

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

In the Matter of:

Case Nos. INS-20-0098

LIBERTY MUTUAL GROUP INC., a
Massachusetts Corporation, and SAFECO
INSURANCE COMPANY OF OREGON, a
Georgia Corporation,

ORDER TO CEASE AND DESIST,
FINAL 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”), has conducted an investigation into the activities of Liberty Mutual Group Inc. (“Liberty Mutual”) and Safeco Insurance Company of Oregon (“Safeco”) (collectively, “Respondents”) and determined that Respondents engaged in violations of the Insurance Code.

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

Now, therefore, as evidenced by the signature(s) subscribed on this Order, Respondents hereby CONSENT to entry of this Order.

FINDINGS OF FACT

The Director FINDS that:

1. Liberty Mutual’s principal place of business is 175 Berkeley St., Boston, MA 02116.
2. Safeco’s principal place of business is 100 Liberty Way, Dover, NH, 03820.
3. Liberty Mutual is comprised of a group of insurers, 38 of which are licensed to

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1 sell property and casualty insurance in Oregon, including Safeco.

2 4. Liberty Mutual's NAIC group code is 111. Safeco's NAIC number is 11071.

3 5. At all relevant times, Respondents have sold automobile insurance policies in
4 Oregon. These policies contain comparative negligence provisions whereby parties to an
5 accident may recover monetary damages, provided they are determined to be no more than
6 50% liable for the applicable accident. Parties determined to have some liability, of 50%
7 or less, have their recoveries reduced in proportion to their assessed percentage of liability.

8 6. Respondents are responsible for assessing comparative negligence liability on
9 their automobile policy claims.

10 7. In 2013 and 2014, the Division of Financial Regulation ("Division") received
11 numerous complaints from Oregon consumers regarding the comparative negligence
12 assessments of Liberty Mutual's insurers. Several of these complaints were against Safeco.

13 8. In 2014, Safeco representatives met with the Division to discuss the foregoing
14 complaints. Shortly thereafter, Liberty Mutual's insurers initiated a corrective action plan
15 that included trainings on comparative negligence and the proper documentation of claim
16 files.

17 9. In 2018 and 2019, the Director received an increase in consumer complaints
18 regarding Respondents' comparative negligence practices and directed Liberty Mutual to
19 provide information regarding their Oregon comparative negligence claims from 2018
20 through April 2019 ("Oregon Claims").

21 10. Liberty Mutual provided information on 352 Oregon Claims. The claims were
22 processed by a number of Liberty Mutual's insurers. Safeco processed the majority of the
23 claims, 232 in total.

24 11. 41 of the Oregon Claims went to intercompany arbitration ("Arbitration
25 Claims"). The adverse carrier prevailed in 35 of the Arbitration Claims, meaning that
26 Respondents' comparative negligence assessments were modified in favor of the adverse



1 carrier over 85% of the time.

2 A. In seven of the Arbitration Claims, Respondents initially assessed the
3 claimant as over 50% liable for the accident, precluding them from any recovery,
4 before the arbitrator determined the claimant was responsible for 50% or less of the
5 accident;

6 B. In 11 of the Arbitration Claims, the arbitrator's liability determination
7 was at least fifty percentage points more favorable to the adverse carrier than
8 Respondents' had been (ex. Respondents determined the claimant was 100% liable
9 for the accident and the arbitrator determined the claimant was only 50% liable);
10 and

11 C. In 21 of the Arbitration Claims, the arbitrator determined the claimant
12 was responsible for 0% of the accident.

13 12. In 39 of the Oregon Claims, or 11% of them, Respondents failed to follow
14 appropriate procedures for managing and documenting comparative negligence claims
15 ("Mismanaged Claims"). Examples of this include:

16 A. Failure to take claimant statements;
17 B. Failure to review accident scene photographs;
18 C. Failure to account for points of impact;
19 D. Failure to consider distance/reaction time to determine whether evasive
20 action was possible;

21 E. Failure to support conclusions that claimants' breached duties were
22 causal and/or contributing factors to an accident; and

23 F. Failure to document a theory of liability in the claim file, resulting in
24 Respondents' inability to reconstruct the handling of one claim.

25 13. Ten of the Mismanaged Claims were also Arbitration Claims. The adverse
26 carrier prevailed in all ten arbitrations.

1 14. The Division finds that third-party claimants are especially vulnerable to being
2 harmed by inadequate comparative negligence claims handling. If a third-party claimant
3 lacks collision coverage, holding only the required liability coverage, their insurer is
4 unlikely to intervene in a comparative negligence claim. In addition, it's frequently cost-
5 prohibitive to hire attorneys for claims of this size, leaving many third-party claimants to
6 navigate these claims by themselves.

7 CONCLUSIONS OF LAW

8 The Director CONCLUDES that:

9 15. By failing to be able to reconstruct the handling of one claim, Respondents
10 violated Oregon Administrative Rules ("OAR") 836-080-0215.

11 16. Respondents' 85% failure rate in the Arbitration Claims, along with the
12 considerable discrepancies between their liability determinations and those of the
13 arbitrators, reflect a pattern of refusing to pay claims without conducting a reasonable
14 investigation. Consequently, Respondents violated ORS 746.230(1)(d) in 35 instances.

15 17. By failing to follow appropriate procedures for managing and documenting
16 comparative negligence claims in the Mismanaged Claims, Respondents engaged in acts
17 injurious to the insurance buying public, thereby violating ORS 746.240 in 39 instances.

