

BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS

**FINAL ORDER**

**Effective: 01/03/06**

In the Matter of  
THE WESTERN AND SOUTHERN LIFE  
INSURANCE COMPANY

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Docket No. 3501-SO

**SUMMARY ORDER**

Pursuant to the authority granted to the Commissioner of Insurance by Kansas Statutes Annotated (“K.S.A.”) 40-2404 and 40-2,125,

I, Sandy Praeger, the duly elected and qualified Commissioner of Insurance of the State of Kansas, hereby make the following findings of fact, conclusions of law, and order, to wit:

**Findings of Fact**

1. Western and Southern Life Insurance Company (“Western”) is a life insurance company domiciled in the State of Ohio and is subject to statutes regulating the business of insurance.

2. The Ohio Superintendent of Insurance (“the Superintendent”) has jurisdiction over the subject matter of this proceeding with consent from the Kansas Commissioner of Insurance, and this proceeding is held in the public interest.

3. On June 14, 2001, the Ohio Department of Insurance began a targeted, multi-state market conduct examination to investigate possible race-based underwriting practices of the company.

4. On December 31, 2003, a report entitled “Race Based Pricing Activities With Respect to the Life Insurance Business of Western & Southern Life Insurance

Company” (“market conduct examination”) was prepared by Actuarial Resources Corporation upon the request of the Ohio Department of Insurance.

5. On August 12, 2005, the Superintendent, Carroll R. Hutchinson, Sr. Vice President of The Western and Southern Life Company, and Donald J. Wuebbeling, Sr. Vice President of The Western and Southern Life Company, entered into a Consent Order.

6. On or about November 12, 2005, the Kansas Insurance Department received notification of resolution of a market conduct examination of the Western and Southern Life Insurance Company.

7. On November 30, 2005, the Kansas Insurance Department accepted the results of the multi-state market conduct examination.

### **Conclusions of Law**

1. K.S.A. 2004 Supp. 40-2404 provides, in relevant part,

Unfair methods of competition or unfair and deceptive acts or practices; title insurance agents, requirements; disclosure of nonpublic personal information; rules and regulations. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

...(7) Unfair discrimination. (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

2. Based on the information contained in paragraphs three (3) through seven (7) above, it appears that Western and Southern Life Insurance Company unfairly discriminated against policyholders based on race in violation of K.S.A. 40-2404(7).

**Notice of Right to Hearing or Appeal**

Western and Southern Life Insurance Company is entitled to a hearing pursuant to K.S.A. § 77-537, the Kansas Administrative Procedure Act. If Western and Southern Life Insurance Company desires a hearing, the company must file a written request for a hearing with:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9th Street  
Topeka, Kansas 66612.

This request must be filed within fifteen (15) days from the date of service of this Order. If Western and Southern Life Insurance Company requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. § 77-613. In the event that Western and Southern Life Insurance Company files a petition for judicial review, pursuant to K.S.A. § 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9th Street  
Topeka, Kansas 66612.

**IT IS THEREFORE, BY THE COMMISSIONER OF INSURANCE, ORDERED  
THAT:**

1. The Consent Order entered into between the Company and the Ohio Department of Insurance on August 24, 2005, is hereby APPROVED AND ADOPTED.
2. The report titled "Race Based Pricing Activities With Respect to the Life Insurance Business of Western & Southern Life Insurance Company" and dated December 31, 2003, is hereby APPROVED AND ADOPTED.
3. The Company shall immediately initiate compliance with all terms and conditions of the Consent Order and follow all recommendations outlined in the report.
4. With respect to Section II, Subsection I of the consent order, the Kansas Insurance Department will be considered to be a participating state and the Company will make a pro-rata administrative payment to Kansas Insurance Department in lieu of any other administrative penalty that may be imposed by the Commissioner of Insurance.

**IT IS SO ORDERED THIS 13th DAY OF DECEMBER, 2005 IN THE CITY OF  
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



\_\_\_\_\_  
 /s/ Sandy Praeger  
 Sandy Praeger  
 Commissioner of Insurance

BY:

\_\_\_\_\_  
 /s/ John W. Campbell  
 John W. Campbell  
 General Counsel

SUBMITTED AND APPROVED BY:

/s/ Deletria L. Nash \_\_\_\_\_  
Deletria L. Nash  
Staff Attorney  
Kansas Insurance Department

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the above and foregoing Summary Order was served by placing the same in the United States Mail, first class postage prepared, on this 13th day of December, 2005 addressed to the following:

Western and Southern Life Insurance Company  
c/o Daniel J. Atkisson, CPCU, CIDM, CIE  
Insurance Compliance Supervisor  
Ohio Department of Insurance  
2100 Stella Court  
Columbus, OH 43215.

/s/ Deletria L. Nash \_\_\_\_\_  
Deletria L. Nash  
Staff Attorney