

**In the Matter of:  
H&R Block Services, Inc.**

**Respondents.**

**ASSURANCE OF VOLUNTARY COMPLIANCE OR DISCONTINUANCE**

This Assurance of Voluntary Compliance or Discontinuance (“Assurance”) is entered into by the Attorneys General of the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia,<sup>1</sup> Hawaii,<sup>2</sup> Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana,<sup>3</sup> Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and the Corporation Counsel of the District of Columbia<sup>4</sup> (“Attorneys General”), acting pursuant

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<sup>1</sup>With regard to Georgia, the Administrator of the Fair Business Practices Act, appointed pursuant to O.C.G.A. 10-1-395, is statutorily authorized to undertake consumer protection functions, including acceptance of Assurances of Voluntary Compliance for the State of Georgia. Hereafter, when the entire group is referred to as the “States” or “Attorneys General,” such designation, as it pertains to Georgia, refers to the Administrator of the Fair Business and Practices Act.

<sup>2</sup>With regard to Hawaii, Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General’s Office, but which is statutorily authorized to represent the State of Hawaii in consumer protection actions. Hereafter, when the entire group is referred to as the “States” or “Attorneys General,” such designation as it pertains to Hawaii, refers to the Executive Director of the State of Hawaii Office of Consumer Protection.

<sup>3</sup>With regard to Montana, Montana is represented by its Department of Commerce, an agency which is not part of the state Attorney General’s Office but which is statutorily authorized to represent the State of Montana in consumer protection actions. Hereafter, when the entire group is referred to as the “States” or “Attorneys General,” such designation as it pertains to Montana, refers to the Montana Department of Commerce.

<sup>4</sup>The District of Columbia is represented by its Corporation Counsel, who is statutorily authorized to represent the District of Columbia in consumer protection actions. D.C. Code § 28-3909. Hereafter, when the entire group is referred to as the “States” or “Attorneys General,” such designation, as it pertains to the District of Columbia, refers to the District of Columbia Corporation Counsel.

to their respective consumer protection statutes<sup>5</sup>, and H&R Block Services, Inc. (“H&R Block”).

As used herein, H&R Block shall refer to H&R Block Services, Inc., its parent corporation, its employees, agents, directors, subsidiaries, affiliates, predecessors, successors or assigns.

## **BACKGROUND**

1. H&R Block is incorporated in Missouri, with its headquarters located at 4400 Main Street, Kansas City, Missouri, 64111. H&R Block is in the business of individual and business tax return preparation and advice, investment services, mortgage services and other financial activities.
2. H&R Block, through its affiliate offices and franchisees, among other things, provides tax return preparation services to consumers for a fee. In providing its tax return services, H&R Block also offers and provides other for-fee, optional services that are associated with its tax return preparation services. Among these for-fee, optional services is the “Peace of Mind guarantee” (“POM”).
3. For those consumers who purchase POM through H&R Block, H&R Block guarantees that if their preparer makes a mistake in the preparation of the consumer’s tax return, H&R Block will pay up to \$5,000 of any additional income tax that may be owed

