COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS, Plaintiff, v. ANDREW W. CROWTHER, JR., KATHLEEN J. BURKE, CYRUS A. KILGORE, JEFFREY B. KILGORE, and KILGORE INSURANCE AGENCY Defendants, and CYRUS A. KILGORE and JEFFREY B. KILGORE, INDIVIDUALLY AND AS TRUSTEES AND BENEFICIARIES OF THE KILGORE FAMILY REALTY TRUST, Reach & Apply Defendants.	COMPLAINT Civil Action No. 09-5416

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SUPERIOR COURT - CIVIL
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

I. INTRODUCTION

1. This is a civil action for injunctive relief, civil penalties, attorneys fees, damages and restitution brought by the Attorney General, Martha Coakley, on behalf of the Commonwealth of Massachusetts (the "Commonwealth") pursuant to M.G.L. c. 93A, §4; M.G.L. c. 12, §10; M.G.L. c. 175, §§162R, 168, and 170; M.G.L. c. 176D, §3; and the common law of unjust enrichment.

2. The Commonwealth, through the Office of the Attorney General (the "AGO"), seeks to hold responsible Andrew W. Crowther, Jr., Kathleen J. Burke, Cyrus A. Kilgore, Jeffrey B. Kilgore, and the Kilgore Insurance Agency ("Kilgore Insurance") for the unfair and deceptive acts and practices they

committed in providing insurance brokerage services. The Defendants devised a vast scheme and artifice to defraud by which they routinely and significantly overcharged numerous clients for the placement of insurance.

A. The Basic Scheme

3. The basic scheme was as follows. The Defendants, who operate as retail insurance brokers, would seek to place insurance for a client (usually with a so-called "surplus lines" insurance carrier) and would obtain a premium quote for this purpose from the insurance carrier via a second intermediary (a "wholesale" or "surplus lines" broker).

4. This premium quote would nearly always include *a commission on offer to the Defendants, normally around 10% of the policy premium.* The typical business practice in the commercial surplus lines market, where there are often two brokers involved, is for the two brokers to split the (gross) commission offered by the insurance carrier. This results in a commission "split" to the retail broker (such as Kilgore Insurance) of at or near 10% of the premium (ranging from 7.5% to 12%). (The term "commission" refers to any broker compensation included in a premium and set by the insurance carrier, whereas the term "fee" – or "broker fee" or "agency fee" – refers to any broker compensation that is separately set by the insurance broker and the client, and directly charged to the client by the insurance broker.)

5. Upon receiving the premium quote, the Defendants would either (i) affirmatively reject the offered commission and instead add an undisclosed and often exorbitant agency fee to this amount and present this inflated figure as the actual premium to the client; or (ii) accept the commission on offer and *also* add the exorbitant undisclosed agency fee. *This agency fee amount, as well as the mere existence of an agency fee, remained at all times undisclosed to the client. Instead, clients assumed and*

understood that the Defendants were compensated in the typical manner: by means of a commission paid by the insurance carrier.

6. In those instances in which the Defendants affirmatively rejected the commission on offer (which was their typical practice with these clients), this commission amount *would not be deducted from the premium*; instead, the client would pay not only the undisclosed agency fee, but the commission amount as well. As such, whether the Defendants elected to keep the commission or reject it, *the clients would still pay the commission.*

7. In order to hide the true premium amount from their clients, the Defendants would then take affirmative, fraudulent steps to deceive the client, including without limitation (i) forging the client's signature on insurance documents that might reveal the actual premium, and (ii) materially altering the *actual insurance policies* prior to providing them to the client. For example, upon receiving the actual insurance policy for a client, the Defendants would often either physically remove the declarations page (which sets forth the true premium) or *they would erase or "white out" the true premium and then re-type the figure showing their inflated premium, with the undisclosed agency fee "rolled in".*

B. Initial Discovery of the Defendants' Unfair and Deceptive Acts

8. In August 2008, one of the clients victimized by the Defendants, Madison Security Group, Inc. ("Madison"), filed a lawsuit in Middlesex Superior Court against agent Crowther, Kilgore Insurance, Cyrus Kilgore and Jeffrey Kilgore (CV2008-02924) (the "Madison litigation"). The complaint alleged conduct identical to that set forth herein, including that the defendants charged excessive undisclosed agency fees, altered policy documents, and forged signatures, among other things. The Madison litigation was settled for an undisclosed sum in September 2009.

9. Prior to commencement of the Madison litigation, Kilgore Insurance and agent Crowther responded in writing to the allegations and demands made by Madison pursuant to M.G.L. c. 93A. ***Exhibit 1*** *(July 10, 2008 letter from Jeffrey Kilgore to Madison's Attorney, Chris Grant).* In this letter, Jeffrey Kilgore states the following:

> "You are … correct in concluding that unless asked otherwise, when we communicate the cost of insurance to our customers, we do not break-down items of fees, premium, surplus taxes, inspections costs, etc. … We simply provide a bottom line cost we are willing to accept to place and service the business. …
>
> However, as your client correctly learned, it is also our business practice to promptly provide a full accounting of all costs, fees, etc., upon request. …
>
> Another business practice we have, which we offered to Madison, is we reimburse our customers if they are dissatisfied with our service. …
>
> In any event, we stand ready to explain to any trier of fact the surplus market, the risks involved, the unregulated nature of that market, our bottom line billing practice combined with a full accounting upon request."

10. The issue of compensation charged directly to clients was addressed in quite a different manner by the Defendants several years prior. In a November 9, 2004 e-mail to Yvonne Torres of the Commonwealth's Division of Insurance (attached hereto as ***Exhibit 2***), Cy Kilgore writes:

> "dear ms Torres, I was given your e-mail after coming in to your office on monday as I would like to no [sic] when I deal with surplus ins. companies that present quotes on a net commission base [sic] what are the regulation [sic] controlling the amount of commission I can charge. My question does not relate to discloser [sic] *because obviously i would give full discloser* [sic]. If there is a regulation on this could you please provide me with a copy." (Emphasis added.)

11. Unlike the business practice outlined in the letter above (***Exhibit 1,*** *identified supra, ¶9*), Mr. Kilgore indicates in his e-mail to the Massachusetts Division of Insurance that Kilgore Insurance would "obviously" give full disclosure of "commissions" (agency fees) that they would charge to clients in the surplus lines insurance market. (He also suggests that Kilgore Insurance would charge this "commission" only when the surplus lines carrier presents a quote that offers no commission – that is, when the carrier "quotes on a net commission" basis. However, surplus lines insurance carriers

routinely offer a commission that is then split between the surplus lines broker and the retail broker. Such a commission cannot be deducted from the premium absent the affirmative request of the broker, which in this case rarely, if ever, occurred.) The Defendants have long been aware that their acts were (and are) both illegal and contrary to established insurance industry practice.

12. Following the commencement of the Attorney General's investigation, in and around the winter of 2008, the Defendants began "disclosing" that they were charging agency fees by means of a small-print footnote on insurance binders (which are issued only *after* insurance has been placed) and, in some instances, on insurance proposals. This "disclosure" states merely "premium includes surplus lines tax; policy fee and agency fee". Defendants refused to disclose to clients (much less to negotiate with clients) an itemization of agency fees, despite the fact that these fees represent thousands, sometimes tens of thousands, of dollars in additional unnecessary costs to clients.

13. Year after year, for at least the past ten years, the Defendants have charged numerous clients – approximately 100 or more, many year in and year out – these additional undisclosed agency fees, presenting them as actual premium and actively hiding them from the clients. And as noted, at times the Defendants charged not only the additional undisclosed agency fee, but were also compensated by means of the commission routinely offered by the insurance carrier. In the past approximately six years (2004 through April 2009), considering only the undisclosed agency fees charged and not any additional commissions, the Defendants profited collectively by this scheme, fraudulently charging and collecting nearly four million dollars from their clients. Moreover, these practices go back at least as far as 2000, which means the Defendants have profited by considerably more.

