

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
& HEALTH CARE ADMINISTRATION**

In re:	ALLIANZ LIFE INSURANCE)	
	COMPANY OF NORTH)	DOCKET NO. 09-066-I
	AMERICA)	
)	

ORDER ADOPTING REPORT OF EXAMINATION

NOW COMES Paulette J. Thabault, Commissioner of the Vermont Department of Banking, Insurance, Securities and Health Care Administration (“Commissioner”), and hereby issues the following Order adopting the Market Conduct Examination Report in the above referenced docket number, which generally covers the period January 1, 2002 through December 31, 2005, subject to the modifications and amendments set forth below.

Preliminary Statement

1. Pursuant to the authority granted by Vermont law, including, but not limited to, that contained in 8 V.S.A. §§ 10-13, 18, 3564-3574, 3661 and 4726, the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration (“the Department”) is charged with administering and enforcing the insurance laws and regulations of the State of Vermont and is authorized to conduct periodic examinations of insurers and licensees to determine whether they are in compliance with said laws and regulations.

2. Allianz Life Insurance Company of North America (“the Company” or “Allianz”) is organized under the laws of the State of Minnesota. Allianz is a foreign or alien insurer authorized to transact insurance business in Vermont.

3. On May 1, 2009, a final market conduct examination report was issued by Examiners Charles Piasecki, James Montgomery III, Robbie Kriplean and Jennifer Greenway (collectively, the "Examiners") titled *MARKET CONDUCT EXAMINATION OF THE ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA AS OF DECEMBER 31, 2005 BY VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES AND HEALTH CARE ADMINISTRATION* (hereinafter “the Report”).

4. In accordance with the requirements of 8 V.S.A. § 3574(b), the Report was transmitted to the Company and the Company was afforded a reasonable period of time of thirty (30) days to submit a formal written submission or rebuttal with respect to any matters contained in the Report. The Company submitted a formal response received by the Department on May 27, 2009 (“Response”). The Company has accepted, rejected and suggested various changes to the findings, conclusions and recommendations included in the Report.

5. Pursuant to 8 V.S.A. § 3574(c), the Commissioner has fully considered the Report and the Response. To the extent this Order does not expressly adopt an amendment or modification to the Report, the Report is adopted as written.

Findings of Fact and Conclusions of Law

6. The Examiners, after describing equity indexed annuities offered by the Company, found and reported in Section I (B) of the Report ("Section I") titled, *SALES AND MARKETING*, that some of the advertising and/or promotional pieces used by the

Company mischaracterized, contained misleading inferences or misrepresented certain annuities offered. The Examiners reviewed the following advertising and/or promotional pieces: a promotional piece (850545-VT) regarding the PowerDex Elite annuity plans that refers to a premium bonus, a promotional brochure (form # WS124) (9/2001) titled, *Sales strategies to help you capture the CD market* and promotional pieces CB50270 (R-7/2005), (R-6/2005), (R-5/2005), (R-4/2005), (R-3/2005), (R-10/2004), (R-6/2004), (R-5/2004), (R-10/2003), (7/2003), all containing the following language: *Lock in annual gains – assures you your highest value in the future.*

The Company disagreed with the Examiners conclusions that the advertising and/or promotional pieces are misleading. The Company responds by stating that the Examiners should have reviewed all information given to the purchaser or consumer, including all oral representations made by the producer, before concluding that a misrepresentation of the product was made. The Company, in a footnote, cites a Vermont Supreme Court decision as authority for its assertion. The Company advised in its Response that brochures cited by the Examiners as containing misrepresentations are no longer in use or have been revised so as to omit the cited language or references.

The Examiners recommend that those advertising and/or promotional pieces (brochures), which still contain the referenced misrepresentations, be withdrawn from further use immediately. Advertising material, which is misleading, should not be distributed, even for a short time, under any circumstances.

The Department, upon due consideration, adopts the findings of fact and conclusions of law regarding violations of the Vermont Insurance Trade Practices Act, 8 V.S.A. §§ 4721-4726 as set forth in Section I (B) of the Report. It must be pointed out

that the Supreme Court decision cited by the Company focused its review on a jury instruction given by the underlying trial court in a Vermont Consumer Fraud action brought by a consumer pursuant to a different statute (9 V.S.A §2453(a)). The Vermont Insurance Trade Practices Act (“the Act”) does not afford a consumer a private right of action, but provides for administrative sanctions for unfair and deceptive acts or practices within the insurance industry, including for misrepresentations and false advertising of insurance policies and misrepresentations of insurance services or products. *See* 8 V.S.A. § 4724 (1) and (13). Accordingly, the Department finds that the Examination Report reveals that the Company’s actions are an unfair or deceptive act or practice in the business of insurance:

7. The Examiners, in Section II (“Section II”) of the Report titled, *TRADE PRACTICES*, focused on the suitability of the Company’s sales of its equity indexed annuities (“EIA’s”). The Examiners reported that the Company incentivizes its producers to sell EIA’s by offering higher up front commissions and bonuses for these products than for other products that are available to Vermont consumers. These products are sold primarily through producers who are not required to hold a securities license (Registered Representative). The Report notes that the Company’s marketing material titled, *No Securities License Required to Sell EIA’s* (Form # ZFX802) further encourages the sale of these products. The Examiners found Allianz to be in violation of 8 V.S.A. § 4724 (16) regarding EIA’s issued prior to July 2005. The Examiners found no evidence that Allianz had sufficient information in its files to determine whether or not EIA’s issued prior to July 2005 were suitable for the persons for whom they were written. The Examination Report also reveals that the Company had reason to know that unsuitable

contracts were being issued due to consumer complaints involving suitability and the Company's own investigations of agents/producers in which the Company reviewed the activities of agents with respect to suitability.

