

IN RE:)
Zurich American Insurance Company)
American Guarantee & Liability Insurance)
Company)
American Zurich Insurance Company) **CONSENT AGREEMENT**
Assurance Company of America) **Docket No. INS-13-202**
Maryland Casualty Company)
Northern Insurance Company of New York)
Universal Underwriters Insurance Company)
)

THIS CONSENT AGREEMENT is entered into by and among ZURICH AMERICAN INSURANCE COMPANY, AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY, AMERICAN ZURICH INSURANCE COMPANY, ASSURANCE COMPANY OF AMERICA, MARYLAND CASUALTY COMPANY, NORTHERN INSURANCE COMPANY OF NEW YORK, and UNIVERSAL UNDERWRITERS INSURANCE COMPANY (“Universal Underwriters”) (collectively, “the Zurich Group” or the “Companies”; individually a “Company”), the SUPERINTENDENT OF THE MAINE BUREAU OF INSURANCE (the “Superintendent”), the MAINE WORKERS’ COMPENSATION BOARD (the “Board”), and the OFFICE OF THE MAINE ATTORNEY GENERAL (the “Attorney General”). Its purpose is to bring to a halt, without resort to an adjudicatory proceeding, violations of 39-A M.R.S. § 359(2) certified to the Superintendent by the Board pursuant to 39-A M.R.S. § 359(2).

I

STIPULATIONS

1. The Superintendent is the official charged with administering and enforcing Maine’s insurance laws and regulations. The Board is the agency charged with administering and enforcing Maine’s workers’ compensation laws and regulations.
2. Each Company has authority to insure employers for claims arising under the Maine Workers’ Compensation Act of 1992, M.R.S. Title 39-A, as amended, and regulations of the Board issued thereunder (the “WCA”). The Companies are licensed to do business in Maine and domiciled as follows:

Name of Company	State of Domicile	NAIC Code	Maine License Number	Date of First Maine License
Zurich American Insurance Company	New York	16535	PCF61397	12/31/1998
American Guarantee & Liability Insurance Company	New York	26247	PCF366	12/01/1939
American Zurich Insurance Company	Illinois	40142	PCF914	04/05/1985
Assurance Company of America	New York	19305	PCF651	06/01/1970
Maryland Casualty Company	Maryland	19356	PCF500	05/01/1901
Northern Insurance Company of New York	New York	19372	PCF501	03/20/1938
Universal Underwriters Insurance Company	Kansas	41181	PCF892	01/01/1983

3. In 2005, the Board’s Monitoring Audit & Enforcement Division (the “MAE Division”) audited the records of the Companies, except Universal Underwriters, with respect to

- claims filed under the WCA with dates of injury from January 1, 2003 through June 30, 2004. This audit focused on compliance with the WCA concerning form filing, timeliness of indemnity payments and accuracy of indemnity benefits.
4. On June 28, 2005, the Board issued a Compliance Audit Report (the “2005 Report”) detailing its findings. The 2005 Report’s findings reflect that the Zurich Group, except Universal Underwriters, did not timely and accurately file Board forms or pay indemnity claims in violation of 39-A M.R.S. § 359(2).
 5. In August 2005, the Board and the Zurich Group, except Universal Underwriters, entered into eleven consent decrees, in lieu of administrative hearings, related to the findings in the 2005 Report. One decree established that Zurich had “engaged in a pattern of questionable claims-handling techniques in violation of Section 359(2) [of the WCA] for” failing to pay claims timely, to pay benefits due, to calculate injured workers’ benefits accurately, and to file or timely file forms required under the WCA.
 6. On August 29, 2005, the Board certified these findings to the Superintendent pursuant to 39-A M.R.S. § 359(2).
 7. Thereafter, Maine Bureau of Insurance (the “Bureau”) staff performed a targeted market conduct examination of (i) claims for indemnity benefits under the WCA insured by the Zurich Group, other than Universal Underwriters, and having dates of injury from January 1, 2006 through December 31, 2006 and (ii) claims having dates of injury from January 1, 1993 through December 31, 2005 for which the Zurich Group, other than Universal Underwriters, paid indemnity benefits between January 1, 2006 and December 31, 2006 (the “Examination”). The purpose of the Examination was to determine whether the violations of 39-A M.R.S. § 359(2) found by the Board still existed as of the time of the Examination, specifically whether the Zurich Group, other than Universal Underwriters, timely and accurately paid indemnity benefits and filed Board forms timely and accurately with respect to such claims.
 8. During the Examination, Bureau staff found that, compared to the findings of the Report as to its claims-handling practices in Maine, for the period of the Examination, the Zurich Group’s:
 - a. form filing compliance had improved in some respects, decreased in others, and remained unacceptably low,
 - b. initial indemnity benefit timeliness had improved but remained below the Board benchmark, and
 - c. indemnity benefit payment accuracy remained unacceptably low.
 9. In March 2009, the Zurich Group, except Universal Underwriters, entered into a Consent Agreement with the Superintendent and the Attorney General (the “2009 Consent Agreement”).
 10. In July 2009, the MAE Division audited the records of Universal Underwriters with respect to claims filed under the WCA with dates of injury from 2006 through 2009. This audit focused on compliance with the WCA concerning form filing, timeliness of indemnity payments and accuracy of indemnity benefits.

