

**NORTH CAROLINA DEPARTMENT OF INSURANCE  
RALEIGH, NORTH CAROLINA**

<b>STATE OF NORTH CAROLINA</b>	)	<b>BEFORE THE COMMISSIONER</b>
<b>COUNTY OF WAKE</b>	)	<b>OF INSURANCE</b>
	)	
<b>IN THE MATTER OF THE LICENSURE</b>	)	
<b>OF ERNEST B. BEALL</b>	)	<b>VOLUNTARY SETTLEMENT</b>
	)	
	)	<b>AGREEMENT</b>
	)	

NOW COME Ernest B. Beall [hereinafter, "Mr. Beall"] and the North Carolina Department of Insurance [hereinafter "the Department"], by and through Senior Deputy Commissioner Angela Ford, and hereby voluntarily and knowingly enter into the following Voluntary Settlement Agreement, [hereinafter "this document"]:

WHEREAS, Ernest B. Beall has resident Life and Health insurance agent and a Medicare Supplement/Long Term Care agent's licenses issued by the Department on February 1, 1988 and November 5, 1991, respectively;

WHEREAS, Mr. Beall has never had his insurance licenses suspended or revoked, and he has never been on probation with the Department;

WHEREAS, the Department has no records of any consumer complaints against Mr. Beall and Mr. Beall has no prior record with the Department;

WHEREAS, Mr. Beall owns a North Carolina corporation named Affinity Group Benefits Association, Inc. ["AGBAI"] which has been in existence since 1978;

WHEREAS, Mr. Beall is the President and registered agent of AGBAI. AGBAI's principal office address is 233 LePhillip Court, NC, Concord, NC 28025;

WHEREAS, Mr. Beall acquired AGBAI from a business acquaintance who had incorporated a number of membership associations for the purpose of marketing insurance and other benefits to members;

WHEREAS, AGBAI was a dormant association with no members when Mr. Beall acquired it. Although Mr. Beall intended to use AGBAI as a vehicle to provide benefits, including insurance, to members, Mr. Beall never enrolled any members;

WHEREAS, Mr. Beall has never solicited, marketed, sold, brokered, negotiated, or serviced any insurance product by or through AGBAI;

WHEREAS, Obed Kirkpatrick is a Tennessee resident and is an acquaintance of Mr. Beall's. On January 22, 2004, the Department entered an order in Docket number 1102 which concluded that Kirkpatrick and other named respondents therein had transacted insurance business in violation of N.C.G.S. §§ 58-28-5 and 58-33-95 and ordered Kirkpatrick and other named respondents to cease and desist transacting insurance business in this State and to pay unpaid claims;

WHEREAS, Bart Posey is a Tennessee resident who operates a business named Smart Data Solutions, Inc. ["SDS"] in Springfield, Tennessee. Mr. Posey is the President of SDS and Richard H. Bachman is the Vice President of SDS. Mr. Bachman holds a nonresident Life and Health insurance agent's license issued by the Department on February 23, 2006;

WHEREAS, Mr. Kirkpatrick is a business associate of Mr. Posey and works in the SDS office in Springfield, Tennessee. Mr. Kirkpatrick's Tennessee insurance agent's license was revoked by the Tennessee Department of Commerce and Insurance on February 15, 2007;

WHEREAS, the National Alliance of Associations, a.k.a. the National Trade Business Alliance Association ["NAA"] is registered as a non-profit New Jersey corporation and is located at 141 Ganttown Road, Turnersville, NJ 08012. The NAA is supposedly a membership association which purportedly provides health insurance, health-related discounts, and accidental death benefits to its "members";

WHEREAS, Professional Benefits Consultants, Inc., a.k.a. PBC Direct [hereinafter, "PBC Direct"], is supposedly an insurance producer also located at 141 Ganttown Road, Turnersville, NJ 08012. PBC Direct and NAA are operated by the same individuals from the same address, and are essentially each other's alter ego;

WHEREAS, the Department entered an order against NAA, PBC Direct, their principals (Thomas Sullivan, James M. Doyle, and Christopher Ashiotes) on January 31, 2008 which found and concluded that the NAA, PBC Direct, their principals, and other named respondents therein had violated N.C.G.S. §§ 58-28-5 and 58-28-10 and ordered that all named respondents in that case cease and desist these violations;

