

STATE OF WASHINGTON

Phone: (360) 725-7000

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 25th day of July 2006 at Tumwater, Washington.

Signed: Wendy Galloway

OFFICE OF
INSURANCE COMMISSIONER

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HEARINGS UNIT
Fax: (360) 664-2782

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Wendy Galloway
Paralegal
WendyG@OIC.wa.gov.
(360) 725-7002

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In re:)	NO. G04-96
)	
UNITY HR OF WASHINGTON, INC.,)	<u>AMENDED FINDINGS OF FACTS,</u>
)	<u>CONCLUSIONS OF LAW AND</u>
Appellant.)	<u>FINAL ORDER ON HEARING</u>
)	

TO: Alan J. Wertjes, Attorney for Unity HR of Washington
1800 Cooper Point Road S.W., Bldg. 3
Olympia, Washington 98502

COPY TO: Tom Montgomery, Attorney for Governing Committee
Montgomery Scarp MacDougall, PLLC
Seattle Tower 27th Floor
1218 3rd Avenue
Seattle, Washington 98101

The purpose of this Amended Findings of Facts, Conclusions of Law and Final Order on Hearing is solely to clarify the intent of the undersigned, as shown in the changes indicated below. Other than those changes, the original Findings of Facts, Conclusions of Law and Final Order on Hearing entered on December 12, 2005, remains effective in its entirety as of date of entry.

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 before the Insurance Commissioner for the state of Washington (OIC) on August 29 and 30, 2005, 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



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opportunity to inspect all documentary evidence. Unity HR of Washington, Inc. (Unity HR) appeared through its attorney, Alan J. Wertjes, Esq., of Wertjes Law Group, PS in Olympia, Washington. The Governing Committee of the Washington State United States Longshore and Harbor Workers' Compensation Act Assigned Risk Plan (WARP) appeared by and through its attorney, Tom Montgomery, Esq. of Montgomery Scarp MacDougall, PLLC in Seattle, Washington.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether a specific decision of the Governing Committee of WARP, which is documented by letter from the Plan Director of WARP to Unity HR dated November 23, 2004 and filed herein, should be confirmed, set aside or modified. Said decision denies coverage to Unity HR for injuries sustained by one of its workers, on the basis that at the time of the accident there was no coverage in place. Unity HR requested this hearing to contest this decision.

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. Troy Olney (Olney) is President and founder of Unity HR, the Appellant, headquartered in Bellingham, Washington. Unity HR provides staffing and payroll services for businesses engaged in various industries, including offices, restaurants, construction and maritime industries. The maritime work includes ship repair and construction and also fishing, among other activities. [Testimony of Olney.]
3. Briefly, WARP is an organization created by Washington law to facilitate the provision of insurance coverage for employers operating in the longshore and harbor workers industry where the employer has been refused coverage by at least two insurance carriers. This insurance coverage is the USL&H Assigned Risk Plan coverage (USL&H). WARP is, in effect, the insurance plan of last resort. In order to facilitate the provision of USL&H coverage, at all times pertinent hereto (until the end of 2004), WARP contracted with Eagle Pacific as the servicing carrier. Eagle Pacific used PointSure Insurance Services (PointSure), a separate corporation although apparently owned or otherwise closely affiliated with Eagle Pacific, as its representative to handle all of the administration of its USL&H insurance coverage, from initial inquiries to claims handling and termination/cancellation of coverage. Later, beginning on or about October 2003, the rights to Eagle Pacific's renewal business were acquired by Kemper and

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therefore Kemper became WARP's servicing carrier for Unity HR's renewal on March 18, 2004, the next renewal date. At all times pertinent hereto, Kemper retained PointSure as its representative to handle administration of its USL&H insurance. [Testimony of Charles Glass; Testimony of Elizabeth Corwin.]

