

Mike Winsor
State Auditor's Office
840 Helena Avenue
Helena, Montana 59601
(406) 444-2040

Attorney for the Department of Insurance

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA**

IN THE MATTER OF INDEPENDENT)	CAUSE NO. INS-2008-3
ELECTRICAL CONTRACTORS; IEC POWER)	
PLUS PLAN; IEC GROUP BENEFIT TRUST;)	NOTICE OF PROPOSED
DAYSPRING MANAGEMENT LLC;)	AGENCY ACTION AND
MEDICAL BENEFITS ADMINISTRATORS)	OPPORTUNITY FOR
OF MARYLAND; CLIENT FIRST)	HEARING
BROKERAGE SERVICES; RJW BENEFIT)	
SERVICES; R.J. WILSON AND ASSOCIATES)	
LTD.; and)	
)	
RONALD JACK WILSON; ERIN BENNETT;)	
RODGER BAYNE; LEONARD KOLOMS; R.)	
JEFFREY WILSON; DAWN MORGAN; JIM)	
EHRICH, individually, and in their capacities as)	
officers or directors of the forgoing entities,)	
)	
)	
Respondents.)	

TO: RESPONDENTS

PLEASE TAKE NOTICE:

Staff of the Insurance Department of the Office of the Montana Commissioner of Securities and Insurance, State Auditor's Office (the "Department"), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing that the Commissioner of Insurance ("Commissioner") take disciplinary action against the Respondents for violations of the Montana Insurance Code. Specifically, staff is proposing, pursuant to Mont. Code Ann. § 33-1-317, that the Commissioner impose a fine not to exceed \$25,000.00 for each

violation of the Montana Insurance Code in addition to all other penalties imposed by the laws of Montana.

Additionally, the Department requests that the Cease and Desist Order be made permanent and that Respondents be required to make full restitution to Montana citizens for all financial losses sustained as a result of fraud together with interest at a rate of 10% per annum from the date of the fraud pursuant to Mont. Code Ann. § 33-1-1302.

The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-102, 33-1-311, 33-1-314, 33-1-317, 33-1-318, 33-1-1211, 33-1-1302 and 33-2-104.

ALLEGATIONS OF FACT

1. On March 4, 2008, the Department of Insurance (“Department”) Examinations Bureau received an inquiry from K.J. regarding a group health insurance plan called the IEC Power Plus Health Plan that he purchased for his employees at Sun Electric Contractors in Whitefish, Montana.

2. By soliciting and selling the IEC Power Plus Health Plan in Montana, the Respondents were soliciting and selling disability (“health”) insurance in Montana.

3. Additionally, the Department also determined, from information supplied by R.J. Wilson and Associates, that the Respondents solicited and sold the IEC Power Plus Health plan to Elliott Electric Inc. in Columbia Falls, Montana; Keimer Electric Inc. in Bozeman, Montana; Aero Electric in Whitefish, Montana; Mountain Electric of Montana in Billings, Montana; and DJ’s Electric Inc. in Hamilton, Montana.

4. The IEC Power Plus health plan was marketed through the Independent Electrical Contractors (“IEC”) website, which indicated that IEC was an association for electrical contractors and offered IEC members access to a health plan and other benefits.

5. The website claimed that the IEC Power Plus plan, also known as the IEC Group Benefit Trust, qualified as a fully insured benefit plan under federal ERISA standards and was provided to employees and dependents of small employers members. The IEC Power Plus plan/IEC Benefit Trust was not approved or authorized in any capacity by the Department.

6. According to the website, Dayspring Management LLC was the plan administrator for IEC Power Plus, Medical Benefits Administrators of Maryland (“MBA”) was the claims administrator, RJW Benefit Services was an affiliate of MBA, and R.J. Wilson and Associates “assisted the IEC member employers in the implementation, design, presentation, and enrollment of employees and dependents under national association benefit programs.”

