

1
2
3 THE STATE OF WASHINGTON
4 OFFICE OF THE INSURANCE COMMISSIONER

2011 Aug 30 *lmc* 3:23

5 In the Matter of
6 ABILITY INSURANCE COMPANY,
7 An Authorized Insurer and Respondent

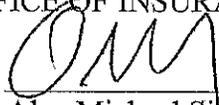
Docket Nos. 11-0088 and 11-0089
MOTION TO SUPPLEMENT THE
RECORD – OIC DISCOVERY AND
RESPONDENT’S OBJECTIONS,
ANSWERS AND RESPONSES

8 The OIC moves to supplement the record with the attached: (1) true and correct copy
9 of the OIC’s First Interrogatories and Requests for Production to Ability Insurance Company
10 (“the Company”), including a printout of the June 20, 2011 e-mail to the Company’s lawyers
11 attaching the same, and (2) the Company’s original objections, answers, and responses to the
12 same. At the hearing, OIC staff indicated these documents would be offered into evidence, in
13 part, to correct certain inaccurate representations in the Company’s “Motion for Stay of Order
14 to Cease and Desist,” which has been made an exhibit in this matter, and to show the
15 Company’s responses to discovery questions regarding any anticipated experts.

16 Under the Administrative Procedures Act, evidence may be offered when “necessary
17 for full disclosure of all relevant facts and issues.” RCW 34.05.449(2). Including the
18 attached as exhibits is necessary for this Court to reach a decision based on accurate
19 information and a “full disclosure of all relevant facts.” Accordingly, OIC staff moves to
20 admit into evidence the attached two documents, as two further exhibits in this matter.

21 DATED this 30th day of August, 2011.

22 OFFICE OF INSURANCE COMMISSIONER

23 By: 
Alan Michael Singer
Staff Attorney
Legal Affairs Division

In re ABILITY INSURANCE COMPANY, Nos. 11-0088 and 11-0089

**MOTION TO SUPPLEMENT THE RECORD – OIC DISCOVERY AND RESPONDENT’S OBJECTIONS,
ANSWERS AND RESPONSES**

ATTACHMENT 1:

**TRUE AND CORRECT COPY OF THE OIC’S FIRST INTERROGATORIES AND REQUEST FOR PRODUCTION
TO ABILITY INSURANCE COMPANY AND JUNE 20, 2011 EMAIL ATTACHING THE SAME**

Singer, Alan (OIC)

From: Singer, Alan (OIC)
Sent: Monday, June 20, 2011 1:48 PM
To: 'Howard, Christopher H.'; 'Nicholson, Virginia R.'
Cc: Tribe, Christine (OIC)
Subject: Ability Insurance Co., docket nos. 11-0088 and 11-0089
Attachments: 6-20-11 1st ROGs and RFPs to Ability Insurance Company.pdf

Hi Chris and Virginia,

Attached please find the First Interrogatories and Requests for Production to Ability Insurance Company. I would welcome your client's answers and responses sooner than thirty days from today, much sooner if at all possible, since, as you know, Judge Petersen indicated that she will be away and unavailable to address and resolve any discovery disputes or other questions during the week of July 25. If you have any questions about any of the interrogatories or requests for production, please call me as soon as possible to discuss them.

In addition, as we discussed some weeks ago, if there are certain facts you feel your client would be willing to stipulate to, I would welcome receiving your proposed stipulation to consider.

I will separately contact you regarding which witnesses I would like you to please make available for testimony at the upcoming hearing.

Thank you for your ongoing courtesy and prompt attention to this matter. Please do not hesitate to call me if you have any other questions.

Alan

Alan Michael Singer
Staff Attorney
Legal Affairs
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255
360-725-7046
360-586-0152 Fax

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

ABILITY INSURANCE COMPANY,

An Authorized Insurer and Respondent

Docket Nos. 11-0088 and 11-0089

FIRST INTERROGATORIES AND
REQUESTS FOR PRODUCTION

TO: Donald K. Lawler
Ability Insurance Company
P.O. Box 3735
Omaha NE 68103
(via US mail and email: dlawler@abilityre.net)

AND TO: Christopher H. Howard and Virginia R. Nicholson
Schwabe, Williamson & Wyatt, P.C.
1420 5th Avenue #3400
Seattle WA 98401
(via US mail and email: VNicholson@SCHWABE.com and
CHoward@SCHWABE.com)

Definitions and Procedures

A. Procedures: Please complete the answers within the space provided, and, if needed, add additional pages. Within the time the Washington Civil Rules for Superior Court permit, return one copy to the office of the undersigned attorney together with copies of documents requested.

