

14 CV 2355

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

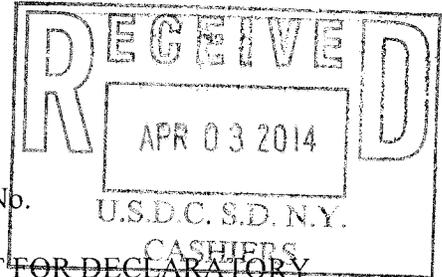
AMERICAN INTERNATIONAL GROUP,  
INC.,

Plaintiff,

v.

NEW YORK STATE DEPARTMENT OF  
FINANCIAL SERVICES; and BENJAMIN M.  
LAWSKY, in his official capacity as  
Superintendent of the New York State  
Department of Financial Services,

Defendants.



Civil Action No.

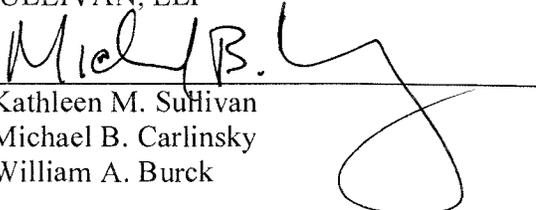
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

**RULE 7.1 STATEMENT**

Pursuant to Federal Rule of Civil Procedure Rule 7.1, Plaintiff American International Group, Inc. states that it is a publicly-held corporation that has no parent corporation and no other publicly-held corporation owns 10 percent or more of its stock.

DATED: New York, New York  
April 3, 2014

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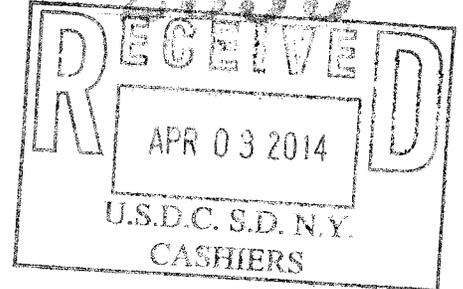
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**NATURE OF THE ACTION**

1. This action is a constitutional challenge to the State of New York's efforts to enforce its insurance law against Plaintiff American International Group, Inc. ("AIG") for certain activities conducted over various years prior to 2010 by American Life Insurance Company ("ALICO"), which was a wholly-owned subsidiary of AIG until November 1, 2010.<sup>1</sup> The State of New York has the authority to regulate the business of insurance issued to insureds resident in New York. It does not have authority to regulate the business of insurance issued to foreign insureds resident outside of the State of New York. Yet New York officials, including those in the Department of Financial Services, have threatened to impose New York's insurance licensing requirements on AIG for ALICO's marketing of *foreign* life insurance products that are

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<sup>1</sup> In bringing this action, AIG does not concede liability for the activities of its former subsidiaries ALICO or Delaware American Life Insurance Company ("DelAm"), and reserves all rights in this regard. Principles of corporate form and separateness normally would bar Defendants from holding the parent, AIG, responsible for the activities of its subsidiaries, ALICO or DelAm, especially where, as here, the entities at issue are *former* subsidiaries now held by a new parent (*see* ¶ 2 *infra*).

regulated by *foreign* insurance authorities and which cover exclusively *foreign* insureds located outside the State of New York and indeed outside the United States.

2. Specifically, New York officials have advised AIG that they will initiate administrative proceedings and other actions in order to impose substantial monetary penalties on AIG based on the marketing of ALICO's foreign insurance products from and into New York, which Defendants purport constituted an "insurance business" without a New York license. In fact, the Department has already stated in its March 31, 2014 Consent Order with the Metropolitan Life Insurance Company ("MetLife") (ALICO's current parent company) that AIG and its former subsidiaries violated the New York Insurance Law.<sup>2</sup> Defendants have undertaken these enforcement actions against AIG and its former subsidiaries, despite express language in the New York Insurance Law that operations such as ALICO's are not subject to the State's insurance licensing scheme, and despite New York officials' longstanding practice of allowing ALICO and numerous other companies throughout the insurance industry to engage in such activities within the State of New York.

3. Moreover, on information and belief, at the time ALICO was AIG's subsidiary, New York officials indicated that a company that did not write insurance for New York insureds was ineligible for a New York license.<sup>3</sup> Indeed, New York's application for an insurance license

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<sup>2</sup> In the Consent Order, attached hereto as Exhibit A, the Department finds that AIG, ALICO, and other former subsidiaries of AIG, such as DelAm, violated the New York Insurance Law. *See* Ex. A, at p. 9 ¶ 18. As set forth herein, the Department's position is based on a flawed and unconstitutional interpretation and application of the New York Insurance Law.

<sup>3</sup> The Department's March 31, 2014 Consent Order seems consistent with the view that a New York license is not available to a foreign insurer that does not provide insurance to New York insureds. While the Consent Order permits MetLife and its subsidiaries to continue their activities and cryptically states that they will "work to come into full compliance with the New York Insurance Law," *see* Ex. A, at p. 11 ¶¶ 5-6, the Order nowhere states that they will obtain an insurance license.

makes clear on its face that eligibility for a license requires that the applicant intend to provide insurance to New York insureds. This refusal to grant an insurance license to a foreign insurer writing insurance exclusively for foreign insureds, while simultaneously penalizing that insurer for marketing its foreign insurance products from or into New York without a New York license, creates a catch-22 that violates the U.S. Constitution in each of three ways:

4. *First*, imposing upon AIG (as ALICO's former owner) New York's current interpretation of the New York Insurance Law violates the Due Process Clause of the Fourteenth Amendment. Due Process requires that a statute or regulation have sufficient clarity to give the ordinary person fair notice of what is and is not prohibited. As applied here, the New York Insurance Law violates these protections and is void for vagueness because no reasonably prudent person, familiar with the insurance industry and regulation, would understand the statutory scheme to require a New York insurance license for marketing insurance products that exclusively cover out-of-state (in fact, out-of-country) employees of multinational companies. Indeed, numerous insurance companies have long engaged in these types of activities in New York without a license, yet New York officials have elected to single out AIG and ALICO for a penalty.

5. *Second*, penalizing AIG (as ALICO's former owner) under the Insurance Law for activity consisting solely of the marketing of contracts of insurance to and with foreign insureds violates the First Amendment protection of freedom of speech as applied to the States through the Due Process Clause of the Fourteenth Amendment. Imposing a penalty for violating New York's insurance licensing requirements for such pure marketing activities, particularly in the absence of any allegation that the speech at issue was false, misleading or anything other than

entirely truthful and accurate, would constitute a content-based restriction on commercial speech that is unjustified by any legitimate or important state interest.

6. *Third*, the statutory and regulatory scheme that New York officials propose to apply here also unconstitutionally discriminates against out-of-state and foreign commerce in violation of the dormant Commerce Clause, U.S. Const. art. I, § 8. This is so under either or both of the two horns of the dilemma New York officials have imposed: If the New York Insurance Law and related regulations are interpreted to *preclude* the issuance of a New York insurance license to a company that markets from or into New York insurance products that exclusively cover foreign insureds and maintains no insurance premiums in New York, then the statutory scheme would amount to facial discrimination against out-of-state commerce. If, on the other hand, the New York Insurance Law and related regulations are interpreted to *require* such entities to provide insurance to New York residents in order to obtain a license in New York, then it would likewise amount to facial discrimination against out-of-state commerce by requiring a foreign insurer who wishes to market from or into New York to involuntarily enter insurance contracts with New York insureds rather than writing policies covering exclusively foreign insureds and paying premiums outside the State of New York. Such discrimination is virtually *per se* invalid and at a minimum would require a compelling state interest.

