

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

UNION LABOR LIFE INSURANCE )  
COMPANY, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 06-2629  
 )  
OFFICE OF INSURANCE REGULATION, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to Notice, this matter came on for hearing before Diane Cleavinger, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, on April 10-13, 2007, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Robert Thomas Wright, Esquire  
Coffey, Burlington, Wright, LLP  
2699 South Bayshore Drive, Penthouse  
Miami, Florida 33133

Jeffrey A. Mishkin, Esquire  
Skadden, Arps, Slate, Meagher  
and Flom, LLP  
Four Times Square  
New York, New York 10036

For Respondent: S. Marc Herskowitz, Esquire  
Assistant General Counsel  
Office of Insurance Regulation  
612 Larson Building  
200 Gaines Street  
Tallahassee, Florida 32399-4206

STATEMENT OF THE ISSUE

Whether Petitioner, the Union Labor Life Insurance Company (Union Labor Life), is entitled to a certificate of authority to transact insurance in the State of Florida.

PRELIMINARY STATEMENT

By letter dated April 17, 2006, Respondent, Office of Insurance Regulation (OIR), notified Union Labor Life of its disapproval of Union Labor Life's application for a certificate of authority to transact insurance in Florida. Union Labor Life challenged OIR's disapproval and filed a Petition for Formal Hearing. The Petition was forwarded to the Division of Administrative Hearings.

Prior to the hearing, OIR filed a motion in limine to preclude consideration of an unexecuted consent order. At the commencement of the hearing, the parties presented oral argument on the motion. The motion in limine was granted. To preserve the issue for further review, Union Labor Life made an offer of proof regarding the unexecuted consent order.

At the hearing, Union Labor Life offered the testimony of three witnesses: Mark Singleton, chairman and chief executive

officer of Union Labor Life; Andrée St. Martin, an employee benefits attorney and a principal in the Groom Law Group Chartered, Washington, DC; and Teresa Valentine, Union Labor Life's vice president, general counsel and chief compliance officer. Union Labor Life also offered the deposition testimony of two witnesses: Jay Ridder and William Kane, partners in Ernst & Young LLP, Philadelphia, Pennsylvania. Additionally, Union Labor Life offered 60 exhibits into evidence. OIR offered the testimony of Charles Robert Norris, the financial administrator in the OIR Bureau of Health and Life Financial Oversight, and offered 42 exhibits into evidence. Additionally, 13 joint exhibits were submitted into evidence.

After the hearing, Petitioner submitted a Proposed Recommended Order on May 15, 2007. Likewise, Respondent submitted a Proposed Recommended Order on May 15, 2007.

#### FINDINGS OF FACT

1. Union Labor Life is a licensed insurer legally domiciled in the State of Maryland, with its principal place of business in the District of Columbia. It is a privately held company and wholly owned subsidiary of ULLICO Inc. (ULLICO). It has been in existence since 1925.

2. Union Labor Life is in the business of providing insurance protection, investment products, and other financial

services to unions, union members, and multi-employer pension, health and welfare, and other employee benefit funds.

3. Currently, Union Labor Life is authorized to engage in the business of insurance in 49 states and the District of Columbia. Florida is the only state that Union Labor Life is not currently authorized to engage in the business of insurance.

4. Union Labor Life had engaged in the insurance business in Florida under a certificate of authority issued on May 24, 1954.

5. Between the late 1990's through 2001, Union Labor Life was run by a senior management group who engaged in an improper course of self-dealing in the stock of Union Labor Life's parent corporation, ULLICO. Although that course of conduct did not harm Union Labor Life policyholders, it unjustly enriched certain directors and senior officers of ULLICO at the expense of ULLICO's institutional shareholders, most of which are labor unions and their affiliated pension and employee benefit funds. After the allegations against these officials arose, a battle for control of the Company ensued, creating considerable tumult within the company.

6. By the end of 2001, in part because of the self-dealing engaged in by certain officers and board members, Union Labor Life no longer met the capital and surplus requirements contained in Section 624.408, Florida Statutes. The Company's financial

difficulties were reflected in the Quarterly Financial Statements it filed with the Department of Insurance (Department), the predecessor agency to OIR.

7. On December 13, 2001, after reviewing the September 30, 2001, Quarterly Statement of Union Labor Life, the Department informed the company that it was not in compliance with Florida's capital and surplus requirements. The Department notified Union Labor Life that compliance must be achieved by the end of 2001.

8. Subsequently, during the same tumultuous time period, the Department and Union Labor Life attempted to resolve its licensure and financial issues.

9. In April 2002, former Illinois Governor James R. Thompson's law firm was retained by the ULLICO board of directors to investigate the allegations of self-dealing and wrongdoing by certain directors and senior officers. During the same time period, some of the implicated directors and managers retained another law firm to investigate the allegations made against them.

10. On July 3, 2002, the company and the Department entered into a Consent Order. The agreement stated that Union Labor Life suffered from serious capital and surplus problems in violation of Section 624.408, Florida Statutes, was out of compliance with maximum insurance writing ratios in violation of Section 624.4095, Florida Statutes, had investments in

subsidiaries in excess of statutory limits in violation of Section 625.325, Florida Statutes, and had excessive investments in individual mortgages in violation of Section 625.305, Florida Statutes.

