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Ref. No. 947817.01/022669.00005

Gulliver A. Swenson

July 21, 2014

Hearings Unit  
Washington State Office of  
Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

**Re: No. 14-0082**  
**Benefit Marketing Solutions, LLC; et al.**

Dear Sir/Madam:

Enclosed is the original (1) Motion for Stay of Proceedings of Amended Cease and Desist Order; (2) Declaration of Gulliver Swenson; and (3) Declaration of Bradley Denison in Support of Motion for Stay of Amended Cease and Desist Order.

Very truly yours,

RYAN, SWANSON & CLEVELAND, PLLC

Diana Jones, Legal Assistant to  
Gulliver A. Swenson

GAS:ddj  
Enclosures

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STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

BENEFIT MARKETING SOLUTIONS LLC and  
BENEFIT SERVICES ASSOCIATION,

NO. 14-0082

**MOTION FOR STAY OF  
AMENDED CEASE AND DESIST  
ORDER**

Benefit Marketing Solutions (“BMS”) and Benefit Services Association (“BSA”) ask this Hearings Unit to stay the Cease and Desist Order issued in matter No. 14-0081, to mirror the stay of matter No. 14-0082, until the threshold legal issue of the Washington Office of Insurance Commissioner’s jurisdiction and authority to regulate BMS and BSA has been determined. This Hearings Unit recently stayed matter 14-0082 pending determination of the OIC’s jurisdiction and authority, but we are back before this Hearings Unit at the request of the OIC and at the direction of Thurston County Superior Court.

RCW 48.04.020 allows this Hearings Unit to stay orders issued by the OIC that are otherwise not automatically stayed. Here, the OIC issued an Amended Cease and Desist Order that was not automatically stayed because it was made effective immediately. The Amended Cease and Desist Order would cause immediate and irreparable harm to both BMS and BSA if not stayed. The OIC is simply seeking to punish BMS and BSA before they have had their day in court and before the disputed threshold legal issue of the OIC’s jurisdiction has been determined. Thus, for the same reasons that this court stayed matter No. 14-0082, BMS and



1 BSA request that this court stay the Amended Cease and Desist Order pending determination  
2 of the OIC's jurisdiction to regulate BMS and BSA.

### 3 **PROCEDURAL AND FACTUAL HISTORY**

4 BSA is a not-for-profit Illinois corporation that provides membership programs in a  
5 number of industries. BMS is an Oklahoma limited liability corporation that administers  
6 BSA's membership programs, including the RAC Benefit Plus membership at issue in this  
7 matter. The RAC Benefit Plus membership is made available to customers of Rent-A-Center  
8 in Washington and other states. Membership in RAC Benefit Plus entitles its members to  
9 benefits such as discounts in retail products and services including discounts in food,  
10 entertainment, and automotive industries and other benefits that would assist members were  
11 they to become disabled or unemployed.

12 The OIC, through its designated representative Marcia Stickler, issued an Amended  
13 Cease and Desist Order on May 15, 2014 . On its face, the order requires that BMS and BSA  
14 cease and desist from engaging or transacting any unauthorized business of insurance in  
15 Washington based upon the Insurance Commissioner's conclusion that plaintiffs have acted as  
16 "service contract providers" under RCW 48.110, *et seq* by providing a benefit called paid-out  
17 product service protection. The Amended Cease and Desist Order purports to not only prevent  
18 BMS and BSA from continuing to sell the product in Washington state but also from  
19 providing the benefit to members that existed prior to the order. The order also requires BMS  
20 and BSA to notify all Washington residents who have purchased any "service contract" of the  
21 order.

22 Counsel for BMS and BSA met with the OIC's designated representative and  
23 indicated that they would be requesting a stay of the order pursuant to RCW 48.04.020(2) by  
24 a letter to the designated representative. BMS and BSA formally requested the OIC stay the  
25 Amended Cease and Desist Order pending determination of the parties' jurisdictional  
26



1 disagreements in Thurston County Superior Court. Declaration of Gulliver Swenson, Ex. A.  
2 The OIC denied this request on June 2, 2014. *Id.*, Ex. B.

3 BMS and BSA then filed their Complaint for Declaratory Relief in Thurston County  
4 Superior Court on June 13, 2014. BMS and BSA's Thurston County Superior Court action  
5 asks for a declaration that:

6 BMS and BSA, and their collective business activities, are not subject to  
7 regulation and control by the Washington State Office of the Insurance  
8 Commissioner because BMS and BSA: (1) are not service contract providers  
9 and are not engaged in the solicitation or sale of service contracts as defined  
10 by RCW 48.110.020, and (2) are not insurance providers as defined by RCW  
11 48.17.060.

12 On June 27, 2014, Thurston County Superior Court heard BMS and BSA's motion for  
13 stay pursuant to RCW 48.04.020(2) for a stay of the Amended Cease and Desist Order.  
14 During argument, counsel for the OIC stated:

15 [T]he motion for – cease and desist – or the order to cease and desist and the  
16 notice of intent to impose fines were filed the same day or issued the same day  
17 by staff at the OIC. With the notice for – of intent to impose fines, and this day  
18 of proceeding concerning the exact allegations in this case, concerning the  
19 exact parties, concerning the exact statutes, was initiated. Therefore there is an  
20 administrative proceeding pending where a motion for a stay could have been  
21 filed. However, for whatever reasons, the plaintiffs, "Benefit" failed to do so.

22 *Id.*, Ex. C.

23 The court then denied the motion for stay, without prejudice, because it identified a  
24 technical issue based on the fact that BMS and BSA did not make the prior request for a stay  
25 to the Commissioner (through the Hearings Unit). We are, therefore, back in front of this  
26 Hearings Unit to meet that technical requirement of RCW 48.04.020(2) and comply with the  
OIC's position that the request for stay be made to this Hearings Unit.

### ARGUMENT

A stay of matter No. 14-0081 is appropriate because (1) BMS and BSA are being  
punished by the Amended Cease and Desist Order before there has been a determination



1 whether the OIC has jurisdiction to issue the Order or regulate BMS and BSA's activities, (2)  
2 it will promote judicial economy, preserve resources, and avoid inconsistent adjudications,  
3 and (3) a stay will benefit Washington consumers that are BSA members and will not lead to  
4 any possible harm.

5 First, Thurston County Superior Court, the OIC, BMS and BSA all agree that there is  
6 a legitimate good-faith dispute as to whether the benefit that is the subject of the cease and  
7 desist order is a "service contract" as defined by RCW 48.110. The benefit, called paid-out  
8 product service protection, does not meet the statutory definition of a service contract because  
9 no additional consideration is provided by the customer and there is no specific duration for  
10 the benefit. This dispute is the subject of BMS and BSA's Complaint for Declaratory Relief  
11 in Thurston County Superior Court. The adjudication of whether the paid-out product service  
12 protection is a service contract will determine whether the OIC has jurisdiction to regulate  
13 BMS and BSA and issue the Amended Cease and Desist Order. If the Thurston County  
14 Superior Court grants the relief that BMS and BSA are requesting, the OIC will have lacked  
15 the jurisdiction and authority to enter the Amended Cease and Desist Order.

