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## 2007 ANNUAL REPORT

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### A REPORT ON THE ACTIVITIES OF THE WEST VIRGINIA ATTORNEY GENERAL'S CONSUMER PROTECTION AND ANTITRUST DIVISIONS

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#### I.

#### FOREWORD

Attorney General Darrell V. McGraw, Jr., submits this report to the Governor and Legislature of West Virginia pursuant to West Virginia Code § 46A-7-102(4)(2007). This report outlines the education, mediation, and enforcement activities of Attorney General McGraw's Consumer Protection and Antitrust Divisions from November 20, 2006 through November 19, 2007.

## II.

### INTRODUCTION

Attorney General McGraw's Consumer Protection and Antitrust Divisions operate under the direction of one Deputy Attorney General. The Divisions are responsible for enforcing the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 et seq.; the West Virginia Antitrust Act, W. Va. Code § 47-18-1 et seq.; and the Preneed Funeral Contracts Act, W. Va. Code § 47-14-1 et seq. There are five Assistant Attorneys General assigned to the two Divisions. One attorney is assigned full-time to enforce the Antitrust Act, one attorney is assigned half-time to the Preneed Funeral Unit, and the remaining lawyers on staff are responsible for enforcing the West Virginia Consumer Credit and Protection Act (the Act). During this reporting period, the Division received \$972,560,255.52 in refunds, debt cancellation, and value received for the State and its citizens. (See Exhibits 1 and 2.)

### III.

#### CONSUMER EDUCATION

The mission of Attorney General McGraw's Consumer Protection Division is to protect West Virginia citizens from those that would harm them. Undoubtedly, the best protection is education and the Consumer Protection Division (Division) embarks each year on educating consumers about the latest scams, consumer fraud, and abuse.

The Attorney General has four field representatives whose primary responsibility is to educate West Virginians about their rights as consumers and about the services his Division offers. The representatives are located in Charleston, Weirton, Martinsburg, and Morgantown. McGraw also employs a senior citizen liaison in an effort to reach senior citizens all over the State. In addition, all six attorneys in the Division spent countless hours spreading the consumer protection word. This year alone, the lawyers spoke before more than 24 different organizations.

In March of 2007, Attorney General McGraw announced the creation of the Citizen Advisory Committee. The committee is made up of approximately 33 active community members from around the state. Members advise the Attorney General's Office of emerging consumer issues in their communities and give recommendations on how the Division's resources can best be used in the small towns and cities where they live. The committee meets quarterly.

One of the committee's suggestions was to create educational brochures on consumer protection issues. So far, two brochures have been created. "Take Charge: Don't Be a Slave to Your Credit Card," discusses the pros and cons of using credit cards and provides a "Watch Out" for wise credit card use. The second brochure, "Measuring Up: A Consumer's Guide to Hiring Contractors for Home Repairs," gives consumers

advise on hiring a contractor and tips to follow before signing a home improvement contract. The Division has drafted two additional brochures and hopes to have them finalized soon.

This year, Attorney General McGraw partnered with AARP, Consumers Union, the West Virginia Division of Veterans Affairs, and Mountain State Justice in advocating for the passage of security freeze legislation in West Virginia. This legislation, which became effective June 5, 2007, allows consumers to place a security freeze on their credit report. When there is a security freeze on a credit report, the report cannot be shared with potential creditors. This right is an excellent tool for consumers in combating identity theft. Thirty-nine states and the District of Columbia have passed security freeze legislation.

The Attorney General's partnership with the AARP Foundation continued to flourish this year with the expansion of ElderWatch. ElderWatch is dedicated to providing protection for West Virginia's older consumers who have been victims of fraud. One of the services offered by ElderWatch is assisting consumers who want help filling out the consumer complaint form. Specifically, when a consumer calls the Division, he is asked if he is over the age of 50. If he is, the receptionist transfers the call to an AARP volunteer who fills out the form for the consumer over the telephone. Since it was launched on February 1, 2006, ElderWatch has helped more than 3,600 West Virginia consumers. ElderWatch volunteers have contributed more than 3,900 hours of service.

In January of 2007, Attorney General McGraw introduced the "Credit Car." The "Credit Car" is a mobile office staffed by employees from the Division who assist consumers in obtaining free copies of their credit reports and instruct them on how to correct any inaccuracies. The "Credit Car" was initially scheduled to be at six locations

around the State. The program was so successful, an additional ten locations were scheduled.

The “Credit Car” was also used in partnership with the AARP during the AARP Consumer University “Scam Jams.” These events were held in locations throughout the State and focused on credit, identity theft, investment fraud, and Internet safety. The Attorney General’s office obtained credit reports for every attendee that requested one and the Deputy Attorney General for the Division presented a detailed program on how to read and understand a credit report.

Last winter, Jill Miles, the Deputy Attorney General overseeing the Division, was invited by Consumer Credit Counseling of Southern West Virginia to judge the regional 2007 “Be Money Wise National Poster Contest.” The contest required participants to design a poster that would educate and build awareness of young people on sound money management and financial responsibility. There were three grade categories of participants – elementary, middle, and high school.

The 2007 competition theme was to “Plant a Seed of Savings to Grow Your Future.” Miles picked Krystal Saunders, a seventh grader in McKinley Middle School in St. Albans to advance to the national level. Among 1,500 entries nationwide, Saunders won the national competition grand prize, which included a \$500.00 savings bond and an all expense paid trip to Washington, D.C. to receive her award. During her visit, Saunders had lunch with Senator Byrd, Senator Rockefeller, and Congresswoman Capito.

Constitution and Citizenship Day is a federal holiday that recognizes the ratification of the United States Constitution. It is observed on September 17, the day the United States Constitutional Convention signed the Constitution in 1787. The legislation

making September 17 a federal holiday requires all publicly funded educational institutions to provide educational programming on the history of the American Constitution on this day.

In September of 2007, Attorney General McGraw and Secretary of State Betty Ireland sponsored a contest for Constitution and Citizenship Day for all West Virginia high school seniors. The Attorney General's office prepared a study guide on the United States Constitution and an accompanying test. To spur interest in the test, and hopefully the Constitution, a new notebook computer was awarded to a participating senior in each of West Virginia's 55 counties. To be eligible to win the computer, the senior had to score 100% on the test. In the event that more than one student scored a 100%, a winner was drawn at random.

In February of 2007, Attorney General McGraw presented Wayne County resident Earl Walls with a "Consumer Protection Hero" award to commemorate Consumer Protection Week. Mr. Walls, a 65-year-old, disabled, retired factory worker lost more than money when he was duped by a Nigerian Internet fake check scheme – he was also arrested and charged with obtaining money under false pretenses.

Shortly after his arrest, Mr. Walls' neighbor, Felicia Adams, contacted the Attorney General's office for help. The Attorney General worked with the Wayne County Prosecutor's Office and the Wayne County Public Defenders Office in getting the charges against Mr. Walls dismissed. The Attorney General also assisted Walls in convincing his bank to unfreeze his checking account so he could access his Social Security money.

Earl Walls has since helped the Attorney General with consumer education by appearing at events for AARP/ElderWatch and appearing on the Attorney General's

Legal Journal television show on public broadcasting. Walls' story reached national acclaim when it was featured in the *AARP Bulletin*.

Finally, In an effort to educate consumers about the hazards of lead poisoning, the Division created a program in conjunction with the West Virginia Department of Health and Human Resources, Bureau for Public Health, Office of Environmental Health Services, and Astar Abatement, Inc. of Charleston to test the lead level in various items, especially toys. Testing booths were set up at several locations around the State, including the Morgan County Fair, the West Virginia State Fair, the Parkersburg Homecoming, the South Charleston Summer Festival, and the Capitol City Arts and Crafts Show. In addition to providing lead testing for free, the Division also continued its partnership with the United States Consumer Product Safety Commission (CPSC) and has regularly posted lead hazard recall notices issued by the CPSC on its website at [www.wvago.gov](http://www.wvago.gov).

## IV.

### MEDIATION

The backbone of the Division's efforts – and its successes – is its mediation process. If a consumer has a dispute with a business, he can call the Division's toll-free hotline at 1-800-368-8808. If a consumer calls, a written complaint form and instructions are sent to his home. The complaint form is also available on the Division's website at [www.wvago.gov](http://www.wvago.gov).

When the complaint form is returned, it is assigned to a mediator, who contacts the business on behalf of the consumer requesting a response to the complaint. The mediation process is voluntary, but the intent is to reach a settlement satisfactory to both parties. The amount of money saved by consumers and businesses in litigation costs as a result of mediation cannot be known, but it must surely be substantial.

The sheer volume of the Division's mediation activity attests to its utility. During the reporting period, the Division received 10,061 complaints. (See Exhibits 1, 2 and 3.) The most common complaints involved credit and automobiles. (See Exhibit 4.) Of the complaints pending at the beginning of or received during the reporting period, the Division closed 10,703. As a result of the Division's mediation efforts, consumers received approximately \$651,980.35 in cash refunds, and \$1,648,898.20 in debt cancellation and value for products and services received. The total amount received in mediation was \$2,300,878.55.

## V.

### ENFORCEMENT PROCEEDINGS

When mediation is unsuccessful, the consumer's complaint is reviewed by the Deputy Attorney General who decides whether to refer the file to a staff attorney. Often a simple letter from the attorney to the business will prompt a result acceptable to all parties. If mediation does not resolve the matter, the staff attorney, in consultation with the Deputy, may initiate an investigation.

## A.

### LITIGATION

Following a pre-complaint investigation, the Attorney General can file suit against a company pursuant to W. Va. Code §§ 46A-7-108 through -111(2007) and petition the Court to enjoin the company from doing business illegally in West Virginia. The Attorney General can also obtain restitution for consumers, monies for consumer education, investigation and court costs, attorney fees, and civil penalties. During this reporting period, Attorney General McGraw recovered \$963,000,310.69 through consumer protection litigation. (See Exhibits 1 and 2.) Identified below are the cases that Attorney General McGraw's Consumer Protection Division had in litigation during the 2007 reporting period.

1.

**Darrell V. McGraw, Jr., Attorney General, ex rel. State of West Virginia;  
the West Virginia Public Employees Insurance Agency; and  
the West Virginia Department of Health and Human Resources  
v. The American Tobacco Company, et al.  
(Civil Action No. 94-C-1707 - Circuit Court of Kanawha County)**

Attorney General McGraw has previously reported a settlement reached between West Virginia, 45 states, the 4 original participating manufacturers, and dozens of subsequent participating manufacturers. Pursuant to the terms of that settlement, West Virginia was scheduled to receive \$1,736,741,427.33<sup>\*1</sup> over 25 years and thereafter \$70,000,000.00\* per year (adjusted upward for inflation and downward for market share loss as necessary) as long as the Defendant manufacturers or their successors or assigns remain in business.

In addition to the sums set forth above, West Virginia was scheduled to receive \$196,087,655.47\* payable beginning in 2008, separate from and in addition to, the regular yearly settlement payments. These additional funds were awarded to West Virginia in recognition of the key role that Attorney General McGraw played in the nationwide tobacco litigation. This additional payment of \$196,087,655.47\* is almost four times the amount West Virginia would have received under the standard distribution formula established in the Master Settlement Agreement (MSA).

During this year's reporting period, West Virginia received approximately \$54,000,000.00 under the terms of the MSA. This is the last payment West Virginia will receive under the MSA because during the 2007 legislative session, the Legislature

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<sup>1</sup> Monies that are followed by an \* were not counted during this reporting period.

passed a bill that authorized the remainder of the tobacco settlement money to be sold to bond holders in return for a lump sum payment.

On June 26, 2007, Governor Manchin, with the Legislature's approval, sold the remaining monies owed to West Virginia from the tobacco litigation. This sale resulted in West Virginia receiving a lump sum payment of approximately \$900,000,000.00. In consideration for this lump sum payment, the bond holders will receive all remaining monies owed West Virginia under the MSA. During this reporting period, the State received \$954,000,000.00.

## 2. and 3.

**Medco Health Solutions, Inc., et al.**  
**v. West Virginia Public Employees Insurance Agency**  
**(Civil Action No. 02-C-2769 - Circuit Court of Kanawha County)**

**State ex rel. Darrell V. McGraw, Jr., et al. v. Medco Health Solutions, Inc., et al.**  
**(Civil Action No. 02-C-2944 - Circuit Court of Kanawha County)**

On October 25, 2002, the West Virginia Public Employees Insurance Agency (PEIA) was sued by Medco Health Solutions, Inc. and Medco Health Prescription Solutions, LLC (Medco). The complaint alleged that PEIA had not paid all sums owing under its pharmacy benefits management contract with Medco

On November 13, 2002, the Attorney General and PEIA counter-sued Medco and others, claiming that the company's pharmacy benefits manager and its affiliated companies had used misleading and deceptive representations in securing the pharmacy benefits management contract with PEIA. The lawsuit also alleged that Medco engaged in fraud, tortious interference with the business relationship, and breach of contract.

The parties settled both cases in July of 2007. Under the terms of the settlement, Medco paid the State \$5,500,000.00, and both lawsuits were dismissed with prejudice.

4.

**State ex rel. Darrell V. McGraw, Jr. v. Purdue Pharma, LP, et al.**  
**(Civil Action No. 01-C-137-S - Circuit Court of McDowell County)**

On June 11, 2001, Attorney General McGraw sued Purdue Pharma, LP, Purdue Pharma, Inc., Purdue Frederick Company, Abbott Laboratories, and Abbott Laboratories, Inc. alleging various product liability claims, as well as consumer protection and antitrust violations. The defendants manufacture and distribute OxyContin, which is a drug used to treat chronic pain. Since it first became available to consumers, OxyContin has been widely abused.

In his complaint, Attorney General McGraw alleged that the defendants made false, deceptive, and misleading representations about OxyContin and failed to disclose material facts in its marketing of the drug to physicians and the general public. The Attorney General further claimed that the defendants failed to use reasonable care in the manufacturing, marketing, and distribution of OxyContin.

The case settled on November 4, 2004. Under the terms of the settlement, the defendants agreed to pay the State a total of \$10,000,000.00\* over four years. To date, the State has received \$7,500,000.00.\* The third payment of \$2,500,000.00 was received in December of 2006. The fourth and final payment is due in December of 2007. The settlement money is earmarked for education and addiction rehabilitation services.

5.

**In re: Clifford Ealy**  
**(Case No. 2:03-BK-22312 - U.S. Bankr. S.D. W.Va.)**  
**State ex rel. Darrell V. McGraw, Jr., et al. v. Ameribank, Inc. et al.**  
**(Adversary Proceeding No. 06-2150 - U.S. Bankr. S.D. W.Va.)**

In July of 2003, Clifford Ealy d/b/a Howard Ealy Used Cars, located in Princeton, West Virginia became insolvent and filed for Chapter 7 bankruptcy. That same year, the Division had received numerous complaints from consumers who were unable to get titles for the cars they purchased from Ealy and from consumers whose liens on their trade-ins had not been paid off by the dealership.

