MIKE KREIDLER
STATE INSURANCE COMMISSIONER

**STATE OF WASHINGTON**

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**OFFICE OF**
**INSURANCE COMMISSIONER**
**HEARINGS UNIT**
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October 20, 2008

Thomas P. Rowland
OIC Legal Affairs, Legal Staff Attorney
P.O. Box 40255
Olympia, Washington 98501

Jeffry L. Gingold, Attorney at Law
Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, Wa 98101

Margaret Simmons
Office of Administrative Hearings
2420 Bristol Court S.W.
P.O. Box 9046
Olympia, Wa 98507-9046

Re: United of Omaha Life Insurance Co & Mutual of Omaha Insurance Co.
Stipulation & Agreed Order Dismissing Adjudicative Proceeding, D07-0333

Dear Mr. Rowland, Mr. Gingold and Ms. Simmons:

I am in receipt of your Stipulation and Agreed Order Dismissing Adjudicative Proceeding and OIC Docket No. D07-0333. Said Stipulation has been executed by Mr. Rowland on behalf of the Commissioner and by Mr. David A. Barron on behalf of United of Omaha and Mutual of Omaha. Further, said Order was presented by Mr. Rowland and approved for entry/notice of presentation waived by Mr. Gingold as attorney for United of Omaha and Mutual of Omaha, and executed by Administrative Law Judge Todd Gay.

A review of the file indicates that 1) on October 7, 2008, Mr. Rowland sent a letter transmitting the Stipulation and Order to Judge Gay asking him to enter the Order and forward a copy of the document to his office once it has been fully executed and entered by Judge Gay; 2) on October 8, Judge Gay entered the order terminating proceeding; and 3) on October 10, Ms. Simmons, Legal Secretary to Judge Gay, wrote to the parties advising them that because Judge Gay had signed the Order Dismissing Adjudicative Proceeding that OAH Docket Number 2007-INS-0007 and OIC matter No. D07-0333 are hereby closed and dismissed with prejudice as settled. Finally, 4) on October 10, the hearing file was transferred back to me.

Unfortunately, we must have this conversation once again: Pursuant to RCW 34.05.461, an administrative law judge from the Office of Administrative Hearings (OAH) has only authority to enter initial orders. This includes orders terminating proceedings. Any orders entered by OAH at all should indicate that they are only initial orders. Further, so as to prevent confusion to the parties or the public, when a settlement is reached in a case then the hearing file should simply be transmitted back to the Hearings Unit without an initial order terminating so that the only order terminating the proceeding is the final order which is entered here in the Hearings Unit. While some ALJs at OAH handle this properly, there has been inconsistency in complying with Title 34 RCW in this situation and it has been discussed with OAH in the past.

In order to prevent the extra time and confusion created in this situation in the future, I am attaching the final document in the recent Stewart Title case (D07-288) handled by OIC Attorney Charles Brown. In that matter, when a settlement was reached with Stewart Title, said Stipulation (apparently drafted by Mr. Brown) was executed by the parties and the final order terminating proceeding was set up for my signature. Upon execution of the Stipulation by the parties on September 21 and 23, 2008, OAH sent the entire hearing file back to me for review and proper execution of the final order terminating the proceeding, it being presented to me by Mr. Brown and approved for entry/notice of presentation waived by Jeffrey M. Thomas, attorney representing Stewart Title. That way, there is no confusion concerning the lack of finality of any order terminating proceeding entered by OAH.

I am returning the original unfiled Stipulation and Agreed Order Dismissing Adjudicative Proceeding and OIC Docket No. D07-0333 to Mr. Rowland and sending a copy to Mr. Gingold (and informational copies to Selwyn Walters, Deputy Chief Administrative Law Judge, Stephanie Croon Williams, Senior Administrative Law Judge, Judges Gay and Kirkendoll and to Legal Secretary, Margaret Simmons) with the request that you revise pages 3 and 4 to reflect the above procedure. Please follow the procedure in the Stewart Title case in all situations where cases are settled and the proceeding must be terminated. While it is most efficient to follow a single procedure, it is also required by RCW 34.05.461 and is necessary to avoid confusion of the parties and the public. If you have any questions, please contact Wendy Galloway of my office. Alternately, you may want to contact Selwyn Walters or Stephanie Croon Williams of OAH with whom, coincidentally, I had a discussion about this problem just this past August.

