

OFFICE OF INSURANCE REGULATION

KEVIN M. MCCARTY  
COMMISSIONER

Received by Office of  
Insurance Regulation

IN THE MATTER OF:

FEB 02 2006

CASE NO.: 84561-05

WESTERN AND SOUTHERN  
LIFE INSURANCE COMPANY  
MARKET CONDUCT EXAMINATION

Bureau of  
Market Investigations

**ORDER ADOPTING MULTISTATE EXAMINATION REPORT AND CONSENT ORDER**

THIS CAUSE came on for consideration and final agency action by the **OFFICE OF INSURANCE REGULATION** (hereinafter "**OFFICE**"), upon the notification of resolution of a multi-state market conduct examination of the Western and Southern Life Insurance Company (hereinafter referred to as the "**Company**"). Upon consideration of the record, and being otherwise fully advised in the premises, the Commissioner of the Office of Insurance Regulation, as head of the **OFFICE**, hereby finds:

1. On June 12, 2000, as part of a national review, the National Association of Insurance Commissioners (NAIC) adopted a resolution, in which the members of the NAIC agreed to work cooperatively to determine if individual insurance companies had engaged in race-based discriminatory practices, and to jointly seek a multi-state settlement with each of the affected insurance companies.
2. Pursuant to this resolution, the Superintendent of the Ohio Department of Insurance, as primary examiner and negotiator, in conjunction with regulators

from Michigan, North Carolina, Illinois, and Indiana, conducted a market conduct examination of the Company, related to the sale of industrial life and certain other life insurance policies. As a result of that examination, the Superintendent of the Ohio Department of Insurance entered into a Consent Order with the Company, dated August 24, 2005. A copy of the Consent Order is attached hereto as exhibit "A," and is made a part hereof by reference. The Consent Order has been executed by the Company and the Superintendent of the Ohio Department of Insurance, as primary examiner and negotiator.

3. Upon review of the Consent Order, the **OFFICE** finds that the Consent Order is a fair and proper disposition of the matters addressed therein.

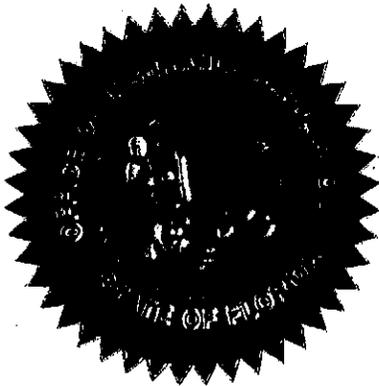
**IT IS THEREFORE ORDERED:**

4. The Consent Order entered into between the Company and the Ohio Department of Insurance on August 24, 2005, is hereby APPROVED AND ADOPTED.
5. The report titled "Race Based Pricing Activities With Respect to the Life Insurance Business of Western & Southern Life Insurance Company" (Report) and dated December 31, 2003, is hereby APPROVED AND ADOPTED.
6. The Company shall immediately initiate compliance with all terms and conditions of the Consent Order and follow all recommendations outlined in the Report.
7. The Company shall provide the **OFFICE** with documentary proof of compliance with all applicable terms and conditions of the Consent Order, certified by an officer of the company, on or before the thirtieth (30<sup>th</sup>) day after which this Order is executed.

8. With respect to Section II, Subsection I of the Consent Order, the **OFFICE** will be considered to be a “participating state” and the Company will make a *pro rata* administrative payment to the **OFFICE** *in lieu* of any other administrative penalty that may be imposed by the Commissioner. Because the Report indicates that there are thirteen (13) affected Florida policies, representing .023% of the total affected policies nationwide, the State of Florida will receive **Nine Thousand Two Hundred Dollars and No/100 (\$9,200.00)** as its *pro rata* share of WSL’s administrative payment. This payment will be made to the **OFFICE** on or before the thirtieth (30<sup>th</sup>) day after which this Order is executed.

All terms and conditions above are hereby **ORDERED**.

