



OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT

Fax: (360) 664-2782

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Wendy Galloway
Paralegal
(360) 725-7002
Wendyg@oic.wa.gov

May 5, 2009

Richard J. Silverberg
Richard J. Silverberg & Associates
1500 Walnut Street, Suite 1500
Philadelphia, PA 19102

Re: (1) Silverberg Request for Reconsideration (April 9, 2009); and (2) Silverberg Notice of Appeal, Thurston County Superior Court No. 09-2-00996-9 (April 28, 2009)

Dear Mr. Silverberg:

This letter is in response to yours dated April 9, 2009, requesting reconsideration of my March 24, 2009 Order on Posthearing Telephone Conference. This letter also concerns your Notice of Appeal to Thurston County Superior Court filed on or about April 23, 2009, appealing this same Order on Posthearing Telephone Conference.

On May 16, 2008, Liberty Mutual Holding Company Inc. and wholly owned entities, filed its Form A with the Insurance Commissioner, requesting approval of its proposed acquisition of the Safeco organization, and later Liberty Mutual filed additional information as requested by the Commissioner.

On August 26, 2008, after initial review of the Form A and prehearing conference with the parties, I entered a Notice of Hearing. This Notice was published on the Commissioner's website beginning at least August 26, and ran continuously from that time until the date of the hearing on September 10 and 11, 2008. Specifically, the entire Notice of Hearing was published, which includes all details identifying the proposed purchaser, the Safeco organization, the proposed acquisition, the statutory criteria which must be met through presentation of evidence at hearing and citations thereof, the consequences of the acquisition should it be approved, and invitation for public input. This publication was in compliance with customary method and time period of public notice required in all cases of this type: it is anticipated as a precondition of

approval of a proposed acquisition that there be a finding that no reasonable objection exists, and therefore advice is contained in the Notice, and published, as follows:

YOU ARE FURTHER NOTIFIED that all interested individuals may attend the hearing in this matter without prior approval as this is a public proceeding. Further, interested parties may also listen or participate in the hearing by telephone by dialing (360) 407 3780

YOU ARE FURTHER NOTIFIED that all interested individuals and entities may submit comments on, or objections to, this proposed acquisition to the undersigned. Said comments or objections, which will be included in the hearing record and will be considered by the undersigned prior to her making her final decision, must be submitted by 9:30 a.m. Pacific Standard Time on Wednesday, September 10, 2008, by fax, U.S. Mail, personal delivery, or email to Judge Petersen at PatriciaP@oic.wa.gov. The fax number of the undersigned is (360) 664-2782, her mailing address is PO Box 40255, Olympia, WA 98504-0255, her delivery address is 5000 Capitol Boulevard, Tumwater, Washington 98501.

YOU ARE FURTHER NOTIFIED that, pursuant to RCW 48.31B.015(4)(b), any person whose interest is determined by the undersigned to be affected, may present evidence and argument on all issues involved, examine and cross-examine witnesses, and offer oral and written statements, and in connection therewith may conduct discovery proceedings.

Additionally, beginning at least by August 26, 2008, the Commissioner's public website contained a news article concerning this proposed acquisition and the date of the hearing, and linked to my court calendar (entitled Judicial Proceedings on the Commissioner's website) which gives the public access to the documents which had been filed in this case including all of the Form A, additional information filed later in response to the Commissioner's requests, questions asked by me and responded to by Liberty Mutual, and other documents which presented a full, highly detailed description of this proposed acquisition along with the above advice to the public that all interested individuals and entities may provide input which would be considered by me in making my final decision.

In response to this public notice, you did not request to be on my very extensive mailing list of interested individuals to receive copies of all documents produced by me during this process, and it also appears that you did not call in to listen to the proceeding along with hundreds of other interested individuals, who were all also given the opportunity to make comments in support or opposition to this proposed acquisition on the record and/or question any of the parties. In fact, no contact of any kind was received from you at any time before, during, or after the hearing on September 10 and 11, 2008. On September 18, I entered my Final Order Approving Proposed Acquisition of Control.

