### BEFORE THE DIVISION OF INSURANCE, STATE OF COLORADO

Case File No. 214127 DOI Order No. 0-09-042

EX PARTE EMERGENCY ORDER TO CEASE AND DESIST THE UNAUTHORIZED AND UNLAWFUL TRANSACTION OF THE BUSINESS OF INSURANCE IN THE STATE OF COLORADO

IN THE MATTER OF CONSOLIDATED WORKERS ASSOCIATION ("CWA"); CONSOLIDATED WORKERS RISK RETENTION GROUP, LLC. ("CWRRG"); THE NATIONAL ALLIANCE OF BENEFIT SERVICES ASSOCIATION ("NABSA"); CLAIMS AND BENEFIT MANAGEMENT ("CBM"); INTEGRATED HEALTH BENEFITS ("IHB"); WALTER R. CECCHINI, JR.; AND BRAD WESSLER;

Respondent	ts.
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This matter comes before the Honorable Marcy Morrison, the Commissioner of Insurance of the State of Colorado (the "Commissioner"), pursuant to the provisions of the Regulation of Unauthorized Insurance Act, §§ 10-3-901 through 10-3-910, C.R.S., whereby the Commissioner is authorized to issue an *ex parte* emergency cease and desist order regarding the unauthorized transaction of insurance business in Colorado.

# **PARTIES AND JURISDICTION**

- 1. The Commissioner has the duty and responsibility to supervise the business of insurance in the State of Colorado, and to investigate and enforce Colorado insurance laws and regulations, as set forth in §§ 10-1-108(5) and (7), C.R.S.
- 2. When the Commissioner believes that an unauthorized person or entity is engaging in the transaction of insurance business in violation of §§ 10-3-105 or 10-3-903, C.R.S., or any rule or regulation promulgated under authority of Colorado insurance laws, and when it appears to the Commissioner that such unauthorized person or entity's conduct is fraudulent, or creates an immediate danger to the public safety, or is causing or can be reasonably expected to cause significant, imminent and irreparable public injury, the Commissioner may issue an *ex parte* emergency cease and desist order to such unauthorized person or entity to cease and refrain from such unlawful conduct pursuant to § 10-3-904.5, C.R.S.
- 3. It is the duty of the Commissioner to make such investigations and examinations as are authorized by title 10, C.R.S., and to investigate such information as is presented to the Commissioner by authority that the Commissioner believes to be reliable pertaining to violation of the insurance laws of Colorado, and it is the Commissioner's duty to present the result of such investigations and examinations for further investigation and

- prosecution to either the district attorney of the proper judicial district or the attorney general when, in the Commissioner's opinion, such violations justify such action.
- 4. Consolidated Workers Association ("Respondent CWA" or collectively "Respondents") is a Delaware Corporation located at The Nemours Building, 1007 Orange Street, Suite 1410, Wilmington, Delaware, 19801. Respondent CWA's registered agent is located at 160 Greentree Street, Suite 101, Dover, Delaware, 19904.
- 5. Walter R. Cecchini, Jr. ("Respondent Cecchini" or collectively "Respondents") is a resident of the state of Florida and is the owner, president and sole director of Respondent CWA.
- 6. The Consolidated Workers Risk Retention Group, LLC ("Respondent CWRRG" or collectively "Respondents") is a Delaware Corporation located at the Nemours Building, 1007 Orange Street, Suite 1410, Wilmington, Delaware, 19801. Respondent CWRRG's registered agent is located at the same address.
- 7. National Alliance of Benefit Services Association ("Respondent NABSA" or collectively "Respondents") is a California corporation located at 6251 Schafer Avenue, Suite O, Chino, California 91710.
- 8. Claims and Benefit Management ("Respondent CBM" or collectively "Respondents") is a California corporation located at 6598 Pinion Court, Chino, California, 91710 and 6251 Schafer Avenue, Suite M, Chino, California 91710. Respondent CBM is a licensed third-party administrator in the state of California.
- 9. Integrated Health Benefits ("Respondent IHB" or collectively "Respondents") is located at 6251 Schafer Avenue, Suite O, Chino, California 91710. The address for Respondent IHB is listed on its website at <a href="www.ibhhealth.com">www.ibhhealth.com</a> as PO Box 2647, Chino, California 91709. The website for Respondent IBH indicates that it is a division of Respondent CBM.
- 10. Brad Wessler is a Managing Partner of Respondent NABSA, President of Respondent CBM, and President of Respondent IHB.
- 11. The Commissioner has jurisdiction over Respondents and the subject matter of this *Ex Parte* Emergency Cease and Desist Order (the "Order") pursuant to §§ 10-3-901 through 10-3-910, C.R.S.
- 12. The relevant portions of the Colorado Revised Statutes, which apply to Respondents and to the subject matter of this are Order, are:

