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I. RELIEF REQUESTED

This motion for reconsideration is limited in scope. Petitioners respectfully request that this Court grant Petitioners' motion for reconsideration of the Court's Opinion concerning two narrow issues:

1. This Court should revise the Chief Hearing Officer's Final Findings of Fact, Conclusions of Law, Order on Hearing dated July 10, 2009 ("CHO's Order") to the extent that the CHO's Order requires Petitioners to: mail the CHO's Order to each Washington consumer who "purchased" the NADC money-back guarantee; and (b) mail the CHO's Order to each Washington NADC dealer member.

2. Revise the Court's Opinion on page 5, lines 5-6, concerning a reference to income tax reporting for NADC and NADS.

Petitioners are not seeking reconsideration of any other portion of the Court's Opinion.

II. STATEMENT OF FACTS

This Court is very familiar with the facts of this case. On September 2, 2010, the Court issued an opinion affirming Petitioners' Petition for Review of the CHO's Order. While Petitioners disagree with the Court's Opinion, they recognize the Court issued its opinion after consideration of the record. Accordingly, Petitioners are not seeking

PETITIONERS' MOTION FOR LIMITED RECONSIDERATION OF THE COURT'S OPINION

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1 reconsideration of the Court's Opinion affirming the CHO's Findings of Fact or
2 Conclusions of Law.

3 Although this Court's Opinion included a detailed discussion of the CHO's
4 Findings of Fact and Conclusions of Law, the Court did not address the appropriateness
5 of the four separate orders contained in the CHO's Order. Petitioners assigned error to
6 the CHO's orders in addition to certain findings of fact and the conclusions of law. Even
7 in light of the fact that this Court has affirmed the CHO's Findings of Fact and
8 Conclusions of Law, a modification of two of the CHO's orders is warranted and
9 necessary to prevent substantial harm and unnecessary confusion.
10

11 For the Court's convenience, the CHO's four orders are hereby set forth in their
12 entirety:

13 **IT IS HEREBY ORDERED** that, effective immediately, the
14 Respondents are ordered to cease and desist from further offering
15 their NADC Program, as described in the Findings of Fact above,
16 to any automobile dealers or other entities in Washington [Order
#1];

17 **IT IS FURTHER ORDERED** that, within 10 days of the date of
18 this Order, Respondents shall 1) send a copy of these Final
19 Findings of Fact, Conclusions of Law and Order to all Washington
20 NADC Dealer Members in Washington state; and 2) instruct all
21 Washington NADC Dealer Members that they are to cease offering
and/or entering into any more NADC Auto Dealer Extended
Service Contract Reimbursement Guarantees [Order #2],

22
23 **PETITIONERS' MOTION FOR**
24 **LIMITED RECONSIDERATION**
25 **OF THE COURT'S OPINION**

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1 **IT IS FURTHER ORDERED** that, within 10 days of the date of
2 this Order, Respondents shall 1) send a copy of these Final
3 Findings of Fact, Conclusions of Law and Order to all Washington
4 consumers who have purchased an NADC Auto Dealer Extended
5 Service Contract Reimbursement Guarantee; and 2) instruct all
6 such consumers that should the consumer file a valid claim against
7 their NADC Auto Dealer Extended Service Contract
8 Reimbursement Guarantee at the time of expiration of their
9 extended service contract, it will be honored by Respondents
10 [Order #3],

11 **IT IS FURTHER ORDERED** that, as to all NADC Auto Dealer
12 Extended Service Contract Reimbursement Guarantees existing on
13 the date of entry of this Order, Respondents shall honor all valid
14 claims made on these contracts at the time of expiration of the
15 extended service contract [Order #4].¹

16 On August 7, 2009, this Court granted Petitioners' Motion for Stay with respect to
17 CHO's Order #1 and Order #3, subject to certain terms and conditions. In light of the
18 Court's Opinion, Petitioners are requesting a modification of Order #2 and Order #3.

19 **III. STATEMENT OF ISSUES**

20 1. Should the CHO's Order and the Court's Opinion be modified with
21 respect to Order #2 and Order #3? ANSWER: YES.

22 2. Should the Court's Opinion at page 5, lines 5-6, be modified in order to
23 remove any reference or suggestion of impropriety concerning a reference to income tax
24 reporting for NADC and NADS? ANSWER: YES.

25 _____
26 ¹ For convenience, each of these orders shall be referred to individually as Order #1, Order #2, Order #3
and Order #4.

27 **PETITIONERS' MOTION FOR**
28 **LIMITED RECONSIDERATION**
29 **OF THE COURT'S OPINION**

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IV. EVIDENCE RELIED UPON

- A. The Declaration of Chad Greenlee with Exhibits thereto;
- B. Records and exhibits on file.

V. ARGUMENT

This motion is being made pursuant to CR 59 (9).

I. THE CHO'S ORDER SHOULD BE REVISED IN ORDER TO AVOID UNNECESSARY CONFUSION AND HARM TO PETITIONERS.

1. Petitioners Are In Compliance with Order #1.

Order #1 of the CHO's Order prohibits Petitioners from offering the NADC money-back guarantee program in Washington. Although there is some ambiguity concerning the effective date of Order #1 in light of this Court's Order Granting Stay, Petitioners immediately complied with Order #1 upon receipt of the Court's Opinion. On September 8, 2010, NADC sent a Notice to each Washington NADC dealers, as well as each independent agent in Washington, notifying them that the offering of the NADC money-back guarantee program must be discontinued immediately. See Declaration of Chad Greenlee, 'Exhibit A.'² NADC sent the Notice by facsimile and by United Parcel Service, in order to ensure the Washington dealer and independent agents received the

² A copy of the Notice provided to Dealers and Agents is attached to Mr. Greenlee's Declaration.

PETITIONERS' MOTION FOR LIMITED RECONSIDERATION OF THE COURT'S OPINION

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1 Notice as promptly as possible.³ Effective September 8, 2010, in recognition of this
2 Court's affirmance of the CHO's Final Order, Petitioners ceased doing business in
3 Washington. Thus, Petitioners have already complied with Order #1.

4 **2. Petitioners Have Already Complied with this Court's Modification of Order**
5 **#2.**

6 Order #2 has two components: (1) a provision requiring Petitioners to notify
7 NADC dealer to cease offering the NADC money-back guarantee; and (2) a provision
8 requiring Petitioners to provide a copy of the CHO's Order to all NADC Washington
9 dealers.

10
11 Petitioners immediately satisfied the first requirement of Order#2 upon receipt of
12 the Court's Opinion. The Notice from NADC dated September 8, 2010, notified all
13 Washington dealer that they must immediately cease offering the money-back guarantee.⁴
14 See Declaration of Chad Greenlee, 'Exhibit A.'

15
16 Petitioners had earlier provided a copy of the CHO's individual orders to all
17 Washington NADC dealers pursuant to this Court's Order of August 28, 2009, which
18 required Petitioner's to provide the CHO's individual orders to all Washington dealer by
19

20 ³ NADC also followed up with phone calls to all dealers and agents.

21 ⁴ Although Petitioners were not required to do so, they also sent the notice to all NADC representatives. As
22 previously mentioned, all notices were sent by both facsimile and by United Parcel Service in order to
23 ensure the notices were timely and effectively received by all Washington member dealers. NADC also
24 followed up with phone calls to each agent and dealer.

25 **PETITIONERS' MOTION FOR**
26 **LIMITED RECONSIDERATION**
OF THE COURT'S OPINION

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1 September 18, 2009. *See* Declaration of Chad Greenlee, filed on October 7, 2009. Thus,
2 Petitioners complied with this Court's modification of Order #2 one year ago.

3 Moreover, circulating a copy of the CHO's Order at this time does not benefit any
4 party or public interest. Petitioners are no longer doing business in Washington, all
5 Washington agents and dealers have been notified of NADC's withdrawal from
6 Washington, the CHO's individual orders were previously distributed to all persons
7 required by the CHO and information allowing dealer and agents to obtain the decision of
8 this Court and the CHO is set forth in the Notice mailed out on September 8, 2010.
9 Nothing more can be gained under the foregoing circumstances in requiring that the
10 CHO's Order be sent to dealer at this time.

11
12 There is a risk that re-circulation of the CHO's Order may result in unnecessary
13 confusion within the dealer community concerning not only the NADC program, but
14 potentially other offers and products not associated with Petitioners. There is no risk of
15 confusion at the present time based on the Notice that has been delivered by NADC.