11. The Consent Order, also, referred to a Corrective Action Plan submitted by the company on April 24, 2002, that Union Labor Life believed would bring it back into compliance with Sections 624.408 and 624.4095, Florida Statutes, by the end of the third quarter of 2002. In the event the company was not in compliance with the aforementioned statutes, Union Labor Life agreed that it's "Certificate of Authority shall be immediately suspended in the State of Florida."

12. Paragraph 9 of the Consent Order states:

ULLIC enters into this agreement with the DEPARTMENT and agrees that its Certificate of Authority in this state as a foreign insurer shall be suspended if the quarterly report for September 30, 2002 does not show compliance with the Florida Insurance Code.

. .

13. The Consent Order also states:

Upon compliance with said section and pursuant to Section 624.421(4), Florida Statutes, ULLIC shall submit documentary evidence verifying its compliance with Sections 624.408 and 624.4095, Florida Statutes, and requesting reinstatement of its Certificate of Authority.

14. As required, in mid-November 2002, Union Labor Life submitted its quarterly financial report for the period ending

September 30, 2002. Although Union Labor Life had instituted some of its corrective action plan, it had not cured all the financial problems that led to the issuance of the Consent Order. Therefore, by letter dated November 20, 2002, the Department notified Union Labor Life that it remained in violation of the Florida Insurance Code and in accordance with the terms and conditions of the Consent Order, its Certificate of Authority was suspended.

15. As a result of the suspension of its Certificate of Authority and per the terms of the Consent Order, Union Labor Life agreed inter alia, to immediately cease writing all new direct business in Florida, immediately cease the assumption of policies on Florida residents and issue no new insurance policies in Florida. Policies that were already in force prior to the suspension remained in force with Union Labor Life administering, servicing and providing benefits as those policies required. By the terms and conditions of the Consent Order, Union Labor Life was also required to continue to file all documents and information with the Department and comply with all statutory requirements for foreign insurers licensed in this State.

16. Additionally, Union Labor Life was required to "send a notice to all Florida agents alerting them that ULLIC can no

longer write new business in the state of Florida" and to provide the Department with a copy of the notice.

17. Initially, Union Labor Life contested the suspension, and through local Florida Counsel, Douglas Mang, Esquire, filed a Motion to Stay Enforcement of Consent Order and Memorandum in Support of Motion.

18. Local counsel negotiated with the Department in an effort to resolve or delay the license suspension.

19. Union Labor Life expected the time until it would comply with the financial requirements of Florida to be in the near future. It, therefore, thought any suspension would be short-lived. In order to preserve its Florida sales agent force and to avoid unnecessarily alarming its Florida policyholders, Union Labor Life wanted the suspension to be more like a voluntary cessation of business and to represent the suspension to the public as a voluntary cessation in the company's writing of new business. The Department also felt that Union Labor Life would comply with the financial requirements of Florida in the near future and did not want to harm the company any further. However, somewhat troublingly, the Department permitted Union Labor Life to represent to the public that it had voluntarily consented to cease writing new business in Florida. Somewhat more troubling and in addition, the Department agreed to post a public comment on its computer system for the Department's



consumer service personnel to read if the Department received an inquiry about Union Labor Life from a member of the public. The public comment stated:

Effective November 22, 2002, the Company has voluntarily consented to cease writing new business in Florida. The Company will continue to renew existing policies as well as service and maintain its existing business in Florida.

Although the same computer screen also showed the status of the company's certificate as suspended as of November 22, 2002, whether that information would be communicated to an inquiring member of the public "would depend on whoever the operator was that was receiving the calls." There was no evidence that a member of the public could access the suspension information on their own over the internet. Similarly the letter sent to the agents utilized language similar to the text quoted above. This letter was also agreed to by the Department. The fact that the Department felt these representations were "spin" was not communicated clearly to the corporate offices of Union Labor Life and resulted in a situation where later corporate officials and OIR personnel would disagree on the nature of the suspension and how that suspension should be represented in various filings made with OIR.

20. The report drafted for the accused officers and directors was known as the 'ULLICO Report of the Special

Committee to the Board of Directors" and was published on March 25, 2003. The Board at the time approved the report, but took no action regarding its findings. The report drafted by Governor Thompson became known as the "Thompson Report" and was published on May 8, 2003. The report was submitted to the board. That report details the self-dealing engaged in by certain board members and senior management personnel and concludes that such conduct was unethical. Following the publication of the Thompson Report, a new slate of directors was elected to the board of ULLICO and, within a short period of time, all of the then-senior management of ULLICO and Union Labor Life had resigned, retired or been terminated. By mid-2003, none of the directors or senior officers who had participated in the improper conduct remained employed at ULLICO or Union Labor Life. The goal of the new board and management was to save Union Labor Life after the corporate wrongdoing and mismanagement of the former senior management and turn Union Labor Life into "a model for corporate governance." To this end, the new board adopted all of the Thompson Report's recommendations for changes in the company's corporate governance. These changes were designed to increase the independence and accountability of the board of directors and senior management, to improve the level of financial oversight and transparency, and to improve the risk management and compliance performance of the company.

21. In addition to the adoption of Governor Thompson's recommendations, Union Labor Life has spent considerable funds to comply with all relevant provisions of the Sarbanes-Oxley Act, the purpose of which is corporate transparency and legal compliance, even though, as a privately held company, Union Labor Life is not required to comply with the Sarbanes-Oxley Act. Union Labor Life has also launched a company-wide risk management process that includes a revamped internal audit and internal control process, has implemented a new risk management oversight function for the company, and has created a vice president position in risk management who reports directly to the audit committee and the board of directors.