14. Because of the egregiousness and volume of the Defendants' unfair and deceptive acts, and because these acts may continue without judicial enforcement, the AGO now brings this action to enjoin permanently the Defendants from repeating their unlawful conduct in Massachusetts. The AGO

also seeks to recover restitution for the many harmed clients of the Defendants, as well as civil penalties, attorneys fees and costs, and other necessary relief pursuant to M.G.L. c. 93A, §4.

II. JURISDICTION AND VENUE

15. The Commonwealth of Massachusetts has an interest in preventing unfair or deceptive acts or practices, and preserving the rule of law, including M.G.L. c. 93A, M.G.L. c. 12, §10, M.G.L. c. 175, and the common law of unjust enrichment.

16. This Court has subject matter jurisdiction pursuant to M.G.L. c. 93A, §4, M.G.L. c. 12, §10, and M.G.L. c. 214, §1. Venue in Suffolk County is proper under M.G.L. c. 93A, §4 and M.G.L. c. 223, §5.

17. This Court has personal jurisdiction over the Defendants pursuant to M.G.L. chapter 223A, §§1 through 3.

III. THE PARTIES

18. The plaintiff is the Commonwealth of Massachusetts, represented by the AGO, which brings this action in the public interest.

19. Defendant Andrew W. Crowther, Jr. lives in Lynnfield, Massachusetts. He is, and was at all times relevant to this complaint, a licensed insurance producer working as an insurance broker or agent for, and on behalf of, the Kilgore Insurance Agency and its two owners and partners, Jeffrey B. Kilgore and Cyrus A. Kilgore.

20. Defendant Kathleen J. Burke lives in Methuen, Massachusetts. She is, and was at all times relevant to this complaint, a licensed insurance producer and customer service representative working as an employee of the Kilgore Insurance Agency and its two owners and partners, Jeffrey B. Kilgore and Cyrus A. Kilgore.

21. Defendant Cyrus A. Kilgore lives in Beverly, Massachusetts. He is, and was at all times relevant to this complaint, a licensed insurance producer and an owner of, and 50% partner in, the Kilgore Insurance Agency. Mr. Kilgore is a Trustee and presumed beneficiary of the Kilgore Family Realty Trust. This action is against Mr. Kilgore individually and in his capacity as (i) partner in the Kilgore Insurance Agency, and (ii) as Trustee of the Kilgore Family Realty Trust.

22. Defendant Jeffrey B. Kilgore lives in Marblehead, Massachusetts. He is, and was at all times relevant to this complaint, a licensed insurance producer and an owner of, and 50% partner in, the Kilgore Insurance Agency. Mr. Kilgore is a Trustee and presumed beneficiary of the Kilgore Family Realty Trust. This action is against Mr. Kilgore individually and in his capacity as (i) partner in the Kilgore Insurance Agency, and (ii) as Trustee of the Kilgore Family Realty Trust.

23. Reach and apply defendant, the Kilgore Family Realty Trust, is a Massachusetts real estate trust under Declaration of Trust recorded at the Essex County Registry of Deeds, Book 15981, Page 97 (October 6, 1999), and is the owner of certain real property located at 25 Gallison Avenue, Marblehead, Massachusetts. Upon information and belief, both Cyrus Kilgore and Jeffrey Kilgore hold beneficial interests in the Kilgore Family Realty Trust.

24. Defendant the Kilgore Insurance Agency ("Kilgore Insurance") is an insurance agency licensed as an insurance producer by the Commonwealth of Massachusetts. It is located at 5 Centennial Drive, Peabody, Massachusetts and is owned by Jeffrey B. Kilgore and Cyrus A. Kilgore. Jeffrey B. Kilgore and Cyrus A. Kilgore, who are brothers, operate Kilgore Insurance as a partnership in which each holds a 50% partnership interest.

IV. FACTS

A. Background: The Business of Surplus Lines Insurance

25. The Defendants were able to engage in their unfair and deceptive acts and practices largely by means of the surplus lines insurance business. Surplus lines (or "non-admitted") insurance carriers generally underwrite risks or parts of risks for which insurance is not available through an admitted insurance carrier. Such business is therefore placed with a non-admitted carrier in accordance with the state's surplus lines insurance laws. Surplus lines carriers are not subject to the full panoply of Massachusetts insurance regulations and do not participate in the Commonwealth's guaranty fund, which provides financial protection in the event of a carrier's insolvency. The Commonwealth levies a 4% tax on premiums paid for insurance purchased through surplus lines carriers.

26. Because of the additional risks noted above, the Commonwealth's Division of Insurance requires execution of a so-called "surplus lines affidavit" by any Massachusetts entity that purchases insurance through a surplus lines carrier. A surplus lines affidavit is signed by the insured party and notes (among other things) that the insured party is aware the surplus lines carrier (i) "is not licensed in this state and is not subject to Massachusetts [Division of Insurance] regulations" and (ii) "in the event of an insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund". The retail broker and the surplus lines broker must also sign the surplus lines affidavit. In addition, the surplus lines affidavit must set forth details about the relevant insurance policy *including the true policy premium.* A copy of the affidavit must be filed with the Division of Insurance and provided to the insured party.

27. As noted briefly above, most surplus lines carriers do not deal directly with the end client (the insured party), but instead use a surplus lines (or wholesale) broker – an insurance broker that has obtained a "special brokers" license from the Massachusetts Division of Insurance enabling it to place

surplus lines insurance. Much like surplus lines carriers, these brokers generally do not deal with the insured party, and as a result, retail brokers such as Kilgore Insurance are frequently involved in such placements. All paperwork having to do with placing the insurance goes through the retail insurance broker (either to/from the client or the surplus lines broker), including the applications, invoices, and the actual policies themselves. Insurance placements that are invoiced, or billed, through an insurance broker, rather than directly by the insurance carrier, are referred to as "agency-billed" policies.

28. The surplus lines broker is generally responsible for evaluating a given risk, approaching the insurance carriers to obtain premium quotes, and, in some instances, for binding and issuing the actual insurance policy. Premium quotes, binders, and insurance policies are then conveyed to the retail broker, who in turn is expected to convey that same information, unchanged, to the end client.

29. Despite these differences, placing insurance in the surplus lines markets is largely similar to placing insurance through admitted carriers. The surplus lines carrier is insuring against a certain risk – for example, the possibility that a liability claim will be brought against a security guard company – and is paid a certain sum of money by the insured to do so. This sum of money is the "premium" and is broadly defined in the industry as rate (or risk) multiplied by exposure. The surplus lines carrier determines the premium amount that it will charge the proposed insured. The premium amount *does not include additional charges such as the surplus lines tax or any policy/processing or inspection fees.*[1]

30. In terms of broker compensation, the surplus lines market is also similar to the admitted market. The surplus lines carrier sets a commission amount (a percentage of the premium) and includes that amount in the premium figure. This commission amount, because it is commonly split between two brokers, is larger than the commission amounts offered in the normal commercial marketplace by

[1] "Policy" or "processing" fees (sometimes also called "filing fees") are fees charged by the insurance carrier or the surplus lines broker for the overhead associated with preparing and binding the policy. "Inspection" fees are fees charged by insurance carriers for "inspecting" the operations of the proposed insured. Such fees might range from a low of $25 to a high of $750. The typical charge is between $100 and $250.

admitted carriers. In general, the commission amount offered to the retail broker in surplus lines placements is 10% of the premium, though it may be as low as 7.5% or as high as 12% of the premium.

31. Agents Crowther and Burke, through Kilgore Insurance, placed insurance for a significant number of companies in the following lines of business: security and guard patrol (both armed and unarmed), fire suppression, alarm installation and monitoring, janitorial services and ventilation cleaning, contractors, and traffic control and signaling. These businesses were directed by agents Crowther and Burke to acquire liability and other insurance coverage through the surplus lines markets. As a result, the majority of this business was placed through the surplus lines markets.