4. Ms. Elizabeth Corwin (Corwin) served first as Manager of Assigned Risk Plans employed by PointSure. Upon receiving requests for coverage from employers who might qualify for USL&H coverage through WARP, WARP referred those requests to PointSure, specifically Corwin. Corwin, on behalf of PointSure which was representing Eagle Pacific and later Kemper, then discussed the coverage needs with the requesting employer, explained the terms of coverage, received and reviewed applications, rated the coverage, sent quotes to employers, received the funds in payment of the coverage, issued certificates of coverage and saw that the policies were issued. It also quoted renewals and spoke with insureds whenever they had questions about coverage. Corwin was Manager of Assigned Risk Plans within PointSure until on or about the end of 2004 and was in charge of, and performed, these functions. [Testimony of Corwin; Testimony of Charles A. Glass (Glass), WARP Plan Director.] [Testimony of Corwin; Testimony of Glass.]

5. During the pertinent period, 2002 to 2004, many employers seeking coverage through WARP in the above detailed manner did not work through an insurance broker but instead communicated directly with PointSure for all necessary information and activities relative to securing the USL&H insurance coverage, from original inquiry into terms of coverage to issuance of the policy, payment therefore, inquiries concerning renewals and payment therefore, communications relative to claims and all other necessary communications. [Testimony of Corwin.]

6. The insurance carrier from which WARP, through PointSure, secured coverage for qualified applicants, all as detailed above, was Eagle Pacific. On or about October 1, 2003, due to the acquisition of Eagle Pacific's renewals by Kemper, Eagle stopped writing all coverages; and the insurance carrier from which WARP, through PointSure, began to secure coverage was changed to Kemper. The only difference was the carrier name printed on the policy. [Testimony of Corwin.]

7. Policies issued to qualified employers, as detailed above, were for a term of one year, beginning at different times of the year depending upon when the particular insured first obtained coverage. Specifically, the quote written and transmitted by PointSure to the applicant acts as the invoice for the premium, and PointSure never issued coverage without first receiving payment of the premium for that coverage. It is only when later installment payments are due that PointSure sent out invoices. [Testimony of Corwin.]

8. When the one year term of a policy is about to expire, it was the practice of PointSure to pull the policy about sixty days in advance of termination and send a renewal quote to the insured. At the time of renewal, PointSure did not require a new application; instead, it required a new application approximately every third or fourth year. [Testimony of Corwin.]

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9. At the time of renewal, if PointSure did not receive payment for the new term of coverage, it just let the policy lapse. It was not PointSure's practice to notify the employer that its policy had lapsed for nonpayment of premium.

10. On or about the end of 2002, Olney established, and became the President of, Unity HR for the purpose of engaging in the activities detailed above. At that time, because of the particular industries in which Unity HR was engaged, ~~Olney~~ Unity HR had no immediate need for USL&H insurance. However, on or about March 2003, because of the addition of new maritime clients doing business with Unity HR, it became necessary for Olney to secure this coverage. In order to secure insurance coverage for ~~his~~ Unity HR's maritime related risks, on or about March 2003, Olney directly contacted Corwin, who was at that time employed by PointSure. Corwin never advised Olney that he needed a broker – and indeed it was not the practice of PointSure to require that employers be represented by brokers - but instead listened to the type of work in which Unity HR was engaged, sent Olney an application for insurance and helped him complete it and gave him a rate quote for the desired coverage from Eagle Pacific. [Testimony of Olney; Testimony of Corwin.] Corwin advised Olney that he would have to receive two denials of coverage from standard carriers to qualify with WARP/USL&H and advised that he could get one denial from the company with which she was affiliated, Eagle Pacific. [Testimony of Olney.]

