

**STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE DIVISION**

In the Matter of **Robert E. Abel**

) **AMENDED**  
) **STIPULATION** and  
) **FINAL ORDER**  
) Case No. INS 09-11-007

The stipulation and final order dated 1/27/10 is amended to read as follows:

**STIPULATION**

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against Robert E. Abel (Abel).

Abel desires to conclude this proceeding without a hearing by entering into this stipulation pursuant to ORS 183.417(3).

Abel waives all rights relative to notice, an administrative hearing, and judicial review thereof.

Abel stipulates to the following facts, conclusions, action, and to the issuance of a final order incorporating this stipulation.

Abel understands that the stipulation and final order is a public record and shall be posted permanently on the Insurance Division's website.

**Facts and Conclusions**

Licensing Information

Abel has been licensed in Oregon as a resident individual insurance producer since 5/23/89. Abel's license number is 115324, and NAIC national producer number is 34557. Abel's license is scheduled to expire on 10/31/13. Abel's last recorded residence and business address is 41009 Highway 62, Prospect, OR 97536-8905; telephone number is 541-890-3490; and e-mail is [abelblazer@aol.com](mailto:abelblazer@aol.com).

Made Unsuitable Recommendation in Life Insurance Transaction

Abel is subject to enforcement action pursuant to OAR 836-080-0090 because of the following circumstances.

OAR 836-080-0090 prohibits a person from recommending that another person purchase or replace a life insurance policy or annuity, or any rider, endorsement or amendment to the policy or annuity, without having reasonable grounds to believe that the transaction is not unsuitable for the other person based upon a reasonable inquiry concerning the other person's insurance objectives, financial situation and needs, age and other relevant information known by the person.

#### Johnson Transaction

On or about 11/10/05, Abel recommended that Florence E. Johnson (Johnson), then age 78, of Grants Pass, Oregon, terminate all of her mutual funds administered by Pioneer Funds Distributor, Inc. (Pioneer Funds) and deposit \$46,413.09 therefrom into a fixed annuity to be issued by Bankers Life and Casualty Company (Bankers Life). Abel did not have reasonable grounds to believe that the annuity was not unsuitable for Johnson because Abel knew or should have known that (1) the \$46,413.09 to be deposited into the Bankers Life annuity was approximately 100 percent of Johnson's liquid net worth, (2) Johnson was earning an average of about 5.22 percent from March 1997 to November 2005, but the Bankers Life annuity promised to pay 5.75 percent interest for the first year and 2.5 percent for the next nine years for an effective annual interest rate of only 2.82 percent for ten years, (3) Johnson received only approximately \$1,080.00 of income per month but her monthly income paid only for her monthly expenses but not for her other expenses such as her annual property taxes, and also did not know the sources of the income, and the type and amount of monthly expenses, (4) Johnson was withdrawing money from her mutual funds to pay her annual property taxes, and her average annual withdrawals from March 1997 to November 2005 were about \$4,000.00, (4) the mutual funds were not subject to any withdrawal or termination penalties but the Bankers Life annuity was subject to surrender penalties for the first ten years, (6) Johnson had unlimited access to her funds in the mutual funds but would not have unlimited access to her funds in the Bankers Life annuity for ten years, and (7) Johnson was 78 years old and had a life expectancy of about 10.5 years but the Bankers Life annuity had a surrender period of ten years and did not mature for ten years. On 11/5/05, Johnson applied for the Bankers Life annuity. On

11/10/05, Johnson terminated the mutual funds and transferred the funds to Bankers Life. On 11/23/05, Bankers Life issued to Johnson the annuity, number 7830575.

#### Clark Transaction

On or about 12/5/05, Abel recommended to Betty L. Clark (Clark), then age 76, of Grants Pass, Oregon, that she terminate an account invested in a combination of certificates of deposit, bonds, and stocks, all managed by Smith Barney, a division of Citigroup Global Markets, Inc. (Smith Barney), and deposit \$496,411.46 therefrom into an annuity to be issued by Bankers Life. On 12/27/05, Clark deposited an additional \$252.50 into the annuity, for a total of \$496,663.96. Abel did not have reasonable grounds to believe that the annuity was not unsuitable for Clark because (1) Abel either knew or should have known that the \$496,411.46 to be deposited was all or substantially all of Clark's liquid assets, (2) Abel knew that Clark's monthly income was about from \$1,500 to \$2,000, and had only about \$200 to \$400 each month in discretionary monthly income, (3) Abel knew or should have known that Clark was earning an average of about 6.08 percent annually for the previous six years on her investments managed by Smith Barney, but that the annuity promised to pay only 5.75 percent for the first year, 2.5 percent for the next nine years, for an effective annual interest rate of 2.82 percent for ten years, and 3 percent thereafter, (4) Abel knew that Clark might pay taxes and fees for terminating her investments but did not know the amount, or a reliable estimate of the amount, of such taxes and fees and thus did not know whether Clark would recoup such expenses from the earnings of the Bankers Life annuity, (5) Abel knew or should have known that Clark was 76 years old at the time of the transaction and Clark had a life expectancy of about 12 years, but the annuity had a surrender period of nine years and would not mature for 10 years, and (6) Abel did not know that Clark had impaired and possibly declining health and thus did not know whether Clark might have increasing living or medical expenses or a shorter than normal life expectancy. Clark relied on Abel's recommendation, applied for the Bankers Life annuity, and terminated her investments managed by Smith Barney. On 12/19/05, Bankers Life issued to Clark the annuity, number 7832210. As a result of terminating her investments managed by Smith Barney, Clark paid \$6,353.63 in commissions, \$14.94 in "SEC charges," \$120.00 in "transaction fees," \$50.00 for a