11. On May 25, 2010, the Board issued a Compliance Audit Report detailing its findings as to Universal Underwriters (the "Universal Report"). The Universal Report's findings relevant to questionable claims-handling techniques that violated 39-A M.R.S. § 359(2) included non-filing of forms, late and inaccurate forms filings and untimely and inaccurate indemnity payments.
12. In August 2010, the Board and Universal Underwriters entered into five consent decrees, in lieu of administrative hearings, addressing the findings in the Universal Report. In one such decree (the "Universal Consent Decree"), Universal Underwriters agreed that it had "engaged in patterns of questionable claims-handling techniques in violation of Section 359(2)" of the WCA by failing to file or timely file forms with the Board.
13. On August 3, 2010, the Board certified the findings concerning the Universal Consent Decree to the Superintendent as required by 39-A M.R.S.A. § 359(2).
14. In 2010, the MAE Division audited the records of the Zurich Group, except Universal Underwriters, with respect to claims filed under the WCA with 2009 dates of injury (the "2010 Audit"). The 2010 Audit focused on compliance with WCA requirements for form filing, timeliness of benefits payments, and accuracy of indemnity benefits. In addition, at the request of the Superintendent, the MAE Division audited the indemnity payments that were the subject of paragraph 17 of the 2009 Consent Agreement.
15. On August 9, 2011, the Board issued a Compliance Audit Report detailing its findings (the "2011 Report"). The 2011 Report's findings relevant to questionable claims-handling techniques that violated 39-A M.R.S. § 359(2) included failures by various members of the Zurich Group to pay claims timely, to pay benefits due to injured workers, to calculate injured workers' benefits accurately, and to file or timely file forms required under the WCA. In the course of its audit, the MAE Division identified Zurich American Insurance Company, American Zurich Insurance Company and American Guarantee and Liability Insurance Company as having errors that constituted a pattern of questionable claims-handling techniques.

II

MAINE LAW

16. 39-A M.R.S. § 359(2) provides in part that:

[T]he [workers' compensation] board ... upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims ... shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt.

III

CONCLUSIONS OF LAW

17. The Zurich Group, other than Universal Underwriters, engaged in violations of 39-A M.R.S. § 359(2) through December 31, 2009.

IV

COVENANTS

18. The Zurich Group shall bring to a halt as set forth in this Agreement violations of 39-A M.R.S. § 359(2) and represents that each Company has put into effect written procedures to file Board forms timely and accurately and to pay indemnity benefits as required by the WCA, as stated on Exhibit A to this Agreement.
19. The Zurich Group warrants and represents that it has paid penalties of Seven Thousand One Hundred Fifty Dollars (\$7,150) to injured workers in accordance with the findings in the 2011 Report. Each Company confirms its understanding and agreement that these penalties result from its failures, as documented by the 2011 Report, to pay weekly compensation benefits or accrued weekly benefits as required by the WCA.
20. Within thirty (30) days after the effective date of this Agreement, the Zurich Group shall deliver to the Board payment of a civil penalty of Twenty-five Thousand Dollars (\$25,000) payable to the Treasurer, State of Maine. Each Company confirms its understanding and agreement that this penalty results from its failures, as documented by the 2011 Report, to halt through December 31, 2009 the violations of 39-A M.R.S. § 359(2) established by the August 2005 consent decrees between the Zurich Group and the Board.
21. Within thirty (30) days after the effective date of this Agreement, the Zurich Group shall deliver to the Board payment of a civil penalty of Three Thousand Two Hundred Dollars (\$3,200) payable to Treasurer, State of Maine. Each Company confirms its understanding and agreement that this penalty results from its failures, as documented by the 2011 Report, to file forms as required by the WCA.
22. Within thirty (30) days after the effective date of this Agreement, the Zurich Group shall adopt a plan for performing quarterly audits, as set forth below, of claims activity within the applicable quarter for all claims with dates of injury on or after January 1, 1993 to ensure compliance with the benchmarks shown in Exhibit A.

