

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

FILED

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

Docket Nos. 11-0088 and 11-0089

SECOND DECLARATION OF
ALAN MICHAEL SINGER

Patricia D. Pelosey
Chief Hearing Officer

I, Alan Michael Singer, state and declare as follows:

1. My name is Alan Michael Singer. I make this Declaration based on personal knowledge. I am over the age of eighteen (18) years. I am competent and authorized to testify to the matters set forth herein.
2. Attached as "**Exhibit A**" is a true and correct copy of an email and orders sent to Donald K. Lawler, J.D., M.B.A., Senior Vice President of Ability Insurance Company, on April 27, 2011.
3. Attached as "**Exhibit B**" is a true and correct copy of an email sent to Mr. Lawler on April 29, 2011.
4. Attached as "**Exhibit C**" is a true and correct copy of an email from Mr. Lawler dated May 2, 2011.
5. Attached as "**Exhibit D**" is a true and correct copy of the document "Notice of Receipt of Demand for Hearing" dated May 5, 2011.
6. Attached as "**Exhibit E**" is a true and correct copy of a letter dated May 2, 2011.
7. Attached as "**Exhibit F**" is a true and correct copy of the May 24, 2011 order entitled "Order Concerning: 1) Ability Insurance Company's Motion for Discretionary Stay of OIC's Order to Cease and Desist and Application of that Order; 2) Automatic Stay of OIC's Order Suspending Certificate of Authority; 3) and Scheduling Second Prehearing Conference."
8. Attached as "**Exhibit G**" is a true and correct copy of the June 21, 2011 Notice of Hearing.

1
2 I declare under penalty of perjury under the laws of the State of Washington that the
3 foregoing is true and correct.

4 EXECUTED this 13th day of July, 2011 at Bothell, Washington.

5
6 
7 _____
8 Alan Michael Singer
9

SECOND DECLARATION OF ALAN MICHAEL SINGER

EXHIBIT A

Singer, Alan (OIC)

From: Singer, Alan (OIC)
Sent: Wednesday, April 27, 2011 2:43 PM
To: 'Don Lawler'
Subject: Ability Insurance Company: Order (No. 11-0089) Suspending Certificate of Authority, \$10,000 fine, and Order (No. 11-0088) to Cease and Desist
Attachments: Ability Ins Co Order to Cease and Desist 4-27-11.pdf; Ability Ins Co Order of Suspension 4-27-11.pdf

Hi Don,

As we discussed a short time ago, I attach the two orders entered today relative to Ability Insurance Company: (1) order No. 11-0089, titled "Order Suspending Certificate of Authority," and (2) order No. 11-0088, titled "Order to Cease and Desist." In addition to these two actions, this agency will also fine the company \$10,000 for the company's violation briefly outlined in the attached orders. As I mentioned, this concerns the same matter we have been discussing the past several months.

I would propose separately sending you a draft consent order to levy the fine. Our state's insurance laws allow this fine to be imposed by consent order or after hearing. Please let me know if you would like me to prepare and send a draft consent order for consideration.

Please let me know if you have any questions. Thanks,

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

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 27th 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 75th St
Omaha, NE 68124-1655

SIGNED this 27th day of April, 2011, at Tumwater, Washington.

Chris Tribe
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 27th day of April, 2011.

MIKE KREIDLER
Insurance Commissioner

By:



Alan Michael Singer, Staff Attorney
Legal Affairs Division

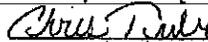
CERTIFICATE OF MAILING

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 75th St
Omaha, NE 68124-1655

SIGNED this 27th day of April, 2011, at Tumwater, Washington.


Chris Tribe

SECOND DECLARATION OF ALAN MICHAEL SINGER

EXHIBIT B

Singer, Alan (OIC)

From: Singer, Alan (OIC)
Sent: Friday, April 29, 2011 4:00 PM
To: 'Don Lawler'
Cc: Sureau, Carol (OIC)
Subject: RE: Ability Insurance Company: Order (No. 11-0089) Suspending Certificate of Authority, \$10,000 fine, and Order (No. 11-0088) to Cease and Desist

Don, will you please let me know if you would like me to prepare and send a draft consent order for consideration?
Thanks,

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

From: Singer, Alan (OIC)
Sent: Wednesday, April 27, 2011 2:43 PM
To: 'Don Lawler'
Subject: Ability Insurance Company: Order (No. 11-0089) Suspending Certificate of Authority, \$10,000 fine, and Order (No. 11-0088) to Cease and Desist

Hi Don,

As we discussed a short time ago, I attach the two orders entered today relative to Ability Insurance Company: (1) order No. 11-0089, titled "Order Suspending Certificate of Authority," and (2) order No. 11-0088, titled "Order to Cease and Desist." In addition to these two actions, this agency will also fine the company \$10,000 for the company's violation briefly outlined in the attached orders. As I mentioned, this concerns the same matter we have been discussing the past several months.

