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Hearings Unit, DIC
Patricia D. Peterson
Chief Hearing Officer

FACSIMILE TRANSMITTAL

TO: Attention: Marcia G. Strickler, Esq.	FROM: Aubrey Trevett
COMPANY: Office of Insurance Commissioner	DATE: February 10, 2010
FAX NUMBER: (360) 586-0152	TOTAL NO. OF PAGES INCLUDING COVER: 11
PHONE NUMBER:	SENDER'S REFERENCE NUMBER: Warranty Administration
RE: 02/10/10 Letter from Denis S. Kenny	YOUR REFERENCE NUMBER:
	CC:

- URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

NOTES/COMMENTS:

Dear Ms. Strickler,

Enclosed please find a letter from Mr. Kenny, including exhibits, regarding the Demand for Hearing in connection with the Order to Cease and Desist, No. 10-0018.

Please do not hesitate to contact Mr. Kenny directly with any questions or concerns.

Thank you.

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February 10, 2010

VIA FEDERAL EXPRESS & FACSIMILE
(360) 586-0152

Office of Insurance Commissioner
Attn: Marcia G. Stickler, Esq.
5000 Capitol Blvd.
Tumwater, WA 98501

Re: Demand for Hearing re: Order to Cease and Desist, No. 10-0018

Dear Ms. Stickler:

This follows-up on our telephone discussion of February 9, 2010, concerning the Office of Insurance Commissioner's issuance of the above-referenced Order to Cease and Desist, dated February 1, 2010 (the "Order," a copy of which is attached as Exhibit A). As discussed, this office represents the entities and individuals (collectively referred to hereinafter as "CDWS" solely for purposes of convenience) identified in the Order.

I am writing on behalf of CDWS to demand a hearing pursuant to RCW 48.04.10 *et seq.*, to challenge the Order, for the reasons set forth below. We hereby further invoke the applicable provisions of RCW 48.04.020 to invoke an automatic stay of the Order and all of its terms, conditions and obligations. In the event the OIC disagrees with our interpretation of applicable law as providing for an automatic stay of the Order (and any affirmative or prohibitory action provided therein), CDWS hereby requests, in writing, pursuant to RCW 48.04.020(2), that the OIC grant a stay.

As previously explained in my letter of July 17, 2009, to Mr. Ted Bader of your office, our interpretation of controlling law reveals that CDWS' product manufacturing business does not fall within the parameters of or otherwise violate any applicable statute, regulation or ordinance promulgated by the state of Washington. The scope of this Demand for Hearing specifically focuses on the apparent findings of alleged wrongful conduct made in the Order; specifically, that CDWS has acted as a vehicle service contract provider in violation of applicable Washington law.

Pertinent Background Facts

Neither my client nor my office received any contact whatsoever from anyone affiliated with the OIC after my July 17th letter. We collectively assumed that the matter

Marcia G. Stickler, Esq.
February 10, 2010
Page 2 of 3

had been resolved or, alternatively, that OIC would be engaging in further correspondence with my office to the extent OIC continued to take the position that CDWS was engaging in activities in violation of Washington law. Unfortunately, the next information my client received of any kind relating to the Washington OIC was notice of the Order (which it initially heard about from a third party prior to receiving the Order in the mail). This came as a shock to my client and to my office, as I had engaged in the pertinent background correspondence with Mr. Bader and Tom Rowland, which by our estimation, appeared constructive and productive, and certainly not the precursor to the about-face issuance of a Cease and Desist Order.

In any event, in an abundance of caution and consistent with its ongoing commitment to working cooperatively with the OIC toward seeking an informal resolution of this matter short of the administrative hearing/appeal process, CDWS immediately ceased any and all business activities relating to or concerning the state of Washington as of February 2, 2010. As indicated in our February 9, 2010 telephone discussion (and as previously stated in our July 19, 2009, letter to Mr. Bader), CDWS remains fully committed to working with the OIC toward reaching a negotiated resolution of this matter. Indeed, an informal settlement would appear to be in the best interests of all parties pursuant to the edict set forth in RCW 34.05.060 specifically encouraging "informal settlement of matters that may make unnecessary more elaborate proceedings." However, given the circumstances, we are compelled to proceed down the coincident and parallel track of the subject administrative hearing process.