22. Furthermore, since mid-2003, Union Labor Life's new management has improved the company's compliance activities by, among other things, restructuring its internal reporting procedures so that all business unit compliance employees report directly to the chief compliance officer (rather than to their immediate supervisors) on compliance issues; requiring the chief compliance officer to report four times a year directly to the audit and corporate governance committees of the board of directors; taking corporate compliance into account in determining every employee's compensation; hiring three vice presidents responsible to ensure that the company's third-party administrators meet all compliance requirements; and implementing

a Risk Navigator software program to alert employees when regulatory forms and reports are due.

23. As indicated earlier, insurers, whether suspended or having a subsisting Certificate of Authority, are required to file Quarterly Financial Statements for each of the first three quarters of the calendar year (March 31, June 30 and September 30) due 45 days after the close of the quarter. Further, insurers, whether suspended or having a subsisting Certificate of Authority, are required to file an Annual Statement reflecting finances and other information at year end by March 1 with OIR. An Audited Financial Statement, prepared by an independent third party, is also required at year end and is due no later than June 1 of the following year. These financial statements, both annual and quarterly, are sworn under oath and filed with the regulatory authority of each state or territory in which the insurer is authorized to transact business.

24. Union Labor Life continued to file its quarterly and annual reports. In 2003, it filed a report of Gross Annual Premium and Enrollment Data for Health Coverages Issued to Florida Residents. The report prompted Alicia Gibson, a staff assistant with OIR, to inquire regarding the premium data contained in the report. Around the same time because of the new management and the new compliance process, an internal whistleblower complaint was made by a compliance officer about

her supervisor to Ms. Valentine as the new chief compliance officer. As a result, in mid-2003, an internal audit of the direct marketing business unit was conducted. The company discovered that it had issued 12 life insurance policies after the date of the suspension of the Certificate of Authority and that approximately 1200 Florida residents received certificates of insurance after the date of the suspension of the Certificate of Authority. Union Labor Life had, also, issued certificates of insurance under a group life insurance policy on unapproved forms in a number of states, including approximately 3,067 such certificates in Florida. In addition, despite specific instructions to the contrary, the company discovered that it had issued 691 accidental death and dismemberment policies in Florida for a total combined annual premium of less than \$332 as part of a low-cost, lead generation program between late 2002 and mid-2003 while its certificate of authority had been suspended. All of these actions were in violation of the Florida Insurance Code since the company may not have had a certificate of authority, or used an unapproved form.

25. The new management terminated the two vice presidents who had been responsible for the infractions, put an immediate hold on all direct marketing business, conducted a complete audit and review of its third-party administrators, issued a memorandum to remind all employees to cease and desist any

marketing or issuance of new policies in Florida, and created additional controls to ensure that the violations would not reoccur. Union Labor Life, also, described the infractions that had occurred in Florida and the remedial measures it had taken to correct the problem, in a letter to OIR dated January 22, 2004.

26. In February 2004, representatives of Union Labor Life's new management team met with representatives of OIR to introduce themselves and to discuss the compliance problems the new management had found. Following the meeting, Charles Robert Norris, the financial administrator in OIR's Bureau of Health and Life Financial Oversight wrote that the agency "appreciate[d] the prompt actions taken when [Union Labor Life] became aware of the problems that were discussed in the meeting." Mr. Norris also instructed Union Labor Life to submit the unapproved forms to OIR for approval. The forms were submitted promptly to OIR by Union Labor Life.

27. In September 2004, management for Union Labor Life learned of a subpoena duces tecum from Mabel Capolongo, the Regional Director for the Philadelphia Region of the U.S. Department of Labor, Employee Benefits Security Administration, dated June 16, 2003, to Union Labor Life seeking the production of certain documents and informing the company of an investigation into the activities of Union Labor Life. The

purpose of the investigation is to determine whether any person has violated Title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1134(a)(1), U.S. Code with regard to Separate Account J from January 1, 1998.

28. By January 31, 2005, more than two years after the suspension, Union Labor Life had cured its financial deficiencies and the company was again in full compliance with Florida's statutory financial requirements.

29. On March 7, 2005, Teresa Valentine, then an in-house attorney at Union Labor Life and currently Union Labor Life's general counsel and chief compliance officer, contacted OIR to inform it that the company had brought its financial condition into compliance with the Florida statutory requirements and to inquire as to how to re-activate the company's certificate of authority. Paul Johns, a financial analyst supervisor with OIR's Bureau of Life and Health Financial Oversight, informed Ms. Valentine that, because Union Labor Life's certificate of authority had been suspended for more than two years, Union Labor Life had to file what Mr. Johns referred to as a "reactivation application." She asked Mr. Johns what information OIR needed to reactivate Union Labor Life's certificate of authority. Mr. Johns promised to send Ms. Valentine the application. At the time, she did not review any statutory or administrative rule

requirements for renewal or issuance of a new Certificate of Authority.

30. On March 8, 2005, Mr. Johns sent Ms. Valentine an email that identified as its subject, "Reinstatement Of Expired Florida Certificate of Authority - Union Labor Life Insurance Company."

