
2008 ANNUAL REPORT



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

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

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)(2008). This report outlines the education, mediation, and enforcement activities of Attorney General McGraw's Consumer Protection and Antitrust Divisions from November 20, 2007, through November 19, 2008.

II.

INTRODUCTION

Attorney General McGraw's Consumer Protection and Antitrust Divisions (Division) operate under the direction of one Deputy Attorney General. The Division is 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 to enforce the Antitrust Act, one attorney is assigned 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 \$89,822,741.05 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 Division embarks each year on educating consumers about the latest scams, consumer fraud, and misleading and deceptive acts and practices.

The Attorney General has five 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. One of the representatives is a senior citizen liaison whose primary responsibility is reaching out to 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 to more than 21 different organizations.

The Citizen Advisory Committee (CAC), which is made up of approximately 33 active community members from around the state, continued to meet in 2008. 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 CAC met in Chester and Shepherdstown during 2008.

One of the CAC's initial suggestions was to create educational brochures on consumer protection issues. Two brochures were created and distributed in 2007. "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" list for wise credit card use. The second

brochure, "Measuring Up: A Consumer's Guide to Hiring Contractors for Home Repairs," gives consumers advise on steps to take before hiring a contractor and tips to follow before signing a home improvement contract. During 2008, two additional brochures were created. "The Reverse Mortgage: An Income Option for Senior Citizens," identifies the pros and cons of reverse mortgages. "On The Mark: A Guide to Concealed Weapons Laws of West Virginia," assists consumers about West Virginia's concealed weapons laws and where in the United States their West Virginia license is recognized.

During 2008 the Attorney General and the West Virginia State Bar joined forces to warn consumers about predatory "debt relief" companies that promise to make consumers "debt free," in exchange for hefty, non-refundable fees, with a focus on a controversial approach known as "debt settlement." "Debt settlement" companies advise consumers to stop paying all their debts and to send monthly payments to the debt settlement company where the funds are held to settle the accounts at an undetermined later date. The "advice," known as the unauthorized practice of law, often has disastrous consequences for consumers and is of great concern to the West Virginia State Bar and to the Attorney General.

One result of the partnership was the creation of a public service announcement (PSA) that cautions consumers about these companies and urges them to consult with West Virginia lawyers for assistance with debts. The PSA will be broadcast on radio stations statewide beginning December 29, 2008 through January 11, 2009, and is also available on the Attorney General's web site, www.wvago.gov.

The Attorney General's partnership with the AARP Foundation continued to flourish this year with the expansion of the ElderWatch program. 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 Division's 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 the program was launched on February 1, 2006, ElderWatch has helped more than 5,600 West Virginia consumers. ElderWatch volunteers have contributed more than 7,712 hours of service.

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. When the consumer calls, a complaint form and instructions are sent to his home. The complaint form is also available on the Division's website at 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 8,861 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 9,790. As a result of the Division's mediation efforts, consumers received \$429,028.17 in cash refunds, and \$1,565,087.22 in debt cancellation and value for products and services received. The total amount received in mediation was \$1,994,115.39.

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(2008) 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 \$75,992,042.96 through litigation. (See Exhibits 1 and 2.) Identified below are the cases that the Division had in litigation during the 2008 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. Through November 30, 2008, the State has collected approximately \$550,000,000.00^{*1} in payments since the execution of the Master Settlement Agreement (MSA). During this reporting period, West Virginia received approximately \$73,000,000.00.

The monies received under the tobacco settlement have benefitted the state in several different ways. In 2003, the West Virginia Legislature allocated \$24,000,000.00* from the West Virginia tobacco settlement to help create the initial capital and surplus of the Physicians' Mutual Insurance Company (PMIC). The Legislature created PMIC to help relieve the cost of medical malpractice insurance for West Virginia physicians and to make medical services more accessible for consumers. Moreover, in 2006, the West Virginia Legislature allocated approximately \$100,000,000.00,* the entire account balance from the tobacco settlement, to reduce the unfunded liability of the Workers Compensation fund.

During the 2007 session, the West Virginia Legislature enacted W. Va. Code § 4-11A-12 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,

¹ Monies that are followed by an * were not counted during this reporting period.

with the Legislature's approval, sold approximately 25 years' entitlement to the remaining settlement monies, resulting in a lump sum payment of approximately \$900,000,000.00.* This transaction also included the \$200,000,000.00* in strategic contribution money.

In the past 3 years, the non-participating tobacco companies have withheld approximately \$18,000,000.00.* The withholding issue is the subject of litigation currently ongoing in 46 states, including a lawsuit in the Circuit Court of Kanawha County. The litigation is currently on appeal in the United States Supreme Court of Appeals regarding the issue of whether the State must arbitrate the litigation in a single nationwide arbitration.

2.

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 for chronic pain relief. OxyContin has been widely abused and is frequently crushed to be either inhaled or injected.

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 agreement, the defendants paid the State a total of \$10,000,000.00* over four years. The State received its first payment of \$2,500,000.00* on December 15, 2004. The second payment of \$2,500,000.00* was received in December of 2005. The third payment of \$2,500,000.00* was received in December of 2006. The final payment of \$2,500,000.00 was received in December of 2007. The settlement money is earmarked for education and addiction rehabilitation services.

In early 2007, the Centers for Medicare and Medicaid Services (CMMS) made a demand for most of the settlement money claiming it was owed a refund under Medicaid law. The Federal Administrative Appeals Board ruled some money was owed to CMMS, but only a fraction of the amount demanded. The matter has sent back to CMMS for further proceedings.

3.

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., is a Delaware corporation that 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. These vacuum cleaners were offered 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. After consumers gave their bank or credit card information, the automated system would confirm their order. Consumers who ordered one vacuum under the “buy one - get one free” deal were

confirmed for two vacuums; consumers who ordered two vacuums were confirmed for four.

Immediately after the order was confirmed, the call would be disconnected, thereby 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 double what they had ordered and charged for both vacuums. IGIA routinely refused to give refunds when consumers returned merchandise or for merchandise the consumer never received.

In March of 2007, the Attorney General settled with IGIA, who agreed to pay restitution in the amount of \$176,139.27,* payable in 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 received \$57,467.59 in refunds.

4.

Capital One Bank (USA), N.A., et al. v. Darrell V. McGraw, Jr.
(Civil Action No. 2:08-CV-00165 - U.S.D.Ct., Southern District of West Virginia)

On March 1, 2008, Capital One Bank converted from a state-chartered Virginia bank to a national bank. National banks are regulated by the Office of Comptroller of the Currency (OCC), which has sole authority to inspect or require the production of documents from a national bank. In March of 2008, the new Capital One Bank (USA) and Capital One Services, Inc., filed suit in the United States District Court for the Southern District of West Virginia seeking a ruling that the Attorney General could no

longer pursue his investigation of them because state law was pre-empted by federal law. The Attorney General had been investigating possible unfair or deceptive acts or practices by Capital One Bank and Capital One Services, Inc., related to their marketing, advertising, servicing, debt collection, and issuing of credit cards.²

The United States District Court held that the Attorney General no longer has authority to pursue his investigation of Capital One Bank, but was not precluded from enforcing his subpoenas of Capital One Services, Inc. The Court made it clear, however, even though its ruling as to the bank was in accordance with federal law, the United States Congress should consider giving both the state and federal governments jurisdiction to enforce laws designed to protect consumers from abusive and misleading credit card practices. In his opinion, the Honorable Joseph R. Goodwin wrote that he believed the Attorney General's "lawful investigation was hijacked by Capital One's conversion to a national bank" and was concerned "whether the OCC will be as motivated or as effective in protecting the consumers of West Virginia as is the West Virginia Attorney General." Because the Court enjoined the Attorney General from investigating Capital One Bank, the Division has closed its investigation of the bank; however, it continues to seek enforcement of its subpoena issued to Capital One Services, Inc. Based on information submitted in this and other lawsuits, it appears that Capital One Services does the advertising for the bank's credit cards, services the credit cards' accounts, sells related products, and services the collection of the bank's accounts. The action is pending.

² At the time the suit was filed, both parties had appeals pending before the West Virginia Supreme Court of Appeals of orders requiring them to provide information in response to subpoenas issued by the Division.

5.

State ex rel. Darrell V. McGraw, Jr. v. Countrywide Financial Corporation, et al.
(Civil Action No. 08-C-268 - Circuit Court of Putnam County)
(Civil Action No. 3:08-1093 - U.S.D.Ct., Southern District of West Virginia)
(MDL-1988 - U.S.D.Ct., Southern District of California)

On August 12, 2008, the Division sued Countrywide Financial Corporation, et al.³ (Countrywide), in the Circuit Court of Putnam County. On September 12, 2008, Countrywide removed the lawsuit to the United States District Court for the Southern District of West Virginia. On September 16, 2008, the defendants moved to transfer and consolidate the case to the Judicial Panel on Multidistrict Litigation in the United States District Court for the Southern District of California (MDL). A week later, Countrywide moved to stay the action in West Virginia.

On October 22, 2008, the action pending in the district court was conditionally transferred to the MDL. On November 6, 2008, the State filed an objection to the conditional transfer order with the MDL Judicial Panel.

³ Countrywide Financial Corporation, a Delaware corporation; Countrywide Home Loans, Inc., a New York corporation; Countrywide Home Loans Servicing, LP, a Texas partnership; Full Spectrum Lending, Inc., a California corporation; and Angelo R. Mozilo, individually and in his capacity as Chief Executive officer of defendant Countrywide Financial Corporation.

6.

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 for certain mental illnesses, and Duragesic, a narcotic pain reliever absorbed through a skin patch. The State alleged that the defendants had misled doctors by misrepresenting the risks and benefits of these drugs. During a prior reporting period, the trial court ruled the Attorney General could hire outside counsel to litigate the case. The defendants appealed that ruling. The appeal was denied in January of 2007. In October of 2008, there was a bench trial and a ruling on the case has not been issued by the Court.

7.

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 failed to verify debts when they were 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. No trial date has been set.

In 2006, the California State Bar initiated a disbarment proceeding against Jack Boyajian, the California lawyer, who owned JBC and its various incarnations. This action was prompted by Boyajian's alleged unlawful debt collection practices in West Virginia

and many other states. In May of 2008, the California State Bar placed Boyajian's law license on an inactive status, pending final disposition of the bar's disciplinary matter. Boyajian recently requested and was granted an indefinite stay of the disbarment proceedings after learning that he was the subject of an active and open criminal investigation by the Major Frauds Unit of the United States Department of Justice.

8.

State ex rel. Darrell V. McGraw, Jr. v. Eli Lilly and Company
(Civil Action No. 06-C-31 - Circuit Court of Mason County)
(Civil Action 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 (Eli Lilly), of Indianapolis, Indiana, a manufacturer of prescription drugs, for its deceptive marketing of Zyprexa. This atypical, anti-psychotic drug, is approved for use for certain mental illnesses.