B. The General Scheme To Defraud

32. Since as early as 2000, and possibly before, the Defendants have engaged in their unfair and deceptive behavior, repeatedly affecting approximately one hundred small businesses in connection with their annual surplus lines insurance placements. The victims were largely clients of agents Crowther and Burke. Mr. Crowther has worked as an insurance broker/agent for, or on behalf of, Kilgore Insurance since approximately 1996, while Ms. Burke "supports" Mr. Crowther and his clients as the primary customer service representative (she is an employee of Kilgore Insurance and a licensed insurance producer). Compensation paid in connection with agent Crowther's insurance sales is paid directly to Kilgore Insurance and is then split, 60%-40%, respectively, between Mr. Crowther and Kilgore Insurance. As the sole partners of Kilgore Insurance, Jeffrey and Cyrus Kilgore (along with agents Crowther and Burke) profited handsomely from this scheme.

33. Shortly before the annual renewal of a client's surplus lines insurance policy, agents Crowther and Burke would contact the client and ask the client to fill out an insurance application for submission to the surplus lines broker and any proposed insurance carrier. Among other things, these insurance applications sought data concerning prior years' insurance policies, including the prior

insurance carrier and *prior premiums paid*. Agents Crowther and Burke would routinely tell clients to sign the application and leave this section blank, adding that they would add this information to the form at a later time. This was one of several ways in which the Defendants hid the true premiums from their clients.

34. Upon receiving their clients' completed insurance applications, agents Crowther and Burke would then submit those applications to the surplus lines broker. Frequently, agents Crowther and Burke would submit the applications to only one surplus lines broker, thereby limiting their clients' access to only those "markets" available to the relevant surplus lines broker. At the same time, clients were told that their policies were being aggressively "shopped" each year among multiple insurance carriers in order to obtain the "best" insurance quotes. ***See, e.g., Exhibit 3*** *(two examples: August 30, 2007 e-mail from Kilgore Insurance to Kim Potavin of broker The Mechanic Group seeking general liability and umbrella quotes for American Service Company, stating* ***"we have not marketed this to any other carrier"****; two-page March 21, 2008 e-mail from Kilgore Insurance also to Ms. Potavin noting that with regard to the 2008 general liability renewal for Security III, Inc., Kilgore Insurance was* ***"not submitting an application to any other carrier"****).*

35. Upon receiving a client's insurance application from Kilgore Insurance, the surplus lines broker would then go out to the insurance companies (or "markets") to which it had access and seek insurance quotes for the client. These quotes would then be conveyed to Kilgore Insurance. ***See, e.g., Exhibit 4*** *(three examples: three page 7/22/02 quote from broker Surplus Services Insurance Agency, Inc. to Kilgore Insurance regarding New World Security Associates, Inc.; four page 4/9/07 quote from broker The Mechanic Group to Kilgore Insurance regarding Security III, Inc.; and three page 11/13/07 quote from broker The Mechanic Group to Kilgore Insurance regarding American Flagging & Traffic Control, Inc.)*

36. Included in such an insurance quote would be an offer of commission to Kilgore Insurance, normally at 10% of the policy premium. ***See, e.g., Exhibit 4*** *(identified supra, ¶35),* ***Exhibit 19*** *(identified infra, ¶80), and* ***Exhibit 20*** *(identified infra, ¶97). This offer of commission is routinely conveyed to the retail broker in such transactions, as it is the standard method by which all brokers in surplus lines (and most other) placements are compensated.*

37. Agents Crowther and Burke would then convey to the client, usually via telephone, the purported insurance premium (or premiums) – but instead of disclosing the true premium, they would add in an agency fee of as much as 330% or more of the true premium, calling this the "insurance premium". They would tell the client this was the "best" or cheapest insurance available to meet the client's insurance needs and would recommend that the client purchase said policy or policies.

38. Typically, agents Crowther and Burke would wait until within a few days of a client's insurance renewal date before delivering the insurance "quote", thereby effectively preventing the client from evaluating the offer and/or comparing it to other possible options. (These clients cannot operate their businesses without proof of adequate insurance coverage.)

39. Having little time to consider any options, and trusting agents Crowther and Burke – and believing that Kilgore Insurance was working on its behalf and in its best interests – the client would generally approve the suggested insurance purchase.

40. Kilgore Insurance employees, particularly those who worked to assist agent Crowther, were expressly prohibited from revealing to surplus lines clients the true policy premiums and/or the agency fee amounts charged by Kilgore Insurance.

41. In order for the surplus lines broker (or the insurance carrier) to "bind" the actual insurance policy for the insured party, it would first require a "bind" order from agent Crowther and/or agent Burke. In these "bind" orders, agents Crowther and Burke would normally write "no commission

to our agency" or the like, indicating to the surplus lines broker that Kilgore Insurance was rejecting its portion of the standard commission on offer. ***See, e.g., Exhibit 5*** *(two examples: 11/23/05 "bind" order from agent Crowther to broker Szerlip & Co., concerning Aegis Protection Group, Inc..; and 12/17/07 "bind" order from agent Burke to broker All Risks, Ltd. concerning Atlas Alarm Corporation);* ***Exhibit 20*** *(identified infra, ¶97).* However, despite rejecting these offered commissions and absent other direction, the actual policy premium would remain the same – thus, instead of seeking to reduce the actual premium by the amount of the rejected commission, agents Crowther and Burke would customarily permit the surplus lines broker to keep Kilgore Insurance's share of the commission.

42. In some cases, Kilgore Insurance would accept the commission on offer *and charge the client an undisclosed agency fee, as well.*

43. Shortly after "binding" the insurance coverage, Kilgore Insurance would mail to the client, via U.S. mail, a cover letter enclosing insurance "binders" (as "proof of coverage until the actual policies are issued") and "invoices *for the premiums*", as well as a proposed premium finance contract "in the event you would prefer to finance". ***See, e.g., Exhibit 6*** *(11/30/05 general liability and umbrella liability "renewal package" sent to Aegis Protection Group by agent Crowther and Kilgore Insurance).* Clients were instructed to "simply sign and return one copy of the [premium finance] contract with the deposit payable to Kilgore Insurance". ***Id.*** The binders were routinely signed by Cyrus Kilgore. ***Id. at 3, 5.*** The invoices themselves would set forth a single dollar figure which purported to be the actual premium for the policy listed. ***Id. at 2, 4.*** Clients were led to believe, and did so believe, that this figure was the actual premium as set by the insurance carrier.

44. Because the majority of these insurance placements were with surplus lines carriers, the Commonwealth's Division of Insurance required that the insured party execute (and receive a copy of) a surplus lines affidavit, which sets forth the true premium amount. However, rather than provide the

surplus lines affidavit to the insured party to sign, agents Crowther and Burke would routinely *forge the signatures of the insured parties, without authorization, and provide the forged surplus lines affidavits to the relevant surplus lines broker.* By this method, Kilgore Insurance was able to prevent the insured party from learning the true premium. One example of a forged surplus lines affidavit is attached here to as ***Exhibit 7*** *(7/1/09 surplus lines affidavit purporting to bear the signature of Marianne Jenkins of Alliance Detective & Security Service, Inc.).* The forged surplus lines affidavits were typically counter-signed by Cyrus Kilgore.

45. At this juncture, the AGO is aware of no fewer than 48 confirmed instances of Kilgore Insurance forging the signatures of its clients on surplus lines affidavits. Moreover, Kilgore Insurance has forged its clients' signatures on numerous additional surplus lines affidavits over the years.

46. Following the terrorist attacks of September 11, 2001, the federal government passed a 2002 law (the Terrorism Risk Insurance Act or "TRIA") that required insurance companies to offer terrorism coverage and created a federal subsidy for insurance industry losses due to acts of terrorism. Among other things, the law requires that (i) insurance carriers disclose the cost of the additional "terrorism coverage premium" to insured parties, and (ii) insured parties sign a form (referred to as a "TRIA" or "terrorism coverage" form) indicating whether they will decline or accept to purchase terrorism coverage. These so-called TRIA forms show the "terrorism coverage premium" amount, which is a specified percentage of the actual premium (frequently, though not always, it is 10% of the actual premium).

