

**IN THE DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION
STATE OF MISSOURI**

In Re:)
)
CONTINENTAL WESTERN INSURANCE) **Market Conduction Examination**
COMPANY (NAIC #10804)) **Number 1104-10-TGT**
)
UNION INSURANCE COMPANY (NAIC #25844)) **Market Conduct Examination**
) **Number 1104-37-TGT**

ORDER OF THE DIRECTOR

NOW, on this 13TH day of MARCH, 2014, Director John M. Huff, after consideration and review of the market conduct examination reports of Continental Western Insurance Company (NAIC #10804) (hereafter referred to as "Continental") report number 1104-10-TGT, and Union Insurance Company (NAIC #25844) (hereafter referred to as "Union") report number 1104-37-TGT, prepared and submitted by the Division of Insurance Market Regulation pursuant to §374.205.3(3) (a)¹ and the Stipulation of Settlement and Voluntary Forfeiture ("Stipulation"), does hereby adopt such reports as filed. After consideration and review of the Stipulation, reports, relevant work papers, and any written submissions or rebuttals, the findings and conclusions of such reports are deemed to be the Director's findings and conclusions accompanying this order pursuant to §374.205.3(4).

This order, issued pursuant to §374.205.3(4), §374.280, and §374.046.15. RSMo (Cum. Supp. 2013), is in the public interest.

IT IS THEREFORE ORDERED that Continental, Union and the Division of Insurance Market Regulation having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

IT IS FURTHER ORDERED that Continental and Union shall not engage in any of the violations of law and regulations set forth in the Stipulation and in the reports and shall


¹ All references, unless otherwise noted, are to Missouri Revised Statutes 2000 as amended.

implement procedures to place Continental and Union in full compliance with the requirements in the Stipulation and the statutes and regulations of the State of Missouri and to maintain those corrective actions at all times.

IT IS FURTHER ORDERED that Continental shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$12,000 payable to the Missouri State School Fund, and that Union shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the voluntary forfeiture of \$9,000 payable to the Missouri State School Fund.

IT IS SO ORDERED.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office in Jefferson City, Missouri, this 13th day of MARCH, 2014.


John M. Huff
Director



IN THE DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION
STATE OF MISSOURI

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MO. DEPT. OF INSURANCE,
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

In Re:)
)
CONTINENTAL WESTERN)
INSURANCE COMPANY (NAIC # 10804)) Market Conduct Exam No. 1104-10-TGT
)
UNION INSURANCE COMPANY)
(NAIC #25844)) Market Conduct Exam No. 1104-37-TGT

**STIPULATION OF SETTLEMENT
AND VOLUNTARY FORFEITURE**

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter “the Division”) and Continental Western Insurance Company (NAIC #10804) (hereinafter referred to as “Continental”) and Union Insurance Company (NAIC #25844) (hereinafter referred to as “Union”), as follows:

WHEREAS, the Division is a unit of the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereinafter, “the Department”), an agency of the State of Missouri, created and established for administering and enforcing all laws in relation to insurance companies doing business in the State in Missouri; and

WHEREAS, Continental and Union have been granted certificates of authority to transact the business of insurance in the State of Missouri; and

WHEREAS, the Division conducted a Market Conduct Examination of Continental and Union and prepared report numbers 1104-10—TGT and 1104-37-TGT; and

WHEREAS, the report of the Market Conduct Examination of Continental revealed that:

1. In three (3) instances, Continental’s schedule rating plans included the category of “classification peculiarities” in violation of §§287.947 and 287.955 (1)¹;
2. In several instances, Continental’s workers compensation policies included incorrect

1 All references, unless otherwise noted, are to Missouri Revised Statutes 2000, as amended.

fees in violation §287.947 and 20 CSR 500-6.950;

3. In several instances, Continental's workers compensation policies used incorrect schedule debit or credit factors in violation of §287.950 and 20 CSR 500-4.100 (7) (D);

4. In several instances, Continental incorrectly calculated Administrative Surcharge in violation of §§287.310.9 and 287.716;

5. In eighty-eight (88) instances, Continental used an algorithm to determine the terrorism rate which algorithm was not filed in violation of §§287.947, 287.955 and 20 CSR 500-9.950.

WHEREAS, the report of the Market Conduct Examination of Union revealed that:

1. In several instances, Union's workers compensation policies used incorrect schedule debit or credit factors in violation of §287.950 and 20 CSR 500-4.100 (7) (D);

2. In two (2) instances, Union incorrectly calculated Administrative Surcharge in violation of §§287.310.9 and 287.716;

3. In nineteen (19) instances, Union used an algorithm to determine the terrorism rate which algorithm was not filed in violation of §§287.947, 287.955 and 20 CSR 500-9.950.

WHEREAS, the Division, Continental and Union have agreed to resolve the issues raised in the Market Conduct Examination Report as follows:

A. **Scope of Agreement.** This Stipulation of Settlement and Voluntary Forfeiture embodies the entire agreement and understanding of the signatories with respect to the subject matter contained herein. The signatories hereby declare and represent that no promise, inducement or agreement not herein expressed has been made, and acknowledge that the terms and conditions of this agreement are contractual and not a mere recital.

