

VIA PERSONAL DELIVERY

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER



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In the Matter of

Fidelity & Guaranty Life Insurance
Company,

An Authorized Insurer,

MATTER NO. 13-0336

RESPONSE AND
OBJECTION TO REQUEST
FOR HEARING; AND
REQUEST FOR RELIEF

COMES NOW Fidelity & Guaranty Life Insurance Company ("F&G" or "Company"), and herewith submits its Response and Objection to the Notice of Request For Hearing For Imposition Of Fines ("Notice") filed by the Insurance Commissioner of the State of Washington in the above captioned matter.

1. Company denies each and every allegation set forth in the Insurance Commissioner's Notice and puts the Insurance Commissioner to his proof as to each and every allegation set forth as the basis for the Notice. Company further objects and responds that the allegations set forth in the Notice refer and relate to the acts or failures to act of others and not to acts of the Company.

2. Company objects to the Insurance Commissioner's Notice as an unauthorized attempt to commence a legal proceeding against the Company. The Insurance Commissioner's authority to commence legal proceedings against any person suspected of violating any provision of the insurance code (Title 48 Revised Code of Washington) or insurance regulations (Title 284 Washington Administrative Code) is limited by law to either issuing a cease and desist order and/or bringing an action in a court of competent jurisdiction by and through the Attorney General or a prosecuting attorney.

1 3. Company objects to the Insurance Commissioner's attempt to initiate a legal
2 proceeding against the Company by means of the mere filing of the Notice. The
3 authority of the Insurance Commissioner to hold a hearing is not the legal or procedural
4 equivalent of initiating a legal proceeding or bringing an action against a person.
5 Accordingly, the Insurance Commissioner's Notice, Request for Hearing, and all relief
6 requested in the Notice, should be denied.

7 4. Company objects to the Insurance Commissioner's attempt to bring an
8 action against the Company, by means of the Notice or otherwise, through a person
9 identified as "OIC Staff Attorney." Under the Constitution and laws of the State of
10 Washington, only the Attorney General of the State of Washington has authority to
11 represent the Insurance Commissioner and the Office of the Insurance Commissioner
12 ("OIC") in any proceeding brought under Title 48 Revised Code of Washington.
13 Furthermore, the Insurance Commissioner is precluded by law from employing or
14 retaining any attorney to act as attorney in any legal or quasi-legal capacity or perform
15 any duties that the Attorney General is authorized and required to perform for and on
16 behalf of the OIC.

17 5. Company objects to the Notice as untimely. Even assuming, but without
18 conceding, that the Insurance Commissioner's Notice is an attempt to bring an action
19 against the Company, the Notice and the relief alleged to be requested under the Notice
20 was not brought within the applicable two-year statute of limitations governing such
21 actions.

22 6. Company objects to the Notice and the allegations contained therein as they
23 relate and refer to a contract. Company responds and asserts that there is no contract in
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1 existence. Accordingly, there is no subject matter on which the Insurance
2 Commissioner may request or seek penalties or other relief as alleged in the Insurance
3 Commissioner's Notice.

4 7. Company further responds to the Notice and asserts that the Insurance
5 Commissioner has refused Company's good faith requests and attempts to negotiate a
6 settlement or other resolution of the Insurance Commissioner's allegations against the
7 Company. Company objects to the Insurance Commissioner's refusal to negotiate a
8 possible settlement in good faith and asserts that this matter should be and can be
9 resolved without the need of any legal or quasi-legal proceeding. Company further
10 asserts and alleges that the Insurance Commissioner is obligated to seek an alternative
11 resolution of this matter and that the Insurance Commissioner's Notice is not brought
12 in good faith or in the best interests of the parties herein.

13 8. Company further responds and asserts that the Company has an unqualified
14 right to request that this matter, as presented and/or once properly commenced by the
15 Attorney General on behalf of the Insurance Commissioner and in accordance with the
16 applicable provisions of Title 48 Revised Code of Washington, be heard and presided
17 over by an administrative law judge assigned under chapter 34.12 RCW. Company
18 reserves its right to make such request at any time, including in the event the Insurance
19 Commissioner's Notice of Request for Hearing is not denied and this matter proceeds.

20
21 **WHEREFORE**, Company seeks relief from the Insurance Commissioner's
22 Notice and further requests the following:

23 1. That the Insurance Commissioner's Notice of Request for Hearing for
24 Imposition of Fines be rejected, that the Insurance Commissioner's Request for

1 Hearing be denied, and that the Insurance Commissioner's bald assertion that the
2 Insurance Commissioner "will convene a hearing" be refused and quashed as an
3 unauthorized action under Title 48 Revised Code of Washington.

4 2. That the Insurance Commissioner be instructed that, if he intends to bring an
5 action against the Company, such action shall be brought in accordance with and
6 pursuant to the authority set forth in Title 48 Revised Code of Washington, and by and
7 through the Attorney General of the State of Washington.

8 3. That the Insurance Commissioner be instructed to engage in good faith
9 negotiations to settle or otherwise resolve this matter, including, as necessary,
10 participating with the Company in a Settlement Conference before an appropriate
11 tribunal.

12 4. That the Company shall be afforded its right to request, at such time as the
13 Company may deem appropriate and necessary, that this matter be presided over by an
14 administrative law judge as set forth in Title 48 Revised Code of Washington.

15 5. That the Company be awarded such other and further relief as shall be
16 appropriate under the circumstances then presented upon adequate proof.

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18 DATED this 5th day of June June, 2014

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20 KREGER BEEGHLY, PLLC

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22 Brian F. Kreger,
23 WSBA Number 10670

24 Attorney for Licensees

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CERTIFICATE OF SERVICE

I, Brian F Kreger, under penalty of perjury under the laws of the State of Washington do hereby declare and certify that I served on June 6, 2014, I caused to be delivered by personal delivery a copy of the foregoing document on the following parties at the last known addresses given below:

Hearings Unit
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

Ms. Andrea Philhower
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

Executed on this 6th day of June, 2014 in Tumwater, Washington.


Brian F. Kreger