

STATE OF WASHINGTON

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MIKE KREIDLER
STATE INSURANCE COMMISSIONER



FILED

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 parties listed below
DATED this 11th day of May 2007.
at Tumwater, Washington.

OFFICE OF
INSURANCE COMMISSIONER

2007 MAY 11 A 10:42

Signed: Wendy Galloway

HEARINGS UNIT
Fax: (360) 664-2782

Hearings Unit, DIC
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Chief Hearing Officer

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:)

NO. D06-351

OMAHA WOODMEN LIFE)
INSURANCE SOCIETY,)

FINDINGS OF FACT, CONCLUSIONS)
OF LAW AND ORDER ON HEARING)

A Licensed Fraternal Benefit Society.)

TO: Lynn L. Espeland, Assistant V.P./Associate General Counsel
Woodmen of the World Life Insurance Society &
Omaha Woodmen Life Insurance Society
1700 Farnam Street
Omaha, Nebraska 68102

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
James T. Odiome, Deputy Commissioner, Company Supervision
Carol Sureau, Deputy Commissioner, Legal Affairs
Marcia Stickler, Staff Attorney, Legal Affairs
P.O. Box 40255
Olympia, Washington 98504-0255

Pursuant to RCW 34.04.090, 34.04.120, 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 Insurance Commissioner for the state of Washington (OIC) on January 29, 2007, 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

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inspect all documentary evidence. The Insurance Commissioner appeared pro se by and through Marcia Stickler, OIC Staff Attorney. Omaha Woodmen Life Insurance Society and/or Woodmen of the World Life Insurance Society was represented by Lynn L. Espeland, Esq., its Assistant V.P. and Associate General Counsel.

NATURE OF PROCEEDING

On January 16, 2007, Omaha, by and through Lynn L. Espeland, Esq., filed a Request for Hearing dated January 12, 2007, in this matter. Said Request contests the validity of the OIC's tender of a Consent Order Imposing a Fine, D06-351, which it had requested Omaha to execute. Said Consent Order includes an admission that Omaha Woodmen Life Insurance Society (Woodmen) filed its calendar year 2004 Separate Accounts Statement with the OIC on May 2, 2005, 62 days late, and includes several "Conclusions of Law" admitting to various specified violations of the Insurance Code as a result of this late filing, and consents to pay a fine of \$6,200 for these violations.

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.
2. Woodmen was incorporated under the laws of Nebraska in 1891 and has been continuously licensed to transact life and disability insurance business as a fraternal benefit society in the State of Washington since December 18, 1924.
3. On or about February 18, 2005, Woodmen filed its 2004 Annual Statement electronically with the OIC as required. [Ex. 1 to Woodmen Hearing Memorandum.]
4. Because Woodmen is not approved for electronic signatures, Woodmen submitted paper copies of the signature page for both the 2004 Annual Statement and the Separate Accounts Statement to the OIC on February 22, 2005. [Ex. 2 to Woodmen Hearing Memorandum.]
5. As required, Woodmen submitted the 2004 Annual Statement and the 2004 Separate Accounts Statement electronically to the NAIC on February 23, 2005. The NAIC confirmed that the date file for both 2004 statement was loaded to the NAIC Financial Date Repository on or about February 23, 2005. [Ex. 3 to Woodmen Hearing Memorandum.]

6. As required, Woodmen submitted hard copies of the Annual Statement and the Separate Accounts Statement to the NAIC on February 18, 2005. [Ex. 4 to Woodmen Hearing Memorandum.]

7. By letter dated April 26, 2005, the OIC notified Woodmen that it did not electronically file its 2004 Separate Accounts Statement. [Ex. 5 to Woodmen Hearing Memorandum.]

8. In response, on May 2, 2005, Woodmen filed its 2004 Separate Accounts Statement electronically with the OIC. The OIC acknowledged receipt of the 2004 Separate Accounts Statement on May 2, 2005. [Ex. 6 to Woodmen Hearing Memorandum.]

9. Woodmen filed its 2004 Separate Accounts Statement sixty two days late. [Testimony of Woodmen.] Accordingly, the OIC determined that Woodmen should be fined \$6,200 at the rate of \$100 per late day. However, it was not until January 2, 2007 that the OIC made the determination to penalize Woodmen and so notified Woodmen with the proposed Consent Order Imposing a Fine which is the subject of this appeal.

10. Woodmen's failure to electronically file its 2004 Separate Accounts Statement was an inadvertent oversight error on the part of the associate who completed the filing for Woodmen with the OIC on February 18, 2005. The Separate Accounts Statement was prepared and ready to file on February 18, 2005, in advance of the March 1, 2005, deadline. Woodmen believed that it had properly and timely filed both the 2004 Annual Statement and the 2004 Separate Accounts Statement on February 18, 2005, as reinforced by the fact that in its paper copy filing Woodmen filed a paper copy of the signature pages for both the 2004 Annual Statement and the 2004 Separate Accounts Statement on February 22, 2005 – well before the March 1, 2005 deadline. In addition, Woodmen properly and timely submitted electronic and hard copies of its 2004 Annual Statement and 2004 Separate Accounts Statement with the NAIC on February 23, 2005, as required, and the NAIC confirmed electronic receipt of both the 2004 Annual Statement and the 2004 Separate Accounts Statement on February 23, 2005. [Testimony of Woodmen.]