11. Subsequently, upon obtaining the necessary two denials, Olney submitted payment for the WARP coverage (as above, from Eagle Pacific through PointSure). ~~His~~ Unity HR's policy term was March 18, 2003 to March 18, 2004. He paid the premium for that first year of coverage to Corwin; a percentage of the premium was paid to bind the coverage and then Corwin sent him a payment schedule. When a payment was due, Olney would receive an invoice approximately two weeks before it was due. At the end of the first term, he also received an invoice for additional premium due (based upon increased payroll) for \$76,437. which he paid timely as well. [Ex. 7; Testimony of Olney; Testimony of Corwin.] Olney's payments were made on or before their due dates and were never late. Olney never dealt with anyone other than Corwin in these matters related to his acquisition and retention of the subject insurance coverage. [Testimony of Olney.]

12. On or about January 2004, Olney received a letter dated January 14, 2004, from *Elizabeth Corwin, ARM/Washington Assigned Risk Plan Underwriter/PointSure Insurance Services/Kemper Employers Insurance Company/On behalf of Eagle Pacific Insurance Company* which advised that on October 1, 2003 the Eagle Insurance Companies announced the sale of certain assets including the rights to Eagle Pacific's renewals, to Kemper Employers Insurance Company and that therefore Eagle Pacific's contract to act as the WARP's servicing carrier was replaced by Kemper. The letter further advised that *the enclosed non-renewal notice to you fulfills the regulatory obligation of Eagle Pacific...to notify you that they will not renew your workers compensation policy.* The letter further advised that Kemper had been designated the new servicing carrier by WARP and that prior to the expiration of ~~his~~ Unity HR's current WARP policy, Kemper would automatically offer ~~him~~ Unity HR a replacement policy, that coverage with Kemper can be bound upon timely payment of the renewal premium without any lapse in coverage. Attached to this letter was a document entitled *Policy Termination/Cancellation/*

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Reinstatement Notice indicating that Unity HR's policy was being nonrenewed effective March 18, 2004. [Ex. A8; Testimony of Olney; Testimony of Corwin.]

13. Olney understood that this January 14, 2004 letter possibly cancelled his Unity HR's subject Eagle Pacific policy. Accordingly, he immediately telephoned Corwin and asked her what it meant and whether his Unity HR's coverage was cancelled. Corwin advised him that it had to do with internal activities within Eagle Pacific, that his Unity HR's policy was current and effective and that he need not worry about his Unity HR's policy. For this reason, Olney took no further steps to maintain his Unity HR's coverage. [Testimony of Olney.]

14. As to other USL&H insureds in Washington, at their first renewal after Kemper had taken over the WARP business from Eagle Pacific, at least some of those other insureds, e.g. Donald Reid of ACRA Inc., Perette Kinser of Hamer Environmental LLP and Carol Cotton of Orcas Power & Light Cooperative [Exs. 13, 14 and 15 respectively; Testimony of Carol Cotton.] received letters from Corwin on behalf of PointSure, which letters required that they renew applications for the new coverage to be issued by Kemper. Based upon uncontroverted testimony, Olney Unity HR received no such request, nor did Corwin/PointSure expect such update/current application from Olney Unity HR. [Testimony of Olney.]

15. On or about January 21, 2004, Olney Unity HR received a one page document by fax, which at the top bore the names *PointSure Insurance Services/Kemper Employers Insurance Co. and Elizabeth Corwin, ARM*. This page, which bore no signature but bore the phone numbers of these companies and the e-mail address of Corwin at the top, was entitled *WA USL&H Renewal Proposal Effective March 18, 2004* and listed policy limits, rates and premium amounts pertaining to Unity HR's business. While it stated the total estimated discounted premium of \$28,968 and the down payment amount of \$7,242 and advised that installments of \$7,242. were due on 8/1/04, 9/1/04 and 12/1/04, it bore no due date any other payments. [Ex. A9.] The document received by Olney Unity HR consisted of one page. [Testimony of Olney.] Olney reviewed this page and believed that it was for the purpose of informing him about what he could expect for the upcoming year's term and that, prior to his Unity HR's coverage lapsing for nonpayment for this new term year he Unity HR would receive an invoice which would be the actual invoice which he should pay, just as he Unity HR had received invoices from PointSure for prior installment payments during the previous term of insurance. [Testimony of Olney.] Olney's expectation was based upon the appearance of the faxed document and upon his experience with USL&H insurance procedures in Alaska, where he had gone through at least one renewal cycle: in that region, such insurance is provided by Alaska National and involves the more formal use of the U.S. Mail, as opposed to faxed documents, and often by certified mail as well. [Ex. A16; Testimony of Olney.]

