

Douglas B. Cannon (#4287)  
dcannon@fabianlaw.com  
Rachel G. Terry (#10769)  
rterry@fabianlaw.com  
FABIAN & CLENDENIN  
A Professional Corporation  
Twelfth Floor  
215 South State Street  
P.O. Box 510210  
Salt Lake City, Utah 84151  
Telephone: (801) 531-8900

FILED  
U.S. DISTRICT COURT  
2008 AUG 29 PM 3:51  
BY: [Signature]

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

EQUITABLE LIFE & CASUALTY  
INSURANCE COMPANY,

Plaintiff,

vs.

ASSURITY LIFE INSURANCE  
COMPANY and COMMEMORATIVE  
LIFE INSURANCE SERVICES, INC.,

Defendants.

**COMPLAINT AND JURY DEMAND**

Case: 2:08cv00658  
Assigned To : Kimball, Dale A.  
Assign. Date : 8/29/2008  
Description: Equitable Life and  
Casualty Insurance Company v.  
Assurity Life Insurance Company et

Plaintiff Equitable Life & Casualty Insurance Company ("Equitable Life") complains and alleges as follows:

**NATURE OF THIS ACTION**

1. This patent infringement action is brought against the defendants under the patent laws of the United States, Title 35, United States Code.

### **PARTIES**

2. Plaintiff Equitable Life & Casualty Insurance Company (“Equitable Life”) is a Utah corporation with its principal place of business in Utah. Plaintiff Equitable Life specializes in providing insurance products to seniors.

3. Defendant Assurity Life Insurance Company (“Assurity”) is a Nebraska corporation having a place of business in Nebraska. Assurity markets and sells insurance products.

4. Defendant Commemorative Life Insurance Services, Inc. (“Commemorative Life”) is a California corporation having a place of business in California. Commemorative Life markets and sells insurance products.

### **JURISDICTION AND VENUE**

5. This case is a civil action for patent infringement under the patent laws of the United States, Title 35, United States Code. This Court has subject matter jurisdiction over the case pursuant to 28 U.S.C. §§ 1331 and 1338 because this action arises under federal patent law.

6. Venue is proper in the United States District Court, District of Utah pursuant to 28 U.S.C. §§ 1391 and 1400.

7. Defendants are subject to the personal jurisdiction of this Court. Upon information and belief, defendants have: (i) conducted business within Utah that has infringed Equitable Life’s patent; (ii) engaged in substantial and not isolated business activity in Utah; and (iii) solicited business from customers in Utah.

### **GENERAL ALLEGATIONS**

8. Equitable Life is the sole owner of United States Patent No. 5,761,645 (the “645 patent”), filed December 21, 1995 and issued June 2, 1998 for the system that releases insurance

gift payments to designated beneficiaries on a designated day over a period of time. A copy of the '645 patent is attached as Exhibit A.

9. Assurity has sold and is selling a product called "AfterThoughts Birthday Insurance" using the principles and claims set forth in the '645 patent.

10. Commemorative Life has sold and is also selling a product called "AfterThoughts Birthday Insurance" using the principles and claims set forth in the '645 patent.

11. Assurity and Commemorative Life jointly use a website that promotes and describes AfterThoughts Birthday Insurance. That website describes AfterThoughts Birthday Insurance as a system that releases a set insurance gift payment to a designated beneficiary on the beneficiary's birthday over a period of time.

12. Upon information and belief, defendants have known of Equitable Life's '645 patent since shortly after the patent issued and have continued to market and sell insurance products using the principles and claims set forth in the '645 patent.

**CLAIM FOR RELIEF**  
**(INFRINGEMENT UNDER 35 U.S.C. § 271)**

13. Equitable Life incorporates the allegations contained in paragraphs 1 through 12 above as though fully set forth herein.

14. The '645 patent has at all times since its issuance been fully enforceable and is now fully enforceable.

15. Defendants have marketed, and/or sold and continue to market, and/or sell insurance products using a system that comes within the scope of one or more claims of the '645 patent and infringes one or more claims of the '645 patent.

16. Defendants have marketed, and/or sold and continue to market, and/or sell insurance products using a system that comes within a range of equivalents of the claims of the '645 patent and thereby infringes one or more claims of the '645 patent.

17. Defendants do not have Equitable Life's permission to use the '645 patent. Hence, the defendants' marketing, and/or selling of its insurance products have been without authority or license from Equitable Life, and in violation of Equitable Life's rights, thereby infringing the '645 patent.

18. Upon information and belief, defendants have also contributed to or induced infringement of the '645 patent in violation of 35 U.S.C. § 271.

19. Defendants' infringement of the '645 patent has been willful and in disregard of Equitable Life's exclusive rights set forth in the '645 patent.

20. The amount of money damages that Equitable Life has suffered due to defendants' acts of infringement cannot be determined without an accounting, and is thus subject to proof at trial.

21. Equitable Life is entitled to a complete accounting of all revenue derived by defendants from the unlawful conduct alleged herein.

22. Further, the harm to Equitable Life arising from defendants' acts of infringement of the '645 patent is not fully compensable by money damages. Rather, Equitable Life has suffered, and continues to suffer, irreparable harm, which has no adequate remedy at law and will continue unless defendants' conduct is enjoined. Equitable Life is therefore entitled to a preliminary injunction, to be made permanent on entry of the judgment, preventing defendants from further infringement.

**PRAYER FOR RELIEF**

WHEREFORE, Equitable Life requests this Court enter judgment against defendants and in favor of Equitable Life as follows:

1. For a judgment that defendants have infringed United States Patent No. 5,761,645 (the “‘645 patent”);
2. For an order directing defendants to account for all revenue derived from the unlawful conduct alleged above;
3. For a judgment of damages in an amount to be determined at trial but not less than a reasonable royalty;
4. For a finding that defendants acted willfully in their infringement of the ‘645 patent, and for an award of treble damages, pursuant to 35 U.S.C. § 284;
5. For an order effective during the pendency of this action, thereafter to be made permanent, that defendants and their agents, servants, employees, attorneys, and directors and those persons in active concert or participation with them be enjoined under 35 U.S.C. § 293 from further violation of Equitable Life’s patent rights on such terms as the Court deems reasonable;
6. For an order directing defendants file with this Court and serve on Equitable Life within thirty (30) days after service on defendants of the injunction granted herein, or such extended period as the Court may direct, a report in writing, under oath, setting forth in detail the manner and form in which defendants have complied with the injunction and order of the Court;
7. For an order directing defendants to pay Equitable Life’s attorney’s fees and its costs in connection with this litigation;
8. For an order directing defendants to pay prejudgment and post-judgment interest until such awards are paid; and

9. For such other and further relief as shall seem just and proper to the Court.

**DEMAND FOR JURY TRIAL**

Equitable Life demands a trial by jury on all issues.

Dated this 29th day of August, 2008.



---

Douglas B. Cannon  
Rachel G. Terry  
FABIAN & CLENDENIN,  
A Professional Corporation  
Attorneys for Plaintiff