On September 23, 2006, the Attorney General and the West Virginia Division of Motor Vehicles (DMV) jointly filed an adversary proceeding in Ealy's Chapter 7 bankruptcy. The action asked the Court to take equitable jurisdiction over approximately 90 vehicles for which ownership and lien status was uncertain and to enter an order: (1) declaring who owns the vehicle; (2) who, if anyone, has a valid security interest in the vehicle; (3) which security interests and liens were extinguished; (4) which transactions were void; and (5) establishing appropriate remedies for the consumers who claimed an interest in the vehicles. The Division subsequently filed documents supporting the claims of 22 consumers who filed complaints with the Attorney General's office.

The State moved for summary judgment on the complaint. The Court heard the motion, in part, in July and is to reconvene the hearing on January 2, 2008. The Court ruled in favor of the State and against Blanton Auto Sales, a South Carolina auto wholesaler, as to the titles of eight vehicles. The order required the DMV to issue titles to the consumers who purchased vehicles sold by Blanton to Ealy. The State has also reached settlements with First Sentinel Bank, Branch Banking & Trust, and First Community Bank of Princeton. Under the terms of these settlements, all loans

associated with the unpaid liens on trade-ins were cancelled, and all loans for vehicles which the lender has no certificate of title were cancelled. Consumers have received a total of \$823,993.67 in cancelled debt and other value received. The only remaining defendant is Ameribank, Inc.

6.

**State ex rel. Darrell V. McGraw, Jr. v. IGIA, Inc., et al.**  
**(Civil Action No. 06-C-2643 - Circuit Court of Kanawha County)**

IGIA, Inc. (IGIA), a Delaware corporation, markets household products through infomercials and the Internet. IGIA offered vacuum cleaners for sale under the names Windstorm, Singer Lazer Storm, and Milinëx Power Storm and offered these vacuum cleaners for sale as a “buy one, get one free” deal. Consumers responded to the infomercial, which aired on the TV Guide Channel, by calling IGIA’s toll-free number. The toll-free number was answered by an automated system. Consumers placed their orders by giving their bank or credit card information, after which the automated system would misrepresent what the consumer had ordered.

For example, consumers who ordered one vacuum under the “buy one – get one free” deal were confirmed for two vacuums. Immediately after the order was confirmed, the automated system would disconnect, preventing the consumers from disputing the amount of the vacuums they had purchased. Consumers were not only overcharged, but many did not receive the vacuums they ordered. Consumers who did receive their vacuums were sent and charged double what they had ordered. When consumers requested refunds for merchandise they had returned and were charged for but never received, IGIA refused to give them refunds.

In March of 2007, the Attorney General entered into a settlement wherein IGIA agreed to pay restitution in the amount of \$176,139.27,\* payable in 18 installments with the final payment due in November of 2008. IGIA also agreed to cease doing business in West Virginia until the settlement amount was paid in full. During this reporting period, 404 consumers have received \$57,467.59 in refunds.

7.

**State ex rel. Darrell V. McGraw, Jr. v. YP Corp., et al.**  
**(Civil Action No. 06-C-2645 - Circuit Court of Kanawha County)**

On December 14, 2006, the Attorney General, along with 33 other state Attorneys General, settled litigation against YP Corp., of Phoenix, Arizona and its subsidiary, Telco Billing, Inc. (YP.com). The Attorneys General alleged that YP.com used deceptive “live” activation checks to lure small businesses and organizations into signing up for Internet advertising service. Since 2003, YP.com had sent out checks to small businesses and other organizations for small amounts, usually around \$3.50. Once the checks were cashed, YP.com claimed that the fine print on the back of the checks authorized YP.com to withdraw anywhere from \$27.50 to \$39.95 from the organization’s bank account each month for the purchase of online advertising. The vast majority of the organizations had no idea they had “purchased advertising” or that money was being withdrawn from their bank account by YP.com.

Under the terms of the settlement, YP.com agreed to stop using activation checks and to pay restitution to consumers and organizations wishing to cancel the unauthorized advertising. West Virginia consumers were paid \$5,423.00 in restitution, and the State received \$21,470.00, for a total settlement value of \$26,893.00.

8.

**State ex rel. Darrell V. McGraw, Jr. v. H & H Windows Unlimited, Inc.**  
**(Civil Action No. 03-C-3075 - Circuit Court of Kanawha County)**

H & H Windows Unlimited, Inc. (H & H), located in Morgantown, West Virginia, manufactured, supplied, and installed vinyl insulated windows. In early 2003, the Division began investigating H & H based on consumer complaints that it sold defective windows and failed to replace them under the company's lifetime warranty. In March of 2003, H & H entered into an Assurance of Discontinuance with the Division. The Assurance obligated H & H to repair or replace the defective windows for all consumers who had filed complaints with the Division and to honor all future claims made by consumers under its lifetime warranty.

In December of 2003, the Division filed suit against H & H because it had violated the terms of the Assurance. In January of 2004, the State and H & H settled the lawsuit and H & H agreed to complete all past due repairs by February 16, 2004. H & H also agreed to resolve all future complaints within 120 days after receiving them from the Division. During this reporting period, a total value of \$25,370.93 was received in repairs and replacement windows. H & H has now gone permanently out of business.

9.

**State ex rel. Darrell V. McGraw, Jr. v. Mountaineer Roofing & Siding, Inc., et al.**  
**(Civil Action No. 06-C-946 - Circuit Court of Kanawha County)**

On May 17, 2006, Attorney General McGraw sued Mountaineer Roofing & Siding, Inc. and its owner/operator, Dana Sanders (Mountaineer), for violating the Act. Mountaineer is a contracting business that operates primarily in Kanawha and Putnam Counties. The Division alleged violations regarding failure to complete agreed upon

work, failure to honor warranties, failure to comply with the home solicitation rule, and failure to comply with home improvement rules governing contractors. In some instances, Mountaineer took deposits from consumers and did not do any of the promised work.

On June 13, 2006, a hearing was scheduled on the Division's petition for a temporary injunction. Just prior to commencement of the hearing, Mountaineer agreed to cease from engaging in any further unfair or deceptive acts or practices. Additionally, Mountaineer was ordered to post a \$25,000.00\* bond with the Court. If Mountaineer commits any future unfair or deceptive acts or practices, the bond will be forfeited to the State.

The parties reached a settlement of the lawsuit in February of 2007. Under the terms of the settlement, the bond posted with the Court will remain in place for two years. Mountaineer also paid \$25,000.00 in consumer restitution.

## 10.

**State ex rel. Darrell V. McGraw, Jr. v. Charles Roth,**  
**d/b/a Valley Pools and Spas Construction, et al.**  
**(Civil Action No. 05-C-432 - Circuit Court of Putnam County)**

In late 2005, the Division filed suit against Charles Roth (Roth), a Dunbar resident who for years had been installing swimming pools under the name of Valley Pools and Spas Construction. Consumers complained that when they contacted Roth, he submitted impressive proposals with low bids and promises of "15-year" warranties. However, once work began and Roth had received significant payments, he would fail to complete the jobs. Consumers reported that Roth became increasingly difficult to reach, and ignored consumers' pleas that he return to finish the job. Some consumers reported

that if they insisted he make all the repairs prior to final payment, Roth would threaten them.

In January of 2006, the Circuit Court of Putnam County enjoined Roth from engaging in the home improvement business until the case was resolved. On March 30, 2007, Roth finally agreed to be permanently enjoined from engaging in the home improvement business in West Virginia. Roth was also ordered to pay \$80,000.00\* in restitution to consumers, in payments in the amount of \$300.00 monthly. During this reporting period, Roth has paid \$12,100.00.

11.

**State ex rel. Darrell V. McGraw, Jr. v. Donna K. Diulus, et al.**  
**(Civil Action No. 04-C-281 - Circuit Court of Marion County)**

On August 31, 2004, the Attorney General sued Pennsylvania residents, Donna and Carmine Diulus d/b/a CMS Pools (CMS). CMS sold above-ground swimming pools. On September 6, 2005, the court granted the Attorney General's motion for summary judgment in the amount \$271,123.00.\* The Court found that CMS had made material omissions and misrepresentations in its advertising and had failed to provide consumers with notice of their three-day right to cancel. The order also prohibited the defendants from doing business in West Virginia until the judgment is paid in full.

The Division domesticated this judgment in Pennsylvania and recorded the judgment lien in Allegheny County, Pennsylvania, where the defendants own a house. The Division has since received notice of a sheriff's sale of the defendants' property and plans to file a claim in connection with that sale. During this reporting period, one of the lenders who financed pools sold by CMS cancelled the consumer's outstanding debt valued at \$9,985.50.

12.

**State ex rel. Darrell V. McGraw, Jr. v. Huey Small d/b/a H & S Paving, et al.**  
**(Civil Action No. 97-C-1041 - Circuit Court of Kanawha County)**

In 1998, the Division put a stop to a paving scam that was operated by Huey Small, of Mercer County. Small had defrauded scores of West Virginians by approaching them at home and promising a good price on “leftover” asphalt. Although the paving work was always substandard, Small’s band of workers would refuse to leave consumers’ homes until they had coerced them to pay large sums of money. The Division sued Small, and the Circuit Court of Kanawha County ordered him to pay \$125,458.00\* in consumer restitution.

Small disobeyed the Court’s orders to pay restitution, and in 2001, the Court jailed him for contempt. Small was finally released from jail when he agreed to pay off the judgment in monthly installments. Small stayed current on his restitution payments up through 2006. Thereafter, Small fell behind on several months worth of payments. After the Division filed a petition to have Small found in contempt of court, he made up his shortfall and resumed monthly payments. The Division has received \$9,000.00 during this reporting period.

13.

**State ex rel. Darrell V. McGraw, Jr. v. Check Game Solutions, et al.**  
**(Civil Action No. 06-C-755 - Circuit Court of Kanawha County)**

In April of 2006, the Division sued Check Game Solutions (CGS), a Florida collection agency, and its President, Catherine Key, of Vero Beach, Florida, for engaging in unlawful debt collection practices. CGS’s client, Universal Subscription Agency (Universal), sold multiple magazine subscriptions door-to-door using high pressure sales

tactics. When consumers attempted to cancel the sale, Universal hired CGS to send debt collection letters to the consumers accusing them of writing the magazine company bad checks. CGS also falsely threatened to criminally prosecute consumers in order to frighten them into paying off the subscription.

On June 26, 2006, the Circuit Court of Kanawha County preliminary enjoined CGS from doing any business in the State until the case was resolved. In April of 2007, CGS agreed to a permanent injunction, forever banning them from sending collection letters into West Virginia. CGS further agreed to pay the State \$8,500.00 for consumer education.

**14.**

**State ex rel. Darrell V. McGraw, Jr. v. Wholesale Used Cars, Inc.**  
**(Civil Action No. 03-C-2839 - Circuit Court of Kanawha County)**

Wholesale Used Cars, Inc., was a “buy here - pay here” auto dealer located in Charleston, West Virginia. In November of 2003, the Division sued Wholesale Used Cars, Inc. and its officers, Charles and Jeryl Parker (Wholesale). The Division alleged that Wholesale sold consumers used vehicles that broke down shortly after they were purchased. Review of Wholesale’s loan documents revealed numerous additional violations, including disclaiming the implied warranty of merchantability and charging various unlawful fees. On October 11, 2005, a judgment was entered that required Wholesale to pay \$28,616.34\* in consumer restitution and \$28,616.34\* in civil penalties. During this reporting period, Wholesale has made payments of \$750.00 toward the judgment.

15.

**State ex rel. Darrell V. McGraw, Jr. v. Appalachian Heating and Cooling, Inc., et al.**  
**(Civil Action No. 06-C-1089 - Circuit Court of Kanawha County)**

The Attorney General began his investigation into unlawful advertising by unlicensed contractors in May of 2006. As a result of his investigation, the Attorney General discovered that four contractors had advertised a contractor's license number in the 2006 Verizon Yellow Pages when they did not, in fact, have a valid contractor's license. The Attorney General filed a lawsuit against these four contractors on June 8, 2006, alleging false advertising, in violation of W. Va. Code § 46A-6-104.

During the last reporting period, two of the contractors obtained a valid contractor's license. In January of 2007, a third contractor, Appalachian Heating and Cooling, Inc. and its president, Larue Causey, obtained a valid contractor's license and paid civil penalties in the amount of \$500.00. The fourth contractor, Tim and Terry Romeo d/b/a Arctic Air, is no longer in business.

16.

**In the Matter of Health Spas**

Legislative Rule 142, Series 13 Health Spas, § 142-13-1, et seq., requires health spas to register annually with the Division. Registration includes submission of an annual registration form, a current membership contract, a current business registration certificate, and to post a surety bond if the business has been in operation for three years or less.

During the 2007 reporting period, the Division filed lawsuits against three health spas, they are identified below:

**Case Name****Civil Penalty**

**State ex rel. Darrell V. McGraw, Jr. v. Ash, Inc. d/b/a Curves** \$250.00  
**(Civil Action No. 07-C-2598 - Circuit Court of Kanawha County)**

On December 7, 2006, the Division sued Ash, Inc. d/b/a Curves (Ash, Inc.), located in Oak Hill, West Virginia because the health spa failed to register in a timely manner. On January 8, 2007, an order was entered after Ash, Inc. completed the registration process. Ash, Inc. was not required to post a surety bond because it had been in operation for more than three years.

**State ex rel. Darrell V. McGraw, Jr. v. Kali Style, LLC d/b/a Curves** \$250.00  
**(Civil Action No. 07-C-2599 - Circuit Court of Kanawha County)**

On December 7, 2006, the Attorney General filed a lawsuit against Kali Style, LLC d/b/a Curves (Kali Style), located in Inwood, West Virginia because the company had failed to register as a health spa. On April 6, 2007, an order was entered after Kali Style completed the registration process and posted a surety bond.

**State ex rel. Darrell V. McGraw, Jr. v. Vincent's Athletic Club** \$250.00  
**(Civil Action No. 07-C-624 - Circuit Court of Kanawha County)**

On April 2, 2007, the Attorney General filed a lawsuit against Vincent's Athletic Club (Vincent's), located in Oak Hill, West Virginia because the company had failed to register as a health spa. On April 19, 2007, an order was entered after Vincent's completed the registration process. Vincent's was not required to post a surety bond because it has been in operation for more than three years.

17.

**State ex rel. Darrell V. McGraw, Jr. v. BlueHippo Funding, LLC, et al.**  
**(Civil Action No. 07-C-348 - Circuit Court of Kanawha County)**

On March 12, 2007, the Attorney General sued BlueHippo Funding, LLC, BlueHippo Capital, LLC, and Joseph Rensin (BlueHippo), the primary owner of those businesses. BlueHippo advertises the sale of computers on the radio, on the television, in print media, and on the Internet. The ads target low-income consumers and falsely states that all the consumer needs is a checking account to purchase a computer.