B. Scope of Answers: By any use of "you," "your," and "your company" in these interrogatories and request for production, it is intended that the answers and responses are to include all information known to you, to your agents and attorneys, and to your attorneys' agents and investigators, accountants, appraisers, and employees. "You," "your," and "your company" include Ability Insurance Company, Medico Insurance Company, and Mutual Protective Insurance Company.

C. Document: As used herein, the word "document" shall mean the original and any copy, regardless of origin or location, electronic or otherwise, of any book, pamphlet, periodical, letter, email, log, entry, memorandum, telegram, report, record, study, handwritten note, map, drawing, working paper, chart, paper, graph, index, tape, data sheet or data processing card, or any other written, recorded transcribed, punched, taped, filmed, or graphic matter, written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, to which you have or have had access.

D. Continuing in Nature: The interrogatories and requests for production shall be

deemed to be continuing. In the event that you or your attorney discover additional information that is responsive to any of them, upon receipt of the information, you are to promptly provide supplemental information or change your answers and/or responses accordingly. If additional information is discovered between the time of making these answers and responses and the time of hearing, these interrogatories and requests for production are directed to that information. If such information is not furnished, the undersigned will move, at the time of hearing, to exclude from evidence any information requested and not furnished.

E. Numbers: All answers to interrogatories and responses to requests for production shall be numbered consecutively.

F. Identify or Identity:

1. *Person:* As used herein, "identify" or "identity" used in reference to an individual person means to state his or her full name, present address, telephone number, present or last known position or business affiliation, position, and business affiliation at the time in question.

2. *Document:* "Identify" or "identity" when used in reference to a document means to state the date and author, type of document (e.g., identifying it), and its present location or custodian. If any such document was, but is no longer in your possession or subject to your control, state what disposition was made of it.

DATED this 20th day of June, 2011.



Alan Michael Singer
Staff Attorney
Legal Affairs Division
Office of Insurance Commissioner

FIRST INTERROGATORIES

INTERROGATORY NO. 1. Did you receive any proof, evidence, or other information suggesting that Gladys White had or may have had any cognitive impairment? Unless your answer is an unqualified "no," for such information received, please identify: (a) each such document or other piece or item of information that you received (including such items as medical records, verbal statements, letters, etc.), (b) when it was received, (c) the person with your company who received it, and (d) the person who provided it to you.

ANSWER:

INTERROGATORY NO. 2. Did you receive any proof, evidence, or other information suggesting that Gladys White had or may have had any loss of functional capacity? Unless your answer is an unqualified "no," for such information received, please identify: (a) each such document or other piece or item of information that you received (including such items as medical records, verbal statements, letters, etc.), (b) when it was received, (c) the person with your company who received it, and (d) the person who provided it to you.

ANSWER:

INTERROGATORY NO. 3. In your May 20, 2011 "Motion for Order to Cease and Desist" at page 3 lines 1-2 and page 4 lines 21-22, citing a series of documents attached as "Exhibit C" to the May 20, 2011 declaration of Virginia Nicholson, you asserted that "[b]oth Ms. White and Ms. Silvernail properly received notice of non-payment," and "Ms. White was provided the proper notices and Ms. Silvernail was also warned of the potential cancellation of the policy for non-payment." Please identify all documents, facts and other evidence that supports these assertions, including any that you reserve the right to offer into evidence at any hearing in this matter, specifically including (a) the identity of each person who purportedly provided each such "notice" or 'warning' or has personal knowledge of the same, and (b) an identification and listing of all documents, facts and other evidence showing the date and manner (e.g, via US mail, telephone, etc.) that each such "notice" or 'warning' was purportedly provided.

ANSWER:

INTERROGATORY NO. 4. Do you contend you were not provided with any "proof of [insured Gladys White's] cognitive impairment," as referred to in WAC 284-54-253(2)? Unless your answer is an unqualified "no," please provide the basis for your answer.

