

IN RE:

PEERLESS INSURANCE CO.

PEERLESS INDEMNITY INSURANCE CO.

EXCELSIOR INSURANCE CO.

THE NETHERLANDS INSURANCE CO.

Docket No. INS-11-211

CONSENT AGREEMENT

THIS CONSENT AGREEMENT is entered into by and among PEERLESS INSURANCE COMPANY, PEERLESS INDEMNITY INSURANCE COMPANY, EXCELSIOR INSURANCE COMPANY, and THE NETHERLANDS INSURANCE COMPANY, each of which is a subsidiary of Liberty Mutual Group (collectively, the "Companies" or "Liberty Mutual Group"; individually, a "Company"), the MAINE SUPERINTENDENT OF INSURANCE (the "Superintendent"), and the OFFICE OF THE MAINE ATTORNEY GENERAL (the "Attorney General"). Its purpose is to bring to a halt, without resort to an adjudicatory proceeding, violations of 39-A M.R.S.A. §359(2) certified to the Superintendent by the Maine Workers' Compensation Board (the "Board") pursuant to that provision.

I

STIPULATIONS

1. The Superintendent is the official charged with administering and enforcing Maine's insurance laws and regulations.
2. Each Company is organized and domiciled, and is licensed to do business in Maine, as follows:

Name of Company	Domicile	NAIC Code	Maine License Number	Date of First Maine License
Peerless Insurance Co. ("Peerless")	N.H.	24198	PCF548	3/15/1905
Peerless Indemnity Insurance Co. ("Peerless Indemnity")	Ill.	18333	PCF97399	7/31/2003
Excelsior Insurance Co. ("Excelsior")	N.H.	11045	PCF46786	8/21/1996
The Netherlands Insurance Co. ("The Netherlands")	N.H.	24171	PCF827	1/1/1979

All of the above companies are licensed as insurers with authority to insure employers for claims arising under the Maine Workers' Compensation Act of 1992, M.R.S.A. Title 39-A, as amended, and regulations of the Board issued thereunder (the "WCA").

3. In 2009–10, the Board’s Monitoring Audit & Enforcement Division (the “MAE Division”) audited the records of Peerless, Peerless Indemnity, Excelsior, and The Netherlands (collectively, the “Peerless Companies”) with dates of injury in 2008 for compliance with form filing, timeliness of indemnity payments and accuracy of indemnity payments.
4. On May 20, 2010, the Board issued a Compliance Audit Report detailing its findings (the “Peerless Report”). The Report’s findings relevant to questionable claims-handling techniques that violated 39-A M.R.S.A. § 359(2) included failure to file or timely file forms with the Board, failure to pay or timely pay benefits, and failure to pay claims accurately.
5. In September, 2010, the Board and the Peerless Companies entered into 23 consent decrees, in lieu of administrative hearings, addressing the findings in the Report. In one such decree (the “Consent Decree”), the Peerless Companies agreed that they had “engaged in patterns of questionable claims-handling techniques and/or repeated unreasonably contested claims in violation of Section 359(2)” of the WCA based on the practices described in paragraph 4 above. As a condition of executing the Consent Decree for violations of 39-A M.R.S.A. §359(2), the Peerless Companies paid a civil penalty of Five Thousand Dollars (\$5,000.00).
6. On September 29, 2010, the Board certified these findings to the Superintendent as required by 39-A M.R.S.A. § 359(2).
7. Notwithstanding the findings of the Peerless Report and the consent decrees entered into with the Board, the Peerless Companies have not conducted a formal review for accuracy of indemnity claims paid since January 1, 2009.

II

MAINE LAW

8. 39-A M.R.S.A. §359(2) provides in part that:

[T]he [workers’ compensation] board ... upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims ... shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt.

