

# 2009 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**

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#### **I.**

#### **FOREWORD**

Attorney General Darrell V. McGraw, Jr., submits this report to the Governor and Legislature of West Virginia pursuant to W. Va. Code § 46A-7-102(4)(2009). This report outlines the education, mediation, and enforcement activities of Attorney General McGraw's Consumer Protection and Antitrust Divisions from November 20, 2008, through November 19, 2009.

## 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 \$133,353,299.47 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 33 different organizations. Some of these speaking engagements involved partnerships with other agencies, such as the Finance University 2009 with the West Virginia Auditor's Office, and *Ready, Set, Internet!* with the AARP. The AARP program, *Ready, Set, Internet!*, was held in four locations around the state, Charleston, Wheeling, Bridgeport and Martinsburg. Over 150 West Virginia senior citizens attended each of these educational presentations.

The Citizen Advisory Committee (CAC), which is made up of approximately 33 active community members from around the state, continued to meet in 2009. The CAC met at the Stonewall Jackson Resort in Roanoke, West Virginia on May 29, 2009. Members of the committee advise the Attorney General's office of emerging consumer

issues in their communities and make recommendations on how the Division's resources can best be used in the small towns and cities where they live.

One of the CAC's initial suggestions was to create educational brochures on consumer protection issues. As a result, four brochures have been created and distributed throughout the State. "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 tips on what steps to take before hiring a contractor and before signing a home improvement contract. "The Reverse Mortgage: An Income Option for Senior Citizens," identifies the pros and cons of reverse mortgages. The fourth brochure, "On The Mark: A Guide to Concealed Weapons Laws of West Virginia," advises West Virginians where in the United States a West Virginia concealed weapons license is recognized.

The Attorney General's partnership with the AARP Foundation continued to grow 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. If the consumer would like assistance, the Division's 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 14,517 West Virginia consumers. ElderWatch volunteers have contributed more than 16,161 hours of service.

The Division also partnered with the AARP Foundation during 2009 in contacting West Virginians by the telephone to educate them about telemarketing fraud and to encourage them to avoid sending money to strangers using money transfer services.

## 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](http://www.wvago.gov).

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

The sheer volume of the Division's mediation activity attests to its utility. During the reporting period, the Division received 9,242 complaints. (See Exhibits 1, 2 and 3.) The most common complaints involved credit and automobiles. (See Exhibit 4.) Of the complaints pending at the beginning of or received during the reporting period, the Division closed 10,054. As a result of the Division's mediation efforts, consumers received \$747,522.78 in cash refunds, and \$3,565,515.44 in debt cancellation and value for products and services received. The total amount received in mediation was \$4,313,038.22.

## 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(2009) 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 \$105,145,578.13 through litigation. (See Exhibits 1 and 2.) Identified below are the cases that the Division had in litigation during the 2009 reporting period.

1.

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

Attorney General McGraw has previously reported a settlement reached between West Virginia, 45 states, the 4 original participating manufacturers, and dozens of subsequent participating manufacturers. Pursuant to the terms of that settlement, West Virginia is scheduled to receive \$1,700,000,000.00<sup>1\*</sup> over 25 years and thereafter \$90,000,000\* per year (adjusted upward for inflation and downward for market share loss as necessary) as long as the Defendant manufacturers or their successors or assigns remain in business.

In addition to the sums set forth above, West Virginia is scheduled to receive another \$196,087,655.00\* payable over ten years beginning in 2008, separate from and in addition to, the regular yearly settlement payments. These additional funds were awarded to West Virginia in recognition of the key role that Attorney General McGraw played in the nationwide tobacco litigation. The additional payment of \$196,087,655.00\* is almost four times the amount West Virginia would have received under the standard distribution formula established in the Master Settlement Agreement. Through November 30, 2009, the State has collected approximately \$628,400,000.00\* in payments since the execution of the Master Settlement Agreement (MSA).

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

During the 2007 legislative session, the legislature passed a bill that authorized the remainder of the Tobacco Settlement money to be sold to bond holders in return for a lump sum payment. On June 26, 2007, Governor Manchin, with the legislature's approval, sold approximately 25 years' entitlement to the remaining settlement from the Tobacco litigation. This resulted in a lump sum payment of approximately \$900,000,000.00. This transaction also included the \$200,000,000.00 in strategic contribution money.

During this year's reporting period, West Virginia received approximately \$79,000,000.00 under the terms of the MSA, which was used to meet the state's obligation to the bond holders.

## 2.

**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. In July of 2009, Eli Lilly agreed to settle the matter with the State in the amount of \$15,750,000.00.

3.

**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.<sup>2</sup> (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 February 3, 2009, West Virginia settled with the corporate defendants, who agreed to pay consumers \$340,000.00 in foreclosure relief payments and develop a loan modification program valued at \$9,000,000.00 for West Virginia consumers, and \$100,000.00 in fees.

On March 2, 2009, the Honorable Judge Sabraw ordered the case pending against Mozilo be remanded to state court, and on October 8, 2009, West Virginia also settled with Mozilo for \$150,000.00. The total settlement with Countrywide is valued at \$9,590,000.00.

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<sup>2</sup> 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.

4.

**State ex rel. Darrell V. McGraw, Jr. v. Pfizer, Inc.**  
**(Civil Action No. 09-C-1681 - Circuit Court of Kanawha County)**

On September 9, 2009, West Virginia and 41 other states filed simultaneous complaints against Pfizer, Inc. (Pfizer), a Delaware corporation, for its off label marketing of the atypical anti-psychotic drug, Geodon. Although a physician may prescribe medications for off label use, drug manufacturers may not market drugs for off label use. The lawsuit against Pfizer alleged, among other things, that Pfizer marketed Geodon to pediatricians when the drug was not approved for children. Pfizer settled with the participating states for \$33,000,000.00.\* West Virginia's portion of the settlement was \$507,872.00.

5.

**State ex rel. Darrell V. McGraw, Jr. v. Mattel, Inc., et al.**  
**(Civil Action No. 08-C-3353 - Circuit Court of Kanawha County)**

On December 15, 2008, West Virginia and 37 other states filed a complaint simultaneously against Mattel, Inc. and Fisher Price, Inc. alleging they manufactured and sold toys that contained illegal levels of lead. As a result of the lawsuit, the defendants agreed to phase in lower lead standards sooner than required by federal law, to maintain records regarding testing and manufacturing of covered products, and to report any lead violations and/or recalls of covered products. The settlement resulted in \$12,000,000.00\* to the participating states. West Virginia's portion was \$204,619.00 to be used for consumer education.

6.

**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)**

In April of 2005, the Attorney General issued investigatory subpoenas to Capital One Bank (the Bank) and Capital One Services, Inc. (COSI), to determine whether they were violating the Act in their marketing, advertising, servicing (including debt collection), and issuing of credit cards and related services. Neither the Bank nor COSI responded. On May 7, 2005, the State sued to enforce the subpoenas. On September 10, 2007, the Court entered an order requiring respondents to provide all the requested documents within 90 days of entry of the order. Respondents appealed to the West Virginia Supreme Court of Appeals, which granted a stay.

On March 1, 2008, the Bank converted from a Virginia state-chartered bank to a national bank. A week later the Bank and COSI sued the Attorney General in the United States District Court for the Southern District of West Virginia, alleging that further action to enforce either subpoena would violate the visitorial powers rule of the Office of the Comptroller of the Currency (OCC), the federal bank regulator that claims to have exclusive jurisdiction over national banks. On June 26, 2008, the federal court permanently enjoined the Attorney General from investigating or suing the Bank regarding credit card lending, relying primarily on Clearing House Ass'n v. Cuomo, 510 F.3d 105 (2d Cir. 2007). The Court declined to extend the injunction to COSI, however, noting that it was not an operating subsidiary of the Bank.

In January of 2009, the United States Supreme Court agreed to review Cuomo v. The Clearing House Ass'n. The United States Supreme Court subsequently ruled that the OCC's visitorial powers rule and its interpretation of The National Bank Act, 12

U.S.C. § 38, are not reasonable insofar as they prohibit state enforcement agencies from suing to enforce their non-preempted state laws. Based on this change in the law, on August 22, 2009, the Attorney General moved the United States District Court to modify the order that enjoins him from suing the Bank on the non-preempted substantive state laws. The Court has not yet ruled.

7.

**State ex rel. Darrell V. McGraw, Jr. v. BlueHippo Funding, LLC, et al.**  
**(Civil Action No. 07-C-438 - Circuit Court of Kanawha County)**

On March 12, 2007, the Attorney General sued BlueHippo Funding, LLC, BlueHippo Capital, LLC, and Joseph Rensin (BlueHippo), the primary owner of those businesses. BlueHippo advertises the sale of computers on radio, television, and the Internet. The ads target low-income consumers and falsely state that all the consumer needs to purchase a computer is a checking account. Under West Virginia law, a business that advertises the sale of goods or services and sells those goods or services during a telephone call is required to be registered as a telemarketer and post a surety bond of \$100,000.00 for each telemarketing location. BlueHippo has never registered as a telemarketer or posted the required bond. In addition, telemarketers must give consumers seven days to return any items purchased for a full refund. All BlueHippo sales were non-refundable. The State also alleged that BlueHippo's contracts contained numerous illegal provisions.

In July of 2007, a preliminary injunction was held. After the hearing, BlueHippo and the Attorney General entered into an order by which BlueHippo agreed to stop selling computers and other electronic goods in West Virginia, place all consumer

payments into an escrow account, provide the State a list of all West Virginia customers, and stop all debt collection activities on the open West Virginia accounts. The case is set for trial in April of 2010.

**8.**

**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. In October of 2008, there was a bench trial. In February of 2009, the trial court ruled in favor of the State and awarded \$4,750,000.00\* in civil penalties. Defendants have petitioned the West Virginia Supreme Court to reverse the decision. The appeal petition has not yet been accepted by the Court.

**9.**

**State ex rel. Darrell V. McGraw, Jr. v. Rite Aid of West Virginia, Inc.**  
**(Civil Action No. 09-C-217 - Circuit Court of Boone County)**  
**(Civil Action No. 2:09-cv-0956 - U.S.D.Ct., Southern District of West Virginia)**

In July of 2009, the Attorney General sued Rite Aid of West Virginia, Inc. (Rite Aid), for failing to comply with W. Va. Code § 30-5-12b. Under West Virginia law, if a generic equivalent drug exists for a name brand drug, the generic must be substituted for the name brand. When generic drugs are substituted for brand name drugs, the cost

savings must be passed on to the purchaser. Rite Aid did not pass on prescription drug savings to consumers when generic drugs were substituted for name brand drugs as required by statute. The case was removed to the United States District Court for the Southern District of West Virginia. The State has asked the federal court to return the case to state court. The matter is pending.

**10.**

**State ex rel. Darrell V. McGraw, Jr. v. CVS Pharmacy, Inc., et al.**  
**(Civil Action No. 09-C-226 - Circuit Court of Boone County)**  
**(Civil Action No. 2:09-cv-01000 - U.S.D.Ct., Southern District of West Virginia)**

In August of 2009, the Attorney General sued CVS Pharmacy, Inc., Kmart Holding Corporation, The Kroger Co., Wal-Mart Stores, Inc., Walgreen Co., and Target Stores, Inc., in a companion case to the Rite Aid matter. Under West Virginia law, if a generic equivalent drug exists for a name brand drug, the generic must be substituted for the name brand. The State claims when a generic drug is substituted for an equivalent name brand drug, the pharmacy must pass on the savings to the purchaser. The defendants did not pass on prescription drug savings to consumers when generic drugs were substituted for name brand drugs as required by statute. The case was removed to federal court. The State has asked the federal court to return the case to state court. The matter is pending.

11.

**State ex rel. Darrell V. McGraw, Jr. v. Able Debt Settlement, Inc.**  
**(Civil Action No. 07-Misc-310 - Circuit Court of Kanawha County)**  
**(Civil Action No. 09-C-683 - Circuit Court of Kanawha County)**

In January of 2007, the Attorney General began investigating Able Debt Settlement, Inc. (Able), after receiving a consumer complaint that Able had charged for debt settlement services and had failed to provide them. On July 30, 2007, the Division filed a Petition to Enforce an Investigatory Subpoena against Able when it failed to comply with the subpoena. Prior to the hearing on the Petition to Enforce, the Circuit Court of Kanawha County enjoined Able from conducting business in West Virginia until it comes into full compliance with the subpoena and West Virginia law. Able appealed the Court's order in 2008, but agreed not to sign up new customers. The appeal was denied in February of 2009. To date, Able has not complied with the subpoena.

After the Court forced Able to produce the subpoenaed documents, the Attorney General sued Able. After an evidentiary hearing, the Honorable Irene Berger issued a preliminary injunction preventing Able from doing business in West Virginia. The matter is pending.

12.

**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 abusive 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, the Attorney General was preempted by federal law from regulating its practices.

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, to grant refunds of all unlawful fees, and to order CashCall to comply with his investigative subpoena. On November 17, 2008, CashCall removed the suit to the United States District Court for the Southern District of West Virginia.