# § 10-3-903. Definition of transacting insurance business

- (1) Any of the following acts in this state, effected by mail or otherwise, by an unauthorized insurer constitute transacting insurance business in this state as such term is used in section 10-3-105;
- (c) The taking or receiving of any application for insurance;

- (d) The receiving or collection of any premium commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof;
- (e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;
- (f) Directly or indirectly acting as an agent for or otherwise representing, or aiding on behalf of another, . . . in the transaction of matters subsequent to the effectuation of the contract and arising out of it; or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. .
- (g) The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance;
- (h) The doing, or proposing to do, any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes;

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# FINDINGS OF FACT

- 13. Respondent CWRRG is a risk retention group whose state of domicile is Delaware, and who is managed by a captive insurance company named Risk Services, LLC, located at 2233 Wisconsin Avenue, N.W., Suite 310, Washington, D.C. 20007.
- 14. Respondent CWA underwrites the membership benefits and obligations that it provides to its members by way of a contractual liability insurance policy that was secured from Respondent CWRRG.
- 15. Respondent CWA entered into a marketing agreement with Respondent NABSA on or around November 7, 2007 in which Respondent CWA granted to Respondent NABSA the right to market Respondent CWA's membership benefits. The agreement is signed by Respondent Cecchini as President of Respondent CWA and by Respondent Wessler as Managing Partner of Respondent NABSA.
- 16. Paragraph 9 of the November 7, 2007 marketing agreement provides that Respondent CWA provide to Respondent NABSA the authority to refer individuals and entities to Respondent CWA for potential membership. If membership is approved, then Respondent CWA represents and warrants that the medical plans offered to members of Respondent CWA are exempt from multi-state regulation as an insurance product as an insured owner of a policy issued and insured by Respondent CWRRG. Paragraph 9 of the marketing agreement states in full part the following:

### 9. Medical Benefit Plans

CWA shall offer to NABSA, the right to refer individuals or entities to CWA for potential CWA membership. Once CWA accepts these individuals and entities as members of CWA, said CWA members are eligible for certain Membership Benefits that CWA represents and warrants to NABSA are fully authorized and available to potential CWA members in any state that CWA accepts Members [sic] referred by NABSA. Said authorized Membership Benefits are fully described in Addendum "A" which is attached hereto and made a part thereof. CWA does not regard its Membership Benefits as insurance and as an owner insured of Consolidated Workers Risk Retention Group created under the Federal Liability Risk Retention Act maintains that its Membership Benefits are not subject to multi-state regulation as an insurance product.

- 17. Membership to Respondent CWA includes enrollment into one of its medical benefit plans, which is marketed to individuals throughout the United States, including Colorado, primarily through the internet and namely through the website for Respondent NABSA at <a href="https://www.nabsabenefits.com">www.nabsabenefits.com</a> and the website for Respondent IBH at <a href="https://www.ibhhealth.com">www.ibhhealth.com</a>.
- 18. The website for Respondent NABSA advertises several limited medical health plans that purport not to be insurance but that include different specified dollar benefits for hospitalization, surgical procedures and doctor visits. The medical plans listed on Respondent NABSA's website indicate that such plans are not insurance but are underwritten by Respondent CWA.
- 19. The website for Respondent NABSA also indicates that individuals interested in membership information, benefit levels, and dues should direct their inquiries to <a href="mailto:bradwessler@cbmtpa.com">bradwessler@cbmtpa.com</a>, which is the email address to Respondent Wessler at Respondent CBM.
- 20. The website for Respondent IBH includes information on the medical benefit plans underwritten by Respondent CWA. The website lists medical benefit plans that have a specified dollar benefit for hospitalization, surgical procedures and doctor visits. "Membership dues" differ based upon whether the enrollment is for an individual, couple or family.
- 21. On or around March 21, 2008, the Division received a complaint from Kristine Shipman in which it was revealed that money had been debited from her checking account by Respondent NABSA involving a purported health insurance policy that she had initially purchased from the National Alliance of Associations, another entity that is unauthorized to transact the business of insurance in the state of Colorado and subject to a separate *Ex Parte* Cease and Desist Order, Division Order Number O-08-120, that the Commissioner issued on May 15, 2008.
- 22. On or around May 18, 2008, the Division received another complaint from Amanda Krol in which it was alleged she had originally purchased a purported health insurance policy from the National Alliance of Associations, but that she was subsequently transferred as a member to Respondent CWA.