III

CONCLUSIONS OF LAW

9. Each of the Peerless Companies violated 39-A M.R.S.A. § 359(2) by engaging in a pattern of questionable claims-handling techniques and/or repeated unreasonably contested claims through September 29, 2010.
10. The Superintendent is required, pursuant to the Board’s September 29, 2010 certification of its findings that the Peerless Companies engaged in a pattern of questionable claims-handling techniques to take appropriate action to bring those practices to a halt.

IV

COVENANTS

11. The Companies shall comply with each provision of this Agreement. However, the Companies may, unless otherwise provided herein, act as a group to comply with any affirmative obligation under this Agreement, including delivering to the Superintendent the reports and certifications pursuant to paragraphs 13 and 14, provided that (a) each Company shall take all necessary steps to authorize any group action on its behalf, and (b) all Companies wishing to act as a group remain affiliated with each other. Each Company acknowledges and agrees that a breach of this Agreement resulting from any group action shall constitute an individual breach of this Agreement by each Company.
12. Each of the Companies shall bring to a halt the pattern of questionable claims-handling techniques as set forth in this Agreement.
13. Within thirty (30) days after executing this Agreement, the Companies shall adopt, and deliver to the Superintendent for approval, with a copy to the WCB Deputy Director, MAE Division, written procedures that detail the manner in which all claims for indemnity benefits under the WCA will be paid in compliance with Maine law.

At a minimum, such procedures must include plans for:

- a. improving compliance to meet the benchmarks set forth in Exhibit A;
- b. hiring and retaining supervisory and front-line staff experienced in handling workers' compensation claims in Maine;
- c. training in-house claims personnel on the provisions of the WCA concerning derivation of benefit levels from average weekly wages and accuracy of indemnity payments;
- d. encouraging employers' cooperation in meeting the reporting requirements of the WCA;
- e. maintaining claims payment standards through ongoing staff and third-party administrator education and supervision;
- f. implementing adequate claim review procedures, to include monitoring the accuracy and timeliness of WCB form filings and indemnity payments; and
- g. auditing, on at least a quarterly basis, a random sample of indemnity claims selected in accordance with NAIC market conduct examination standards to produce a 95% confidence level and a 5% upper error limit to measure compliance with the benchmarks set forth in Exhibit A (the "Quarterly Self-Audit Report").

The Companies shall deliver to the Superintendent, with a copy to the WCB Deputy Director, MAE Division, the results of the audits referred to in subparagraph (g) for four (4) successive calendar quarters starting with the quarter in which the Companies execute

this Agreement. The Companies shall, within ten (10) days following the end of the quarter, submit to the Bureau an electronic spreadsheet listing, by individual adjuster, all "lost time" claims in excess of the statutory waiting period, excluding those discharged under 39-A M.R.S.A. §352 for the purpose of allowing the Bureau to designate a statistically valid random sample of claims in accordance with subsection (g) above. The Companies shall deliver each Quarterly Self-Audit Report within thirty (30) days of receiving the Bureau's designation of the sample as provided above. Within forty-five (45) days thereafter, the Superintendent may call a meeting with the Companies to discuss any concerns he may have with the Companies' claims performance during the period covered by such audit report. Failure to call any such meeting shall not waive any of the Superintendent's or the Attorney General's rights under this Agreement. Also within the aforementioned forty-five (45) days, the Superintendent may require the Companies to perform an expanded audit for that quarterly reporting period based upon Company performance with the benchmarks set forth in Exhibit A.

The Companies shall deliver with the fourth and final Quarterly Self-Audit Report, a certification in the form attached as Exhibit B, attesting to the accuracy of all claims performance audit information required under this Agreement. The Companies shall also deliver, upon the Superintendent's or the WCB Deputy Director's request, any and all work papers and non-privileged documents, in any format, in its possession, custody or control, related to any Quarterly Self-Audit Report.

