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November 19, 2007

VIA E-MAIL AND FIRST CLASS MAIL

State of Washington
Office of Insurance Commissioner
Hearings Unit
Patricia D. Petersen, Chief Hearing Officer
5000 Capitol Boulevard
Olympia, Washington 98501

Attention: Wendy Galloway, Paralegal [***WendyG@OIC.WA.GOV***]

Re: United of Omaha Life Insurance Company & Mutual of Omaha Insurance Company; No. D07-333.

Dear Judge Petersen:

This firm represents United of Omaha Life Insurance Company & Mutual of Omaha Insurance Company ("United") in the above-referenced matter. United is a licensed life and disability insurance carrier.

On or about November 9, 2007, the Washington Office of Insurance Commissioner ("OIC") filed with the OIC Hearings Unit a Notice of Hearing in the Matter of United (the, "Notice"). Please refer to **Exhibit A.**

The purpose of this letter is to request that the aformentioned hearing be presided over by an administrative law judge assigned under chapter 34.12 RCW. This request is made pursuant to RCW 48.04.010(5), which states that, "A licensee under this title may request that a hearing authorized under this section be presided over by an administrative law judge assigned under chapter 34.12 RCW. Any such request shall not be denied." Additionally, we hereby request an automatic stay pursuant to RCW 48.04.020(1), of OIC's imposition of sanctions specified in section 4 of the aforementioned Notice.

Very truly yours,
LANE POWELL PC

Jeffrey L. Gingold
Shareholder

JLG:af
cc: Thomas P. Rowland, Esq.
Richard C. Anderl, Esq.
114141.0012/1446607.1

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EXHIBIT A

FILED

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Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

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IN THE STATE OF WASHINGTON
BEFORE THE OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of **UNITED OF OMAHA LIFE INSURANCE COMPANY** and **MUTUAL OF OMAHA INSURANCE COMPANY,** Respondents.	NO. D07-333 **NOTICE OF HEARING**

The Honorable Mike Kreidler, Insurance Commissioner of the State of Washington, proposes disciplinary action against United of Omaha Life Insurance Company and Mutual of Omaha Insurance Company and hereby issues this Notice of Hearing. The Insurance Commissioner submits the following as the basis of this Notice of Hearing in accordance with RCW 48.04.010.

1. PARTIES AND JURISDICTION

1.1 Pursuant to the Insurance Code, Title 48 RCW, the Insurance Commissioner is authorized to regulate the business of insurance and enforce the insurance laws of Washington State in order to protect the public interest.

1.2 United of Omaha Life Insurance Company and Mutual of Omaha Insurance Company (collectively, "United of Omaha") are authorized to transact the business of

insurance in Washington State and, therefore, are subject to Title 48 RCW and Chapter 284 WAC. United of Omaha issues life insurance, including juvenile life insurance.

1.3 Jurisdiction and venue are appropriate under, amongst other provisions, RCW 48.02.060, RCW 48.02.080, and RCW 48.04.010.

2. BACKGROUND

A. RCW 48.23.345 AND UNITED OF OMAHA'S JUVENILE LIFE INSURANCE STANDARDS.

2.1 On August 1, 2001, RCW 48.23.345 became effective in Washington State. It requires insurers to develop and implement underwriting standards and procedures that are specifically designed to detect and prevent the purchase of juvenile life insurance for speculative or fraudulent purposes.

2.2 On January 8, 2001, United of Omaha issued a "Field Communication" to its General Managers that contained United of Omaha's guidelines and underwriting standards for the sale of juvenile life insurance policies. The Field Communication directed the Company's General Managers to review the document and share it with all United of Omaha management, agents, and front office staff. This Field Communication remained effective until it was updated by a subsequent Field Communication on or about March 19, 2004.

2.3 The Field Communication issued by United of Omaha on January 8, 2001 provides, in relevant part, as follows:

> 2.3.1 The maximum amount of Juvenile Life Coverage that United of Omaha generally will issue is $100,000.
>
> 2.3.2 For all coverage requests in excess of $100,000, United of Omaha requires the following additional information from the applicant: (a) whether siblings are covered for a similar amount, (b) the total amount of coverage in force on the parents, (c) identification of the applicant/owner, (d) whether the parents signed the application if they are not the applicants/owners, and (e) the purpose of the coverage.
>
> 2.3.3 The parents must have (a) four times more coverage in force for children ages five and under, or (b) three times more coverage for children above the age of five, and (c) if parents

have no coverage, then the maximum amount of juvenile life coverage that can be issued is $25,000.

