

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 7860-AG09-1109-229  
8534-AG09-1109-230

IN THE MATTER OF: )  
 )  
Spencer & Associates, L.L.C. )  
1 S. Limestone St., Ste. 301 )  
Springfield, OH 45502 )  
Indiana License No.: none )  
 )  
Association of Franchise and )  
Independent Distributors, L.L.C. )  
1 S. Limestone St., Ste. 301 )  
Springfield, OH 45502 )  
Indiana License No.: none )  
 )  
Americans for Affordable Healthcare, Inc. )  
1 S. Limestone St., Ste. 301 )  
Springfield, OH 45502 )  
Indiana License No.: none )  
 )  
Per4mance Health Plan )  
1 S. Limestone, St., Ste. 301 )  
Springfield, OH 45502 )  
Indiana License No.: none )  
 )  
Paul Olzeski )  
701 Lakewood Drive )  
Taylor Mill, KY 41015 )  
Indiana License No.: 548173 )  
 )  
David L. Clark )  
Real Benefits Association )  
75 Hardscrabble Road, Ste. 202 )  
Basking Ridge, NJ 07920 )  
Indiana License No.: none )  
 )  
Respondents. )  
 )  
 )  
 )

**FILED**

SEP 29 2010

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINAL ORDER**

On July 29, 2010, the Administrative Law Judge, filed his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and Recommended order and Notice of Filing Recommended Order on Respondent by mailing the same to all Respondent's to the addresses of record.

2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.

3. Respondent's have not filed an objection with the Commissioner regarding the Administrative Law Judge's Recommended Order, and more than eighteen (18) days have elapsed.

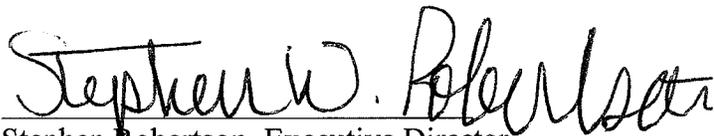
Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Final Order:

IT IS THEREFORE ORDERED, by the Commissioner of Insurance:

1. Respondent Olzeski's producer license, number 548173, is permanently revoked.
2. Respondent Olzeski shall pay a fine in the amount of ten thousand dollars (\$10,000.00).
3. Respondent Olzeski shall pay restitution to the following people, in the following amounts:
  - a. Bryan Stinson shall be reimbursed for his premiums, in the amount of \$6,483.19.
  - b. Jan Horn shall be paid the amount of the claim submitted, less her \$10,000.00 deductible, in the amount of \$30,318.19

- c. William Burch shall be reimbursed for the care of himself and his wife in the amount of \$32,000.00.
  - d. Lifetime Skin Care Centers shall be paid \$591.00 for the medical care provided to Vicki Conquest.
4. Respondents Olzeski, Spencer & Associates, AFID, AFAH, PHP and Clark are held jointly and severally liable for the restitution ordered in Paragraph 3.
  5. Respondent Clark is required to pay a fine in the amount of fifty thousand dollars (\$50,000.00) pursuant to Indiana Code §27-4-1-6(a)(1).
  6. Respondents Spencer & Associates, AFID, AFAH, PHP, Olzeski, and Clark are to permanently cease and desist from engaging in unauthorized insurance business in Indiana, including but not limited to, the sale of limited benefit health plans and memberships in trade associations.

ALL OF WHICH IS ORDERED by the Commissioner this 29<sup>th</sup> day of September, 2010.

  
Stephen Robertson, Executive Director,  
Acting Commissioner  
Indiana Department of Insurance

Copies to:

Nikolas P. Mann, Attorney  
Indiana Department of Insurance  
311 West Washington Street, Suite 300  
Indianapolis, Indiana 46240  
Distribution (Cont'd)

Spencer & Associates, L.L.C.  
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Respondents. )  
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**FILED**

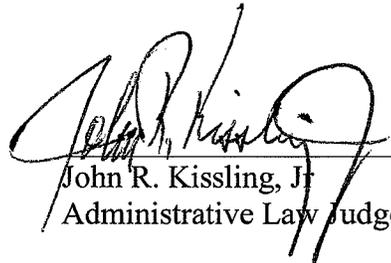
JUL 29 2010

STATE OF INDIANA  
DEPT. OF INSURANCE

**NOTICE OF FILING OF RECOMMENDED ORDER**

The parties to this action are hereby notified that the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order are deemed filed as of this date.

