

MAY 04 2010

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Attorney for Securities and Insurance Departments

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

IN THE MATTER OF:)	CASE NO. INS-2009-80
)	
INTERNATIONAL ASSOCIATION OF)	NOTICE OF PROPOSED AGENCY
BENEFITS,)	DISCIPLINARY ACTION
701 Highlander Boulevard, Suite 400)	AND OPPORTUNITY FOR HEARING
Arlington, TX 76015)	
in its capacity as an unlicensed producer)	
and TPA;)	
)	
FAIRMONT PREMIER INSURANCE CO.)	
5 Christopher Way)	
Eatontown, NJ 07724)	
in its capacity as an authorized insurer; and)	
)	
UNITED STATES FIRE INSURANCE)	
COMPANY)	
305 Madison Avenue)	
Morristown, NJ 07962)	
in its capacity as an authorized insurer,)	
)	
Respondents.)	

Staff of the Insurance Department (Department) of the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), pursuant to the authority of the Insurance Code of Montana, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing to the Commissioner that she take specific action against International Association of Benefits (IAB), with a principal place of business located at 701 Highlander Boulevard, Suite 400, Arlington, TX 76015,

Fairmont Premier Insurance Company (Fairmont), with a principal place of business at 5 Christopher Way, Eatontown, NJ 07724, and United States Fire Insurance Company (US Fire), with a principal place of business of 305 Madison Avenue, Morristown, NJ 07962, identified above, for violations of the Montana Insurance Code (Insurance Code). The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-102, 33-1-301, 33-1-311, 33-1-317, 33-1-318, 33-1-501, 33-15-102, 33-15-415, 33-17-102, 33-17-201, 33-17-602, 33-17-603, 33-18-202, 33-38-104 and 33-38-108.

In particular, the Department recommends specific action against IAB including imposition of appropriate fines and appropriate restitution with interest.

Service of process is pursuant to Mont. Code Ann. § 33-1-314.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true and, therefore, justify and support immediate issuance of an order requiring Respondents to cease and desist their activities in violation of the Montana Insurance Code.

ALLEGATIONS OF FACT

1. IAB is a pharmacy discount card provider and bundled membership organization that provides the pharmacy discount card along with other benefits including limited insurance products. IAB is domiciled in Arlington, Texas.

2. Fairmont is an insurer with a principal place of business in Eatontown, New Jersey. Fairmont is a subsidiary of US Fire. US Fire is an insurer with a principal place of business in Morristown, New Jersey.

3. The Department received a complaint from an IAB consumer (Complainant) on or about June 19, 2008. The complaint indicated the IAB consumer chose to cancel the insurance product and pharmacy discount card purchased from IAB some months earlier, but IAB refused to refund the consumer's money. IAB claimed the consumer waited too long to seek the refund promised during the 30-day "free look" period.

4. Compliance Specialist Ron Herman (Herman) contacted IAB regarding the complaint. Herman discovered there was a discrepancy in IAB advertising regarding the "free-look" period. The online advertising indicates members may cancel their membership within 30 days from the date membership materials are received and receive a full refund. In the materials provided to the complainant, IAB indicates members may cancel their membership "within 30 calendar days from submission of the membership registration" to receive a full refund. This is confusing and misleading. The Complainant indicated IAB did not ship the membership materials for nearly three weeks after registration, making the discrepancy between cancellation dates critical to the refund.

5. Herman was able to obtain the refund requested by the IAB consumer. The Complainant paid for the insurance coverage with a membership fee to IAB. IAB then refunded the membership fee pursuant to Herman's investigation.

6. During his review of the matter, Herman became concerned the insurance product provided to the Complainant was not authorized for sale in Montana and the case was referred to Insurance Investigations.

7. Investigator Bryan Stanley (Stanley) investigated the matter relying on standard methods of investigation used by the Department. Stanley contacted IAB, US Fire, Fairmont, and the Complainant to obtain documentation from them.