2.3.4 One parent with whom the child is living must sign the application.

2.3.5 The guidelines apply to adopted children and children under guardianship.

B. MR. JOEL ZELLMER PURCHASES A $200,000 UNITED OF OMAHA JUVENILE LIFE INSURANCE POLICY ON HIS STEPDAUGHTER.

2.4 On September 6, 2003, Joel and Stacey Zellmer were married. Just nine days later, on September 15, 2003, Mr. Zellmer purchased a $200,000 United of Omaha life insurance policy on Ashley Cay McLellan, the three-year old daughter of Stacey Zellmer. Mr. Zellmer also purchased additional life insurance policies in the amount of $100,000 on his two sons from a previous relationship, Dakota and Levi Zellmer. As a result, each of the children had insurance in the amount of $200,000. Mr. Zellmer, who already had a $750,000 life insurance policy, also purchased a $750,000 policy on Stacey Zellmer. Incidentally, while the United of Omaha standards and procedures require parents of children under the age of five to have life insurance that is four times greater than the child, United of Omaha did not implement or apply this standard in the Zellmer case since neither Stacey nor Joel Zellmer maintained coverage in the amount of $800,000.

2.5 On December 3, 2003, less than three months after Mr. Zellmer purchased the $200,000 juvenile life insurance policy on his stepdaughter, Ashley Cay McLellan was found floating and unconscious in the swimming pool at the Zellmer residence. At the time of this incident, Stacey Zellmer was at work and Mr. Zellmer was the only adult at home to care for and supervise Ashley Cay McLellan. On December 5, 2003, Ashley Cay McLellan died.

2.6 Following the death of Ashley Cay McLellan, King County investigated the circumstances which led to her death. The investigation revealed, amongst other things, the following incidents and/or series of alleged events involving Mr. Zellmer:

2.6.1 In August of 1990, Mr. Zellmer purchased insurance from Viking Insurance Company that would pay up to $25,000 for anyone injured in his car if it was hit by an uninsured motorist. Just a few weeks later, Mr. Zellmer brought his then four-month old stepson, Mitchell Komendant, into the hospital and claimed that Mitchell had been injured after the family car was rear-ended by a hit-and-run driver. Initial X-rays of Mitchell were negative; however, three days later, Mr. Zellmer brought Mitchell to the hospital for new X-rays. This time, X-rays indicated that Mitchell had one, and possibly two, broken legs. Within a week of the follow-up X-rays, Mr. Zellmer attempted to collect on the automobile insurance policy. Ultimately, Mr. Zellmer ceased efforts to collect on the insurance after his then-wife signed a declaration stating there had been no car accident and that Mr. Zellmer had planned to make a false claim against Viking all along in order to collect the insurance proceeds.

2.6.2 In 1990, Mr. Zellmer made a fraudulent insurance claim on his homeowner's policy citing a break-in/theft at a Shurgard storage unit.

2.6.3 Sometime in 1991 and 1992, Mr. Zellmer obtained insurance proceeds for a ring he claimed was stolen; however, he later gave the ring to Kelly StaRosa.

2.6.4 In August of 1995, Allstate Insurance Company rescinded a renter's insurance policy issued to Mr. Zellmer after he made a claim in connection with damage caused by a fire at his residence. Allstate investigated the claim and discovered that Mr. Zellmer had misrepresented his application and claim history by denying any prior claims. In fact, Mr. Zellmer had made a claim just six months earlier under his renter's policy with Farmers Insurance Company in connection with stolen property and a slashed waterbed. Farmers paid for the claim, including paying Mr. Zellmer $11,000 in cash. As a result of this information, Allstate rescinded its renter's policy with Mr. Zellmer and refunded his premium payment.

2.6.5 In April of 2000, Mr. Zellmer began a relationship with Kelly Clausen, the mother of an infant son named Kyle. Less than a month into the relationship, Ms. Clausen's son was found soaking wet and lying next to the hot tub at the Zellmer residence. Mr. Zellmer claimed that the infant crawled and fell into the hot tub. In July of 2000, while Mr. Zellmer was

home babysitting, Kyle sustained blisters and second degree burns on his hands. Mr. Zellmer claimed that Kyle sustained the injuries by leaning against the glass fireplace.

2.6.6 In the autumn of 2002, Mr. Zellmer began a relationship with Michelle Barnett, the mother of a four-year old daughter named Madison. In December of 2002, while Mr. Zellmer was babysitting Madison, Michelle Barnett came home to find Madison wearing different clothing. Mr. Zellmer explained the incident by claiming that Madison "tripped and fell" into the pool. Ms. Barnett also claimed that Mr. Zellmer had expressed interest in purchasing life insurance for Madison.