11. There is no evidence of bad faith on the part of Woodmen and no harm was caused by its inadvertence in failing to file the 2004 Separate Accounts Statement by March 1, 2005. The electronic date for both 2004 statements was published by the NAIC on or about February 23, 2005, and would have been available to the OIC through the NAIC data base prior to March 1, 2005. Further, Woodmen promptly submitted the 2004 Separate Accounts Statement to the OIC when it was notified of the oversight on April 29, 2005.

12. There is no evidence of any pattern of late filing on the part of Woodmen. Although a pattern of late filing is not required, in this situation it is meaningful that there is no pattern, together with the fact that there is no evidence that Woodmen has ever failed to file all other statements in a timely manner with the OIC. Finally, since the oversight occurred in 2005, Woodmen has implemented a

system to re-verify that all electronic filings have been properly submitted to the OIC in a timely manner.

13. Lynn L. Espeland appeared as witness, by telephone, on behalf of Woodmen. Ms. Espeland presented her testimony in a detailed, clear and credible manner, and exhibited no apparent biases.

14. Based upon the activities of Woodmen as set forth in the facts found herein, it is here found that the OIC's Consent Order Imposing a Fine, No. D06-351, offered to Woodmen for execution on January 2, 2007, is excessive under the circumstances and should be set aside.

CONCLUSIONS OF LAW

1. RCW 48.36A.260 requires that every fraternal benefit society transacting business in Washington State file an Annual Statement and a Separate Accounts Statement (both calendar year) in conformity with NAIC guidelines by March 1 of the following calendar year. Woodmen did timely file its 2004 Annual Statement by March 1, 2005, but failed to file its 2004 Separate Accounts Statement by March 1. Woodmen did timely file both statements with the NAIC on February 23, 2005, as required. On April 29, 2005, the OIC first advised Woodmen that it had not received its 2004 Separate Accounts Statement. In response, on May 2, 2005, Woodmen filed the subject 2004 Separate Accounts Statement. Therefore, Woodmen violated the requirements of RCW 48.36A.260 by filing its 2004 Separate Accounts Statement on May 2, 2005, 62 days late.

2. It is recognized that, as argued by the OIC, RCW 48.36A.260(3) provides that, *A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars for each day during which the neglect continues....* However, it is appropriate to take into account the facts found above, specifically, 1) it has been clearly established that this filing was an oversight; 2) that signature page to the 2004 Separate Accounts Statement was in fact filed with the OIC timely along with the entire 2004 Annual Statement; 3) that Woodmen properly and timely filed the complete 2004 Annual Statement and 2004 Separate Accounts Statement with the NAIC on February 23, 2005; 4) that no harm was caused by this oversight; and 5) that Woodmen has always, and since, filed its Annual Statements and Separate Accounts Statements with the OIC, as required, in a timely manner.

3. Based upon the Findings of Facts herein, and Conclusions of Law directly above, it is hereby concluded that the Insurance Commissioner's action in requiring Woodmen to execute the subject Consent Order Imposing a Fine, which includes payment of a fine of \$6,200, in lieu of revocation of its license to conduct insurance business in Washington State and/or other penalties, should be set aside.

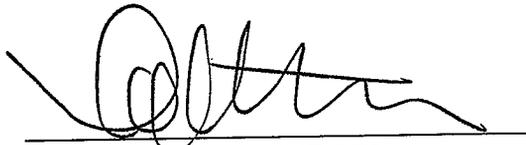
ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the Licensee has violated RCW 48.36A.260(3), but that due to the circumstances found above Woodmen should not be penalized for this activity,

IT IS HEREBY ORDERED that the OIC's Consent Order Imposing a Fine, No. D06-351, tendered to Woodmen for execution on January 2, 2007, should be set aside, and no penalties for the activity detailed above shall be levied. However, the facts found above may be taken into consideration should Woodmen fail to make timely filings in the future.

This Order is entered pursuant to RCW 34.05, including, for good cause shown, RCW 34.05.461(8), Title 48 RCW and specifically RCW 48.04.010, and regulations applicable thereto.

This Order is entered at Tumwater, Washington, this 11th day of May, 2007.



PATRICIA D. PETERSEN
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. Finally, the parties are advised that they may seek a discretionary stay of this order either from the Office of the Insurance Commissioner or from the applicable Superior Court, pursuant to RCW 34.05.467 and RCW 48.04.020(2). For further information or to obtain copies of the applicable statutes, the parties may contact Wendy Galloway, Paralegal to the undersigned, at the above address or (360) 725-7002.