ANSWER:

INTERROGATORY NO. 5. Do you contend you were not provided with any "proof of [insured Gladys White's] loss of functional capacity," as referred to in WAC 284-54-253(2)? Unless your answer is an unqualified "no," please provide the basis for your answer.

ANSWER:

INTERROGATORY NO. 6. As to the notice required by WAC 284-54-253(1)(a) with respect to insured Gladys White and her designee, please identify: (a) the specific date on which the notice was actually mailed to the insured's designee, (b) the person(s) who mailed it on your behalf, and (c) any records, logs, entries, or other documents in your possession, custody, or control showing proof of the specific date the notice was actually mailed and the person(s) who mailed it.

ANSWER:

INTERROGATORY NO. 7. Please identify all contact information (including telephone numbers) for Gladys White's WAC 284-54-253(1) designee that existed in any records (electronic or otherwise) within your possession, custody, or control on or before March 20, 2009.

ANSWER:

INTERROGATORY NO. 8. At any time prior to March 20, 2009, did you ever provide Gladys White's WAC 284-54-253 designee with a copy of Ms. White's designation (which you asserted was attached as "Exhibit B" to the May 20, 2011 declaration of Virginia Nicholson), or otherwise advise or inform Ms. White's designee of that designation? Unless your answer is an unqualified "no," please explain your answer fully, including an explanation of how and when you so advised or informed the designee, and an identification of the person(s) who did this on your behalf.

ANSWER:

INTERROGATORY NO. 9. In your May 20, 2011 "Motion for Order to Cease and Desist" at page 3 lines 12-13, without citing any allegedly supportive documents, you asserted that on August 6, 2009, "Ms. Silvernail was again informed that Ms. White's policy had been cancelled for non-payment as of February 7, 2009." Please identify all documents, facts and other evidence that supports this assertion, including any that you reserve the right to offer into evidence at any hearing in this matter, specifically including (a) the identity of each person who purportedly "informed" Ms. Silvernail at the date and time you indicated in the May 20, 2011 motion, (b) please provide an explanation of the manner in which Ms. Silvernail was supposedly "informed that Ms. White's policy had been cancelled for non-payment as of February 7, 2009," (c) please indicate exactly what was said or related to Ms. Silvernail when she was supposedly "informed" on the date and time you indicated, and (d) please identify all documents, facts and other evidence showing that you (including any person acting on your behalf) purportedly "informed" Ms. Silvernail at the date and time you indicated.

ANSWER:

INTERROGATORY NO. 10. Please fully identify each individual you intend to call as an expert witness in this matter, and for each such witness, please state the individual's area of expertise and expert qualifications.

ANSWER:

INTERROGATORY NO. 11. As to each expert identified in your answer to the foregoing Interrogatory, please summarize the opinion or opinions such expert is expected to express and state the grounds for each such opinion.

ANSWER:

INTERROGATORY NO. 12. Please (a) identify each person you reserve the right to call as a witness in this matter, and (b) for each such person, please briefly indicate the matters on which they are expected to testify.

ANSWER:

INTERROGATORY NO. 13. Please identify all documents and other physical evidence you reserve the right to offer into evidence in this matter.

ANSWER:

FIRST REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1. Please produce true and correct copies of all documents and other pieces or items of information responsive to interrogatory number one above.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2. Please produce true and correct copies of all of your documents that discuss your view as to whether you believe Gladys White had or may have had any cognitive impairment.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3. Please produce true and correct copies of all documents and other pieces or items of information responsive to interrogatory number two above.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4. Please produce true and correct copies of all of your documents that discuss your view as to whether you believe Gladys White had or may have had any loss of functional capacity.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5. Please produce true and correct copies of all documents and other information responsive to interrogatory number six above.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6. If, at any time prior to March 20, 2009, you provided Gladys White's WAC 284-54-253 designee with a copy of Ms. White's designation (which you asserted was attached as "Exhibit B" to the May 20, 2011 declaration of Virginia Nicholson), or otherwise advised or informed Ms. White's designee of that designation, please produce true and correct copies of all documents showing the same or supporting the same.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7. Please produce true and correct copies of all documents and other pieces or items of information responsive to interrogatory number nine above.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8. Please produce true and correct copies of all documents and other pieces or items of information responsive to interrogatory number thirteen above.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9. Please produce a copy of the curriculum vitae of any expert whose identity is responsive to interrogatory number ten above.