On March 11, 2009, Chief Judge Joseph R. Goodwin of the United States District Court for the Southern District of West Virginia issued an Order granting the Attorney General's Motion to Remand, which returned the case for trial to the Circuit Court of Kanawha County. In his Order, Judge Goodwin found that CashCall is not a bank, and therefore the claim does not invoke and cannot be completely preempted by the Federal Deposit Insurance Act. The case is currently in discovery and the trial is scheduled for May 10, 2010 in the Circuit Court of Kanawha County.

**13.**

**State ex rel. Darrell V. McGraw, Jr. v. J.K. Harris and Company, LLC, et al.**  
**(Civil Action No. 08-C-1131 - Circuit Court of Kanawha County)**

On June 12, 2008, West Virginia and 17 other states sued J.K. Harris & Company, LLC, J.K. Harris Financial Recovery System, LLC, and Professional Fee Financing Associates, LLC (JK Harris), and simultaneously entered into a Consent

Decree. The South Carolina tax-relief company claimed to be able to settle consumers' debts with the Internal Revenue Service (IRS) for "pennies on the dollar."

The Attorney General's lawsuit alleged that JK Harris regularly advertised that it could help people who owed back taxes to the IRS by filing an Offer in Compromise (OIC) on their behalf resulting in them only having to pay "pennies on the dollar" of what they owed. JK Harris charged money up front for this service without actually determining if consumers qualified for an OIC. The IRS accepts only a small number of these kinds of cases. In many cases, JK Harris did not even apply to the IRS to help consumers as promised, but still refused to give those consumers their money back. JK Harris regularly advertised that it had more than 45 offices nationwide. In reality, if a consumer wanted to talk with a JK Harris representative in person about the tax services he had purchased, he would have to travel to JK Harris's main office in Charleston, South Carolina.

Under the terms of the consent judgment, JK Harris must make clearer disclosures to consumers and pay them refunds if they aren't able to work out a compromise with the IRS. The company must tell consumers up front under what circumstances they might qualify to reach a compromise with the IRS on back taxes and also provide the consumer with the percentage of OIC offers the IRS actually accepts. The company must also refund consumers' money if the IRS does not provide them with an OIC.

JK Harris refunded \$1,500,000.00\* to consumers who filed complaints in all of the settling states. West Virginia received \$42,049.47 in refunds for 37 West Virginia consumers and \$10,000.00 for consumer education.

14.

**In re Clifford Ryland Ealy and Margaret Carole Ealy**  
**(Case No. 2:03-BK-22312 - U.S. Bankr. Ct., Southern District of West Virginia)**  
**(State ex rel. Darrell V. McGraw, Jr., et al. v. Ameribank, Inc., et al.)**  
**(Adversary Proceeding No. 06-2150 - U.S. Bankr. Ct., Southern District of West Virginia)**

In July of 2003, Clifford Ealy d/b/a Howard Ealy Used Cars (Ealy), located in Princeton, West Virginia, became insolvent and went out of business. The Division received numerous complaints from consumers who were unable to get titles for the cars they purchased from the dealership and whose liens on trade-ins had not been paid by the dealership. On September 23, 2006, the Attorney General and the West Virginia Division of Motor Vehicles jointly filed an adversary proceeding in Ealy's Chapter 7 Bankruptcy.

In this reporting period, the Division reached a settlement with the Federal Deposit Insurance Corporation, as receiver for Ameribank, resolving the complaints of the remaining consumers, and the case was dismissed on July 31, 2009, with a settlement value of \$20,476.66 for 3 West Virginia consumers.

15.

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

On December 12, 2005, the Attorney General sued Mr. Meats, and its owner, Bill Parsons. 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 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.

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 \$6,850.00.

**16.**

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

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

17.

**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 operated by Huey Small, of Mercer County, who had defrauded 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. During this reporting period, the Division has collected \$6,000.00.

18.

**State ex rel. Darrell V. McGraw, Jr. v. FFD Ventures., et al.**  
**(Civil Action No. 09-C-2135 - Circuit Court of Kanawha County)**

On November 16, 2009, the Attorney General filed a suit against 13 interconnected corporations and their principals (FFD Enterprises), that owned or operated interactive web sites that made usurious payday loans to West Virginia consumers. The Circuit Court of Kanawha County had previously ordered the FFD companies to comply with the Attorney General’s investigative subpoenas and to cease collecting their loans in West Virginia in an earlier enforcement proceeding, but the FFD companies failed to comply with the order.

In the lawsuit, the Attorney General asked the Court to enter an order to void all of the loans, refund all payments made by consumers, and assess a civil penalty of up to \$5,000.00 for each separate violation of the Act. The lawsuit is pending.

19.

**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 performing 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.

20.

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

Wholesale Used Cars, Inc. (Wholesale), was a “buy here - pay here” auto dealer located in Charleston, West Virginia. In November of 2003, the Division sued the dealership and its officers, Charles and Jeryl Parker, alleging that Wholesale sold

consumers used vehicles that violated the implied warranty of merchantability and charged various unlawful fees. On October 11, 2005, the court entered a judgment that required Wholesale to pay \$28,616.34\* in consumer restitution and \$28,616.34\* in civil penalties. During this reporting period, Charles Parker has made payments of \$3,000.00 toward the consumer restitution portion of the judgment, and that money has been distributed to consumers.

21.

**State ex rel. Darrell V. McGraw, Jr. v. Community Support, Inc.**  
**(Civil Action No. 09-C-947 - Circuit Court of Kanawha County)**

In May of 2009, the Consumer Protection Division joined 31 other states in settling with Community Support, Inc. (CSI), a professional charity solicitor based in Milwaukee, Wisconsin. An investigation revealed that CSI called consumers on the phone and solicited donations by falsely claiming that contributions would benefit organizations in the donors' local communities. To support this false misrepresentation, CSI had the donor mail their donation to a local post office box. Although CSI kept 83% to 90% of every contribution, complaints alleged that the company told consumers 100% of their money would go to charitable programs. Under the settlement, CSI agreed to a court order permanently enjoining the company from engaging in fraudulent solicitation practices, as well as pay \$3,000.00\* to the consumer education fund over 18 months. During this reporting period the Division has collected \$1,111.00.

22.

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

In October of last 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, sued, or their wages would be garnished if they did not pay their cell phone bill. In some cases, Howell disclosed personal information to employers, neighbors and family members. Many of the debts were not even valid, and during some of this period Howell was not licensed to engage in collections in the state of West Virginia. On March 19, 2009, the Circuit Court of Kanawha County entered a preliminary order enjoining Howell from abusive collection practices, and litigation is ongoing.

23.

**State ex rel. Darrell V. McGraw, Jr. v. James R. Armstrong, et al.**  
**(Civil Action No. 09-C-852 - Circuit Court of Kanawha County)**

On May 7, 2009, the Attorney General filed suit against James R. Armstrong, Family Credit Counseling Corporation (FCCC), and several other affiliated marketing companies. The Attorney General commenced an investigation of Armstrong and his affiliated companies after receiving complaints and other information disclosing that the companies were charging unlawful up front fees and excess monthly service fees for the establishment and administration of debt management plans (DMPs) in West Virginia.

Among other things, the Attorney General alleged that Armstrong had an ownership interest in marketing companies that charged fees for the referral of

consumers for the administration of DMPs to FCCC at the same time that he owned or controlled FCCC. The Attorney General's complaint also notes that FCCC sold its accounts to another nonprofit company, American Debt Counseling, without resolving the Attorney General's pending claims of unlawful and excess charges. The Attorney General settled its claims against ADC (discussed on page 36 of this report) but the suit against Armstrong remains pending.

## 24.

### **Stover v. Fingerhut Direct Marketing, Inc., et al.** **(Case No. 5:09-cv-0152 - U.S.D.Ct., Southern District of West Virginia)**

On January 22, 2009, a Raleigh County couple, Carter and Brenda Stover, sued Fingerhut Direct Marketing, Inc. and its finance company, CitiBank, after the bank contacted the Stovers directly by telephone 89 times after they advised that they were represented by counsel and informed the bank of their lawyer's name and phone number.

The Stovers alleged that the bank had violated W. Va. Code § 46A-2-125(e), which makes it unlawful for a debt collector to continue to contact a consumer "whenever it appears that the consumer is represented by an attorney and the attorney's name and address are known, or could be easily ascertained . . . ." The bank asserted that this provision was so vague as to be unconstitutional.

Because the bank challenged the constitutionality of a law enforced by the Attorney General, the Attorney General was afforded an opportunity to intervene in the lawsuit. On August 26, 2009, United States District Judge Thomas E. Johnston issued

a Memorandum Opinion and Order finding that the subject provision of the Act was not unconstitutional and denying the bank's motion to dismiss the Stovers' complaint.

**25.**

**State ex rel. Darrell V. McGraw, Jr. v. National Enterprise Systems, et al.**  
**(Civil Action No. 09-C-1324 - Circuit Court of Kanawha County)**

On July 21, 2009, the Attorney General filed a suit against National Enterprise Systems, Inc. and its owner, Ernest R. Pollack. The Attorney General opened an investigation of National Enterprise Systems (NES), a collection agency based in Solon, Ohio, after receiving several complaints alleging that NES was engaging in abusive and harassing debt collection activities. Among other things, consumers alleged that NES tried to coerce payments on credit card accounts by making false threats of arrest or criminal prosecution. The suit also alleged that NES wrongfully added collection fees to debts allegedly owed for tuition to various West Virginia colleges and universities.

On October 1, 2009, the Attorney General and NES reached an agreement on a temporary order that prohibits NES from engaging in abusive or harassing debt collection practices, prohibits NES from adding collection fees to debts owed to West Virginia institutions of higher education except in those circumstances where fees may lawfully be added, and requires NES to file a compliance plan explaining the actions it intends to take to comply with the order.

Although the parties reached an agreement on a temporary order that will remain in effect until the time of trial, the case has not yet been settled and no trial has been scheduled as of this date.

26.

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

In May of 2005, the Attorney General filed suit against Coupon Connection of America, Inc., a Texas corporation, and its two principals. The suit alleged that the defendants operated a pyramid scheme and committed unfair or deceptive acts or practices, such as misrepresenting the money-making potential of the program. A temporary injunction hearing was held in July of 2005, and the Court entered an injunction on November 18, 2005. The corporation filed a petition for Chapter 7 Bankruptcy in the State of Texas. There were no assets to distribute, and that bankruptcy was closed in November of 2008. In July of 2009, the Division moved to dismiss this matter because there were no corporate assets and the Division believed it had never obtained proper service of process on the individual defendants. The case was dismissed on July 7, 2009.

27.

**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 his investigative subpoenas.

**a.**

**State ex rel. Darrell V. McGraw, Jr. v. Credit Collections Defense Network, et al.**  
**(Civil Action No. 09-Misc-77 - Circuit Court of Kanawha County)**

In December of 2008, the Attorney General commenced an investigation of Credit Collection Defense Network (CCDN) to determine if it was providing debt settlement services and credit repair as it promised. Preliminary investigation showed that it was not providing the services, yet was charging fees in excess of what is allowed by law.

The Attorney General issued an investigative subpoena to learn more about CCDN's business. CCDN refused to comply with the subpoena. Thus, the Attorney General commenced the subpoena enforcement action which CCDN did not defend. CCDN and one of its principles, Robert K. Lock, Jr., have been enjoined from conducting their business in West Virginia until they are in full compliance with the subpoena.

**b.**

**State ex rel. Darrell V. McGraw, Jr. v. ACA Recovery, Inc., et al.**  
**(Civil Action No. 09-Misc-96 Circuit Court of Kanawha County)**

On March 24, 2009, the Attorney General filed a Petition to Enforce Investigative Subpoenas And For Related Relief (petition) against five collection agencies, ACA

Recovery, Inc., Capital Collections, LLC, Covenant Management Group, LLC, Oasis Financial Solutions, LLC, and Westbury Ventures. The Attorney General opened an investigation of these companies after receiving complaints disclosing that they were collecting debts without a license and surety bond and were collecting usurious Internet payday loans.

In order to determine the scope of their activities in West Virginia, the Attorney General issued investigative subpoenas to each company requiring that they disclose records of their activities here. However, all five of the companies refused to comply with the Attorney General's subpoenas, which lead to the lawsuit. In the Petition, the Attorney General has asked the Court to order the collection agencies to comply with the investigative subpoenas. The Attorney General has also asked the Court to prohibit the companies from collecting Internet payday loans in West Virginia and from collecting any debts in West Virginia until they have obtained the required license and surety bond.

c.

**State ex rel. Darrell V. McGraw, Jr. v. GA Financial Trust and  
Arrow Financial Services**  
**(Civil Action No. 09-Misc-213 - Circuit Court of Kanawha County)**

On June 11, 2009, the Attorney General filed a Petition to Enforce Investigative Subpoena And For Related Relief against GA Financial Trust 2002-A and its servicers Arrow Financial Services, LLC. The Attorney General commenced an investigation of GA Financial Trust after receiving a complaint disclosing that it had purchased and was collecting defaulted credit card debts in West Virginia without the required license and surety bond.

In an effort to determine the scope of its activities in West Virginia, the Attorney General issued an investigative subpoena, however, GA Financial Trust refused to disclose the records of its activities here. The matter is pending.

d.