7. The Department has identified no legitimate state interest justifying its unprecedented attempt to expand its regulatory reach, much less an important or compelling state interest. In its Consent Order with MetLife, the Department does not identify a single harm to a single insurance consumer (in New York or otherwise), nor does it allege that the activities at issue somehow threatened the stability of the New York insurance market. Moreover, the agreement contains a detailed safe harbor provision apparently designed to allow ALICO to

carry on its business without substantial interruption, notwithstanding the fact that it appears that ALICO cannot obtain a New York license. Thus, the Department's purported interest in prohibiting the activities in question is undermined by the terms of its own Consent Order.

8. By this action, AIG seeks a declaratory judgment that the New York Insurance Law's licensing requirements are unconstitutional (i) in violation of the Due Process Clause because they are vague as applied to activities involving the marketing of foreign insurance products to and with foreign insureds; (ii) in violation of the First and Fourteenth Amendments because they unduly restrict the marketing of foreign insurance products unjustified by any legitimate state interest; and (iii) in violation of the dormant Commerce Clause because they regulate the sale of foreign insurance covering foreign insureds located outside the State of New York and regulated by foreign insurance authorities in a way that discriminates facially against foreign commerce.

9. By this action, AIG also seeks preliminary and permanent injunctive relief prohibiting the State of New York, through its officials, from commencing or continuing any proceeding (administrative or otherwise) or imposing any penalty (monetary or otherwise) against AIG due to ALICO's failure to obtain a license for purportedly "doing an insurance business" under the New York Insurance Law.

#### **THE PARTIES**

10. Plaintiff AIG is a Delaware corporation with its principal place of business in New York, New York. Prior to November 1, 2010, ALICO, a Delaware corporation, was Plaintiff's wholly-owned subsidiary. ALICO was acquired by MetLife on November 1, 2010. During the time that it was owned by AIG, ALICO, through its branches and subsidiaries in more than 50 countries, underwrote, issued, and delivered a range of life and health insurance

products, including traditional life, variable life, annuities, pensions, personal accident insurance and group insurance for large and small organizations. ALICO's foreign life insurance products were marketed by the Group Management Division ("GMD"), which described itself as marketing products and services of group life insurance companies, including ALICO, throughout the world.

11. Defendant New York State Department of Financial Services (the "Department" or "DFS") is an agency of the State of New York that regulates New York's financial services industry in order to guard against financial crises and to protect New York consumers and markets from fraud.

12. Defendant Benjamin M. Lawskey is the Superintendent of the New York State Department of Financial Services.

#### **JURISDICTION AND VENUE**

13. The Court has subject matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331 (federal question) because this action involves interpretation of the Commerce Clause of the United States Constitution (U.S. Const. art. I, § 8) and the First and Fourteenth Amendments to the United States Constitution (U.S. Const. amend. I, XIV), and because the action seeks to prevent state officials from interfering with federal rights.

14. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391 because Plaintiff's principal place of business is located in New York, New York, and most of the conduct that underlies this action occurred in New York, New York.

15. There is a present and actual controversy between the parties.

16. The relief requested is authorized pursuant to 28 U.S.C. §§ 2201 and 2202 (declaratory judgment), 28 U.S.C. § 1651(a) (injunctive relief), and 42 U.S.C. § 1983 (deprivation of rights, privileges, and immunities secured by the Constitution).

### SUBSTANTIVE ALLEGATIONS

#### **I. THE STATUTORY AND REGULATORY SCHEME**

17. Section 1102 of the New York Insurance Law provides that “[n]o person, firm, association, corporation, or joint-stock company shall *do an insurance business* in this state unless authorized by a license in force pursuant to the provisions of this chapter, or exempted by the provisions of this chapter from such requirement.” N.Y. INS. LAW § 1102(a) (emphasis added).

18. The definition of “insurance business” is set forth in Section 1101(b) of the New York Insurance Law, which provides:

[A]ny of the following acts *in this state*, effected by mail from outside this state or otherwise, by any person, firm, association, corporation or joint-stock company shall constitute *doing an insurance business* in this state and shall constitute doing business in the state within the meaning of section three hundred two of the civil practice law and rules:

(A) making, or proposing to make, as insurer, any insurance contract, *including either* issuance or delivery of a policy *or* contract of insurance to *a resident of this state* or to any firm, association, or corporation authorized to do business herein, or *solicitation of applications* for any *such* policies or contracts;

(B) making, or proposing to make, as warrantor, guarantor or surety, any contract of warranty, guaranty or suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the warrantor, guarantor or surety;

(C) collecting any premium, membership fee, assessment or other consideration for any policy or contract of insurance;

(D) doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this chapter;

(E) doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this chapter.

N.Y. INS. LAW § 1101(b)(1)(A)-(E) (emphases added).

19. With respect to insurance contracts, the language of Section 1101(b) is explicit. The making of, or proposal to make, insurance contracts in New York—which includes the issuance or delivery of policies or contracts from out-of-state insurance companies to New York residents—constitutes doing an “insurance business.” See N.Y. INS. LAW § 1101(b)(1)(A) (“any of the following acts *in this state* . . . shall constitute *doing an insurance business* . . . : making, or proposing to make, as insurer, any insurance contract, including *either* issuance or delivery of a policy or contract of insurance to *a resident of this state* or to any firm, association, or corporation authorized to do business herein”) (emphasis added).

20. The statute is equally clear as to solicitation of insurance contracts—it applies only to solicitation of “such” contracts, meaning insurance contracts made in New York and issued or delivered to New York residents or companies. See N.Y. INS. LAW § 1101(b)(1)(A) (“or solicitation of applications for any *such* policies or contracts”) (emphasis added). Thus, by the statute’s plain terms, there are two, and only two, ways that an individual or entity does an “insurance business” under § 1101(b)(1)(A): “*either*” by issuing or delivering a policy or contract of insurance to a New York resident or firm, association, or corporation authorized to do business in New York, “*or*” by “solicitation of *applications* for any *such* policies or contracts.” (Emphases added).

21. Section 1101 thus makes clear that the New York Insurance Law is concerned with protecting *New York* consumers from unscrupulous insurance companies selling fraudulent or unregulated products. The legislative history of Section 1101 and the related Section 1102 (discussing the requirements for an insurer’s license) confirms this principle. See Memorandum from Richard E. Stewart, Superintendent of Ins., to Governor of N.Y. (May 1, 1970) (“The 1969 bill was similar to the current bill in its intent *to protect residents of this state* from mail

solicitations from unauthorized insurers whose responsibility and soundness is questionable.”) (emphasis added); *id.* (“The bill’s salutary effect is to require foreign insurers to qualify under our laws before they may *solicit our residents*”) (emphasis added); Governor’s Mem. approving A. 3786, ch. 295, 1970 (“This bill, adopted upon by recommendation, will provide *New York consumers* with protection from financially unsound and irresponsible insurance companies soliciting business by mail from out-of-state.”) (emphasis added); N.Y. Bill Jacket, 1970 A. 3786, ch. 295 (Governor’s Mem.) (“The purpose of the bill is to protect *residents of this state* from solicitation by mail by insurance companies which may be financially unsound or irresponsible.”) (emphasis added); *see also* 1993 N.Y. Sess. Laws ch. 663 (McKinney) (“The legislature hereby finds and declares that a principal goal of effective insurance regulation must be to allow *citizens of this state* reasonable access to financially sound and reliable insurers for their insurance coverage needs.”) (emphasis added); Ins. Law Revision of the State of N.Y. (Tentative Draft) § 50.3 cmt., at 106 (1937) (“[T]he chief concern of the State of New York is the regulation of insurance on property on risks within its borders.”).

22. Nothing in the language or legislative history of the New York Insurance Law extends the definition of “doing an insurance business” so far as to reach the marketing activities at issue here, which involved insurance contracts issued outside of New York to and on behalf of non-New York insureds. Nor is there any allegation that ALICO’s policies were fraudulent or otherwise improper.