The Company disagrees with the Examiners' finding that it was in violation of the Act prior to July of 2005. The Company states that the Examiners did not have a sufficient basis for their recommendations with regards to suitability. The Company states ... "8 V.S.A. § 4724 (16) is violated only if (i) the issuer issues an unsuitable policy to a purchaser and (ii) the issuer knew or should have known that a particular issued policy was unsuitable for the purchaser". The Company throughout its Response alludes to the requirement of a finding that there be evidence that the Company "knew or should have known" that a policy sold in Vermont was unsuitable before a conclusion may be drawn that there was a violation of the Act. The Company contends that the Examiners' conclusions about its knowledge of unsuitable sales rest on vague and misinformed assumptions about the products and annuity purchasers age 65 or older. The Company asserts that the Examiners came to their conclusion that EIA's issued by the Company prior to July 2005 were unsuitable simply because one third of these were issued to Vermonters who were 65 years or older.

The Department, upon due consideration, adopts the Examiners findings and conclusions in Section II of the Report. The Examination Report reveals that the Company violated the Act by issuing unsuitable policies to Vermont consumers. The Company's argument is without merit. The Company, while quoting verbatim a section of §4724 (16) of the Act at the lead in to its Response, omits the essence of the duty imposed upon it by the statute throughout its argument. The Act at 8 V.S.A. § 4726 (16)

provides that “[s]oliciting, selling, or issuing an insurance policy when the person soliciting, selling, or issuing the policy **has reason to know or should have reason to know** that it is unsuitable for the person purchasing it” is an unfair or deceptive act or practice in the business of insurance. (emphasis added). The Act defines “person” to include ... “any individual, corporation...or any other legal entity ... engaged in the business of insurance”. “Reason to know” and “should have reason to know” are legal terms of art. The Company has “reason to know” when the Company has information from which a person of reasonable intelligence would infer that the fact in question exists. “Should have reason to know” requires the Company to go one step further and denotes a duty of action to take steps to learn or ascertain the fact in issue. The Examination Report reveals that the Company could produce no data from which a suitability determination could be made for sales of EIA’s prior to July 2005. A policy sold without any indication or information from which a suitability determination can be made is an unsuitable sale. The Examiners do not base their conclusion on sales to Vermonters age 65 or older. On the contrary, the Examiners state “[a]lthough annuities **are suitable** for some individuals over 65, many of the advantages of annuities are realized only after a long period of time thus, annuities are **less likely** to be suitable products for the elderly population”. (emphasis added). The Company, in its Response, correctly states that an individual analysis of the annuity product fit to the particular customer is needed for a suitability determination. This requires evidence of the individual circumstances of each individual purchaser that existed at the time of the purchase. The Examination Report reveals that the Company, prior to July 2005, never had the information or evidence that it admits is required to make a suitability

determination. The Examiners conclude that this is true for all sales of EIA's prior to July 2005. The Examiners' conclusion that these sales made prior to July 2005 were unsuitable is not based upon the number or percentage sold to Vermont consumers' age 65 or older. The Company having direct knowledge that there was no information from which to determine suitability had reason to know that the sale was unsuitable. The Company further states in its response that there is "a stark lack of evidence of unsuitable sales that would translate into a basis for Allianz's knowledge of unsuitable sales". Again, the Company does not correctly state the law. The correct standard is "has reason to know or should have reason to know". Allianz need not have actual or direct knowledge of an unsuitable sale to be in violation of the Act.

The Department, upon due consideration, adopts the examiners finding and conclusion that the *Complaints* and *Investigations* sections of the Report¹ as well as the *Replacements* section of the Report provide ample evidence of facts and circumstances from which the Company could infer that the sales were unsuitable

It appears that the Company does not contest the fact or the Examiners' conclusion that its own records for sales prior to July 2005 are insufficient to determine if those sales were suitable. The Company instead, in its response, makes the argument that its reliance upon its producers to make the suitability determination somehow relieves it of its duty to adhere to the law. The Act, as stated above, applies to all persons who engage in the business of insurance in Vermont. This includes Allianz as well as its

¹ The Department does not limit the inclusion of a complaint or grievance in the category of suitability to instances in which the complainant uses the term "unsuitable" or "suitable" or "suitability". The Department includes within suitability those complaints and grievances that are not artfully phrased or written. Examples include "was not in the owner's best interest", "misinformed as to accessibility of funds", "not what the owner thought it was", "in a nursing home and needed the funds without a penalty", etc.

producers. While the Company is correct when it states that there is no law in Vermont that prohibits a company from relying on its producers to ensure that only suitable products are sold, the duty of Allianz, as the person issuing the annuity, is a non-delegable duty to issue a suitable product to the purchaser. Hence, the Company relies on its producers to its own detriment.

8. The Examiners, in Section III ("Section III") of the Report titled *SUPERVISION AND CONTROL OF PRODUCERS*, examined the Company's agents that were terminated for cause or investigated by the Company. The Examiners concluded that the Company's supervision and training of its agency force is deficient as evidenced by the extraordinarily high number of violations observed during the examination. See Section IV, *Replacements*. In addition, the Examiners' Report contains an extensive discussion of Company investigations of its agents regarding serious allegations of malfeasance on the part of its agents and the Company's handling of these investigations. The Examination report states that Allianz did not monitor its producers' life and annuity replacements during the examination period. The only monitoring was in response to the Examiners' request for a sample of ten (10) producers' records. The Examiners' review revealed that three (3) of the producers in the sample had annuity contract replacement percentages vs. annual annuity sales that appeared to be unusually high. Further, the Examiners found that the Company was in violation of 8 V.S.A. § 4813I (d) in that there were five (5) applications that were dated more than fifteen (15) days prior to the date of the producers' appointments.

The Company disagrees with the Examiner's conclusion that the Company's system of supervision and control is deficient and does not comply with Vermont statutes

and regulations. The Company states that while its producers are contracted through field marketing organizations or broker dealers, it has always maintained and continually improved its education of independent producers and compliance expectations. Again, the Company states that Vermont law does not require any supervision or training of producers.

The Examiners recommend that the Company submit to the Vermont Department for approval a plan of remediation for those consumers who may have been sold policies by those agents that were terminated for cause, investigated and/or for which complaints were received alleging agent misconduct and those agents where regulatory action was taken and a Corrective Action Plan addressing an adequate plan of supervision and training of its agency force. The Examiners also recommend that the Company amend its procedures so as to ensure that a notice of appointment will be filed on a producer within the timeframe required by 8 V.S.A. § 4813 I (d).

