

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF SECURITIES
HELENA, MONTANA

IN THE MATTER OF:) CASE NO. 03-31-05-142 I
)
WADDELL & REED, INC.,)
6300 LAMAR AVENUE)
OVERLAND PARK, KS, 66202,)
A Broker-Dealer firm registered in)
Montana and a federally covered Investment)
Advisor firm notice filed in Montana;)
ROBERT HECHLER, Individually and in his)
capacity as President, CEO and CFO for)
WADDELL & REED; ROBERT WILLIAMS,)
individually and in his capacity as)
Executive Vice President and National Sales)
Director for WADDELL & REED; and)
)
WILLIAM JELINEK, individually and in his)
capacity as a financial advisor, MICHAEL)
COSTLE, individually and in his capacity as a)
financial advisor, CHARLES GRIFFITH,)
individually and in his capacity as a financial)
advisor, MICHAEL ERICKSON, individually and)
in his capacity as a financial advisor, PATRICIA)
MATTHEW, individually and in her capacity as a)
financial advisor, KEVIN FREDENBERG,)
individually and in his capacity as a financial)
advisor, BRYAN THIES, individually and in his)
capacity as a financial advisor, WILLIAM)
SOLOMON, individually and in his capacity as a)
financial advisor, KRISTINE VOORHEES,)
individually and in her capacity as a financial)
advisor, JUDY RIESENBERG, individually and)
in her capacity as a financial advisor,)

CONSENT AGREEMENT

CHRISTOPHER FABER, individually and in his capacity as a financial advisor, WILLARD FLADAGER, individually and in his capacity as a financial advisor, THOMAS TILLEMANN, individually and in his capacity as a financial advisor, GREGORY SCHMAUTZ, individually and in his capacity as a financial advisor, VANCE BENNETT, individually and in his capacity as a financial advisor, ROBERT A. SMITH, individually and in his capacity as a financial advisor, THOMAS ADOLPH, individually and in his capacity as a financial advisor, BRIAN LETHERT, individually and in his capacity as a financial advisor, ALBERT MARTINEZ, individually and in his capacity as a financial advisor, DANNY BERG, individually and in his capacity as a financial advisor, EILEEN ASHWAL, individually and in her capacity as a financial advisor, JASON RENSKERS, individually and in his capacity as a financial advisor, MICHAEL BENTZ, individually and in his capacity as a financial advisor, THOMAS AGNEW, individually and in his capacity as a financial advisor, JAYLA FROST, individually and in her capacity as a financial advisor, GUS SHARP, individually and in his capacity as a financial advisor, JUDITH SEAMAN, individually and in her capacity as a financial advisor, and R. RAMONA SMITH, individually and in her capacity as a financial advisor,

Respondents.

The Montana Commissioner of Securities and Insurance (Commissioner) pursuant to the authority of the Securities Act of Montana, §30-10-101, et seq., MCA (2003) and the Montana Insurance Code, §33-1-101, et. seq., MCA (2003), hereby states the following:

RECITALS

WHEREAS, the Securities and Insurance Departments (Departments) issued a Notice of Proposed Agency Disciplinary Action and Opportunity for Hearing (Action) on or about April 27, 2005, alleging violations of the Montana Securities Act and the Montana Insurance Code;

WHEREAS, the Action alleged that while W & R Insurance Agency of Montana, Inc (“W&R”) was properly licensed to conduct business in Great Falls, Montana, W&R was not properly licensed in other Montana locations and that such failure resulted in certain insurance producer license violations pursuant to the Montana Insurance Code;

WHEREAS, the Action also alleged that W&R violated other specific provisions of the Montana Insurance Code, including §§33-18-202 and 204, MCA;

WHEREAS, the Action also alleged that Waddell & Reed, Inc. (“WRI”) violated certain specific provisions of the Montana Securities Act that were not essentially similar to allegations found by states involved in a multi-state investigation of the Respondent with regard to variable annuity sales practices;

WHEREAS, WRI represent the interests of all other named Respondents in this Action with the exception of William Jelinek; and

WHEREAS, the Departments, WRI and W&R agree that the parties’ best interests would be served by dismissing the Action with respect to WRI and the other named Respondents, with the exception of William Jelinek (Jelinek), and entering into the following specific agreement and undertakings set forth below.

NOW THEREFORE, in consideration of the mutual undertakings established herein, the Departments, WRI and W&R and the other named Respondents other than Jelinek, as the parties hereto, enter into the following:

AGREEMENT

A. Without admitting the allegations and conclusions contained within the four corners of the Action, WRI, W&R and the other named Respondents except Jelinek, hereby stipulate and consent to the following:

1. With respect to all claims by the Departments that are essentially similar to the multi-state investigations' allegations, Respondents WRI, W&R and the Department have entered into a separate agreement attached;

2. With respect to the Insurance Department's claims that are not essentially similar to the multi-state investigations' allegations, Respondent W&R shall pay an amount of \$25,000 to the Insurance Department.