Mr. Johns wrote:

The information you requested for re-instating a Florida certificate of authority that expired pursuant to Section 624.421, Florida Statutes is detailed below. As we discussed, we have sufficient financial information on file to begin assessing compliance with items (1) and (2) and will follow-up with company contacts on any outstanding issues once Carolyn Morgan returns next week. For items (5) and (6), it will be necessary to get information on officers/directors and individuals directly or indirectly owning 10% or more of the applicant and/or the ultimate controlling entity that are not on file with the Office. In the meantime, please contact me with any questions. Sincerely, Paul Johns

31. The evidence showed that Union Labor Life was not aware that its suspended certificate of authority would expire after two years, and had not intended to permit its certificate of authority to expire. However, the evidence also showed that regardless of Union Labor Life's intent, it did not comply with Florida's financial requirements until January 31, 2005, more than two years after the certificate had been suspended. By



operation of law, Union Labor Life's Certificate of Authority had expired. See § 624.421(4), Fla. Stat.

32. On March 29, 2005, Mr. Johns informed Union Labor Life that two of OIR's financial examiners had reviewed Union Labor Life's financial statements and had agreed that the company was in compliance with Florida's statutory financial requirements. On March 31, 2005, Union Labor Life submitted the information and materials requested by Mr. Johns to reinstate Union Labor Life's expired certificate of authority. The information and materials were sent by overnight mail, and the OIR received them on April 1, 2005. No reinstatement fee or application fee was paid by Union Labor Life.

33. In the thirty-day period between April 1, 2005, and May 1, 2005, OIR did not request Union Labor Life to submit any additional information or materials. On May 2, 2005, Carolyn Morgan, an insurance examiner in OIR's Bureau of Life and Health Financial Oversight, wrote to Union Labor Life, stating:

Paul [Johns] and I have completed our review of your application and have forwarded our recommendation to the next level of management for review. Upon completion of management's review, your file will be forwarded to Legal Services with a copy of our draft consent order where it will be reviewed before sending to the company for signature. (emphasis added)

34. Around June 1, 2005, Union Labor Life filed its 2004 audited financial statements with OIR. In the notes to those statements, Union Labor Life disclosed that, "[i]n September 2004, the Company learned that the DOL [United States Department of Labor] had initiated an investigation of The Union Labor Life Insurance Company, with respect to the operation of The Union Labor Life Insurance Company Pooled Separate Accounts"; that, in connection with that matter, the DOL had "requested documents relating to fees paid by borrowers and prospective borrowers from Separate Account J"; and that Union Labor Life had "fully complied with the DOL's request." The statement was the first time OIR had learned of an investigation by the United States Department of Labor and, on June 10, 2005, requested information about the DOL investigation.

35. On June 17, 2005, Union Labor Life responded in a letter describing what it understood about the investigation and providing OIR with the name and contact information of a DOL investigator involved in the investigation. OIR contacted the DOL. However, the DOL declined to provide any information about the investigation to OIR.

36. OIR did not approve or disapprove Union Labor Life's original March 2005 request for reinstatement of its expired certificate of authority within 180 days of receiving that application. Instead, on July 7, 2005, OIR informed Union Labor

Life that, "[d]ue to the on-going Department of Labor investigation into Union Labor's Separate Account J, . . . Union Labor's Florida Certificate of Authority reinstatement has been placed on hold until further information can be obtained about the matter." In response, Union Labor Life offered to have its ERISA counsel meet with OIR to explain the meaning of a DOL investigation, and invited OIR to speak with its home regulator, the Maryland Insurance Administration, about the DOL investigation. Union Labor Life had previously informed the State of Maryland about the DOL investigation.

37. Notwithstanding Mr. Johns and Ms. Morgan's communications between Union Labor Life and OIR that indicated the information and material the company had submitted, along with other material on-file with OIR was being treated as an application for reinstatement of Union Labor Life's expired certificate of authority, OIR, in a letter dated September 16, 2005, eventually informed Union Labor Life that, after review of its file, the company was required to complete a UCAA Expansion Application for a new certificate of authority in Florida because its certificate of authority had expired pursuant to Section 624.421(4), Florida Statutes.

38. On September 23, 2005, Union Labor Life submitted a UCAA Expansion Application to OIR.

39. By letter dated September 29, 2005, Gwen Chick, Admissions Coordinator for the Office, informed Ms. Valentine that the application was not complete and that further information was required no later than October 6, 2005, or the application would be returned as incomplete.

40. Union Labor Life submitted the information requested by Ms. Chick and, along with the UCAA Expansion Application, a copy of the corporate charter, articles of incorporation and other charter documents certified by the Maryland Department of Assessments and Taxation, a copy of the Bylaws certified by an officer of the company and a certificate of compliance from the Florida Secretary of State, all of which were required by Section 624.413, Florida Statutes.

41. The application was determined to be complete as of October 19, 2005, and the 180-day time limit for review of such applications set forth in Section 120.80(9), Florida Statutes, began.

42. OIR held a hearing on March 17, 2006, relating to Union Labor Life's September 2005 UCAA Expansion Application. After the hearing, on April 17, 2006, OIR timely denied Union Labor Life's UCAA Expansion Application. The denial was based on, (i) the outcome of the pending DOL investigation into Separate Account J is unclear; (ii) prior to November 22, 2002, Union Labor Life issued approximately 3,000 insurance policies in

Florida on unapproved forms; (iii) between November 22, 2002, and sometime in 2003, Union Labor Life wrote "hundreds" of new policies despite the suspension of its certificate of authority; (iv) on Schedule T of its 2005 annual statement, Union Labor Life reported that it was licensed in Florida despite the expiration of its certificate of authority pursuant to Section 624.421(4), Florida Statutes; and (v) certain officers and directors of Union Labor Life failed to identify fines levied against Union Labor Life in response to Question 16c of their biographical affidavits.