16 The problem is that the Amended Cease and Desist Order is a punishment that is  
17 effective immediately and by the time the Superior Court has issued its declaratory judgment,  
18 BMS and BSA will have been significantly harmed. The Amended Cease and Desist Order  
19 requires BMS and BSA to cease selling "service contracts" to Washington consumers and  
20 provide every customer that BMS and BSA has ever had in Washington with a copy of the  
21 Amended Cease and Desist Order. This punishment irreparably harms BSA and BMS by  
22 significantly interrupting their Washington business and damaging their reputations among  
23 their previous and existing members. This type of punishment should not be meted out until  
24 the Thurston County Superior Court has determined that the OIC had jurisdiction to regulate  
25 BMS and BSA and issue the Amended Cease and Desist Order.  
26

1 Second, BMS and BSA are on the 90-day clock for filing a Notice of Hearing  
2 contesting the Amended Case and Desist Order. Without a stay of the Amended Cease and  
3 Desist, BMS and BSA may have to request a hearing to preserve their right to  
4 administratively contest matter 14-0082. This would result in two hearings adjudicating the  
5 exact same legal issue. The resources of this Hearings Unit can be conserved by staying this  
6 matter. Inconsistent adjudication can be avoided if the Hearings Unit and Thurston County  
7 Superior Court are not concurrently determining whether the OIC has jurisdiction to regulate  
8 BMS and BSA.

9 Third, a stay will not harm any Washington consumers; in fact a stay will protect  
10 Washington consumers and allow them to continue receiving a valuable benefit. As an initial  
11 matter, the allegation against BMS and BSA is that they failed to register as a service contract  
12 provider. There are no allegations of fraud, deceit, misappropriation of funds, or acts that  
13 would otherwise put Washington state consumers at risk of harm. Rather this is simply an  
14 allegation of a technical statutory violation.

15 Next, as the Declaration of Brett Wimberley further explains, there is no threat or  
16 likelihood of harm to Washington consumers because:

- 17 • The BSA membership has been provided to Washington residents since 2004  
18 without a single administrative complaint to the OIC or any other Washington  
19 state agency;
- 20 • No lawsuits have been filed in Washington state against BMS or BSA;
- 21 • The benefit at issue – the paid-out product service protection – is insured by a  
22 CLIP policy, as more fully explained in the Declaration of Bradley Dennison,  
23 that protects Washington consumers from non-payment;
- 24 • The CLIP policy is approved by the Oklahoma Department of Insurance; and,
- 25 • No claims have ever been made by a Washington resident under the CLIP  
26 policy because the benefits owed to Washington consumers under the paid-out  
product benefit have always been provided by BMS/BSA.



1 Not only is there no risk of harm were this Hearings Unit to order a stay, but  
2 Washington consumers would be harmed if the Amended Cease and Desist Order is not  
3 stayed. There is no comparable product on the market that would allow Washington  
4 consumers to protect their purchased goods. If the Amended Cease and Desist is not stayed,  
5 the OIC will contend that not only are BMS and BSA prohibited from providing the paid-out  
6 product benefit to new members, but also that the benefit can no longer be provided to  
7 existing members. A stay of the Amended Cease and Desist Order is necessary because, in  
8 absence of a stay, Washington consumers will no longer be entitled to receive a benefit they  
9 are currently expecting if a stay is not entered.

#### 10 CONCLUSION

11 The OIC's shoot first and ask questions later approach to this matter has created a  
12 situation that begs for a stay. The OIC should not be able to punish BMS and BSA prior to  
13 adjudicating whether the OIC even has jurisdiction to regulate BMS and BSA. For this  
14 reason, and those stated above, this Hearings Unit should enter an order staying the Amended  
15 Cease and Desist Order.

16 DATED this 21st day of July, 2014.

17 Respectfully submitted:

18 RYAN, SWANSON & CLEVELAND, PLLC

19  
20  
21 By 

22 Jerry Kindinger, WSBA #5231  
23 Gulliver A. Swenson, WSBA #35974  
24 Attorneys for Benefit Marketing Solutions  
25 LLC and Benefit Services Association

26 1201 Third Avenue, Suite 3400  
Seattle, Washington 98101-3034  
Telephone: (206) 464-4224  
Facsimile: (206) 583-0359  
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STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

BENEFIT MARKETING SOLUTIONS LLC and  
BENEFIT SERVICES ASSOCIATION,

NO. 14-0082

**DECLARATION OF GULLIVER  
SWENSON**

I, Gulliver Swenson, state and declare as follows:

1. I am an attorney at Ryan, Swanson & Cleveland, PLLC, the attorneys of record for Benefit Marketing Solutions, LLC and Benefit Services Association in the above-captioned action. I make the following statements based on my first-hand knowledge and information. I am competent to testify and, if called to do so, would repeat and affirm each and every statement herein made.

2. Attached as Exhibit A is a true and correct copy of the Complaint for Declaratory Relief we filed in Thurston County Superior Court on June 13, 2014. As we represented to this Hearings Unit, we quickly moved for a stay of the Amended Cease and Desist Order dated May 15, 2014 issued in matter no. 14-0081.

3. Attached as Exhibit B is a true and correct copy of the hearing transcript from the hearing on our motion for a stay of the Amended Cease and Desist Order. I have highlighted relevant portions of the hearing transcript in which both the Court and the OIC invite us to return to this Hearings Unit and request a stay.

DECLARATION OF GULLIVER SWENSON - 1

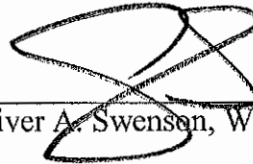




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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 21<sup>st</sup> day of July, 2014, at Seattle, Washington.



Gulliver A. Swenson, WSBA #35974



**EXHIBIT A**

**FILED**

JUN 13 2014

SUPERIOR COURT  
BETTY J. GOULD  
THURSTON COUNTY CLERK

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SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

BENEFIT SERVICES ASSOCIATION, a  
nonprofit Illinois corporation; BENEFIT  
MARKETING SOLUTIONS, LLC, an Oklahoma  
limited liability company,

Plaintiffs,

v.

WASHINGTON STATE OFFICE OF  
INSURANCE COMMISSIONER,

Defendant.

14-2-01156-1  
NO.  
**COMPLAINT FOR  
DECLARATORY RELIEF**

**INTRODUCTION**

Benefit Services Association, a not-for-profit Illinois corporation and Benefit Marketing Solutions, LLC, an Oklahoma limited liability company, seek declaratory adjudication that:

Neither entity nor their respective business activities are subject to regulation and control by the Washington State Office of the Insurance Commissioner because plaintiffs: (1) are not service contract providers and are not engaged in the solicitation or sale of service contracts as defined by RCW 48.110.020, and (2) are not insurance providers as defined by RCW 48.17.060.

This action is brought because the Washington State Insurance Commissioner ("Insurance Commissioner") issued an Amended Cease and Desist Order dated May 15, 2014 (attached hereto as Exhibit A) alleging that plaintiffs are engaged in or transacting unauthorized business of insurance in the State of Washington as defined by RCW 48.110. A

COMPLAINT FOR DECLARATORY RELIEF - 1

**COPY**

1 good faith dispute exists regarding the interpretation of the statutes the Insurance  
2 Commissioner relies upon and their application to Benefits Services Association (“BSA”) and  
3 Benefit Marketing Solutions, LLC (“BMS”). The Insurance Commissioner has  
4 misinterpreted and misapplied these statutes because plaintiffs are not engaging in the  
5 business of insurance and the Insurance Commissioner lacks personal and subject matter  
6 jurisdiction over them.