**State ex rel. Darrell V. McGraw, Jr. v. ESR Agency, Inc.,**  
**d/b/a Empire State Recovery, Inc., et al.**  
**(Civil Action No. 09-Misc-384 - Circuit Court of Kanawha County)**

On October 21, 2009, the Attorney General sued ESR Agency, Inc., d/b/a Empire State Recovery, Inc. (ESR). The Attorney General opened an investigation of ESR after receiving a complaint disclosing that it was collecting debts in West Virginia without a license and was engaging in abusive debt collection practices.

In order to determine the scope of its activities, the Attorney General issued an investigative subpoena, but ESR has refused to respond to the subpoena, which led to the lawsuit. The matter is pending.

e.

**State ex rel. Darrell V. McGraw, Jr. v. Sherman Enterprises, LC**  
**d/b/a Nationwide Credit Solutions, et al.**  
**(Civil Action No. 09-Misc-383 - Circuit Court of Kanawha County)**

On October 22, 2009 the Attorney General filed a Petition to Enforce Investigative Subpoena And For Related Relief against Sherman Enterprises, LC d/b/a Nationwide Credit Solutions; GSV Limited; and Glen S. Vondielingen (Nationwide). The Attorney General commenced an investigation of Nationwide after receiving a complaint disclosing that the company was debiting money from the accounts of West Virginia

consumers to provide debt settlement services, but was failing to provide any services at all.

In order to determine the scope of its activities, the Attorney General issued an investigative subpoena, but Nationwide has refused to respond to the subpoena, which led to the lawsuit. The matter is pending.

f.

**State ex rel. Darrell V. McGraw, Jr. v. Capital Collections, LLC, et al.**  
**(Civil Action No. 09-Misc-423 - Circuit Court of Kanawha County)**

On November 16, 2009, the Attorney General filed a Petition to Enforce Investigative Subpoenas And For Related Relief against four collection agencies, Capital Collections, LLC; Claims Investigators of America; Crime Monitoring Center; and Premier Recovery Group. The Attorney General opened an investigation of these companies after receiving complaints and other information disclosing that they were collecting debts in West Virginia without a license and were collecting usurious payday loans.

In the petition, the Attorney General asked the court to order these companies to comply with his investigative subpoenas. The Attorney General has also asked that the companies be enjoined from collecting Internet payday loans and from collecting any debts in West Virginia until such time as they become licensed and bonded as required by West Virginia law. The Attorney General's Petition is scheduled for hearing on January 7, 2010, in the Circuit Court of Kanawha County.

**B.**

**ASSURANCES OF DISCONTINUANCE AND SETTLEMENT AGREEMENTS**

**1.**

**IN THE MATTER OF LAWRENCE A. HECKER, ATTORNEY AT LAW**

In November of 2009, the Attorney General entered into an Assurance of Discontinuance with Lawrence A. Hecker, Attorney at Law (Hecker) of Hamilton, New Jersey, and two companies he collected for, APM Financial Solutions, LLC, and Account Portfolio Management, LLC (APM), of Bensalem, Pennsylvania.

The Attorney General opened an investigation of Hecker and APM after receiving complaints that they were collecting debts in West Virginia without a license and surety bond. Further investigation also disclosed that most of the debts that Hecker and APM collected were past the statute of limitations; collection letters were sent on lawyer letterhead stationary implying that a lawsuit would be filed to collect the debt when there was no intention to file a suit; and the suit was barred by the statute of limitations. In addition, Hecker and APM failed to verify alleged debts in a timely manner and sometimes not at all, and collected debts arising from usurious Internet payday loans.

Although Hecker vigorously disagreed with the Attorney General's position, particularly with regard to the use of lawyer letterhead in the collection of debts, both Hecker and APM agreed to refrain from engaging in all of the alleged unlawful practices. Hecker and APM agreed to refund all payments that it collected from West Virginia consumers, which resulted in cash refunds of \$5,416.00 for 33 West Virginia consumers, close all of its West Virginia accounts with a zero balance, which resulted in

\$10,425,395.82 in cancelled debts for 2,887 West Virginia consumers, and to pay \$10,000.00 for consumer education purposes. The total resolution was \$10,440,811.82.

## 2.

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

During the current reporting period, Attorney General McGraw continued his aggressive efforts to protect West Virginia consumers facing dire circumstances from being victimized by the debt relief industry. Many consumers are enticed to sign up for these expensive services by slick ads promising to make them debt free without having to file for bankruptcy. The most controversial debt relief service, known as “debt settlement”, urges consumers to stop making payments on their credit card debts and to place the funds aside in a separate account often controlled by the company. After the company collects its advance fees, typically several thousand dollars, funds are accumulated that the company uses to negotiate lump sum settlements of accounts one at a time. Often times the companies do not settle any accounts and the consumers are left worse off than before. In some cases, the debt relief companies simply take the money and run.

The volume of debt relief complaints and enforcement actions taken by many states across the country prompted the Federal Trade Commission (FTC) to propose a new rule that would prohibit debt relief companies from charging any fees in advance before services are rendered. Most of the debt relief industry vigorously opposes the proposed rule.

On November 4, 2009, the FTC held a public forum at its headquarters in Washington, D.C. to hear comments to aid the FTC in deciding whether to enact the proposed rule. Attorney General McGraw's office was a major participant on several panels at the public forum in advocating the position of the states, 41 of which signed off on a letter supporting enactment of the FTC's reforms.

The Attorney General entered into the following settlements in the amounts noted with debt relief companies as indicated below.

**a.**

**In the Matter of Financial Freedom of America, Inc.**

On November 10, 2009, the Attorney General entered into an Assurance of Voluntary Compliance with Financial Freedom of America, Inc. (FFA), of Dallas, Texas. The Attorney General opened an investigation of FFA after learning that it was providing debt settlement services to West Virginia consumers in violation of applicable consumer protection laws.

As a result of the investigation, the Attorney General learned that FFA had ceased enrolling new West Virginia consumers for its services after February 28, 2007, and had discontinued charging fees to its existing customers on November 24, 2008. In the Assurance, FFA promised to refrain from providing debt settlement services in West Virginia. FFA also agreed to pay \$90,487.61, which will be refunded to 140 West Virginia consumers.

**b.**

**In the Matter of Elimidebt Management Services, Inc.**

On June 11, 2009, the Attorney General entered into an Assurance of Discontinuance with Elimidebt Management Services, Inc. (Elimidebt), a debt management company based in Orlando, Florida. The Attorney General opened an investigation of Elimidebt after receiving a complaint disclosing that Elimidebt was charging unlawful up-front fees and unlawful monthly service fees for its debt management services.

In the Assurance, Elimidebt promised to refund all unlawful up-front fees and unlawful monthly service fees that it collected from West Virginia consumers, which it represented to be \$6,661.80\* at the time it signed the Assurance. After the Assurance was signed, Elimidebt disclosed that the earlier figure was incorrect and that the actual amount owed is \$79,340.72\* to 159 West Virginia consumers.

As of the date of this annual report it is not known whether Elimidebt will refund these fees to consumers although it is promised to do so in the Assurance.

**c.**

**In the Matter of Christopher Rubini and CSTR Solutions, Inc.  
d/b/a Clear Financial Solutions**

On November 16, 2009, the Attorney General entered into an Assurance of Discontinuance with Christopher Rubini and CSTR Solutions, Inc. d/b/a Clear Financial Solutions (Clear Financial Solutions), a debt negotiation company based in Orlando, Florida. The Attorney General opened an investigation of Clear Financial Solutions after receiving complaints from consumers disclosing that the company was engaging in debt

negotiating services in West Virginia in violation of the Act. Specifically, Clear Financial Solutions employed telemarketers who called consumers to offer assistance in reducing interest rates on credit cards. Consumers who accepted the offer were asked to authorize the fee over the phone, which was charged to their credit card or other account. In some instances, consumers complained that they were charged a fee even though they had not accepted the offer.

In the Assurance, Clear Financial Solutions agreed to permanently refrain from providing debt negotiation or other debt relief services in West Virginia. Clear Financial Solutions also agreed to refund \$77,966.99 to 74 West Virginia consumers.

**d.**

**In the Matter of Lynch Financial Solutions, Inc.,  
d/b/a Financial Solutions Legal Center and Financial  
Solutions Consumer Center**

In November, 2009, the Attorney General entered into an Assurance of Discontinuance with Lynch Financial Solutions, Inc. d/b/a Financial Solutions Legal Center and Financial Solutions Consumer Center (FSLC), a debt settlement company based in West Palm Beach, Florida. The Attorney General opened an investigation of FSLC after receiving a complaint disclosing that FSLC was engaging in debt settlement services in West Virginia in violation of the Act.

In the Assurance, FSLC promised to refrain from providing debt settlement services in West Virginia. FSLC also agreed to refund \$46,601.98 to 22 West Virginia consumers.

e.

**In the Matter of United Debt Services, LLC**

On November 2, 2009, the Attorney General entered into an Assurance of Discontinuance with United Debt Services, LLC (UDS), a debt management company based in Greenwood Village, Colorado. The Attorney General commenced an investigation of UDS after receiving a complaint disclosing that UDS charged fees to West Virginia consumers to establish debt management plans (DMPs) and continued to charge monthly fees to the same consumers after referring them to non-profit corporations that administered the DMPs.

In the Assurance, UDS promised to refrain from charging up-front or other unlawful fees to establish or administer DMPs in its future business practices. UDS also agreed to refund \$24,892.00 to 20 West Virginia consumers.

f.

**In the Matter of American Debt Counseling**

On July 8, 2009, the Attorney General entered into an Assurance of Discontinuance with American Debt Counseling, Inc. (ADC), a debt management company based in Sunrise, Florida. The Attorney General commenced an investigation of ADC after learning that it had purchased a number of West Virginia accounts from another company that the Attorney General was investigating, Family Credit Counseling Corporation (FCCC) of Lauderdale Lakes, Florida. In addition to his concerns about ADC's purchase of accounts from FCCC, the Attorney General also discovered that ADC had overcharged consumers in its provision of debt management services in West

Virginia. In the Assurance, ADC agreed to pay \$22,500.00 to 20 West Virginia consumers.

**g.**

**In the Matter of Consolidated Credit Counseling Corporation, Inc.**

By letter dated October 30, 2009, Consolidated Credit Counseling Corporation, Inc. (Consolidated), a credit counseling agency based in Fort Lauderdale, Florida, notified the Attorney General that it had ended its practice of charging up-front fees to enroll consumers in debt management plans (DMPs) and also discontinued its membership benefits program in which consumers who enrolled in DMPs were offered additional services for a fee through other companies.

Consolidated refunded all past enrollment fees and offered refunds of membership fees, which resulted in refunds of \$6,738.00 to 115 West Virginia consumers.

**h.**

**In the Matter of Lawyers United for Debt Relief**

On August 28, 2009, the Attorney General entered into an Agreement with Jerome S. Lamet d/b/a Lawyers United For Debt Relief (LUFDR), in which the company agreed to comply with West Virginia's debt pooling law in its future business practices.

The Attorney General opened an investigation of LUFDR in April of 2008 after learning that Lamet, an Illinois lawyer, was charging unlawful fees for administering

payment agreements. West Virginia law restricts for-profit companies to a fee of 2% of the monthly payment amount.

Lamet believed he was exempt from the fee restrictions because he was a "licensed attorney." As a result of the agreement, Lamet accepted the Attorney General's position that the exemption only applies to lawyers licensed to practice law in West Virginia and agreed to comply with the 2% monthly fee cap in his future debt pooling activities.

### 3.

#### **IN THE MATTER OF JEFFERSON CAPITAL SYSTEMS, LLC**

On May 29, 2009, the Attorney General entered into an Agreement with Jefferson Capital Systems, LLC (JCS), a collection agency based in St. Cloud, Minnesota. The Attorney General opened an investigation of JCS after receiving a complaint or other information disclosing that JCS was collecting Internet payday loans. The Attorney General also learned that JCS induced consumers to pay defaulted credit card debts through its "Fresh Start Solutions Program," by offering a new credit card account on which they could make purchases after paying off the defaulted debt.

In the Agreement, JCS promised to permanently refrain from collecting Internet or other payday loans in West Virginia and to refund all payments it collected. The Agreement with JCS brought a net value of \$180,824.90 for 260 West Virginia consumers, consisting of \$97,940.25 in refunds, \$77,691.50 in cancelled debt, and \$5,193.15 for consumer education.

**4.**

**IN THE MATTER OF WILHELM, WEST, KACEY & ASSOCIATES**

On August 24, 2009, the Attorney General entered into an Assurance of Discontinuance with Wilhelm, West, Kacey & Associates (WWKA), a debt purchaser based in Canton, Georgia. The Attorney General commenced an investigation of WWKA after receiving a complaint alleging that WWKA was collecting debts in West Virginia without a license.

Further investigation disclosed that WWKA was collecting time-barred debts and sending collection letters implying that it was going to sue the consumer, even though the statute of limitations had run on the debt.

In the Assurance, WWKA agreed to comply with West Virginia law in its future business practices and to close all of its accounts with a zero balance. The Assurance resulted in cancelled debt of \$178,559.73 for 120 West Virginia consumers.

