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Hearings Unit, DIC
Patricia O. Petersen
Chief Hearing Officer

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

RELIAMAX SURETY COMPANY

Unauthorized Entity.

OAH Docket No. 2011-INS-0002
No. 11-0092

RELIAMAX SURETY COMPANY'S
MOTION TO WITHDRAW REQUEST
FOR HEARING

I. RELIEF REQUESTED

Plaintiff ReliaMax Surety Company ("ReliaMax") hereby exercises its absolute right to withdraw its request for hearing and requests that the administrative law judge enter an initial order terminating these adjudicative proceedings pursuant to RCW 34.05.461(1)(c).

II. STATEMENT OF FACTS

On April 28, 2011, the Insurance Commissioner entered an Order to Cease and Desist, effective immediately, which directed ReliaMax to cease and desist several activities.¹ ReliaMax timely submitted a written demand for hearing to the Office of the Insurance Commissioner ("OIC"), and subsequently amended its demand to request a hearing by an administrative law judge.² OIC received ReliaMax's Demand for Hearing on July 26, 2011, and its Amended Demand for Hearing on August 1, 2011.³ During a prehearing conference

¹ Appendix A.

² Appendices B and C.

³ See Appendix D.

RELIAMAX SURETY COMPANY'S
MOTION TO WITHDRAW REQUEST
FOR HEARING - 1

CARNEY
BADLEY
SPELLMAN

701 Fifth Avenue, Suite 3600
Seattle, Washington
98104-7010
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F (206) 467-8215

1 on October 26, 2011, ReliaMax stated its intent to withdraw its request for hearing. Citing no
2 authority, OIC stated it might object to such withdrawal. The administrative law judge set a
3 date for oral argument and a briefing schedule.

4 III. AUTHORITY AND ARGUMENT

5 Under the Insurance Code, the Commissioner must hold a hearing upon written
6 demand by “any person aggrieved by any act, threatened act, or failure of the commissioner
7 to act.” RCW 48.04.010(1)(b); *see also* RCW 34.05.413(2) (requiring an agency to
8 commence an adjudicative proceeding “upon the timely application of any person”).
9 ReliaMax has an absolute right under the Insurance Code and the Administrative Procedure
10 Act to request a hearing, and thus to withdraw its request for hearing. *See* RCW
11 48.04.010(1)(b); RCW 34.05.413(2). The procedure is analogous to CR 41(a), which affords
12 a plaintiff the absolute right to dismiss a civil action anytime before resting his case, so long
13 as no counterclaim has been pleaded. *See Goin v. Goin*, 8 Wn. App. 801, 802, 508 P.2d 1405
14 (1973) (plaintiff’s right is “absolute and involves no element of discretion on the part of the
15 trial court”). “[T]he effect of a voluntary dismissal ‘is to render the proceedings a nullity and
16 leave the parties as if the action had never been brought.’” *Beckman v. Wilcox*, 96 Wn. App.
17 355, 359, 979 P.2d 890 (1999), quoting *Bonneville Assocs., Ltd. P-ship v. Barram*, 165 F.3d
18 1360, 1364 (Fed. Cir. 1999).

19 This adjudicative proceeding was commenced upon ReliaMax’s request for hearing,
20 not at OIC’s instance. ReliaMax no longer desires to challenge the cease and desist order
21 through state administrative procedures. OIC has cited no grounds upon which to hold a
22 hearing on its cease and desist order other than ReliaMax’s request for hearing. ReliaMax
23 has fully complied with the cease and desist order, which was effective immediately and not
24 stayed pending these proceedings, and OIC has presented no facts to the contrary.
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IV. CONCLUSION

ReliaMax respectfully requests that the administrative law judge enter an initial order terminating these proceedings pursuant to RCW 34.05.461(1)(c).

DATED this 2nd day of November, 2011.

CARNEY BADLEY SPELLMAN, P.S.

