

STATE OF WASHINGTON

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OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT
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MIKE KREIDLER
DECLARATION OF MAILING
I declare under penalty of perjury
under the laws of the State of
Washington that on the date listed
below, I mailed or caused delivery
of a true copy of this document to
the parties
DATED this 23 day of Oct 2009
at Tumwater, Washington.
Signed: Sally Johnson

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:

DESIGN SAVERS PLAN, STEVEN D.)
SMITH, INC., STEVEN D. SMITH)
DESIGN BENEFITS, INC., DENTAL)
BY DESIGN, DESIGN TELESERVICES)
INC., SDS FINANCIAL, JOHN BYARS,)
ADOVA HEALTH, IRA GOTTLIEB,)
FAMILY SECURITY COUNCIL, INC.,)
NEW HEALTH CARE MANAGEMENT)
GROUP, INC., C. MURPHY LEOPOLD,)
EDWARD DEMMING, ROBERT D,)
EDELHEIT, UNITED GROUP)
PROGRAMS, INC., E2 HOLDING, INC.,)
WAR COLLEGE SIMULATIONS, INC.,)
UNITED PROGRAMS WORLDWIDE,)
INC., UNITED NATIONAL WORKFORCE)
ASSOCIATION, INC., OPTIMED,)
ARNOLD H. KATZ, and JONATHAN)
EDELHEIT,)
Unauthorized Insurers.)

D07-0351

FINAL FINDINGS OF FACTS,
CONCLUSIONS OF LAW AND ORDER
RE: PARTIES STEVEN D. SMITH,
STEVEN D. SMITH, INC., AND
DESIGN BENEFITS, INC.

TO: Steven D. Smith
7034 S. Yampa Court
Foxfield, CO 80016

Design Teleservices, Inc.
2851 S. Parker Road
Suite 1300, Penthouse
Aurora, CO 80014



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Dental by Design
2851 S. Parker Road
Suite 1300, Penthouse
Aurora, CO 80014

SDS Financial
2851 S. Parker Road
Suite 1300, Penthouse
Aurora, CO 80014

COPY TO: Mike Kreidler, Insurance Commissioner
Mike Watson, Chief Deputy Insurance Commissioner
James T. Odiorne, Deputy Commissioner, Consumer Protection
Carol Sureau, Deputy Commissioner, Legal Affairs Division
Thomas P. Rowland, Staff Attorney, Legal Affairs Division
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.04.090, RCW 34.04.120, RCW 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Office of Insurance Commissioner (OIC) for the state of Washington commencing on October 1, 2008 and continuing on January 28 and February 4, 2009. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner appeared by and through OIC Staff Attorney Thomas P. Rowland. Steven D. Smith appeared representing himself. Mr. Smith also represented Steven D. Smith, Inc., Steven D. Smith, Inc. dba Design Benefits, Design Savers Plan, Inc., Dental By Design, Design Teleservices, Inc. and SDS Financial, being the duly authorized representative of these entities as their sole officer and/or sole owner. Following the hearing, the record was left open for a significant period to allow the parties to file additional briefs if desired.

NATURE OF PROCEEDING

On January 30, 2008, Steven D. Smith, on behalf of himself, Steven D. Smith, Inc., Design Benefits, Inc., Dental By Design, Design Teleservices, Inc. and SDS Financial, asserting either that he was their sole owner or otherwise their duly authorized representative, filed a letter with the Insurance Commissioner requesting this hearing to contest the Insurance Commissioner's Order to Cease and Desist, No. D07-0351 entered on December 18, 2007. The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance

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Commissioner's Order should, as to these entities, be confirmed, set aside or modified. Said Order requires Steven D. Smith, Steven D. Smith, Inc., Design Savers Plan, Design Benefits, Inc., Dental By Design, Design Teleservices, Inc. and SDS Financial to cease and desist from practicing the business of insurance and from committing other alleged violations of the Insurance Code, based upon the facts asserted therein. (Said Order to Cease and Desist also includes numerous other individuals and entities, two separate groups of which appeared represented by other counsel in two separate proceedings, and others which did not appear at all and therefore became subject to said Order as of its effective date of December 17, 2007.)

Prior to commencement of the hearing herein, the Insurance Commissioner requested that 1) Design Teleservices, Inc.; 2) Dental By Design; and 3) SDS Financial be dismissed from the above-captioned matter, and therefore these three entities were dismissed from this proceeding.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened, with all parties appearing by telephone, and all substantive and procedural requirements under the laws of the state of Washington have been satisfied.
2. During prehearing conferences held June 6, 2008 and September 3, 2008, Steven Dudley Smith ("Smith") requested that the hearing be held by telephone based upon his assertion that he could not afford to travel to appear in person. The Insurance Commissioner ("OIC") agreed to this request, with reasonable conditions regarding transfer of documents prior to the hearing date, in an effort to accommodate Smith. Specifically, the OIC committed to transmitting the documents he would use at hearing on a specified date prior to the scheduled hearing date, and Smith advised that he would have no documents to submit. [Record of Prehearing Conference 9/3/08.]
3. Smith is an approximately 56 year old man who resides in Colorado. He graduated from high school in 1971 in Tampa, Florida. Thereafter, he earned a BA in Psychology from the University of South Florida. During college he also took courses in aviation, obtained his private, commercial and airplane instructor's licenses and was flying Boeing 727 planes, all before he was 25 years old. He was hired by American Airlines as a pilot in 1979 and based at LaGuardia airport. His career as a pilot continued for approximately six years. In the mid-1980s he left his career as a pilot and after multiple jobs in sales he moved to Colorado and obtained his insurance agent's license in 1992. In 1993, he started his own insurance agency in Colorado. He currently still resides in Colorado with his wife and eight children all aged 18 and under. Smith has been licensed as an insurance agent in Colorado and 41 other states, not including Washington State. [Declaration of Roberts, Ex. 2(N, Q).]
4. By letter dated September 8, 2008, the OIC advised the undersigned that *The Legal Affairs*