RESPONSE:

CERTIFICATE OF MAILING

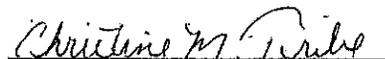
The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION on the following individuals via US Mail.

Donald K. Lawler
Ability Insurance Company
P.O. Box 3735
Omaha NE 68103
(via US mail and email: dlawler@abilityre.net)

Christopher H. Howard and Virginia R. Nicholson
Schwabe, Williamson & Wyatt, P.C.
1420 5th Avenue #3400
Seattle WA 98401
(via US mail and email: VNicholson@SCWWABE.com and CHoward@SCHWABE.com)

SIGNED this 20th day of June, 2010, at Tumwater, Washington.



Christine M. Tribe, Paralegal

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION on the following individuals via US Mail.

Donald K. Lawler
Ability Insurance Company
P.O. Box 3735
Omaha NE 68103
(via US mail and email: dlawler@abilityre.net)

Christopher H. Howard and Virginia R. Nicholson
Schwabe, Williamson & Wyatt, P.C.
1420 5th Avenue #3400
Seattle WA 98401
(via US mail and email: VNicholson@SCWWABE.com and CHoward@SCHWABE.com)

SIGNED this 20th day of June, 2010, at Tumwater, Washington.



Christine M. Tribe, Paralegal

In re ABILITY INSURANCE COMPANY, Nos. 11-0088 and 11-0089

MOTION TO SUPPLEMENT THE RECORD – OIC DISCOVERY AND RESPONDENT'S OBJECTIONS,
ANSWERS AND RESPONSES

ATTACHMENT 2:

ORIGINAL ABILITY INSURANCE COMPANY OBJECTIONS, ANSWERS AND RESPONSES TO OIC'S FIRST
INTERROGATORIES AND REQUEST FOR PRODUCTION TO ABILITY INSURANCE COMPANY

RECEIVED

JUL 20 2011

INSURANCE COMMISSIONER
LEGAL AFFAIRS DIVISION

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of
ABILITY INSURANCE COMPANY,
An Authorized Insurer and Respondent

No. 11-0088 and 11-0089
FIRST INTERROGATORIES AND
REQUESTS FOR PRODUCTION

Respondent Ability Insurance Company ("Ability") submits the following objections and responses to OIC's First Interrogatories and First Requests for Production of Documents.

GENERAL OBJECTIONS

1. Ability objects to these requests for production to the extent that they seek to place a higher obligation and burden on them than that which is contemplated or required under the applicable rules.

2. Ability objects to these discovery requests to the extent that they seek information that is subject to the attorney-client privilege, attorney work-product privilege, and/or any other applicable privilege.

3. Ability objects to these discovery requests to the extent that they seek Defendants or any third party's confidential or proprietary information.

4. Ability objects to these discovery requests to the extent they seek information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence.

5. Ability objects to these discovery requests to the extent that they are vague,

overly broad, and/or unduly burdensome.

6. Ability objects to OIC's non-cooperation regarding a discovery schedule in this matter. Notwithstanding this objection, Ability endeavors to respond to Plaintiffs' discovery without waiver of the objection.

7. Ability incorporates each and every one of these General Objections by reference into each and every specific response. A specific response to a request may repeat a General Objection for emphasis or some other reason. The failure to include any General Objection in any specific response shall not be interpreted as a waiver of any General Objection to that response.

FIRST INTERROGATORIES

INTERROGATORY NO. 1. Did you receive any proof, evidence, or other information suggesting that Gladys White had or may have had any cognitive impairment? Unless your answer is an unqualified "no," for such information received, please identify: (a) each such document or other piece or item of information that you received (including such items as medical records, verbal statements, letters, etc.), (b) when it was received, (c) the person with your company who received it, and (d) the person who provided it to you.

