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Fed. R. Civ. P. 65(c)20

RESTATEMENT (SECOND) OF TORTS § 62911

I. PRELIMINARY STATEMENT REGARDING THIS APPLICATION

Plaintiff Association Member Benefits Advisors, LLC (“AMBA” or “Plaintiff”) has already filed its Application for Preliminary Injunction (the “Application”) with Plaintiff’s Original Petition in the prior state court proceeding and after removal to this Court in Plaintiff’s First Amended Complaint (Dkt. No. 18-1), which Motion for Leave is still pending. (Dkt. No. 18.) AMBA now files its Application in order to conform with the requirements of Local Court Rule CV-65 and to provide additional legal authorities. Plaintiff incorporates by reference its previous pleadings containing AMBA’s Application, which sets forth in full Plaintiff’s factual and legal bases for relief. AMBA does not plead any new legal theories or novel facts within this Application; this is a pro forma pleading to conform with the Court’s local rule. In further support of its previously filed Application, AMBA respectfully shows:

II. INTRODUCTION

This case arises out of Defendant TRTA’s breach of its contractual obligations under two longstanding agreements with AMBA, the 2004 Dental/Vision Agreement (Exhibit 1) and the 2011 Other Endorsed Products Agreement (Exhibit 2, the “2011 Agreement”)¹ and Defendant’s efforts to misappropriate Plaintiff’s contract rights. AMBA seeks to preserve the status quo and to hold the Defendants accountable for unlawful and malicious conduct that was perpetrated for no other reason than to misappropriate AMBA’s property and to injure AMBA.

The Contract Claim. AMBA’s injunctive application requests (*see* Dkt. No. 18-1, AMBA’s Amended Complaint) that Defendants be enjoined from violating (1) the parties’ 2004

¹ The terms of the 2004 Dental/Vision Agreement and the 2011 Agreement are discussed at length in Plaintiff’s Amended Complaint (Dkt. No. 18-1 at 7-8, 22) and other responsive pleadings. (*See* Dkt. No. 27 at 2-4; Dkt. No. 30 at 6-7.)

Dental/Vision Agreement between AMBA and TRTA and (2) the surviving provisions of the 2011 Agreement. The parties' 2004 Agreement provides that AMBA shall continue to serve as the agent of record and third-party administrator for policies under the dental and vision blocks of business, even if AMBA is no longer endorsed for other products under the 2011 Agreement. Despite this fact, Defendants TRTA and its agent Tim Lee have knowingly refused to honor the terms of the 2004 Agreement to the great detriment of AMBA and the TRTA members who are insured through AMBA's policies.

The tortious interference and disparagement claims. AMBA's injunctive application also seeks (*see* Dkt. 18-1) to enjoin Defendants from:

- (a) seeking to undermine the relationship between TRTA members who are AMBA insurance customers and AMBA;
 - (b) attempting to defame and disparage AMBA's valuable business;
 - (c) seeking to tortiously interfere with the business relationships between AMBA, its customers and its underwriters;
 - (d) interfering with AMBA's ability to continue to sell and provide insurance services to TRTA members and other associations' members;
 - (e) seeking to change the status quo between Defendant TRTA and AMBA, prior to the proper litigation of the matters set out in AMBA's Complaint (Dkt. No. 18-1), in violation of a valid Rule 11 agreement made before the case was removed;
 - (f) misrepresenting the benefits of AMBA's products while making untrue and misleading comparisons of the benefits offered by Trident; and
 - (g) disrupting the AMBA dental and vision plans by misleading marketing methods.
- (*See* Dkt. No.18-1 at 5-6.)

Unless Defendants are enjoined as requested, AMBA will face irreparable harm on many fronts. Defendants' conduct threatens the longevity and value of AMBA's "book of business" comprising the dental and vision blocks of insurance AMBA has developed for its TRTA customers. Defendants' breach of contract and/or tortious conduct is causing, and will continue to cause, insureds to cancel their insurance with AMBA, create confusion among the TRTA members as to AMBA's right to continue administering the dental and vision policies and cause the insureds to distrust the integrity of AMBA to administer the policies. Just as important, Defendants' conduct affects the public interest, as TRTA members' insurance coverage is being compromised by Defendants' misleading marketing practices. For the foregoing reasons, Plaintiff seeks preliminary injunctive relief to protect AMBA from further irreparable harm and to protect the public interest.

III. ARGUMENT AND AUTHORITIES

A. Legal Standard for Preliminary Injunctive Relief.

A court may issue a preliminary injunction to protect the plaintiff from irreparable injury and to preserve the district court's power to render a meaningful decision after a trial on the merits. *Canal Authority of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974). An applicant for a preliminary injunction must show: (1) a substantial likelihood that the plaintiff will prevail on the merits; (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant; and (4) granting the injunction will not disserve the public interest. *Id.* at 572-73.

B. AMBA is Likely to Prevail on the Merits of its Claims.

To show a likelihood of success on the merits, the party seeking injunctive relief must present a "prima facie case" but need not demonstrate that he is certain to win. *See Janvey v. Alguire*, 647 F.3d 585, 595-96 (5th Cir. 2011). To determine the likelihood of success on the

merits, the court will look to the standards provided by the substantive law. *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir. 1990). Under this framework, AMBA has shown a probable right to recover on its claims for breach of contract, tortious interference, business disparagement and defamation.

1. AMBA is Likely to Prevail on its Breach of Contract Claim, as the Parties Intended for the 2004 Dental/Vision Agreement, and AMBA’s Agent/Administrator Status, to Survive Beyond the Endorsement Agreement.

The 2004 Agreement is clear. No party has pleaded ambiguity. All elements for breach are satisfied. *Southwell v. University of the Incarnate Word*, 974 S.W.2d 351, 354 (Tex. App.—San Antonio, 1998, pet. denied). The 2004 Agreement designates AMBA as the exclusive agent of record and third party administrator for any and all dental (and vision, as amended) insurance programs developed for TRTA by AMBA for “the duration of its existence.” This Agreement concerns discrete books of business developed using AMBA resources and sold by AMBA.

“It is axiomatic that the first task of a court in contract interpretation is determining from the agreement itself and the surrounding circumstances what the intent of the parties was.” *Southern Bell Telephone & Telegraph Co. v. Florida East Coast Railway Co.*, 399 F.2d 854, 856 (5th Cir. 1968). Up until the filing of this lawsuit, both TRTA, its Executive Director and their current legal counsel acknowledged in writing that termination of the 2011 endorsement agreement would not terminate AMBA’s right to market the Dental and Vision benefits as Agent of Record and Administrator under the 2004 Agreement. In an email dated July 1, 2020, TRTA and its Executive Director, Tim Lee, wrote to AMBA and acknowledged that the 2004 Agreement did not allow for assignment of Agent of Record status to a new designee. *See* Exhibit 4. Mr. Lee also expressed that an amendment to the 2004 Agreement would be required before TRTA had the right to transfer AMBA’s Agent of Record rights to a new plan:

[] TRTA suggests that an amendment is necessary to our current agreement that takes into account the addition of this new dental product. We know that TRTA is the master policy holder on the dental product(s), but we also suggest that TRTA have the ability to assign agent of record status to any future designee for the new select plan in the event that the TRTA and AMBA partnership is not renewed. ***We recognize that the current TRTA/AMBA's agreement does not allow for this assignment under the existing terms for the existing insureds***

Id. (emphasis added). It is clear from the July 2020 email that TRTA's original understanding was that it was bound by the 2004 Agreement to have AMBA remain as the agent and administrator of the dental and vision blocks *even if* the parties ended their 2011 endorsement agreement with respect to other products. *Id.* The Court should interpret the 2004 Agreement as the parties did:

No principle of interpretation of contracts is more firmly established than that great, if not controlling, weight should be given by the court to the interpretation placed upon a contract of uncertain meaning by the parties themselves. Courts rightfully assume that parties to a contract are in the best position to know what was intended by the language employed. . . . The court should adopt the construction of the instrument as placed upon it by the parties unless there is clear language in the instrument indicating an intention to the contrary.

Harris v. Rowe, 593 S.W.2d 303, 306 (Tex. 1980) (citations omitted).

Now TRTA is trying to take a position that is 180 degrees from its original understanding. As reflected by the parties' understanding in the July 2020 email, the 2004 Agreement is binding on the parties, still in effect and cannot be unilaterally terminated except in limited circumstances, as expressly stated in the contract. *See* Exhibit 1 at Exh. B, ¶ 5. Contrary to TRTA's *new* (post lawsuit filing) interpretation of the contracts, the 2004 Agreement was not superseded by the 2011 Agreement, as the latter agreement by its express language did not even apply to the dental or vision insurance coverage that is the subject of the earlier agreement. *See Shannon v. Mem'l Drive Presbyterian Church U.S.*, 476 S.W.3d 612, 623 (Tex. App. 2015) (A court interpreting a contract will "give terms their plain and ordinary meaning"); *cf.* Exh. 1 and Exh. 2; *see also* AMBA's

Response (Dkt. No. 27 at 7-8) (2011 Agreement did not invalidate the terms of the 2004 Agreement.).

TRTA clearly recognizes that the 2011 Agreement did not supersede the 2004 Agreement, which is why it now suddenly argues that the 2004 Agreement is an agreement of indefinite duration and therefore terminable at will. (Dkt. No. 14 at 10-12.) TRTA's argument overlooks the mutual agreement of the parties to restrict its right to terminate AMBA's agent/administrator status. Per the provision, TRTA may only terminate the contract if AMBA commits "a material breach of fiduciary duty" or "fail[s] to adhere to the princip[les] of the Insurance Marketplace Standards Association." See Exhibit 1. From a practical standpoint, TRTA may also end the agreement by canceling the dental and vision plans that were developed by AMBA for the TRTA members. *Id.* ("AMBA shall remain the agent of record and third party administrator for the TRTA dental [and vision] plan[s], developed by AMBA, **for the duration of [their] existence.**" (emphasis added)).

The 2004 Dental/Vision Agreements are neither "agreements of indefinite duration" nor are they "terminable at will." The *Trient* case, relied upon by Defendants, involved a license agreement for the operation of Blockbuster stores by a licensee. See *Trient Partners I, Ltd. v. Blockbuster Entm't Corp.*, 83 F.3d 704, 706 (5th Cir. 1996). Distinct from the AMBA/TRTA contract, the *Trient* agreement did not have any express provision limiting a party's right to terminate and only allowed the parties to walk away if it was "breached by means of an incurable or uncured default." *Id.* at 709. Presented with a simple recitation of contract principles and not a specific termination clause, the *Trient* court did not find the agreement's termination provisions to be "the kind of determinable events that transform a contract of indefinite termination into one of definite duration." *Id.*

But the 2004 Agreement does not say it will “continue indefinitely.” It has an end point when (1) AMBA breaches as mentioned above or (2) when the plan no longer exists. The latter point is critical because TRTA as the policy holder of the dental plan has the right to terminate the plan. At that point the TRTA members’ policies could be converted to individual coverage. The 2004 Dental/Vision Agreement does make its duration determinable in a real and concrete way: the parties’ contract is only in effect *as long as the dental and vision plans are in effect*, a circumstance under TRTA’s control. Thus, there is a clear end point to the parties’ agreement, and TRTA has the practical ability to cancel the AMBA dental and vision plans in order to remove AMBA as the agent of record and administrator of these plans. *See* Exhibit 1 at Exh. B, ¶ 5.

The Fifth Circuit has recognized this distinction between a *Trient*-type agreement and the AMBA/TRTA contract. In *Besco, Inc. v. Alpha Portland Cement Co.*, 619 F.2d 447 (5th Cir. 1980), the court made clear that even when a contract’s length is not defined in units of time in such a manner that a termination date is clear from its inception, it may not “be terminated at any time by either party” because the parties have “otherwise agreed” to limit a party’s termination rights in the manner clearly disclosed in the contract. *Besco*, 619 F.2d at 448-49. In *Besco*, the option contract provided that the exclusive right to purchase “shall remain open and shall not be withdrawable” unless the buyer failed to sell a certain amount of product or the seller’s materials became unavailable. *Id.* Despite neither of these contractual events occurring, the seller stopped performing the contract and claimed that as a matter of law the contract was terminable at will and of indefinite duration, “despite the express contractual provisions to the contrary.” *Id.* The Fifth Circuit rejected the seller’s arguments and refused to hold the contract “terminable at will.” *Id.* The court stated “for the document itself establishes its duration by defining those events which would permit termination—i.e., the contract may not be terminated at any time by either party

since it is ‘otherwise agreed,’ . . . by the contract.” *Id.*; *see also Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth.*, 320 S.W.3d 829, 842 (Tex. 2010) (contract not indefinite nor terminable at will as language specified a fixed, determinable term); *Rolling Lands Invs., L.C. v. Nw. Airport Mgmt., L.P.*, 111 S.W.3d 187, 197 (Tex. App. 2003) (“When a contract limits duration by the happening of any one of several ascertainable contingencies it is not terminable at will.”) As in *Besco*, TRTA’s right to terminate is dependent on agreed upon conditions and has been “otherwise restricted.” The 2004 Dental/Vision Agreement is not one of indefinite duration and is not terminable at will. This interpretation is consistent with the parties’ own interpretation. *See Rowe*, 593 S.W.2d at 306 (courts primarily look at intent of the parties in construing written contracts.).