- 23. Ms. Krol's bank statements reflect that her "membership fee" to Respondent CWA that was ostensibly health insurance premium for her health insurance policy underwritten by Respondent CWA was debited from her checking account in the amount of \$369.00 by Respondent NABSA from December 2007 through March 2008. The amount of \$369.00 was represented to Ms. Krol to be the monthly "premium" for health insurance coverage that included she, her husband, and their children.
- 24. Ms. Krol further states that she believed she had purchased a comprehensive health insurance policy with Respondent CWA, but that to her knowledge, no claims have been paid by Respondent CWA, Respondent NABSA or Respondent CBM.
- 25. Ms. Krol has received claim statements from Respondent CBM which purports to have paid in some instances \$50.00 to various medical providers as part of her alleged medical coverage with Respondent CWA, but upon her further investigation with those medical providers, no money toward any claim has been received by her medical providers from Respondents.
- 26. During the time in which Ms. Krol and her family thought they had comprehensive medical coverage through Respondent CWA, Ms. Krol's husband was diagnosed with a serious medical condition in which he sought treatment. When it was discovered that the medical coverage through Respondent CWA would not cover the medical treatment for the condition and that said health coverage was fraudulent, Ms. Krol and her family purchased health insurance through a legitimate health insurance company, but have a rider on their policy that does not include medical coverage of her husband's medical condition on grounds it is a pre-existing condition.
- 27. The Division has information that besides Ms. Krol, there are at least 27 other members of Respondent CWA, who are also Colorado residents and are ostensibly paying "membership fees" to Respondent NABSA for purported health insurance coverage underwritten by Respondent CWA with claims and other administrative services handled by Respondent CBM.
- 28. On or around June 27, 2008, the Division sent all Respondents, except for Respondents CWRRG and IHB, an Order of Examination pursuant to § 10-3-907, C.R.S. The Order of Examination asked Respondents several questions related to their alleged unauthorized transaction of insurance business in the State of Colorado.
- 29. While Respondent CWA sent correspondence to the Division dated August 12, 2008 that was signed by Respondent Cecchini as President of Respondent CWA and referenced the Division's Order of Examination, said correspondence was not responsive to the Division's Order of Examination. Respondent Cecchini states in his response that Respondent CWA has been compliant at all times in providing its members with a non-insurance product that is underwritten by Respondent CWRRG, and he enclosed a copy of the Certificate of Membership Benefits for Respondent CWA. None of the Division's forty-two (42) questions were addressed by Respondent CWA or Respondent Cecchini. Respondents CWA and Cecchini indicate in their August 12, 2008 response that, notwithstanding their belief that they are in compliance with any applicable insurance