The Zurich Group shall deliver to the Superintendent and the Deputy Director, MAE Division, the results of the quarterly audits referred to above for two (2) successive calendar quarters starting with the beginning of the quarter in which the Zurich Group executes this Agreement. The Zurich Group shall deliver each report, consolidated for the Companies, no later than forty-five (45) days after the end of the applicable calendar quarter. Each report shall be an Excel spreadsheet and contain the following data, safeguarded in accordance with the WCA, for each claim: the Board number, if known; the claimant's Social Security number (general format, no dashes); the claimant's last and first name (in that order); the date of injury; the Company claim number; and the third-party administrator ("TPA"), if any. Within forty-five (45) days after delivery of each report, the Superintendent and the Board may call a meeting with the Zurich Group to discuss any concerns they may have with the Zurich Group's claims performance during the period covered by such report. Failure to call any such meeting shall not be considered a waiver by the Superintendent, the Board or the Attorney General of any claims performance that does not meet the Exhibit A benchmarks. The Zurich Group shall deliver with the last quarterly audit report (the "Final Self-Audit Report") a certification

for the Companies in the aggregate, substantially in the form attached as Exhibit B, as to the accuracy of all claims performance audit information required under this paragraph. The Zurich Group shall deliver, upon request, any and all work papers and documents, in any format, in its possession, custody or control, related to any self-audit report. The Zurich Group shall compile such information in a manner acceptable to the Superintendent and the Board.

Should the Superintendent, or upon the Superintendent's election, the Board determine, upon audit or examination and after the Companies have had an opportunity to rebut any such audit or exam findings, within twelve (12) months after the Board has published its Quarterly Compliance Report for the period covered by the Final Self-Audit Report, that the Zurich Group did not meet on average the benchmarks in Exhibit A (the "Benchmarks") during the self-audit period, then the Superintendent may impose upon the Zurich Group a civil penalty not to exceed One Hundred Fifty Thousand Dollars (\$150,000), which the Zurich Group shall deliver to the Superintendent within thirty (30) days after receiving the determination. The determinations under this paragraph shall be in the sole and absolute discretion of the Superintendent or the Board, except that the Superintendent will, in determining the amount of the civil penalty, take into account (i) the Zurich Group's compliance with the Benchmarks, expressed as a percentage, (ii) the nature of the Zurich Group's overall performance as to the benchmarks, and (iii) the size of the claim population audited or examined under the terms of this paragraph.

In preparing the reports required under this paragraph, the Zurich Group is not required to calculate its compliance with the Benchmarks for WCB-1s, WCB-3s (Memoranda of Payment), WCB-9s, and timely initial payment of temporary total and temporary partial disability benefits (TTD/TPD). The Superintendent shall deem the compliance rates for these categories, subject to examination or audit, to be the rates shown in the Board's Quarterly Compliance Report for the applicable period.

23. Within three hundred sixty-five (365) days after the effective date of this Agreement, the Zurich Group shall, for the period starting March 16, 2009 and ending with the last day of the calendar quarter immediately preceding the quarter in which the Zurich Group executes this Agreement,:
- a. review the indemnity claims, with dates of injury on or after January 1, 1993, except those discharged under 39-A M.R.S. § 352, presented to any Company under the WCA, which shall include the incapacity periods, and indemnity benefits, penalties and interest originally paid thereon;
 - b. recalculate the benefits, penalties and interest to ensure their compliance with the WCA;
 - c. pay to the appropriate claimants any deficiencies, with the penalties and interest provided for in the WCA, and file with the Board such related forms as the WCA requires; and
 - d. deliver to the Superintendent and the Deputy Director, MAE Division an Excel spreadsheet report ("Look-Back Report") containing each claim so reviewed. The Look-Back Report shall contain the following data, safeguarded in accordance with the WCA, for each claim: the Board number, if known; the claimant's

Social Security number (general format, no dashes); the claimant's last and first name (in that order); the date of injury; Company name and claim file number; the incapacity periods; the amount of indemnity originally paid; whether or not the claim was settled under 39-A M.R.S. § 352 (Y or N) and the date of such settlement; the amount of indemnity paid after review; the amount of penalties paid after review; the amount of interest paid after review; the amount of overpayment upon review; and the name of the person conducting the review. The Zurich Group shall deliver with the report a certification as to the accuracy of all information in the report, substantially in the form attached as Exhibit B.