To preserve an objection to this Order for judicial review, you must object to the Order in a writing that: 1) identifies the basis of your objection with reasonable particularity; and 2) is filed with the ultimate authority for the Final Order, Steve Robertson, Acting Commissioner of the Department of Insurance, within eighteen (18) days from the date of service of this Order.



John R. Kissling, Jr.  
Administrative Law Judge

STATE OF INDIANA )  
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COUNTY OF MARION )

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**FILED**

JUL 29 2010

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

Administrative Law Judge John R. Kissling, Jr. (hereafter "ALJ"), having considered and reviewed all of the evidence, will now render a decision in the matter of Respondent Spencer & Associates, L.L.C., Respondent Association of Franchise and Independent Distributors, L.L.C., Respondent Americans for Affordable Healthcare, Inc., Respondent Paul Olzeski, Respondent Per4mance Health Plan, and Respondent David L. Clark, which came to be heard on June 8, 2010, at the Indiana Department of Insurance, 311 West Washington St., Indianapolis, Indiana 46204.

The Enforcement Division of the Indiana Department of Insurance (hereafter, the "Department") was represented by counsel, Nick Mann and Lisa Harpenau. Respondents failed to appear. Witnesses testified under oath, evidence was heard, and exhibits were received into evidence from the Department.

Based upon the evidence presented at said hearing, the ALJ now makes the following Findings of Fact and Conclusions of Law, and issues the following Recommended Order:

**FINDINGS OF FACT**

1. Respondent Association of Franchise and Independent Distributors, L.L.C. (hereafter, "Respondent AFID") is an unlicensed entity in the State of Indiana. At all relevant times, Respondent AFID purported to be a membership association offering healthcare benefits to Indiana consumers. Transcript, June 8, 2010, pp. 69-71, 77, 80-81; Exhibit 1, pp 4-6, Exhibit 10.
2. Respondent Americans for Affordable Healthcare, Inc. ("Respondent AFAH"), an unlicensed entity in the State of Indiana, at all relevant times purported to be a

membership association also offering healthcare benefits to Indiana consumers. Transcript, June 8, 2010 at p. 69 and Exhibit 1.

3. Respondent Real Benefits Association (hereafter, "Respondent RBA"), an unlicensed entity in the State of Indiana, purported to operate as a labor union which offered healthcare plans to its members. Transcript, June 8, 2010 at pp 32-33; Exhibit 7; Exhibit 12. If found to operate as a labor union, Respondent RBA would be subject to the regulations of the Taft Hartley Act and not the Department's enforcement statutes. Transcript, June 8, 2010 at p. 31. However, the U.S. Department of Labor's Office of Management Standards has concluded that Respondent RBA does not qualify as a labor union. Transcript, June 8, 2010 at p. 34; Exhibit 13. Therefore, Respondent RBA's conduct is regulated by the Department. Transcript, June 8, 2010 pp. 8, 32-33.
4. Respondent AFID, AFAH and RBA are operated by the same persons and are essentially alter egos of each other. *See* Department's Demonstrative Exhibit A. Transcript, June 8, 2010 at pp. 19 and 31.
5. Respondent David L. Clark (hereafter, "Respondent Clark") ran Respondent RBA. Exhibit 11, p. 3.
6. Paul Olzeski (hereafter, "Respondent Olzeski") holds non-resident producer license number 548713. Exhibit 14. No other Respondents hold any type of license required to do insurance business in Indiana. Transcript, June 8, 2010 at p. 35.
7. Respondents Olzeski and Bruce Spencer also run and operate Respondents AFID, AFAH and RBA. *Id.* at 31, *See* Department's Demonstrative Exhibit A. Respondent AFID is an incarnation of Respondent AFAH and Respondent RBA. Transcript, June 8, 2010 at pp. 19 and 31.