### 7 **STANDING AND JURISDICTION**

8 1. BSA and BMS have standing under the Uniform Declaratory Judgments Act to  
9 bring this action pursuant to RCW 7.24.020 because their substantive rights are adversely  
10 affected by the Insurance Commissioner’s incorrect interpretation and application of the  
11 Insurance Code and improper assertion of jurisdiction over the plaintiffs.

12 2. This court has jurisdiction and venue to determine the plaintiffs’ request for  
13 declaratory relief pursuant to RCW 4.92.010(5).

### 14 **DESCRIPTION OF PLAINTIFFS**

15 3. BSA is a not-for-profit corporation formed under the laws of the State of  
16 Illinois with its principal place of business in Norman, Oklahoma. BSA has never maintained  
17 an office in the State of Washington nor has it ever employed citizens in the State of  
18 Washington. Membership in BSA is open to any person. BSA members, depending on the  
19 level of their membership, are entitled to an array of discounts in retail products and/or  
20 services in numerous industries including discounts in food and entertainment industries,  
21 automotive and other retail products and services. BSA association memberships are made  
22 available for sale by banks, insurance companies, retailers, network marketing programs and  
23 rental purchase centers to their customers and clients.

24 4. BMS is an Oklahoma limited liability company with its principal office in  
25 Norman, Oklahoma. BMS has never had an office in Washington state nor employees who  
26



1 work in this state. BMS administers BSA's membership programs. BMS makes available to  
2 the industries and organizations described above the right to sell BSA association  
3 memberships to their customers. BSA memberships are offered for purchase to customers of  
4 these organizations separate from the organization's products or services, as part of  
5 organizations' efforts to retain customers and enhance customer relations.

#### 6 UNDERLYING FACTS

7 5. BMS entered into a written agreement dated March 1, 2012 with Rent-A-  
8 Center of Texas, LP, for itself and in its capacity as manager of Rent-A-Center East, Inc., a  
9 Delaware corporation with a principal office in Plano, Texas (collectively referred to herein as  
10 "RAC"). Under this agreement, BMS supplied RAC with retail and discount benefits through  
11 BSA. The agreement was executed by the parties in Oklahoma and Texas, respectively.

12 6. RAC stores located in Washington and other states are engaged in a rent-to-  
13 own service in which RAC customers enter into rent-to-own agreements for the rental of such  
14 things as household appliances, televisions and furniture. After the initial rental term, RAC  
15 customers can terminate their leases without charge or penalty, continue to rent, or purchase  
16 the goods for the amount of the early purchase option contained in the agreement. Unlike  
17 lessees under standard leases, RAC customers who lease products for the entire period set out  
18 in the rent-to-own agreement receive title to those products upon completion of the rental  
19 period without any additional charge. These arrangements are substantively different from  
20 traditional equipment/product leases which generally run for specific times and duration in  
21 excess of one year, and, once signed, financially obligate the lessee for all lease obligations  
22 for the balance of the entire lease term and at the end of which the lessor retains title to the  
23 goods unless the lessee pays an additional residual value amount.

24 7. Under the agreement, BSA's benefits are provided to RAC customers in a  
25 program known as "RAC Benefits Plus" ("RAC Membership"). A RAC Membership is  
26



1 offered to RAC customers who lease products from RAC stores located in Washington and  
2 elsewhere. The RAC Membership is offered to RAC customers as an additional benefit upon  
3 the leasing of any product. The RAC customer may join the RAC Membership for a period as  
4 short as a week, but the RAC Membership is renewable by the customer for as long as the  
5 customer wants. The RAC Membership is completely optional to RAC customers. RAC  
6 Membership members can terminate their RAC Membership at any time for any or no reason  
7 without charge or obligation.

8 8. RAC customers can continue to participate in the RAC Membership after their  
9 rent-to-own agreements have been fulfilled or terminated. Some, but not all RAC customers  
10 do that in order to continue to avail themselves of the wide-ranging benefits of membership.

#### 11 **PAID-OUT PRODUCT SERVICE PROTECTION**

12 9. If RAC customers choose to continue membership in the RAC Membership  
13 after they acquire ownership of the rent-to-own products, those persons receive an additional  
14 RAC Membership benefit called "paid-out product service protection." This benefit is added  
15 to the RAC Membership at no cost or obligation to the RAC Membership participant. It is  
16 simply an additional and incidental benefit of the RAC Membership. The benefit provides a  
17 repair and replacement service for all RAC products that the RAC customer owns outright.  
18 The benefit is available to the RAC customer no matter how many RAC products they own.  
19 Neither BSA nor BMS provide these repair or replacement services.

#### 20 **CLAIMS OF INSURANCE COMMISSIONER**

21 10. The Insurance Commissioner has improperly concluded that the paid-out  
22 product service protection offered as an incidental part of the RAC Membership constitutes  
23 (1) a service contract as defined under RCW 48.110.020(17)(a) and that (2) BSA and BMS  
24  
25  
26



1 are service contract providers as that term is defined by RCW 48.110.020(19).<sup>1</sup>

2 11. Neither RCW 48.110.020(17)(a) nor (19) applies to plaintiffs because: (1) the  
3 post-rental agreement program benefit is not a service contract; and (2) BSA and BMS are not  
4 service contract providers.

5 12. The paid-out product service protection benefit is not a service contract as  
6 defined by statute. RCW 48.110.020(17)(a) provides in pertinent part:

7 'Service contract' means a contract or agreement entered into at any time for  
8 consideration over and above the lease or purchase price of the property for  
9 any specific duration to perform the repairs, replacement or maintenance of  
10 property or the indemnification for repairs, replacement or maintenance for  
operational or structural failure due to a defect in materials or workmanship or  
normal wear and tear[.]

11 13. This incidental benefit of the RAC Membership is substantively different from  
12 the statutory definition. First, there is no additional consideration paid by the consumer. RAC  
13 customers may choose to pay a set membership fee to join the RAC Membership for which  
14 the paid-out account product service protection is an incidental benefit. RAC Membership  
15 fees are neither increased nor decreased for members based on whether the paid-out product  
16 service protection is included in the benefits. The benefit is not tied to any specific product,  
17 instead it is tied to the customer's membership. The membership fee is unaffected by either  
18 the specific leased product or the quantity of leased products. A RAC customer could lease as  
19 many products as it wanted, but would only pay a single membership fee to receive the  
20 incidental paid-out account product service protection. There is not a minimum membership  
21 period required to receive any benefit and a member is not required to be a member  
22 throughout the lease period to receive the paid-out account product service protection. If the  
23 member joins one day prior to needing to use the paid-out account product service protection,

24 \_\_\_\_\_  
25 <sup>1</sup> Note: This statute was amended by the 2014 Legislature in S.SL 5977 which becomes  
26 effective June 12, 2014. The amendments of this legislation are immaterial to the issues  
presented here, but do change the citation references above. After June 12 the new references  
are: RCW 48.110.020(18)(a) and (20), respectively.



1 they will receive the full benefit. Thus, there is no additional consideration paid for this  
2 benefit.

3 14. Second, there is no specific duration for the paid-out account product service  
4 protection. The benefit is available to the member for as long as they maintain their  
5 membership. There is no specific duration for the paid-out account product service protection  
6 benefit because the duration is tied directly to the RAC Membership and can be continued or  
7 terminated at any time at the member's discretion.

