

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

**In the Matter of  
Liberty Mutual Group  
NAIC Group #111**

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**Docket No.: 70561**

**CONSENT AGREEMENT AND FINAL ORDER**  
**(Pursuant to K.S.A. 40-222 and K.S.A. 77-537)**

The Kansas Insurance Department ("KID") and Liberty Mutual Group (collectively referred to as "Liberty Mutual" or "Company") submit this Consent Agreement and Final Order. Liberty Mutual includes Liberty Mutual Fire Insurance Company (NAIC #23035), LM General Insurance Company (NAIC #36447), LM Insurance Corporation (NAIC #33600), First Liberty Insurance Corporation (NAIC #33588), and Liberty Insurance Corporation (NAIC #43404). Liberty Mutual hereby waives any and all rights to further administrative adjudication or review of this matter, including any and all rights conferred upon it under K.S.A. 77-501 *et seq.* Pursuant to the authority conferred upon the Commissioner of Insurance in K.S.A. 40-222, Ken Selzer, CPA, the Commissioner of Insurance ("Commissioner"), hereby adopts KID's Report of Market Conduct Examination ("Examination") and agreement made with Liberty Mutual, finds, and Orders as follows:

**Stipulated Findings of Fact**

The parties stipulate that if a hearing were conducted in this matter, the following evidence could be offered by the Commissioner, and although neither admitted nor denied by Respondent, would be recognized as admissible to show the following:

1. Liberty Mutual Fire Insurance Company is domiciled in Wisconsin and has been authorized to transact business in Kansas since 1925. All remaining companies are domiciled in Illinois and have been authorized to transact business since 1982 for LM General Insurance Company, 1988 for Liberty Insurance Company, 1989 for LM Insurance Corporation, and 1989 for First Liberty Insurance Corporation.
2. KID completed a market conduct examination of automobile and homeowners insurance policies sold to Kansas residents. The examination period is January 1, 2012 through December 31, 2014.

3. The examination focused on rating practices, internal audit procedures, history, and company operations and management. Examination was conducted pursuant to guidelines and procedures recommended in the 2016 Market Regulation Handbook.
4. LM Insurance Corporation did not have proper authority to write homeowners coverage but has been writing such coverage in Kansas since 2012. Company has since rectified this issue.
5. Evidence shows that there were many instances during the examination process where rates and rules were vague, overly encrypted, difficult to recreate, or not submitted with the rate filing. This created delays and difficulty for the examiners to recreate rates and tiers.
6. Evidence showed that the rates charged for auto coverage did not match with what was filed for use in Kansas.
  - a. Company indicated 18,325 auto policies issued or renewed during the exam period, 100% of which contained rating tiers determined by factors other than what was filed and approved.
  - b. There were three types of rating violations found in the "legacy" auto rating program which are demonstrated in all policies sold under that system.
  - c. There were nineteen separate types of violations found in the "gears" auto rating program, which are demonstrated in all policies sold under that system.
7. Evidence showed that the rates charged for homeowners policies did not match the rates filed and approved for use in Kansas.
  - a. Company indicated 28,837 policies issued or renewed during the exam period, 53% of which contained rating tiers determined by factors other than what was filed and approved.
8. Evidence shows that some auto rating discounts were applied without specific or verifiable criteria to support such discount and without evidence that the rating was applied fairly.
9. Company was provided a copy of the Examination and responded with minimal comments.

## Applicable Law

### **1. K.S.A. 40-214. Conditions under which insurance may be written; certificate of authority; revocation, when; unlawful acts.**

It shall be unlawful for any person, company, corporation or fraternal benefit society to transact the business of insurance, indemnity or suretyship, or do any act toward transacting such business, unless such person, company, corporation or fraternal benefit society shall have been duly authorized under the laws of this state to transact such business and shall have received proper written authority from the commissioner of insurance in conformity with the provisions the laws of this state relative to insurance, indemnity and suretyship, and further, it shall be unlawful for any insurance company to effect contracts of insurance in this state on the life or person of residents of this state or on property located in this state except through persons duly licensed and certified in accordance with the insurance laws of this state and subject to the provisions of K.S.A. 40-245, and amendments thereto. Neither the enrollment of individuals under a group policy nor the inclusion of insurance in a credit transaction under an arrangement for its purchase by the creditor in compliance with the applicable provisions of the uniform consumer credit code shall constitute the effecting of a contract of insurance.