8. Respondent Spencer & Associates, L.L.C. (hereafter, "Respondent Spencer & Associates"), at all relevant times herein, provided services to and/or acted as a third party administrator ("TPA") for Respondent AFID and Respondent RBA. Exhibit 2 and Exhibit 7. Bruce Spencer runs and operates Respondent Spencer & Associates. Transcript, June 8, 2010 at p. 31.
9. Respondents marketed insurance policies referred to as "Per4mance Health Plan" or the "One Advantage Plan" as a benefit to those who joined their member associations. Transcript, June 8, 2010 at p. 31. These policies were purported to have been underwritten by BEEMA Insurance Company of Pakistan ("BEEMA") or its purported subsidiary, Serve America Assurance. Transcript, June 8, 2010 at pp. 27-28. In reality, BEEMA does not own a subsidiary called Serve America Assurance. Transcript, June 8, 2010 at p. 29.
10. BEEMA is an insurance company based in Karachi, Pakistan. Transcript, June 8, 2010 at p. 21. About five years ago, the Securities and Exchange Commission of Pakistan began closing the operations of BEEMA. Transcript, June 8, 2010 at p. 29. BEEMA has never actually issued any policies in the United States. *Id.* The company that allegedly underwrote Respondents' policies does not have a certificate of authority. *Id.*

Bryan Stinson

11. Bryan Stinson ("Mr. Stinson") is an Indiana consumer who resides at 1845 Colonnade Court, Evansville, Indiana, 47715. Transcript, June 8, 2010 at p. 67.
12. In either late 2008 or early 2009, Mr. Stinson, acting on the recommendation of a local agent, applied for membership with Respondent AFID. *Id.* at pp. 68-69 and Exhibit 1. This application did not ask if Mr. Stinson had any pre-existing medical conditions. *Id.* at

- p. 69. Mr. Stinson was charged a ten dollar (\$10.00) membership fee for Respondent AFID. Transcript, June 8, 2010 at pp. 68 and 78; and Exhibit 24.
13. Respondent AFID provided a document which contained an explanation of member benefits. Exhibit 1. Respondent AFID purported to offer Mr. Stinson a policy underwritten by BEEMA as such a benefit. Transcript, June 8, 2010 at pp. 69-70 and Exhibit 1. The policy claimed to cover health costs with a ten thousand dollar (\$10,000.00) deductible. Transcript, June 8, 2010 at pp. 68 and 78; Exhibit 1. AFID also supplied Mr. Stinson with an insurance card listing medical coverage under "The One Advantage" plan and pharmaceutical coverage under the "Per4mance Rx" plan. Exhibit 1 at p. 4.
  14. Because Mr. Stinson believed he was covered by a legitimate policy, he regularly and continuously paid premiums from March of 2008 until September of 2009. Transcript, June 8, 2010 at p. 70 and Exhibit 24. Respondent Spencer & Associates debited three hundred seventy four dollars and fifty one cents (\$374.51) every month from March of 2008 until July of 2009. Exhibit 24. Respondent Spencer & Associates debited one hundred six dollars and fifty two cents (\$106.52) each month thereafter. In total, Respondent Spencer & Associates debited six thousand, four hundred seventy three dollars and nineteen cents (\$6, 473.19). Exhibit 24.
  15. The explanation for the price drop in premiums offered by Respondent AFID was misleading and untrue. Respondent AFID represented to Mr. Stinson that, after discovering BEEMA was in legal trouble, policies underwritten by BEEMA were discontinued. Transcript, June 8, 2010 at pp. 71-72. In addition to the other complainants listed below, the Department received a complaint from Verlin Wagler ("Wagler") on

April 16, 2010. Exhibit 10. Wagler's complaint arose from facts similar to others filed against Respondents AFID, AFAH and RBA. Transcript, June 8, 2010 at p. 25 and Exhibit 10. Because Respondents are alter egos of one another, operated by the same owners, it is clear that they have not stopped offering insurance policies underwritten by an unlicensed entity nor have they begun to pay claims filed under these policies.

16. No benefits were paid for the medical services Mr. Stinson received, pursuant to his BEEMA policy, on March 17, 2008, March 31, 2008, June 16, 2008, July 21, 2008, August 5, 2008, and September 15, 2008. Transcript, June 8, 2010 at p. 72 and Exhibit 1 at pp. 10-16. Mr. Stinson telephoned Respondent "Spencer & Associates 30 to 50 times" with the hope of determining the status of payments. Transcript, June 8, 2010 at p. 73.
17. Instead of meaningful responses, Respondent Spencer & Associates offered deceptive responses, when they bothered to respond at all. Transcript, June 8, 2010 at pp. 73-74. Mr. Stinson did not receive even an explanation of benefits until he suggested the possibility of legal action. *Id.* Instead, Mr. Stinson was told that his enrollment could not be verified, that the check was in the mail and that he should contact another company to discuss this matter. *Id.*
18. Mr. Stinson's medical provider, St. Mary's Physicians' Health Group, L.L.C. ("St. Mary's"), was also unable to receive any meaningful response regarding lack of payments. *Id.* at 72. On September 10, 2009, the Department received correspondence from St. Mary's stating no explanation of benefits or checks for medical services rendered on May 4, 2009, June 22, 2009, June 29, 2009, July 27, 2009, August 6, 2009, and August 20, 2009 were received. Exhibit 3. On August 20, 2009, St. Mary's office manager spoke with a representative for Respondent AFID. Exhibit 3.

