

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

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

9 In Re:

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

Petitioners,

No.: 09-2-01710-4

**PETITIONERS' MOTION  
FOR RETURN OF CASH  
BOND**

14  
15 **I. RELIEF REQUESTED**

16 **COME NOW** the Petitioners, North American Dealer Co-Op ("NADC"),  
17 National Administrative Dealer Services, Inc. ("NADS"), and Henry C. Bailey, Jr.  
18 ("Bailey"), by and through their attorneys, Davies Pearson, P.C., and move the Court for  
19 an order returning the \$250,000.00 cash bond deposited with the Thurston County  
20 Superior Court Clerk to the Petitioners.  
21

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23  
24 **PETITIONERS' MOTION FOR RETURN OF CASH  
25 BOND**

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TOLL-FREE (800) 439-1112  
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3 **II. EVIDENCE RELIED UPON**

4 This motion is based on the records and file herein.

5  
6 **III. STATEMENT OF FACTS/ARGUMENT**

7 As the Court is aware, in connection with Petitioners request for a stay of the  
8 CHO's Final Order during the pendency of this appeal, the Court, in its Order of August  
9 28, 2009, required Petitioners to post a bond in the amount of \$250,000.00. Petitioners  
10 satisfied this requirement by depositing \$250,000.00 with the Clerk of Court. While the  
11 issue of the bond is not addressed in this Court's Opinion, Petitioners believe it is  
12 appropriate to address the bond at this time in connection with the other compliance  
13 issues addressed in the Petitioners' motion for reconsideration.

14 The bond was required in order to obtain the stay of the CHO's Final Order. That  
15 stay is no longer in effect and Petitioners have ceased doing business in Washington.  
16 Washington consumers who received reimbursement guarantees during the course of the  
17 appeal before this Court are all protected from defalcation by their dealers by virtue to the  
18 existing bond issued by Western General Insurance ("Western"). That bond has  
19 unlimited liability and covers all Washington consumers and has been the subject of  
20 earlier declarations filed with this Court. In view of this, there is no need for the cash  
21 bond and it should be returned to Petitioners.<sup>1</sup>

22  
23 <sup>1</sup> The Court's authority to discharge the bond, or to allow for alternative security to be posted, is set forth in  
24 Rule of Appellate Procedure 8.1(g).

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

2                                   **DAVIES PEARSON, P.C.**

3                                   

4                                   \_\_\_\_\_  
5                                   **BRIAN M. KING, WSB #29197**  
6                                   Attorneys for Petitioners

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4     Date: 9/17/2010  
5     Time: 9:00 AM  
6 The Honorable Thomas 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.,

OFFICE OF THE INSURANCE  
COMMISSIONER'S OPPOSITION  
TO MOTION FOR RETURN OF  
CASH BOND

Petitioners,

14                                   **I.     RESPONSE**

15             On August 28, 2009, this Court ordered a bond for \$250,000 be posted for the  
16 protection of Washington Consumers. Unfortunately, because Washington consumers still  
17 have not received any meaningful notice concerning the deficiencies of the money back  
18 guarantees offered by the North American Dealer Co-Op (NADC), National Administrative  
19 Dealer Services, Inc., and Henry C. (Hank) Bailey, Jr. (collectively "Petitioners"), they have  
20 not yet had the opportunity to explore whether to keep their Vehicle Service Contracts in the  
21 hopes NADC or the Dealer Member will be able to pay claims, or seek at least a partial refund  
22 now. Even once notice is received by Washington Consumers, as long as there are potential  
23 outstanding liabilities, there is a need for the bond to remain in place as protection for those  
24 consumers. Therefore until Petitioners can certify that there are no outstanding potential  
25 claims, or all outstanding guarantees have been placed with a licensed insurer, this bond  
26 remains a necessary protection for Washington Consumers. Therefore the Office of the

1 Insurance Commissioner, Mike Kreidler, Insurance Commissioner, (collectively the "OIC")  
2 requests that Petitioner's Motion for Return of Cash Bond be denied.

## 3 II. ARGUMENT

4 The \$250,000 bond at issue was determined by this Court to be necessary for the  
5 protection of Washington Consumers during the pendency of this matter. Although it was  
6 required as a condition for the stay that has been in place for the duration of this matter, now  
7 that the court has affirmed the OIC's determination that Petitioners' product is illegal  
8 insurance, this protection is even more necessary. To date, consumers who purchased Vehicle  
9 Service Contracts with Money Back Guarantees have not even been notified that the  
10 guarantees are illegal insurance products. They are not aware that this product, unlike other  
11 insurance products, is not backed by any guarantee association. While Petitioners have  
12 asserted a clear intention to honor all valid claims, the OIC has no meaningful way to gauge or  
13 ensure that Petitioners will remain solvent in four or more years from now. However, many of  
14 the guarantees will not mature for at least four years or more.

15 While the OIC is not opposed to allowing Petitioners to post a bond other than a cash  
16 bond, the OIC must object to transferring the cash bond to a bond offered by Western. As the  
17 record reflects, the bond currently in place between NADC and Western is not a valid bond for  
18 securing Washington based risks. That bond was issued before Western was even licensed to  
19 provide insurance in Washington. Further, the bond provided by Western is not actually a  
20 bond. It is a liability policy that Western is not licensed to offer. Further, it is the OIC's  
21 position that Western, as a material participant in the Petitioners' program, is too entangled  
22 with Petitioners' to be an appropriate bond holder for Washington consumers. Therefore  
23 Petitioners' assurances that another Western bond essentially identical to the improper bond  
24 currently in place would sufficiently protect customers in Washington are not sufficient to  
25  
26

1 ally the OIC's concerns that Western's interest in its business with NADC would not interfere  
2 with its duty to consumers as a bond holder.

3 However, the OIC would not object to an unlimited bond held by another Washington  
4 licensed insurer. Further, the OIC would not object to the placement of all Washington  
5 guarantees with a licensed insurer, at Petitioners' expense, rather than requiring Petitioners' to  
6 maintain the bond until all covered Vehicle Service Contracts have expired. However, until  
7 Petitioners can certify that all currently outstanding potential claims have been paid, or placed  
8 with an authorized insurer, the OIC cannot agree to return the only security that can certainly  
9 be understood to exist for the benefit of Washington Consumers.

10 **III. CONCLUSION**

11 For the foregoing reasons, the OIC requests Petitioners' Motion for Return of Cash  
12 Bond should be denied.

13  
14 DATED this 15th day of September, 2010.

15 ROBERT M. MCKENNA  
16 Attorney General

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