**DONE AND ORDERED** this <sup>31<sup>st</sup></sup>~~30<sup>th</sup>~~ day of January, 2006.



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Kevin M. McCarty  
Commissioner  
Office of Insurance Regulation

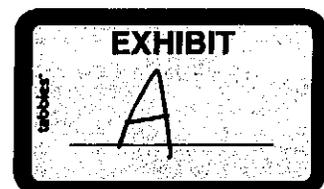
**STATE OF OHIO  
DEPARTMENT OF INSURANCE  
2100 Stella Court  
Columbus, Ohio 43215**

**IN THE MATTER OF** : **CONSENT ORDER**  
**THE WESTERN AND SOUTHERN LIFE** :  
**INSURANCE COMPANY** :  
**MARKET CONDUCT EXAMINATION** :

The Superintendent of the Ohio Department of Insurance ("Department") is responsible for administering Ohio insurance laws pursuant to Section 3901.011 of the Ohio Revised Code ("R.C."). The Western and Southern Life Insurance Company ("Company") is domiciled in the state of Ohio, is authorized to engage in the business of insurance in the state of Ohio; and, as such, is under the jurisdiction of the Superintendent and the Department. On June 12, 2000, as part of a national review, the National Association of Insurance Commissioners ("NAIC") adopted a resolution, in which the members of the NAIC agreed to work cooperatively, to determine if individual insurance companies had engaged in race-based discriminatory practices, and to jointly seek a multi-state settlement with each of the affected insurance companies. Pursuant to this resolution, the Superintendent, as primary examiner and negotiator, and in consultation with regulators in Illinois, Indiana, Michigan, and North Carolina, conducted a market conduct examination of the Company related to the sale of industrial life and certain other life insurance policies. As a result of this examination, the Superintendent has entered into this Consent Order with the Company.

**SECTION I**

- A. On June 14, 2001, the Department began a targeted, multi-state market conduct examination to investigate possible race-based underwriting practices of the Company. For the purposes of the market conduct examination and this Consent Order, the look-back period utilized was 1889, which was the effective date of the analogous statutes preceding R.C. Sections 3911.16 and 3911.17.
- B. Beginning in 1957 and continuing through 1970, the Company acquired eight life insurance companies, including companies that may have engaged in race-based underwriting practices prior to their acquisition by the Company.
- C. In 1988, the Company voluntarily implemented an extensive internal program to identify those industrial and ordinary policies in force that may have been priced on a racially distinct basis and that were still in force on a premium-paying basis. The Company then provided an increased amount of insurance protection to these policyholders. In 2000 and 2001, the Company enhanced all then in force industrial and ordinary policies issued with premiums that may have been determined on a racially distinct basis that had not been enhanced in 1988. In 2005, the Company made additional enhancements to in force policies that were recommended by Actuarial Resources Corporation ("ARC"), the Department's consultants in the examination.



- D. At all times herein, the Company fully cooperated in the investigation, giving full access to its personnel, records, facilities and results of its own internal examination of documents. The Department satisfied itself that the Company made its best efforts to identify any policies with potentially race based premiums.
- E. As a result of this market conduct examination, the Superintendent alleges that until 1966, companies that were later acquired by the Company (and the Company itself for a period of less than a year in the 1950s) sometimes used race as a factor in underwriting, which led to some African-American applicants paying higher premiums than some Caucasian applicants. The Superintendent acknowledges that the Company's practices at issue did not constitute intentional or willful violations.
- F. The Superintendent further alleges that the above-described business practice constitutes a violation of R.C. 3911.16, 3911.17, 3901.20 and 3901.21.

## SECTION II

It is hereby agreed to and consented by the parties that:

- A. The Superintendent and the Company enter into this Consent Order to resolve the allegations as set forth in Section I of this order. In doing so, the Company expressly denies any wrongdoing alleged by the Superintendent and does not admit or concede actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against it by the Superintendent.
- B. The Company has been advised that it has a right to a hearing before the Superintendent pursuant to R.C. Chapter 119; that, at a hearing, it would be entitled to appear in person, to be represented by an attorney or other representative who is permitted to practice before the agency; and that, at a hearing, it would be entitled to present its position, arguments or contentions in writing and to present evidence and examine witnesses appearing for and against it. The company hereby waives all such rights.
- C. The Company consents to the jurisdiction of the Superintendent and the Department, as primary examiner and negotiator on behalf of the regulators of the various other states where the Company transacts the business of insurance, to determine the issues set forth herein. The Company expressly waives any prerequisites to jurisdiction that may exist.
- D. The Company shall complete its adjustment effort as described herein and shall not make or permit any unfair discrimination between individuals of the same class and hazard by reason of race.
- E. The Company agrees to develop a policyholder notification program to assist it in locating persons eligible for any of the settlement benefits as outlined herein. Within 120 days of the execution of this Consent Order, the Company shall submit this policyholder notification program to the Department for approval. A notification program is required because the policies involved have not been offered for a substantial number of years, they were offered primarily by entities before those entities were acquired by the Company, the older historical files contain incomplete

information, and there is a lack of consistent and well documented relationships between plan codes used in rate books and those contained on the Company's administrative systems.