43. OIR does not contest the managerial experience of the current management of Union Labor Life. Mark Singleton, the current chairman and chief executive officer of Union Labor Life (and the current president and chief executive officer of ULLICO), joined the company in August 2003 as Union Labor Life's senior vice president and chief financial officer and was promoted to his current positions in August 2006. Mr. Singleton has worked in the insurance industry for 24 years, initially as a certified public accountant concentrating on insurance companies and their financial matters, and then as an insurance company executive. Anne Bossi, the current president of Union Labor Life, is a well-known health insurance industry leader with more than 25 years of experience in the insurance industry. Before joining Union Labor Life in 2005, Ms. Bossi ran divisions of two

of the largest insurance companies in the United States. Damon Gasque, the current acting chief financial officer of Union Labor Life, has 30 years of experience in the insurance industry, having served as an officer at several insurance companies with a focus on insurance accounting and reporting. James Paul, Union Labor Life's senior vice president and chief of corporate operations, has more than 35 years of experience at various insurance companies and Teresa Valentine, the company's general counsel and chief compliance officer, has nearly 20 years of legal experience, primarily in the area of insurance regulation. In short, Union Labor Life's current senior management has sufficient insurance company managerial experience to qualify Union Labor Life for a certificate of authority to transact insurance in Florida.

44. OIR also does not contest the competence of the current management, officers and directors of Union Labor Life. Union Labor Life's chairman and chief executive officer testified at length and without contradiction about the new management's successful efforts to turn Union Labor Life's financial fortunes around, dramatically reducing its loss ratio and its operating expenses, while significantly increasing its capital reserves. As a consequence of the new management's efforts, A.M. Best, the oldest and most widely recognized rating agency dedicated to the insurance industry, has upgraded Union Labor Life's rating twice

since 2003, from B- with a negative outlook to B+ with a stable outlook.

45. The A.M. Best rating is significant because it comes from an independent, widely recognized source in the insurance industry and is based on both quantitative and qualitative review of management's performance. A.M. Best conducts complete face-to-face business reviews with management presentations and discussions about the company's operations, stressing the quality of management and its experience, its history of meeting commitments and its ability to sustain the company's current performance. There is no doubt that Union Labor Life's current management is sufficiently competent to entitle Union Labor Life to a certificate of authority in Florida.

46. Ultimately, the sole issue between the parties is whether Union Labor Life's current management, officers and directors are sufficiently trustworthy to transact insurance in Florida based on the allegations contained in OIR's denial letter listed above and the alleged failure to comply with regulatory requirements. The term "trustworthy" means "dependable," "reliable," or "worthy of confidence." Webster's Third New International Dictionary of the English Language Unabridged 2457 (1986).

47. The outcome of the DOL investigation into Union Labor Life's Separate Account J is indeed unclear. The company's ERISA

counsel, who is an expert in the field, testified that, based on the questions the DOL has asked Union Labor Life and the documents the DOL has requested, it appears that the DOL is looking at the investment transactions and fee arrangements of Separate Account J to determine whether they are consistent with the complicated ERISA rules that apply to such transactions and fee arrangements. More importantly, the company's ERISA counsel testified that no conclusions about the ultimate reasons the DOL is conducting this inquiry could be drawn from the fact that there is an investigation or that Union Labor Life is suspected of violating ERISA or any other statute that may be under the DOL's jurisdiction. At least since September 2004, the DOL has been gathering and evaluating information, but has made no findings or informed the company that the agency has determined that Union Labor Life has engaged in any improper conduct. The DOL has no deadline to complete its investigation and any assertion about the final outcome of the DOL investigation, if any, or its likely consequences, if any, for Union Labor Life would be pure speculation. Speculation about the possible outcome of an investigation in which no allegations of wrongdoing have been made do not form a basis to find that the current management, officers and directors of Union Labor Life are untrustworthy or that the company is ineligible for a certificate of authority to transact insurance in Florida.



48. As discussed above, the issuance of the policies in Florida using unapproved forms prior to November 22, 2002, and the issuance of policies in Florida while the company's certificate of authority was suspended after November 22, 2002, was reported to OIR in January 2004 and addressed at a meeting between Union Labor Life and OIR in February 2004. These infractions occurred under the former management and do not themselves reflect on the trustworthiness of the current management, officers and directors. As noted above, when Union Labor Life's current management learned of these infractions, it took steps to terminate the employment of the responsible individuals, to report the infractions to the states in which they had occurred, including Florida, to file the unapproved forms with OIR for approval, and to change the compliance controls within the company. Such self-policing and reporting by a company demonstrates the honesty and forthrightness of the current management and should be encouraged. On the other hand, the policies were issued in violation of the Florida Insurance Code. On balance, the evidence showed that these violations of the Insurance Code were not indicative of the future or current behavior of Union Labor Life. Therefore these violations should not serve as a basis for denying a certificate of authority to Union Labor Life.

