

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

**In the Matter of** )  
**LIBERTY MUTUAL INSURANCE** )  
**COMPANY AND LIBERTY MUTUAL FIRE** )  
**INSURANCE COMPANY** )

Docket No. 3536-MC

**ORDER**

Pursuant to the authority conferred upon the Commissioner of Insurance in K.S.A. 40-222, Sandy Praeger, the duly elected, qualified and serving Commissioner of Insurance hereby adopts the Kansas Insurance Department’s Report of Market Conduct Examination of Liberty Mutual Insurance Company and Liberty Mutual Fire Insurance Group (“collectively Liberty Mutual”), as of December 31, 2004, (attached herein as Attachment A) by incorporating the same in its entirety with specific findings stated as follows:

**Findings of Fact**

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. The Kansas Insurance Department (“KID”) performed a targeted market conduct examination of Liberty Mutual Insurance Company (“LMIC”) and Liberty Mutual Fire Insurance Company (“LMFIC”) from January 1, 2002 – December 31, 2004.
3. On or about April 20, 2006 the Examiner-in-Charge provided Liberty Mutual Insurance Group with a draft of the Market Conduct Examination conducted by KID on the operation of LMIC and LMFIC with request to the company to respond in the form of written comments, additions, or acceptance by May 24, 2006.

4. Liberty Mutual timely responded with written comments regarding the draft report on May 23, 2006 which is attached herein as Attachment B.
5. The Kansas Commissioner of Insurance has since fully reviewed said Kansas report which is attached herein as Attachment A.
6. The Market Conduct Examination team (“MCE team”) utilized the standards and tests established in the NAIC Market Conduct Examiners Handbook. A tolerance standard of 7% is used for claim procedures and 10% is used for all other procedures.

## **UNDERWRITING AND RATING**

### **7. Standard 1: Rating Practices**

- a. Liberty Mutual obtained a passage rate of 86% for the Homeowners Standard in the Rating Practices of the Underwriting and Rating portion of the exam. Liberty Mutual failed the standard.
- b. From January 19, 2004 to March 14, 2005, Liberty Mutual charged an incorrect premium on all new business due to the use of an incorrect tier developed from a matrix which was not filed and approved by KID. Liberty Mutual has acknowledged this error and has agreed to provide a list of policies and amount of premium to be refunded within 30 days of the issuance of this Order. Liberty Mutual estimates this error affected 300 policyholders.

### **8. Standard 22: Termination Practices**

- a. Out of a sample of 50 auto and homeowners application rejections, Liberty Mutual provided the MCE team with thirty (30) auto applications which were captured electronically. The homeowners’ policies were not captured

electronically. With only an application and no other documents pertaining to the underwriting of the account, the MCE team could not determine if the files were handled in accordance with Kansas law.

9. **General Rating Manual Violations**

- a. The Liberty Mutual Auto Rating Manual did not explain that different experience periods are used to determine eligibility for new and renewal business.
- b. Liberty Mutual's Kansas State Homeowners Rating Manual under Tier Eligibility did not define "targeted animal(s)" which is required in the rating manual because the element will affect the rating of a homeowner's policy.
- c. Liberty Mutual did not include the rating matrix or an explanation of qualifications for Liberty Mutual's 1/20/03 Tier plan on the rule page of their filed rating manual. The Tier plan had six (6) different tiers and each one had a different pricing level. Liberty Mutual failed to show any different risk characteristics in their rate manual which would distinguish one class of business from another to justify a different premium charged.

**Applicable Law**

K.S.A. 40-953 states, in pertinent part:

"Rates shall not be excessive, inadequate or unfairly discriminatory, nor shall an insurer charge any rate which if continued will have or tend to have the effect of destroying competition or creating a monopoly..."

Rates are inadequate if they are clearly insufficient, together with the investment income attributed to them, to sustain projected losses and expenses in the class of business to which they apply.

One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses.

Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy...”

K.S.A. 40-955 states, in pertinent part:

- (a) “Every insurer shall file with the commissioner...every manual of classifications, rules and rates, every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date and the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings. A filing and any supporting information shall be open to the public inspection after it is filed with the commissioner.
- (f) No insurer shall make or issue a contract or policy except in accordance with filings which have been filed or approved for such insurer as provided in this act.”

K.S.A. 40-2,111 states, in pertinent part:

- (a) ‘Adverse underwriting decision’ means: Any of the following actions with respect to insurance transactions involving insurance coverage which is individually underwritten:
  - (1) A declination of insurance coverage;
  - (2) A termination of insurance coverage;
- (b) ‘Declination of insurance coverage’ means a denial in whole or in part, by an insurance company or agent of requested insurance coverage.