By 
Timothy J. Parker, WSBA No. 8797
Jason W. Anderson, WSBA No. 30512
Attorneys for ReliaMax Surety Company

DECLARATION

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this day the undersigned deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the following persons:

Admin. Law Judge Terry
Schub

Andrea Phulhower
via fax & mail

containing a copy of the document to which this document is attached.


SIGNED at Seattle Washington this 2nd
day of Nov., 2011

APPENDIX A



OFFICE OF
INSURANCE COMMISSIONER

In the Matter of)	
)	No. 11-0092
ReliaMax Surety Company)	
)	ORDER TO CEASE AND DESIST
Unauthorized Entity)	

To: The Respondents

ReliaMax Surety Company
5024 S. Bur Oak Place, Ste. 103
Sioux Falls, SD 57108

And via email at:
jredmon@redmonlaw.com; mvanerdewyk@reliamax.com

Pursuant to RCW 48.01.020, 48.02.080, 48.05.030, 48.15.020, and 48.15.023, the Office of the Insurance Commissioner ("OIC") orders ReliaMax Surety Company, its officers, directors, trustees, agents, and affiliates ("Respondents") to immediately cease and desist from:

- A. Engaging in or transacting the unauthorized business of insurance or sale of unlicensed surety products in the State of Washington, including the collection or attempted collection of premium monies, and advertising of insurance and surety products;
- B. Soliciting any insurance or surety business in the State of Washington;
- C. Soliciting Washington residents, including credit unions or other financial institutions, to sell or purchase any plan or policy or coverage for any form of unauthorized insurance or unlicensed surety product;
- D. Soliciting Washington residents, including credit unions or other financial institutions, by e-mail, facsimile (fax), telephone, mail, internet, flyers, advertisements, or any other means to induce them to purchase any form of unauthorized insurance or surety product;
- E. Offering to Washington residents a plan or policy or coverage for any form of unauthorized insurance or unlicensed surety product without first submitting to examination by the Insurance Commissioner to determine the organization and solvency of the person or the entity offering such insurance or discount plan, and to determine whether or not such person or entity complies with the applicable provisions of the Insurance Code; and



- F. Offering to Washington residents any insurance or surety product as to which the rates and/or forms have not been filed with and approved by the Insurance Commissioner according to the requirements of Washington Law.

THIS ORDER IS BASED ON THE FOLLOWING:

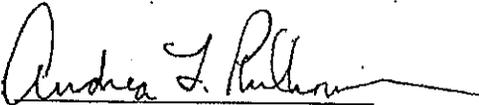
1. Respondent Company is domiciled and is a licensed insurance company in the state of South Dakota. Respondents sell a surety product that insures credit unions for student loans.
2. Respondent Company is not authorized to engage in the business of insurance in Washington, and has filed no rates or forms with the OIC for any products to be sold in Washington. Respondent Company currently does not meet the criteria under RCW 48.05.340 for licensure as an insurance company in Washington, or to sell its surety product through a licensed surplus lines broker.
3. In January of 2011, the OIC received information from the Washington Department of Financial Institutions ("DFI") that Respondents were selling surety products in Washington without being licensed to do so.
4. There were a total of 3 unauthorized sales of Respondents' surety products in Washington, affecting 3 Washington credit unions. One of these Washington credit unions had around \$400 thousand in student loans that were covered by the Respondent Company's surety product, and was committed to do another \$225 thousand before June, 2011. Respondent Company has informed OIC that, as a Company, it had approximately \$500,000 insured in Washington, and has approximately \$300 million in student loans insured nationwide.

Any violation of the terms of this Order by Respondents, their officers, directors, agents, or affiliates, will render the violator(s) subject to the full penalties authorized by the Washington Insurance Code.

Respondents have the right to demand a hearing pursuant to chapters 48.04 and 34.05 RCW. 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 28th day of April, 2011.