The Attorney General alleged that Eli Lilly misled and misrepresented Zyprexa to doctors who then prescribed the medicine. Shortly after the complaint was filed, the matter was removed to federal court, which then sent the case to Multidistrict Litigation in Brooklyn, New York. The case is in the discovery phase of the litigation.

9.

State ex rel. Darrell V. McGraw, Jr. v. CashCall, Inc., et al.
(Civil Action No. 08-C-1964 - Circuit Court of Kanawha County)

The Attorney General commenced an investigation of CashCall, Inc. (CashCall), in 2007 after learning that the company was making or arranging usurious loans for West Virginia consumers. These loans had interest rates of up to 99% per annum and were

arranged over the Internet via an interactive website. The Attorney General's investigation was also prompted by consumer complaints alleging a wide range of unlawful debt collection practices by CashCall. In response, CashCall asserted that its loans were actually made by a state-chartered bank in South Dakota, and, therefore, preempted by federal law.

On October 8, 2008, the Attorney General sued Cashcall and its president and CEO, J. Paul Reddam, in the Circuit Court of Kanawha County. The Attorney General asked the Court to permanently enjoin CashCall from making and collecting usurious loans in West Virginia, and to comply with his investigative subpoena, which was issued on August 3, 2007. On November 17, 2008, CashCall removed the suit to the United States District Court for the Southern District of West Virginia.

10.

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, who 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. Finally, Small was released when he agreed to pay off his debt to

consumers in monthly installments. The Division has collected \$6,000.00 during the reporting period.

11.

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

On December 12, 2005, the Attorney General sued Mr. Meats, and its owner, Bill Parsons. The lawsuit alleged that Mr. Meats sold poor quality meat door-to-door, misrepresented the type of meat being sold, failed to honor consumers' three-day automatic right to cancel, and threatened to charge unlawful collection fees if consumers stopped payment on their checks. The suit also alleged that Parsons did not have a food handling permit issued by the Kanawha-Charleston Health Department.

In 2007, the Circuit Court of Kanawha County temporarily enjoined Mr. Meats and Parsons from engaging in door-to-door sales in West Virginia until further order of the Court. The Court also granted the State's Motion for Summary Judgment on several counts alleged in the complaint.

On January 25, 2008, Parsons agreed to a permanent injunction barring him from selling food products in West Virginia without a food handling permit. The Court further ordered Parsons to comply with consumers' three-day right to cancel, refrain from deceiving consumers, stop assessing unlawful fees, and to pay \$15,000.00* in monthly installments of \$500.00 to be used for consumer restitution and consumer education. During this reporting period, the Division has collected \$5,000.00.

12.

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 and other home improvements under the name 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. Once Roth received significant payments, consumers reported that he failed to complete the jobs and became increasingly difficult to reach. Some consumers reported that if they insisted he make all the repairs prior to final payment, Roth would threaten to physically harm them.

In January of 2006, the Circuit Court of Putnam County enjoined Roth from engaging in any home improvement business until the case was resolved. On March 30, 2007, Roth finally agreed to a permanent injunction forever barring him from engaging in the home improvement business in the State. Roth was also ordered to pay \$80,000.00* in restitution to consumers, in monthly payments. During this reporting period, Roth has paid \$3,600.00.

13.

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)
(Civil Action No. 2:03-2161 - U.S.D.Ct., Southern District of West Virginia)

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, which are used in industrial settings. Specifically, the State alleged that although the dust masks were marketed as 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 matter is pending.

14.

State ex rel. Darrell V. McGraw, Jr. v. Brag Women's Center, LLC, et al.
(Civil Action No. 07-C-2705 - Circuit Court of Kanawha County)

On December 18, 2007, the Division filed suit against Brag Women's Center, LLC d/b/a Spencer Curves (Spencer Curves), located in Spencer, West Virginia, for failing to comply with the Health Spa Rule, Title 142, Series 13. The Health Spa Rule requires every health spa in the state to register with the Attorney General's office and provide the office with a copy of its West Virginia business registration certificate, as well as a valid membership contract. On March 20, 2008, Spencer Curves complied with The Health Spa Rule, and paid \$500.00 for consumer education.

15.

State ex rel. Darrell V. McGraw, Jr. v. Charles Howell & Associates, Inc.
(Civil Action No. 08-C-1935 - Circuit County of Kanawha County)

In October of this year, the Attorney General sued Charles Howell & Associates, Inc. and its President, Gregory James Wells (Howell), for unlawful debt collection practices. Consumers complained of receiving calls from Howell suggesting they would

be arrested if they did not pay their cellular telephone bill. Howell also violated state law by falsely representing to consumers that their wages would be garnished if they did not pay off the debt in full. In some cases, Howell disclosed personal information about the consumer to his employer, neighbors, and family members. During part of the investigation, Howell was not licensed to engage in collections in the State. The lawsuit seeks preliminary and permanent injunctive relief, as well as restitution for affected consumers. Litigation is ongoing.

16.

PETITIONS TO ENFORCE INVESTIGATIVE SUBPOENAS

The Legislature granted the Attorney General the power to subpoena documents and witnesses when investigating possible violations of the Act. 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 by 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 petition to enforce the investigative subpoena, asking the Court to order the defendant to comply.

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

a.

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

In September of 2006, the Attorney General commenced an investigation of SRA Capital, LLC, Monitor Construction Services, LLC, and their owner, John H. Partridge (Partridge), a disbarred Virginia lawyer. The investigation was initiated after the Division received a complaint from a Martinsburg couple alleging that Partridge took the deed to their home valued at \$250,000.00 in connection with a fraudulent foreclosure rescue scam. When Partridge failed to comply with the subpoena, the Attorney General filed a Petition to Enforce Investigative Subpoena and for Related Relief in the Circuit Court of Berkeley County. After a hearing on December 3, 2007, the Court ordered Partridge to comply with the subpoena and enjoined him from engaging in any fraudulent rescue scams. The Court also vacated the deed that Partridge had wrongfully taken from the Martinsburg couple and appointed a local lawyer to act as a special commissioner with the power to transfer the deed back to the couple.

b.

State ex rel. Darrell V. McGraw, Jr. v. Hess Kennedy Chartered
(Civil Action No. 07-MISC-454 - Circuit Court of Kanawha County)

In November of 2007, the Division filed a Petition to Enforce Investigatory Subpoena and for Related Relief against Hess Kennedy Chartered (Hess Kennedy) of Coral Springs, Florida, when it failed to comply with a subpoena that had been issued against the company. The Attorney General began investigating Hess Kennedy in 2007 after receiving consumer complaints that Hess Kennedy had failed to provide promised debt settlement services. When Hess Kennedy failed to appear at the hearing to enforce

the subpoena, the Court enjoined the company from conducting further business in West Virginia until it complied with the subpoena and West Virginia law.

In February of 2008, Hess Kennedy was sued by the Florida Attorney General's office and placed into receivership in Florida. The company is now in the process of being dissolved. In October, the owner of Hess Kennedy, Laura L. Hess, was disbarred by the Supreme Court of Florida.

Prior to Hess Kennedy being placed in receivership in Florida, it had refunded \$155,975.37 to West Virginia consumers.

c.

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

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 in support of the State of Colorado's subpoena enforcement action against two Internet payday lenders, Cash Advance and Preferred Cash Loans. The lenders claimed to be Indian tribes and asserted that they were 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. On March 5, 2007, the Court found the lenders in contempt and ordered them to comply with the subpoena.

On April 17, 2008, the Colorado Court of Appeals issued an opinion remanding the case to the trial court for further proceedings to determine whether the lenders are arms of Indian tribes, whether they are entitled to sovereign immunity, and, if so, whether they have waived their immunity. The lenders have asked Colorado's highest appellate court to review this decision.

d.

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)

As reported in last year's annual report, the Circuit Court of Kanawha County issued an order on February 5, 2007, compelling 10 of the Internet payday lenders sued by the Attorney General to refrain from making or collecting payday loans in West Virginia until further order of the Court. Four of the lenders sued have reached settlement agreements with the Attorney General's office. The remaining lenders failed to comply with the investigative subpoena and some of them have continued to make and collect payday loans in West Virginia.

The Attorney General filed a Petition for Contempt against those lenders who continued to violate the order of the court. On January 7, 2008, the Honorable Paul Zakaib found two of the lenders, Cash Advance Network, Inc., and GECC, in contempt and fined them \$3,000.00 per day relating back to April 5, 2007, the date the companies were first required to comply with the Attorney General's subpoenas. As of the date of this report, the two companies still have not complied with the Court's order and the Attorney General's enforcement actions against them continue. The remaining four companies were never properly served because addresses could not be confirmed.

e.

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

As reported in last year's annual report, the Attorney General filed a Petition to Enforce Investigative Subpoenas against 17 Internet payday lenders⁴ that had failed to 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. The lawsuit against 6 of the 17 lenders was dismissed because the lenders were never properly served. The remaining three companies entered settlement agreements with the Attorney General.

Thereafter, the Attorney General filed a Petition for Contempt against those lenders who still failed to comply with the orders of the Court as reported later in this document. The Attorney General's Petition for Contempt was heard on February 14, 2008, at which time the Honorable Louis H. Bloom found five of the companies in contempt, Cash Supply, PaydayServices.com, PaydayYes.com; Route 66 Funding, and Web Payday and fined them \$7,500.00* each. These companies still have not complied with the Court's order and the Attorney General's enforcement action against them is pending.

⁴ The 17 Internet payday lenders are as follows: AeroAdvance Financial, Inc.; Cash Supply; Eastside Lenders.com; FTR Processing; Geneva-Roth Ventures; Interim 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; PaydayMax.com; Payday Services.com; PaydayYes.com; Preferred Cash; Route 66 Funding; Selling Source d/b/a PreferredCashLoans.com; SFS, Inc. d/b/a One Click Cash; and Web Payday.

f.

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

The Attorney General began investigating Able Debt Settlement, Inc. (Able), in January of 2007 after receiving a consumer complaint that Able Debt Settlement, Inc. had failed to provide the debt settlement services the consumer had paid for. In March of 2007, the State issued an investigatory subpoena. When Able failed to comply with the subpoena, the Division filed a Petition to Enforce.

Prior to the hearing on the petition, the Court ruled on the State's petition and Able's response, enjoining Able from conducting further business in West Virginia until it comes into full compliance with the subpoena and West Virginia law. On March 10, 2008, Able appealed the Court's order. In the interim, Able has agreed not to sign up any new customers. The matter is scheduled for argument before the West Virginia Supreme Court of Appeals in January of 2009.

g.

