

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER  
**DECLARATION OF MAILING**

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to the parties listed below.  
DATED this 23rd day of July at Tumwater, Washington.

Signed: [Signature]



OFFICE OF  
INSURANCE COMMISSIONER

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BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:	)	No. 09-0138
	)	
UNIFIED LIFE INSURANCE COMPANY )	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
An Authorized Insurer. )	)	AND ORDER ON HEARING

**TO:** William M. Buchanan, Chairman of the Board  
Kevin Dill, Assistant Vice President and Associate Actuary  
Unified Life Insurance Company  
Post Office Box 25326  
Overland Park, Kansas 66225-5326

**COPY TO:** Mike Kreidler, Insurance Commissioner  
Mike Watson, Chief Deputy Insurance Commissioner  
Carol Sureau, Esq., Deputy Commissioner, Legal Affairs Division  
Marcia Stickler, Staff Attorney, Legal Affairs Division  
Beth Berendt, Deputy Commissioner, Rates and Forms Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

Pursuant to RCW 34.05.434, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing, by telephone, before the Office of Insurance Commissioner for the state of Washington on February 25, 2010, in Tumwater, Washington. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner (Commissioner) appeared pro se by and through his Staff Attorney Marcia Stickler. Stephanie Baker, Esq., Vice President of Unified Life Insurance Company, and Kevin Dill, Assistant Vice President and



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Associate Actuary with Unified Life Insurance Company, appeared on behalf of Unified Life Insurance Company (Unified).

**NATURE OF PROCEEDING**

On November 16, 2009, the Commissioner issued a proposed Consent Order to Unified, proposing that Unified agree to specified facts regarding the filing of its annual reports and agree to pay a \$2750 fine based on those facts. Unified Life Insurance Company declined to enter into this proposed Consent Order and on January 4, 2010, requested a hearing to contest the Commissioner's action. Therefore, the purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Commissioner's proposed Consent Order, No. 09-0138, dated November 16 2009, should be confirmed, set aside or modified.

**FINDINGS OF FACTS**

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; and Title 34 RCW and specifically, for good cause shown, RCW 34.05.461(8).
2. Unified Life Insurance Company (Unified) is a Texas domiciled life and health insurance company, with its administrative functions handled from its offices in Overland Park, Kansas. Unified is the successor to a previous Unified insurance carrier that was under this same ownership and management since 1986. Unified is currently licensed to conduct life, and disability insurance in the state of Washington and in 48 other states and the District of Columbia.
3. Unified first acquired health insurance business that pertains to the Washington loss ratio report requirements in October 2007. By its own admission and agreement of the Commissioner, Unified mailed its 2007 Loss Ratio Report on June 9, 2009 and admits that at that time it was past due over one year. [Ex. 1 to Unified Hearing Memorandum.] Said 2007 Loss Ratio Report was due by May 31, 2008.
4. By its own admission without contest from the Commissioner, Unified mailed its calendar year 2008 Loss Ratio Report on May 28, 2009. The Commissioner received Unified's 2008 Loss Ratio Report on June 3, 2009. [Ex. 2 to Commissioner's Hearing Memorandum.] Said 2008 Loss Ratio Report was due by May 31, 2009.
5. It is uncontested that Unified's 2007 filing was over one year late. As to its 2008 filing, however, the Commissioner asserts that it must have been received by the Commissioner by

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May 31, 2009 and because it was not received by the Commissioner until June 3, 2009 it was 3 days late. However, Unified asserts that its 2008 filing must only have been postmarked (or bear other proof of placing with a third party for delivery to the Commissioner) by the May 31, 2009 deadline and therefore, because it was postmarked on May 28, 2009, it was filed timely.

6. On November 16, 2009, the Commissioner offered a proposed Consent Order to Unified, imposing a fine of \$2750. [Ex. 3 to Unified Hearing Memorandum.] Because the range of possible fines the Commissioner is allowed to impose is so broad, the Commissioner has established a formula to calculate a fine for all late loss ratio reports [Ex. 4 to Commissioner's Hearing Memorandum.] and based upon this formula the Commissioner included a \$1750 fine for the 2007 late filing and a \$1500 fine for the 2008 late filing, for a total of \$3250 (but due to a math error on the Commissioner's part, the proposed fine in the Consent Order totaled \$2750). Unified declined this offer and instead, on December 7, 2009, mailed a Request for Hearing to the undersigned. [Ex. 4 to Unified Hearing Memorandum.] This Request for Hearing was received by and signed for on December 9, 2009 by a representative of the Commissioner per FedEx tracking. [Ex. 5 to Unified Hearing Memorandum.] Neither Judge Petersen nor the Hearings Unit received that Request for Hearing and it is unclear whether any other division of the Commissioner received it. [Ex. 1, hearing file including all documents filed up to date of hearing, February 24, 2010 letter to parties from the undersigned.] On January 4, 2009, Unified emailed a second Request for Hearing to Ms. Stickler. [Ex. 6 to Unified Hearing Memorandum.] [It is noted that, as the undersigned opined at that time [Ex. 1] that while it appeared that the Commissioner had been remiss in handling receipt of the December 9, 2009 Request for Hearing and therefore the hearing process did not commence within 30 days as required, Unified was also remiss in that at least in its 2<sup>nd</sup> Request for Hearing Unified failed to include its grounds for its relief requested as required and therefore neither party should benefit from the lack of adherence to required processes herein.]

