

**MIKE WINSOR**

Office of the Commissioner of Securities and  
Insurance, Montana State Auditor (CSI)  
840 Helena Avenue  
Helena, Montana 59601  
(406) 444-2040

Attorney for the CSI

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

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IN THE MATTER OF:	)	Case No. 2002-35
	)	
THE PROPOSED DISCIPLINARY	)	
TREATMENT OF BETH GARGUILO,	)	
MEDICAL BENEFITS	)	<b>CONSENT AGREEMENT</b>
ADMINISTRATORS OF MD, INC.,	)	<b>AND FINAL ORDER</b>
CUSTOM RAIL EMPLOYER WELFARE	)	
TRUST FUND, and those underwriters at	)	
LLOYD'S LONDON SIGNATORY TO	)	
CERTIFICATE NO. L171255 AND	)	
CERTIFICATE NO. L271268,	)	
	)	
Respondents.	)	

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This Consent Agreement dated this 9<sup>th</sup> day of November, 2011, is between the Montana Insurance Department ("Department") of the office of the Commissioner of Securities and Insurance, Montana State Auditor ("CSI"), acting pursuant to the authority of Mont. Code Ann. § 2-4-603, and the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et. seq.*, Custom Rail Employer Welfare Trust Fund and Medical Benefits Administrators of Maryland, Inc. (referred to herein collectively as "Respondents").

## RECITALS

WHEREAS, on October 31, 2002, the Department filed a Notice of Proposed Agency Action and Opportunity For Hearing (“Notice”), which is incorporated herein by reference;

WHEREAS, the Notice alleged that the Respondents violated the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*;

WHEREAS, the Respondents and the Department entered into a consent order under which Montana Central Railroad was continued to participate in the Custom Rail Employers Welfare Association welfare benefit plan and that the Custom Rail Employers Welfare Association would not admit additional participating employers in Montana unless certain actions were taken, all under the terms and conditions of the Consent Order;

WHEREAS, Custom Rail Employers Welfare Association’s sole participating employer in Montana is, was and has been Central Montana Railroad;

WHEREAS, a dispute exists between the Department and the Respondents as to whether the Respondents have complied with the terms of the consent agreement referenced in the Notice described hereinabove;

WHEREAS, Respondents neither admit nor deny the substance of said allegations contained in the Notice;

WHEREAS, the Department and Respondents agree that the parties’ best interests would be served by entering into the following specific agreement and undertakings set forth below.

NOW, THEREFORE, in consideration of the mutual undertakings established herein, the Department and the Respondents enter into the following:

**AGREEMENT**

1. Respondents agree to permanently cease and desist from engaging in the following conduct in the state of Montana without first complying with this Consent Agreement, and applying for and receiving appropriate authority or licensure from the Department:

a. Engaging in or transacting the business of insurance, the collection of premiums or other consideration, issuance of insurance and insurance-related products, and advertising to or soliciting Montana residents by any means so as to induce Montana residents to purchase any form of insurance under any of the identified business organization titles or under any other name or organization;

b. Participating in any act of an insurance producer or an insurance company in soliciting insurance business in the state of Montana without first obtaining all licenses required by then-applicable Montana law; and

c. Engaging in any other act, practice, or course of business that violates any section of the Montana Insurance Code.

2. Respondents affirm that they have terminated coverage for all participating Montana employers by proper notice, have provided certificates of creditable coverage and upon termination ceased accepting contributions from participating Montana employers.

3. Respondents affirm that they have notified members of their right to submit claims incurred and that all eligible claims have been paid, that no claims are

pending from Montana claimants, and that Respondents do not presently engage in the business of insurance in Montana. The time period for filing appeals for claims which have been denied has not yet expired, but no appeals are pending with respect to persons covered under the Central Montana Railroad. Any subsequent claims which are found to be allowed will be paid promptly.

4. Respondents agree that the Department retains the right to request additional information as needed in order to determine compliance with this Consent Agreement, for clarification of the accounting system, and to communicate with insureds and providers regarding claims and payment issues such as, but not limited to, additional payments that may be due.

5. The Department agrees that any fines sought for violation of this Consent Agreement must be rationally related to the severity of any such violation and that the Department may not seek or impose maximum or extraordinary fines for *de minimus* violations.

6. Except for violations of paragraph 1 and its subsections herein, prior to acting on an alleged violation of this Consent Agreement or asserting that a fine or penalty of any kind is due or owed, the Department shall provide written notice to Respondents of the alleged violation and allow Respondents 20 working days to cure the alleged violation.

