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RECEIVED

MAY 04 2011

INSURANCE COMMISSIONER  
LEGAL AFFAIRS DIVISION

May 2, 2011

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

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

Re: Order to cease and Desist, No. 11-0088 and  
Order Suspending Certificate of Authority, No. 11-089  
REQUEST FOR HEARING  
Our File No.: 012345/012345

Dear Mr. Singer:

This law firm has been retained by Ability Insurance Company ("Ability") in connection with the above-referenced matter. We are in receipt of the April 27, 2011 Order to Cease and Desist and the April 27, 2011 Order Suspending Certificate on Authority issued from the Office of Insurance Commissioner ("OIC"). A copy of both Orders is included with this letter as Exhibit A.

With this letter, we formally demand a hearing before an administrative law judge pursuant to RCW 48.04.10 *et seq.*, to challenge the findings and directions of the Orders on the grounds set forth below. Additionally, it is our understanding by virtue of this request and pursuant to RCW 48.094.020, all of the Orders' terms, directions, conditions, and obligations are automatically stayed pending the outcome of the requested hearing. In the event the OIC disagrees with our interpretation of the applicable law as providing for an automatic stay of the Orders, Ability hereby requests, pursuant to RCW 48.04.020(2), that the OIC grant a stay pending the resolution of the requested hearing.

Specifically, the Orders are retaliatory, arbitrary, and based upon improper interpretation of Washington law regarding the policy at issue:

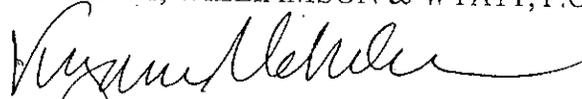
1. OIC's interpretation of the requirements of WAC 284-54-253(2) is incorrect. The WAC clearly states: "Every insurer shall provide a limited right to reinstate coverage in the event of lapse or termination for nonpayment of premium. If the Insurer is provided proof of the insured's cognitive impairment or loss of functional capacity and reinstatement is requested within the five months after the policy lapsed or terminated due to nonpayment of premium." To achieve a desired result, the OIC interpreted this provision as requiring reinstatement within the five months after the grace period following the policy lapse or termination due to nonpayment of premium. The WAC is clear. OIC's interpretation is incorrect.
2. Ability's interpretation is reasonable and based upon the Washington regulation at issue. The five month term begins to run on the date the premium was terminated due to nonpayment. That date was February 7, 2009.
3. Ability has not violated WAC 284-54-253.
4. OIC's action, immediately suspending Ability's Certificate of Authority and implementing a Cease and Desist letter, based upon Ability's reasonable and correct interpretation of Washington law is not a reasonable action by the OIC.
5. The OIC's action in issuing the Cease and Desist Order and the Order Suspending Ability's Certificate of Authority is arbitrary and capricious and/or retaliatory.

Ability reserves the right to advance further and distinct arguments and evidence in support of its position, and this correspondence is not intended as a complete recitation of all of the facts and circumstances in this matter and is written without prejudice to any of our client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved.

Please do not hesitate to contact us with any questions or concerns.

Sincerely,

SCHWABE, WILLIAMSON & WYATT, P.C.



Christopher H. Howard  
Virginia R. Nicholson

VNI

Enclosure

cc: Donald K. Lawler, J.D., M.B.A.



**EXHIBIT A**



OFFICE OF  
INSURANCE COMMISSIONER

In the Matter of

ABILITY INSURANCE COMPANY,

) No. 11-0088

)  
) ORDER TO CEASE  
) AND DESIST  
)  
)

Respondent.

Pursuant to RCW 48.02.080 of the Washington Insurance Code ("Code"), the Insurance Commissioner of the State of Washington orders Ability Insurance Company and their officers, directors, trustees, employees, agents, and affiliates ("Respondent") to immediately cease and desist from further violating the Code by not allowing reinstatement of their long term care policies within five (5) months after the lapse date set forth in the WAC 284-54-253(1) notice when the insured provides proof of their cognitive impairment or loss of functional capacity.

THIS ORDER IS BASED ON THE FOLLOWING:

1. Ability Insurance Company, WAOIC No. 796, is a 100% wholly owned subsidiary of Ability Resources, Inc. Ability Resources, Inc. acquired Medico Life Insurance Company (herein referred to as "Medico Life"), a former subsidiary of Medico Insurance Company, in September 2007. Medico Insurance Company was formerly known as Mutual Protective Insurance Company (herein referred to as "MPIC"). Medico Life was renamed Ability Insurance Company in January 2009.
2. In 1999, MPIC issued a long-term care policy to a Washington consumer. On July 25, 2009, the consumer fell, was hospitalized for a few days, and then entered a nursing home. In the records from her hospitalization, doctors noted the consumer's history of dementia. On August 4, 2009, the consumer's daughter spoke with a Company representative about her mother's situation and to make a claim under the policy for her mother. The Company's representative advised the consumer's daughter to complete a claim form available online and did not indicate that the policy had lapsed. The consumer's daughter submitted the claim two days later.
3. The consumer had apparently failed to pay the premium which had been due on February 8, 2009. On or about March 20, 2009 the Company sent the consumer's daughter a required notice of nonpayment advising that the policy would lapse if the premium was not paid within 35 days of the date of the notice, but she never received it. The consumer's



daughter did not learn of the nonpayment until September 9, 2009, when she went to her mother's vacated home to collect her mail.

