

M. GALE LEMMON #4363 *MSL*  
Assistant Attorney General  
MARK L. SHURTLEFF #4666  
Attorney General  
Attorneys for Utah Insurance Department  
160 East 300 South, Fifth Floor  
P.O. Box 14974  
Salt Lake City, UT 84114-0874  
Telephone (801) 366-0375

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH**

**COMPLAINANT:**

UTAH INSURANCE DEPARTMENT

**RESPONDENT:**

ABILITY INSURANCE COMPANY  
ATTN: DAVID CHARSKY  
1515 S 75<sup>TH</sup> ST  
OMAHA NEBRASKA 68124-1618

Utah Company Id. No.: 478

**NOTICE OF INFORMAL  
ADJUDICATIVE PROCEEDING  
AND ORDER**

Docket No.: 2011-184 HL

Enf. Case No.: 2994

---

The Utah Insurance Department has commenced this informal adjudicative proceeding pursuant to Utah Code Annotated §§ 31A-2-201 and 63G-4-201 and Utah Administrative Code Rule R590-160. Based upon information contained in agency files or known to the Commissioner, the Commissioner makes the following:

**FINDINGS OF FACT**

1. Respondent is an insurer domiciled in the State of NEBRASKA and authorized to do the business of insurance in the State of Utah, Utah Company Identification No. 478.
2. Respondent is an insurer that markets Long Term Care Insurance Policies and was required, under Utah Administrative Code Rule R590-148-25, to electronically file its

Replacement and Lapse Report, its Claims Denial Report, its Rescission Report, and its Suitability Report on or before June 30<sup>th</sup>, of each year.

3. Respondent failed to electronically file its Replacement and Lapse Report, its Claims Denial Report, its Rescission Report, and its Suitability Report on or before June 30, 2011, and said reports have not been filed as of the date of this Order.

4. Respondent failed to file their 2009, Long Term Care Reports by the due date of June 30, 2010. The fact that the Respondent has had 2 years of late reporting has resulted in an increase in the monetary forfeiture.

Having entered his Findings of Fact, the Commissioner now enters his:

**CONCLUSION OF LAW**

1. In failing to electronically file its Long Term Care Reports on or before June 30, 2011, Respondent violated Utah Admin. Code Rule R590-148-25.

2. Pursuant to Utah Code Annotated § 31A-2-308, the commissioner may impose an administrative forfeiture on an insurer of up to \$5,000.00 for each violation of the Utah Insurance Code.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commissioner now enters the following:

**ORDER**

**IT IS HEREBY ORDERED:**

1. Respondent is assessed an administrative forfeiture in the amount of \$3000.00. Said forfeiture shall be paid no later than ten (10) days after the date this Order becomes final.

2. Respondent shall file the reports not properly filed within 10 day after the date this Order becomes final.

3. This Order shall become final fifteen (15) days after the date of mailing unless a written request for a hearing is received from the Respondent in the offices of the department prior to that date. A written request for a hearing shall be signed by the person making the request and shall state the basis for the relief requested.

DATED THIS 13 day of Sept., 2011.

NEAL T. GOOCH  
INSURANCE COMMISSIONER



---

MARK KLEINFELD, J.D.  
ADMINISTRATIVE LAW JUDGE  
Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, Utah 84114  
Telephone (801) 538-3800

**NOTIFICATION**

If you request a hearing regarding this matter, the department will be represented by M. Gale Lemmon, Assistant Attorney General, 160 East 300 South, Fifth Floor, P.O. Box 140874, Salt Lake City, Utah 84114-0874, Telephone Number (801) 366-0375. Failure to request a hearing will be considered a failure to exhaust administrative remedies and will preclude any further administrative or judicial review or appeal of this matter.

You are further notified that a failure to obey an Order of the commissioner may subject you to further penalties, including forfeitures of up to \$5,000.00 per violation and the suspension or revocation of your license, and the filing of an action in District Court, which may impose forfeitures of up to \$10,000.00 per day for continued violation.

You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them.