7. IEC, Dayspring Management LLC, MBA, RJW Benefit Services and R.J. Wilson and Associates are not licensed in any capacity by the Department.

8. According to the IEC Power Plus plan informational materials, which were supplied to R.J. by the plan, Client First Brokerage Services, Inc. (“Client First”) was responsible for enrollment services, marketing, and sales support. The materials also indicate that Client First would review and underwrite IEC Power Plus enrollment applications. Client First is not licensed in any capacity by the Department.

9. According to the IEC website, the IEC Power Plus product provided major medical, prescription drug, dental, vision, and short-term disability coverage benefits but was not insurance, and was not subject to state mandates and regulation. The website stated that the insurance arrangement benefits were guaranteed by underwriters at Lloyd’s of London (“Lloyd’s”) and were provided through the reinsurance intermediary R.J. Wilson & Associates, Ltd. Lloyd’s is not a licensed carrier in Montana. IEC and IEC Power Plus/IEC group benefit

trust do not have a certificate of authority to transact insurance as a self-funded multiple employer welfare arrangement.

10. The coverage supplied by Lloyd's is medical stop loss insurance.

11. The coverage supplied by Lloyd's is not a recognized line of insurance to be sold as surplus lines in Montana.

12. In a response to a Department inquiry, Ronald Jack Wilson claimed that the Multiple Employer Welfare Arrangement was fully insured.

13. At times material hereto, Ronald Jack Wilson ("Wilson") was listed as the Chairman and CEO of MBA on the MBA website. Wilson is also the president of R.J. Wilson & Associates, Ltd. and RJW Benefit Services. Wilson was not licensed in any capacity by the Department.

14. At times material hereto, the president of R.J. Wilson and Associates, Ltd. was Erin Bennett who was not licensed in any capacity by the Department.

15. At all times material hereto, Rodger Bayne ("Bayne"), Jim Ehrich ("Ehrich"), and Dawn Morgan ("Morgan") were corporate officers of Client First. Bayne, Ehrich, and Morgan did not have producer licenses in Montana.

16. At all times material hereto, Leonard Koloms was the owner and managing member of Dayspring Management LLC. Leonard Koloms was not licensed in any capacity by the Department.

17. At all times material hereto, R. Jeffrey Wilson was the executive vice president of Advanced Benefit Services and RJ Wilson & Associates. R. Jeffrey Wilson is not licensed in any capacity by the Department.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance. Mont. Code Ann. § 2-15-1903.
2. The Department is under the control and supervision of the Commissioner. Mont. Code Ann. §§ 2-15-1902 and 33-1-301.
3. The Commissioner and Department have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.
4. The Commissioner shall administer the Department to protect insurance consumers. Mont. Code Ann. § 33-1-311(3).
5. A person or entity may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the Montana Insurance Code. Mont. Code Ann. § 33-1-102(1)
6. Insurance is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies. Mont. Code Ann. § 33-1-201(5).
7. The IEC Power Plus/IEC Benefit Trust product sold by Respondents constitutes insurance because the product purports to indemnify IEC member employees or pay member employees a specified or determinable amount or benefit upon determinable contingencies.
8. Disability (“health”) insurance is insurance of human beings against bodily injury, disablement, or death by accident or accidental means or the medical expense or indemnity involved; or against disablement or medical expense or indemnity resulting from sickness. Mont. Code Ann. § 33-1-207.

9. The stop-loss insurance issued to the plan at issue by Lloyd's is not a form of insurance that can be sold as a surplus line coverage in Montana or as health insurance. Mont. Code Ann. § 33-2-302(1)(b).

10. No person or entity shall act as an insurer and/or transact insurance in Montana except as authorized by a certificate of authority issued by the Commissioner. Mont. Code Ann. § 33-2-101.

11. "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, or any other legal entity. Mont. Code Ann. § 33-1-202. Each of the Respondents are persons as defined by Mont. Code Ann § 33-1-202.