4. On September 11, 2009 the consumer's daughter, who was also the consumer's WAC 284-54-253 designee, faxed a request to the Company to please contact her about the lapse. On September 15, 2009, the consumer's daughter spoke with a Company representative. She explained that she just learned of her mother's policy lapse, she explained that her mother had a cognitive impairment, and she requested that the Company reinstate the policy. She also explained that she had just worked with a Company representative on a claim for her mother in August of 2009, but that no one from the Company told her about the policy lapsing. The Company's representative told her to provide the Company with the documentation showing her mother's cognitive impairment. On September 30, 2009 the consumer's daughter faxed copies of medical records from the July hospitalization disclosing her mother's history of dementia.
5. The Company refused to reinstate coverage. The Company contended that while the insured had a right to reinstate within five months, the 5 months commenced on the day the premium was due, not after the additional period provided by the Company's March 20 notice.
6. OIC told Ability that the very soonest the contract could have lapsed would have been 30 days from the date of the March 20, 2009 letter, or Sunday, April 19, 2009, and that the Company was required under WAC 284-54-253(2) to allow reinstatement if the insured or her designee sought reinstatement within five months of April 19.
7. The Company's improper refusal to allow reinstatement within five (5) months of the lapse date that was required under WAC 284-54-253 violates WAC 284-54-253.

Any violation of the terms of this Order by Respondent, their officers, directors, agents, or employees, or affiliates, will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, 48.05.140, and other applicable sections of the Insurance Code of the State of Washington.

Respondent has the right to demand a hearing pursuant to RCW Chapters 48.04 and 34.05. This Order shall remain in effect subject to the further order of the Commissioner.

THIS ORDER IS EFFECTIVE IMMEDIATELY AND IS ENTERED at Tumwater, Washington, this 27<sup>th</sup> day of April, 2011.

MIKE KREIDLER  
Insurance Commissioner

By:   
Alan Michael Singer, Staff Attorney  
Legal Affairs Division

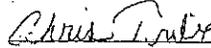
CERTIFICATE OF MAILING

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 ORDER TO CEASE AND DESIST on the following Company via US Mail.

Ability Insurance Company  
1515 S 75<sup>th</sup> St  
Omaha, NE 68124-1655

SIGNED this 27<sup>th</sup> day of April, 2011, at Tumwater, Washington.

  
Chris Tribe



3. The consumer had apparently failed to pay the premium which had been due on February 8, 2009. On or about March 20, 2009 the Company sent the consumer's daughter a required notice of nonpayment advising that the policy would lapse if the premium was not paid within 35 days of the date of the notice, but she never received it. The consumer's daughter did not learn of the nonpayment until September 9, 2009, when she went to her mother's vacated home to collect her mail.
4. On September 11, 2009 the consumer's daughter, who was also the consumer's WAC 284-54-253 designee, faxed a request to the Company to please contact her about the lapse. On September 15, 2009, the consumer's daughter spoke with a Company representative. She explained that she just learned of her mother's policy lapse, she explained that her mother had a cognitive impairment, and she requested that the Company reinstate the policy. She also explained that she had just worked with a Company representative on a claim for her mother in August of 2009, but that no one from the Company told her about the policy lapsing. The Company's representative told her to provide the Company with the documentation showing her mother's cognitive impairment. On September 30, 2009 the consumer's daughter faxed copies of medical records from the July hospitalization disclosing her mother's history of dementia.
5. The Company refused to reinstate coverage. The Company contended that while the insured had a right to reinstate within five months, the 5 months commenced on the day the premium was due, not after the additional period provided by the Company's March 20 notice.
6. OIC told Ability that the very soonest the contract could have lapsed would have been 30 days from the date of the March 20, 2009 letter, or Sunday, April 19, 2009, and that the Company was required under WAC 284-54-253(2) to allow reinstatement if the insured or her designee sought reinstatement within five months of April 19.
7. The Company's improper refusal to allow reinstatement within five (5) months of the lapse date that was required under WAC 284-54-253 violates WAC 284-54-253.

This Order does not relieve the Company from any pending or accrued reporting, filing, or fee/tax payment required by Title 48 RCW. RCW Chapters 48.04 and 34.05 provide the Company the right to demand a hearing on this Order.

Entered at Tumwater, Washington this 27<sup>th</sup> day of April, 2011.

MIKE KREIDLER  
Insurance Commissioner

By:   
Alan Michael Singer, Staff Attorney  
Legal Affairs Division

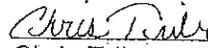
CERTIFICATE OF MAILING

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 ORDER SUSPENDING CERTIFICATE OF AUTHORITY on the following Company via US Mail.

Ability Insurance Company  
1515 S 75<sup>th</sup> St  
Omaha, NE 68124-1655

SIGNED this 27<sup>th</sup> day of April, 2011, at Tumwater, Washington.

  
Chris Tribe