

SEP 10 1997

DEPT. OF INSURANCE  
BY ED

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

In the Matter of the Withdrawal of:	)	Docket No. 97A-122-INS
	)	
MOTORIST LIFE INSURANCE COMPANY	)	<b>ORDER</b>
(NAIC No. 62960),	)	
	)	
Petitioner.	)	
	)	

On September 5, 1997, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:

1. The recommended findings of fact and conclusions of law are adopted.
2. The Petitioner may file its Articles of Dissolution with the Arizona Corporation Commission.
3. The Petitioner is entitled to the release of its statutory deposit in the sum of \$100,000.00 and that the statutory deposit will be released to the Petitioner after the Department has received the following: (a) payment of \$46.58 to the Insurance Examiners' Revolving Fund ("IERF") and \$715.00 to the Department as a penalty for the late payment of Petitioner's certificate of authority renewal fee; (b) a copy of Petitioner's Articles of Dissolution certified as filed by the Arizona Corporation Commission; and (c) a fully executed Form E126 (Notice of Trust Deposit Release). The statutory

1 deposit will not be released until the Department receives a fully executed copy of the official State  
2 Treasurer Release Receipt.

3 4. The sum of \$100.00 previously credited to the IERF will be refunded to the  
4 Petitioner, pursuant to A.R.S. § 20-159.

5 5. The Petitioner will file its 1997 Annual Statement with the Department, together  
6 with all applicable fees, unless Petitioner files its Articles of Dissolution with the Arizona Corporation  
7 Commission on or before December 31, 1997.

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9 NOTIFICATION OF RIGHTS

10 The aggrieved party may request a rehearing with respect to this Order by filing a written  
11 petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth  
12 the basis for such relief pursuant to A.A.C. R20-6-114(B).

13 The final decision of the Director may be appealed to the Superior Court of Maricopa  
14 County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of  
15 Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal,  
16 pursuant to A.R.S. §41-1092.10.

17 DATED this 9 day of September, 1997

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20   
21 John A. Greene  
22 Director of Insurance  
23

1 A copy of the foregoing mailed  
this 10<sup>th</sup> day of September, 1997

2 Charles R. Cohen, Deputy Director  
3 Mary Butterfield, Assistant Director  
4 Catherine O'Neil, Assistant Director  
5 Gary Torticill, Assistant Director  
6 Deloris Williamson, Assistant Director  
7 Scott Greenberg, Business Administrator  
8 Department of Insurance  
9 2910 N. 44th Street, Suite 210  
10 Phoenix, AZ 85018

11 Office of Administrative Hearings  
12 1700 W. Washington, Suite 602  
13 Phoenix, AZ 85007

14 Thomas E. Haney  
15 1421 E. Thomas Road  
16 Phoenix, AZ 85014

17 *Esther Davis*

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1  
2 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

3  
4 In the Matter of the Withdrawal of  
5 **MOTORIST LIFE INSURANCE**  
6 **COMPANY** (NAIC No. 62960),  
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Petitioner.

97A-122-INS

**RECOMMENDED DECISION  
OF ADMINISTRATIVE  
LAW JUDGE**

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**HEARING:** August 26, 1997

**APPEARANCES:** Thomas E. Haney, Esq. On behalf of the Petitioner; Assistant Attorney General W. Mark Sendrow on behalf of the Arizona Department of Insurance

**ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

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On August 26, 1997, a hearing took place to consider the application of Motorist Life Insurance Company (the "Petitioner"), that was filed with the Arizona Department of Insurance (the "Department") to withdraw from the insurance business and for the release of its statutory deposit pursuant to A.R.S. §20-588 and A.A.C. R20-6-303.

Based upon the entire record in this matter, the following Recommended Findings of Fact, Conclusions of Law and Recommended Order are made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Petitioner has surrendered its Certificate of Authority to the Department.
2. The Petitioner has filed with the Department certified copies of Resolutions of the Petitioner's Board of Directors and of the Petitioner's shareholder(s) authorizing Petitioner to withdraw from the insurance business by dissolution.
3. The Petitioner has no insurance obligations owing to it, whether by policies written direct or by reinsurance ceded to it.
4. The Petitioner has filed its certified financial statement as of December 31, 1996 with the Department.

