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ATTORNEY FOR RESPONDENT

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

* * * * * * * * * *

IN THE MATTER OF:	)	
	)	Cause No. INS-2018-207
Ability Insurance Company,	)	
	)	
Respondent.	)	SETTLEMENT AGREEMENT
	)	AND ORDER
	)	
	)	
	)	Hearing Examiner: Jeff Doud
	)	
	)	

* * * * * * * * *

This Settlement Agreement and Final Order is entered into by the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), acting pursuant to the authority of Mont. Code Ann. § 2-4-603, and the Montana Insurance Code, Mont. Code Ann. § 33-1-101, et. seq., (the Code); and Ability Insurance Company (Ability).

RECITALS

WHEREAS, Ability on August 9, 2017, filed a rate increase request with the CSI on its 3358, LT690, LT692, LT694, LT695, LT696, LT698, AC597, and LT201 blocks of long-term care insurance. This filing is designated number TRIP-131004971 in the System for Electronic Rates & Forms Filing (SERFF); and Case No. INS-2018-207.

WHEREAS, On August 24, 2017, the CSI informed Ability that the company did not qualify for a premium rate increase under the CSI's methodology

WHEREAS, On March 15, 2018, the CSI updated Ability's SERFF filing with an objection letter. The objection letter stated that upon re-review, Ability's request still did not qualify for a premium rate increase, and the Commissioner declined to depart from its established methodology.

WHEREAS, Ability contends CSI's methodology as applied to Ability's rate increase request was not properly promulgated by CSI and not enforceable; and that Ability has met all promulgated regulations that apply to Ability's rate increase request.

WHEREAS, CSI contends that it has consistently used the methodology to evaluate long term care rate increase requests, that its methodology is valid and enforceable, and that the denial was proper.

WHEREAS, The CSI received a request for a hearing on this determination dated March 23, 2018.

WHEREAS, On May 1,2018 the Commissioner of Securities and Insurance, Matthew M. Rosendale, granted Ability's request for a hearing. Jeff Doud was appointed the Hearings Examiner for this case.

WHEREAS, CSI and Ability have met and negotiated a resolution to this dispute and

wish to put the terms of the resolution into this Settlement Agreement, as a complete and final resolution of all issues in this case.

NOW, THEREFORE, in consideration of the mutual undertakings established herein, the CSI and the Respondent enter into the following:

STIPULATIONS

Without admitting or denying any of the each other's allegations, CSI and Ability stipulate and agree to the following:

1. CSI will accept a premium increase on Ability Insurance Company's long-term care insurance forms 3358, LT690, LT692, LT694, LT695, LT696, LT698, AC597, and LT201, as described and limited herein. The allowed amount will be premium increase of thirty-eight percent (38%) in aggregate for policies with a lifetime benefit period; and a five percent (5%) aggregate premium increase for policies with a limited benefit period. The rate increase can be applied evenly to all issue ages by lifetime or limited benefit; or variations by issue age and inflation option are acceptable only if: (a) they are actuarially justified; and (b) no single-issue age in a given subgroup receives a rate increase that is greater than 80% of each individual policyholder's current in force premium. The aggregate premium increases will be based upon the year-end 2016 in force policy distribution, which is found in the current filing.

2. Ability must demonstrate how the revised rate increase complies with both the aggregate and individual limits described in paragraph 1.

3. The compliance filing process with CSI, by which Ability applies for the agreed upon rate increases is as follows: (1) Submit an Excel file demonstrating compliance with paragraphs 1 and 2, via email to aperez.mt.gov, (2) submit an amendment in SERFF with a revised Actuarial Memorandum reflecting the agreed upon increases, (3) submit updated rate

tables in PDF and Excel with the current and agreed upon increases, and (4) submit a post submission update revising the applicable fields in the rate/rule schedule tab.

4. Ability will be free to file requesting future rate increases in Montana under existing state rules and regulations.

5. This matter will be dismissed with prejudice by the parties after CSI's final approval of Ability's rate increase compliance filing as outlined in this Agreement.

6. Both parties acknowledge that they have read and understand each term of this Settlement Agreement and enter into this Settlement Agreement voluntarily and without reservation.

7. The parties stipulate and agree that this Settlement Agreement resolves this matter. No other issue has been analyzed, or is addressed or resolved in this Agreement, other than Ability's rate requests described herein.

8. In settling this matter the parties agree that this Agreement does not constitute any agreement with or concession with respect to any particular methodology for determining premium levels or increases. This Agreement is a compromise. Both parties agree that the compromised resolution herein and any methodology to arrive at this resolution cannot be cited or used as precedent in any other proceeding. The terms and premium increases herein are not to be used for any other purpose, other than setting the new premium levels in this case, as provided herein.

9. Ability and the CSI hereby acknowledge and agree that this Settlement Agreement constitutes the entire agreement between the parties and that no other promises or agreements, either express or implied, have been made by the CSI or by any member, officer, agent, or representative of the CSI to induce Ability to enter into this Settlement Agreement.

10. The parties specifically and affirmatively waive a contested case hearing, their right to appeal, and elect to resolve this matter on the terms and conditions set forth herein.

11. The parties fully and forever release and discharge each other and each other's employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of this administrative action.

12. Nothing in this Settlement Agreement may be construed as creating or limiting a private or separate cause of action.

13. The parties acknowledge and agree that this Settlement Agreement may not be modified orally, and any subsequent modifications to this Settlement Agreement must be mutually agreed upon by both parties, and signed in writing to be effective.

14. The CSI and Ability agree that this Settlement Agreement shall be incorporated into and made a part of the attached Final Order issued by the Commissioner herein.

15. This Settlement Agreement shall be effective upon signing of the Final Order.

DATED this 24 day of May 2019.

IVAN C EVILSIZER
Attorney for the CSI

DATED this 24 day of May 2019.

By: _____

Bruce M. Spencer
Attorney for Ability Insurance Company
LAW OFFICES OF BRUCE M. SPENCER, PLLC

FINAL ORDER

Pursuant to the authority vested by Mont. Code Ann. § 2-4-603, and the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, and upon review of the foregoing Settlement Agreement and good cause appearing,

IT IS ORDERED that the foregoing Settlement Agreement between the Department and the Respondent is hereby adopted as if set forth fully herein.

DATED this 24 day of May 2019.

MATTHEW M. ROSENDALE
Commissioner of Securities and Insurance

cc: Chuck Evilsizer, CSI
Bruce Spencer, Attorney for Ability

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of May 2019, I served a true and accurate copy of the Settlement Agreement and Order, by email to the following:

Bruce M. Spencer
bruce@brucespencerlaw.com

Jeff Doud
JDoud@mt.gov

Ramona Bidon

RAMONA BIDON
Legal Secretary