State ex rel. Darrell V. McGraw, Jr. v. Video Magic, LLC
(Civil Action No. 08-MISC-217 - Circuit County of Kanawha County)

In 2008, the Attorney General began investigating Video Magic, LLC, and its sole officer, Steven Paul VanHorn (Video Magic), of South Charleston, West Virginia. The company is in the business of recording video footage of wedding events and composing a final video production on DVD. Consumers complained that although Video Magic would show up to record their weddings, it never provided the consumers with a final product. The Division issued a subpoena in April of this year, but Video Magic made no attempt to respond. On June 16, 2008, a Petition to Enforce Investigative Subpoena was filed in the

Circuit Court of Kanawha County. On August 28, 2008, the Honorable Tod Kaufman ordered the company to fully respond to the subpoena within thirty days. Video Magic finally delivered documents to the Division in August of 2008, and the investigation is ongoing.

h.

State ex rel. Darrell V. McGraw, Jr. v. Jack Wolf, et al.
(Civil Action No. 07-MISC-189 - Circuit Court of Kanawha County)
(Civil Action No. 08-MISC-311 - Circuit Court of Kanawha County)

The Attorney General commenced an investigation of Jack Wolf and Wolf Law Firm, Inc. (Wolf), a collection agency based in Mulberry, Florida, after receiving complaints that Wolf was collecting debts in West Virginia without a license, and was engaging in other unlawful collection practices. These unlawful practices included the following: collecting debts on behalf of Suncoast Recovery Group, LLC, an unlicensed debt purchaser; collecting debts when he did not have adequate proof the debt was owed; failing and refusing to verify debts when disputed by consumers; failing to send consumers a letter advising them of their debt validation rights within five days of his initial debt collection communication; and, contacting third parties, including consumers' supervisors at work, under the guise of obtaining "location information," when Wolf already had such information.

On June 9, 2008, Wolf entered into an Assurance of Discontinuance with the Division. Under the terms of the Assurance, Wolf promised to conform his future business practices to applicable state and federal law. Wolf also agreed to pay \$3,000.00* for consumer education.

When Wolf failed to make the payments as required under the terms of the Assurance, the Division filed a Petition to Enforce Assurance of Discontinuance against Wolf in the Circuit Court of Kanawha County. The case is pending.

17.

**PETITIONS TO ENFORCE ASSURANCES OF DISCONTINUANCE
AND SETTLEMENT AGREEMENTS**

Often companies enter into Assurances of Discontinuance with the Division that resolve the Attorney General's concerns and conclude the investigation. In most instances, the agreements require the companies to conform their future business practices to applicable state and federal law and to make restitution to consumers who were aggrieved by their past practices. Unfortunately, some of the companies fail to fulfill their obligations under the agreement, which makes it necessary for the Division to file suit to enforce the agreement. The cases listed below are the instances in which the Attorney General filed petitions in court to enforce its Assurance of Discontinuance.

a.

**State ex rel. Darrell V. McGraw, Jr. v. Jack Bishop's Pre-Owned Auto Sales, LLC, et al.
(Civil Action No. 08-MISC-237 - Circuit Court of Kanawha County)**

On February 8, 2008, the Attorney General entered into an Assurance of Discontinuance with Jack Bishop d/b/a Jack Bishop's Pre-Owned Auto Sales, LLC (Bishop), a used car dealership located in MacArthur, West Virginia. The Attorney General commenced an investigation of Bishop after receiving complaints that Jack Bishop was engaging in a wide range of unlawful sales and credit practices. These unlawful practices included the following: selling vehicles "as is;" repossessing vehicles

and accelerating the account balance without first providing the consumer with notice of right to cure default; failing to collect the privilege tax from consumers; and, collecting or representing that it could collect debt collection fees and charges. Under the terms of the Assurance, Bishop agreed to conform its business practices to applicable state and federal law, and to pay \$7,500.00 for consumer restitution.

Bishop only made one of seven payments. On June 30, 2008, the Attorney General filed a Petition to Enforce Assurance of Discontinuance in the Circuit Court of Kanawha County. Prior to any hearings in the matter, Bishop paid the remaining amount owed. As a result, the Court dismissed the pending lawsuit.

b.

State ex rel. Darrell V. McGraw, Jr. v. United Processing, Inc., et al
(Civil Action No. 08-MISC-365 - Circuit Court of Kanawha County)

On July 7, 2008, the Attorney General entered into an Assurance of Discontinuance with United Processing, Inc. (United), a collection agency based in Jacksonville, Florida. The Attorney General commenced an investigation of United after receiving complaints that it was collecting debts in West Virginia without a license and was engaging in other unlawful debt collection practices. These unlawful practices included the following: collecting on unlawful payday loans; threatening that nonpayment of a debt would result in arrest or criminal prosecution; and, threatening that nonpayment would result in the imposition of collection and attorney's fees. Under the terms of the Assurance, United agreed to conform its business practices to applicable state and federal law, and to refund all payments it collected from 23 West Virginia consumers, for a total of \$5,797.96.*

When United failed to make the required payments, the Attorney General filed a Petition to Enforce Assurance of Discontinuance in the Circuit Court of Kanawha County. The matter is pending.

c.

State ex rel. Darrell V. McGraw, Jr. v. Guy R. Hartman, et al.
(Civil Action No.08-MISC-223 - Circuit Court of Kanawha County)

On March 6, 2008, the Attorney General entered into an Assurance of Discontinuance with Guy R. Hartman d/b/a Guy's Little Detroit (Hartman), a used car dealership located in Martinsburg, West Virginia. The Attorney General commenced an investigation of Hartman after receiving complaints that Hartman was engaging in a wide range of unlawful sales and credit practices. These unlawful practices included the following: selling vehicles "as is;" failing to post buyer's guides in the manner and form required by the FTC Used Vehicle Rule; selling vehicles on credit without properly disclosing the terms and conditions of financing; charging late fees in excess of the amount permitted by law; and, failing to collect the privilege tax from consumers at the time of sale. Under the terms of the Assurance, Hartman promised to conform his future business practices to applicable state and federal law. Hartman also agreed to pay \$4,000.00* for consumer education.

When Hartman failed to make the required payments, the Attorney General filed a Petition to Enforce Assurance of Discontinuance in the Circuit Court of Kanawha County. After a hearing on September 9, 2008, the Court granted a judgment against Hartman for the full amount owed, \$5,216.44,* plus prejudgement interest and costs. Hartman has made one payment of \$1,000.00. On October 20, 2008, the Attorney General asked that

the Division of Motor Vehicles to revoke Hartman's Dealer License and also filed a claim against its Surety Bond for the remaining \$4,216.44.*

d.

State ex rel. Darrell V. McGraw, Jr. v. Robert G. Postlewaite, et al.
(Civil Action No.08-MISC-288 - Circuit Court of Kanawha County)

The Attorney General commenced an investigation of Robert G. Postlewaite d/b/a Action Auto Sales (Postlewaite), a "buy here/pay here" used car dealer in Parkersburg, West Virginia. The investigation focused on Postlewaite's unlawful sales and credit practices, including selling vehicles "as is," unlawful repossessions, and charging unlawful fees.

After a lengthy investigation, the Attorney General reached an agreement with Postlewaite. Unfortunately, after the Attorney General prepared and sent the Assurance of Discontinuance to Postlewaite, Postlewaite refused to sign it. As a result, on August 6, 2008, the Attorney General filed a Petition to Compel Agreement against Postlewaite in the Circuit Court of Kanawha County.

On October 3, 2008, Postlewaite signed the Assurance. Postlewaite agreed to conform his future business practices to applicable state and federal law, and paid \$5,000.00 for consumer education.

e.

State ex rel. Darrell V. McGraw, Jr. v. Frederick D. Kelly, et al.
(Civil Action No. 08-MISC-244 - Circuit Court of Kanawha County)

On February 29, 2008, the Attorney General entered into an Assurance of Discontinuance with Frederick D. Kelly d/b/a Frederick D. Kelly Recovery Services (Kelly), a collection lawyer based in Houston, Texas. The Attorney General commenced an investigation of Kelly after receiving a complaint disclosing that Kelly was collecting debts in West Virginia without a license and engaging in other unlawful collection practices. These unlawful practices include the following: collecting internet payday loans; harassing consumers by telephone; and, harassing consumers at times and places known to be inconvenient. Under the terms of the Assurance, Kelly agreed to conform its business practices to applicable state and federal law and to pay \$5,000.00* for consumer education.

When Kelly failed to make the required payments, the Attorney General filed a Petition to Enforce Assurance of Discontinuance in the Circuit Court of Kanawha County. On August 8, 2008, after a hearing in which Kelly failed to appear, the Court entered a judgement against Kelly in the amount of \$5,000.00,* plus prejudgement interests and costs. As of the date of this report, Kelly is in contempt of the Court's order.

B.

**ASSURANCES OF DISCONTINUANCE
AND SETTLEMENT AGREEMENTS**

1.

IN THE MATTER OF FINANCIAL CREDIT SERVICES

On September 8, 2008, the Attorney General entered into an Assurance of Discontinuance with Financial Credit Services, Inc. (FCS), a debt purchaser based in Palatine, Illinois. The Attorney General commenced an investigation of FCS after learning that FCS was collecting debts in West Virginia without a license. After further investigation, the Division learned that FCS was threatening to sue consumers when it did not intend to do so, threatening to report unpaid debts to credit bureaus when it did not intend to do so, and attempting to collect debts it could not verify. In the agreement, FCS promised to conform its future business practices to applicable state and federal law. FCS also agreed to close all of its West Virginia accounts with a zero balance, delete all references to the accounts from consumers' credit records, and to refund all payments it had collected. The agreement resulted in refunds of \$2,481.00 and canceled debt of \$6,675,474.64 for 1,451 West Virginia consumers.

2.

**IN THE MATTER OF SANTANDER CONSUMER USA
d/b/a DRIVE FINANCIAL SERVICES**

The Attorney General entered into an Assurance of Discontinuance with Santander Consumer USA (Santander), d/b/a Drive Financial Services, an auto loan purchaser. The investigation was prompted by a consumer complaint regarding the repossession practices

of the business. Santander had repossessed vehicles from consumers without first sending them proper notice of right to cure their defaults. Under the terms of the Assurance, Santander agreed to cancel debt of \$2,684,692.46 for 405 West Virginia consumers, and deleted all references to the accounts from consumers' credit records.

3.

IN THE MATTER OF PAYDAY LENDING

In 2005, Attorney General McGraw launched a major initiative to protect West Virginia consumers from the financial debt trap caused by payday lending. Although payday lending has never been legal in West Virginia, hundreds of payday loan companies were loaning money to consumers over the Internet via interactive websites.