2.6.7 In the spring of 2003, Mr. Zellmer became involved in a relationship with Mia Teran, the mother of a 3-year old daughter. Mr. Zellmer suggested purchasing insurance policies for Mia and her daughter. However, the second time that Mia left her daughter alone with Mr. Zellmer, the girl burned her lips on a sippy cup provided by Mr. Zellmer. Mia ended the relationship after finding a collection of pictures of other women with young children in Mr. Zellmer's home office.

2.6.8 Mr. Zellmer has been charged in King County Superior Court with first-degree theft for allegedly collecting $193,000 in connection with a fraudulent disability claim filed with the Department of Labor and Industries.

2.6.9 Mr. Zellmer was not employed at the time he purchased the juvenile life insurance policy on Ashley Cay McLellan from United of Omaha; rather, his only source of income was disability payments from the Department of Labor and Industries.

2.7 On June 7, 2007, King County officials arrested and charged Joel Zellmer with the murder of Ashley Cay McLellan. King County maintains, amongst other things, that Mr. Zellmer had a number of motivations to murder Ashley Cay McLellan, including a desire to collect on the $200,000 life insurance policy issued by United of Omaha.

C. THE OIC EXAMINES UNITED OF OMAHA'S JUVENILE LIFE INSURANCE GUIDELINES/STANDARDS AND DETERMINES THEY FAIL TO SATISFY THE REQUIREMENTS OF RCW 48.23.345.

2.8 Learning about the investigation and arrest of Mr. Zellmer by King County prompted the OIC to conduct its own investigation of United of Omaha with respect to the underwriting standards and guidelines it designed and implemented in connection with the sale of juvenile life insurance.

2.9 Having substantially completed its investigation, the OIC maintains that United of Omaha failed to develop and implement adequate underwriting standards and procedures that were designed to detect and prevent the purchase of juvenile life insurance for speculative or fraudulent purposes. United of Omaha's failure to develop and implement adequate underwriting standards and procedures allegedly resulted in the very harm the legislature required insurers to attempt to prevent—the death of the insured juvenile by the policy owner. Had United of Omaha's standards and procedures included anything more than a requirement that insurance be in place on all family members, this tragedy might have been prevented. As such, the OIC's contends that United of Omaha's standards and procedures did not satisfy the statutory directive provided in RCW 48.23.345.

2.10 Had United of Omaha's underwriting standards and procedures included, by way of example, the following factors, the Ashley Cay McLellan tragedy might have been prevented. At a minimum, the statutory directive of RCW 48.23.345 would have been satisfied:

2.10.1 Language in the standards/procedures stating that detecting and preventing the purchase of juvenile life insurance for speculative or fraudulent purposes is a key component of the standards/procedures and of primary concern to United of Omaha;

2.10.2 Language in the standards/procedures requiring an analysis of family net worth;

2.10.3 Language in the standards/procedures requiring an analysis of parental household income;

2.10.4 Language in the standards/procedures requiring an analysis of net worth of the child;

2.10.5 Language in the standards/procedures implementing income verification procedures and safeguards;

2.10.6 Language in the standards/procedures when and under what circumstances a criminal background check and/or search of the National Insurance Crime Bureau will be performed on the applicants and/or beneficiaries during the application process;

2.10.7 Language in the standards/procedures requiring financial justification for the purchase of large sums of juvenile life insurance and/or other procedures for permitting the purchase of insurance that exceeds the standard maximum amount (in this case, $100,000);

2.10.8 Language in the standards/procedures detailing the procedure for gaining Company approval for the purchase of large sums of juvenile life insurance or approval for the purchase of insurance that exceeds the standard maximum amount (in this case, $100,000);

2.10.9 Language in the standards/procedures which identify the criteria to be applied if the Company allows exceptions to any of the standards/procedures implemented;

2.10.10 Language in the standards/procedures which identify the procedures to be used to document the reason(s) why any exception was granted;

2.10.11 Language in the standards/procedures which identify the process used to verify that persons applying for juvenile life insurance coverage have an insurable interest, as provided in RCW 48.18.030—this should also include the procedures used to identify who may be listed as "owner" of the policy and who may be listed as the "beneficiary";

2.10.12 Language in the standards/procedures which explain the processes used to verify insurable interest when court documentation or licenses are necessary to establish the requisite insurable interest;

2.10.13 Language in the standards/procedures which identify the financial and/or medical underwriting standards applied during the juvenile life insurance application or screening process; and

2.10.14 Language in the standards/procedures which identify the process used to screen or discover connections that the potential owner or beneficiary may have with illegal business practices, criminal background information, association with criminals or underworld organizations, etc.

