

Operating Procedures to the wrong Washington statute. The statute the OIC cited and held up as the standard, 48.18.2901(1)(a), is for nonrenewal notices. Subsection (1)(a) applied to the [WARP's] January 14, 2004 letter notifying Unity HR of Eagle's nonrenewal, and the [WARP] complied completely. The subsection of 2901 the OIC overlooked, but should have used to evaluate the appropriateness of the Operating Procedures and the [WARP's] actions thereunder relating to the January 21 fax, is subsection (1)(b), which applies to offers to renew. The procedure set out in subsection (1)(b) is functionally identical to the procedure followed by the [WARP] in this matter.

In reconsideration of this issue, the primary issue in this proceeding was whether the WARP and Kemper Employers Insurance Company (Kemper) properly offered to renew the Kemper insurance coverage to Unity HR, Kemper having at that time just recently acquired the renewal rights to WARP's business from Eagle Pacific Insurance Company, which was WARP's prior servicing carrier. Consideration of this issue required the undersigned to consider 1) the applicable statute, RCW 48.18.2901(1)(b), which applies to offers to renew; and 2) the WARP's own Operating Procedure. The WARP's own Operating Procedure, found at Ex. A17, p.3., sec. 2(d), provides, both as to nonrenewals and offers to renew: *At least 45 days before the expiration of coverage [the WARP or agent must] send a notice of the impending expiration to the insured, and the producer. Such notice shall set out the procedure under which the policy will be renewed.* Because this Operating Procedure applies to both nonrenewals and offers to renew, because this Operating Procedure provides no directive as to what form of notification WARP and the servicing carrier must use as to either nonrenewals or offers to renew, and because by statute the Insurance Commissioner was required to approve the language of the Operating Procedure, the undersigned looked to both 48.18.2901(1)(a) (nonrenewals) and 48.18.1901(1)(b) (offers to renew) as guides to a proper interpretation of what the drafters of the WARP's unclear Operating Procedure intended as the required procedures applicable in this instant matter.

RCW 48.18.2901(1)(a) requires that all insurers give the named insured notice of nonrenewal, in writing, and mailed to the named insured, at least forty-five days in advance. As to procedures to be followed for offering to renew insurance plans, 48.18.2901(1)(b) requires that all insurers "communicate" their willingness to renew "in writing" to the named insured at least twenty days in advance of the expiration date of the policy, which notice must also include a statement of the amount of the premium to be paid, and the due date thereof.

In determining that the WARP failed to comply with its own Operating Procedure, using both RCW 48.18.2901(1)(a) and (b) as guides, the undersigned considered, among other factors including the method of transacting offers to renew in similar arenas, the fact that the WARP, by its own testimony, only faxed one three page letter-type document to Unity HR, which the undersigned found to be very unclear. By its own admission, the WARP offered no follow up of any kind to this faxed offer to renew. Simply put, it was determined by the undersigned that, in approving the language of this Operating Procedure in 1995, and using both 48.18.2901(1)(a) and (1)(b) as guides, it is most

reasonable to assume that the Insurance Commissioner expected that the Operating Procedure contemplated more than one single fax, with no follow up, relative to required procedure in offers to renew coverage. Even if it had been found that the single faxed document were in compliance with its Operating Procedure (which it was not), in this situation it was also found that there was even verbal communication from the WARP to Unity HR that Unity HR was not required to take any action at that time [testimony of Olney]. Further, even if it had been found that the single faxed document were in compliance with its Operating Procedure (which it was not), the WARP failed to sufficiently prove that it had in fact delivered the entire three page fax document successfully to Unity HR, and Unity HR testified that it had only actually received one page [testimony of Olney].

In summary, the argument of the WARP on reconsideration, that RCW 48.18.2901(1)(a) was misapplied to this situation because it pertains only to nonrenewals, is without merit. Further, the WARP's proposal [Motion, II.A.5] that the Order somehow declares RCW 48.18.290, .2901(1)(a) and .2901(1)(b) to be invalid, is without any reasonable basis.

