

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of:

Case No. INS-22-0101

BERKSHIRE HATHAWAY DIRECT
INSURANCE COMPANY, a Nebraska
Insurance Company, WELFLEET
INSURANCE COMPANY, an Indiana
Insurance Company, WELFLEET NEW
YORK INSURANCE COMPANY, a New
York Insurance Company, NATIONAL
LIABILITY & FIRE INSURANCE
COMPANY, a Connecticut Insurance
Company,

ORDER TO CEASE AND DESIST,
ORDER ASSESSING CIVIL
PENALTY, AND CONSENT TO
ENTRY OF ORDER

Respondents.

The Director of the Department of Consumer and Business Services for the State of Oregon (“Director”), acting in accordance with Oregon Revised Statutes (“ORS”) chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750 (“Insurance Code”), conducted an investigation into the activities of Berkshire Hathaway Direct Insurance Company (“Berkshire”), Wellfleet Insurance Company (“Wellfleet”), Wellfleet Insurance Company of New York (“Wellfleet NY”), and National Liability & Fire Insurance Company (“NLFIC”) (collectively, “Respondents”) and determined that Respondents engaged in activities constituting violations of the Insurance Code.

Respondents wish to resolve and settle this matter with the Director.

Now, therefore, as evidenced by the authorized signature subscribed on this Order, Respondents hereby CONSENT to entry of this Order upon the Director’s Findings of Fact and Conclusions of Law as stated hereinafter.

FINDINGS OF FACT

The Director FINDS that:

1. Berkshire is a Nebraska insurance company with a principal place of business

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Salem, OR 97301-3881
Telephone: (503) 378-4387





1 located at 1314 Douglas St., Suite 1400, Omaha, NE 68102-1944 (“Berkshire Address”).
2 Berkshire has been licensed to enter into Oregon insurance policies, including workers
3 compensation policies, since 1976.¹

4 2. Wellfleet is an Indiana insurance company with a principal place of business
5 located at 5814 Reed Rd., Fort Wayne, IN 46835 (“Wellfleet Address”). Wellfleet has
6 been licensed to enter into Oregon insurance policies, including workers compensation
7 policies, since 1929.²

8 3. Wellfleet NY is a New York insurance company with a principal place of
9 business located at the Wellfleet Address. Wellfleet NY has been licensed to enter into
10 Oregon insurance policies, including workers compensation policies, since 1929.³

11 4. NLFIC is a Connecticut insurance company with a principal place of business
12 located at the Berkshire Address. NLFIC has been licensed to enter into Oregon insurance
13 policies, including workers compensation policies, since 1980.⁴

14 5. Respondents are all members of the Berkshire Hathaway Group of insurers.⁵

15 6. Pursuant to Oregon Administrative Rules (“OAR”) 836-043-0110, insurers of
16 workers compensation policies are required to include particular language in their audit
17 billings pertaining to the insureds’ right to a hearing to dispute the audit results. The
18 language must identify who is entitled to a hearing, when and how they must request a
19 hearing, and related information.

20 7. From January 1, 2020 through June 30, 2022, Respondents issued final
21 premium audit billings for Oregon workers compensation policies which failed to include
22 the language described in Paragraph (6).

23 8. During the foregoing time period, Respondents issued the following number of
24

¹ Berkshire’s NAIC number is 10391.

² Wellfleet’s NAIC number is 32280.

³ Wellfleet NY’s NAIC number is 20931.

⁴ NLFIC’s NAIC number is 20052.

⁵ The Berkshire Hathaway Group’s NAIC Group Code number is 31.

1 premium audit billings without the language described in Paragraph (6):

2 A. Berkshire – 403

3 B. NLFIC – 337

4 C. Wellfleet – 199

5 D. Wellfleet NY – 107⁶

6 CONCLUSIONS OF LAW

7 The Director CONCLUDES that:

8 9. Respondents are all “insurers” under ORS 731.106.

9 10. OAR 836-043-0110 requires insurers of workers compensation insurance
10 policies to include the language described in Paragraph (6), or substantially similar
11 language, in their final premium audit billings.

12 11. By failing to include the language identified in Paragraph (6) in 1,046 final
13 premium audit billings issued from January 1, 2020 through June 30, 2022, Respondents
14 violated OAR 836-043-0110.

15 12. Because the Director has reason to believe that Respondents have been
16 engaged, are engaging, or are about to engage in violations of the Insurance Code, the
17 Director may issue an order to Respondents to cease and desist, pursuant to ORS
18 731.252(1).

19 13. Under ORS 731.988(1), the Director may impose a civil penalty of up to
20 \$10,000 *per violation* upon any person who violates a provision of the Insurance Code.

21 ORDERS

22 Now therefore, the Director issues the following Orders:

23 14. As authorized by ORS 731.252(1), the Director hereby ORDERS Respondents
24 to CEASE AND DESIST from violating OAR 836-043-0110.

25 15. As authorized by ORS 731.988(1), the Director hereby ORDERS that

26 ⁶ Respondents have confirmed that their premium audit billings now include this language.