I would propose separately sending you a draft consent order to levy the fine. Our state's insurance laws allow this fine to be imposed by consent order or after hearing. Please let me know if you would like me to prepare and send a draft consent order for consideration.

Please let me know if you have any questions. Thanks,

Alan

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

SECOND DECLARATION OF ALAN MICHAEL SINGER

EXHIBIT C

Singer, Alan (OIC)

From: Don Lawler [dlawler@abilityre.net]
Sent: Monday, May 02, 2011 7:53 AM
To: Singer, Alan (OIC)
Subject: RE: Ability Insurance Company: Order (No. 11-0089) Suspending Certificate of Authority, \$10,000 fine, and Order (No. 11-0088) to Cease and Desist

Dear Mr. Singer,
No, thank you.



Donald K. Lawler, J.D., M.B.A.
Senior Vice President
Ability Insurance Company
FICA Medico Life Insurance Company
1515 South 75th Street
Omaha, NE 68124
(402) 218-4069
(402) 515-4411 cell
(866) 240-2352 FAX
dlawler@abilityre.net

This message contains confidential information and is intended only for the individual named. If you are not the named addressee, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of e-mail transmission. If verification is required, please request a hard copy version.

Ability Insurance Company, 1515 South 75th St., Omaha, NE 68124.

From: Singer, Alan (OIC) [mailto:AlanS@OIC.WA.GOV]
Sent: Friday, April 29, 2011 6:00 PM
To: Don Lawler
Cc: Sureau, Carol (OIC)
Subject: RE: Ability Insurance Company: Order (No. 11-0089) Suspending Certificate of Authority, \$10,000 fine, and Order (No. 11-0088) to Cease and Desist

Don, will you please let me know if you would like me to prepare and send a draft consent order for consideration?
Thanks,

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

From: Singer, Alan (OIC)

Sent: Wednesday, April 27, 2011 2:43 PM

To: 'Don Lawler'

Subject: Ability Insurance Company: Order (No. 11-0089) Suspending Certificate of Authority, \$10,000 fine, and Order (No. 11-0088) to Cease and Desist

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Please let me know if you have any questions. Thanks,

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

SECOND DECLARATION OF ALAN MICHAEL SINGER

EXHIBIT D



FILED

OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT
Fax: (360) 664-2782

2011 MAY -5 P 2:33

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

Heard: 5/11, 2011
Patricia D. Peterson
Chief Hearing Officer
Paralegal
(360) 725-7002
Hearings@oic.wa.gov

NOTICE OF RECEIPT OF DEMAND FOR HEARING

To: Christopher H. Howard
Virginia R. Nicholson
Schwabe, Williamson & Wyatt, P.C.
US Bank Center
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010

From: Patricia D. Petersen, Chief Hearing Officer

Date: May 5, 2011

Hearing: Request for Hearing in the Matter of Ability Insurance Company
Cease and Desist 11-0088 and
Suspension of Certificate of Authority 11-0089

This is to advise you that on May 4, 2011, the Hearings Unit received and filed your Demand for Hearing.

Unless a date is entered at the end of this Notice, in approximately 5 working days, you will be contacted by the Hearings Unit to schedule a date for the prehearing conference in this matter. This prehearing conference, which will be held by telephone, will include: 1) you, and/or your representative if you wish; 2) the individual who will be representing the Insurance Commissioner in this matter; and 3) Patricia D. Petersen, the Chief Hearing Officer. The purpose of the prehearing conference is to discuss basic procedure to be followed before, during and after the hearing, as well as any issues or concerns which have arisen or which you believe will arise in your preparation for the hearing.

For your information, we have included a brief outline of hearing procedure below.

If you have any questions concerning this Notice or the prehearing conference to be scheduled, please contact Nicole Kelly, Paralegal, Hearings Unit, at the above telephone number or address.