Previously, Value Services of West Virginia, LLC, d/b/a First American Cash Advance (FACA) had been making or arranging payday loans for West Virginia consumers at 11 storefront locations throughout the state. FACA asserted that it did not have to comply with West Virginia law because its loans were being made by a state-chartered bank based in South Dakota. In 2006, the Federal Deposit Insurance Commission reiterated its concerns about the partnering of state-chartered banks with nonbanks such as FACA and urged the banks it supervised to exit the payday lending business. Shortly thereafter, the South Dakota bank dissolved its partnership with FACA and FACA permanently ceased payday lending activities in West Virginia.

After FACA closed its West Virginia operations, the Internet became the primary source of payday loans to West Virginia consumers and, as a result, the Attorney General focused his enforcement efforts on the illegal loans being made over the Internet. The Attorney General is also investigating companies that play any role in the making or

collecting of Internet payday loans, including third-party collection agencies and debt purchasers, as well as companies that market the payday loans, commonly known as leads generators. During this reporting period, the Attorney General entered into 14 settlement agreements with Internet payday lenders, leads generators, and collection agencies. These agreements resulted, collectively, in cash refunds of \$356,896.54 and canceled debt of \$163,602.93 for 1,912 West Virginia consumers. Many investigations remain pending as of the date of this report. The companies the Attorney General received moneys from during the reporting period are identified below.⁵

ASSURANCE DATE	COMPANY	LOCATION	AMOUNT
June 8, 2007	International Cash Services	Wilmington, DE	\$3,799.00
July 24, 2007	Wrightway Investments, Inc.	Kensington, MD	\$11,071.50
Oct. 25, 2007	Geneva-Roth Ventures	Kansas City, MO	\$770.00
Oct. 25, 2007	United Consumer Financial Services	Salt Lake City, UT	\$10,483.10
Nov. 29, 2007	Ambassador Financial Services	Espana, NM	\$48,016.25
Jan. 29, 2008	My Cash Time.com	Albuquerque, NM	\$12,962.50
Feb. 28, 2008	Miami Nation Enterprises	Miami, OK	\$122,493.00
March 5, 2008	MTE Financial Services	Miami, OK	\$71,551.50
March 5, 2008	SFS, Inc.	Niobrara, NE	\$33,670.00
March 24, 2008	AeroAdvance Financial, Inc.	San Jose, CA	\$5,728.00
April 28, 2008	EastsideLenders.com	Newark, DE	\$25,372.67
May 28, 2008	Cash Back Payday Loans	Henderson, NV	\$33,881.65
June 27, 2008	Impact Cash USA	North Logan, UT	\$92,181.68
July 14, 2008	Quick Draw Cash	Reno, NV	\$1,000.00

⁵ The Money Center, based in Houston, Texas, made restitution to one West Virginia consumer, but have refused to sign an Assurance of Discontinuance.

Aug. 8, 2008	Cash in a Wink	Wilmington, DE	\$20,426.25
Sept. 10, 2008	Avantis Financial, LLC	Sioux Falls, SD	\$18,808.87
Oct. 31, 2008	Consumer Direct Lending Services, Inc.	Atlanta, GA	\$7,202.50
Nov. 6, 2008	The Norwood Group, Inc.	St. Louis, MO	\$25.00
	The Money Center	Houston, TX	\$1,056.00
		Total	\$520,499.47

4.

IN THE MATTER OF ASCENSION SERVICES, INC.

On December 19, 2007, the Attorney General entered into an Assurance of Discontinuance with Ascension Services, Inc. (Ascension), a debt purchaser based in Hurst, Texas. The Attorney General opened an investigation of Ascension after receiving a complaint disclosing that it was collecting debts in West Virginia without a license. Ascension was also collecting debts that originally arose from door-to-door sales of Kirby vacuum cleaners that were illegally placed on MasterCard accounts. Under the terms of the Assurance, Ascension agreed to make refunds of \$28,721.81 and canceled debt of \$244,286.86 for 173 West Virginia consumers.

5.

IN THE MATTER OF THE DEBT RELIEF INDUSTRY

This year Attorney General McGraw continued his success in combating the exploitation of already cash-strapped consumers by the debt relief industry, with a particular focus on companies engaging in a controversial approach to debt relief called “debt settlement” or “debt negotiation.” Under this approach, the debt settlement

companies advise consumers to stop paying their credit card 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 consumers hefty up-front fees, monthly service fees, and 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 under 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 debt settlement companies give advice to consumers that constitutes the unauthorized practice of law; and (4) the companies' claims about their ability to help consumers become "debt free" are not supported by the actual outcomes for consumers.

During the current reporting period, the Attorney General reached settlements with three debt relief companies that resulted in refunds of \$271,562.94 for 120 West Virginia consumers. These settlements are identified below.

a.

In the Matter of Debt Relief USA, Inc.

On April 2, 2008, the Attorney General entered into an Assurance of Discontinuance with Debt Relief USA, Inc. (Debt Relief USA), a debt relief company based in Addison, Texas. Under the terms of the Assurance, Debt Relief USA agreed to permanently refrain from providing debt relief services to consumers in West Virginia.

Debt Relief USA also agreed to refund all fees and charges that it collected, resulting in refunds of \$209,747.93 for 69 West Virginia consumers.

b.

In the Matter of Acushield Financial, Inc.

On March 12, 2008, the Attorney General entered into an Assurance of Discontinuance with Acushield Financial, Inc. (Acushield), a debt settlement company based in Las Vegas, Nevada. Under the terms of the Assurance, Acushield agreed to permanently refrain from providing debt settlement services to consumers in West Virginia. Acushield also agreed to refund all fees and charges that it collected, resulting in refunds of \$56,586.34 for 9 West Virginia consumers.

c.

In the Matter of American Debt Solutions

On January 25, 2008, the Attorney General entered into an Assurance of Discontinuance with American Debt Solutions, Inc. (ADS), a debt management company based in Boca Raton, Florida. The Attorney General commenced an investigation of ADS after learning that the company was charging unlawful “set-up” fees and excessive monthly service fees for debt settlement services to West Virginia consumers. Under the terms of the Assurance, ADS promised to conform its future business practices to applicable state and federal law, and to refund all payments it had collected from West Virginia consumers. The settlement resulted in refunds of \$3,728.67 for 42 consumers. ADS also agreed to pay \$1,500.00 for consumer education.

6.

IN THE MATTER OF THE BUREAU OF ASSET MANAGEMENT, INC.

On June 30, 2008, the Attorney General entered into an Assurance of Discontinuance with The Bureau of Asset Management, Inc. (BAM), a debt purchaser based in Anaheim, California. The Attorney General began investigating BAM after receiving a complaint that the company was engaging in the collection of debts without a license. Further investigation revealed that BAM was threatening to sue consumers when it did not intend to do so, threatening to unlawfully garnish consumers' wages, and disclosing consumers' indebtedness to third parties. Under the terms of the Assurance, BAM agreed to close all its West Virginia accounts with a zero balance and to refund all payments it collected. The settlement resulted in refunds of \$1,525.00 and cancelled debt of \$99,025.65 for 45 West Virginia consumers.

7.

**IN THE MATTER OF GEORGE E. LOVEGROVE, M.D. d/b/a
WEST VIRGINIA VEIN AND SKIN CENTERS**

On October 2, 2008, the Attorney General entered into an Assurance of Discontinuance with George E. Lovegrove, M.D. d/b/a West Virginia Vein & Skin Centers (WVSC), which has offices in Beckley and Charleston, West Virginia. The Attorney General commenced an investigation of WVSC after receiving a complaint disclosing that it was improperly adding interest to alleged delinquent account balances. Further investigation disclosed that on May 28, 2008, WVSC sued 52 consumers in Raleigh County Magistrate Court. In every lawsuit, WVSC added interest of 18% per annum to the amount allegedly owed.

Under the terms of the Assurance, WVVSC promised that it would comply with applicable state and federal law before adding interest or other fees to account balances in the future. WVVSC also agreed to dismiss all 52 lawsuits, to refund all payments collected on the accounts in question, and to forgive the consumers' entire debt, including charges for services rendered. As a result, WVVSC refunded \$20,530.54, and cancelled debt of \$72,582.18 for 52 West Virginia consumers.

8.

IN THE MATTER OF CHECKCARE OF ATLANTA, J.A.

On November 26, 2007, the Attorney General entered into an Assurance of Discontinuance with JTA/Atlanta, Inc. d/b/a Checkcare of Atlanta, J.A. (Checkcare), a check guarantee company based in Duluth, Georgia. The Attorney General commenced an investigation of Checkcare after learning that Checkcare was collecting debts without a license and was charging dishonored check fees in excess of the amounts permitted by West Virginia law. Under the terms of the Assurance, Checkcare agreed to pay \$2,500.00 for consumer education and to close all of its West Virginia accounts with a zero balance, which resulted in canceled debt of \$66,494.10 for 2,458 West Virginia consumers.

9.

**IN THE MATTER OF THE COLLECTION OF DIRECTV ACCOUNTS BY
JESSE RIDDLE d/b/a RIDDLE & ASSOCIATES, P.C.**

On March 31, 2008, the Attorney General entered into a Settlement Agreement with DIRECTV, Inc., a satellite television services provider based in El Segundo, California. The Attorney General commenced an investigation of DIRECTV after receiving complaints

disclosing that its collection agency, Jesse L. Riddle d/b/a Riddle & Associates, P.C., sent a collection letter to DIRECTV customers stating or implying that their account balances would be increased by attorney fees and collection costs if they failed to promptly pay off the alleged debt.⁶ Under the terms of the Assurance, DIRECTV closed the accounts of all West Virginia consumers who had received the unlawful collection letter and cancelled debt for 294 West Virginia consumers totaling \$59,818.37.

10.

IN THE MATTER OF PDM INTERNATIONAL, INC.

On June 5, 2008, the Attorney General entered into an Assurance of Discontinuance with PDM International, Inc. (PDM), a credit services organization based in Bedford, Texas. The Attorney General commenced an investigation of PDM after receiving a complaint disclosing that PDM was misleading consumers about its ability to obtain interest rate reductions and other debt relief. In addition, PDM was engaging in credit services and telemarketing solicitations without a license. Under the terms of the Assurance, PDM agreed to conform its business practices to applicable state and federal law. PDM also agreed to refund all payments it collected from West Virginia consumers, for a total of \$35,345.00 in refunds for 38 West Virginia consumers.

⁶ On March 11, 2004, Riddle & Associates, P.C., had previously entered into an Assurance of Discontinuance with the Attorney General promising to refrain from this very same practice.

11.