47. Kilgore Insurance would often avoid providing these TRIA forms to its clients, for fear that a given client might be able to deduce the actual premium based on the "terrorism coverage premium" reflected on the TRIA form. Instead, agents Crowther and Burke would *forge the signatures of the insured parties, without authorization, and provide the forged TRIA forms to the relevant surplus*

lines broker. One example of a forged TRIA form is attached hereto as ***Exhibit 8*** *(6/28/06 TRIA form purporting to bear the signature – misspelled – of Marianne Jenkins, president of Alliance Detective & Security Service, Inc.).*

48. At this juncture, the AGO is aware of no fewer than 48 confirmed instances of Kilgore Insurance forging the signatures of its clients on TRIA forms. Moreover, Kilgore Insurance has forged its clients' signatures on numerous additional TRIA forms over the years. In addition, in certain instances, Kilgore Insurance not only forged the insured party's signature on TRIA forms, but also *accepted terrorism coverage without the insured party's knowledge or consent, thereby further fraudulently inflating the purported premium charged to the insured party.*

49. The stated expectation of the surplus lines brokers is that all documents requiring the signature of the insured party will in fact bear the actual signature of the insured party, and that retail brokers will never sign any document on behalf of an insured party unless the retail broker first has express written authorization from the insured to do so.

50. Following the placement of insurance for a client, in the normal course of the insurance business, the insurance carrier or the retail broker will forward to the insured party a copy of the actual insurance policy as bound. In the case of "agency-billed" insurance, such as surplus lines placements, the insurance policy is mailed to the retail broker, who in turn is expected to mail the policy to the insured party.

51. Finally, Kilgore Insurance would engage in several tricks with respect to the actual insurance policy. First, it would delay sending the insurance policy to the insured party for months (and sometimes for the entire policy year), or would fail to send the policy at all, absent a direct request from the insured party. Second, *it would materially alter or remove policy pages that reflected the actual premium without the authorization (or awareness) of the insured party, the surplus lines broker, or the*

insurance carrier. One such page in an insurance policy is the "declarations" page, which is a summary of the insurance coverage purchased, the name of the insured party, the name of the insurance carrier, and the premium amount. The "declarations" page is often followed by a "ratings" page, which indicates the rating (or risk) factor assigned to an insured party, and the related exposure – this page often shows the actual premium amount as well.

52. In numerous instances, agents Crowther and Burke would remove the declarations and ratings pages of actual policies, erase or "white out" the policy premium set forth therein (and erase related figures on the ratings page as well), re-type, with a typewriter, the inflated "premium" figure that they had communicated to the insured party, and then replace the altered declarations page(s) into the policy and convey this policy to the insured party. In some cases, they would simply remove the declarations and ratings pages from the policy altogether prior to forwarding it to the insured party.

53. Agents Crowther and Burke have both admitted in sworn examinations to the practice of materially altering declarations pages of actual insurance policies. In addition, Cyrus Kilgore claimed in his sworn testimony that this practice is appropriate and that such changes to policy documents need not be communicated even to the insurance carrier.

54. At this juncture, the AGO is aware of no fewer than 42 confirmed instances of Kilgore Insurance materially altering the declarations and/or ratings pages of actual insurance policies. Moreover, Kilgore Insurance has engaged in such material alterations on numerous additional insurance policies over the years. One example of an altered declarations page is attached hereto as ***Exhibit 9***, while the corresponding actual declarations page is attached hereto as ***Exhibit 10*** *(Everest Indemnity Insurance Company declarations page for 7/1/05 to 7/1/06 general liability policy for Alliance Detective & Security Service, Inc.)*. ***Exhibit 9*** was provided to Marianne Jenkins, the president of Alliance Detective & Security Service, Inc., by Kilgore Insurance. A second example of an altered declarations

page is attached hereto as ***Exhibit 11***, while the corresponding actual declarations page is attached hereto as ***Exhibit 12*** *(Crum & Forster declarations page for 12/19/06 to 12/19/07 excess insurance policy for Atlas Alarm Corporation).* ***Exhibit 11*** was mailed to Michael Rich, the president of Atlas Alarm Corporation, by Kilgore Insurance. A side-by-side comparison of ***Exhibits 9 and 10, and Exhibits 11 and 12***, respectively, reflects the redactions and changes in typeface of the altered declarations pages, as compared to the actual declarations pages.

55. The stated expectation of the surplus lines brokers (who often serve as managing general agents for certain surplus lines carriers) is that insurance policy documents provided to the retail agent will be provided to the retail broker's clients in the exact form in which they were conveyed to the retail broker, and that such documents cannot be materially changed or altered in any manner. Moreover, the insurance policy itself is a formal contract between the insured party and the insurance carrier.

C. The Role of Premium Financing

56. Insured parties often need to finance their insurance premiums, as they are unable to pay the full amount upfront. As a result, Kilgore Insurance typically offered to their surplus lines clients the option of financing their inflated "premiums" (which, unbeknownst to the client, also included agency fees).

57. To facilitate the premium financing arrangement, agents Crowther and Burke would forward a copy of the proposed premium finance agreement to the client, in a "renewal package" that also included the insurance binder and the invoice for the purported premium. ***See, e.g.,*** ***Exhibit 6*** *(identified supra, ¶43) and* ***Exhibit 13*** *(11/9/07 employment practices/D&O liability and crime coverage "renewal package" sent to Alliance Detective & Security Service, Inc. by agent Crowther and Kilgore Insurance).*

58. Clients who needed to finance the purported premium would sign the premium finance agreement and return it to Kilgore Insurance. Though the finance agreements typically required the counter-signature of the "producer" (normally agent Burke, or Cyrus or Jeffrey Kilgore) to be fully executed, Kilgore Insurance would never return a fully executed copy to the client.

59. The two principal premium finance companies that Kilgore Insurance worked with at all times relevant to this complaint are Premium Assignment Corporation ("PAC"), a Florida company, and First Insurance Funding Corporation ("FIFC"), an Illinois company.

60. Once the premium finance company agrees to finance a premium, it must verify the actual policy premium with the insurance carrier because of its contractual subrogation rights. If the insured party (or the insurance carrier) cancels the financed insurance policy, the premium finance company is able to step into the insured party's shoes and cancel the policy for a premium refund. As a result, the premium finance company *must know the true amount of the premium* (which is largely refundable on a *pro rata* basis).

61. Both PAC and FIFC required that Kilgore Insurance provide them with an actual breakdown of all costs associated with a given premium finance contract. In addition, PAC had an agreement with Kilgore Insurance whereby PAC agreed also to finance Kilgore Insurance's agency fees, but only up to a specified aggregate limit and only upon agreement by Kilgore Insurance that it would "return, on a pro-rata basis, fees charged to our insured and included in the financing of their premiums with Premium Assignment Corporation when a policy is cancelled." ***Exhibit 14*** *(2/24/04 Letter from Cyrus Kilgore to Premium Assignment Corporation regarding premium financing)*. Kilgore Insurance had a similar arrangement with FIFC.

62. Three examples of the typical "breakdown" letters provided to PAC are attached hereto as ***Exhibit 15***, two signed by Jeffrey Kilgore and one handwritten by agent Burke *(4/14/04 letter from*

Jeffrey Kilgore to PAC regarding Security III, Inc.; 12/9/04 fax cover sheet from agent Burke to PAC regarding Alliance Detective & Security Service, Inc.; 1/3/07 letter from Jeffrey Kilgore to PAC regarding Atlas Alarm Corporation). These letters, containing an explicit break-out of the true premium, surplus lines tax, processing/policy or inspection fee, and the agency fee paid directly to Kilgore Insurance *were never provided to the clients.* ***See also Exhibit 16*** *(1/12/07 letter from Jeffrey Kilgore to PAC regarding American Flagging & Traffic Control, Inc.);* ***Exhibit 17*** *(identified and discussed below, ¶65).*

63. Kilgore Insurance would tell its clients that the single amount invoiced was "premium" – but Kilgore Insurance knew this was not the case. The amount presented to the clients as "premium" was loaded with an often exorbitant agency fee disguised as premium. When dealing with the premium finance companies (as described above), Kilgore Insurance clearly distinguished between premiums, the various types of fees, and taxes – and provided full break-outs of same. Only the clients were misled into believing that the one inflated figure on their invoice was actually "premium".