7. The Department and the Respondents agree that this Consent Agreement resolves all matters in connection with the Notice referenced herein and no other action shall be taken with respect to or in connection with the Notice, and pursuant to this Consent Agreement the Respondents and each of them shall be dismissed with prejudice

from this action and a Final Order incorporating the terms of this Consent Agreement shall be entered in this action.

8. The Department acknowledges and agrees that it does not intend to take any action against any of the Lloyds' Underwriters who at any time provided insurance to CREW with respect to the activities of CREW in Montana.

9. The Respondents acknowledge the CSI and the Department have jurisdiction over the subject matter of the above-entitled proceeding.

10. The Respondents acknowledge that they have read and understand each term of this Consent Agreement and enter into this Consent Agreement voluntarily and without reservation.

11. The Respondents stipulate and agree with the Department that this Consent Agreement resolves this matter.

12. The Respondents and the Department hereby acknowledge and agree that this Consent Agreement constitutes the entire agreement between the parties and that no other promises or agreements, either express or implied, have been made by the Department or by any member, officer, agent, or representative of the Department to induce the Respondents to enter into this Consent Agreement.

13. The Respondents specifically and affirmatively waive a contested case hearing, their right to appeal, and elect to resolve this matter on the terms and conditions set forth herein.

14. The Respondents fully and forever release and discharge the CSI, Department, and all Department employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or

unasserted, known or unknown, foreseen or unforeseen, arising out of this administrative action.

15. Nothing in this Consent Agreement may be construed as creating or limiting a private or separate cause of action.

16. The parties acknowledge and agree that this Consent Agreement may not be modified orally, and any subsequent modifications to this Consent Agreement must be mutually agreed upon in writing to be effective.

17. The Department and the Respondents agree that this Consent Agreement shall be incorporated into and made a part of the attached Final Order issued by the Commissioner or her representative herein.

18. The Respondents further understand that, upon the signing of the Final Order by the Commissioner or her representative, this Consent Agreement and Final Order will be an order of the CSI and failure to comply with it may constitute a separate violation of the Montana Insurance Code, as provided in Mont. Code Ann. § 33-1-318, and may result in subsequent legal action by the Department.

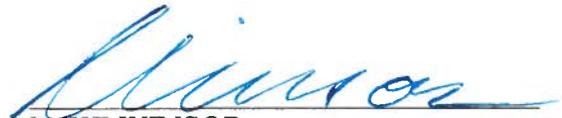
19. Upon execution of this Consent Agreement, the Department will fully and forever release and discharge the Respondents, Respondents' employees, and Respondents agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of this administrative action and will not commence any further administrative, civil, or other legal action based upon the regulatory non-compliance referenced hereinabove.

20. This Consent Agreement shall be effective upon signing of the Final Order.

21. The Respondent acknowledges that this Consent Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.

22. This Consent Agreement and Final Order may be signed in counterparts.

DATED this 8<sup>th</sup> day of November 2011.

  
MIKE WINSOR  
Attorney for the Department of Insurance

DATED this 3<sup>rd</sup> day of November, 2011.

CUSTOM RAIL EMPLOYER WELFARE  
TRUST FUND

By: Ronald Wilson CEO

Its: PLAN ADMINISTRATOR

STATE OF Maryland )  
City of Baltimore ) :ss.

SUBSCRIBED and SWORN to before me by Ronald Wilson,  
this 3<sup>rd</sup> day of November, 2011.

Betty J. Harlan  
Printed Name Betty J. Harlan  
Notary Public for the state of Maryland  
Residing at Anne Arundel County  
My Commission Expires 1-14-2013

DATED this 3<sup>rd</sup> day of November, 2011.

MEDICAL BENEFITS  
ADMINISTRATORS OF MARYLAND,  
INC.

By: Ronald Wilson

Its: CEO

STATE OF Maryland )  
City ) :SS  
County of Baltimore )

SUBSCRIBED and SWORN to before me by Ronald Wilson,  
this 3<sup>rd</sup> day of November, 2011.

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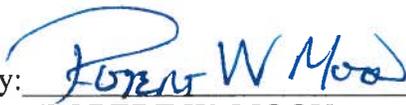
**FINAL ORDER**

Pursuant to the authority vested by Mont. Code Ann. § 2-4-603, and the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, and upon review of the foregoing Consent Agreement and good cause appearing,

IT IS ORDERED that the foregoing Consent Agreement between the Department and the Respondent is hereby adopted as if set forth fully herein.

DATED this 8<sup>th</sup> day of NOVEMBER, 2011.

**MONICA J. LINDEEN**  
Commissioner of Securities and Insurance

By:   
**ROBERT W. MOON**  
Deputy Commissioner of Insurance