- a. In regards to the service rendered on May 4, 2009, the representative said a check had been mailed even though St. Mary's did not receive payment. Exhibit 3.
  - b. In regards to the service rendered on June 22, 2009, the representative said the claim would not be processed until later that week. *Id.*
  - c. In regards to the service rendered on June 29, 2009, the representative stated that a check would be sent out within the next 7-14 days. *Id.*
  - d. In regards to the service rendered on July 27, 2009, the representative said Respondent AFID had not received a claim for this date. *Id.*
  - e. Respondent AFID did not respond to St. Mary's August 20, 2009 claim. *Id.*
19. St. Mary's had not received any explanation of benefits or checks for the above dates of services. *Id.* and Transcript, June 8, 2010 at pp. 72-73. As of the hearing, the only payments St. Mary's has received have been two checks for fifty dollars (\$50.00) each. Transcript, June 8, 2010 at p. 72.
20. Mr. Stinson has paid premiums and never received the benefit of these premiums. Because of this fraudulent conduct, Mr. Stinson seeks the return of those premiums, in the amount of six thousand, four hundred eighty three dollars and nineteen cents (\$6,483.19). Transcript, June 8, 2010 at p. 88.

Jan Horn

21. Jan Horn ("Mrs. Horn") is an Indiana consumer who resides at 601 North Illinois, Monticello, Indiana, 47960. Mrs. Horn filed a complaint with the Department on April 26, 2010 against Respondent AFID. Exhibit 4.
22. In 2008, Mrs. Horn, acting on the recommendation of a local agent, applied for and was granted membership with Respondent AFID. Transcript, June 8, 2010 at pp. 80-81. Mrs.

Horn was never told she was enrolling in a trade association. *Id.* at p. 81. Mrs. Horn was misled by Respondents to believe she had purchased health insurance. *Id.*

23. Respondent Spencer & Associates regularly and continuously deducted a monthly premium of one hundred six dollars and fifty two cents (\$106.52) from Mrs. Horn's bank account for the alleged health insurance. *Id.*

24. Respondent AFID provided Mrs. Horn with an insurance card listing medical coverage under "The One Advantage" plan and pharmaceutical coverage under the "Per4mance Rx" plan. Exhibit 4. Mrs. Horn was told by Respondent AFID that this policy had a ten thousand dollar (\$10,000.00) deductible. Transcript, June 8, 2010 at p. 80 and Exhibit 4.

25. Neither Respondent AFID nor Respondent Spencer & Associates have paid any of Mrs. Horn's medical bills incurred for a total knee replacement surgery, despite their promise to do so. Transcript, June 8, 2010 at pp. 81 and 84 and Exhibit 4. On April 29, 2009, Mrs. Horn was informed that she needed a total knee replacement surgery. Exhibit 4. On May 7, 2009, St. Francis Hospital & Health Center ("St. Francis") obtained pre-certification from Respondent Spencer & Associates to perform this surgery. Transcript, June 8, 2010 at p. 84 and Exhibit 4. St. Francis performed the surgery on May 28, 2009. Exhibit 4. Mrs. Horn incurred a bill in the amount of forty thousand, three hundred eighteen dollars and eight cents (\$40,318.08) for this operation. *Id.* Respondents have not paid any portion of this bill, even though it exceeds the deductible amount. Transcript, June 8, 2010 at pp. 82-83.

26. Neither Respondent AFID nor Respondent Spencer & Associates have provided a reason for not covering any portion of this bill, despite repeated attempts by St. Francis and Mrs. Horn to contact Respondents. Transcript, June 8, 2010 at p. 82. On December 21, 2009,

Respondents claimed to have mailed a check for payment to St. Francis. Transcript, June 8, 2010 at p. 83 and Exhibit 4. No check was received. *Id.* At the hearing, Mrs. Horn testified that St. Francis is going to turn her case over to a collection agency. Transcript, June 8, 2010 at p. 85. Mrs. Horn seeks payment of the claim she submitted to avoid further financial troubles caused by Respondents' conduct. *Id.*

27. Mrs. Horn is owed the amount of the claim she submitted, less the ten thousand dollar (\$10,000.00) deductible for a total of thirty thousand, three hundred eighteen dollars and eight cents (\$30,318.08). Transcript, June 8, 2010 at p. 88.

