

FILED

2012 JUL 13 P 4:30

Heidi M. ...
Patricia D. ...
Chief Hearing Officer

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In re the Matter of

NATHAN BOCHSLER,

Licensee.

NO. 12-0023

MOTION FOR PROTECTIVE ORDER

I. RELIEF REQUESTED

Allstate Insurance Company seeks an order protecting from disclosure investigative materials and documents created by the Allstate Legal Department Division of Investigative Services. This request is based on (1) RCW 48.17.595(6), (2) RCW 34.05.446(1), (3) the attorney-client privilege, and (4) the Declaration of Kevin H. Stelzer.

II. BACKGROUND FACTS

Allstate is an authorized property casualty insurer doing business in the state of Washington and offering, among other lines, automobile and homeowners insurance. Allstate offers and transacts insurance policies through agents and employees who are licensed producers pursuant to Chapter 48.17 RCW. Pursuant to various mandates in the Washington Insurance Code (Title 48) Allstate continually polices the honesty and integrity of its producers. To carry out this function the Allstate Legal Department through its Investigative Services Division investigates the business practices of its producers when there is cause.

MOTION FOR PROTECTIVE ORDER - 1

CARNEY
BADLEY
SPELLMAN

Law Offices
A Professional Service Corporation
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010
FAX (206) 467-8215
TEL (206) 622-8020

ORIGINAL

In 2010, Allstate conducted an internal investigation of apparent questionable practices followed by one of its agents in the sale of certain automobile and homeowners policies to a Washington resident. Upon completion of a thorough investigation, including witness interviews and review of producer and company records, Allstate concluded that the producer violated legal obligations imposed by Title 48 and his agency agreement with Allstate. The producer was terminated.

Pursuant to statutory obligation set forth in RCW 48.17.595, Allstate gave notice to the OIC of the producer termination.

On June 21, 2011, also pursuant to RCW 48.17.595, the Washington OIC contacted Allstate and requested the supporting documentation regarding Allstate's internal investigation of the producer. By letter dated July 11, 2011 (Attachment A) Allstate provided such information stating:

Please note that the information that the [OIC] has requested contains confidential, proprietary and trade secrets of Allstate Insurance Company. All information provided should not be released to anyone without prior consent of Allstate. If the [OIC] receives a request for release of this information, Allstate requests notice so we can obtain a court order to prevent such a release.

On February 16, 2012, the OIC notified Allstate Insurance Company that it had received a public disclosure request from the agent seeking the investigation file created by Allstate and provided to the OIC pursuant to RCW 48.17.595(1).

The Washington Public Disclosure Act (Chapter 42.56.400(15)) provides as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

...

(15) Documents, materials, or information obtained by the Insurance Commissioner under RCW 48.15.595.

RCW 48.17.595(1) and (6) provide in pertinent part:

An insurer ... that terminates the appointment, employment, contract or other business relationship with an insurance producer ... shall notify the commissioner within 30 days following the

effective date of the termination . . . if the reason for termination is one of the reasons set forth in RCW 48.17.530

(6) Information provided under this section is confidential.

(a) Any documents, materials or other information in the control or possession of the commissioner that is furnished by an insurer . . . or obtained by the commissioner in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to disclosure under Chapter 42.56 RCW, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

On February 23, 2012, Allstate advised the OIC that it would not waive its statutory protection and the OIC agreed not to produce the Allstate investigation documents. Attachment B.

On May 29, 2012, the OIC sent a NOTICE OF INTENT TO DISCLOSE to Allstate's attorney. Attachment C. The NOTICE states in part:

The Insurance Commissioner of the State of Washington hereby issues this Notice of Intent to Disclose: Summary of Evidence report and Consolidated Insurance Profile (CIP) reports prepared by Allstate. Said documents will be disclosed to licensee Nathan Bochsler on June 14, 2012 unless Allstate files a Motion for a Protective Order with the Chief Hearing Officer by that date.

In accordance with the OIC NOTICE Allstate hereby seeks a protective order preserving the confidentiality of the documents identified in the OIC NOTICE OF INTENT TO DISCLOSE.

III. STATEMENT OF LAW

The Allstate Legal Department Investigative Services Division interviewed witnesses, reviewed documents and prepared internal communications to management addressing the suspected misconduct of its agent. That investigative work and conclusions reside in the Summary of Evidence report and Consolidated Insurance Profile (CIP) reports. These two documents are the subject of the NOTICE OF INTENT TO DISCLOSE and this motion.

MOTION FOR PROTECTIVE ORDER - 3

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Pursuant to RCW 48.17.595, RCW 34.05.446(1), and the attorney-client privilege (RCW 5.60.060(2)) this material is confidential and not subject to disclosure.

