

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17 th Street, Suite 1300, Denver, Colorado 80202	▲ COURT USE ONLY ▲
THE COLORADO DIVISION OF INSURANCE, Petitioner, vs. Neptune Management Corporation, d/b/a The Neptune Society, license number 26011, Respondent.	
NOTICE TO SET, NOTICE OF DUTY TO ANSWER, NOTICE OF HEARING, NOTICE OF CHARGES AND OPTION TO ENGAGE IN ALTERNATIVE DISPUTE RESOLUTION	

TO: Neptune Management Corporation, d/b/a/ The Neptune Society
 c/o National Corporation Research, Ltd.
 12649 West Warren Avenue
 Lakewood, Colorado 80228
 Neptune Management Corporation, d/b/a The Neptune Society
 5400 Ward Road, Building II, Suite 101
 Arvada, Colorado 80002

NOTICE TO SET

YOU ARE HEREBY NOTIFIED that the undersigned attorney, or a representative for the Colorado Division of Insurance ("Division") will appear at **1:30 P.M. on Friday, October 24, 2008**, at the Colorado Office of Administrative Courts, 633 Seventeenth Street, Suite 1300, Denver, Colorado, 80202, in order to set a date, time and location for a hearing regarding the following Notice of Hearing and Notice of Charges. You may be present in person or by counsel or you may make prior arrangements to be reached by telephone at the time and date specified above by contacting the Office of Administrative Courts at (303) 866-2000 **prior** to the time and date indicated above.

NOTICE OF DUTY TO ANSWER

YOU ARE HEREBY NOTIFIED that pursuant to § 24-4-105(2)(b), C.R.S., you are required to file a written answer to the Notice of Charges set forth below with the Colorado Office of Administrative Courts, 633 Seventeenth Street, Suite 1300, Denver, Colorado,

80202, within **thirty (30) days** after the mailing date of this Notice to Set, Notice of Duty to Answer, Notice of Hearing, Notice of Charges, and Option to Engage in Alternative Dispute Resolution (“Notice of Charges”). You must also mail a copy of such answer to the Division’s attorney of record in this matter: Tanya T. Light, Assistant Attorney General, 1525 Sherman Street, Denver, Colorado 80203, within the same thirty (30) day period.

If you fail to file your written answer within 30 days as set forth above, an order entering a default decision may be issued against your Colorado preneed funeral contract seller license. Such a default decision may grant the relief requested in the Notice of Charges, or such other relief or penalties that may be provided for by law, or both.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that pursuant to §§ 24-4-104 and 24-4-105, C.R.S., a hearing will be held before an authorized administrative law judge at a date, time, and location to be determined at the preceding Notice to Set. Such hearing will be conducted for the purpose of determining whether Neptune Management Corporation, d/b/a/ The Neptune Society (“Neptune”) should be subjected to lawful discipline pursuant to § 10-15-101 et seq., as more fully described in the Notice of Charges below.

YOU ARE FURTHER HEREBY NOTIFIED that the relevant portions of the statutes that the Division alleges you have violated are set forth below:

10-15-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) ‘Broker’ means any contract seller who must utilize the services of a general provider to fulfill the terms of a preneed contract.

(9) ‘General provider’ means a person who engages, on a contract basis, in the usual business of providing the merchandise and performing the services, at time of need, for the final disposition of a deceased human body, and does not include subcontractors of a general provider.

(13)(b) A contract for merchandise whereby the buyer takes physical possession of the merchandise at the time of entering into the contract shall not be included in the definition of preneed contract.

10-15-103. License procedure – records – examinations of records.

(2) Upon receipt of a complete initial application and license fee, the commissioner shall issue a license to the applicant unless the commissioner determines that:

(e) The applicant has not filed a preneed contract, general provider contract, or trust agreement and assignment form, where applicable, which comply with the provisions of this article. (emphasis added).

10-15-105. Contract requirements – refund – full performance.

