

In re LIBERTY MUTUAL)
INSURANCE COMPANY) **CONSENT AGREEMENT**
)
Docket No. MCINS-99-36)

Liberty Mutual Insurance Company and the Maine Superintendent of Insurance hereby enter into this Consent Agreement, pursuant to 5 M.R.S.A. § 9053(2), to resolve, without an adjudicatory hearing, issues arising out of Liberty Mutual's conduct under a license issued by the Superintendent.

Stipulations

1. The Superintendent is the official charged with administering and enforcing the insurance laws of the State of Maine.
2. Liberty Mutual is domiciled in the State of Massachusetts and is authorized by the Superintendent to act as an insurer in the State of Maine.
3. Liberty Mutual issued workers' compensation insurance coverage, effective June 1, 1998, to a Maine employer that had previously been self-insuring its workers' compensation liabilities.
4. Premiums for workers' compensation insurance are based in part upon a uniform experience rating plan, administered pursuant to 24-A M.R.S.A. §§ 2382-C and 2382-D by the National Council on Compensation Insurance ("NCCI"), which takes into account the recent loss history of each employer in evaluating the level of risk in that employer's workplace. When the employer is covered by an insurance policy, the relevant loss data are reported to NCCI on an ongoing basis, and NCCI calculates the appropriate experience modification factor. In Bureau of Insurance Bulletin 242, the Superintendent explained the obligations of employers and insurers to provide and to use accurate loss data for any relevant period of time during which the employer was self-insured.
5. Because no valid experience modification factor was available, Liberty Mutual initially issued the policy without any adjustment for experience modification, in the same manner as coverage is issued to start-up businesses with no loss history. Pursuant to an endorsement on the policy, the employer agreed to provide its most recent three years of payroll and losses to NCCI, so that the premium could be recalculated with the appropriate experience modification factor retroactive to the date of issue.
6. Up to this point, Liberty Mutual and the employer followed the correct procedure. However, the employer did not provide the relevant loss data in a timely manner, and Liberty Mutual never recalculated the premium, in violation of 24-A M.R.S.A. § 2382-B(1). Bulletin 242 explains that this procedure is only permitted as a last resort, and that if the unavailability of the necessary loss data is the result of the employer's failure to cooperate, the insurer should postpone the final determination of the premium pursuant to Bureau of Insurance Rule 450, Article I, § 2(D).

7. On June 4, 1999, Bureau of Insurance Senior Insurance Rate Analyst Bradford Brown wrote a letter on behalf of the Superintendent, requesting that Liberty Mutual explain how it had calculated the premium on the policy. Pursuant to 24-A M.R.S.A. § 220(2), a response to such inquiries is required within 30 days.
8. Liberty Mutual asked NCCI to provide a response, but neglected to inform the Superintendent that it had delegated this responsibility to NCCI.
9. As of August 24, 1999, neither Liberty Mutual nor NCCI had responded, and Mr. Brown sent a second letter reminding Liberty Mutual of its obligation to reply within 30 days and warning that the deadline to respond had already passed. Rather than notifying the Superintendent that it was waiting for a response from NCCI, Liberty Mutual ignored the letter.
10. Due to Liberty Mutual's continuing failure to respond, Mr. Brown sent a third letter on September 30, 1999, urging Liberty Mutual to "provide a timely response." Liberty Mutual did not do so, and admits that its failures to provide timely responses to both the August 24 and September 30 letters violate 24-A M.R.S.A. § 220(2).

Covenants

11. A formal hearing in this matter is waived and no appeal will be taken. This Consent Agreement is an enforceable final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act.
12. For its failure to apply the correct experience modification factor, Liberty Mutual agrees to pay a civil penalty of \$1000, pursuant to 24-A M.R.S.A. § 12-A.
13. Liberty Mutual agrees to pay a civil penalty of \$100 for its failure to respond to the August 24 letter and a civil penalty of \$100 for its failure to respond to the September 30 letter, pursuant to 24-A M.R.S.A. § 12-A.
14. A check for \$1200, payable to the Treasurer of the State of Maine, shall be submitted at the time of the execution of this Agreement.
15. In consideration of Liberty Mutual's execution of and compliance with the terms of this Consent Agreement, the Superintendent agrees to forgo pursuing any disciplinary measures or other civil sanction for the actions described in the Stipulations, other than those agreed to in this Consent Agreement.
16. It is understood by the parties to this Agreement that nothing herein shall affect any rights or interests that any person not a party to this Agreement may possess.
17. Liberty Mutual understands and acknowledges that this Agreement will constitute 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.

18. Liberty Mutual has been advised of its right to consult with counsel, and has consulted with counsel before executing this Agreement.

19. This Consent Agreement may only be modified by the written consent of the parties.

FOR LIBERTY MUTUAL

Dated:

(signature)

(printed name and title)

**Personally appeared before me this day
Agreement in my presence.**

, and signed this Consent

Notary Public

FOR THE MAINE ATTORNEY GENERAL

Dated:

Judith Shaw Chamberlain, AAG

BY THE SUPERINTENDENT OF INSURANCE

Dated:

Alessandro A. Iuppa, Superintendent