A. RCW 48.17.595.

The confidential material is specifically addressed in this section of the insurance code. The statute imposes a reporting obligation on an insurer and renders the material confidential. In pertinent part, the statute states as follows:

An insurer ... that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer or title insurance agent shall notify the commissioner within thirty days following the effective date of the termination ... if the reason for termination is one of the reasons set forth in RCW 48.17.530.... Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination

RCW 48.17.595(1).

In compliance with this obligation Allstate provided the documents at issue to the Office of the Insurance Commissioner. Subsection 6 of the statute states succinctly that the information will be protected by the OIC. That provision states:

(6) Information provided under this section is confidential.

(a) Any documents, materials, or other information in the control or possession of the commissioner that is furnished by an insurer ... or an employee or agent thereof acting on behalf of the insurer ... or obtained by the commissioner in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to disclosure under Chapter 42.56 RCW, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

* * *

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (5)(c) of this section.

In accordance with RCW 48.17.595 it is requested that the "immunities" and "confidential" nature of the documents at issue be preserved.

B. RCW 34.05.446.

This proceeding is governed by the Washington State Administrative Procedures Act – Chapter 34.05 RCW. Subsection (1) of the statute authorizes the presiding officer to issue "protective orders." This statute also authorizes the presiding officer to make discovery orders with respect to procedures authorized by Superior Court Civil Rules 26 through 36.

In view of the underlying confidentiality accorded the documents at issue by the insurance code, the presiding officer is requested to properly exercise her authority under RCW 34.05.446(1) and (3) and uphold the confidentiality of the documents at issue.

C. RCW 5.60.060(2).

The documents at issue were created under the auspices of the Allstate Legal Department. The purpose of the documents was to advise management on the results of the investigation and advise on whether termination was merited. The communications at issue constitute attorney-client communication and are subject to protection pursuant to RCW 5.60.060(2) and the common law attorney-client privilege.

RCW 5.60.060(2) provides: “An attorney or counselor shall not, without the consent of his or her client, be examined as to any communications made by the client to him or her, or his or her advice thereon in the course of professional employment.” The purpose of the attorney-client privilege is to “allow the client to communicate freely without fear of compulsory discovery.” *Dietz v. Doe*, 131 Wn.2d 835, 842, 935 P.2d 611 (1997). The privilege extends to documents that contain a privileged communication. *Id.* The

privilege belongs to the client, and as such can ordinarily be waived only by the client. *Id.*, at 850.

The fact that the Allstate Legal Department reports were produced to the regulating authority as required by statute does not waive the privilege. A “party does not waive the attorney-client privilege for documents which he is *compelled* to produce.” *United States v. de la Jara*, 973 F.2d 746, 749 (9th Cir. 1992) (emphasis in original), quoting *Transamerica Computer v. Int’l Business Machines*, 573 F.2d 646, 651 (9th Cir. 1978). Where disclosure is involuntary, the privilege is “preserved if the privilege holder has made efforts ‘reasonably designed’ to protect and preserve the privilege.” *Id.*, at 750.

Allstate was compelled by statute to provide its attorney-client communications. Allstate did so under the condition that the information would remain confidential. Allstate also required the OIC to seek its consent before releasing its attorney-client communications. Allstate never gave consent for a broader release and instead invoked the attorney-client privilege in response to the agent’s public disclosure act request. Those steps were reasonably designed to protect the privileged nature of Allstate’s attorney-client material.

Further, allowing the OIC to disclose the investigative materials and documents created by Allstate’s legal team to a third party would be inconsistent with the purposes of the attorney-client privilege. Insurance companies would be discouraged from communicating freely with legal counsel about the business practices of producers if the producer is provided the fruits of attorney-client communications. This Court should advance the purposes of the attorney-client privilege by finding that Allstate did not waive the privilege when it complied with the statutory requirement to provide information to the OIC under the condition that the information remain confidential.

IV. CONCLUSION

The presiding officer is respectfully requested to issue a protective order in the attached form.

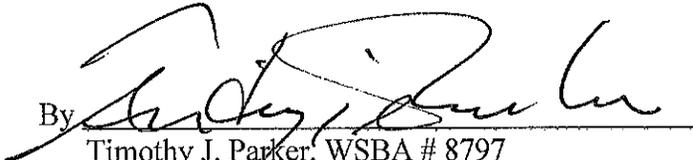
MOTION FOR PROTECTIVE ORDER - 6

CARNEY
BADLEY
SPELLMAN

Law Offices
A Professional Service Corporation
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010
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TEL (206) 622-8020

RESPECTFULLY SUBMITTED this 13 day of June, 2012.