8 15. Finally, this benefit is an incidental part of a RAC Membership which includes  
9 availability of wide ranging product and service discounts wholly unrelated to and separate  
10 from the rental agreements. The purpose of the RAC Membership is to enhance customer  
11 relations and encourage repeat customers by offering discounts for goods and services  
12 unrelated to the RAC business. Traditional service contracts focus on offering maintenance,  
13 repair or replacement for the specific products sold or leased for a specific consideration in  
14 addition to what the consumer already pays for a product. Those circumstances do not exist  
15 here.

16 16. This court should preliminarily stay the enforcement of the Amended Cease  
17 and Desist Order until it has resolved the claims contained herein.

18 WHEREFORE, plaintiffs pray that the Court adjudge and decree that:

19 1. The paid-out account product service protection benefit of the RAC  
20 Membership is not a service contract as defined by RCW 48.110.020(17)(a) and does not  
21 constitute an insurance product subject to the Insurance Code of the State of Washington;

22 2. BSA is not a service contract provider as defined by RCW 48.110.020(19)  
23 because it does not sell or solicit the sales of service contracts in Washington State;

24 3. BMS is not a service contract provider as defined by RCW 48.110.020(19)  
25 because it does not sell or solicit the sales of service contracts in Washington State;  
26







**EXHIBIT A**

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

Phone: (360) 725-7000  
www.insurance.wa.gov



OFFICE OF  
INSURANCE COMMISSIONER

RECEIVED  
MAY 16 2014

Ryan Swanson Cleveland

In the Matter of )

) No. 14-0081

BENEFIT MARKETING SOLUTIONS and )  
BENEFIT SERVICES ASSOCIATION, )

) AMENDED ORDER TO CEASE  
) AND DESIST

) Unregistered and Unauthorized Entities. )  
)

Pursuant to RCW 48.02.080, RCW 48.15.020 and RCW 48.110.030, the Insurance Commissioner orders the entities and the individuals named above and their officers, directors, trustees, agents, employees, subsidiaries, and affiliates ("Respondents") to immediately cease and desist from:

- A. Engaging in or transacting the unauthorized business of insurance in the State of Washington, including the advertising and/or solicitation of insurance and insurance-related products, including, but not limited to, service contracts; and from
- B. Seeking or soliciting insurance business in the State of Washington and participating, directly or indirectly, in any act of an insurance producer or insurance company in seeking or soliciting insurance business, including service contracts, in the State of Washington.

**THIS ORDER IS BASED ON THE FOLLOWING:**

1. Respondents have acted as service contract providers, under various names, in Washington. Service contract providers who register under RCW 48.110 are not required to have a Certificate of Authority from the Commissioner. Without such registration, issuers of service contracts are subject to all of the general provisions of the Insurance Code, Chapter 48 RCW. A contract sold to a Washington resident by an unregistered entity therefore constitutes the act of undertaking to indemnify the consumer or pay a specified amount upon determinable contingencies and thus constitutes "insurance" as defined in RCW 48.01.040.
2. None of the Respondents are licensed to solicit insurance in Washington. Respondents have not applied for or been granted a registration as a service contract provider, a Certificate of Authority to act as an insurer or an insurance producer license in Washington. Respondents have not submitted to OIC any appropriate certificate, license, or other document issued by another agency of this state, any subdivision thereof, or the federal government, permitting or qualifying

Mailing Address: P. O. Box 40255 • Olympia, WA 98504-0255  
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501

EXHIBIT "A"

Respondents to provide such coverage in this state. Respondents have not transacted this insurance through a licensed surplus lines broker in this state.

3. Respondents acted as service contract providers in Washington in violation of RCW 48.110.030, have transacted insurance in Washington in violation of RCW 48.15.020, and acted as an insurance producer by soliciting Washington residents for insurance without being licensed as an insurance producer in violation of RCW 48.17.060.

Respondents are further ordered to furnish the Office of the Insurance Commissioner, within forty-five (45) days of receipt of this Order, with a complete listing, to include full contact information and amounts of monies collected from such consumers, of all Washington residents and Washington risks who have purchased any service contract, or other insurance-related product, directly or through the Internet, sales center, or retail outlet, from Respondents.

Respondents are also further ordered to notify all Washington residents who have purchased any service contract or other insurance-related product from Respondents of the complete content of this Order within forty-five (45) days of receipt of the Order.

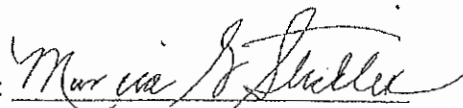
Pursuant to RCW 48.15.020(2)(b), each unauthorized insurer and each individual who made a contract of insurance in this state, directly or indirectly, including service contracts, shall remain individually liable for the performance of the contract and for the full amount of any loss sustained by an insured under such contract.

Any violation of the terms of this Order by Respondents, their officers, directors, employees, agents, or affiliates, will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, 48.17.530, 48.15.020 and other applicable Code sections.

Respondents have the right to demand a hearing pursuant to chapters 48.04 and 34.05 RCW. This Order shall remain in effect subject to the further order of the Commissioner.

THIS ORDER IS EFFECTIVE IMMEDIATELY AND IS ENTERED at Tumwater, Washington, this 15<sup>th</sup> day of May, 2014.

**MIKE KREIDLER**  
Insurance Commissioner

By:   
Marcia G. Stickler  
Staff Attorney  
Legal Affairs Division

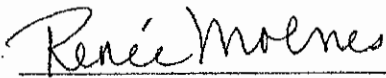
CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing ORDER TO CEASE AND DESIST on the following individual via U.S. mail:

Gulliver A. Swenson, Esq.  
Ryan, Swanson & Cleveland, PLLC  
1201 Third Avenue, Suite 3400  
Seattle, Washington 98101-3034

SIGNED this 15<sup>th</sup> day of May, 2014, at Tumwater, Washington.



\_\_\_\_\_  
Renee Molnes

**EXHIBIT B**



A P P E A R A N C E S

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I N D E X

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1 June 27, 2014,

Olympia, Washington

2 MORNING SESSION

3 The Honorable Judge Carol Murphy, Presiding

4 Kathryn A. Beehler, Official Reporter

5 --oOo--

6 THE COURT: The final matter that the court  
7 will hear today is Number 19 on the court's docket.  
8 Again I appreciate the patience of the parties. This  
9 is Benefit Services Association versus The Office of  
10 the Insurance Commissioner. And I have reviewed the  
11 pleadings with regard to this motion for stay prior  
12 to this hearing. And we'll begin with appearances  
13 from counsel.

14 MR. SWENSON: Your Honor, Gulliver Swenson  
15 here on behalf of Benefit Services Association and  
16 Benefit Marketing Solutions.

17 MS. DELEON: And Marta DeLeon, Assistant  
18 Attorney General and counsel for The Office of the  
19 Insurance Commissioner.

20 THE COURT: Thank you. Mr. Swenson, this is  
21 your motion. You may proceed.

22 MR. SWENSON: Thank you. You know, this is  
23 just a perfect example of why RCW 48.04.020(2)  
24 exists. This is an administrative action filed by  
25 the OIC in which they allege that BMS and BSA failed

1 to register, a procedural violation, something that's  
2 a technical rule, but something that at its heart  
3 shows no injury to the consumers of Washington, shows  
4 no injury to the people of Washington.

5 And the allegations contained in this Amended  
6 Cease and Desist Order are bare allegations. They're  
7 not allegations that have factual support for them.  
8 And they're allegations that are challenged by a  
9 bona fide dispute between the parties as to what the  
10 definition is of a service contract and whether the  
11 OIC even has jurisdiction to regulate the activities  
12 of Benefit Services Association and Benefit Marketing  
13 Solutions and to regulate these entities.