On September 22, 2008, my Paralegal received an email from you requesting immediate attention because the Liberty/Safeco transaction is scheduled to close Monday, September 22,

2008, and Safeco will be dissolved as of that date.... and that ...a motion for Preliminary Injunction to Enjoin the Acquisition of Safeco Insurance Company by the Liberty Mutual Group was filed in the United States District Court for the eastern District of Pennsylvania. The motion is pending. Although both Liberty and Safeco were duty-bound to bring the Motion for Preliminary Injunction to the State's attention within 48 hours of the date it was filed, they intentionally failed to do so in order to foreclose the State from considering it.

In response, on September 22, 2008, even though it was not required because 1) the time for public objection/input had passed 12 days before your submission of your email and 2) my Final Order Approving Acquisition based on the evidence presented at hearing had been entered four days prior, I held a posthearing teleconference. This posthearing teleconference included some 12 representatives of the parties, and you presented your position and argument followed by the parties' presentations. At the conclusion of that posthearing teleconference, I orally ruled (as transcribed from the recording of the posthearing conference) as follows:

Judge Petersen [to Mr. Silverberg]: *I have read the documents that you sent, the parts that I think are pertinent and I appreciate your bringing this up Mr. Silverberg very much. I understand your concern. I am not going to take any further action in this matter. Again, I understand the arguments of the parties and it is not, and I think that it's, it's telling the activity of the federal magistrate recently and based on arguments of the parties, I am not going to take any further action on that and my Order [Final Order Approving Proposed Acquisition] stands as written. And I may do a follow-up order on that as well.*

Therefore, based on your presentation and argument, and the presentation and arguments of all the parties and Christina Beusch, Assistant Attorney General representing the Commissioner, who all supported the approval of the proposed acquisition, my final decision on your objection was orally entered on September 22, 2008. Because I had ruled at that time that your objection did not provide a sufficient basis to alter my Final Order Approving Proposed Acquisition or to impose a stay thereof, the closing of the Liberty Mutual/Safeco acquisition took place shortly after my oral ruling on September 22.

Subsequently, while cleaning and archiving this hearing file recently, although not required, I made a choice to enter a written order confirming my September 22, 2008 oral order. Therefore, on March 24, 2009, I entered a written order confirming that oral order as follows:

After careful consideration of the information and argument presented at posthearing teleconference, and the entire hearing file, the undersigned at the time of the subject posthearing teleconference concluded that while it would have been appropriate for Liberty Mutual to advise the undersigned about this litigation prior to the hearing, the failure to do so was not significant to either the hearing itself or to the Final Order entered by the undersigned on September 18, 2008. [Emphasis added.]

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On April 9, 2009, you filed a letter requesting that I reconsider and vacate my Order on Posthearing Telephone Conference, *and that this matter be stayed pending the outcome of the above-captioned appeal* [Jackson v. Rohm and Haas Co., et al., United States Court of Appeals for the Third Circuit, No. 09-1872] which was the case you presented in argument before me during the posthearing teleconference on September 22, 2008. My response is as follows:

- **Request for Stay:** Your original letter sent by email on September 22, 2008 requested that the Liberty Mutual/Safeco acquisition scheduled to close later on September 22 be prevented from taking place. Your current April 9, 2009 letter requests that I reconsider and vacate my Order and *that this matter be stayed*. As above, based upon my oral order entered and effective September 22, the Liberty Mutual/Safeco acquisition was consummated at some time later in the day on September 22, or shortly thereafter. There is at this time nothing to stay.
- **Request for Reconsideration:** Your Request for Reconsideration was not timely filed. My oral order was entered and effective September 22, and therefore it is long past the ten day time limit for filing requests for reconsideration set forth in RCW 34.05.470.