William Burch

28. William Burch ("Mr. Burch") is an Indiana consumer who resides at 309 W. First Street, Newburgh, IN, 47630. Exhibit 5. On August 21, 2009, Mr. Burch filed a complaint with the Office of the Indiana Attorney General ("AG's Office") against Respondent RBA. Exhibit 5. On August 24, 2009, the Department received the complaint from the AG's Office. *Id.* Mr. Burch is the widower of Jamie Burch ("Mrs. Burch"), a former "member" of Respondent RBA. Transcript, June 8, 2010 at p. 22 and Exhibit 6. Mrs. Burch passed away from cancer in December 2009. Transcript, June 8, 2010 at p. 22. Mr. Burch himself is not in good health as he suffers from renal failure and must undergo kidney dialysis treatment every other day. *Id.* Respondents purported that the treatment for these illnesses were covered, however, no payments have been made. *Id.* Mr. Burch's complaint states that he is owed thirty two thousand dollars (\$32,000.000) Exhibit 5.
29. In either late 2008 or early 2009, Mrs. Burch enrolled in Respondent RBA. Exhibits 6 and 7. As discussed above, Respondent RBA and Respondent AFID are alter egos of one another; the owners and the "business" plans are the same. Transcript, June 8, 2010 at p.

19. Respondent RBA indicated that its members' insurance policies were underwritten by BEEMA or its subsidiary, Respondent Serve America. Transcript, June 8, 2010 at p. 21 and Exhibit 5, 7.
30. Respondent RBA provided Mrs. Burch with insurance cards and a "Medical Benefit Guide." Exhibit 7, pp. 2-9. Respondent RBA purports that its goal is to "[provide] benefits and services to its members that address the needs of the consumer and enhance their quality of life." Exhibit 7, p. 2. However, when Mr. Burch attempted to discuss the absence of payments on his medical expenses with Respondent Spencer & Associates and Respondent RBA, he was given the same run-around as other Indiana consumers. Transcript, June 8, 2010 at p. 19 and 21; Exhibit 5.
31. Respondents have attempted to deceive the Department and Indiana consumers. On August 7, 2009, Respondent RBA addressed a letter to Mrs. Burch which states it ended its relationship with Respondent "Spencer & Associates, a third party administrator in Ohio" because they were experiencing legal troubles. Exhibit 7. The letter concludes: "Rest assured your benefits are current and you are safely protected by RBA and Serve America." *Id.* However, Respondent Spencer & Associates, in response to the Department's inquiry, claims they "did not have an agreement with Real Benefits Association." Exhibit 8. This letter claims the relationship was cancelled because Respondent Spencer & Associates did not want to provide services to a company selling policies underwritten by BEEMA. *Id.*
32. Mr. and Mrs. Burch were led to believe their membership in Respondent RBA provided them a policy underwritten by either BEEMA or Serve America which would provide medical benefits. However, no medical benefits have been realized and Mr. Burch is

owed thirty two thousand dollars (\$32,000.00). Transcript, June 8, 2010 at p. 88.

Lifetime Skin Care Centers

33. On January 29, 2010, the Department received a complaint from Lifetime Skin Care Centers (“Lifetime”), an Indiana business/provider who had not received payments from Respondent AFID for medical services rendered. Exhibit 9.
34. Lifetime provided medical services to Vicki Conquest (“Ms. Conquest”) and has not received compensation. Exhibit 9. Lifetime provided the Department with Ms. Conquest’s insurance card and explanation of benefits. Exhibit 9. The insurance card, issued by Respondent AFID, lists coverage under a “Per4mance Health Plan” and a “Per4mance Rx” plan. *Id.* at p. 4. Lifetime provided service to Ms. Conquest on January 2, 2008 for a charge of three hundred ninety two dollars (\$392.00) and on April 8, 2009 for a charge of one hundred ninety nine dollars (\$199.00). *Id.* at p. 2.
35. Lifetime’s complaint details Respondent AFID’s evasive tactics and their attempt to avoid paying. *Id.* On May 12, 2009, Lifetime contacted a representative of Respondent AFID to discuss the matter, but was told that checks would be reissued and mailed to Lifetime. *Id.* On August 13, 2009, having not received the checks, Lifetime again contacted Respondent AFID. Again, she was told the check was in the mail. *Id.* On November 16, 2009, having still not received payment, Lifetime again reached out to Respondent AFID. *Id.* During this conversation, Lifetime was told their claim would be handled by the financial department, not consumer services. Lifetime never received a response from the voicemails left with Respondent AFID’s financial department on November 16, 2009 and January 18, 2010. *Id.*
36. Lifetime is still owed five hundred ninety one dollars (\$591.00) for unpaid services