14 The problem with the Amended Cease and Desist and  
15 the problem with the path that the OIC has taken is  
16 that this order is effective immediately. It's the  
17 punishment. It's what they have to do from day one.  
18 And part of what they have to do from day one is stop  
19 operating in the state of business -- in the State of  
20 Washington the business that they have been operating  
21 for ten years.

22 The other part of what they have to do is that  
23 they have to notify every single customer, which is  
24 thousands of customers. In the past two or three  
25 years, there's been 13,000 customers. And they have

1 to notify each and every one of those customers of  
2 this Amended Cease and Desist, and provide the  
3 Amended Cease and Desist Order to them.

4 As this court can understand, that would have  
5 significant impact on the continuing business of  
6 those customers and a significant impact on BSA and  
7 BMS's ability to continue to do this in this state.  
8 That would obviously cause extreme disruption to BSA  
9 and BMS's business and cause irreparable damage to  
10 BMS and BSA's business in this state which can't be  
11 fixed by anything that would otherwise happen other  
12 than a stay.

13 I thought the declaration of Marcia Stickler was  
14 quite telling as to how this came about -- and to  
15 other issues that are related to this stay.  
16 Ms. Stickler says in her declaration,

17 "My role is essentially that of a prosecutor of  
18 insurance code violations." So she's taking one  
19 side of the story. She's prosecuting these  
20 violations.

21 She says, "my review of the relevant evidence,"  
22 so the prosecutor's review of the relevant evidence,  
23 and then "I issued an Order to cease and desist."

24 So what we have is, we have the prosecutor looking  
25 at evidence, making determinations about that

1 evidence, and then issuing an order that's the final  
2 and effective order that's going to irreparably harm  
3 our clients.

4 THE COURT: But you would recognize that this  
5 is an interim order in which your client has the  
6 opportunity to have a hearing on.

7 MR. SWENSON: I recognize that one of the  
8 rights that our clients have as the result of that --  
9 of the Amended Cease and Desist Order is to request a  
10 hearing. I also recognize that another right we have  
11 is to request a stay of this Amended Cease and Desist  
12 Order. So I don't think those two things are  
13 necessarily connected in any way.

14 THE COURT: Well, how are they not connected?  
15 In other words, a stay would only be issued in order  
16 to allow the contested matter to be resolved; right?  
17 I mean, you're not requesting immediate relief so  
18 that the Cease and Desist is reversed to never be  
19 brought again.

20 MR. SWENSON: Absolutely not. We're  
21 requesting that the Cease and Desist Order itself,  
22 which in itself says "effective immediately," be  
23 stayed until the bona fide dispute that both parties  
24 admit -- I mean, we sat down there for an hour with  
25 Ms. Stickler and Investigator Bobby Frye. And we had

1 a discussion about this bona fide dispute that we all  
2 agreed existed.

3 It's a gray area. It's a question that requires  
4 someone to adjudicate whether the OIC even has  
5 jurisdiction. And then the question to this court  
6 is, before that question is answered -- before the  
7 question of the OIC's jurisdiction is answered,  
8 should this matter be stayed so that this irreparable  
9 harm and these damages that would accrue to our  
10 clients don't happen before that real threshold  
11 question is determined, the jurisdiction of the OIC.

12 And again, you know, we're talking about a  
13 technical violation. And no one disagrees that if --  
14 if BMS and BSA had simply registered, which is,  
15 you know, provide them your information, send in 250  
16 bucks and fill out an application, that there would  
17 be a problem here. And this isn't -- this isn't a  
18 case that originates from a customer complaint, from  
19 situations of fraud, from things that the OIC does  
20 investigate and would have interest in having an  
21 Amended Cease and Desist Order be effective  
22 immediately. This is just simply a registration  
23 violation.

24 One of the issues, I think, with RCW 48.04.020 and  
25 this court's position here today is, there isn't any

1 true guiding language. It doesn't say to the court,  
2 here's the three-part test that you can look at to  
3 determine whether a stay is appropriate or not. And  
4 so what we would posit with the court is the question  
5 then becomes, is a stay reasonable in light of these  
6 circumstances; is a stay fair in light of these  
7 circumstances; and have the procedural pieces been  
8 met that would allow a party like BMS or BMA to stay.

9 And we agree that granting a stay until the  
10 termination has been conclusively made as to whether  
11 the OIC has jurisdiction over the plaintiff and their  
12 business activities, whether that is by this court or  
13 by the OIC itself in a hearing, is the appropriate  
14 remedy for this court and for our clients, frankly.

15 There were a couple objections that were made in  
16 the response brief of the OIC. I think those can  
17 actually be done away with fairly easily. There are  
18 concerns about the legitimacy of the underlying  
19 action. And we welcome a motion to dismiss,  
20 Your Honor. But that will be heard on a 28-day  
21 calendar. It will probably be heard sometime in  
22 August or September. And when that motion is  
23 properly noted before this court, we're happy to  
24 respond to it. But it's indisputable that the proper  
25 place, as stated in 48.04.020, for this motion to be

1 heard is in Thurston County Superior Court.

2 They objected, stating that the request for stay  
3 needs to be heard by the hearings unit and not by --  
4 and not by some other designee of the Commissioner.  
5 This is simply manufactured. This is not part of the  
6 statute. What the statute says is that the request  
7 needs to be made to the Commissioner. And when you  
8 have Marcia Stickler declaring that she issued an  
9 Order to Cease and Desist, and you have Marcia  
10 Stickler meeting with us to discuss the Cease and  
11 Desist, and we provide Ms. Stickler with our request  
12 for a stay, and then on Office of the Insurance  
13 Commissioner letterhead she responds denying the  
14 stay, I don't see that it is a fair argument to argue  
15 that that wasn't a denial of the stay by the  
16 Commissioner or that we didn't follow a process of  
17 requesting a stay from the Commissioner.

18 THE COURT: Did you request a stay of the  
19 Commissioner?

20 MR. SWENSON: We did. It's Exhibit --

21 THE COURT: I reviewed that. That's why -- I  
22 guess I'm responding to what you're saying. You said  
23 you didn't have to, but you did.

24 MR. SWENSON: But -- no, sorry. The position  
25 of the OIC in this is that we had to request a stay



1 of the hearings unit, that we had to -- and as the  
2 court is, I'm sure, aware, there's been some tumult  
3 at the hearings unit at the OIC. So there wasn't  
4 really a hearings officer at the time that we  
5 requested a stay to Ms. Stickler at the  
6 Commissioner's Office. But the OIC's position is  
7 that the only place where a stay can be requested to  
8 is the hearings unit. And we think that by  
9 requesting a stay of the same person who issued the  
10 Cease and Desist Order and having that stay denied by  
11 the cease and -- by the Commissioner's Office  
12 accomplished the necessary step under RCW 48.04.020.

13 THE COURT: Do you wish to reserve some time?

14 MR. SWENSON: Just a brief second. I'm almost  
15 through, Your Honor.

16 The other piece that they put forward that is a  
17 little bit misleading is, they cite to RCW 48.04.140.  
18 And they say that the court must make a determination  
19 that a stay wouldn't tend to injure the public. But  
20 that is found nowhere in 48.04.020. And the citation  
21 in their response brief is a little bit misleading as  
22 to how that exists.