23. New York’s licensing process is governed by the Uniform Certificate of Authority Application (“UCAA”), which would have required ALICO to file a UCAA expansion application to obtain a license. For such an application to be accepted, ALICO would have been required to comply with a number of provisions, including the disclosure of information specific

to the selling of insurance *to New York residents*. Such information includes but is not limited to the following:

- Product lines currently sold or planned;
- Specialty line or lines currently sold and planned;
- Marketing plan (including how New York state fits into ALICO's overall plan);
- Detailed description of planned advertising;
- Current and expected competition (both regionally and nationally);
- Plan of operations (including how policies will be underwritten and cancelled; premiums will be handled; and personnel will be trained, supervised, and compensated);
- Three-year premium and loss projections for each line of business;
- Minimum capital and surplus requirements;
- Statutory deposit requirements.

24. Since ALICO did not write insurance for New York insureds, ALICO could not provide most of the information required to obtain a New York license and thus could not have expected to need such a license, nor been eligible for such a license according to the statutory and regulatory terms.

25. At the time ALICO was AIG's subsidiary, officials from the Department indicated that a company like ALICO was ineligible for a New York insurance license.

## **II. ALICO'S ACTIVITIES**

26. ALICO was incorporated under the laws of the State of Delaware on August 18, 1921 as the Asia Life insurance Company, with its principal office located in Shanghai, China.

27. In 1951, ALICO amended its Certificate of Incorporation to change the corporate title to American Life Insurance Company and to change the principal office to Bermuda. In 1969, ALICO again relocated its principal office, this time to Wilmington, Delaware.

28. ALICO's foreign life insurance products were marketed by GMD, which described itself as marketing products and services of group insurance life companies throughout

the world. Over the years, GMD operated under different monikers, but the essential activities of its personnel remained similar.

29. Much of the marketing of ALICO's insurance products occurred in New York, and most senior GMD employees were based in New York and Delaware. Neither ALICO nor GMD was licensed to "do an insurance business" in New York.

30. Marketing by GMD personnel included presentations to and discussions with multinational clients, by phone, email, and in person, in an effort to assess their needs for foreign products in foreign operations and to discuss ALICO's capabilities regarding those products and operations. These calls, emails, and meetings usually were initiated either by GMD personnel contacting offices of U.S.-based multinational corporations which were known to have foreign operations in countries where ALICO could provide group employee benefit packages or pension products, or by existing or potential clients themselves.

31. If the corporation was interested in an employee benefits package for one or more of its foreign operations, GMD personnel in the U.S. would provide information to the U.S. contact in that corporation regarding the availability of ALICO subsidiaries, and at times, specific ALICO insurance products, in the relevant countries. GMD personnel also would either refer the lead to GMD counterparts in its local (foreign) offices who would follow up by contacting the local (foreign) operation of the U.S.-based corporation, or provide a proposal from a local (foreign) insurer directly to the U.S. contact. If the transaction was consummated between the foreign operation and the non-U.S. ALICO branch or subsidiary, the policy would be underwritten, issued and delivered and the premium would be received in that foreign jurisdiction by the ALICO licensed insurance entity, and would be subject to regulation by the insurance authorities in that jurisdiction.

32. With respect to ALICO's insurance products prior to November 1, 2010, all key aspects of insurance policy issuance and delivery—underwriting, contracting, and premium collection—occurred outside of New York.

33. At no time prior to November 1, 2010, was the marketing, solicitation, or sale of insurance products to New York insureds part of ALICO's business or GMD's marketing of ALICO's insurance products. Nor at any time prior to November 1, 2010, did ALICO or GMD maintain any premiums for insurance in the State of New York.

34. Although the above marketing activities were openly conducted in New York for many decades, at no time prior to November 1, 2010, did the Department, its predecessor, or any official thereof require AIG, GMD, or ALICO to obtain a license pursuant to New York Insurance Law § 1102(a) to engage in the above activities.

35. Accordingly, at no time prior to November 1, 2010, did ALICO seek or obtain a license from the State of New York for “the doing of an insurance business.”

### **III. THE DEPARTMENT'S ENFORCEMENT ACTION**

36. By its unambiguous terms, the New York Insurance Law has no application to a foreign insurer that markets only insurance products regulated by foreign insurance authorities and covering exclusively foreign insureds located outside the State of New York and the United States.

37. Nevertheless, the Department has recently informed AIG that, as it now interprets the New York Insurance Law, the marketing of ALICO's insurance products from or into New York violated that law because ALICO was unlicensed as a New York insurance business, and it now seeks to impose substantial monetary penalties on AIG for the purportedly illegal marketing activities that occurred in the State of New York prior to November 1, 2010.

38. Specifically, in or about February 2013, the Department notified AIG and MetLife that it was investigating whether the marketing of ALICO's foreign insurance products to multinational corporations from offices in New York constituted doing an insurance business as defined by New York law without a license.

39. On June 7, 2013, the Department indicated to AIG that it had summarily concluded that GMD's marketing of ALICO's insurance products in New York constituted unlicensed insurance business. DFS asserted that, since the alleged violations date back several decades, AIG's and ALICO's potential civil penalty exposure under New York Insurance Law § 1102 is very substantial.

40. The Department gave AIG a settlement proposal on October 21, 2013 to resolve its investigation into ALICO's activities. At that time, the Department threatened that, if AIG refused to resolve the case, the Department would initiate formal enforcement proceedings against AIG.

41. On March 31, 2014, Defendant Lawsky announced in a press release that DFS and MetLife had reached an agreement to settle the investigation into ALICO's activities as to MetLife. The Consent Order (Ex. A) memorializing the agreement contains a detailed "Factual Background" setting forth various allegations specifically naming and implicating AIG. For example, the Consent Order alleges:

- a. "ALICO, while operating as a subsidiary of AIG in 2009, made intentional misrepresentations and omissions to [DFS's predecessor] concerning its insurance business activities in New York." *Id.* at p. 4 ¶ 6.
- b. "ALICO's insurance activities prior to 2009 and to date" constituted "doing an insurance business in New York." *Id.* at pp. 6-7 ¶ 14.

c. Based on alleged conduct described in the Consent Order, *see id.* at pp. 7-9 ¶ 16, “ALICO, AIG, DelAm, and MetLife were soliciting insurance business in New York without a license.” *Id.* at p. 9 ¶ 17.

42. In addition to setting forth factual findings, the Consent Order contains DFS’s “conclusions” based on its new interpretation of the New York Insurance Law. DFS “concluded that ALICO, DelAm, and certain AIG subsidiaries and affiliates have done an insurance business in New York without a license[,]” *id.* at p. 1, in violation of N.Y. INS. LAW §§ 1102, 2102(a) and 2117, *id.* at p. 9 ¶ 18.

43. These factual allegations and legal positions are identical to those DFS has pressed against AIG in meetings and correspondence. The message that DFS is sending is clear: AIG must settle or it will be subject to an enforcement proceeding.

44. Indeed, the DFS-MetLife agreement is specifically contingent upon MetLife’s unqualified commitment to “fully cooperate with DFS’s investigation of ... AIG concerning ALICO’s, DelAm’s and AIG’s violations of sections 1102, 2102 and 2117 of the Insurance Law[.]” *Id.* at p. 10 ¶ 4. Specifically, in addition to paying a \$50 million civil fine, *id.* at p. 9 ¶ 1, MetLife must provide all non-privileged materials requested by DFS and make MetLife’s employees available for testimony requested by DFS related to “ALICO’s and DelAm’s doing insurance business in New York without a New York license prior to the Acquisition,” *id.* at p. 10 ¶ 4.

45. Thus, by the plain terms of the Consent Order, DFS has already concluded that AIG has violated the law; the only remaining question is *when* DFS will initiate enforcement proceedings against AIG.

46. Accordingly, under the Department's new interpretation of the New York Insurance Law and related regulations, a company may not, without obtaining a New York insurance license, market insurance products in New York even if those products are regulated by foreign insurance authorities and cover exclusively foreign insureds located outside the State of New York. But at the same time, a company engaged in exclusively foreign insurance business with no New York insureds or New York-based premiums is not eligible for a New York insurance license. DFS's new interpretation thus imposes a catch-22: it either bars the marketing of exclusively foreign insurance products in New York, or compels any business seeking to market such products involuntarily to also issue insurance to New York residents in order to obtain a New York insurance license as the price of doing business in the State of New York.