14. The Peerless Companies shall, for the period starting January 1, 2009 and ending as of the effective date of this Agreement:
 - a. review the indemnity claims, with dates of injury on or after January 1, 1993, except those discharged under 39-A M.R.S.A. § 352, presented to the Company under the WCA, the incapacity periods, and indemnity benefits, penalties and interest originally paid thereon;
 - b. recalculate the benefits, penalties, and interest to ensure their compliance with the WCA;
 - c. pay to the appropriate claimants any deficiencies, with the penalties and interest provided for in the WCA, and file with the Board such related forms as the WCA requires; and
 - d. deliver to the Superintendent, with a copy to the WCB Deputy Director, MAE Division, by the date the Companies must deliver the fourth and final Quarterly Self-Audit Report, an electronic spreadsheet report viewable in Microsoft Excel listing each claim so reviewed (the "Look-Back Report"). The Look-Back Report shall contain the following data, safeguarded in accordance with the WCA, for each Designated Claim:
 - i. the Board number, if known;
 - ii. the claimant's Social Security number (general format/no dashes);
 - iii. the claimant's last and first name (in that order);

- iv. the date of injury;
- v. Company name and claim file number; the incapacity periods;
- vi. the amount of indemnity originally paid;
- vii. whether or not the claim was settled under 39-A M.R.S.A. §352 (Y or N) and the date of such settlement;
- viii. the amount of additional indemnity paid after review;
- ix. the amount of penalties paid after review;
- x. the amount of interest paid as provided by the WCA after review;
- xi. the amount of overpayment upon review; and
- xii. the name of the person conducting the review.

The Companies shall deliver with the Look-Back Report a certification attesting to the accuracy of all information in the report, in the form attached as Exhibit B.

In conducting the review described in this paragraph, the Companies may opt, subject to paragraph 16 below, to review a statistically valid random sample of those claims adjusted between January 1, 2010 and the date of this Agreement. To opt for such a review, the Companies shall provide to the Bureau of Insurance within thirty (30) days of the execution of this Agreement, an electronic spreadsheet listing all "lost time" claims in excess of the statutory waiting period for claims adjusted after January 1, 2010, excluding those discharged under 39-A M.R.S.A. §352, so that the Bureau may designate the sample to be reviewed (the "Designated Claims"). The Companies may not use a statistical sampling approach to review under this section claims adjusted between January 1, 2009 and December 31, 2009.

This section shall not apply to any claims that are subject to the audits described in paragraph 13, to any claims that have been discharged under 39-A M.R.S.A. §352, or to any claims that were previously presented to any Company or third-party administrator working on behalf of a Company that were previously audited by the Board and subsequently corrected by the Company.

15. Should the Superintendent, in his sole and absolute discretion, determine, within nine (9) months after receiving the (i) fourth and final Quarterly Self-Audit Report and (ii) Look-Back Report, that the Peerless Companies:
 - a. on an aggregate basis, did not meet or exceed on average the benefit payment and form filing the benchmarks in Exhibit A during the self-audit review period described in paragraph 13, then the Companies shall, pursuant to the instructions below, collectively deliver a civil penalty to be determined at the sole and absolute discretion of the Superintendent but not exceeding Twenty Thousand Dollars (\$20,000.00), within thirty (30) days of receiving the determination or
 - b. failed to correct deficiencies in indemnity payments as required by paragraph

14(c) (including payment of interest and penalties provided for in the WCA), or as may be further required pursuant to paragraph 16, resulting in compliance with the WCA in less than 93 percent of claims required to be reviewed pursuant to those paragraphs, then the applicable Companies shall, pursuant to the instructions below, collectively deliver a civil penalty to be determined at the sole and absolute discretion of the Superintendent but not exceeding Five Thousand Dollars (\$5,000.00) within thirty (30) days of receiving the determination.

In determining whether the Companies met or exceeded the benchmarks in Exhibit A for purposes of subsection (a) above, the Superintendent, upon the Companies' furnishing of substantiating documentation satisfactory to the Superintendent, shall not consider for purposes of calculating compliance with the relevant benchmark that portion of a delay caused by an employer, for which the employer could be penalized pursuant to 39-A M.R.S. §205(5), provided that the Companies shall have demonstrated to the Superintendent's satisfaction their compliance with paragraph 13(d) of this Agreement.