Notice of Receipt of Demand for Hearing
and Hearing Procedures

Re: Ability Insurance Company, Docket # 11-0088, 11-0089

Page 2

HEARING PROCEDURES - OFFICE OF THE INSURANCE COMMISSIONER

The following is a brief summary of hearing procedure. Following the prehearing conference referred to above, a Notice of Hearing will be entered advising you of the date scheduled for the hearing. The specific rules which govern the hearing procedure, which include many more details, can be found primarily at Chapter 34.05 RCW (the Administrative Procedure Act) and Chapter 10-08 WAC. Your hearing will be presided over by a Hearings Judge who handles cases where actions of the Insurance Commissioner are appealed, such as yours. It will be conducted in a fairly formal manner; however, it will be as flexible as possible to accommodate the needs of the parties and any witnesses which may appear. You will be allowed to submit documents to support your version of the facts. Testimony may also be presented in the form of live witnesses, including the parties themselves; also, if requested, witnesses are allowed to testify over the telephone at the discretion of the Hearings Judge.

The hearing normally begins with each party presenting an opening statement summarizing what they intend to prove; then each party presents its case-in-chief which includes presentation of documents and testimony, subject to cross examination by the opposing party; then the hearing concludes with each party presenting its closing arguments summarizing what they believe they have shown.

The Hearings Judge is an individual who has not had any involvement with this case. The Hearings Judge will hear and make the final decision in the case without any communication, input or review by the Insurance Commissioner or staff or any other individual who has knowledge of the case. The Hearings Judge's final decision may 1) uphold the Commissioner's action; 2) reverse the Commissioner's action; or 3) impose penalties which are less than those contained in the Commissioner's action.

Please note that, pursuant to General Rule 24, Washington Rules of Court, attorneys representing individuals or entities in Washington State adjudicative proceedings such as this, need **not** be licensed as an attorney in Washington State.

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 following people at their addresses listed above: Christopher H. Howard, Virginia R. Nicholson, Hearings Unit (OIC), Alan Singer (OIC)

DATED this 5th day of May 2011.


SHELLIE SAVAGE

SECOND DECLARATION OF ALAN MICHAEL SINGER

EXHIBIT E



SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

COPY FILED

U.S. Bank Centre, 1420 5th Avenue, Suite 3400, Seattle, WA 98101-4010 | Phone 206.622.1711 | Fax 206.292.0460 | www.schwabe.com

CHRISTOPHER H. HOWARD
Admitted in Washington
Direct Line: 206-407-1524
E-Mail: choward@schwabe.com

VIRGINIA R. NICHOLSON
Direct Line: 206-407-1557
E-Mail: vnicholson@schwabe.com

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.

Portland, OR 503.222.9981 | Salem, OR 503.540.4262 | Bend, OR 541.749.4044
Seattle, WA 206.622.1711 | Vancouver, WA 360.694.7551 | Washington, DC 202.488.4302

PDX/011112/156080/VNI/7439830.1

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

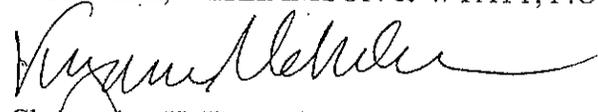
1. OIC's interpretation of the requirements of WAC 284-54-253(2) is incorrect. The WAC clearly states: "Every insurer shall provide a limited right to reinstate coverage in the event of lapse or termination for nonpayment of premium. If the Insurer is provided proof of the insured's cognitive impairment 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 27th day of April, 2011.

MIKE KREIDLER
Insurance Commissioner

By: 
Alan Michael Singer, Staff Attorney
Legal Affairs Division

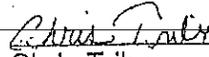
CERTIFICATE OF MAILING

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 75th St
Omaha, NE 68124-1655

SIGNED this 27th day of April, 2011, at Tumwater, Washington.


Chris Tribe



OFFICE OF
INSURANCE COMMISSIONER

<i>In The Matter Of:</i>)	
)	
ABILITY INSURANCE COMPANY,	)	No. 11-0089
)	
	)	ORDER SUSPENDING
	)	CERTIFICATE OF AUTHORITY
An Authorized Insurer,)	

To: Ability Insurance Company
1515 S 75th St
Omaha, NE 68124-1655

You are hereby notified that, pursuant to RCW 48.05.140 of the Washington Insurance Code, the Washington Office of the Insurance Commissioner (herein referred to as "OIC") now orders that Certificate of Authority WAOIC No. 796 issued to Ability Insurance Company (herein referred to as "Ability" or the "Company") be and hereby is suspended for a period of six (6) months, which suspension shall commence and take effect ten days from the date of entry of this Order. This suspension is confined to the Company's authority to write new business during the six-month period of suspension and does not suspend the Company's authority to fulfill obligations under policies issued prior to the effective date of the suspension imposed by this Order or the Company's authority to renew such existing policies.