64. Kilgore Insurance would also normally indicate to the premium finance company the amount of the premium deposit sum comprised of agency fees as opposed to premium. ***See, e.g., Exhibit 15 at pp. 2-3*** *(identified supra, ¶62).* At times (always unbeknownst to the client), Kilgore Insurance would elect to include the entire agency fee in the premium deposit to the premium finance company (***Exhibit 16****, identified supra, ¶62)*; at other times, it would include only a portion of agency fees in the deposit (***Exhibit 15****, pp. 2-3*). Other than as a further means of deception, when the entire agency fee was included in the deposit, there was no reason to pass that money through the premium finance company (as opposed to simply billing the client).

65. Because the premium finance agreements (depending on the company and format) itemized true premiums and other charges, agents Crowther and Burke took steps to hide portions of the

actual finance agreements from their clients. In some instances, they would mail only the first page, or first and second pages, of a three-page finance agreement. ***See, e.g., Exhibit 6 at pp. 6-7*** *(identified supra, ¶43)*. However, attached hereto as ***Exhibit 17*** is a 12/8/05 "breakdown" letter signed by Jeffrey Kilgore and attaching the premium finance agreement *including the third page* regarding Aegis Protection Group's 2005-06 general liability and umbrella policy placements. (The handwriting added to the third page of ***Exhibit 17*** was added by a PAC employee subsequent to receiving it from Kilgore Insurance.) ***Exhibit 17*** was provided to PAC by Kilgore Insurance and corresponds to the premium finance agreement provided to Aegis Protection Group (***Exhibit 6, pp. 6-7***) – except that Aegis Protection Group was never provided the agreement's third page, showing the true premiums.

66. In other instances, agents Crowther and Burke would materially alter the premium finance agreement prior to sending it to the client. ***See, e.g., Exhibit 13 at p. 8*** *(identified supra, ¶57)*. Attached hereto as ***Exhibit 18*** is the corresponding premium finance agreement that was provided to PAC by Kilgore Insurance *including the unaltered third page* regarding Alliance Detective & Security Service, Inc.'s 2007-08 employment practices/D&O liability and crime coverage placements. (The handwriting added to the third page of ***Exhibit 18*** was added by a PAC employee subsequent to receiving it from Kilgore Insurance). The redactions to the copy that was sent to Alliance Detective & Security Service, Inc. are clear: the true premium figures are simply erased, or "whited out".

67. Because the insured parties were entirely unaware they were being charged agency fees by Kilgore Insurance, they also had no knowledge that they were in many instances financing agency fees. Financing was an additional cost to the insured party, as the premium finance companies charge interest for providing this service.

D. Other Deceptive Acts

68. Concerning liability policies, many surplus lines insurance carriers will "audit" the insured party near the end of the policy year to determine whether the insured party's payroll figures and finances remained consistent with the figures set forth in its application (which is necessarily a forward-looking estimate). The cost of commercial liability insurance is based at least in part on the number of employees a company has and how much those employees are paid. If, for example, a company's payroll figures during the policy year were in fact higher than estimated, the insurance carrier will charge an additional "audit premium". If, on the other hand, the payroll figures during the policy year were *lower* than estimated, the insurance carrier will return some portion of the original premium charged. This process is conducted entirely by the insurance carrier or an independent audit firm working on behalf of the insurance carrier. The retail broker has virtually nothing to do with the audit process, except that audit premiums are "agency billed" and return premiums pass through the retail broker.

69. In multiple instances in which an audit premium was charged to a client, Kilgore Insurance would add an exorbitant undisclosed agency fee to this premium and present it to the client as the actual audit premium as set by the insurance carrier. As detailed above, the audit process involves no work whatsoever by the retail broker.

70. In instances where a policy is cancelled by the insurance carrier or by the insured party, the insurance carrier generally must return a *pro rata* share of the premium (less any "earned premium" amount automatically incurred at policy inception) – that is, the amount of the premium that is "unearned" as of the policy cancellation date. In these instances, Kilgore Insurance, rather than return a corresponding *pro rata* share of the undisclosed agency fee, would instead return either a smaller portion of the agency fee or return no agency fee amount at all. The client's understanding and expectation was

that it was receiving the appropriate *pro rata* share of the "premium" it had paid – yet the "premium" it had paid was not the true premium, but included an undisclosed agency fee rolled in.

71. In certain instances where Kilgore Insurance was directed to refund to a client either return premium (following an audit) or a premium refund (following a policy cancellation), it did not do so. Instead, Kilgore Insurance would "apply" the refund to the client's outstanding purported "premium" balance, which balance routinely included large undisclosed agency fees. In short, while the client was led to believe that it was paying down a true premium balance, it instead was paying down an agency fee or fees that had been improperly charged to its account.

E. Four Illustrative Examples

72. Kilgore Insurance undertook these unfair and deceptive acts and practices against an array of clients over a period of at least ten years. To illustrate the scheme perpetrated by the Defendants, it is useful to consider in brief the acts involved against *just four* of the many clients they deceived.

73. The first illustrative client is American Flagging & Signal Control, Inc. ("AFTC") a family-owned business that engages in "full service traffic control" – providing flagmen – including work for numerous Massachusetts entities, both private and governmental. AFTC is owned and run by Joseph Dunlap, his sister Kathleen MacPhee, and their mother, Mary Dunlap. (In one way, AFTC is different from other clients. Because it is organized in New Hampshire, it is not required to execute surplus lines affidavits, thus AFTC is not among the victims whose signatures were repeatedly forged on these affidavits.)

74. AFTC has been using Kilgore Insurance for its insurance placements since it was incorporated in 1995. AFTC chose Kilgore Insurance because Kilgore Insurance and/or agent Crowther

had been placing insurance for many years for another company also owned by the same family, Reliable Security Guard Agency, Inc. ("Reliable") (which was sold in 2006).

75. Neither agent Crowther nor anyone at Kilgore Insurance ever discussed with the owners of AFTC and Reliable the subject of charging agency fees in lieu of commissions on policies placed for AFTC and Reliable. In fact, the owners of AFTC and Reliable understood that Mr. Crowther and Kilgore Insurance were being paid commissions by the insurance carrier.

[PURPOSELY BLANK]

76. Since 2000-2001 (the only years for which the AGO has obtained data), Kilgore Insurance has charged *at least* the following undisclosed agency fees on the following insurance placements for AFTC:

AFTC POLICY	ACTUAL PREMIUM	UNDISCLOSED AGENCY FEE	FEE AS % OF ACTUAL PREMIUM	"PREMIUM" AS BILLED TO CLIENT[2]
00-01 General Liability	$4,500	$3,000	67%	$7,685
01-02 General Liability	$4,500	$5,000	111%	$9,715
01-02 Umbrella Liability	$1,000	$1,500	150%	$2,902
02-03 General Liability	$4,870	$6,800	140%	$11,916.10
02-03 Umbrella Liability	$2,500	$2,000	80%	$4,575
03-04 General Liability	$7,854	$10,500	134%	$18,689.62
03-04 Umbrella Liability	$3,000	$4,500	150%	$7,590
04-05 General Liability	$8,247	$11,000	133%	$19,511.94
04-05 Umbrella Liability	$3,024	$5,000	165%	$8,084.48
05-06 General Liability	$7,795	$8,000	103%	$16,050.90
05-06 General Liability Audit	$9,718	$3,900	40%	$13,812.36
05-06 Umbrella Liability	$3,024	$3,000	99%	$6,144.96
06-07 General Liability	$16,538	$6,800	41%	$23,838
06-07 Umbrella Liability	$6,500	$2,775	43%	$9,705
CANCELLATION OF 06-07 UMBRELLA: PREMIUM REFUND	($3,868, or 60%)	NO AGENCY FEE REFUNDED		
07-08 General Liability	$10,560	$4,400	42%	$15,426.20
08-09 General Liability	$12,976	$3,300	25%	$16,785.52
TOTALS	**$102,738**	**$81,475**	**79%**	**$192,432.08**

77. As noted in the table above, over a period of nine years, Kilgore Insurance charged AFTC undisclosed and illegal agency fees totaling $81,475 – fees which represent 79% of the actual policy premiums. In addition, the commission set by the insurance carrier *remained in the premium amounts* and thus was paid by AFTC, irrespective of whether Kilgore Insurance accepted its share of commission.