18 18. Because the Director has reason to believe that Respondents have been engaged
19 in violations of the Insurance Code, the Director may issue an order to Respondents to
20 cease and desist, under ORS 731.252(1).

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

23 ORDERS

24 Now therefore, the Director issues the following Orders:

25 20. As authorized by ORS 731.252(1), the Director ORDERS Respondents to
26 CEASE AND DESIST from violating OAR 836-080-0215, ORS 746.230(1)(d), and ORS

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1 746.240.

2 21. As authorized by ORS 731.988(1), the Director hereby ORDERS that
3 Respondents be jointly and severally subject to a CIVIL PENALTY of \$160,000 as
4 follows:

- 5 A. \$10,000 for violating OAR 836-080-0215;
- 6 B. \$75,000 for violating ORS 746.230(1)(d); and
- 7 C. \$75,000 for violating ORS 746.240.

8 22. The Director hereby suspends payment of \$40,000 of the CIVIL PENALTY for
9 a period of three years, provided Respondents:

- 10 A. Pay the remaining \$120,000 of the CIVIL PENALTY pursuant to the
11 terms of this Order;
- 12 B. Satisfy the reporting requirements set forth below; and
- 13 C. Do not violate OAR 836-080-0215, ORS 746.230(1)(d),¹ and/or ORS
14 746.240 within the three-year time period.

15 23. The non-suspended portion of the CIVIL PENALTY assessed herein
16 (\$120,000) is due and payable at the time Respondents return this signed Order to the
17 Division.

18 24. The suspended CIVIL PENALTY (\$40,000) will be waived three years from
19 the effective date of this Order, provided Respondents have complied with the foregoing
20 Order terms. The Director reserves the right to immediately assess and collect the
21 suspended civil penalty upon a determination that Respondents have violated any term of
22 this Order.

23 25. In 2020, Respondents implemented new training on managing third-party
24 liability claims. Within SIX MONTHS of the execution of this Order, Respondents SHALL
25

26 _____
¹ Adverse arbitration rulings do not necessarily constitute violations of ORS 746.230(1)(d).



1 REQUIRE all their third-party liability claims adjustors to complete this training.²
2 Respondents shall confirm with the Director that all adjustors have completed the training
3 within this timeframe.

4 26. The Division may require Respondents to make reasonable modifications to
5 the procedures and/or trainings as it deems appropriate.

6 27. Respondents shall conduct audits of their Oregon comparative negligence claim
7 files and report all claim file numbers to the Director, who will randomly select 50 files³
8 for Respondents to provide the following data:

- 9 A. Names of the insured and claimant;
- 10 B. Date of loss;
- 11 C. Brief summary of claim facts;
- 12 D. Date of the initial liability determination;
- 13 E. Results of the initial liability determination;
- 14 F. Factors relied upon to make the liability determination;
- 15 G. Whether police reports were available and, if so, whether they were
16 obtained and considered;
- 17 H. Whether claimant statements were obtained and considered;
- 18 I. Whether witnesses were available and, if so, whether their statements
19 were obtained and considered;
- 20 J. Whether the initial liability determination changed and, if so, how it
21 changed;
- 22 K. The reasons for any liability determination changes, including whether
23 the claims went to arbitration; and
24

25 ² This only applies to adjustors that have not already completed the training.

26 ³ If there are fewer than 50 applicable files for a reporting period, the Director will request data on a smaller number of files as appropriate. The Director will make diligent efforts to identify the selected files within two weeks of receiving the claim file numbers.



1 L. Whether Respondents followed their internal policies for managing and
2 documenting the claims.

3 28. Respondents shall provide the foregoing claim numbers at the following
4 intervals from the date this Order is executed:

- 5 A. Three months;
- 6 B. Six months;
- 7 C. Nine months;
- 8 D. One year;
- 9 E. 18 months; and
- 10 F. Two years.

11 29. Respondents shall provide the requested data, identified in Paragraph (28)
12 above, within 30 days of the Director identifying the files selected for that reporting period.

13 30. If, at any point during the reporting period, Respondents have not demonstrated
14 substantial compliance with their internal policies for managing and documenting
15 comparative negligence claims, or they demonstrate a pattern of liability determinations
16 that significantly deviate from those of arbitrators,⁴ additional audits may be required on a
17 quarterly, semi-annually or annual basis, at the Director's discretion.

18 31. All claim numbers and reports will be provided to the Director through the
19 Division's secure Biscom account.

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26 ⁴ The Director will determine whether such a pattern exists.

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32. This Order is binding upon Respondents' successors and assigns.

SO ORDERED this 13th day of July, 2021.

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

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

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CONSENT TO ENTRY OF ORDER

I, Michael R. Fiato, state that I am an officer of Liberty Mutual 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 Liberty Mutual’s right to a hearing and right to be represented by counsel in this matter. Liberty Mutual 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. Liberty Mutual 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 with the terms and conditions stated herein.

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

Signature: /s/ Michael R. Fiato

Position Held: EVP and COO

State of _____

County of _____

Signed or attested before me on this ____ day of _____, 2021

by _____.

Notary Public

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CONSENT TO ENTRY OF ORDER

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Signature: /s/ Michael R. Fiato

Position Held: EVP and COO

State of _____

County of _____

Signed or attested before me on this _____ day of _____, 2021

by _____.

Notary Public

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