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STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of

RENT-A-CENTER, INC. and RENT-A-CENTER
WEST, INC.

and

BENEFIT MARKETING SOLUTIONS, LLC and
BENEFIT SERVICES ASSOCIATION,

NO. 14-0082

**OPPOSITION TO OFFICE OF THE
INSURANCE COMMISSIONER'S
MOTION FOR SUMMARY
JUDGMENT**

The Office of the Insurance Commissioner's Motion for Summary Judgment fails to meet the requirements of Civil Rule 56 for summary judgment and should be denied because the OIC: (1) has not produced any admissible evidence that establishes the absence of material questions of fact; (2) cannot meet its burden to prove that the Paid-Out Account Product Service Protection (the "Paid-Out Account benefit") is a service contract under RCW 48.110, and (3) has not provided any evidence that Rent-A-Center West, Inc. ("Rent-A-Center") solicits, negotiates, or sells insurance in violation of RCW 48.

A. The OIC has failed to provide any admissible evidence to demonstrate the absence of a genuine issue of material fact.

The OIC states the proper standard for summary judgment – the burden is on the moving party to demonstrate there is no genuine issue of material fact – but then fails to even attempt to meet its burden. Under CR 56, allegations not based upon personal knowledge do



1 not provide facts that would be competent evidence that should be considered in ruling on a
2 motion for summary judgment. *State v. Dan J. Evans Campaign Comm.*, 86 Wn.2d 406, 553
3 P.2d 107 (1976). Rather than base any evidence on personal knowledge, the OIC attaches
4 unauthenticated documents on the back of its motion and then relies on an “administrative
5 record” entirely devoid of any admissible evidence. There are no substantive declarations, no
6 deposition transcripts, and nothing else that could meet the OIC’s burden under CR 56.

7 To prevail on summary judgment, the OIC must submit admissible evidence that
8 establishes a violation of RCW 48. The OIC’s motion for summary judgment should be
9 denied because the OIC’s unsupported conclusions and documents fall far short of the high
10 summary judgment standard.

11 **B. Material questions of fact exist precluding summary judgment relating to**
12 **whether the Paid-Out Account benefit is a service contract.**

13 The OIC makes the conclusory statement that the Paid-Out Account benefit is a
14 service contract, but then provides no admissible evidence that supports this conclusion. The
15 OIC seemingly relies on a page from racbenefitsplus.com to “prove” that there is a specific
16 duration and additional consideration, but this “evidence” does not establish what the OIC
17 contends.

18 The OIC agrees that there are two requirements of a service contract under RCW
19 48.110 that are in dispute related to the Paid-Out Account benefit: (1) is there a specific
20 duration for the benefit; and, (2) was consideration in addition to the lease of the product paid
21 for the benefit. The OIC fails to establish either.

22 First, the OIC contends that there is a specific duration for the benefit because as to
23 any specific item, the benefit lasts for up to one year after purchase of that item. The OIC
24 ignores that in the majority of cases, the member never owns the product, but rather returns it
25 during the lease period. In this instance, the duration of the benefit would be zero days. Even
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1 in the cases where the benefit becomes effective (because the product has been purchased),
2 the duration is entirely up to the consumer and how long the consumer chooses to maintain
3 their membership. There is also not a specific duration because the Paid-Out Account benefit
4 can be removed as a membership benefit at the discretion of Benefit Market Solutions or
5 Benefit Services Association. The OIC's motion for summary judgment should be denied
6 because the duration is not set (at the time of the lease or at any other time) and is certainly
7 not specific.

8 Second, the OIC states that there is additional consideration paid because the customer
9 pays membership dues. The OIC ignores that the membership dues are for a membership in
10 an association that provides numerous benefits and that the Paid-Out Account benefit is
11 simply an incidental benefit of membership. The OIC provides no evidence that there is any
12 actual additional consideration provided for the Paid-Out Account benefit, but rather focuses
13 on a charge for the membership in toto. The OIC does no analysis of how the benefit can be
14 removed by the association and that members agree that the benefits may change from time to
15 time. The OIC's conclusory statement does not consider that once a person is a member, they
16 could lease or purchase an infinite number of products and there would be no change to the
17 membership dues or that the membership dues are in no way impacted by the type of product
18 (i.e. a refrigerator or a television). The OIC does not consider that the benefit could be
19 removed or replaced and the membership fee would be unchanged. The OIC's simplistic and
20 conclusory analysis is fatal to its argument that there is not a material issue of fact.

21 **C. The OIC's has not established that Rent-A-Center is an insurance producer.**

22 The OIC's allegation that Rent-A-Center is an insurance producer under RCW 48 is
23 based upon its conclusion that "RAC knew the benefits provided in the membership included
24 AD&D insurance." First, there is no admissible evidence supporting this conclusory
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1 statement. Second, this is not the legal standard. For Rent-A-Center to be an insurance
2 producer they must sell, solicit, or negotiate insurance coverage. RCW 48.17.010(6).

3 Rent-A-Center provided two things to customers: (1) the RAC Benefits Plus
4 membership application form (attached as Exhibit B to the Declaration of Bradley Denison),
5 and (2) the RAC Benefits Plus brochure (Exhibit A). Rent-A-Center did not offer advice,
6 confer regarding a particular contract of insurance (or the terms thereof), exchange a contract
7 of insurance, or do any of the things that would be indicia of negotiating, soliciting, or selling
8 insurance. Instead, there was a transaction that takes place entirely outside of Washington
9 state where a group AD&D policy, that has been approved in the state of Oklahoma was
10 delivered to an Illinois association at its Oklahoma offices. As additional evidence that Rent-
11 A-Center does not solicit, negotiate, or sell insurance, the AD&D policy has not been part of
12 the RAC Benefits Plus program for Washington consumers since December 2013, but the
13 process Rent-A-Center undertakes (providing customers with a membership application and
14 RAC Benefits Plus brochure) is entirely unchanged.

15 The OIC has submitted no evidence that Rent-A-Center solicits, negotiates, or sells
16 insurance and has therefore not met the standard for summary judgment.

17 CONCLUSION

18 To prevail on its motion, the OIC bears the burden of establishing via admissible
19 evidence that there is an absence of material issues of fact. The OIC has failed to introduce a
20 scintilla of evidence to meet its burden. Further, when the actual admissible evidence is
21 reviewed it is clear that the Paid-Out Account benefit is not a service contract and that Rent-
22 A-Center is not an insurance producer. For these reasons, the OIC's motion should be denied.

23 DATED this 7th day of November, 2014.

24 Respectfully submitted:

25 RYAN, SWANSON & CLEVELAND, PLLC
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