K.S.A. 40-2,112 states, in pertinent part:

- (a) In the event of an adverse underwriting decision the insurance company...responsible for the decision shall either provide the applicant, policyholder or individual proposed for coverage with specific reason or reasons for the adverse underwriting decision in writing or advise such persons that upon written request they may receive the specific reason or reasons in writing.
- (b) Upon receipt of written request within 60 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder, or individual proposed for coverage, the insurance company...shall furnish to such person within 21 business days of the receipt of such written request:

- (1) The specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to subsection (a); or...

**Conclusions of Law**

Based upon the Findings of Fact enumerated in paragraphs #1 through #9 and the Applicable Law,

**IT IS, THEREFORE, ORDERED BY THE COMMISSIONER OF INSURANCE:**

- a. The Kansas Insurance Department's December 31, 2004, Report of Market Conduct Examination of Liberty Mutual Group is herein adopted in its entirety.
- b. Liberty Mutual's Rating Practices passage rate of 86% constitutes failure of this standard for the homeowners portion of the test. This constitutes a violation of K.S.A. 40-955(a)(f). Pursuant to K.S.A. 40-2,125(a)(1), Liberty Mutual shall pay a monetary penalty of One Thousand Dollars and No Cents (\$1,000.00) due and payable to the Kansas Insurance Commissioner on or before the 14<sup>th</sup> day from the date of this Order for the above stated violation of K.S.A. 40-955(a)(f).
- c. Liberty Mutual charged an incorrect premium on all new business from 1/19/04 to 3/14/05 due to the use of an incorrect tier developed from a matrix not filed and approved by KID. Liberty Mutual has estimated approximately 300 policyholders were affected. This constitutes a violation of K.S.A. 40-955(a)(f). Pursuant to K.S.A. 40-2,125(a)(1) Liberty Mutual shall pay a monetary penalty of Ten Thousand Dollars and No Cents (\$10,000.00) due and payable to the Kansas Insurance Commissioner on or before the 14<sup>th</sup> day from the date of this Order for the above-stated violation of K.S.A. 40-955(a)(f).
- d. Liberty Mutual provided the MCE team with thirty (30) automobile applications captured electronically during the application process. Liberty Mutual did not

provide any other documents that pertained to the underwriting of the accounts other than the application. From this information the MCE team could not determine if the files were handled in accordance with Kansas law. This constitutes a violation of K.S.A. 40-2,111 and K.S.A. 40-2,112. Pursuant to K.S.A. 40-2,125(a)(1), Liberty Mutual shall pay a monetary penalty of Five Hundred Dollars and No Cents (\$500.00) due and payable to the Kansas Insurance Commissioner on or before the 14<sup>th</sup> day from the date of this Order for the above stated violation of K.S.A. 40-2,111 and 40-2,112.

- e. Liberty Mutual's Auto Rating Manual did not explain different experience periods are used to determine eligibility for new and renewal business. This constitutes a violation of K.S.A. 40-955.
- f. Liberty Mutual failed to define the term "targeted animal" in the Kansas State Homeowners Rating Manual. The definition of "targeted animal" in the rating manual will affect the rating of a homeowners policy. This constitutes a violation of K.S.A. 40-953.
- g. Liberty Mutual did not include the rating matrix or an explanation of qualifications for Liberty Mutual's 1/20/03 Tier plan on the rule page of their filed rating manual. Liberty Mutual failed to show any different risk characteristics which distinguish different classes of business and which justify a different premium charged. This constitutes a violation of K.S.A. 40-953 and K.S.A. 40-955.
- h. Liberty Mutual shall pay a monetary penalty of One Thousand Dollars and No Cents (\$1,000.00) due and payable to the Kansas Insurance Commissioner on or

before the 14<sup>th</sup> day from the date of this Order for the above-stated violations of  
K.S.A. 40-953 and K.S.A. 40-955 enumerated in paragraphs e., f., and g. above.

**IT IS SO ORDERED THIS 5th DAY OF FEBRUARY, 2007, IN THE CITY OF  
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



/s/ Sandy Praeger  
Sandy Praeger  
Commissioner of Insurance

BY:

/s/ John W. Campbell  
John W. Campbell  
General Counsel

### **NOTICE OF RIGHTS**

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

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If Liberty Mutual requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of the 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 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 that Liberty Mutual 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:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9<sup>th</sup> Street  
Topeka, Kansas 66612

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he served the above and foregoing Order and Notice of Rights on this \_5th\_ day of \_February\_, 2007, by causing the same to be deposited in the United States mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

Mark Plesha CPCU, AIS  
Regional Director, Market Conduct Services  
Liberty Mutual Insurance Group  
175 Berkeley St.  
Mail Stop S3B  
Boston, MA 02116

/s/ Zachary J.C. Anshutz \_\_\_\_\_  
Zachary J.C. Anshutz  
Staff Attorney