(1)(d) If the contract seller is a broker, or if the preneed contract requires any services to be performed or merchandise to be provided by a general provider other than the contract seller, the contract seller shall furnish the contract buyer with a copy of the agreement or a certificate evidencing an agreement between the contract seller and such general provider whereby the general provider or the heirs, assigns, or duly authorized representatives of such general provider are obligated to perform the services or provide the merchandise as stated in the preneed contract. Such agreement or certificate shall state that the general provider shall perform the contract services and provide the merchandise specified in the agreement between the contract seller and general provider, under any fully paid preneed contract, without recourse against the contract buyer or his or her heirs, assigns, or duly authorized representatives for any funds due from the contract seller. Each such agreement or certificate evidencing each agreement shall be filed with the commissioner. As an alternative to having a separate agreement with a general provider, the preneed contract shall contain a signature and statement of guarantee by the general provider or an authorized agent of said general provider to provide the merchandise and services as agreed in the preneed contract. (Emphasis added).

(6) No contract seller shall condition a preneed contract upon the purchase of any other item or contract unless such preneed contracts, other contracts, and any other item can be independently purchased at the same stated price.

10-15-107. Deposit of funds with trustee.

(1) If a contract seller enters into a preneed contract in which the consideration is funds, the contract seller shall deposit not less than seventy-five percent of the total preneed contract price with a trustee. The contract seller shall deposit all funds in excess of twenty-five percent of the total preneed contract price with a trustee within forty-five days after receipt thereof. All funds deposited with a trustee shall be deposited under the terms of a trust instrument, which shall not be inconsistent or in conflict with the provisions of this article and shall be held in trust by the trustee pursuant to the provisions of this article.

Copies of all trust instruments and amendments to such trust instruments shall be filed with the commissioner.

10-15-114. Investigations – actions against licensees.

(1) The commissioner may impose an administrative fine not to exceed one thousand dollars for each separate offense; may issue a letter of admonition; may place a contract seller on probation under the commissioner's close supervision on such terms and for such time as the commissioner deems appropriate; and may refuse to renew, may revoke or may suspend the license of any contract seller if, after investigation and after notice and a hearing pursuant to the provision of section 24-4-104, C.R.S., the commissioner determines that the contract seller has:

(a) Failed to comply with or has violated any provision of this article or any regulation or order lawfully made pursuant to and within the authority of this article; or

(e) Committed any act that constitutes a violation of the 'Colorado Consumer Protection Act', article 1 of title 6, C.R.S.; or

6-1-105. Deceptive trade practices.

(1) A person engages in deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith.

(g) Represents that goods, food, services, or property are of standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;

(i) Advertises goods, services, or property with intent not to sell them as advertised;

(n) Employs 'bait and switch' advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised or on terms other than those advertised and which is also accompanied by one or more of the following practices:

(III) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised goods, property, or services.

(u) Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.

YOU ARE FURTHER HEREBY NOTIFIED that at the hearing on this matter, you will have the right to appear in person and/or by legal counsel, to present evidence on your behalf, to cross-examine any witnesses presented by the Division, and to rebut any evidence presented by the Division. You may also have subpoenas issued on your behalf upon request to the Administrative Law Judge.

NOTICE OF CHARGES

Parties and Jurisdiction

1. At all times relevant to the events described herein, Neptune was licensed in Colorado to sell preneed funeral contracts pursuant to §§ 10-15-101 et seq., C.R.S. Neptune's license was first issued on December 12, 2001, license number 26011.

2. The Division is an agency of the State of Colorado, duly authorized and acting pursuant to law. § 10-1-103(1), C.R.S.

3. The Colorado Commissioner of Insurance ("Commissioner") has been authorized to supervise the business of preneed funeral contracts in Colorado to assure that it is conducted in accordance with the laws of this state and in such a manner as to protect policyholders and the general public. § 10-15-103(1)(a), C.R.S.

4. Neptune's license allowed it to transact the business of selling preneed funeral contracts in Colorado subject to the applicable Division rules adopted by the Commissioner, and other relevant laws, rules and orders.