Under West Virginia law, a business that advertises the sale of goods or services and sells those goods or services during a telephone call is required to be registered as a telemarketer and post a surety bond of \$100,000.00 for each telemarketing location. BlueHippo has never registered as a telemarketer, nor posted the required bond. In addition, telemarketers must give consumers seven days to return any items purchased for a full refund. All BlueHippo sales were non-refundable. In addition, the State alleged that BlueHippo's contracts contained numerous illegal provisions.

In July of 2007, a preliminary injunction hearing was held. After the hearing, BlueHippo and the Attorney General entered into an order, in which BlueHippo agreed to (1) stop selling computers in West Virginia; (2) place all consumer payments from West Virginia residents into an escrow account in the West Virginia Treasurer's office; (3) provide the State with a list of all West Virginia customers; and (4) stop all debt collection activities on the open West Virginia accounts.

**18.**

**BlueHippo Funding, LLC, et al. v. Darrell V. McGraw, Jr., et al.**  
**(Civil Action No. 2:07-0399 - U.S.D.Ct., Southern District of West Virginia)**

BlueHippo Fund, LLC and Blue Hippo Capital, LLC (BlueHippo) brought a declaratory judgment action against the Attorney General and the Secretary of the Department of Revenue of the State of West Virginia. The lawsuit seeks a declaratory judgment that the registration and bonding requirements of the West Virginia telemarketing statute constitute an unlawful prior restraint that violates BlueHippo's First Amendment right of free speech, constitutes unlawful discrimination that deprives BlueHippo of equal protection of the law, in violation of the Fourteenth Amendment, and

unduly burdens interstate commerce, in violation of the Commerce clause of the United States Constitution. The lawsuit also alleges that the State's attempt to enforce the law by filing the lawsuit in state court deprives BlueHippo of its Constitutional rights, in violation of 42 U.S.C. § 1983.

In an order dated October 2, 2007, the United States District Court for the Southern District of West Virginia entered a memorandum order abstaining from taking jurisdiction over the Freedom of Speech and Equal Protection claims, but retaining jurisdiction of the Commerce clause claim. The case is pending.

**19.**

**State ex rel. Darrell V. McGraw, Jr. v. Johnson & Johnson, et al.**  
**(Civil Action No. 04-C-156 - Circuit Court of Brooke County)**

In August of 2004, the Attorney General filed a lawsuit against Johnson & Johnson, Janssen Pharmaceutica Products, LP, and Janssen Pharmaceutica, Inc. These companies manufacture Risperdal, a prescription drug used to treat certain mental illnesses, and Duragesic, a narcotic pain reliever that is absorbed through a skin patch. The State alleged that the defendants had misled and misrepresented to doctors the risks and benefits of these drugs.

During the reporting period, the trial court ruled that the Attorney General could hire outside counsel to litigate the case. The defendants appealed that ruling. The appeal was denied in January of 2007. The case is pending.

20.

**State ex rel. Darrell V. McGraw, Jr. v. Eli Lilly and Company**  
**(Civil Action No. 06-C-31 - Circuit Court of Mason County)**  
**(Case No. 3:06-cv-00298 - U.S.D.Ct., Southern District of West Virginia)**  
**(MDL-1596 - U.S.D.Ct., Eastern District of New York)**

In February of 2006, the Attorney General sued Eli Lilly and Company, of Indianapolis, Indiana, a manufacturer of prescription drugs, in the Circuit Court of Mason County. The Attorney General alleged that Eli Lilly and Company misled and misrepresented the risks and benefits of Zyprexa, an anti-psychotic drug, to doctors. Shortly after the complaint was filed, the case was removed to the United States District Court for the Southern District of West Virginia, which then transferred the case to Multi District Litigation in Brooklyn, New York. The case is pending.

21.

**State ex rel. Darrell V. McGraw, Jr. v. Minnesota Mining and Manufacturing Company, et al.**  
**(Civil Action No. 03-C-109 - Circuit Court of Lincoln County)**

On August 6, 2003, the Attorney General sued Minnesota Mining and Manufacturing Company, Mine Safety Appliances Company, and American Optical Corporation in the Circuit Court of Lincoln County. The State alleged that the defendants had violated the Act by falsely advertising the capabilities of the dust masks they sold. Specifically, the State alleged that although the dust masks were marketed as being safe and effective, the masks repeatedly failed. The defendants removed the case to the United States District Court for the Southern District of West Virginia. In January of 2005, the case was remanded back to state court. The case is pending.

**22.**

**State ex rel. Darrell V. McGraw, Jr. v. Coupon Connection of America, Inc., et al.**  
**(Civil Action No. 05-C-81 - Circuit Court of Lincoln County)**

The Division filed a lawsuit against Coupon Connection, a Texas corporation, and its two principals in May of 2005. The suit alleged that the defendants operated a pyramid scheme and committed unfair or deceptive acts or practices by misrepresenting the money making potential of the work-at-home program. A preliminary injunction hearing was held in July of 2005, and an injunction order was entered on November 18, 2005.

Subsequently, the Division learned that the defendants were concealing their assets. On March 31, 2006, a second hearing was held. The State asked the Court to require Coupon Connection to post a bond, to grant a default judgment against the defendants for their failure to timely file an answer, and to resolve various discovery disputes. The Court has not yet ruled on these matters.

**23.**

**State of Colorado, et al. v. Cash Advance and Preferred Cash Loans**  
**(Colorado Court of Appeals - Tr. Ct. No. 05-CV-1143)**

The Division led a group of other state Attorneys General, state financial services administrators, and several consumer advocacy organizations in the filing of an amicus brief to support the State of Colorado in its long-standing subpoena enforcement action against two Internet payday lenders, Cash Advance and Preferred Cash Loans. The lenders claim to be Indian tribes and assert that they are exempt from the regulatory authority of the states under the doctrine of tribal sovereign immunity.

On February 14, 2005, the District Court for the City and County of Denver, Colorado ordered the lenders to comply with the State's subpoena. After the lenders failed to comply, the Colorado Attorney General commenced a contempt action, which resulted in the entry of an order on March 5, 2007, finding the lenders in contempt and ordering them to comply with the subpoena. The lenders appealed the contempt order, which is presently pending before the Colorado Court of Appeals.

In late 2005, the West Virginia Attorney General initiated his own investigation of the lenders that alleged to be Indian tribes. The lenders have also refused to cooperate with the West Virginia Attorney General's investigation and have again asserted tribal sovereign immunity in response to a Petition to Enforce Investigative Subpoena filed in West Virginia.

**24.**

**State ex rel. Darrell V. McGraw, Jr. v. Superior Windows, Inc., et al.**  
**(Civil Action No. 07-C-2135 - Circuit Court of Kanawha County)**

On October 9, 2007, the Attorney General filed a Complaint and Petition for Preliminary Injunctive Relief in the Circuit Court of Kanawha County against Superior Windows, Inc., WDS Marketing, Craig Carver, individually, and as President of Superior Windows, Inc., and Teresa Carver, individually, and as President of WDS Marketing (Superior). In his lawsuit, the Attorney General alleged that the defendants had refused to honor warranties and had performed substandard work. The case is pending.

25.

**State ex rel. Darrell V. McGraw, Jr. v. Mr. Meats, et al.**  
**(Civil Action No. 05-C-2694 - Circuit Court of Kanawha County)**

On December 12, 2005, the Attorney General sued Mr. Meats, and its owner, Bill Parsons, in the Circuit Court of Kanawha County. The lawsuit alleged that Mr. Meats sold poor quality meat door-to-door, misrepresented the type of meat being sold, and failed to honor consumers' three-day right to cancel. The suit also alleged that Parsons did not have a food handling permit from the Kanawha-Charleston Health Department.

In 2007, the Court entered a temporary injunction order barring Mr. Meats and Parsons from engaging in door-to-door sales in West Virginia until further order of the Court. The Court further granted the State's Motion for Summary Judgment, in part. Trial is scheduled for February 19, 2008.

26.

**State ex rel. Darrell V. McGraw, Jr. v. JBC Legal Group, PC, et al.**  
**(Civil Action No. 04-C-2083 - Circuit Court of Kanawha County)**

On July 28, 2004, the Attorney General sued JBC Legal Group, PC (JBC), and its officers. The lawsuit alleged that JBC engaged in unlawful debt collection activities when it threatened to criminally prosecute consumers, threatened to sue them for time-barred debts, and refused to provide verification of debts when disputed by consumers. On July 20, 2004, the Circuit Court of Kanawha County enjoined JBC from collecting debts in West Virginia pending further order of the Court.

27.

**State ex rel. Darrell V. McGraw, Jr. v. Paul Arsenault, et al.**  
**(Civil Action No. 06-C-794 - Circuit Court of Monongalia County)**

On December 6, 2006, the Attorney General sued Paul Arsenault, individually, and as owner of Just for Women II. Just for Women II was a health club located in Morgantown, West Virginia that closed without advance notice to its members. Prior to closing, memberships for six to twelve months were sold to West Virginia consumers. Thus, these consumers were deprived of the services they had paid for when the health club closed.

On January 18, 2007, Paul Arsenault filed Chapter 7 bankruptcy in the United States District Court for the Northern District of West Virginia. The women who did not receive the entire term of their health club membership were listed as creditors in the bankruptcy proceedings. By order entered on March 7, 2007, Paul Arsenault agreed not to own and/or operate a health club in West Virginia again.

28.

**State ex rel. Darrell V. McGraw, Jr. v. ET Burns Mechanical Corporation, et al.**  
**(Civil Action No. 07-C-1522 - Circuit Court of Kanawha County)**

On July 24, 2007, the Attorney General filed a Complaint and Petition for Preliminary Injunction against Harper's Heating and Cooling and Edwin Burns (Harper's) in the Circuit Court of Kanawha County. Harper's was taking money from consumers for heating and air conditioning units, not installing them, and refusing to honor warranties. On September 5, 2007, the Court granted the State's Motion for Default Judgment for \$15,624.30.\*

## PETITIONS TO ENFORCE INVESTIGATIVE SUBPOENAS

The Legislature granted the Attorney General the power to subpoena documents and witnesses when investigating possible violations of State consumer protection law. The subpoena power is one of the most important tools used by the Attorney General to determine whether the law has been violated and, if so, to gauge the scope of the violations and identify the consumers who have been victimized. Although the Attorney General's subpoena power is expressly provided for under the Act, W. Va. Code § 46A-7-104, some companies challenge the Attorney General's authority to issue subpoenas or simply refuse to comply. When companies do not respond to a subpoena issued by the Attorney General, he can file a lawsuit called a Petition to Enforce Investigative Subpoena, asking the Court to order compliance with the subpoena.

### a.

**State ex rel. Darrell V. McGraw, Jr. v. Cash Advance Network, Inc., et al.**  
**(Civil Action No. 06-MISC-437 - Circuit Court of Kanawha County)**

Last year, the Attorney General filed suit in the Circuit Court of Kanawha County against 14 Internet payday lenders<sup>2</sup> to enforce investigative subpoenas and to enjoin their usurious lending practices in West Virginia. After a hearing on February 5, 2007, the Court ordered ten of the Internet payday lenders to comply with the Attorney

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<sup>2</sup> The 14 Internet payday lenders are as follows: Apple Fast Cash Personal Loans; Cash Advance Network, Inc.; Cash Advance USA; Cash Advance Marketing, Inc. d/b/a Cash Back Values; Cash Net; American Interweb Marketing d/b/a CASHRebateOnLine.com; Leads Global, Inc. d/b/a Cash Today Limited, and d/b/a Cash2day4you.com; GECC d/b/a Cashdirectnow.com; Americash Hotline, LLC d/b/a Direct Cash Express, LLC; Magnum Cash Advance, Inc.; Ambassador Financial Services d/b/a Nationwide Cash; PayDay OK d/b/a PayDay Select; Quik Payday.com; Financial Solutions; and USA Cash Center.

General's subpoena and enjoined them from making or collecting payday loans in West Virginia until further order of the Court. Four of the lenders reached settlement agreements with the Attorney General prior to or subsequent to the hearing. A fourth, Leads Global, Inc., asserted that it was not a lender. Proceedings against Leads Global remain pending.

On September 5, 2007, the Attorney General filed a Petition for Contempt against the nine remaining Internet payday lenders because they failed to comply with the Attorney General's investigative subpoena as ordered by the Court. A hearing was held in the Circuit Court of Kanawha County on November 20, 2007, at which time the court found three of the lenders in contempt.<sup>3</sup> As of this date, the Court has not yet ordered what sanctions will be imposed.

**b.**

**State ex rel. Darrell V. McGraw, Jr. v. Aero Advance Financial, et al.**  
**(Civil Action No. 06-MISC-364 - Circuit Court of Kanawha County)**

On September 5, 2007, the Attorney General filed a Petition to Enforce Investigative Subpoena against 17 more Internet payday lenders<sup>4</sup> that had failed to

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<sup>3</sup> One of the lenders, Ambassador Financial Services d/b/a Nationwide Cash, reached a settlement agreement with the Attorney General; Cash Advance Marketing, Inc. and GEGG were found in contempt. The Petition for Contempt remains pending against the remaining five lenders because they could not be located.

<sup>4</sup> The 17 Internet payday lenders are as follows: AeroAdvance Financial, Inc.; Cash Supply; Eastside Lenders.com; FTR Processing; Geneva-Roth Ventures; Interin Cash.com; Miami Nation Enterprises d/b/a Ameriloan d/b/a Cash Advance d/b/a US Fast Cash d/b/a United Cash Loan; MTE Financial Services d/b/a 500 Fast Cash d/b/a NoFaxingPaydayLoan.com d/b/a PayCheckToday.com d/b/a QuickestPaydayLoan.com d/b/a Rio Resources d/b/a XtraCash.com; My Cash Now; Payday Max.com; Payday Services.com; Payday Yes.com; Preferred Cash; Route 66 Funding; Selling Source d/b/a Preferred Cash Loans.com; SFS, Inc. d/b/a One Click Cash; and Web Payday.

comply with his investigative subpoenas. After a hearing on October 25, 2007, the Court ordered eight of the Internet payday lenders to comply with the Attorney General's investigative subpoena and enjoined them from making or collecting loans in West Virginia pending further order of the Court. Six of the seventeen lenders were dismissed because they could not be located to be served with the petition and show cause order.

The remaining three lenders<sup>5</sup> filed a motion challenging the court's jurisdiction, which will be heard on February 14, 2008. These three lenders, which allege to be Indian tribes, have previously been ordered by a court in Colorado to comply with a similar subpoena issued by the Colorado Attorney General's office. The companies assert that they are immune from civil suit under the doctrine of tribal sovereign immunity. The Attorneys General of West Virginia and Colorado have asserted that the real lenders are not Indian tribes, but simply are using the tribes as a front to circumvent state usury laws.