IN THE MATTER OF DIRECTORY BILLING, LLC

On February 25, 2008, the Attorney General, along with 25 other states, entered into an Assurance of Discontinuance with Directory Billing, LLC, d/b/a USDirectory.com (Directory Billing). Since 2004, Directory Billing had been sending businesses and other organizations “live” activation checks in the mail. These checks were made payable to the business or other organization for a small amount, usually \$3.50. On the back of the check, in fine print above the endorsement line, was language stating that by depositing the check, the recipient agreed to purchase advertising from Directory Billing in its on-line yellow pages directory. The fine print also stated that by depositing the check, the recipient authorized Directory Billing to automatically debit the business’s bank account.

The multistate investigation revealed that many of the recipients of these checks deposited them without knowing that they were purchasing Directory Billing’s on-line advertising service. In some cases, the businesses remained unaware that it was being billed for several months, or longer. Under the terms of the Assurance, Directory Billing agreed to stop using “live” activation checks, to reimburse the states for their investigation costs, and to inform all current customers of their right to cancel the service and receive a partial refund. In West Virginia, businesses received \$26,362.46 in refunds, and the State received \$8,642.85 for consumer education.

12.

IN THE MATTER OF CINGULAR WIRELESS, LLC

In the spring of 2006, Cingular Wireless, LLC (now known as AT&T Wireless), began terminating customers that it believed were excessively “roaming” onto competing

wireless telephone networks. After receiving several complaints, the Attorney General began an investigation to determine if Cingular was in violation of the Act. On January 30, 2008, without admitting to any wrongdoing, Cingular agreed to pay \$18,324.00 to consumers who had their wireless contracts terminated under the program.

13.

**IN THE MATTER OF NORVERGENCE
(NATIONAL CITY COMMERCIAL CAPITAL COMPANY, LLC)**

On March 27, 2008, the Attorney General and 20 other states settled with National City Commercial Capital Company, LLC (National City Capital), a company that had purchased millions of dollars in debts that originated from an apparent telecommunications scam. Beginning in 2003, a company called NorVergence, Inc. began promising small businesses, churches, and other customers savings of 30% or more on their phone bills, including discounts on wireless services and Internet access, as long as they rented a special matrix device at a cost of \$400.00 to \$5,700.00 a month. The rental contracts contained language obligating customers to keep paying for the matrix boxes no matter what happened, even if NorVergence went out of business. The matrix leased by NorVergence was a garden-variety piece of electronic equipment that did not provide the promised telephone or Internet services. After defrauding its customers, NorVergence quickly sold the inflated rental contracts to several finance companies, including National City Capital.

After significant negotiations with state Attorneys General, National City Capital agreed to forgive 85% of balances owed by customers. National City Capital also agreed to forgive any late fees and penalties accruing after July 15, 2004. Nationwide, National

City Capital agreed to forgive approximately \$7,200,000.00* in lease payments. For West Virginia consumers, the settlement resulted in \$13,049.53 in debt cancellation.

14.

IN THE MATTER OF SEARS, ROEBUCK AND CO.

The Division entered into an Assurance of Discontinuance with Sears Holdings Corporation and its subsidiary, Sears, Roebuck and Co. (Sears), over defects in major appliances, lawn equipment, electronics, and other household goods. Consumers complained that when they contacted the company for assistance, Sears never addressed their concerns, and the company's pattern of ignoring consumer complaints continued even after the Division contacted Sears to request a resolution. Under the terms of the Assurance, Sears agreed to comply with West Virginia's express and implied warranty laws and to address complaints in a timely manner. Sears also agreed to repair or replace defective goods within specific time frames after being notified of a problem, and paid \$12,000.00 for consumer education.

15.

IN THE MATTER OF PHILLIPS & BURNS, INC.

On May 5, 2008, the Attorney General entered into an Assurance of Discontinuance with Phillips & Burns, Inc., and Phillips & Burns, LLC (Phillips & Burns), two affiliated collection agencies with offices based in Tampa, Florida and Buffalo, New York respectively. The Attorney General commenced an investigation of Phillips & Burns after learning that the companies were collecting debts without a license; were collecting debts on behalf of seven unlicensed debt purchasers; were threatening to sue consumers when

it did not intend to do so; were threatening to unlawfully garnish consumers' wages; and were unjustifiably contacting third parties under the guise of obtaining "location information." Under the terms of the Assurance, Phillips & Burns agreed to conform their future business practices to applicable state and federal law. Phillips & Burns also agreed to refund 7 consumers a total of \$6,515.97, and to pay \$5,000.00 for consumer education.

16.

IN THE MATTER OF PERSONAL CREDIT SERVICES

On October 6, 2008, the Attorney General entered into an Assurance of Discontinuance with Personal Credit Services, Inc. (PCS), a credit services company based in Holbrook, New York. On its web site, PCS boasted that it could obtain loans for consumers with bad credit. Despite these representations, consumers who paid the fees to PCS, which ranged from \$125.00 to \$400.00, did not receive a loan; instead, they received a list of lenders that they could have easily obtained on their own from their local telephone book.

Under the terms of the Assurance, PCS agreed to refrain from providing credit services without a license and from misleading consumers about its ability to obtain loans. PCS also agreed to refund all payments it collected from West Virginia consumers, which resulted in refunds of \$9,400.00 for 58 consumers.

17.

IN THE MATTER OF I GLO WORKSHOP, INC.

On July 7, 2008, the Attorney General entered into an Assurance of Discontinuance with I Glo Workshop, Inc. (I Glo), a telemarketing company based in Phoenix, Arizona.

The Division's investigation was prompted because I Glo was engaging in unlawful telemarketing and debt collection practices in West Virginia. Under the terms of the Assurance, I Glo agreed to conform its business practices to applicable state and federal law, to refund all payments it collected from West Virginia consumers, to cancel all debts allegedly owed by West Virginia consumers, and to pay \$1,000.00 for consumer education. This resulted in refunds of \$5,186.74, and canceled debt of \$2,615.53 for 138 West Virginia consumers.

18.

IN THE MATTER OF SEARS HOME IMPROVEMENT PRODUCTS, INC.

On August 6, 2008, the Division entered into an Assurance of Discontinuance with Sears Home Improvement Products, Inc., a subsidiary of Sears, Roebuck and Co., and Sears Holdings Corporation (SHIP). Consumers complained of shoddy work by SHIP contractors. When consumers called to complain, SHIP failed to repair defects, and continued to ignore problems even after being contacted by the Attorney General's office. Under the terms of the Assurance, SHIP agreed to comply with all terms of its home improvement contracts with West Virginia consumers and comply with West Virginia express and implied warranty laws. SHIP also agreed to remedy complaints within a reasonable time frame; to comply with the West Virginia Home Improvement Rule; and to pay \$8,000.00 for consumer education. SHIP continues working with the Division to resolve individual complaints that were filed prior to the execution of the Assurance.

19.

IN THE MATTER OF BAILEY'S PRE-OWNED AUTOS, LLC

On October 23, 2008, the Attorney General entered into an Assurance of Discontinuance with Bailey's Pre-Owned Autos, LLC (Bailey's), a used car dealer located in Buckhannon, West Virginia. The Attorney General commenced an investigation of Bailey's after receiving complaints disclosing that the company was selling used cars "as is" and was engaging in other unlawful sales and credit practices. Under the terms of the Agreement, Bailey's agreed to conform its business practices to applicable state and federal law. Bailey's also agreed to pay \$7,500.00 for consumer restitution.

20.

IN THE MATTER OF MAXIMUM RECOVERY SOLUTIONS, INC.

On June 27, 2008, the Division entered into an Assurance of Discontinuance with Maximum Recovery Solutions, Inc. (MRS), after learning that MRS was attempting to collect on a debt older than ten years. Under the terms of the Assurance, MRS agreed to close all of its West Virginia accounts with a zero balance and to notify credit bureaus to delete all references to the accounts from consumers' credit records. The settlement resulted in \$5,000.00 of canceled debt for 9 West Virginia consumers.

21.

**IN THE MATTER OF LISA A. HENRY; STEPHEN W. HENRY; AND
S & B CONCRETE CONSTRUCTION**

In June of 2008, the Attorney General entered into an Assurance of Discontinuance with S & B Concrete Construction (S & B) and its owners, Lisa and Stephen Henry of

Charleston, West Virginia. Consumers complained of major defects with S & B's paving jobs. Under the terms of the Assurance, S & B agreed to fully honor all terms of its contracts with consumers, provide completion dates on the face of its contracts, and remedy complaints in a timely fashion. S & B also paid \$2,900.00 in consumer restitution and \$1,500.00 for consumer education.

22.

**IN THE MATTER OF CORNERSTONE FAMILY SERVICES OF
WEST VIRGINIA SUBSIDIARY, INC., A SUBSIDIARY OF STONEMOR PARTNERS, L.P.**

On December 19, 2007, the Attorney General entered into an Assurance of Discontinuance with Cornerstone Family Services of West Virginia Subsidiary, Inc., a subsidiary of Stonemor Partners, L.P. (Stonemor), of Bristol, Pennsylvania. The Division opened its investigation after receiving complaints from consumers who had paid Stonemor in advance for cemetery plots and vaults. Specifically, consumers complained that Stonemor was installing the concrete vaults they had purchased prior to the consumer's need and without their authorization. Under the terms of the Assurance, Stonemor agreed to get authorization from the consumers before installing their burial vaults, and to remedy future complaints in a timely manner. Stonemor also paid \$1,766.00 in consumer restitution and \$1,700.00 for consumer education.

23.

IN THE MATTER OF UNIVERSAL SUBSCRIPTION AGENCY, INC.

In July of 2008, the Division entered into an Assurance of Discontinuance with Universal Subscription Agency, Inc., its President, Richard Lamb, and its Director, Stephen

Ingram (Universal), of Las Vegas, Nevada. Specifically, consumers complained about Universal's door-to-door sales practices and that they had paid for magazine subscriptions they never received. The Attorney General investigated, and found that the company was also violating state law by refusing to cancel multiple magazine subscriptions immediately upon the consumer's request. Universal had also threatened to refer its alleged delinquent accounts to Check Game Solutions, a Florida collection agency, which was permanently enjoined from collecting debts in West Virginia by the Circuit Court of Kanawha County. Under the terms of the Assurance, Universal agreed to honor its magazine subscription contracts, disclose to consumers their right to cancel subscriptions at anytime, and to cease threatening to refer delinquent accounts to unlicensed collection agencies. Universal further agreed to pay \$464.00 in consumer restitution, and \$3,000.00 for consumer education.

24.

IN THE MATTER OF KESSLER & FREEDMAN, INC.

On July 2, 2008, the Attorney General entered into an Assurance of Discontinuance with Kessler & Freedman, Inc., a debt purchaser based in Amherst, New York. The Attorney General commenced an investigation of Kessler & Freedman after learning that the company was collecting debts in West Virginia without a license, threatening to sue consumers when it did not intend to do so, threatening to unlawfully garnish the consumers' wages, and unlawfully contacting and disclosing alleged indebtedness to third parties under the guise of obtaining "location information." Under the terms of the Assurance, Kessler & Freedman promised to conform its future business practices to

applicable state and federal law. The settlement resulted in a cash refund of \$500.00 and canceled debt of \$2,692.42.