“Medallion Signature Guarantee” account at US Bank, and \$3,370.00 in income taxes, for a total of \$9,908.57. On or about 11/9/06, the Insurance Division received from James R. Dole, an attorney, on behalf of Clark, a complaint dated 11/7/06 about Abel. On or about 11/16/06, the Insurance Division contacted Bankers Life about the complaint. On or about 11/29/06, Abel sent a letter to the Insurance Division responding to the allegations made in the complaint. On or about 5/23/07, the Insurance Division sent a letter to Bankers Life requesting Bankers Life rescind the annuity. On or about 6/21/07, Bankers Life rescinded the annuity. On or about 6/22/07 and 9/11/07, Bankers Life refunded the money Clark paid to Bankers Life. On or about 6/22/07, Bankers Life reimbursed Clark for the expenses she paid to terminate her investments. On or about 9/11/07, Bankers Life reimbursed Clark for the expenses she paid to repurchase her investments.

#### Davis Transaction

On or about 4/11/06, Abel recommended that Donald D. Davis, then age 82, and Carolyn R. Davis, then age 80, (collectively Davis) of Medford, Oregon, terminate a fixed annuity issued by Transamerica Life Insurance Company (Transamerica Life) and deposit \$222,049.28 therefrom into a fixed annuity to be issued by Bankers Life. Abel did not have reasonable grounds to believe that the annuity was not unsuitable for Davis because Abel knew or should have known that (1) the \$222,049.28 to be deposited into the Bankers Life annuity was approximately 100 percent of Davis’ liquid net worth, (2) the Transamerica Life annuity promised to pay 3 percent interest for the first year but was actually paying from 3.25 to 5.65 percent and an average of approximately 5 percent, but the Bankers Life annuity promised to pay 6 percent interest for the first year and 2.5 percent for the next nine years for an effective annual interest rate of only 2.9 percent for ten years, (3) the Transamerica Life annuity was not subject to surrender penalties but the Bankers Life annuity was subject to surrender penalties for the first ten years, (4) Davis had unlimited access to his funds in the Transamerica Life annuity but would not have unlimited access to his funds in the Bankers Life annuity for ten years, and (5) Donald Davis and Carolyn Davis were 82 and 80 years old respectively and had a life expectancy of about 6.7 years and 9.16 years respectively but the Bankers Life annuity had a surrender period of ten years and did not mature for

ten years. On 4/11/06, Davis applied for the Bankers Life annuity. On 5/8/06, Davis terminated the Transamerica Life annuity and transferred the funds to Bankers Life. On 5/15/06, Bankers Life issued to Davis the annuity, number 7842783.

#### LeMoine Transaction

On or about 7/2/07, Abel recommended that Pierre M. LeMoine then age 83 and Juanita M. LeMoine, then age 79, (collectively LeMoine) of Klamath Falls, Oregon, terminate or not renew a certificate of deposit and deposit \$51,912.83 therefrom into a fixed annuity to be issued by Bankers Life. Abel did not have reasonable grounds to believe that the annuity was not unsuitable for LeMoine because (1) Abel knew or should have known that the \$51,912.83 to be deposited into the Bankers Life annuity was from the sale of their residence and was approximately 97 percent of LeMoine's liquid net worth of \$53,695.98, (2) Abel knew that LeMoine had only approximately \$1,800 in savings and did not know that LeMoine did not have any additional liquid assets, (3) Abel knew that LeMoine received only approximately \$2,000 of income per month but did not know the sources of the income and the type and amount of monthly expenses, (4) LeMoine had impaired health which may increase their living and medical expenses or shorten their normal life expectancy, and (5) Pierre LeMoine and Juanita LeMoine were 84 and 79 years old respectively and had a life expectancy of about 6 and 9.7 years respectively but the Bankers Life annuity had a surrender period of ten years and did not mature for ten years. LeMoine terminated or did not renew the certificate of deposit. On 7/2/07, LeMoine applied for the Bankers Life annuity. On 7/13/07, Bankers Life issued to LeMoine the annuity, number 7870517.

#### **Action**

Pursuant to ORS 744.074(1), Abel's Oregon resident individual insurance producer license is suspended for 30 days. Pursuant to the original stipulation and final order dated 1/27/10, Abel's license was suspended for 30 days from 2/1/10 to 3/2/10. Thus, Abel's license shall not be further suspended.

Pursuant to ORS 731.988(1), Abel is assessed a civil penalty of \$3,000.00. The payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. The payment shall be delivered or mailed to the Insurance Division at the Labor and Industries Building, 350 Winter

Street NE Room 300, Salem, OR 97301-3880; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. The payment shall be received by the Insurance Division before the date of the final order.

Except for the matters discussed herein, the director does not have any pending or anticipated investigations or actions against Abel related to his license or to the sales of annuities or insurance products as of the date of the final order. Therefore, the director shall not take additional enforcement action against Abel for violating the former annuity suitability rule, OAR 836-080-0090, or the current annuity suitability rule, OAR 836-080-0180, before the date of the final order. However, the director shall revoke Abel's license if Abel violates OAR 836-080-0180 on or after the date of the final order.

Dated March 29, 2013

/s/ Robert E. Abel  
Robert E. Abel

### **FINAL ORDER**

The director incorporates herein the above stipulation, adopts it as the director's final decision in this proceeding, and orders that the action stated therein be taken.

Dated April 12, 2013

/s/ Louis Savage  
Louis Savage  
Insurance Commissioner

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