49. On Schedule T-Premium and Annuity Considerations of its 2005 annual financial statement, Union Labor Life reported that it was licensed in Florida. Schedule T requests that an insurer state whether it is licensed in a State relative to the premiums it receives. In this case, Union Labor Life believed it was licensed, in so far as it was required to administer and service policies that were in force.

50. Union Labor Life's chairman and chief executive officer explained that the company completed Schedule T as it did in 2005 because the company was authorized to continue to accept renewal premiums and additional deposits on its group annuity contracts and had received more than \$14 million in premiums in Florida in 2005. Indeed, until the issue of the exact licensure status of Union Labor Life arose in relation to suspension, expiration and reinstatement, the parties themselves seem to at times refer to Union Labor Life as licensed. For example, in August 2005, in a memorandum regarding Union Labor Life's reinstatement, Carolyn Morgan, an OIR insurance examiner, wrote that "[t]he Company is licensed in all 50 states and the District of Columbia."

Mr. Norris testified that he thought that Union Labor Life's representation on Schedule T that the company was licensed in Florida was inaccurate in 2002, 2003, 2004 and 2005 because the company's license had been suspended. Yet neither Mr. Norris nor any other person at OIR who reviewed Union Labor Life's annual

reports during those four years informed Union Labor Life of OIR's interpretation of Schedule T until April 17, 2006, when the company's response to Schedule T in its 2005 annual report was raised. Union Labor Life's initial response to the inquiry on Schedule T in 2005 and earlier years was reasonable and does not constitute a basis on which to find Union Labor Life's current management, officers or directors untrustworthy or the company ineligible for a certificate of authority in Florida.

51. OIR also raised the issue of disclosure of Union Labor Life's licensure status in regards to the section in Union Labor Life's annual and quarterly statements entitled "General Interrogatories." Interrogatory 6.1 in the annual statement and 8.1 in the quarterly statement asks, "Has this reporting entity had any Certificates of Authority, licenses or registrations . . . . suspended or revoked by any governmental entity during the reporting period. Interrogatory 6.2 in the annual statement and 8.2 in the quarterly statement asks, "If yes, give full information." Union Labor Life answered these interrogatories by stating that "Union Labor Life Insurance Company voluntarily agreed to cease writing new business in Florida in November, 2002." This statement is in line with the language that was approved by OIR's predecessor agency. There was no evidence that Union Labor Life intended to mislead either OIR or any other agency as to the status of its certificate of authority. By

approving this language, OIR's predecessor laid the groundwork for Union Labor Life's confusion over the status of its certificate of authority and the status of its license. Union Labor Life used the language OIR's predecessor had approved in describing its licensure status and OIR cannot now complain about Union Labor's Life use of that language. Therefore, Union Labor Life's response to the General Interrogatories in its quarterly and annual reports does not form a basis for denying Union Labor Life a certificate of authority in Florida.

52. The final issue raised by OIR in its denial letter related to the responses to Question 16c of certain officers and directors of Union Labor Life in their biographical affidavits submitted with the application. Specifically, certain officers did not identify fines levied against Union Labor Life in their responses to Question 16c. Question 16c asks the affiant:

To your knowledge has any company or entity for which you were an officer or director, trustee, investment committee member, key management employee or controlling stockholder, had any of the following events occur while you served in such capacity? If yes, please indicate and give details. When responding to questions (b) and (c) affiant should also include any events within twelve (12) months after his or her departure from the entity.

\* \* \*

c. Been placed on probation or had a fine levied against it or against its permit, license, or certificate of authority in any

civil, criminal, administrative, regulatory,  
or disciplinary action?

53. The evidence demonstrated that the question is vague as to whether the information being sought is for the affiant's service prior to their current position or includes the affiant's current position. Officers and directors of Union Labor Life have differed in their interpretation of this question, depending on the context in which they were completing the form. Union Labor Life's chairman and chief executive officer testified that, when he completed his biographical affidavit upon joining Union Labor Life in 2003, he understood the question to be asking about companies at which he had previously served, not about Union Labor Life. By contrast, Union Labor Life's general counsel and chief compliance officer responded to Question 16c in her updated biographical affidavit as if the question asked for information about Union Labor Life. There was no evidence that any of these officers intended to deceive OIR in their response to Question 16c. Given the variable interpretations that can be reasonably given to Question 16c, failure of an officer to list fines that occurred during the time they held their current position with Union Labor Life does not reflect untrustworthiness of Union Labor Life's current management, violate any statute or render Union Labor Life ineligible for a certificate of authority in Florida.

54. In sum, Union Labor Life's current management is qualified, competent and trustworthy. Union Labor Life has demonstrated that it is entitled to a certificate of authority in Florida and the application should be granted.

CONCLUSIONS OF LAW

55. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. § 120.57(1), Fla. Stat.

56. OIR is the agency responsible for ascertaining whether an applicant for a certificate of authority to transact insurance meets the requirements of the Florida Statutes. See § 624.401, et seq., Fla. Stat.

57. Section 624.09, Florida Statutes defines an "authorized insurer" as an insurer holding a subsisting certificate of authority to transact insurance in Florida. Transacting insurance includes administering and servicing policies within Florida. See § 624.10, Fla. Stat.

58. Section 624.402(5), Florida Statutes, provides that a certificate of authority is not required for the continuation and servicing of life and health policies and annuities that are in force when the insurer has withdrawn from Florida and is no longer transacting new insurance in Florida.