8. Stanley obtained the Complainant's membership packet provided by IAB. The documents provided to the Complainant by IAB indicate each of the insurance products contained in the membership package are "[u]nderwritten by Fairmont Premier Insurance Company and/or United States Fire Insurance Company." (Emphasis added.) The Complainant was uncertain which company provided the actual insurance product the Complainant purchased from IAB. Stanley was uncertain which company provided the actual insurance product to the Complainant through the membership purchase with IAB until IAB and Fairmont provided documents he requested in his investigation of the matter.

9. Stanley discovered the insurance provided to Complainant through the membership with IAB was underwritten by Fairmont. The forms provided by Fairmont for the insurance product IAB sold to the Complainant are not approved for use in Montana as required by the Insurance Code. Additionally, the forms included in the membership package indicating US Fire may underwrite the insurance are not approved for use in Montana.

10. The appointment for the insurance producer identified by Fairmont as authorized to sell the insurance product IAB provides to its members was termed in September 2006, more than a year prior to the sale made to the Complainant identified herein.

11. IAB acts as a third-party administrator (TPA) for the insurance coverage it offers to its members. In its role as a TPA, IAB engages in the following acts:

- A. IAB advertises (solicits) the insurance product provided to its members;
- B. IAB collects the premium for the insurance product and refunds the premiums for the insurance product;
- C. IAB identifies which of its several insurance products offered are to be bundled with its pharmacy discount card based on the jurisdiction wherein the consumer resides.

12. Alternatively, IAB acts as an insurance producer by selling, soliciting and negotiating insurance contracts for its members. The facts supporting the allegation that IAB is acting as an insurance producer are the same as those identified herein at paragraph 11.

13. Alternatively, IAB acts as an insurance agency by engaging in the acts identified herein at paragraph 11.

14. IAB is not properly registered as a TPA pursuant to the provisions of the Insurance Code.

15. Alternatively, IAB is also not properly licensed to act as an insurance producer, either as an individual or as an agency.

16. In its role as a pharmacy discount card provider, IAB has failed to provide to the Commissioner the name, address, and telephone number of the compliance officer responsible for ensuring compliance with Montana law.

17. Additionally, the right to cancel the pharmacy discount card is confusing and misleading because the online advertising indicates members have 30 days from the date they receive the card to cancel while the materials provided with the card indicate a member has 30 days from the date they submit their registration to cancel. These are clearly different time frames.

18. Fairmont is allowing IAB to sell its insurance product without IAB being properly registered or licensed. IAB is not and cannot be appointed with Fairmont to sell Fairmont's insurance product without an appropriately licensed producer.

13. US Fire is the parent company for Fairmont. US Fire is identified as an underwriter of the insurance contracts sold by IAB to its membership. US Fire is allowing IAB to sell its insurance product without IAB being properly registered or licensed. IAB is not and cannot be appointed with US Fire to sell US Fire's insurance product without an appropriately licensed producer.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter by reason of the IAB's promotion, offers and sales of pharmacy discount cards in Montana pursuant to Mont. Code Ann. § 33-38-101, *et seq.*, as well as its actions consistent with a TPA pursuant to Mont. Code Ann. §§ 33-17-602 through 618, or as an insurance producer pursuant to the provisions of Mont. Code Ann. § 33-17-101, *et seq.* Further, the Commissioner has jurisdiction over this matter by reason of Fairmont and U S Fire's authorization to conduct insurance business in Montana pursuant to Mont. Code Ann. § 33-2-101, *et seq.*

2. Pursuant to Mont. Code Ann. § 33-15-102 (2), "premium" is defined as "consideration for insurance, by whatever name called." The definition includes "[a]ny assessment or membership . . . or similar fee or charge in consideration for an insurance contract."

3. Pursuant to Mont. Code Ann. § 33-17-102 (3), an "Administrator" is defined as "a person who collects charges or premiums from residents of this state in connection with . . . disability . . . insurance."

4. Pursuant to Mont. Code Ann. § 33-1-501, insurance forms, including contract forms, must be filed with and approved by the Department.

5. Pursuant to Mont. Code Ann. § 33-15-415, notices of a consumer's right to cancel and have premiums refunded for disability insurance policies must indicate the cancellation period begins on the date of delivery of the policy to the consumer.

6. IAB violated Mont. Code Ann. § 33-17-602 by acting as an Administrator without a written agreement between IAB and the insurer providing the policies for the IAB membership.