7. Pursuant to its formulae, the Commissioner proposed a \$1750 fine for the 2007 Loss Ratio Report, the year in which Unified had just \$220 of earned premium in Washington. The Commissioner proposed a \$1500 fine for the 2008 Loss Ratio Report, a year in which Unified had just \$1161 of earned premium in Washington. The fines would have been the same had Unified made millions of dollars in earned premium in Washington.

8. It is reasonable to conclude that Unified's 2008 Loss Ratio Report was required to be postmarked by May 31, 2009.

9. It is reasonable to set aside the \$1,500 fine for a late 2008 filing on the basis that said 2008 filing was postmarked on May 28, 2009 and was therefore not late. It is further reasonable to uphold the \$1750 fine for the late 2007 filing but deduct the \$500 mathematical error applied to the total fines proposed and therefore impose a fine for 2007 of \$1250.

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CONCLUSIONS OF LAW

1. RCW 48.20.025(3) requires that by the last day of May each year any insurer issuing or renewing individual health benefit plans in Washington State during the preceding calendar year shall file for review by the Commissioner, a loss ratio report for that year. There is no indication in this statute whether the filing must be received by the Commissioner by May 31 or whether it must be postmarked by May 31. The Commissioner asserts that Loss Ratio Reports must be received by the Commissioner by May 31, citing RCW 34.05.010(6), the Administrative Procedure Act. RCW 34.05.010(6) provides *Filing of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designating, at the office of the agency head.* While this statute certainly states that filing of documents in administrative proceedings – which include adjudicative proceedings and rule-making hearings – are considered made when received by the agency, insufficient authority has been provided to conclude that RCW 34.05.010(6) applies to insurance carriers filing their annual Loss Ratio Reports. Further, the Commissioner presents no other statute which dictate that filings of annual Loss Ratio Reports are considered made upon receipt by the Commissioner.

2. Unified asserts that, because it found no guidance in RCW 48.20.025 as to whether its 2008 Loss Ratio Report must be received by the Commissioner by May 31 or must just be postmarked (or otherwise furnished to a third party for delivery to the Commissioner) by May 31, it was reasonable to look to RCW 1.12.070, which applies to filings made with Washington State agencies generally, for guidance. RCW 1.12.070 provides that *(1) Any report, claim, tax return, statement or other document required to be filed with, ... the state ... this is (a) transmitted through the United States mail or private third-party delivery service, shall be deemed filed and received by the state ... on the date shown by the post office or private third-party delivery service cancellation mark or shipping date stamped or affixed upon the envelope.....* Given no other authority by the Commissioner regarding any other provision of the Insurance Code or regulations, or other more specific statute or regulation which might apply to determine that the Loss Ratio Report must have been received by the Commissioner by May 31 rather than just postmarked by May 31, it is hereby concluded that Unified acted reasonably when it depended upon RCW 1.12.070 and determined that its 2008 Loss Ratio Report must simply be postmarked by May 31, 2009. Therefore, Unified did not violate RCW 48.20.025 in having its 2008 Loss Ratio Report postmarked on May 28, 2008 and said 2008 Loss Ratio Report was filed timely and Unified did not violate RCW 48.20.025 in mailing its 2008 Loss Ratio Report on May 28, 2009.

3. Unified violated RCW 48.20.025 when it mailed its 2007 Loss Ratio Report, due by May 31, 2008, on June 9, 2009. Therefore it is reasonable to uphold the Commissioner's fine in the amount of \$1750, but due to the Commissioner's mathematical error in calculating the total fines sought, \$500 should be deducted and therefore it is reasonable to impose a fine of \$1250 upon Unified for failing to file its 2007 Loss Ratio Report timely.

**ORDER**

On the basis of the foregoing Findings of Facts and Conclusions of Law,

**IT IS HEREBY ORDERED** that the \$1750 fine imposed by the Commissioner on Unified related to its 2007 late Loss Ratio Report is upheld, reducing said fine to \$1250 due to a mathematical error made by the Commissioner in calculating the total fines he proposed;

IT IS FURTHER ORDERED that the \$1000 fine imposed by the Commissioner on Unified related to its 2008 Loss Ratio Report is set aside as there was no violation of RCW 48.20.025 because Unified filed its 2008 Loss Ratio Report timely.,

IT IS FURTHER ORDERED that the above \$1250 fine shall be paid to the Commissioner within 15 days of the date of this Order.

ENTERED AT TUMWATER, WASHINGTON, this 23<sup>rd</sup> day of July, 2010, pursuant to Title 48 RCW and specifically 48.04 and 48.20.025, RCW 1.12.070 and Title 34 RCW, and regulations applicable thereto.



PATRICIA D. PETERSEN  
Chief Hearing Officer  
Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.