25.

IN THE MATTER OF HERBERT A. WHITE d/b/a WHITE'S PRE-OWNED AUTOS

On July 16, 2008, the Division entered into an Assurance of Discontinuance with Herbert A. White d/b/a White's Pre-Owned Autos (White), a used car dealership in Gassaway, West Virginia. The investigation was initiated after the Division received a complaint from a consumer who purchased a vehicle from White and two weeks later the vehicle stopped running. The Division's investigation revealed that White engaged in many unlawful practices, including the following: overcharging consumers for vehicles; selling vehicles "as is;" and, unlawfully modifying the implied warranty.

Under the terms of the Assurance, White agreed to stop selling vehicles "as is" and to refrain from any future attempts to disclaim or limit the implied warranty of merchantability. White also reimbursed one consumer \$1,360.35 for the cost of repairs to the vehicle.

26.

IN THE MATTER OF SMOKER FRIENDLY

On September 28, 2008, the Division entered into an Assurance of Discontinuance with Smoker Friendly, located in Parkersburg, West Virginia. Smoker Friendly had been charging consumers substantially more for cigarettes than was posted on its price board in the store. Smoker Friendly agreed to discontinue this practice, refund consumers, and pay \$1,000.00 for consumer education.

27.

**IN THE MATTER OF CARROLL D. McDONALD, SR.
d/b/a CARROLL'S 24-HOUR TOWING, INC.**

On August 28, 2008, the Division entered into an Assurance of Discontinuance with Carroll D. McDonald, Sr. d/b/a Carroll's 24-Hour Towing, Inc., a towing business located in Martinsburg, West Virginia. The Attorney General's investigation was prompted by a consumer complaint that the business charged a \$60.00 bad check fee. Under West Virginia law, the maximum permissible bad check fee is \$25.00. Investigation revealed that the business also charged an 18% annual percentage rate finance charge on all accounts that were not paid in full within 30 days of becoming due. Under West Virginia law, it is unlawful to charge or collect any interest or other fee incidental to the original debt unless the fee is expressly authorized by the agreement creating the debt and by statute. There is no statute in West Virginia that authorizes such fees in cash transactions; therefore, the finance charge imposed by the towing company was illegal. Under the terms of the Assurance, the business agreed to reduce its bad check fee to \$25.00; stop adding finance charges to its transactions; reimburse the consumer the \$60.00 bad check fee; and paid \$500.00 for consumer education.

28.

IN THE MATTER OF ASHWANI K. MALHOTRA d/b/a SUPER DOLLAR STORE, INC.

On January 30, 2008, the Attorney General entered into an Assurance of Discontinuance with Super Dollar Store, Inc., a discount store based in Montgomery, West Virginia. The Attorney General commenced an investigation of Super Dollar Store after receiving complaints that its owner, Ashwani K. Malhotra, was making unlawful payday

loans to consumers from the Super Dollar Store location. Under the terms of the Assurance, Super Dollar Store and its owner promised to permanently refrain from making payday loans, to refund all payments it collected, and to cancel any debts allegedly still owed on the loan accounts. The agreement resulted in cash refunds of \$557.00 for 12 West Virginia consumers.

29.

IN THE MATTER OF VALLEY FUELS

On January 7, 2008, the Division entered into an Assurance of Discontinuance with Valley Fuels, located in Masontown, West Virginia. Valley Fuels had added a surcharge to credit card transactions in violation of its Merchant Agreement. Valley Fuels refunded consumers who had been overcharged, for a total settlement value of \$507.00.

30.

IN THE MATTER OF FEDERAL CREDIT CORP.

On January 25, 2008, the Attorney General entered into an Assurance of Discontinuance with Federal Credit Corp. (Federal), of Colleyville, Texas. The Attorney General opened an investigation of Federal after receiving complaints that Federal was attempting to collect debts that had been discharged in bankruptcy. The Attorney General also learned that Federal was collecting debts in West Virginia without being properly licensed or bonded.

Under the terms of the Assurance, Federal agreed to become a licensed and bonded debt collection agency before engaging in further debt collection in West Virginia, and to pay \$500.00 for consumer education.

IN THE MATTER OF EDUCATIONAL RESEARCH CENTER OF AMERICA, INC.

On October 28, 2008, West Virginia, along with 35 other states and the District of Columbia, entered into a settlement that requires Educational Research Center of America, Inc. (ERCA), to implement safeguards for the collection and use of students' personal information. The states initiated the investigation because ERCA, a New Jersey company, offered gift cards to educators in exchange for the educators asking their students to complete surveys that disclosed the students' personal information.

Specifically, ERCA offered educators \$40.00 and \$50.00 gift cards from companies, including Staples, VISA, and Office Max in an attempt to entice educators to have students complete surveys that disclosed information marketed not only to colleges and other educational institutions, but also to commercial businesses that market products and services to students. For example, the ERCA survey asked the students their ethnic background, honors they had won, sports and extracurricular activities they had participated in, and the religious affiliation of a college they would choose. Educators would ask students to fill out the surveys without explaining to the students or their parents that they could opt out from participating.

Under the terms of the agreement, ERCA must clearly disclose how students or parents of students under the age of 18 can opt out of students' completing the survey, and ERCA is prohibited from violating of The West Virginia Governmental Ethics Act, W. Va. Code § 6B-1-1 et seq., by offering anything of monetary value to educators for collecting personal information from students.

IN THE MATTER OF MONEYGRAM PAYMENT SYSTEMS, INC.

In 2003, the Attorney General, along with 43 other states and the District of Columbia, began an investigation of MoneyGram Payment Systems, Inc. (MoneyGram). A survey conducted by the participating states estimated that more than 29% of money transfers over \$300.00 to Canada were fraud-induced, resulting in consumer losses of approximately \$113,000,000.00.* On July 8, 2008, the states entered into an Assurance of Voluntary Compliance with MoneyGram.

Under the terms of the Assurance, MoneyGram will pay \$1,100,000.00,* to be used for a national consumer education program on how to avoid fraud-induced transfers. The program is aimed at reducing the high number of fraud-induced transfers – money wired by consumers to fraudulent telemarketers and other scam artists – by establishing a national consumer awareness program that requires MoneyGram to place prominent warnings on the forms consumers use to wire money.

The Assurance further requires MoneyGram to reimburse the transferred amount to any consumer who requests that the transfer be stopped, and reimburse transfer fees if the consumer reasonably claims that the transfer was fraud-induced. Finally, MoneyGram will provide special training for agents; suspend or terminate agents who are involved in fraud and do not take reasonable steps to reduce it; block wire transfers from specific consumers or to specific recipients when the company receives information from a state that there are good faith grounds to believe that fraud will occur; and, ensure that money transfers sent from the United States can only be picked up in the country designated by the sender.

IN THE MATTER OF ROBERT HAYES d/b/a HAYES & ASSOCIATES

On October 8, 2008, the Division entered into an Assurance of Discontinuance with Robert Hayes d/b/a Hayes & Associates (Hayes). Hayes operates a Kirby vacuum cleaner distributorship located in West Mifflin, Pennsylvania. The Division's investigation was prompted by a complaint from a consumer that Hayes used high pressure sales tactics when he sold her a new vacuum cleaner, took her old Kirby vacuum cleaner without her permission, and failed to return her trade-in within 10 days of the consumer canceling the transaction.

Under the terms of the Assurance, Hayes agreed to the following: return all trade-ins within 10 days after a home solicitation sale is cancelled; include the manufacturer, make, model, and serial number of the vacuum purchased on all credit agreements; identify consumer trade-ins by their manufacturer, make, model, and serial number on all credit agreements; and, obtain a certificate of registration from the Secretary of Tax and Revenue. The business also agreed to provide the consumer a replacement for the vacuum cleaner at a value of \$500.00.

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 \$602,665.17 for the State and its citizens.

ANTITRUST LITIGATION

1.

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 January of 2008, the defendants and the State reached a settlement. Final approval to the settlement was granted by the Circuit Court of Ohio County in August of 2008. Under the terms of the settlement, the defendants agreed to pay \$12,300,000.00* to the State and pay reasonable attorneys' fees. The majority of the money, \$11,600,000.00,* will be used to fund sales tax holidays for the purchase of Energy Star products, \$600,000.00* will be used for consumer education, and \$100,000.00* will be used to advertise the settlement. The Attorney General's office worked with the Legislature and Governor's office in enacting W. Va. Code § 11-15-9k, a state sales tax holiday law on Energy Star compliant goods.

During the reporting period, the State received \$400,000.00 (half of the \$600,000.00* and \$100,000.00* for advertisement), and held its first of three tax holidays in September of 2008. The two subsequent holidays will last from September through November in each of 2009 and 2010. Any money remaining after the third holiday will be paid into the State's general revenue fund.

2.

State ex rel. Darrell V. McGraw, Jr. v. American International Group, Inc.
(Civil Action No. 08-C-49 - Circuit Court of Ohio County)

After learning of bid-rigging activities occurring in the insurance industry in late 2004, the Attorney General, along with several other states, commenced an investigation of American International Group, Inc. (AIG), and its subsidiaries regarding its business activities in West Virginia, and its involvement with Marsh & McLennan Companies, then,

the world's largest insurance broker. After months of negotiation, on January 29, 2008, the states entered into a settlement agreement with AIG. As part of the settlement agreement, AIG agreed to pay the settling states \$12,500,000.00.* West Virginia received \$54,572.57 as its share of this settlement.

3.

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 Vitelic, Inc.; Mosel Vitelic Corp.; Nanya Technology Corporation USA, Inc.; Nanya Technology Corporation; Elpida Memory, Inc.; Elpida Memory (USA), Inc.; and, NEC Electronics America, Inc. These companies and others are charged with conspiring to fix the prices of dynamic random access memory computer chips. The 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 companies have pled guilty to price fixing.

In early 2007, Samsung Semiconductor, Inc. and Samsung Electronics Co., Ltd., reached a settlement with West Virginia and the other litigating states. In total, Samsung agreed to pay the states \$10,000,000.00.* The amount each state will receive from the settlement has not been determined.

4.

State ex rel. Darrell V. McGraw, Jr. v. The Travelers Companies, Inc.
(Civil Action No. 08-C-7 - Circuit Court of Ohio County)

After learning of bid-rigging activities occurring in the insurance industry in late 2004, the Attorney General, along with several other states, commenced an investigation of Travelers Companies, Inc. (Travelers), and its subsidiaries regarding its business activities in West Virginia, and its involvement with Marsh & McLennan Companies, then the world's largest insurance broker. After months of negotiation, in December of 2007, the states entered into a settlement agreement with Travelers. As part of the settlement agreement, Travelers agreed to pay the settling states \$6,000,000.00.* West Virginia received \$109,994.33 as its share of this settlement.