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 contacted the Company and 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.

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 27th 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 75th St
Omaha, NE 68124-1655

SIGNED this 27th day of April, 2011, at Tumwater, Washington.

Chris Tribe
Chris Tribe

SECOND DECLARATION OF ALAN MICHAEL SINGER

EXHIBIT F

STATE OF WASHINGTON

Phone (360) 725-7000
www.insurance.wa.gov

MIKE KREIDLER
STATE INSURANCE COMMISSIONER



FILED

OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT

2011 MAY 24 P 2:53

Fax: (360) 664-2782

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

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer
Paralegal
(360) 725-7002
hearings@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:

	)	Docket No. 11-0088 and 11-0089
)	
Ability Insurance Company	)	ORDER CONCERNING: 1) ABILITY
	)	INSURANCE COMPANY'S MOTION
	)	FOR DISCRETIONARY STAY OF
	)	OIC'S ORDER TO CEASE AND
	)	DESIST AND APPLICATION OF THAT
	)	ORDER; 2) AUTOMATIC STAY OF
	)	OIC'S ORDER SUSPENDING
	)	CERTIFICATE OF AUTHORITY; 3)
	)	AND SCHEDULING SECOND
An Authorized Insurer.	)	PREHEARING CONFERENCE

TO: Ability Insurance Company
1515 South 75th Street
Omaha, Nebraska 68124-1655

Christopher H. Howard, Esq.
Virginia R. Nicholson, Esq.
Schwabe, Williamson & Wyatt
Attorneys at Law
US Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010

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

Mailing Address: P. O. Box 40257 • Olympia, WA 98504-0257
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501



PREHEARING CONFERENCE ON REQUEST FOR DISCRETIONARY STAY

11-0088 and 11-0089

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On April 27, 2011, the Insurance Commissioner (OIC) issued an Order to Cease and Desist against Ability Insurance Company (Ability), No. 11-0088, alleging that Ability is violating the Insurance Code by not allowing reinstatement of its long term care policies within five months after the lapse date set forth in the WAC 284-54-253(1) notice when the insured provides proof of cognitive impairment or loss of functional capacity. In addition, on April 27, 2011, the OIC issued an Order Suspending Certificate of Authority, No. 11-0089, suspending Ability's authority to write new business during the six month period of suspension based upon the same allegations.

On May 4, 2011, Ability filed its Demand for Hearing to contest both of the abovereferenced Orders. In its Demand, Ability requests a discretionary stay of these Orders in the event that RCW 48.04.020 does not provide for an automatic stay. On May 11, 2011, the undersigned held a first prehearing conference which included all parties to address the issue of stays in these proceedings. The undersigned advised that RCW 48.04.020(1) provides for an automatic stay of the Order Suspending Certificate of Authority, No. 11-0089, suspending Ability's authority to write new business during the six month period of suspension based upon the same allegations because Ability filed its Demand for Hearing prior to the effective date of this Order. The undersigned advised, however, that RCW 48.04.020(1) does not provide for an automatic stay of the Order to Cease and Desist, No. 11-0088, as that Order by its terms became effective immediately upon issuance. Ability reiterated its desire to move for a discretionary stay provided in RCW 48.04.020(2).

Pursuant to Ability's motion for a discretionary stay of the OIC's Order to Cease and Desist filed pursuant to RCW 48.04.020(2), the parties agreed that 1) Ability shall file its Motion and supporting documents by May 20, 2011; 2) the OIC shall file its responsive brief and supporting documents by May 27; and 3) Ability shall file its reply by June 1. The parties have indicated they prefer that the undersigned decide this matter on the pleadings and neither wishes to present oral argument. The undersigned will rule on Ability's motion for a discretionary stay of the OIC's Order to Cease and Desist by June 3.

Of significance, 1) Ability agreed that it will promptly notify the OIC of any Washington consumers, other than consumer Gladys White referred to in the OIC's Orders who have, either in the past or currently during pendency of this proceeding, been denied reinstatement of their Ability long term care policies, who have requested reinstatement under Ability's contract provision written pursuant to WAC 284-54-253; 2) the parties agreed that the OIC's Order to Cease and Desist is at this time prospective in nature only and does not require reinstatement of Ms. White's long term care policy; 3) the OIC advised that, in addition to the Order to Cease and Desist and Order Suspending Certificate of Authority, it intends to also impose a \$10,000 fine on Ability based on Ability's activities alleged in the Orders. Finally, 4) Ability indicated it needed more time to prepare for a general prehearing conference in this matter and the OIC agreed to delay the general prehearing conference until June 2, 2011.