The Department, upon due consideration, accepts the findings of fact and conclusions of the Examiners as set forth in Section III of the Report. The Examination Report reveals violations of Vermont insurance laws that can be cured through better supervision and training of the Company's agency force. *See* Sections II, III and IV of the Report. The Examination Report also reveals that the Company violated 8 V.S.A. § 4813 I.

9. The Examiners, in Section IV ("Section IV") of the report titled, *REPLACEMENTS*, and Section III (D) titled, *Monitoring of Producers' Replacement Activity*, of the Report, examined the Company's Replacement activities as well as the Company's monitoring of its producer's replacement activities. The Examination Report

reveals over three hundred (300) violations of Vermont Regulation I-2001-03 titled, *LIFE INSURANCE AND ANNUITIES REPLACEMENT REGULATION*, and former Replacement Regulation 88-2.² The Examination Report lists the particular sections of the Replacement Regulation that were found to be violated, the number of violations of the particular section together with a brief explanation of the violation.

The Company does not make any specific rebuttal to the Examiners findings in its formal Response, but does submit that it “has adopted a new system designed to address the alleged deficiencies identified in the Report.” The Company further states that it is concerned about a number of the examiners recommendations regarding replacements, but does not cite to specific recommendations and does not state what the concerns are.

The Examiners recommend, as a result of their findings and conclusions as set forth in Section IV that:

- a). The Company appoint personnel within its underwriting department, to have the sole responsibility of reviewing applications which involve replacement transactions, in order to ensure full compliance with the specific requirements of Regulation 2001-3 and provide periodic reports, designed to identify problematic areas, to a supervisory unit. These reports should be made available upon request from the Vermont Department.
- b). The Company should strengthen its involvement with its agency force through more direct control with respect to supervision and training; offering training programs specifically designed to focus on compliance with the requirements of the regulation.
- c). The Company should take steps in order to ensure that the existing company is notified within the required five (5) business days in accordance with Regulation 2001-3 § 5 A.

² Replacement Regulation 2001-3, became effective March 1, 2002 and applies to replacements made on and after March 1, 2002. Vermont Insurance Regulation 88-2 applies to replacements made before March 1, 2002. Both of the regulations are hereinafter referred to as “Replacement Regulation”.

d). The Company should adhere to its newly implemented procedure, designed to automatically log replacements into the replacement register, and conduct periodic reviews in order to determine the effectiveness of the program.

e). The Company should furnish notification and full disclosure, to each of the affected policyholders, of the Company's failure to inform them of their right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract. Upon notifying the affected policy/contract holders, the Company should at that time provide the required thirty (30) days notice to receive an unconditional full refund of all premiums or considerations paid in an effort to make those policy/contract holders whole.

The Department, upon due consideration, accepts the findings of fact and conclusions of the Examiners as set forth in Section IV and Section III (D) of the Report. The Examination Report reveals that the Company has violated numerous sections of the Replacement Regulation as cited by the Examiners. These violations of the Replacement Regulation are deemed, pursuant to § 8 of the Replacement Regulation to be an unfair or deceptive act or practice in the business of insurance and a violation of the Vermont Insurance Trade Practices Act.

10. The Examiners, in Section V ("Section V") of the report titled, *BUYER'S GUIDE*, examined the Company's adherence to the disclosure requirements contained within Vermont Insurance Bulletin 110 titled, *Indexed Annuities*, ("Bulletin 110") and Vermont Insurance Bulletin 121 titled, *Indexed Life Insurance Products*, ("Bulletin 121"). The Examiners found that in one hundred and eighty-two (182) cases the Company failed to provide evidence that the policyholder(s) received a copy of the buyer's guide. The Examiners point out that Bulletin 110 contains the specific requirement that: "[a] copy signed by the insured or certificate holder, indicating the

receipt of a copy of the buyer's guide and an understanding of its disclosures, must be kept in the insurers records". (emphasis in original). The Examination Report reveals that the Company did not comply with various requirements of Bulletin 121 Sections (D) and (E). The Examiners list the particular sections of Bulletin 121 that the Company did not comply with and offer a brief description of each instance in which the Company did not comply.

The Company states in its submission that it believes that Bulletin 110 is not law, therefore, no action can be taken by the Department as a result of the Company's non-compliance. The Company further states that it has enhanced its procedures for compliance with Bulletin 110 by implementing additional quality control mechanisms, but does not specify what those mechanisms are. The Company, in its submission, offered no comment on the findings with regards to Bulletin 121.

The Examiners recommend that the Company should take steps to ensure that all policyholders are provided with a copy of the buyer's guide and that a signed receipt be part of the Company's records of each sale. The Examiners also recommend that the Company implement procedures that ensure full compliance with the requirements of Bulletin 121.

The Department, upon due consideration, accepts the findings of fact and conclusions of the Examiners as set forth in Section V of the Report. While the company correctly points out that Bulletin 110 does not have the effect of a Vermont Insurance law, it is a notice from the Department that advises the Company what the Department considers to be part of an adequate full disclosure of an indexed annuity product to a Vermont consumer. Bulletin 110, in essence, warns the Company that anything less than

the disclosures required will not be accepted. The Act at §4724 (13) deems the failure to adequately disclose to the public, the true nature of the policy being offered, an unfair or deceptive act or practice in the business of insurance. Although the Company made no comment, the same analysis would apply to Bulletin 121. The Examination Report, in Section V, reveals that the Company violated the Act.

11. The Examiners, in Section VI ("Section VI") of the report titled, *CLAIMS PRACTICES AND PROCEDURES*, examined Death Benefits paid by the Company during the examination period. The Examiners found that the Company reported erroneous entries when reporting death benefits paid for the years 2002, 2003 and 2004 in the Company's Vermont Annual Statement State Pages. The Examiners also found that the Company did not pay interest on death benefits in conformance with 8 V.S.A. §3665. In fifty-five (55) cases the Company failed to pay any interest on the claim and one (1) claim was paid with an interest rate of 3.5%, rather than the statutorily required rate of 6%. Additionally, the Company was found to be in violation of 8 V.S.A. § 3665 (d) with respect to two (2) cases in which Allianz failed to pay the claims in a timely manner (within 30 days from receipt of proof of loss). During the timeframe of the examination period the Company's procedure guidelines with respect to annuity death claims did not include the requirement that the penalty claim interest (12%) be paid on those claims not paid within thirty (30) days from receipt of proof of death as required by 8 V.S.A. § 3665 (d).