WHEREAS, in 2006, Mr. Kirkpatrick and Mr. Posey initiated discussions with Mr. Beall about purchasing AGBAI. Mr. Beall understood that Mr. Posey wanted an association so that he could provide insurance benefits, including insurance, to his clients in the trucking industry. SDS would market the association benefits for AGBAI;

WHEREAS, in June 2007, Mr. Beall informed Mr. Kirkpatrick and Mr. Posey that he decided not to sell his association. In late July 2007, Mr. Kirkpatrick e-mailed Mr. Beall and Mr. Posey and Mr. Kirkpatrick called Mr. Beall and urged him to allow them to "use" AGBAI

temporarily until they could form a new association of their own. Mr. Posey and Mr. Kirkpatrick told Mr. Beall that they had a large group of individuals who were ready to enroll in an association as of August 1, 2007 and that they would look like idiots and lose the group if they could not use AGBAI;

WHEREAS, Mr. Beall agreed to allow Mr. Kirkpatrick and Mr. Posey to operate their business through AGBAI until they could form a new association. Mr. Kirkpatrick paid Mr. Beall \$5,000.00 up front and promised Mr. Beall that SDS would pay Mr. Beall a monthly administrative fee of \$.50 per member enrolled for the use of AGBAI. Mr. Beall received a total of \$1,523.00 from SDS and Mr. Kirkpatrick for monthly administrative fees for the months of September through December 2007. Mr. Beall also received a check dated April 10, 2008 for \$650.00 from Mr. Kirkpatrick for the January 2008 administrative fee which Mr. Beall did not cash;

WHEREAS, Mr. Beall authorized Mr. Kirkpatrick to be AGBAI's secretary and to be responsible for the day to day operations of the association. Although Mr. Beall received a monthly administrative fee, the Department has no evidence that Mr. Beall was involved in the business activities which Mr. Kirkpatrick, Mr. Posey, and SDS conducted through AGBAI;

WHEREAS, in July 2007, Mr. Bachman and SDS became appointed as agents to represent Transamerica Life Insurance Company ("Transamerica") through its Transamerica Worksite Marketing ["TWM"] division in the marketing and sale of TransChoice, a group voluntary limited-benefit medical indemnity insurance policy issued by Transamerica. Transamerica is a licensed insurance company;

WHEREAS, on September 4, 2007, Mr. Bachman submitted an application for a TransChoice policy to TWM to be issued to AGBAI;

WHEREAS, Mr. Kirkpatrick on behalf of AGBAI and Mr. Bachman on behalf of SDS executed a Premium Collection Agreement which authorized Mr. Bachman and SDS to serve as AGBAI's Premium Collection Administrator ["administrator"]. As administrator, SDS's duties include the handling of all insurance premium billing and collection matters on AGBAI's behalf;

WHEREAS, on or about September 4, 2007, Transamerica issued a TransChoice Plus group policy to AGBAI with an effective date of September 1, 2007. The TransChoice policy was issued in North Carolina and provides limited health insurance benefits rather than comprehensive health insurance;

WHEREAS, the Department alleges that AGBAI entered into an affiliation agreement with the NAA which purportedly authorizes AGBAI to provide NAA members the same insurance benefits that AGBAI offers its members and requires the NAA to collect AGBAI affiliated member dues from NAA members and remit these dues to AGBAI;

WHEREAS, the Department alleges that Transamerica was unaware of the affiliation agreement and did not approve the NAA to market the TransChoice product as a sub-association of AGBAI. The Department further alleges that the NAA, PBC Direct, SDS, their principals, and other marketing companies under contract with these companies marketed and sold the TransChoice product to the general public via illegal and unauthorized fax blast solicitations. The NAA, PBC Direct, SDS, and their principals also prepared to transfer or move existing NAA enrollees into the TransChoice policy issued to AGBAI;

WHEREAS, Mr. Kirkpatrick informed the Department that accident and medical benefits are provided to AGBAI members through a policy or policies issued to AGBAI by the United States Fire Insurance Company ["US Fire"]. However, US Fire has never issued any policies to AGBAI and has never been affiliated with AGBAI in any way;