**5.**

**IN THE MATTER OF DEBT TRADE PARTNERS, LLC**

On January 20, 2009, the Attorney General entered into an Assurance of Discontinuance with Debt Trade Partners, LLC (DTP), a debt purchaser based in Englewood, Colorado. The Attorney General opened an investigation of DTP after receiving a complaint or other information disclosing it was collecting debts arising from Internet payday loans and did not have a license to collect any debts in West Virginia.

In the Assurance, DTP promised to refrain from collecting debts in West Virginia in the future without a license and surety bond. DTP also agreed to refund all payments

it collected, close all of its West Virginia accounts with a zero balance, and to delete any information reported to the credit bureaus. As a result of this action, \$161,063.70 of debt was cancelled and \$230.00 was refunded for 386 West Virginia consumers.

**6.**

**IN THE MATTER OF DISH NETWORK, LLC**

In July of 2009, the Division, along with 45 other states, reached a settlement with Dish Network, LLC (Dish). Hundreds of West Virginia consumers had filed complaints over billing and service issues, including allegations that Dish advertised low prices for large programming packages, only to later raise prices without warning and cancel channels without notice. Others complained that Dish charged their credit cards or made electronic bank withdraws without authorization, and when consumers tried to cancel, Dish responded with a demand for high early termination fees. The Assurance required Dish to advertise prices and channels accurately, to fully explain sign-up terms to each consumer both orally and in writing, and offer an opportunity to cancel if prices increase or programming changes occur. Under the terms of the agreement, Dish agreed to resolve all outstanding complaints filed with the Attorney General since January of 2004, and pay \$125,000.00 for consumer education.

7.

**IN THE MATTER OF PAYDAY LENDING**

During the current reporting period, Attorney General McGraw continued his major initiative which was commenced in 2005 to protect West Virginia consumers who have been victimized by usurious loans made by Internet payday lenders.

The enforcement actions have encompassed companies that perform any services in furtherance of making Internet payday loans, including marketers, leads generators, servicers and processors, and collection agencies. During the current reporting period, the Attorney General has entered into settlements and obtained refunds and cancelled debts as noted from the companies identified below.

| <b>Assurance Date</b> | <b>Company</b>                                   | <b>Location</b>    | <b>Amount</b> |
|-----------------------|--|--------------------|---------------|
| April 3, 2007         | BMG Group  | Mission, KS        | \$1,188.50    |
| April 12, 2007        | Premier Processing                               | Wilmington, DE     | \$395.00      |
| May 1, 2007           | National Opportunities Unlimited                 | New Castle, DE     | \$2,365.00    |
| May 22, 2007          | PD6 d/b/a Xpress Cash                            | Kansas City, MO    | \$680.00      |
| July 24, 2007         | Wrightway Investments d/b/a Payday2go.com        | Kensington, MD     | \$1,168.75    |
| Feb. 28, 2008         | Miami Nation Enterprises d/b/a Cash Advance      | Miami, OK          | \$1,020.00    |
| Feb. 28, 2008         | Miami Nation Enterprises d/b/a United Cash Loans | Miami, OK          | \$2,600.00    |
| Feb. 28, 2008         | Miami Nation Enterprises d/b/a US Fast Cash      | Miami, OK          | \$560.00      |
| March 5, 2008         | MTE Financial Services d/b/a 500 Fast Cash       | Miami, OK          | \$1,470.00    |
| March 5, 2008         | MTE Financial Services d/b/a Paycheck Today.com  | Miami, OK          | \$2,760.00    |
| March 5, 2008         | MTE Financial Services d/b/a RIO Resources       | Miami, OK          | \$1,100.00    |
| Oct. 14, 2008         | Military Funding USA, Inc.                       | Las Vegas, NV      | \$1,196.90    |
| Nov. 3, 2008          | Leads Global                                     | Reno, NV           | \$10,000.00   |
| March 30, 2009        | Salt Lake Financial                              | West Jordan, UT    | \$902.00      |
| April 20, 2009        | United Capital Credit                            | Salt Lake City, UT | \$8,775.00    |

|                |                                 |                    |                     |
|----------------|---------------------------------|--------------------|---------------------|
| April 27, 2009 | Money and More                  | Herret, CA         | \$32,635.00         |
| May 29, 2009   | Debt Doctors                    | Wentzeville, MO    | \$1,480.00          |
| July 21, 2009  | Payday Online                   | Yuma, AZ           | \$3,080.00          |
| Aug. 6, 2009   | Best Cash Advance               | Salt Lake City, UT | \$18,872.88         |
| Aug.12, 2009   | B&L Marketing                   | Mission, KS        | \$11,235.00         |
| Nov. 5, 2009   | Paragon Funding                 | Las Vegas, NV      | \$970.00            |
| Nov. 10, 2009  | PCN, LLC d/b/a Platinum Finance | Wilmington, DE     | \$12,006.75         |
|                |                                 | <b>Total</b>       | <b>\$116,460.78</b> |

**8.**

**IN THE MATTER OF MERCK & CO., INC., SCHERING-PLOUGH CORPORATION,  
MSP SINGAPORE COMPANY**

In July of 2009, West Virginia, along with 35 other states, commenced an investigation of deceptive marketing of Vytorin and Zetia by Merck & Co., Inc., Schering-Plough Corporation and their joint venture, MSP Singapore Company, resulting in the companies signing an Assurance of Voluntary Compliance. The investigation showed that the companies attempted to withhold results of clinical studies that were less than favorable or promoting findings that could not be supported by the studies. As part of the settlement agreement, the companies also agreed to end a practice known as “ghost writing.” All company-sponsored papers generated from company-sponsored studies must be written by individuals who had substantial input into the study or analysis of the results.

As part of the Assurance, the companies agreed to reimburse the states their investigative costs totaling \$5,400,000.00.\* West Virginia received \$100,000.00 for reimbursement of its costs and fees.

**9.**

**IN THE MATTER OF DELL, INC. and DELL FINANCIAL SERVICES, LLC**

On January 12, 2009, 27 states, including West Virginia, executed an Assurance of Voluntary Compliance with Dell, Inc., and Dell Financial Services, LLC (Dell) to stop unfair and deceptive sales practices in financing, rebates, technical support and repair policies. Consumers could file a claim with the Attorney General's office until April 13, 2009, to receive a refund. In June of 2009, Dell refunded \$17,491.55 to 30 West Virginia consumers and paid \$46,666.67 for consumer education.

**10.**

**IN THE MATTER OF FREEGASREDEMPTION.COM**

In February 2009, the Attorney General began receiving complaints from consumers who had received direct mail solicitations during the spring and fall of 2008 from West Virginia car dealers. These solicitations varied in format, but all informed the consumers that they had won a prize or would receive a free gift. The promotions required the consumers to present a card or flyer at the car dealer's business in order to receive the prize or gift. A "free gas" card was the gift or prize in each promotion. Some car dealers advertised the "free gas" card as a gift for consumers who test drove or purchased a new vehicle. Many consumers responded to these promotions because gas prices had soared during that time. The amount of the "free gas" offer ranged from \$150.00 to \$500.00.

Consumers who responded to these promotions were given certificates to receive their "free gas." However, they soon discovered that their prize or "free gift" was not

free. In order to receive their gas cards, consumers were required to register with the company administering the promotion, and pay a \$5.00 processing fee. They could not receive more than one \$25.00 gas card per month in exchange for submitting \$100.00 in gas receipts.

The certificates, and many of the direct mail solicitations and advertisements, contained language that violated the West Virginia Prizes and Gifts Act, W. Va. Code § 46A-6D-1 et seq. Words and phrases such as “Congratulations!,” “You have been awarded” or “You have been selected,” are prohibited by the Prizes and Gifts Act unless the consumer receives his or her prize or gift within ten days and without obligation.

The dealers who signed an Assurance of Discontinuance were Exit 132 Pontiac Buick GMC, Beford South Point Ford, Inc. d/b/a Beford Family Preowned Auto Superstore, Bert Wolfe, Inc., Hurricane Chevrolet, Inc., Cole Chevrolet-Cadillac, Inc., and Toothman Ford Sales. The Assurances required the car dealers to pay the consumers the cash value of the gas card they were to receive or give them a gas card for the proper amount, for a total of \$47,875.00 in restitution to 162 West Virginia consumers.

## 11.

### **IN THE MATTER OF OMNI CREDIT SERVICES OF FLORIDA, INC.**

On January 30, 2009, the Division entered into an Assurance of Discontinuance with Omni Credit Services of Florida, Inc. (Omni), a collection agency based in Tampa, Florida, and its President, George Kopp. The Division received a complaint from a consumer that Omni had accused her of stealing, referred to her as a felon, threatened her with court action, and told her that “God will take care of you.” Omni had also

withdrawn money from her checking account despite knowledge that the account had insufficient funds to cover the withdrawal. The Attorney General's investigation revealed that Omni had contacted thousands of West Virginia consumers without having obtained a West Virginia collection agency license or posting a surety bond with the State Tax Department. Under the terms of the Assurance, Omni agreed to refrain from collection activity in West Virginia in the absence of a collection agency license, and cease engaging in abusive collection practices. Omni also provided \$1,248.01 in debt cancellation and paid \$42,015.00 for restitution and consumer education.

**12.**

**IN THE MATTER OF VONAGE HOLDINGS CORP.**

On November 16, 2009, the Division announced an Assurance of Discontinuance with Vonage Holdings Corp. (Vonage), a Delaware corporation, headquartered in New Jersey. Although consumers were misled to believe they were signing up for Vonage Internet-based telephone service based on "free trial" or "money back guaranteed" offers, the trial period had ended by the time the Vonage equipment arrived in the mail. Vonage also failed to disclose that the consumer would have to pay an activation fee, shipping and handling, taxes, and other charges during the "free trial" period. The Assurance requires Vonage to conspicuously disclose the terms of its free offers and pay \$35,000.00 for consumer education.

**13.**

**IN THE MATTER OF TJX COMPANIES, INC.**

On June 23, 2009, West Virginia and 40 other states executed an Assurance of Discontinuance with TJX Companies, Inc. (TJX), for electronic data intrusions that occurred in January and February of 2007. During these intrusions, consumer information, including credit and debit card information was stolen. The intrusions occurred because TJX lacked policies and procedures to protect consumer information.

As a result of the Assurance, TJX agreed to implement and maintain a comprehensive information security program reasonably designed to protect the security, confidentiality and integrity of personal information. A total of \$9,750,000.00\* was paid to the states, West Virginia's portion was \$26,837.40 for consumer education.

**14.**

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

On March 3, 2009, the Attorney General entered into an Assurance of Discontinuance with Santander Consumer USA (Santander), an Illinois corporation, that buys and services retail installment loans from auto dealers across the country. The Division's investigation was prompted by a consumer complaint regarding repossession. Under West Virginia law, a lender must send a consumer a notice of right to cure default before repossessing a car. Investigation revealed that Santander repossessed vehicles from consumers without sending them proper notices of right to cure default and without allowing them 10 days from the date the notice is mailed to bring all payments current on the loan.

Under the terms of the Assurance, Santander agreed to amend its notice of right to cure default to comply with applicable law; stop collecting on deficiency balances that resulted from the sale of the repossessed vehicles; buy back the accounts that had been sold; write the deficiency balances down to zero; and take the necessary steps to have any negative references in connection with the loans deleted from the consumers' credit reports.

As reported in an earlier reporting period, 388 West Virginia consumers received \$2,462,189.05\* in cancellation of deficiencies arising from repossession of their vehicles. The Division negotiated a supplemental agreement to cover 17 additional consumers who recovered their vehicles after the improper repossessions occurred. Under the terms of this agreement, all references to the accounts will be deleted from the consumers' credit records and they will be reimbursed all fees and out-of-pocket expenses arising from the repossessions, totaling \$17,854.28. Santander also paid \$1,000.00 to be used for consumer education.

## **15.**

### **IN THE MATTER OF DIVERSE FUNDING ASSOCIATES, LLC**

On June 22, 2009, the Attorney General entered into an Assurance of Discontinuance with Diverse Funding Associates, LLC, (DFA), a debt purchaser based in Buffalo, New York. The Attorney General commenced an investigation of DFA after receiving a complaint disclosing that it was collecting debts in West Virginia without a license, including debts arising from usurious Internet payday loans. In the Assurance, DFA agreed to obtain a license and surety bond before collecting debts in West Virginia

in the future. DFA agreed to close all of its West Virginia accounts with a zero balance and to refund all payments it collected, which resulted in cancelled debts of \$17,535.00 for 35 West Virginia consumers.

**16.**

**IN THE MATTER OF JACK BISHOP AND KATHY BISHOP  
f/k/a JACK BISHOP'S PREOWNED AUTO SALES, LLC**

On December 2, 2008, the Attorney General entered into an Amended Assurance of Discontinuance with Jack Bishop and Kathy Bishop f/k/a Jack Bishop's Preowned Auto Sales, LLC (the Bishops) of MacArthur, West Virginia. The Attorney General reopened its investigation of the car dealership operated by the Bishops after receiving new complaints indicating that the dealership was violating the Assurance of Discontinuance previously entered into with the Attorney General on February 6, 2008. The complaints alleged that the Bishops sold vehicles that were not merchantable; failed to adequately repair the vehicles in a timely manner; and breached the peace while engaging in self-help repossessions after consumers allegedly defaulted on credit agreements.