Thank you for your consideration.

Patricia D. Petersen
Chief Hearing Officer

Cc: Selwyn Walters, Deputy Chief Administrative Law Judge (w/ encl.)
Stephanie Croon Williams, Senior Administrative Law Judge (w/ encl.)
Todd Gay, Administrative Law Judge (w/ encl.)
Karena Kirkendoll, Administrative Law Judge (w/ encl.)
Encls.: Stipulation & Agreed Order, OIC Docket No. D07-0333 (United of Omaha)
Stipulation & Agreed Order, OIC Docket No., D07-288 (Stewart Title)

**BEFORE THE STATE OF WASHINGTON**
**OFFICE OF ADMINISTRATIVE HEARINGS**
**FOR THE OFFICE OF INSURANCE COMMISSIONER**

| | | |
|---|---|---|
| IN THE MATTER OF | ) | NO. D07-0333 |
| | ) | |
| | ) | STIPULATION AND AGREED |
| | ) | ORDER DISMISSING ADJUDICATIVE |
| United of Omaha Life | ) | PROCEEDING AND OIC DOCKET NO. |
| Insurance Co. & | ) | D07-0333 |
| Mutual of Omaha Insurance Co., | ) | |
| | ) | |
| | ) | |
| An Authorized Insurer. | ) | |

Pursuant to RCW 34.05.060 and WAC 10.08.230(2)(b), the Office of Insurance Commissioner ("OIC"), by and through its designated representative, Thomas Rowland, and United of Omaha Life Insurance Company & Mutual of Omaha Insurance Company ("United"), by and through its undersigned representatives and its counsel, Jeffrey Gingold, hereby stipulate and agree to resolve this matter as follows:

1. United is a life and disability insurer licensed to do business in the State of Washington. Among coverages offered by United to Washington residents are life insurance policies, including such policies insuring the lives of juveniles.

2. On or about November 9, 2007, the OIC filed a Notice of Hearing with its Hearings Unit seeking to impose a fine of $10,000 upon United for alleged failure to comply with requirements of RCW 48.23.345 by failing to develop and implement underwriting standards and procedures that were designed to detect and prevent the purchase of juvenile life insurance for speculative or fraudulent purposes.

3. On or about November 19, 2007, pursuant to RCW 48.04.010(5), United (a) denied that it violated RCW 48.23.345, and (b) requested that the matter be presided over by an administrative law judge assigned under Chapter 34.12 RCW. As such, the matter was transferred from the OIC's Hearings Unit to the Office of Administrative Hearings ("OAH") and was assigned OAH Docket No. 2007-INS-0007.

4. The parties agree to fully settle this matter as follows:

4a. United will review OIC's draft proposed Juvenile Life Insurance Rules (the, "Draft Rules") promulgated by OIC pursuant to RCW 48.23.345 and RCW 48.02.060(3) (a), develop comments, observations and suggestions that include United's concerns, suggested wording changes, substantive observations relating to the content of the draft rule, and alternatives that OIC may wish to consider. United will do

so in good faith with the intent of providing candid, helpful input to OIC for its use in refining the rule within the parameters of existing legislation.

4b. OIC understands and agrees that United's comments, observations and commitments pursuant to this Stipulation and Order are limited to United's views only and do not represent the views of any other insurer or the insurance industry. OIC and United recognize that depending upon the final form of the Draft Rules, other insurers or representatives of the insurance industry may object to or oppose the rule making.

4c. In order to facilitate candid input from United concerning the Draft Rules, OIC confirms that any juvenile life insurance rules that OIC implements will be of general application to all carriers issuing insurance covering the lives of juveniles in Washington, and such rules will not single out United. In consideration of OIC's aforementioned confirmation, United agrees that it will not challenge the juvenile life insurance rulemaking process and will not present public testimony opposing the juvenile life insurance rule.