[2] The single line item figure that Kilgore Insurance would bill their clients as "premium" included not only the undisclosed agency fee, but generally the surplus lines tax and any minor ancillary fees as well (filing/processing and/or inspection fees), which in this case ranged from $25 to $500. Surplus lines tax in Massachusetts is 4% of the actual premium, and in New Hampshire it is 2% of the actual premium.

78. In addition, Kilgore Insurance charged illegal and undisclosed agency fees to this family's other company, Reliable, during the same period that it was charging undisclosed agency fees to AFTC. For example, from the 2000-01 policy year until the 2006-07 policy year (during which Reliable was sold), Kilgore Insurance charged Reliable undisclosed agency fees totaling nearly $260,000.

79. Following the general liability and umbrella liability insurance policy placements for AFTC and Reliable, Kilgore Insurance, at different times, both (i) failed to forward to the insured party the bound actual insurance policies, and (ii) forwarded to the insured party the relevant insurance policy *but with a declarations page that was materially altered by Kilgore Insurance to reflect its inflated "premium" rather than the actual policy premium.*

80. Moreover, in at least one policy year (2007-08 general liability policy), Kilgore Insurance charged AFTC the additional premium for terrorism coverage, despite the fact that AFTC declined to purchase such coverage. For that general liability policy, Kilgore Insurance provided a "TRIA form" to the surplus lines broker indicating that AFTC elected to purchase terrorism coverage. This form *included the forged signature of AFTC's president, Joseph Dunlap.* ***Exhibit 19*** *(11/14/07 "bind" sheet from agent Crowther to The Mechanic Group for the 2007-08 general liability placement for AFTC, indicating that coverage should be bound "with certified terrorism endorsement" and attaching forged TRIA form).*

81. This additional terrorism coverage, charged to AFTC without the owners' knowledge and contrary to their instructions, cost AFTC $979.20 in additional undisclosed, unauthorized and unnecessary charges.

82. In October and November 2009, after having learned of the AGO's investigation of Kilgore Insurance, Mr. Dunlap requested from Mr. Crowther and Kilgore Insurance a full accounting of

all fees, taxes, and true premium amounts concerning all of AFTC's and Reliable's past insurance placements. He also demanded repayment of the undisclosed agency fees that Kilgore Insurance had overcharged the two companies over the years.

83. Mr. Crowther and Kilgore Insurance provided only a partial accounting to Mr. Dunlap and refused to refund any money. This is in direct contravention to Kilgore Insurance's alleged "business practices" whereby it will "promptly provide a full accounting of all costs, fees, etc., upon request" and "reimburse our customers if they are dissatisfied with our service." ***Exhibit 1*** *(identified supra, ¶9).*

84. The second illustrative client is Alliance Detective & Security Services, Inc. ("Alliance"). Alliance is a Massachusetts family-owned business that provides guard patrol, alarm response and dispatch, and uniform security guard services to its clients. Alliance is owned and run by Marianne Jenkins, along with other members of her family.

85. Alliance has been using Kilgore Insurance for its insurance placements for the past ten to twelve years.

86. Neither agent Crowther nor anyone at Kilgore Insurance ever discussed with Ms. Jenkins the subject of charging agency fees in lieu of commissions on policies placed for Alliance. In fact, Ms. Jenkins, who is herself a licensed insurance producer, understood that Mr. Crowther and Kilgore Insurance were being paid commissions by the insurance carrier.

87. Since 2003-2004 (the only years for which the AGO has obtained data), Kilgore Insurance has charged *at least* the following undisclosed agency fees on the following insurance placements for Alliance:

ALLIANCE POLICY	ACTUAL PREMIUM	UNDISCLOSED AGENCY FEE	FEE AS % OF ACTUAL PREMIUM	"PREMIUM" AS BILLED TO CLIENT
03-04 General Liability	$77,649	$16,000	21%	$96,964.96
03-04 Umbrella Liability	$39,680	$7,100	18%	$48,467.20
04-05 General Liability	$70,776	$19,000	27%	$93,217.04
04-05 Umbrella Liability	$33,589	$10,000	30%	$45,282.56
04-05 Employment Practices	$14,755	$12,000	81%	$26,755
04-05 Crime Coverage	$13,163	$8,000	61%	$21,163
05-06 General Liability	$57,576	$20,000	35%	$80,529.04
05-06 Umbrella Liability	$28,391	$10,000	35%	$39,876.64
05-06 Employment Practices	$14,400	$11,500	80%	$25,900
05-06 Crime Coverage	$11,847	$10,000	84%	$21,847
06-07 General Liability	$40,463	$17,000	42%	$59,731.52
06-07 Umbrella Liability	$24,687	$10,000	41%	$36,024.48
06-07 Employment Practices	$14,300	$5,720	40%	$20,020
06-07 Crime Coverage	$11,947	$4,778	40%	$16,725
07-08 General Liability	$42,281	$17,800	42%	$62,422.24
07-08 Umbrella Liability	$18,549	$9,300	50%	$28,940.96
07-08 Umbrella INCREASE	$4,638	$2000	43%	$6,823.52
07-08 Employment Practices	$11,060	$4,900	44%	$15,960
07-08 Crime Coverage	$11,840	$5,000	42%	$16,840
08-09 General Liability	$36,370	$11,542	32%	$50,016.80
08-09 Umbrella Liability	$19,067	$6,053	32%	$26,232.68
08-09 Umbrella INCREASE	$1,000	$500	50%	$1,540
08-09 Employment Practices	$13,800	$2,760	20%	$16,560
08-09 Crime Coverage	$11,840	$2,368	20%	$14,208
09-10 General Liability	$51,840	$12,800	25%	$67,363.60
09-10 Umbrella Liability	$22,425	$6,300	28%	$29,972
TOTALS	**$697,933**	**$242,421**	**35%**	**$969,383.24**

88. As noted in the table above, over a period of seven years, Kilgore Insurance charged Alliance undisclosed and illegal agency fees totaling $242,421 – fees which represent 35% of the actual policy premiums. In addition, the commission set by the insurance carrier *remained in the premium*

amount and thus was paid by Alliance, irrespective of whether Kilgore Insurance accepted its share of commission.

89. Following the insurance policy placements for Alliance, Kilgore Insurance forwarded to Alliance the various insurance policies; in numerous instances, the declarations and ratings pages of those policies were materially altered by Kilgore Insurance to reflect the inflated "premium" rather than the actual policy premium.

90. In August 2009 and again in November 2009, after having learned of the AGO's investigation of Kilgore Insurance, Ms. Jenkins requested from Mr. Crowther and Kilgore Insurance a full accounting of all fees, taxes, and true premium amounts concerning all of Alliance's past insurance placements. She also demanded repayment of the undisclosed agency fees that Kilgore Insurance had overcharged Alliance over the years.

91. Agent Crowther and Kilgore Insurance provided only a partial accounting to Ms. Jenkins, while Mr. Crowther contended that no agency fees had been charged prior to 2006. Mr. Crowther also stated that he and his "partners" would not refund Ms. Jenkins' money (the other Defendants also have affirmatively refused to repay Ms. Jenkins). As noted prior, these responses are in direct contravention to Kilgore Insurance's stated "business practices" ***(Exhibit 1)***.