WHEREAS, the Department alleges that the NAA, PBC Direct, SDS, their principals, and other marketing companies under contract with these companies misrepresented to enrollees that the insurance plans provided comprehensive medical coverage;

WHEREAS, the Department alleges that many of the individuals who SDS enrolled in the Transamerica policy had enrolled in an insurance plan marketed by the NAA, PBC Direct, or other marketing companies under contract with or connected with these entities and had not heard of Transamerica, TWM, or SDS until they received a fulfillment package from Transamerica;

WHEREAS, the Department alleges that Transamerica requested SDS, NAA, PBC Direct, and their principals to cease and desist marketing the TransChoice policy to NAA members in late September 2007 and that SDS, NAA, PBC Direct, and their principals ignored this request;

WHEREAS, the Department alleges that Transamerica terminated Mr. Bachman and SDS's appointment in February 2008 and ceased enrolling new AGBAI enrollees in the TransChoice plan after determining that SDS, NAA, PBC Direct, and their principals ignored their request to cease and desist marketing the TransChoice policy to NAA members and determining that misrepresentations about the coverage continued to be made by SDS, NAA, PBC Direct, their principals, and marketing companies under contract or connected with these entities;

WHEREAS, the Department alleges that at least 5000 individuals from 49 states, including North Carolina, were enrolled in the TransChoice policy which was issued in this State to AGBAI;

WHEREAS, the Department alleges that 1,055 AGBAI enrollees which Transamerica rejected in February 2008 have since been enrolled in a bogus insurance policy purportedly issued to AGBAI by Beema Insurance Company ["Beema"]. Beema is an unauthorized, alien insurance company located in Pakistan. SDS is Beema's third party administrator;

WHEREAS, the Department alleges that SDS, NAA, PBC Direct, AGBAI, their principals except Mr. Beall, and marketing companies under contract with or connected with these entities are engaging in unfair and deceptive acts and practices in the business of insurance in violation of N.C.G.S. § 58-63-10 and are transacting insurance business in violation of N.C.G.S. §§ 58-28-5 and 58-28-10 and other provisions of the unauthorized insurance laws;

WHEREAS, the Department alleges that the activities of Mr. Kirkpatrick, the NAA, PBC Direct, and their principals in relation to AGBAI are in violation of the respective cease and desist orders which the Department entered against them;

WHEREAS, the Department contacted Mr. Kirkpatrick by telephone on February 19, 2008 to inquire about insurance products offered to members of AGBAI. The Department followed up with a letter to Mr. Kirkpatrick asking for information and documents;

WHEREAS, Mr. Kirkpatrick e-mailed Mr. Beall on February 20, 2008 and sent documents referring to AGBAI which Mr. Kirkpatrick had drafted. Mr. Kirkpatrick told Mr. Beall to print the documents and sign as President of AGBAI. Mr. Kirkpatrick told Mr. Beall to backdate the documents to August 10, 2007 and August 24, 2007;

WHEREAS, one of the documents Mr. Kirkpatrick e-mailed to Mr. Beall on February 20, 2008 was a Marketing Agreement with a signature line for Mr. Beall as President of AGBAI. Mr. Beall refused Mr. Kirkpatrick's request to sign the Marketing Agreement;

WHEREAS, the Department sent Mr. Beall a letter on April 18, 2008 which outlined the Department's allegations against him and against Mr. Kirkpatrick, SDS, the NAA, PBC Direct, and their principals and invited him to attend an informal conference with the Department;

WHEREAS, the Department also requested Mr. Beall to produce documents and other information regarding AGBAI's insurance activities, including the identity of all individuals enrolled in AGBAI's insurance plans prior to an informal conference with the Department;

WHEREAS, Mr. Beall alleges that he was unable to produce or provide many of the documents and information which the Department requested because the documents and information are in the possession of, or within the unique knowledge of, Mr. Kirkpatrick, SDS, or their principals;

WHEREAS, Mr. Beall sent a copy of the letter the Department sent him on April 18, 2008 and faxed a letter to Mr. Kirkpatrick on April 20, 2008, which stated:

"You and all of your associates are to immediately cease and desist using, in any means whatsoever, the Affinity Group Benefits Association, Inc., or AGBAI. This is a notice of cessation of any and all business relationships we have had to date. ... I am requesting your undivided attention to helping me with information (the Department) has requested in this letter since I am totally void of knowledge pertaining to most of the subject matter of which (the Department) is inquiring."