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<sup>5</sup> The 3 Internet payday lenders are as follows: Miami Nation Enterprises d/b/a Ameriloan d/b/a Cash Advance d/b/a US Fast Cash d/b/a United Cash Loan; MTE Financial Services d/b/a 500 Fast Cash d/b/a NoFaxingPaydayLoan.com d/b/a PayCheckToday.com d/b/a QuickestPaydayLoan.com d/b/a Rio Resources d/b/a XtraCash.com; and S.F.S. d/b/a One Click Cash.

c.

The cases listed below are additional instances in which the Attorney General filed petitions in court to enforce its investigative subpoenas.

<b>Case Name</b>	<b>Date Filed</b>
<b><u>State ex rel. Darrell V. McGraw, Jr. v. Financial Credit Services, et al.</u></b> <b>(Civil Action No. 07-MISC-135 - Circuit Court of Kanawha County)</b>	<b>March 28, 2007</b>

After a hearing on May 10, 2007, the Circuit Court of Kanawha County entered an order compelling Financial Credit Services to fully comply with the subpoena and to cease collecting any debts in West Virginia pending further order of the Court.

<b><u>State ex rel. Darrell V. McGraw, Jr. v. Frederick Kelly, et al.</u></b> <b>(Civil Action No. 07-MISC-155 - Circuit Court of Kanawha County)</b>	<b>April 5, 2007</b>
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After a hearing on June 1, 2007, the Circuit Court of Kanawha County entered an order compelling Frederick Kelly (Kelly) to comply with the subpoena and also enjoining Kelly from collecting any debts in West Virginia until further order of the Court. Kelly again failed to comply with the subpoena. Thus, on August 13, 2007, the Attorney General filed a Petition for Contempt against Kelly asking the Court to impose such sanctions as may be necessary to compel him to comply with the subpoena. The Petition for Contempt remains pending as of the date of this report.

<b><u>State ex rel. Darrell V. McGraw, Jr. v. Wolf Law Firm, et al.</u></b> <b>(Civil Action No. 07-MISC-189 - Circuit Court of Kanawha County)</b>	<b>April 27, 2007</b>
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After a hearing on July 19, 2007, at which Wolf Law Firm (Wolf) failed to appear, the Circuit Court of Kanawha County issued an Order compelling Wolf to comply with the subpoena and to cease collecting debts in West Virginia until further order of the Court.

<b><u>State ex rel. Darrell V. McGraw, Jr. v. Evelyn Cain Jackson, et al.</u></b> <b>(Civil Action No. 07-MISC-177- Circuit Court of Kanawha County)</b>	<b>June 18, 2007</b>
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After a hearing on June 21, 2007, the Circuit Court of Kanawha County issued an order compelling Evelyn Cain Jackson to comply with the Attorney General's subpoena and to cease collecting any debts in West Virginia pending further order of the Court.

**State ex rel. Darrell V. McGraw, Jr. v. Patriot Debt Solutions, Corp.**  
**(Civil Action No. 07-MISC-309 - Circuit Court of Kanawha County)**

**July 30, 2007**

Patriot Debt Solutions, Corp. (Patriot) failed to appear at the hearing on the Petition to Enforce the Subpoena and the Court entered an order enjoining Patriot from engaging in business in West Virginia until it comes into compliance with the subpoena and West Virginia law. Patriot has ceased doing business in West Virginia.

**State ex rel. Darrell V. McGraw, Jr. v. Able Debt Settlement, Inc.**  
**(Civil Action No. 07-MISC-310 - Circuit Court of Kanawha County)**

**July 30, 2007**

On October 25, 2007 the Circuit Court of Kanawha County enjoined Able Debt Settlement (Able) from conducting business in West Virginia until it comes into full compliance with the subpoena and West Virginia law. To date, Able has not complied with the subpoena.

**State ex rel. Darrell V. McGraw, Jr. v. Kwik Dri Carpet & Upholstery, LLC**  
**(Civil Action No. 07-MISC-327 - Circuit Court of Kanawha County)**

**August 8, 2007**

A hearing was held on November 1, 2007, and Kwik Dri Carpet & Upholstery, LLC was ordered to respond fully to the subpoena by no later than the close of business on December 3, 2007.

**State ex rel. Darrell V. McGraw, Jr. v. SRA Capital, et al.**  
**(Civil Action No. 07-P-222 - Circuit Court of Berkeley County)**

**August 15, 2007**

This case is scheduled for hearing on December 3, 2007.

**B.**

**ASSURANCES OF DISCONTINUANCE  
AND SETTLEMENT AGREEMENTS**

If, after investigating a business, a lawyer in Attorney General McGraw's Consumer Protection Division determines that the company has engaged in conduct that violates the Act, he or she typically tries to settle the matter with the business without filing a lawsuit. Specifically, the attorney will ask the company to sign an Assurance of Discontinuance pursuant to W. Va. Code § 46A-7-107(2007) or enter into a settlement agreement. This approach has proven very successful. During this reporting period, the Division has secured \$6,626,260.88 in refunds, cancellation of debt, and products received. The companies that entered into Assurances of Discontinuance and settlement agreements with the Division during the reporting period are identified below.

**1.**

**IN THE MATTER OF EXCALIBUR I**

On May 24, 2007, the Attorney General entered into an Assurance of Discontinuance with Excalibur I, LLC (Excalibur), a debt purchaser based in Lake Success, New York. The Attorney General commenced an investigation of Excalibur after receiving a complaint alleging that Excalibur was collecting debts in West Virginia without a license and was allegedly engaging in other unlawful debt collection practices.

In the Assurance, Excalibur agreed to close all of its West Virginia accounts with a zero balance, to notify credit bureaus to delete all references to these accounts from the consumers credit reports, and to refund payments collected from certain consumers. Excalibur also dismissed 119 collection lawsuits it had filed and released all judgments

that had been obtained against West Virginia consumers. As a result of this Assurance, Excalibur closed the accounts of 861 consumers with a zero balance, which resulted in the debt cancellation of \$3,074,112.51, and refunds of \$27,611.00, for a total settlement value of \$3,101,723.51.

## 2.

### **IN THE MATTER OF VALUE SERVICES OF WEST VIRGINIA, LLC d/b/a FIRST AMERICAN CASH ADVANCE**

On April 30, 2007, the Attorney General entered into an Assurance of Discontinuance with Value Services of West Virginia, LLC d/b/a First American Cash Advance (FACA), located in Chattanooga, Tennessee. The Attorney General opened an investigation of FACA after receiving complaints that FACA was engaging in the business of making payday loans to West Virginia consumers, even though such loans are prohibited by West Virginia law. FACA asserted that it was merely the marketer and servicer of loans that were actually issued by Community State Bank, a state-chartered bank located in South Dakota where such loans are lawful.

In 2006, the Federal Deposit Insurance Commission reiterated its concerns about the partnering of state-chartered banks with non-banks such as FACA and urged the banks it supervised to exit the payday lending business. Shortly thereafter, Community State Bank dissolved its partnership with FACA.

In the Assurance, FACA agreed to permanently refrain from marketing or making payday or other usurious loans in West Virginia. FACA also agreed to pay \$222,000.00 to the State for refunds and consumer education. In addition, FACA agreed to close the

accounts of 3,853 West Virginia consumers with a zero balance, resulting in \$918,000.00 in debt relief. The total settlement value was \$1,140,000.00.

**3.**

**IN THE MATTER OF FEDERAL PACIFIC CREDIT COMPANY, LLC**

On November 16, 2007, the Attorney General entered into an Assurance of Discontinuance with Federal Pacific Credit Company, LLC (FPCC) of Salt Lake City, Utah. The Attorney General opened an investigation of FPCC, a debt purchaser, after receiving a complaint disclosing that FPCC was collecting debts in West Virginia without a license and was also allegedly engaging in other violations of state and federal debt collection law.

In the Assurance, FPCC agreed to refrain from collecting debts in West Virginia until it obtained a license to do so, close all of its West Virginia accounts with a zero balance, and to notify credit bureaus to delete all references to these accounts from consumers' credit reports. As a result of this action, the Attorney General obtained \$558,635.17 in refunds and debt forgiveness for 246 West Virginia consumers.

**4.**

**IN THE MATTER OF THE DEBT RELIEF INDUSTRY**

The latest debt relief scam involves for-profit companies offering consumers a controversial approach to debt relief called "debt settlement" or "debt negotiation" services. In this approach, the debt settlement companies advise consumers to stop paying their bills and to instead make monthly payments to the debt settlement company or into a separate account. When the debt settlement company determines that enough

money has accumulated in the account, it attempts to negotiate lump sum settlements with each of the consumer's creditors. These companies charge already cash-strapped consumers hefty up-front fees, monthly service fees, and also charge a contingency fee of 20% or more of the amount allegedly saved whenever an account is settled.

The Attorney General has asserted that debt settlement services violate the law in four main respects: (1) the fees charged exceed the amounts allowed by West Virginia law for debt relief services; (2) the companies are not registered and bonded as credit services organizations with the West Virginia Secretary of State; (3) the advice given to consumers by these companies constitutes the unauthorized practice of law; and (4) the companies' claims about their ability to help consumers become "debt free" are deceptive and are not supported by the actual outcomes for consumers who enroll in debt settlement programs.

During the current reporting period, the Attorney General reached settlements with six debt settlement companies that resulted in refunds of \$463,382.74 for 370 West Virginia consumers. These settlements are identified below.

**a.**

**In the Matter of Debt Relief of America**

On March 22, 2007, the Attorney General entered into an Assurance of Discontinuance with Debt Relief of America, LP (DRA), of Dallas, Texas. The Attorney General opened an investigation of DRA after receiving consumer complaints disclosing that DRA, a for-profit company, was providing unlawful debt settlement services to West Virginia consumers.

In the Assurance, DRA agreed to permanently refrain from providing debt settlement and any other kind of debt relief services to consumers in West Virginia. DRA also agreed to fully refund all fees and charges collected for its services, resulting in refunds of \$222,699.78 to 206 West Virginia consumers.

**b.**

**In the Matter of Fidelity Debt Consultants**

On March 29, 2007, the Attorney General entered into an Assurance of Discontinuance with Fidelity Debt Consultants, Inc. (Fidelity) of Clearwater, Florida. The Attorney General opened an investigation of Fidelity after receiving consumer complaints disclosing that Fidelity, a for-profit company, was marketing or providing unlawful debt settlement services to West Virginia consumers.

In the Assurance, Fidelity agreed to permanently refrain from providing debt settlement and any other kinds of debt relief services to West Virginia consumers. Fidelity also agreed to refund all fees and charges collected, which resulted in refunds of \$136,450.00 to 112 West Virginia consumers.

**c.**

**In the Matter of Consumer Credit Counseling Services, Inc.**

On July 17, 2007, the Attorney General entered into an Assurance of Discontinuance with Consumer Credit Counseling Services of America, Inc. (CCCA), located in North Andover, Massachusetts. The Attorney General opened an investigation of CCCA after receiving consumer complaints alleging that the company held itself out to be a non-profit consumer credit counseling agency with an office in

Charleston when, in fact, it was a for-profit company based exclusively in Massachusetts. When consumers contacted CCCA, they mistakenly believed they were calling Consumer Credit Counseling Services of Southern West Virginia, a well-established credit counseling agency with several offices in the Kanawha Valley area. Instead, they were actually connected to CCCA's call center in Massachusetts.

In the Assurance, CCCA agreed to permanently refrain from providing debt settlement services in West Virginia, including marketing or enrolling consumers in debt settlement services with other companies, and it also agreed to refund all fees and charges collected by companies to which CCCA had referred consumers. As a result of the Assurance, the Attorney General obtained \$53,727.08 in refunds for 28 West Virginia consumers.

**d.**

**In the Matter of William Riggs and Debt Set, Inc.  
and Michelle Tucker and Resolve Credit Counseling, Inc.**

On June 7, 2007, the Attorney General entered into an Assurance of Discontinuance with William Riggs and Debt Set, Inc. (Debt Set), and Michelle Tucker and Resolve Credit Counseling, Inc. (Resolve). Both companies are headquartered in Boulder, Colorado. The Attorney General commenced an investigation of Debt Set and Resolve after receiving consumer complaints alleging that the companies were marketing and providing unlawful debt settlement services to West Virginia consumers.

In the Assurance, Debt Set and Resolve agreed to permanently refrain from marketing and providing debt settlement services to West Virginia consumers. The

companies also agreed to refund all fees and charges collected from West Virginia consumers, which resulted in refunds of \$39,220.02 for 21 West Virginia consumers.

**e.**

**In the Matter of Freedom Group**

On December 15, 2006, the Attorney General entered into an Assurance of Discontinuance with David Huffman d/b/a Freedom Group, a debt settlement company based in San Diego, California. The Attorney General commenced an investigation of Freedom Group after receiving a consumer complaint alleging that the company was unlawfully providing debt settlement services. In the Assurance, Freedom Group agreed to permanently refrain from providing debt settlement services in West Virginia, and also agreed to refund the consumer complainant \$7,000.00.

**f.**

**In the Matter of New Horizons Debt Relief**

On April 19, 2007, the Attorney General entered into an Assurance of Voluntary Compliance with New Horizons Debt Relief, Inc. (New Horizons) of Aliso Viejo, California. The Attorney General opened an investigation of New Horizons after receiving a consumer complaint alleging that New Horizons, a for-profit corporation, was engaging in unlawful debt settlement services in West Virginia.

In the Assurance, New Horizons agreed to permanently refrain from providing debt settlement services to consumers in West Virginia. New Horizons also agreed to refund all fees and charges that it collected, resulting in refunds of \$4,285.86 for 2 consumers.

5.

**IN THE MATTER OF PAYDAY LENDING**

In 2005, Attorney General McGraw launched a major initiative to educate consumers about the hazards of payday lending. Payday loans are short-term loans or cash advances typically for a period of 14 days, secured by a post-dated check or by the consumer's written authorization for an automatic debit from their checking account for the full amount of the loan, including interest or other fees.

Even though payday loans are not legal in West Virginia, many companies still attempt to circumvent West Virginia law by making payday loans to consumers over the Internet. In December of 2005, Attorney General McGraw commenced an investigation of the entire Internet payday lending industry after receiving numerous complaints from West Virginia consumers who had been victimized by these companies.

Each time the Division receives a complaint about a payday lender, a formal investigation is opened and followed up with a court enforcement action against any company who refuses to comply with West Virginia law. As a result of this approach, the Attorney General has successfully obtained settlement agreements with 17 Internet payday lenders. These agreements have resulted in \$441,984.92 in cash refunds and canceled debts for 3,328 consumers. Each company also agreed to permanently discontinue payday lending in West Virginia. These companies are identified below.