This paragraph shall not apply to any (i) claims activities that are subject to the quarterly audits described in paragraph 22, (ii) claims that have been discharged under 39-M.R.S. § 352, (iii) claims that were previously audited by either the Board or the Superintendent and subsequently corrected by the Zurich Group or TPA or found not to need correction, or (iv) claims activities that are the subject of a look-back and reporting provision in a consent agreement to which the Bureau and a TPA working on behalf of a Company were party.

Should the Superintendent or, upon the Superintendent's election, the Board determine, within twelve (12) months after receiving the Look-Back Report, that the Zurich Group failed during the look-back review period to correct deficiencies in indemnity benefits as required in paragraph (d) above, including penalties and interest due thereon, pursuant to the WCA, resulting in compliance with the WCA in fewer than ninety-three (93) percent of the claims required to be reviewed, then the Superintendent may impose a civil penalty, which the Zurich Group shall deliver to the Superintendent within thirty (30) days after receiving the determination. The determinations under this paragraph shall be in the sole and absolute discretion of the Superintendent or the Board, except that no civil penalty shall exceed Fifty Thousand Dollars (\$50,000).

24. The Zurich Group agrees that (i) any civil penalties assessed under paragraph 22 or 23 of this Agreement will have resulted from its continued failure through the delivery date of either the Final Self-Adult Report or the Look-Back Report, to comply with the requirements of the WCA, (ii) in declaring any civil penalty due under paragraph 22 or 23, the Superintendent and the Board may rely on the Self-Audit Reports and the Look-Back Report as conclusive evidence of the fact and extent of such failure, and (iii) the amount of these penalties will not limit further measures, penalties or remedies that the Superintendent, the Board or the Attorney General may impose or seek under paragraph 33 below.
25. The Zurich Group shall pay, as provided by law, the Superintendent's and the Board's reasonable costs and expenses of enforcing the Zurich Group's obligations under, and its compliance with, this Agreement. The Zurich Group shall not recoup any payments of refunds, interest, or civil penalties made under this Agreement or any costs associated with complying with this Agreement in any future rate adjustments.
26. The Zurich Group shall ensure that third-party administrators working on behalf of the Companies comply with the Covenants set forth in this Agreement. If any third-party administrator fails to comply with the Covenants or the WCA, the Zurich Group will consider the removal of such non-compliant third-party administrator from handling new

Group claims in the state of Maine. The Companies acknowledge their continued responsibility for the actions of any third-party administrator not removed from the Maine Third Party Administrator Approved Panel.

V


MISCELLANEOUS

27. Any action that this Agreement permits the Superintendent, the Board or the Attorney General to take may be taken against all or any of the Companies.
28. The Companies waive:
 - a. formal hearing in this matter and will make no appeal from this Agreement;
 - b. objection to any action that may be taken by the Superintendent, the Board or the Attorney General pursuant to this Agreement, including but not limited to the imposition of the civil penalties specified in this Agreement;
 - c. all defenses arising out of or in connection with the 2011 Report;
 - d. certification under the WCA to the Superintendent of the findings of the 2011 Report; and
 - e. objection to the Board's release to the Superintendent and the Attorney General of "audit working papers," as defined in section 153 of the WCA, related to any audit of any Company and, in connection with this waiver, to the use of such papers by the Superintendent and Attorney General for purposes related to the implementation and enforcement of this Agreement.
29. The Companies acknowledge that this Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for public inspection and copying as provided for by 1 M.R.S. § 408, and will be reported on a per Company basis to the National Association of Insurance Commissioners' Regulatory Information Retrieval System database.
30. The Companies have been advised of their right to consult with counsel and have, in fact, consulted with counsel before executing this Agreement.
31. Nothing herein shall affect any right or interest of any person or entity not a party to this Agreement or limit the Superintendent's or Board's ability to seek any available legal remedy for alleged or actual violations of the WCA or the Maine Insurance Code against any Zurich Group affiliate or subsidiary not a party to this Agreement or against any entity from which any Company obtains WCA claims administrator services.
32. Nothing in this Agreement shall limit the ability of the Superintendent or Board to examine:
 - a. the Zurich Group's indemnity claims having dates of injury on or after January 1, 2010, as the Superintendent or the Board, in their sole discretion, at any time may determine advisable in order to determine whether any Company has brought to a halt the violations of 39-A M.R.S. § 359(2) found by the Board; or