2. Findings Concerning Receipt of the Subject Fax by Troy Olney/Unity HR: As a further basis of its Motion for Reconsideration, the WARP argues [Motion, II.B.] that . . . *since the relevant issue is whether the offer [to renew] was communicated to the insured, Unity HR, the finding that Mr. Olney only received the second page is simply irrelevant....and that the OIC should reconsider its Order and enter a finding acknowledging that Unity HR, the named insured, received the January 21, 2004 fax notice. The evidence in this case was uncontroverted that Unity HR received all three pages*

In reconsideration of this issue, in its Findings of Fact concerning whether Olney had received one or three pages of the three page faxed letter at issue in this case, those Findings do, indeed, sometimes refer to "Olney" and sometimes refer to "Unity HR". While "Olney" and "Unity HR" are interchanged, the clear intent is to find that no one at Unity HR, including, but not limited to Mr. Olney – its founder, President and manager throughout the activities at issue herein and currently, and the individual who testified at hearing on behalf of Unity HR – received two pages of the three page fax. While this is more clear than not in the Findings, it would have been ideal to recite "Unity HR" throughout and not "Olney" on occasion; therefore the Findings of Facts will be revised to recite "Unity HR" throughout to conform with the undersigned's intent. Further contrary to the argument of WARP on reconsideration, a review of the testimony and the Findings herein clearly do not support a finding that there was uncontroverted evidence that Unity HR received all three pages: indeed, the evidence, and intent of the Findings herein, support Unity HR's position that only one page was received by Unity HR and the WARP has not provided sufficient proof that all three pages were sent to Unity HR.

Even so, as argued by Unity HR, whether or not Unity HR received all three pages of the three page fax document is not determinative of this case. The findings still remain that – even if Unity HR did receive all three pages of the subject three page fax (which the

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Findings conclude it did not) - the WARP still did not comply with the best interpretation of the requirements of its own Operating Procedure.

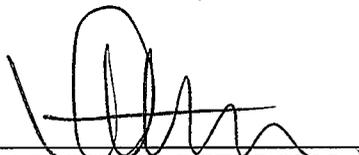
The undersigned has reviewed and considered the arguments of the parties presented during hearing on the subject Motion for Reconsideration, the record of the original hearing herein, WARP's Motion for Reconsideration filed December 23, 2005, Unity HR's Appellant's Response to WARP's Motion to Reconsider filed February 2, 2006, and WARP's Washington Assigned Risk Plan's Reply Brief in Support of its Motion for Reconsideration filed February 21, 2006, and the entire hearing file and has concluded that there is no basis for change in the Findings of Facts, Conclusions of Law, and Final Order on Hearing entered by the undersigned on December 12, 2005, except to change "Olney" to "Unity HR" in several places to clarify the intent of the undersigned in regard to a single fact therein which corrections do not change the Order herein. Other than those corrections, said Findings of Facts, Conclusions of Law and Final Order on Hearing remain effective as entered as the final order in this proceeding.

ORDER

Based upon the above activity,

IT IS HEREBY ORDERED that WARP's Motion for Reconsideration in this matter has been properly received and heard by the undersigned, that there is no sufficient basis for changing any portion on the Findings of Facts, Conclusions of Law and Final Order entered in this matter by the undersigned on December 12, 2005, except for change in wording from "Olney" to "Unity HR" in several places in the Findings to clarify intent of the undersigned expressed elsewhere throughout the Findings and Conclusions. Aside from these corrections, the Findings of Facts, Conclusions of Law and Final Order entered in the matter by the undersigned on December 12, 2005 remain effective as entered as the Final Order in this proceeding. Compliance with said Final Order, as corrected and entered on even date herewith, shall be made within 30 days of the date of entry of this Order on Reconsideration.

ENTERED AT TUMWATER, WASHINGTON, this 25th day of July, 2006, pursuant to Title 34 RCW, Title 48 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Presiding Officer