



DEPARTMENT OF COMMERCE & INSURANCE

P.O. Box 690, Jefferson City, Mo. 65102-0690

In Re:)
)
WEST AMERICAN INSURANCE) **Market Conduct Investigation No. 349907**
COMPANY (NAIC #44393))

ORDER OF THE DIRECTOR

NOW, on this 18th day of October, 2021, Director, Chlora Lindley-Myers, after consideration and review of the Stipulation of Settlement and Voluntary Forfeiture (hereinafter "Stipulation") entered into by the Division of Insurance Market Regulation (hereinafter "Division"), and West American Insurance Company (NAIC #44393) (hereinafter "West American"), relating to the market conduct investigation no. 349907, does hereby issue the following orders:

This order, issued pursuant to §374.046.15¹ and §374.280 is in the public interest.

IT IS THEREFORE ORDERED that West American and the Division having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

IT IS FURTHER ORDERED that West American shall not engage in any of the violations of law and regulations set forth in the Stipulation, shall implement procedures to place it 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, and shall fully comply with all terms of the Stipulation.

¹ All references, unless otherwise noted, are to Revised Statutes of Missouri 2016, as amended, or to the Code of State Regulations, 2020, as amended.

IT IS FURTHER ORDERED that West American shall pay, and the Department of Commerce and Insurance, State of Missouri, shall accept, the Voluntary Forfeiture of \$48,300.00, 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 18th day of October, 2021.



Chlora Lindley Myers
Chlora Lindley-Myers
Director

**IN THE DEPARTMENT OF COMMERCE AND INSURANCE
STATE OF MISSOURI**

In Re:)
)
WEST AMERICAN INSURANCE) **Market Conduct Investigation**
COMPANY (NAIC #44393)) **No. 349907**

STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter “the Division”) and West American Insurance Company (NAIC #44393) (hereinafter “West American”), as follows:

WHEREAS, the Division is a unit of the Missouri Department of Commerce and Insurance (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 of Missouri;

WHEREAS, West American has been granted a certificate of authority to transact the business of insurance in the State of Missouri;

WHEREAS, the Division conducted a market conduct investigation of West American, investigation #349907; and

WHEREAS, based on the market conduct investigation of West American, the Division alleges that:

1. In 72 instances, an audit was completed and billed more than 120 days from the expiration date of the policy in violation of §287.955.1¹, §287.955.3, and 20 CSR 500-6.500(2)(A).
2. West American erroneously attached a withdrawn National Council on

¹ All references, unless otherwise noted, are to Missouri Revised Statutes 2016, as amended or to the Code of State Regulations, 2020, as amended.

Compensation Insurance (“NCCI”) form to a policy in violation of §287.955.1 and §287.955.5.

3. West American added classification codes to declarations on an “if any” basis for workers’ compensation policies issued to Missouri risks in violation of §287.955.

WHEREAS, the Division and West American have agreed to resolve the issues raised in the market conduct investigation as follows:

A. **Scope of Agreement.** This Stipulation of Settlement and Voluntary Forfeiture (hereinafter “Stipulation”) 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.** West American agrees to take remedial action bringing it into compliance with the statutes and regulations of Missouri and agrees to maintain such remedial actions at all times, to reasonably ensure that the errors noted in the market conduct investigation and in this Stipulation do not recur. Such remedial actions shall consist of the following:

1. West American agrees that audits on workers compensation insurance policies with Missouri premium or exposure will be completed, billed, and premiums returned within 120 days of policy expiration or cancellation unless a) a delay is caused by the policyholder’s failure to respond to reasonable audit requests provided that the requests are timely and adequately documented or b) a delay is by the mutual agreement of the policyholder and West American provided that the agreement is adequately documented.

2. West American agrees to attach the approved MO Amendatory Endorsement to all workers’ compensation policies issued to Missouri risks as required by §287.955.1 and §287.955.5.

3. West American agrees to implement underwriting processes pertaining to classifications listed on a policy that reflect actual business and exposure of a risk, according to Section 287.955.1 RSMo. and approved Rule 1F of the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance.

C. **Compliance.** West American agrees to file documentation with the Division, in a format acceptable to the Division, within 60 days of the entry of a final order of any remedial action taken pursuant to Paragraph B to implement compliance with the terms of this Stipulation. Such documentation is provided pursuant to §374.190.

D. **Ongoing Investigation.** West American agrees to pay any reasonable investigation fees expended by the Division in conducting its review of the documentation provided by West American pursuant to Paragraph C of this Stipulation.

E. **Voluntary Forfeiture.** West American agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$48,300; such sum payable to the Missouri State School Fund, in accordance with §374.049.11 and §374.280.2.

F. **Non-Admission.** Nothing in this Stipulation shall be construed as an admission by West American, this Stipulation being part of a compromise settlement to resolve disputed factual and legal allegations arising out of the above-referenced market conduct investigation.

G. **Waivers.** West American, after being advised by legal counsel, does 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 investigation.

H. **Changes.** No changes to this Stipulation shall be effective unless made in writing and agreed to by representatives of the Division and West American.

I. **Governing Law.** This Stipulation 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, on behalf of the Division and West American respectively.

K. **Counterparts.** This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single document. Execution and delivery of this Stipulation by facsimile or by an electronically transmitted signature shall be fully and legally effective and binding.

L. **Effect of Stipulation.** This Stipulation shall become effective only upon entry of a Final Order by the Director of the Department (hereinafter the "Director") approving this Stipulation.

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

DATED: 9/30/2021



Stewart Freilich
Chief Market Conduct Examiner and
Senior Counsel
Division of Insurance Market Regulation

DATED: 9/23/2021



Donna Tiner
Manager, Financial Services
West American Insurance Company