WHEREAS, Mr. Beall received documents from Mr. Kirkpatrick on April 23, 2008;

WHEREAS, one of the documents received by Mr. Beall on April 23, 2008 was a Marketing Agreement between AGBAI and SDS. The Marketing Agreement Mr. Kirkpatrick sent was signed by Mr. Kirkpatrick and Mr. Posey and dated August 25, 2007; it provided SDS is responsible for "market[ing] the day to day operations of the AGBAI. This include[s] developing market plans to procure new members, hiring marketing organizations to approach new potential members and administration once the new member becomes an active member."

WHEREAS, SDS is also responsible under the Marketing Agreement to: (a) negotiate for services and products on AGBAI's behalf, (b) make health insurance benefits available to AGBAI members, (c) bill and collect monthly dues and insurance premiums for all members, (d) handle and send fulfillment packages (including insurance cards and explanations of benefits) to new members, and (e) provide live customer support operators and licensed representatives at its offices in Tennessee to answer any members who have questions about insurance benefits and to enroll new members in AGBAI's insurance plans;

WHEREAS, Mr. Beall alleges he had not been provided the signed Marketing Agreement between AGBAI and SDS prior to receiving the documents from Mr. Kirkpatrick on April 23, 2008;

WHEREAS, in response to the requests set forth in the Department's April 18, 2008 letter, Mr. Beall produced the documents and information which he had in his possession, including all the documents sent to him by Mr. Kirkpatrick on April 23, 2008;

WHEREAS, Mr. Beall did not provide the Department with all the documents and information which it requested, including the list of the individuals enrolled in AGBAI's insurance plans because he alleges he has never had such information or documents;

WHEREAS, Mr. Beall attended an informal conference to discuss the allegations against him on May 8, 2008. Mr. Beall alleges that he was never involved in, and had no knowledge of, the business which Mr. Kirkpatrick, Mr. Posey, and SDS conducted through AGBAI;

WHEREAS, Mr. Beall further alleges that he had no specific knowledge of: (a) the marketing and premium collection agreements between AGBAI and SDS, (b) any affiliation agreement between AGBAI and the NAA, and (c) the TransChoice insurance policy which Transamerica issued to AGBAI;

WHEREAS, the Department alleges Mr. Beall failed to exercise due diligence when he allowed Mr. Posey and Mr. Kirkpatrick to use AGBAI to conduct their insurance business;

WHEREAS, the Department alleges Mr. Beall failed to exercise proper oversight and

control of AGBAI while Mr. Posey and Mr. Kirkpatrick used AGBAI to conduct their insurance business;

WHEREAS, the Department alleges that Mr. Beall demonstrated incompetence in the conduct of business within the meaning of N.C.G.S. § 58-33-46(a)(8) by allowing Mr. Posey and Mr. Kirkpatrick to use AGBAI to conduct their insurance business;

WHEREAS, the Department alleges that Mr. Beall is subject to disciplinary action pursuant to N.C.G.S. § 58-33-46(a)(8) for demonstrating incompetence in the conduct of business;

WHEREAS, Mr. Beall alleges he was not incompetent in the conduct of business within the meaning of N.C.G.S. § 58-33-46(a)(8);

WHEREAS, Mr. Beall authorized an attorney to send a second cease and desist letter dated May 9, 2009 to Mr. Kirkpatrick, Mr. Posey and Mr. Bachman ordering them to:

“Immediately take down the website and stop any and all activities that you initiated, participated in, or are involved with (individually or with any associates) which in any way refer to Affinity Group Benefits Association, Inc., or AGBAI. Neither of you nor any other individual or entity is authorized or entitled to represent that you have any association or affiliation with Affinity Group Benefits, Inc., or AGBAI. Further, neither of you nor any other individual or entity is authorized to sign any document or contract which purports to involve Affinity Group Benefits Association, Inc., or AGBAI.”