59. As an applicant, Union Labor Life has the burden of proving by a preponderance of the evidence its entitlement to a

certificate of authority to transact insurance in Florida. Florida Dept. of Transp. v. J.W.C. Co., 396 So. 2d 778, 778 (Fla. 1st DCA 1981). It bears this burden at each and every step of the licensure proceedings. Dept. of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996). Union Labor Life must show by a preponderance of the evidence that it meets all of the relevant statutory criteria to satisfy this burden. Id.

60. As a creature of statute, OIR is limited by the statutes over which it has authority and may not ignore those statutes. Section 424.413, Florida Statutes, is the statute that provides the requirements for applying for a new certificate of authority. Rules 690-136.002 and 690-136.034, Fla. Rule Admin. Proc., implement Section 624.413, Florida Statutes. In general, the statutes and the rules require that an application for a certificate of authority be filed on a form adopted by the Financial Services Commission. The only form relevant to this proceeding and adopted by the Commission is the UACC application form that was filed by Union Labor Life in October 2005. The UACC application requires a \$1500.00 fee be filed with the application. See § 624.501, Fla. Stat. Neither the statute nor the rules reference a "reactivation application."

61. However, Section 624.416, Florida Statutes, entitled "Continuance, expiration, reinstatement and amendment of certificate of authority," provides that a certificate of

authority shall continue in force until suspended, revoked or terminated at the request of the insurer. Notification to the insurer of the impending expiration of the certificate is required. Subsection (3) provides that OIR may reinstate a certificate of authority that the insurer has inadvertently allowed to expire. A reinstatement fee of \$50.00 is required to be paid prior to reinstatement. See § 624.501, Fla. Stat. Apparently it is this statutory section that Mr. Johns and other OIR officials felt they were proceeding under prior to OIR's decision to put on hold Union Labor Life's request for reinstatement of its certificate of authority. The statute makes clear that if the expired certificate of authority cannot be reinstated, the insurer must file an application for another certificate of authority.

62. In this case the evidence did not demonstrate that Union Labor Life's certificate of authority expired through inadvertence, but, unbeknownst to current management, expired through the operation of Section 624.421, Florida Statutes, and the consent order entered into by prior management. The consent order provided that Union Labor Life's certificate would be suspended unless it complied with Florida's financial requirements by a date certain. That date passed and the certificate of authority was suspended with the later



modification that Union Labor Life had voluntarily ceased writing business in Florida.

63. Section 624.421, Florida statutes, provides for the duration of the suspension period should the time for compliance expire. At most, Union Labor Life's certificate of authority expired two years after the time the specific event was to have occurred. In other words, Union Labor Life's certificate of authority expired by operation of law in September or November of 2003. As indicated, Union Labor Life's current management was unaware of the expiration and thought the certificate of authority remained, with Union Labor Life's voluntary withdrawal from writing new business in Florida.

64. Ultimately, OIR, through its levels of review caught its mistake and advised Union Labor Life that it would be required to file a UACC application for a new certificate of authority

65. Union Labor Life argues that OIR is equitably estopped from denying that it is entitled to reinstatement under Section 624.416, Florida statutes.

66. Equitable estoppel will only be applied against the State in exceptional circumstances. Department of Revenue v. Anderson, 403 So. 2d 397 (Fla. 1981). Further, the state may not be estopped when the mistake is one of law. North American Company v. Green, 120 So. 2d 603 (Fla. 1959). Estoppel may be

applied to misstatements of facts. North American Comapany, supra.; Council Bros., Inc. v. City of Tallahassee, 634 So. 2d 264, 266 (Fla. 1st DCA 1994); Dolphin Outdoor Advert. v. Dept. of Transp., 582 So. 2d 709, 711 (Fla. 1st DCA 1991); Harris v. State, Dept. of Admin., 577 So. 2d 1363, 1367 & n.1 (Fla. 1st DCA 1991); Warren v. Dept. of Admin., 554 So. 2d 568, 571 (Fla. 5th DCA 1989); City of Coral Springs v. Broward County, 387 So. 2d 389, 390 (Fla. 4th DCA 1980).

67. The elements that must be established for the doctrine of equitable estoppel to apply against a governmental agency are set forth in Council Bros., Inc. v. City of Tallahassee, 634 So. 2d 264 (Fla. 1st DCA 1994). In that case, the court held that "[t]he elements which must be present for application of estoppel are: (1) a representation as to a material fact that is contrary to a later-asserted position; (2) reliance on that representation; and (3) a change in position detrimental to the party claiming estoppel, caused by the representation and reliance thereon.'" Id. at 266. See also Dolphin Outdoor Advert. v. Dept. of Transp., 582 So. 2d at 710; Harris v. State, Dept. of Admin., 577 So. 2d at 1366; Warren v. Dept. of Admin., 554 So. 2d at 570.

68. The evidence did not establish that OIR misrepresented a fact to Union Labor Life, but misrepresented the law regarding the application process. Indeed, the evidence indicates, OIR

personnel may have been as confused about the process as Union Labor Life. However, OIR cannot act beyond its governing statutes. Neither Mr. Johns, nor his Bureau, had the authority to waive statutory requirements. Whatever his statements as to what constituted a "reactivation application," those statements were of law. Accordingly, Mr. John's initial misinformation regarding reinstatement constitutes a mistake of law. Therefore, OIR is not estopped from requiring Union Labor Life to file a UACC application for a new certificate of authority.