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Division has reviewed the investigation file and also received additional documentation in the course of preparing this matter for hearing which demonstrates that these entities are not proper parties with respect to Cease and (sic) Order No. D07-0351. By request of the OIC, a copy of which is included in the hearing file and by this reference incorporated herein, and by request of Smith, by order of the undersigned prior to commencement of the hearing herein it was reasonable that (1) Design Teleservices, Inc.; (2) Dental By Design; and (3) SDS Financial were dismissed from this proceeding and as named parties in said Order so that the Order was no longer effective as to those entities as of September 3, 2008. [Ex. 1, Commissioner's letter dated September 8, 2008; Request of the Commissioner and Licensee presented during second prehearing conference held 9-3-08.] Smith is also affiliated with other entities not named in this proceeding, e.g. he is identified as being President of Family Financial Advisors which bears the same address as SDS Financial at 6021 S. Syracuse Way #105 in Denver, and others. [Ex. 1.] Family Security Council/Family Security Council, Inc., which was registered as a dba for United National Workforce Association, which was also named as a party in this enforcement action but did not demand a hearing and therefore has been subject to the Order to Cease and Desist since its effective date of December 18, 2007. Family Security Council, Inc., is a Georgia for-profit corporation that maintains a principal business address at 2839 Paces Ferry Road, Atlanta, Georgia 30339. Family Security Council, Inc., is not, and has never been, licensed or authorized to sell or transact the business of insurance in Washington State. [Declaration of Roberts.] Family Security Council, Inc. is sometimes referred to by Smith, who has been contracted to market and sell for it and may be its sole or one of its owners/managers, as "Family Security Council" and hereinafter will be referred to as "Family Security Council." Also, records show that possibly Family Security Council may have changed its registration from a for-profit entity to a non-profit entity.

5. Design Savers Plan, LLC (also referred to by Smith in exhibits and testimony, and occasionally by the OIC, as "Design Savers Plan" and hereinafter will be referred to as "Design Savers Plan") is a Colorado limited liability corporation, ID No. 20031223730. It was organized by Smith on July 11, 2003, who operated the entity and served as its President, "Managing Member" and registered agent. [Declaration of Roberts, Ex. 2 (O).] No other individual has been identified as having any ownership interest, management function or as having even worked for Design Savers Plan. Design Savers Plan was voluntarily dissolved by Smith on February 13, 2007, which, notably, is the date Smith and his Design Savers Plan was contacted by the OIC specifying the OIC's detailed concerns about the legality of his and Design Savers Plan's activities. [Declaration of Roberts, Ex. 2(O); January 17, 2008 letter from Smith to OIC included in hearing file; Exs. 1, 3.]

6. Steven D. Smith, Inc. is an active Colorado corporation. It was incorporated on March 1, 1996. Smith is its President, sole officer and registered agent. [OIC Ex. 4; Testimony of Smith; Testimony of Roberts.] Steven D. Smith, Inc. operates primarily through its dba, Design Benefits. [Testimony of Smith; Testimony of Roberts; Ex. 5.]

7. Design Benefits is an assumed or trade name (i.e. a "dba") of Steven D. Smith, Inc. On October 20 1997, Smith, identifying himself as President of Steven D. Smith, Inc., filed the required Certificate of Assumed or Trade Name with the Colorado Secretary of State

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Corporations Section. [Ex. 6.] Thereon, in the section requesting *A brief description of the kind of business transacted under such assumed or trade name solely as “Sales of Health, Life and Disability Insurance.”* [Emphasis added.] In the Denver/Boulder Better Business Bureau publication, Design Benefits is included and lists Smith as its President and customer contact and specifies Design Benefits’ business as “Insurance-Health” and provides references to qualifications of insurance agents in general and specific references to the Colorado Division of Insurance and the National Association of Insurance Commissioners. [Ex. 21.] On June 27, 2007, Smith filed a Statement of Trade Name Withdrawal, formally withdrawing Design Benefits as a trade name of Steven D. Smith, Inc. with the Colorado Secretary of State. [Ex. 8.]

8. Steven D. Smith; Steven D. Smith, Inc.; Steven D. Smith, Inc. dba Design Benefits; and Design Savers Plan all operate out of the same office located at “2851 S. Parker Road, Suite 1300 - Penthouse, Aurora, Colorado.” There was no distinguishable difference between these entities, they functioned as a common unit and had a common mission. [Testimony of Roberts.] No individual other than Smith has been identified as having any ownership interest, management function or as having even worked for Steven D. Smith, Inc., Steven D. Smith, Inc. dba Design Benefits or, as above, Design Savers Plan. [Hereinafter, because Smith himself during his testimony and presentation, in certain of the Design Savers Plan’s marketing and other materials at issue herein, and occasionally the OIC often use the name “Design Benefits Plan” interchangeably with “Design Benefits” when referring to this assumed or trade name; both refer to the same entity legally named “Design Benefits” and will herein be referred to by its correct name of “Design Benefits.” [OIC Ex. 15.] Likewise, Smith, certain marketing and other materials at issue herein, and the OIC often refer to the complete name of Design Savers Plan, LLC as “Design Savers Plan” interchangeably, Design Savers Plan will be referred to as “Design Savers Plan.”