Factual Background

5. The Division re-alleges paragraphs 1 through 4 above as though fully set forth herein.

6. On April 30, 2008, the Division received a citizen complaint concerning Neptune's business practices. The Division received a second complaint on July 7, 2008 from an individual who had purchased a preneed contract from Neptune and subsequently requested a refund. Division investigators spent the spring and summer of 2008 investigating the complaints. The outcome of the investigation resulted in the charges below.

7. Neptune sells cremation services throughout the country and markets its services primarily through direct mailings of brochures, price lists and other information highlighting its low cost. As part of its sales efforts, Neptune provides a "General Price List" to potential customers.

8. A September 4, 2007 General Price List, which is the most recent price list Neptune provided the Division, gives purchasers three options. The purchaser can choose Direct Cremation Services ("Direct Cremation Services") for a total cost of either \$2,220.00 or \$2,315.00. The \$2,220.00 amount is charged when a purchaser provides his or her own urn, while \$2,315.00 represents the cost of using an "alternative container" provided by Neptune.

9. The second option is the Direct Cremation Package (the "Package") which costs \$1,389.00. The Package includes all of the services provided in the Direct Cremation Services choice. The General Price List states that if the items included in the Package were purchased separately, they would total \$2,315.00 – the exact cost of the Direct Cremation Services.

10. The third option appears to be a customized selection of individual items and services. The General Price List lists 18 items or services and their cost under a heading of "Itemized Selections." The total cost of the itemized selections is approximately \$4,000.00.

11. When a customer purchases the Package, he or she is required to sign two contracts: the "Retail Merchandise Contract" and the "Agreement for Pre-Arranged Funeral Merchandise and Services" contract. Neptune's advertising materials and the General Price List do not inform the customer that he or she will be required to sign two separate contracts in order to purchase the Package.

12. The Retail Merchandise Contract is purportedly for merchandise and services that Neptune provides to the customer upon purchase of the Package: a Neptune cremation urn, a Neptune Society Information Book, a Registration Packet Portfolio, and administrative services related to the initial data entry and setting up of a permanent file in Neptune's Membership databank, as well as legal, accounting and record delivery fees. These items will be referred to hereinafter as the "Upfront Merchandise."

13. Purchasers of the Package are provided a notice along with the Retail Merchandise Contract whereby they must acknowledge in writing they have read the following disclosure:

In the event you wish to cancel the pre-need cremation portion of the contract (and you have paid for the merchandise in full), you are entitled to keep such merchandise that has been delivered and retained or controlled by you, however, be advised that the money used to pay for the merchandise that has been delivered to you will not be refunded to you and is not being placed in trust.

14. The second contract, "The Agreement for Pre-Arranged Funeral Merchandise and Services Contract," is apparently for the services provided at the time of death:

the basic services of the funeral director and staff, transfer of the body from the place of death within the Denver Metropolitan area 'Service Area' to refrigerated holding facility and to crematory facility, minimum preparation of the deceased with a positive identification system, filing of death certificate and necessary permits, assistance with filing for benefits through Social Security and the Veteran's Administration (if needed), fiberboard cremation receptacle, the actual process of cremation, return of the cremated remains to the family.

15. During its investigation, the Division asked Neptune what percentage of the preneed contracts purchased in Colorado were for the Package versus Direct Cremation Service. Neptune's counsel stated that 100% of Neptune's approximately 5,000 Colorado preneed contract customers chose the Package.

16. The Division examined a random sample of 50 of Neptune's Colorado preneed contracts (which consisted of both the Retail Merchandise Contract and the Agreement for Pre-Arranged Funeral Merchandise and Services Contract). All of the contracts charged over half of the total Package price – approximately 55% to 60% - for the cost of the Upfront Merchandise. The remaining 40% to 45% was supposedly used for future cremation services.

17. For example, one of the contract purchasers, Ms. Helen Stiles, paid a total Package price of \$1,333.08. Of that amount, \$723.08, or 55% of the Package price, was charged for the Upfront Merchandise, and \$610.00, or 45% of the Package price, was charged for future cremation services.

18. According to funeral industry insiders, Neptune's approximate cost for the Upfront Merchandise totals no more than about \$50.00. On average Neptune charges over \$700.00 for the Upfront Merchandise. Upon information and belief, the urn itself costs less than \$13.00, yet Neptune charges \$349.00 for each urn.