Olney had never gone through a renewal cycle with the WARP, either in his employment with his former employer or now managing Unity HR. [Testimony of Corwin.] He was therefore not familiar with what to expect in this unusual renewal process (which was further complicated by the renewal being through a new carrier, Kemper).

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16. In his business, Olney does not receive bills from entities with which he does business, including any vendors, which are faxed to him. He receives bills by mail. Further, he receives communications with other insurance carriers by fax only if the faxed document is information which he has requested of them e.g., Labor and Industries information. [Testimony of Olney.]

17. When a first premium payment on a new policy is due, PointSure does not send an invoice. [Testimony of Corwin.] Rather, the aforereferenced faxed *WA USL&H Renewal Proposal* [Ex. A9] was meant by PointSure to serve as the invoice for the subject Kemper policy. Only when installment payments are due does the insured receive an invoice. [Ex. A5, A6, A7.] Testimony of Corwin; Testimony of Glass.] When it was not paid by Olney, his Unity HR's policy was allowed to expire on March 18, 2004. [Testimony of Corwin; Testimony of Glass.] Unlike the process for notification in other states, because Eagle Pacific/PointSure does not notify the insured in any manner when its policy lapses for lack of payment, Olney was not aware that Unity HR's policy had expired. [Testimony of Olney.] Neither Eagle Pacific, PointSure, Corwin or any other individual or entity ever communicated with Olney or anyone at Unity HR in any form that Unity HR's policy had expired for lack of payment for the renewal term. [Testimony of Corwin; Testimony of Olney.]

18. On or about April 7, 2004, which was approximately three weeks after Unity HR's policy had expired on March 18, 2004, and still at a time in which Olney was unaware that it had expired, an accident occurred involving an individual who would have been covered by the policy. Olney promptly contacted Corwin, who advised him that his policy had expired and that there was no coverage for Unity HR. [Declaration of Olney, Ex. R17; Testimony of Corwin; Testimony of Olney.]

19. On or about April 7, 2004, because Unity HR had at that time approximately 70 employees who were all without coverage, which put his employer clients at risk as well, Olney stopped all work until he could obtain coverage again. Corwin advised him that the earliest she could send Olney a bill was the next day, and so, in desperation, Olney contacted Charles Glass, WARP Plan Director (Glass). Glass authorized Corwin to reinstate the subject policy as of that day (not retroactively). Accordingly, Olney immediately transferred payment, on April 7, 2004, in the amount of \$7,242.00 for the coverage immediately from his bank to PointSure to pay the premium for this coverage. [Ex. R23; Testimony of Olney; Testimony of Glass.]

20. Currently, Unity HR is again covered under an insurance policy issued in affiliation with WARP. However, Unity HR has had to bear the loss incurred as a result of the abovereferenced accident because the Board of WARP has denied coverage for that accident due to the fact that the subject WARP policy, which would have covered the accident, had expired some three weeks prior to the time of the accident.