<b>Assurance Date</b>	<b>Company</b>	<b>Location</b>	<b>Amount</b>
Dec. 18, 2006	SJM Marketing.com	Kansas City, MO	\$20,320.00
Jan. 3, 2007	Magnum Cash Advance	Wilmington, DE	\$42,178.52
Jan. 5, 2007	Fast Bucks	Dallas, TX	\$9,650.00
Jan. 31, 2007	Apple Fast Cash	Wilmington, DE	\$57,031.98
Feb. 5, 2007	Payday OK	Ruidiso, MN	\$126,286.58
April 3, 2007	BMG Group	Mission, KS	\$5,780.00
April 12, 2007	Premier Processing	Kansas City, MO	\$14,425.00
April 12, 2007	JVC Processing	Kansas City, MO	\$4,160.00
May 1, 2007	National Opportunities Unlimited	New Castle, DE	\$8,986.25
May 1, 2007	American Interweb Marketing	Carson City, NV	\$2,730.00
May 2, 2007	American International Processing	Wilmington, DE	\$50,420.00
May 22, 2007	PD6 Ventures	Kansas City, MO	\$51,937.55
June 8, 2007	International Cash Services	Wilmington, DE	\$10,000.00
June 8, 2007	WorldWideCashNow.com	Philadelphia, PA	\$10,000.00
Aug. 10, 2007	JD Marketing	Las Vegas, NV	\$19,155.00
Sept. 10, 2007	Geneva Roth	Kansas City, MO	\$8,113.09
Sept. 12, 2007	Cash Pro d/b/a MakePaydayToday.com	Carson City, NV	\$810.95
		<b>TOTAL</b>	<b>\$441,984.92</b>

**6.**

**IN THE MATTER OF FINANCIAL ASSET MANAGEMENT SYSTEMS, INC.**

In late 2006, the Division entered into an Assurance of Discontinuance with Financial Asset Management Systems, Inc. (FAMS), a debt collection agency, located in Tucker, Georgia. During its investigation, the Division learned that FAMS was the debt collector for a wireless service provider and was charging unlawful debt collection fees.

After settling with FAMS, the Division issued a subpoena to the cell phone company for copies of all of its agreements with other debt collectors.

On March 22, 2007, the State entered into a letter agreement with the wireless service provider. Specifically, the provider agreed to change its contracts with collection agencies to preclude the charging of unlawful collection fees and other incidental fees, cancel any outstanding debt, and refund all unlawful fees collected from West Virginia consumers. Under the terms of the agreement, West Virginia consumers received refunds totaling \$58,578.20, and canceled debt totaling \$244,940.24, for a total settlement value of \$303,518.44.

**7.**

**IN THE MATTER OF SERVICING SOLUTIONS, LLC and AUTOVEST, LLC**

On May 4, 2007, the Attorney General entered into an Assurance of Discontinuance with Servicing Solutions, LLC and Autovest, LLC, both of Southfield Michigan. The Attorney General commenced an investigation of these affiliated companies after receiving a complaint disclosing that they were engaging in the collection of debts without a license in West Virginia.

In the Assurance, the companies agreed to credit consumers' accounts anywhere from \$500.00 to \$1,000.00, for a total of \$159,269.95 for 196 West Virginia consumers. The companies also paid \$1,000.00 to the State, and dismissed a lawsuit against a Culloden, West Virginia couple, resulting in a canceled debt of \$13,287.17. The total settlement value was \$173,557.12.

**8.**

**IN THE MATTER OF DIRECTV**

On June 21, 2007, the Attorney General entered into an Agreement with DIRECTV of El Segundo, California that settled a long-standing dispute involving consumers' eligibility to receive distant network programming. Consumers who complained alleged that they could not receive local network programming using their rooftop antennae and that local broadcast affiliates refused to grant waivers that would allow them to receive distant network programming. DIRECTV advised them that there was nothing further that they could do. The Attorney General opened an investigation of DIRECTV because DIRECTV had failed to inform these consumers about their right to receive a free on-site signal strength test to determine whether they were eligible to receive distant network programming on their home satellite dish systems.

In the agreement, DIRECTV agreed to grant an account credit or payment of \$125.00 to West Virginia consumers who were misinformed of their right to request a signal strength test. The settlement resulted in \$152,000.00 in account credits and refunds to 1,216 West Virginia consumers.

**9.**

**IN THE MATTER OF FAMILY HOME CENTER OF PRINCETON**

In 2006, the Attorney General commenced an investigation of Family Home Center of Princeton (Family Home Center) after receiving several consumer complaints alleging that the mobile home dealer failed to deliver mobile homes after receiving full payment or substantial down payments from consumers.

In response to the consumer complaints, Allegiance Holdings, LLC, Family Home Center's parent company, advised the Attorney General that the company had encountered a temporary cash flow problem and fully intended to make good on its obligations under the contracts. Despite these representations, the company failed to keep its promise.

When the company reneged on its promise to honor its contracts, the Attorney General assisted the consumers in filing claims against Family Home Center from the Dealer Recovery Fund administered by the West Virginia Division of Labor. As a result, the Attorney General assisted five consumers in obtaining refunds of \$81,249.26.

**10.**

**IN THE MATTER OF DR. ERIC LEE AND DR. PAULA LEE d/b/a  
KANAWHA BOULEVARD ANIMAL HOSPITAL**

On January 30, 2007, the Attorney General entered into an Assurance of Discontinuance with Dr. Eric Lee and Dr. Paula Lee d/b/a Kanawha Boulevard Animal Hospital (KBAH), of Charleston, West Virginia. The Attorney General opened an investigation of KBAH after receiving a complaint disclosing that the company was adding interest to allegedly delinquent account balances.

In the Assurance, KBAH agreed to permanently refrain from adding interest to delinquent account balances, close all delinquent accounts with a zero balance, and to notify credit bureaus to delete all references to these accounts from consumers' credit reports. As a result of this Assurance, the Attorney General obtained \$68,521.16 in debt forgiveness for 473 West Virginia consumers.

**11.**

**IN THE MATTER OF AOL, LLC**

On July 11, 2007, the Attorney General announced that West Virginia, along with 47 other states, had entered into an Assurance of Discontinuance with AOL, LLC. The Assurance alleged that AOL had established ongoing procedures to purposely hinder consumers' attempts to cancel AOL accounts. Instead of honoring cancellation requests made by telephone, AOL put callers through a "save" process, and used high pressure methods to prevent cancellations. Employees were given financial incentives to complete "member saves" and it became virtually impossible for consumers to cancel their Internet service.

The Assurance imposed strict limitations on telephone account-retention practices, and required a user-friendly online cancellation method, as well as a recorded verification of all telephone cancellation requests. Under the terms of the Assurance, AOL paid \$1,186.55 in consumer restitution and \$210.40 in debt cancellation to resolve outstanding complaints that had been filed with the Division. AOL also paid \$45,000.00 to the State for consumer education. The total settlement value was \$46,396.95.

**12.**

**IN THE MATTER OF KIRBY VACUUM CLEANERS FINANCED  
ON CREDIT CARDS ISSUED BY FIDELITY FEDERAL BANK**

On November 30, 2006, the Attorney General entered into a Settlement Agreement with HSBC Bank Nevada, N.A (HSBC) arising from its purchase and collection of credit card accounts originally opened by the now-defunct Fidelity Federal Bank (Fidelity). The Attorney General alleged that the accounts collected by HSBC

originated from the door-to-door sales of Kirby vacuum cleaners that were financed on credit cards issued by Fidelity. The Attorney General learned from a previous investigation that the consumers, many of whom were not credit worthy, had not been informed that their Kirby purchases had been placed on high interest credit cards.

As a result of the settlement agreement, HSBC agreed to close all such accounts with a zero balance and to delete all references of the accounts from consumers' credit reports, resulting in debt cancellation of \$34,095.76 owed by 28 West Virginia consumers.

### **13.**

#### **IN THE MATTER OF ALLIED HOME MORTGAGE CAPITAL CORPORATION**

In December of 2006, the Division entered into an Assurance of Discontinuance with Allied Home Mortgage Capital Corporation (Allied) of Houston, Texas, a home mortgage brokering business. Consumers were being sold loans on terms different than what was represented to them by sales representatives in Allied's Weirton, West Virginia office.

As part of the Assurance, Allied agreed to notify West Virginia consumers that a negatively-amortizing loan will increase the balance of the original loan if the lender's suggested payment is made. Allied paid \$12,000.00 to the State for consumer education and restitution.

**14.**

**IN THE MATTER OF WILLIAM R. HAGUE, INC.  
d/b/a HAGUE QUALITY WATER INTERNATIONAL, INC.**

On November 21, 2007, the Attorney General entered into an Agreement with William R. Hague, Inc. d/b/a Hague Quality Water International (Hague), a manufacturer, distributor and seller of water treatment systems, in Groveport, Ohio. The Attorney General commenced an investigation of Hague after receiving complaints against its former dealer, Hague Quality Water of Pittsburgh.

Based upon the complaints, the Attorney General determined that Hague's dealer failed to give consumers notice of their three day right to cancel; made claims and representations about the ability of its water treatment systems to minimize certain pollutants, contaminants, and micro-organisms in consumers' water when such claims could not be substantiated; did not have a contractor license; and misled consumers about the terms and conditions of financing.

In the agreement, Hague agreed to take such actions as may be necessary to ensure that its dealers comply with state and federal consumer protection law in the future. Hague also agreed to pay \$10,000.00 in restitution and for consumer education.

**15.**

**IN THE MATTER OF CHOICEPOINT INC.**

On May 31, 2007, the Attorney General announced that West Virginia, along with 43 other states, had entered into an Assurance of Discontinuance with Choicepoint Inc. (Choicepoint), a Georgia corporation, that collects and distributes consumers' personally identifiable information as part of its data brokering business. In February of 2005,

Choicepoint disclosed that criminals posing as legitimate businesses had gained access to consumers' personally identifiable information. The Assurance alleged that Choicepoint had failed to adequately maintain the privacy and security of consumers' personal information and, thus, had put consumers at serious risk of identity theft.

Under the terms of the Assurance, Choicepoint will make significant ongoing changes in the way it credentials its new customers. Choicepoint also agreed to pay \$5,000.00 for consumer education.

**16.**

**IN THE MATTER OF PAUL J. COLEMAN d/b/a  
COLEMAN & ASSOCIATES, P.C.**

On May 15, 2007, the Attorney General entered into an Assurance of Discontinuance with Paul J. Coleman d/b/a Coleman & Associates, P.C. (Coleman) of Revere, Massachusetts. The Attorney General opened an investigation of Coleman after receiving a complaint alleging that Coleman engaged in unlawful debt collection practices. The Attorney General also determined that Coleman, a lawyer licensed in Massachusetts, was not licensed to collect debts in West Virginia.

In the Assurance, Coleman agreed to comply with state and federal consumer protection laws in his future debt collection practices. Coleman also paid \$5,000.00 for consumer education.

**17.**

**IN THE MATTER OF JESSE L. RIDDLE d/b/a RIDDLE & ASSOCIATES**

On November 5, 2007, the Attorney General entered into a second Assurance of Discontinuance (second Assurance) with Jesse L. Riddle d/b/a Riddle & Associates, P.C. (Riddle), of Draper, Utah. The Attorney General had previously entered into an Assurance of Discontinuance on March 11, 2004, after receiving complaints that Riddle was adding unlawful attorney fees and collection costs to account balances that he was collecting for DIRECTV.

The Attorney General commenced a new investigation of Riddle after receiving a complaint and other information that Riddle was again stating or implying that it could add attorney fees and collection costs of \$98.00 to account balances allegedly owed to DIRECTV. In the second Assurance, Riddle agreed to permanently refrain from collecting DIRECTV accounts in West Virginia. Riddle also agreed to pay \$5,000.00 to the State to be used for consumer education.

**18.**

**IN THE MATTER OF SONY BMG MUSIC ENTERTAINMENT**

In the spring of 2005, Sony BMG (Sony) began selling music CD's that contained digital rights management software. The software was intended to prevent consumers from copying the CD. Occasionally, the software would disable the consumer's CD-ROM drive in his computer, which enabled viruses and other malicious software programs to hide on a user's computer.

After receiving complaints about Sony's software, a multi-state investigation ensued. On December 20, 2006, Sony entered into an Assurance of Voluntary

Discontinuance with Attorneys General from 40 states, including West Virginia, and the District of Columbia.

As part of the Assurance, Sony agreed to pay the states \$4,250,000.00\* for attorneys' fees and investigative costs. West Virginia's share was \$5,000.00. In addition, Sony agreed to pay anywhere from \$25.00 to \$175.00 to any consumer whose computer required repairs because of problems with the software, and to give free music to consumers who filed a claim.

**19.**

**IN THE MATTER OF GWWV, INC. d/b/a ROYALTY CHOICE DISTRIBUTORS  
d/b/a ROYAL FOODS d/b/a ELITE FOODS**

On September 6, 2006, the Attorney General entered into an Assurance of Discontinuance with GWWV, Inc. d/b/a Royalty Choice Distributors d/b/a Royal Foods d/b/a Elite Foods, of Wesley Chapel and Tampa, Florida. The settlement required refunds be made to consumers in two phases. During this reporting period, 15 consumers received refunds for a total of \$4,117.00.

**20.**

**IN THE MATTER OF MAHAMMAD JAMAL d/b/a TRI-STATE USED CARS**

On August 17, 2007, the Division entered into an Assurance of Discontinuance with Mahammad Jamal d/b/a Tri-State Used Cars, a used auto dealership in Charleston, West Virginia. The Attorney General's investigation was prompted by a complaint from a consumer who purchased a vehicle that shortly after delivery became inoperable. In

addition to violating the implied warranty of merchantability, the Division's investigation identified numerous other violations.

Under the terms of the Assurance, the business agreed to change its business practices to comply with the Truth in Lending Act, to refrain from asserting any right to repossess vehicles in which it did not have a security interest, to refrain from repossessing vehicles prior to mailing consumers the required notice of right to cure default, and to refrain from disclaiming the implied warranty of merchantability. The value of the settlement was \$3,400.00 in consumer restitution.

**21.**

**IN THE MATTER OF ALLTEL COMMUNICATIONS, INC.**

On September 7, 2006, the Attorney General entered into an Assurance of Discontinuance with Alltel Communications, Inc. Under the terms of the Assurance, 1,470 West Virginia consumers who purchased a hands-free kit between May 25, 2005 and September 30, 2005 from 2 West Virginia stores, could receive a refund if they returned the hands-free kit and signed a form verifying that an Alltel employee told them it was against the law to operate a cell phone while driving. During this reporting period, 30 consumers received refunds totaling \$2,835.26.