The Company did not address Section VI in its submission. The Company's only comments on this section are those alluded to by the Examiners in the Examination Report.

The Examiners, in Section VI (A), recommend that the Company file amended Annual Statements' State Pages for the years 2002 and 2003 with the Department and adhere to the Company's proposal to implement additional checks and balances, second level reviews and control templates which would ensure that correct financial information is reported in the Company's financial statements. The Examiners, in Section VI (B) recommend that the Company go back as far as the Vermont Department deems appropriate and pay with interest those amounts due to the beneficiaries of the affected insureds. Additionally, the Examiners recommend that the Company implement procedures by which full compliance with 8 V.S.A. § 3665 (c) (2) and (d) would be assured. The Examiners, in Section VI (C), recommend that the Company adhere to its newly developed procedure whereby statutory interest is paid on lump sum amounts where the annuity claim was not paid within 30 days after receipt of a properly executed proof of loss.

The Department, upon due consideration, accepts the findings of fact and conclusions of the Examiners as set forth in Section VI of the Report. The Examination Report reveals that the Company violated 8 V.S.A § 3561 and 8 V.S.A. § 3665.

12. The Examiners, in Section VII ("Section VII") of the report titled, *COMPLAINTS*, examined complaints received by the Company during the examination period and recorded on the Company's complaint record. The Examination Report sets out a summary of the complaints reviewed for the period of the examination setting forth the complaint number, reason/s for the complaint, how the complaint was resolved and the Examiners' comments. The Examiners found that the Company failed to file the required summary sheet (Annual Report) of its complaint records in violation of

Insurance Regulations 99-1 § 4 A. (4)(c) and 76-1 § 5. Additionally, the Examiners found that a portion of “free look” cancellation requests included written statements primarily expressing a grievance that were not included among the reported complaints in violation of the Act.

The Company does not agree with the Examiners’ criticism and recommendations. The Company believes that the criticisms and recommendations are based on a miscommunication between the Company and the Examiners about how the Examiners wished to review the Company’s complaint register. The Company states that the information requested by the Examiners was available. The Company further states that its complaint register is updated on a quarterly basis to ensure accuracy.

The Examiners, in Section VII (A), recommend that the Company should take steps that would ensure that the complaint register contains accurate and updated information with respect to the resolution and dates of resolution of complaints pursuant to the requirements of Insurance Regulation 99-1 § 4 A. (4)(b). The Company should improve its procedures regarding the process of inputting dates into their complaint tracking system ensuring full compliance with the requirements of Insurance Regulation 79-2 § 5 C. The Examiners recommend, in Section VII (B) that going forward the Company adheres to its plan to submit timely annual reports to the Department.

The Department, upon due consideration, accepts the findings of fact and conclusions of the Examiners as set forth in Section VII of the Report. The Examination Report reveals that the Company violated Insurance Regulation 99-1 and Insurance Regulation 76-1.

13. The Examiners, in Section VIII (“Section VIII”) of the report titled, *REPORTS*

OF LEGAL ACTIONS INVOLVING OTHER INSURANCE DEPARTMENTS, examined the Company filings with the Department pursuant to Bulletin 30. Bulletin 30 requires that the Company maintain and file with the Department a list of actions of insurance departments of other states against the Company or by the Company against an insurance department of another state. The Examiners found that the Company was noncompliant with the requirements of Bulletin 30 by failing to file the prescribed notifications with the Vermont Department during the examination period.

The Company did not address Section VIII in its submission. The Examination Report notes that the Company represented that it would resubmit the filings in the required format by September 15, 2006 and that going forward it will complete the annual filings required by Bulletin 30, in the required format, by the due date of April 15th.

The Examiners recommend that the Company implement procedures which would ensure accuracy in reporting legal actions involving other insurance departments and take corrective actions which would bring the Company into full compliance with the requirements of Bulletin 30.

The Department, upon due consideration, accepts the findings of fact and conclusions of the Examiners as set forth in Section VIII of the Report. Bulletin 30 requires the Company to report certain information in addition to that required in the annual statement. The Examination Report reveals that the Company violated 8 V.S.A. § 3561.

Order

IT IS THEREFORE ORDERED by the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration that:

- A. The *MARKET CONDUCT EXAMINATION OF THE ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA AS OF DECEMBER 31, 2005 BY VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES AND HEALTH CARE ADMINISTRATION* (which is incorporated herein by reference) shall be and hereby is adopted with the following modifications and amendments:
- B. Allianz shall cease and desist from using brochures or marketing materials that contain references to an “immediate bonus”, brochures titled *Sales Strategies to Help Capture the CD Market* and brochures that contain the following language: *Lock in annual gains – assures you your highest value in the future*, in the sale and marketing of annuity products. Allianz shall pay an administrative penalty in the amount of ten thousand dollars (\$10,000.00) for violation of 8 V.S.A. § 4723.
- C. Allianz shall submit to the Department for approval within 60 days of the signing of this order, a remediation plan for those Vermont consumers sold equity indexed annuities during the time period of January 1, 2002 to June 30, 2005 in all instances in which there is no suitability documentation or insufficient suitability documentation. The plan shall include the procedures described in Exhibit 4 attached. The Commissioner may approve such plan, disapprove such plan, or approve such plan with conditions. The Commissioner shall retain jurisdiction over Allianz and the subject matter of the plan in the event that the

plan submitted is disapproved or approved with conditions and to monitor implementation of the plan.