21. In his regulations, the Insurance Commissioner requires that the WARP publish and follow its Operating Procedures. Those Operating Procedures were drafted by its Governing Committee on and approved by the Insurance Commissioner on or about March 15, 1995. [Testimony of Glass.] Those subject regulations do not specifically require that the WARP to publish and

follow Operating Procedures regarding procedures to bill or otherwise provide notifications to of any kind to insureds, aside from giving the WARP the authority to *Take such other actions as the committee considers necessary and appropriate to properly administer the activities of the assigned risk plan*. Importantly, there also is no directive as to what form of notification WARP and the servicing carrier must use i.e. fax, U.S. Mail, etc. For this reason, presumably, in those Operating Procedures [Ex. 20] which were drafted as a result of this regulation, there is no clear section which allows the WARP, or the servicing carrier, to nonrenew an insured for nonpayment of premium. The sole section which addresses this topic instructs that *At least 45 days before the expiration of coverage [the servicing carrier must] send a notice of the impending expiration to the insured Such notice shall set out the procedure under which the policy will be renewed*. [Ex. 20, page 3.] Further, the Operating Procedures also appear to be silent with regard to advising an insured when its insurance has been actually nonrenewed/allowed to expire for nonpayment of premium. Finally, and importantly, the Operating Procedures contain no directive as to what form of notice – to such extent that any notice is required – the WARP and servicing carrier may use e.g. fax, U.S. Mail, etc.

22. Operating procedures are also included in the contract which the WARP has with its servicing carrier. [Ex. 21.] This contract contains virtually no procedures to be followed in the event of nonpayment of premium and the carrier's procedures relative to nonrenewal for nonpayment of premium. The only portion of this contract which is of some interest, it should be noted, is that – as between the WARP and the servicing carrier, Sec. 6.1 thereof specified that *Whenever written notice is required to be given under any provision of this agreement ... such notice shall be sufficient if sent by certified mail, return receipt requested*. Therefore, the required standard of notification as between the WARP and the servicing carrier is certified mail, return receipt requested, while the servicing carrier has established a procedure – in the absence of any direction regarding notice to insureds aside from the aforementioned 45 day notice set forth in its Operating Procedures – where it simply faxes the 45 day notice to insureds with no follow up of any kind even at the time that the insurance actually expires.

23. The procedures followed by PointSure in this matter depart greatly from all established procedures in other property and casualty insurance. While it is recognized, as ably argued by WARP, that the insurance at issue herein is directed to a different type of market than traditional property and casualty insurance with its strict rules concerning billing, renewals and cancellations, the consumer still has a right to expect a reasonable standard of care in notifying the consumer in the areas of billing, renewals and cancellations and the form of delivery in which they are sent.

24. In other USL&H programs in other states, without any substantial deviation, the typical process for renewals is as follows: 1) Notice of Renewal sent approximately 90 days prior to expiration of the policy term, by fax; 2) 2 weeks (approx.) later a fax and certified letter are delivered as a reminder; 3) 30 days prior to expiration of the policy term, if no premium payment is received, then another reminder letter is faxed, together with a certified letter advising the insured that should the premium not be paid by the due date then its coverage will be cancelled. At no time is this process every conducted entirely by fax. Further, at no time is only one letter –

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by whatever means – sent to the insured. [Testimony of Michael D. Miller.] Further, for example, in Alaska, where Olney has purchased USL&H coverage, renewal notices are sent by certified U.S. Mail, return receipt requested, with clear indications of the due date and consequences of nonpayment clearly stated therein, with additional detailed attachments concerning terms and amounts and types of coverages. [Ex. A16.]

25. While, as also ably argued by the WARP herein, the markets for USL&H insurance in some other states are somewhat different from that of Washington, this information is not sufficient to accept as reasonable procedure such a radically curtailed renewal procedure as that conducted by the WARP in comparison to other states in their USL&H programs. It is not unreasonable for a consumer – who can often be, as Olney, an employer doing business with USL&H Assigned Risk programs in other states – to expect billing, renewal and cancellation procedures at least somewhat similar to those other states in care and attention to detail. Finally, in carrying out the renewal process which is the subject of this proceeding, communications by fax are not sufficiently reliable methods of communication. [Testimony of Michael D. Miller.]