16
17 This Court is urged to recognize that the Petitioners immediately and in good faith
18 notified all Washington member dealers that they must cease offering the NADC money-
19 back guarantee as a result of the decision by the Washington OIC affirmed by this Court,
20 had previously provided copies of the CHO's individual orders to all Washington dealer
21 in accordance with this Court's prior partial stay of Order #2, and that adequate Notice
22

23 **PETITIONERS' MOTION FOR**
24 **LIMITED RECONSIDERATION**
25 **OF THE COURT'S OPINION**

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1 has been provided that Petitioners are no longer conducting business in Washington. No
2 further notice should be required pursuant to Order #2 and Petitioners respectfully request
3 that the Court modify Order #2 to reflect that its requirements have been satisfied.

4 **3. Petitioners Are In Compliance with Order #4.**

5 Order #4 of the CHO's Order requires Petitioners to continue to honor existing
6 money-back guarantees offered to Washington consumers. Petitioners have done so
7 throughout the course of these proceedings, and will continue to do so. Petitioners have
8 already complied with Order #4.

10 **4. Petitioners Should Not Be Required to Circulate the CHO's Order to All**
11 **Washington Consumers.**

12 For a myriad of reasons, this Court should modify the Court's Opinion and the
13 CHO's Order in order to eliminate Order #3 in its entirety. To summarize, Order #3
14 requires Petitioners to send a copy of the CHO's Order to "all Washington consumers
15 who have purchased (*sic*) an NADC Auto Dealer Extended Service Contract
16 Reimbursement Guarantee."⁵

17
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20 ⁵ As this Court is aware, the money-back guarantee is not "purchased" by any consumers. Rather, the
21 evidence established that the money-back guarantee is offered with *every* vehicle service contract offered
22 by a NADC dealer member, and is not separately purchased by the consumer. For this reason, this Order
23 technically would not apply to any Washington consumers. However, Petitioners would rather have the
24 Court's Opinion modified based on the reasons set forth in this motion for reconsideration.

23 **PETITIONERS' MOTION FOR**
24 **LIMITED RECONSIDERATION**
25 **OF THE COURT'S OPINION**

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1 A. NADS's Database does not categorize customers by address or
2 jurisdiction.

3 The database is arranged by the contract number of the reimbursement guarantee,
4 or customer's name or VIN number. *See* Declaration of Chad Greenlee. It is not
5 categorized by customer address or jurisdiction. *See* Declaration of Chad Greenlee.

6 B. Dissemination of the CHO's Order would cause substantial harm to
7 Petitioners outside the state of Washington.

8 As this Court is aware, the CHO's Order is based on a lengthy administrative
9 record and its legal conclusions are limited to the specific provisions contained in Title 48
10 of the Revised Code of Washington. Such a significant and widespread circulation of the
11 CHO's Order to Washington customers will result in substantial harm to Petitioners'
12 business activities outside the state of Washington. The CHO's Order will certainly
13 result in confusion by those residents of other jurisdictions, and the NADC dealers in
14 other jurisdictions that will undoubtedly be contacted by those customers. Such a result
15 will effectively allow the Washington OIC to negatively impact Petitioners' activities
16 outside of the state of Washington even though it lacks jurisdiction in those other states.

17 C. Unnecessarily Confuses Customers

18 It is unclear what benefit the CHO was trying to achieve by requiring a mailing of
19 her Order. It has been demonstrated again and again that Petitioners are fully committed

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23 **PETITIONERS' MOTION FOR**
24 **LIMITED RECONSIDERATION**
25 **OF THE COURT'S OPINION**

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1 to paying each and every valid claim submitted by Washington residents and all other
2 Washington residents. As the Court is aware, a separate order already requires
3 Petitioners to do so.

4 The CHO's Order, or any unsolicited legal notice, will only result in substantial
5 confusion and unnecessary concern. For instance, the majority of recipients do not even
6 qualify for the money-back guarantee because they have either made a claim on their
7 vehicle service contract and/or have sold their vehicle. Recipients will simply not have
8 the necessary information concerning the specific factual and legal issues discussed in the
9 CHO's Order or an accompanying notice to determine why they are being provided with
10 unsolicited legal documents. There is no benefit to receiving the information, as the
11 customers must submit valid claims in precisely the same manner they were required to
12 do so prior to the Court's Opinion. The CHO's Order does not alter any terms or
13 conditions of the money-back guarantee.
14

15
16 It is difficult to understand why the OIC would be in favor of a mass mailing of
17 the CHO's Order and/or notice. Such action will undoubtedly result in numerous
18 telephone and email inquiries from recipients to the OIC, Attorney General's Office,
19 motor vehicle dealers, vehicle service contract providers, and other non-parties to this
20 action. This makes absolutely no practical sense, as the customers' guarantee has not
21 been modified in any way.
22

23 **PETITIONERS' MOTION FOR**
24 **LIMITED RECONSIDERATION**
25 **OF THE COURT'S OPINION**

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1 This Order is purely punitive in nature and would only result in widespread
2 confusion and harm to Petitioners outside of the state of Washington. Order #3 requires
3 Petitioners to take action which is inconsistent with their database. For all of the reasons
4 set forth above, Order #3 should be eliminated in its entirety.

5 II. ONE SENTENCE OF THE COURT'S OPINION SHOULD BE REVISED AS
6 IT MAY BE MISINTERPRETED AS A FINDING OF WRONGDOING
7 CONCERNING NADC AND NADS.
8

9 In Petitioners' Opening Brief, they took issue with the CHO's improper
10 "findings" concerning the income tax records of NADS and NADC. The CHO implied
11 impropriety with respect to the Petitioners' income tax records, despite the clear lack of
12 foundation regarding those tax records
13

14 In the Court's Opinion, at page 5, lines 5-6, the Court references the CHO's
15 "seventh factor" concerning Mr. Bailey's credibility. The Court's Opinion characterizes
16 the seventh factor as "concerning income tax reporting for NADC and NADS."
17

18 The CHO's discussion in "factor seven" actually pertained to prior tax returns for
19 Electro Lock, Inc., not NADC or NADS. The Court's Opinion suggests that the CHO's
20 entire discussion related to the income tax reporting for NADC and NADS, which is
21 incorrect. Petitioners assume that the Court did not intend to imply impropriety with
22 respect to Mr. Bailey's "practices, and tribulations" concerning the income tax reporting
23

24 **PETITIONERS' MOTION FOR**
25 **LIMITED RECONSIDERATION**
26 **OF THE COURT'S OPINION**

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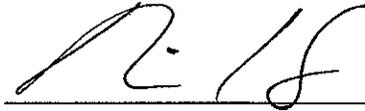
1 for NADC and NADS. Unfortunately, there is a likelihood that the Court's Opinion will
2 be construed as a finding pertaining to NADC and/or NADS. Petitioners request that the
3 Court's Opinion be revised in order to delete the reference to NADC and NADS's
4 income tax reporting.

5 **CONCLUSION**

6 For the foregoing reasons, the Court's Opinion should be revised in order to strike
7 Order #3 from the CHO's Order and to delete page 5, lines 5-6.
8

9 **RESPECTFULLY SUBMITTED** this 10 day of September, 2010.

10 **DAVIES PEARSON, P.C.**

11 

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13 **BRIAN M. KING, WSB #29197**
14 **Attorneys for Petitioners**

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23 **PETITIONERS' MOTION FOR**
24 **LIMITED RECONSIDERATION**
25 **OF THE COURT'S OPINION**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR THE COUNTY OF THURSTON

In Re:

NORTH AMERICAN DEALER CO-OP;
 NATIONAL ADMINISTRATIVE
 DEALER SERVICES, INC.; AND HENRY
 C. ("HANK") BAILEY, JR.,

Petitioners,

No. 09-2-01710-4

**DECLARATION OF CHAD
 GREENLEE**

CHAD GREENLEE declares as follows:

1. I reside in the state of Colorado. I am over the age of eighteen (18) and am qualified and competent to testify in judicial proceedings in the state and federal courts in the United States concerning the matters set forth in this declaration. I make this declaration based upon my own knowledge and belief.

2. I am the National Sales Manager for National Administrative Dealer Services, Inc. ("NADS"), located in Lakewood, Colorado. I have been employed by

**DECLARATION OF CHAD GREENLEE IN
 SUPPORT OF PETITIONERS' PETITION FOR
 REVIEW**

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1 NADS since March 1, 2000. I am also the Secretary for the North American Dealer Co-
2 Op ("NADC").