5.

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)

After learning of bid-rigging activities occurring in the insurance industry in late 2004, the Attorney General, along with several other states, commenced an investigation of Ace Group Holdings, Inc. (Ace), and its subsidiaries regarding its business activities in West Virginia, and its involvement with Marsh & McLennan Companies, then the world's largest insurance broker. After months of negotiation, 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's share of the settlement was \$38,098.27.

6.

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. Medicaid uses this information to establish the amount it will reimburse pharmacies for prescription drugs. In October of 2001, the State sued Warrick Pharmaceuticals Corporation, Dey, Inc., Abbott Laboratories, and Abbott Laboratories, Inc., alleging that the defendants inflated their reported prices to one information gathering company, First Data Bank, allowing pharmacies to recover more money than they were entitled to from the government.

One of the defendants, Dey, reached a settlement with the Division in May of 2004. Under the terms of the settlement, Dey 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 of the verdict was denied in January of 2007. The case against Abbott is pending.

7.

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 alleges 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. Contingent commissions were paid, in part, based on the volume of business written by the broker and the profitability of the business written. The matter is in the discovery phase, and trial is not expected until the end of 2009.

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 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, 2008, the Regulation Fund had a balance of \$212,780.47, and the Guarantee Fund had a balance of \$921,290.48.

The Preneed Funeral Unit also resolves consumer complaints relating to preneed funeral contracts through its mediation process. This year, the Preneed Funeral Unit secured \$33,410.83 in refunds.

1.

PRENEED FUNERAL UNIT LITIGATION

a.

State ex rel. Darrell V. McGraw, Jr. v. Iams Funeral Home, et al.
(Civil Action No. 07-C-126 - Circuit Court of Wetzel County)
(Docket No. 081775 - West Virginia Supreme Court of Appeals)
(Case No. 5:07-BK-1397 - U.S. Bankr.Ct., Northern District of West Virginia)
(Case No. 5:07-CV-170 - U.S.D.Ct., Northern District of West Virginia)

On October 24, 2007, the Attorney General filed a Complaint and Petition for Preliminary Injunction in the Circuit Court of Wetzel County against Iams Funeral Home d/b/a Iams and Iams Funeral Home, Inc., and John L. Iams, II, Individually and as Owner of Iams Funeral Home (Iams). On November 2, 2007, the Honorable John T. Madden ordered the defendants to cease and desist selling, maintaining, and performing preneed funeral contracts. On November 19, 2007, the Court also ordered Iams to transfer all of its preneed funeral contracts to other funeral homes within thirty days of entry of the order. All consumers with a preneed funeral contract with Iams were notified of the pending transfer.

On October 26, 2007, Iams filed for Chapter 11 Bankruptcy. On November 9, 2007, a Motion for Entry of Order and, in the Alternative, Motion to Modify Automatic Stay was filed by the Attorney General. The Honorable Patrick M. Flatley in the United States Bankruptcy Court for the Northern District of West Virginia, granted the Attorney General's Motion for Expedited Hearing and set the hearing for November 19, 2007. At the hearing, the Court ruled that the lawsuit in the Circuit Court of Wetzel County was exempt from the automatic stay because the State was exercising its police and regulatory power. The Court also denied Iams' motion for damages.

On July 3, 2008, the Honorable Frederick P. Stamp, Jr., in the United States District Court for the Northern District of West Virginia, upheld the United States Bankruptcy

Court's November 19, 2007 ruling. On April 25, 2008, the Wetzel County Circuit Court ruled Iams was in violation of the Preneed Act, and permanently enjoined from selling, maintaining, or providing preneed funeral contracts. The value of the transferred preneed funeral contracts was \$239,562.83.

On August 25, 2008, Iams appealed the April 25, 2008, order permanently enjoining it from selling, maintaining or providing preneed funeral contracts. The matter is pending.

b.

**IN RE: MATHENY POMROY FUNERAL HOME
(Civil Action No. 07-C-38 - Circuit Court of Wirt County)**

After an audit of Matheny Funeral Home disclosed consumer funds had been misappropriated, the funeral home agreed to be enjoined from selling, maintaining, or providing preneed funeral contracts. Shortly thereafter, the assets of Matheny Funeral Home were sold; the majority were sold to Matheny Pomroy Funeral Home. At an undetermined time, Matheny Pomroy was given a Certificate of Authority to sell preneed funeral contracts.

An audit of Matheny Pomroy Funeral Home in December of 2007, disclosed consumer funds were misappropriated and the Certificate of Authority was revoked. The assets were immediately sold to the daughter of the owner and officer of Matheny Pomroy Funeral Home and renamed Matheny Whited Funeral Home.

In December of 2007, a declaratory judgment action was filed in the Wirt County Circuit Court to determine whether Matheny Whited Funeral Home was enjoined from selling, maintaining, or providing preneed funeral contracts under the previously agreed order. On May 15, 2008, the Honorable Robert A. Waters ruled that the State could not

prohibit Matheny Whited from selling preneed funeral contracts because it had issued a Certificate of Authority several years after the order.

C.

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 Bartolo was refusing to refund money paid for preneed funeral contracts. The Preneed Funeral Unit performed an audit which revealed that Bartolo had failed to report 50 preneed funeral contracts, and 37 instances where Bartolo had failed to report the withdrawal of consumers' money after servicing their contracts. The Attorney General learned that instead of depositing consumers' funds in trust accounts, Bartolo kept more than \$170,000.00* 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 Bartolo from selling or servicing preneed funeral contracts. Eventually, the Attorney General paid out over \$149,218.39* to consumers from the Guarantee Fund. Currently, the Attorney General is collecting monthly payments from Bartolo to reimburse the Guarantee Fund and collected \$6,000.00 during this reporting period.

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 2008 reporting period, eight preneed funeral providers signed an Assurance of Discontinuance. Those funeral homes are identified below.⁷

DATE OF ASSURANCE	FUNERAL HOME	LOCATION	Failure to Register	Failure to File Death Beneficiary Forms	Other Violations	ADMINISTRATIVE FEES AND COSTS
Jan. 30, 2008	Pryor Funeral Home	East Bank, WV	7	104		\$2,130.00
July 2, 2008	Boyle Funeral Home	Weston, WV			✓	\$4,541.00
July 2, 2008	Floyd Funeral Home	Weston, WV			✓	\$1,559.00
Sept. 30, 2008	Davis-Weaver Funeral Home	Clarksburg, WV	9	68		\$1,510.00
Oct. 1, 2008	Eakles-Spencer and Norton Funeral Home	Harpers Ferry, WV	49	31		\$3,980.00
Oct. 17, 2008	Cunningham-Parker-Johnson Funeral Home	Charleston, WV	64	170		\$5,580.00
Nov. 17, 2008	Colonial Funeral Home	Ranson, WV	18	9		\$880.00
	Valley Funeral Home	Whitesville, WV	6	42		\$1,120.00
TOTAL FILING FEES AND COSTS						\$21,300.00

⁷ Valley Funeral Home paid administrative fees and costs, but have refused to sign an Assurance of Discontinuance.

VI.

CONCLUSION

2008 was another successful year for the Consumer Protection and Antitrust Divisions in that they recovered \$89,822,741.05 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 in refunds and debt cancellation from unscrupulous debt settlement companies, and from companies engaging in bid rigging. The amount the exploiters of such practices might have fleeced from West Virginia consumers and the State, 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

2008 - 2002 COMPARISONS

	2008	2007	2006	2005	2004	2003	2002
MEDIATION COMPLAINTS							
Complaints Received	8,861	10,061	9,766	8,683	9,143	8557	8,573
Complaints Closed	9,790	10,703	10,830	9,591	9,581	9511	8,934
Restitution	\$1,994,115.39	\$2,300,878.55	\$2,187,728.89	\$1,849,372.13	\$2,496,207.75	\$2,300,282.00	\$1,690,726.15
CONSUMER PROTECTION							
Litigation	\$75,992,042.96	\$963,000,310.69	\$54,713,035.29	\$62,912,498.42	\$58,404,584.00	\$71,225,894.80	\$66,170,098.77
Assurances	\$10,933,643.87	\$6,626,260.88	\$3,557,591.97	\$18,210,610.49	\$4,916,377.30	\$859,270.62	\$57,852.95
ANTITRUST							
Litigation	\$602,665.17	\$529,743.26	\$8,925,082.50	\$5,097,957.34	\$4,070,916.34	\$1,741,992.55	\$6,525,816.90
PRENEED FUNERAL UNIT							
Litigation-Assurances-Mediation	\$300,273.66	\$103,062.14	\$26,506.87	\$234,967.14	\$146,214.97	\$98,613.07	\$62,134.48
TOTAL							
RESTITUTION	\$89,822,741.05	\$972,560,255.52	\$69,409,945.62	\$88,305,405.52	\$70,034,300.36	\$76,226,053.04	\$75,306,629.25

2001 - 1995 COMPARISONS

	2001	2000	1999	1998	1997	1996	1995
MEDIATION COMPLAINTS							
Complaints Received	8,080	7,929	8,891	8,903	7,106	6,691	5,516
Complaints Closed	8,572	8,342	9,830	8,007	7,252	5,858	4,809
Restitution	\$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
CONSUMER PROTECTION							
Litigation	\$61,684,366.53	\$51,179,434.48	\$963,570.47	\$413,924.83	\$1,710,739.92	\$932,192.90	\$128,252.95
Assurances	\$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
ANTITRUST							
Litigation Assurances	\$548,724.30	\$262,000.00	\$26,000.00	----	\$220,950.14	\$342,600.00	\$266,837.00
PRENEED FUNERAL UNIT							
Litigation Assurances	\$63,807.85	\$ 465,663.99	\$3,082,033.34	\$ 322,557.98	\$139,511.30	\$123,319.45	\$7,175.00
TOTAL							
RESTITUTION	\$65,265,623.34	\$54,610,145.45	\$9,116,535.16	\$5,362,075.96	\$5,515,969.57	\$3,309,140.19	\$912,596.99

2008 - 2007 COMPARISONS

	2008	2007	2008-2007 Difference	%
MEDIATION COMPLAINTS				
Complaints received	8,861	10,061	-1,200	-14%
Complaints closed	9,790	10,703	-913	-9%
Restitution	\$1,994,115.39	\$2,300,878.55	-\$306,763.16	-15%
CONSUMER PROTECTION				
Litigation	\$75,992,042.96	\$963,000,310.69	-\$887,008,267.73	-1167%
Assurances	\$10,933,643.87	\$6,626,260.88	\$4,307,392.99	65%
ANTITRUST				
Litigation	\$602,665.17	\$529,743.26	\$72,921.91	14%
PRENEED FUNERAL UNIT				
Litigation-Assurances-Mediation	\$300,273.66	\$103,062.14	\$197,211.52	191%
TOTAL				
RESTITUTION	\$89,822,741.05	\$972,560,255.52	\$882,737,514.47	-983%