- laws, that it would abide by the Division's Cease and Desist Order, even though no Cease & Desist Order has issued until now.
- 30. While the Certificate of Membership enclosed in Respondents CWA and Cecchini's correspondence includes a statement that the benefits included are "not an insurance contract," the packet of information also details the medical benefits provided under the Certificate, exclusions and limitations, claims processing procedure and other information that specifically relate to and are designed to be represented as legitimate health insurance coverage.
- 31. Respondent CWRRG also provided a response likewise dated August 12, 2008 that was signed by Jon Harkavy on behalf of Risk Services, LLC, the captive insurance company manager for Respondent CWRRG, that also referenced the Division's Order of Examination but failed to answer any of the forty-two (42) questions. Mr. Harkavy claims that the Contractual Liability Insurance Policy ("CLIP") that underwrites the medical benefits offered and sold by Respondent CWA as part of membership into the organization does not constitute insurance as it is underwritten by Respondent CWRRG, which was formed under the Federal Liability Risk Retention Act ("LRRA"), 15 U.S.C.A. §§ 3901 through 3906.
- 32. Respondent CWRRG further states in its August 12, 2008 that it would stop enrolling CWA members from Colorado and reimburse monies to any Colorado members pursuant to CWA membership obligations.
- 33. The LRRA defines a "risk retention group" as any corporation or limited liability association whose primary activity consists of assuming, and spreading all, or any portion of, the liability exposure of its members and is organized for that primary purpose, and whose members are engaged in business or activities similar or related with respect to the liability to which members are exposed by virtue of related, similar, or common business, trade, product, services, premises, or operations, and whose activities do not include any activities of insurance except for spreading all or a portion of the liability risk amongst its members. See 15 U.S.C.A. §§ 3901(4)(A), (B), (F), and (G).
- 34. The LRRA defines "liability" to mean "any legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries arising to other persons, damages to their property, or other damage or loss to such other person resulting from or arising out of any business or activity of any state or local government." See 15 U.S.C.A. §§ 3901(2)(a)(i) and (ii).
- 35. Section 3902(a) of the LRRA provides for limited state regulation of a validly formed risk retention group, and includes oversight by the Commissioner to include, but is not limited to, assurance that the group is in compliance with Colorado's unfair settlement practice act, assurance that the group is in compliance that it pays on a nondiscriminatory basis premium tax that is similar to admitted insurers and surplus lines insurers, a requirement that the group register with and designate the Commissioner as its agent for receiving legal service of process, and assurance that the group is in compliance with

Colorado law relating to unfair or deceptive trade practices. See 15 U.S.C.A. §§ 3902(a)(1)(A), (B), (D), and (G).

36. A validly formed risk retention group must also include on any insurance policy issued to the group a notice that is in 10-point type that states the following:

### NOTICE

This policy is issued to you by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulation of your State. State insurance insolvency guaranty funds are not available for your risk retention group.

See 15 U.S.C.A. § 3902(a)(1)(H).

- 37. The LRRA also requires that any validly formed risk retention group must submit to the state commissioner of insurance in any state it intends on conducting business a copy of the group's plan or study, which includes the name in which the risk retention group is chartered and its principal place of business and a copy of any revision or changes in the plan or study. See 15 U.S.C.A. §§ 3902(2)(A) and (B).
- 38. For any state in which the risk retention group does conduct business, in addition to the items listed above in Paragraphs 35-37, the group must provide to the state commissioner of insurance a copy of the group's annual financial statement that has been certified by an independent certified public account with an opinion of loss and loss adjustment expense reserves made by either the American Academy of Actuaries or a qualified loss reserve specialist. See 15 U.S.C.A. §§ 3902(3)(A) and (B).
- 39. The Commissioner's official records indicate that Respondents are not validly licensed with a certificate of authority to engage as an authorized insurer, as an insurance producer who is an agent of a validly formed and licensed insurance company, nor has any Respondent, specifically Respondents CWRRG or CWA by themselves or through an agent such as Risk Services, LLC, filed and registered as a foreign risk retention group or provided the proper information to the Commissioner as required by the LRRA to conduct business in this state as a foreign risk retention group.
- 40. The consumer complaints and other evidence indicate that Respondents are collectively, either directly or indirectly, soliciting, negotiating, procuring, providing, underwriting, processing, administering, or otherwise engaging in the effectuation of health insurance benefits for which they are not duly licensed.
- 41. Several other states, notably Utah, Kansas and Delaware, have issued Cease & Desist Orders against Respondents CWA, NABSA, CBM, Cecchini and Wessler involving the same offer of alleged health insurance coverage without the legal authority to transact the business of insurance in those states.