**22.**

**IN THE MATTER OF H&R BLOCK – PHILIPPI, WV FRANCHISE**

On February 27, 2007, the Division entered into an Assurance of Discontinuance with the Philippi franchise of H&R Block and Multi-Services, Inc. H&R Block prepares income tax returns for West Virginia consumers. The Division commenced an

investigation of the Philippi franchise of H&R Block after receiving a complaint that the company had falsely advertised, "West Virginia law REQUIRES that ALL residents returns must be filed ELECTRONICALLY." Apparently, the franchise misinterpreted a new statute that requires tax preparers filing over 100 returns to file electronically. The franchise erroneously believed the new statute also required individuals to file electronically. Based on this misrepresentation, Attorney General McGraw was concerned West Virginia consumers would feel compelled to utilize the services of the H&R Block franchise to prepare and file their income tax returns.

The Assurance required the H&R Block franchise to refrain from making such misrepresentations in the future, issue a retraction of the misrepresentation and reimburse any consumers who file a meritorious complaint with the Attorney General's office. The total settlement value was \$2,000.00.

### **23.**

#### **IN THE MATTER OF BEAUTIFUL MEMORIES MONUMENTS**

On June 12, 2007, the Division entered into an Assurance of Discontinuance with Beautiful Memories Monuments, a company selling cemetery markers in West Virginia and Ohio. The Division received numerous complaints from consumers that the business had closed without delivering their monuments. The owners, Ken & Vicki Hobbs, agreed to refund 31 consumers for their monuments and to refrain from engaging in such unfair or deceptive acts in the future. The consumers should receive a total of \$43,576.81.\* To date, the defendants have paid \$1,800.00 in restitution.

**24.**

**IN THE MATTER OF PROFESSIONAL RECOVERY, INC.**

On June 28, 2007, the Division entered into an Assurance of Discontinuance with Professional Recovery, Inc. (PRI), a repossession business located in Bluefield, West Virginia. The Attorney General's investigation was prompted by a complaint from a consumer who alleged that PRI charged him a handling fee to retrieve his personal property from his repossessed vehicle, removed and kept the consumer's license plate, and stole valuable amateur radio equipment from the car. West Virginia law prohibits agents from retaining the personal property of persons whose vehicles are repossessed and from charging a fee to retrieve such property. Under the terms of the Assurance, PRI agreed to stop charging consumers a handling fee to retrieve personal property and agreed not to keep license plates or personal goods found in the repossessed vehicles. The total settlement value of the Assurance was \$1,500.00.

**25.**

**IN THE MATTER OF ADVANCE AMERICA, CASH ADVANCE CENTERS, INC.**

On February 1, 2007, the Attorney General entered into an Assurance of Discontinuance with Advance America, Cash Advance Centers, Inc. (Advance America) of Spartanburg, South Carolina. Advance America is the nation's largest payday lender.

The Attorney General commenced an investigation of Advance America after receiving complaints about unlawful debt collection practices from West Virginia consumers who had traveled to Ohio branches of Advance America to get payday loans. These consumers alleged that Advance America attempted to coerce payment from them by threatening to file criminal charges against them, making unauthorized collection

calls to third parties, and by attempting to collect the debt by visiting consumers at their homes.

In the Assurance, Advance America promised to comply with applicable state and federal consumer protection laws and agreed to end its practice of making personal visits to consumers at their homes in West Virginia to collect payday loans. Advance America also agreed to zero out the accounts of four West Virginia consumers who had filed complaints alleging collection harassment, resulting in \$1,443.59 in cancelled debt.

**26.**

**IN THE MATTER OF SOLOMON & SOLOMON, P.C.**

On February 9, 2007, the Attorney General entered into an Assurance of Discontinuance with Solomon & Solomon, based in Albany, New York. The Attorney General opened an investigation of Solomon & Solomon after receiving a complaint disclosing that it was collecting debts in West Virginia without a license.

In the Assurance, Solomon & Solomon agreed to obtain a license and surety bond from the State Tax Department before collecting debts in West Virginia in the future. Solomon & Solomon also agreed to pay \$1,000.00 to the State for consumer education.

**27.**

**IN THE MATTER OF BLAINE A. ASH d/b/a MOUNTAIN STATE  
ASSET RECOVERY & TRANSPORT**

On December 28, 2006, the Division entered into an Assurance of Discontinuance with Blaine Ash, d/b/a Mountain State Asset Recovery & Transport, an automobile repossession business, located in Salem, West Virginia. The Attorney General's

investigation was prompted by a complaint from a consumer who was charged a fee to retrieve his personal property from his repossessed vehicle. Under the terms of the Assurance, Ash agreed to stop charging consumers unlawful fees for retrieving their personal possessions. The total settlement value is approximately \$600.00.

**28.**

**IN THE MATTER OF MAIN SECURITY CENTER, LLC**

On August 18, 2006, the Division entered into an Assurance of Discontinuance with Main Security Center, LLC, and Thomas Jamison (Main), of Phoenix, Arizona. The details of the Assurance were reported in the 2006 Annual Report. During the current reporting period, Main paid \$500.00 of the \$1,000.00\* to be used for the consumer education.

**29.**

**IN THE MATTER OF TRILEGIANT CORPORATION AND TRL GROUP, INC.**

On January 18, 2007, the Division entered into an Assurance of Discontinuance with Trilegiant Corporation and TRL Group, Inc. (Trilegiant). Trilegiant, a Connecticut company, sold membership programs for goods and services, including memberships offering discounts on automobile maintenance, car rentals, travel services, pet products, and home improvement products and services.

Trilegiant marketed its membership programs to consumers by means of direct mail in the form of check and non-check solicitations. Check solicitations involved the cashing or depositing of a check the consumer received in the mail. The non-check solicitations were mailed to the consumer for a free product. Under both scenarios,

acceptance of the solicitation obligated the consumer to pay for future services. In the Assurance, Trilegiant agreed to clearly and conspicuously disclose the consequences of cashing check solicitations or accepting non-check offers.

**30.**

**IN THE MATTER OF SCOTT WYATT, INDIVIDUALLY  
AND d/b/a WEST VIRGINIA SENIOR CITIZENS COALITION**

On June 6, 2007, the Division entered into an Assurance of Discontinuance with Scott Wyatt d/b/a West Virginia Senior Citizens Coalition. The business, located in Pittsburgh, Pennsylvania, is a sole proprietorship, for-profit business that advises senior citizens on how to structure their finances to allow them to qualify for Medicaid services, while legally preserving their assets for their personal use. The Division received numerous complaints from people who suspected the business was a scam because its name implied that it was an advocacy group or charitable organization located in West Virginia.

Under the terms of the Assurance, Scott Wyatt agreed to change the name of the business so it does not imply it is an association, advocacy group, or charitable organization, or that the business is located in West Virginia. In addition, Wyatt agreed to modify his contract so as to comply with the liquidated damages provisions of West Virginia law.

C.

**ANTITRUST DIVISION**

The Antitrust Division of the Office of the Attorney General is under the same management as the Consumer Protection Division and is charged with the responsibility of enforcing the West Virginia Antitrust Act, W. Va. Code § 47-18-1 et seq. The purpose of the Antitrust Act is to prevent unreasonable restraints of trade, monopolies, and attempts to monopolize trade. The Antitrust Division is staffed by one attorney and one paralegal. Under the Antitrust Act, the Attorney General is authorized to take legal action on behalf of the State and/or on behalf of its citizens to secure injunctive relief, restitution, civil penalties, damages, fees and costs. During this reporting period, the Antitrust Division secured \$529,743.26 for the State and its citizens.

1.

**ANTITRUST DIVISION LITIGATION**

a.

**State ex rel. Darrell V. McGraw, Jr. v. Zurich American Insurance Co., et al.**  
**(Civil Action No. 06-C-261 - Circuit Court of Hancock County)**

In 2004, after learning about the unlawful bid-rigging activities occurring in the insurance industry, West Virginia and nine other states commenced an investigation of Zurich American Insurance Co. (Zurich), and its subsidiaries, regarding its business activities and its involvement with Marsh & McLennan, then, the world's largest insurance company. In December of 2006, the states entered into a settlement agreement with Zurich. As part of the settlement agreement, Zurich agreed to pay the settling states \$20,000,000.00.\* West Virginia received \$125,000.00 as its share of this settlement.

b.

**States of Texas, et al. v. Organon USA Inc., et al.**  
**(Civil Action No. 04-5126 - U.S.D.Ct., District of New Jersey)**

In 2004, the Attorney General and other Attorneys General sued Organon USA Inc., and its parent company, Akzo Nobel N.V. (Organon), alleging that Organon had violated Section 2 of the Sherman Act and comparable state laws by unlawfully maintaining its monopoly for mirtazapine-based prescription drug products in the United States. Mirtazapine is the active ingredient in Remeron, a popular brand-name antidepressant marketed by Organon since 1996. The Attorneys General complaint alleged that Organon improperly listed or deliberately late-listed its patent for Remeron for the purpose of delaying the entry of generic competitors by as much as eight months.

This matter was settled by agreement on September 28, 2004, and the order for distribution was signed and entered on February 27, 2007. As a result of this settlement, 1,050 West Virginia consumers received refunds totaling \$85,489.53, and the State received \$27,425.21 for investigative costs and fees. The total settlement value was \$112,914.74.

c.

**State of Florida, et al. v. BMG Music, et al.**  
**(Docket No. 01-CV-125-F-H, MDL No. 1361 - U.S.D.Ct., District of Maine)**

In August of 2000, West Virginia joined 41 states and 3 territories in an action against BMG Music, Bertelsmann Music Group, Inc., Capitol Records, Inc. d/b/a EMI Music Distribution, Virgin Records America, Inc., Priority Records, LLC, MTS, Inc. d/b/a Tower Records, Musicland Stores Corp., Sony Music Entertainment, Inc., Transworld Entertainment Corp., Universal Music Group, Inc., Universal Music & Video Distribution

Corp., UMG Recordings, Inc., Warner-Elektra-Atlantic Corp., Warner Music Group, Inc., Warner Bros. Records, Inc., Atlantic Recording Corp., Elektra Entertainment Group, Inc., and Rhino Entertainment, Inc., in the United States District Court for the Southern District of New York. The matter was transferred to the United States District Court for the District of Maine and was consolidated into the multi-district litigation. The states alleged that the defendants were engaged in resale price maintenance, which had the effect of artificially inflating the price of recorded music compact discs.

In 2003, the states entered into a settlement agreement with all defendants providing for the payment of cash and the distribution of compact discs. The settlement was valued at \$143,000,000.00.\* During the current reporting period, West Virginia received \$66,828.52, earmarked for music education.

**d.**

**State ex rel. Darrell V. McGraw, Jr. v. Warrick Pharmaceuticals Corporation, et al.**  
**(Civil Action No. 01-C-3011 - Circuit Court of Kanawha County)**

Typically, drug companies report their wholesale prices to a data gatherer who then supplies the information to Medicaid so that it can set reimbursement levels on the prices of prescription drugs. In October of 2001, the State sued Warrick Pharmaceuticals Corp., Dey, Inc., Abbott Laboratories, and Abbott Laboratories, Inc. claiming that the defendants purposely inflated their reported prices to First Data Bank, an information gathering company, which allowed pharmacies to recover more money than they were entitled to from the government. The Division alleged that these companies submitted false prices to the data gatherer.

One of the defendants, Dey, Inc. reached a settlement with the Attorney General in May of 2004. Under the terms of the settlement, Dey, Inc. paid the State

\$1,100,000.00.\* The cases against the other two defendants were separated for trial. The trial against Warrick concluded on December 7, 2005, and resulted in a verdict for Warrick. The State's appeal to the West Virginia Supreme Court of Appeals was denied in January of 2007. The trial against Abbott is unscheduled.

e.

**State ex rel. Darrell V. McGraw, Jr. v. Acordia of West Virginia, Inc., et al.**  
**(Civil Action No. 05-C-115W - Circuit Court of Hancock County)**

After a five month investigation, the Attorney General sued Acordia, Inc. and Acordia of West Virginia, Inc. alleging violations of the Act and the Antitrust Act. Acordia, an insurance broker, acts as a middleman between a company wanting to purchase insurance and companies offering insurance policies. The suit alleged that Acordia failed to disclose the "backdoor" commissions that it received from its clients. Moreover, the State alleged that Acordia steered its customers to insurers that paid higher contingent commissions. The matter is in the discovery phase.

f.

**State ex rel. Darrell V. McGraw, Jr. v. Visa U.S.A., Inc., et al.**  
**(Civil Action No. 03-C-551 - Circuit Court of Ohio County)**

On October 27, 2003, Attorney General McGraw sued Visa U.S.A., Inc. and MasterCard International, Inc. alleging violations of the Act and the Antitrust Act. The lawsuit alleged that the companies used their market power with general purpose credit cards to force merchants to accept their branded debit cards. General purpose credit cards are widely used throughout the United States for making purchases on credit. Debit cards are used in place of writing a check. The complaint further alleged that this

unlawful tying arrangement forced retailers to increase prices on goods and services causing consumers to pay more for products than they would have absent the unlawful arrangement.

In October of 2005, the Court denied the defendants' request to dismiss the action. Defendants appealed the decision to the West Virginia Supreme Court of Appeals. The West Virginia Supreme Court of Appeals refused the petition. The case is pending.

**g.**

**State of California, et al. v. Infineon Technologies AG, et al.**  
**(3:06- CV-04333 PJH - U.S.D.Ct. Northern District of California)**  
**(MDL No. 1486 - San Francisco Division, Northern District of California)**

On July 14, 2006, the Division filed a complaint against Infineon Technologies AG; Infineon Technologies North America Corp.; Hynix Semiconductor, Inc.; Hynix Semiconductor America, Inc.; Micron Technology, Inc.; Micron Semiconductor Products, Inc.; Mosel-Vitec (USA), Inc.; Mosel-Vitec Corp.; Nanya Technology Corp. USA, Inc.; Nanya Technology Corp.; Elpida Memory, Inc.; Elpida Memory (USA), Inc.; NEC Electronics America, Inc. These companies and others are charged with conspiring to fix the prices of dynamic random access memory computer chips. Computer memory chips are used in personal computers, laptop computers and other electronic devices such as cell phones and personal digital assistants. Several of the principals have pled guilty to price fixing. Defendants' motion to dismiss West Virginia from the lawsuit was denied. The case is pending.

h.

**State ex rel. Darrell V. McGraw, Jr. v. Ace Group Holdings, Inc., et al.**  
**(Civil Action No. 07-C-481 - Circuit Court of Ohio County)**

In late 2004, after learning of bid-rigging activities occurring in the insurance industry, the Attorney General and eight other states, commenced an investigation of Ace Group Holdings, Inc. (Ace), and its subsidiaries regarding its business activities and its involvement with Marsh & McLennan, then, the world's largest insurance broker. In October of 2007, the states entered into a settlement agreement with Ace. As part of the settlement agreement, Ace agreed to pay the settling states \$4,500,000.00.\* West Virginia is scheduled to receive approximately \$38,000.00.\*

2.