- b. the self-audit quarterly review described in Paragraph 22 to determine its accuracy; or
 - c. the indemnity claim review described in paragraph 23 to determine its accuracy.
33. In consideration of the Companies' execution of and compliance with the terms of this Agreement, the Superintendent, the Board and the Attorney General agree to forgo pursuing disciplinary measures or civil or administrative sanctions, relating to questionable claims-handling practices under the WCA, other than those set forth in this Agreement, for the actions described in any prior corrective action plan, compliance audit report, or consent agreement, and actions and violations alleged by any person and communicated to the Board prior to January 1, 2009. Should any Company violate this Agreement, nothing herein shall prohibit the Superintendent, the Board or the Attorney General from seeking against the Zurich Group any available legal remedy for such violation, including without limitation imposition of additional civil penalties, and the limitation, suspension or revocation of workers' compensation authorities issued to the Companies by the Superintendent.
34. The effective date of this Agreement is the date entered in the Superintendent's signature line below.
35. This Agreement may be modified only by the written mutual consent of all parties.

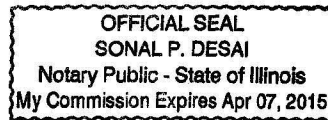
Dated: February 26, 2013

ZURICH AMERICAN INSURANCE COMPANY

By: 
 Its: Kristen Shalda, Claims Chief Operations officer
 Printed Name and Title

Subscribed and sworn to before me
 this 26 day of February, 2013.

Sonal P. Desai
 Notary Public
SONAL P. DESAI
 Printed name
4/7/2015
 Date commission expires



Dated: February 26, 2013

**AMERICAN GUARANTEE & LIABILITY
INSURANCE COMPANY**

By: Kristen [Signature]

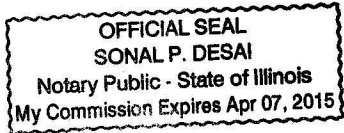
Its: Kristen Chakda, Claims Chief Operations office
Printed Name and Title

Subscribed and sworn to before me
this 26 day of February, 2013.

Sonal P. Desai
Notary Public

SONAL P DESAI
Printed name

4/7/2015
Date commission expires



Dated: February 26, 2013

AMERICAN ZURICH INSURANCE COMPANY

By: Kristen [Signature]

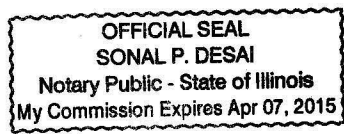
Its: Kristen Chakda, Claims Chief Operations office
Printed Name and Title

Subscribed and sworn to before me
this 26 day of February, 2013.

Sonal P. Desai
Notary Public

SONAL P DESAI
Printed name

4/7/2015
Date commission expires



Dated: February 26, 2013

ASSURANCE COMPANY OF AMERICA

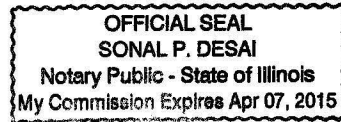
By: Kristen [Signature]

Its: Kristen Chakda, Claims Chief Operations office
Printed Name and Title

Subscribed and sworn to before me
this 26 day of February, 2013.



Sonal. P. Desai
Notary Public
SONAL P DESAI
Printed name
4/7/2015
Date commission expires



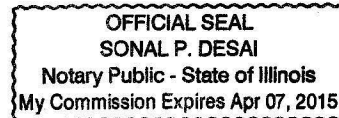
Dated: February 26, 2013

MARYLAND CASUALTY COMPANY

By: [Signature]
Its: Kristen Shalder, Claims Chief Operations office
Printed Name and Title

Subscribed and sworn to before me
this 26 day of February, 2013.