26. The WARP has argued that it did comply with the specific term of its own single Operating Procedure [Ex. A17, p.3] in handling this renewal/nonrenewal transaction and that – as required by regulation, the Insurance Commissioner did approve those Operating Procedures. That sole Operating Procedure was taken from that section of the Insurance Code which applies to other types of property and casualty insurance. [Testimony of Corwin.] That statute (RCW 48.18.2901(1)(a) provides that “The insurer gives the named insured at least forty-five days’ notice in writing as provided for in RCW 48.18.290, that it proposes to refuse to renew the insurance contract upon its expiration date;” RCW 48.18.290 requires careful, written notification to be deposited in the U.S. Mail with other specific, strict requirements of proof of mailing. While approving these Operating Procedures, the Insurance Commissioner may have assumed that the Operating Procedure contemplated similar written, mailed, notice just as required by the statute from which the Operating Procedure was derived (just as elsewhere in the Operating Procedures [Ex. A17, p. 2] regarding process for cancellation it incorporates the whole of RCW 48.18.290). At any rate, the Operating Procedure itself does not define “send a notice of the impending expiration to the insured,...” and, as with all insurance transactions and procedures – particularly ones where the method is not clearly spelled out in every detail such as this one - there exists the duty to use a reasonable standard of care. Based upon this reasoning, it is here found that PointSure, acting on behalf of Eagle Pacific and then Kemper, failed to uphold a reasonable standard of care when nonrenewing the Kemper Policy and billing Unity HR for the new Kemper policy. Most specifically, there was no indication what the actual intent of the January 14, 2004 fax letter with attached page [Ex. A8; Ex. R10] was, particularly together with Olney’s conversation with Corwin discussed above. Further, the January 21, 2004 three page fax letter [Ex. A10; R11 and R11A] was admittedly not an invoice [Testimony of Corwin; Testimony of Glass] and, particularly as to the second page which is the page that Olney received, failed to contain even a due date on its face. Further – and this is whether or not Olney did receive all 3 pages of this faxed January 21, 2004 communication from Corwin - when payment of premium was not received, a normal standard of care either under standard procedure in other states’ USL&H programs or under standard procedure in other areas of property and

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casualty insurance, would dictate that the insured be notified of its intent to cancel for nonpayment prior to letting the policy expire. Finally, it is not reasonable for PointSure/Kemper to conduct its invoicing by fax rather than by, or in combination with, U.S. Mail or other more reliable means. The WARP's activities in processing Unity HR's coverage with the new carrier (Kemper), and delivering its only "proposal" (which was intended to be the only invoice) solely by fax, without further communications of any kind, violates the reasonable standard of care which Unity HR could expect in its business dealings with PointSure, Eagle Pacific and Kemper.

27. Steven A. Glass appeared as a witness on behalf of the WARP. Mr. Glass presented his testimony in a clear, credible and detailed manner, answered questions directly and exhibited no apparent biases.

28. Elizabeth D. Corwin appeared as a witness on behalf of the WARP. Ms. Corwin presented her testimony in a clear, credible and detailed manner, answered questions directly and exhibited no apparent biases.

29. Michael D. Miller appeared as a witness by telephone on behalf of Unity HR. Mr. Miller presented his testimony in a clear, credible and detailed manner, answered questions directly and exhibited no apparent biases.

30. It is noted here that the WARP presented a motion at hearing, with argument, that the testimony of Mr. Miller should be stricken at least in so far as he intended to testify about the California USL&H and California's process relative to proper notifications to insureds in the renewal/nonrenewal process. The WARP argued, briefly, 1) that it had insufficient notice of this witness; and 2) that that information which might be gained from this witness' testimony is irrelevant to this case. Unity HR opposed the motion, arguing that it is appropriate to be able to receive information about other states' USL&H programs and procedures in order to assist in determination of the standard of care. The undersigned overruled the WARP's motion and allowed this testimony based upon a determination 1) that there had been no agreement on due dates for exchange of exclusive witness lists; and 2) this witness' testimony about other states' USL&H programs was potentially relevant and, in any case, this question of relevancy would go to the weight to be given to this evidence rather than to its admissibility.