PREHEARING CONFERENCE ON REQUEST FOR DISCRETIONARY STAY

11-0088 and 11-0089

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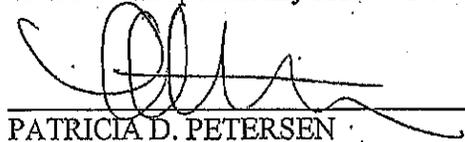
Based on the above activity,

IT IS ORDERED that the parties shall file briefs and supporting documents on the issue of a discretionary stay of the OIC's Order to Cease And Desist pursuant to the briefing schedule set forth above.

IT IS FURTHER ORDERED that Ability shall promptly notify the OIC of any other Washington consumers who have been denied reinstatement of their Ability long term care policies who have requested reinstatement under Ability's contract provision written pursuant to WAC 284-54-253.

IT IS FURTHER ORDERED that the general prehearing conference in this matter shall commence, by telephone, on June 2, 2011 at 10:00 a.m. with each party being contacted just prior to that time. The purpose of this general prehearing conference is to summarize and discuss procedure to be followed at hearing, to receive and respond to any questions or concerns of the parties, to address any other issues raised by the parties, and to schedule a mutually convenient hearing date.

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

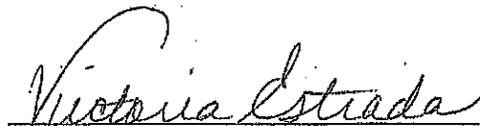


PATRICIA D. PETERSEN
Presiding Officer

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 following people at their addresses listed above: Ability Insurance Company, Christopher H. Howard, Esq., Virginia R. Nicholson, Esq., Mike Kreidler, Michael G. Watson, John F. Hamje, Esq., Carol Sureau, Esq., and Alan Singer, Esq.

DATED this 24th day of May, 2011.



VICTORIA ESTRADA

HEARINGS UNIT
Fax: (360) 664-2782

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

Hearings Unit
Paralegal
(360) 725-7002
Hearings@oic.wa.gov

To request an interpreter, complete and mail this form to:

Chief Hearing Officer
Office of Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

REQUEST FOR INTERPRETER

I am a party or witness in Matter No. 10-0236, before the Insurance Commissioner. I NEED AN INTERPRETER and request that one be furnished.

Please check the statements that apply to you:

I am a non-English-speaking person. I cannot readily speak or understand the English language. My primary language is _____ (insert your primary language). I need an interpreter who can translate to and from the primary language and English.

I am unable to readily understand or communicate the spoken English language because:

- I am deaf.
- I have an impairment of hearing.
- I have an impairment of speech.

[Please state below or on the reverse side any details which would assist the Commissioner or Presiding Officer in arranging for a suitable interpreter or in providing appropriate mechanical or electronic amplification, viewing, or communication equipment.]

Date: _____

Signed: _____

Please print or type your name: _____

Address: _____

Telephone: _____

SECOND DECLARATION OF ALAN MICHAEL SINGER

EXHIBIT G



OFFICE OF
INSURANCE COMMISSIONER

FILED

2011 JUN 21 P 3:59

HEARINGS UNIT
Fax: (360) 664-2782

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

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer
Paralegal
(360) 725-7002
hearings@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of	)	Docket No. 11-0088 and 11-0089
)	
Ability Insurance Company,	)	NOTICE OF HEARING
An Authorized Insurer.)	

TO: Ability Insurance Company
1515 South 75th Street
Omaha, Nebraska 68124-1655

Christopher H. Howard, Esq.
Virginia R. Nicholson, Esq.
Schwabe, Williamson & Wyatt P.C.
Attorneys at Law
U.S. Bank Center
1420 5th Avenue, Suite 3400
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 April 27, 2011, the Insurance Commissioner (OIC) issued an Order to Cease and Desist, No. 11-0088, against Ability Insurance Company and their affiliates (Ability) requiring that they immediately cease and desist from what the OIC alleges are violations of the Insurance Code by not allowing reinstatement of their long term care policies within five months after the lapse date set forth in the WAC 284-54-253 notice when the insured provides proof of their cognitive impairment or loss of functional capacity. In addition, on April 27, 2011, the OIC issued an Order Suspending License No. 11-0089, suspending the Washington Certificate of Authority of Ability Insurance Company (Ability) for six months pursuant to terms specified therein. In response, on May 4, 2011 Ability filed its Request for Hearing to contest both Orders, asserting



NOTICE OF HEARING

11-0088 and 11-0089

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that Ability is not required to provide reinstatement in the situation presented by the OIC in its Orders for reasons specified therein.

