

FILED

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

2014 AUG -7 A 9 20

In the Matter of:

No. 14-0081

**BENEFIT MARKETING SOLUTIONS,
LLC, and BENEFIT SERVICES
ASSOCIATION**

ORDER ON MOTION FOR STAY OF
AMENDED CEASE AND DESIST
ORDER

TO: Gulliver A. Swenson, Esq.
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Benefit Services Association

COPY TO: James T. Odiorne, Chief Deputy Insurance Commissioner
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1. On May 15, 2014, the Office of Insurance Commissioner ("OIC") issued an Amended Cease and Desist Order in this case ("Amended Order"), requiring Benefit Marketing Solution, LLC ("BMS") and Benefit Services Association ("BSA") to immediately cease and desist from engaging in or transacting unauthorized business of insurance in the State of Washington, including advertising and/or solicitation of service contracts or other insurance-related products, and from seeking or soliciting insurance business in the State of Washington and participating in any act of an insurance producer or insurance company in seeking or soliciting insurance business, including service contracts, in the State of Washington. The Amended Order was based in substantial part on the OIC's conclusion that BMS and BSA have acted as unregistered service contract providers, whose contracts to indemnify consumers or pay a specified amount upon determinable contingencies constitute "insurance" as defined in RCW 48.01.040.

2. On June 13, 2014, BMS and BSA filed a Complaint for Declaratory Relief in Thurston County Superior Court ("Declaratory Judgment Action"), asking the Court to declare that the OIC lacks jurisdiction. BMS and BSA assert: 1) they are not service contract providers and are not engaged in the solicitation or sale of service contracts as defined by RCW 48.110.020; and 2) they are not insurance providers as defined by RCW 48.17.060.

3. On June 27, 2014, the Court (the Hon. Carol Murphy) heard BMS and BSA's Motion for Stay of the Amended Order pursuant to RCW 48.04.020(2). The Court denied the Motion for Stay based on BMS and BSA's failure to comply with RCW 48.04.020(2), which provides that in any case where an automatic stay is not provided for (as it is not in the present case), "if the commissioner after written request therefor fails to grant a stay, the person aggrieved thereby may apply to the superior court for Thurston county for a stay of the commissioner's action." The Court ruled (I believe correctly) that under RCW 48.04.020(2), the Commissioner's failure to grant a stay upon written request is a condition precedent to application to the Court for a stay.

4. On July 22, 2014, BMS and BSA's Motion for Stay of Amended Cease and Desist Order was filed with the OIC Hearings Unit and is now before me for ruling.

5. I believe a stay of the present proceeding is appropriate for the following reasons:

6. BMS and BSA have presented a substantial request for declaratory relief to the Court -- in its June 27, 2014, oral ruling in the Declaratory Judgment Action on motion for stay, the Court, at 27, stated that, based on the parties' representations, "there are genuine issues that require resolution." If the issues before the Court appeared to be trivial, my ruling would be different.

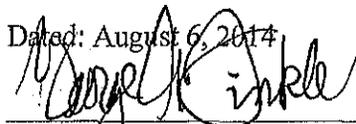
7. Washington State policyholders do not appear to be subject to substantial continuing risk as the result of a stay -- BSA has a lengthy history of providing membership to Washington residents, apparently without administrative complaints, lawsuits, or other adverse consumer consequences, and a CLIP policy approved by the Oklahoma Department of Insurance appears to protect Washington State consumers. If Washington State policyholders appeared to be at substantial risk, my ruling would be different.

8. BMA and BSA have made a showing that significant adverse consequences to them would follow the failure to impose a stay, before they have had the opportunity to argue the merits of their position. If BMA and BSA did not appear to be likely to suffer substantial adverse consequences, my ruling would be different.

9. A stay would 1) conserve judicial resources in the Superior Court and the OIC; and 2) avoid the risk of inconsistent determinations of the dispositive issues in the Declaratory Judgment Action.

10. The present proceeding is stayed until the Thurston County Superior Court resolves the pending Declaratory Judgment Action.

Dated: August 6, 2014

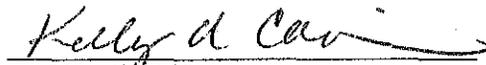


George A. Finkle, Superior Court Judge (Ret.)
Presiding Hearing Officer

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: ~~Dwight Dummer~~, Gulliver Swenson, Esq., James T. Odiorne, John F. Hamje, AnnaLisa Gellermann, Esq. and Marcia Stickler, Esq.

DATED this 7th day of ^{August} ~~July~~, 2014.


KELLY A. CAIRNS