2. As to Defendants Trident, Entrust, Vela and Sharp, AMBA is Likely to Prevail on the Merits of its Claim for Tortious Interference with an Existing Contract.

To prevail on its tortious interference claim, AMBA must show (1) the existence of a valid contract; (2) the defendant(s) willfully and intentionally interfered with the contract; (3) the interference proximately caused AMBA’s injury; and (4) AMBA incurred actual damage or loss. *Prudential Insurance Co. of Amer. v. Financial Review Svcs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000). Plaintiff AMBA has a valid contract with Defendant TRTA that has been in effect since 2004. *See* Exhibit 1. The Rule 11 Agreement between TRTA and AMBA was entered into in order to protect the status quo pending the Court’s determination of the parties’ claims.

Defendants Trident, Vela, Sharp and Entrust have willfully and intentionally interfered with the 2004 Agreement and breached the Rule 11 Agreement by demanding that the insurance carriers remove AMBA as the exclusive agent of record and third party administrator for the vision and dental plans offered to TRTA’s members. *See* Exhibit 3. They have actively engaged in communications with AMBA insureds under the 2004 Agreement that caused insureds to wrongly believe, *e.g.*, that their insurance obtained through AMBA was no longer going to be in force and

needed to be replaced by TRTA's new insurance agents. *See, e.g.*, Exhibit 8 (Email from the president of a local TRTA unit to its members, dated September 15, 2021, forwarding a Trident benefits book and identifying Trident as "TRTA's new benefits provider (instead of AMBA)"); Exhibit 9 (Trident benefits book marketed to TRTA members and offering a "TRTA Take Over Benefit" and/or credit for prior dental coverage); and Exhibit 10 (Meeting minutes from the MKM Unit of TRTA, dated September 2, 2021, with announcement that "TRTA chose Trident to replace AMBA" and that a Trident executive would attend the January 2022 meeting.).

The interference by Trident and Entrust directed toward upending the 2004 Agreement has proximately caused the Plaintiff's injury, as Plaintiff stands to lose its existing block of business, as well as future business from retired educators and others based on the damage AMBA has and will continue to suffer to its reputation and its ability to continue to offer competitive insurance rates. In addition, TRTA and Trident have tortiously interfered with Plaintiff's contracts with the dental and vision insurers that underwrite the subject business. AMBA has incurred actual damage or loss, as Trident and Entrust have made clear that they are replacing AMBA and taking over these blocks of business. *See, e.g.*, Exhibit 11 (AMBA call log dated September 27, 2021, documenting cancellation of AMBA coverage due to TRTA/Tim Lee messages).

The Rule 11 Violation. Further, what makes Trident's and Entrust's conduct more egregious is that Defendants' communications have disturbed and interfered with the status quo that was agreed upon in the Rule 11 Agreement, which provides that "TRTA will take no action to change AMBA's status as either agent of record or administrator of the dental and vision blocks of business which are the subject of this suit. AMBA will take no action adverse to TRTA's member's group coverage remaining in place." *See* Exhibit 5. AMBA has sustained—and will continue to sustain—massive economic loss, loss of reputation, irreparable damage to its insurance

relationships that also affect non-TRTA retired educators and AMBA's relationships with insurers, and loss of future business opportunities as a result of Defendants' interference with the 2004 Agreement and the Rule 11 Agreement.

3. AMBA is Likely to Prevail on the Merits of its Claim for Tortious Interference with Prospective Relations.

AMBA can prove that Defendants are liable for tortiously interfering with future and prospective relationships with AMBA's insurers and insureds. To meet its burden of proof, Plaintiff must show (1) there was a reasonable probability that AMBA would have entered into a business relationship with a third person; (2) the defendant intentionally interfered with the relationship; (3) the defendant's conduct was independently tortious or unlawful; (4) the interference proximately caused AMBA injury; and (5) AMBA suffered actual damage or loss. *Coinmach Corp. v. Aspenwood Apt. Corp.*, 417 S.W.3d 909, 923 (Tex. 2014).

Based on AMBA's track record, there is a reasonable probability that this interference has diminished AMBA's business. By its conduct, Defendants have intentionally interfered with AMBA's ability to market its products. The confusion created by Defendants' conduct is well documented by the hundreds of inquiries made to both the TRTA and AMBA call centers. Plaintiff's damages include the pecuniary loss of the benefits that would have flowed from prospective and future relations, damages for economic injury, including AMBA's lost profits, and loss of good will.

4. AMBA is Likely to Prevail on the Merits of its Claims for Business Disparagement and Defamation.

AMBA's Business Disparagement Claim. Defendant TRTA's and Tim Lee's conduct and communications post lawsuit amount to tortious acts that rise to the level of business disparagement and defamation. To prevail on its business disparagement claim, AMBA must

demonstrate: (1) The defendant published disparaging words about the plaintiff's economic interests; (2) the words were false; (3) the defendant published the words with malice; (4) the defendant published the words without privilege; and (5) the publication caused special damages. *Innovative Block of S. Tex., Ltd. v. Valley Builders Supply, Inc.*, 603 S.W.3d 409, 417 (Tex. 2020).

Defendant TRTA and its agent, Tim Lee, published disparaging words about AMBA's economic interests when they sent a series of "blast" emails to their members in August of 2021, discrediting AMBA's products and services. *See* Exhibits 6-7. The words published by TRTA and Lee in these purported "Important Announcement[s]" included: "[AMBA]'s proposal was too weak"; (Exh. 6.); "AMBA . . . [is] not . . . endorsed by TRTA." (*Id.*; *cf.* Exhibit 1 (2004 Dental/Vision Agreement contracting for endorsement of AMBA by TRTA)); "AMBA . . . used their marketing firm to create the 'association for hire'"; (*Id.*); and "AMBA retained trial lawyers who sued your association, *simply because TRTA was looking out for your best interest.*" (Exhibit 7 (emphasis added)). In addition, the August 19, 2021 communication from TRTA and Tim Lee falsely implied that by rejecting AMBA's proposal after an "exhaustive review process," AMBA's practices did not comport with goals such as "full transparency on products and costs," "unequivocal trust," "full disclosure", and the assurance of "quality and reliability." *See* Exhibit 6.

TRTA and Tim Lee's words were disparaging because they cast doubt on the quality of AMBA's services, and TRTA and Lee intended the words to cast doubt, or at a minimum, the TRTA members would reasonably understand the words to cast doubt. *See* RESTATEMENT (SECOND) OF TORTS § 629 (defining disparaging words); *accord Innovative Block*, 603 S.W.3d at 417. The words and characterizations used by TRTA and Lee in the August 19, 2021 and August 25, 2021 messages were also false. *See* Exhibits 6 and 7; Plaintiff's Reply (Dkt. No. 30 at 3.). TRTA and Lee published the words with malice, as they knew the statements in question were

false, acted with reckless disregard for whether the statements were true, acted with ill will, as evidenced by Tim Lee's April 2, 2018 disgruntled email², and/or intended to interfere with AMBA's economic interest by broadcasting disparaging language to AMBA's group of insureds. *See* Exhibit 12. TRTA and Lee's disparaging statements have caused AMBA to incur special damages. Specifically, AMBA has realized pecuniary losses in the form of lost insureds and the denigration of its developed blocks of business for TRTA due to Defendants' business disparagement.

The words used by TRTA and Tim Lee were also tantamount to false advertising and are additional grounds to support a preliminary injunction. 15 U.S.C. § 1125(a)(1)(B). TRTA and Lee's communications constituted commercial speech by a Defendant who is in commercial competition with Plaintiff for the purpose of influencing TRTA members to buy insurance products from Trident and Entrust. *See Seven-Up Co. v. Coca-Cola Co.*, 86 F.3d 1379, 1384 (5th Cir. 1996) (articulating 5th Circuit factors for representations to constitute "commercial advertising or promotion"); *Handsome Brook Farm, LLC v. Humane Farm Animal Care, Inc.*, No. 16-1813, at *10 (4th Cir. Aug. 22, 2017) (holding that "any communication that is commercial speech, promotes a good, and is sufficiently disseminated is an advertisement for the promoted good, regardless of the speaker," including a non-profit.). TRTA hoped to realize economic gain when Defendant disseminated its messages which encouraged its membership to cancel their

² The Tim Lee disgruntled email is excerpted in pertinent part in Plaintiff's Amended Complaint. (Dkt. No. 18-1, pp. 13, 18-19, 28, 30, and Exhibit 6.) In the email to AMBA, Lee expresses his frustrations over not profiting "personally" and "getting the short end of the stick" with respect to his AMBA dealings. Tim Lee also complains that he is "losing money" and "see[ing] everyone else benefit in ways that will not materialize into something better for [him]." *Id.*; *see also* Exhibit 12, attached hereto.

AMBA insurance policies and switch to Trident, TRTA's new preferred agent. *See Handsome Brook Farm*, No. 16-1813, at *13.

Where a non-profit organization has a direct economic stake in the provision of its product or service, and structures its message in the hopes of realizing an economic gain rather than merely informing the public or pursuing its ideological views, it may reasonably be viewed as economically motivated.

Id. at *15. TRTA and Tim Lee's messages were "placed in a commercial context and fixated on the provision of [insurance] services rather than advocacy of its ideological commitments." *Id.* at *16. As a result of TRTA and Tim Lee's business disparagement and false advertising, AMBA has lost insureds and its reputation continues to be tarnished. *See id.* at *23-4.

AMBA's Defamation Claim. To prevail on its defamation claim, AMBA must demonstrate generally that (1) the defendant published a statement of fact; (2) the statement referred to AMBA; (3) the statement was defamatory; (4) the statement was false; (5) with regard to the truth of the statement, the defendant was (a) acting with actual malice, (b) negligent, or (c) liable without regard to fault (strict liability); and (6) AMBA suffered pecuniary injury, unless injury is presumed. *See Dallas Morning News, Inc. v. Hall*, 579 S.W.3d 370, 377 (Tex. 2019).

Defendant TRTA and Tim Lee published defamatory statements of fact referring to AMBA in a widely distributed message emailed to TRTA members on August 25, 2021. *See Exhibit 7.* Specifically, Defendants TRTA and Tim Lee published false statements of purported fact to its TRTA members, indicating that AMBA (along with TRTA and ASBA) was "cold calling" or showing up at TRTA members' homes "uninvited." *Id.* TRTA and Lee also strongly implied that AMBA was participating in illegal activity, as TRTA members were advised several times to contact the state's Attorney General or Department of Insurance if they were contacted by AMBA. *Id.* Tim Lee further expressed that "I have never seen outsiders (or anyone else) attempt to circumvent your best interests for their own. Do not be fooled by these outsiders . . ." *Id.*

In addition, TRTA and Tim Lee’s published message included a grossly misleading visual aid—containing many outright lies—that purports to compare TRTA with AMBA. *Id.* False and damaging statements from the TRTA graphic include statements that “AMBA retained trial lawyers who sued your association, simply because TRTA was looking out for your best interest”; “Chicago-based TREA has no members and no presence in Texas”; and “DON’T BE FOOLED BY AMBA AND TREA!” *Id.* The message contained additional untrue statements about the agreements between AMBA and TRTA. *Id.*

TRTA and Lee’s statements are patently false, and their statements taken as a whole are more damaging to AMBA’s reputation than a truthful publication would have been. *See Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 114 (Tex. 2000) (reiterating the principle that “an allegedly defamatory publication should be construed as a whole in light of the surrounding circumstances based upon how a person of ordinary intelligence would perceive it.”); *see also Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 622-31 (Tex. 2018) (“recognizing defamation-by-‘gist’”).

TRTA and Tim Lee’s conduct in disseminating the August 25, 2021 defamatory communication to the TRTA members was intentional. At a minimum, TRTA and Tim Lee were grossly negligent as they failed to investigate the truth or falsity of their statements about AMBA before publication and failed to act in a reasonably prudent manner.