69. As indicated, Union Labor Life did file a UACC application. To be entitled to a certificate of authority, an applicant must demonstrate that it satisfies both the quantitative financial requirements of the Florida Insurance Code and the qualitative requirements of Section 624.404(3)(a), Florida Statutes, which provides in pertinent part, that OIR:

shall not grant or continue authority to transact insurance in this state as to any insurer the management, officers, or directors of which are found by it to be incompetent or untrustworthy; or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public; or so lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of successful operation.

70. In this case, the parties agreed that Union Labor Life satisfies Florida's statutory financial requirements and is financially qualified for a certificate of authority in Florida.

Thus, the primary issue for determination is whether Union Labor Life's current management, officers, or directors are "incompetent or untrustworthy; or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public."

71. The evidence demonstrates that Union Labor Life's current management are both trustworthy and competent individuals. The reasons for OIR's denial were listed in its denial letter. The denial was based on (i) the outcome of the pending DOL investigation into Separate Account J is unclear; (ii) prior to November 22, 2002, Union Labor Life issued approximately 3,000 insurance policies in Florida on unapproved forms; (iii) between November 22, 2002, and sometime in 2003, Union Labor Life wrote "hundreds" of new policies despite the suspension of its certificate of authority; (iv) on Schedule T of its 2005 annual statement, Union Labor Life reported that it was licensed in Florida despite the expiration of its certificate of authority pursuant to Section 624.421(4), Florida Statutes; and (v) certain officers and directors of Union Labor Life failed to identify fines levied against Union Labor Life in response to Question 16c of their biographical affidavits.

72. Undermining, manipulating or subverting the regulatory process shows a lack of trustworthiness to engage in the business of insurance. Florida Department of Insurance and Treasurer v.

Bankers Insurance Company, 694 So. 2d 70 (Fla. 1st DCA 1997).

However the evidence did not show that Union Labor Life's current management intentionally or materially misrepresented any facts in its UACC application and associated documents. As stated earlier, Section T of the annual statement could reasonably be interpreted to request confirmation of whether the insurer had authority to collect the premiums in a particular state.

Moreover, in the General Interrogatories, Union Labor Life reported that it had voluntarily withdrawn from writing business in Florida and utilized the language OIR's predecessor had approved relevant to its license. The biographical information supplied by Union Labor Life's management and key personnel regarding fines levied against Union Labor life during their tenure at Union Labor Life responded to a reasonable interpretation of an otherwise vague Question 16c. None of these alleged violations demonstrate untrustworthiness or dishonesty on the part of current management and do not constitute a basis for denial of Union Labor Life's application.

73. The issuance of policies during the time of its suspension and on unauthorized forms occurred primarily in 2002 and under the watch of Union Labor Life's former management. The actions of the former management are not reflective of the current management's character. Indeed, the current management self-reported the policy infractions and self-corrected those

same infractions. Section 424.404(5), Florida Statutes, provides that an insurer cannot be authorized to transact insurance in Florida, for infractions within three years preceding its application after it has been notified of such infractions and failed to correct those violations. In this case the violations were corrected and policies put in place to prevent a reoccurrence of the same. Again, these past infractions do not form a basis for denial of Union Labor Life's application.

74. Likewise, the DOL investigation cannot form a basis for denial of Union Labor Life's application. No allegations of wrongdoing have been made against any of the current management of Union Labor Life. Moreover, according to expert testimony, it would be inappropriate to draw such a conclusion based on the fact that DOL has an ongoing investigation. In Comprehensive Medical Access, Inc. v. Office of Insurance Regulation, 2006 WL 3148809 (Fla. Div. Admin. Hrgs. November 1, 2006), the pendency of a civil complaint was held to be sufficient grounds to give rise to reasonable and serious concern regarding the fitness and trustworthiness of the applicant. However, in that case, the civil complaint contained specific allegations of wrongdoing. The DOL investigation does not involve such specific allegations. Therefore, the case is distinguishable from the case at issue here.

75. In sum, the experience, competence and trustworthiness of Union Labor Life's current management, officers and directors, satisfies the qualitative requirements of Section 624.404(3)(a) for a certificate of authority. Accordingly, Union Labor Life has met its burden of proving by a preponderance of the evidence its entitlement to a certificate of authority to transact insurance in the State of Florida.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That a final order be entered granting Union Labor Life's application for a certificate of authority to transact insurance in the State of Florida.

DONE AND ENTERED this 3rd day of August, 2007, in Tallahassee, Leon County, Florida.



---

DIANE CLEAVINGER  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of August, 2007.

COPIES FURNISHED:

S. Marc Herskovitz, Esquire  
Office of Insurance Regulation  
612 Larson Building  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

Jeffrey A. Mishkin, Esquire  
Skadden, Arps, Slate, Meagher  
and Flom, LLP  
Four Times Square  
New York, New York 10036

Robert Thomas Wright, Esquire  
Coffey, Burlington, Wright, LLP  
2699 South Bayshore Drive, Penthouse  
Miami, Florida 33133

Kevin M. McCarty, Commissioner  
Office of Insurance Regulation  
200 East Gaines Street  
Tallahassee, Florida 32399-0305

Steve Parton, General Counsel  
Office of Insurance Regulation  
200 East Gaines Street  
Tallahassee, Florida 32399-0305

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.