- D. Allianz shall submit to the Department for approval within 60 days of the signing of this order, a plan for determining whether an annuity is suitable for a particular applicant that shall include the systems, standards and procedures described in Exhibits 1, 2 and 3 attached. The Commissioner may approve such plan, disapprove such plan, or approve such plan with conditions. The Commissioner shall retain jurisdiction over Allianz and the subject matter of the plan in the event that the plan submitted is disapproved or approved with conditions and to monitor implementation of the plan
- E. Allianz shall submit to the Department for approval within 60 days of the signing of this order, a plan of remediation for those Vermont consumers sold equity indexed annuities from July 1, 2005 to the present by those agents that were terminated for cause, investigated and/or for which complaints were received alleging misconduct and those agents where regulatory action was taken. The plan shall include the procedures described in Exhibit 5 attached. The Commissioner may approve such plan, disapprove such plan, or approve such plan with conditions. The Commissioner shall retain jurisdiction over Allianz and the subject matter of the plan in the event that the plan submitted is disapproved or approved with conditions and to monitor implementation of the plan.
- F. Allianz shall submit to the Department for approval within 60 days of the signing of this order, a corrective action plan for the adequate supervision and training of its agency force. The Commissioner may approve such plan, disapprove such

plan, or approve such plan with conditions. The Commissioner shall retain jurisdiction over Allianz and the subject matter of the plan in the event that the plan submitted is disapproved or approved with conditions and to monitor implementation of the plan.

- G. Allianz shall submit to the Department for approval within 60 days of the signing of this order, a plan addressing how it will amend its procedures so as to ensure that a notice of appointment will be filed on a producer within the timeframe required by 8 V.S.A. § 4813 I (d). The Commissioner may approve such plan, disapprove such plan, or approve such plan with conditions. The Commissioner shall retain jurisdiction over Allianz and the subject matter of the plan in the event that the plan submitted is disapproved or approved with conditions and to monitor implementation of the plan. Allianz shall pay an administrative penalty in the amount of two thousand five hundred dollars (\$2,500.00) for violation of 8 V.S.A. § 4813I (d).
- H. Allianz shall appoint Company personnel within its underwriting department to have the sole responsibility of reviewing applications which involve replacement transactions in order to ensure full compliance with the specific requirements of the Vermont Replacement Regulation including, but not limited to, the requirement of any “free look period” and provide periodic reports, designed to identify problematic areas, to a supervisory unit. These reports shall be made available to the Department upon request.
- I: Allianz shall, within sixty (60) days of the signing of this order, implement training programs that all employed or appointed contracted insurance producers

are required to successfully complete designed to focus on compliance with the specific requirements of the Vermont Replacement Regulation. The training program shall be reasonably designed to strengthen Allianz's involvement with producers through more direct control with respect to supervision and training.

- J. Allianz shall take steps to ensure that the existing company is notified within the required 5-day period pursuant to the Vermont Replacement Regulation.
- K. Allianz shall adhere to its newly implemented procedure, designed to automatically log replacements into the replacement register, and conduct periodic reviews in order to determine the effectiveness of the program.
- L. Allianz shall furnish written notification with a full disclosure, to each of the fourteen (14) affected policy/contract holders (See Section IV (H) of the examination report), of the Company's failure to inform them of their right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract. Upon notifying the affected policy/contract holders, the Company should at that time provide the required thirty (30) days notice to receive an unconditional full refund of all premiums or considerations paid in an effort to make those policy/contract holders whole. Allianz shall audit its annuity replacement files for situations where the 30-day free look notice was not provided for the period

January 1, 2002 through December 31, 2005, and Allianz shall provide the Department with a spreadsheet, in Excel spreadsheet format (electronically and in paper copy), fully documenting such audit. Allianz shall prepare a written notice and disclosure to all affected replacement policyholders describing their right to a 30-day free-look period and shall file such notice and disclosure within thirty (30) days of the date of this Order for the Department's review and approval. The notice shall apprise every policyholder that he/she will be given the opportunity to return their policy for a full refund of their existing account value without surrender penalties within the 30-day free look period. In the case of variable annuities where the value is less than the total of the premiums paid, the contract owner shall be offered the return of premiums paid. Allianz shall send a copy of such approved notice and disclosure to each affected policyholder within thirty (30) days of the date of the Department's approval of the form of notice and disclosure.

- M. Allianz shall pay an administrative penalty in the amount of one hundred fifty thousand dollars (\$150,000.00) for violation of the Replacement Regulation.
- O. Allianz shall, within sixty (60) days of the signing of this order, implement a procedure designed to ensure that Insurance Producers adequately disclose indexed annuity products to Vermont consumers pursuant to Vermont law, including any required disclosure of informational material in the form of the "Buyers Guide" and any requirements that the disclosure materials be signed by the policyholder affirming receipt and understanding of the disclosure materials. Allianz shall, in addition, within sixty (60) days of the signing of this order,

implement a procedure designed to ensure that Allianz complies with the record retention requirements contained in the disclosure requirements of Vermont laws and Vermont regulations, including any requirement that the disclosure materials signed by the policyholder be kept in Allianz's records. Allianz shall report to the Department on the development of the procedure.

- P. Allianz shall pay an administrative penalty in the amount of one hundred eighty-two thousand dollars (\$182,000.00) for violation of 8 V.S.A. § 4723 for failure to adequately disclose to the public the true nature of the policies offered.
- Q. Allianz shall file amended Annual Statements' State Pages for the years 2002 and 2003 with the Department. Allianz shall implement a procedure to ensure it is complying with the laws, regulations and requirements of Vermont regarding the reporting of complaints, legal actions/administrative actions (Bulletin 30) and the filing of annual reports, including that its complaint register contain accurate and updated information with respect to the resolution and dates of resolution of complaints, accuracy in reporting insurance departments' legal and administrative actions taken against it and that the filing of annual reports is timely. Allianz shall pay an administrative penalty in the amount of one thousand dollars (\$1,000.00) for violation of 8 V.S.A. § 3561.
- R. Allianz shall within sixty (60) days of the signing of this order, audit its life claims and annuity death claims where the beneficiary(s) elected a lump sum payment, since January 1, 2001 to the date of this order to ensure that the interest rate paid to claimants was in compliance with the requirements of 8 V.S.A. § 3665. Allianz shall submit to the Department for approval, in the form of a

spreadsheet format provided by the Department, the amounts paid, interest paid, and dates thereof for each such claim and then shall make any interest payments due within 30 days after notice of the Department's approval of the audit. Allianz shall implement procedures to assure that death benefits are paid according to Vermont laws, including on lump sum amounts where the annuity claim was not paid within 30 days after receipt of a properly executed proof of loss. Allianz shall report to the Department on the development of the procedures.