WHEREAS, Mr. Beall agrees that he will not authorize or allow any new enrollments into AGBAI and that AGBAI shall only remain in existence so long as necessary to continue the insurance benefits provided to members under the group policy issued by Transamerica; and

WHEREAS, Mr. Beall agrees that he will not authorize or allow any insurance or benefits to be offered or provided to existing AGBAI members other than the insurance benefits already being provided to members enrolled in the Transamerica policy;

WHEREAS, the parties to this document have reached a mutually agreeable resolution of this matter as set out in this Voluntary Settlement Agreement.

NOW, THEREFORE, in exchange for the consideration of the promises and agreements set out herein, the Department and Mr. Beall hereby agree to the following:

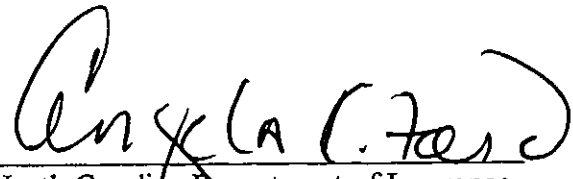
1. Mr. Beall will not authorize or allow any new enrollments into AGBAI, and AGBAI shall only remain in existence so long as necessary to continue the insurance benefits provided to members under the group policy issued by Transamerica.

2. Mr. Beall will not authorize or allow the offer of, nor will he provide, any insurance or other benefits to existing AGBAI members other than the insurance benefits already being provided to members enrolled in the Transamerica policy;
3. Mr. Beall agrees to comply with all statutory and regulatory requirements applicable to insurance agents in this State.
4. The Department will not seek to place Mr. Beall on probation or suspend, revoke, or fail to renew his insurance licenses because of his ownership of, or involvement with, AGBAI for any act or omission which has occurred up to the date of the entry of this Agreement.
5. This Agreement does not in any way affect the Department's disciplinary power in any future actions, cases or complaints involving Mr. Beall.
6. The parties to this document agree that the Superior Court of Wake County shall be the venue for any actions seeking to enforce this document.
7. If, for any reason, any part or provision of this document is found to be void or unenforceable, the other parts and provisions shall remain in full force and effect.
8. The parties to this document have read and understand this document and agree to abide by the terms and conditions contained herein.
9. This Agreement, when finalized, will be a public record and is not confidential. Any and all licenses issued by the Department to the licensee shall reflect that Regulatory Action has been taken against the licensee following the execution of this Agreement. The Department is free to disclose the contents of this Agreement with third parties upon request or pursuant to any law or policy providing for such disclosure. The Department routinely provides copies of voluntary settlement agreements to all companies that have appointed the licensee.
  10. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner. Mr. Beall understands that N.C. Gen. Stat. § 58-33-46(a)(2) provides that Mr. Beall's licenses may be suspended or revoked for violating an Order of the Commissioner.
11. Mr. Beall voluntarily waives any right to notice of an administrative hearing and any right to a hearing on the violation and disciplinary action referenced in this Settlement Agreement. Mr. Beall also waives any right to appeal and agrees not to challenge the validity of this Settlement Agreement in any way.

12. The promises, agreements, representations and consideration contained herein are not mere recitals but are contractual in nature.
13. This written document contains the entire agreement between the Parties. There are no other oral or written agreements of any kind that alter or add to this agreement.

This the 10<sup>th</sup> day of June, 2008.

  
Ernest B. Beall

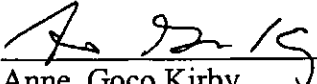
  
North Carolina Department of Insurance  
By Angela K. Eord  
Senior Deputy Commissioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing VOLUNTARY SETTLEMENT AGREEMENT was served on Ernest B. Beall by US mail, first class postage prepaid, addressed as follows:

Sanford Thompson, p.l.l.c.  
Attorney for Ernest B. Beall  
4800 Six Forks Road  
Suite 100  
Raleigh, NC 27609

This the 17 day of June 2008.

  
\_\_\_\_\_  
Anne Goco Kirby  
Assistant Attorney General  
N. C. Department of Justice  
9001 Mail Service Center  
Raleigh, N.C. 27699-9001