

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the **CONTINENTAL**)
WESTERN INSURANCE COMPANY) Docket No. 3868-SO
NAIC #10804)

CONSENT ORDER

The Kansas Insurance Department (“KID”) and Continental Western Insurance Company (“CWIC”) wish to resolve an incident arising out of the investigation and adjustment of a workers’ compensation claim brought by Sara Cooper against CWIC. Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 44-5,120(e), K.S.A. 40-103 *et seq.* and K.S.A. 77-501 *et seq.*, the Commissioner hereby agrees to the terms of this Consent Order and accepts CWIC’s tender of payment for costs of investigation incurred by the KID in the amount of \$10,000.00 in exchange for dismissal of this action with prejudice.

Findings of Fact

KID and CWIC agree to the following findings of fact:

1. Continental Western Insurance Company (“CWIC”), located at 11201 Douglas Avenue, Urbandale, Iowa 50322, has been authorized to transact insurance business in the State of Kansas.
2. On or about November 22, 2007, a complaint from Dr. Lynn Curtis against the above-named insurance carrier was received at the Kansas Insurance Department.

3. The complaint was assigned to Ezra J. Ginzburg, Staff Attorney, for his review to determine if a violation of K.S.A. 44-5,120 had taken place and specifically to find whether the insurance carrier had intentionally, knowingly and willfully failed to pay court ordered medical bills duly authorized and ordered by Administrative Law Judge Bryce Benedict. On or about February 12, 2008, Eliehue Brunson took over the review of the file.

4. The Kansas Insurance Department (“KID”) has jurisdiction over this matter pursuant to K.S.A. 44-5,120, K.S.A. 40-103 *et seq* and K.S.A. 77-501.

5. On April 24, 2008, KID issued a Summary Order, Docket No. 3868-SO, which alleged a violation of K.S.A. 44-5,120(d) arising out of CWIC’s conduct in the Kansas worker’s compensation claim involving claimant Sarah Cooper.

6. On May 9, 2008, KID received a letter from Roger Finscher, attorney for Sarah Cooper, claimant in the matter of *Sarah Cooper v. Sunflower Supports Company and Continental Western Insurance Company*, Docket No. 1,031,064, requesting that the complaint be dismissed.

7. In lieu of further administrative litigation in this matter by the Kansas Insurance Department for alleged acts of conduct as defined in K.S.A. 44-5,120(d), both KID and CWIC have jointly agreed to the terms of this Consent Order.

8. KID and CWIC jointly agree that CWIC will pay the sum of Ten Thousand Dollars (\$10,000.00) and KID will dismiss this action with prejudice. However, if KID institutes a disciplinary action with respect to any newly discovered allegations of a same or similar nature to the Summary Order allegations that KID alleged were committed by CWIC, received on or before December 31, 2008, KID may use the Summary Order allegations in an attempt to show a pattern of practice by the company.

9. KID acknowledges that CWIC admits no liability whatsoever in agreeing to this Consent Order. The payment made pursuant to this agreement shall not be construed in any fashion as an admission of liability on behalf of CWIC or as an admission that CWIC was in any way at fault or committed any wrongful acts for the purposes of this administrative action or for the purposes of any other litigation, administrative or civil, arising out of this incident including, but not limited to, *Sarah Cooper v. Sunflower Supports Company and Continental Western Insurance Company*, Docket No. 1,031,064.

Applicable Law

1. K.S.A. 77-501 *et seq.* – The Kansas Administrative Procedures Act
2. K.S.A. 77-601 *et seq.* – The Act for Judicial Review and Civil Enforcement of Agency Action.
3. K.S.A. 44-5,120 *et seq.* – Fraudulent or abusive acts or practices; defined; powers, duties and functions of director of workers compensation and commissioner of insurance, etc.

Conclusions of Law

IT IS THEREFORE AGREED UPON BY THE COMMISSIONER OF INSURANCE AND CONTINENTAL WESTERN INSURANCE COMPANY (“CWIC”):

10. CWIC agrees to make a payment of Ten Thousand Dollars (\$10,00.00) to KID in exchange for the dismissal of this action with prejudice. However, if KID institutes a disciplinary action with respect to any newly discovered allegations of a same or similar nature to the Summary Order allegations that KID alleged were committed by CWIC, received on or

before December 31, 2008, KID may use the Summary Order allegations in an attempt to show a pattern of practice by the company.

11. KID acknowledges that CWIC admits no liability whatsoever in agreeing to this Consent Order. The payment made pursuant to this agreement is in settlement of disputed claims and shall not be construed in any fashion as an admission of liability on behalf of CWIC or as an admission that CWIC was in any way at fault or committed any wrongful acts for the purposes of this administrative action or for the purposes of any other litigation, administrative or civil, arising out of this incident including, but not limited to, *Sarah Cooper v. Sunflower Supports Company and Continental Western Insurance Company*, Docket No. 1,031,064.

12. The fact of this payment, the settlement negotiations between KID and CWIC and the entry of this Consent Order shall not be admissible in evidence in any respect in *Sarah Cooper v. Sunflower Supports Company and Continental Western Insurance Company*, Docket No. 1,031,064.

- a. Upon the entry of this Consent Order this action shall be dismissed with prejudice.
- b. The entry of this Consent Order is based upon a strict compromise of disputed issues between KID and CWIC and may not be used as evidence in any other proceeding.
- c. CWIC shall deliver, within twenty (20) days of the entry of this Order, the sum of \$10,000.00 to Eliehue Brunson, KID Staff Attorney, on behalf of the Kansas Insurance Department.
- d. If payment is not made as required, KID may vacate and/or declare this Consent Order void and proceed with a Summary Order and hearing.

12. CWIC agrees it shall, in good faith, assist KID in resolving any future complaints received on or before December 31, 2008, from Ms. Sarah Cooper concerning her workers' compensation claim.

IT IS SO ORDERED THIS ___21st___ DAY OF AUGUST, 2008 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Sandy Praeger
Commissioner of Insurance

_____/s/ John W. Campbell_____
By: /s/ John W. Campbell
John W. Campbell
General Counsel

Continental Western Insurance Company

_____/s/ William W. Sneed_____
By: /s/ William W. Sneed
Attorney for Continental Western Insurance
Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was deposited in the United States Mail, first class postage prepaid, addressed to the following:

William W. Sneed #10630
POLSINELLI SHALTON FLANIGAN SUELTHAUS P.C.
555 S. Kansas Avenue, Suite 101
Topeka, KS 66603-3423

on the ___21st___ day of _____August_____, 2008.

/s/ Eliehue Brunson

Eliehue Brunson
Staff Attorney

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