In the Amended Assurance, the Bishops agreed to pay \$8,750.00, which was refunded to the complainants whose vehicles were repossessed by the Bishops.

**17.**

**IN THE MATTER OF CHECK AND BUSINESS SERVICES, LLC**

On August 17, 2009, the Attorney General entered into an Assurance of Discontinuance with Check and Business Services, LLC, a debt purchaser based in

Tonawanda, New York. The Attorney General opened an investigation of Check and Business Services after receiving a complaint disclosing that the company was collecting debts in West Virginia without a license, was collecting usurious Internet payday loans, and was engaging in other abusive debt collection practices.

In the Assurance, Check and Business Services promised to obtain a license and surety bond before collecting debts in West Virginia in the future and to refrain from threatening that nonpayment of an alleged debt may result in arrest or criminal prosecution. Check and Business Services also agreed to close all of its accounts with a zero balance, refund \$960.00, and cancel \$8,605.00 in debts for 24 West Virginia consumers.

**18.**

**IN THE MATTER OF LAWRENCE NATHAN ASSOCIATES, INC.**

On March 10, 2009, the Attorney General entered into an Assurance of Discontinuance with Lawrence Nathan Associates, Inc. (LNA), a collection agency based in Las Vegas, Nevada. The Attorney General opened an investigation of LNA after receiving a complaint disclosing that it was collecting usurious Internet payday loans. In the Assurance, LNA promised to permanently refrain from collecting payday loans in West Virginia, refund \$145.90 to 2 West Virginia consumers, cancel \$6,869.10 in debts for 13 West Virginia consumers, and pay \$1,000.00 for consumer education.

**19.**

**IN THE MATTER OF ACTIVE DEBT SOLUTIONS**

In early 2009, the Attorney General learned of a debt settlement business operating in West Virginia without proper licensing and charging unlawful fees. The company, CCDN, used a number of marketers or “lead generators” to identify and enroll customers. Generally, debt settlers claim to negotiate lump sum settlements of consumer debt for less than what is owing.

Active Debt Solutions (Active Debt) was a lead generator for CCDN. Active Debt would enroll consumers, keep half the fee, and refer the consumers to CCDN for debt settlement. Active Debt was not licensed in West Virginia and was charging unlawful fees. Active Debt agreed to pay consumer restitution and penalties totaling \$31,486.95\* in monthly installments. During the reporting period, Active Debt paid \$7,872.00.

**20.**

**IN THE MATTER OF HAGAN’S USED CARS, LLC**

On September 18, 2009, the Attorney General’s office entered into an Assurance of Discontinuance with Hagan’s Used Cars, LLC (Hagan’s), of Stollings, West Virginia, and Patricia R. Baker, its owner. Hagan’s is a “buy here - pay here” business that sells vehicles and finances them in-house. The investigation was prompted by a consumer complaint that the vehicle the consumer purchased became completely inoperable within a short time after purchase. Review of previous consumer complaints revealed similar factual circumstances and numerous contract violations. The violations included the following: selling goods on credit without making the disclosures required by the Federal Truth in Lending Act, 15 U.S.C. § 1638; asserting a right to repossess vehicles in which

the business had no security interest; and engaging in the business of rebuilding and selling salvaged motor vehicles without obtaining the license required by West Virginia Department of Motor Vehicles. Under the terms of the Assurance, Hagan's agreed to conform its practices to the requirements of applicable law and paid a total of \$7,054.14 in restitution to 4 West Virginia consumers.

**21.**

**IN THE MATTER OF SYDNEY MOTORS PRE-OWNED AUTO SALES  
AND SERVICE CENTER, LLC**

On August 7, 2009, the Attorney General entered into an Agreement with Sydney Motors Pre-Owned Auto Sales and Service Center, LLC (Sydney Motors). The Attorney General opened an investigation of Sydney Motors after receiving complaints that the vehicles it sold did not conform to the implied warranty of merchantability. The Attorney General also received information that Sydney Motors had employed Joseph Stock, a former car dealer whose license had previously been revoked by the West Virginia Division of Motor Vehicles.

In the agreement, Sydney Motors agreed that it would no longer employ Joseph Stock in any capacity. Sydney Motors also agreed to rescind the sales to two of the complainants, resulting in refunds of \$4,600.00 and to relieve the remaining balance of \$2,000.00 owed on the vehicle purchased by the other complainant.

**22.**

**IN THE MATTER OF BUDGET RIGHT DEBT MANAGEMENT, INC.**

On April 27, 2009, the Attorney General entered into an Assurance of Discontinuance with Budget Right Debt Management, Inc. (Budget Right), a debt

management company based in Lake Mary, Florida. The Attorney General opened an investigation of Budget Right after receiving a complaint disclosing that it was charging unlawful up-front fees and excessive monthly service fees for the establishment and administration of debt management plans. In the Assurance, Budget Right agreed to refund \$5,651.00 to 19 West Virginia consumers.

**23.**

**IN THE MATTER OF FINANCIAL FREEDOM RESOURCES, INC.**

In February of 2009, the Division reached an agreement with Financial Freedom Resources, Inc. (Financial Freedom), a Delaware debt settlement company, based in Clearwater, Florida, in a joint effort with the Florida Attorney General's office. Consumers alleged that a telemarketer signed them up for "debt elimination" programs promising to reduce interest rates on credit cards, student loans, car loans and mortgages, and paid up to \$1,000.00 in up-front fees for the service, which carried a money back guarantee. However, consumers later learned that most of these loans could not be renegotiated and that Financial Freedom was not reducing their monthly fees as promised. The company refused to honor its money back guarantee in many cases. Under the terms of the Assurance, Financial Freedom agreed to refrain from misrepresenting its program's abilities to consumers, honor its money back guarantee, resolve all outstanding complaints, and pay \$4,781.00 in restitution to 13 West Virginia consumers.

**24.**

**IN THE MATTER OF AMANDA Y. SPROUSE d/b/a WYATT USED AUTOS**

On September 10, 2009, the Attorney General's office entered into an Assurance of Discontinuance with Amanda Y. Sprouse d/b/a Wyatt Used Autos (Wyatt). Wyatt is a "buy here - pay here" business that sells and finances vehicles in Buckhannon, West Virginia. Review of consumer complaints and the business's response revealed violations that included the following: refusing to honor the implied warranty; using a sales contract that attempted to disclaim the implied warranty of merchantability; omitting material facts about the goods; and selling goods on credit without making the disclosures required by the Federal Truth in Lending Act, 15 U.S.C. § 1638. Under the terms of the Assurance, the business agreed to conform its practices to the requirements of applicable law, pay consumer restitution and debt cancellation in the amount of \$3,142.27 to 2 consumers, and \$1,000.00 for consumer education.

**25.**

**IN THE MATTER OF INLAND CAPITAL SERVICES**

On September 14, 2009, the Attorney General entered an agreement with Inland Capital Services (Inland) concerning its debt collection practices in West Virginia. The Attorney General commenced an investigation of Inland in August, 2009, after receiving information indicating that Inland had purchased defaulted loan accounts from CashCall, Inc., an online lender, and did not have a license to collect debts in West Virginia.

Further investigation disclosed that Inland only purchased one CashCall account owed by a West Virginia consumer and had not taken any action to collect on the account. In the Agreement, Inland agreed to close the account with a zero balance and

to notify credit bureaus to delete all references to the account from the consumer's credit records. This action resulted in cancellation of a debt originally owed to CashCall in the amount of \$3,565.74.

**26.**

**IN THE MATTER OF PALLINO ASSET MANAGEMENT, LLC**

On April 13, 2009, the Attorney General entered into an Assurance of Discontinuance with Pallino Asset Management, LLC (Pallino), a collection agency based in Middletown, Delaware. The Attorney General opened an investigation of Pallino after receiving complaints disclosing that Pallino was collecting debts without a license. In the Assurance, Pallino agreed to obtain a license and surety bond before collecting debts in West Virginia and to ensure that the collection agencies it places accounts for collections are also licensed and bonded to collect debts in West Virginia. Pallino also paid \$2,500.00 for consumer education purposes.

**27.**

**IN THE MATTER OF PHILLIP A. THOMPSON d/b/a THOMPSON & ASSOCIATES, PC**

On February 12, 2009, the Attorney General entered into an Assurance of Discontinuance with Phillip A. Thompson d/b/a Thompson & Associates, PC, Attorneys at Law (Thompson), a law firm based in Lawrence, Massachusetts. The Attorney General opened an investigation of Thompson after learning that it was collecting debts in West Virginia without a license and surety bond, and was collecting on unlawful Internet payday loans. In the Assurance, Thompson agreed to obtain a license and

surety bond before collecting debts in West Virginia in the future. Thompson also agreed to pay \$2,500.00 for consumer education purposes.

**28.**

**IN THE MATTER OF BRADY & CARUSO, LLC**

On March 2, 2009, the Attorney General entered into an Assurance of Discontinuance with Brady & Caruso, LLC (Brady & Caruso), a Nevada corporation, that engaged in debt collection in West Virginia. The investigation was prompted by a consumer complaint that Brady & Caruso threatened to file a lien against the consumer's real property, without informing the consumer that a court order must be in effect before such action could be taken. The investigation also revealed that Brady & Caruso was not licensed as a debt collector in West Virginia and that it failed to send written validation notices to consumers within five days of its initial contact with the consumer, as required by law. Under the terms of the Assurance, Brady & Caruso agreed to conform its business practices to the requirements of applicable state and federal law, to eliminate any monies owed, to delete all negative credit reporting in connection with the debt, and to refund all money previously collected from West Virginia consumers, for a total amount of \$282,953.84\* in cancelled debt and \$9,287.87\* in refunds. Subsequently, the office learned of two additional consumers who had made payments totaling \$3,264.72.\* To date, Brady & Caruso has paid \$2,176.48 to the office for refunds to the additional consumers.

**29.**

**IN THE MATTER OF VINTAGE SPECIALTY FLOORING, INC.**

In August of 2009, the Attorney General entered into an Assurance of Discontinuance with Vintage Specialty Flooring, Inc. and its owner Jeff Harris (Vintage), of Alderson, West Virginia. The Division opened its investigation after receiving a complaint from a consumer who had purchased hardwood flooring. The consumer complaint showed that Vintage's business practices violated Series 5, Title 142, Legislative Rule Pertaining to the Prevention of Unfair or Deceptive Acts or Practices in Home Improvement Transactions. As a result of the Assurance, Vintage agreed to cease its unlawful practices and to pay \$1,768.75 in consumer restitution.

**30.**

**IN THE MATTER OF ALLSTAR KARATE**

On December 30, 2008, the Attorney General entered into an Assurance of Discontinuance with Allstar Karate, operating in Hagerstown, Maryland, and Martinsburg, West Virginia. Allstar Karate was not in compliance with the Health Spa Rule, Title 142, Series 13, and was selling memberships in excess of 3 months without posting a bond or registering. Allstar Karate agreed to repay consumers who lost money when they paid in advance for memberships, for a total of \$2,235.00,\* and to comply with applicable law. During this reporting period, \$1,222.00 was collected.

**IN THE MATTER OF KENDALL K. RICHARDS d/b/a SUNDOWNER USED AUTOS**

On November 12, 2009, the Attorney General's office entered into an Assurance of Discontinuance with Kendall K. Richards d/b/a Sundowner Used Autos, LLC (Sundowner). Sundowner is a "buy here - pay here" business that sells and finances vehicles in-house in Parkersburg, West Virginia. Review of the business's contractual documents revealed numerous violations: failure to disclose the vehicles' prior salvage and reconstructed titles; imposing excess charges for DMV fees; attempting to disclaim the implied warranty of merchantability; using a sales contract that permits acceleration of the balance of the loan and threatens to repossess the vehicle without first providing the required notice of right to cure default and allowing a 10-day cure period; attempting to have consumers waive notice of right to cure default; imposing late fees before expiration of the statutory grace period; imposing late fees in excess of the statutory maximum; imposing more than one late fee in an installment period; and failure to provide the consumer the Buyers Guide required by Federal Trade Commission's Used Car Rule, 16 C.F.R. § 455(a)(1). Under the terms of the Assurance, Sundowner agreed to conform its business practices to applicable state and federal law, cancel the balance remaining on the consumer's loan in the amount of \$659.00, and pay \$2,500.00\* for consumer education in monthly installments. During this reporting period, the State has received \$500.00.

**32.**

**IN THE MATTER OF ACCESS CAPITAL CREDIT**

On November 12, 2009, the Attorney General entered into an Agreement with The Oppland Group, Inc. d/b/a Access Capital Credit (Access), a collection agency based in El Cajun, California. The Attorney General opened an investigation of Access after receiving a complaint disclosing that the company was collecting debts in West Virginia without a license and was also adding unlawful interest charges to balances allegedly owed. In the Agreement, Access agreed to become licensed and bonded as a collection agency before collecting debts in West Virginia in the future. Access did not collect any money from consumers in West Virginia, but agreed to pay \$1,000.00 for consumer education purposes.