23 Even if it was applicable that you had to make a  
24 determination that a stay wouldn't impact the public,  
25 they would have the burden of proving that, which

1       their naked and bare assertions that we don't qualify  
2       as insurers are just circuitous to their whole  
3       argument in the Amended Cease and Desist.

4       So we don't think that that makes any sense. And  
5       as we said, initially, there is no harm for the  
6       public, because this is simply a registration  
7       violation. There are no complaints; there are no  
8       allegations of fraud, no allegations of deceit. So  
9       we do think a stay is appropriate in this matter,  
10      Your Honor.

11             THE COURT: Thank you.

12             MS. DELEON: Good morning, Your Honor. I'd  
13      like to begin by apologizing for a citation error in  
14      my brief, as Mr. Swenson did point out. The language  
15      concerning the requirement that a Superior Court  
16      cannot enter a stay if entering such a stay would  
17      tend to injure the public interest is found in  
18      48.04.140. And my brief cited .020. And it brings  
19      to light an important issue in this case, an  
20      important consideration for this court. Context here  
21      is extremely important.

22             First, the motion for -- to cease and desist -- or  
23      the Order to Cease and Desist and the Notice of  
24      Intent to impose fines were filed the same day or  
25      were issued the same day by staff at the OIC. With

1 the notice for -- of intent to impose fines, an  
2 administrative proceeding concerning the exact  
3 allegations in this case, concerning the exact  
4 parties, and concerning the exact statutes, was  
5 initiated. Therefore, there is an administrative  
6 proceeding pending where a motion for a stay could  
7 have been filed. However, for whatever reason, the  
8 plaintiffs, who I'll refer to as "Benefit," failed to  
9 do so.

10 THE COURT: But they chose to use another  
11 process that was also available to them.

12 MS. DELEON: Well, they chose to ask the --  
13 essentially, the prosecutor to agree to such a stay.  
14 But with a pending administrative proceeding, the  
15 entity who has the authority to enter the  
16 Commissioner's order is not the prosecuting staff.  
17 It is the hearings officer. So it is --

18 THE COURT: But can't they also go to  
19 Superior Court?

20 MS. DELEON: After -- in a -- in a case, which  
21 is an administrative hearing, they have requested and  
22 been denied a stay by the Commissioner. When there  
23 is an administrative proceeding pending, the  
24 Commissioner's decision comes from the hearings  
25 officer. And while the case -- or the statutes,

1 particularly 48.02 -- 04.020 is not as clear as it  
2 could be, the context of that statute makes it clear.

3 This entire scheme for requesting a stay is  
4 established in the statutes that establish  
5 administrative hearings before the Office of the  
6 Insurance Commissioner. Absent a request for an  
7 administrative hearing or a pending administrative  
8 proceeding initiated by staff, there is no  
9 opportunity to stay an order, because a stay has --  
10 the order has not been contested.

11 Once an order is contested and a request for an  
12 administrative proceeding is initiated, then the  
13 individuals who are subject to whatever order the  
14 Commissioner has entered can request a stay from the  
15 administrative hearings officer. After that stay has  
16 been denied by the Commissioner, by the  
17 Administrative Hearing Officer who has the  
18 Commissioner's authority to enter a final order, then  
19 that stay can be -- a stay can be requested from this  
20 court.

21 Because they failed to request a stay from the  
22 individual who has the Commissioner's authority to  
23 enter or approve such a stay or to deny it, they have  
24 failed the first step of that statute, which is  
25 requesting the hearing from the -- or requesting the

1 stay from the Commissioner.

2 Secondly, once they do come to Superior Court,  
3 they are not -- there is not a complete void of  
4 considerations for this court to keep in mind.  
5 48.04.040 lays out that requesting an appeal of a  
6 Commissioner's order does not -- or requesting a --  
7 appealing to Superior Court does not automatically  
8 stay. But in any case, where a stay is requested  
9 from the Superior Court, it cannot be entered if  
10 entering the stay would tend to injure the public  
11 interest.

12 THE COURT: And who has the burden of proof on  
13 that?

14 MS. DELEON: The statute is silent. But in  
15 all cases contesting agency action, the  
16 administrative procedures can overlay other more  
17 specific statutory schemes. And in the  
18 Administrative Procedures Act, the burden of  
19 demonstrating the invalidity of an agency's action is  
20 always on the entity who is contesting the action.

21 So it is my opinion that Benefit would have the  
22 burden of proving that a stay would not tend to  
23 injure the public interest. Even if it is on the  
24 Commissioner, there is uncontested evidence in the  
25 record so far from the declaration of Marcia Stickler

1 that, in fact, allowing an unlicensed insurance  
2 company to continue to sell products without a  
3 license and without a certificate of authority to do  
4 so does tend to injure the public interest. And the  
5 fact that a current consumer had not complained does  
6 not eliminate the tendency to create consumer harm  
7 when an unauthorized, unlicensed entity is allowed to  
8 sell a product in a highly regulated industry, and  
9 where an administrative hearing to determine if, in  
10 fact, the applicable statutes or the relevant  
11 statutes apply to this entity, and where they have  
12 the opportunity to present that case in an  
13 administrative hearing.

14 I'd also like to point out that it has been nearly  
15 two months that this Cease and Desist Order has been  
16 in place. And there is nothing in the record  
17 indicating how Benefit has been harmed by the  
18 imposition of the cease and desist. There's nothing  
19 from anyone in the company explaining the lost  
20 revenue or anything like that. However --

21 THE COURT: Well, there is some indication of  
22 the burden on Benefit with regard to the notice  
23 requirements, that sort of thing; correct?

24 MS. DELEON: The fact that they did not get a  
25 notice of the cease and desist prior to the cease and

1 desist?

2 THE COURT: No. The notice that they have to  
3 provide to clients or potential clients or past  
4 clients.

5 MS. DELEON: And I don't dispute that that may  
6 be a burden. But that is not a burden saying that  
7 they admit to the charges. It is simply requiring  
8 them to notify their customers that the product they  
9 have purchased and the product that they may, in  
10 fact, be selling for some of their consumers, is a  
11 product that is not currently authorized by the  
12 Insurance Commissioner.

13 Any entity under the Insurance Code who sells an  
14 unauthorized product, whether it is the company that  
15 has underwritten or created the product or someone  
16 down the road such as Rent-A-Center, who is one of  
17 the customers that provides this product directly to  
18 consumers -- any person in that chain under the  
19 Insurance Code is liable, personally, for the  
20 performance of an unauthorized insurance contract.  
21 And so it would very much harm the public interest if  
22 Benefit were allowed to not only continue  
23 producing -- or continue selling their product, but  
24 also not inform those people who may be personally  
25 liable that this product is not authorized, and

1           therefore, they are subject to personal liability.

2           So there is -- in addition to the potential for  
3 consumers who may think they are purchasing a  
4 licensed and authorized insurance product that has  
5 been reviewed by the Insurance Commissioner, issued  
6 by a company that is financially solvent under the  
7 Commissioner's requirements, only to find out that,  
8 in the unfortunate event the business financial  
9 prospects of the company that they have purchased  
10 from don't progress the way that the company hopes --  
11 and this has actually happened in the state of  
12 Washington, which is why the OIC is so concerned.  
13 And what the OIC sees as the tendency to harm the  
14 public.

15           This lack of both the protection of the Guaranty  
16 Association, the review of the financial solvency of  
17 the company, and the potential liability to anybody  
18 involved in the chain of producing this product, all  
19 tend to harm the public interest. And while we admit  
20 there is a burden to providing that notice, this is,  
21 again, a highly regulated industry.