rendered to Ms. Conquest, a member of Respondent AFID. Transcript, June 8, 2010 at p. 88.

#### Other State Actions

37. Respondents' actions have harmed more than just Indiana consumers; they operate in a nationwide scheme. Transcript, June 8, 2010 pp. 27-31. *See* Department's demonstrative Exhibit A. Dave Rose ("Mr. Rose"), an investigator for the Department, testified that he has worked with "approximately 27 different states...as well as members of federal regulators" to gain information on this scheme. Transcript, June 8, 2010 at pp. 28-29.
38. Several other states have taken administrative action against Respondents for running the same or a variation of this scheme in their jurisdiction.
  - a. On November 28, 2008, the North Carolina Department of Insurance ("NCDOI") entered into a Final Consent Cease and Desist Order with Respondent Spencer & Associates and Respondent Spencer. Exhibit 18, p. 1. In this case, Respondents enrolled at least twenty-four (24) North Carolina residents in a program offered by Respondent RBA or Respondent AFID. *Id.* at 2. In addition to the Cease and Desist Order, Respondents were fined six thousand dollars (\$6,000.00).
  - b. On June 5, 2009, the New Jersey Department of Banking and Insurance ("NJDBI") entered into a Consent Order with Respondent Clark. Exhibit 19. In this case, Respondent Clark solicited illegitimate policies to New Jersey residents through a sham association known, among other names, as Respondent RBA. *Id.* at 2. The NJDBI revoked Respondent Clark's license and issued fines totaling forty thousand dollars (\$40,000.00). *Id.* at 8.
  - c. On August 27, 2009, the Connecticut Department of Insurance ("CDI") issued a

Cease and Desist order against RBA, Serve America, BEEMA and Respondent Spencer & Associates. Exhibit 20. In this case, information and exhibits were received to indicate Respondents engaged in selling insurance without a license. *Id.* at p. 2. The CDI held Respondents liable to reimburse Connecticut consumers, for the “full amount of claims or losses,” who were taken by this scheme. *Id.* at p. 8.

- d. On April 17, 2009, the Ohio Department of Insurance (“ODI”) issued a Notice of Hearing to Respondent Olzeski to determine whether his license shall be revoked for using “fraudulent, coercive, or dishonest practices... in the conduct of business.” Exhibit 21 at p. 2. This case is pending.
- e. On June 2, 2009, the ODI entered a Final Order to Cease and Desist against Respondent AFID for enrolling Ohio consumers in a fictitious Labor Union. Exhibit 23.

39. Despite having been provided proper notice, Respondents failed to cooperate with the Department’s investigation. Transcript, June 8, 2010 at p. 11. After receiving Mr. Stinson’s complaint, the Department requested a response from Respondent Spencer & Associates. Transcript, June 8, 2010 at p. 15. Despite the issue within the complaint being obvious—Respondent’s failure to pay Mr. Stinson’s medical bills—Respondent Spencer & Associates employed their delaying tactics, claiming the complaint was too difficult to understand. Transcript, June 8, 2010 at p. 15 and Exhibit 2. No other response was received on this matter. In their response to Mr. Burch’s complaint, Spencer & Associates claims to have broken ties with Respondent RBA upon discovering their association with BEEMA. Exhibit 8. On May 7, 2009, the Department attempted to contact Respondents

AFID and Olzeski via letter. Exhibit 11 at p. 1. On July 23, 2009, the Department received a response package from Respondents' attorney. *Id.* Respondents claimed they were not aware of the letter until July 1, 2009. *Id.* The response package identifies Respondents and essentially claims that all ties have been broken with BEEMA, that AFID is no longer operational and that Respondents were duped into believing the product offered was legitimate. *Id.* at pp. 1-3. This obviously is not the case, as the Department is still receiving complaints against Respondents for operating this scam. Exhibit 10. This is the only formal communication between Respondents' attorney and the Department; this attorney no longer represents Respondents. Transcript, June 8, 2010 at p. 26. Respondents did not respond to the Department's information gathering request regarding Lifetime's complaint. Transcript, June 8, 2010 at p. 23. The information that was obtained by the Department was done mostly with the help of other government regulatory bodies and complainants, not Respondents. Transcript, June 8, 2010 at p. 33.