Each Company agrees that (i) any civil penalties assessed under subsection (a) or (b) above will have resulted from its continued failure through the delivery date of the fourth and final Quarterly Self-Adult Report and the Look-Back Report, to halt the pattern of questionable claims-handling techniques established by the Consent Decree, (ii) in declaring the Civil Penalty due, the Superintendent may rely on the Quarterly Self-Audit Reports and the Look-Back Report as conclusive evidence of the fact and extent of such failure, and (iii) the amount of this penalty will not limit further measures, penalties or remedies that the Superintendent or the Attorney General may impose or seek under paragraph 26 below.

16. Should the Superintendent, in his sole and absolute discretion, determine, within nine (9) months after receiving the Look-Back Report, that the Peerless Companies, for any calendar year for which Designated Claims were reviewed, failed to achieve a 93% compliance rate in (a) accurately calculating average weekly wage, (b) accurately calculating weekly compensation rate, (c) accurately calculating partial benefits, or (d) accurately calculating indemnity, he may, in his sole and absolute discretion, require the Companies to conduct an expanded review of claims paid in any or all of the calendar years in which the Companies were noncompliant—up to and including a review of all Maine claims paid by the Companies during the Look-Back period—for the specific purpose of identifying and correcting inaccurate payments to claimants.

Should the Superintendent order such an expanded review, the Companies shall complete the review within the time specified by the Superintendent, which shall be no less than three (3) months, and shall, upon completion of the review, submit a report to the Superintendent setting forth the process employed to conduct the review and the results of the review, and shall provide, upon the Superintendent's request, any additional documentation necessary for the Superintendent to verify that the review was properly completed.

17. The Companies shall pay, as provided by law, the Superintendent's reasonable costs and expenses of monitoring their compliance with, and enforcing the Companies' obligations under, this Agreement. The Companies shall be jointly and severally liable for these costs and expenses.

18. The Companies shall not recoup any payments of refunds, interest, or civil penalties made under this Agreement or any costs associated with complying with this Agreement in any future rate adjustments.

V

MISCELLANEOUS

19. Any action that this Agreement permits the Superintendent to take may be taken against all or any of the Companies.
20. The Companies waive any:
- a. hearing rights arising from this Agreement;
 - b. any action that may be taken by the Superintendent pursuant to this Agreement, including imposition of the penalty specified in paragraph 15 and agree they will make no appeal from this agreement; and
 - c. objection to the Board's release to the Superintendent and the Attorney General of Board "audit working papers," as defined in section 153 of the WCA, related to any audit of any Company and, in connection with this waiver, to the use of such papers by the Superintendent and the Attorney General for purposes related to the implementation and enforcement of this Agreement.
21. Nothing in this agreement prohibits the Companies from requesting the Superintendent to reconsider any exercise of his discretion under this Consent Agreement. The Companies acknowledge and agree, however, that their waiver of hearing rights in paragraph 20(a) above and their appeal rights in paragraph 20(b) includes any right to a hearing or appeal based on the Superintendent's denial of (or failure to act upon) any such request.
22. The Companies acknowledge that this Agreement is a public record within the meaning of 1 M.R.S.A. §402 and will be available for public inspection and copying as provided for by 1 M.R.S.A. §408, and will be reported to the Regulatory Information Retrieval System database at the National Association of Insurance Commissioners.
23. The Companies have been advised of their right to consult with counsel and have, in fact, consulted with counsel before executing this Agreement.
24. This Agreement does not bind any person or entity not a party to this Agreement, or limit the Superintendent's ability to seek any available legal remedy for any violations of the WCA or the Maine Insurance Code against any Company affiliate or subsidiary not a party to this Agreement or against any entity from which any Company obtains WCA claims administrator services.
25. Nothing in this Agreement shall limit the ability of the Superintendent, in his sole and absolute discretion, in order to determine whether any Company has brought to a halt all violations of 39-A M.R.S.A. §359(2) established by the Consent Decree, to investigate the:

- a. handling of any of the Peerless Companies' indemnity claims having dates of injury after January 1, 2007;
 - b. accuracy of the self-audit quarterly review described in paragraph 13; or
 - c. accuracy of the indemnity claim review described in paragraph 14.
26. The purpose of the self-audit quarterly review described in paragraph 13 and the indemnity claim review described in paragraph 14 is to bring to a halt the violations established by the Consent Decree. Therefore, in consideration of the Companies' execution of this Agreement, the Superintendent shall not pursue civil penalties, disciplinary measures or other civil or administrative sanctions, other than those agreed to herein, for violations established by the Consent Agreement that continue through the period of the paragraph 13 and paragraph 14 reviews up to and including the date of execution of this agreement. However, the Superintendent may pursue any available legal remedy, including without limitation imposition of additional civil penalties and the limitation, suspension or revocation of workers' compensation authorities issued to any Company by the Superintendent should any Company:
- a. engage in conduct that violates 39-A M.R.S.A. §359(2) after the period of the paragraph 13 and paragraph 14 reviews; or
 - b. violate any provision of this Agreement other than as described in subsections (a) and (b) of paragraph 15; or
 - c. otherwise violate Maine law.
27. The effective date of this Agreement is the date entered in the Superintendent's signature line below.
28. This Agreement may be modified only by the written consent of all parties.

[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.]

Dated: 10/11, 2012

PEERLESS INSURANCE CO.

By: *Thomas F. Sanders*

Its: Thomas F. Sanders, Asst. Claims Manager
Printed Name and Title

Subscribed and sworn to before me this 15th day of October, 2012.

Patricia J. Dougherty
Notary Public
Patricia J. Dougherty
Printed name
9/30/2013
Date commission expires

Patricia J. Dougherty
Notary Public, State of New York
No. 01004505033
Qualified in Onondaga County
Commission Expires 9/30/2013

Dated: 10/11, 2012

PEERLESS INDEMNITY INSURANCE CO.

By: *Thomas F. Sanders*

Its: Thomas F. Sanders, Asst. Claims Manager
Printed Name and Title

Subscribed and sworn to before me this 16th day of October, 2012.

Patricia J. Dougherty
Notary Public
Patricia J. Dougherty
Printed name
9/30/2013
Date commission expires

Patricia J. Dougherty
Notary Public, State of New York
No. 01004505033
Qualified in Onondaga County
Commission Expires 9/30/2013

Dated: 10/11, 2012

EXCELSIOR INSURANCE CO.

By: [Signature]

Its: Thomas F Sanders, Asst Claims Manager
Printed Name and Title

Subscribed and sworn to before me this 15th day of October, 2012.

[Signature]
Notary Public
Patricia J. Dougherty
Printed name
9/30 2013
Date commission expires

Patricia J. Dougherty
Notary Public, State of New York
No. 01D0400000
Qualified in Oneida County
Expiration Date: 9/30 2013

Dated: 10/11, 2012

THE NETHERLANDS INSURANCE CO.

By: [Signature]

Its: Thomas F Sanders, Asst Claims Manager
Printed Name and Title

Subscribed and sworn to before me this 15th day of October, 2012.

[Signature]
Notary Public
Patricia J. Dougherty
Printed name
9/30 2013
Date commission expires

Patricia J. Dougherty
Notary Public, State of New York
No. 01D0400000
Qualified in Oneida County
Expiration Date: 9/30/2013

Dated: Oct 12, 2012

OFFICE OF THE MAINE ATTORNEY GENERAL

[Signature]
Jonathan R. Bolton
Assistant Attorney General

Effective
Date: Oct 12 , 2012

MAINE BUREAU OF INSURANCE



Eric A. Cioppa
Superintendent