3 3. I am familiar with the "Final Findings of Fact, Conclusions of Law, and
4 Order on Hearing" issued by Patricia D. Petersen, Chief Hearing Officer of the State of
5 Washington Office of the Insurance Commissioner, dated July 10, 2009. I am also
6 familiar with this Court's Opinion dated September 2, 2010, which I received on
7 September 7, 2010.

8 4. On September 8, 2010, as a result of this Court's Opinion, NADC sent a
9 notice to each Washington NADC dealer. The notice stated that each Washington NADC
10 dealer must immediately discontinue offering the NADC money-back guarantee in
11 Washington. In order to ensure effective and prompt notice to all Washington NADC
12 dealers, I sent the notice by United Parcel Service and also by facsimile. In addition, the
13 notice was sent to all Washington NADC agents. A true and correct copy of the notice I
14 mailed and faxed on September 8, 2010, to all Washington NADC dealers and agents is
15 attached hereto as 'Exhibit A.'

16 5. In addition to mailing and faxing the notice, NADC representatives also
17 followed-up with phone calls to Washington NADC dealers and agents, in order to make
18 sure they understood that they must immediately discontinue offering the NADC money-
19 back guarantcc.

20 6. As National Sales Manager for NADS, I am very familiar with the
21 computer database used by NADS to retain information related to money-back
22 guarantees offered by NADC dealers to consumers. Customer information is not
23

24 **DECLARATION OF CHAD GREENLEE IN**
25 **SUPPORT OF PETITIONERS' PETITION FOR**
26 **REVIEW**

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1 arranged by jurisdiction. Rather, the database reports are arranged by the contract
 2 number, VIN number and customer name for each money-back guarantee. The computer
 3 system does not distinguish between customers living in different jurisdictions. The
 4 database is not designed to identify customers by their state of residence.

5 7. NADS and NADC took immediate action to comply with three of the
 6 Chief Hearing Officer's orders. Unfortunately, we are not able to comply with the order
 7 requiring us to mail the decision to each Washington consumer, as our database is not
 8 designed to identify customers in this manner. Further, we are very concerned that direct
 9 mailing of the Chief Hearing Officer's Order will create a very large amount of confusion
 10 with customers in the state of Washington as well as in other jurisdictions. The mailing
 11 of the Chief Hearing Officer's Order will also have a substantial negative impact on
 12 NADC dealers and customers in other jurisdictions, as the notices will be forwarded to
 13 customers and NADC dealers in other states. Those NADC dealers and customers will
 14 not have any background concerning these proceedings and are not likely to make a
 15 distinction between the Washington Insurance Commissioner and the Insurance
 16 Commissioners of the other states.

17 9. NADC and NADS are complying with this Court's Opinion, including but
 18 not limited to our ongoing obligation to administer each and every valid claim. We are
 19 asking this Court to modify its opinion in order to remove the obligation of mailing a
 20 notice to Washington consumers.

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

24 **DECLARATION OF CHAD GREENLEE IN**
 25 **SUPPORT OF PETITIONERS' PETITION FOR**
 26 **REVIEW**

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DATED at Lakewood, Colorado, this 9th day of September, 2010.

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CHAD GREENLEE

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**DECLARATION OF CHAD GREENLEE IN
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EXHIBIT A

N.A.D.C.

NORTH AMERICAN DEALER CO-OP

WASHINGTON STATE NOTICE

To: All Washington State Agents and Dealers
From: North American Dealer Co-op and National Administrative Dealer Services, Inc.
Date: September 8, 2010

Effective immediately NADC will not accept any new contracts originating in Washington State. This decision is required because the Superior Court for Thurston County, Washington has upheld the decision of the Office of the Insurance Commissioner which concluded that the NADC Vehicle Service Contract Reimbursement Program constitutes insurance under Washington law.¹

ALL EXISTING WASHINGTON STATE REIMBURSEMENT GUARANTEES WILL BE HONORED IN ACCORDANCE WITH THEIR TERMS. NADS will continue to provide administration services for all existing Washington State guarantees and Western Insurance Company will continue to hold your reserves and pay valid claims from your reserves and, if necessary, from the Bond it issued to NADC member/dealers.

NADC regrets any inconvenience that this decision may cause you. Should you have any questions please feel free to call us.

North American Dealer Co-op
National Administrative Dealer Services, Inc.

¹ Copies of the Thurston County Superior Court decision can be found at docket number 09-2-01710-4 and of the decision of the Office of the Insurance Commissioner can be found at docket number D07-0149.

1 **EXPEDITE**
2 Hearing is set:
3 Date: Friday, September 17, 2010
4 Time: 9:00 a.m.
5 Judge/Calendar: Judge McPhee
6 No hearing currently set

7
8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF THURSTON

10 In Re:
11 NORTH AMERICAN DEALER CO-OP;
12 NATIONAL ADMINISTRATIVE
13 DEALER SERVICES, INC.; AND HENRY
14 C. ("HANK") BAILEY, JR.,
15
16 Petitioners,

No. 09-2-01710-4

**DECLARATION
REGARDING FACSIMILE
SIGNATURE**

17 KATHY KARDASH, Legal Assistant to Brian M. King, declares under penalty of
18 perjury under the laws of the State of Washington, that the facsimile document attached
19 to this declaration titled, Declaration of Chad Greenlee, consisting of eight (8) pages
20 including this declaration page, is a complete and legible facsimile that I have examined
21 personally and that was received by me via FAX at the following number: 253-572-
22 3052.

23
24 **DECLARATION REGARDING FACSIMILE
25 SIGNATURE**

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge information and belief.

Signed at Tacoma Washington this 10th day of September, 2010.



KATHY KARDASH
Legal Assistant

DECLARATION REGARDING FACSIMILE SIGNATURE

Page 2 of 2
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DAVIES PEARSON, P.C.
ATTORNEYS AT LAW
920 FAWCETT -- P.O. BOX 1657
TACOMA, WASHINGTON 98401
TELEPHONE (253) 620-1500
TOLL-FREE (800) 439-1112
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1 “new facts or legal authority” warranting reconsideration of the Court’s Opinion affirming
2 these provisions of the *Final Findings of Facts, Conclusions of Law and Order on Hearing*,
3 *No. D07-0149* (Commissioner’s Final Order). See LCR 59(a)(3). Although based on the
4 grounds that “substantial justice has not been done,” Petitioners’ motion is truly based on the
5 unsubstantiated presumption that consumers and Member Dealers will be confused upon
6 receiving a complete copy of the Commissioner’s Final Order. Because this fear of confusion
7 can easily be remedied with a brief introductory letter, the Office of the Insurance
8 Commissioner, Mike Kreidler, Insurance Commissioner, (collectively the “OIC”) requests that
9 Petitioner’s Motion for Limited Reconsideration of the Court’s Opinion be denied, and that the
10 *Proposed Order Affirming the Commissioner’s Final Order*, filed with this opposition, be
11 entered.

12 II. ISSUE

13 Should Petitioners’ request for reconsideration be denied?

14 III. EVIDENCE RELIED UPON

15 The *Declaration of Marta DeLeon in Opposition to Motion for Limited*
16 *Reconsideration of the Court’s Opinion (DeLeon Decl.)*, and the papers and pleadings on file
17 with the Court.

18 IV. FACTS

19 On August 7, 2009, this court extended a stay of the Commissioner’s Final Order
20 pending the final disposition of this matter. *Order Granting Motion for Stay*, dated August 7,
21 2009. While the OIC was directed to post the Commissioner’s Final Order on its website, it
22 was barred from further disseminating the Commissioner’s Final Order. *Id.* This allowed
23 NADC to continue to do business without any notice to consumers or Dealer Members
24 regarding the potential problems with Petitioners product. On August 28, 2009, after briefing
25 and argument from both parties, this court ordered the Petitioners to post a \$250,000 bond for
26

1 the protection of their uninformed consumers, and to provide a copy of the Commissioner's
2 Final Order to Dealer Members only. *Order*, dated August 28, 2009. However, on *Petitioners*
3 *Motion for Reconsideration*, the notice requirement was modified so that Petitioners were only
4 required to provide Dealer Members with a copy of the "Orders" section of the
5 Commissioner's Final Order, with annotations indicating what portions of the Commissioner's
6 Final Order had been stayed. *Order*, dated September 11, 2009. Aside from a brief letter that
7 Petitioners are not accepting new guarantees, this is all that has been provided to the Dealer
8 Members to date. *DeLeon Decl.*, Exhibit A. Consumers still have not been provided any
9 notice that the program that may have induced them to purchase a vehicle service contract, is
10 illegal insurance.