MIKE KREIDLER
Insurance Commissioner

By 
Andrea L. Philhower
Legal Affairs Division
Office of Insurance Commissioner
State of Washington

CERTIFICATE OF MAILING

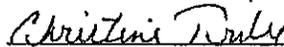
The undersigned certifies under the penalty of perjury under the laws of the State of Washington as follows:

I am now and at all times herein mentioned have been a citizen of the United States and a resident of the State of Washington. I am 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 individuals via US Mail and e-mail.

ReliaMax Surety Company
5024 S. Bur Oak Place, Ste. 103
Sioux Falls, SD 57108

And via email at:
jredmon@redmonlaw.com; mvanerdewyk@reliamax.com

SIGNED this 28th day of April, 2011, at Tumwater, Washington.


Christine Tribe.

APPENDIX B



STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

NO. 11-0092

ReliaMax Surety Company

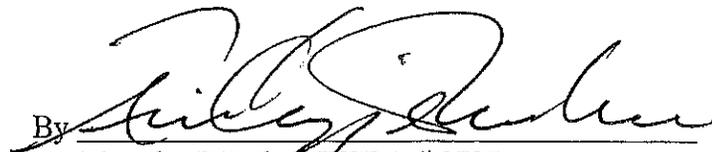
DEMAND FOR HEARING

Pursuant to RCW 48.04.010(1)(b) and (5), ReliaMax Surety Company, through the undersigned counsel, requests a hearing on the Order to Cease and Desist entered by the Office of Insurance Commissioner on April 28, 2011 (copy attached).

ReliaMax Surety Company is aggrieved by the Order to Cease and Desist in that it prevents ReliaMax Surety Company from doing business as a direct writer. ReliaMax relies on the definitions and limits on OIC jurisdiction under Title 48, RCW and federal law on extraterritorial transaction of insurance and commerce.

DATED this 28th day of July, 2011.

CARNEY BADLEY SPELLMAN, P.S.

By 

Timothy J. Parker, WSBA # 8797
Attorney for ReliaMax Surety Company

DEMAND FOR HEARING – 1

CARNEY
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OFFICE OF
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And via email at:
jredmon@redmonlaw.com; mvanerdewyk@reliamax.com

DELIVERED TO
INSURANCE COMMISSIONER

ON JUL 27 2011 @ —

BY JL
ABC LEGAL MESSENGERS

Pursuant to RCW 48.01.020, 48.02.080, 48.05.030, 48.15.020, and 48.15.023, the Office of the Insurance Commissioner ("OIC") orders ReliaMax Surety Company, its officers, directors, trustees, agents, and affiliates ("Respondents") to immediately cease and desist from:

- A. Engaging in or transacting the unauthorized business of insurance or sale of unlicensed surety products in the State of Washington, including the collection or attempted collection of premium monies, and advertising of insurance and surety products;
- B. Soliciting any insurance or surety business in the State of Washington;
- C. Soliciting Washington residents, including credit unions or other financial institutions, to sell or purchase any plan or policy or coverage for any form of unauthorized insurance or unlicensed surety product;
- D. Soliciting Washington residents, including credit unions or other financial institutions, by e-mail, facsimile (fax), telephone, mail, internet, flyers, advertisements, or any other means to induce them to purchase any form of unauthorized insurance or surety product;
- E. Offering to Washington residents a plan or policy or coverage for any form of unauthorized insurance or unlicensed surety product without first submitting to examination by the Insurance Commissioner to determine the organization and solvency of the person or the entity offering such insurance or discount plan, and to determine whether or not such person or entity complies with the applicable provisions of the Insurance Code; and

- F. Offering to Washington residents any insurance or surety product as to which the rates and/or forms have not been filed with and approved by the Insurance Commissioner according to the requirements of Washington Law.