CARNEY BADLEY SPELLMAN, P.S.

By 
Timothy J. Parker, WSBA # 8797
Attorneys for Allstate Insurance Company

MOTION FOR PROTECTIVE ORDER - 7

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SPELLMAN

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CERTIFICATE OF SERVICE

I, Christine Williams, under oath hereby declare as follows: I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, and not a party to nor interested in this action. On June 13, 2012, I caused to be delivered *via legal messenger* a copy of the foregoing document on the following party at the last known address as stated:

Attorney for Office of Insurance Commissioner
Robin E. Aronson
Staff Attorney, Legal Affairs Division
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

Attorney for Nathan Bochsler
Joyce L. Thomas
Frank Freed Subit & Thomas LLP
705 Second Avenue, Suite 1200
Seattle, WA 98104-1798

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 13th day of June, 2012.



Christine Williams, Legal Assistant

ATTACHMENT A



July 11, 2011

Attn: Jodie Thompson
State of Washington
Office of Insurance Commissioner

RE: Termination of Appointment of Nathan Bochsler (WAOIC No. 233844)

Dear Ms. Thompson:

In response to your inquiry dated June 21, 2011, we are providing you with supporting documentation regarding our internal investigation for Nathan Bochsler.

Please note that the information the Division has requested contains confidential, proprietary and trade secrets of Allstate Insurance Company. All information provided should not be released to anyone without prior consent of Allstate. If the Division receives a request for release of this information, Allstate requests notice so we can obtain a court order to prevent such a release.

Should you have any additional questions regarding this issue, please contact me directly at 425- 489-5565.

Sincerely,

Woody Whitaker
HR Consultant
Northwest Region

Confidential Communication. This letter contains confidential and/or proprietary information of Allstate Insurance Company, the disclosure of which may cause irreparable harm to the company. This information is intended solely for the individual(s) to whom it is addressed and must therefore be maintained in strict confidence. This letter, and any attachment to it, should not be copied, nor should the contents be discussed, disclosed or restated to others, orally or in writing, without the express written permission of Allstate Insurance Company.

Allstate Insurance Company
Address 18911 North Creek Parkway, Suite 301, Bothell, WA 98011
Phone 425.489.5565 Fax 425.489.5274 bwhiw@allstate.com

ATTACHMENT B

Williams, Christine

From: Anderson, Jason
Sent: Wednesday, February 29, 2012 11:07 AM
To: Williams, Christine
Subject: FW: Allstate v. OIC - public records request will be denied

From: Polz, Heather (ATG) [<mailto:HeatherP1@ATG.WA.GOV>]
Sent: Wednesday, February 29, 2012 11:06 AM
To: Parker, Tim
Cc: Anderson, Jason; DeLeon, Marta (ATG)
Subject: RE: Allstate v. OIC - public records request will be denied

Tim,

I just spoke with your colleague, Jason, and let him know that the OIC has reconsidered its position and will now be denying Mr. Bochslers' public records request. The OIC will explain that the documents are exempt from disclosure under RCW 48.17.595(6)(a) and RCW 42.56.400(15). Therefore, a TRO is no longer necessary.

If you would like to discuss this matter, feel free to call me. I would appreciate you confirming receipt of this email.

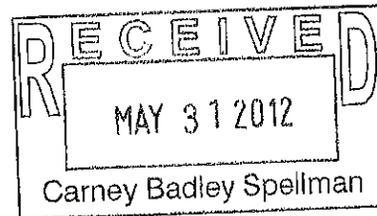
Sincerely,

Heather Polz
(360) 664-0865

ATTACHMENT C



OFFICE OF
INSURANCE COMMISSIONER



In Re the Matter of

Nathan J. Bochsler,

Licensee.

NO. 12-0023

NOTICE OF INTENT TO DISCLOSE

TO: Allstate Insurance Company, through its attorney of record:

Timothy J. Parker
Carney Badley Spellman
701 5th Ave Ste 3600
Seattle, WA 98104-7010

The Insurance Commissioner of the State of Washington hereby issues this Notice of Intent to Disclose: Summary of Evidence report and Consolidated Insurance Profile (CIP) reports prepared by Allstate. Said documents will be disclosed to licensee Nathan Bochsler on June 14, 2012 unless Allstate files a motion for a protective order with the Chief Hearing Officer by that date.