11 V. ARGUMENT

12 CR 59 lays out nine specific grounds for a motion for reconsideration. CR 59(a). The
13 only grounds asserted by Petitioners is CR 59(a)(9). However, Petitioners have not explained
14 what substantial justice is lacking. Instead Petitioners seem to claim that unless their own
15 interest in avoiding any expense or possible negative impact as a result of these proceedings
16 trumps the public interest in "preserving inviolate the integrity of insurance" through proper
17 notification to the Dealer Members and consumers who have paid for their product, then
18 substantial justice is lacking. *See* RCW 48.010.030.

19 Just the opposite is true. Until Member dealers are given a proper explanation as to
20 why the OIC has determined this product is insurance, and consumers are given proper notice
21 that their guarantees are illegal insurance, substantial justice will not have been accomplished.
22 Because any potential confusion can be mitigated with an explanatory cover letter, Petitioners'
23 speculative claims of confusion and harm cannot justify eliminating any meaningful notice
24 required by the Commissioner's Final Order.
25
26

1 **A. Dealers Are Entitled To The Notice Required In Order 2.**

2 Order 2 provides:

3 **IT IS FURTHER ORDERED** that within 10 days of the date of this Order,
4 [Petitioners] shall 1) send a copy of these Final Findings of Facts, Conclusions
5 of Law and Order to all Washington NADC Dealer Members in Washington
6 state; and 2) instruct all Washington NADC Dealer Members that they are to
cease offering and/or entering into any more NADC Auto Dealer Extended
Service Contract Reimbursement Guarantees...

7 Commissioner's Final Order at 15. Petitioners have not complied with this order.

8 The only portion of the Commissioner's Final Order that has been provided to NADC
9 Dealer Members has been the copy of the "Orders" section, with annotations indicating that
10 most of the orders have been stayed, provided nearly a year ago. *DeLeon Decl.* Exhibit A.
11 Further, the notice Petitioners voluntarily provided to Dealer Members on September 8, 2010
12 did not instruct Dealer Members to stop offering the program. Rather it stated that, "NADC
13 will not accept any new contracts originating in Washington State." *Declaration of Chad*
14 *Greenlee*, dated September 9, 2010, Exhibit A. While the announcement that NADC will not
15 accept new contracts in Washington may imply that Dealer Members cannot offer the program,
16 instructing Dealer Members to stop offering the program has a different and immediate impact.
17 Petitioners were ordered to instruct Dealer Members to stop offering the program in part to
18 notify Dealer Members that their actions in connection with this program have legal
19 consequences. For example, RCW 48.15.020(2)(b) mandates that Dealer Members could be
20 personally liable for performance of these contracts. RCW 48.15.030 provides that these
21 contracts shall be voidable "except at the instance of the insurer." The reason the
22 Commissioner's Final Order must be delivered to all dealer members is because no where else
23 have Dealer Members been notified that under the laws of Washington State, they have been
24 acting as Petitioners' agents, and are potentially liable in full for the NADC program. Now
25 that the Court has confirmed that the product offered by Petitioners is illegal insurance, these
26 consumer protection statutes apply.

1 Although they have alleged a potential for “unnecessary confusion” among the dealer
2 community as the justification for avoiding full disclosure, Petitioners have not explained what
3 will confuse the dealer community. In contrast, failure to provide the complete
4 Commissioner’s Final Order to Dealer Members has the potential to allow a far more harmful
5 confusion for Dealer Members and the dealer community to persist in light of the outdated
6 notice provided a year ago, and the uninformative, and non-compliant, notice Petitioners
7 provided on September 8, 2010. To date there has been no meaningful notice to the Dealer
8 Members of their potential liability, of Petitioners’ repeated statements that Dealer Members
9 are solely responsible for claims made under the Money Back Guarantee program, or of the
10 need Dealer Members may have to begin finding replacement coverage for their current
11 outstanding potential liability. There has been no explanation as to *why* this order is necessary,
12 and thus no opportunity to meaningfully analyze what Dealer Members should do to protect
13 themselves. In fact, despite repeated claims that Dealer Members are solely responsible for the
14 contracts with consumers, the notice Petitioners provided on September 8, 2010, attempts to
15 imply that the Commissioner’s Final Order has no practical impact on the Dealer Members.
16 This potential confusion must be cured. And because Petitioners are the source of this
17 confusion, they should be responsible for remedying it.

18 **B. Consumers Are Entitled To The Notice Required By Order 3.**

19 Similarly, Petitioners should bear the costs of notifying the most vulnerable people
20 involved in Petitioners business: the consumers who were induced to purchase vehicle service
21 contracts because they had a money back guarantee. Order 3 provides:

22 **IT IS FURTHER ORDERED** that within 10 days of the date of this Order,
23 [Petitioners] shall 1) send a copy of these Final Findings of Facts, Conclusions
24 of Law and Order to all Washington consumers who have purchased an NADC
25 Auto Dealer Extended Service Contract Reimbursement Guarantee; and 2)
26 instruct all such consumers that should the consumer file a valid claim against
their NADC Auto Dealer Extended Service Contract Reimbursement

1 Guarantees at the time of the expiration of their extended service contract, it
2 will be honored by [Petitioners]...

3 Substantial evidence supports the finding that dealers were encouraged to roll the costs
4 of the Money Back Guarantee into the purchase price of the Vehicle Service Contracts, passing
5 those costs on to consumers, who ultimately purchased both the Vehicle Service Contract and
6 the Money Back Guarantee at the same time. Any representation that there are no Washington
7 consumers who “purchased” the Money Back Guarantee simply because it was not a separate
8 line item on the bill is completely disingenuous. Therefore, Order 3, which requires, in part,
9 that the Commissioner’s final order to be mailed to Washington consumers who “purchased” a
10 Money Back Guarantee is appropriate and necessary. To date, those consumers are the only
11 group that has not received any meaningful notice regarding the legal status of the Money
12 Back Guarantee program.

13 Petitioners claim that this provision will be difficult to comply with because it is
14 “inconsistent with their database” which is arranged by contract number. It is curious that
15 Petitioners claim they cannot search for Washington specific consumers, but later represent
16 that most Washington consumers have already made claims on their Vehicle Service Contracts,
17 or even sold their vehicles. *Petitioners’ Motion for Limited Reconsideration of the Court’s*
18 *Opinion* at 10. If Petitioners have a factual basis for this claim, it may be that they have a
19 usable database, that it is searchable by fields, regardless of how data is entered, rather than the
20 cumbersome list they have described.

21 Even if that is not the case, and Petitioners have chosen to catalogue their consumer
22 information in a way that makes it cumbersome and expensive to search for groups meeting
23 specific criteria, the mere fact that this requirement will be difficult, does not overcome the
24 need to notify consumers that the product they have purchased is an illegal insurance product.
25 Regardless of the cost to Petitioners, consumers are entitled to know that product they have
26 purchased is not protected by the Washington Guarantee Association. Under

1 RCW 48.110.075(4), consumers who purchase Vehicle Service Contracts may be entitled to a
2 refund of the contract if they return the contract. Some consumers may choose to return the
3 contract, rather than risk that Petitioners or the Dealer Members will be unable or unwilling to
4 pay their claims in four or more years.

5 Despite the claims that they cannot readily search their database for Washington
6 consumers, Petitioners claim that compliance with Order 2 will result in “significant and
7 widespread circulation” of the Commissioner’s Final Order. Petitioners speculate, without any
8 explanation, that this will result in “substantial harm to Petitioner’s business activities outside
9 the state of Washington. Even if this order has any impact on Petitioners’ business outside of
10 Washington, it was Petitioners’ choice to continue doing business here, rather than comply
11 with the OIC’s initial warnings that this program constitutes illegal insurance, and to publicly
12 contest that characterization in an administrative hearing. Had the Petitioners complied with
13 the OIC’s recommendations in the first place, they could have minimized the impact the OIC’s
14 decision has. Regardless, the fact that an order might negatively impact Petitioners business
15 should not be allowed to trump consumers’ rights to be informed and protected.

16 Finally, any confusion Petitioners speculate will occur among consumers can again be
17 mitigated with a cover letter. Even if this court agrees that the Commissioner’s Final Order in
18 its entirety would be inaccessible to the average consumers, at the very least, consumers are
19 entitled to an explanation of why the Money Back Guarantee is illegal insurance, and what
20 Petitioner’s are obligated to provide under the terms of the order.