THIS ORDER IS BASED ON THE FOLLOWING:

1. Respondent Company is domiciled and is a licensed insurance company in the state of South Dakota. Respondents sell a surety product that insures credit unions for student loans.
2. Respondent Company is not authorized to engage in the business of insurance in Washington, and has filed no rates or forms with the OIC for any products to be sold in Washington. Respondent Company currently does not meet the criteria under RCW 48.05.340 for licensure as an insurance company in Washington, or to sell its surety product through a licensed surplus lines broker.
3. In January of 2011, the OIC received information from the Washington Department of Financial Institutions ("DFI") that Respondents were selling surety products in Washington without being licensed to do so.
4. There were a total of 3 unauthorized sales of Respondents' surety products in Washington, affecting 3 Washington credit unions. One of these Washington credit unions had around \$400 thousand in student loans that were covered by the Respondent Company's surety product, and was committed to do another \$225 thousand before June, 2011. Respondent Company has informed OIC that, as a Company, it had approximately \$500,000 insured in Washington, and has approximately \$300 million in student loans insured nationwide.

Any violation of the terms of this Order by Respondents, their officers, directors, agents, or affiliates, will render the violator(s) subject to the full penalties authorized by the Washington Insurance Code.

Respondents have the right to demand a hearing pursuant to chapters 48.04 and 34.05 RCW. 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 28th day of April, 2011.

MIKE KREIDLER
Insurance Commissioner

By: 
Andrea L. Philhower
Legal Affairs Division
Office of Insurance Commissioner
State of Washington

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the State of Washington as follows:

I am now and at all times herein mentioned have been a citizen of the United States and a resident of the State of Washington. I am 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 individuals via US Mail and e-mail.

ReliaMax Surety Company
5024 S. Bur Oak Place, Ste. 103
Sioux Falls, SD 57108

And via email at:
jredmon@redmonlaw.com; mvanerdewyk@reliamax.com

SIGNED this 28th day of April, 2011, at Tumwater, Washington.

Christine Tribe
Christine Tribe.

DELIVERED TO
INSURANCE Commissioner

ON JUL 27 2011 @

BY JL
ABC LEGAL MESSENGERS

APPENDIX C

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

ReliaMax Surety Company

NO. 11-0092

AMENDED DEMAND FOR HEARING

Pursuant to RCW 48.04.010(1)(b) and (5), ReliaMax Surety Company, through the undersigned counsel, requests a hearing before an administrative law judge on the Order to Cease and Desist entered by the Office of Insurance Commissioner on April 28, 2011 (copy attached).

ReliaMax Surety Company is aggrieved by the Order to Cease and Desist in that it prevents ReliaMax Surety Company from doing business as a direct writer. ReliaMax relies on the definitions and limits on OIC jurisdiction under Title 48, RCW and federal law on extraterritorial transaction of insurance and commerce.

DATED this 28th day of July, 2011.

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By 

Timothy J. Parker, WSBA # 8797
Attorney for ReliaMax Surety Company

AMENDED DEMAND FOR HEARING - 1

CARNEY
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OFFICE OF
INSURANCE COMMISSIONER

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To: The Respondents

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DELIVERED TO
INSURANCE Commissioner
ON JUL 27 2011 @
BY JV
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- D. Soliciting Washington residents, including credit unions or other financial institutions, by e-mail, facsimile (fax), telephone, mail, internet, flyers, advertisements, or any other means to induce them to purchase any form of unauthorized insurance or surety product;
- E. Offering to Washington residents a plan or policy or coverage for any form of unauthorized insurance or unlicensed surety product without first submitting to examination by the Insurance Commissioner to determine the organization and solvency of the person or the entity offering such insurance or discount plan, and to determine whether or not such person or entity complies with the applicable provisions of the Insurance Code; and



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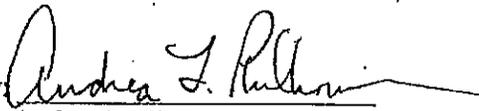
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MIKE KREIDLER
Insurance Commissioner

By 
Andrea L. Philhower
Legal Affairs Division
Office of Insurance Commissioner
State of Washington

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the State of Washington as follows:

I am now and at all times herein mentioned have been a citizen of the United States and a resident of the State of Washington. I am 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 individuals via US Mail and e-mail.