47. The Department's new interpretation of New York's licensing requirements is unconstitutional under the U.S. Constitution because it (i) violates the Due Process Clause of the Fourteenth Amendment as impermissibly vague because companies are deprived of reasonable notice of these requirements, (ii) violates the First and Fourteenth Amendments because it constitutes a content-based restriction on commercial speech that is unjustified by any legitimate or important state interest in regulating the New York insurance industry or protecting New York insureds, and (iii) violates the dormant Commerce Clause because it facially discriminates against foreign commerce without a compelling interest.

#### **CLAIMS FOR RELIEF**

##### **COUNT I: VIOLATION OF DUE PROCESS AND 42 U.S.C. § 1983 (DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF)**

48. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above in paragraphs 1 through 47 as if fully set forth herein.

49. Sections 1101(b)(1) and 1102(a) of the New York Insurance Law, as currently interpreted and applied by the Department, are unconstitutionally vague and fail to give fair notice of the requirements of those laws.

50. As alleged above, Sections 1101(b)(1) and 1102(a) do not provide a person of ordinary intelligence fair notice that a company that markets or solicits from or to New York insurance products regulated by foreign insurance authorities and covering insureds located outside the State of New York and the United States is subject to New York's insurance licensing requirements and/or is prohibited from engaging in such activities in New York.

51. Because of this vagueness, it was impossible for AIG to know during the period in which ALICO was one of its wholly-owned subsidiaries that ALICO was required to obtain a license under the New York Insurance Law.

52. Any penalty for ALICO's purported violation of the New York Insurance Law would deprive AIG of its "rights, privileges and immunities," 42 U.S.C. § 1983, under the Due Process Clause, U.S. Const. amend XIV.

53. An actual controversy exists between AIG and Defendants because Department officials, acting under color of law, have informed AIG that ALICO's failure to obtain a New York insurance license during the time in which it was AIG's wholly-owned subsidiary violated the New York Insurance Law and these officials, again acting under color of law, have further advised AIG that they will initiate administrative proceedings and other actions in order to levy substantial monetary penalties on AIG for this violation. The settlement and Consent Order between the Department and MetLife, announced on March 31, 2014, which expressly states the Department's conclusion that AIG has violated the New York Insurance Law, *see* Ex. A, at 9 ¶

18, further corroborates the concrete and imminent likelihood of an enforcement action against AIG and the existence of an actual and ripe controversy.

54. Plaintiff seeks a declaration that Sections 1101(b)(1) and 1102(a) of the New York Insurance Law, as interpreted and applied by the Department to ALICO's foreign insurance contracts, are void for vagueness under the Due Process Clause of the Fourteenth Amendment.

55. Plaintiff also seeks an injunction prohibiting Defendants from commencing or continuing any proceeding (administrative or otherwise) or imposing any penalty (monetary or otherwise) against AIG due to ALICO's failure, prior to November 1, 2010, to obtain a license pursuant to Sections 1101(b)(1) and 1102(a) of the New York Insurance Law.

**COUNT II: VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENT  
FREEDOM OF SPEECH AND 42 U.S.C. § 1983  
(DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF)**

56. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above in paragraphs 1 through 47 as if fully set forth herein.

57. The Department's *de facto* prohibition on the marketing from or into New York of insurance products regulated by foreign insurance authorities and exclusively covering insureds located outside the State of New York and the United States is an unconstitutional abridgement of the freedom of speech protected by the First Amendment as applied to the States through the Due Process Clause of the Fourteenth Amendment. The freedom of speech extends to commercial speech marketing or soliciting the purchase of goods or services.

58. This prohibition is a content-based restriction of protected speech because it prohibits certain insurance companies from marketing insurance products for foreign insureds that are not subject to any legitimate regulation by the State of New York.

59. This prohibition is a speaker-based restriction on speech because it targets one type of speaker—a company operating in New York that seeks *only* to market and solicit insurance products regulated by foreign insurance authorities and exclusively covering foreign insureds.

60. GMD’s marketing of ALICO’s insurance products for foreign insureds was not false or misleading and concerned activity that is lawful in the foreign jurisdictions to which those products were subject. There is no allegation to the contrary.

61. The Department has no legitimate or important interest in prohibiting marketing and solicitation of foreign insurance products regulated by foreign insurance authorities and exclusively covering foreign insureds, as such activities affect neither the New York insurance market nor New York residents. The insurance products, moreover, are already subject to regulation by foreign insurance regulators, with responsibility for and jurisdiction over the foreign insureds.

62. The Department’s interpretation of New York insurance laws to prohibit a company from marketing from or into New York insurance products regulated by foreign insurance authorities and exclusively covering foreign insureds does not directly advance any legitimate or important government purpose in regulating the New York insurance industry or protecting New York insureds. Indeed, the Department has not identified (nor even alleged) a single harm to New York (or even foreign) insurance consumers, nor has the Department asserted that the conduct at issue somehow jeopardized or undermined the stability of New York’s insurance market. *See, e.g.,* Ex. A. This lack of state interest is underscored by the fact that the Consent Order contains a detailed safe harbor provision apparently designed to allow ALICO to continue business operations without substantial interruption. *Id.* at p. 11 ¶ 7.

63. Any penalty imposed for these pure marketing activities, exclusive of any actual issuance or delivery of insurance in the State of New York, would deprive AIG of its “rights, privileges and immunities,” 42 U.S.C. § 1983, under the Free Speech Clause of the First Amendment, U.S. Const. amend I, as applied to the States through the Due Process Clause of the Fourteenth Amendment.

64. An actual controversy exists between AIG and Defendants because Department officials, acting under color of law, have advised AIG that they will initiate administrative proceedings and other actions in order to impose a substantial monetary penalty on AIG for the purportedly illegal marketing activities which occurred in the State of New York prior to November 1, 2010. The settlement and Consent Order between the Department and MetLife, announced on March 31, 2014, which expressly states the Department’s conclusion that AIG has violated the New York Insurance Law, *see* Ex. A, at p. 9 ¶ 18, further corroborates the concrete and imminent likelihood of an enforcement action against AIG and the existence of an actual and ripe controversy.

65. Plaintiff seeks a declaration that the State of New York may not, consistent with the First Amendment freedom of speech, prohibit a company operating in New York from marketing insurance products regulated by foreign insurance authorities and exclusively covering foreign insureds.

66. Plaintiff further seeks an injunction prohibiting Defendants from commencing or continuing any proceeding (administrative or otherwise) or imposing any penalty (monetary or otherwise) against AIG due to the marketing, prior to November 1, 2010, of ALICO’s insurance products regulated by foreign insurance authorities and exclusively covering foreign insureds.

**COUNT III: UNCONSTITUTIONAL BURDEN ON INTERSTATE  
COMMERCE UNDER COMMERCE CLAUSE AND 42 U.S.C. § 1983  
(DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF)**

67. Plaintiffs incorporate by reference and re-allege each and every allegation set forth above in paragraphs 1 through 47 as if fully set forth herein.

68. ALICO and GMD engaged in out-of-state and foreign commerce by marketing insurance products that were regulated by foreign insurance authorities and covered foreign insureds.

69. New York Insurance Law and related regulations, as interpreted by the Department, preclude a company operating in New York from marketing insurance products exclusively for foreign insureds without a New York insurance license but make such companies ineligible to obtain a license.