4d. The OIC will withdraw its notice of intent to fine or otherwise impose sanctions against United and will request dismissal with prejudice of OAH Docket No. 2007-INS-0007 and the pending administrative adjudicative proceeding in OIC Matter NO. D07-0333.

4e. The parties agree that this Stipulation and agreed Order are intended to fully resolve the issues arising out of OIC's Notice of Hearing in Matter NO. D07-0333 and OAH Docket No. 2007-INS-0007, and the OIC acknowledges that this settlement resolves all alleged violations relating to the underlying matters, conduct or facts of this proceeding.

4f. The parties agree that the subjoined Order may be entered forthwith and without further notice.

Dated this 7TH day of October, 2008.

OFFICE OF INSURANCE COMMISSIONER

Thomas P. Rowland

Thomas Rowland
Staff Attorney
Legal Affairs Division

Dated this 3rd day of October, 2008.

**UNITED OF OMAHA LIFE INSURANCE COMPANY and MUTUAL OF OMAHA INSURANCE COMPANY**

By: Daniel A. Barron

Title: Assistant General Counsel

**ORDER**

This matter having come on before Administrative Law Judge Todd Gay pursuant to the foregoing Stipulation, and the Administrative Law Judge having reviewed said Stipulation and deeming himself fully advised in the premises, NOW THEREFORE,

IT IS HEREBY ORDERED as follows:

1. OAH Docket Number 2007-INS-0007 and OIC matter NO. D07-0333 are hereby closed and dismissed with prejudice as settled.

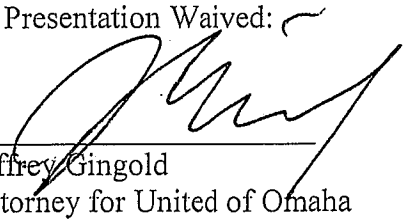
SIGNED AND ENTERED this 8th day of October, 2008.

TODD GAY
Administrative Law Judge
Office of Administrative Hearings

Presented by:

Thomas Rowland
OIC Staff Attorney

Approved for Entry/Notice
of Presentation Waived:



Jeffrey Gingold
Attorney for United of Omaha
Life Insurance Company &
Mutual of Omaha Insurance
Company

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 Charles Brown + Jeffrey Thomas
DATED this 30th day of Sept 2008 at Tumwater, Washington.
Signed: W Galloway

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

Phone: (360) 725-7000
www.insurance.wa.gov

FILED

2008 SEP 30 A 11:33

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

| | | |
|---|---|---|
| IN THE MATTER OF | ) | NO. D07-288 |
| | ) | |
| | ) | STIPULATION AND AGREED |
| | ) | ORDER DISMISSING |
| STEWART TITLE | ) | ADJUDICATIVE PROCEEDING |
| GUARANTY COMPANY, | ) | |
| | ) | |
| An Authorized Insurer. | ) | |

## STIPULATION

Pursuant to RCW 34.05.060 and WAC 10.08.230(2)(b), the Office of Insurance Commissioner ("OIC"), by and through its designated representative, Charles Brown, and Stewart Title Guaranty Company ("STG"), by and through its undersigned representatives and its counsel, Jeffrey Thomas, hereby stipulate and agree to resolve this matter as follows:

1. STG is a title insurer licensed to do business in the State of Washington. Stewart Title of Snohomish County, Inc. ("Stewart Snohomish") is a subsidiary title agent of STG.

2. In 2006, the OIC issued a report of an investigation into payments or services provided by title insurers to real estate agents and brokers as inducements for referral of title business in violation of WAC 284-30-800. The report found that illegal inducements were widespread in the title insurance industry in Washington. In November 2006, the OIC issued Technical Assistance Advisory 06-06, clarifying that title insurers may not give anything of value exceeding $25 in any twelve month period to any person as an inducement or reward for placing title insurance business.

3. In 2007, the OIC audited Stewart Snohomish's checkbook, ledger, expense account documents, and realtor continuing education expenses for the period December 1, 2006 through March 30, 2007.

