

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

CASE NO.

MERIDIAN ASSURANCE INC. d/b/a
INTRUST HOME CARE AND
ROY F. FITZGERALD,

Defendants.

**COMPLAINT FOR PERMANENT INJUNCTIVE RELIEF,
AND OTHER STATUTORY RELIEF**

Plaintiff, **STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS**, sues Defendants, **MERIDIAN ASSURANCE
INC. d/b/a INTRUST HOME CARE (“Intrust”) AND ROY F. FITZGERALD
 (“Fitzgerald”)**, and alleges:

JURISDICTION AND VENUE

1. This is an action for damages, injunctive and other statutory relief, brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Fla. Stat. (2005).

2. This Court has jurisdiction pursuant to the provisions of said statute.

3. Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs, (hereinafter "State") is an enforcing authority of Chapter 501, Part II, Fla. Stat. (2005), and is authorized to seek penalties, damages, injunctive relief, and other statutory relief pursuant thereto.

4. The State has conducted an investigation of the matters alleged herein and Attorney General Charles J. Crist, Jr., has determined that this enforcement action serves the public interest, as required by Section 501.207(2), Florida Statutes (2004). (See attached Exhibit A.)

5. Defendant Intrust, sold contracts for personal services to senior citizens throughout the State. These contracts have also been sold to senior citizens in California, Virginia, and Illinois.

6. Intrust was a Florida based corporation which was administratively dissolved by the Department of State on September 16, 2005, for its failure to file an annual report. Intrust had its principal place of business at 2505 Enterprise Road, Suite 1, Clearwater Florida 33763. Intrust designated Form-A-Corp LLC, 100 Village Square Crossing, Suite 103, Palm Beach Gardens FL 33410-4531, as its registered agent to accept service of process.

7. Defendant Fitzgerald was the President, Secretary, Treasurer, and sole Director of Intrust, and was responsible for the service contracts it sold. He made all the decisions relating to claims, refunds, and other contract issues. His wife Nicola Fitzgerald was the Vice President of Intrust.

8. Intrust and Fitzgerald are subject to jurisdiction of the courts of this state pursuant to section 48.193, Florida Statutes, because they engaged in business in this

state. Intrust is also subject to jurisdiction in this state because it breached contracts in this state.

9. The statutory violations and Defendants' activities alleged herein occurred in or affect more than one judicial circuit in the State of Florida, including the Second Judicial Circuit in Leon County.

10. All actions material to the complaint have occurred between December 31, 2001, and the present and are not precluded by the time limitations in Section 501.207(5).

**STATEMENT OF FACTS AND
DEFENDANTS' COURSE OF CONDUCT**

11. Intrust sold service contracts to senior citizens (defined in section 501.2077 to be persons 60 years of age or older). These contracts were designed to avoid regulatory oversight. Although they contain many similarities to insurance contracts, they purport not to be contracts of insurance to avoid the purview of the Department of Financial Services. In like manner, although they contain many similarities to home health care contracts, they were designed not to be home health care contracts, thus avoiding the scrutiny of the Agency for Health Care Administration.

12. No one ever received any benefits. Despite its promise of services for home companion and other services, Intrust had no agreements with anyone to ever provide those services. When customers called for services, they were put off and the promised services were never delivered.

13. Intrust sold two types of contracts. At first, it sold the "Home Companion Membership Association Discount Plan." This plan had two options: Plan A - - \$30 for 4

hours of care and Plan B - - \$60 for 8 hours of care. The services provided were dressing, laundry, toileting, excursions, housekeeping, grooming, meals bathing, and mobility assistance. A copy of the service agreement, application, and associated documents is attached as **Composite Exhibit B**.

14. After members signed up, they could call Intrust and order home companions. The rate for the home companion was set at a regional rate during the first three months of the contract. Thereafter, the rate was \$30 for 4 hours of care, or \$60 for 8 hours of care, depending on the plan chosen.

15. Intrust later sold a contract entitled the "Assisted Living Home Care Contract." This contract provided assistance with specified activities. The activities listed in the contract are meals, dressing, bathing, excursions, laundry, housekeeping, and toileting. A copy of the contract, the application, the cancellation notice, and the application confirmation is attached as **Composite Exhibit C**.

16. The annual rates paid for the all the above described contracts ranged from \$743 to \$7,610. The arithmetic mean was \$3,541. The total amount paid to Intrust was over \$146,000; while the total benefits paid out was zero.

17. The contracts contained a number of options. Persons could purchase four different levels of coverage depending on their health. They could also choose between a number of different days of coverage, 30, 60, 180, 360, and a number of hours a day of coverage, 4 or 8. Finally, they could select either a six or twelve-month waiting period.

