

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

In the Matter of)
LINCOLN HERITAGE LIFE INSURANCE COMPANY) **Docket No. 4484-CO**
NAIC#65927)
)

CONSENT AGREEMENT AND FINAL ORDER

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-103 and in accordance with K.S.A. 40-2,125, the Commissioner hereby admonishes and assesses penalty against Lincoln Heritage Life Insurance Company (Lincoln Heritage) for violation of the applicable insurance statutes. This Consent Agreement shall become effective as a Final Order, without further notice, when signed by the Commissioner or her designee and filed of record with the Kansas Insurance Department (KID).

Findings of Facts

1. Lincoln Heritage Life Insurance Company, located at 4343 E. Camelback Rd., Phoenix, AZ is a foreign domiciled licensed insurance company in the state of Kansas with NAIC #65927.
2. KID has received complaints about an advertising solicitation produced and mailed by Lincoln Heritage that appears substantially similar to government issued documents. In addition, the solicitation contains minimized disclosures, indicates a limited time frame and does not clearly indicate that it is a life insurance product.
3. Lincoln Heritage, without adjudication of any issues of law or fact and without admitting or denying liability of any allegations or foregoing facts, stipulates to the foregoing facts.
4. Lincoln Heritage consents to the assessment of the civil penalty as ordered.

5. Lincoln Heritage understands its right to have a hearing on the facts and disposition and to seek review of an adverse order in this matter and expressly waives hearing and judicial review.

Applicable Law

K.S.A. 40-103 states,

“The commissioner of insurance shall have general supervision, control and regulation of corporations, companies, associations, societies, exchanges, partnerships, or persons authorized to transact the business of insurance, indemnity or suretyship in this state and shall have the power to make all reasonable rules and regulations necessary to enforce the laws of this state relating thereto.”

K.S.A. 40-2404 states,

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(2) *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.

K.A.R. 40-9-118 states,

Section 4. Form and Content of Advertisements

1. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

Section 5. Disclosure Requirements

1. The information required to be disclosed by this regulation shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
4. An advertisement shall not use as the name or title of a life insurance policy any phrase that does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance. An advertisement shall not use as the name or title of an annuity contract any phrase that does not include the word "annuity" unless accompanied by other language clearly indicating it is an annuity. An annuity advertisement shall not refer to an annuity as a CD annuity, or deceptively compare an annuity to a certificate of deposit.
5. An advertisement shall prominently describe the type of policy advertised.
20. Introductory, Initial or Special Offers and Enrollment Periods
 - (a) An advertisement of an individual policy or combination of policies shall not state or imply that the policy or combination of policies is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless that is the fact. An advertisement shall not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies.

Section 6. Identity of Insurer

1. The name of the insurer shall be clearly identified in all advertisements, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. If an application is a part of the advertisement, the name of the insurer shall be shown on the application. An advertisement shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other devise or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identify of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.
2. No advertisement shall use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with a governmental program or agency.

K.S.A. 40-2,125 states, in pertinent part,

“(a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or

any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:
(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall be not more than \$2,000 for each and every act or violation;”

Conclusions of Law

The Commissioner has jurisdiction over Lincoln Heritage and the subject matter of this proceeding and based on Paragraphs #1 through #9 and the Applicable Law enumerated above.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE:

1. Lincoln Heritage’s marketing advertisement sent to Kansas consumers is in violation of K.S.A. 40-2404 and K.A.R. 40-9-118.
2. Pursuant to K.S.A. 40-2,125(a), Lincoln Heritage is hereby ordered to pay a monetary penalty, due and payable to the Kansas Insurance Department, in the amount of TEN THOUSAND DOLLARS (\$10,000.00) for its above-stated violations of K.S.A. 40-2404 and K.A.R. 40-9-118.
3. Pursuant to KSA 77-415(b)(2)(A), this order is designated by KID as precedent.

IT IS SO ORDERED THIS 24th DAY OF OCTOBER, 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Order and Notice of Rights on this 24th day of October, 2012, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

Thomas Londen
President
Lincoln Heritage Life Insurance Company
4343 E. Camelback Rd.
Phoenix, AZ 85018

George R. Katosic
Attorney
300 N. Coit Rd., Suite 350
Richardson, TX 75080

_ /s/ Jennifer R. Sourk _____
Jennifer R. Sourk
Staff Attorney