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<sup>5</sup>ALABAMA - Deceptive Trade Practices Act, Ala. Code § 8-19-1 *et seq.*; ALASKA – Unfair Trade Practices and Consumer Protection Act, §§ 45.50.471 through 45.50.561; ARIZONA - Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*; ARKANSAS - Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 *et seq.*; CALIFORNIA - Bus. & Prof. Code §§ 17200 *et seq.*, and 17500 *et seq.*; COLORADO - Colorado Consumer Protection Act, C.R.S. §§ 6-1-101 *et seq.*; DELAWARE - Consumer Fraud Act, 6 Del.C. Section 2511, *et seq.*, UDTPA, 6 Del.C. Section 2531, *et seq.*; DISTRICT OF COLUMBIA – Consumer Protection Procedures Act, D.C. Code § 28-3901 *et seq.*; FLORIDA - Deceptive and Unfair Trade Practices Act, Fla. Stat. Ch. 501.201 *et seq.*; GEORGIA - Fair Business Practices Act of 1975, O.G.C.A. § 10-1-390 *et seq.*; HAWAII – Haw. Rev. Stat. § 480-2; IDAHO - Consumer Protection Act, Idaho Code § 48-601 *et seq.*; ILLINOIS - Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.* (1998); INDIANA - Deceptive Consumer Sales Act, Indiana Code 24-5-0.5-1 *et seq.*; IOWA - Iowa Consumer Fraud Act, Iowa Code Section 714.16; KANSAS – Kansas Consumer Protection Act, KSA 50-617, *et seq.*; KENTUCKY - Consumer Protection Statute, KRS 367.170; LOUISIANA - LSA R. S. 51:1410 and LSA R. S. 51:1401, *et. seq.*; MARYLAND - Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; MASSACHUSETTS - Consumer Protection Act, M.G.L. c. 93A *et seq.*; MICHIGAN - Consumer Protection Act, M.C.L. 445.901 *et seq.*, M.S.A. 19.418(1) *et seq.* (1994); MISSISSIPPI - Consumer Protection Act, Miss. Code Ann. § 75-24-1 *et seq.*; MONTANA - Mont. Code Ann. § 30-14-101 *et seq.*; NEVADA - Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 *et seq.*; NEW JERSEY - Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; NEW MEXICO - Unfair Trade Practices Act, NMSA § 57-12-1 *et seq.* (1978); NEW YORK - N.Y. Gen. Bus. Law §§ 349 & 350 and Executive Law § 63(12); NORTH CAROLINA - Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 *et seq.*; NORTH DAKOTA - Consumer Fraud and Unlawful Credit Practices N.D.C.C. § 51-15-01 *et seq.*; OHIO - Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*; OREGON - Unlawful Trade Practices Act, ORS 646.605 to 646.656; PENNSYLVANIA - Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*; RHODE ISLAND - Unfair Trade Practice and Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*; SOUTH DAKOTA - SDCL § 37-24-1 through 35 *et seq.*; TENNESSEE - Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*, (1977); TEXAS - Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. And Com. Code § 17.41 *et seq.*, (Vernon 2002); VERMONT - Consumer Fraud Act, 9 V.S.A. § 2451 *et seq.*; VIRGINIA - Virginia Consumer Protection Act, 59.1 -196 *et seq.*; WASHINGTON - Unfair Business Practices/Consumer Protection Act, R.C.W. 19.86; WEST VIRGINIA - Code Section 46A-1-101 *et seq.*; WISCONSIN - Wis. Stat. § 100.18 (Fraudulent Representations); WYOMING - W.S. §§ 40-12-102 *et seq.*

to a taxing authority due to the preparer's error. In addition, a representative from H&R Block will accompany the consumer to any meeting or proceeding a taxing authority has requested concerning errors in the preparation of the consumer's tax return.

#### **ATTORNEYS GENERAL'S POSITION**

4. Based upon an inquiry made by the Attorneys General, the Attorneys General contend that during Tax Season 2001 (the time frame during which income tax returns were prepared for income obtained in calendar year 2000) H&R Block automatically added a fee of \$22 for POM to all consumer tax return preparation invoices without first obtaining the consumer's affirmative acceptance of POM. The practices described in this paragraph violate the consumer protection statutes of the states as set forth in footnote 5 hereof.

#### **H&R BLOCK'S POSITION**

5. H&R Block denies that it violated any of the consumer protection statutes set forth in footnote 5 hereof. H&R Block contends that during Tax Season 2001, all consumers in its standard offices<sup>6</sup> were given a voluntary choice as to whether they wished to purchase POM for an additional \$22. H&R Block maintains that the computer prompt it used did not deprive its consumers of this voluntary choice. H&R Block asserts that it informed consumers that POM was an optional service, and that only approximately 22% of H&R Block's consumers purchased POM during Tax Season 2001.

