

BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS

In the Matter of:)
Continental Western) Docket No. 4367-SO
Insurance Company)
NAIC # 10804)

CONSENT ORDER

The Kansas Insurance Department (“KID”) and Continental Western Insurance Company (“Continental Western”) wish to resolve the above-captioned matter before the Commissioner of Insurance without formal adjudication by entering into this Consent Order.

This Consent Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made, pursuant to K.S.A. §77-542. The Commissioner of Insurance (“Commissioner”) hereby makes the following Findings of Fact, Conclusions of Law, and Order, to-wit:

Findings of Fact

The parties stipulate that if a hearing were conducted in this matter, the following evidence could be adduced by the Commissioner, and although neither admitted nor denied by Continental Western Insurance Company, it would be recognized as admissible to show the following:

1. Continental Western Insurance Company is located at 11201 Douglas, Urbandale, IA 50322, and has been authorized to transact and has continuously engaged in transacting insurance business in the State of Kansas since August 1, 1945.
2. The Commissioner of Insurance (“the Commissioner”) has jurisdiction over the subject matter of this proceeding, and this proceeding is held in the public interest.

3. On October 21, 2010, KID received a copy of a letter from the Diane E. Barger Law Office to the Fraud and Abuse section of the Kansas Department of Labor, Division of Workers Compensation regarding the actions of Continental Western in the case of Rolando Sotelo v. Falcon Industries, Inc. and Continental Western Insurance Company; Docket no. 1048677.
4. On July 10, 2010, KID Consumer Assistance Division employee, Scott Smith, wrote to Continental Western regarding the complaint sent to KID inquiring about relevant facts of the case and requesting certain pertinent documents.
5. On November 4, 2010, Cassandra Blue, a Claims Supervisor for Continental Western, provided some of the internal documents requested by Scott Smith and clarified the position of Continental Western in refusing to timely authorize treatment by the authorized treating physician.
6. On January 4, 2011, pursuant to *Nelson v. Miller*, 233 Kan. 122, 660 P.2d 1361, 1983, KID notified Continental Western by letter that the actions taken by the claim's representative, Mike Moorehead, and the agent contracted by Continental Western to act as a Nurse Case Manager, Bianca Soria, were considered to be a violation of Kansas law and could result in administrative action being taken against them.
7. On January 17, 2011, James M. McVay, of the Law Offices of Watkins Calcara, Chartered, Counsel for Continental Western, responded to the KID *Nelson v. Miller* letter of January 4, 2011, disputing the allegations and providing additional information from the files of Continental Western related to this case.

Applicable Law

1. K.S.A. 44-5,120, which states in the relevant part:
 - (d) Fraudulent or abusive acts or practices for purposes of the workers compensation act include, willfully, knowingly or intentionally:

- (4) obtaining, denying or attempting to obtain or deny payments of workers compensation benefits for any person by:
 - (A) Making a false or misleading statement;
 - (B) misrepresenting or concealing a material fact;
- (11) misrepresenting the provisions of the workers compensation act to an employee, an employer, a health care provider or a legal beneficiary;
- (15) failing to confirm medical compensation benefits coverage to any person or facility providing medical treatment to a claimant if a clear and legitimate dispute does not exist as to the liability of the insurance carrier, self-insured employer or group-funded self-insurance plan;
 - (g) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person or persons charged have engaged in a fraudulent or abusive act or practice the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue an order or summary order requiring such person to cease and desist from engaging in such act or practice and, in the exercise of discretion, may order any one or more of the following:
 - (1) Payment of a monetary penalty of not more than \$2,000 for each and every act constituting the fraudulent or abusive act or practice, but not exceeding an aggregate penalty of \$20,000 in a one-year period;

Conclusions of Law

Based on the Findings of Fact in Paragraphs #1 through #7 and the Applicable Law above,

**IT IS THEREFORE, AGREED UPON BY THE COMMISSIONER OF INSURANCE
AND CONTINENTAL WESTERN INSURANCE COMPANY:**

Continental Western Insurance Company neither admits nor denies the allegations set forth in Paragraphs #1 through #7 above.

1. Continental Western Insurance Company agrees to make a payment to KID of Six Thousand Dollars and 00/100 (\$6,000.00) for the unspecified acts of claims personnel that could be considered contrary to K.S.A. 44-5,120(d).
2. Continental Western Insurance Company also agree that when there is a preliminary order for medical treatment in place under the workers compensation act that its claims procedure will require a clear and legitimate dispute as to the liability of medical treatment

before denying medical benefits or refusing to authorize medical treatment recommended by the authorized treating physician.

3. In exchange for the payment KID will dismiss this action with prejudice.
4. Upon entry of this Consent Order this action shall be dismissed with prejudice. If payment is not made within 30 days, KID may vacate and/or declare this Consent Order void and proceed with a hearing.
5. The Commissioner shall retain jurisdiction over this matter to issue any Order(s) deemed necessary and appropriate.

NOTICE OF RIGHTS

Continental Western Insurance Company (“Continental Western”) is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedure Act. If Continental Western desires a hearing, the company must file a written request for a hearing with:

Zachary J.C. Anshutz, 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 Continental Western desires a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and provide information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of the same.

If a hearing is not requested in the time and manner stated above, this Consent 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 Continental Western 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:

Zachary Anshutz, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

IT IS SO ORDERED THIS 31st DAY OF MAY, 2012, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

BY:

/s/ Zachary J.C. Anshutz
Zachary J.C. Anshutz
General Counsel

Submitted and Approved By:

/s/ Mark A. Marion
Mark A. Marion
Staff Attorney
Kansas Insurance Department

Approved By:

/s/ John F. Thelen
John F. Thelen
Continental Western Insurance Company

Certificate of Service

The undersigned hereby certifies that above and foregoing Consent Order was served via the United States Postal Service, first-class postage prepaid, on this 31st day of May, 2012, addressed to the following:

Continental Western Insurance Company
John F. Thelen
11201 Douglas
Urbandale, IA 50322

CC: James M. McVay
Watkins Calcara, Chtd.
1321 Main, Ste. 300
P.O. Drawer 1110
Great Bend, KS 67530

_s/ Mark A. Marion_____

Mark A. Marion
Staff Attorney