

September 16, 2009

FILED

SEP 18 2009

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hearings Unit
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Re: Withdrawal of Approval of Application Form Number 8121WA and Policy Form
Number 8387WA

Dear Sir or Madam:

On June 23, 2009, the Office of the Insurance Commissioner issued a letter withdrawing approval of the above-referenced forms, indicating that said withdrawal had been prompted by a review of a consumer complaint, OIC Case Number 1021061.

Pursuant to RCW 48.04.010, petitioner Life Insurance Company of the Southwest hereby gives notice of its appeal and demands a hearing reviewing the action taken by the OIC in its June 23, 2009 correspondence. As grounds for this appeal, Life Insurance Company of the Southwest will demonstrate that the above-referenced forms comply with Washington law and the OIC should not withdraw its approval of the forms.

Petitioner will supplement this notice of appeal with a memorandum of law.

This notice is provided to protect legal rights. It is our hope that this matter will be resolved amicably.

Very truly yours,



Jerry B. Edmonds

Attorney at Law

(206) 628-6639

jedmonds@williamskastner.com

JBE:bsj

cc: Alan A. Hudina, Manager, P & C Life & Annuities

Williams, Kastner & Gibbs PLLC

Two Union Square

601 Union Street, Suite 4100

Seattle, Washington 98101

main 206.628.6600 fax 206.628.6611

www.williamskastner.com

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OFFICE OF
INSURANCE COMMISSIONER

June 23, 2009

LIFE INSURANCE COMPANY OF THE SOUTHWEST
BARBARA FITCH SECOND VP
1300 WEST MOCKINGBIRD LANE
DALLAS TX 75247

Re: Withdrawal of approval of application form number 8121WA and policy form number 8387WA

Dear Ms. Fitch,

A recent consumer complaint, OIC Case Number 1021061 (Christina Gerdes), initiated a complete review of the above captioned forms which were deemed approved on 1/29/2007. For the reasons listed below and in compliance with RCW 48.18.110(1)(a), (c), approval of these forms is hereby withdrawn. The company is directed to cease use of the forms upon receipt of this letter. Approval is withdrawn for the following reasons.

- 1) Application form 8121WA is ambiguous in that one check box covers two statements. Specifically, the application form has a box that "MUST be checked if a signed application of the policy applied for is NOT enclosed with this application." Next to that box, "By signing this application, I, the Applicant/Owner acknowledge that I have NOT received an illustration of the policy applied for and understand that an illustration of the policy as issued will be provided no later than the policy delivery date." In the case of the consumer complaint, it appears that the agent checked the box, meaning that he was not forwarding the illustration along with the application. It appears that the Applicant did not argue with the agent about the illustration she received. This box should be attributed to the agent, not the Applicant. By having one box cover two statements, we must conclude that the application form is ambiguous and in violation of RCW 48.18.110(1)(c).
- 2) The policy form 8387WA provides for a permanent "monthly percent of accumulated value charge" of .04%. The purpose of the percent of accumulated value charge is to reduce the stated 2.5% interest guarantee to 2.0%. This charge is a condition which unreasonably and deceptively affects the (investment) risk purported to be assumed in the general coverage of the contract, while the stated 2.5% interest guarantee is a misleading indication of the policy provisions. This is in violation of RCW 48.18.110(1)(c), The percent of fund charge has no place in a general account life insurance policy.
- 3) The policy form provides for a permanent "monthly administrative charge per thousand" that was \$.189 in the consumer complaint. This has the effect of a permanent flat extra, making the stated "preferred risk" classification misleading. In its response to

the complaint Life of the Southwest (LSW) points out that this charge, if applied for ten years, is intended to cover a 150% commission (and modest underwriting expenses) with a 12% return to the Company. LSW did not provide for the temporary nature of this charge in its policy form. After ten years, this charge must be considered a permanent flat extra. The "ten years" should be written into the form and disclosed on the illustrations. Lacking this disclosure and a limitation of the duration in the form is a violation of RCW 48.18.110(1)(c).

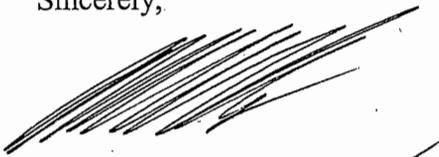
4) The policy form is sold with an illustration that does not comply with RCW 48.23A.030(2)(e) and 48.23A.040(5)(c). Specifically, the nonguaranteed values shown at the end of the policy year are not available at the end of the policy year on the same basis as the guaranteed values.

5) The illustration, in violation of RCW 48.23A.030(3), illustrates credited interest rates higher than what LSW has been earning. With the Company earning 5.87%, a consistent 9.9% return cannot be considered based on a "disciplined current scale." In a letter dated February 23, 2009, the company contends that it could earn more through its hedging strategy than through its traditional investments. This argument flies in the face of revelations in the financial services industry and is untenable.

6) RCW 48.23A.080(2) requires actuarial certification of the disciplined current scale defined in RCW 48.23A.015(4). LSW's actuaries avoided the expression, "recent historical experience," which appears in RCW 48.23A.015(4). Actuarial Standard of Practice No. 24 (3.4.1.a) calls for an "appropriate time frame." Going back to the 1980s to project a 9.9% return is neither "recent historical experience" nor "an appropriate time frame." While LSW has defended its actuarial certification, there was no certification that the 9.9% rate illustrated is supportable, nor were the nonguaranteed charges after ten years disclosed in Determination Procedures and Actuarial Interrogatories filed in LSW's Annual Statement.

The company is directed to provide the number of these forms that have been issued. In an effort to minimize any disruption to the LSW's marketing, the above forms may be re-filed and presuming the above issues have been addressed, we will expedite our review of the re-filed forms. The forms should be sent to my attention along with reference to this correspondence.

Sincerely,



Alan A. Hudina, Manager
P & C and Life & Annuities

cc: Beth Berendt, Deputy Commissioner Rates and Forms
Mary Childers, Manager Consumer Advocacy