Sonal. P. Desai
Notary Public
SONAL P DESAI
Printed name
4/7/2015
Date commission expires



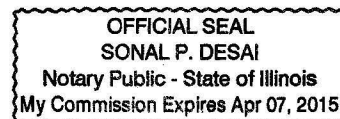
Dated: February 26, 2013

NORTHERN INSURANCE COMPANY OF NEW YORK

By: [Signature]
Its: Kristen Shalder, Claims Chief Operations office
Printed Name and Title

Subscribed and sworn to before me
this 26 day of February, 2013.

Sonal. P. Desai
Notary Public
SONAL P DESAI
Printed name
4/7/2015
Date commission expires



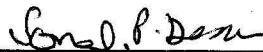
Dated: February 21, 2013

**UNIVERSAL UNDERWRITERS INSURANCE
COMPANY**

By: 

Its: Kristen Shalda, Claims Chief Operations off.
Printed Name and Title

Subscribed and sworn to before me
this 26 day of February 2013.



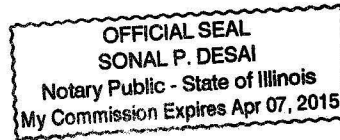
Notary Public

SONAL P. DESAI

Printed name

4/7/2015

Date commission expires



Dated: _____, 2013

Date: February 20, 2013

MAINE WORKERS' COMPENSATION BOARD



Paul Sighinolfi
Executive Director

Dated: March 18, 2013

**MAINE OFFICE OF THE ATTORNEY
GENERAL**



Jonathan R. Bolton
Assistant Attorney General

Effective
Date: MARCH 21, 2013

MAINE BUREAU OF INSURANCE

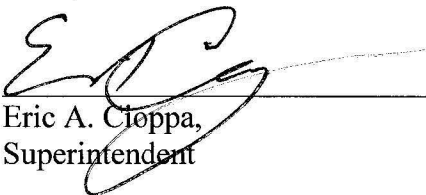

Eric A. Cloppa,
Superintendent

Exhibit A

Form of Self-Audit Worksheet

	FROI Timely Filed	Wage Statement (WCB-2) Filed Timely	Schedule of Depen- dents (WCB- 2A) Filed Timely	MOP (WCB- 3 or - 4A) Filed Timely	Modifi- cation/ Reduc- tion (WCB- 4, -4A or -8) Filed	Disconti- nuance (WCB-4, -4A or -8) Filed	NOC (WCB- 9) Filed Timely	Initial TTD Timely	Subse- quent TTD Timely	Payment of Approved Agree- ments, Orders, Decisions	TTD /TPD Accu- rate	Average Weekly Wage	Weekly Benefit Rate	Partial Indemnity
Bench- mark (%)	85	75	75	85	90	75	90	87	87	90	75	80	75	75
xx/13	(#/#)													
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Exhibit B

Form of Certification

IN RE:

- Zurich American Insurance Company)
- American Guarantee & Liability Insurance Company)
- American Zurich Insurance Company)
- Assurance Company of America)
- Maine Bonding & Casualty Company)
- Maryland Casualty Company)
- Northern Insurance Company of New York)
- Valiant Insurance Company)

AFFIDAVIT OF CORPORATE OFFICER

Docket No. INS-13-202

The undersigned, being duly sworn, says:

1. Terms used but not defined in this affidavit shall have the meanings given them in the Consent Agreement entered into between the above Companies, the Superintendent, the Board and the Office of the Maine Attorney General under Bureau docket number INS-13-202.
2. I have read and understand the Consent Agreement and exhibits attached thereto.
3. I understand that the Board and Bureau may rely on the truthfulness of the information contained in and materials attached to this affidavit and that the truthfulness of this information is material to the ability of the Superintendent and the Board to evaluate the Companies' compliance with the Consent Agreement.
4. I have read the materials attached to this affidavit. To the best of my knowledge, and after reasonable inquiry, they accurately and completely summarize the information contained therein, as required by [paragraph 22/paragraph 23] of the Consent Agreement.
5. I hold the position identified below and have obtained all necessary authority from each of the Companies to give this affidavit on its behalf in connection with the proceedings undertaken as Bureau Docket No. INS-13-202.

(name typed or printed)

(position typed or printed)

(company name typed or printed)

Acknowledgement

State of _____
County of _____

Personally appeared before me on _____, 201_, the above named _____ and, being duly sworn, affirmed that this affidavit is based upon his or her personal knowledge and is true and correct.

Before me,

Notary Public/Attorney-at-Law

[seal]

Printed Name: _____

My Commission Expires: _____