Defendants’ implication that AMBA is engaging in illegal insurance activity makes their statements defamatory *per se*, and thus damages to AMBA are presumed. *See Innovative Block*, 603 S.W.3d at 418 (defamation *per se* does not require proof of actual damages). Falsehoods that qualify as defamation *per se* include accusations of committing a crime. *See Leyendecker Associates, Inc. v. Wechter*, 683 S.W.2d 369, 374 (Tex. 1985) (“A false statement which charges a person with the commission of a crime is libelous *per se*.”) TRTA and Lee urged their members

to contact the Texas Attorney General to report AMBA for presumed crimes. In the alternative, AMBA has sustained actual damages in the form of lost insureds as a direct result of TRTA and Tim Lee's defamatory publication. With respect to both tortious acts, the August 19, 2021 and August 25, 2021 messages disseminated by Defendant TRTA and Tim Lee to the TRTA members, along with other negative communications, have caused AMBA to incur special damages. Specifically, AMBA has realized pecuniary losses in the form of lost insureds who specifically referenced Lee's communications when terminating their coverage. *See, e.g.*, Exhibit 11.

C. AMBA Faces a Substantial Threat of Irreparable Injury if a Preliminary Injunction is Not Granted.

As AMBA has established a substantial likelihood of success on its claims, the Court will next evaluate "whether a substantial threat of irreparable harm exists if the injunction is not granted." *Bcoww Holdings, LLC v. Collins*, SA-17-CA-00379-FB, at *4 (W.D. Tex. Sep. 5, 2017). Irreparable injury is an injury that cannot be compensated in damages or an injury that results in damages that cannot be measured by any pecuniary standard and can result from breach of contract. *See Paulssen Services v. Geophysical Sigmar*, 529 F.3d 303 (5th Cir 2008). The 5th Circuit Courts have also described the requirements for showing irreparable harm as follows:

[I]t is not necessary to demonstrate that harm is inevitable and irreparable. The plaintiff need show only a significant threat of injury from the impending action, that the injury is imminent, and that money damages would not fully repair the harm.

Humana, Inc. v. Avram A. Jacobson, M.D., P.A., 804 F.2d 1390, 1394 (5th Cir. 1986); *accord Sirius Computer Solutions, Inc. v. Sparks*, 138 F. Supp. 3d 821, 840-41 (W.D. Tex. 2015). TRTA's breach of AMBA's contractual rights under its 2004 Dental/Vision Agreement, along with Defendants' tortious interference with the 2004 Dental/Vision Agreement and other prospective relationships, cannot later be retracted, and the resulting pecuniary damage cannot be quantified.

Plaintiff will suffer irreparable harm, damage, and injury unless the acts and conduct of Defendants complained of above are enjoined because the ongoing activities of Defendant TRTA in violation of its contractual obligations, along with TRTA's and the other Defendants' potential interference with AMBA's prospective business relationships, will lead to the immediate loss of massive revenue, a staggering loss of AMBA's current and future customer base, and immeasurable damage to AMBA's stellar business reputation. The dollar value impact this conduct has had and will ultimately have on AMBA and its business operations is difficult, if not impossible, to ascertain. AMBA has suffered and will continue to suffer injuries to its reputation, operations and goodwill that cannot be calculated in monetary damages or measured by pecuniary standards. *See Alamo Lights, LLC v. Four Bros Lighting & Bulbs, Inc.*, 1:18-CV-187-RP, at *4 (W.D. Tex. Mar. 20, 2018) (finding that plaintiff "face[d] a substantial threat of irreparable harm to its reputation, goodwill, and customer relationships" from defendant's false advertising).

Furthermore, AMBA has no adequate remedy at law for the damage already caused, and threatened to be caused, by Defendants' unlawful conduct. There is no remedy at law that would give AMBA complete relief from Defendants' past actions and threatened future action. The damages Defendants have caused and threatened to cause to AMBA's business base, reputation and client and insurer relations is extremely difficult to calculate, making damages as a sole remedy inadequate. Furthermore, the losses are also likely to exceed Defendants' net worth so as to prevent any adequate compensation to AMBA, even if money damages were a sufficient remedy. *See Handsome Brook Farm*, No. 16-1813, at *23-4.

It is essential that Defendants be restrained from doing and performing the acts described above because Defendants are actively taking steps to gravely jeopardize AMBA's contractual rights by replacing AMBA with different agents and a different third party administrator in clear

violation of the 2004 Dental/Vision Agreement's termination provision. The court will not be able to redress the harm done to AMBA if Defendants are not preliminarily enjoined from pursuing their current course of action pending a full adjudication on the merits. *See Canal Authority*, 489 F.2d at 573 (main purpose of preliminary injunction is to "to preserve the court's ability to render a meaningful decision on the merits.").

D. The Threatened Injury to AMBA if the Injunction is Denied Outweighs Any Potential Harm to TRTA if the Injunction is Granted.

The court will engage in a "traditional balancing test" to determine whether AMBA has shown that its irreparable harm is greater than the hardship that the preliminary injunction would cause to TRTA. *See Sparks*, 138 F.Supp.3d at 842. AMBA can establish that its irreparable harm is greater than any hardship that the preliminary injunction would cause the Defendants. *See id.*

If AMBA's request for injunctive relief is granted, the only "hardship" that TRTA will sustain is a maintaining of the status quo until the rights of the parties under the contracts are fully adjudicated at trial. A return to the status quo is what AMBA and TRTA agreed to in their June 23, 2021 "Rule 11 Agreement," in which the parties expressly agreed to maintain the status quo pending a hearing on the parties' applications for injunctive relief. *See Exhibit 5*. TRTA explicitly agreed to "take no action to change AMBA's status as either agent of record or administrator of the dental and vision blocks of business" *See id.* It is dubious that TRTA will experience hardship by being required to comply with terms to which it already agreed. In TRTA's Application, TRTA contends that the parties' standstill agreement "has become un-workable" and that "TRTA members are growing more confused by the day." (Dkt. No. 14 at 9.) The confusion among the TRTA membership arises solely from TRTA's misleading communications and deviation from the agreed upon status quo. *See Exhibit 13* (email showing confusion). TRTA's violation of its own Rule 11 agreement has caused, and continues to cause, AMBA irreparable

injury. A preliminary injunction “is necessary to alter the situation so as to prevent [AMBA’s] injury . . . by returning to the last uncontested status quo between the parties,” being the position of the parties immediately upon entering into the standstill agreement. *See Canal Authority*, 489 F.2d at 576 (offering alternatives for preventing irreparable injury in context of injunctive relief).

If Plaintiff’s motion for preliminary injunction is denied, AMBA bears the true risk of irreparable injury, in the form of numerous lost present and future insureds, its business reputation and ability to procure competitive insurance rates in the future, among other grievous injuries. AMBA stands to lose greatly, whereas TRTA merely stands to lose the contracted-for status quo if AMBA’s request for preliminary injunction is not granted.

E. A Strong Public Interest Supports Issuance of an Injunction.

In deciding whether to grant a preliminary injunction, the court must consider whether the issuance of a preliminary injunction would “disserve the public interest.” *Id.*, 489 F.2d at 572; *see Miss. Power Light v. United Gas Pipe Line*, 760 F.2d 618, 625-26 (5th Cir. 1985) (emphasizing public interest element). Here, injunctive relief is necessary to protect the thousands of TRTA members who rely on their dental and vision insurance policies through AMBA for coverage of their healthcare needs. Indeed, the regulation and issuance of insurance is a matter of public interest on both a state and federal level. *See Fairfield v. Stephens*, 246 S.W.3d 653, 657 (Tex. 2008) (“business of [insurance] is affected with a public interest”); *accord Cochran v. Paco, Inc.*, 606 F.2d 460, 462 (5th Cir. 1979). The public will be irreparably harmed if Defendants are permitted to continue to breach the 2004 Dental/Vision Agreement and interfere with other AMBA agreements and relationships, as the current and prospective insureds will face greater insurance uncertainty in the marketplace paired with higher insurance rates with potentially less coverage. *See Exhibit 14* (email from TRTA member negatively impacted by insurance change). TRTA is

not a licensed insurance agency and thus lacks the expertise of AMBA, a qualified and experienced agent/administrator, to continue to serve these blocks of business until a trial on the merits. Defendants' and Tim Lee's actions in trying to "roll" the AMBA-insureds to another insurance provider with potentially less coverage with higher premiums is a matter of public interest and compel the issuance of a preliminary injunction. *See Miss. Power Light*, 760 F.2d at 623 (affirming preliminary injunction based on "the dominant presence of the public interest" in the case).

IV. CONCLUSION

Defendants' continuing actions, including TRTA's breach of the 2004 Dental/Vision Agreement and the parties' Rule 11 Agreement, Defendants' tortious interference with a contract and prospective relations, as well as Defendant TRTA and Tim Lee's business disparagement and defamation of Plaintiff AMBA, irreparably harm AMBA's present and future contracts, reputation among insureds and insurance companies, and its heavily invested in developed blocks of business. Plaintiff has shown the court that it can meet the elements of each cause of action with supporting facts and thus has demonstrated a substantial likelihood that Plaintiff will prevail on the merits. The threatened injury to AMBA if injunctive relief is not granted greatly outweighs any effect on an injunction on Defendants, as TRTA essentially agreed to what AMBA is now seeking in the parties' earlier "standstill agreement." Finally, the business of insurance is a matter of public interest and allowing Defendants to proceed with their current breach of contract and tortious conduct will only serve to confuse the AMBA-insureds, who are also members of the public, and potentially decrease their insurance coverage at a greater cost.

V. PRAYER FOR RELIEF

Pursuant to FRCP Rule 65 and general principles of equity, AMBA requests preliminary injunctive relief to restrain acts prejudicial to AMBA, irrespective of any remedy at law.

WHEREFORE, PREMISES CONSIDERED, AMBA respectfully prays that:

- a. Defendant TRTA be ordered to cease all efforts to replace AMBA as the exclusive agent of record and third party administrator for the AMBA-developed dental and vision plan products for the benefit and use of TRTA;
- b. Defendants Trident, Vela, Sharp, Entrust and Tim Lee be ordered to cease all communications with TRTA members regarding AMBA and its customer associations and the insurance and related services it offers to associations, and to cease all efforts with regard to replacing AMBA as the exclusive agent of record and third party administrator for the dental and vision plan products developed by AMBA;
- c. Defendants be ordered to cease any and all interference with the 2004 Dental/Vision Agreement and other business relationships of AMBA;
- d. Defendants TRTA and Tim Lee be ordered to remove from its websites, cease and retract any and all communications to the TRTA members and/or other third parties regarding AMBA that contain disparaging and/or defamatory statements regarding AMBA's business practices, character, or the like;
- e. Defendants be ordered to cease any and all efforts to offer any new dental and/or vision programs until this matter is effectively resolved through a trial on the merits, a final ruling or otherwise;
- f. on this hearing, a preliminary injunction be granted and a writ of injunction issued commanding Defendants to cease and desist and refrain from breaching or facilitating the breach of the 2004 Dental/Vision Agreement and the Rule 11 Agreement between AMBA and TRTA and upon trial, that a permanent injunction be granted in those particulars;
- g. for specific performance of the Agreement;
- h. for actual damages;
- i. for exemplary and punitive damages;
- j. attorneys' fees and costs of suit; and
- k. all such other and further relief, whether at law or in equity, to which Plaintiff may show itself justly entitled.

Dated: October 12, 2021

Respectfully submitted,

TAYLOR THUSS PLLC
603 West 9th Street
Austin, Texas 78701
512.368.9186 (Telephone)
512.368.9014 (Fax)

By: /s/ Donald R. Taylor

Donald R. Taylor
State Bar No. 19688800

don@taylorthuss.com

Natalie Taylor

State Bar No. 24056412

natalie@taylorthuss.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record below who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system this 12th day of October, 2021.

/s/ Donald R. Taylor

Donald R. Taylor

EXHIBIT 1

**ASSOCIATION DENTAL INSURANCE MARKETING AND
ADMINISTRATION AGREEMENT**

THIS AGREEMENT made and entered into this 14th day of May, 2004, by and between the Texas Retired Teachers Association, hereinafter referred to as the "**TRTA**", acting for the benefit of its membership, and **Association Member Benefits Advisors, LTD.** hereinafter referred to as "**AMBA.**"

WITNESSETH:

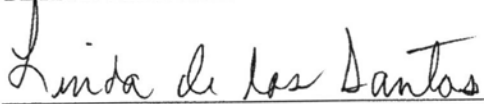
IN CONSIDERATION OF the appointment of **AMBA** by **TRTA** as its agent of record and third party administrator for dental insurance programs, developed by **AMBA**, to be offered to members of **TRTA**, **AMBA** hereby agrees to furnish individual members of **TRTA** the items and/or services listed in Exhibit A attached hereto and made a part hereof and on the terms and conditions included therein. **TRTA** agrees to the provisions therein and both parties agree to the terms included in Exhibit B attached hereto and made a part hereof.

It is expressly understood by both parties hereto that the terms of this Agreement shall be on an exclusive basis.