22           The other piece of context to keep in mind is that  
23 this matter, as a general -- the underlying matter,  
24 the declaratory action, is wholly and properly before  
25 this court. And while we will be filing a motion to



1 dismiss, and I don't expect the court to rule on  
2 whether or not this matter is properly before it  
3 today, I think that context is critical to keep in  
4 mind.

5 Where an entity that is unauthorized to sell a  
6 product has been ordered to stop and notify others  
7 who have potential liability, because -- and  
8 consumers will not be protected by the regular  
9 schemes that are in place for authorized products --  
10 where those factors all exist and the entity at issue  
11 is trying to circumvent the very process that will  
12 answer the -- answer, finally, the questions of  
13 whether the facts demonstrate that these laws are  
14 actually applicable to that entity, and trying to  
15 remove the -- or trying to remove itself from that  
16 very process that's been established by statute and  
17 established by the APA, there is no reason for this  
18 court to feel compelled to step in and protect that  
19 entity where it is not availing itself of remedies  
20 that are clearly available to it and that have the  
21 ability, potentially, to address these issues much  
22 more quickly than this, court and where the remedies  
23 the entity is asking for will pose significant  
24 harm -- would tend to pose significant harm to  
25 innocent actors who may not be aware of this matter

1 at all. For these reasons, we respectfully request  
2 that the motion for stay be denied.

3 THE COURT: Thank you.

4 MR. SWENSON: Just a few pieces of reply,  
5 Your Honor. Ms. DeLeon spoke to a pending matter in  
6 front of the administrative agency, which we agree  
7 exists. That's a separate cause number. And it is a  
8 completely separate matter. The idea that we could  
9 file in matter 14-0081 a request for a stay in matter  
10 14-0082 where a hearing has not been initiated, I  
11 think, is just a fallacy. Those are just two  
12 completely separate matters. And, frankly, as they  
13 have represented, we have filed a request for a stay  
14 properly in that matter in front of the hearings  
15 officer, because there was in fact a hearing that was  
16 in issue.

17 The question under RCW 48.04.020 is whether an  
18 automatic stay would be granted. And you can  
19 determine, because the order is effective  
20 immediately, that whether a hearing was requested or  
21 not, an automatic stay wouldn't be granted. So  
22 filing for a hearing is not a prerequisite to the  
23 relief we seek here.

24 She has -- Ms. DeLeon keeps saying where an entity  
25 is unauthorized. This is just a bare allegation.

1 This is -- this is their assertion. And what they're  
2 suggesting is that we should be punished before their  
3 allegation and before their assertion is tried and  
4 heard. And whether that's this court or whether that  
5 is the hearings unit is yet to be determined. But  
6 relying on this bare allegation that we're an  
7 unauthorized entity is the same sort of overreaching  
8 that got us the Cease and Desist Order in the first  
9 place.

10 Now they're coming before you and overreaching  
11 again and acting like this is a fact, like this isn't  
12 in dispute, like there isn't a bona fide claim and a  
13 bona fide dispute that the OIC doesn't even have  
14 jurisdiction to regulate our entity. So relying on  
15 these naked assertions is not something I believe the  
16 court can rely on to make a determination that there  
17 would be any harm.

18 The idea by Ms. DeLeon that because, upon appeal  
19 we would bear the burden, means that now at this  
20 early stage, prior to any findings of fact, prior to  
21 a hearing having existed, that we still bear the  
22 burden of establishing that there would be an injury  
23 to public interest, I think, is actually separated  
24 out from the statute. That's why Ms. DeLeon's  
25 indicated that she had wrongfully cited this. That's

1 why these two statutes are separate. One of them  
2 indicates an ability to, prior to a hearing, come in  
3 and get a stay; and one of them indicates after a  
4 hearing, an ability to appeal that.

5 And we -- we agree that if this was after a  
6 hearing and we had appealed and now we're requesting  
7 a stay, that there would be a burden on us. But at  
8 this point, if we are going to talk about injury to  
9 public interest, which I don't believe is even  
10 applicable, it certainly is not a burden to us.

11 The personal liability piece, that's new; that's  
12 just newly argued now. The idea that there are other  
13 people that could be impacted by this order, that  
14 there are people who would be personally liable,  
15 that's not even a requirement of the Amended Cease  
16 and Desist Order as it is. We are required to notify  
17 our customers, not other people in the chain of  
18 command as it relates to the other entities that may  
19 be involved. And frankly, I believe that everybody  
20 who was involved in this process on our end is aware  
21 of these -- of these hearings that are taking place  
22 and our efforts as they relate to them. So I think  
23 that may just be a red herring related to the delay  
24 in this matter. That's all I have.

25 THE COURT: Thank you. The court at this time

1 is prepared to issue a ruling on the motion for stay.  
2 Frankly, it is not unusual for parties to request  
3 that this court intervene in administrative matters,  
4 and perhaps that is just because in Thurston County  
5 Superior Court, we hear so many administrative  
6 matters. So I am fairly familiar with this idea of  
7 coming before this court and requesting a stay.  
8 However, determination of this particular motion  
9 before me required a review of this particular  
10 statute. And I don't believe that it is a model of  
11 clarity in terms of the procedural requirements and  
12 how the parties should operate while a matter is  
13 pending.

14 In this case, a matter is pending. And I believe  
15 that, based upon the parties' representations, there  
16 are genuine disputes that require resolution. This  
17 court is not resolving those matters today.

18 With regard to the request for a stay of the Order  
19 to Cease and Desist that was issued by the  
20 Commissioner, I am not entering a stay at this time.  
21 I believe that there are other avenues that should be  
22 addressed before this court intervenes in this  
23 matter. I think that there is a technical issue that  
24 was not properly followed prior to bringing this  
25 matter before this court, but I understand that that

1 is not very clear. And, as I indicated before, I  
2 think that the statutes and how they are read can be  
3 subject to several different interpretations.

4 So I base my ruling today not solely on that, but  
5 also that I do not believe that Benefit Services  
6 Association has properly met its burden with regard  
7 to the motion for stay. I realize that that is very  
8 much contested, and I am only basing my ruling today  
9 on the pleadings that have been filed and the  
10 representations made by counsel today.

11 There are still a lot of questions in my mind as  
12 to the facts in this case. But as I indicated, I did  
13 study, pretty heavily, the statutory scheme. And on  
14 that basis, the court is denying the motion.

15 MR. SWENSON: One point of clarification,  
16 Your Honor. When you say that you believed that  
17 there was a technical issue related to the process,  
18 is that a indication that you believe that the  
19 statute requires that we initiate a hearing and make  
20 a request of the hearings officer for a stay prior to  
21 coming to this court?

22 THE COURT: My understanding is that you must  
23 make a request to the Commissioner, and I don't  
24 believe that has been satisfied in this case.

25 MS. DELEON: Thank you, Your Honor. We do

1           have a proposed order.

2           MR. SWENSON: I would ask that the order be --  
3           that the motion be denied without prejudice for our  
4           clients to move the court again for a stay after  
5           meeting the -- I guess the technical requirements of  
6           the statute?

7           THE COURT: In ruling today, the court is not  
8           precluding any future motions.

9           MR. SWENSON: Okay.

10          THE COURT: I haven't seen any proposed order.  
11          But I will, in response to your request for  
12          clarification, indicate that my ruling is based  
13          solely upon the record so far in this case, and I am  
14          not precluding any future motions.