9. Steven D. Smith does not hold an insurance producer’s license issued by the Washington State OIC authorizing him to sell or otherwise transact the business of insurance in Washington State as required. [Declaration of Roberts, Exs. N, Q.] Similarly, Steven D. Smith, Inc., Steven D. Smith, Inc. dba Design Benefits, Design Savers Plan during all times pertinent hereto did, and currently do not, hold any licenses, certificates of authority or other documents issued by the Washington State OIC to transact insurance business in Washington State. Further, neither Steven D. Smith, Steven D. Smith, Inc., Steven D. Smith, Inc. dba Design Benefits, nor Design Savers Plan LLC during all times pertinent hereto did, and currently do not, hold any other authority issued by another agency of Washington State, any subdivision thereof, or the federal government, permitting or qualifying them to solicit and/or provide such insurance coverage in the State of Washington. [Declaration of Roberts.] Finally, neither Steven D. Smith, Steven D. Smith, Inc., Steven D. Smith, Inc. dba Design Benefits, nor Design Savers Plan have registered with the OIC as a risk retention group or risk purchasing agents, nor have they solicited this insurance through a licensed surplus lines broker in Washington State.

10. In May 2005, The Chesapeake Life Insurance Company (“Chesapeake”) issued a blanket accident-only policy to UNWA that provided its members with accidental death and dismemberment, excess accident medical expense, and weekly accidental income benefits. Chesapeake’s subsidiary or business marketing unit StarHRG also had a supplemental health

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insurance product called HealthAssist which it made available to UNWA in 2006; however, Chesapeake never actually issued this insurance contract to UNWA (Chesapeake sold this division to CIGNA before the product was finalized) and therefore UNWA could not legally sell this HealthAssist health insurance to consumers in any state. However, UNWA, including Design Savers Plan and Smith who both marketed and sold the insurance for UNWA, did represent themselves to be authorized to market and sell the Chesapeake insurance products (including the HealthAssist that even a agents, brokers or other representatives of Chesapeake while not appointed as insurance agents, brokers or otherwise authorized by Chesapeake to do so, and UNWA did market and sell the HealthAssist insurance product to consumers: indeed, the number of persons attempted to be insured went from five in one month to over 4,000 in the next month. [Ex. 2(AA).] Chesapeake eventually took actions to try to remedy the situation: for example, a letter was issued to John Byars, an official of UNWA, by Chesapeake's Deputy General Counsel demanding that Mr. Byars stop acting as an agent/broker of Chesapeake. [Declaration of Roberts; 6/30/06 Letter from David A. Thompson, Deputy General Counsel of Chesapeake to John Byars of UNWA, and 7/24/06 email from Mr. Thompson, Ex. 2(AA).] In addition, Chesapeake made sure that UNWA members enrolled in HealthAssist would be protected until a new carrier was able to write the coverage by establishing a fund that would pay claims filed during the period 11/1/05 through 9/30/06. [Ex. 2(Y).]

11. Effective October 1, 2006, after Chesapeake terminated any relationship they had with UNWA (and by its relationship with UNWA, Design Savers Plan and Smith). HM Life Insurance Company (which is also authorized to sell health insurance) took over the business of providing health insurance coverage for UNWA members under a group health insurance plan similar to the Chesapeake's HealthAssist health insurance product which UNWA actually never had available for its members, and Design Savers Plan and Smith were never authorized to sell even if Chesapeake had issued a group policy to UNWA. This product was called HM Life's HM Care Advantage health insurance product, and it was not approved for sale in Washington. [Ex. 2(Y); UNWA Application Materials to HM Life Insurance Company, Ex. 2(BB); 11/22/06 UNWA Letter Regarding Insurance Change Notification, Ex. 2(CC).] Even so, Key Benefit Administrators administered the HM Care Advantage health insurance product issued to UNWA. Key Benefit would send fulfillment packages including information about the health insurance to UNWA relating to each consumer who enrolled in UNWA. UNWA and Family Security Council including Smith, in turn, would send that information, along with additional UNWA materials, to those consumers who had purchased memberships albeit always or often unknowingly. Through this means, 186 residents of Washington purchased the HM Care Advantage health insurance product offered by Family Security Council Inc. and UNWA. [Declaration of Roberts, Ex. 2(DD).]

12. Shortly thereafter, on December 14, 2006, Smith individually, and Smith as President of Design Savers Plan sold the name and all assets of Design Savers Plan, including the database and list of all members/enrollees that reside in Washington State and elsewhere, to Family Security Council, Inc. for \$1,200,000. Notably, Family Security Council, Inc. had only just been formed the day before, on December 13, 2006. [Declaration of Roberts, Ex. 2(H, I, J); Asset Purchase Agreement, Ex. 25; Ex. 2(V).] Notably also, at least by June 12, 2006 the Design Savers Plan website had already informed its current and prospective members that Design

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Savers Plan had been transferred to Family Security Council – even though Family Security Council had not been formed until December 13, 2006 and had not purchased Design Savers Plan until December 14, 2006. [Ex. 2(W).]

13. In said 12/14/06 Asset Purchase Agreement, an initial recitation identifies Design Savers Plan as the marketing agent for UNWA dba Family Security Council, an association which offers its members access to health services and from providers and vendors through various networks at discounted contract rates, and guaranteed issue association insurance products;... [Emphasis added.] Family Security Council, Inc. is and has never been licensed or authorized to sell or transact the business of insurance in Washington State. [Declaration of Roberts, Ex. 2(K).]