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5024 S. Bur Oak Place, Ste. 103
Sioux Falls, SD 57108

And via email at:
iredmon@redmonlaw.com; mvanderdewyk@reliamax.com

SIGNED this 28th day of April, 2011, at Tumwater, Washington.

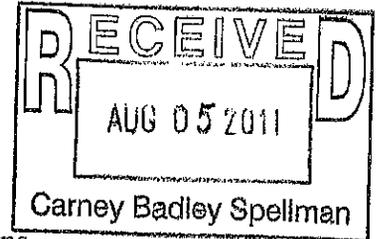
Christine Tribe
Christine Tribe.

DELIVERED TO
INSURANCE Commissioner
ON JUL 27 2011 @
BY JL
ABC LEGAL MESSENGERS

APPENDIX D



OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT
Fax: (360) 664-2782



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

Kelly A. Cairns
Paralegal
(360) 725-7002
KellyC@oic.wa.gov

NOTICE OF RECEIPT OF DEMAND FOR HEARING

To: Timothy J. Parker
Carney Badley Spellman
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010

From: Patricia D. Petersen, Chief Hearing Officer 

Date: August 3, 2011

Hearing: Request for Hearing in the Matter of ReliaMax Surety Company
Order to Cease and Desist

This is to advise you that on July 26, 2011, the Hearings Unit received and filed your Demand for Hearing, and on August 1, 2011, your Amended Demand for Hearing was received and filed.

We note that you have requested that an administrative law judge from the Office of Administrative Proceedings (OAH) conduct the hearing in this matter. Accordingly, in order to accommodate your request, administrative discretion is being used in this case to transfer the hearing file to OAH. Per our arrangement with OAH, an administrative law judge with OAH will be appointed to hear this matter and enter an Initial, or Recommended, Order. The Initial Order, together with the entire hearing file and transcript of the proceedings, will then be returned by OAH to this Hearings Unit. At that time, the entire hearing file and Initial Decision entered by OAH will be reviewed by a Review Judge, who will then enter the Final Findings of Facts, Conclusions of Law and Order in this matter. More details about this procedure appear on the attached page.

If you have any questions concerning this Notice, please contact Wendy Galloway, Administrative Assistant, Hearings Unit, at the above telephone number or address. 

HEARING PROCEDURES – OFFICE OF THE INSURANCE COMMISSIONER

Depending on your Demand for Hearing and applicable statutes, you may have had two options available for the procedure by which your hearing will be conducted. These two options are as follows:

Option 1: Your hearing will be presided over by an Administrative Law Judge who handles appeals from actions of the Insurance Commissioner, pursuant to Title 34 RCW, the Administrative Procedures Act, and Title 48 RCW.. The Administrative Law Judge is an individual who, by statute, may have no prior involvement with either the facts or any issues involved in this case. The Administrative Law 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 Administrative Law Judge's final decision may uphold or reverse the Commissioner's action or may instead impose any penalties, which are less than those contained in the Commissioner's action.

Option 2: Your hearing may be presided over by an Administrative Law Judge from the Office of Administrative Hearings. That Administrative Law Judge will issue an initial, or recommended, decision which will then be sent to the Insurance Commissioner along with the entire hearing file. The Insurance Commissioner, or his designee, will review the entire hearing file, and the Initial Decision, make the final decision and enter a Final Findings of Facts, Conclusions of Law and Order accordingly. The Insurance Commissioner's final decision in the case may uphold, reverse or modify the initial decision, and may thereby change the penalty which is recommended in the initial decision. In writing the final decision, the Insurance Commissioner is not bound by the findings of facts or conclusions of law which were made in the initial decision.

Based upon your request in your Demand for Hearing, your hearing will be handled under Option 2 described above.

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: Timothy J. Parker, Hearings Unit (OIC), Andrea L. Philhower (OIC)

DATED this 4th day of August 2011.


KELLY A. CAIRNS