CDWS Is Not a Service Contract Provider

The Order states that CDWS "acted as a vehicle service contract provider." RCW § 48.110.020(18) defines "service contract provider" as "a person who is contractually obligated to the service contract holder under the terms of the service contract." Section 48.110.020(16), in turn, defines "service contract" as:

a contract or agreement for consideration *over and above the lease or purchase price of the property* for a specific duration to perform the repair, replacement, or maintenance of property or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear.

CDWS manufactures products, for sale by authorized third-party sellers, who are required to execute CDWS' standard Seller Agreement (an exemplar of which is attached as Exhibit B). As part of the purchase of the product, and provided the product is purchased for use in an eligible motor vehicle, CDWS will pay for repair of certain enumerated components of said vehicle. CDWS *does not* charge separately for its commitment to provide these vehicle repair benefits. Rather, the price, *i.e.*, "consideration," the customer pays the third-party seller for the product includes CDWS' commitment in this regard. Therefore, there is no "consideration over and above the ...

Marcia G. Stickler, Esq.
February 10, 2010
Page 3 of 3

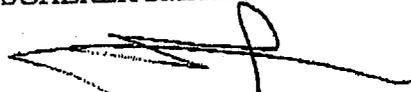
purchase price of the property." Consequently, CDWS does not sell or provide "service contracts" and is not a "service contract provider," under applicable Washington law.

CDWS reserves the right to advance further and distinct arguments and evidence in support of its position including without limitation the propriety of claims of personal/individual liability against the "Individual Respondents" listed in the Order. By way of example only, the "Individual Respondents" named in the Order were at all relevant times acting within the course and scope of their employment. Therefore, individual liability is not warranted.

Thank you in advance for your attention to this matter, and please do not hesitate to contact me with any questions or concerns.

Sincerely,

SCHERER SMITH & KENNY LLP



Denis S. Kenny

Enclosures

Cc via email: Client
Scott Stickney, Esq.

S:\DOCUMENT\Warranty Administration Services\Dept of Ins (WA)\Cease and Desist Mater\Demand for Hearing (FINAL).docx

EXHIBIT A
**(Cease and Desist Order, dated
February 1, 2010)**

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

Phone: (800) 725-7000
www.insurance.wa.gov



OFFICE OF
INSURANCE COMMISSIONER

In the Matter of

No. 10-0018

Consumer Direct Warranty Services, Inc.
Warranty Administration Services, Inc.
Warranty Administration Solutions, Inc.
SafeData Management Services, Inc.

ORDER TO CEASE AND DESIST

Unregistered and Unauthorized Entities,

and

Robert L. Chapman
James C. Sletner
Jennifer Shaw
Tamara Berbena

Individual Respondents.

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, vehicle service contracts and protection product guarantees; 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 vehicle service contracts and protection product guarantees, in the State of Washington.

THIS ORDER IS BASED ON THE FOLLOWING:

- 1. Respondents, collectively referred to herein as "CDWS," have acted as service contract providers, under various names, in Washington. Individual Respondents are principals or

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



managers of CDWS. Motor vehicle 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 motor vehicle 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 motor vehicle service contract provider or protection product guarantee 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 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 vehicle 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 thirty (30) days of receipt of this Order, with a complete listing, to include full contact information and amounts of premium collected from such consumers, of all Washington residents and Washington risks who have purchased any motor vehicle service contract, protection product guarantee, or other insurance-related product, directly or through the Internet, sales center, or dealer, from Respondents.

Respondents are also further ordered to notify all Washington residents who have purchased any motor vehicle service contract, protection product guarantee, or other insurance-related product from Respondents of the complete content of this Order within ten (10) 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 motor vehicle 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.

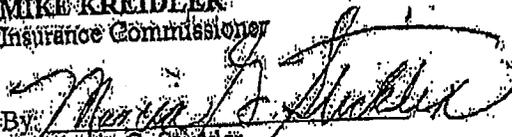
Any violation of the terms of this Order by Respondents, their officers, directors, employees, agents, or affiliates, will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, 48.17.530, 48.15.020 and other applicable Code sections.