12. An insurer includes every person or entity engaged as an indemnitor, surety, or contractor in the business of entering into contracts of insurance. Mont. Code Ann. § 33-1-201(6). IEC, and IEC Power Plus/IEC Benefit Trust acted as insurers because they received consideration for, and promised to pay, members' medical expenses in the event of certain contingencies.

13. "Transact," with respect to insurance, includes any of the following: (a) solicitation and inducement; (b) preliminary negotiations; (c) effectuation of a contract of insurance; or (d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it. Mont. Code Ann. § 33-1-201.

14. The Respondents transacted insurance in Montana by soliciting sales through the IEC website, negotiating sales of the IEC Power Plus/IEC Group Benefit Trust product, accepting consideration in exchange for the IEC Power Plus/IEC Group Benefit Trust product, sending insurance identification cards and membership materials to purchasers, and administering claims.

15. A self-funded multiple employer welfare arrangement is defined, in Montana, as a multiple employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies with a certificate of authority under Mont. Code Ann., Title 33. Mont. Code Ann. § 33-35-103.

16. The arrangement is a self-funded multiple employer welfare arrangement because coverage under the certificate of insurance is conditional, Lloyd's is not licensed under Title 33, but is merely an unauthorized insurer pursuant to Mont Code Ann. § 33-2-301(1)(g), and the arrangement does not provide for payment of benefits solely through a policy or policies of health insurance. The Lloyd's policy is, at best, stop loss insurance. It is not health insurance.

17. A person may not establish or maintain a self-funded multiple employer welfare arrangement in Montana unless the arrangement first obtains a certificate of authority from the Commissioner. Mont. Code Ann § 33-35-201(1).

18. A self-funded multiple employer welfare arrangement is considered to be established or maintained in Montana if one or more of the employer members participating in the arrangement is either domiciled in or maintains its principal place of business in Montana. Mont. Code Ann. § 33-35-201(2).

19. Because six of the employer members participating in the arrangement are domiciled and maintain their principal places of businesses in Montana, this arrangement is established or maintained in Montana.

20. Because the self-funded multiple employer welfare arrangement was established and maintained in Montana without a certificate of authority, the Respondents violated Mont. Code

Ann. § 33-2-101. Mont. Code Ann. § 33-35-303. The self-funded multiple employer welfare arrangement is not licensed as a multiple employer welfare arrangement in any other state.

21. No person may directly or indirectly act as an insurance producer for, or otherwise represent or aid on behalf of another, any insurer not authorized to transact insurance in this state in the solicitation, negotiation, or effectuation of insurance contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or any other transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. Mont. Code Ann. § 33-2-104.

22. By representing or aiding an unauthorized insurer, IEC, Dayspring Management LLC, Medical Benefits Administrators of Maryland, Client First Brokerage Services, RJW Benefit Services, R.J. Wilson and Associates Ltd., and their officers, directors or members have committed multiple violations of Mont. Code Ann. § 33-2-104.

23. A person commits the act of insurance fraud, when in the course of offering or selling insurance, a medical discount card, or a pharmacy discount card, the person misrepresents a material fact known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment. Mont. Code Ann. § 33-1-1302.

24. Respondents committed multiple violations of Mont. Code Ann. § 33-1-1302 by representing that the offered products were being legally offered under the laws of the state of Montana or were exempt from those laws. Respondents made these representations knowing that they were untrue or with reckless indifference as to the truth of the representations with the intention of causing consumers to rely on the misrepresentation to the consumer's detriment.

25. A person may not sell, solicit, or negotiate insurance or act as an insurance producer in Montana unless licensed as an insurance producer under Mont. Code Ann. Title 33, Chapter 17. Mont. Code Ann. § 33-17-201.

26. A person may not act as or represent to the public that the person is an administrator in this state unless the person holds a certificate of registration as an administrator. Mont. Code Ann. § 33-17-603.