1           5.    At least 10 business days before the hearing of this matter, Petitioner gave  
2 special notice to creditors and policyholders of the Petitioner, setting forth the date,  
3 place, nature and purpose of the hearing, as evidenced by an affidavit of publication.  
4 Petitioner also provided individual notice by mail to its known creditors, as evidenced by  
5 an affidavit.

6           6.    The Petitioner has a \$100,000.00 statutory deposit with the Department  
7 and a \$100.00 deposit with the Insurance Examiners' Revolving Fund ("IERF").

8           7.    The Petitioner has complied with the provisions of A.R.S. §20-588 and with  
9 A.A.C. R20-6-303, relating to the release of its \$100,000.00 statutory deposit.

10          8.    The parties stipulated to amend the Notice of Hearing so as to include as  
11 an issue at this hearing, Petitioner's appeal of the Department's assessment upon the  
12 Petitioner of a penalty for Petitioner's late payment of its certificate of authority renewal  
13 fee. It is undisputed that Petitioner's certificate of authority renewal fee was due on  
14 March 31, 1997 and that Petitioner paid the Department that fee on August 25, 1997.

15          9.    Petitioner's counsel contested the Department's assessment of a \$10.00  
16 per day penalty. Petitioner asserted that it that did not pay the renewal fee because it  
17 intended to withdraw from the business of insurance and did not think it needed to pay  
18 such fee. However, Petitioner's counsel represented that Petitioner had received  
19 advice from counsel to pay that fee. In support of its position, Petitioner maintained that  
20 it is a small insurance company and that, under the circumstances, no penalty should  
21 be assessed against the Petitioner.

22          10.   The Department asserted that the Director has discretion in assessing  
23 penalties up to \$25.00 per day for late filing of certificate of renewal fees.

24          11.   Kurt Regner, an examiner who works for the Department, credibly testified  
25 that the Department maintains an internal written policy for assessing penalties against  
26 insurance companies though he has never seen that written policy statement. The  
27 policy provides for first time late filings or payments, a \$10.00 per day penalty is  
28 assessed against insurance companies. A second occurrence results in a \$15.00 per  
29 day penalty and a third time occurrence results in a \$25.00 per day penalty.

30          12.   It is determined that Petitioner intentionally did not pay its certificate of  
authority renewal fee timely as required and that the Department was justified in  
assessing a penalty upon Petitioner. However, it is determined that , under the  
circumstances, a penalty of \$5.00 per day for each day the renewal fee was not paid is

1 more reasonable and appropriate. Therefore, it is determined that Petitioner currently  
2 owes the Department the sum of \$715.00 as a penalty for Petitioner's late payment of  
3 its certificate of authority renewal fee.

4 13. Petitioner currently owes \$46.58 to the IERF.

5 **RECOMMENDED ORDER**

6 The undersigned Administrative Law Judge recommends that:

7 1. The Petitioner may file its Articles of Dissolution with the Arizona  
8 Corporation Commission.

9 2. The Petitioner is entitled to the release of its statutory deposit in the sum of  
10 \$100,000.00 and that the statutory deposit shall be released to the Petitioner  
11 after the Department has received the following:; (a) payment of \$46.58 to the IERF and  
12 \$715.00 to the Department as a penalty for the late payment of Petitioner's certificate of  
13 authority renewal fee; (b) a copy of Petitioner's Articles of Dissolution certified as filed  
14 by the Arizona Corporation Commission; and (c) a fully executed Form E126 (Notice of  
15 Trust Deposit Release). The statutory deposit cannot be released until the Department  
16 receives a fully executed copy of the official State Treasurer Release Receipt.

17 3. The sum of \$100.00 previously credited to the IERF be refunded to the  
18 Petitioner, pursuant to A.R.S. §20-159.

19 4. The Petitioner file its 1997 Annual Statement with the Department, together  
20 with all applicable fees, unless Petitioner files its Article of Dissolution with the Arizona  
21 Corporation Commission on or before December 31, 1997.

22 Done this day, September 5, 1997.

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24 Lewis D. Kowal  
25 Administrative Law Judge  
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Original transmitted by mail this  
8 day of September, 1997, to:

Mr. John A. Greene, Director  
Department of Insurance  
2910 North 44th Street, #210  
ATTN: Curvey Burton  
Phoenix, AZ 85018-7256

By Chris Crawford Thomison