1. **AMBA** acknowledges that **TRTA** is not licensed as, and therefore cannot act as, an insurance agent or third party administrator in the state of Texas. Consequently, **AMBA** acknowledges that **TRTA** shall not be involved in any insurance agent-type activity including, but not limited to, the following: processing of applications; providing proposals or quotations of rates; countersigning or delivering policies; examining or inspecting risks; receiving, collecting or transmitting premiums; or soliciting insurance. **AMBA** agrees to indemnify and hold harmless all **TRTA** officers and staff for any of its actions under this Agreement, including but not limited to ALL lawsuits under state or federal laws or arbitrations regarding its omissions, negligence, failure to act in good faith and fair dealing. Should a lawsuit be filed against **TRTA** as a result of this agreement, **AMBA** shall be responsible for any and all attorney fees and any/all other costs associated with said action.

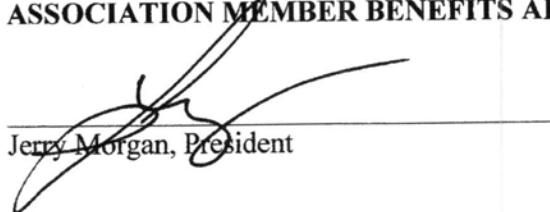
Acknowledged and agreed to this 14th day of May, 2004.

TEXAS RETIRED TEACHERS ASSOCIATION



Linda de los Santos, Interim Executive Director

ASSOCIATION MEMBER BENEFITS ADVISORS, Ltd.



Jerry Morgan, President

EXHIBIT A

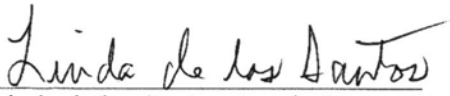
AMBA AGREES TO:

1. Market and administer a TRTA "Members Only" Dental insurance policy to TRTA members and potential members.
2. Conduct an initial open enrollment for all TRTA members. Also, AMBA will conduct subsequent annual open enrollments for TRTA members who are not participating in the dental insurance program.
3. Provide individual dental insurance to all TRTA employees at an annual cost of \$5.00 per TRTA employee.
4. Periodically, and not less often than every 36 months, AMBA will request proposals from other dental insurance carriers to insure that TRTA members are receiving the most benefit rich plans available.
5. Create custom materials and distribute to all school business officials state-wide in an effort to brand TRTA with the benefits staff at Texas school districts.
6. AMBA shall not mail any materials/communications associated with this plan/program without first receiving written approval from TRTA and will coordinate its enrollment activities with TRTA.
7. Promote TRTA memberships by marketing the "Members Only" dental plan. Memberships will be forwarded to TRTA within 10 days of receipt.
8. Resolve any member complaints within 72 hours and provide a written response to TRTA. Establish an arbitration committee to handle any non-resolved complaints.

Acknowledged and agreed to this 14th day of May, 2004.

TEXAS RETIRED TEACHERS ASSOC.

ASSOC. MEMBER BENEFITS ADVISORS, Ltd


Linda de los Santos, Interim Exec. Director


Jerry Morgan, President

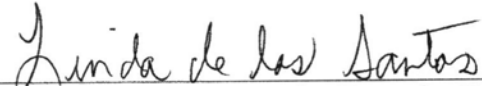
EXHIBIT B

TRTA AGREES TO:

1. Provide AMBA with annual endorsement letters signed by the President and/or Executive Director.
2. Provide AMBA with a double exhibit booth space at the TRTA Annual Convention at no charge.
3. Provide AMBA with the TRTA membership list and any potential member list for the mailings of announcements and promotion of the endorsed policies allowing TRTA reasonable time to prepare such list(s).
4. Include information regarding the endorsement in each TRTA Newsletter.
5. Designate AMBA as the exclusive agent of record and third party administrator for any and all dental insurance programs developed for TRTA by AMBA. In the absence of a material breach of fiduciary duty or failure to adhere to the principals of the Insurance Marketplace Standards Association, AMBA shall remain the agent of record and third party administrator for the TRTA dental insurance plan, developed by AMBA, for the duration of its existence.
6. Upon AMBA's request, furnish notifications to carriers of AMBA's designation as TRTA's permanent agent of record and/or third party administrator for dental insurance programs developed by AMBA for members of TRTA.

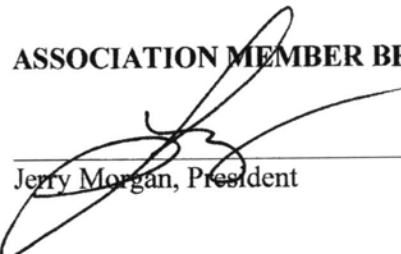
Acknowledged and agreed to this 14th day of May, 2004.

TEXAS RETIRED TEACHERS ASSOCIATION



Linda de los Santos, Interim Executive Director

ASSOCIATION MEMBER BENEFITS ADVISORS, Ltd.



Jerry Morgan, President

AMENDMENT NUMBER 1 to the Association Dental Insurance Marketing and Administration Agreement dated May 14th, 2004, by and between the Texas Retired Teachers Association and Association Member Benefits Advisors, Ltd

This Amendment Number 1 to the Agreement dated May 14th, 2004, by and between the Texas Retired Teachers Association (TRTA) and Association Member Benefits Advisors, Ltd (AMBA) is to be effective 19 of April 2005.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, and with the intent to be legally bound hereby, the parties agree as follows:

This agreement is amended to read as follows:

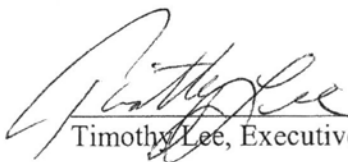
- A. TRTA agrees to appoint AMBA as the third party administrator and agent of record for the TRTA Group Vision Plan.

Except as modified by this Amendment Number 1, the Agreement dated May 14th, 2004 shall continue in full force and effect according to its terms and conditions.

This Amendment Number 1 may be executed in multiple counterparts, each of which shall constitute the original. Executed on the 19 day of April 2005, to be effective on 4-1 2005.

Texas Retired Teachers Association

Association Member Benefits Advisors



Timothy Lee, Executive Director



Jerry Morgan, President

EXHIBIT 2

**Agreement Between
Association Member Benefits Advisors, Ltd. and
The Texas Retired Teachers Association**

This Agreement is entered on this 8th day of July, 2011, by and between Association Member Benefits Advisors, Ltd. ("AMBA") and the Texas Retired Teachers Association ("TRTA") and is effective as of July 1, 2011.

This Agreement replaces the Agreement between United Teacher Associates Insurance Company and The Texas Retired Teachers Association dated June 19, 2001, and any and all Amendments and Assignments to that Agreement. This Agreement also replaces the Association Endorsement Agreement between the Texas Retired Teachers Association and Association Member Benefits Advisors, Ltd. dated December 10, 2004 and any Amendments to that Agreement.

In consideration of the mutual agreements contained in this Agreement and other good and valuable consideration, AMBA and TRTA agree as follows:

ARTICLE I
Definitions

In this agreement, the following terms mean:

1. "Agreement" means this Agreement between Association Member Benefits Advisors, Ltd. and the Texas Retired Teachers Association.
2. "Endorsed Products" means the Long-Term Care/Home Health Care Policy, Single Premium Tax Deferred Annuity, Cancer and Dread Disease Policy, Final Expense Life Insurance Policy and Medicare Supplement Insurance Policy, Medical Air Service Association Membership Plan, Identity Theft Plan, and a Homeowners and Automobile Insurance Program endorsed by TRTA pursuant to this Agreement.
3. "Members" means current, active and associate members of the TRTA, who are in good standing.
4. "AMBA" means Association Member Benefits Advisors, Ltd.
5. "TRTA" means the Texas Retired Teachers Association.
6. "TRS" means the Teacher Retirement System of Texas.

ARTICLE II

Endorsement and Provision of Services

- A. Contracted Services. AMBA shall make available to Members the Endorsed Products which meet the requirements stated in this Agreement, the Texas Insurance Code, and other applicable federal and Texas laws, rules, regulations and standards.
- B. Endorsement.
1. During the term of this Agreement, TRTA agrees that the endorsement by TRTA of an Endorsed Product developed by AMBA under Section II(A) of this Agreement shall be an exclusive endorsement and TRTA agrees to allow AMBA to market the Endorsed Products developed under Section II(A) of this Agreement using the TRTA endorsement of the Endorsed Products to the Members of TRTA. TRTA agrees that it will not endorse products issued or marketed by another company or provider which are the same or similar to the Endorsed Products during the term of this Agreement. Only AMBA and its legally authorized representatives may use the TRTA endorsement for the purposes stated in this Agreement.
 2. TRTA agrees to grant AMBA the right of first refusal for any other insurance or related products to be offered to TRTA members.
 3. AMBA acknowledges that TRTA is not a licensed insurer, third-party administrator, or insurance agent under the laws of the State of Texas and, therefore, cannot act in any such capacity under the laws of the State of Texas. Also, AMBA agrees and acknowledges that TRTA shall not be involved in or required to be involved in any activity relations to the Endorsed Products either through its endorsement or promotion which would require a license for TRTA to act as an insurer, third-party administrator, or insurance agent in this state, including, but not limited to, processing applications for insurance, providing proposals or quotations of rates, counter-signing or delivering policies, examining or evaluating risks, receiving, collecting or transmitting premiums, soliciting or advertising any Endorsed Product or accepting and resolving complaints relating to the Endorsed Products.
- C. Royalty Payment for Endorsement. In exchange for TRTA's exclusive endorsement of the Endorsed Products, AMBA agrees to pay TRTA an annual royalty of \$240,000 per year beginning July 1, 2011. The annual royalty fee will increase by 3% each year beginning July 1, 2012. Payments will be due at the end of each quarter. The endorsement fee will be allocated as follows:
1. For the Long Term Care policy endorsement, AMBA will pay TRTA a royalty of \$1.00 per member per year based upon the 2011 membership of 72,000.
 2. The balance of the royalty payment will be for the additional Endorsed Products described in Article I (2) and the TRTA Convention sponsorship.
- D. Enrollment of TRTA Members. AMBA agrees that during the term of this Agreement AMBA will make its best efforts to enroll members into TRTA. However, AMBA and

TRTA agree that AMBA does not guarantee to enroll any specific number of members into TRTA.

1. AMBA will make its best efforts to recruit TRTA Members and enroll them in the TRS dues deduction program. AMBA will receive a credit towards the annual endorsement fee for each new TRS dues deduction Member directly recruited by AMBA. It is agreed that a new TRTA member is someone who has not previously been a TRTA member in the prior thirty-six (36) months. The credit shall be equal to the first year dues in the year that they are recruited. This credit shall be calculated each quarter and applied to AMBA's payment due that quarter.
2. For new members enrolled by AMBA that are not TRS dues deduction members, TRTA will also give credit to AMBA provided that the dues are auto-deducted. It is agreed that a new TRTA member is someone who has not previously been a TRTA member in the prior thirty-six (36) months. This credit shall be calculated each quarter and applied to AMBA's payment due that quarter. The credit shall be equal to the first year dues in the year that they are recruited. This credit shall be calculated each quarter and applied to AMBA's payment due that quarter. After this Agreement has been in effect for three (3) years, TRTA will notify AMBA if TRTA wishes to continue to give AMBA a credit for new members directly recruited by AMBA that are not enrolled in the TRS dues deduction program.

E. Communications with TRTA Members.

1. AMBA agrees that in its marketing, including all advertising and marketing materials of the Endorsed Products, it shall distinguish between the Endorsed Products and any other policies or products of AMBA which are not endorsed by AMBA and shall not include the marketing for the Endorsed Products in the advertising or marketing for non-endorsed policies or products and vice versa, and will not include in any manner in marketing or advertising that non-endorsed policies or products have been endorsed by TRTA.
2. AMBA agrees to include on the AMBA website, information that will assist Members in securing information relating to Endorsed Products as well as other information relating to accessing benefits and receiving responses to inquiries regarding the Endorsed Products.

F. Agents.

1. AMBA agrees to work with designated representatives of TRTA to develop a training program for agents who will be responsible for marketing TRTA Endorsed Products. Each agent who markets TRTA Endorsed Products must complete the training course before that agent is entitled to market such products. A training program to be provided to agents shall include training as to sales protocol and conduct expected of the agent in marketing the Endorsed Products to Members.
2. AMBA agrees to provide information to TRTA on quality-control efforts that prohibit AMBA agents from providing any impression that they represent, work for, are an

agent of, are “with”, or any other variation or connotation of said representation of working for or with TRTA.

ARTICLE III
Obligations of TRTA

A. Information to be Provided by TRTA.

1. As part of any information provided to AMBA, TRTA agrees to provide to AMBA, at the beginning of each calendar quarter of each year covered by this Agreement, a list of all current Members in good standing of TRTA and the names, addresses and telephone numbers, and if available, e-mail addresses of those Members. In addition, TRTA will furnish AMBA with like information of potential members possessed by TRTA.
2. AMBA agrees that AMBA will not sell, distribute or in any manner disclose the membership list of TRTA to any third person.