**33.**

**IN THE MATTER OF CAB ASSET MANAGEMENT, LLC**

On July 8, 2009, the Attorney General entered into an Assurance of Discontinuance with CAB Asset Management, LLC (CAB), a collection agency based in Towson, Maryland. The Attorney General opened an investigation of CAB after receiving a complaint disclosing that CAB was collecting debts without a license, and was collecting on unlawful Internet payday loans. In the Assurance, CAB agreed to refrain from collecting debts in West Virginia without a license and surety bond and from collecting payday loans. CAB also agreed to refund \$458.00 to West Virginia consumers and to pay \$500.00 for consumer education purposes.

**34.**

**IN THE MATTER OF CURVES OF INWOOD**

In May 2008, Curves of Inwood went out of business without notifying or refunding its members. On May 4, 2009, the owner, Lisa Kunzler, signed an Assurance of Discontinuance and agreed to make monthly payments to reimburse members. Ms. Kunzler agreed to repay consumers \$1,325.63.\* During this reporting period, a total of \$600.00 was refunded to 5 consumers.

**35.**

**IN THE MATTER OF DHRUVI ENTERPRISE, INC. d/b/a/ FRIENDS INN**

On July 30, 2009, the Attorney General entered into an Assurance of Discontinuance with DHRUVI Enterprise, Inc., a West Virginia corporation, d/b/a Friends Inn, in Morgantown, West Virginia (Friends Inn). The investigation was prompted by a complaint that Friends Inn prominently advertised room rates "from \$37.00" on a billboard located near I-79 Exit 155 on Monongahela Boulevard, without disclosing that the advertised rate was only available to business customers who rented five or more single occupancy rooms for a stay of seven nights or longer. Under the terms of the Assurance, Friends Inn agreed to modify its advertising so as to conspicuously disclose the room rates available to the general public, including modifying or removing the previously-described billboard. Friends Inn also paid \$500.00 for consumer education.

**36.**

**IN THE MATTER OF PRISTINE PRE-OWNED AUTO, INC.**

In November of 2009, the Attorney General's office entered into an Assurance of Discontinuance with Pristine Pre-Owned Auto, Inc. (Pristine), a "buy here - pay here" business that sells and finances vehicles in-house in Keyser, West Virginia. The investigation revealed numerous violations, including: failing to honor the implied warranty of merchantability; using a sales contract that permits acceleration of the balance of the loan and threatens to repossess the vehicle without first providing the required notice of right to cure default and allowing a 10-day cure period; attempting to have consumers waive notice of right to cure default; imposing late fees in excess of the statutory maximum; imposing unlawful debt collection fees; charging a flat repossession fee without regard to the actual cost of repossession; and failure to provide the consumer the Buyers Guide required by Federal Trade Commission's Used Car Rule, 16 C.F.R. § 455(a)(1). Under the terms of the Assurance, Pristine agreed to conform its business practices to applicable state and federal law and pay of \$2,000.00\* for consumer education in 4 monthly installments. During this reporting period, the State has received \$500.00.

**37.**

**IN THE MATTER OF A.S. & ASSOCIATES, INC.**

On March 10, 2008, the Attorney General entered into an Assurance with A.S. & Associates, Inc. (AS&A), a collection agency based in Houston, Texas. As a result of the Assurance, AS&A agreed to refund all payments it collected for unlawful Internet payday loans and other debts while it was not licensed. During this reporting period, the

Attorney General received a complaint disclosing that AS&A had collected \$459.62 from a consumer for an Internet payday loan. The company refunded the consumer as it was obligated to do under the Assurance.

**38.**

**IN THE MATTER OF MEDICAL BUSINESS BUREAU**

On August 14, 2009, the Attorney General entered into an Agreement with Medical Business Bureau (MBB), a collection agency based in Park Ridge, Illinois. The Attorney General opened an investigation of MBB after receiving a complaint that it was collecting debts allegedly owed to Ameriad, Inc., a now-defunct medical provider, but that it could not verify were owed.

In the agreement, MBB promised to refrain from collecting on accounts it could not verify were owed. MBB also agreed to close all disputed Ameriad accounts with a zero balance and to refund any payments it had collected, which resulted in a cash refund of \$61.08 for 1 consumer and a cancelled debt of \$139.00 for another.

**39.**

**IN THE MATTER OF RONALD S. JONES, M.D.**

On October 23, 2009, the Attorney General entered into an Agreement with Ronald S. Jones, M.D., of Charleston, West Virginia. The Attorney General commenced an investigation of Dr. Jones after receiving a complaint disclosing that his office added a "\$2.00 re-billing fee" to allegedly delinquent accounts. In the agreement, Dr. Jones agreed to refrain from charging this fee in the future and to grant account credits or refunds to all persons who have been charged the fee in the past.

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 \$11,960,847.62 for the State and its citizens.

1.

**ANTITRUST LITIGATION**

a.

**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\* was used for consumer education, and \$100,000.00\* was used to give notice of 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 prior 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 second holiday lasted from September through November of 2009. The final holiday will last from September through November of 2010. During the reporting period, the State received \$11,900,000.00. Any money remaining after the third holiday will be paid into the State's general revenue fund.

**b.**

**In re Buspirone Antitrust Litigation**  
**State of Alabama, et al. v. Bristol-Myers Squibb Co., et al.**  
**(Case No. 01 cv 11401, MDL 1413 - U.S.D.Ct., Southern District of New York)**

In December of 2001, more than 25 states and territories filed a civil action against Bristol-Myers Squibb Co., Danbury Pharmacal, Inc. and Watson Pharma, Inc.

(BMS), claiming they had violated antitrust laws in marketing BuSpar, a widely prescribed anti-anxiety drug.

The Federal Patent and Trademark Office and the Food and Drug Administration rely upon private parties to furnish them with accurate information. Failure to report accurate information is unlawful. The states alleged that BMS knowingly made false statements to federal government regulators regarding patents on its brand name drug to maintain its monopoly. This activity prevented generic competitors from entering the market.

In 2003, the states and the defendants reached a settlement agreement whereby the defendants paid the states \$100,000,000.00.\* Under the settlement, BMS also agreed to notify the states of patent litigation settlements with generic drug competitors and submit annual compliance reports.

Thereafter, in March of 2006, BMS reached a settlement with generic drug manufacturer Apotex, Inc. in a patent infringement lawsuit involving BMS's blockbuster drug, Plavix. The Plavix settlement triggered BMS's notification obligations under the earlier court order in the Buspar case, and was subject to State approval. According to the states, the Plavix settlement that BMS provided was inaccurate and incomplete, as were BMS's 2007 and 2008 compliance reports, because BMS failed to disclose non-documented, "side" arrangements that a BMS official had made with Apotex. BMS's failure to inform the states of the secret arrangements, the states contended, violated the Buspar court order approving the settlement.

BMS acknowledged responsibility for making incomplete and false statements to the states, and agreed to pay the states \$1,200,000.00.\* BMS further agreed to revised

court orders extending its reporting obligations to the states. West Virginia's share of the settlement was \$10,847.62.

c.

**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. The matter is under consideration by the U. S. Magistrate for the District Court. Litigation against the remaining defendants is pending.

d.

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

Typically, drug companies report their wholesale prices to a data gatherer who then supplies the information to Medicaid. 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.

e.

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

After a five month investigation, the Attorney General sued Acordia, Inc. and Acordia of West Virginia, Inc. (Acordia) 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 2010.

f.

**Philip Richardson, et al. v. Akzo Nobel, Inc., et al.**  
**(Civil Action No. 1:09-cv-02112 - U.S.D.Ct. District of Columbia)**

On November 9, 2009, West Virginia joined 22 states in an action against manufacturers of vitamins including Akzo Nobel Inc., Bioproducts Incorporated, Mitsui & Co., Ltd., Mitsui & Co. (U.S.A.), Inc., Chinook Global Limited f/k/a Chinook Group LTD., Chinook Group, Inc., Evonik Degussa GMBH, successor to Degussa AG f/k/a Degussa-Huls AG, Degussa Corporation f/k/a Degussa-Huls Corporation, Lonza AG, Merck KGaA, E. Merck OHG, EMD Chemicals Inc. f/k/a EM Industries, Inc., Nepera, Inc., c/o Cambrex Corporation, Sumitomo Chemical America, Inc., Sumitomo Chemical Co., LTD., Mitsubishi Tanabe Pharma Corporation f/k/a Tanabe Seiyaku Company, LTD., Tanabe U.S.A., Inc., UCB Pharma, Inc., Vertellus Specialties Inc. f/k/a Reilly Industries, Inc., Vertellus Chemicals SA f/k/a Reilly Chemicals SA. The lawsuit is the final chapter in antitrust litigation involving many multi-national vitamin-manufacturing companies. The companies engaged in wide spread bid-rigging and market-allocation schemes to boost the prices for a variety of vitamins including vitamins A, C, E, and B4. The states have reached a settlement with the remaining manufacturers, but the settlement figures are not yet final. The states had previously settled antitrust allegations

against larger companies resulting in payments to the states and private producers of about \$225,000,000.00.\* The exact terms of the settlement with these smaller defendants are expected to be filed with the court before the end of 2009.

**g.**

**State ex rel. Darrell V. McGraw, Jr. v. Bank of America, N.A.**  
**(Civil Action No. 09-C-113N - Circuit Court of Mason County)**  
**(Case No. 3:09-cv-1116 - U.S.D.Ct., Southern District of West Virginia)**  
**(MDL No. 1950 - U.S.D.Ct., Southern District of New York)**

On September 3, 2009, the State filed a complaint against Bank of America, N.A. claiming Bank of America conspired with other financial institutions and brokers to fix the prices bid for investment products called “guaranteed investment contracts” (GIC). The GICs are sold to state and municipal agencies as short-term investments of larger sums of money obtained by the agencies from the sale of bonds, usually tax-exempt. The State claims the bond sold by GIC paid less interest than they would have in a competitive market. Bank of America removed the matter to the United States District Court for the Southern District of West Virginia.

The matter has been conditionally transferred to the United States District Court for the Southern District of New York to be joined with multidistrict litigation. The State has asked the Court to send the case back to West Virginia. The request is pending.

h.

**State ex rel. Darrell V. McGraw, Jr. v. Comcast Corporation, et al.**  
**(Civil Action No. 09-C-130-H - Circuit Court of Marshall County)**  
**(Civil Action No. 5:09-cv-00091FPS - U.S.D.Ct. - Northern District of West Virginia)**  
**(Civil Action No. 2:09 MDL-2034 - U.S.D.Ct. - Eastern District of Pennsylvania)**

In July of 2009, the Attorney General sued Comcast Corporation, Comcast Holdings Corporation, Comcast Cable Communications, LLC and Comcast Cable Communications Holdings, Inc. (Comcast), because of alleged antitrust violations. Comcast requires customers to rent a converter box from Comcast if the consumer wants premium channels. The converter boxes are available for sale from third-party vendors for less than a yearly rental fee from Comcast, but Comcast requires the rental fee to get the premium channels. The Attorney General alleged this practice is an unlawful tying arrangement. The matter was removed to Federal Court by Comcast, then transferred to Philadelphia, Pennsylvania, where numerous cases against Comcast are pending in multidistrict litigation.

i.

**State of Florida, et al. v. Abbott Laboratories, et al.**  
**(Case No. 1:08-cv-00155 - U.S.D.Ct., District of Delaware)**

In March of 2008, the Attorney General sued Fournier Industrie Et Sante (Fournier), a French pharmaceutical manufacturer, and its United States distributor, Abbott Laboratories (Abbott), for antitrust violations relating to their popular cholesterol-lowering drug fenofibrate, sold under the brand name TriCor. The lawsuit alleged that Abbott and Fournier conspired to exclude generic fenofibrate products from entering the market by patenting new formulations of its drug with only questionable

benefits, then engaging in a massive effort to pull its old formulation from pharmacy shelves and eliminate it from the National Data Drug File (NDDF). Once removed from the NDDF list, doctors could no longer prescribe either the old TriCor product or the generic products with the same benefits, causing consumers and state governments to pay more for these products each year. Trial in the case was set for January of 2010, but on October 27, 2009, the United States District Court for the District of Delaware stayed all litigation to give the parties time to finalize an agreement and resolve the case out of court. Settlement talks are ongoing.

j.

**State ex rel. Darrell V. McGraw, Jr. v. CDR Financial Products, Inc.**  
**(Civil Action No. 09-Misc-409 - Circuit Court of Kanawha County)**

CDR Financial Products, Inc. (CDR), of Los Angeles, California, is a bidding agent hired by State agencies to get bids for the purchase of financial instruments by the agencies. The agencies expect to receive the highest interest rates allowed through competitive bidding. The State suspected CDR was engaged in bid-rigging. In June of 2009, a subpoena was issued to CDR, but it failed to comply with the subpoena. The State then learned CDR had been criminally indicted by the DOJ on suspected bid-rigging activities regarding the financial instruments purchased by State agencies. The State then filed the enforcement action to compel CDR to comply with the subpoena. In November of 2009, the Circuit Court of Kanawha County ordered CDR to fully comply with the subpoena by December 7, 2009.