19. By statute Neptune is required to place 75% of funds used to pay for preneed contracts in a trust fund. Exempt from the definition of "preneed contract" is merchandise that the buyer takes physical possession of at the time of entering into the preneed contract. Therefore, Neptune does not place any of the funds received for the Upfront Merchandise into a trust account, nor does it refund any of the funds for Upfront Merchandise when a customer cancels a preneed contract.

COUNT I

(Plan and practice to avoid compliance with preneed trusting requirements)

20. The Division re-alleges paragraphs 1 through 19 above as though fully set forth herein.

21. Colorado's General Assembly enacted the state's preneed trusting requirements in order to protect consumers who fund long-term contracts. The General Assembly wanted to ensure that if a preneed company is unable to perform on its contracts at a future date, whether due to filing bankruptcy, leaving Colorado, or being unable to secure a general provider, that the consumer would be able to access a substantial portion of his or her funds in order to purchase the same services elsewhere.

22. By the actions explained above, Neptune has engaged in a plan and practice to avoid fully funding the preneed trust accounts, thereby thwarting the General Assembly's intent of consumer protection.

23. Specifically, Neptune charges its customers an approximately 1300% mark-up for its Upfront Merchandise in order to falsely "pad" the dollar amount that does not have to be trusted. Conversely, upon information from funeral industry insiders, Neptune significantly undercharges its customers for the future cremation services, and shifts its future costs to the price of the Upfront Merchandise. Neptune avoids trusting the full 75% of the cost of the future services by this plan and practice.

24. This plan has allowed Neptune to avoid trusting \$525.00 per preneed contract (the \$700.00 cost of each Retail Services Contract times 75%), for a total of approximately \$2,625,000.00 that Neptune not placed in trust (\$525.00 times 5,000 contracts equals \$2,625,000.00).

25. Neptune's actions in Count I violate § 10-15-107(1). Section 10-15-114 allows the Commissioner to impose an administrative fine of up to \$1,000.00 for each separate offense, which in Count I totals at least 5,000 separate offenses, for a potential total fine of up to **\$5,000,000.00**.

26. Section 10-15-114 also allows the Commissioner to suspend or revoke Neptune's license to sell preneed contracts.

COUNT II

(Violations of the general provider requirement)

27. The Division re-alleges paragraphs 1 through 26 above as though fully set forth herein.

28. Colorado statutes require a preneed contract seller to have a general provider agreement in place who is obligated to perform the services or provide the merchandise as

stated in the preneed contract. See §10-15-105(1)(d). Failure to maintain a general provider agreement is grounds for suspension or revocation of the contract seller's license. See §§10-15-105(1)(d); 10-15-114(1)(a).

29. The Colorado General Assembly enacted the general provider requirement to ensure that the consumer, who is funding a contract that will not be performed on until an unknown date possibly far into the future, has access to an entity to perform the cremation services at the purchaser's future time of need.

30. Ms. Helen Stiles entered into a preneed contract with Neptune on June 11, 2003 (the "Contract"). The "Provisions and Disclosures" section of the Contract contained the following two provisions:

1. DEFINITIONS: 'General Provider' means any entity which agrees to provide merchandise or services for use upon the death of the Preneed Contract Beneficiary.

2. GENERAL PROVIDER: The guaranteed funeral merchandise and services listed in the Statement of Funeral Merchandise and Services Selected will be provided by Rundus Funeral Home and Crematory, 1998 W. 10th Ave., Broomfield, CO, 80020. A copy of an executed General Provider Agreement is attached.

31. Rundus Funeral Home and Crematory, doing business as The Broomfield Funeral Home, Inc. ("Rundus") is a funeral home located in Broomfield, Colorado. Mr. Vince Rundus is the owner of Rundus.

