

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



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OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT

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2011 MAY 24 P 2: 53

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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
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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



PREHEARING CONFERENCE ON REQUEST FOR DISCRETIONARY STAY

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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

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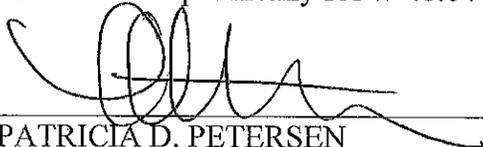
Based on the above activity,

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.

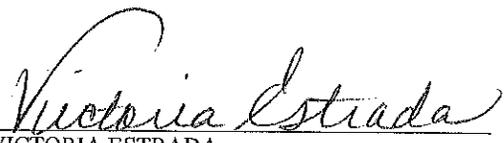


PATRICIA D. PETERSEN
Presiding Officer

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

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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: _____