21 **C. The Order Properly Characterized The Commissioner’s Final Order.**

22 Petitioners argue that one sentence mischaracterizes the seventh reason the Chief
23 Hearing Officer found that Mr. Bailey was not a credible witness. The Petitioners are correct
24 that Chief Hearing Officer’s seventh reason for finding Mr. Bailey was not credible focused
25 primarily on Mr. Bailey’s actions with Electro Lock, Inc., where he is or was President and
26

1 majority stockholder. Specifically, the Chief Hearing Officer found that Mr. Bailey was
2 previously indicted on two counts of income tax evasion and two counts of filing false
3 corporate income tax returns, that he was a convicted felon, and served significant time in
4 federal prison for these crimes. Commissioner's Final Order at 12. The Chief Hearing Officer
5 also found those charges involved using a nominee bank account to divert substantial amounts
6 from the company for personal use, while failing to report the income on his personal tax
7 returns, and falsely deducting those amounts as "insurance expenses" on the corporate returns.
8 *Id.* These specific findings were not enumerated in the Court's opinion.

9
10 However, as this Court noted, in the Chief Hearing Officer's seventh reason for finding
11 Mr. Bailey not credible, she did discuss the practices concerning his tax reporting for NADC
12 and NADS. While not given significant weight by the Chief Hearing Officer, or this Court, the
13 Commissioner's Final Order does discuss Mr. Bailey's practices concerning income tax
14 reporting for NADS and NADC. Specifically, the Chief Hearing Officer noted that in 2006
15 and 2003, NADS deducted over \$4 million for "purchases" that were characterized as "costs of
16 goods sold," and made another \$2 million in other deductions, resulting in very little or no
17 taxes; from 1995-2002, NADS paid nothing in taxes; NADC deducted over \$4.8 million for
18 insurance, and posted a loss of \$104 in 2006; and in 2005 and 2004, NADC deducted their
19 total reported gross receipts as "cost of goods sold." Commissioner's Final Order at 12-13.

20 While it may be appropriate for the Court to include the Chief Hearing Officer's
21 discussion of Mr. Bailey's convictions for tax evasion and filing false returns, the Court
22 correctly summarized that part of the Chief Hearing Officer's seventh reason for finding
23 Mr. Bailey not credible, although not given significant weight, included his practices
24 concerning income tax reporting for NADC and NADS. As with the other issues raised in
25 *Petitioner's Motion for Limited Reconsideration of the Court's Opinion*, this is not a manifest
26

1 error. There is no lack of substantial justice in the Court's characterization of the Chief
2 Hearing Officer's reasoning, or the Court's affirmation of the Commissioner's Final Order.

3
4 **VI. CONCLUSION**

5 Requiring Petitioners to comply with the Commissioner's Final Order is necessary to
6 "preserv[e] inviolate the integrity of insurance" and "enforce the provisions of [the Insurance
7 Code]." RCW 48.01.030; RCW 48.02.060(2). Petitioners have been conducting the business
8 of insurance without a license for over three years, and have been insulated for over a year
9 from providing meaningful notice to their Dealer Members and consumers. Only if the Court
10 decides that Petitioners' interests trump the interest of the Dealers and consumers who are now
11 at risk will there be a lack of substantial justice.

12 Petitioners should not be entitled to avoid informing their Dealer Members and
13 consumers of the reasons that this program has been found to be unlawful insurance. Self
14 serving allegations of *potential* harm cannot outweigh the continuing public harm to Dealer
15 Members, and individual consumers who remain unaware of their exposure. Therefore
16 Petitioners' motion for reconsideration should be denied.

17 DATED this 15th day of September, 2010.

18 ROBERT M. MCKENNA
19 Attorney General

20 
21 MARTA DELEON, WSBA #35779
22 Assistant Attorney General
23 Attorneys for Washington State Office
24 of the Insurance Commissioner
25
26

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set:
4 Date: 9/17/2010
5 Time: 9:00 AM
6 The Honorable Judge McPhee

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 In Re:

NO. 09-2-01710-4

10 NORTH AMERICAN DEALER CO-
11 OP; NATIONAL ADMINISTRATIVE
12 DEALER SERVICES, INC.; AND
13 HENRY C. ("HANK") BAILEY, JR.,

Petitioners,

DECLARATION OF MARTA
DELEON IN SUPPORT OF THE
INSURANCE COMMISSIONER'S
OPPOSITION TO MOTION FOR
LIMITED RECONSIDERATION

14 I, Marta DeLeon, counsel to the Office of the Insurance Commissioner, Mike Kreidler
15 Insurance Commissioner, declare as follows:

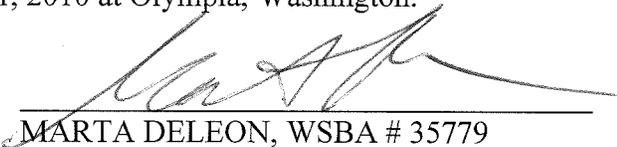
16 1. I am over the age of 18, and competent to be a witness. I make this declaration
17 based on my personal knowledge, unless the context clearly indicates otherwise.

18 2. On Saturday, October 3, 2009, Petitioners emailed the Attorney General's
19 office a copy of the Declaration of Mailing signed by Chad Greenlee. This declaration
20 attaches the notice provided by Mr. Greenlee to NADC Dealer Members. Attached as Exhibit
21 A is a true and correct copy of Mr. Greenlee's Declaration of Mailing, signed September 30,
22 2009, with attachments.

23 3. This mailing is the only notice Washington Dealer Members have received
24 from Petitioners concerning the legal status of their program. This notice did not include any
25 indication that Dealer Members may be liable for the Money Back Guarantee.

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

3 SIGNED this 15th day of September, 2010 at Olympia, Washington.

4 

5 MARTA DELEON, WSBA # 35779
6 Attorney for the Office of the Insurance
7 Commissioner
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Exhibit A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

In Re:

NORTH AMERICAN DEALER CO-OP;
NATIONAL ADMINISTRATIVE
DEALER SERVICES, INC.; AND HENRY
C. ("HANK") BAILEY, JR.,

Petitioners,

No. 09-2-01710-4

**DECLARATION OF
MAILING**

I am over the age of 18 years. I make this declaration based upon personal knowledge, and I am competent to make the same. My business address is National Administrative Dealer Services, 1661 Wadsworth Blvd., Lakewood, CO, 80214.

1. On September 18, 2009, I placed in the U.S Mail for mailing to each Washington NADC dealer member a copy of the document attached hereto as "Exhibit A." I also included a cover letter. A copy of my cover letter is attached hereto as "Exhibit B."

DECLARATION OF MAILING

Page 1 of 2

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2. On September 18, 2009, I mailed the documents attached as "Exhibit A" and "Exhibit B" to each active Washington NADC dealer member. A copy of the mailing list is attached hereto as "Exhibit C."

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

Executed at Lakewood, Colorado, on September 30, 2009.



CHAD GREENLEE

DECLARATION OF MAILING

Page 2 of 2

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The following Order was entered by the Office of the Insurance Commissioner's (OIC) Hearing Officer Patricia Peterson on July 31, 2009. NADC has appealed the OIC's decision and requested a stay of this Order pending appeal of the Hearing Officer's decision. On September 11, 2009, Thurston County Superior Court Judge Thomas McPhee's entered a partial stay and ordered the OIC to provide notice of this order and the status of each provision to NADC's members. The status of each portion of the order is italicized below.

ORDER

On the basis of the foregoing Finding of Fact and Conclusions of Law, to the effect that the Respondents' NADC Program is an illegal offering of insurance, that Respondents are acting as insurance agents and/or brokers without the legal authority to do so, that Respondent NADC is acting as an insurer without the legal authority to do so, that Respondents are engaged in misrepresentation to consumers in the business of insurance, and that the NADC Program is misleading and deceptive,

IT IS HEREBY ORDERED that, effective immediately, the Respondents are ordered to cease and desist from further offering their NADC Program, as described in the Findings of Facts above, to any automobile dealers or other entities in Washington

[This Order has been stayed pursuant to Thurston County Superior Court Judge Thomas McPhee's Order dated August 7, 2009.]

