

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

In the Matter of	)	
<b>LIBERTY MUTUAL</b>	)	Docket No. 4236-CO
<b>INSURANCE COMPANY</b>	)	
<b>NAIC # 23043</b>	)	

**CONSENT ORDER**

The Kansas Insurance Department (“KID”) and Liberty Mutual Insurance Company (“Liberty”) wish to resolve the above-captioned matter before the Commissioner of Insurance without formal adjudication by entering into this Consent Order. Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 44-5,120(e), K.S.A. 40-103 *et seq.*, and K.S.A. 77-501 *et seq.*, the Commissioner hereby agrees to the terms of this Consent Order and accepts Liberty’s tender of payment in the amount of Thirteen Thousand and no hundredths dollars in exchange for dismissal of this action with prejudice.

The Commissioner of Insurance (“Commissioner”) hereby makes the following Findings of Fact, Conclusions of Law, and Order, to-wit. 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.

**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 Liberty, would be recognized as admissible to show the following:

1. Liberty Mutual Insurance Company, located at 175 Berkley Street, Boston, MA, 02116, has been authorized to transact and has continuously engaged in transacting insurance business in the State of Kansas since April 3, 1922.

2. The Kansas Insurance Department (“KID”) has jurisdiction over this matter pursuant to K.S.A. 44-5,120, K.S.A. 40-103 *et seq.*, and K.S.A. 77-501 *et seq.*
3. That on October 23, 2008 and on November 13, 2008, B.K.C. filed complaints with KID against Liberty regarding a workers compensation claim pending before the Kansas Division of Workers Compensation in docket number 1,034,286.
4. That Liberty delayed total temporary disability payments and necessary medical treatment to B.K.C. without lawful cause on several occasions contrary to an October 5, 2007, Order in docket number 1,034,286. These delays required the intervention of a Division of Workers Compensation Administrative Law Judge, additional Orders and hearings, and unnecessarily delayed medical treatment.
5. That on August 28, 2009, D.B. filed a complaint with KID against Liberty regarding a significant delay in the payment to L.J.B. for medical mileage stemming from workers compensation award in docket number 201,521. Liberty was notified of the travel and a mileage form was submitted on June 29, 2009. Liberty failed to make payment on the mileage owed to L.J.B. until September 8, 2009.
6. That on September 17, 2009, John J. Bryan, attorney for L.B., filed a complaint with KID against Liberty regarding a significant delay in the payment of medical treatment, reimbursement for out of pocket medical expenses and medical mileage in docket number 1,027,863. Liberty had been notified of the outstanding medical bills, out of pocket medical expenses and medical mileage, and failed to respond to a demand for payment or make payment in a timely manner contrary to an Order.
7. That on August 18, 2009, the Kansas Department of Labor forwarded a complaint to KID made by Michael Wallace, attorney for B.A.W., against Liberty, as the Third

8. That on December 1, 2008, the Kansas Department of Labor forwarded a complaint to KID was made by Dennis Horner, attorney for S.S., against Liberty for failing to pay medical mileage, reimbursement for prescriptions and for delaying appropriate and authorized medical treatment in docket number 1,033,879. The initial demand for payment of medical mileage and reimbursement for prescriptions was made to Liberty on May 9, 2008, and was not paid to S.S. until December of 2008. That on June 25, 2009, ALJ Marcia L. Yates-Roberts issued a Preliminary Decision directing Liberty to provide diagnostic testing as recommended by the previously authorized treating physician despite the fact that Liberty had previously refused to authorize it. Further, that because of Liberty's continued refusal to pay medical mileage and prescription reimbursement to S.S. as well as having suspended S.S.'s temporary total disability payments, ALJ Marcia L. Yates-Roberts issued another Preliminary Decision on July 24, 2009, ordering temporary total disability to be reinstated and the payment of medical mileage and prescription reimbursement by Liberty.
9. That on June 29, 2009, a complaint was made to KID by Dennis Horner, attorney for G.R., against Liberty for failing to abide by an Order dated January 14, 2009, in docket number 1,039,910. Specifically, that Liberty had failed to pay medical mileage, medical expenses and failed to pay total temporary disability (TTD) to G.R. in the amounts specified in the Order. At the Preliminary Hearing in this matter on

- June 4, 2009, Counsel for Liberty agreed that there had been an underpayment in TTD to G.R. and advised this would be promptly resolved. The TTD underpayment to G.R. was not made by Liberty until July 2, 2009. Mileage reimbursement and medical expense reimbursement was not made by Liberty until July 15, 2009.
10. That on November 24, 2008, a complaint was made to KID by Roger Fincher, attorney for M.T.R., against Liberty for failing to confirm medical benefits to and authorize medical treatment for M.T.R. as ordered on October 1, 2008, in docket number 1,039,557. A diagnostic medical procedure was ordered by the authorized treating physician, but approval for this procedure was not given by Liberty for over 60 days.
  11. That on July 23, 2009, the Kansas Department of Labor forwarded a complaint to KID that was made by Dennis Horner, attorney for E.W.G., against Liberty for failing to confirm medical compensation benefits coverage to the authorized treating physician and for failing to pay medical mileage to E.W.G. On May 1, 2009, ALJ Steven Howard issued an Order in Docket number 1,043,657 appointing an authorized treating physician for E.W.G. On May 4 and again on May 22, of 2009, Mr. Horner requested an appointment be scheduled with the authorized treating physician and that medical mileage be paid to E.W.G. The requests for an appointment to see the physician were not responded to by Liberty until May 29, 2009 when an appointment in August of 2009 was made for E.W.G. There was no response to the request for mileage. On August 5, 2009, ALJ Steven Howard issued another Order in Docket number 1,043,657 requiring Liberty to pay medical mileage