70. The Department's refusal to license a company operating in New York and marketing foreign insurance contracts that are regulated by foreign insurance authorities and exclusively cover foreign insureds discriminates facially against out-of-state commerce in violation of the dormant Commerce Clause, Art. I, section 8. The Department has no legitimate or important interest, much less any compelling interest in doing so. To date, the Department has not identified (nor alleged) any harm to a single New York insurance consumer, nor has the Department asserted that the conduct at issue jeopardized or undermined the stability of New York's insurance market. *See, e.g.*, Ex. A. Moreover, the Consent Order contains a detailed safe harbor provision apparently designed to allow ALICO to carry on its business without substantial interruption, notwithstanding the fact that it appears that ALICO cannot obtain a New York license. *Id.* at p. 11 ¶ 7. Thus, the Department's purported interest in prohibiting the activities in question is undermined by the terms of its own Consent Order.

71. Alternatively, if New York permits a company operating in New York to market insurance contracts regulated by foreign insurance authorities and covering foreign insureds solely on condition that it also provide insurance to New York insureds so that it is then eligible for a New York insurance license, that state policy likewise discriminates facially against out-of-state commerce in violation the dormant Commerce Clause, Art. I, section 8.

72. Defendants' impermissible discrimination against foreign commerce has deprived AIG of its "rights, privileges and immunities," 42 U.S.C. § 1983, under the Commerce Clause, U.S. Const. art. I, § 8.

73. An actual controversy exists between AIG and Defendants concerning whether the dormant Commerce Clause permits the State of New York, through Defendants, to prohibit a company operating in the State of New York from marketing insurance products regulated by foreign insurance authorities and exclusively covering foreign insureds. The settlement and Consent Order between the Department and MetLife, announced on March 31, 2014, which expressly states the Department's conclusion that AIG has violated the New York Insurance Law, *see* Ex. A, at p. 9 ¶ 18, further corroborates the concrete and imminent likelihood of an enforcement action against AIG and the existence of an actual and ripe controversy.

74. Plaintiff seeks a declaration that the State of New York's interpretation and application of its insurance law violates the dormant Commerce Clause insofar as it either *de facto* prohibits a company marketing from or into New York insurance products regulated by foreign insurance authorities and exclusively covering foreign insureds or alternatively forces such a company, as a price of doing business in New York, to market to New York insureds so as to become eligible to obtain and so to obtain a New York insurance license.

75. Plaintiffs further seek an injunction prohibiting Defendants from commencing or continuing any proceeding (administrative or otherwise) or imposing any penalty (monetary or otherwise) against AIG due to the marketing, prior to November 1, 2010, of ALICO's insurance products regulated by foreign insurance authorities and exclusively covering foreign insureds.

**PRAYER FOR RELIEF**

In light of the foregoing, Plaintiff respectfully prays that this Court:

A. Issue a declaratory judgment, pursuant to 28 U.S.C. § 2201, 42 U.S.C. § 1983, and Rule 57 of the Federal Rules of Civil Procedure, that:

i. Sections 1101(b)(1) and 1102(a) of the New York Insurance Law are void for vagueness under the Due Process Clause of the Fourteenth Amendment as applied to the marketing from or into New York of insurance products regulated by foreign insurance authorities and exclusively covering insureds located outside the State of New York and the United States;

ii. the State of New York's prohibition on the marketing from or into New York of insurance products regulated by foreign insurance authorities and exclusively covering insureds located outside the State of New York and the United States violates the Free Speech Clause of the First Amendment as applied to the States through the Due Process Clause of the Fourteenth Amendment; and

iii. the State of New York violates the dormant Commerce Clause of Art. I, section 8 either by: (a) prohibiting the marketing from or into New York of insurance products regulated by foreign insurance authorities and exclusively covering insureds located outside the State of New York, and/or (b) permitting such marketing activities from or into New York only on

condition that they are coupled with the sale of insurance products to New York state residents that would make the insurer eligible to obtain a New York state insurance license.

B. Issue a preliminary and permanent injunction, pursuant to 28 U.S.C. § 1651(a), 42 U.S.C. § 1983, and Rule 65 of the Federal Rules of Civil Procedure, prohibiting Defendants from commencing or pursuing any proceeding (administrative or otherwise) or imposing any penalty (monetary or otherwise) against AIG due to the marketing, prior to November 1, 2010, of ALICO's insurance products regulated by foreign insurance authorities and exclusively covering insureds located outside the State of New York and the United States;

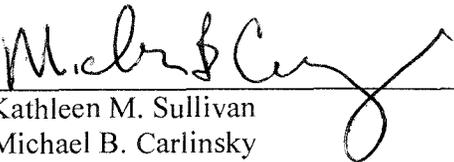
C. Award reasonable attorneys' fees and costs;

D. Award such other relief available under the law that may be considered appropriate under the circumstances, including other fees and costs of this action to the extent allowed by the law.

DATED: New York, New York

April 3, 2014

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By:   
Kathleen M. Sullivan  
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# Exhibit A

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
FINANCIAL FRAUD & CONSUMER PROTECTION DIVISION

-----X

In the Matter of

American Life Insurance Company, Delaware American  
Life Insurance Company and MetLife, Inc.,

Respondents.

-----X

**CONSENT ORDER**

WHEREAS, in 2011, the New York State Department of Financial Services (“DFS”) commenced an investigation, pursuant to the New York Insurance Law, of American Life Insurance Company (“ALICO”) and Delaware American Life Insurance Company (“DelAm”), formerly subsidiaries of American International Group (“AIG”), and, as of November 2010 subsidiaries of MetLife, Inc. (“MetLife”) (the “Investigation”);

WHEREAS, DFS investigated whether ALICO and DelAm were doing an insurance business in New York without a New York license and aided other insurers in doing an insurance business in New York without a New York license;

WHEREAS, the Investigation concluded that ALICO, while operating as a subsidiary of AIG, made misrepresentations and omissions concerning its insurance business activities in New York to DFS’s predecessor, the New York State Insurance Department (“NYSID”)<sup>1</sup>;

WHEREAS, the Investigation concluded that ALICO, DelAm and certain AIG subsidiaries and affiliates have done an insurance business in New York without a license;

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<sup>1</sup> DFS was created by transferring the functions of the New York State Banking Department and the New York State Insurance Department into a new agency. This transfer of functions became effective on October 3, 2011.

WHEREAS, the Investigation concluded that ALICO, DelAm, certain AIG subsidiaries and affiliates, AIG and MetLife have solicited and continue to solicit insurance business in New York on behalf of insurers unlicensed in New York or otherwise aid such insurers;

WHEREAS, the Investigation concluded that ALICO and certain alien insurers have collected approximately \$900 million in premiums (including renewals) from multinational corporations involving contact with its New York sales representatives from 2007 to 2012;

WHEREAS, this Consent Order contains DFS's findings and the relief agreed to by DFS and ALICO, DelAm and MetLife (collectively referred to as the "MetLife Parties").

NOW, THEREFORE, DFS and the MetLife Parties are willing to resolve the matters cited herein in lieu of proceeding by notice and a hearing. DFS finds as follows:

### **FINDINGS**

The findings of the Investigation ("Findings") are as follows:

### **RELEVANT ENTITIES**

1. AIG is a major insurance and financial services company, operating in more than 130 countries and jurisdictions. AIG offers life insurance networks to commercial, institutional and individual customers. AIG also provides retirement services, financial services and asset management to clients worldwide. On March 8, 2010, AIG announced an agreement with MetLife to sell ALICO and DelAm to MetLife for \$15.5 billion. On November 1, 2010, MetLife completed its acquisition of ALICO and DelAm for \$16.2 billion, consisting of \$7.2 billion in cash and \$9.0 billion in MetLife equity and other securities (the "Acquisition").