4. Based on the audit, the OIC issued Order to Cease and Desist No. D07-288, and sought through this administrative hearing to impose a fine upon Stewart for violations of WAC 284-30-800. These violations primarily related to co-advertising expenditures by Stewart to realtors that OIC contends were disproportionately large in comparison to the amount of space in the advertisements allocated to Stewart and to certain transactions in which Stewart Snohomish paid money on a monthly basis to realtors to rent desks in their offices, although OIC contends these rentals lacked substance. The OIC believes that any co-advertising with realtors where the title

company's percentage share of the cost of a joint printed advertisement exceeds the percentage share of the total advertisement occupied by the title company's logo or other information specific to the title company is an illegal inducement. The OIC further believes that desk fee arrangements with realtors are illegal inducements.

5. In order to fully resolve the pending proceeding between the OIC, STG and its subsidiary title agents without further administrative or judicial proceedings and in order to avoid the costs and uncertainties of litigation, the parties agree to fully settle this matter as follows:

5a. Stewart Snohomish agrees to pay a penalty of $400,000, of which amount $250,000 is due within thirty days of the date of the entry of the subjoined Order and the remainder of which is suspended for a period of two years from the date of entry of the subjoined Order on the condition that STG and its subsidiary title agents comply with the Washington insurance code statutes and regulations governing illegal inducements and carry out the provisions of the Compliance Plan which is attached hereto and incorporated herein by reference.

5b. The parties agree that this Stipulation and Agreed Order are intended to fully resolve all issues relating to STG and its subsidiary title agents related to the OIC's Notice of Intent to Impose Civil Penalties and arising under the Washington insurance code statutes and regulations governing illegal inducements as of the date of entry of the Order.

5c. In the event the statutes or regulations change during the two-year suspension period, any future conduct by STG will be subject to the statutes or regulations then in effect.

5d. This Stipulation is for settlement purposes only, and the fact of, and any provision, finding, or conclusion contained in this Stipulation or the subjoined Order, and any action taken hereunder: (a) does not constitute and shall not be construed to constitute, or be admissible in evidence as, any admission of liability by STG, including, but not limited to any fact or legal principle in the action now pending in King County titled Sherlita Wilson v. Stewart Title Guaranty, et al., the action now pending in the United States District Court for the District of Washington titled Lubic v. Fidelity National Financial, Inc., et al. (and any cases consolidated therewith or making substantially the same allegations as are made therein), or any other lawsuit related to or based upon any allegation, fact, or legal principle involved in this action, and (b) does not, and is not intended to, determine any factual or legal issues or have any preclusive or collateral estoppel effects in regard to Wilson v. Stewart Title, Lubic v. Fidelity National (and consolidated or substantially similar cases), or any other lawsuit based upon any allegation, fact, or legal principle involved in this action.

The parties agree that the subjoined Order may be entered forthwith and without further notice.

Dated this 29th day of September, 2008.

Charles D. Brown

Charles D. Brown
OIC Staff Attorney

Dated this 23rd day of September, 2008.

Stewart Title Guaranty Company

By:

Title: Senior VP

**ORDER**

This matter having come on before the undersigned Chief Hearing Officer of the State of Washington Office of Insurance Commissioner pursuant to the foregoing Stipulation and the Chief Hearing Officer having reviewed said Stipulation and deeming herself fully advised in the premises, NOW THEREFORE,

IT IS HEREBY ORDERED as follows:

1. Stewart Title of Snohomish County, Inc. is ordered to pay a penalty amount in the amount of $400,000, $150,000 of which amount is suspended pending compliance with the statutes and regulations that are the subject of this Order for a period of two years and with the terms of the Compliance Plan which is attached hereto and incorporated herein by reference, subject to all terms and conditions in the foregoing stipulation.