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### **2. K.S.A. 40-222 provides, in part:**

(a) Whenever the commissioner of insurance deems it necessary but at least once every five years, the commissioner may make, or direct to be made, a financial examination of any insurance company in the process of organization, or applying for admission or doing business in this state. In addition, at the commissioner's discretion the commissioner may make, or direct to be made, a market regulation examination of any insurance company doing business in this state.

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(c) For the purpose of such examination, the commissioner of insurance or the persons appointed by the commissioner, for the purpose of making such examination shall have free access to the books and papers of any such company that relate to its business and to the books and papers kept by any of its agents and may examine under oath, which the commissioner or the persons appointed by the commissioner are empowered to administer, the directors, officers, agents or employees of any such company in relation to its affairs, transactions and condition.

### **3. K.S.A. 953. Same; excessive, inadequate or unfairly discriminatory rates or rates resulting in destruction of competition, standards.**

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 presumed not to be excessive if a reasonable degree of market competition exists at the consumer level with respect to the class of business to which they apply. Rates in a noncompetitive market are excessive if they are producing or are likely to produce unreasonably high profits for the insurance provided or if expenses are unreasonably high in relation to services rendered. A competitive market in a type of insurance subject to this act is presumed to exist unless the commissioner after notice of hearing determines and orders that a reasonable degree of competition does not exist in the market. Such order shall expire no later than one year after issuance unless the commissioner renews the rule after a hearing and a finding of the continued lack of a reasonable degree of competition. In determining whether a reasonable degree of market competition exists, the commissioner shall consider all relevant tests,

including: (1) The number, market share, and concentration of insurers, as measured by the 1992 horizontal merger guidelines published in the Federal Register September 10, 1992 (57 FR 41552), actively engaged in the class of business; (2) the existence of rate differentials in that class of business; (3) ease of entry into the market; and (4) whether long-run profitability for insurers in that class of business is unreasonably high in relation to its riskiness. If such competition does not exist, rates are excessive if they are likely to produce a long run profit that is unreasonably high in relation to the riskiness of the class of business, or if expenses are unreasonably high in relation to the services rendered

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**4. K.S.A. 40-955. Same; rate filings; review and approval of certain lines; effective dates; exemptions from filing; certain workers compensation policies; rules and regulations.**

(a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, 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 public inspection after it is filed with the commissioner, except that disclosure shall not be required for any information contained in a filing or in any supporting documentation for the filing when such information is either a trade secret or copyrighted. For the purposes of this section, the term "trade secret" shall have the meaning ascribed to it in K.S.A. 60-3320, and amendments thereto. An insurer may satisfy its obligations to make such filings by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer. Nothing contained in this act shall be construed to require any insurer to become a member or subscriber of any rating organization.

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(g) 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.

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**Conclusions of Law and Orders**

Based on the Findings of Fact enumerated in Paragraphs #1 through #9 and the applicable law cited above, **THE COMMISSIONER OF INSURANCE MAKES THE FOLLOWING ORDERS:**

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222, and shall retain jurisdiction to issue any further orders deemed necessary.
2. The Report of Market Conduct Examination, including recommendations of examiners, is incorporated into this Consent Agreement by reference. The Examination will be published thirty days after service of Final Order.

3. Liberty Mutual shall pay a monetary penalty of \$80,000 for stated violations of Kansas law, including the following:

- a. \$40,000 for auto policies issued or renewed during the exam period without filed and approved rates, in violation of K.S.A. 40-953 and 40-955 (a) and (g).
- b. \$30,000 for homeowner policies issued or renewed during the exam period without filed and approved rates, in violation of K.S.A. 40-955 (a) and (g).
- c. \$8,000 for providing incomplete or encrypted rating data to examiners in violation of K.S.A. 40-222 (g).
- d. \$2,000 for writing business without full authorization to do so, in violation of K.S.A. 40-214.

4. Liberty Mutual neither admits nor denies the violations noted above.

IT IS SO ORDERED THIS 33<sup>rd</sup> DAY OF FEBRUARY 2018, IN THE CITY OF TOPEKA, STATE OF KANSAS.



Ken Selzer, CPA  
Commissioner of Insurance

Diane Minear  
General Counsel

APPROVED BY:

Sean O'Connor  
Liberty Mutual Insurance  
175 Berkeley Street  
Boston, MA 02116

**Certificate of Service**

The undersigned hereby certifies that she served a true and correct copy of the above and foregoing **Consent Order** on this 23rd day of February, 2018, by email addressed to the following:

Sean F. O'Connor  
Liberty Mutual Insurance  
175 Berkeley Street  
Boston, MA 02116  
Sean.OConnor@libertymutual.com



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Elizabeth J. Hickert Fike  
Staff Attorney