2. ALICO is a Delaware insurance company founded in 1921. ALICO is licensed in the United States only in Delaware. ALICO, through its network of foreign branches, subsidiaries and affiliates, sells life insurance, annuities, accident and health insurance and, in the past, other types of insurance, in more than 50 countries and regions, including Japan, Europe, the Middle East, South Asia, and the Caribbean. The insurance sold through ALICO includes group life, disability, medical plans that companies offer their employees and pension plans. ALICO is not now, nor has it ever been, licensed to do an insurance business in New York.
3. DelAm is a Delaware life insurance company founded in 1964. As of January 2013, it is licensed to do insurance business in all states except New Mexico. DelAm was not licensed to do an insurance business in New York for any period prior to January 1, 2013.
4. MetLife is a holding company incorporated in Delaware and holds all of the capital stock of ALICO and DelAm.
5. The Group Management Division of AIG, and later the Global Employee Benefits Group at MetLife (collectively "GMD"), was responsible for soliciting and selling insurance to multinational companies on behalf of DelAm and ALICO's foreign branches, subsidiaries and affiliates as well as insurers unrelated to ALICO and DelAm. Prior to the Acquisition, GMD's personnel were located at 70 Pine Street, New York, New York and Wilmington, Delaware, and since the Acquisition GMD's personnel have been located at 1095 Avenue of the Americas, New York, New York and Wilmington, Delaware. GMD also has personnel in Chicago, Los Angeles, , Paris and London. At various times over at least the last twenty years, GMD personnel were employees of AIG, ALICO, MetLife Group, Inc., and upon information and belief, DelAm.

## FACTUAL BACKGROUND

### ALICO's Intentional Misrepresentations and Omissions to the NYSID

6. ALICO, while operating as a subsidiary of AIG in 2009, made intentional misrepresentations and omissions to NYSID concerning its insurance business activities in New York.
7. On July 14, 2009, ALICO's in-house and outside counsel made a presentation to then Acting Superintendent of Insurance, Kermitt Brooks. The presentation materials specifically stated that, with respect to ALICO: "No Insurance Operations Conducted in New York."
8. Following the meeting with NYSID, ALICO's outside counsel, in a letter to NYSID dated July 21, 2009, specifically represented to NYSID on behalf of ALICO that ALICO was not soliciting insurance business in New York. In pertinent part, the letter states:

ALICO presently has executive offices in the AIG building at 70 Pine Street. The Company **does not solicit business in New York** nor does its name appear anywhere on the building or in any building directory available to the public. The Company is not listed in any New York telephone directory. The Company's executives and staff in New York do not make, propose to make, issue or deliver any policies or contracts of insurance, underwrite any insurance risks, **solicit persons to buy any insurance**, bill or collect premiums or any other consideration for contracts of insurance, or adjust any insurance claims. (Emphasis added.)

9. In response to the above letter, NYSID requested additional information regarding the insurance business activities of ALICO. However, ALICO's outside counsel refused to provide any additional information. In a letter to NYSID dated September 4, 2009, ALICO's outside counsel, on behalf of ALICO, refused to provide the requested information citing "practical" hurdles in specifying the employees' specific responsibilities. ALICO's outside counsel wrote:

I am writing pursuant to our telephone conversation wherein you asked for greater detail concerning the types of activities in which American Life Insurance Company ("ALICO") employees will engage, as described in my letter to [Rob Easton] of July 17. I have reviewed those descriptions with my client, which described categories of activities, and see no

practical way to expand upon them. Obviously it would be an ultimately futile attempt to try and detail the myriad activities involved in “human resources,” “strategic planning,” “finance operations,” “shareholder relations,” or “corporate legal advice.”

10. Despite ALICO’s refusal to provide the requested information, NYSID conditionally concluded that the activities specified in ALICO’s letter may constitute permissible “back office” functions under certain circumstances. Specifically, in a letter to ALICO’s outside counsel dated November 23, 2009 (the “November 2009 Letter”), NYSID concluded that ALICO’s functions “seem” to be “back office” functions that do not constitute engaging in the business of insurance in New York, and thus “may” not require ALICO to have an insurance license. However, NYSID reiterated the various restrictions on ALICO’s activities in order to comply with the New York Insurance Law. As such, NYSID conditionally approved the activities provided that ALICO was engaged only in “back office” functions.

In the November 2009 Letter to ALICO’s outside counsel, NYSID concluded:

Yes. The general function ascribed to the various ALICO executives may come within activities in New York that constitute “back office” functions. Thus, provided that there is no contact with the public, and so long as such functions are primarily ministerial in nature, and do not involve solicitation or sale of insurance or any other activity proscribed by N.Y. Ins. Law § 1102 (McKinney 2006), they are permissible.

11. In the November 2009 Letter, NYSID also provided an analysis that clearly identified to ALICO the activities that are not permissible under New York law. NYSID wrote to ALICO’s outside counsel:

Insurance Law Section 1102(a) is relevant to the inquiry. That statute prohibits any person, firm, association, corporation, or joint stock company from doing an insurance business in this state unless authorized by a license in force pursuant to the provisions of the Insurance Law, or explicitly exempted by the Insurance Law.

In turn, Insurance Law Section 1101 defines the acts that constitute doing an insurance business in this state. Insurance Law Section 1101(b) provides:

(b)(1) Except as provided in paragraph two, three or three a of this subsection any of the following acts in this state, effected by mail from outside this state or otherwise, by any person, firm, association, corporation, or joint-stock company shall constitute doing an insurance business in this state and shall constitute doing business in this state within the meaning of section three hundred two of the civil practice law and rules:

(A)making, or proposing to make, as insurer, any insurance contract, including either issuance or delivery of a policy or contract of insurance to a resident of this state or to any firm, association, or corporation authorized to do business herein, or solicitation of applications for any such policies or contracts;

....

(D) doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this chapter;

(E) doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this chapter.

12. In the November 2009 Letter, NYSID also emphasized that merely acting for or aiding an unlicensed or unauthorized insurer is also a violation of the N. Y. Insurance Law:

**Finally, Insurance Law Section 2117 prohibits any person, firm, association or corporation from acting for or aiding unlicensed or unauthorized insurers or health maintenance organizations.** (Emphasis added.)

13. In the November 2009 Letter, NYSID concluded:

The general functions set forth in your July 21, 2009 letter, and ascribed to the various ALICO executives seem to fall within activities in New York that constitute “back office” functions, provided that there is no contact with the public, and so long as they are primarily ministerial in nature, and do not involve solicitation or sale of insurance, or any other activity, proscribed by Insurance Law § 1102. However, given the general nature of your inquiry, OGC is unable at this time to opine definitively about whether any specific activity that any of the executives may perform in New York on behalf of ALICO constitutes the doing of an insurance business.

14. As discussed in more detail below, ALICO’s insurance activities prior to 2009 and to date, went well beyond engaging in “back office” functions. In fact, ALICO and DelAm were

doing an insurance business in New York. Moreover, ALICO and, upon information and belief, DelAm employees, and certain AIG employees and, later, MetLife Group, Inc. employees were aiding unlicensed insurers in the doing of an insurance business in New York.

15. Less than four months after receiving the November 2009 Letter, AIG announced the Acquisition.

**Unlicensed Solicitation of Insurance Business in New York**

16. The Investigation has revealed, contrary to the representations of ALICO's counsel, that the following insurance activities have been and continue to be conducted by ALICO, DelAm, AIG, and MetLife from their respective offices in New York:

- (a) Sales representatives were based in New York;
- (b) The sales representatives solicited in New York insurance, including group life, disability, medical plans offered by companies to their employees, and pension plans, on behalf of ALICO and DelAm and their subsidiaries or affiliates, as well as insurers not affiliated with either company, without any such insurer being duly licensed in New York;
- (c) The sales representatives were engaged in direct selling in New York to multinational companies on behalf of ALICO and DelAm and their subsidiaries and affiliates as well as insurers not affiliated with either company;
- (d) The sales representatives were not licensed as insurance brokers or agents in New York. Some of the sales representatives became licensed as insurance agents following the Acquisition;