92. The third illustrative client is Security III, Inc. ("Security III"), a small security business with approximately nine employees that provides unarmed patrols to small neighborhood associations in Boston's South End. Security III is owned by Thomas Roche, who purchased the company from the prior owner in 2004 after working as a security guard there for 10 years.

93. Security III has been using Kilgore Insurance for its insurance placements since at least 2003.

94. Neither agent Crowther nor anyone at Kilgore Insurance ever discussed with Mr. Roche the subject of charging agency fees in lieu of commissions on policies placed for Security III. In fact, Mr. Roche understood that Mr. Crowther and Kilgore Insurance were being paid commissions by the insurance carrier.

95. Since 2004-2005 (the only years for which the AGO has obtained data), Kilgore Insurance has charged *at least* the following undisclosed agency fees on the following insurance placements for Security III:

SECURITY III POLICY	ACTUAL PREMIUM	UNDISCLOSED AGENCY FEE	FEE AS % OF ACTUAL PREMIUM	"PREMIUM" AS BILLED TO CLIENT
04-05 General Liability	$4,138	$14,000.	338%	$18,553.52
05-06 General Liability	$4,576	$13,800	302%	$18,809.04
06-07 General Liability	$11,277	$4,800	43%	$16,778.08
07-08 General Liability	$11,842	$5,062.27	43%	$17,591.95
08-09 General Liability	$11,277	$5,898.92	52%	$17,877
09-10 General Liability	$7,689	$2600	34%	$10,846.56
TOTALS	**$50,799**	**$46,161.19**	**91%**	**$100,456.15**

96. As noted in the table above, over a period of six years, Kilgore Insurance charged Security III undisclosed and illegal agency fees totaling $46,161.19 – fees which represent an astonishing 91% of the actual policy premiums. In addition, the commission set by the insurance carrier *remained in the premium amount* and thus was paid by Security III, irrespective of whether Kilgore Insurance accepted its share of commission.

97. Moreover, in at least two policy years (2006-07 and 2007-08), Kilgore Insurance charged Security III the additional premium for terrorism coverage, despite the fact that Security III always declined to purchase such coverage. For those general liability policies, Kilgore Insurance provided "TRIA forms" to the surplus lines broker indicating that Security III elected to purchase terrorism coverage. These two forms include the *forged signature* of Security III's owner, Mr. Roche – and in one instance, Mr. Roche's last name is misspelled as R-o-a-c-h-e. ***Exhibit 20*** *(4/7/06 forged TRIA form indicating acceptance of certified terrorism coverage; and three page 4/11/07 "bind" instructions from Kilgore Insurance to The Mechanic Group for the 2007-08 general liability placement for Security III, indicating that coverage should be bound "with certified terrorism endorsement" and including forged TRIA form).*

98. This additional terrorism coverage, charged to Security III without Mr. Roche's knowledge and contrary to his instructions, cost Security III $1,066 in 2006 and $1,120.08 in 2007, for a total of $2,186.08 in additional undisclosed, unauthorized and unnecessary charges.

99. In September 2009, after having learned of the AGO's investigation of Kilgore Insurance, Mr. Roche requested from agent Crowther and Kilgore Insurance full repayment of the undisclosed agency fees that Kilgore Insurance had overcharged Security III over the years.

100. Kilgore Insurance has refused to provide Mr. Roche with a refund of the undisclosed agency fees charged to Security III. Again, as noted prior, this response is in direct contravention to Kilgore Insurance's stated "business practices" ***(Exhibit 1)***.

101. The fourth illustrative client is New World Security Associates, Inc. ("New World"). A local business based in Roxbury, New World was the largest women/minority-owned security firm in Massachusetts prior to its sale in October 2005. Local business women Cassie Farmer and Roberta

Adams founded the company in 1990, building it from modest beginnings into a significant local inner-city employer.

102. New World used Kilgore Insurance for its insurance placements for the bulk of its existence, or at least 8-9 years (from approximately 1996 or 1997 until 2005).

103. Neither agent Crowther nor anyone at Kilgore Insurance ever discussed with New World's president, Ms. Farmer, the subject of charging agency fees in lieu of commissions on policies placed for New World. In fact, Ms. Farmer understood that Mr. Crowther and Kilgore Insurance were being paid commissions by the insurance carrier.

104. Since 2004 until New World was sold late in 2005 (the only years for which the AGO has obtained data), Kilgore Insurance charged *at least* the following undisclosed agency fees on the following insurance placements for New World. Moreover, on New World's commercial automobile placements in 2004 and 2005, Kilgore Insurance not only charged excessive undisclosed agency fees, but it *also received commissions* on those placements (these commissions were lower than usual because (i) the commission was split with another retail broker, A.J. George Insurance Agency, and (ii) the policies were placed with an *admitted* carrier, Bankers Standard Insurance Company):

NEW WORLD POLICY	ACTUAL PREMIUM	UNDISCLOSED AGENCY FEE	FEE AS % OF ACTUAL PREMIUM	COMMISSION PAID TO KILGORE INS.	"PREMIUM" AS BILLED TO CLIENT
04-05 General Liability	$27,715	$30,000	108%		$59,073.60
04-05 Umbrella Liability	$33,089	$25,000	76%		$59,412.56
04-05 Crime Coverage	$6,557	$3,400	52%		$9,957
04-05 Commercial Auto	$85,485	$21,000	25%	$3,205.69 (3.75%)	$106,485
05-06 General Liability	$18,000	$20,000	111%		$38,970
05-06 Umbrella Liability	$21,560	$20,300	94%		$42,938
05-06 Commercial Auto	$48,349	$9,000	19%	$1,816.46 (3.75%)	$57,349
TOTALS	**$240,755**	**$128,700**	**54%**		**$374,185.16**

105. As noted in the table above, over a period of only two years, Kilgore Insurance charged New World undisclosed and illegal agency fees totaling $128,700 – fees which represent 54% of the

actual policy premiums. In addition, the commission set by the insurance carrier *remained in the premium amount* and thus was paid by New World, irrespective of whether Kilgore Insurance accepted its share of commission (which it did in at least two instances).

106. Moreover, on both of the above commercial automobile policies placed by Kilgore Insurance for New World, Kilgore Insurance was also paid a commission by the insurance carrier (the standard method of broker compensation). In short, it was compensated twice on the same placements.

107. The examples provided above, concerning victims AFTC, Alliance, Security III, and New World, represent just a small sampling of approximately one hundred Kilgore Insurance clients to which undisclosed and illegal agency fees were repeatedly charged and deceptively rolled into the purported premium over numerous years. Other clients were subjected to the same ruses, by which Kilgore Insurance affirmatively hid from its clients the true premium figures and the exorbitant agency fees tacked on. These deceptions included, without limitation, a misleading invoicing system that set forth a purported (inflated) premium that in fact included an agency fee; the forgery of clients' signatures on various insurance documents in order to hide the true premium amount; alteration and/or failure to disclose parts of premium finance agreements in order to hide the true premium amount; material alterations of actual policy documents in order to hide the true premium amount; and the failure to provide actual policies to clients in order to hide the true premium amount.

108. In countless ways, these clients relied upon Kilgore Insurance to their detriment, believing that the insurance "quotes" procured by Kilgore Insurance were the actual premiums as set by the insurance carriers – and believing that agents Crowther and Burke were working on their behalf, to "shop" the market and procure for them the least expensive insurance policies to cover their needs. These clients unwittingly paid inflated amounts for their commercial insurance policies and suffered damages as a result thereof.

V. CAUSES OF ACTION

Count One
(Unfair or Deceptive Acts or Practices in Violation of M.G.L. c. 93A, §2)

109. The Commonwealth incorporates by reference the allegations of paragraphs 1 through 108 of the Complaint.

110. By carrying out the scheme described above, the Defendants engaged in unfair and deceptive acts and practices, in violation of M.G.L. c. 93A, §2(a) (and regulations promulgated thereunder), causing financial harm to their clients. The Attorney General brings this action under G.L. c. 93A, § 4.