3. ALLEGED VIOLATIONS OF LAW

3.1 United of Omaha violated RCW 48.23.345 by failing to develop and implement underwriting standards and procedures that were designed to detect and prevent the purchase of juvenile life insurance for speculative or fraudulent purposes.

4. SANCTIONS REQUESTED

4.1 United of Omaha will revise and implement its juvenile life insurance standards/procedures to comply with RCW 48.23.345 so as to ensure that the underwriting standards in place are designed to detect and prevent the purchase of juvenile life insurance for speculative or fraudulent purposes.

4.2. Pursuant to RCW 48.05.185, the Commissioner seeks to impose a fine against United of Omaha in the amount of $10,000 for the above-cited violation.

5. NOTICE OF HEARING

The OIC will convene a hearing to consider the allegations above and the appropriate sanction or sanctions, if any, to be imposed upon United of Omaha pursuant to RCW 48.04.010 and RCW 48.05.185. At the hearing, the OIC will present evidence showing that United of Omaha violated the Insurance Code and that the sanctions requested above should be ordered. United of Omaha may cross-examine OIC witnesses and present any defenses, evidence, or arguments it may have in opposition. In the event that United of Omaha fails to

appear, it will be held in default and the penalties sought by the OIC will be levied, effective the date of the hearing.

DATED this 9TH day of November, 2007.

MIKE KREIDLER
Insurance Commissioner

By: _____
Thomas P. Rowland
Staff Attorney
Legal Affairs Division

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing NOTICE OF HEARING on the following individuals in the manner indicated:

(XXX) Via U.S. Mail
Mr. Richard C. Anderl
Senior Vice President & Associate General Counsel
United of Omaha Life Insurance Company
Mutual of Omaha Plaza
Omaha, Nebraska 68175-1008

(XXX) Hand Delivery
Patricia D. Petersen
Administrative Law Judge
5000 Capital Blvd.
PO Box 40255
Olympia, WA 98504-0255

SIGNED this 9th day of November, 2007, at Tumwater, Washington.

Jodie L. Thompson

Jodie Thompson

OF
IN
P.O. BOX 40255
OLYMPIA, WA 98504-0255

Mr. Richard C. Anderl
Senior Vice President & Associate General Counsel
United of Omaha Life Insurance Company
Mutual of Omaha Plaza
Omaha, Nebraska 68175-1008

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Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

IN THE STATE OF WASHINGTON
BEFORE THE OFFICE OF THE INSURANCE COMMISSIONER

IN THE MATTER OF UNITED OF OMAHA LIFE INSURANCE COMPANY and MUTUAL OF OMAHA INSURANCE COMPANY Respondents.	NO. D07-333 NOTICE OF APPEARANCE FOR UNITED OF OMAHA LIFE INSURANCE COMPANY and MUTUAL OF OMAHA INSURANCE COMPANY

TO: Thomas P. Rowland, Office of Insurance Commissioner Staff Attorney

AND TO: Patricia D. Petersen, Chief Hearing Officer

Please take notice that the undersigned attorneys hereby appear in the above-entitled matter for purposes of representing United of Omaha Life Insurance Company and Mutual of Omaha Insurance Company ("United"), in all the above-entitled matter, without waiving objections to any defense available under the law.

All further papers and pleadings in this matter, except writs of original process, should be served upon the undersigned attorneys for United, at their offices listed below:

Jeffrey L. Gingold
John S. Devlin
Katherine A. Baker
Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101
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LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

DATED this 19th day of November, 2007

LANE POWELL PC

By _____
Jeffrey L. Gingold, WSBA No. 18915
John S. Devlin III, WSBA No. 23988
Katherine A. Baker, WSBA No. 36578
Attorneys for United of Omaha Life Insurance Company and Mutual of Omaha Insurance Company

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206.223.7000 FAX: 206.223.7107

CERTIFICATE OF SERVICE

The undersigned hereby certifies and declares under penalty of perjury under the laws of the State of Washington as follows:

1. I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and otherwise competent to be a witness to this matter.

2. On the 19th day of November, 2007, I caused a true and correct copy of the following documents:

- Notice of Appearance for United of Omaha Life Insurance Company and Mutual of Omaha Insurance Company;
- November 19, 2007 Letter from Jeffrey L. Gingold to Office of Insurance Commissioner; and
- this Certificate of Service

to be served on the following counsel of record in the manner indicated below:

Thomas P. Rowland, Esq.
Staff Attorney
Legal Affairs Division
Office of Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

☐ by **CM/ECF**
☑ by **Electronic Mail**
☐ by **Facsimile Transmission**
☑ by **First Class Mail**
☐ by **Hand Delivery**
☐ by **Overnight Delivery**

Alisa R. Flabel
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