- (e) The sales representatives conducted sales meetings in New York concerning group insurance products of ALICO, DelAm and their subsidiaries and affiliates as well as insurers not affiliated with either company;
- (f) The sales representatives had extensive contact with the multinational clients including periodic visits, regular phone calls and emails, deliveries of multinational pooling reports, and providing entertainment;
- (g) The sales representatives would also make personal visits in New York to the multinational clients and potential clients;
- (h) The sales representatives conducted “road shows” in New York in order to solicit and sell group insurance products of ALICO, DelAm and their subsidiaries and affiliates and other unaffiliated insurers. The sales representatives, for example, conducted a “road show” at the AIG corporate dining room at 70 Pine Street for multinational companies with operations in Brazil. The Brazil “road show” was designed to generate new sales in the amount of \$25 million;
- (i) The sales representatives had incentive compensation plans that compensated them for placing business with DelAm and the foreign operations of ALICO and its subsidiaries and affiliates and other unaffiliated insurers and were compensated based upon a percentage of premium collected by DelAm and ALICO and its subsidiaries and affiliates and other unaffiliated insurers;
- (j) ALICO and DelAm had an incentive compensation bonus that was changed from a commission at the advice of counsel. The incentive compensation

bonus was based on how much the sales representatives were able to sell in terms of ALICO, DelAm and other insurers' insurance;

(k) The sales executives in New York organized sales competitions among the sales representatives in order to increase sales productivity; and

(l) The sales representatives also solicited purchases of group insurance products in New York for expatriate employees sent abroad by the multinational corporations on behalf of ALICO, DelAm, and their subsidiaries and affiliates and unaffiliated insurers.

17. AIG, ALICO, DelAm and MetLife insurance activities went well beyond engaging in "back office" functions. In fact, ALICO, AIG, DelAm and MetLife were soliciting insurance business in New York without a license.

#### **VIOLATIONS**

18. DFS finds the foregoing acts and practices of MetLife, AIG, ALICO and DelAm violate N.Y. Ins. Law §§ 1102, 2102(a) and 2117.

#### **AGREEMENT**

##### **I. Civil Fine**

1. Within seven days of the Effective Date, MetLife shall pay a civil fine pursuant to N.Y. Ins. Law § 109 in the amount of \$50,000,000 to the New York State Department of Financial Services to address all underlying conduct of the MetLife Parties. The payment shall be in the form of a wire transfer in accordance with DFS instructions or a certified or bank check made payable "State of New York Department of Financial Services" and mailed to: New York State Department of Financial Services, One State Street, New

York, New York, 10004-1511, Attn: Joy Feigenbaum, Executive Deputy Superintendent, Financial Frauds & Consumer Protection.

**II. Licensing and Reporting**

2. A MetLife subsidiary authorized to write life and accident and health insurance as well as annuities in New York (the “Authorized Insurer”) will submit documentation and information about the MetLife Parties’ global employee benefit business and the MAXIS Global Benefits Network pursuant to Paragraph 7(A)(v) below. The initial documentation and information shall be provided within 30 days of the execution of this Consent Order.
3. The MetLife Parties shall provide to DFS quarterly reports commencing on April 30, 2014 relating to the MetLife Parties’ insurance activities involving multinational corporations in New York with respect to the Authorized Insurer, ALICO, the Global Employee Benefits Group, and the MAXIS Global Benefits Network.

**III. Compliance with the Investigation**

4. The MetLife Parties agree to fully cooperate with DFS’s Investigation of ALICO, DelAm and AIG concerning ALICO’s, DelAm’s and AIG’s violations of sections 1102, 2102 and 2117 of the Insurance Law and related offenses prior to the Acquisition. The MetLife Parties’ cooperation includes, but is not to limited to, providing all non-privileged documents and information requested by DFS, as well as any testimony of any MetLife Parties’ employees requested by DFS concerning ALICO’s and DelAm’s doing insurance business in New York without a New York license prior to the Acquisition.

5. MetLife Parties that are not licensed in New York and their employees shall immediately cease and desist from engaging in any activities that would violate N.Y. Ins. Law §§ 1102, 2102(a) and 2117.
6. MetLife Parties that are licensed in New York shall immediately cease and desist from engaging in any activities that would violate N.Y. Ins. Law §§ 2102(a) and 2117 subject to the provisions of Paragraphs 7 through 9 below.
7. As the MetLife Parties work to come into full compliance with the New York Insurance Law, and provided they fully comply with the Agreement section of this Consent Order, and, further, only in the circumstances including without limitation satisfying the conditions set forth in Paragraph 7(A) below, DFS will not object to the MetLife Parties and their subsidiaries and affiliates and their respective employees, officers and agents acting on behalf of the Authorized Insurer (collectively referred to herein as “Authorized Insurer Representative”) that are licensed engaging in the activities set forth in Paragraph 7(B) below with respect to an alien insurer or a foreign branch of ALICO until June 30, 2015:
  - A(i.) the alien insurer is a controlled person within the Authorized Insurer’s holding company system or party to a contract concerning global employee benefits with the Authorized Insurer and is not licensed to do an insurance business in the United States;
  - (ii.) the activities relate to a policy or contract of group life, group annuity, or group accident and health insurance covering employees of a multinational corporation and their dependents, where the covered individuals are not citizens or permanent residents of the United States, except that the policy or contract (a) may provide

coverage to a covered individual who is temporarily in the United States, provided that in such case if the policy is a major medical or other comprehensive-type accident and health insurance policy or contract, then the policy or contract shall provide coverage in the United States that meets the minimum requirements as required by applicable law, or (b) in the alternative, terminate coverage to any individual that enters the United States;

- (iii.) neither the Authorized Insurer nor any Authorized Representative shall, in this state, underwrite or bind a policy or contract or negotiate the terms and conditions of a policy or contract or issue or deliver a policy or contract in the United States on behalf of the alien insurer or ALICO foreign branch;
- (iv.) any Authorized Insurer Representative shall not act as an insurance agent in this state unless licensed as an insurance agent in this state and appointed by the Authorized Insurer;
- (v.) prior to the Authorized Insurer or any Authorized Insurer Representative engaging in any activity on behalf of the alien insurer or ALICO with respect to its foreign branches, the Authorized Insurer files with the Superintendent of Financial Services:
  - a. a statement that the alien insurer or ALICO is a controlled person within the Authorized Insurer's holding company system or party to a contract concerning global employee benefits with the Authorized Insurer's holding company system;
  - b. the alien insurer's or, with respect to ALICO's foreign branch's name, country of domicile, and address of its principal office;

- c. the name, mailing address, email address, and telephone information of a contact person for the alien insurer or ALICO foreign branch;
  - d. a list of the kinds of insurance and types of policies or contracts to be issued or delivered and an affirmation that the alien insurer or ALICO foreign branch is authorized to transact the kinds of insurance business in the jurisdictions where the policies or contract will be issued or delivered;
  - e. a statement that the policy or contract has been filed with the appropriate regulatory authority in the jurisdiction where the policy or contract is to be issued or delivered or, if the jurisdiction does not require the policy or contract to be filed with a regulatory authority, appropriate documentation that no such filing is required, and a statement that the alien insurer is duly licensed and subject to the jurisdiction where the policies or contract has been filed;
  - f. an acknowledgement that the Authorized Insurer shall be responsible for any violations of New York Insurance Law by the alien insurer or ALICO foreign branch or any Authorized Insurer Representative;
  - g. such other information as the Superintendent of Financial Services may require; and
  - h. beginning on July 1, 2014, the Authorized Insurer shall file with the Superintendent of Financial Services any changes in the information required above within forty-five days after such change or after the Authorized Insurer's cessation of such activities.
- (vi.) upon engaging in any of the activities specified below or immediately thereafter, the Authorized Insurer must provide written notice to the multinational

corporation that the alien insurer is not licensed or authorized to do business in this state; that the policy or contract has not been approved by the Superintendent of Financial Services; and the policy or contract is not subject to all of the laws of this state;

- (vii.) the alien insurer shall not maintain any office in this state; and
- (viii.) an Authorized Insurer Representative shall not be compensated by any person other than the Authorized Insurer or its affiliate for engaging in any activity provided herein.