- S. The Company, in total, shall pay **Three Hundred Forty-Five Thousand Five Hundred Dollars (\$345,500.00)** to the Vermont Department of Banking, Insurance, Securities and Health Care Administration for the herein above described violations. Payment shall be made no later than 10 days after the expiration of the appeal deadline of this Order, or other administrative or judicial order as appropriate.
- T. The Company shall pay the Department's reasonable costs and expenses associated with this Order and the Examination pursuant to 8 V.S.A. § 18 no later than 10 days after receipt of the Department's final invoice, or other administrative or judicial order as appropriate. The Department's reasonable costs and expenses do not include the cost of retaining the Examiners, which has been borne by the Company pursuant to 8 V.S.A. § 3573.
- U. All costs and expenses associated with and arising out of all remediation plans ordered in this Order shall be paid by Allianz, including, but not limited to, the Department's reasonable costs and expenses associated with the remediation plan,

costs and expenses of third party arbitrators and costs and expenses of financial planners.

PURSUANT TO 8 V.S.A. § 3574(c), THIS ORDER AND REMEDIAL ACTION SET FORTH HEREIN MAY BE APPEALED TO THE COMMISSIONER BY FILING AN ADMINISTRATIVE APPEAL WITHIN THIRTY (30) DAYS OF THE DATE SET FORTH BELOW. FURTHER REMEDIAL ACTIONS AND PENALTIES ORDERED UPON RECEIPT OF INFORMATION ORDERED HEREIN MAY BE APPEALED WITHIN THIRTY (30) DAYS OF SUBSEQUENT DECISIONS BY THE DEPARTMENT.

Dated at Montpelier, Vermont this 24th day of June, 2007

Department of Banking, Insurance,
Securities and Health Care Administration

By: Paulette J. Thabault
Paulette J. Thabault, Commissioner
Department of Banking, Insurance, Securities and
Health Care Administration

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
AND HEALTH CARE ADMINISTRATION**

IN RE: ALLIANZ LIFE INSURANCE)
COMPANY OF NORTH AMERICA)

DOCKET NO. 09-066-I

EXHIBIT 1

DEFINITIONS

1. "Annuity" shall mean any fixed interest or fixed index deferred annuity issued by the Company with a deferral period of one (1) year or more.
2. "Policyholder" shall mean the current or former owner of an Annuity who was a Vermont resident or domiciled in Vermont at the time the annuity was purchased. "Policyholder" includes the heirs and successors of the Annuity owner.
3. "Applicant" shall mean any Vermont resident who applies to purchase an Annuity.
4. "Income" shall mean the earned and investment income received by an Applicant and, if a member of the same household, the earned and investment income of the Applicant's spouse/partner. "Income" shall include, but is not limited to, salary and wages; Social Security payments; payments from an individual retirement account ("IRA") and other similar retirement plans, including a pension; payments from annuities that have been annuitized; interest payments; rental income; and profits or losses from the sale of a business or asset. "Income" shall not include income currently earned on funds an Applicant intends to invest in an Annuity.

5. "Living Expenses" shall mean the expenses incurred by an Applicant and, if a member of the Applicant's household, the expenses of the Applicant's spouse/partner. "Living Expenses" shall include, but are not limited to, rent, mortgage, and other household maintenance costs, including utilities; insurance premiums; health care, medical and prescription drug costs, including deductibles and co-pays; nursing home and assisted living costs; taxes (including income, FICA and property taxes); support for dependants; food costs; transportation costs; membership costs; and vacation and recreation costs.
6. "Disposable Income" shall mean monthly household Income minus monthly household Living Expenses.
7. "Liquid Assets" shall mean the value of assets owned by an Applicant and, if a member of the same household, the value of assets owned by the Applicant's spouse/partner, that could readily convert to cash without the imposition of fees or penalties. A liquid asset has the ability to be easily converted to cash through the act of buying or selling without causing a significant movement in price and with minimum loss of value. "Liquid Assets" shall include, but are not limited to, any amount in a checking, savings, or money market account; and amounts invested in stock, bonds, mutual funds, or other investments that are easily converted to cash without the imposition of fees or penalties. "Liquid Assets" shall not include any amount that an Applicant may withdraw from the Annuity that is being applied for by the Applicants. "Liquid Assets" also shall not include personal belongings or other personal property of an Applicant, including but not limited to, jewelry, furnishings or vehicles.

8. "Net Worth" shall mean the value of assets owned by an Applicant and, if a member of the same household, the value of assets owned by the Applicant's spouse/partner minus the total debt of the Applicant, and if applicable, the Applicant's spouse/partner.
9. The procedure for determining the suitability of a sale will take into account, at a minimum, the suitability information as identified in exhibit #2. Special attention must be given to the issue of liquidity. Any surrender charges or other fees applied as a result of canceling, making withdrawals, or other policy changes can result in significant financial loss to the applicant and consequently this area must be looked at and reviewed closely when determining if the policy is in the best interest of the applicant. The Company must set a reasonable standard for a minimum cash reserve that an applicant must keep in order to meet expected cash demands during the surrender period of the policy. Training on how to implement this standard must be provided to its producers. Consequently, a minimum amount of essential data with a focus on liquidity must be reviewed to make a reasonably accurate decision of whether the policy is suitable for the applicant. See exhibit #3 for the minimum financial information needed. The data, (at a minimum that contained in exhibits 2 and 3), must be retained to document the decision on suitability in the event there is a question of suitability in the future as a result of a regulatory exam or an Applicant's complaint. The procedure shall contain a minimum retention period equal to the longer of the policy surrender charge period or any other time period where the applicant could incur loss from the annuity's value as a result of a policy provision. Although the Company may delegate to its appointed producers or contract with a

third party to retain the data, the Company will be ultimately responsible for suitability determinations and to provide the necessary data to support the determination that a policy is suitable and such delegation and/or third party contract will not relieve the Company of this responsibility. If the data to support the determination that a policy is suitable is not provided in a reasonable amount of time, the policy will be deemed unsuitable.