15          MR. SWENSON: All right.

16          THE COURT: Mr. Swenson, did you have an  
17          opportunity to review the form of this order?

18          MR. SWENSON: Ms. DeLeon did provide it to me.

19          MS. DELEON: I didn't sign, and neither did  
20          Mr. Swenson. I apologize, Your Honor.

21          THE COURT: That's okay. These signatures  
22          aren't required. I just wanted to make sure that  
23          there wasn't any issue with regard the form of the  
24          order.

25          MR. SWENSON: In my brief look at it, it just

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said "denied," which is -- that's fine.

THE COURT: Thank you. And I've signed that order, and we are concluded.

MR. SWENSON: Thank you, Your Honor.

MS. DELEON: Thank you.

(Conclusion of June 27, 2014, Proceedings.)





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STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

BENEFIT MARKETING SOLUTIONS LLC and  
BENEFIT SERVICES ASSOCIATION,

NO. 14-0082

**DECLARATION OF BRADLEY  
DENISON IN SUPPORT OF  
MOTION FOR STAY OF  
AMENDED CEASE AND DESIST  
ORDER**

I, Bradley Denison, declare as follows:

1. I am an Executive Vice President of Benefit Marketing Solutions, LLC (“BMS”), which is the subject of the Amended Cease and Desist Order issued by the Washington Office of the Insurance Commissioner on May 15, 2014. I am competent to give this declaration and the statements made herein are based upon my own personal knowledge and my review of BMS’s records.

2. A true and correct copy of the Amended Cease and Desist Order is attached as Exhibit A. The Amended Cease and Desist Order is “effective immediately” and will cause significant harm to Benefit Marketing Solutions, Benefit Services Association (“BSA”), and their Washington customers, if enforced.

3. By way of background, BMS administers membership programs that are provided by BSA. One of the BSA membership programs is offered through Rent-A-Center (“RAC”) stores in Washington state and is called RAC Benefits Plus. A RAC Benefits Plus

1 membership is offered to RAC customers who lease products from RAC stores located in  
2 Washington. The RAC Benefits Plus membership is offered to RAC customers as an  
3 additional benefit upon the leasing of any product. The RAC customer may join RAC  
4 Benefits Plus for a period as short as a week, but the RAC Benefits Plus membership is  
5 renewable by the customer for as long as the customer wants. RAC Benefits Plus members  
6 can terminate their membership at any time for any or no reason without charge or obligation.

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8 4. If RAC customers choose to continue membership in the RAC Benefits Plus  
9 membership after they acquire ownership of the rent-to-own products, those persons receive  
10 an additional benefit called "paid-out product service protection." It is simply an additional  
11 benefit of the RAC Benefits Plus membership at no additional cost or obligation to the  
12 member. The benefit provides a repair and replacement service for all RAC products that the  
13 RAC customer owns outright. The benefit is available to the RAC Benefits Plus member no  
14 matter how many RAC products they own.

15 5. The Amended Cease and Desist Order concludes that the paid-out service  
16 protection is a "service contract" and that BMS and BSA have failed to register as a service  
17 contract provider. As BMS understands it, its only alleged failure is that it failed to register  
18 with the OIC. The OIC has not made any allegations that BMS or BSA has done anything  
19 that in any way was intended to or could harm Washington consumers.

20 6. BMS does not believe that the OIC has jurisdiction to regulate its activities in  
21 the state of Washington because the paid-out product service protection is not a service  
22 contract and BMS has filed a Complaint for Declaratory Relief in Thurston County Superior  
23 Court asking the Court to determine that the OIC lacks jurisdiction to regulate BMS and BSA  
24 or either entity's activities.  
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1 7. Prior to the determination from the Superior Court of whether the OIC has  
2 jurisdiction over BMS and BSA, BMS and BSA are forced to deal with the implications and  
3 impact of the Amended Cease and Desist Order.

4 8. The Amended Cease and Desist Order purports to require BMS and BSA to  
5 cease selling service contracts in Washington, which is intended to require us to stop  
6 providing the paid-out product service protection as a benefit through the RAC Benefits Plus  
7 membership. It is unclear from the face of the Order whether this would apply to only new  
8 members or also to existing members that have already been provided the benefit as part of  
9 their membership or are counting on the benefit once they fully pay for the leased product. A  
10 conservative reading of the Amended Cease and Desist Order would require BMS and BSA to  
11 stop providing the paid-out product protection to its existing members.

12 9. To remove this benefit from the RAC Benefits Plus membership would  
13 weaken the package of benefits that are provided to Washington consumers.

14 10. There is not another product on the market that is comparable to the paid-out  
15 product protection, so Washington consumers would not be able to obtain an exact  
16 replacement benefit if BMS and BSA can no longer provide the paid-out product protection.

17 11. The Amended Cease and Desist Order would also cause harm to the existing  
18 RAC Benefits Plus members that are from Washington. There were approximately 13,022  
19 RAC Benefits Plus members from Washington that enrolled in 2012 and 2013. The existing  
20 members were all provided with a membership that contained the paid-out product protection  
21 as a benefit. To pull this benefit from the Washington members would be unfair to them and  
22 would undoubtedly damage BMS and BSA's reputation with its Washington members. As  
23 stated above, Washington members would not be able to replace the paid-out product  
24 protection with a comparable product.  
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1           12.     The other provision of the Amended Cease and Desist Order that would cause  
2 significant harm to BMS and BSA is the one requiring BMS to notify its Washington  
3 members of the Amended Cease and Desist Order. This provision appears solely intended to  
4 harm BMS and BSA and there does not appear to be any legitimate protection that is provided  
5 to Washington consumers or the OIC by requiring BMS and BSA to notify their customers  
6 prior to a final adjudication of the issues in this matter.

7           13.     Were the OIC Hearings Unit to stay the Amended Cease and Desist Order  
8 while BMS and BSA are seeking an adjudication of the OIC's jurisdiction, there would be no  
9 risk of harm to any Washington consumers.

10          14.     BMS has provided the RAC Benefits Plus membership in Washington state  
11 since 2004. Since initiating the membership program, BMS has not received a single  
12 administrative complaint from a Washington member related to RAC Benefits Plus; this  
13 includes no complaints to the OIC or any other Washington administrative agency that BMS  
14 has been notified of.

15          15.     There has not been a single lawsuit initiated by a Washington consumer  
16 against BMS.

17          16.     As it relates specifically to the paid-out product protection benefit, this benefit  
18 is insured by a Contractual Liability Insurance Policy ("CLIP") that is issued to the BSA  
19 membership association and insures the benefits of the paid-out product protection benefit for  
20 the RAC Benefits Plus members from non-payment. The CLIP is approved by the Oklahoma  
21 Department of Insurance.


22          17.     While the CLIP does provide protection to the Washington consumers, no  
23 Washington consumer has ever had to make a claim under the CLIP because the benefits  
24 owed to the Washington consumers have always been paid under the paid-out product  
25 protection.  
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18. BMS and BSA also continue to provide the paid-out product protection to their members from other states that they offer membership programs. Continuing to provide the paid-out product protection to Washington members poses absolutely no risk to those members and will continue to allow them to receive a significant and valuable benefit of being a RAC Benefits Plus member.

I declare under penalty of perjury under the laws of the State of Oklahoma and Washington that the foregoing is true and correct.

DATED this 21<sup>st</sup> day of July, 2014 at Norman, Oklahoma.

  
Bradley Denison