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<sup>6</sup> In addition to standard offices, H&R Block has approximately 400 Premium® offices nationwide. In Premium® offices, POM is offered as part of the tax services provided to consumers and is not an optional charge. Therefore, H&R Block asserts that the Attorney's General contentions only apply to practices in H&R Block standard offices.

## **I. GENERAL AGREEMENTS**

6. The parties have agreed to resolve the issues raised during the Attorneys General inquiry by entering into this Assurance. H&R Block is entering into this Assurance solely for the purpose of settlement and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, or of any other matter of fact or law, or of any liability or wrongdoing, all of which H&R Block expressly denies. No part of this Assurance constitutes or shall constitute evidence against H&R Block in any action brought by any person(s) or entity or other party of any violation of any federal or state statute or regulation or the common law, except in an action brought by the Attorneys General, or one of them, to enforce the terms of this Assurance.

## **II. ASSURANCES**

7. The assurances set forth herein are applicable to H&R Block's standard offices and to H&R Block's Premium® offices where POM is not included as part of the tax services package provided to consumers and is an optional charge. H&R Block will make the assurances set forth herein part of the policies and procedures that must be followed by its franchisees in their standard offices and Premium® offices, where applicable. H&R Block will use its best efforts to ensure that its franchisees comply with these assurances.

8. H&R Block shall not automatically charge a consumer for POM, place the charge for POM on a consumer's bill or invoice, or generate a document that evidences a consumer's agreement to purchase POM unless the consumer has affirmatively assented to the purchase of POM and H&R Block has offered the consumer POM consistent with the terms of this Assurance.

9. In offering POM to consumers, H&R Block shall not initially state either orally, in writing, or in a presentation on a computer screen that it "recommends" (or words of similar import) POM.

10. H&R Block shall not automatically predetermine, through the use of a pre-selected "yes" on a computer screen or any other means, that a consumer has elected to purchase POM.

11. Concurrent with its initial offer of POM, and prior to making any recommendation

regarding POM, H&R Block shall describe the material terms and conditions of the POM guarantee program to the consumer by displaying them on the computer screen during the preparation of the consumer's tax return and shall orally review those terms and conditions with the consumer. Those terms and conditions shall include a clear and conspicuous statement that the consumer has a right to cancel POM for seven (7) days from the date POM is purchased and receive a full refund of the amount paid for POM.

12. For every sale of POM, H&R Block shall present the consumer with a written copy of the terms and conditions of the POM guarantee, including the seven (7) day right of cancellation. This written copy shall be signed and dated by the consumer and H&R Block, and shall indicate that the consumer has agreed to purchase POM. H&R Block shall give a copy of the signed terms and conditions to the consumer and maintain any signed copy of the terms and conditions for as long as the term of the guarantee.

13. H&R Block shall list separately and in a clear and conspicuous manner, whether printed or on a computer screen, the purchase of POM and separately set forth the itemized cost for POM on any invoice or bill.

### **III. CONSUMER REFUNDS**

14. H&R Block shall establish a fund of one million dollars (\$1,000,000.00) to be utilized to pay refunds to eligible consumers. An eligible consumer shall be a consumer who had his/her tax return prepared at an H&R Block office in Tax Season 2001, who was charged for POM as an additional component of his/her tax return preparation, never utilized POM for which he/she was charged in Tax Season 2001 and believes that he/she was never informed that POM was added for a fee to his/her tax return preparation service in Tax Season 2001.

15. In order to receive a refund, an eligible consumer must make a request, either by phone, in writing or by the website referenced in paragraph 16, for such refund within 120 calendar days from the Effective Date of this Assurance. The request must include the consumer's name, address, phone number, and social security number. Further, H&R Block shall take all measures available to ensure that the information provided by consumers is utilized solely for refund requests under this Assurance and that the

information is not utilized for marketing purposes by H&R Block and is not provided to any other individual, group, entity or business, whether an affiliate of H&R Block or not, for any other purpose. Requests for refunds forwarded to H&R Block from any of the offices of the Attorneys General shall be treated by H&R Block as consumer requests for refunds.