CPD TOTAL COMPARISON WITHOUT TOBACCO

			2007		2008	
2007 Total	\$972,560,255.52		Total	\$972,560,255.52	Total	\$89,822,741.05
2008 Total	\$89,822,741.05		Tobacco	\$954,000,000.00	Tobacco	\$73,000,000.00
	2007 Tobacco	\$954,000,000.00	Total Without Tobacco	\$18,560,255.52	Total Without Tobacco	\$16,822,741.05
	2008 Tobacco	\$73,000,000.00				

PERCENTAGE COMPARISON WITHOUT TOBACCO

2008	2007	2008-2007 DIFFERENCE	%
\$16,822,741.05	\$18,560,255.52	-\$1,737,514.47	-10%

EXHIBIT 2

CONSUMER PROTECTION AND ANTITRUST DIVISIONS
 2008 Mediation, Litigation and Assurances

Complaints Received	8,861
Complaints Closed	9,790
Mediation - Refunds, Debt Cancellation, Value Received	\$1,994,115.39
Consumer Protection Litigation	\$75,992,042.96
Consumer Protection Assurances	\$10,933,643.87
Antitrust Division Litigation	\$602,665.17
Preneed Funeral Unit Mediation	\$33,410.83
Preneed Funeral Unit Litigation	\$245,562.83
Preneed Funeral Unit Assurances	\$21,300.00
CONSUMER PROTECTION DIVISION TOTAL	\$89,822,741.05

CONSUMER PROTECTION LITIGATION

<u>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.</u> Civil Action No. 94-C-1707 - Circuit Court of Kanawha County	\$73,000,000.00
<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>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. Huey Small d/b/a H & S Paving, et al.</u> Civil Action No. 97-C-1041 - Circuit Court of Kanawha County	\$6,000.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Mr. Meats, et al.</u> Civil Action No. 05-C-2694 - Circuit County of Kanawha County	\$5,000.00

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 \$3,600.00

State ex rel. Darrell V. McGraw, Jr. v. Brag Women’s Center, LLC, et al.
Civil Action No. 07-C-2705 - Circuit Court of Kanawha County \$500.00

Petitions to Enforce Investigative Subpoenas

State ex rel. Darrell V. McGraw, Jr. v. John Henry Partridge, et al.
Civil Action No. 07-P-222 - Circuit Court of Berkeley County \$250,000.00

State ex rel. Darrell V. McGraw, Jr. v. Hess Kennedy Chartered
Civil Action No. 07-MISC-454 - Circuit Court of Kanawha County \$155,975.37

Petitions to Enforce Assurances of Discontinuance And Settlement Agreements

State ex rel. Darrell V. McGraw, Jr. v.
Jack Bishop’s Pre-Owned Auto Sales, LLC, et al.
Civil Action No. 08-MISC-237 - Circuit Court of Kanawha County \$7,500.00

State ex rel. Darrell V. McGraw, Jr. v. Guy R. Hartman, et al.
Civil Action No.08-MISC-223 - Circuit Court of Kanawha County \$1,000.00

State ex rel. Darrell V. McGraw, Jr. v. Robert G. Postlewaite, et al.
Civil Action No.08-MISC-288 - Circuit Court of Kanawha County \$5,000.00

CONSUMER PROTECTION ASSURANCES

IN THE MATTER OF FINANCIAL CREDIT SERVICES \$6,677,955.64

IN THE MATTER OF SANTANDER CONSUMER USA
d/b/a DRIVE FINANCIAL SERVICES \$2,684,692.46

IN THE MATTER OF PAYDAY LENDING \$520,499.47
 In the Matter of Miami Nation Enterprises \$122,493.00
 In the Matter of Impact Cash USA \$92,181.68
 In the Matter of MTE Financial Services \$71,551.50
 In the Matter of Ambassador Financial Services \$48,016.25
 In the Matter of Cash Back Payday Loans \$33,881.65
 In the Matter of SFS, Inc. \$33,670.00
 In the Matter of EastsideLenders.com \$25,372.67
 In the Matter of Cash in a Wink \$20,426.25

In the Matter of Avantis Financial, LLC	\$18,808.87
In the Matter of My Cash Time.com	\$12,962.50
In the Matter of Wrightway Investments, Inc.	\$11,071.50
In the Matter of United Consumer Financial Services	\$10,483.10
In the Matter of Consumer Direct Lending Services, Inc.	\$7,202.50
In the Matter of AeroAdvance Financial, Inc.	\$5,728.00
In the Matter of International Cash Services	\$3,799.00
In the Matter of The Money Center	\$1,056.00
In the Matter of Quick Draw Cash	\$1,000.00
In the Matter of Geneva-Roth Ventures	\$770.00
In the Matter of The Norwood Group, Inc.	\$25.00
IN THE MATTER OF ASCENSION SERVICES, INC.	\$273,008.67
IN THE MATTER OF THE DEBT RELIEF INDUSTRY	\$271,562.94
In the Matter of Debt Relief USA, Inc.	\$209,747.93
In the Matter of Acushield Financial, Inc.	\$56,586.34
In the Matter of American Debt Solutions	\$5,228.67
IN THE MATTER OF THE BUREAU OF ASSET MANAGEMENT, INC.	\$100,550.65
IN THE MATTER OF GEORGE E. LOVEGROVE, M.D. d/b/a WEST VIRGINIA VEIN AND SKIN CENTERS	\$93,112.72
IN THE MATTER OF CHECKCARE OF ATLANTA, J.A.	\$68,994.10
IN THE MATTER OF THE COLLECTION OF DIRECTV ACCOUNTS BY JESSE RIDDLE d/b/a RIDDLE & ASSOCIATES	\$59,818.37
IN THE MATTER OF PDM INTERNATIONAL, INC.	\$35,345.00
IN THE MATTER OF DIRECTORY BILLING, LLC	\$35,005.31
IN THE MATTER OF CINGULAR WIRELESS, LLC	\$18,324.00
IN THE MATTER OF NORVERGENCE	\$13,049.53
IN THE MATTER OF SEARS, ROEBUCK AND CO.	\$12,000.00
IN THE MATTER OF PHILLIPS & BURNS, INC.	\$11,515.97
IN THE MATTER OF PERSONAL CREDIT SERVICES	\$9,400.00
IN THE MATTER OF I GLO WORKSHOP, INC.	\$8,802.27
IN THE MATTER OF SEARS HOME IMPROVEMENT PRODUCTS, INC.	\$8,000.00

IN THE MATTER OF BAILEY'S PRE-OWNED AUTOS, LLC	\$7,500.00
IN THE MATTER OF MAXIMUM RECOVERY SOLUTIONS, INC.	\$5,000.00
IN THE MATTER OF LISA A. HENRY; STEPHEN W. HENRY; AND S & B CONCRETE CONSTRUCTION	\$4,400.00
IN THE MATTER OF CORNERSTONE FAMILY SERVICES OF WEST VIRGINIA SUBSIDIARY, INC., A SUBSIDIARY OF STONEMOR PARTNERS, L.P.	\$3,466.00
IN THE MATTER OF UNIVERSAL SUBSCRIPTION AGENCY, INC.	\$3,464.00
IN THE MATTER OF KESSLER & FREEDMAN, INC.	\$3,192.42
IN THE MATTER OF HERBERT A. WHITE d/b/a WHITE'S PRE-OWNED AUTOS	\$1,360.35
IN THE MATTER OF SMOKER FRIENDLY	\$1,000.00
IN THE MATTER OF CARROLL D. McDONALD, SR. d/b/a CARROLL'S 24-HOUR TOWING, INC.	\$560.00
IN THE MATTER OF ASHWANI K. MALHOTRA d/b/a SUPER DOLLAR STORE, INC.	\$557.00
IN THE MATTER OF VALLEY FUELS	\$507.00
IN THE MATTER OF FEDERAL CREDIT CORP.	\$500.00
IN THE MATTER OF ROBERT HAYES d/b/a HAYES & ASSOCIATES.	\$500.00

ANTITRUST DIVISION LITIGATION

<u>State ex rel. Darrell V. McGraw, Jr. v. Visa U.S.A., Inc., et al.</u> Civil Action No. 03-C-551 - Circuit Court of Ohio County	\$400,000.00
<u>State ex rel. Darrell V. McGraw, Jr. v. American International Group, Inc.</u> Civil Action No. 08-C-49 - Circuit Court of Ohio County	\$54,572.57
<u>State ex rel. Darrell V. McGraw, Jr. v. The Travelers Companies, Inc.</u> Civil Action No. 08-C-7 - Circuit Court of Ohio County	\$109,994.33
<u>State ex rel. Darrell V. McGraw, Jr. v. Ace Group Holdings, Inc., et al.</u> Civil Action No. 07-C-481 - Circuit Court of Ohio County	\$38,098.27

PRENEED FUNERAL UNIT LITIGATION

State ex rel. Darrell V. McGraw, Jr. v. Iams Funeral Home, et al.

Civil Action No. 07-C-126 - Circuit Court of Wetzel County
Docket No. 081775 - West Virginia Supreme Court of Appeals
Case No. 5:07-BK-1397 - U.S. Bankr.Ct., Northern District of West Virginia
Case No. 5:07-CV-170 - U.S.D.Ct.,
Northern District of West Virginia \$239,562.83

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 CUNNINGHAM-PARKER-
JOHNSON FUNERAL HOME \$5,580.00

IN THE MATTER OF BOYLE FUNERAL HOME \$4,541.00

IN THE MATTER OF EAKLES-SPENCER
AND NORTON FUNERAL HOME \$3,980.00

IN THE MATTER OF PRYOR FUNERAL HOME \$2,130.00

IN THE MATTER OF FLOYD FUNERAL HOME \$1,559.00

IN THE MATTER OF DAVIS-WEAVER FUNERAL HOME \$1,510.00

IN THE MATTER OF VALLEY FUNERAL HOME \$1,120.00

IN THE MATTER OF COLONIAL FUNERAL HOME \$880.00

EXHIBIT 3

MEDIATION

Written complaints received during reporting period 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 **8,861**

Written complaints closed during reporting period 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 **9,790**

Written complaints pending for reporting period 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 👉 **223**

Cash refunds received by consumers from mediation during reporting period \$ **\$429,028.17**

Value and Debt Cancellation received by consumers from mediation during reporting period \$\$\$\$\$\$\$\$\$\$\$\$ **\$1,565,087.22**

EXHIBIT 4