B. **Remedial Action.** Continental and Union agree to take remedial action bringing them into compliance with the statutes and regulations of Missouri and agree to maintain those remedial actions at all times, to reasonably assure that the errors noted in the above-referenced market conduct examination report do not recur. Such remedial actions shall include, but are not limited to, the following:

1. Continental and Union agree to reimburse the Second Injury Fund and the

Administrative Surcharge Fund for underpayments identified in the Continental and Union examination reports;

2. Continental and Union agree to file with the Director any algorithm used in Missouri for determining terrorism rates. Such filing shall be in a form substantially similar to Continental filing WC-Terrorism-1 (Exhibit A)

3. Continental and Union agree not to use the category of "classification peculiarities" in their schedule rating plans for workers compensation insurance.

4. Continental and Union agree to review all workers compensation insurance policies listed on the attached spreadsheet (Exhibit B) for the policy periods beginning with the effective date listed on the spreadsheet to: a) Ensure that any policy with a waiver of subrogation charge did not have remuneration for any contracting classification code; b) Verify the correct calculation of the subrogation charge; c) Confirm that if a schedule rating factor was applied, there is a corresponding worksheet in the file; d) Confirm that if a schedule rating credit was reduced or there was an increase in the schedule rating debit, the Company sent a letter to notify the insured; e) Verify correct calculation of the Second Injury Fund Surcharge; and f) Verify correct calculation of the Administrative Surcharge. If the policyholder is entitled to a refund of premium, the Company must issue any refund due to the insured, bearing in mind that an additional payment of nine per cent (9%) interest per annum is also required, pursuant to §408.020. A letter must be included with the payment, indicating that "as a result of a Missouri Market Conduct Examination," it was found that a refund was due to the insured. If the Second Injury Fund is owed additional payments, such payments shall be made to the fund with any applicable interest and penalties. An amended return may also need to be filed with the Fund. If the Administrative surcharge was underpaid, such payments that are owed, with any applicable interest and penalties, shall be paid to the Department of Revenue. In addition, if underpayments are discovered, the Company must file an amended return on its Administrative Surcharge calculation to the Premium Tax Section of the Department.

C. **Compliance.** Continental and Union agree to file documentation with the Division within 150 days of the entry of a final order of all remedial action taken to implement compliance

with the terms of this stipulation and to document the payment of restitution to policyholders, to document any payments required to be made to the Second Injury Fund, and to document any payments required to be made to the Department of Revenue relating to the Administrative Surcharge.

D. **Voluntary Forfeiture.** Continental agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$12,000, such sum payable to the Missouri State School Fund, in accordance with §374.280. Union agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$9,000, such sum payable to the Missouri State School Fund, in accordance with §374.280.

E. **Other Penalties.** The Division agrees that it will not seek penalties against Continental and Union, other than those agreed to in this Stipulation, for the conduct found in Market Conduct Examinations 1104-10-TGT and 1104-37-TGT.

F. **Waivers.** Continental and Union, after being advised by legal counsel, do hereby voluntarily and knowingly waive any and all rights for procedural requirements, including notice and an opportunity for a hearing, and review or appeal by any trial or appellate court, which may have otherwise applied to the above referenced Market Conduct Examinations.

G. **Non-Admission.** Nothing in this Stipulation shall be construed as an admission by Continental or Union, this Stipulation being part of a full and final compromise settlement which resolves the disputed factual and legal allegations raised in Market Conduct Examination Reports #1104-10-TGT and #1104-37-TGT for those insurance policies referenced in those reports for the time period under review. The Division is not precluded from initiating a future exam or investigation of Continental or Union with respect to any issues that were not actually addressed in Market Conduct Examination Reports #1104-10-TGT and #1104-37-TGT, even if the issues not actually addressed relate to the insurance policies referenced in those reports for the time period under review.

H. **Changes.** No changes to this stipulation shall be effective unless made in writing and agreed to by all signatories to the stipulation.

I. **Governing Law.** This Stipulation of Settlement and Voluntary Forfeiture shall be

governed and construed in accordance with the laws of the State of Missouri.

J. **Authority.** The signatories below represent, acknowledge and warrant that they are authorized to sign this Stipulation of Settlement and Voluntary Forfeiture.

K. **Effect of Stipulation.** This Stipulation of Settlement and Voluntary Forfeiture shall not become effective until entry of a Final Order by the Director of the Department of Insurance, Financial Institutions and Professional Registration (hereinafter the "Director") approving this Stipulation.

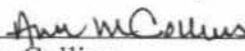
L. **Request for an Order.** The signatories below request that the Director issue an Order approving this Stipulation of Settlement and Voluntary Forfeiture and ordering the relief agreed to in the Stipulation, and consent to the issuance of such Order.

DATED: 3-11-14



Stewart Freilich
Senior Regulatory Affairs Counsel

DATED: 2-28-14



Ann Collins
Vice-President & Treasurer
Continental Western Insurance Company

DATED: 2-28-14



Ann Collins
Assistant Treasurer
Union Insurance Company