16. H&R Block shall establish by the Effective Date of this Assurance a toll free telephone number that consumers may call to request a refund as set forth in this Assurance. Further, H&R Block shall establish adequate and appropriate measures on the toll free telephone number to handle refund requests made by those consumers whose primary language is Spanish. H&R Block shall also establish a special website for consumer refund requests. To the extent practicable, the Attorneys General will inform consumers of the availability of the website to file refund requests. The H&R Block website home page shall provide, for the period of time in which consumers can make POM refund requests under this Assurance, a link to the POM refund request website. Further, the POM refund request website screens shall only contain the mechanisms necessary to complete a refund request and shall not contain any marketing materials, other than the H&R Block logo.

17. H&R Block shall not be responsible for any additional costs for any notice to consumers regarding the refund program set forth in this Assurance.

18. H&R Block shall establish a liaison to the Attorneys General who shall be the recipient of any requests for refunds that may be sent to the Attorneys General.

19. Any consumer who requests and receives a refund shall, upon the receipt of his/her refund payment, forego any claim he/she may have under POM for which he/she was charged in Tax Season 2001.

20. H&R Block shall, within forty-five (45) calendar days after the end of the 120-day refund claim period, send to all the eligible consumers who requested a refund, a check for the full amount that they paid for POM that they purchased from H&R Block in Tax Season 2001. If the total dollar amount of requests for refunds by eligible consumers exceeds one million dollars (\$1,000,000.00), H&R Block shall calculate refunds to eligible

consumers on a pro-rata basis and shall notify the Attorneys General who are signatories to this Assurance of the pro-rata refund amount that consumers will receive at least ten (10) calendar days prior to sending refund checks to consumers.

21. H&R Block shall, two hundred and seventy (270) calendar days after the end of the 120-day refund claim period, provide a final report outlining the total number of requests for refunds made from consumers nationally and in each state, the total number of requests for refunds that H&R Block approved nationally and in each state, the total amount of refunds paid out by H&R Block nationally and in each state and the total number of refund checks that were either returned or not deposited or cashed by consumers in each state as of the date of the report. The report shall be submitted to each state's signatory to this Assurance. Further, H&R Block shall maintain the ability to search and report on, at the request of any Attorney General, any individual consumer requests for refunds and the status of any approval of those requests from consumers of that Attorney General's state, provided, however, H&R Block's duty to report to the Attorneys General regarding the refund program shall end three hundred and ninety (390) calendar days after the Effective Date of this Assurance, and H&R Block shall only be required to retain records regarding the refund program for four hundred and twenty-five (425) calendar days after the Effective Date of this Assurance. At reaching the four hundred and twenty-sixth (426th) calendar day after the Effective Date of this Assurance, H&R Block will undertake those steps necessary to ensure that any information that was provided to H&R Block by consumers in order to request or obtain a refund check is disposed of so that it may not be utilized, in any fashion, by any individual, group, entity or business.

22. H&R Block shall, at the time that the final report is due, send to each signatory Attorney General to this Assurance a payment equal to the total amount of all refund checks that were written under this Assurance and were either returned to H&R Block or not deposited or cashed by eligible consumers in each Attorney General's respective state

as of the date of the report.<sup>7</sup> Further, H&R Block shall provide, at the time the final report is due, each signatory Attorney General to this Assurance with the last known name and address of any individual whose refund check was either returned to H&R Block or was not deposited or cashed by eligible consumers in each Attorney General's respective state as of the date of the report. If any consumer attempts to deposit or cash a refund check after the date of the report and complains to H&R Block when the check is not cashed, H&R Block will refer that consumer to the Attorney General to whom H&R Block forwarded the information and payment required by this paragraph.