Appeal to Thurston County Superior Court: On April 23, 2009, you filed a Notice of Appeal in the Thurston County Superior Court, signed by your client, Jackson, appearing pro se, which I expect removes the requirement that you must affiliate with a Washington attorney in order to represent a client in Washington courts. However, while it is up to the Thurston County Superior Court to finally determine whether your appeal is timely filed, it is my opinion that it is not timely filed: as stated therein, my written Order on Posthearing Telephone Conference that you are now appealing to Superior Court is simply written confirmation of my oral order entered and effective on September 22, 2008. Therefore it appears to me that because pursuant to RCW 34.05.514 and 34.05.542 you had 30 days to appeal this September 22 order, you have filed your appeal over six months late.

If you wished to have had an impact on this adjudicative proceeding, it would have been necessary for you to have either 1) complied with the requirements of RCW 48.31B.015 and registered and presented your objection by 9:30 a.m. on September 10, 2008, as required in the Notice of Hearing (even though I did choose to still entertain it after that time); 2) complied with RCW 34.05.470 by filing your Request for Reconsideration of my September 18, 2008 Final Order with me within the required ten days (and/or filed a request for discretionary stay with me); and/or 3) appealed my September 18 Final Order to the Superior Court within the required 30 days and/or asked the Superior Court for a stay of that September 18 Final Order within the required time period.

I understand your concern, but believe that far more than is required has been done to receive and allow you to present your objections and entertain response and argument from the parties even though both times you have objected – your original objection in September 2008 and now in April 2009 – were filed later than required. At this time, it is not appropriate to again raise these same objections either before me on reconsideration, or by appeal to Superior Court,

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because both the request for reconsideration before me and, I believe, the appeal to Superior Court, are six months too late. Further, it is noted that the form and also the content of your appeal to the Superior Court does not appear to be proper, but that is – along with a determination of the timeliness of filing your appeal – a decision which must be made by the Superior Court.

Finally, because pursuant to RCW 34.05.566(1) the agency record must generally be sent within 30 days of your appeal to the Superior Court, we ask that you let Ms. Galloway know within seven working days of the date of this letter if you no longer wish to appeal to the Superior Court based on the above information or other events. Otherwise, we will calculate the amount of prepayment required from you pursuant to RCW 34.05.566(3) before we prepare the very large hearing file for transmission to the Superior Court, including the transcription of the record or a portion of the record (or you can seek a voluntary written agreement from all parties to have the record which is sent to Superior Court “shortened, summarized, or organized” pursuant to RCW 34.05.566(4); I am not in a position to determine to shorten the hearing file myself as might be possible in some cases, because, for one reason, I would not know which portions to select as you have not stated any bases for your appeal).

Very truly yours,



Patricia D. Petersen
Presiding Officer
Chief Hearing Officer

/wmg

cc: Mark Jackson, Pro Se
Court Clerk, Thurston County Superior Court
Mike Kreidler, Insurance Commissioner
Mike Watson, Chief Deputy Insurance Commissioner
James T. Odiome, Deputy Commissioner, Company Supervision Div.
Ronald Pastuch, Holding Manager, OIC Company Supervision Div.
Carol Sureau, Deputy Commissioner, OIC Legal Affairs Division
Charles D. Brown, Sr. Staff Attorney, OIC Legal Affairs Division
Christina Beusch, Assistant Attorney General
Linda Dalton, Sr. Assistant Attorney General
DeAnn F. Work, Esquire
James Williams, Esquire
Richard P. Quinlan, Esquire
Melvin N. Sorensen, Esquire

DECLARATION OF MAILING

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery via normal office procedure of a true copy of this document to those listed

DATED this 5 day of May, 2009
at Tumwater, Washington.

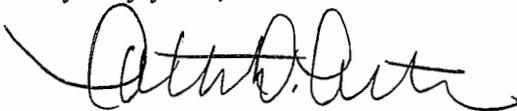
Signed: Wendy Galloway

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Very truly yours,



Patricia D. Petersen
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Christina Beusch, Assistant Attorney General
Linda Dalton, Sr. Assistant Attorney General
DeAnn F. Work, Esquire
James Williams, Esquire
Richard P. Quinlan, Esquire
Melvin N. Sorensen, Esquire

DECLARATION OF MAILING

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to those listed below via normal office procedures

DATED this 5th day of May 2009 at Tumwater, Washington.

Signed: Wendy Galloway