B. Letter of Endorsement.

1. TRTA agrees to provide to AMBA one or more letters of endorsement for each Endorsed Product that are acceptable to AMBA that are for the purpose of mailing to members and potential members and are in compliance with law. The letter or letters shall be on the TRTA letterhead and shall be provided at the beginning of each contract year during the term of this Agreement. Such letter or letters shall be signed by the President and/or Executive Director of TRTA.
2. TRTA agrees to provide AMBA a letter of introduction to Texas school superintendents.
3. A letter of endorsement provided to AMBA under this section must be drafted in accordance with any rules or guidelines of the Texas Department of Insurance relating to an endorsement by TRTA of the Endorsed Products.
4. Any endorsement letter provided by TRTA to AMBA shall not be used to directly market any Endorsed Policy under this Agreement unless prior approval is obtained from TRTA and the Texas Department of Insurance. Approval of the Texas Department of Insurance shall include the use of the letter in advertising by the Texas Department of Insurance.

C. TRTA Newsletter. TRTA agrees to include in each quarterly issue of the TRTA Newsletter a display-size article (not less than 1/3 of a page), furnished by AMBA, about the Endorsed Products. TRTA also agrees to remove the current disclaimer language printed below the listing of endorsed benefits in the TRTA Newsletter.

D. TRTA Convention. TRTA agrees to list AMBA as a Gold Sponsor of TRTA’s annual convention as part of the royalty fee paid to TRTA under this agreement.

- E. Limitations on Actions of TRTA. AMBA agrees that in requesting TRTA to carry out its responsibilities under this Agreement or any amendments to this Agreement, that TRTA will not be required to perform any acts of an insurance company, third-party administrator, or insurance agent under the insurance laws of the State of Texas and that TRTA will not be required to perform any acts that constitute the acts of an insurance company, third-party administrator, or insurance agency under the laws of the State of Texas or the rules of the Texas Department of Insurance.

ARTICLE IV
Term and Termination

- A. Term of Agreement. This Agreement takes effect on July 1, 2011 (“Effective Date”) and shall remain in effect through June 30, 2021. It is understood that unless either party gives written notice of its intention not to extend this contract, at one-hundred and eighty (180) days prior to the expiration date, that the contract will automatically be extended for a like period.
- B. Agent of Record. It is understood and agreed that AMBA shall remain the agent of record for all policies or certificates of insurance issued to TRTA or its members. This provision shall survive the termination of this Agreement.
- C. Insolvency. This Agreement may be terminated immediately by either party by giving written notice of termination to the other party if the other party is adjudicated bankrupt or insolvent, becomes insolvent, has a receiver of its, his or her assets or property appointed, or makes a general assignment for the benefit of creditors, or institutes or causes to be instituted any insolvency or bankruptcy.

ARTICLE V
Miscellaneous

- A. Amendments in Writing. The parties to this Agreement may amend this Agreement by mutual consent; provided, no amendment to this Agreement shall be valid unless it is in writing and signed by the parties or their authorized representatives.
- B. Governing Law/Severability. This Agreement shall be governed by laws of the State of Texas and applicable federal laws and regulations. If any provision of this Agreement is held to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.
- C. Third-Party Beneficiaries. Except as may be specifically provided by this Agreement, the obligations of each party to this Agreement shall inure solely to the benefit of the other party, and no Member or other person or entity shall be a third-party beneficiary of this Agreement.

- D. Notices. Any notice or other communication made in writing shall be deemed to have been received by the party to whom it is addressed on the date indicated on the certified mail return receipt if sent by certified mail, or one (1) business day after being delivered to an overnight delivery service if sent by overnight delivery, and addressed as follows:

If to TRTA:

Mr. Tim Lee
Executive Director
Texas Retired Teachers Association
313 E. 12th Street, Suite 200
Austin, TX 78701

If to AMBA:

Mr. Jerry Morgan
President
Association Member Benefits Advisors
6034 W. Courtyard Drive, Suite 300
Austin, TX 78730

- E. Assignment/Subcontracting. This Agreement may not be assigned by either party without prior written consent of the other party.
- F. Independent Contractors. None of the provisions of this Agreement are intended to create, nor shall they be deemed or construed to create, any relationship between TRTA and AMBA other than that of independent contractors contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither of the parties to this Agreement, nor any of their respective officers, employees, contractors, coverholders, or agents, shall be construed to be the agent, partner, co-venturer, employee, or representative of any other.
- G. Suits and Other Actions. Except for court-ordered participation, TRTA will not intervene nor become a party to any litigation arising pursuant to the sale or servicing of the Endorsed Products brought against AMBA or its owners.
- H. Execution of Agreement. This Agreement may be executed in multiple counterparts each of which on execution shall be considered to be an original and all of which taken together shall constitute one single Agreement.
- I. Hold Harmless. AMBA agrees to indemnify and hold harmless TRTA, its directors, officers, employees, agents, attorneys, and other representatives from any legal action or claim brought by or on behalf of any individual, Member, company, or other legal entity involving the approval or disapproval of insurance, administration of any insurance policy or contract, administration of any claims for benefits under any insurance policy or contract, the underwriting of any policy or contract of insurance, the issuance of any policy or contract of insurance, the determination of billing and collection of premiums for any insurance policies or contracts, the processing of any claims under any insurance

policies or contracts, or any other actions which are considered under the insurance laws of Texas to be engaging in the business of insurance or to be acting as an insurance agent or third-party administrator, as any of those actions may be taken in conjunction with endorsements given by or actions required of TRTA pursuant to this Agreement.

- J. Compliance with Agreement. TRTA and AMBA agree to comply with the terms and conditions of this Agreement, and this Agreement is binding on both parties.
- K. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes any prior written or oral understanding between the parties with respect to the subject matter hereof.
- L. Confidentiality. TRTA and AMBA agree that the terms and conditions of this Agreement are confidential and shall be kept in the strictest confidence and shall not be disclosed or disseminated to any third parties, except as expressly authorized.

The parties acknowledge that they have entered into this Agreement on the 8th day of JULY, 2011.

**ASSOCIATION MEMBER BENEFITS
ADVISORS, LTD.**

By: [Signature]

Jenny Morgan
Printed Name

Title: President

**TEXAS RETIRED TEACHERS
ASSOCIATION**

By: [Signature]

Timothy R Lee
Printed Name

Title: Executive Director

EXHIBIT 3



Texas Retired Teachers Association

313 E. 12th Street, Suite 200 | Austin, TX 78701-1957
800.880.1650 | 512.476.1622 | fax 512.476.1003

The Voice For All Public Education Retirees

www.trta.org

June 15, 2021

Ameritas

5900 O Street, Lincoln, NE 68510

Policy # 010-350489

RE: Texas Retired Teachers Association

Dear Craig Miller:

This letter is to Transfer Broker Of Record (BOR) 100% to **Trident Benefits & Consulting, LLC**, July 1, 2021. Trident Benefits & Consulting will be the exclusive insurance agent for all lines of coverage listed above. Trident benefits will **Not** be taking over payment collections or commissions for the month of June, but merely facilitating the transition to bind coverage with a new carrier effective July 1, 2021 if necessary. The appointment of Trident Benefits and Consulting, LLC rescinds and supersedes all previous agent appointments and shall remain in force until cancelled in writing. This appointment allows Trident Benefits and Consulting, LLC to act as our representative in negotiations with Ameritas for possible new plan options and to receive all information to transfer and bind coverage with new carrier if needed for our benefits program. This includes but is not limited to a copy of the signed **TRTA master Policy, TRTA members Certificates of Coverage and an eligibility file of all active TRTA members and Dependent covered under the current program.** I represent that I am authorized to appoint an agent for the lines of coverage that are included in this letter.

Also, this correspondence is to inform you that effective July 1, 2021, **Entrust, LLC dba 90 Degree Benefits** will be providing administrative services for Texas Retired Teachers Association's dental and vision benefits offered to its members.

We anticipate that this will be a smooth transition, and we expect all parties to provide all information reasonably requested in order to facilitate this transition. This

letter authorizes the release of any information or documentation as requested by **Trident Benefits & Consulting, LLC & Entrust, LLC dba 90 Degree Benefits to Trident Benefits & Consulting, LLC.**

If you have any questions, please do not hesitate to contact me.

Sincerely,



Timothy Lee
Executive Director
Texas Retired Teachers Association

EXHIBIT 4

From: Tim Lee <tim@trta.org>

Subject: TRTA Dental Plan Expansion Update

Date: July 1, 2020 at 8:15:19 AM MST

To: Steve Cardinal <steve.cardinal@amba.info>, Billy Hill <billyhill@gmail.com>, Andrew Weber <andrew.weber@kellyhart.com>

Steve,

Thank you for the time and effort your team has invested in developing a new dental program for TRTA. We believe the option of two plans, a high-benefit choice plan and the ERS-like select plan, represents good benefit management in that it addresses the needs of potential insureds.

I want to single out the work done by Mark Krum as both comprehensive and understandable in all aspects of this discussion and plan development.

As we both know and recognize, TRTA and AMBA relations are currently strained and delicate. To be even more matter-of-fact, there is doubt about the path forward long-term between our two organizations.

In light of this, TRTA suggests that an amendment is necessary to our current agreement that takes into account the addition of this new dental product.

We know that TRTA is the master policy holder on the dental product(s), but we also suggest that TRTA have the ability to assign agent of record status to any future designee for the new select plan in the event that the TRTA and AMBA partnership is not renewed.

We recognize that the current TRTA/AMBA's agreement does not allow for this assignment under the existing terms for the existing insureds; however, since this is a new block of business, and one that TRTA insisted be pursued for the betterment of our benefits program, we want to resolve that the new "select plan" insureds follow TRTA in the event that we do not reach an agreed to TRTA/AMBA renewal.

TRTA also needs verification of enrollee status along with updates on the administration of this program, quarterly claims updates, and some reporting on enrollment and the commissions/bonuses paid in connection to this program.

TRTA anticipates this will be a very beneficial and popular program and we want to be updated on the overall "value" of this plan as a product to Ameritas and to AMBA. I think the loss ratio is 60 or 65 percent. That other 35-40 percent seems pretty high to pay administration costs for a program like this. I may need to know more about why that number is set at 60 percent. I would also like to know how the other 35-40 percent is allocated.

If this is acceptable, I will ask that our legal team confer with your legal team to develop the necessary amendment language.

If this is not acceptable, please let me know and I will inform the TRTA Board that we could not reach agreement on this new product offering at this time.

Again, thank you for working with us to develop this exciting new product for current and prospective TRTA members.

Tim Lee
Executive Director
Texas Retired Teachers Association

EXHIBIT 5

From: Andrew Weber <andrew.weber@kellyhart.com>
Sent: Wednesday, June 23, 2021 2:32 PM
To: Don Taylor
Cc: Beaird, Nanette K.; Natalie Taylor; billyhill@gmail.com
Subject: RE: AMBA v. TRTA
Attachments: image001.jpg

Agree.

Andrew Weber
Partner-in-Charge, Austin
Chair Public Law Section

On June 23, 2021 at 2:31:14 PM CDT, Don Taylor <don@taylorthuss.com> wrote:

Ok,
This confirms our Rule 11 agreement

Donald Taylor
TAYLOR THUSS PLLC
603 W. 9th St.
Austin, Texas 78701
512.368.9186 (Telephone)
512.368.9014 (Facsimile)
don@taylorthuss.com

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From: Andrew Weber <andrew.weber@kellyhart.com>
Sent: Wednesday, June 23, 2021 2:28 PM
To: Don Taylor <don@taylorthuss.com>
Cc: Beaird, Nanette K. <nbeaird@foley.com>; Natalie Taylor <natalie@taylorthuss.com>; billyhill@gmail.com
Subject: RE: AMBA v. TRTA

Agree. Thank you.

Andrew Weber

Partner-in-Charge, Austin
Chair Public Law Section

On June 23, 2021 at 2:16:09 PM CDT, Don Taylor <don@taylorthuss.com> wrote:

Andrew,

Please confirm that you will agree to the following Rule 11 agreement:

1.This Rule 11 agreement is without prejudice to any parties rights with respect to any claim or defense.

2.The parties agree that pending a hearing on AMBA's application for TRO that the parties will maintain the status quo as follows:

TRTA will take no action to change AMBA's status as either agent of record or administrator of the dental and vision blocks of business which are the subject of this suit. AMBA will take no action adverse to TRTA's member's group coverage remaining in place.

3.This agreement terminates upon the court issuing an order granting or denying in whole or in part AMBA's pending request for a TRO. The parties will cooperate in setting the hearing at a mutually convenient time.

