

1 THE STATE OF WASHINGTON
2 OFFICE OF THE INSURANCE COMMISSIONER

FILED

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

Docket Nos. 11-0088 and 11-0089

2011 JUL 13 P 2:30

NOTICE OF INTENT TO IMPOSE
FINE AND MOTION TO
CONSOLIDATE AND AMEND.
NOTICE OF HEARING
Hearings Unit, OIC
D. Peterson
Chief Hearing Officer

6 **I. INTRODUCTION**

7 In response to the facts and conduct of Ability Insurance Company (“Ability” or “the
8 Company”) as outlined in orders 11-0088 and 11-0089 entered by the Washington State
9 Office of the Insurance Commissioner (“OIC”), Ability demanded a hearing and such hearing
10 has been scheduled to take place on August 3 (and 4, if needed) 2011. But beside the two
11 orders, the OIC had previously told the Company that it also intends to take a third action –
12 the imposition of a fine against the Company.

13 Based on the facts and the evidence of the Company’s conduct presented at the
14 hearing, the OIC intends to ask the Presiding Officer to conclude that the facts and the
15 Company’s conduct warrants (1) suspending the Company’s Certificate of Authority, (2)
16 upholding the OIC’s Order to Cease and Desist No. 11-0088, and (3) imposing a fine against
17 Ability. Since all three agency actions will concern the same conduct and facts outlined
18 briefly in the above-referenced orders, this notice and motion seeks to amend or supplement
19 the existing Notice of Hearing to make OIC’s intent clear and to consolidate the same.

18 **II. FACTS**

19 On April 27, 2011, based on the same allegations of fact and conduct, the OIC entered
20 an Order to Cease and Desist against Ability Insurance Company, No. 11-0088, and an Order
21 Suspending Certificate of Authority, No. 11-0089. On that same date, copies of these two
22 orders were sent to Donald K. Lawler, J.D. M.B.A., Senior Vice President of Ability
23

1 Insurance Company, via e-mail as PDF attachments. *See* Decl. Singer Exh. A.¹ In that e-
2 mail, Mr. Lawler was advised that, “[i]n addition to these two actions, this agency will also
3 fine the company \$10,000 for the company’s violation briefly outlined in the attached orders.”

4 *Id.* Mr. Lawler was asked whether he wished to receive a draft consent order to levy the fine
5 since the “laws allow this fine to be imposed by consent order or after hearing.” *Id.*

6 On April 29, 2011, Mr. Lawler was asked again whether he would like to receive and
7 consider a draft consent order. Decl. Singer Exh. B. On May 2, 2011, Mr. Lawler replied,
8 “[n]o, thank you.” Decl. Singer Exh. C.

9 On May 4, 2011, the OIC Hearings Unit received and filed Ability’s Demand for
10 Hearing. Decl. Singer Exh. D. This Demand for Hearing was a letter dated May 2, 2011.
11 Decl. Singer Exh. E.

12 On May 11, 2011, the Presiding Officer held a first prehearing conference. Decl.
13 Singer Exh. F. At this conference, OIC advised that, in addition to the Order to Cease and
14 Desist and Order Suspending Certificate of Authority, it intends to also impose a \$10,000 fine
15 on Ability based on Ability’s activities alleged in the Orders. *Id.*

16 On June 21, 2011, a Notice of Hearing was entered. Decl. Singer Exh. G. This Notice
17 of Hearing established that a hearing would be held on August 3 (and 4, if needed) 2011 to
18 consider Ability’s challenge to the OIC’s Orders. *Id.* It did not reference OIC’s
19 aforementioned intent to also impose a \$10,000 fine. *Id.*

20 III. MOTION

21 To ensure that Ability has received ample written notice of all three actions OIC
22 intends to seek against the Company, OIC asks that the June 21, 2011 Notice of Hearing
23 either be amended or supplemented to make this clear, and that the three actions be
consolidated at the hearing that commences August 3, 2011.

¹ Filed herewith is a declaration titled “Second Declaration of Alan Michael Singer” (“Decl. Singer.”)

1 Washington's Administrative Procedures Act requires a written notice of hearing to
2 detail, among other things, "a short and plain statement of the matters asserted by the agency"
3 and "the particular statutes and rules involved." RCW 34.05.434(2)(g), (h). Here, in addition
4 to the two Orders already entered, OIC also seeks to impose a fine of at least \$10,000 against
5 the Company based on the same facts and Company conduct briefly outlined in the two
6 Orders. OIC's actions, including such a fine, are authorized by various provisions of the
7 Insurance Code that may include RCW 48.02.080, RCW 48.05.140, RCW 48.05.185, WAC
8 284-54-253, WAC 284-54-800, WAC 284-54-900, RCW 48.30.040, and RCW 48.30.090.

9 While OIC has repeatedly informed Ability that OIC intends to pursue all three
10 courses of action, this motion has been brought to obviate risk of the Company objecting that
11 it did not receive sufficient written notice of the OIC's intended actions against it.

12 **IV. CONCLUSION**

13 To make clear what agency actions are at issue in the hearing, OIC moves to amend or
14 supplement the June 21, 2011 Notice of Hearing to provide that OIC seeks: (1) an order
15 suspending the Company's Certificate of Authority for at least six months, **AND** (2) an order
16 upholding the OIC's Order to Cease and Desist No. 11-0088, **AND** (3) an order imposing a
17 fine against Ability in the amount of at least \$10,000. OIC moves to consolidate these three
18 courses of action at the hearing to take place on August 3 (and 4, if needed) 2011.

19 DATED this 13th day of July, 2011.

20 OFFICE OF INSURANCE COMMISSIONER
21 By: 
22 Alan Michael Singer
23