#### **IV. CONSUMER EDUCATION**

23. H&R Block shall, within thirty (30) calendar days of the completion of the Consumer Refund program set forth in paragraphs 14-22 of this Assurance, remit to the states through the Attorney General of Ohio the funds not distributed pursuant to the Consumer Refund program which remains in the Consumer Refund Fund.<sup>8</sup> The Attorneys General shall use the funds remitted pursuant to this paragraph for the purpose of creating and implementing a Consumer Education Program. A committee of representatives from the Attorneys General, selected by the Attorneys General, shall develop or cause to be developed the Consumer Education Program, which shall take the form of a brochure or public service announcement concerning tax issues important to consumers. The Consumer Education Program shall not reference in any way H&R Block. The Attorneys General shall provide H&R Block with a description of the proposed program. Such notification shall set forth a description of the proposed program, including an identification of the tax issues addressed and the format of the program.

#### **V. PAYMENT TO THE ATTORNEYS GENERAL**

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<sup>7</sup> With respect to the State of West Virginia, said payment shall be used at the discretion of the Attorney General solely for consumer protection purposes, including but not limited to, restitution, consumer education, credit or bankruptcy counseling and education, conflict resolution programs, and costs associated with implementing restitution orders.

<sup>8</sup> The Attorney General of Kentucky has not agreed that any money shall be used for a consumer education program but does not object to such use. The funds earmarked for these purposes are the same amounts regardless of Kentucky's participation in this agreement. Therefore, the Commonwealth of Kentucky has no claim to or legal interest in the funds which might be used for the consumer education program.

24. H&R Block agrees to pay to the participating Attorneys General the sum of \$2,300,000. On or after the Effective Date, the Attorney General of Ohio shall notify H&R Block in writing as to the correct mailing addresses and respective amounts of the checks that will comprise the \$2,300,000. Within ten (10) calendar days after the receipt of this written notice, H&R Block will send the checks by mail directly to the respective Attorneys General. Subject to their respective state laws and policies, the Attorneys General may use such amount for any purpose provided by state law, including but not limited to, their attorneys' fees and other costs of the inquiry leading to this Assurance, placement in or application to a consumer education, litigation or local consumer aid fund or revolving fund or for other uses to defray the costs of the inquiry leading to this Assurance, as permitted by the laws of each State.<sup>9</sup>

## **VI. COMPLIANCE EFFORTS AND REPORTS**

25. H&R Block shall institute supervisory compliance procedures which are reasonably designed to insure compliance with this Assurance, including, without limitation, the training of relevant employees, revisions to and/or development of appropriate training materials and the development and implementation of internal procedures, including periodic monitoring to ensure compliance with the terms of this Assurance.

26. Within five (5) calendar days of the Effective Date of this Assurance, H&R Block shall send by written and/or electronic means, to all employees and managers involved in

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<sup>9</sup> With respect to the State of Colorado, said payment shall be utilized, first, for reimbursement of Colorado's actual costs and attorney fees and, second, to be held, along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud, or antitrust enforcement efforts. With respect to the State of Kentucky, said payment shall be held in an interest bearing trust and agency account and shall be deposited into the Consumer Protection Fund Division's Consumer and Education Fund for the purposes described herein. With respect to the State of Georgia, said payment shall be used for the reimbursement of costs, including monitoring of compliance, and any remainder, at the end of twelve months, shall be delivered to the Georgia Consumer Preventative Education Plan pursuant to O.G.C.A. § 10-1-381. With respect to the State of Alaska, said payment shall be utilized by the Attorney General for consumer protection and antitrust investigations, enforcement, and education. With respect to the State of Illinois, the payment made pursuant to this paragraph shall be deposited into the Attorney General Court Ordered and Voluntary Compliance Payment Projects Fund, to be used for law enforcement activity, consumer and educational programs associated with the enforcement of the Illinois Consumer Fraud Act, 815 ILCS 505.1 et seq. With respect to the State of Arkansas, said payment shall be held in trust by the Attorney General for uses directly related to the Attorney General's consumer protection efforts and deposited in the Consumer Education and Enforcement Fund. With respect to the State of West Virginia, said payment shall be used at the discretion of the Attorney General solely for consumer protection purposes, including but not limited to, restitution, consumer education, credit or bankruptcy counseling and education, conflict resolution programs, and costs associated with implementing restitution orders.