Respondent also failed to meet the terms of any written agreement required by Mont. Code Ann. § 33-17-602.

7. IAB violated Mont. Code Ann. § 33-17-603 by acting as an Administrator without a certificate of registration as an Administrator.

8. Alternatively, IAB violated Mont. Code Ann. § 33-17-201 by failing to become licensed as an insurance producer when it sold, solicited and negotiated insurance in Montana.

9. IAB violated Mont. Code Ann. § 33-15-415 by indicating in the material sent to members that the member must notify IAB of the intent to cancel the membership (policy) “within 30 calendar days from the submission of the membership registration” in order to get a refund. (Emphasis added.)

10. IAB violated Mont. Code Ann. § 33-18-202 by making misrepresentations regarding the terms and conditions of the insurance policy when IAB indicated in its materials to the consumers that cancellation must be made within 30 calendar days from the submission of the registration.

11. IAB violated Mont. Code Ann. § 33-38-104 (1) when it indicated in its materials to the consumers that cancellation must be made within 30 calendar days from the submission of the registration.

12. IAB violated Mont. Code Ann. § 33-38-108 (1) (k) when it failed to provide the Commissioner the name, address, and telephone number of the compliance officer responsible for ensuring compliance with Montana law.

13. Fairmont violated Mont. Code Ann. § 33-1-501 by providing insurance forms to its Montana consumers that had not been filed and/or approved by the Department.

14. US Fire violated Mont. Code Ann. § 33-1-501 by providing insurance forms to its Montana consumers that had not been filed and/or approved by the Department.

15. IAB, Fairmont and US Fire violated Mont. Code Ann. § 33-18-203 by disseminating representations with respect to their business of insurance that are untrue, deceptive or misleading by indicating in the IAB membership materials that the insurance product is underwritten by either Fairmont or U S Fire.

16. IAB, Fairmont and US Fire violated Mont. Code Ann. § 33-18-203 by disseminating representations with respect to their business of insurance that are untrue, deceptive or misleading by indicating in the IAB membership materials to the consumers that cancellation must be made within 30 calendar days from the submission of the registration.

PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Montana insurance consumers and pharmacy discount card participants to:

1. immediately issue a cease and desist order barring IAB, Fairmont and U S Fire, as well as the agents and representatives for these companies from further violations of the Montana Insurance Code;
2. order IAB to pay an administrative fine in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter;
3. order Fairmont to pay an administrative fine in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter;
4. order U S Fire to pay an administrative fine in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter; and

5. take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana insurance consumers.

RELIEF REQUESTED

WHEREFORE, the Department seeks the following relief:

1. pursuant to Mont. Code Ann. § 33-1-317, imposition of fines not to exceed \$25,000 for each violation of the Montana Insurance Code;
2. pursuant to Mont. Code Ann. § 33-38-108 (2), imposition of fines of \$25,000 per violation;
3. a finding that all sanctions and remedies detailed and described here are in the public interest and necessary for the protection of Montana insurance consumers;
4. issuance of an immediate Order to cease and desist from committing further violations of the Act; and
5. any further action as deemed just and appropriate for the protection of Montana insurance consumers.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-601, *et seq.*, including § 2-4-631. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must

advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, State Auditor's Office, 840 Helena Avenue, Helena, MT 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of 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. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to Mont. Code Ann. § 33-1-701 (2).

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Montana Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

CONTACT WITH SECURITIES COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the Insurance Department, at 840 Helena Avenue, Helena, MT 59601, (406) 444-2040 or, within Montana, (800) 332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions

against you and your license without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 4th day of May 2010.



Roberta Cross Guns
Attorney for Insurance Department

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 4th day of May 2010, by US mail, certified, first-class postage paid, to the following:

International Association of Benefits
701 Highlander Boulevard, Suite 400,
Arlington, Texas, 76015

Fairmont Premier Insurance Company
5 Christopher Way
Eatontown NJ 07724

United State Fire Insurance Company
305 Madison Avenue
Morristown, NJ 07962



Susan Paulson-Davis
State Auditor's Office