IT IS FURTHER ORDERED that, within ten (10) days of the date of this Order, Respondents shall 1) send a copy of these Final Findings of Facts, Conclusions of Law and Order to all Washington NADC Dealer Members in Washington state; and 2) instruct all Washington NADC Dealer Members that they are to cease offering and/or entering into any more NADC Auto Dealer Extended Service Contract Reimbursement Guarantees;

[This Order has been partially stayed pursuant to Thurston County Superior Court Judge Thomas McPhee's Order dated September 11, 2009. This notice is provided pursuant to Judge McPhee's Order dated September 11, 2009.]

IT IS FURTHER ORDERED that, within ten (10) days of the date of this Order, Respondents shall 1) send a copy of these Final Findings of Facts, Conclusions of Law and Order to all Washington consumers who have purchased an NADC Auto Dealer Extended Service Contract Reimbursement Guarantee; and 2) instruct all consumers that should the consumer file a valid claim against their NADC Auto Dealer Extended Service Contract Reimbursement Guarantee at the time of expiration of their extended service contract, it will be honored by Respondents;

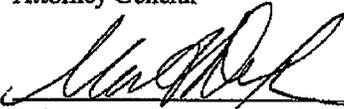
[This Order has been stayed pursuant to Thurston County Superior Court Judge Thomas McPhee's Order dated August 7, 2009.]

EXHIBIT A

IT IS FURTHER ORDERED that, as to all NADC Auto Dealer Extended Service Contract Reimbursement Guarantees existing on the date of entry of this Order, Respondents shall honor all valid claims made on these contracts at the time of expiration of the extended service contract.

[This Order has not been stayed.]

ROBERT M. MCKENNA
Attorney General



MARTA DELEON, WSBA #35779
Assistant Attorney General
Attorneys for Washington State Office of the Insurance Commissioner

DAVIES PEARSON, P.C.



BRIAN M. KING, WSBA #29197
PETER T. PETRICH, WSBA #8316
REBECCA LARSON, WSBA #20156
Attorneys for Petitioners

N.A.D.S.

NATIONAL ADMINISTRATIVE DEALER SERVICES, INC.

September 18th, 2009

Dear (Washington NADC Dealer Member):

As you may be aware, in April 2007, NADC and NADS requested a hearing before the Office of Insurance Commissioner Hearings Unit in order to obtain an administrative determination that the NADC money-back guarantee offered by NADC member dealers does not constitute insurance in the State of Washington. At that time it was determined that the dealers would be allowed to continue writing the money-back guarantee until the case had been heard.

In July 2009, several administrative orders were issued by the OIC Hearings Unit. As you can see, the administrative orders have been stayed (put on hold) by the Thurston County Superior Court. Therefore, NADC dealer members may continue to offer the money-back guarantee in Washington until further notice.

We look forward to a long and prosperous relationship with Washington NADC dealer members. If you have any questions, please contact Chad Greenlee at National Administrative Dealer Services (NADS) at (800) 637-2277.

Sincerely,



Chad M. Greenlee
National Sales Manager

EXHIBIT B

BROOKS BIDDLE CHEVROLET
17909 BOTHELL WAY NE
BOTHELL, WA 98011
ATTN: F&I Director

PIONEER FORD
8038 GUIDE MEVIDIAN
LUNDEN, WA 98264
ATTN: F&I Director

RALLYE AUTO SALES INC.
203 BALL ST.
SEDROWVALLEY, WA 98284
ATTN: F&I Director

ROY ROBINSON CHEVROLET
PO BOX 168
MARYSVILLE, WA 98270
ATTN: F&I Director

BMW OF BELLEVUE
13617 NORTHUP WAY
BELLEVUE, WA 98005
ATTN: F&I Director

SPEEDWAY CHEVROLET LLC
16957 W. MAIN ST.
MONROE, WA 98272
ATTN: F&I Director

BURIEN HONDA
15026 1ST AVE. S.
SEATTLE, WA 98146
ATTN: F&I Director

LEE JOHNSON CHEVROLET
11845 NE 85TH ST.
KIRKLAND, WA 98033
ATTN: F&I Director

DEWEY GRIFFIN BUICK SUBARU
P.O. BOX 847
BELLINGHAM, WA 98227
ATTN: F&I Director

VALLEY PONTIAC BUICK GMC INC
3104 AUBURN WAY N
AUBURN, WA 98002
ATTN: F&I Director

NORTHWEST HONDA
2010 IOWA STREET
BELLINGHAM, WA 98229
ATTN: F&I Director

SIMS HONDA
1615 GOLDENROD ROAD
BURLINGTON, WA 98233
ATTN: F&I Director

APPLE VALLEY HONDA
154 EASY STREET
WENATCHEE, WA 98801
ATTN: F&I Director

FUGATE FORD MERCURY, MAZDA
PO BOX 217
ENUMCLAW, WA 98022
ATTN: F&I Director

EXHIBIT C

JERRY CHAMBERS CHEVROLET CADILLAC
3891 N W RD
BELLINGHAM, WA 98226
ATTN: F&I Director

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EXPEDITE
 No Hearing Set
 Hearing is set
Date: Friday, September 24, 2010
Time: 9:00 a.m.
Judge/Calendar: Judge McPhee

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

In Re:

NORTH AMERICAN DEALER CO-OP;
NATIONAL ADMINISTRATIVE
DEALER SERVICES, INC.; AND HENRY
C. ("HANK") BAILEY, JR.,

Petitioners,

No.: 09-2-01710-4

**PETITIONERS' REPLY IN
SUPPORT OF PETITIONERS'
MOTION FOR LIMITED
RECONSIDERATION AND
RETURN OF CASH BOND**

COME NOW the Petitioners, North American Dealer Co-Op ("NADC"), National Administrative Dealer Services, Inc. ("NADS"), and Henry C. Bailey, Jr. ("Bailey"), by and through their attorneys, Davies Pearson, P.C., and hereby submit their reply in support of Petitioners' Motion for Limited Reconsideration of the Court's Opinion dated September 2, 2010 and Motion for Return of Cash Bond.

**PETITIONERS' REPLY IN SUPPORT OF
PETITIONERS' MOTION FOR LIMITED
RECONSIDERATION AND RETURN OF
CASH BOND**

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1 **1. This Hearing Should Be Continued To October 1, 2010.**

2 Petitioners have obtained a special set hearing from this Court's Judicial Assistant
3 for a hearing on Friday, October 1, 2010, at 11:00 a.m., in order to allow Mr. Bailey's
4 legal counsel, Fred Greenberg, to appear by telephone.¹ A hearing is presently scheduled
5 for October 1, 2010, at 11:00 a.m. Unfortunately, the OIC noted its motion to enter an
6 Order affirming the Court's Opinion for hearing on September 24, 2010. Petitioners
7 respectfully request that this Court continue all motions for one week in order to allow
8 Mr. Greenberg to appear (by phone) on behalf of Mr. Bailey.

10 **2. Additional Notice to Dealers Is Not Necessary.**

11 It is Petitioner's position that the dealers have already received adequate notice.
12 The OIC concedes that Petitioners provided a copy of the CHO's Order to NADC dealers
13 approximately one year ago. The OIC also concedes that the complete copy of the
14 CHO's Order has been available on the OIC's website since July 2009. The OIC's
15 response mischaracterizes the nature of the notice provided to Washington dealers.
16

17 In the OIC's response, it alleges that Washington dealers have only received a
18 copy of the "Orders" section of the OIC's Order. In support of this assertion, the OIC
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20

21 ¹ Mr. Greenberg's office is located in Wallingford, Pennsylvania. As this Court is aware, Mr. Greenberg
22 has participated in the prior legal proceedings before this Court, including a personal appearance at the
hearing on Petitioners' Petition for Review.

23 **PETITIONERS' REPLY IN SUPPORT OF**
24 **PETITIONERS' MOTION FOR LIMITED**
25 **RECONSIDERATION AND RETURN OF**
 CASH BOND

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1 provided the Court with a courtesy copy of the Declaration of Chad Greenlee. The OIC
2 incorrectly identified the date of the Declaration as September 9, 2010 (*sic*).