The program will include a process whereby written notice of the settlement will be sent to the last known address of record to all policyholders and beneficiaries eligible for benefits under this settlement whose policies have terminated. In order to locate those individuals who are no longer at the address of record maintained by the Company, the Company shall develop and implement an internal locator plan satisfactory to the Department. The Company will also issue a public notice, in a form approved by the Department, notifying former policyholders and their descendents of their right to benefits under this settlement. Notice shall be published in publications approved by the Department.

F. The Company agrees to pay a regulatory enhancement of twenty-five dollars (\$25.00) per policy to holders of policies remediated as set forth in Section IIG. below, or their beneficiaries if the policyholder cannot be paid, who make a valid claim under the terms of this Consent Order. This regulatory enhancement will be paid on in force policies by increasing the benefits of those policies by the amount of the regulatory enhancement.

G. Scope of Remediation

1. In force policies. The Department acknowledges that based on its examination, including the report of ARC, that all eligible policies in force on February 24, 2005 have been fully remediated.
2. Terminated policies on which there was a previous payment (death claim, maturity or cash surrender). For a period of one year from the implementation date of this Consent Order, the Company shall honor all claims shown to be valid by the claimant by providing additional benefits with respect to the policies not in force on February 24, 2005 on which the claim has been made to ensure that Caucasian and African-American policyholders are treated the same and in accordance with ARC's report.

H. In addition to the regulatory enhancement and remediation terms contained herein, the Company agrees to a minimum benefit floor of \$2,000,000.00, which has been adjusted to reflect the enhancement payments made prior to 2005 by the Company. This floor amount will be reduced by benefits and payments made under paragraphs F and G. After one year from the implementation date of this Consent Order, if a minimum benefit amount of \$2,000,000.00 has not been reached, the Company agrees to meet and confer with the Superintendent to determine appropriate disposition of part or of all of the remainder. The Company agrees that ultimately any unused funds from the minimum benefit floor shall be donated to one or more educational institutions or charities that serve African-American causes or interests.

I. The Company will make an administrative payment in the amount of \$400,000.00 to be split among the various participating states. The participating states will have ninety days after the date of execution of this Consent Order, or such longer period if the Superintendent determines it is appropriate, to join this global settlement. The

number of participating states and their respective pro-rata share of the total affected in-force policies will determine the final allocation. Each eligible and participating state will receive a minimum of \$1,000.00. This payment shall be in lieu of any other administrative penalty that may be imposed by the Superintendent.

- J. The Company has paid \$7,406.00 in administrative costs directly incurred by the Department to perform the Market Conduct examination. In addition, the Company has paid \$182,111.94 in administrative costs directly incurred by ARC to perform the Market Conduct examination. ARC and the Department will invoice the Company for any additional administrative costs.
- K. The Company waives any and all causes of action, claims or rights, known or unknown, which it may have against the Department, and any employees, agents, consultants, contractors or officials of the Department, in their individual and official capacities, as a result of any acts or omissions on the part of such persons or firms arising out of this matter.
- L. The Company has read and understands this Consent Order. The Company further understands that it has the right to seek counsel of its choice and to have counsel review this Consent Order.
- M. This Consent Order has the full force and effect of an Order of the Superintendent. Failure to abide by the terms of this agreement shall constitute an actionable violation in and of itself without further proof and may subject the Company to any and all remedies available to the Superintendent.
- N. This Consent Order shall be entered in the Journal of the Ohio Department of Insurance. All parties understand and acknowledge that this Consent Order is a public document pursuant to R.C. 149.43. Neither this Consent Order, nor the negotiations leading thereto, nor the fact of its having been made, shall be admissible or entered into evidence for any purpose whatsoever, except with regard to any effort by the Superintendent or the Company to enforce or interpret the terms of the Consent Order.

Date: 8-12-05

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Carroll R. Hutchinson, Sr. Vice President  
The Western and Southern Life Insurance Company

Date: 8-12-05

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Donald J. Wuebbeling, Sr. Vice President  
The Western and Southern Life Insurance Company

Date: 8/24/05

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Ann H. Womer Benjamin  
Superintendent of Insurance  
Ohio Department of Insurance