40. Respondents failed to appear at the scheduled hearing to refute any evidence offered by the Department. Transcript, June 8, 2010 at p. 11. Respondents were provided a Notice of Hearing. Exhibit 15. The Notice of Hearing set "this matter for a hearing on June 8<sup>th</sup>, 2010 at 10:00 a.m." Exhibit 15 at p. 2. The hearing was held at this day and time. Transcript, June 8, 2010 at p. 1. The Notice of Hearing was sent to Respondents AFID, AFAH, RBA and Clark via certified mail. Exhibit 16 and 17. Respondent AFID is the same entity as Respondent AFAH and they share the same mailing address. Exhibit 15. Respondents RBA and Clark also have the same mailing address. Exhibit 15. The Notice of Hearing was mailed May 6, 2010. Exhibit 15. The United States Postal Service ("USPS") tracking system confirmed delivery to Respondents AFID/AFAH on May 10,

2010. Exhibit 16. The USPS tracking system was unable to deliver notice to Respondents RBA and Clark, as it appears that address is no longer used, even though the Department's records do not indicate an address change. Transcript, June 8, 2010 at p. 38-39 and Exhibits 17.

41. Respondents have not attempted to explain their lack of communication with the Department.

42. Even though the names of the entities change, the blueprint for Respondents' scheme remains the same. Transcript, June 8, 2010 at pp. 86 -87. Membership to an organization is offered to consumers. Respondents solicit an insurance policy provided by a known unlicensed entity to these members, advertising it is a benefit to its members. *Id.*, Exhibit 12, Exhibit 24. Respondents Spencer & Associates act as a TPA and religiously deduct premiums from policyholders. Exhibit 24. Before treatment, Respondents promise to cover the costs of a procedure; after treatment, Respondents refuse to pay and send interested parties on a wild goose chase. Exhibit 1; Exhibit 4; Exhibit 5; Exhibit 9. Consumers proceed with these surgeries because Respondents promise to pay. Transcript, June 8, 2010 at pp. 82-83, Exhibits 1 and 7. Premiums are not refunded. Exhibits 1 and 24. Names are changed and entities are intermingled in hopes of confusing policyholders. Transcript, June 8, 2010 at p. 87. Respondents have victimized residents of Indiana and other states and, in doing so, have violated Indiana law. Exhibits 18-23.

#### **CONCLUSIONS OF LAW**

1. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action.

2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code.
3. The Commissioner has the discretionary authority to revoke Respondent Olzeski's license to sell insurance and to fine Respondents.
4. The Department has met its burden in showing by a preponderance of the evidence that Respondents' conduct is contrary to Indiana Insurance Code and that disciplinary action to include revocation of license is in order.
5. "Misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon" constitutes an unfair method of competition and unfair and deceptive act and practice in the business of insurance. Ind. Code § 27-4-1-4(a)(1)(A).
6. Respondents acted in a manner contrary to Ind. Code § 27-4-1-4(a)(1)(A), by, in the course of business in this state, representing to Indiana residents that membership in an association would entitle them to a legitimate health insurance policy underwritten by a licensed company when this was not, in fact, the case. These unfair and deceptive acts have resulted in the loss of thousands of dollars by Indiana residents.
7. Indiana Code §27-4-1-6 states; "Sec. 6 (a) If after a hearing under IC 4-21.5-3, the Commissioner determines that the method of competition or the act or practice in question is defined in section 4 of this chapter and that the person complained of has engaged in such method of competition, act, or practice in violation of this chapter, he shall reduce his findings to writing and shall issue and cause to be served on the person charged with the violation an order requiring such person to cease and desist from such method of competition, act, or practice, and the Commissioner may at his discretion order one (1) or

more of the following: (1) Payment of a civil penalty of not more than twenty-five thousand (25,000) for each act or violation. If the person knew or reasonably should have known that he was in violation of this chapter, the penalty may not be more than fifty thousand (50,000) for each act or violation”.