3 The Declaration of Chad Greenlee the OIC is referring to is actually dated
4 September 30, 2009. At that time, pursuant to this Court's Order, each Washington
5 dealer received a complete copy of each and every one of the CHO's Orders. This
6 requirement was satisfied one year ago. The Declaration of Chad Greenlee dated
7 September 9, 2010, identifies the *additional* notice Petitioners immediately and
8 voluntarily provided to Washington dealers upon receiving this Court's Opinion. Each
9 Washington dealer was clearly informed that: a) effective immediately the NADC
10 money-back guarantee will no longer be offered in Washington; b) the termination of
11 Washington business is the result of decisions by the Superior Court of Thurston County
12 and the OIC; c) all existing contracts will be honored; d) they can find the OIC
13 proceedings and the Superior Court proceedings at the case numbers provided; and e) that
14 the Office of Insurance Commissioner and Thurston County Superior Court have
15 concluded that the NADC Vehicle Service Reimbursement Program constitutes insurance
16 under Washington law. See Declaration of Chad Greenlee dated September 9, 2010,
17 'Exhibit A'. In other words, the Washington dealers have already been notified directly
18 and clearly that the program is considered insurance in Washington, that the program is
19 terminated and of all other facts and findings which are germane.
20
21
22

23 **PETITIONERS' REPLY IN SUPPORT OF**
24 **PETITIONERS' MOTION FOR LIMITED**
25 **RECONSIDERATION AND RETURN OF**
26 **CASH BOND**

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1 a. **Petitioners are Willing to Post a New Washington-Approved Bond**
2 **Subject to Agreement with the OIC.**

3 The OIC's primary argument in favor of circulation of the CHO's Order is that it
4 will somehow notify dealers of alleged issues related to their own liability. As this Court
5 is aware, there is already a reserve fund and a Nevada-approved bond ("Western bond")
6 in place to protect dealers and consumers. The record in this case is clear that all valid
7 reimbursement claims over the past 15 years have been paid and that adequate funds and
8 coverage exist to cover all future claims. Moreover, there is also presently a \$250,000
9 cash bond in place to further protect Washington consumers. However, in an effort to
10 fully and completely alleviate any concerns the OIC may have concerning existing
11 Washington claims, the Petitioners are willing to acquire - subject to reasonable
12 availability and agreement by the OIC - a new Washington-approved bond that will
13 provide complete and full coverage for all existing Washington claims. Petitioners are
14 hopeful that the bond can be in place on or before October 1, 2010.²

15
16
17 If the parties agree to the posting of a new Washington-approved bond³ there is no
18 reasonable basis for additional notice to dealers. They have been fully advised of all the
19

20 ² This is an additional reason why a continuance to October 1, 2010 is appropriate.

21 ³ From its response to the Motion relating to the Cash Bond, it appears that the OIC would have no
22 objection to the release of the existing cash bond upon the posting of a new bond issued by a Washington
approved carrier. Petitioners would condition posting of the new bond on a release of the cash bond to
them, since the new bond alleviates the need for the cash bond.

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1 pertinent facts concerning the NADC program and they, and their customers, are fully
2 protected.

3 Finally, Petitioners respectfully submit that they have actually provided *more*
4 useful information to Washington dealers than the legalese and extended summaries of
5 testimony and procedural history contained in the CHO's Order. The CHO's Order adds
6 nothing to the notice already provided. The CHO's Order No. 2 should be deemed
7 satisfied.
8

9 **3. The OIC has Failed to Identify a Legitimate Public Interest in Having the**
10 **CHO's Order Sent to Consumers.**

11 The OIC's response and proposed Order implicitly acknowledges that
12 dissemination of the OIC's Order will create unnecessary confusion. This is why the
13 OIC is also seeking its *own* revision of the OIC's Order #3, by drafting its own proposed
14 notice. However, the OIC did not file a cross-Petition for Review, and is therefore
15 estopped from seeking additional relief and/or modification of the OIC's Order. It
16 appears the OIC recognizes the practical problems associated with widespread
17 dissemination of the OIC's Order to consumers.
18

19 **a. The OIC's Concerns Regarding Service Contract Termination Rights**
20 **Were Not Part of the CHO's Order and Were Not Addressed in this Case.**
21
22

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1 The OIC's response brief seeks to secure notice to Washington consumers so
2 those consumers may invoke their statutory right to cancel their service contracts. The
3 underlying service contracts, which are perfectly legal and not the subject of these
4 proceedings, should not be the subject of any notice. There was absolutely nothing
5 improper with respect to the purchase and/or sale of those service contracts. The service
6 contracts are offered by companies totally unrelated to Petitioners. Consumers retain all
7 statutory rights available to them irrespective of the money-back guarantee. There is no
8 requirement in the CHO's order relating to service contract termination issues and it is an
9 inappropriate basis for the OIC's request here.
10

11 Additionally, concerns regarding Washington consumers receiving the benefit of
12 their bargain also do not justify notice to them. Assuming the OIC agrees to a new bond,
13 Washington consumers will have three full layers of protection. Even without the new
14 bond, there are three layers of protection when you include the current cash bond. The
15 OIC will have performed its duty in obtaining protection for Washington consumers and
16 dealers.
17

18 Petitioners respectfully submit that notice to consumers will only create confusion
19 and will be counter-productive. An unsolicited mailing of the CHO's Order will create
20 an unnecessary firestorm of issues for dealers and service contract providers, without
21 providing any additional protection to consumers. Such a notice will undoubtedly
22

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1 generate claims and lawsuits from consumers against dealers and service contract
2 providers wanting to get their money back, particularly if the OIC insists that such notice
3 contain an allegation that the dealer's sale of a service contract with a money back
4 guarantee was "illegal insurance", an allegation with which we vigorously disagree and
5 which we believe is not supported by this Court's opinion. We expect that any notice to
6 consumers will generate many claims by consumers who have expired contracts, or who
7 have used the service contract thus voiding the money back guarantee. This will
8 unnecessarily make the dealers and service contract providers victims here, without any
9 additional benefit to Washington consumers.

11 In the event the Court believes some additional notice should be provided to
12 consumers – which we vigorously oppose - Petitioners are willing to publish a notice in
13 various newspapers in Washington serving those communities where the NADC program
14 was offered, notifying recipients of the money-back guarantee of their right to continue to
15 receive the money-back guarantee. Petitioners believe such a notice is not necessary and
16 will also be counter-productive but are prepared to publish such a notice if this Court
17 views notice as necessary.⁴ Petitioners have submitted a form of notice to the OIC.

21 ⁴ The alternative of newspaper advertising is offered because of the facts as stated in Mr. Greenlee's
22 declaration, which demonstrate that effective mailed notice to all Washington consumers is impossible to
provide.

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1 **4. The Court's Order Requiring a Bond in the amount of \$250,000 Should be**
2 **Dissolved Upon the Filing of a Washington-Approved Bond.**

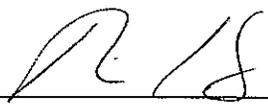
3 In September 2009, pursuant to the Court's Order, Petitioners posted a \$250,000
4 cash bond. If a new bond issued by a Washington approved and licensed carrier is posted
5 which covers all claims by Washington consumers, not just those claims that arose while
6 the stay was in place, the cash bond should be returned. Therefore, Petitioner's
7 respectfully submit that the Court's bond requirement should be immediately dissolved
8 upon the filing of a new Washington-approved bond.
9

10 **CONCLUSION**

11 For the foregoing reasons, the Petitioners ask that the Court modify the Court's
12 Opinion and the CHO's Order with respect to Order #2 and Order #3, and to dissolve the
13 cash bond presently on file with the Court upon the filing of a new Washington approved
14 bond.
15

16 **RESPECTFULLY SUBMITTED** this 23 day of September, 2010.

17 **DAVIES PEARSON, P.C.**

18 
19 _____
20 BRIAN M. KING, WSB #29197
21 Attorneys for Petitioners
22

23 **PETITIONERS' REPLY IN SUPPORT OF**
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

In Re:

NORTH AMERICAN DEALER CO-OP;
NATIONAL ADMINISTRATIVE
DEALER SERVICES, INC.; AND HENRY
C. ("HANK") BAILEY, JR.,

Petitioners,

No. 09-2-01710-4

**SUPPLEMENTAL
DECLARATION OF CHAD
GREENLEE**

CHAD GREENLEE declares as follows:

1. I reside in the state of Colorado. I am over the age of eighteen (18) and am qualified and competent to testify in judicial proceedings in the state and federal courts in the United States concerning the matters set forth in this declaration. I make this declaration based upon my own knowledge and belief.