**2.**

**ANTITRUST SETTLEMENT AGREEMENTS**

**IN THE MATTER OF MARSH & McLENNAN COMPANIES, INC., MARSH, INC.**

In December of 2008, the Attorney General, along with nine other states, entered into a settlement agreement with Marsh & McLennan Companies, Inc., Marsh, Inc. (Marsh) and their subsidiaries. Marsh is an insurance broker that was at the center of an antitrust conspiracy to rig bids for commercial insurance. The Attorney General previously reached settlements with several of the insurance carriers as reported in prior annual reports.

Marsh agreed to pay the settling states a total of \$7,000,000.00,\* West Virginia received its share of \$50,000.00 to be used for consumer education.

## 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 270 funeral homes and 34 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, 2009, the Regulation Fund had a balance of \$199,211.00, and the Guarantee Fund had a balance of \$1,009,639.00.

The Preneed Funeral Unit also resolves consumer complaints relating to preneed funeral contracts through its mediation process. This year, the Preneed Funeral Unit secured \$1,270.00 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 Circuit Court of Wetzel County ruled Iams was in violation of the Preneed Act and permanently enjoined it 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 and the West Virginia Supreme Court of Appeals refused the petition for appeal. In December of 2008, the Honorable Judge Madden ordered Iams pay \$45,902.15\* in attorney's fees and costs.

**b.**

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

In 2004, the Division filed a lawsuit against Bartolo Funeral Home, Inc., and its owner, James F. Bartolo (Bartolo), in the Circuit Court of Harrison County, alleging that the funeral home had misappropriated funds paid by consumers for preneed funeral contracts. When Bartolo ceased doing business at his Clarksburg funeral home in 2003, the Preneed Funeral Unit began receiving complaints that the funeral director was refusing to refund money paid for preneed funeral contracts. The Preneed Funeral Unit performed an audit that revealed 50 preneed funeral contracts that Bartolo had failed to report to the Attorney General, 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\* of consumers' money and squandered it for other, unknown purposes.

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

c.

**State ex rel. Darrell V. McGraw, Jr. v. Myers Funeral Home, et al.**  
**(Civil Action No. 04-C-79 - Circuit Court of Kanawha County)**

On November 5, 2009, the Attorney General filed a contempt petition in the Kanawha County Circuit Court. The defendants, who previously were ordered to comply with the Preneed Act, continue to violate it. A show cause hearing has been scheduled for December 7, 2009.

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 2009 reporting period, 11 preneed funeral providers signed an Assurance of Discontinuance. Those funeral homes are identified below.

| <b>FUNERAL HOME</b>                | <b>LOCATION</b>      | <b>CONTRACTS Failure to Register</b> | <b>CONTRACTS Failure to File Death Beneficiary Forms</b> | <b>FILING FEES AND COSTS</b> |
|------------------------------------|----------------------|--------------------------------------|--|------------------------------|
| Seaver Funeral Home                | Princeton, WV        | 50                                   | 176  | \$4,900.00                   |
| James Funeral Home                 | Follansbee, WV       | 38                                   | 23   | \$2,385.00                   |
| Chambers Funeral Home              | Wellsburg, WV        | 31                                   | 33   | \$1,785.00                   |
| Valley Funeral Home                | Whitesville, WV      | 6                                    | 42   | \$1,120.00                   |
| Snodgrass Funeral Home             | South Charleston, WV | 6                                    | 54   | \$920.00                     |
| Browning Funeral Home              | Kingwood, WV         | 11                                   | 41   | \$885.00                     |
| Rotruck Lobb Funeral Home          | Kingwood, WV         | 5                                    | 67   | \$990.00                     |
| McCulla Funeral Home               | Morgantown, WV       |                                      | 34   | \$260.00                     |
| Dering-Henson Funeral Home         | Morgantown, WV       | 3                                    | 26   | \$410.00                     |
| Morgan Funeral Home                | Lewisburg, WV        |                                      | 33   | \$400.00                     |
| Bartlett Funeral Home              | Grafton, WV          | 21                                   | 144  | \$5,310.00                   |
| <b>Total Filing Fees and Costs</b> |                      |                                      |  | <b>\$19,365.00</b>           |

## VI.

### CONCLUSION

2009 was another successful year for the Consumer Protection and Antitrust Divisions in that they recovered \$133,353,299.47 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 from financial institutions engaging in predatory mortgage lending, pharmaceutical companies promoting off-label uses of prescription drugs, and from credit card companies engaging in unlawful tying arrangements. 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

## 2009 - 2003 COMPARISONS

|  | 2009                    | 2008                   | 2007                    | 2006                   | 2005                   | 2004                   | 2003                   |
|--|-------------------------|------------------------|-------------------------|------------------------|------------------------|------------------------|------------------------|
| <b>MEDIATION COMPLAINTS</b>            |                         |                        |                         |                        |                        |                        |                        |
| <b>Complaints Received</b>             | 9,242                   | 8,861                  | 10,061                  | 9,766                  | 8,683                  | 9,143                  | 8557                   |
| <b>Complaints Closed</b>               | 10,054                  | 9,790                  | 10,703                  | 10,830                 | 9,591                  | 9,581                  | 9511                   |
| <b>Restitution</b>                     | \$4,313,038.22          | \$1,994,115.39         | \$2,300,878.55          | \$2,187,728.89         | \$1,849,372.13         | \$2,496,207.75         | \$2,300,282.00         |
| <b>CONSUMER PROTECTION</b>             |                         |                        |                         |                        |                        |                        |                        |
| <b>Litigation</b>                      | \$105,145,578.13        | \$75,992,042.96        | \$963,000,310.69        | \$54,713,035.29        | \$62,912,498.42        | \$58,404,584.00        | \$71,225,894.80        |
| <b>Assurances</b>                      | \$11,907,200.50         | \$10,933,643.87        | \$6,626,260.88          | \$3,557,591.97         | \$18,210,610.49        | \$4,916,377.30         | \$859,270.62           |
| <b>ANTITRUST</b>                       |                         |                        |                         |                        |                        |                        |                        |
| <b>Litigation Settlements</b>          | \$11,960,847.62         | \$602,665.17           | \$529,743.26            | \$8,925,082.50         | \$5,097,957.34         | \$4,070,916.34         | \$1,741,992.55         |
| <b>PRENEED FUNERAL UNIT</b>            |                         |                        |                         |                        |                        |                        |                        |
| <b>Litigation Assurances Mediation</b> | \$26,635.00             | \$300,273.66           | \$103,062.14            | \$26,506.87            | \$234,967.14           | \$146,214.97           | \$98,613.07            |
| <b>TOTAL</b>                           |                         |                        |                         |                        |                        |                        |                        |
| <b>RESTITUTION</b>                     | <b>\$133,353,299.47</b> | <b>\$89,822,741.05</b> | <b>\$972,560,255.52</b> | <b>\$69,409,945.62</b> | <b>\$88,305,405.52</b> | <b>\$70,034,300.36</b> | <b>\$76,226,053.04</b> |

## 2002 - 1995 COMPARISONS

|                              | 2002                   | 2001                   | 2000                   | 1999                  | 1998                  | 1997                  | 1996                  | 1995                |
|------------------------------|------------------------|------------------------|------------------------|-----------------------|-----------------------|-----------------------|-----------------------|---------------------|
| <b>MEDIATION COMPLAINTS</b>  |                        |                        |                        |                       |                       |                       |                       |                     |
| <b>Complaints Received</b>   | 8,573                  | 8,080                  | 7,929                  | 8,891                 | 8,903                 | 7,106                 | 6,691                 | 5,516               |
| <b>Complaints Closed</b>     | 8,934                  | 8,572                  | 8,342                  | 9,830                 | 8,007                 | 7,252                 | 5,858                 | 4,809               |
| <b>Restitution</b>           | \$1,690,726.15         | \$1,284,772.76         | \$1,872,763.62         | \$1,230,609.05        | \$946,267.05          | \$1,121,614.54        | \$594,652.44          | \$453,300.46        |
| <b>CONSUMER PROTECTION</b>   |                        |                        |                        |                       |                       |                       |                       |                     |
| <b>Litigation</b>            | \$66,170,098.77        | \$61,684,366.53        | \$51,179,434.48        | \$963,570.47          | \$413,924.83          | \$1,710,739.92        | \$932,192.90          | \$128,252.95        |
| <b>Assurances</b>            | \$57,852.95            | \$1,683,951.90         | \$830,283.36           | \$3,814,322.30        | \$3,679,326.10        | \$2,323,153.67        | \$1,316,375.40        | \$57,031.58         |
| <b>ANTITRUST</b>             |                        |                        |                        |                       |                       |                       |                       |                     |
| <b>Litigation Assurances</b> | \$6,525,816.90         | \$548,724.30           | \$262,000.00           | \$26,000.00           | ----                  | \$220,950.14          | \$342,600.00          | \$266,837.00        |
| <b>PRENEED FUNERAL UNIT</b>  |                        |                        |                        |                       |                       |                       |                       |                     |
| <b>Litigation Assurances</b> | \$62,134.48            | \$63,807.85            | \$ 465,663.99          | \$3,082,033.34        | \$ 322,557.98         | \$139,511.30          | \$123,319.45          | \$7,175.00          |
| <b>TOTAL</b>                 |                        |                        |                        |                       |                       |                       |                       |                     |
| <b>RESTITUTION</b>           | <b>\$75,306,629.25</b> | <b>\$65,265,623.34</b> | <b>\$54,610,145.45</b> | <b>\$9,116,535.16</b> | <b>\$5,362,075.96</b> | <b>\$5,515,969.57</b> | <b>\$3,309,140.19</b> | <b>\$912,596.99</b> |

## 2009 - 2008 COMPARISONS

|  | <b>2009</b>             | <b>2008</b>            | <b>2009-2008<br/>Difference</b> | <b>%</b>   |
|--|-------------------------|------------------------|---------------------------------|------------|
| <b>MEDIATION COMPLAINTS</b>            |                         |                        |                                 |            |
| <b>Complaints received</b>             | 9,242                   | 8,861                  | 381                             | 4%         |
| <b>Complaints closed</b>               | 10,054                  | 9,790                  | 264                             | 3%         |
| <b>Restitution</b>                     | \$4,313,038.22          | \$1,994,115.39         | \$2,318,922.83                  | 116%       |
| <b>CONSUMER PROTECTION</b>             |                         |                        |                                 |            |
| <b>Litigation</b>                      | \$105,145,578.13        | \$75,992,042.96        | \$29,153,535.17                 | 38%        |
| <b>Assurances</b>                      | \$11,907,200.50         | \$10,933,643.87        | \$973,556.63                    | 9%         |
| <b>ANTITRUST</b>                       |                         |                        |                                 |            |
| <b>Litigation-Settlement</b>           | \$11,960,847.62         | \$602,665.17           | \$11,358,182.45                 | 1885%      |
| <b>PRENEED FUNERAL UNIT</b>            |                         |                        |                                 |            |
| <b>Litigation-Assurances-Mediation</b> | \$26,635.00             | \$300,273.66           | -\$273,638.66                   | -1027%     |
| <b>TOTAL</b>                           |                         |                        |                                 |            |
| <b>RESTITUTION</b>                     | <b>\$133,353,299.47</b> | <b>\$89,822,741.05</b> | <b>\$43,530,558.42</b>          | <b>48%</b> |

## CPD TOTAL COMPARISON WITHOUT TOBACCO

|                   |                         |                        | 2008                         |                        | 2009                         |                         |
|-------------------|-------------------------|------------------------|------------------------------|------------------------|------------------------------|-------------------------|
| <b>2008 TOTAL</b> | <b>\$89,822,741.05</b>  |                        | <b>TOTAL</b>                 | <b>\$89,822,741.05</b> | <b>TOTAL</b>                 | <b>\$133,353,299.47</b> |
| <b>2009 TOTAL</b> | <b>\$133,353,299.47</b> |                        | <b>TOTAL</b>                 | <b>\$89,822,741.05</b> | <b>TOTAL</b>                 | <b>\$133,353,299.47</b> |
|                   | <b>2008 TOBACCO</b>     | <b>\$73,000,000.00</b> | <b>TOBACCO</b>               | <b>\$73,000,000.00</b> | <b>TOBACCO</b>               | <b>\$79,000,000.00</b>  |
|                   | <b>2009 TOBACCO</b>     | <b>\$79,000,000.00</b> | <b>TOTAL WITHOUT TOBACCO</b> | <b>\$16,822,741.05</b> | <b>TOTAL WITHOUT TOBACCO</b> | <b>\$54,353,299.47</b>  |

## PERCENTAGE COMPARISON WITHOUT TOBACCO

| <b>2009</b>            | <b>2008</b>            | <b>2009-2008 DIFFERENCE</b> | <b>%</b>    |
|------------------------|------------------------|-----------------------------|-------------|
| <b>\$54,353,299.47</b> | <b>\$16,822,741.05</b> | <b>\$37,530,558.42</b>      | <b>223%</b> |