111. The Defendants' unfair and deceptive acts and practices include, but are not limited to:

i. Charging clients undisclosed and excessive agency fees for insurance brokerage services;

ii. Submitting letters, invoices and other communications to clients that hid the Defendants' agency fees and misrepresented the actual insurance policy premiums;

iii. Materially altering insurance policies that the Defendants' received from insurance carriers or their agents before forwarding said policies to clients;

iv. Prohibiting employees from releasing premium figures and/or the amount of the Defendants' agency fees to clients;

v. Creating and conveying to clients deceptive premium finance agreements;

vi. Either failing to disclose or altering premium finance documents that were then conveyed to clients in order to hide the Defendants' excessive and undisclosed agency fees;

vii. Forging clients' signatures on surplus lines affidavits in order to hide the actual insurance policy premiums from surplus lines clients;

viii. Not refunding an appropriate *pro rata* share of agency fees when clients' insurance policies were cancelled;

ix. Forging clients' signatures on TRIA forms in order to hide the actual insurance policy premiums from surplus lines clients;

x. Failing to remit premium refunds or audit returns that were due and owing to certain clients; and

xi. Charging clients an undisclosed, excessive agency fee *and* accepting a commission on certain insurance policy placements.

112. Defendants' misrepresentations to their clients were material.

113. Defendants knew or should have known that they were committing numerous acts that were unfair or deceptive in violation of G.L. c. 93A § 2(a).

114. Defendants' clients suffered harm based on the Defendants' unfair and deceptive behavior, including, but not limited to overpayment for insurance products, overpayment to the Defendants of commissions and agency fees, and overpayment to finance "premiums" that were not true premiums but instead deceptively included excessive agency fees.

115. Pursuant to G.L. c. 93A § 4, the Commonwealth provided the required notice before filing this action.

Count Two
(Unjust Enrichment)

116. The Commonwealth incorporates by reference the allegations of paragraphs 1 through 115 of the Complaint.

117. By the aforementioned acts, Defendants were unjustly enriched and should be required to disgorge their ill-gotten gains.

Count Three
(Reach and Apply Beneficial Interest in Real Estate Trust Pursuant to M.G.L. c. 214, §3)

118. The Commonwealth incorporates by reference the allegations of paragraphs 1 through 117 of the Complaint.

119. The interests of defendants Cyrus A. Kilgore and Jeffrey B. Kilgore, respectively, in the Kilgore Family Realty Trust are not liable to be taken on execution and are not subject to attachment.

120. The Commonwealth, as a creditor of defendants Cyrus A. Kilgore and Jeffrey B. Kilgore, is entitled to reach and apply the Kilgores' interests in the Kilgore Family Realty Trust in satisfaction of any judgment it may be awarded.

VI. RELIEF REQUESTED

WHEREFORE, the Commonwealth requests that this Court:

121. After hearing, upon joint motion, and/or after a trial on the merits,

(i) Issue an Order and preliminary and permanent injunction enjoining all Defendants, and their officers, agents, servants, employees, attorneys, successors and assigns, and all other persons and entities, whether acting individually or in active participation or concert with them, directly or indirectly, through any corporation, trust or other device, who received actual notice of the Order from:

a. Destroying, concealing, altering, defacing or transferring any records, documents or other information in any way relating to their business operations, the above-described scheme, or to the provision of insurance brokerage services;

b. Applying for or renewing any insurance brokerage, agent or producer registration or license issued by the Commonwealth's Division of Insurance;

c. Transferring, pledging, selling, mortgaging, encumbering, or in any way disposing of any ownership interest or custody of any real or personal assets the Defendants own or control, individually or collectively, directly or indirectly, or may own or control while this Order remains in effect, including, without limitation: all real property, wherever located; all bank accounts and all funds contained therein, wherever located; all securities; all household and office furnishings; and all lump-sums of money, of any amount, the Defendants have or may receive while this Order remains in effect, from any source; except such real or personal assets as may be used in the ordinary course of business or for necessary and usual living expenses as defined by the Internal Revenue Service;

d. Signing documents on behalf of any client without the express, written, advance approval of the client; altering any part of any insurance policy bound by an insurance carrier on behalf of a client, prior to providing a true and complete copy of same to the client; providing to a client invoices, bills, correspondence, insurance proposals or any other documentation in connection with the placement of insurance for a client

that states the premium as anything other than the premium as set by the insurance carrier; and

(ii) Issue an affirmative Order directing all Defendants, and their officers, agents, servants, employees, attorneys, successors and assigns, and all other persons and entities, whether acting individually or in active participation or concert with them, directly or indirectly, through any corporation, trust or other device, who received actual notice of the Order to:

e. Provide within 15 days of the date of the Order, to all clients to whom agency fees were charged, a full written accounting of all fees, taxes, commissions (those commissions offered to Defendants and, if known, the amount of any commission offered to any additional broker(s)), and premium amounts as set by the insurance carrier (and/or its agent such as a wholesale or surplus lines, broker) plus what amount (if any) of the commission offered to the Defendants remained in the premium, broken out by year and insurance policy, for all relevant clients and insurance placements since January 1, 2000;

f. Provide within 15 days of the date of the Order a copy of the accountings described above in subparagraph (e), to Assistant Attorney General M. Claire Masinton, Office of the Attorney General, Insurance & Financial Services Division, One Ashburton Place, 18th Floor, Boston, MA 02108;

g. Disclose in writing to any client to whom the Defendants propose to charge an agency fee as a form of compensation to the Defendants, and not later than 10 days prior to any proposed policy placement for such client, (i) that the Defendants propose to charge an agency fee directly to the client as compensation instead of accepting a commission paid by the insurance carrier and/or its agent such as a wholesale or surplus lines, broker, and (ii) the amount of any agency fee that the Defendants propose to charge to the client; and

h. Disclose in writing to any client not later than 5 days prior to any proposed policy placement the following:

- The policy's premium, as set and billed by the insurance carrier and/or its agent, such as a wholesale, or surplus lines, broker;
- Any additional non-premium charges such as ancillary policy/filing/inspection fees and surplus lines or other taxes;
- The amount of any commission offered by the insurance carrier and/or its agent to the Defendants;
- Whether the commission will be accepted or rejected by the Defendants, and what amount (if any) of the commission offered to the Defendants remains in the premium; and

- If known, the amount of any commission offered to any additional broker(s).

122. Issue Writs of Attachment against all Defendants in the amount of not less than $4,000,000.

123. After a trial on the merits,

a. Enter judgment in favor of the Commonwealth, and against the Defendants, including permanent injunctive relief, restitution to clients injured by the Defendants' unfair and deceptive acts and practices, civil penalties of $5,000 for each violation of M.G.L. c. 93A, attorney's fees, costs of investigation and litigation, and other remedial relief under M.G.L. c. 93A and other applicable statues; and

b. Issue an appropriate permanent injunction to enjoin Defendants from (i) engaging in any business directly or indirectly involving the sale, brokerage, or placement of insurance of any type in the Commonwealth; (ii) maintaining, operating, or having an ownership interest in any insurance brokerage business organized to do business, or doing business, in the Commonwealth; and (iii) applying for or renewing any insurance brokerage, agent or producer registration or license issued by the Massachusetts Division of Insurance; and

c. Enter an order authorizing the Commonwealth to reach and apply all of defendant Cyrus A. Kilgore's beneficial interest and all of defendant Jeffrey B. Kilgore's beneficial interest in the Kilgore Family Realty Trust, and any proceeds thereof, to liquidate the same where necessary, and to apply the proceeds thereof in satisfaction of any judgment that the Commonwealth recovers against the Defendants.

124. Grant such other and further relief as the Court deems equitable and proper.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
MARTHA COAKLEY
ATTORNEY GENERAL

Date: December 22, 2009

By: _____
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