Donald Taylor
TAYLOR THUSS PLLC
603 W. 9th St.
Austin, Texas 78701
512.368.9186 (Telephone)
512.368.9014 (Facsimile)
don@taylorthuss.com

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From: Andrew Weber <andrew.weber@kellyhart.com>

Sent: Wednesday, June 23, 2021 12:34 PM

To: Don Taylor <don@taylorthuss.com>

Cc: Beaird, Nanette K. <nbeaird@foley.com>; Natalie Taylor <natalie@taylorthuss.com>

Subject: Re: Notification of Service for Case: , for filing Petition, Envelope Number: 54659794

I am optimistic I can get that confirmed with my client. Can you assure me AMBA will tak me no actions adverse to group coverage remaining in place for TRTA members?

I'll get back with you as soon as I can.

Thank you.

Andrew Weber

Partner-in-Charge, Austin
Chair Public Law Section

On June 23, 2021 at 12:29:03 PM CDT, Don Taylor <don@taylorthuss.com> wrote:

Andrew can you assure us that TRTA will not take any action to remove AMBA as administrator and agent of record until after our hearing next week

Sent from my iPhone

On Jun 23, 2021, at 12:17 PM, Andrew Weber <andrew.weber@kellyhart.com> wrote:

Don, I am on a vacation in Galveston with my wife and grandson. At a water park. And my TRTA Exec Director is out of the state on a post-session vacation with family. I cannot arrange a call with him until late tonight. I believe neither of us will be back in Austin until the end of this weekend.

For those reasons, would you consider delaying presenting your Petition until Wednesday or Thursday next week?

Thank you for your professional courtesy in this matter.

Andrew

Andrew Weber
Partner-in-Charge, Austin
Chair Public Law Section

On June 23, 2021 at 9:49:59 AM CDT, Don Taylor <don@taylorthuss.com> wrote:

Mr. Weber,

I am forwarding a copy of the Petition and Application for Injunctive relief that was filed last evening by AMBA against TRTA and others. Please advise if you will accept service for TRTA. We want to schedule a hearing on our TRO application ASAP and will be in touch with you as soon as the court gives us some available times. If you have any questions please call.

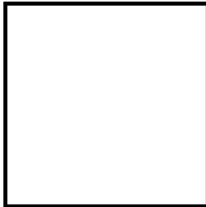
Donald Taylor
TAYLOR THUSS PLLC
603 W. 9th St.
Austin, Texas 78701
512.368.9186 (Telephone)
512.368.9014 (Facsimile)
don@taylorthuss.com

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From: No-Reply@eFileTexas.gov <No-Reply@eFileTexas.gov>
 Sent: Tuesday, June 22, 2021 9:37 PM
 To: Don Taylor <don@taylorthuss.com>
 Subject: Notification of Service for Case: , for filing Petition,
 Envelope Number: 54659794



Notification of Serv

Case Nu
 Case
 Envelope Number: 546

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	
Case Style	
Date/Time Submitted	6/22/2021 9:34 PM CST
Filing Type	Petition
Filing Description	Plaintiff's Verified Original Petition, Application for Temporary Restraining Order, Application for Temporary Injunction and Permanent Injunction
Filed By	Tamara Boston
Service Contacts	Association Member Benefits Advisors, Ltd.: Donald Taylor (don@taylorthuss.com) Natalie Taylor (natalie@taylorthuss.com) Other Service Contacts not associated with a party on the case: Tamara Boston (tamara@taylorthuss.com)

Document Details

Served Document

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EXHIBIT 6

[Subscribe](#)[Past Issues](#)[Translate ▼](#)[Important Announcement for TRTA Members!](#)[View this email in your browser](#)

IMPORTANT ANNOUNCEMENT FOR TRTA MEMBERS

Dear TRTA members,

Members of the Texas Retired Teachers Association (TRTA) have recently received solicitations in the mail from Association Member Benefits Advisors (AMBA) and from a Chicago-based "association for hire" organization known as the Texas Retired Educators Alliance (TREA). Please allow me to communicate with you regarding these letters and how TRTA is protecting its members.

Several months ago, TRTA reviewed our goals for member benefits with some very specific objectives. Our goals for the member benefits program are to: **have full transparency on products and costs; have unequivocal trust with the management of any group we work with; have full disclosure of the financial implications of the benefit program; and above all else, have TRTA be responsible for controlling the products offered to our members to ensure quality and reliability.**

TRTA conducted an exhaustive review process that included receiving proposals from several companies, including AMBA. Ultimately, we rejected the proposal from AMBA. While their proposal would have provided more revenue to the association, we agreed their proposal was too weak to specifically meet the goals we established in our process (as listed above).

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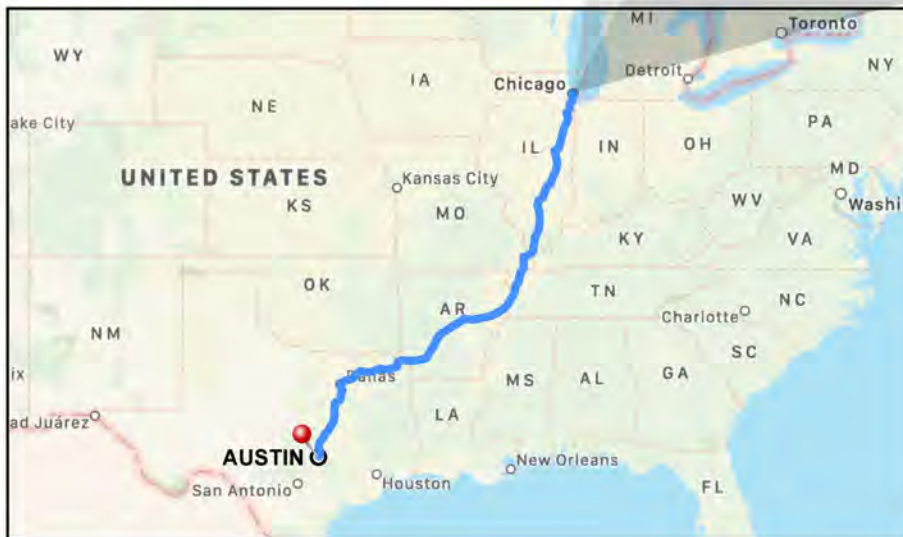
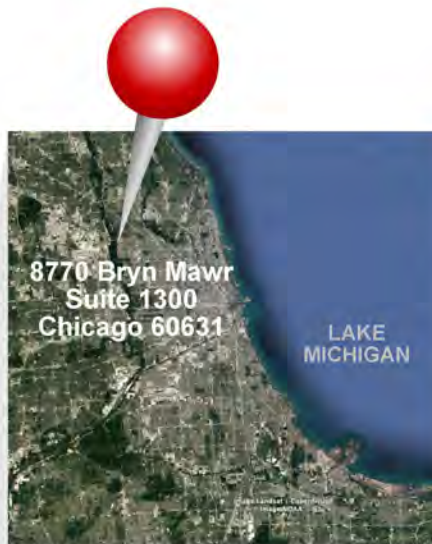
After we notified AMBA of our decision, AMBA sued TRTA, claiming it remains our agent and administrator for *existing* dental and vision plans. Based on an agreement between TRTA and AMBA, existing participants in those plans should **not** be affected during the AMBA litigation. AMBA also used their marketing firm to create the "association for hire," the Chicago-based TREA, which has sent information to some TRTA members (see included alert).

DON'T BE FOOLED!

The Texas Retired Educators Alliance is a Chicago, Illinois "Association for Hire" with NO Office or Employees In Texas!

They want to sell you health insurance.
They say they care deeply about you.
But they don't want you to know they are a group from Chicago, with no office or employees in Texas.
They don't work with the Texas Legislature to protect your retirement or your healthcare future.

What they want is your money.



★ **BEWARE!** ★

The Texas Retired Educators Alliance is a Chicago, Illinois "Association for Hire" working with AMBA, who is suing YOUR Texas Retired Teacher Association

They want you to believe they are a Texas organization helping retired teachers. Your retired teacher health benefits are in good standing with your association, the Texas Retired Teacher Association.
We're here to take care of you. We have been since 1953.

The Chicago "Association for Hire" is a stranger. Remember what you were taught about strangers!

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and their Chicago-based association for hire, are not recommended or endorsed by TRTA. TRTA has been your advocate since 1953, and we continue in that role today. With your support, we will continue to do so into the future. We are undeterred, ever vigilant, and always prepared to represent our members!

We will keep you updated as the court case moves ahead. In the meantime, you can rest assured your current benefits are not impacted. More information will be available soon.

Sincerely,



Tim Lee
TRTA Executive Director

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EXHIBIT 7

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IMPORTANT ANNOUNCEMENT FOR TRTA MEMBERS

Dear TRTA Member,

I am going to open with a very direct message to you regarding AMBA and their partners TREA and ASBA.

TRTA has not asked AMBA, TREA, or ASBA agents to contact you. TRTA is not endorsing any new AMBA, TREA, or ASBA products. TRTA has not given permission for them to use your contact information in any way, especially to cold call you or show up at your home uninvited.

If AMBA, TREA, or ASBA agents or anyone else contacts you about dropping your TRS-Care health insurance, please contact TRS, the Attorney General, the Department of Insurance, or TRTA immediately through the contact information listed below.

If you, as a public education retiree, change to AMBA, TREA, or ASBA recommended alternatives to TRS-Care, you may not have suitable, long-term insurance protection and you will likely never be able to change your coverage back to TRS-Care.

Since 1953, TRTA has served retired Texas educators with a single focus – accomplishing goals that serve the best interests of you and your fellow members.

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not be fooled by these outsiders, who I believe are not keeping your quality of life and hard-earned retirement benefits in mind.



AMBA

In 2011, TRTA signed a 10-year agreement with AMBA, to serve as your association's third-party administrator in developing, marketing and administering vision and dental health benefits. At the conclusion of the ten-year agreement (June 30, 2021) TRTA chose to not extend the agreement with AMBA.

In June 2021, AMBA retained trial lawyers who sued your association, simply because TRTA was looking out for your best interest.

TRTA successfully protects and enhances retirement benefits for public education retirees through our professional legislative advocacy (TRS is prohibited from lobbying).

Neither AMBA nor their partner "Association for Hire", Chicago-based Texas Retired Educators Alliance (TREA), lobby the Texas Legislature to protect your benefits. In fact, AMBA allowed your personal contact information to be used by their partner TREA to solicit business.



TRTA, founded in 1953, is an Austin-based association governed exclusively by education professionals receiving retirement benefits from TRS.

AMBA is owned by a San Francisco-based private equity firm focused on investments in financial services, healthcare, industrials and software. Chicago-based TREA has no members and no presence in Texas.

TRTA, through community service and its Foundation, has provided almost one million books to children; donated \$170,000 to active and retired educators and school personnel impacted by Winter Storm Uri; funds a Beginning Teacher Scholarship Fund, among other charitable efforts.



Neither AMBA nor its owner disclose community/charitable services on their public websites.

TRTA is a powerful statewide force of nearly 100,000 members in 252 local chapters. YOU CAN ALWAYS COUNT ON AND TRUST TRTA.

DON'T BE FOOLED BY AMBA AND TREA!

TRTA has not asked AMBA, TREA, or ASBA agents to contact you. TRTA is not endorsing any new AMBA, TREA, or ASBA products. TRTA has not given permission for them to use your contact information in any way.

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Department of Insurance, or TRTA immediately.

- Teacher Retirement System of Texas (TRS), 1-888-237-6762
- [Attorney General of Texas](#)
- [Texas Department of Insurance](#)
- Texas Retired Teachers Association (TRTA), 1-800-880-1650

Thank you for your continued attention to these matters. TRTA will continue to keep you updated.

Sincerely,



Tim Lee
TRTA Executive Director

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EXHIBIT 8

From: Sherry Hubbard <sherryhubb1@gmail.com>
Sent: Wednesday, September 15, 2021 2:21:35 PM
To: Sherry Hubbard <sherryhubb1@gmail.com>
Subject: Fw: Brochures

Good afternoon, MKM RTA members,

Today I received the brochure (attached below) for Trident, TRTA's new benefits provider (instead of AMBA). If you are interested in any of their products, please follow the directions given and go ahead and sign up for them. Debbie Potter, the vice-president of Trident, will be attending the MKM RTA meeting in Junction on January 6. If you'd like to talk to her in person instead, you will have the opportunity at that time. I know several members have questioned me about the various insurances they have carried through AMBA over the years; those are still fine for you to continue. However, you may want to compare the benefits with those being offered by Trident. Take care and stay well.
Sherry Hubbard, MKM RTA President

Good morning everyone,

Please find attached the information about our products that are available. **Dental (available now) and Vision (available 9/17/2021), all other benefits will be available November 1, 2021.** I am going to send to all Local Units, but if by chance it doesn't get to someone in your district please forward the information to them. In the brochure attached you will find.....