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1 Respondents be jointly and severally subject to a CIVIL PENALTY of \$40,000 for
2 violating OAR 836-043-0110 in 1,046 instances.

3 16. The Director hereby SUSPENDS PAYMENT of \$15,000 of the CIVIL
4 PENALTY for a period of three years, provided Respondents:

5 A. Comply with the terms of this Order; and

6 B. Do not violate OAR 836-043-0110 within the three-year time period.

7 17. The non-suspended CIVIL PENALTY (\$25,000) is due and payable at the time
8 this Order is returned to the Director.

9 18. The suspended CIVIL PENALTY (\$15,000) will be waived three years from
10 the date this Order is finalized, provided Respondents have complied with the foregoing
11 Order terms. The Director reserves the right to immediately assess and collect the
12 suspended civil penalty upon a determination that Respondents have violated any term of
13 this Order.

14 19. This Order is binding upon Respondents' successors and assigns.

15 20. This Order is a "Final Order" under ORS 183.310(6)(b).

16

17 SO ORDERED this 1st day of November, 2022.

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ANDREW R. STOLFI, Director
Department of Consumer and Business Services

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/s/ Dorothy Bean

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Dorothy Bean Chief of Enforcement
Division of Financial Regulation

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CONSENT TO ENTRY OF ORDER

I, Peter Shelley, state that I am an officer of Berkshire and am authorized to act on its behalf. I have read the foregoing Order and know and fully understand the contents hereof. I have been advised of Berkshire’s right to a hearing and right to be represented by counsel in this matter. Berkshire voluntarily consents to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this Order. Berkshire understands that the Director reserves the right to take further actions against it to enforce this Order or to take appropriate action upon discovery of other violations of the Insurance Code or with the terms and conditions stated herein.

Berkshire further assures the Director that neither Berkshire nor its officers, directors, employees, or agents will effect insurance services in Oregon unless such activities are in full compliance with the Insurance Code. Berkshire understands that this Consent Order is a public document.

Signature: /s/ Peter Shelley

Position Held: President

State of Connecticut

County of Fairfield

Signed or attested before me on this 18th day of October, 2022

by Peter Shelley.

/s/ Melissa G. Hough
Notary Public

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CONSENT TO ENTRY OF ORDER

I, Angela Adams, state that I am an officer of Wellfleet and am authorized to act on its behalf. I have read the foregoing Order and know and fully understand the contents hereof. I have been advised of Wellfleet’s right to a hearing and right to be represented by counsel in this matter. Wellfleet voluntarily consents to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this Order. Wellfleet understands that the Director reserves the right to take further actions against it to enforce this Order or to take appropriate action upon discovery of other violations of the Insurance Code or with the terms and conditions stated herein.

Wellfleet further assures the Director that neither Wellfleet nor its officers, directors, employees, or agents will effect insurance services in Oregon unless such activities are in full compliance with the Insurance Code. Wellfleet understands that this Consent Order is a public document.

Signature: /s/ Angela Adams

Position Held: Secretary

State of Indiana

County of Allen

Signed or attested before me on this 18th day of October, 2022

by Angela M. Adams.

/s/ Melissa Dawn Millican
Notary Public

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CONSENT TO ENTRY OF ORDER

I, Angela Adams, state that I am an officer of Wellfleet NY and am authorized to act on its behalf. I have read the foregoing Order and know and fully understand the contents hereof. I have been advised of Wellfleet NY’s right to a hearing and right to be represented by counsel in this matter. Wellfleet NY voluntarily consents to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this Order. Wellfleet NY understands that the Director reserves the right to take further actions against it to enforce this Order or to take appropriate action upon discovery of other violations of the Insurance Code or with the terms and conditions stated herein.

Wellfleet NY further assures the Director that neither Wellfleet NY nor its officers, directors, employees, or agents will effect insurance services in Oregon unless such activities are in full compliance with the Insurance Code. Wellfleet NY understands that this Consent Order is a public document.

Signature: /s/ Angela Adams

Position Held: Secretary

State of Indiana

County of Allen

Signed or attested before me on this 18th day of October, 2022

by Angela M. Adams.

/s/ Melissa Dawn Millican
Notary Public

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CONSENT TO ENTRY OF ORDER

I, Peter Shelley, state that I am an officer of NLFIC and am authorized to act on its behalf. I have read the foregoing Order and know and fully understand the contents hereof. I have been advised of NLFIC’s right to a hearing and right to be represented by counsel in this matter. NLFIC voluntarily consents to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this Order. NLFIC understands that the Director reserves the right to take further actions against it to enforce this Order or to take appropriate action upon discovery of other violations of the Insurance Code or with the terms and conditions stated herein.

NLFIC further assures the Director that neither NLFIC nor its officers, directors, employees, or agents will effect insurance services in Oregon unless such activities are in full compliance with the Insurance Code. NLFIC understands that this Consent Order is a public document.

Signature: /s/ Peter Shelley

Position Held: Vice President

State of Connecticut

County of Fairfield

Signed or attested before me on this 18th day of October, 2022

by Peter Shelley.

/s/ Melissa G. Hough
Notary Public

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