POM, including, but not limited to regional, district and office managers, complete instructions as to how POM is to be presented and sold to any consumer in compliance with the terms of this Assurance. In addition, H&R Block shall in this same communication set forth the requirements and steps that are necessary for a consumer to request a refund under the terms of this Assurance.

27. H&R Block shall file with each of the Attorneys General two written Compliance reports, each signed by an officer with knowledge of H&R Block's obligations under this Assurance, as to H&R Block's compliance with the terms and provisions hereof, the first to be filed six months after the Effective Date of this Assurance, and the second six months thereafter.

## **VII. GENERAL PROVISIONS**

28. This Assurance shall be governed by the laws of the States. Nothing in this Assurance shall be deemed to permit or authorize any violation of the laws of any state or otherwise be construed to relieve H&R Block of any duty to comply with the applicable laws, rules and regulations of any state, nor shall anything herein be deemed to constitute permission to engage in any acts or practices prohibited by such laws, rules or regulations. This Assurance constitutes the full and final resolution between the Attorneys General and H&R Block of all civil claims relating to the allegations and contentions by the Attorneys General regarding POM for Tax Season 2001 as set forth in paragraph 4 of this Assurance.

29. This Assurance does not constitute an approval by the Attorneys General of any of H&R Block's programs or practices and H&R Block shall not make any representation to the contrary.

30. Where allowed by applicable state law, the respective Attorneys General, without further notice, may make *ex parte* application to any appropriate state court for an order approving this Assurance, which shall be considered an Assurance of Voluntary Compliance or an Assurance of Discontinuance as provided by the States' respective laws, or otherwise file this Assurance in any appropriate state court.

31. This Assurance may be executed in counterparts.

32. The "Effective Date" of this Assurance shall be April 24, 2003 or the date on which a fully executed copy of this Assurance is delivered to H&R Block, whichever is later.

33. Nothing in this Assurance shall be construed as a waiver of any private rights of any person.

34. This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to this Assurance must be in writing and signed by duly authorized representatives of the parties agreeing to such modification. Any modification of this Assurance shall be initiated by a written request from the party(s) seeking the modification to the other party(s), and a timely response by the other party(s) shall be given. A modification can only be made through a written agreement signed by the Attorney(s) General agreeing to the modification and H&R Block. To seek any modification from a single Attorney General, H&R Block shall send a written request for such modification to that Attorney General who shall respond to such request within 30 days of its receipt. To seek a modification from more than one Attorney General, H&R Block shall send written request for such modification to the Attorney General of Ohio who will coordinate the Attorneys General response to such request within 30 days of its receipt. All parties will consider in good faith any request for modification.

35. The undersigned representative for each party certifies that he/she is fully authorized by the party he/she represents to enter into the terms and conditions of this Assurance and to legally bind the party he/she represents to the Assurance.

#### **VIII. SIGNATURES**

We the undersigned, who have the authority to consent and sign on behalf of the parties in this matter, hereby consent to the form and contents of the foregoing Assurance and to its entry:

Signed this \_\_\_\_ day of April 2003.

**H&R Block Services, Inc.**

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

Title: \_\_\_\_\_

**Counsel for H&R Block Services, Inc.**

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

Date: \_\_\_\_\_

**For the States:**

**BILL PRYOR**

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**ELLEN LEONARD**

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**GREGG D. RENKES**

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