ANSWER:

Without waiving the objections below, Ability received the following:

- An evaluation from NationsCare Link, provided to Medico on August 1, 2007. The information was likely sent to the attention of Tie Vandyke.
- Claim for Gladys White, received on August 7, 2009 from Cheryl Silvernail
- Phone conversation between Sharon Klusaw and Cheryl Silvernail on September 15, 2009.
- October 2, 2009 medical records from Multicare received from Cheryl Silvernail Duplicates received October 28, 2009
- October 2, 2009 letter from Cheryl Silvernail. Duplicates received October 28, 2009.

Ability objects to this request as overly broad and burdensome as it is vague and unlimited as to time and scope. Ability objects to the use of the term cognitive impairment, as it is undefined. Ability further objects to this request as irrelevant; this matter regards policy and regulation interpretation and does not specifically apply to Gladys White, as stipulated by counsel.

INTERROGATORY NO. 2. Did you receive any proof, evidence, or other information suggesting that Gladys White had or may have had any loss of functional capacity? Unless your answer is an unqualified "no," for such information received, please identify: (a) each such document or other piece or item of information that you received (including such items as medical records, verbal statements, letters, etc.), (b) when it was received, (c) the person with your company who received it, and (d) the person who provided it to you.

ANSWER:

Without waiving the objections below, Ability received the following:

- An evaluation from NationsCare Link, provided to Medico on August 1, 2007. The information was likely sent to the attention of Tie Vandyke.
- Claim for Gladys White, received on August 7, 2009 from Cheryl Silvernail
- Phone conversation between Sharon Klusaw and Cheryl Silvernail on September 15, 2009.
- October 2, 2009 medical records from Multicare received from Cheryl Silvernail Duplicates received October 28, 2009
- October 2, 2009 letter from Cherly Silvernail. Duplicates received October 28, 2009.

Ability objects to this request as overly broad and burdensome as it is vague and unlimited as to time and scope. Ability objects to the use of the term functional capacity, as it is undefined. Ability further objects to this request as irrelevant; this matter regards policy and regulation interpretation and does not specifically apply to Gladys White, as stipulated by counsel.

INTERROGATORY NO. 3. In your May 20, 2011 "Motion for Order to Cease and Desist" at page 3 lines 1-2 and page 4 lines 21-22, citing a series of documents attached as "Exhibit C" to the May 20, 2011 declaration of Virginia Nicholson, you asserted that "[b]oth Ms. White and Ms. Silvernail properly received notice of non-payment," and "Ms. White was provided the proper notices and Ms. Silvernail was also warned of the potential cancellation of the policy for non-payment." Please identify all documents, facts and other evidence that supports these assertions, including any that you reserve the right to offer into evidence at any hearing in this matter, specifically including (a) the identity of each person who purportedly provided each such "notice" or 'warning' or has personal knowledge of the same, and (b) an identification and listing of all documents, facts and other evidence showing the date and manner (e.g., via US mail, telephone, etc.) that each such "notice" or 'warning' was purportedly provided.

ANSWER:

Note that this request is duplicative to information already obtained by the OIC and

already provided in this matter. The following notices were sent:

- Premium Notice to Gladys White sent via U.S. Mail on January 90, 2009
- Past Due Notice to Gladys White sent via U.S. Mail on February 19, 2009
- Reinstatement Notice to Gladys White sent via U.S. Mail on March 20, 2009
- Third Party Notice to Cheryl Silvernail sent via U.S. Mail on March 20, 2009

These notices are automatically generated.

INTERROGATORY NO. 4. Do you contend you were not provided with any "proof of [insured Gladys White's] cognitive impairment," as referred to in WAC 284-54-253(2)? Unless your answer is an unqualified "no," please provide the basis for your answer.

ANSWER:

Without waiving the objections below, see attached claims file.

Ability objects to this request as argumentative and calling for a legal conclusion; thus, it is not a proper subject matter for discovery. Ability objects to this request as burdensome as it is duplicative of Interrogatory No. 1. Ability further objects to this request as irrelevant; this matter regards policy and regulation interpretation and does not specifically apply to Gladys White, as stipulated by counsel.

INTERROGATORY NO. 5. Do you contend you were not provided with any "proof of [insured Gladys White's] loss of functional capacity," as referred to in WAC 284-54-253(2)? Unless your answer is an unqualified "no," please provide the basis for your answer.