32. Ms. Stiles received with the Contract a general provider agreement that appears to have been signed by Mr. Rundus on September 28, 2001. However, Mr. Rundus states that he never signed a general provider agreement with Neptune, that his signature on the September 28, 2001 general provider agreement was forged, and that he never allowed Neptune to use Rundus as its general provider either orally or in writing. Indeed, Neptune's unauthorized use of Rundus' name as the general provider was the subject of a civil lawsuit by Rundus against Neptune: Broomfield District Court case number 2006-CV000-153, Broomfield Funeral Home Inc. v. Huisenga, Terry Et. Al. That case eventually settled and the settlement terms are confidential.

33. At the time Neptune and Ms. Stiles entered into the Contract, Neptune did not have a general provider agreement in place with Rundus, or, upon information and belief, with any other funeral home.

34. On October 1, 2004, Neptune entered into a written general provider agreement with Cappadona's Family Services ("Cappadona's"), a Colorado Springs funeral home. Paragraph 1(a) of the general provider agreement stated as follows:

'Term' means the length of time this Service Agreement under the terms of this Agreement shall remain in force. Absent any other time period indicated in this Agreement or upon further written mutual consent by the Parties, the 'Term' of this Agreement shall be for a period of 3 years. Following this, all terms and obligations of this Agreement shall expire except for the fulfillment obligations of the 'Service Provider' and Neptune to provide such services and merchandise as mentioned herein shall survive until the fulfillment of all the relevant contracts have been completed.

35. The number "3" in Paragraph 1(a) above was crossed out, and the number "2" written in its place. Thus, Neptune's general provider agreement with Cappadona's expired by its own terms on October 1, 2007, and possibly as early as October 1, 2006.

36. On May 22, 2007, Mr. William Stiles, Ms. Stiles' husband, entered into a preneed contract with Neptune ("Mr. Stiles' Contract"). Mr. Stiles' Contract did not include the name of the general provider in the contract. Instead, in the location where his wife's Contract stated Rundus was the general provider, Mr. Stiles' Contract merely stated the following:

'General Provider' means any entity, which agrees to provide merchandise or services for use upon the death of the Preneed Contract beneficiary.

37. Mr. Stiles did not receive a separate general provider agreement from Neptune indicating who the general service provider would be for his preneed contract.

38. On July 25, 2008, the Division sent a letter to Neptune requesting Neptune to 1) submit an acceptable signed general provider agreement form to the Division; and 2) send complete and signed general provider agreement forms to all Neptune contract buyers.

39. In partial response to the Division's July 25, 2008 letter, the Division received a signed general provider agreement between Neptune and The Phoenix Company, a cremation services company located in Brighton, Colorado, dated September 12, 2008.

40. Based upon the above information, Neptune did not have a general provider agreement in place from at least November 28, 2001 through October 1, 2004, and again from either October 1, 2006 or October 1, 2007 through September 12, 2008.

41. Neptune's failure to have a general provider agreement in place violates § 10-15-103(2)(e). Neptune's failure to provide a general provider agreement to Mr. and Mrs. Stiles violates § 10-15-105(1)(d).

42. Pursuant to § 10-15-114(1)(a), the violations in paragraph 41 above are grounds for the imposition of monetary penalties of \$1,000.00 per incident, as well as the revocation or suspension of Neptune's license to sell preneed contracts.

COUNT III

(Conditioning the sale of a preneed contract upon the purchase of a second contract)

43. The Division re-alleges paragraphs 1 through 42 above as though fully set forth herein.

44. Neptune charges its customers \$1,389.00 if they choose the Package, and \$2,220.00 to \$2,315.00 if they purchase the same items in the Package through the Direct Cremation Services option. However, if Neptune customers choose Direct Cremation Services, they will have to spend \$926.00 more for the exact same services and merchandise they receive through the Package. By this economic pressure, Neptune has induced 100% of its Colorado customers to choose the Package.

45. After choosing the Package, Neptune customers are then required to sign two separate contracts: one contract that represents the cost of the future cremation portion of their total out-of-pocket expense, and the second contract for the Upfront Merchandise. Neptune customers are not allowed to purchase the Package unless they sign the second contract for the Upfront Merchandise.

