

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**BEFORE THE COMMISSIONER
OF INSURANCE**

**IN THE MATTER OF
THE LICENSURE OF
WELLINGTON BENEFITS**

**VOLUNTARY SETTLEMENT
AGREEMENT**

NOW COMES Wellington Benefits, Inc. (hereinafter "Wellington Benefits") and the North Carolina Department of Insurance (hereinafter "Department"), and hereby voluntarily and knowingly enter into the following Voluntary Settlement Agreement (hereinafter "Agreement"):

WHEREAS, the Department has the authority and responsibility for enforcement of the insurance laws of this State and for regulating and licensing insurance agents and business entities; and

WHEREAS, Wellington Benefits is a North Carolina corporation and currently holds a business entity license issued by the Department; and

WHEREAS, the executive officers of Wellington Benefits are Douglas E. Faulk, Sr., President and Anthony R. Satterfield, Vice President, and

WHEREAS, Wellington Benefits is owned by First Financial Capital Corporation, a member of the First Financial Group of America with corporate headquarters in Houston, Texas; and

WHEREAS, Wellington Benefits has been retained to sell and enroll employee benefits by approximately twenty-six North Carolina public school districts; and

WHEREAS, on or about May 2007, the Department received written complaints from two of Wellington Benefits' competitors that alleged that Wellington Benefits was violating North Carolina's anti-rebating statutes N.C. Gen. Stat. §§58-33-85 and 58-63-15. As a result of said complaints, the Department conducted an informal investigation into the alleged rebating activities of Wellington Benefits; and

WHEREAS, on or about June 5, 2007, the Department notified Douglas E. Faulk, Sr. and Wellington Benefits of the written complaints from Wellington Benefits' competitors and requested that Wellington Benefits provide a written response regarding the same; and

WHEREAS, on or about June 21, 2007, Wellington Benefits timely responded to the Department that it disagreed with the allegations made by the competitors, and asserted that its actions were not in violation of North Carolina's anti-rebating statute because the benefits were either a) included within the pricing of the underlying insurance policies it sold and/or b) provided at no-cost by their affiliated third party administrator, First Financial Administrators, Inc.; and

WHEREAS, the relevant portions of N.C. Gen. Stat. §58-33-85 (a) provide that "no insurer, broker, agent or limited representative shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance...any rebate, discount, abatement, credit, ... or any valuable consideration,...not specified in the policy of insurance;" and

WHEREAS, the above provisions of N.C. Gen. Stat. §58-33-85(a) are set out in N.C. Gen. Stat. §58-63-15 as an unfair method of competition and an unfair or deceptive act or practice; and

WHEREAS, the Department has consistently interpreted and applied N.C. Gen. Stat. §58-33-85(a) to prohibit agents from offering extra-contractual benefits not provided under the insurance contract to their clients at no-cost both directly and indirectly; and

WHEREAS, the Department, while not finding Wellington Benefits knowingly in violation of any applicable North Carolina anti-rebating statute or regulation, has determined that Wellington Benefits did not meet its responsibility to conduct due diligence and failed to ascertain whether offering said extra-contractual benefits indirectly at no-cost may have been in violation of North Carolina's anti-rebating statutes; and

WHEREAS, the parties have agreed to voluntarily settle, compromise and resolve the matters referenced in this Agreement; and

WHEREAS, pursuant to N.C. Gen. Stat. §58-2-70(g), the Commissioner of Insurance and the Department have the express authority to negotiate a mutually acceptable agreement with any person as to the status of the person's license or certificate issued by the Department; and

WHEREAS, the Parties mutually wish to resolve this matter by agreement and consent; and

NOW THEREFORE, in exchange for the consideration of the promises and agreements set out herein, the Department and Wellington Benefits hereby agree to and waive any objections to the following:

1. Wellington Benefits will not offer its clients extra-contractual benefits or services at no-cost or below fair market value unless said benefits or services are specified in an underlying policy of insurance. Such benefits and services may include, but are not limited to, FLEX Spending Accounts, Flex Spending Account Forfeitures, and Flex Benefit Cards.
2. Wellington Benefits shall notify all current clients prior to any 2008 renewal of service contracts/policies after the date of this Agreement that it may continue to offer extra-contractual benefits and/or services at no-cost or below fair market value only if said benefits and services are specified in an underlying policy of insurance.
3. The Department agrees that Wellington Benefits may lawfully offer such extra-contractual benefits and services at no-cost or below fair market value to its clients if said services are specified in an underlying policy of insurance.

4. The Parties enter into this Agreement freely and voluntarily and with knowledge of their respective right to an administrative hearing on this matter, and voluntarily waive said right.
5. The Parties also waive any right to appeal and agree not to challenge the validity of this Agreement in any way.
6. The promises, agreements, representations and consideration contained herein are not mere recitals but are contractual in nature.
7. The Parties agree that neither will initiate any administrative action based on the findings and agreements referenced herein, provided that neither Party violates the terms and conditions of this Agreement.
8. This Agreement, when finalized, will be a public record and is not confidential.
9. This written document contains the entire Agreement between the Parties. There are no other oral or written agreements of any kind that alter or add to this Agreement.
10. The Parties agree that the Superior Court of Wake County shall be the venue for any actions seeking to enforce this Agreement.
11. If, for any reason, any part or provision of this Agreement is found to be void or unenforceable, the other parts and provisions shall remain in full force and effect.
12. The parties have read and understand this Agreement and agree to abide by the terms and conditions contained herein.

IN WITNESS WHEREOF, the Department and Wellington Benefits have caused this Agreement to be executed on the latter of the dates written below:

Wellington Benefits, Inc.

By: _____

Douglas E. Faulk, Sr., President

Date: _____

2-14-08

North Carolina Department of Insurance

By: _____

Angela Ford
Senior Deputy Commissioner

Date: _____

2-25-08