The basic suitability review process will include at a minimum:

- a. Obtain and retain all necessary suitability information as identified in exhibits #2 and #3.
- b. Conduct a review of the suitability information by a trained company representative who makes a determination that the sale is suitable. This review must be documented in the policyholder's file to include the name of the individual who determined the sale was suitable and the date the review was done.
- c. Development and implementation of a program to audit sales for suitability. This audit should at a minimum be done annually on the prior years sales. The person who conducts the required audit must be independent from, and not, directly or indirectly, subject to direction, control or influence by individuals with responsibility for, or interest in, sales or marketing. The audit reports and documentation must be retained for a period of five years or the surrender period that applies to the policy's audited if longer than five years.

10. The Company will enhance its suitability review for any applicant that meets a threshold test that identifies higher than normal liquidity needs. Such threshold tests

shall include the following: if, on the date of application, the Applicant is 65 years of age or older and:

- a. has Liquid Assets, after purchase of the Annuity, of less than or equal to \$75,000; or
- b. anticipates a significant increase in Living Expenses or a significant reduction in Net Income or Liquid Assets during the Annuity's deferral or surrender charge period, whichever is longer; or
- c. the premium paid for the Annuity exceeds twenty-five (25) percent of the Applicant's Net Worth; or
- d. the Applicant's annual income is less than or equal to \$20,000; or
- e. the premium paid for the Annuity is greater than four (4) times the annual Income of the Applicant.

The dollar amounts referenced in this paragraph 10 shall increase on January 1, 2010, and each year thereafter, by the amount equal to the consumer price index. The Company and its agents shall not consider an Annuity to be suitable for an Applicant simply because none of the thresholds set forth in this paragraph 10 are triggered with respect to the particular Applicant.

If Elevated Review is triggered, Respondent shall only issue the Annuity if a second review is done by a person who is not receiving a direct compensation incentive for this sale, is trained on the Company suitability standards and he or she determines and documents in the Company file specific, objective evidence that clearly establishes that the sale is suitable to the Applicant in light of his or her stated financial condition, needs and objectives. The review results and

documentation must be retained for a period of five years or the surrender period that applies to the policy's audited if longer than five years.

11. The Company will require its agents at the time of application to complete and submit to the Company a product suitability form as part of the application process, which, at a minimum, will incorporate substantially similar language to and all of the information and data requested in Exhibits 2 and 3 attached hereto. The Company shall submit a plan within 60 days of the signing of this order to the Department for approval describing how this new requirement to determine suitability will be implemented and what training will be given to their producers.
12. The Company will continue to develop and implement policies and procedures to further monitor agents, review sales, and take other actions as the Company deems appropriate, against agents who demonstrate a pattern of submitting applications determined to be unsuitable.
13. The Company will fully implement paragraphs 9-12 of this Order by January 1, 2010.

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
AND HEALTH CARE ADMINISTRATION**

IN RE: ALLIANZ LIFE INSURANCE)
COMPANY OF NORTH AMERICA)

DOCKET NO. 09-066-I

EXHIBIT 2

Required suitability information

1. Age
2. Monthly and annual Household income (see exhibit 3)
3. Monthly and annual Household expenses (see exhibit 3)
4. Disposable Household income (see exhibit 3)
5. Household Net worth (see exhibit 3)
6. Household Liquid net worth (see exhibit 3)
7. Applicant's financial objectives for purchasing this annuity
8. Source of funding for this annuity.
9. Tax status
10. Cost and benefit of any replaced financial product including any surrender charges, deferred sales charges or other penalties or costs resulting from accessing the money to purchase this annuity.
11. Any anticipated significant changes in the applicant's household monthly income or living expenses or liquid assets during the total period covering any surrender or deferral period of the annuity that is being recommended. Examples include a reduction in income caused by retirement or pension changes or an increase in expenses such as housing, medical, nursing home, assisted living or travel expenses.
12. Any other information the insurer requires the insurance producer to consider prior to making a recommendation.

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
AND HEALTH CARE ADMINISTRATION**

IN RE: ALLIANZ LIFE INSURANCE
COMPANY OF NORTH AMERICA

DOCKET NO. 09-066-I

EXHIBIT 3

FINANCIAL INVENTORY

Monthly household income

income

Disposable Monthly Income

Salary/Wages

Total monthly income

Social Security Payments

minus total monthly expenses

**Total Disposable monthly
income**

Pension/Retirement Benefits

Interest/Divident Income(do not
include any interest or dividend income
received on the money used to
purchase this annuity)

Rental Income

Other income.

Total monthly Income

Monthly household expenses

expenses

Rent/Mortagage payment

Utilities

Debt repayment

Transportation

food

Health Care

Taxes

Insurance

Support for Dependents

Charitable Donations

travel

other expenses

Total monthly Expenses

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
AND HEALTH CARE ADMINISTRATION**

IN RE: ALLIANZ LIFE INSURANCE)
COMPANY OF NORTH AMERICA)

DOCKET NO. 09-066-1

**EXHIBIT # 4
RESTITUTION PLAN**

All definitions set out in Exhibit 1 are hereby incorporated into and made part of this Exhibit 4. Throughout this document "Department" or "BISHCA" refer to the Vermont Department of Banking, Insurance, Securities and Health Care Administration, and "Company" refers to Allianz life Insurance Company of North America.

1. The Company will identify all equity indexed annuity policies sold in Vermont during the time period of January 1, 2002 through June 30, 2005.
2. The Company will review each policyholder's file that was identified in step #1 above to determine if sufficient suitability documentation is available.
3. If **sufficient documentation is available**, the Company will make a determination if the sale was suitable.
4. If the Company finds the sale was not suitable, an offer will be determined and a mailing will be sent. This offer will be for all premiums paid plus surrender charges paid, if any, less withdrawals plus interest at the rate of 4% per annum. The content of the offer letter must be approved by BISHCA.
5. If the Company finds the sale was suitable, the file will be given to BISHCA for a review.
6. If BISHCA agrees with the Company's determinations regarding the availability of sufficient suitability documentation and suitability then the file is not considered eligible under the order.
7. If BISHCA does not agree with the Company's determinations regarding the availability of sufficient suitability documentation and/or suitability then the policyholder will be treated the same as policyholders in step # 8 and will be sent a mailing.
8. If **sufficient documentation is not available** to determine if the sale was suitable, then the policyholder's name and address is sent to BISHCA for a mailing. BISHCA will send out a letter to the policyholder asking him/her if he/she wishes to have their sale reviewed to determine if it was an appropriate recommendation. The policyholder will be told that if the recommendation is found to be inappropriate he/she will receive an offer to cancel the policy and receive his/her premiums back plus surrender charges paid, if any, plus interest at a rate of 4% per annum. The policyholder will be offered the counsel of a financial planner.