31. Troy Olney appeared as a witness on behalf of Unity HR. Mr. Olney presented his testimony in a clear, credible and detailed manner, answered questions directly and exhibited no apparent biases. It should be noted here that the WARP argued that Olney should be held to know more than the average purchaser of USL&H coverage because he had had contact with PointSure and Corwin in his previous employment with Employers Freedom Services, Inc. In fact, Olney was not the insurance representative in his former employment [Exs. R1 - R5; Testimony of Olney] and had occasion to deal with PointSure and Corwin on only one occasion in that former employment; further, in that employment he had no opportunity to experience the renewal process with the WARP. For this reason it is not reasonable to hold Olney to a higher standard than the average consumer.

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32. Based upon the activities of PointSure/Kemper as found in the Findings of Facts above, it is here found that the decision of the governing committee of the WARP which upheld the WARP's Plan Director's decision to deny coverage to Unity HR, as set forth in its letter dated November 23, 2004 [Ex. 1] should be reversed.

33. The undersigned recognizes recent case law which draws into question the proper standard of proof to be applied in administrative cases involving some types of professional licenses, and recognizes that such cases involving insurance agents' licenses have not been addressed. In recognition of the question that this recent case law raises, however, the undersigned has applied both the "clear cogent and convincing" standard of proof and the "preponderance of the evidence" standard of proof, and finds the above facts under application of either the lower or the higher standard of proof.

CONCLUSIONS OF LAW

Pursuant to the Findings of Facts above, to the effect that the that PointSure, acting on behalf of Eagle Pacific and then Kemper, when nonrenewing the Eagle Pacific policy and billing for the new Kemper policy, 1) gave little indication of the actual intent of its January 14, 2004 fax letter, especially when taken together with Olney's conversation with Corwin after his receipt of the letter; 2) the January 21, 2004 three page fax letter was admittedly not an invoice and, particularly as to the second page which is the page that Olney received, failed to contain even a due date on its face; 3) whether or not Olney did receive all 3 pages of this faxed January 21, 2004 communication from Corwin, when payment of premium was not received, a reasonable standard of care either under standard procedure in other states' USL&H programs or under standard procedure in other areas of property and casualty insurance, would dictate that the insured be notified of its intent to cancel for nonpayment, in writing, and mailed in the U.S. Mail prior to letting the policy expire. Finally, it is not reasonable for PointSure/Eagle Pacific/Kemper to conduct its communications solely by fax rather than by, or in combination with, U.S. Mail or other more reliable means. The WARP's activities in processing Unity HR's coverage with the new carrier (Kemper), and delivering its only "proposal" (which was intended to be the only invoice) solely by fax, without further communications of any kind, violates the reasonable standard of care which Unity HR could expect in its business dealings with PointSure/Eagle Pacific/Kemper.

Pursuant to the Findings of Facts above, it is here concluded that, pursuant to WAC 284-22-090, the decision of the governing committee of the WARP should be reversed and coverage in this matter should not have been denied.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the decision of the governing committee of the WARP should be reversed and coverage granted,

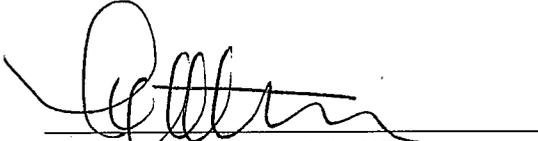
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IT IS HEREBY ORDERED that the decision of the governing committee of the WARP is DENIED and coverage in this matter is granted.

ENTERED at Tumwater, Washington this 25th day of July, 2006, pursuant to Chapter 48 RCW, Chapter 34 RCW and regulations applicable thereto, and specifically WAC 284-22-090.



PATRICIA D. PETERSEN
PRESIDING OFFICER

Pursuant to RCW 34.05.461(3), 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.