14. [Notably, however, on February 13, 2007 Steven D. Smith, as the individual authorized to act on behalf of Design Savers Plan, dissolved Design Savers Plan. [Declaration of Roberts, Ex. 2(O); Statement of Dissolution of Design Savers Plan by Steven D. Smith filed 2/13/07 with Colorado Secretary of State, Exs. 1, 3.] This is even though he testified that he had sold Design Savers Plan to Family Security Council on 12/14/06. [Testimony of Smith; Declaration of Roberts, Ex. 2(H, I, J); Asset Purchase Agreement, Ex. 25; Ex. 2(V).]]

15. On December 14, 2006, in addition to selling the assets of Design Savers Plan to Family Security Council, Inc., Smith also executed an Agent Agreement with Family Security Council, Inc. in which Smith was appointed to market and solicit the business of Family Security Council, Inc. For his marketing and solicitation services, Smith earned a 4% monthly commission on all applications he obtained that resulted in an insurance plan being issued by Family Security Council, Inc. [Agent Marketing Agreement between Smith and Family Security Council, Inc. executed December 14, 2006, Ex. 2(X).] Therefore, through this proceeding, in his testimony and responses to the OIC during its investigation of this matter, although Smith repeatedly stated that he had no information or records or responsibility as he sold Design Savers Plan on December 14, 2006, in fact by virtue of this Agent Marketing Agreement with Family Security Council, Inc., Smith simply continued his same activities of soliciting and selling the health insurance products for Family Security Council, Inc., which was contracted to solicit and sell the health insurance products for UNWA (see below).

16. Notably, on December 13, 2006, the day before Smith sold the name and all assets of Design Savers Plan to it (above) to Family Security Council, Inc., Family Security Council, Inc. had just been formed. Notably also, at the same time that Smith sold Design Savers Plan to Family Security Council, Inc. on December 14, 2006, Smith himself contracted with Family Security Council, Inc. to conduct the marketing and sales of the subject insurance products on behalf of Family Security Council, Inc. Family Security Council, Inc. is identified as a dba of United National Workforce Association (“UNWA”). [12/14/06 Asset Purchase Agreement, Ex. 25.] UNWA exists primarily for the purpose of purchasing group insurance and marketing the benefits to individuals together with membership in UNWA. Toward that end, UNWA had a marketing agreement with Family Security Council, Inc. [UNWA also had a marketing agreement with New Healthcare Management Group, Inc. (“NHCMG”).] Therefore both Family Security Council, Inc. including Smith, and NHCMG, were as of December 14, 2006 specifically

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contracted to market various insurance products including health insurance for UNWA. Therefore beginning December 14, 2006, pursuant to their contracts, Smith and Family Security Council, Inc. advertised for the sale of health insurance to the public, and when consumers purchased this health insurance – which they had no idea was actually from UNWA (see below) – Smith and Family Security Council, Inc. facilitated their enrollment, unknowingly, as a member of UNWA although many or all of these consumers had never heard of UNWA and had no wish to be enrolled in any association (see below). UNWA's group of insurance products were marketed and sold in Washington under the business entities known as the Design Savers Plan (the entity that Smith sold to Family Security Council, Inc. on December 14, 2006), Family Security Council, Inc. [and Adova Health]. Neither Smith nor any of these entities were licensed to sell these insurance products in Washington State, and there is no evidence that licensed agents were ever utilized to sell the insurance products at issue. [Declaration of Roberts; Declaration of Roberts, Ex. 2(Y),(Z).]

17. On February 28, 2007, upon learning of the OIC's investigation of this matter, HM Life Insurance Company issued a Cease and Desist letter to NHMG and Family Security Council, (Family Security Council as a dba of UNWA), Design Savers Plan and John Byers, ordering them to cease their marketing and sales of HM Life's HM CareAdvantage health insurance product. [2/28/07 Letter from HM Life Ins. Co. to NHMG, Family Security Council, Design Savers Plan and John Byers, Ex.2(FF); Declaration of Roberts.]

18. In response to several complaints which the OIC received from Washington consumers, on February 13, 2007 the OIC contacted Smith inquiring about suspected illegal insurance activities in which the OIC believed Smith and his company, Design Savers Plan were involved, asking Smith to *Please provide a listing, including complete contact information on all contacts and transactions that have occurred between your company [Design Savers Plan] and any Washington resident from January 1, 2006 to the present and to Please furnish complete copies of all policies, contracts and marketing information involved in each such transaction and identify the specific product purchased by and/or offered to each such Washington resident.* [Letter from OIC to Smith/Design Savers Plan 2/13/07, Ex. 2(P).] On February 27, 2007 Smith advised the OIC that *Design Savers Plan was sold to Family Security Council on December 18, 2006 [sic]. All records have been transferred to them and Design Savers Plan has been dissolved as a company in the State of Colorado and [W]e do not have that information any longer. The entire date base was all transferred to Family Security Council.* [Letter from Smith to OIC, Ex. 2 (Q).] Notably, in fact, Smith only dissolved Design Savers Plan on February 13, 2007, the day that the OIC contacted Smith regarding the suspected illegal activities of his company, Design Savers Plan. [Ex. 2(P),(Q); Ex. 3.] Notably, Smith never mentioned to the OIC that he, Smith, had actually been contracted to market and sell for Family Security Council and had actually simply continued the marketing and sales activities that he had previously conducted through his own Design Savers Plan and Steven D. Smith, Inc. dba Design Benefits – unauthorized—through his new contract with Family Security Council, Inc. and was therefore on February 13, 2007 in an ideal position to furnish the OIC with all of the information which the OIC had requested on that date.