# EXHIBIT 2

CONSUMER PROTECTION AND ANTITRUST DIVISIONS  
2009 Mediation, Litigation and Assurances

|  |                  |
|--|------------------|
| Complaints Received .....                                    | 9,242            |
| Complaints Closed .....                                      | 10,054           |
| Mediation - Refunds, Debt Cancellation, Value Received ..... | \$4,313,038.22   |
| Consumer Protection Litigation .....                         | \$105,145,578.13 |
| Consumer Protection Assurances .....                         | \$11,907,200.50  |
| Antitrust Division Litigation .....                          | \$11,960,847.62  |
| Antitrust Division Settlement .....                          | \$50,000.00      |
| Preneed Funeral Unit Mediation .....                         | \$1,270.00       |
| Preneed Funeral Unit Litigation .....                        | \$6,000.00       |
| Preneed Funeral Unit Assurances .....                        | \$19,365.00      |
| CONSUMER PROTECTION DIVISION TOTAL .....                     | \$133,353,299.47 |

**CONSUMER PROTECTION LITIGATION**

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 . . . . \$79,000,000.00

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) . . . . . \$15,750,000.00

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) . . . . . \$9,590,000.00

|  |              |
|--|--------------|
| <u>State ex rel. Darrell V. McGraw, Jr. v. Pfizer, Inc.</u><br>(Civil Action No. 09-C-1681 - Circuit Court of Kanawha County) . . . . .  | \$507,872.00 |
| <u>State ex rel. Darrell V. McGraw, Jr. v. Mattel, Inc., et al.</u><br>(Civil Action No. 08-C-3353 - Circuit Court of Kanawha County) . . . . .  | \$204,619.00 |
| <u>State ex rel. Darrell V. McGraw, Jr. v. J.K. Harris and Company, LLC, et al.</u><br>(Civil Action No. 08-C-1131 - Circuit Court of Kanawha County) . . . . .  | \$52,049.47  |
| <u>In re Clifford Ryland Ealy and Margaret Carole Ealy</u><br>(Case No. 2:03-BK-22312 - U.S. Bankr. Ct., Southern District of West Virginia)<br>(State ex rel. Darrell V. McGraw, Jr., et al. v. Ameribank, Inc., et al.)<br>(Adversary Proceeding No. 06-2150 - U.S. Bankr. Ct.,<br>Southern District of West Virginia) . . . . . | \$20,476.66  |
| <u>State ex rel. Darrell V. McGraw, Jr. v. Mr. Meats, et al.</u><br>(Civil Action No. 05-C-2694 - Circuit County of Kanawha County) . . . . .  | \$6,850.00   |
| <u>State ex rel. Darrell V. McGraw, Jr. v. Huey Small d/b/a H &amp; S Paving, et al.</u><br>(Civil Action No. 97-C-1041 - Circuit Court of Kanawha County) . . . . .   | \$6,000.00   |
| <u>State ex rel. Darrell V. McGraw, Jr. v. Charles Roth,<br/>d/b/a Valley Pools and Spas Construction, et al.</u><br>(Civil Action No. 05-C-432 - Circuit Court of Putnam County) . . . . .  | \$3,600.00   |
| <u>State ex rel. Darrell V. McGraw, Jr. v. Wholesale Used Cars, Inc.</u><br>(Civil Action No. 03-C-2839 - Circuit Court of Kanawha County) . . . . .   | \$3,000.00   |
| <u>State ex rel. Darrell V. McGraw, Jr. v. Community Support, Inc.</u><br>(Civil Action No. 09-C-947 - Circuit County of Kanawha County) . . . . .   | \$1,111.00   |

**CONSUMER PROTECTION ASSURANCES**

|  |                 |
|--|-----------------|
| IN THE MATTER OF LAWRENCE A. HECKER,<br>ATTORNEY AT LAW . . . . .  | \$10,440,811.82 |
| IN THE MATTER OF THE DEBT RELIEF INDUSTRY  |                 |
| In the Matter of Financial Freedom of America, Inc. . . . .  | \$90,487.61     |
| In the Matter of Christopher Rubini and CSTR Solutions, Inc.<br>d/b/a Clear Financial Solutions . . . . .  | \$77,966.99     |
| In the Matter of Lynch Financial Solutions, Inc.,<br>d/b/a Financial Solutions Legal Center and Financial<br>Solutions Consumer Center . . . . . | \$46,601.98     |
| In the Matter of United Debt Services, LLC . . . . .   | \$24,892.00     |
| In the Matter of American Debt Counseling . . . . .  | \$22,500.00     |
| In the Matter of Consolidated Credit Counseling Corporation, Inc. . . .  | \$6,738.00      |

|   |                      |
|---|----------------------|
| IN THE MATTER OF JEFFERSON CAPITAL SYSTEMS, LLC . . . . .   | \$180,824.90         |
| IN THE MATTER OF WILHELM, WEST, KACEY & ASSOCIATES . . . . .  | \$178,559.73         |
| IN THE MATTER OF DEBT TRADE PARTNERS, LLC . . . . .   | \$161,293.70         |
| IN THE MATTER OF DISH NETWORK, LLC . . . . .  | \$125,000.00         |
| IN THE MATTER OF PAYDAY LENDING . . . . .   | \$116,460.78         |
| In the Matter of Money and More . . . . .   | \$32,635.00          |
| In the Matter of Best Cash Advance . . . . .  | \$18,872.88          |
| In the Matter of PCN, LLC d/b/a Platinum Finance . . . . .  | \$12,006.75          |
| In the Matter of B&L Marketing . . . . .  | \$11,235.00          |
| In the Matter of Leads Global . . . . .   | \$10,000.00          |
| In the Matter of United Capital Credit . . . . .  | \$8,775.00           |
| In the Matter of Payday Online . . . . .  | \$3,080.00           |
| In the Matter of MTE Financial Services d/b/a Paycheck Today.com . .                                    | \$2,760.00           |
| In the Matter of Miami Nation Enterprises d/b/a United Cash Loans . .                                   | \$2,600.00           |
| In the Matter of National Opportunities Unlimited . . . . .   | \$2,365.00           |
| In the Matter of Debt Doctors . . . . .   | \$1,480.00           |
| In the Matter of MTE Financial Services d/b/a 500 Fast Cash . . . . .                                   | \$1,470.00           |
| In the Matter of Military Funding USA, Inc. . . . .   | \$1,196.90           |
| In the Matter of BMG Group . . . . .  | \$1,188.50           |
| In the Matter of Wrightway Investments d/b/a Payday2go.com . . . . .                                    | \$1,168.75           |
| In the Matter of MTE Financial Services d/b/a RIO Resources . . . . .                                   | \$1,100.00           |
| In the Matter of Miami Nation Enterprises d/b/a Cash Advance . . . . .                                  | \$1,020.00           |
| In the Matter of Paragon Funding . . . . .  | \$970.00             |
| In the Matter of Salt Lake Financial . . . . .  | \$902.00             |
| In the Matter of PD6 d/b/a Xpress Cash . . . . .  | \$680.00             |
| In the Matter of Miami Nation Enterprises d/b/a US Fast Cash . . . . .                                  | \$560.00             |
| In the Matter of Premier Processing . . . . .   | \$395.00             |
| <br>IN THE MATTER OF MERCK & CO., INC., SCHERING-PLOUGH<br>CORPORATION, MSP SINGAPORE COMPANY . . . . . | <br><br>\$100,000.00 |
| <br>IN THE MATTER OF DELL, INC.<br>and DELL FINANCIAL SERVICES, LLC . . . . .                           | <br><br>\$64,158.22  |

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| IN THE MATTER OF FREEGASREDEMPTION.COM .....  | \$47,875.00 |
| IN THE MATTER OF OMNI CREDIT SERVICES OF FLORIDA, INC. ....   | \$43,263.01 |
| IN THE MATTER OF VONAGE HOLDINGS CORP. ....   | \$35,000.00 |
| IN THE MATTER OF TJX COMPANIES, INC. ....   | \$26,837.40 |
| IN THE MATTER OF SANTANDER CONSUMER USA<br>d/b/a DRIVE FINANCIAL SERVICES .....                     | \$18,854.28 |
| IN THE MATTER OF DIVERSE FUNDING ASSOCIATES, LLC .....  | \$17,535.00 |
| IN THE MATTER OF JACK BISHOP AND KATHY BISHOP<br>f/k/a JACK BISHOP'S PREOWNED AUTO SALES, LLC ..... | \$8,750.00  |
| IN THE MATTER OF CHECK AND BUSINESS SERVICES, LLC .....   | \$9,565.00  |
| IN THE MATTER OF LAWRENCE NATHAN ASSOCIATES, INC. ....  | \$8,015.00  |
| IN THE MATTER OF ACTIVE DEBT SOLUTIONS .....  | \$7,872.00  |
| IN THE MATTER OF HAGAN'S USED CARS, LLC .....   | \$7,054.14  |
| IN THE MATTER OF SYDNEY MOTORS PRE-OWNED<br>AUTO SALES AND SERVICE CENTER, LLC .....                | \$6,600.00  |
| IN THE MATTER OF BUDGET RIGHT DEBT MANAGEMENT, INC. ....  | \$5,651.00  |
| IN THE MATTER OF FINANCIAL FREEDOM RESOURCES, INC. ....   | \$4,781.00  |
| IN THE MATTER OF AMANDA Y. SPROUSE<br>d/b/a WYATT USED AUTOS .....                                  | \$4,142.27  |
| IN THE MATTER OF INLAND CAPITAL SERVICES .....  | \$3,565.74  |
| IN THE MATTER OF PALLINO ASSET MANAGEMENT, LLC .....  | \$2,500.00  |
| IN THE MATTER OF PHILLIP A. THOMPSON<br>d/b/a THOMPSON & ASSOCIATES, PC .....                       | \$2,500.00  |
| IN THE MATTER OF BRADY & CARUSO, LLC .....  | \$2,176.48  |
| IN THE MATTER OF VINTAGE SPECIALTY FLOORING, INC. ....  | \$1,768.75  |

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| IN THE MATTER OF ALLSTAR KARATE .....                                    | \$1,222.00 |
| IN THE MATTER OF KENDALL K. RICHARDS<br>d/b/a SUNDOWNER USED AUTOS ..... | \$1,159.00 |
| IN THE MATTER OF ACCESS CAPITAL CREDIT .....                             | \$1,000.00 |
| IN THE MATTER OF CAB ASSET MANAGEMENT, LLC .....                         | \$958.00   |
| IN THE MATTER OF CURVES OF INWOOD .....                                  | \$600.00   |
| IN THE MATTER OF DHRUVI ENTERPRISE, INC. d/b/a/ FRIENDS INN .....        | \$500.00   |
| IN THE MATTER OF PRISTINE PRE-OWNED AUTO, INC. ....                      | \$500.00   |
| IN THE MATTER OF A.S. & ASSOCIATES, INC. ....                            | \$459.62   |
| IN THE MATTER OF MEDICAL BUSINESS BUREAU .....                           | \$200.08   |

**ANTITRUST DIVISION LITIGATION**

|  |                 |
|--|-----------------|
| <u>State ex rel. Darrell V. McGraw, Jr. v. Visa U.S.A., Inc., et al.</u><br>(Civil Action No. 03-C-551 - Circuit Court of Ohio County) ..... | \$11,900,000.00 |
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In re Bupirone Antitrust Litigation

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|---|-------------|
| <u>State of Alabama, et al. v. Bristol-Myers Squibb Co., et al.</u><br>(Case No. 01 cv 11401, MDL 1413 - U.S.D.Ct.,<br>Southern District of New York) ..... | \$10,847.62 |
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**ANTITRUST DIVISION SETTLEMENT AGREEMENTS**

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| IN THE MATTER OF MARSH & McLENNAN COMPANIES, INC.,<br>MARSH, INC. .... | \$50,000.00 |
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**PRENEED FUNERAL UNIT LITIGATION**

|   |            |
|---|------------|
| <u>State ex rel. Darrell V. McGraw, Jr. v. Bartolo Funeral Home, Inc., et al.</u><br>(Civil Action No. 04-C-361-2 - Circuit Court of Harrison County) ..... | \$6,000.00 |
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**PRENEED FUNERAL UNIT ASSURANCES**

|   |            |
|---|------------|
| In the Matter of Bartlett Funeral Home .....      | \$5,310.00 |
| In the Matter of Seaver Funeral Home .....        | \$4,900.00 |
| In the Matter of James Funeral Home .....         | \$2,385.00 |
| In the Matter of Chambers Funeral Home .....      | \$1,785.00 |
| In the Matter of Valley Funeral Home .....        | \$1,120.00 |
| In the Matter of Rotruck Lobb Funeral Home .....  | \$990.00   |
| In the Matter of Snodgrass Funeral Home .....     | \$920.00   |
| In the Matter of Browning Funeral Home .....      | \$885.00   |
| In the Matter of Dering-Henson Funeral Home ..... | \$410.00   |
| In the Matter of Morgan Funeral Home .....        | \$400.00   |
| In the Matter of McCulla Funeral Home .....       | \$260.00   |

# EXHIBIT 3

# MEDIATION

Written complaints received during reporting period 9,242

Written complaints closed during reporting period 10,054

Written complaints pending for reporting period 812

Cash refunds received by consumers from mediation during reporting period \$747,522.78

Value and Debt Cancellation received by consumers from mediation during reporting period \$3,565,515.44

# EXHIBIT 4