**ANTITRUST DIVISION ASSURANCES OF DISCONTINUANCE**

**IN THE MATTER OF COMMERCIAL INSURANCE SERVICES, INC.**  
**(Misc. No. 07-P-16M - Circuit Court of Hancock County)**

In late 2004, the Attorney General commenced an investigation of Commercial Insurance Services, Inc. (Commercial), regarding its business activities in West Virginia. In April of 2007, the State entered into an Assurance of Voluntary Compliance with Commercial. The investigation revealed that disclosures of compensation, particularly contingent commissions, had not been disclosed to Commercial's customers.

As part of the terms of the Assurance, Commercial paid \$100,000.00 for consumer education, \$100,000.00 in refunds to its customers, and \$25,000.00 in attorneys' fees. Commercial also agreed to give its clients notice of the compensation it receives from insurers, including contingent commissions that are based on profitability. The total value of the settlement was \$225,000.00.

**D.**

**PRENEED FUNERAL UNIT**

Attorney General McGraw's Preneed Funeral Unit is responsible for recording and regulating the sale, management, and execution of preneed funeral contracts. The Preneed Funeral Unit consists of an auditor, an administrative assistant, a part-time clerk, and a part-time lawyer.

There are currently 269 funeral homes and 33 cemeteries licensed to sell preneed funeral contracts. The Preneed Funeral Unit has two funded accounts. The West Virginia Preneed Regulation Fund (the Regulation Fund) was established to pay for the administration of the Preneed Funeral Unit and is funded by fees paid by consumers and funeral homes. The West Virginia Preneed Guarantee Fund (the Guarantee Fund) was established to serve as an insurance account to protect consumers in the event a funeral home is financially unable to fulfill its preneed contractual obligations. As of October 31, 2007, the Regulation Fund had a balance of \$252,624.63 and the Guarantee Fund had a balance of \$839,028.33.

The Preneed Funeral Unit also resolves consumer complaints relating to preneed funeral contracts through its mediation process. This year, the Preneed Funeral Unit secured \$10,623.63 in refunds through mediation for consumers.

1.

**PRENEED FUNERAL UNIT LITIGATION**

a.

**State ex. rel. Darrell V. McGraw, Jr. v. F.E. Runner Funeral Home, et al.**  
**(Civil Action No. 07-C-13 - Circuit Court of Randolph County)**

On January 23, 2007, the Attorney General filed a Complaint and Petition for Contempt and Preliminary and Permanent Injunction against F.E. Runner Funeral Home and Cheryl Runner Kittle (Runner), located in Elkins, West Virginia. This was not the first time Runner's business practices were investigated by the Division. In 2003, Runner signed a Voluntary Assurance of Discontinuance to comply with the West Virginia Preneed Funeral Contracts Act. In 2004, the Division sued Runner after an audit revealed that she had failed to disclose a number of preneed funeral contracts to the Preneed Funeral Unit. Again, Runner agreed to comply with the West Virginia Preneed Funeral Contracts Act. Unfortunately, Runner continued to violate the West Virginia Preneed Funeral Contracts Act when she misappropriated money paid to her by consumers for their preneed funerals. In January of 2007, the Division filed a second lawsuit against Runner. On January 31, 2007, the Court granted the Division's request for a preliminary injunction, ordered a constructive trust be established, and appointed a trustee.

After a hearing on a Motion for Default Judgment on March 19, 2007, the Court granted the Division's motion and permanently enjoined F.E. Runner from selling and/or performing preneed funeral contracts. Consumers whose funds had been misappropriated were reimbursed a total of \$41,234.87 from the Guarantee Fund. The remaining consumers were notified they could transfer their preneed funeral contracts to a funeral home of their choice.

b.

**State ex rel. Darrell V. McGraw, Jr. v. Bartolo Funeral Home, Inc., et al.**  
**(Civil Action No. 04-C-361-2 - Circuit Court of Harrison County)**

In 2004, the Division filed a lawsuit against Bartolo Funeral Home, Inc., and its owner, James F. Bartolo (Bartolo), in the Circuit Court of Harrison County, alleging that the funeral home had misappropriated funds paid by consumers for preneed funeral contracts. When Bartolo ceased doing business at his Clarksburg funeral home in 2003, the Preneed Funeral Unit began receiving complaints that the funeral director was refusing to refund money paid for preneed funeral contracts. The Preneed Funeral Unit performed an audit, which revealed 50 preneed funeral contracts that Bartolo had failed to report to the Preneed Funeral Unit, and 37 instances where Bartolo had failed to report the withdrawal of consumers' money after servicing their contracts. Moreover, the Attorney General learned that instead of depositing consumers' funds in trust accounts, Bartolo had kept more than \$170,000.00\* of consumers' money and squandered it for other unknown purposes.

The Attorney General sued Bartolo seeking to freeze his assets and obtain restitution for all consumers. Bartolo agreed to settle the lawsuit by paying restitution and agreeing to a permanent injunction banning him from selling or servicing preneed funeral contracts. Eventually, the Attorney General paid the consumers \$149,218.39\* from the Guarantee Fund. The Attorney General continues to collect monthly payments from Bartolo to reimburse the Guarantee Fund and collected \$6,000.00 from Bartolo during this reporting period.

c.

**State ex rel. Darrell V. McGraw, Jr. v. Iams Funeral Home, et al.**  
**(Civil Action No. 07-C-126 - Circuit Court of Wetzel County)**  
**(Case No. 5:07-bk-01397 - U.S. Bankr. N.D. W. Va.)**

On October 24, 2007, the Division filed a Complaint and Petition for Preliminary Injunction in the Circuit Court of Wetzel County against Iams Funeral Home and its owner-operator, John Iams (Iams). On October 26, 2007, Iams filed for Chapter 11 bankruptcy. On November 2, 2007, the Circuit Court of Wetzel County granted preliminary injunctive relief and ordered the defendants to cease and desist selling, maintaining and performing preneed funeral contracts. The Court also ordered all preneed funeral contracts be transferred to other funeral homes within 30 days.

On November 9, 2007, the Division filed a Motion for Entry of Order and, in the Alternative, Motion to Modify Automatic Stay, asking the United States Bankruptcy Court for the Northern District of West Virginia to rule whether the State was subject to the automatic stay. The Division also filed a Motion for Expedited Hearing, which was promptly granted by the bankruptcy court. On November 19, 2007, the Court ruled that the State court proceedings were exempt from the bankruptcy stay. By letter dated November 20, 2007, all consumers were notified of the Court's order that all preneed funeral contracts were to be transferred within 30 days to a funeral home of their choice.

## 2.

### **PRENEED FUNERAL UNIT ASSURANCES OF DISCONTINUANCE**

As part of its responsibility to regulate the sale of preneed funeral contracts, the Preneed Funeral Unit conducts audits to ensure that funeral providers are managing their consumers' preneed funeral accounts in accordance with state law. When audits reveal violations, funeral providers are asked to sign an Assurance of Discontinuance. The most common violations discovered during these audits are the failure to report preneed funeral contracts to the Preneed Funeral Unit within 10 days of execution, and the failure to submit a Report of Death Beneficiary after servicing a preneed funeral contract. During the 2007 reporting period, 17 preneed funeral providers signed an Assurance of Discontinuance to resolve these violations. Those funeral homes are identified below.

<b>Date of Assurance</b>	<b>FUNERAL HOME</b>	<b>LOCATION</b>	<b>Failure to Register Contracts</b>	<b>Failure to File Death Beneficiary Forms</b>	<b>Other Violations</b>	<b>Administrative Fees and Costs</b>
Nov. 30, 2006	Chapel Funeral Home, Inc.	Bluefield, WV	2	9	2	\$900.00
Jan. 26, 2007	Lohr & Barb Funeral Home, Inc.	Parsons, WV	9	22		\$680.00
Jan. 29, 2007	Carriage Funeral Holdings, Inc. d/b/a Heck Funeral Home	Milton, WV	5	39		\$580.00
Jan. 29, 2007	Kimble Funeral Home	Franklin, WV	24	3	13	\$1,480.00
Feb. 22, 2007	Hinkle Funeral Home	Davis, WV	4	19	2	\$540.00
April 25, 2007	Fogleson-Tucker Funeral Home	Mason, WV	22	72		\$2,815.00
May 1, 2007	Sunset Memory Gardens Cemetery	Parkersburg, WV		68	4	\$2,180.00
May 1, 2007	Sunset Memorial Funeral Home	Parkersburg, WV	7	142	13	\$3,370.00
May 3, 2007	Rollins Funeral Home, Inc.	Kenova, WV			31	\$9,177.74
June 6, 2007	Wright Funeral Home	Phillipi, WV	8	88		\$2,000.90
June 13, 2007	Ridgelawn Memorial Park	Huntington, WV		42	1	\$1,940.00
June 13, 2007	Roselawn Memorial Gardens	Princeton, WV		5	23	\$1,030.00
June 13, 2007	Woodmere Memorial Park	Huntington, WV		39	4	\$1,065.00
Aug. 9, 2007	Boyle Funeral Home	Weston, WV	58	159		\$8,315.00
Aug. 9, 2007	Floyd Funeral Home	Weston, WV	19	208		\$7,290.00
Sept. 27, 2007	Perine Funeral Home	Shinnston, WV			3	\$1,500.00
Oct. 14, 2007	Jarvis Funeral Home	Paden City, WV	4	17		\$340.00
<b>TOTAL Administrative Fees and Costs</b>						<b>\$45,203.64</b>

## VI.

### CONCLUSION

2007 was another successful year for the Consumer Protection and Antitrust Divisions in that they recovered \$972,560,255.52 for consumers and the State. Attorney General McGraw is pleased by this figure, but cautions the reader against too narrow a focus on it. Such a focus is natural – we grasp the tangible more quickly and securely than the intangible – and, in this, the world's greatest market economy, dollar signs draw the most attention. Attorney General McGraw believes that, substantial as it is, this particular dollar sign grossly undervalues his office's efforts.

How? First of all, many or most of the thousands of mediations conducted this year might have become lawsuits, increasing the expenses of both parties and clogging the State's overburdened courts with small claims.

Second, in several instances this past year, the Division was simply ahead of the curve, snuffing out incipient consumer abuse before it caused widespread damage. For example, the Division secured millions of dollars and debt cancellation for consumers who were victims of flagrant debt relief practices, Internet payday loans, and fake check scams. The amount the exploiters of such practices might have fleeced from West Virginia consumers had the practices proliferated and become established can never be known.

Finally, there is a commodity with a value that utterly defies expression in dollars and cents: education. A consumer who learns how to protect himself is less likely to be harmed; a business that learns where the law draws its lines is less likely to transgress them. Thus, education is the linchpin of preventing consumer fraud and abuse in the first

place, with the happy dividend of reducing demand for mediation and litigation. Ideally, Attorney General McGraw would rather be a teacher of dispute avoidance than a player in dispute resolution. While that ultimate ideal is perhaps unattainable, all progress toward it benefits our State and citizens.

Respectfully submitted,

Darrell V. McGraw, Jr.  
Attorney General

# EXHIBIT 1

# COMPARISONS

	2007	2006	2005	2004	2003	2002
<b>MEDIATION COMPLAINTS</b>						
<b>Complaints Received</b>	10,061	9,766	8,683	9,143	8557	8,573
<b>Complaints Closed</b>	10,703	10,830	9,591	9,581	9511	8,934
<b>Restitution</b>	\$2,300,878.55	\$2,187,728.89	\$1,849,372.13	\$2,496,207.75	\$2,300,282.00	\$1,690,726.15
<b>CONSUMER PROTECTION</b>						
<b>Litigation</b>	\$963,000,310.69	\$54,713,035.29	\$62,912,498.42	\$58,404,584.00	\$71,225,894.80	\$66,170,098.77
<b>Assurances</b>	\$6,626,260.88	\$3,557,591.97	\$18,210,610.49	\$4,916,377.30	\$859,270.62	\$857,852.95
<b>ANTITRUST</b>						
<b>Litigation &amp; Assurances</b>	\$529,743.26	\$ 8,925,082.50	\$ 5,097,957.34	\$ 4,070,916.34	\$ 1,741,992.55	\$ 6,525,816.90
<b>PRENEED FUNERAL UNIT</b>						
<b>Litigation &amp; Assurances</b>	\$103,062.14	\$ 26,506.87	\$ 234,967.14	\$ 146,214.97	\$ 98,613.07	\$ 62,134.48
<b>TOTAL</b>						
<b>RESTITUTION</b>	<b>\$972,560,255.52</b>	<b>\$69,409,945.62</b>	<b>\$88,305,405.52</b>	<b>\$70,034,300.36</b>	<b>\$76,226,053.04</b>	<b>\$75,306,629.25</b>

# COMPARISONS

2001	2000	1999	1998	1997	1996	1995	
<b>MEDIATION COMPLAINTS</b>							
<b>Complaints Received</b>	8,080	7,929	8,891	8,903	7,106	5,516	
<b>Complaints Closed</b>	8,572	8,342	9,830	8,007	7,252	4,809	
<b>Restitution</b>	\$1,284,772.76	\$1,872,763.62	\$1,230,609.05	\$ 946,267.05	\$1,121,614.54	\$ 594,652.44	\$453,300.46
<b>CONSUMER PROTECTION</b>							
<b>Litigation</b>	\$61,684,366.53	\$51,179,434.48	\$ 963,570.47	\$ 413,924.83	\$1,710,739.92	\$ 932,192.90	\$128,252.95
<b>Assurances</b>	\$ 1,683,951.90	\$ 830,283.36	\$3,814,322.30	\$3,679,326.10	\$2,323,153.67	\$1,316,375.40	\$ 57,031.58
<b>ANTITRUST</b>							
<b>Litigation Assurances</b>	\$ 548,724.30	\$ 262,000.00	\$ 26,000.00	----	\$ 220,950.14	\$ 342,600.00	\$266,837.00
<b>PRENEED FUNERAL UNIT</b>							
<b>Litigation Assurances</b>	\$ 63,807.85	\$ 465,663.99	\$3,082,033.34	\$ 322,557.98	\$ 139,511.30	\$ 123,319.45	\$ 7,175.00
<b>TOTAL</b>							
<b>RESTITUTION</b>	<b>\$65,265,623.34</b>	<b>\$54,610,145.45</b>	<b>\$9,116,535.16</b>	<b>\$5,362,075.96</b>	<b>\$5,515,969.57</b>	<b>\$3,309,140.19</b>	<b>\$912,596.99</b>