B(i.) Subject to the provisions of Paragraph 7A above, DFS will not object to the Authorized Insurer, or the Authorized Insurer Representative engaging in this state in only the following activities on behalf of the alien insurer or ALICO Foreign branch:

- a. provide general information to the multinational corporation with respect to a policy or contract of group life, group annuity, or group accident and health insurance to be issued or that has been issued by the alien insurer or ALICO Foreign branch;
- b. meet and discuss general insurance needs with the multinational corporation, including providing information directly to the corporation in person or otherwise about the policies or contracts offered by the alien insurer or ALICO Foreign branch, and facilitating introductions with the multinational corporation's human resources and benefit manager in each country in which the corporation has employee benefit needs;

- c. refer the multinational corporation to the alien insurer or ALICO foreign branch and providing general information to the multinational corporation about the alien insurer or ALICO foreign branch;
  - d. respond to requests for clarification by representatives of the multinational corporation concerning quotes and any other specific terms and conditions of a group life, group annuity, or group accident and health insurance policy or contract being negotiated locally by the applicable alien insurer or ALICO foreign branch;
  - e. provide information concerning renewals of existing policies or contracts of group life, group annuity, or group accident and health insurance issued by the alien insurer or ALICO foreign branch;
  - f. manage the employee benefits of the multinational corporation, including aggregating and reporting employee benefits and financial information about the program; and
  - g. with respect to the immediately preceding provisions (a) through (f), for the avoidance of doubt, neither the Authorized Insurer nor any Authorized Insurer Representative shall engage in this state in the following activities on behalf of the alien insurer or ALICO foreign branch: providing quotes, signing applications, binding coverage, issuing policies, collecting premium, or adjudicating claims;
- (ii.) provided, however, that the Authorized Insurer or any Authorized Insurer Representative shall not call attention to the alien insurer by any advertisement or public announcement in this state.

(iii.) the terms of this Paragraph 7(B) shall remain in force until June 30, 2015.

8. Any activity listed in Paragraph 7 above in which an Authorized Insurer or the insurer's officer, employee, or licensed insurance agent engages on behalf of an alien insurer, shall be deemed to be included within the meaning of "any other transaction of business" within the meaning of § 1213 of the Insurance Law.
9. Any agreement between the alien insurer and Authorized Insurer regarding activities, provided herein, including any agreement to compensate the Authorized Insurer, shall be deemed to be a transaction involving the "rendering of services on a regular or systematic basis" by the Authorized Insurer within the meaning of § 1505 of the Insurance Law.

## **II. Other Relief**

10. MetLife, ALICO and DelAm admit to the authority of DFS to effectuate this Consent Order.

## **III. Breach of the Consent Order**

11. In the event that the DFS believes that MetLife, ALICO or DelAm has materially breached this Consent Order, DFS will provide written notice of such breach to MetLife, ALICO or DelAm and MetLife, ALICO or DelAm (as the case may be) and they must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of DFS, appear before DFS and have an opportunity to rebut the evidence, if any, on the issue of whether a breach has occurred and, to the extent pertinent, to demonstrate that any such breach is not material or has been cured.
12. The MetLife Parties understand and agree that MetLife's, ALICO's, or DelAm's failure to appear in response to the notice of breach within the specified period as set forth in Section III, Paragraph 11 is presumptive evidence of MetLife's, ALICO's or DelAm's

breach. Upon finding of a breach, DFS may take any and all actions available to it under the New York Insurance Law and the New York Financial Services Law, and may use any and all evidence available to it for any hearings, notices, orders and other remedies that may be available under New York law.

**IV. Other Provisions**

13. DFS will not initiate any proceeding against the MetLife Parties, their subsidiaries and affiliates (collectively the “MetLife Entities”), current or former employees, officers or directors of any of the MetLife Entities, and any party who entered into a contract concerning global employee benefits with one of the MetLife Entities, in connection with the activities that are the subject of the Investigation, except to the extent that ALICO or DelAm may become a necessary nominal party.
14. If MetLife defaults on its monetary obligations under this Consent Order, DFS may terminate this Consent Order, at its sole discretion, upon ten (10) days’ written notice to MetLife, ALICO or DelAm. In the event of such termination, MetLife, ALICO and DelAm expressly agree and acknowledge that this Consent Order shall in no way bar or otherwise preclude DFS from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Consent Order, against them, or any one of them, or from using in any way the statements, documents or other materials produced or provided by MetLife, ALICO or DelAm prior to or after the date of this Consent Order, including, without limitation, such statements, documents or other materials, if any, provided for purposes of settlement negotiations, except as may otherwise be provided in a written agreement with DFS.

15. DFS has agreed to the terms of this Consent Order based on, among other things, the representations made to DFS by MetLife, ALICO, DelAm and/or their counsel in connection with DFS's Investigation and the Findings of the Investigation. To the extent that representations made by MetLife, ALICO, DelAm or their counsel are later found to be materially incomplete or inaccurate, this Consent Order is voidable by DFS in the Superintendent of Financial Service's sole discretion.
16. MetLife, ALICO, and DelAm shall, upon request by DFS, provide all non-privileged documentation and information reasonably necessary for DFS to verify compliance with this Consent Order.
17. All notices, reports, requests, and other communications to any party pursuant to this Consent Order shall be in writing and shall be directed as follows:

If to DFS:

New York Department of Financial Services  
One State Street  
New York, New York 10004-1511  
Attention: Christopher B. Mulvihill, Senior Counsel to the Superintendent

If to MetLife:

MetLife, Inc.  
1095 Avenue of the Americas  
New York, NY 10036  
  
Attention: A. Kaiper Wilson, Chief Counsel – Litigation

with a copy to:

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022  
  
Attention: Eric Dinallo, Esq.

18. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
19. MetLife, ALICO and DelAm waive their right to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date of this Consent Order and agree that no provision of this Consent Order is subject to review in any court or tribunal.
20. This Consent Order may not be amended except by an instrument in writing signed on behalf of all the parties to this Consent Order.
21. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.
22. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the Respondents hereto and approved by the Superintendent of Financial Services or his designee.
23. Upon execution by the parties to this Consent Order, DFS will discontinue the Investigation as and against MetLife, ALICO and DelAm solely with respect to ALICO and DelAm doing an insurance business in New York without a New York license from November 1, 2010 to the Effective Date of this Consent Order.
24. The Effective Date of this Consent Order is the date on which it shall be signed by each of the Respondents hereto and approved by the Superintendent of Financial Services.

**WHEREFORE**, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

Dated: March \_\_, 2014

MetLife, Inc.

By: A. Kaiper Wilson  
A. Kaiper Wilson  
Chief Counsel - Litigation

March 26, 2014

AMERICAN LIFE INSURANCE COMPANY

By: \_\_\_\_\_

March \_\_, 2014

DELAWARE AMERICAN LIFE INSURANCE  
COMPANY

By: \_\_\_\_\_

March \_\_, 2014

**WHEREFORE**, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

Dated: March \_\_, 2014

MetLife, Inc.

By: \_\_\_\_\_

March \_\_, 2014

AMERICAN LIFE INSURANCE COMPANY

By: A. Kaiper Wilson  
A. Kaiper Wilson

March 28, 2014

DELAWARE AMERICAN LIFE INSURANCE  
COMPANY

By: \_\_\_\_\_

March \_\_, 2014

**WHEREFORE**, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

Dated: March \_\_\_, 2014

MetLife, Inc.

By: \_\_\_\_\_

March \_\_\_, 2014

AMERICAN LIFE INSURANCE COMPANY

By: \_\_\_\_\_

March \_\_\_, 2014

DELAWARE AMERICAN LIFE INSURANCE  
COMPANY

By: *A. Kaiper Wilson*  
A. Kaiper Wilson

March 27, 2014

THE FOREGOING IS HEREBY APPROVED.  
IT IS SO ORDERED.

Dated: New York, NY  
March 31, 2014



BENJAMIN M. LAWSKY  
Superintendent of Financial Services