- 42. Delaware's Cease & Desist Order appears to undermine Respondent CWRRG's claims that it effectuated the CLIP that underwrites the health insurance benefits of Respondent CWA in that state with that state's approval.
- 43. Respondents CWRRG and CWA may not solicit, negotiate, procure, provide, underwrite, process, administer or otherwise engage in the effectuation of health insurance benefits for its members or for third party individuals, through the internet, telephone, mail or otherwise, as risk retention groups are formed for the primary purpose of spreading all or a portion of its members' business or commercial liability exposure based upon similar professions, trades, services, premises, or operations.
- 44. Based upon the foregoing, Respondents conduct business by advertising, soliciting, negotiating and selling, either directly or through third-party agreements, through the internet, telephone, mail or otherwise, insurance products; taking or receiving of applications for insurance; receiving or collecting premium commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof; acting as an agent for either directly or indirectly or otherwise representing or aiding on behalf of another, any person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or in the transaction of matters subsequent to the effectuation of the contract and arising out of it; or in any other manner representing or assisting a person or insurer in the transaction of insurance business with respect to subjects of insurance resident, located, or to be performed in this state; the doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance; the doing, or proposing to do, any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes, constitutes engaging in the business of insurance without the benefit of legal authority and constitutes conduct that is fraudulent, creates an immediate danger to public safety, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

### CONCLUSIONS OF LAW

- 45. The Commissioner has jurisdiction over Respondents and the subject matter of this Order.
- 46. Respondents have engaged in the transaction of insurance business in Colorado, as described in §§ 10-3-903(1)(c), (d), (e), (f), (g) and (h), C.R.S. Respondents' actions as described herein are those of an unlicensed insurer or insurance producer or unregistered foreign risk retention group. By soliciting, negotiating, procuring or effecting insurance, specifically that of health insurance, Respondents' business activities and conduct constitute "insurance" under §§ 10-1-102(12), C.R.S. and such conduct constitutes the definition of "transact" as it pertains to insurance in § 10-1-102(19), C.R.S.
- 47. Respondents have never been issued by the Commissioner a Certificate of Authority or an insurance producer license authorizing them to transact the business of insurance in Colorado.

- 48. Respondents CWRRG and CWA have never registered with the Commissioner either by themselves or through an agent to be recognized as a foreign risk retention group, nor have Respondents CWRRG or CWA filed the information as outlined and required by the LRRA for a validly formed risk retention group who intends on or does conduct business in this state.
- 49. The Commissioner is authorized to issue an *ex parte* emergency cease and desist order to Respondents because: (i) Respondents are an "unauthorized person", as defined in § 10-3-904.5(2), C.R.S.; (ii) Respondents have "transacted insurance business" in Colorado, as defined in § 10-3-903, C.R.S. as an unlicensed insurer or insurance producer by soliciting, negotiating, procuring or effecting insurance or as an unregistered foreign risk retention group; and (iii) Respondents have engaged in conduct which is fraudulent, creates an immediate danger to the public safety, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury. *See* §10-3-904.5(1)(b), C.R.S.

## **ORDER**

Based upon the above Findings of Facts and Conclusions of Law, the Commissioner of Insurance:

50. ORDERS that the above named Respondents, jointly and severally, their officers, managers, directors, agents, members, partners, investors, affiliates, associates, employees, and any others with actual knowledge of this Order, **CEASE AND DESIST** from transacting the business of insurance in the State of Colorado, to residents of the State of Colorado as defined in §10-3-903, C.R.S.

### **OTHER MATTERS**

- 51. Pursuant to § 10-3-904.6(1), C.R.S., Respondents may contest this Order and request a hearing within **60 days** of the date of this Order in accordance with § 24-4-105(12), C.R.S. Such request for hearing must be received by the Division on or before the expiration of 60 days from the date of this Order.
- 52. PURSUANT TO § 10-3-904.6(5), C.R.S., UPON DETERMINATION OF A VIOLATION OF THIS ORDER, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY OF \$25,000.00 FOR EACH ACT AND/OR DIRECT RESTITUTION.
- 53. This Order contains a total of 11 pages, including the Certificate of Service, but excluding Attachments and Exhibits, if any.
- 54. The Commissioner reserves the right to amend this Cease and Desist Order to add any individual, entity or company that is directly or indirectly affiliated or associated with the named entities in this Order or has any type of business or contractual relationship with any of the named entities in this Order that relates to the unauthorized transaction of insurance business based upon evidence acquired through the Division's continuing investigation.

55. This Order is effective immediately upon execution by the Commissioner or her designee.

Dated this \_\_\_\_\_ day of October , 2008.

MARCY MORRISON COMMISSIONER OF INSURANCE

BY: PEGGY A. BROWN, ESQ. DEPUTY COMMISSIONER OF CONSUMER AFFAIRS

# CERTIFICATE OF SERVICE BY CERTIFIED MAIL

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#### VIA INTER-AGENCY MAIL:

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