ANSWER:

Without waiving the objections below, see attached claims file.

Ability objects to this request as argumentative and calling for a legal conclusion; thus, it is not a proper subject matter for discovery. Ability objects to this request as burdensome as it is duplicative of Interrogatory No. 2. Ability further objects to this request as irrelevant; this matter regards policy and regulation interpretation and does not specifically apply to Gladys White, as stipulated by counsel.

INTERROGATORY NO. 6. As to the notice required by WAC 284-54-253(1)(a) with respect to insured Gladys White and her designee, please identify: (a) the specific date on which the notice was actually mailed to the insured's designee, (b) the person(s) who mailed it on your behalf, and (c) any records, logs, entries, or other documents in your possession, custody, or control showing proof of the specific date the notice was actually

mailed and the person(s) who mailed it.

ANSWER:

Ability objects to this request as duplicative to information already obtained by the OIC and already provided in this matter. Notwithstanding this objection, see answer to Interrogatory No. 3. In addition, see letter to the OIC from Don Lawler with attached billing history.

INTERROGATORY NO. 7. Please identify all contact information (including telephone numbers) for Gladys White's WAC 284-54-253(1) designee that existed in any records (electronic or otherwise) within your possession, custody, or control on or before March 20, 2009.

ANSWER:

Without waiving the objections below, see Answer to Interrogatory No. 6. Ability objects to this request as burdensome because it is duplicative. Gladys White's designee information has been previously provided.

INTERROGATORY NO. 8. At any time prior to March 20, 2009, did you ever provide Gladys White's WAC 284-54-253 designee with a copy of Ms. White's designation (which you asserted was attached as "Exhibit B" to the May 20, 2011 declaration of Virginia Nicholson), or otherwise advise or inform Ms. White's designee of that designation? Unless your answer is an unqualified "no," please explain your answer fully, including an explanation of how and when you so advised or informed the designee, and an identification of the person(s) who did this on your behalf.

ANSWER:

Without waiving the objections below, no.

Ability objects to this request as argumentative as implying there is such a requirement that does not appear in the WAC. Thus, it is not a proper subject matter for discovery.

INTERROGATORY NO. 9. In your May 20, 2011 "Motion for Order to Cease and Desist" at page 3 lines 12-13, without citing any allegedly supportive documents, you asserted that on August 6, 2009, "Ms. Silvernail was again informed that Ms. White's policy had been cancelled for non-payment as of February 7, 2009." Please identify all documents, facts and other evidence that supports this assertion, including any that you reserve the right to offer into evidence at any hearing in this matter, specifically including (a) the identity of each person who purportedly "informed" Ms. Silvernail at the date and

time you indicated in the May 20, 2011 motion, (b) please provide an explanation of the manner in which Ms. Silvernail was supposedly "informed that Ms. White's policy had been cancelled for non-payment as of February 7, 2009," (c) please indicate exactly what was said or related to Ms. Silvernail when she was supposedly "informed" on the date and time you indicated, and (d) please identify all documents, facts and other evidence showing that you (including any person acting on your behalf) purportedly "informed" Ms. Silvernail at the date and time you indicated.

ANSWER:

Without waiving the objections, below, see Answer to Interrogatory No. 3 and the attached claims file.

Ms. Silvernail was informed on March 20, 2009 via the Third Party Notice.

Ms. White was informed on August 31, 2009 via letter.

Ms. Silvernail was called and informed on September 15, 2009.

Ability objects to this request as argumentatively phrased. Ability objects to the extent this request is asking Ability to state evidence upon which he intends to rely to prove any fact or facts. *Weber v. Biddle*, 72 Wn.2d 22, 29 (1967) ("However, the opposing party cannot be required to put on a dress rehearsal of the trial. While it is proper to elicit information as to evidentiary facts as contrasted with ultimate facts, nevertheless it is improper to ask a party to state evidence upon which he intends to rely to prove any fact or facts."). Ability objects to the extent that this request calls for information protected by attorney work product.

INTERROGATORY NO. 10. Please fully identify each individual you intend to call as an expert witness in this matter, and for each such witness, please state the individual's area of expertise and expert qualifications.