19. As a recitation of the activities in which Smith and his business entity, Design Savers Plan,

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were involved, in late June and early July, 2006, Michael and Roberta (Connie) Rarden, husband and wife and residents of Washington, began to search the internet for health insurance. The couple was at that time covered by Premera Blue Cross under their COBRA continuation coverage following Mr. Rarden's retirement. However, the COBRA time period was nearing expiration and Mr. and Mrs. Rarden were interested in finding replacement insurance. During the search process, the couple found the Design Savers Plan website and telephoned the number listed on the Design Savers Plan website for information. The representative who answered their telephone call, Mr. Christopher Galusha, told Mr. and Mrs. Rarden that the Design Savers Plan was a full coverage, comprehensive, medical health insurance policy. Mr. Galusha also confirmed that the Design Savers Plan insurance product was valid in Washington State. Thus, Mr. and Mrs. Rarden were led by Design Savers Plan, through its representative Mr. Christopher Galusha to believe that the Design Savers Plan product was 1) comprehensive health insurance, and 2) was authorized in Washington State. [Testimony of Connie Rarden; Ex. 2(R), contemporaneous notes made by Connie Rarden.]

20. Based upon the information given to them by the representative of Design Savers Plan, Mr. and Mrs. Rarden purchased health insurance from Design Savers Plan, effective August 1, 2006. Based upon their reliance on the representations of Design Savers Plan, they allowed their existing health insurance coverage (under their COBRA policy from Mr. Rarden's former employer) to lapse. [[Testimony of Michael Rarden; Testimony of Connie Rarden; Declaration of Roberts.] Although given the advertising from Design Savers Plan, and the representation of Christopher Galusha acting on behalf of Design Savers Plan in response to their telephoning Design Savers Plan, and its advertising materials and "Insurance Card" and other documents from Design Savers Plan, the Rardens understandably thought that they had purchased health insurance coverage from Design Savers Plan.

21. After they purchased the Design Savers Plan product, Mr. and Mrs. Rarden received the following:

1) *Design Savers Plan Benefit Guide*, describing *Medical Benefits, Consumer & business Benefits*;

2) wallet-sized *Design Savers Plan Association Insurance Card* which stated their individual names i.e. *Michael Rarden*, their specific *Member ID no.*, and *Effective Date: 08/01/06*. The reverse of the card bears the information *Members: Present this identification card when receiving health care services. For program information, or to locate Providers, call 800-616-5709. Medical Provider: member is a participant in a limited benefits plan. Collect 20% of billed charges at time of treatment and file claims to the following address: Claims/Design Savers Plan, 2851 South Parker Road, Suite 1300, Aurora, CO 80014. All claims must include Member's ID number as listed on the front of the card. Hospitals: Always call 800-616-5709 before scheduling any hospital or facility procedures.* The wording closes with: *ASSOCIATION INSURANCE CARD.*

3) wallet-sized *DESIGN SAVERS PLAN TIERED PHARMACY CARD* which states *RxBIN no.*, *RxPGN no.*, *RXGroup no.*, *Group Name: Design Savers Plan*, *Member ID no.*, *Member Name: Michael Rarden*, *Effective Date: 08/01/06*, and a space to name *Dependents*. The card does end with the assertion *THIS PROGRAM IS NOT INSURANCE.*

4) *DESIGN SAVERS PLAN MEDICAL SAVINGS CARD* which included the name e.g.

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Michael Rarden, specific Member ID no., and Effective Date: 08/01/06. The final statement is: THIS PROGRAM IS NOT INSURANCE. [Testimony of Michael Rarden; Testimony of Connie Rarden; Declaration of Roberts; Design Savers Plan Benefit Guide, Design Savers Plan Association Insurance Card, Design Savers Plan Tiered Pharmacy Card and Design Savers Plan Medical Savings Card, Ex. 2 (S, T).]

22. Beginning on or after the stated effective of their Design Savers Plan coverage, they continued to receive medical treatment as they had under their previous COBRA plan. They presented their Design Savers Plan Insurance Cards to their health care providers as proof of insurance. [Testimony of Michael Rarden; Testimony of Connie Rarden; Declaration of Roberts.]

23. In September or October of 2006, Mr. and Mrs. Rarden were contacted by their health care providers and advised that the Design Savers Plan health insurance cards they presented were not, in fact, insurance: although the health care providers submitted claims for Mr. and Mrs. Rarden as instructed on the Design Savers Plan Insurance Cards, there had been no reimbursement from Design Savers Plan. After exhaustive telephone calls, each advising they had no connection to payment of health expenses and/or referring them to yet other telephone numbers, Mr. and Mrs. Rarden ultimately concluded that their health care expenses were not going to be paid as promised by Smith and Design Savers Plan. Further, Mr. and Mrs. Rarden were ultimately advised by their health care providers that they were responsible for payment of all services rendered, which totaled approximately \$4,780.42. As required, they paid this amount themselves. [Testimony of Michael Rarden; Testimony of Connie Rarden; Declaration of Roberts; Balance Sheet with Medical Provider Billing/Payment Statements, Ex. 2(U).]

24. In October 2006, when they realized that the Design Savers Plan product was not going to cover their health care expenses as promised by Smith and Design Savers Plan, Mr. and Mrs. Rarden cancelled this coverage effective October 31, 2006. They had great difficulty in obtaining other coverage, however, because in reliance on the representations of Smith and Design Saves Plan they waived their remaining rights to coverage under COBRA and were now in a position where there was a gap in their insurance coverage which made it even more difficult to obtain other coverage. [Testimony of Michael Rarden; Testimony of Connie Rarden; Declaration of Roberts.]