Pursuant to the Insurance Code, Title 48 RCW, the Insurance Commissioner is authorized to regulate the business of insurance and enforce the insurance laws of Washington State in order to protect the public interest. On or about January 31, 2012 the Insurance Commissioner issued an Order of Revocation against licensee Nathan J. Bochsler. Mr. Bochsler has requested a hearing and said request has been granted by Chief Hearing Officer Patricia Petersen. Mr. Bochsler has made a discovery request for a copy of the Insurance Commissioner's investigation file. The Chief Hearing Officer has also required that the parties exchange any documents they intend to submit for consideration at hearing.

Allstate terminated Mr. Bochsler's appointment for cause. On July 11, 2011 Allstate provided the commissioner with a Summary of Evidence report dated December 30, 2010 which was used in support of its termination decision. The report referenced several Consolidated Insurance Profile (CIP) reports which were later provided to the commissioner at his request.

Allstate has put the commissioner on notice that it objects to the release of the documents. Previously Allstate objected to the release of the documents following a public records disclosure request by the licensee on the basis that the documents contain confidential, proprietary and trade secret information of Allstate, and further were subject to protection under RCW 48.17.595. The commissioner did not disclose the documents pursuant to RCW 48.17.595.

The Commissioner believes that the documents must now be and should be provided to the licensee unless Allstate files for and obtains a protective order from the Chief Hearing Officer on this case. The presiding officer has such authority under RCW 34.05.446.

RCW 48.17.595(6) (a) allows the commissioner to use the documents in furtherance of a regulatory or legal action brought as part of the commissioner's duties. The statute so provides in pertinent part:

RCW 48.17.595

Termination of business relationship with an insurance producer or title insurance agent — Notice — Confidentiality of information — Immunity from civil liability.

(6) Information provided under this section is confidential.

(a) Any documents, materials, or other information in the control or possession of the commissioner that is furnished by an insurer, insurance producer, title insurance agent, or an employee or agent thereof acting on behalf of the insurer, insurance producer, or title insurance agent, or obtained by the commissioner in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to disclosure under chapter 42.56 RCW, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties. (Emphasis added.)

The hearing at issue is a regulatory action brought as part of the commissioner's duties. As such, the documents can be used at the hearing and thus must be shared with the licensee.

Dated this 29th day of May, 2012.

MIKE KREIDLER
Insurance Commissioner

By: Robin E. Aronson
Robin E. Aronson
Staff Attorney
Legal Affairs Division

CERTIFICATE OF SERVICE

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 NOTICE OF INTENT TO DISCLOSE on the following individuals in the manner(s) indicated:

Timothy J. Parker
Attorney at Law
Carney Badley Spellman
701 5th Ave Ste 3600
Seattle, WA 98104-7010

- Via U.S. Mail
- Via Facsimile
- Via Legal Messenger
- Via E-mail

Nathan J. Bochslar (copy sent via e-mail)

SIGNED this 29th day of May, 2012, at Tumwater, Washington.



Robin E. Aronson

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2012 JUN 13 P 4:30

Hearing Unit, DIC
Patricia D. Peterson
Chief Hearing Officer

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In re the Matter of

NATHAN BOCHSLER,
Licensee.

NO. 12-0023

DECLARATION OF KEVIN H.
STELZER IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER

I, Kevin H. Stelzer, hereby declare as follows:

1 I am a Senior Investigator at Allstate Insurance Company. Among my duties are the investigation of alleged producer misconduct and violation of applicable law and the preparation of documentation memorializing my investigation, conclusions and recommendations. Unless otherwise stated, this declaration is made on personal knowledge and subject to the laws of perjury of the State of Washington.

2 Allstate is admitted to transact property casualty insurance in the State of Washington – including automobile and homeowners insurance. Allstate transacts such insurance through producers (formerly known as “agents”) who are licensed by the State of Washington. Such producers are obligated to comply with all applicable provisions of the Washington Insurance Code and their producer contract with Allstate which obligates them to conduct their business affairs honestly and with integrity.

DECLARATION OF KEVIN STELZER IN
SUPPORT OF MOTION FOR PROTECTIVE
ORDER - 1

CARNEY
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ORIGINAL

3 In 2010 it came to the attention of the Allstate Legal Department and its Division of Investigative Services that a certain producer or producers in the State of Washington may have intentionally misrepresented the terms of a proposed insurance contract, effectuated issuance of an insurance contract in the State of Washington by making material misrepresentations regarding the risk and employed dishonest practices in the transaction of insurance – all in violation of RCW 48.17.530 and his contractual obligations to Allstate.

4 On August 11, 2010, we began our investigation. These investigatory activities included obtaining and reviewing certain policy applications and customer credit reports. I interviewed customers, the producer in question and his former employee. Based upon my findings I concluded there was sufficient evidence to recommend termination of the producer's relationship with Allstate.