Cover sheet with Trident contact information (email and telephone numbers)

Page 1 will be all the benefits available to you and your members

Page 2 thru 10 will be a screen shot of how to enroll in benefits (**but highly recommend that you call the 800-332-0301 for assistance in enrolling**)

Page 11 is the Dental (FCL/Dentemax Plus)

Page 12 is the Vision (Mesvision)

Page 13 is the Zurich Hospital Indemnity Insurance

Page 14 is the Zurich Critical Illness Insurance

Page 15 is the Zurich Accident Insurance

Page 16 is the Zurich Travel Assist

Page 17 is the Dental and Vision Pricing

I hope this email helps with some of the questions you are receiving from your members and as soon as I have more available I will send to you. Thank You.

Sincerely,

[CLICK HERE TO ENROLL:](#)

Debbie Potter

TVP of Membership Business Development

[17000 Katy Fwy. Suite 200](#)

[Houston, Tx 77094](#)

[Office: 346-800-9308](#)

Cell: 432-488-9668

dpotter@tridentbenefits.net

<image001.png>

<https://tridentbenefitsandconsulting.com/>

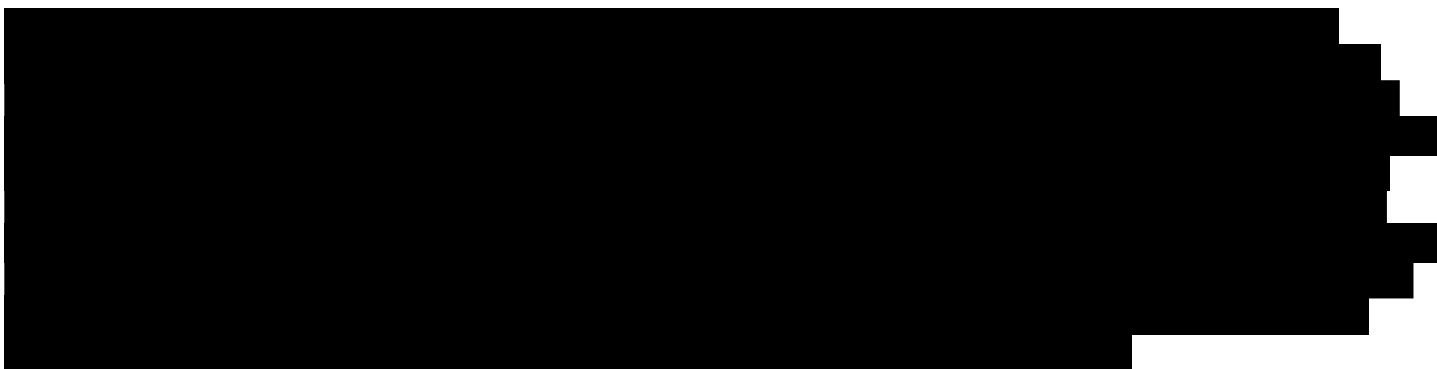
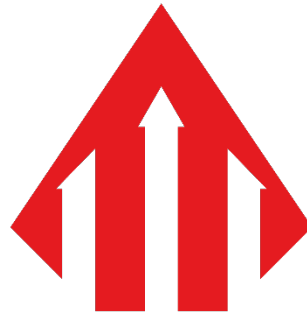


EXHIBIT 9

The Voice For All Public Education Retirees



Exciting New Benefits Coming Your Way



TRIDENT

BENEFITS & CONSULTING

Engage members with the many benefits available through the Texas Retired Teachers Association (TRTA)! Contact Debbie Potter at Trident Benefits to schedule a benefits speaker at your local unit meeting.

Email: dpotter@tridentbenefits.net

Cell: (432) 488-9668

Call Toll Free
(800) 322-0201

Enroll Online
enroll.trta.org



First Continental Life & Accident Insurance Company is a Select Insurance Carrier founded in 1997 based out of Sugar Land, TX where to this day all claims and administration is housed in our Texas based corporate office.

Since its inception, FCL Dental has become a leader in providing access to affordable quality dental benefits.

We are one of the largest independent, full-service dental benefits providers delivering innovative and high-quality dental managed care products to associations, employer groups and individuals.



The provider choices are vast as we utilize the DenteMax Plus network, a 50 state network. Our provider relations teams are

consistently expanding this network in order to provide a more substantial presence for our customers.

At FCL, we are a customer service based organization. We are uniquely positioned to offer tailored response programs for the

customers who place value on flexibility, dependability, and responsiveness.

We look forward to working with the Texas Retired Teachers Association and all of you, its members.

Maximum Allowable Charge (MAC) \$1,500 Dental

Maximum Allowable Charge (MAC) \$5,000 Dental

Annual Benefit - Per Person \$1,500			
	<u>TYPE I</u>	<u>TYPE II</u>	<u>TYPE III</u>
Covered Benefits Per Policy Year	100%	80%	50%
Copayment Per Person	\$25/Visit		

Annual Benefit - Per Person \$5,000			
	<u>TYPE I</u>	<u>TYPE II</u>	<u>TYPE III</u>
DURING THE 1ST YEAR	100%	80%	0%
2ND YEAR AND THEREAFTER	100%	80%	50%
	* 12-month waiting period		
Copayment Per Person	\$25/Visit		

TRTA Take Over Benefit/Credit for Prior Coverage

FCL is extending the takeover benefits to new dental members on the \$5,000 plan with 12 month waiting period that had prior coverage with a previous dental carrier. These members may qualify to receive credit for the months that they've had coverage and may go towards their 12-month waiting period for Type 3-Major Services.

Below are the criteria that will need to be met to be considered for credit of prior coverage.

The prior coverage must be a PPO/MAC or DHMO plan

The member will need to obtain a letter/certificate from the previous carrier with the following information:

- Carrier Name- [outline of dental plan] 100/80/50
- Effective Date of Coverage: [Coverage DATES]
- Family Coverage for:
 - Self: Member Name, SSN & DOB
 - Spouse: Name DOB
 - Child: Name DOB
 - Child: Name DOB

The letter must be on carrier letterhead and state the type of coverage (include annual maximum and coinsurance), list the names of all covered members and there must be a start date and end date for the coverage.

Proof will not be accepted from the following:

- Bank draft
- Screen shot
- Word document
- There cannot be more than a 30-day break in coverage for the takeover benefits to be extended to the member.
- Any discount dental plans.

EXHIBIT 10

MKM Unit Meeting
September 2, 2021

The MKM Unit of Retired Teachers held its meeting at 11 a.m. in the Menard Community Center on September 2, 2021, with 13 members from Menard, 12 members from Junction and 1 from Mason present.

Katherine Kniffen introduced the speaker of the day, Randy Corbin of Menard, a responder to 9/11 Ground Zero, which he referred to as the personification of evil. He was a member and Safety Officer of Texas Task 1 and led the team and its dog team to become rescuers in the terrible crisis, and then instead became a recovery team. He relayed his experiences to the retired teachers.

Sherry Hubbard, president, then opened the business meeting, and Ron Wood said the opening prayer. Patsy Hartt led the pledges to the U.S. and Texas flags. The minutes of the May 6 meeting and the treasurer's report had earlier been mailed to the members.

The MKM RTA Directory has been put online and mailed out to those without email, thanks to Mary Ann Bartlett, who wants any correction that might be needed.

The agenda of meetings is following: next meeting is in Junction on January 6; the Fall conference in Comanche on October 21; a bakeless bake sale for Foundation on November 4; meeting in Mason on March 3; State Conference on April 11-13 ; and meeting in London on May 5.

Discussing the Fall Conference on October 21, Sherry asked who could go and who will donate four gifts for the Silent Auction. Danny and Hettie Allsup will plan to attend along with Connie Fox and Joann Bierschwale. For items for the auction, Patsy Hartt will donate a large homemade grocery bag; Mary Ann, pecans; Connie Fox, a gourd carving, and Sherry, an insulin pen case and toothpick holder made on Bruce's 3-D printer. Connie will take care of putting flowers on the memorial wreath honoring our MKM deceased members: Ann Cotterrell, B'Lee Spiller, and Billie Noguess. Superintendents are invited to the conference, and someone from each school is needed to invite them.

Sherry announced that TRTA chose Trident to replace AMBA, and Debbie Potter from Trident will be at our January meeting. If a member has anything from AMBA and she/he pays straight to that particular company and not to AMBA, don't change anything yet. She also mentioned that there is a Golden Ticket which allows a one-time come back return to TRS care if a member desires to do so.

Mary Ann, first vice-president, stressed trying to get new members. Our unit won \$500 for having continued the same number of members. \$700 were given in scholarships to new teachers in Junction. Their picture was in the Junction paper.

Patsy Hartt, second vice-president, announced that she gave the pre-school books to Charlotte Albrecht to give in Menard.

Betty Jackson, Community Volunteer Services chair, stressed keeping volunteer hours to turn in during January. We need to prove legislators that we are important!

Jeannie Sullivan, Foundation representative, was not present, but members were encouraged to send her their checks for the Foundation fund. The checks were to be made to MKM, and Jeannie will send the amount to Texas Retired Teachers Foundation.

Sherry announced that a Healthy Living Chair is needed. That chair will receive information from the district officer and will report it to MKM meeting. Joann Hedrick volunteered to fill this position.

Sherry announced that an Informative and Protective Services chair is also needed to conduct information between the district officer and local. Ladonna Casaday volunteered to fill this position.

For Legislative information, Sherry announced there had been a win coming with no deduction in state contribution to TRS Trust Fund of increase in costs for health insurance coverage; 13th check coming and hope for COLA in 2023.

Sally Callan, Technology chair, reported that she places info on Tim Lee's work on the website, and pictures/info from MKM.

Sherry encouraged members to self-nominate themselves to become a district officer. She is on the District Nominating Committee.

Sherry closed the meeting with reminding the members there will not be a meeting in November, but they should remember to mail their Foundation contributions to Jeannie.

The meeting concluded, and a wonderful meal was furnished by the Menard members.

Sarah Harrison, Secretary

EXHIBIT 11

Products (Rates)

Product	PaymentType	In Effect	Out Of Effect	Cov Type
Dental	CreditCard	8/1/2021		Employee Only
Vision	CreditCard	8/1/2021		Emp. + Spouse

TRTA - Asher, Kathy J. (399896)

Receipts

Type	Date	Check #	Amount
OP	8/3/2021	cus_Jq7v2oJES9cAJA	\$94.70
OP	9/2/2021	cus_Jq7v2oJES9cAJA	\$74.70

Member Info

PBEntityKey	Association	MemberID	SSN	Type
399896	TRTA			Primary
399897	TRTA			Spouse

Call with RVP Art Dunham. Jenny.Bastin
 Cancellation request and full refund of premiums due to TRTA/Tim Lee Communications. Member is interested 09/27/2021
 in purchasing other policies with Field Agent but wants the TRTA plan cancelled and refunded. Per Art they are
 not comfortable with this coverage. ****Special Authorization Granted to refund premiums and accept
 cancellation once member can call in or e-mail us to authorize cancellation ****

EXHIBIT 12

From: [Tim Lee](#)
To: markkrum@gmail.com
Date: Monday, April 2, 2018 11:25:29 AM

And one final thought now that I'm at it, I'm not sure I want to give all my advice and counsel to Amba for free. They had their chance. I have been around all these associations for 20 years. 20 years!! That's the kind of time and investment in this client base that a high paid consultant could have tried to offer but would never be able to give. Now, I don't think I'm willing to give anything away for free any longer. Before I saw it as my duty, now I see it as advice that will make Amba more profitable and I personally am not seeing any reward for giving knowledge and time away. It just continues to irritate me that I have been the key to great growth at Amba and I'm getting the short end of the stick. I'm putting way too much time into trying to make other people successful and then I have to think of new ways to get trta to be successful as we are not realizing the same revenue growth as the people I just helped.

That may sound selfish, because it sounds selfish to me, but how long am I going to keep pounding the roads and flying all over and losing my family time just to see everyone else benefit in ways that will not materialize into something better for me. Why should I keep thinking and doing all this work just to make ameritas and Amba and medical air ambulance all the richer for it?

In other words, there was a moment that i was willing to do EVERYTHING to help Amba be great after the Morgan transition. But now, I think my ideas and advice may help Amba be better and grow financially, but I'm still stuck at the status quo.

The value of trta to Amba is immense. I'm just not sure the value Amba is to trta is as high as I once thought it was and I don't know that I'm as willing to give up all I know just to help them get richer and our bottom line doesn't change all that much. When I see us losing almost a quarter million annually just on dental non renews, and Amba fighting with me over this I get really unmotivated.