ORDER TO CEASE AND DESIST.
PAGE 3 OF 4

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 1st day of February, 2010.

MIKE KREIDLER
Insurance Commissioner

By: 
Marcia G. Stodler
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:

Denis S. Kenny, Esq.
Scherer Smith & Kenney, LLP
140 Geary Street, Seventh Floor
San Francisco, California 94108

Consumer Direct Warranty Services, Inc.
P. O. Box 993520
Redding, California 96099

Robert L. Chapman
3790 Sunday Court
Redding, California 96001

James C. Sletner,
15676 Old Stage Coach Road
Redding, California 96001

Jennifer Shaw
P. O. Box 993520
Redding, California 96099

Warranty Administration Services, Inc.
P. O. Box 992050
Redding, California 96099

SafeData Management Services, Inc.
P. O. Box 992050
Redding, California 96099

Warranty Administration Solutions, Inc.
P. O. Box 992050
Redding, California 96099

Tamara Berbena
22845 Sunriver Drive
Red Bluff, California 96080

SIGNED this 1st day of February, 2010, at Tumwater, Washington.

Jodie Thompson
Jodie Thompson

EXHIBIT B
(Exemplar Seller's Agreement)



CONSUMER DIRECT WARRANTY SERVICES
Geared for Service

Direct Marketer/Telemarketer
Seller Agreement

This agreement is entered into on this ____ day of _____, 20____ by Consumer Direct Warranty Services (Administrator), and _____ (Seller). Administrator is in the business of distributing and administering vehicle product warranty programs to vehicle dealers and other related companies, internationally.

Please indicate the product warranty programs that will be represented:

- BestChoice™
- CoolChoice™
- DirectChoice™
- GreatChoice™
- SecureChoice™

Seller and affiliated companies agree to:

1. Market Administrator's products with accuracy, integrity and honesty and to fully comply with applicable state, federal, international, administrative, municipal and local laws, regulations and guidelines relating to Seller's activities.
2. Provide Administrator with examples of outbound mail marketing materials and/or telephone marketing scripts to be used for the sale of the product warranty programs, upon request.
3. If outbound telemarketing strategies will be used by direct marketer or by an outside company contracted by, or on behalf of direct marketer to market the product warranty programs, that copies of all required certificates of authority and registration numbers issued by state, federal, and/or international agencies will be provided to the Administrator PRIOR to the start of this sales strategy.
4. Practice ethical and legal telemarketing, direct marketing and advertising. Perform audio recording of Purchaser's authorization to purchase product warranty. Provide audio recording upon request to Administrator. Comply with all legal obligations and restrictions that apply to telemarketing practices and usage of recorded automated messaging preceding connection to a live sales person, included but not limited to TCPA (47 U.S.C.-Section 227 et. Seq.). If any prohibited practices, conduct or actions are found to be utilized, this Agreement will terminate immediately and each violator (s) will be held liable for damages to the fullest extent allowable by law.
5. Acquire and maintain any applicable licensing or registration for selling Administrator's Vehicle Product Warranty Agreements Internationally.
6. Represent the indicated product warranty programs to potential purchasers within vehicle eligibility guidelines.
7. Provide Administrator completed Seller Agreement upon change of ownership or managing principal/partner.
8. Notify the purchaser to read and adhere to the terms and conditions listed in the product warranty agreement.
9. Furnish information necessary to complete the product warranty agreement in its entirety and obtain purchaser's approval for purchase.
10. Allow Administrator retention opportunity should Purchaser voluntarily default on payment, involuntarily default on payment or express intent to cancel for any reason. Retention opportunity includes and is not limited to Administrator making contact with Purchaser. Administrator will remit applicable Seller profit for each successful Purchaser retained.
11. Acknowledge the indicated product warranty programs are taxable and Seller is responsible for all applicable sales tax.
12. Remit to Administrator all product warranty agreement data and applicable installment payment plan data within 14 days of product purchase date.
13. Process and pay "Paid in Full" and/or "Self Financed" agreement invoices received from the Administrator within 14 days from the invoice date. Administrator will invoice Seller by mail, e-mail, and/or fax for all "Paid in Full" and/or "Self Financed" agreements within 48 hours of receipt of data. If payments for "Paid in Full" and/or "Self Financed" invoices are not received, the following may apply: ability to sell "Paid in Full" and/or "Self Financed" agreements may be terminated and/or rejected; late fees and/or reinstatement fees may be applied; purchaser benefits may be terminated.
14. Hold Administrator, Distributor and their officers, employees, associates and all other parties harmless from and indemnify, defend and reimburse said parties in relation to all fees, costs and expenses associated with claims outside the terms and conditions of this product warranty agreement and/or claims relating to alleged wrongful conduct of Seller including without limitation failing to comply with applicable state, federal, international, administrative, municipal and local laws, regulations and guidelines relating to Seller's activities.

