

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made this 20th day of April, 2016, by and between County of Texas, Missouri, a political subdivision organized and existing under the laws of the State of Missouri and created by 46.040 and 46.156 RSMo. ("County of Texas"); and Continental Western Insurance Company, an Iowa corporation ("Continental Western"). The signatories to this Agreement hereinafter are referred to jointly as the "Parties." This Agreement is made as a compromise between the Parties for the complete and final settlement of their claims, differences, and causes of action with respect to the matters described below.

PREAMBLE

WHEREAS, the County of Texas was a defendant in a lawsuit brought on or about January 21, 2009, by Monica Daniel Hutchison ("Hutchison") in the United States District Court for the Western District of Missouri under Case No. 6:09-cv-03018-RED ("*Hutchison* Lawsuit" or "*Hutchison* Complaint").

WHEREAS, the County of Texas was a defendant in a lawsuit brought on or about February 25, 2008, by Carol Wilson ("Wilson") in the Circuit Court of Texas County, Missouri, under Case No. 08TE-C000064, and subsequently transferred to the Circuit Court of Pulaski County, where it pended as Case No. 08PU-CV01557 ("*Wilson* Lawsuit" or "*Wilson* Complaint").

WHEREAS, Continental Western issued an insurance policy to County of Texas under policy No. PEP2365097223, which was in effect for the policy period of August 18, 2005 to August 18, 2006 ("Continental Western Policy").

WHEREAS, Continental Western denied any obligation under the Continental Western Policy to defend or indemnify County of Texas in either the *Hutchison* Lawsuit or the *Wilson* Lawsuit.

WHEREAS, County of Texas filed a lawsuit against, *inter alia*, Continental Western in the Circuit Court of Phelps County, Missouri, under Case No. 10PH-CV01680, alleging, *inter alia*, breach of contract and bad faith (hereinafter referred to as the "Coverage Action").

WHEREAS, the Coverage Action seeks, *inter alia*, recovery of the attorneys' fees the County of Texas incurred in defending itself in the *Hutchison* Lawsuit, recovery of the attorneys' fees the County of Texas incurred in defending itself in the *Wilson* lawsuit, and indemnification for the amount the County of Texas paid to Wilson as part of the settlement of the *Wilson* Lawsuit.

WHEREAS, Continental Western denies all liability for the claims asserted in the Coverage Action.

NOW THEREFORE, in consideration of the mutual promises and releases in this Agreement and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties agree as follows:

1.0 SETTLEMENT

1.1 Within fourteen (14) days of the receipt of a fully executed copy of this Agreement from County of Texas, Continental Western shall deliver a check, made payable to County of Texas, Missouri and its attorneys, Gray, Ritter & Graham, P.C., in the amount of two-hundred and sixty thousand dollars (\$260,000) (the "Settlement Payment").

1.2 Upon receipt of the Settlement Payment set forth in Paragraph 1.1 above, County of Texas agrees to dismiss Continental Western from the Coverage Action that is currently

pending before the Circuit Court of Phelps County, Missouri, under Case No. 10PH-CV01680. The dismissal of Continental Western from the Coverage Action will be with prejudice.

2.0 COMPROMISE

2.1 This Agreement is the result of a compromise and shall never be construed as an admission by the Parties of any liability, wrongdoing, or responsibility on their part or on the part of their predecessors, successors, parents, subsidiaries, affiliates, attorneys, officers, directors, or employees. Indeed, the Parties expressly deny any such liability, wrongdoing, or responsibility.

3.0 RELEASE

3.1 In consideration of this Agreement and the Settlement Payment, County of Texas, individually and on behalf of its predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, assigns, agents, directors, officers, employees, shareholders, attorneys, and insurers, hereby releases and forever discharges Continental Western and all of its respective predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, assigns, agents, directors, officers, employees, shareholders, attorneys, and insurers from and against all actions, causes of action, claims, claims for bad faith, suits, debts, damages, judgments, liabilities, defense costs, attorney's fees, demands and controversies whatsoever, whether matured or unmatured, whether at law or in equity, whether before a local, state or federal court or state or federal administrative agency, commission or arbitration administrator, and whether now known or unknown, liquidated or unliquidated, that County of Texas now has or may have had, or thereafter claims to have, regarding the issues arising out of or directly or indirectly related to the *Hutchison* Lawsuit, the *Wilson* Lawsuit, and/or the Coverage Action.

4.0 ADDITIONAL TERMS AND CONDITIONS

4.1 This Agreement sets forth and constitutes the entire agreement between the Parties with respect to the subject matter and supersedes any and all prior agreements, understandings, promises, warranties, and representations made by each Party to the other concerning their subject matter. This Agreement may be modified only by a written document signed by all Parties. No waiver of this Agreement or of any of its promises, obligations, terms, or conditions shall be valid unless it is written and signed by the Party against whom the waiver is to be enforced.

4.2 This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. Original signatures transmitted by facsimile or email will be effective to create such counterparts and will have the same effect as if signed in person.

4.3 This Agreement is binding on the Parties and their predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, agents, directors, officers, employees, and shareholders. Each of the signatories to this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of his or her respective Party and by such signature to bind that Party to this Agreement.

4.4 If any part or any provision of this Agreement is finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts or provisions of this Agreement.

4.5 The Parties hereby warrant and represent that they have not assigned nor in any way transferred or conveyed, all or any portion of the claims covered by this Agreement. The

Parties acknowledge and agree that this warranty and representation is an essential and material term of this Agreement, without which they would not have entered into it.

4.6 The Parties agree to bear their own costs, attorneys' fees and related expenses associated with the *Hutchison* Lawsuit, the *Wilson* Lawsuit, and/or the Coverage Action.

4.7 The Parties acknowledge that they have consulted with legal counsel of their choosing before entering into this Agreement, they have read this Agreement, they know and understand its contents, and they execute this Agreement freely and voluntarily. In executing and giving this Agreement, each Party acknowledges that it has not relied on or made to the other Party or anyone purporting to act on its behalf any promise or representation that is not in this Agreement.

4.8 The Parties cooperated in the drafting of this Agreement, and if it is finally determined that any provision herein is ambiguous, that provision shall not be presumptively construed against any Party.

4.9 All notices required under this Agreement shall be served on the Parties via electronic mail and First Class U.S. Mail as follows:

NOTICES TO COUNTY OF TEXAS:

Thomas K. Neill
Gray, Ritter & Graham, P.C.
701 Market Street
Suite 800
St. Louis, MO 63101
Telephone: (314) 241-5620
Email: tneill@grgpc.com

NOTICES TO CONTINENTAL WESTERN:

Dana Rice
Hinshaw & Culbertson LLP
222 N. LaSalle Street
Suite 300
Chicago, IL 60601

Telephone: (312) 704-3000
Email: drice@hinshawlaw.com

4.10 This Agreement shall be governed, in all respects, by the laws of the State of Missouri, irrespective of its choice of law rules.

4.11 The Parties agree to cooperate in good faith and execute any documents necessary to effectuate and/or consummate the terms of this Agreement.

IN WITNESS WHEREOF, we have executed this Agreement effective as of the date above written.

COUNTY OF TEXAS, MISSOURI

CONTINENTAL WESTERN INSURANCE
COMPANY

By: Fred W. Stanger
Its: Presiding Commissioner

By: _____
Its: _____