ANSWER:

Mr. Craig Bennion. Mr. Bennion is an attorney whose practice focuses on insurance coverage. He concentrates his practice on insurance coverage and declaratory judgment litigation, appellate work, and alternative dispute resolution. His insurance coverage background spans 28 years experience in analyzing insurance policies and claims, in both first-party property and third-party liability areas. He represents leading national and regional insurers and self-insured risk pools.

INTERROGATORY NO. 11. As to each expert identified in your answer to the foregoing Interrogatory, please summarize the opinion or opinions such expert is expected to express and state the grounds for each such opinion.

ANSWER:

Mr. Bennion has not yet completed his review of this matter. Ability will provide this information pursuant to the case schedule in this matter or via agreement between the

parties.

INTERROGATORY NO. 12. Please (a) identify each person you reserve the right to call as a witness in this matter, and (b) for each such person, please briefly indicate the matters on which they are expected to testify.

ANSWER:

Ability will provide a witness list pursuant to the case schedule in this matter or via agreement between the parties.

INTERROGATORY NO. 13. Please identify all documents and other physical evidence you reserve the right to offer into evidence in this matter.

ANSWER:

Ability will provide an exhibit list pursuant to the case schedule in this matter or via agreement between the parties.

FIRST REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1. Please produce true and correct copies of all documents and other pieces or items of information responsive to interrogatory number one above.

RESPONSE:

See attached claims file.

REQUEST FOR PRODUCTION NO. 2. Please produce true and correct copies of all of your documents that discuss your view as to whether you believe Gladys White had or may have had any cognitive impairment.

RESPONSE:

Without waiving the following objection, see attached claims file. Ability objects to this request to the extent it calls for attorney work product or any attorney-client privileged information.

REQUEST FOR PRODUCTION NO. 3. Please produce true and correct copies of all documents and other pieces or items of information responsive to interrogatory number two above.

RESPONSE:

See attached claims file.

REQUEST FOR PRODUCTION NO. 4. Please produce true and correct copies of all of your documents that discuss your view as to whether you believe Gladys White had or may have had any loss of functional capacity.

RESPONSE:

See attached claims file.

REQUEST FOR PRODUCTION NO. 5. Please produce true and correct copies of all documents and other information responsive to interrogatory number six above.

RESPONSE:

See attached claims file.

REQUEST FOR PRODUCTION NO. 6. If, at any time prior to March 20, 2009, you provided Gladys White's WAC 284-54-253 designee with a copy of Ms. White's designation (which you asserted was attached as "Exhibit B" to the May 20, 2011 declaration of Virginia Nicholson), or otherwise advised or informed Ms. White's designee of that designation, please produce true and correct copies of all documents showing the same or supporting the same.

RESPONSE:

N/A; see Response to Interrogatory No. 8.

REQUEST FOR PRODUCTION NO. 7. Please produce true and correct copies of all documents and other pieces or items of information responsive to interrogatory number nine above.

RESPONSE:

See attached claims file.

REQUEST FOR PRODUCTION NO. 8. Please produce true and correct copies of all documents and other pieces or items of information responsive to interrogatory number thirteen above.

RESPONSE:

N/A; see Response to Interrogatory No. 13.

REQUEST FOR PRODUCTION NO. 9. Please produce a copy of the curriculum vitae of any expert whose identity is responsive to interrogatory number ten above.

RESPONSE:

See attached.

As to objections, if any:

Dated this 19th day of July, 2011.

SCHWABE WILLIAMSON & WYATT, P.C.

By


Christopher H. Howard, WSBA No. 11074
Virginia R. Nicholson, WSBA No. 39601

CERTIFICATE OF MAILING

I hereby certify that on the 19 day of July, 2011, I caused to be served the foregoing FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION on the following party at the following address:

Alan Michael Singer
Staff Attorney, Legal Affairs Division
Office of the Insurance Commissioner
State of Washington
PO Box 40255
Olympia WA 98504-0255

by:

- U.S. Postal Service, ordinary first class mail
- U.S. Postal Service, certified or registered mail, return receipt requested
- hand delivery
- facsimile
- electronic service
- other (specify) _____



Tanya Garbell