5 Included in the investigation file that I created and that memorializes my efforts is a document entitled Summary of Evidence. This Summary of Evidence and other documents were later requested by the Washington Office of the Insurance Commissioner pursuant to RCW 48.17.595(1) which provides in pertinent part:

An insurer . . . that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer or title insurance agent shall notify the commissioner within 30 days . . . upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer or title insurance agent.

6 I understand that this information is protected from public disclosure by RCW 48.17.595(6)(a). In addition, however, Allstate employees in the Investigative Services Division of the Allstate Legal Department consider such investigations extremely confidential and proprietary. We endeavor to conduct our investigations impartially and completely, secure in the understanding that this material will be kept confidential.

DECLARATION OF KEVIN STELZER IN
SUPPORT OF MOTION FOR PROTECTIVE
ORDER - 2

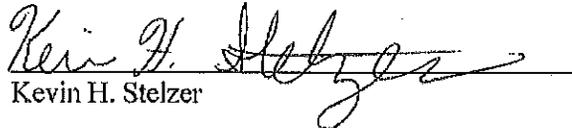
CARNEY
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SPELLMAN

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Seattle, WA 98104-7010
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TEL (206) 622-8020

FURTHER DECLARANT SAYETH NAUGHT.

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Dated June 13 2012, at Northbrook, Illinois, [city and state]


Kevin H. Stelzer

DECLARATION OF KEVIN STELZER IN
SUPPORT OF MOTION FOR PROTECTIVE
ORDER - 3

CARNEY
BADLEY
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CERTIFICATE OF SERVICE

I, Christine Williams, under oath hereby declare as follows: I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, and not a party to nor interested in this action. On June 13, 2012, I caused to be delivered *via legal messenger* a copy of the foregoing document on the following party at the last known address as stated:

Attorney for Office of Insurance Commissioner

Robin E. Aronson
Staff Attorney, Legal Affairs Division
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

Attorney for Nathan Bochsler

Joyce L. Thomas
Frank Freed Subit & Thomas LLP
705 Second Avenue, Suite 1200
Seattle, WA 98104-1798

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DATED this 13th day of June, 2012.



Christine Williams, Legal Assistant

DECLARATION OF KEVIN STELZER IN
SUPPORT OF MOTION FOR PROTECTIVE
ORDER - 4

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STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In re the Matter of

NATHAN BOCHSLER,
Licensee.

NO. 12-0023

DECLARATION RE: ELECTRONIC
SIGNATURE ON DOCUMENT (GR 17)

I, Christine Williams, under penalty of perjury under the laws of the State of Washington declare: I have personally examined the foregoing document consisting of 4 pages; the signature of Kevin Stelzer on the foregoing document is a complete and legible image; and it was received by me via email at williams@carneylaw.com.

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE
STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND
CORRECT TO THE BEST OF MY KNOWLEDGE.

Dated June 13, 2012, at Seattle, Washington.



Christine Williams, Legal Assistant

Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104
Phone: 206-622-8020
Fax: 206-467-8215
Email: williams@carneylaw.com

DECLARATION OF ELECTRONIC
SIGNATURE ON DOCUMENT (GR 17) - 1

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BADLEY
SPELLMAN

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Seattle, WA 98104-7010
FAX (206) 467-8215
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Washington State
Patricia D. Peterson
Chief Executive Officer

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In re the Matter of

NATHAN BOCHSLER,
Licensee.

NO. 12-0023

SPECIAL NOTICE OF APPEARANCE

TO: Office of the Insurance Commissioner

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that, for the limited purpose of filing a Motion for Protective Order on behalf of Allstate Insurance Company, Timothy J. Parker of Carney Badley Spellman, P.S. hereby enters an appearance in the above-captioned matter and requests that all further papers and pleadings be served upon the undersigned counsel at the address stated below.

DATED this 13 day of June, 2012.

CARNEY BADLEY SPELLMAN, P.S.

By 

Timothy J. Parker, WSBA # 8797
Attorneys for Allstate Insurance Company

701 Fifth Avenue, Suite 3600
Seattle, WA 98104

SPECIAL NOTICE OF APPEARANCE - 1

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ORIGINAL

CERTIFICATE OF SERVICE

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Staff Attorney, Legal Affairs Division
Office of the Insurance Commissioner
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Tumwater, WA 98501

Attorney for Nathan Bochsler

Joyce L. Thomas
Frank Freed Subit & Thomas LLP
705 Second Avenue, Suite 1200
Seattle, WA 98104-1798

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DATED this 13th day of June, 2012.



Christine Williams, Legal Assistant

SPECIAL NOTICE OF APPEARANCE - 2

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