- to E.W.G. Most of the mileage was paid on August 17, 2009, however it was not completely paid until November 4, 2009.
12. That on November 17, 2008, a complaint was made to KID by R.S., against Liberty for failing to pay TTD benefits when due, failing to timely reimburse for medical mileage and failure to provide authorization for a YMCA membership, as ordered on September 5, 2008 in docket number 1,039,557. On September 5, 2008, ALJ Nelsona Potts-Barnes issued an Order requiring Liberty to: pay R.S. past due TTD for the time period on June 11, 2008 to July 7, 2008; reimburse medical mileage covering the time period of March 27, 2008 to July 27, 2008; to provide a three (3) month YMCA gym membership as prescribed by the authorized treating physician; and, to pay thirty dollars (\$30.00) in penalties for failing to provide the YMCA gym membership previously ordered on May 20, 2008. On December 16, 2008, Liberty was again ordered to pay an additional penalty for its continued failure to pay for the YMCA membership.
  13. That on October 7, 2009, the Kansas Department of Labor forwarded a complaint to KID that was made by Lisa R. McWilliams, attorney for K.W., against Liberty for failing to confirm medical compensation benefits coverage to the authorized treating physician, and for failing to reimburse for prescription medications in docket number 1,104,567. The authorized treating physician recommended a total knee replacement for K.W. in May of 2009. Liberty would not authorize this procedure. On September 4, 2009 following a Preliminary Hearing, Liberty was ordered to provide the surgery by ALJ Marcia Yates-Roberts. The recommended surgery was not authorized by Liberty until October 5, 2009. On December 15, 2009, K.W. paid for prescriptions

14. That on May 15, 2009, a complaint to KID was made by Mark E. Kolich, attorney for M.S, against Liberty for failing to confirm medical compensation benefits coverage in docket numbers 1,030,420 and 1,030,421. On March 9, 2009, an Agreed Order was approved by ALJ Marcia Yates Roberts providing that the Respondent (Liberty) would provide a list of three physicians to evaluate and treat him medically. Letters dated April 17, 2009 and May 8, 2009 were sent to counsel for Liberty with no response received until May 19, 2009. An appointment with Dr. Jones was scheduled on October 22, 2009. Dr. Jones required a prepayment of \$1,500.00 and submission of medical records prior to the appointment. Liberty was informed several times of these preconditions. On October 22, 2009, Dr. Jones cancelled the appointment due to Liberty's failure to meet the prepayment and medical records conditions. The appointment was rescheduled to March 25, 2010.
15. That on September 23, 2009, G.D. filed a complaint with KID against Liberty regarding an unauthorized suspension of his total temporary disability benefits in docket number 1,044,245. Liberty unilaterally suspended the payment of total temporary disability benefits to G.D. without proper authority or lawful justification. These benefits were reinitiated promptly; however, the suspension was not justified.
16. That on December 15, 2009, the Kansas Department of Labor forwarded a complaint to KID that was made by Dennis L. Horner, attorney for S.H., against Liberty for failing to confirm medical compensation benefits coverage and denial of total

temporary disability benefits in docket number 1,046,970. On November 19, 2009 and agreement was reached between Liberty and S.H. for a change of authorized treating physician. At the time the agreement was made, a settlement offer was declined by S.H. On January 6, 2010, an appointment for February 8, 2010 was made for the new treating physician, a delay in excess of 60 days.

17. On March 19, 2010, pursuant to Nelson v. Miller, 233 Kan. 122, 660 P.2d 1361, 1983, KID notified Liberty by letter of the alleged actions enumerated above in paragraphs # 3 through #16 and that these actions were considered a violation of Kansas law and could result in administrative action being taken against them.
18. On April 8, 2010, responded to the KID Nelson v. Miller letter of March 19, 2010, disputing both the facts as listed above and KID's interpretation of Kansas law.

#### **Applicable Law**

K.S.A. 40-5,120(d)(10), (15), (16) and (18)

And

K.S.A. 40-5,120(g)(1)

#### **Conclusions of Law**

Based on the Findings of Fact in Paragraphs #1 through #18 and the Applicable Law above,

**IT IS THEREFORE, AGREED UPON BY THE COMMISSIONER OF INSURANCE  
AND LIBERTY MUTUAL INSURANCE COMPANY:**

19. Liberty neither admits nor denies the allegations set forth in Paragraph #1 through #18 above.

20. Liberty agrees to make a payment of Thirteen Thousand Dollars and 00/100 (\$13,000.00) to the Kansas Insurance Department in exchange for the dismissal of this action with prejudice.
21. Upon entry of this Consent Order this action shall be dismissed with prejudice.
22. If payment is not made as required, KID may vacate and/or declare this Consent Order void or proceed with a hearing.
23. The Commissioner shall retain jurisdiction over this matter to issue any Order(s) deemed necessary and appropriate.

### **NOTICE OF RIGHTS**

Liberty Mutual Insurance Company (“Liberty”) is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas administrative Procedure act. If Liberty 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 Consent Order. If Liberty 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 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 Liberty 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



IT IS SO ORDERED THIS   3rd   DAY OF   December  , 2010, 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

Submitted and Approved By:

  /s/ Brian Cann    
Brian Cann  
Counsel  
Liberty Mutual Insurance Company

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

**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   3rd   day of   December  , 2010, addressed to the following:

Brian Cann  
Counsel, Litigation Group  
Liberty Mutual Group, Inc.  
175 Berkeley Street  
Mail Stop 07A  
Boston, MA 02117

Thomas J Driscoll  
SVP  
175 Berkley Street  
MS 04-F  
Boston, MA 02117

Douglas L. Anderson  
Regional Vice President  
Liberty Mutual Commercial Market Claims  
2815 Forbs Avenue  
Hoffman Estates, IL 60192

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