25. When they purchased the Design Savers Plan health insurance product effective October 1, 2006, Mr. and Mrs. Rarden unknowing became members of UNWA. They had no idea that they may have joined an association or joined any other organization; they believed they were purchasing health insurance duly authorized in Washington State. [Testimony of Michael Rarden; Testimony of Connie Rarden; Declaration of Roberts.]

26. Between 2003 and April 2, 2007, over 4,000 consumers in Washington State purchased the unauthorized Design Savers Plan product. This time period includes sales by Smith's companies, Design Savers Plan and Steven D. Smith, Inc. dba Design Benefits, and later by Family Security Council, Inc., after Family Security Council, Inc. purchased Design Savers Plan on December 14, 2006 (and on which date Smith also contracted to advertise and market for

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Family Security Council, Inc.). [List of consumers in the State of Washington who purchased the Design Savers Plan unauthorized health insurance product from Design Savers Plan, Ex. 2(HH).]

27. Specifically, some of the other 4,000 Washington residents who a) found Smith's Design Savers Plan's advertisement for health insurance on the internet; and b) purchased what they thought was Design Savers Plan health insurance; but who c) unknowingly became enrolled in UNWA; d) did not want to join an association; and e) had never heard of UNWA and did not know they were paying any membership fees for their unwanted enrollment in UNWA, include the following:

1) Mary Moore who purchased the Design Savers Plan product in 11/06 and cancelled it in 12/06. [Declaration of Roberts, Ex. 2.]

2) Tracy Everett, who purchased the Design Savers Plan product in September 2006. [Design Savers Plan Insurance Card issued to Tracy Everett, Ex. 2(II)] There was no mention of UNWA in Design Savers Plan's advertisement to which Ms. Everett responded. Ms. Everett actually paid approximately \$160.00 for an "enrollment fee" and then \$360.00 per month for the coverage. She incurred over \$9,000 in medical bills but the plan paid nothing. [Billing Statements from Ms. Everett's medical providers, Ex. 2(JJ)] Ms. Everett terminated her plan as of February 2007. [Declaration of Roberts.]

3) Barbara Rainey, who purchased the Design Savers Plan product in July 2006. Her husband is disabled and they had COBRA coverage for approximately 18 months prior to finding Design Savers Plan. Ms. Rainey was led to believe that she was purchasing comprehensive medical insurance coverage for \$300.00 per month. She paid for the coverage for four months (through October 2006). During that period she incurred approximately \$1800 worth of medical bills and although she made claims, none were ever paid. [Declaration of Roberts, Ex. 2.]

4) Barbara Curtiss, who purchased the Design Savers Plan product and paid \$300 a month for the coverage. Ms. Curtiss paid for the policy for the months of June through December 2006. She stated that "nothing worked" when she tried to get information from Design Savers Plan when she tried to get information from the company or file a claim. Ms. Curtiss had heard that Design Savers Plan was sold to another company but did not know which one. [Declaration of Roberts, Ex. 2.]

5) Judy Bergin, who purchased the Design Savers Plan insurance and went to an "approved" doctor on the Design Savers Plan list of participating providers, but was never paid. Ms. Bergin incurred approximately \$3,000 in medical bills that were not covered. Ms. Bergin paid an initial payment of \$275, and for the next seven months paid \$228 per month until she cancelled the plan in mid-March 2007. Ms. Bergin purchased the Design Savers Plan product through a company called National Health Plan;

6) Darin McCurrie, who, when responding to the Design Savers Plan advertisement on the internet, asked if the plan was insurance and was told, "We are, but we're not" and then the sales person explained the insurance portions of the plan which convinced Mr. McCurrie to purchase the product. Mr. McCurrie purchased and paid for coverage under the plan for approximately six months between September 2006 and February 2007 and paid \$350.00 per month. During that period he incurred approximately \$1,000 in medical claims, none of which were ever paid;

7) Greg Bossini purchased the DSP in November 2006, and thought he was buying health insurance with full medical benefits. He knew there was a \$228.50 "start-up" fee, but as with the

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other consumers had never heard of UNWA and still does not know that he is/was a member of UNWA;

8) Randal Lemier is a retired teacher who purchased the Design Savers Plan product on October 15, 2006. He was told during the initial telephone sales call that the Design Savers Plan had "excellent coverage." Although Mr. Lemier was disappointed with the plan when he finally did receive the information packet, he decided not to cancel until he could afford to replace it with a more comprehensive policy. Mr. Lemier continued to make payments in the amount of \$367.50 through April 2007. Said payments were automatically withdrawn from his bank account, originally on behalf of "Design Savers Med Benefit" and later for "Family Security" and deposited in Bay Cities Bank in Lutz, Florida. [Ex. 2(KK).]

9) Nancy Coe purchased the Design Savers Plan product, and had it for two months in 2006. She paid \$200.00 per month. She thought she was purchasing full coverage health insurance;

10) Yvonne Cunningham searched for catastrophic health insurance on the internet and completed an inquiry form with Design Savers Plan. She received a call from Design Savers Plan, asked the Design Savers Plan representative what the Plan covered, and was told the plan would cover doctor office visits, prescription copayments and \$5,000 in hospital coverage. When she received the information about the Design Savers Plan, she discovered it was not what it was presented to be;

11) Garry Williams sought health insurance and purchased the Design Savers Plan in September 2006 and continued until May 2007. Mr. Williams paid \$360.00 per month. [Declaration of Roberts.]