15. "Event of Default" by Seller is:

- a) Default in the payment of any amount due Administrator under this agreement.
- b) Failure to perform any covenant or agreement (other than the payment of monies due Administrator) under this Agreement within fifteen days after written notice of such default.
- c) Commencement of any voluntary proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or shall be adjudicated insolvent or bankrupt by a court of competent jurisdiction; or shall petition or apply for or acquiesce in or consent to the appointment of any receiver or trustee for all or substantially all of Seller's property; or shall make an assignment for benefit of creditors.
- d) Commencement of any voluntary proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or a receiver or trustee shall be appointed for Seller for all or substantially all of the Seller's property, provided if any disability referred to in this clause (d) is removed, dismissed, discontinued, or terminated within forty-five days after the occurrence thereof, then such disability shall not be an Event of Default.
- e) Seller or any officer of Seller is convicted of any criminal offense involving fraud, misappropriation of funds, or similar conduct.

Administrator Agrees to:

1. Receive and process all product warranty agreement data, fees, or payment installment plan data, under the condition that all required information has been provided.
2. Process all eligible product warranty agreement data and ship to purchasers the Vehicle Protection Kit within 48 business hours after receiving the product warranty agreement data and installment payment plan data from Seller.
3. Adjudicate all claims within the terms and conditions of product warranty agreement(s).
4. This Seller Agreement may not be altered by either party unless agreed upon by both parties in writing.

Miscellaneous:

1. TERMINATION OF AGREEMENT: This agreement may be terminated by either party upon a 30 day written notice to the other party, such termination will be effective on the date specified by such notice. In the event of termination of this Agreement, the obligation of the Seller under this Agreement is liable for any fines, expenses or other obligations incurred prior to the effective date of termination.
2. Administrator may cancel seller agreement without notice if Seller commits fraud, defalcation, dishonesty or intentional misrepresentation directed to Consumer Direct Warranty Services.
3. This Seller Agreement will expire 60 days from the date referenced above if no product warranty agreements have been received from Seller and Seller will become "inactive."
4. Administrator may cancel seller agreement without notice, if payments on "Paid in Full" agreements are not received.

Seller Information	
Name (print): _____	Title: _____
Signature: _____	Company Name: _____
Address: _____	City: _____ State: _____ Zip: _____
Phone: _____	Fax: _____
Sales Contact: _____	Email: _____
Office Contact: _____	Website: _____
Direct Transfer: <input type="checkbox"/> MOY <input type="checkbox"/> FORT <input type="checkbox"/> Other	
Installment Payment Plan: <input type="checkbox"/> MPFCO <input type="checkbox"/> PAYM <input type="checkbox"/> Other	
Direct Representative	
Name (print): _____	Title: _____
Phone: _____	Email: _____
Consumer Direct Warranty Services	
Name and Title (print): _____	Signature: _____
Date Received: _____	Seller ID: _____

Return completed form to administrator via fax at: (530) 246-8286 or by email: sales@CDWSnow.com
For assistance call: 800-209-3755 (option 662) • www.CDWSnow.com • A Seller Agreement per location is required for Sellers with multiple locations
CDWS Seller Agm 1-2010