46. Neptune will likely argue that their customers are allowed to buy only the Direct Cremation Services without purchasing the Package, and therefore are not required to enter into a second, tie-in contract for Upfront Merchandise. However, no Neptune customer has or would choose to pay \$926.00 more for an identical item. Thus, Neptune customers do not have a true choice.

47. Neptune's conditioning the sale of preneed contracts upon the purchase of the Upfront Merchandise contracts violates §10-15-105(6), C.R.S.

48. Pursuant to §10-15-114(1)(a), the violation described in paragraph 47 above is grounds for the imposition of monetary penalties of \$1,000.00 per incident, as well as the revocation or suspension of Neptune's license to sell preneed contracts.

COUNT IV

(Violation of the Colorado Consumer Protection Act)

49. The Division re-alleges paragraphs 1 through 48 above as though fully set forth herein.

50. The Commissioner has independent jurisdiction to bring actions against preneed contract sellers for violations of the Colorado Consumer Protection Act, § 6-1-101,

C.R.S., *et. seq.* (“CCPA”). See §10-15-114(1)(e), C.R.S. Neptune has violated several provisions of the CCPA through its practices described above.

Violation of § 6-1-105(1)(e)

51. Neptune knowingly made a false representation that the price for the goods and services that make up the Upfront Merchandise is reasonable, when in fact it is marked up by approximately 1300%.

52. In Ms. Stiles’ Contract, Neptune knowingly made a false representation that Rundus was the general provider when in fact Rundus had never agreed to act in that capacity.

53. These false representations violate § 6-1-105(1)(e) of the CCPA and are grounds for a \$1,000.00 penalty per violation, as well as revocation or suspension of Neptune’s license to sell preneed contracts, pursuant to §10-15-114(1)(e).

Violation of § 6-1-105(1)(g)

54. Neptune knowingly represents that the quality of the goods and services that make up the Upfront Merchandise are of a particular standard, quality or grade when Neptune knows they are not. As previously explained, Neptune pays less than \$13.00 for the urn it charges customers \$349.00 as part of the Package. Moreover, according to funeral industry insiders, the Neptune Society Information Book and Registration Packet Portfolio that are included in the Package cost Neptune approximately \$10.00 to buy in bulk through the Funeral Director’s Association.

55. Neptune’s knowingly false representation of the quality of the goods and services in the Package violates § 6-1-105(1)(g). This violation is grounds for a \$1,000.00 penalty per violation, as well as revocation or suspension of Neptune’s license to sell preneed contracts pursuant to § 10-15-114(1)(e).

Violation of § 6-1-105(1)(i)

56. Neptune advertises goods and services with intent not to sell them as advertised. Neptune advertises that customers can purchase either the Package or Direct Cremation Services. However, Neptune has no intention to sell Direct Cremation Services, as evidenced by Neptune’s pricing the Package at \$926.00 less than the Direct Cremation Services option for the same goods and services.

57. Neptune’s advertisement of its Direct Cremation Services with the intent not to sell that option violates § 6-1-105(1)(i). This violation is grounds for a \$1,000.00 penalty per violation, as well as revocation or suspension of Neptune’s license to sell preneed contracts pursuant to § 10-15-114(1)(e).

Violation of § 6-1-105(1)(n)(III)

58. Neptune requires tie-in sales or other undisclosed conditions to be met prior to selling the Package. Neptune ties-in the sale of the Upfront Merchandise with the sale of the Package by requiring purchasers to enter into two separate contracts when choosing the Package. Neptune does not disclose in its advertising that two contracts must be signed in order to purchase the Package. These actions violate § 6-1-105(1)(n)(III)

59. These violations are grounds for a \$1,000.00 penalty per violation, as well as revocation or suspension of Neptune's license to sell preneed contracts pursuant to §10-15-114(1)(e).

Violation of § 6-1-105(u)

60. Neptune failed to disclose material information concerning its goods and services that was known to Neptune at the time of its advertising. Neptune failed to disclose to Mr. and Mrs. Stiles that it did not have a general provider in place.

61. Neptune does not disclose the material fact that if a customer purchases the Package as opposed to Direct Cremation Services, the amount of refund the customer would receive if the preneed contract is cancelled is reduced substantially.