28. Smith proposes that because he sold Family Savers Plan to Family Security Council, Inc. on December 14, 2006 and the OIC did not issue its Order to Cease and Desist until after that date, he is not responsible for the alleged violations by Design Savers Plan. However, as argued by the OIC, the OIC's Order to Cease and Desist alleges violations by Design Savers Plan which occurred prior to December 14, 2006 - i.e. during the time in which Design Savers Plan, Inc. was owned and operated by Smith - and therefore it is reasonable that Smith is accountable for those alleged violations at least as to the time period up until December 14, 2006. Second, it is unclear whether Smith actually did cease control and/or ownership of Design Savers Plan on December 14, 2006 or at any time: notably, as found above, exhibits showed that on February 13, 2007 - well after the December 14, 2006 date on which Smith testifies he sold Design Savers Plan to Family Security Council, Inc. - Smith himself caused Design Savers Plan to be dissolved. Third, even if Smith did actually sell Design Savers Plan to Family Security Council, Inc. on December 14, 2006, on that same date he contracted with Family Security Council, Inc. to handle marketing and sales for Family Security Council, Inc. and therefore Smith legally obligated himself to continue the same marketing and sales operations after the alleged December 14, 2006 sales date which he had conducted prior to that date.

29. Smith asserts that although he was the sole owner and manager of Design Savers Plan, he actually did not sell the products at issue here. Instead, Smith asserts, he and Design Savers Plan contracted with numerous telemarketing companies throughout the nation to call consumers, solicit for and explain the product and facilitate the sale, and therefore he should not be held accountable for the representations given by the telemarketers to consumers. First, said telemarketers were hired, instructed and paid by Smith and Design Savers Plan. [Testimony of

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Smith.] It is reasonable that Smith and Design Savers Plan should be held accountable for their actions. Second, when notice of the interested consumer was given to Smith, Smith, Design Savers Plan and other affiliated entities facilitated the continued marketing, and ultimate sale, of the products at issue.

30. Bruce D. Roberts, who during all times pertinent hereto was employed as a Senior Investigator with the OIC and served as the OIC's investigator in this matter, appeared, by telephone, as a witness on behalf of the OIC. Mr. Roberts also submitted Declaration of Bruce D. Roberts with Exhibits A through LL. Said Declaration was admitted herein without objection as Ex. 2. Mr. Roberts presented his testimony in a detailed, clear and credible manner and exhibited no apparent biases.

31. Mike Rarden appeared, by telephone, as a witness on behalf of the OIC. He presented his testimony in a detailed, clear and credible manner and exhibited no apparent biases.

32. Connie Rarden appeared, by telephone, as a witness on behalf of the OIC. She presented her testimony in a clear, detailed and credible manner and exhibited no apparent biases.

33. Steven D. Smith appeared, by telephone, as the sole witness on his own behalf. While Mr. Smith has appeared cooperative throughout this process, he continually exhibited an attitude that because he personally may not have made all of the representations at issue here - even though it is his company, Design Savers Plan, that did, and even though he hired, instructed and paid others to telephone solicit for him, and was greatly enriched himself as a result of this solicitation - he should not be responsible for the misrepresentations made and harm to consumers caused by these misrepresentations and sales. Further, although his manner of speaking is calm and deliberate, a review of the written exhibits, testimony of victims and the investigator clearly shows that Mr. Smith 1) leaves significant portions of facts out in his presentation and 2) presents false statements concerning significant issues e.g. the discontinuance of his connection with marketing and sales of these products after his sale of Design Savers Plan in December 2006. Additionally, 3) a review of the exhibits shows that Mr. Smith clearly attempted to obstruct the investigation of the OIC in his statements e.g. his inability to deliver any documents to the investigator as they had been transferred to Family Security Council, Inc. by not divulging that he, in fact, was either the sole or one significant solicitor contracted to handle solicitation and sales for Family Security Council, Inc. and therefore could easily have assisted in this investigation. Instead, Mr. Smith's posture is essentially to not recognize the violations which he and his company have committed and continued, the harm which they have caused to consumers, and to continually place the blame for these on others.

34. Based upon the facts found above, Steven D. Smith as an individual and his companies, Design Savers Plan, Steven D. Smith, Inc., and Steven D. Smith, Inc. dba Design Benefits, engaged in and transacted the unauthorized business of insurance in the state of Washington in violation of the Washington State Insurance Code, Title 48 RCW, including the advertising and solicitation of insurance products, the collection and attempted collection of premium monies, and the issuance of insurance and insurance-related products.

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35. Based upon the facts found above, Steven D. Smith as an individual and his companies, Design Savers Plan, Steven D. Smith, Inc., and Steven D. Smith, Inc. dba Design Benefits, participated and assisted, directly and indirectly, in the advertisement, solicitation and issuance of unauthorized insurance products or business in Washington State, including advertising and soliciting Washington State by telephone, mail and internet advertising, to induce Washington State residents to purchase insurance products. Internet advertising included statements from Smith and his companies that insurance products presented by these entities are available in Washington State.

36. Based upon the facts found above, Steven D. Smith as an individual and his companies, Design Savers Plan, Steven D. Smith, Inc., and Steven D. Smith, Inc. dba Design Benefits, acted as and held themselves out as insurance agents, brokers and/or insurance producers in Washington State, soliciting insurance business in Washington State and participating and assisting, directly and indirectly, in acts in which only duly licensed insurance agents, producers or companies are authorized to engage.

37. Based upon the facts found above, even if they had been duly authorized to solicit for insurance products in Washington State, Steven D. Smith as an individual and his companies, Design Savers Plan, Steven D. Smith, Inc., and Steven D. Smith, Inc. dba Design Benefits, represented insurers and insurance products and business which was not authorized in Washington State, and otherwise participated and assisted, directly and indirectly, in the sales of these unauthorized products to Washington State residents.

