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OFFICE OF  
INSURANCE COMMISSIONER

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HEARINGS UNIT

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BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of	)	<b>Docket No. 11-0088 and 11-0089</b>
	)	
Ability Insurance Company,	)	<b>ORDER RE POST HEARING BRIEFS</b>
	)	<b>AND CLOSING ARGUMENTS</b>
An Authorized Insurer and Respondent.	)	
_____	)	

**TO:** Ability Insurance Company  
1515 South 75<sup>th</sup> Street  
Omaha, Nebraska 68124-1655

Christopher H. Howard, Esq.  
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Seattle, WA 98101-4010

**COPY TO:** Mike Kreidler, Insurance Commissioner  
Michael G. Watson, Chief Deputy Insurance Commissioner  
John F. Hamje, Deputy Commissioner, Consumer Protection Division  
Alan Michael Singer, Staff Attorney, Legal Affairs Division  
Carol Sureau, Deputy Commissioner, Legal Affairs Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

On August 3, 4 and 5, 2011, the adjudicative proceeding in the above entitled matter took place. At the close of the hearing on August 5, the undersigned left the record open to receive briefs from the parties on issues specifically requested by the undersigned and also on any other issues and/or arguments which each party wishes to address. Further, the record was also left open for receipt of evidence including additional exhibits and/or additional testimony (including but not limited to expert testimony) and for presentation of closing arguments. The parties agreed that simultaneous briefs shall be filed by close of business on September 14, 2011, reply briefs, if



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desired, shall be filed by close of business on September 28, and submission of additional evidence and/or testimony followed by oral argument shall be scheduled at the convenience of the parties on either September 29 or 30, 2011.

Upon request, the parties will be furnished digital copies of the hearing in order to listen to some or all parts of the hearing herein in order to further clarify the three issues which the undersigned requested be included in their closing briefs. (Particularly, the undersigned details these issues to be briefed, and responds to questions of the parties concerning these issues, at 18:15:29 to 18:32:16 in this digital recording.) In summary, these specific issues are as follows:

1. What are the general rules of construction of insurance policies 1) when the policy is ambiguous; and 2) when the policy is not ambiguous? (E.g. defer to the interpretation of the regulator? Interpret in favor of the insured?) What is the standard for determining whether an insurance policy is ambiguous or not? Likewise, what are the general rules of construction of statutes and regulations when a regulation is ambiguous?
2. a) When a statute or regulation is either enacted or changed after the date an insurance policy was originally issued, how must the new/changed law/regulation be reflected in the insurance policy? Must an insurance policy comply only at renewal, and how is renewal defined? In a guaranteed renewable policy such as Ability's policy with Ms. White herein (Ability's policy), is there a renewal date upon which the policy must comply? [For example, in this case the Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191, was enacted after WAC 284-54-253 (eff. 10/12/95). Also, how is WAC 284-54-253 (eff. 10/12/95) to be properly interpreted in light of WAC 284-83-025 (eff. 12/25/08) and HIPAA?]
- b) How does Part S, Para. No. 13 found on page 12 of the Ability policy (OIC Ex. 1), and case law, affect a proper interpretation of the Ability policy? [E.g., the Ability policy does not state that, because of federal law, it is actually significantly more difficult for the insured to qualify for coverage under that policy than the wording of that policy states.]
3. How is "lapse" defined for purposes of interpreting WAC 284-54-253? Does it mean "something that triggers the termination of the policy"? [The parties agree that the word "lapse" is used in different capacities throughout WAC 284-54-253 e.g. as a verb, noun and possibility as an adjective.]

As advised during the August 5, 2011 hearing day, the parties are advised to contact Kelly Cairns, Paralegal to the undersigned, should they have any questions concerning the above.

Based upon the above activities,

**It is therefore hereby ordered** that the parties shall submit their briefs regarding the above issues, and any other issues and/or arguments by September 14, 2011;

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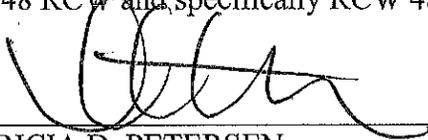
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**It is further ordered** that the parties shall submit their reply briefs, if they wish to file reply briefs, by September 28, 2011; and

**It is further ordered** that the parties shall submit any additional evidence and/or testimony they wish, followed by oral argument, on either September 29 or 30, 2011, based on the most convenient date for the parties. Said oral argument shall be in person in Olympia unless both parties agree that it may be held by teleconference.

**ENTERED AT TUMWATER, WASHINGTON**, this 24th day of August, 2011, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN  
Presiding Officer

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 through normal office mailing custom, a true copy of this document to the above identified individuals at their addresses listed above.

DATED this 24<sup>th</sup> day of August, 2011.

  
KELLY A. CAIRNS