8. An insurance producer’s license may be permanently revoked for using “fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.” Ind. Code § 27-1-15.6-12(b)(8).
9. Respondent Olzeski engaged in behavior which is contrary to Ind. Code § 27-1-15.6-12(b)(8) by, in the course of business, soliciting membership to an association that did not exist except for the purpose of collecting premiums for an unregistered insurance policy that would not pay benefits.
10. Respondent Olzeski engaged in behavior which is contrary to Ind. Code § 27-1-15.6-12(b)(8) by, in the course of business, collecting premiums from Indiana residents in exchange for a policy that was knowingly “issued” by a company without a valid certificate of authority.
11. Respondent Olzeski engaged in behavior which is contrary to Ind. Code § 27-1-15.6-12(b)(8) by, in the course of business, organizing entities which conducted the same fraudulent, coercive or dishonest practices under different names in order to confuse and victimize Indiana consumers.
12. An insurance producer may be sanctioned by the Commissioner for violating “an insurance law, a regulation, a subpoena of an insurance commissioner, or an order of an insurance commissioner of Indiana or another state.” Ind. Code § 27-1-15.6-12(b)(2).

13. Respondents' violations of insurance law, as outlined in paragraphs 5-8, constitute violations of Ind. Code § 27-1-15.6-12(b)(2)
14. "Any person who assisted or in any manner aided directly or indirectly in the procurement of [an unauthorized insurance contract] is liable to the insured for the full amount of the claim or loss in the manner provided by the insurance contract. Ind. Code § 27-4-5-2(c)(2).
15. Respondents RBA and Spencer & Associates are both liable for the full amount of Mr. and Mrs. Burch's losses for BEEMA's failure to pay their claims pursuant to Ind. Code § 27-4-5-2(c)(2).
16. Respondents Spencer & Associates, AFID, AFAH, PHP, Olzeski and RBA are all liable for the full amount of Mr. Stinson's loss for BEEMA's failure to pay Mr. Stinson's claims pursuant to Ind. Code § 27-4-5-2(c)(2).
17. Respondents AFID and PHP are both liable for the full amount of Lifetime's medical service bills accrued while rendering care for Ms. Conquest pursuant to Ind. Code § 27-4-5-2(c)(2).
18. Respondent AFID is liable for the full amount of Mrs. Horn's knee replacement surgery, less the ten thousand dollar (\$10,000.00) deductible pursuant to Ind. Code § 27-4-5-2(c)(2).
19. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

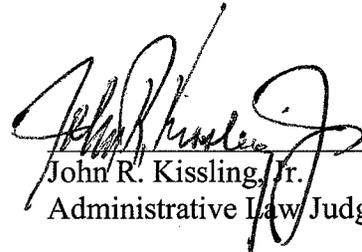
## RECOMMENDED ORDER

With the Findings of Fact and Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner of Insurance the following:

1. Respondent Olzeski's producer license, number 548173, should be permanently revoked.
2. Respondent Olzeski should be required to pay a fine in the amount of ten thousand dollars (\$10,000.00).
3. Respondent Olzeski should be required to pay restitution to the following people, in the following amounts:
  - a. Bryan Stinson should be reimbursed for his premiums, in the amount of \$6,483.19.
  - b. Jan Horn should be paid the amount of the claim submitted, less her \$10,000.00 deductible, in the amount of \$30,318.19
  - c. William Burch should be reimbursed for the care of himself and his wife in the amount of \$32,000.00.
  - d. Lifetime Skin Care Centers should be paid \$591.00 for the medical care provided to Vicki Conquest.
4. Respondents Olzeski, Spencer & Associates, AFID, AFAH, PHP and Clark should be held jointly and severally liable for the restitution ordered in Paragraph 3.
5. Respondent Clark is required to pay a fine in the amount of fifty thousand dollars (\$50,000.00) pursuant to Indiana Code §27-4-1-6(a)(1).
6. Respondents Spencer & Associates, AFID, AFAH, PHP, Olzeski, and Clark should permanently cease and desist from engaging in unauthorized insurance business in

Indiana, including but not limited to, the sale of limited benefit health plans and memberships in trade associations.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 29<sup>th</sup> day of July, 2010.

  
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John R. Kissling, Jr.  
Administrative Law Judge

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