38. Based upon the facts found above, it is reasonable that the OIC's Order to Cease and Desist should be upheld against Steven D. Smith as an individual, and his companies, Design Savers Plan, Steven D. Smith, Inc., and Steven D. Smith, Inc. dba Design Benefits.

CONCLUSIONS OF LAW

1. Pursuant to the Findings of Facts above relative to his activities as an individual and/or the sole manager/owner of his companies, Design Savers Plan, LLC, Steven D. Smith, Inc., and Steven D. Smith, Inc. dba Design Benefits, Steven D. Smith and his companies advertised, solicited, and sold to Washington residents policies for medical health insurance without having been granted certificates of authority or registration, and/or licenses to act as insurers or insurance agents in the state of Washington. Further, they did not have and have not submitted to the Washington State 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 them to solicit and/or provide such insurance coverage in the state of Washington. They have also not registered with the OIC as a risk retention group or risk purchasing agents, nor have they solicited this insurance through a licensed surplus lines broker in the state of Washington. In so doing, they have violated RCW 48.17.060.

2. Pursuant to the Findings of Facts above relative to his activities as an individual and/or the sole manager/owner of his companies, Design Savers Plan, LLC, Steven D. Smith, Inc., and Steven D. Smith, Inc. dba Design Benefits, Steven D. Smith and his companies have advertised,

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solicited and sold unauthorized insurance products in the state of Washington and have thereby engaged in or transacted the unauthorized business of insurance in the state of Washington. In so doing, they have violated RCW 48.17.060.

3. Pursuant to the Findings of Facts above relative to his activities as an individual and/or the sole manager/owner of his companies, Design Savers Plan, LLC, Steven D. Smith, Inc. and Steven D. Smith, Inc. dba Design Benefits, Steven D. Smith and his companies participated and assisted, directly and indirectly, in the solicitation and issuance to Washington residents of poliices for medical health insurance that were not issued by an entity with a certificate of authority or registration in the state of Washington. In so doing, they have violated RCW 48.15.020 and RCW 48.15.023.

4. Pursuant to the Findings of Facts above relative to his activities as an individual and/or the sole manager/owner of his companies, Design Savers Plan, LLC, Steven D. Smith, Inc., and Steven D. Smith, Inc. dba Design Benefits, Steven D. Smith and his companies have participated or assisted, directly and indirectly, in the advertisement, solicitation, and issuance of unauthorized medical health insurance plans or policies in the state of Washington and have thereby engaged in or transacted the unauthorized business of insurance. They have also acted as insurance agents and third-party administrators, collected premiums, paid claims, and sent fulfillment packages to consumers in the state of Washington with respect to the unauthorized medical health insurance products. In so doing, they have violated RCW 48.15.020 and RCW 48.15.023.

5. Pursuant to the Findings of Facts above relative to his activities as an individual and/or the sole manager/owner of his companies, Design Savers Plan, LLC, Steven D. Smith, Inc. and Steven D. Smith, Inc. dba Design Benefits, Steven D. Smith and his companies have, directly or indirectly, issued and/or delivered insurance forms in the state of Washington without filing and obtaining prior approval for use of such forms from the OIC. Likewise, they have used classification manuals, manuals of rules and rates, rating plans, rating schedules, minimum rates, class rates, and/or rating rules without obtaining prior approval for use of such rates from the OIC. In so doing, they have violated RCW 48.18.100 and RCW 48.19.040.

6. Pursuant to the Findings of Facts above relative to his activities as an individual and/or the sole manager/owner of his companies, Design Savers Plan, LLC, Steven D. Smith, Inc., and Steven D. Smith, Inc. dba Design Benefits, Steven D. Smith and his companies represented to prospective purchasers that the insurance product they were selling complied with the laws of the state of Washington. These representations were false, deceptive, and misleading because, among other reasons, these products had not been filed with and approved by the OIC and Smith and his companies were not authorized to solicit an insurance transaction or to deliver or issue an insurance contract under Title 48 RCW. In so doing, they violated RCW 48.30.040 and RCW 48.30.050.

7. Based upon the above Finding of Fact to the effect that it is reasonable that the OIC's Order to Cease and Desist should be upheld against Steven D. Smith as an individual, and his companies, Design Savers Plan, LLC, Steven D. Smith, Inc., and Steven D. Smith, Inc. dba

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Design Benefits, it is hereby concluded that the OIC's Order to Cease and Desist, No. D07-0351, entered against Steven D. Smith as an individual, Design Savers Plan, LLC, Steven D. Smith, Inc. and Steven D. Smith, Inc. dba Design Benefits on December 18, 2007, should be upheld.

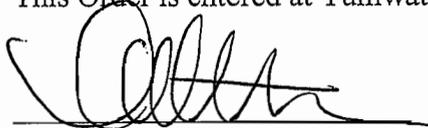
ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that Steven D. Smith as an individual and his companies Design Savers Plan, LLC, Steven D. Smith, Inc. and Steven D. Smith, Inc. dba Design Benefits, have violated Title RCW 48.

IT IS HEREBY ORDERED that the OIC's Order to Cease and Desist, No. D07-0351, entered on December 18, 2007, against Steven D. Smith, Design Savers Plan, LLC, Steven D. Smith, Inc., and Steven D. Smith, Inc. dba Design Benefits, is upheld.

This Order is entered pursuant to RCW 34.05, WAC 10-08-210 and RCW 48.04.010.

This Order is entered at Tumwater, Washington, this 23rd day of October, 2009.



PATRICIA D. PETERSEN

Chief Hearing Officer

Presiding Officer