

MIKE KREIDLER
STATE INSURANCE COMMISSIONER



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 of a true copy of this document to

parties below
DATED this 23 day of January, 2006 at Tumwater, Washington.

Signed: Wendy Galloway

OFFICE OF
INSURANCE COMMISSIONER

FILED

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In the Matter of:)
)
EVOLUTION SERVICES, INC.,)
)
Unauthorized entities,)
)
and)
)
WILLIAM J. MILLER, STANTON L. CALL,)
WILLIAM R. OWENS, BARBARA MILLER,)
JOHN C. RIVERA, JESSE C. RIVERA,)
LISA A. COLEMAN, DAVID EMERSON LEE,)
M.D., KENNETH KAISER, SR., and)
CHRIS KOMARZEC,)
)
Individual Respondents.)

NO. D05-364

**ORDER ON EVOLUTION SERVICES,
INC.'S AND SPECIFIED INDIVIDUALS'
MOTION FOR AUTOMATIC STAY**

TO: Thao Tredt, Esq.
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COPY TO: Mike Kreidler, Insurance Commissioner
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John Hamje, Deputy Commissioner, Consumer Protection
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On September 23, 2005, the undersigned held a prehearing conference in this matter, which included all parties. During that prehearing conference, Brian Kreger, Esq., who was then attorney for Evolution Services, Inc. and specified individuals named herein (together referred to as ESI), argued that at least one portion of the subject Order to Cease and Desist should be automatically stayed. The undersigned requested that the parties brief the issue presented, which briefs were filed timely as requested.

RCW 48.04.020 provides as follows:

- (1) Such demand for a hearing received by the commissioner prior to the effective date of action taken or proposed to be taken by him shall stay such action pending the hearing,*
- (2) In any case where an automatic stay is not provided for, and if the commissioner after written request therefore 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.*

ESI acknowledges that the subject Order to Cease and Desist bears the advisement that *THIS ORDER IS EFFECTIVE IMMEDIATELY and is entered at Tumwater, Washington, this 26th day of July, 2005* and was served on that date. ESI also acknowledges that it filed its Demand for Hearing on September 9, 2005, 45 days after the effective date of the Order. However, ESI points out that the one provision of said Order at issue in this Motion, which is included on page 3 of the Order, states *IT IS FURTHER ORDERED that Respondents, within forty-five (45) days of receipt of this Order, furnish the OIC with a complete listing, to include contact information, of all Washington residents and businesses who have purchased any insurance or insurance-related product from Respondents, and that Respondents report to the OIC all premiums received by Respondents for insurance covering Washington risks.* ESI argues that this portion of the Order, which requires specified action of ESI within 45 days i.e. by September 9, 2005, has been automatically stayed by virtue of RCW 48.04.020(1) and the fact that ESI filed its Demand for Hearing on the 45th day referred to in the Order.

The Commissioner argues that RCW 48.04.020 provides, in (1), that *[S]uch demand for a hearing received by the commissioner prior to the effective date of action taken or proposed to be taken ... shall stay such action pending the hearing* refers to the effective date of the entire Order and not to any individual portions which may be included in the Order.

The undersigned agrees with the argument of the Commissioner: RCW 48.04.020(1) refers solely to the effective date of the entire Order to Cease and Desist, which is, as stated therein, July 26, 2005. The subject portion of the Order which is included on page 3 provides a 45 day courtesy period in which ESI is given to be able to comply with the Order e.g. *to furnish the OIC with a complete listing, to include contact information, of all Washington residents and businesses who have purchased any insurance or insurance-related product from Respondents, and that Respondents report to the OIC all premiums received by Respondents*

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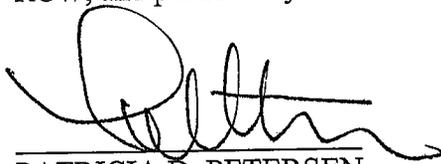
for insurance covering Washington risks. However, even this portion of the Order is effective July 26, 2005 and that is the date upon which the 45 day period begins to run; it does not create a separate window which would be available to ESI to obtain an automatic stay under RCW 48.04.020 for only this portion of the Order.

Finally, ESI argues that because the subject Order was made effective immediately, this prevents any appellant from obtaining an automatic stay. First, it is noted that various provisions throughout the insurance code require that the Commissioner provide a mandatory window of time between entry of an order and its effective date – presumably, in part, for the purpose of allowing the opportunity of obtaining an automatic stay under RCW 48.04.020(1); the insurance code simply does not require any window in this particular type of action. Second, as the Commissioner argues, RCW 48.04.020(2) provides the method whereby appellants who are not entitled to an automatic stay (such as when an order is made effective immediately) may seek a discretionary stay and may also seek a stay from superior court. ESI did not seek a stay through either means which were available to it.

For the above reasons, and after careful review of the Commissioner's OIC's Memorandum RE: Automatic Stay filed September 29, 2005 and ESI's Brief Re Mandatory Stay of Action filed September 30, 2005 and the entire hearing file,

IT IS HEREBY ORDERED that ESI's motion for grant of an automatic stay is denied and the subject Order to Cease and Desist herein, including the subject 45 day portion which is included on page 3 therein, has been effective since its stated effective date of July 26, 2005.

ENTERED at Tumwater, Washington this 23rd day of January, 2006, pursuant to Title 48 RCW, and particularly RCW 48.04.020, Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN

Presiding Officer