I have no doubt Amba makes a lot more than \$35 on every individual dental insured a year. A LOT more. So when I'm the hell would they fight with me over the remuneration deal! F-that. Cancel everyone who is not a member. That's the only way I can force Amba to take this seriously. Once they're in the same boat as me, losing money on people who don't pay their group member fee, only then will they give a shit and only then will we be on equal footing.

If I keep running my blood pressure keeps going up on this!!

Timbo

EXHIBIT 13

From: Cas Sharp [csharp@tridentbenefits.net]
Sent: 8/19/2021 8:03:38 PM
To: Tim Lee [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=6520c12092e74497b1a0d17f738b1a8f-tim]
Subject: Fwd: FW: TRTA Members Receiving Solicitation

Your letter is working. This member had no idea what was going on until she received your letter, and just signed up through AMBA. She is calling to cancel and will call us back. If they refuse to let her cancel or refund the money I will let you know.

Cas

----- Forwarded message -----

From: Marcos Vela <mvela@tridentbenefits.net>
Date: Thu, Aug 19, 2021 at 2:57 PM
Subject: FW: TRTA Members Receiving Solicitation
To: Cas Sharp <csharp@tridentbenefits.net>

Marcos J. Vela

President & Co-Founder

[17000 Katy Frwy, Suite 200](#)

[Houston, TX 77094](#)

Cell: 281-799-5300

Toll Free: 888-564-0254 ext. 106

Mvela@tridentbenefits.net

[Visit Our Website](#)



From: John Bruce <jbruce@tridentbenefits.net>
Sent: Thursday, August 19, 2021 2:55 PM
To: Cortland Gunning <cgunning@tridentbenefits.net>; Corbin Martin <cmartin@tridentbenefits.net>; TRTA Benefits <trtabenefits@tridentbenefits.net>; Marcos Vela <mvela@tridentbenefits.net>
Subject: Fwd: TRTA Members Receiving Solicitation

Please see the attached letter she received today....

"Member Veronica Parada got this today and call to figure out what is going with amma which she just signed up.

After the review of the Lee letter. she indicates she is going to call and cancel the AMBA, as the payment has not yet posted.

She intends to call back and review the FCL

Veronicas # is 832-233-8420

Thanks for the review.

John Bruce

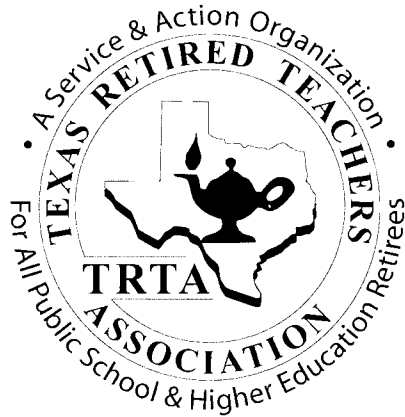
From: **Veronica Susan Parada** <szuszka2@gmail.com>
Date: Thu, Aug 19, 2021 at 2:35 PM
Subject: Fwd: TRTA Members Receiving Solicitation
To: <jbruce@tridentbenefits.net>

----- Forwarded message -----

From: **Tim Lee, TRTA Executive Director** <tim@trta.org>
Date: Thu, Aug 19, 2021 at 12:12 PM
Subject: TRTA Members Receiving Solicitation
To: Veronica <szuszka2@gmail.com>

Important Announcement for TRTA Members!

[View this email in your browser](#)



IMPORTANT ANNOUNCEMENT FOR TRTA MEMBERS

Dear TRTA members,

Members of the Texas Retired Teachers Association (TRTA) have recently received solicitations in the mail from Association Member Benefits Advisors (AMBA) and from a Chicago-based "association for hire" organization known as the Texas Retired Educators Alliance (TREA). Please allow me to communicate with you regarding these letters and how TRTA is protecting its members.

Several months ago, TRTA reviewed our goals for member benefits with some very specific objectives. Our goals for the member benefits program are to: **have full transparency on products and costs; have unequivocal trust with the management of any group we work with; have full disclosure of the financial implications of the benefit program; and above all else, have TRTA be responsible for controlling the products offered to our members to ensure quality and reliability.**

TRTA conducted an exhaustive review process that included receiving proposals from several companies, including AMBA. Ultimately, we rejected the proposal from AMBA. While their proposal would have provided more revenue to the association, we agreed their proposal was too weak to specifically meet the goals we established in our process (as listed above).

Put as simply as we can say it, TRTA members matter more than money.

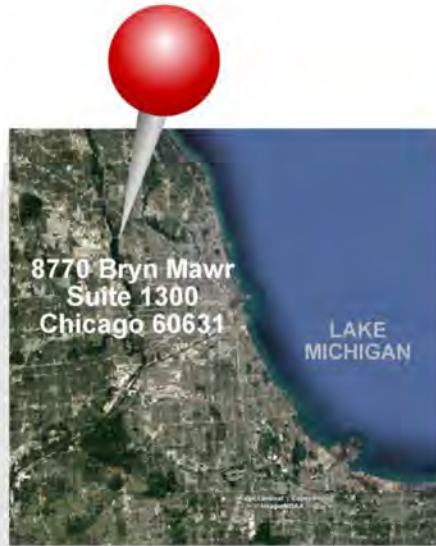
After we notified AMBA of our decision, AMBA sued TRTA, claiming it remains our agent and administrator for *existing* dental and vision plans. Based on an agreement between TRTA and AMBA, existing participants in those plans should **not** be affected during the AMBA litigation. AMBA also used their marketing firm to create the "association for hire," the Chicago-based TREA, which has sent information to some TRTA members (see included alert).

DON'T BE FOOLED!

The Texas Retired Educators Alliance is a Chicago, Illinois "Association for Hire" with NO Office or Employees In Texas!

They want to sell you health insurance. They say they care deeply about you. But they don't want you to know they are a group from Chicago, with no office or employees in Texas. They don't work with the Texas Legislature to protect your retirement or your healthcare future.

What they want is your money.



★ BEWARE! ★
The Texas Retired Educators Alliance is a Chicago, Illinois "Association for Hire" working with AMBA, who is suing YOUR Texas Retired Teacher Association

They want you to believe they are a Texas organization helping retired teachers. Your retired teacher health benefits are in good standing with your association, the Texas Retired Teacher Association. We're here to take care of you. We have been since 1953.

The Chicago "Association for Hire" is a stranger. Remember what you were taught about strangers!

Don't be fooled. Unless a court decides otherwise as to existing dental and vision plans, AMBA (which is owned by a San Francisco private equity firm) and their Chicago-based association for hire, are not recommended or

endorsed by TRTA. TRTA has been your advocate since 1953, and we continue in that role today. With your support, we will continue to do so into the future. We are undeterred, ever vigilant, and always prepared to represent our members!

We will keep you updated as the court case moves ahead. In the meantime, you can rest assured your current benefits are not impacted. More information will be available soon.

Sincerely,



Tim Lee
TRTA Executive Director

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You are receiving this email because you are a TRTA member.

Our mailing address is:

Texas Retired Teachers Association

[313 E 12th St Ste 200](#)

[Austin, TX 78701-1957](#)

[Add us to your address book](#)

Want to change how you receive these emails?
You can **update your preferences** or **unsubscribe from this list**

--

Live simply so that others may simply live.

Veronica Susan Parada

832.233.8420

--

Thanks,

[Click Here To Enroll](#)

John Bruce

TRTA Enrollment Specialist

[Trident Benefits and Consulting](#)

[17000 Katy Frwy., Suite 200](#)

[Houston, TX 77094](#)

Main: 1-800-322-0201

Direct: 346-800-9352

jbruce@tridentbenefits.net

EXHIBIT 14

From: Tim Lee [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6520c12092e74497b1a0d17f738b1a8f-tim]
Sent: 7/20/2021 11:32:00 PM
To: Joyce Pike [ljpike@msn.com]
Subject: Re: Important Change Related to TRTA Member Benefits

No current benefits are being charged as any policy purchases with an AMBA agent remains in force.

Only new policies will be offered through trident and you'll be able to see those options before you choose to do anything about your future benefits.

Hope this info is helpful and addresses your concerns.

From: Joyce Pike <ljpike@msn.com>
Sent: Tuesday, July 20, 2021 6:28:59 PM
To: Tim Lee <tim@trta.org>
Subject: Re: Important Change Related to TRTA Member Benefits

As a long time TRTA member why am I just being notified of this change. Having several policies through AMBA, I would have appreciated the opportunity to do research on Trident comparatively to AMBA prior to the June 30 date. Not being given a reasonable amount of time to research my personal choices as to my 2021-22 policy choices is a disservice to membership. As I consider my choices for the future, I am disappointed in that lack of consideration of a member's perspective.

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Tim Lee, TRTA Executive Director <tim@trta.org>
Sent: Tuesday, July 20, 2021 5:03:08 PM
To: ljpike@msn.com <ljpike@msn.com>
Subject: Important Change Related to TRTA Member Benefits

Important Announcement for TRTA Members

[View this email in your browser](#)



July 20, 2021

Please Read Entire Letter--Important Change Related to TRTA Member Benefits

Dear TRTA Members:

A number of our members have asked questions recently about our member benefits and the status of our relationship with AMBA.

As I discuss more later in this letter, we notified AMBA that our relationship would end June 30, 2021. To that end, **TRTA has a new relationship for benefit administration and marketing with Trident Benefits.**

Except as discussed below, Trident is TRTA's exclusively endorsed benefit partner. This group will work directly with TRTA on new group-based and member exclusive products.

Please know that **Trident Benefit representatives are available to visit locals**, and that our new partnership with them means, as it has in the past, that generally no other benefit group should participate in TRTA meetings at the state, district, or local level. If another benefit group asks to participate, or you consider inviting another group to participate, please contact me in advance. **Trident Benefits contact info will come in a separate email this week to TRTA local leaders.**

We are excited to see what the future holds for TRTA members thanks to Trident and their amazing team of agents, customer care representatives, and support staff.

TRTA knows this change may come with some questions about our parting with the previous benefit partner Association Member Benefit Advisors (AMBA). Late last year, TRTA informed AMBA that its contract with them would be terminated July 1. This was in accordance with the terms of our endorsement agreement as TRTA did not want that agreement to renew for 10 years without our ability to reconsider or amend the endorsement process.

As we all know, times have changed over the last 30 years. TRTA has changed. Member needs and expectations have changed. We decided it was time to do a top-to-bottom review of our administrator, agent, and products.

We retained independent consultants and solicited proposals, including from AMBA. At the end of the process, we decided to go down a different path, particularly one that provides more flexibility in the future.

TRTA always focuses on our members first and foremost. The decision to change our member benefits partner is aimed at opening new doors to exclusive member-based group programs and will provide TRTA a much larger seat at the table when learning about, negotiating, and engaging with benefit providers and carriers all to reduce cost and increase benefit levels for our members.

The individual programs and services our members purchased from AMBA agents are still in force. TRTA will gladly help direct you to AMBA for any customer care or

service issues related to those individual products.

It is also important to let our members know that while TRTA did have a strong working relationship with AMBA for 40 years, **that group has sued TRTA in state court over the parting**. AMBA believes that, despite TRTA's notice terminating our relationship with AMBA, AMBA remains our agent and administrator for existing dental and vision coverage. We disagree. However, **until the court decides that issue, AMBA and TRTA have agreed not to do anything to change your dental or vision coverage—so your existing dental and vision group plans remain in place--with no changes**. *For all new dental and vision and any other insurance benefit plans, Trident is our new agent and benefits administrator*. While TRTA cannot discuss this matter further at the present time, please know our association will work diligently to resolve this matter as quickly as possible, and to do so with TRTA interests' prevailing.

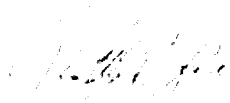
Finally, we want to continue to make sure that we educate our loyal members about a new group formed by AMBA. You have undoubtedly received communications from this group: Texas Retired Educators Alliance (TREA). **TREA is not affiliated in any way with TRTA**. It is a completely separate entity.

We think it is important for our members, colleagues, and supporters to know that the Texas Retired Teachers Association, the group that has worked for and advocated to protect the retirement security for all Texas school retirees and pre-retirees since 1953 and continues in this mission today, is not affiliated with TREA.

TRTA appreciates and values the trust we have with our membership and we look forward to many more years of advocating for and assisting our members in any way that we can.

Thank you for your support and membership with the Texas Retired Teachers Association. Should you have any questions, comments, or concerns regarding this letter, we ask that you please complete our online contact form at <https://trta.org/contact-us/> to submit them to our office.

Sincerely,



Tim Lee
Executive Director
Texas Retired Teachers Association

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You are receiving this email because you are a TRTA member.

Our mailing address is:
Texas Retired Teachers Association
313 E 12th St Ste 200
Austin, TX 78701-1957

Add us to your address book

Want to change how you receive these emails?
You can **update your preferences** or **unsubscribe from this list**