27. R. J. Wilson and Associates, Ltd, Client First Brokerage Services Inc, their officers, directors, and agents committed multiple violations of Mont. Code Ann. 33-17-201, by selling, soliciting, and negotiating insurance and acting as insurance producers in Montana.

28. MBA violated Mont. Code Ann. § 33-17-603 by failing to obtain a certificate of registration before acting as a third-party administrator.

29. For failing to obtain a certificate of registration as administrators from the Commissioner, MBA, R. J. Wilson & Associates, Ltd., and RJW Benefit Services violated Mont. Code Ann. § 33-17-603.

RELIEF REQUESTED

1. For violating provisions of the Montana Insurance Code, staff of the Department seeks to impose an administrative fine against each Respondent not to exceed \$25,000.00 for each of the violations of the Montana Insurance Code in addition to all other penalties imposed by the laws of Montana. Mont. Code Ann. § 33-1-317.

2. The Department requests that the Cease and Desist Order be made permanent and that all Respondents, jointly and severally, be required to make full restitution to Montana citizens who purchased the IEC Power Plus/IEC Benefit Trust product for all financial losses sustained as

a result of insurance fraud together with interest at a rate of 10% per annum from the date of the fraud pursuant to Mont. Code Ann. § 33-1-1302.

STATEMENT OF RIGHTS

You are entitled to a hearing and to respond to this Notice of Proposed Agency Action and to present evidence and arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.*

You have a right to be represented by an attorney at any and all stages of this proceeding. If you wish to contest the allegations herein, you must make a written request for a hearing within 15 days of receipt of this notice to Michael Winsor, Attorney for the Department of Insurance, State Auditor's Office, 840 Helena Ave., Helena, MT 59601. The hearing shall then be held within 45 days of the Commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties. While so advising Mr. Winsor, your written notice must clearly indicate whether you request a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

Should you request a hearing, you have the right to be accompanied, represented and advised by an attorney. If the attorney you choose has not been admitted to the practice of law in the state of Montana, she or he must comply with the Montana State Bar requirements for appearing *pro hac vice* and *Application of American Smelting and Refining, Co.*, 164 Mont. 139,

520 P.2d 103 (1973) and *Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006).

CONTACT WITH THE COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Michael Winsor, Attorney for the Department of Insurance, State Auditor's Office, 840 Helena Ave, Helena, MT, 59601, (406) 444-2040. If you are represented by an attorney, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give written notice of your demand for a formal hearing or for informal procedure within 15 days will result in the entry of a default order imposing any sanctions available under Montana law without any additional notice to you pursuant to Mont. Admin. R. 6.6.101 and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 24 day of February 2010.


Mike Winsor
Attorney for the Department of Insurance

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 24 day of FEBRUARY 2010, a true and correct copy of the foregoing Notice of Agency Action and Opportunity for Hearing was served on the following by certified mail with postage prepaid and return receipt requested:

Ronald Jack Wilson
RJ Wilson & Associates Ltd.
Medical Benefits Administrators of MD,
Inc.
1630 Robin Circle
Forest Hill MD 21050

Vince Kensil
Independent Electrical Contractor's Health
and Welfare Benefits Trust
1630 Robin Circle
Forest Hill MD 21050

Erin Bennett
RJ Wilson & Associates Ltd.
1630 Robin Circle
Forest Hill MD 21050

Dawn Morgan
Client First Brokerage Services, Inc.
303 W. Allegheny Avenue
Towson MD 21204

Jim Ehrich
Client First Brokerage Services, Inc.
303 W. Allegheny Avenue
Towson MD 21204

Rodger Bayne
Client First Brokerage Services, Inc.
303 W. Allegheny Avenue
Towson MD 21204

Leonard Koloms
Dayspring Management, LLC
1630 Robin Circle
Forest Hill MD 21020

R. Jeffrey Wilson
Advanced Benefit Services
RJ Wilson & Associates Ltd.
1630 Robin Circle
Forest Hill MD 21050



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