# 2007 - 2006 COMPARISONS

2007	2006	2007-2006 Difference	%	
<b>MEDIATION COMPLAINTS</b>				
Complaints received	10,061	9,766	295	3%
Complaints closed	10,703	10,830	-127	-1%
Restitution	\$2,300,878.55	\$2,187,728.89	\$113,149.66	5%
<b>CONSUMER PROTECTION</b>				
Litigation	\$963,000,310.69	\$54,713,035.29	\$908,287,275.40	1660%
Assurances	\$ 6,626,260.88	\$ 3,557,591.97	\$ 3,068,668.91	86%
<b>ANTITRUST</b>				
Litigation - Assurances	\$529,743.26	\$8,925,082.50	- \$8,395,339.24	-1585%
<b>PRENEED FUNERAL UNIT</b>				
Litigation - Assurances	\$103,062.14	\$26,506.87	\$76,555.27	289%
<b>TOTAL</b>				
RESTITUTION	\$972,560,255.52	\$69,409,945.62	\$903,150,309.90	1301%

## CPD TOTAL COMPARISON WITHOUT TOBACCO

			<b>2006</b>		<b>2007</b>	
<b>2006 Total</b>	<b>\$69,409,945.62</b>		<b>Total</b>	\$69,409,945.62	<b>Total</b>	\$972,560,255.52
<b>2007 Total</b>	<b>\$972,560,255.52</b>		<b>Tobacco</b>	- \$51,863,412.00	<b>Tobacco</b>	-\$954,000,000.00
	<b>2006 Tobacco</b>	<b>\$51,863,412.00</b>	<b>Total Without Tobacco</b>	\$17,546,533.62	<b>Total Without Tobacco</b>	\$18,560,255.52
	<b>2007 Tobacco</b>	<b>\$954,000,000.00</b>				

## PERCENTAGE COMPARISON WITHOUT TOBACCO

<b>2007</b>	<b>2006</b>	<b>2007-2006 DIFFERENCE</b>	<b>%</b>
<b>\$18,560,255.52</b>	<b>\$17,546,533.62</b>	<b>\$1,013,721.90</b>	<b>6%</b>

# EXHIBIT 2

**CONSUMER PROTECTION AND ANTITRUST DIVISIONS**  
 2007 Mediation, Litigation and Assurances

Complaints Received .....	10,061
Complaints Closed .....	10,703
Mediation - Refunds, Debt Cancellation, Value Received .....	\$2,300,878.55
Consumer Protection Litigation .....	\$963,000,310.69
Consumer Protection Assurances .....	\$6,626,260.88
Antitrust Division Litigation .....	\$304,743.26
Antitrust Division Assurances .....	\$225,000.00
Preneed Funeral Unit Mediation .....	\$10,623.63
Preneed Funeral Unit Litigation .....	\$47,234.87
Preneed Funeral Unit Assurances .....	\$45,203.64
<b>CONSUMER PROTECTION DIVISION TOTAL .....</b>	<b>\$972,560,255.52</b>

**CONSUMER PROTECTION LITIGATION**

<u>Darrell V. McGraw, Jr., Attorney General, ex rel. State of West Virginia;</u> <u>the West Virginia Public Employees Insurance Agency; and</u> <u>the West Virginia Department of Health and Human Resources</u> <u>v. The American Tobacco Company, et al.</u> Civil Action No. 94-C-1707 - Circuit Court of Kanawha County . . .	\$954,000,000.00
<u>State ex rel. Darrell V. McGraw, Jr., et al. v. Medco Health Solutions, Inc., et al.</u> Civil Action No. 02-C-2944 - Circuit Court of Kanawha County <u>Medco Health Solutions, Inc., et al.</u> <u>v. West Virginia Public Employees Insurance Agency</u> Civil Action No. 02-C-2769 - Circuit Court of Kanawha County . . . . .	\$5,500,000.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Purdue Pharma, LP, et al.</u> Civil Action No. 01-C-137-S - Circuit Court of McDowell County . . . . .	\$2,500,000.00

<u>In re: Clifford Ealy</u>	
Case No. 2:03-BK-22312 - U.S. Bankr. S.D. W.Va.	
<u>State ex rel. Darrell V. McGraw, Jr., et al. v. Ameribank, Inc. et al.</u>	
Adversary Proceeding No. 06-2150 - U.S. Bankr. S.D. W.Va. . . . .	\$823,993.67
<u>State ex rel. Darrell V. McGraw, Jr. v. IGIA, Inc., et al.</u>	
Civil Action No. 06-C-2643 - Circuit Court of Kanawha County . . . . .	\$57,467.59
<u>State ex rel. Darrell V. McGraw, Jr. v. YP Corp., et al.</u>	
Civil Action No. 06-C-2645 - Circuit Court of Kanawha County . . . . .	\$26,893.00
<u>State ex rel. Darrell V. McGraw, Jr. v. H &amp; H Windows Unlimited, Inc.</u>	
Civil Action No. 03-C-3075 - Circuit Court of Kanawha County . . . . .	\$25,370.93
<u>State ex rel. Darrell V. McGraw, Jr. v. Mountaineer Roofing &amp; Siding, Inc., et al.</u>	
Civil Action No. 06-C-946 - Circuit Court of Kanawha County . . . . .	\$25,000.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Charles Roth,</u>	
<u>d/b/a Valley Pools and Spas Construction, et al.</u>	
Civil Action No. 05-C-432 - Circuit Court of Putnam County . . . . .	\$12,100.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Donna K. Diulus, et al.</u>	
Civil Action No. 04-C-281 - Circuit Court of Marion County . . . . .	\$9,985.50
<u>State ex rel. Darrell V. McGraw, Jr. v. Huey Small d/b/a H &amp; S Paving, et al.</u>	
Civil Action No. 97-C-1041 - Circuit Court of Kanawha County . . . . .	\$9,000.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Check Game Solutions, et al.</u>	
Civil Action No. 06-C-755 - Circuit Court of Kanawha County . . . . .	\$8,500.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Wholesale Used Cars, Inc.</u>	
Civil Action No. 03-C-2839 - Circuit Court of Kanawha County) . . . . .	\$750.00
<u>State of West Virginia ex rel. Darrell V. McGraw, Jr.</u>	
<u>v. Appalachian Heating and Cooling, Inc., et al.</u>	
Civil Action No. 06-C-1089 - Circuit Court of Kanawha County . . . . .	\$500.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Ash, Inc. d/b/a Curves</u>	
Civil Action No. 07-C-2598 - Circuit Court of Kanawha County . . . . .	\$250.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Kali Style, LLC d/b/a Curves</u>	
Civil Action No. 07-C-2599 - Circuit Court of Kanawha County . . . . .	\$250.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Vincent's Athletic Club</u>	
Civil Action No. 07-C-624 - Circuit Court of Kanawha County . . . . .	\$250.00

**CONSUMER PROTECTION ASSURANCES**

IN THE MATTER OF EXCALIBUR I .....	\$3,101,723.51
IN THE MATTER OF VALUE SERVICES OF WEST VIRGINIA d/b/a FIRST AMERICAN CASH ADVANCE .....	\$1,140,000.00
IN THE MATTER OF FEDERAL PACIFIC CREDIT COMPANY, LLC .....	\$558,635.17
IN THE MATTER OF THE DEBT RELIEF INDUSTRY .....	\$463,382.74
In the Matter of Debt Relief of America .....	\$222,699.78
In the Matter of Fidelity Debt Consultants .....	\$136,450.00
In the Matter of Consumer Credit Counseling Services, Inc. ....	\$53,727.08
In the Matter of William Riggs and Debt Set, Inc. and Michelle Tucker and Resolve Credit Counseling, Inc. ....	\$39,220.02
In the Matter of Freedom Group .....	\$7,000.00
In the Matter of New Horizons Debt Relief .....	\$4,285.86
IN THE MATTER OF PAYDAY LENDING .....	\$441,984.92
In the Matter of SJM Marketing.com .....	\$20,320.00
In the Matter of Magnum Cash Advance .....	\$42,178.52
In the Matter of Fast Bucks .....	\$9,650.00
In the Matter of Apple Fast Cash .....	\$57,031.98
In the Matter of Payday OK .....	\$126,286.58
In the Matter of BMG Group .....	\$5,780.00
In the Matter of Premier Processing .....	\$14,425.00
In the Matter of JVC Processing .....	\$4,160.00
In the Matter of National Opportunities Unlimited .....	\$8,986.25
In the Matter of American Interweb Marketing .....	\$2,730.00
In the Matter of American International Processing .....	\$50,420.00
In the Matter of PD6 Ventures .....	\$51,937.55
In the Matter of International Cash Services .....	\$10,000.00
In the Matter of WorldWideCashNow.com .....	\$10,000.00
In the Matter of JD Marketing .....	\$19,155.00
In the Matter of Geneva Roth .....	\$8,113.09
In the Matter of Cash Pro d/b/a MakePaydayToday.com .....	\$810.95
IN THE MATTER OF FINANCIAL ASSET MANAGEMENT SYSTEMS, INC. ....	\$303,518.44
IN THE MATTER OF SERVICING SOLUTIONS LLC and AUTOVEST LLC .....	\$173,557.12
IN THE MATTER OF DIRECTV .....	\$152,000.00

IN THE MATTER OF FAMILY HOME CENTER OF PRINCETON . . . . .	\$81,249.26
IN THE MATTER OF DR. ERIC LEE AND DR. PAULA LEE d/b/a KANAWHA BOULEVARD ANIMAL HOSPITAL . . . . .	\$68,521.16
IN THE MATTER OF AOL, LLC . . . . .	\$46,396.95
IN THE MATTER OF KIRBY VACUUM CLEANERS FINANCED ON CREDIT CARDS ISSUED BY FIDELITY FEDERAL BANK . . . . .	\$34,095.76
IN THE MATTER OF ALLIED HOME MORTGAGE CAPITAL CORPORATION . . . . .	\$12,000.00
IN THE MATTER OF WILLIAM R. HAGUE, INC. d/b/a HAGUE QUALITY WATER INTERNATIONAL, INC. . . . .	\$10,000.00
IN THE MATTER OF CHOICEPOINT INC. . . . .	\$5,000.00
IN THE MATTER OF PAUL J. COLEMAN d/b/a COLEMAN & ASSOCIATES, P.C. . . . .	\$5,000.00
IN THE MATTER OF JESSE L. RIDDLE d/b/a RIDDLE & ASSOCIATES . . . .	\$5,000.00
IN THE MATTER OF SONY BMG MUSIC ENTERTAINMENT . . . . .	\$5,000.00
IN THE MATTER OF GWWV, INC. d/b/a ROYALTY CHOICE DISTRIBUTORS d/b/a ROYAL FOODS d/b/a ELITE FOODS . . . . .	\$4,117.00
IN THE MATTER OF MAHAMMAD JAMAL d/b/a TRI-STATE USED CARS . . . . .	\$3,400.00
IN THE MATTER OF ALLTEL COMMUNICATIONS, INC. . . . .	\$2,835.26
IN THE MATTER OF H&R BLOCK – PHILIPPI, WV FRANCHISE . . . . .	\$2,000.00
IN THE MATTER OF BEAUTIFUL MEMORIES MONUMENTS . . . . .	\$1,800.00
IN THE MATTER OF PROFESSIONAL RECOVERY, INC. . . . .	\$1,500.00
IN THE MATTER OF ADVANCE AMERICA, CASH ADVANCE CENTERS, INC. . . . .	\$1,443.59
IN THE MATTER OF SOLOMON & SOLOMON, P.C. . . . .	\$1,000.00

IN THE MATTER OF BLAINE A. ASH d/b/a MOUNTAIN STATE  
 ASSET RECOVERY & TRANSPORT ..... \$600.00

IN THE MATTER OF MAIN SECURITY CENTER, LLC ..... \$500.00

**ANTITRUST DIVISION LITIGATION**

State ex rel. Darrell V. McGraw, Jr. v. Zurich American Insurance Co., et al.  
 (Civil Action No. 06-C-261 - Circuit Court of Hancock County) ..... \$125,000.00

States and Commonwealths of Texas, et al. v. Organon U.S.A. Inc., et al.  
 Civil Action No. 04-5126 - U.S.D.Ct., District of New Jersey ..... \$112,914.74

State of Florida, et al. v. BMG Music, et al.  
 Docket No. 01-CV-125-F-H, MDL No. 1361  
 U.S.D.Ct., District of Maine ..... \$66,828.52

**ANTITRUST DIVISION ASSURANCES OF DISCONTINUANCE**

IN THE MATTER OF COMMERCIAL INSURANCE SERVICES, INC.  
 Misc. No. 07-P-16M - Circuit Court of Hancock County ..... \$225,000.00

**PRENEED FUNERAL UNIT LITIGATION**

State ex. rel. Darrell V. McGraw, Jr. v. F.E. Runner Funeral Home, et al.  
 Civil Action No. 07-C-13 - Circuit Court of Randolph County ..... \$41,234.87

State ex rel. Darrell V. McGraw, Jr. v. Bartolo Funeral Home, Inc., et al.  
 Civil Action No. 04-C-361-2 - Circuit Court of Harrison County ..... \$6,000.00

**PRENEED FUNERAL UNIT ASSURANCES**

IN THE MATTER OF CHAPEL FUNERAL HOME, INC. .... \$900.00

IN THE MATTER OF LOHR & BARB FUNERAL HOME, INC. .... \$680.00

IN THE MATTER OF CARRIAGE FUNERAL HOLDINGS, INC.  
 D/B/A HECK FUNERAL HOME ..... \$580.00

IN THE MATTER OF KIMBLE FUNERAL HOME ..... \$1,480.00

IN THE MATTER OF HINKLE FUNERAL HOME ..... \$540.00

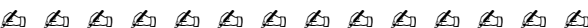
IN THE MATTER OF FOGLESON-TUCKER FUNERAL HOME .....	\$2,815.00
IN THE MATTER OF SUNSET MEMORY GARDENS CEMETERY .....	\$2,180.00
IN THE MATTER OF SUNSET MEMORIAL FUNERAL HOME .....	\$3,370.00
IN THE MATTER OF ROLLINS FUNERAL HOME, INC. ....	\$9,177.74
IN THE MATTER OF WRIGHT FUNERAL HOME .....	\$2,000.90
IN THE MATTER OF RIDGELAWN MEMORIAL PARK .....	\$1,940.00
IN THE MATTER OF ROSELAWN MEMORIAL GARDENS .....	\$1,030.00
IN THE MATTER OF WOODMERE MEMORIAL PARK .....	\$1,065.00
IN THE MATTER OF BOYLE FUNERAL HOME .....	\$8,315.00
IN THE MATTER OF FLOYD FUNERAL HOME .....	\$7,290.00
IN THE MATTER OF PERINE FUNERAL HOME .....	\$1,500.00
IN THE MATTER OF JARVIS FUNERAL HOME .....	\$340.00

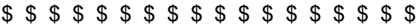
# EXHIBIT 3

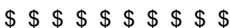
# MEDIATION

Written complaints received during reporting period  10,061

Written complaints closed during reporting period  10,703

Written complaints pending for reporting period  355

Cash refunds received by consumers from mediation during reporting period  \$651,980.35

Value and Debt Cancellation received by consumers from mediation during reporting period  \$1,648,898.20

# EXHIBIT 4