62. Advertising for the Package does not indicate which goods are part of the Upfront Merchandise, payment for which will not be refunded.

63. Neptune's failure to disclose material information violates § 6-1-105(u). These violations are grounds for a \$1,000.00 penalty per violation, as well as revocation or suspension of Neptune's license to sell preneed contracts pursuant to §10-15-114(1)(e).

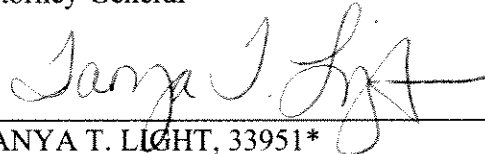
WHEREFORE, based upon the allegations set forth above, the Division respectfully requests that the administrative law judge enter an initial decision for the following relief:

- a. Requiring Neptune to place 75% of all the funds it received for the Package in trust for all outstanding Colorado preneed contracts, as well as for any and all future Package purchases;
- b. Imposing a civil penalty against Neptune in an amount to be determined at hearing;
- c. Suspension or revocation of Neptune's license to sell preneed contracts;
- d. Requiring Neptune to cease all business practices that violate the CCPA going forward; and

- e. Such other and further relief as the administrative law judge deems just and proper.

DATED this 29th day of September, 2008.

JOHN W. SUTHERS
Attorney General



TANYA T. LIGHT, 33951*
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Business and Licensing Section
Attorneys for the Division of Insurance
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Denver, Colorado 80203
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Facsimile (303) 866-5342
*Counsel of Record

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS
OPTION TO ENGAGE IN ALTERNATIVE DISPUTE RESOLUTION
(MEDIATION)

CASE NAME: Neptune Management Corporation, d/b/a The Neptune Society

CASE NUMBER: IN-2008-

This agency disciplinary proceeding will be scheduled for hearing before an administrative law judge of the Office of Administrative Courts (the "OAC"). The OAC encourages parties to use alternative methods of dispute resolution and offers to the agency and Neptune the opportunity to engage in mediation.

Mediation is a process in which a neutral third party meets with the parties to assist them in reaching a negotiated settlement of the disciplinary proceeding. If the parties are able to reach an agreement in this way, they will control the outcome of the disciplinary case by agreeing to a solution, rather than having a solution imposed upon them by an administrative law judge after a hearing.

In mediation, the mediator facilitates communication between the parties in a private, confidential and informal meeting. If a party has an attorney, the attorney will participate. The mediator has no decision-making authority; no settlement or solution to the disciplinary case will be achieved unless both parties are in agreement. A mediator can often help the parties generate creative options to resolve the disciplinary case, even though those options would not be available if the case proceeded to a hearing before an administrative law judge. Mediators may be able to assist the parties in reaching a settlement even where the parties' prior, unassisted negotiations have failed to result in an agreement.

If both parties agree to mediate this disciplinary case they may notify the OAC, which will assign an administrative law judge or other qualified mediator to conduct the mediation. A mediator acts in a completely confidential manner and has no contact with the judge to whom the case is assigned for hearing.

The parties should indicate whether they wish to engage in mediation by completing the information below on this form. Neptune should return the completed form to the OAC, along with the answer to the Notice of Charges or Formal Complaint.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within NOTICE TO SET, NOTICE OF DUTY TO ANSWER, NOTICE OF HEARING, NOTICE OF CHARGES AND OPTION TO ENGAGE IN ALTERNATIVE DISPUTE RESOLUTION, upon all parties herein by depositing copies of same in the United States mail, postage prepaid, at Denver, Colorado, this 21st day of September, 2008 addressed as follows:

Neptune Management Corporation, d/b/a/
The Neptune Society

c/o National Corporation Research, Ltd.
12649 West Warren Avenue
Lakewood, Colorado 80228

Neptune Management Corporation, d/b/a
The Neptune Society
5400 Ward Road, Building II, Suite 101
Arvada, Colorado 80002

By Inter-Agency Mail:

Caryn Berumen
Colorado Division of Insurance
1560 Broadway, Suite 850
Denver, Colorado 80202