2. Stewart Title Guaranty Company shall comply with the terms and conditions of the foregoing stipulation.

2. OIC Docket Number D07-288 is hereby closed and dismissed as settled.

SIGNED AND ENTERED this 30th day of September, 2008;

PATRICIA D. PETERSEN
Chief Hearing Officer
Office of Insurance Commissioner

Presented by:

Charles D. Brown
OIC Staff Attorney

Approved for Entry/Notice
of Presentation Waived:

Gordon Tilden Thomas & Cordell LLP
Jeffrey M. Thomas
Attorneys for Stewart Title
Guaranty Company

## COMPLIANCE PLAN

A. Purpose of and Consideration for the Plan

Stewart Title Guaranty Company ("STG") enters into this Compliance Plan with the Office of Insurance Commissioner ("OIC") for the State of Washington to promote compliance by STG with the requirements of the laws and regulations of the State of Washington. STG also is entering into a Stipulation and Agreed Order No. D07-288 with the OIC. This Plan is attached to the Stipulation and Agreed Order and is fully incorporated into the Agreed Order, and STG's obligations under this Compliance Plan are made a part of the Stipulation and Agreed Order and constitute obligations under the Agreed Order as though this Compliance Plan and STG's obligations under it were fully set forth in the Agreed Order. Any failure by STG to satisfy all terms of this Plan during the two-year suspension period will be grounds for imposition of the suspended portion of the fine set forth in the Agreed Order.

B. Term of Plan

The effective date of this Plan shall be the date of entry of the Agreed Order, on which date this Plan shall become final and binding. STG's obligations under this Compliance Plan shall continue from its effective date for a period of three years.

C. Compliance Plan

1. Internal Audits

a. Information to OIC: STG will conduct seven semi-annual internal audits, the first to be performed within sixty (60) days of the entry of the Stipulation and Agreed Order. Every six (6) months thereafter STG will perform similar audits. STG will provide its staff conducting the audits with the Stipulation and Agreed Order. These audits will review the expenses of STG and its Washington subsidiary agents for the six (6) months prior to each audit. The audits will be completed within sixty (60) days of their start. The results of each audit will be summarized in a report which will be provided to OIC within thirty (30) days of the completion of the audit. STG will take prompt corrective action with regard to any violations of WAC 284-30-800 discovered in the audits and will report that corrective action within thirty (30) days of providing the report to OIC. Copies of each audit report and information about corrective action shall be provided to Christine Tribe of the OIC Legal Affairs Division

b. Internal Audit Obligations:

(i) STG will audit its Washington subsidiary agents' checkbooks, ledgers, and expense account entries to determine whether there have been any violations of WAC 284-30-800.
(ii), Each audit shall review all co-advertising in the State of Washington. As set forth in the Agreed Order, STG agrees that its percentage share of the cost of a joint printed advertisement will not exceed the percentage share of the total advertisement occupied by STG's logo or other information specific to STG. STG's audits of its co-advertising in Washington will verify whether this standard is being met.
(iii) As set forth in the Agreed Order, STG agrees not to enter into arrangements with realtors in the State of Washington to rent specific desks in the realtor's office, so long as such arrangements remain a violation of the anti-inducement statute and regulation. Each audit will verify whether any such arrangements have been transacted.
(iv) Each audit will review STG's costs in providing transaction management services and the amount that STG or its Washington subsidiary agents charge for such services to verify that the transaction management services are not being provided for a price that is below STG's cost and that such services provided are being provided in conformity with the current statutes and regulations or the statutes and regulations that are in effect at the time the transaction management service is offered.

c. Correction of Exceptions: Any violation of WAC 284-30-800 or other statute or regulation identified by the audits shall be promptly corrected. STG agrees to advise the OIC within thirty (30) days of the audit report of all corrective measures taken to address any such violations or any other deficiencies requiring correction. Should STG need longer than thirty (30) days to correct any violation or deficiency, it may contact the OIC Legal Affairs Division and request an extension to the thirty (30) day requirement. The OIC will not impose the suspended portion of the penalty amount nor will it take action against STG's Certificate of Authority should STG or its agents report isolated, de minimis violations of statutes or regulations.

D. Miscellaneous

1. Authority to Enter Plan: STG gives express assurance that, under applicable laws, regulations, and where applicable, its Articles and By-Laws, it has the authority to comply fully with the terms and conditions of

this Plan, and that it will provide written notification to the other parties within ten (10) days of any material change to this authority or of any violation of this Plan.

Dated this 23rd day of September, 2008.

Stewart Title Guaranty Company

By: _____

Title: ROBERT R. OAKLAND, Its SVP