3. In exchange for the dismissal of the individual Respondents from the action, WRI shall pay \$25,000 to the Investor Protection Trust ("IPT"), a non-profit organization domiciled in the State of Wisconsin and administered by the Trustees of the IPT. This money shall be paid to the IPT for the benefit of Montana consumers.

4. The Respondents who are parties to this agreement shall abide by the provisions of the Montana Securities Act and the Montana Insurance Code and the rules and regulations promulgated in support of those laws.

5. Respondents WRI and W&R shall cooperate with the Departments in resolving informally any other matters currently existing with the Departments and the Departments shall not initiate any actions or proceedings with respect thereto.

B. The Commissioner agrees and stipulates to the following:

1. Upon signing this notarized consent agreement, the Commissioner shall file with the hearing examiner the Consent Agreement in regards to all matters now pending before him and seek a dismissal of this case, with prejudice, with respect to WRI and the other named Respondents except Jelinek.

2. The Commissioner shall provide any and all assistance required to expunge the regulatory records of the named Respondents other than Jelinek and WRI as those records reflect the allegations of the Action that is the basis for this Agreement.

C. The parties agree and stipulate as follows:

1. Any complaints brought to the Commissioner after the signing of this Agreement that contain allegations of illegal acts by WRI, W&R or any of the named Respondents, other than Jelinek, of a similar or the same nature as the allegations set forth in the Action that occurred prior to the consummation of this Agreement will not result in further administrative, civil or criminal action by the Commissioner.

2. If payment is not made by WRI as required by this Order, the Montana Departments may vacate this Order, at their sole discretion, upon ten days notice to WRI and without opportunity for administrative hearing and WRI agrees that any statute of limitations applicable to the subject of the investigation and any claims arising from or relating thereto are tolled from and after the date of this Order until such date that the Montana Departments vacate this Order.

3. This Consent Agreement constitutes the entire agreement between the parties with respect to the matters covered hereby, there being no other promises or agreements, either express or implied. Pursuant to statutory authority, the Commissioner hereby agrees that the Commissioner will not initiate any civil, administrative, or criminal action against WRI, W&R or the other named Respondents other than Jelinek regarding the allegations contained in the Action.

4. The Commissioner will not refer the allegations or evidence underlying the allegations for criminal prosecution to any other agency. WRI, W&R and the other named

Respondents except Jelinek fully and forever release and discharge the Office of the State Auditor, the elected State Auditor and all State Auditor employees from any and all actions, claims, causes of action, demands, or expenses for damages or injuries that may arise from the allegations underlying this Agreement, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the Action.

5. The Commissioner shall provide to WRI a copy of any press release related to this matter at least one (1) business day in advance of its release and provide WRI with an opportunity to comment prior to distribution to the media.

DATED this 25th day of August 2005.

MONTANA SECURITIES DEPARTMENT

By: Karen C Powell
Karen Powell
Deputy Securities Commissioner

SUBSCRIBED AND SWORN to before me this 25th day of August 2005.

Kristi K Meier / Kristi K Meier
Notary Public for the State of Montana
Residing at Helena, Montana
My commission expires 2/12/2007.

DATED this 26th day of August 2005.

MONTANA INSURANCE DEPARTMENT

By: Alicia Pichette
Alicia Pichette
Deputy Insurance Commissioner

SUBSCRIBED AND SWORN to before me this 26th day of August 2005.

Shirley L. Vaughn
Notary Public for the State of Montana
Residing at Helena
My commission expires July 13, 2006

DATED this 26th day of August 2005.

Waddell & Reed, Inc.

By: _____

SUBSCRIBED AND SWORN to before me this _____ day of _____ 2004.

Notary Public for the State of Montana
Residing at _____, Montana
My commission expires _____.

SUBSCRIBED AND SWORN to before me this _____ day of _____ 2005.

Notary Public for the State of Montana
Residing at _____
My commission expires _____.

DATED this 25th day of August 2005.

Waddell & Reed, Inc.
By: [Signature]

SUBSCRIBED AND SWORN to before me this 25th day of August 2004.

[Signature]
Notary Public for the State of ~~Montana~~ Kansas
Residing at Johnson County, ~~Montana~~ Kansas
My commission expires June 12, 2009.

VICKI K. McCUNE
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp: June 12, 2009

DATED this ____ day of _____, 2005.

W & R Insurance Agency, Inc.

By: _____

SUBSCRIBED AND SWORN to before me this ____ day of _____,
2005.

Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires _____.