2. I am the National Sales Manager for National Administrative Dealer Services, Inc. ("NADS"), located in Lakewood, Colorado. I have been employed by

**SUPPLEMENTAL DECLARATION OF
CHAD GREENLEE**

Page 1 of 3

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FAX (253) 572-3052

1 NADS since March 1, 2000. I am also the Secretary for the North American Dealer Co-
2 Op ("NADC").

3 3. Shortly after NADS received a copy of this Court's Opinion, NADS's
4 office staff began reviewing each recent new money-back guarantee it had received from
5 dealers throughout the United States over the last month. Each contract involving a
6 Washington resident was flagged and added to a list of consumers. This list included
7 Washington residents that may have purchased their vehicle and the vehicle's service
8 contract from a dealer located outside of the state of Washington.

9 4. This process took two office staff persons many hours and required a hand
10 review of thousands of individual contracts. As a result of these efforts, we were able to
11 identify money-back guarantees given to Washington residents for the period from July
12 2, 2010, through August 5, 2010.

13 5. This process was possible because only the recently submitted contracts
14 were hand reviewed. However, this process cannot be repeated to identify all
15 Washington consumers over the years. NADS practice is to destroy the original
16 documentation once the data is inputted into its system. Thus, older contracts are not
17 available to be hand reviewed and NADS and NADC is handicapped by the limitations of
18 their database.

19 6. NADS is committed to continuing to honor and administer all valid
20 Washington claims. If the Court believes additional notice is necessary, NADS has
21 proposed a publication of a notice in a manner acceptable to the Court. However, NADS
22
23

24 **SUPPLEMENTAL DECLARATION OF**
25 **CHAD GREENLEE**

26 Page 2 of 3
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1 simply does not have a way of identifying Washington consumers for an individual
2 mailing to all Washington customers.

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

5

6 DATED at Lakewood, Colorado, this 22nd day of September, 2010.

7

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CHAD GREENLEE

**SUPPLEMENTAL DECLARATION OF
CHAD GREENLEE**

Page 3 of 3

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1 **EXPEDITE**
2 Hearing is set:
3 Date: Friday, September 24, 2010
4 Time: 9:00 a.m.
5 Judge/Calendar: Judge McPhee
6 No hearing currently set

7
8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

9 IN AND FOR THE COUNTY OF THURSTON

10 In Re:

11 NORTH AMERICAN DEALER CO-OP;
12 NATIONAL ADMINISTRATIVE
13 DEALER SERVICES, INC.; AND HENRY
14 C. ("HANK") BAILEY, JR.,

15
16
17
18
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26
Petitioners,

No. 09-2-01710-4

**DECLARATION
REGARDING FACSIMILE
SIGNATURE**

17 KATHY KARDASH, Legal Assistant to Brian M. King, declares under penalty of
18 perjury under the laws of the State of Washington, that the facsimile document attached
19 to this declaration titled, Supplemental Declaration of Chad Greenlee, consisting of five
20 (5) pages including this declaration page, is a complete and legible facsimile that I have
21 examined personally and that was received by me via FAX at the following number:
22 253-572-3052.

24 **DECLARATION REGARDING FACSIMILE
25 SIGNATURE**

26 Page 1 of 2
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I declare under penalty of perjury under the laws of the State of Washington that
the foregoing is true and correct to the best of my knowledge information and belief.

Signed at Tacoma Washington this 23rd day of September, 2010.


KATHY KARDASH
Legal Assistant

**DECLARATION REGARDING FACSIMILE
SIGNATURE**

Page 2 of 2
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- 1) IMMEDIATELY cease and desist from further offering the NADC Program to any automobile dealers or other entities in the Washington State;
- 2) BEGINNING IMMEDIATELY, AND BY NO LATER THAN SEPTEMBER 24, 2010, send a copy of the *Final Findings of Facts, Conclusions of Law and Order on Hearing*, issued in Case No. D07-0149, to all Washington NADC Dealer Members in Washington State and instruct all Washington NADC dealer Members that they must cease offering or entering into any more NADC Auto Dealer Extended Service Contract Reimbursement Guarantees;
- 3) BEGINNING IMMEDIATELY, AND BY NO LATER THAN OCTOBER 1, 2010, send a copy of the *Final Findings of Facts, Conclusions of Law and Order on Hearing*, issued in Case No. D07-0149, to all Washington consumers who have purchased an NADC Auto Dealer Extended Service Contract Reimbursement Guarantee and instruct such consumers that should the consumer file a valid claim against their NADC Auto Dealer Extended Service Contract Reimbursement Guarantee at the time of expiration of their extended service contract, it will be honored by the Petitioners;

OR IN THE ALTERNATIVE:

BEGINNING IMMEDIATELY, AND BY NO LATER THAN OCTOBER 1, 2010, send a copy of the form letter attached as Exhibit A, explaining the *Final Findings of Facts, Conclusions of Law and Order on Hearing*, issued in Case No. D07-0149, to all Washington consumers who have purchased an NADC Auto Dealer Extended Service Contract Reimbursement Guarantee and instructing consumers that should the consumer file a valid claim against their NADC Auto Dealer Extended Service Contract Reimbursement Guarantee at the time of expiration of their extended service contract, it will be honored by the Petitioners;

and

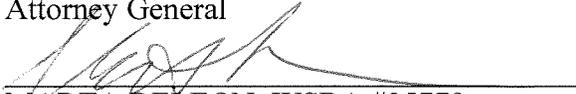
- 1 4) BEGINNING IMMEDIATELY, AND CONTINUING FOR AS LONG AS
2 NECESSARY, honor all valid claims made at the time of the expiration of the
3 extended service contract on all NADC Auto Dealer Extended Service Contract
4 Reimbursement Guarantees existing on the date of entry of this Order.
5 5) Maintain the Cash Bond of \$250,000 currently in place for the protection of
6 Washington Consumers until Petitioners certify to the Court that all potential
7 outstanding claims have expired, or have been placed with an appropriate
8 Washington licensed insurance company.
9 6) Provide proof of compliance with these orders to the Court and the Office of the
10 Insurance Commissioner as they are complete.

11 **DONE** this ____ day of September, 2010.

12
13 _____
JUDGE THOMAS MCPHEE

14 Presented by:

15 ROBERT M. MCKENNA
16 Attorney General

17 
18 MARTA DELEON, WSBA #35779
Assistant Attorney General
Attorneys for Washington State Office of the Insurance Commissioner

19 Approved as to Form:
20 DAVIES PEARSON, P.C.

21 _____
BRIAN M. KING, WSBA #29197
22 PETER T. PETRICH, WSBA #8316
23 REBECCA LARSON, WSBA #20156
Attorneys for Petitioners

24 FRED GREENBERG, P.C.

25 _____
26 FRED GREENBERG, admitted *pro hac vice*
Attorneys for Petitioner Henry C. "Hank" Bailey, Jr.

Exhibit A

Dear _____,

You are receiving this letter because our records indicate that you purchased a Vehicle Service Contract with a money back guarantee backed by a program offered through the North American Dealer Co-Op (NADC), and serviced by the National Administrative Dealer Services, Inc. (NADS). At the time you purchased your Vehicle Service Contract you were informed that if you do not use your Vehicle Service Contract before it expires, you can seek a refund of the total amount of your Vehicle Service Contract.

In 2009, the Washington State Insurance Commissioner determined that our program, which guarantees the reimbursement of the price of your Vehicle Service Contract, is unauthorized insurance. A copy of the Commissioner's *Findings of Fact, Conclusions of Law, and Order on Hearing*, Case No. D07-149 can be found online at www.insurance.wa.gov. The Commissioner's decision has been affirmed by the Thurston County Superior Court, Case No. 09-2-01710-4. You can request copies of the superior court order, or of any documents filed in the superior court case by contacting the Thurston County Superior Court Clerk's Office. We have been ordered to inform you that this money back guarantee program is an illegal insurance contract which may not be offered in Washington State. This order has no impact on your Vehicle Service Contract. This order only affects the money back guarantee, which is wholly separate from your Vehicle Service Contract.

The order entered in Thurston County Superior Court requires that we continue to honor any valid claims for reimbursement made under guarantee contracts currently in existence. The money back guarantee contract is voidable at your instance, and you are entitled to a refund of the purchase price of this contract. However, if you make a valid claim for a full refund under the terms of the contract, we are required to honor it, even though we and the dealers who sold these contracts are barred from offering this program to new customers.

While this does not diminish your rights under the terms of the contract you signed, this notice is being provided so that you can evaluate all of your legal options regarding this contract. If you have any questions about these orders you can contact the Office of the Insurance Commissioner at 1-800-562-6900, or our offices at _____.

Sincerely,

North American Dealer Co-Op, and
National Administrative Dealer Services, Inc.