Accordingly, on May 11, 2011, the undersigned held a first prehearing conference which included all parties. The OIC was represented by Alan Michael Singer, Esq., Staff Attorney in his Legal Affairs Division. Ability was presented by Christopher H. Howard, Esq. and Virginia R. Nicholson, Esq. of Schwabe, Williamson & Wyatt P.C. of Seattle. The undersigned reviewed procedure to be expected at hearing and answered all questions and concerns of the parties. Of note, the undersigned advised that while the Order Suspending Certificate of Authority herein was automatically stayed pursuant to RCW 48.04.020, the Order to Cease and Desist was not. Thereafter, Ability filed its Motion for Discretionary Stay of the Order to Cease and Desist and after consideration of written argument submitted by both parties, on June 14 the undersigned entered her Order Denying Motion for Discretionary Stay. Therefore said Order to Cease and Desist became effective as of April 27, and shall remain in effect until entry of the Final Order on Hearing herein.

On June 9, 2011, the undersigned held a second prehearing conference which included all parties. During said prehearing conference the parties agreed that the hearing herein should take place on August 3 and 4, 2011, commencing at 10 a.m. in person.

Accordingly, **YOU ARE HEREBY NOTIFIED that a hearing will be held commencing on August 3, 2011 at 10:00 a.m. Pacific Standard Time and, if necessary, shall continue commencing at 10:00 a.m. Pacific Standard Time on August 4, 2011.** The purpose of this hearing, which will include all parties, is to consider Ability's challenge to the OIC's Order to Cease and Desist and the OIC's Order Suspending Certificate of Authority.

The OIC will appear by and through Alan Michael Singer, Staff Attorney in his Legal Affairs Division. Mr. Singer's address is Office of the Insurance Commissioner, Legal Affairs Division, P.O. Box 40255, Olympia, WA 98504-0255 and his telephone number is (360) 725-725-7046. Ability will appear and will be represented by Christopher H. Howard, Esq. and Virginia R. Nicholson, Esq. Mr. Howard's and Ms. Nicholson's address is Schwabe, Williamson & Wyatt P.C., US Bank Centre, 1420 5th Avenue, Suite 3400, Seattle, WA 98101-4010.

Patricia D. Petersen, Esq., Presiding Officer, who serves as Chief Hearing Officer for the Office of the Insurance Commissioner, has been designated to hear and determine this matter. Her address is Office of Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255. Her telephone number is (360) 725-7105. All interested individuals and entities who have questions or concerns concerning this proceeding should direct them to her assistant, Shellie Savage, at the same address. Ms. Savage's telephone number is (360) 725-7085.

The hearing will be held under the authority granted by the Commissioner under Chapter 48.04 RCW. The basic facts relied upon are those set forth above, which are more specifically included in the OIC's above referenced Order to Cease and Desist and Order Suspending Certificate of Authority and in Ability's above referenced Demand for Hearing.

The hearing will be governed by the Administrative Procedure Act, Chapter 34.05 RCW, and the model rules of procedure contained in Chapter 10-08 WAC. All parties may be represented at the hearing. They may examine witnesses and fully respond and present evidence and argument on all issues involved.

As required by RCW 34.05.434(2)(i), you are advised that a party who fails to attend or participate in any stage of the proceeding may be held in default in accordance with Chapter 34.05 RCW.

Pursuant to WAC 10-08-040(2) and in accordance with ch. 2.42 RCW, if a limited English speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by ch. 2.42 RCW. A Request for Interpreter form is attached to the original of this Notice, with instructions thereon.

This Notice is provided pursuant to RCW 48.04.010 and RCW 34.05.434.

Based upon the above activity,

IT IS HEREBY ORDERED that the adjudicative proceeding in this matter shall commence on August 3, 2011, at 10:00 a.m. Pacific Standard Time in the Office of the Insurance Commissioner, 5000 Capitol Blvd., Tumwater, WA and shall continue commencing on August 4, 2011 at 10:00 a.m. Pacific Standard Time, at the same location, if necessary.

ENTERED AT TUMWATER, WASHINGTON, this 21st day of June, 2011, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Presiding Officer

Attachment

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 21st day of June, 2011.



SHELLIE SAVAGE