18. The Home Companion and the Assisted Living Contract each offered homemaker or companion services to the members. Those services are defined

statutorily in section 400.462, Florida Statutes. That section specifically prohibits the providing of “hands-on personal care” to clients. Section 400.509 requires organizations that offer these services to be registered with the Agency for Health Care Administration. Bathing and toileting services are also hands-on personal services that are advertised as offered by Intrust, but which it is prohibited from offering since it is not a home health agency.

19. The concept of selling a senior citizen a waiting period of 6 or 12 months before providing service is absurd on its face. When a person who is 94 years old is sold a plan (it actually happened with Intrust) that won’t provide benefits for one year that is per se unconscionable.

20. Intrust sold 56 contracts, eight were cancelled and refunds were provided. Another 28 contracts lapsed after the citizens failed to pay the ongoing premiums. Four contracts lapsed due to the death of the policyholder.

21. When a member died during the policy period, no refund on any sort of basis was provided to the estate.

22. These Defendants knew or should have known that the conduct that each participated in was unfair or deceptive, and thus have knowingly used, a method, act or practice, declared unlawful under section 501.204, Fla. Stat. They have knowingly participated in the marketing of products that do not provide a benefit to the consumer purchaser.

COUNT I

VIOLATIONS OF CHAPTER 501, PART II, Fla. Stat.
DECEPTIVE AND UNFAIR TRADE PRACTICES BY INTRUST

23. Plaintiff realleges paragraphs 1 through 22, as if fully set forth herein, and further alleges:

24. Chapter 501, Part II, Fla. Stat. is entitled, "Florida Deceptive and Unfair Trade Practices Act." Section 501.204(1) of the Act provides that, "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

25. As set forth in paragraphs 1 through 22, Intrust has engaged in representations and omissions which are material, and which had the tendency or capacity, or which were likely, to mislead consumers acting reasonably under the circumstances. Intrust has also engaged in unfair competition and acts and practices which are unconscionable, unfair or deceptive. Further, Intrust has committed acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers. Thus, Intrust has engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of section 501.204(1), Fla. Stat.

26. The aforesaid acts and practices of Intrust were to the injury and prejudice of the public.

COUNT II

VIOLATIONS OF CHAPTER 501, PART II, Fla. Stat.
DECEPTIVE AND UNFAIR TRADE PRACTICES BY FITZGERALD

27. Plaintiff realleges paragraphs 1 through 22, as if fully set forth herein, and further alleges:

28. Chapter 501, Part II, Fla. Stat. is entitled, "Florida Deceptive and Unfair Trade Practices Act." Section 501.204(1) of the Act provides that, "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

29. As set forth in paragraphs 1 through 22, Fitzgerald has engaged in representations, omissions which are material, and which had the tendency or capacity, or which are likely, to mislead consumers acting reasonably under the circumstances. Fitzgerald has also engaged in unfair competition and acts and practices which were unconscionable, unfair or deceptive. Further, Fitzgerald has committed acts or practices in trade or commerce which offend established public policy and were unethical, oppressive, unscrupulous or substantially injurious to consumers. Thus, Fitzgerald has engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of section 501.204(1), Fla. Stat. (2005).

RELIEF REQUESTED

WHEREFORE, Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida, asks for judgment:

A. Permanently enjoining Fitzgerald and Intrust and its officers, agents, servants, employees, attorneys and those persons in active concert or participation with it who

receive actual notice of the injunction, from engaging in methods, acts or practices which are unfair methods of competition or deceptive or unfair acts and practices. More specifically, Plaintiff asks the court to enjoin Defendants as follows:

1. Prohibiting the sale of insurance-like products either by telephone, word of mouth, or through the Internet.
2. Issuing immediate refunds to all Florida consumers who purchased various products.
3. Awarding Plaintiff actual damages on behalf of consumers injured by the unfair competition or deceptive or unfair acts or practices of Defendants, in accordance with section 501.207(1)(c), Fla. Stat.
4. Assessing against Defendants civil penalties in the amount of ten thousand dollars (\$10,000) for each of the known violations of Chapter 501, Part II, pursuant to section 501.2075, Fla. Stat. (2005); and assessing Defendants civil penalties in the amount of \$15,000 for method, act or practice willfully used in violation of Chapter 501, Part II, Fla. Stat. which method, act or practice victimized, or attempted to victimize a person who is 60 years of age or older, pursuant to section 501.2077, Fla. Stat.
5. Awarding reasonable attorney's fees and costs to Plaintiff, pursuant to sections 501.2105, and 501.2075, Fla. Stat.
6. Granting such other relief as this Honorable Court deems just and proper.

DEMAND FOR JURY TRIAL

The State demands a trial by jury for all issues so triable.

Respectfully Submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

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