The financial planner will be jointly chosen by BISHCA and the Company. The Company will pay all costs and expenses of the financial planner.

9. If the policyholder sends BISHCA the return request for a review, then the file is reviewed by BISHCA to determine what additional information is needed to make a determination if the sale was suitable and BISHCA will send out a request for additional information.
10. If sufficient information is provided to BISHCA, then the file is returned to the Company for a review.
11. If the Company finds the sale was not suitable, an offer will be determined and a mailing will be sent. This offer will be for all premiums paid plus surrender charges paid, if any, less withdrawals plus interest at a rate of 4% per annum. . The content of the offer letter must be approved by BISHCA.
12. If the Company finds the sale was suitable the file is given to BISHCA for a second review.
13. If BISHCA agrees with the Company, then the file is not considered eligible under the order.
14. If BISHCA disagrees with the Company, the Company and BISHCA will have a meeting to determine if an agreement can be reached. (agreed suitable not eligible/agreed unsuitable eligible)
15. If BISHCA and the Company cannot reach an agreement, then the file is sent to an arbitrator who makes the final decision.
16. If the **arbitrator determines the sale was suitable**, then policyholder is not eligible under the order.
17. If the **arbitrator determines the sale was unsuitable**, an offer will be determined and a mailing will be sent. This offer will be for all premiums paid plus surrender charges paid, if any, less withdrawals plus interest at a rate of 4% per annum The content of the offer letter must be approved by BISHCA.
18. BISHCA, the Company and the arbitrator shall construe all facts and circumstances in the light most favorable to the policyholder.

The arbitrator referred to in paragraphs 15, 16, 17, and 18 shall be an independent third party mutually selected by BISHCA and the Company. The Company shall pay all reasonable fees and expenses of the arbitrator. .

The Company shall pay BISHCA's costs and expenses, including reasonable attorney's fees.

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
AND HEALTH CARE ADMINISTRATION**

IN RE: ALLIANZ LIFE INSURANCE)
COMPANY OF NORTH AMERICA) DOCKET NO. 09-066-I
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**EXHIBIT #5
RESTITUTION PLAN**

All definitions set out in Exhibit 1 are hereby incorporated into and made part of this Exhibit 4. Throughout this document "Department" or "BISHCA" refer to the Vermont Department of Banking, Insurance, Securities and Health Care Administration, and "Company" refers to Allianz life Insurance Company of North America.

1. The Company will identify all equity index annuity policies sold in Vermont during the time period of July 1, 2005 to the present that were sold by producers who were:
 - a. Terminated for cause or
 - b. Had complaints against them or were investigated by the Company for misconduct or
 - c. Had regulatory actions taken against them.
2. The Company will review each policyholder's file that was identified in step #1 above to determine if sufficient suitability documentation is available.
3. If **sufficient documentation is available**, the Company will make a determination if the sale was suitable.
4. If the Company finds the sale was not suitable, an offer will be determined and a mailing will be sent. This offer will be for all premiums paid plus surrender charges paid, if any, less withdrawals plus interest at the rate of 4% per annum. The content of the offer letter must be approved by BISHCA.
5. If the Company finds the sale was suitable, the file will be given to BISHCA for a review.
6. If BISHCA agrees with the Company's determinations regarding the availability of sufficient suitability documentation and suitability, then the file is not considered eligible under the order.
7. If BISHCA does not agree with the Company's determinations regarding the availability of sufficient suitability documentation and/or suitability, then the policyholder will be treated the same as policyholders in step # 8 and will be sent a mailing.
8. If **sufficient documentation is not available** to determine if the sale was suitable, then the policyholder's name and address is sent to BISHCA for a mailing. BISHCA will send out a letter to the policyholder asking him/her if he/she wishes

to have their sale reviewed to determine if it was an appropriate recommendation. The policyholder will be told that if the recommendation is found to be inappropriate he/she will receive an offer to cancel the policy and receive his/her premiums back plus surrender charges paid, if any, less withdrawals plus interest at the rate of 4% per annum. The policyholder will be offered the counsel of a financial planner. The financial planner will be jointly chosen by BISHCA and the Company. The Company will pay all costs and expenses of the financial planner.

9. If the policyholder sends BISHCA the return request for a review, then the file is reviewed by BISHCA to determine what additional information is needed to make a determination if the sale was suitable and BISHCA will request the additional information.
10. If sufficient information is provided to BISHCA, then the file is returned to the Company for a review.
11. If the Company finds the sale was not suitable, an offer will be determined and a mailing will be sent. This offer will be for all premiums paid plus surrender charges paid, if any, less withdrawals plus interest at the rate of 4% per annum. The content of the offer letter must be approved by BISHCA.
12. If the Company finds the sale was suitable the file is given to BISHCA for a second review.
13. If BISHCA agrees with the Company, then the file is not considered eligible under the order.
14. If BISHCA disagrees with the Company, the Company and BISHCA will have a meeting to determine if an agreement can be reached. (agreed suitable not eligible/agreed unsuitable eligible)
15. If BISHCA and the Company cannot reach an agreement, then the file is sent to an arbitrator who makes the final decision.
16. If the **arbitrator determines the sale was suitable**, then policyholder is not eligible under the order.
17. If the **arbitrator determines the sale was unsuitable**, an offer will be determined and a mailing will be sent. This offer will be for all premiums paid plus surrender charges paid, if any, less withdrawals plus interest at the rate of 4% per annum. The content of the offer letter must be approved by BISHCA.
18. BISHCA, the Company and the arbitrator shall construe all facts and circumstances in the light most favorable to the policyholder.

The arbitrator referred to in paragraphs 15, 16, 17 and 18 shall be an independent third party mutually selected by BISHCA and the Company. The Company shall pay all reasonable fees and expenses of the arbitrator.

The Company shall pay BISHCA's costs and expenses, including reasonable attorney's fees.