

**IN THE MISSOURI DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION**

<b>In Re: LIBERTY INSURANCE</b>	)	
<b>UNDERWRITERS, INC.</b>	)	<b>Case No. 140320315C</b>
<b>SERFF TRACKING NUMBER</b>	)	
<b>PERR-129463222</b>	)	

**ORDER DISAPPROVING FORM FILING**

Upon review and consideration of the filing of Liberty Insurance Underwriters, Inc., SERFF Tracking Number PERR-129463222, specifically Forms LIUI BACC P001 MO (Ed. 12 13) and LIUI BACC C001 MO (Ed. 12 13), the Deputy Director DISAPPROVES said forms for the reasons stated below.

**FINDINGS OF FACT**

1. John M. Huff is the Director of the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri ("Director" of the "Department").
2. Liberty Insurance Underwriters, Inc. ("Liberty"), NAIC Number 19917, is a foreign life and health insurance company organized pursuant to the laws of the state of Illinois and transacting insurance business in this state pursuant to a Certificate of Authority issued by the Director.
3. Pursuant to §376.405,<sup>1</sup> insurance companies licensed to transact business in this state may not deliver or issue for delivery in this state a policy of group accident or group health insurance unless the form has been approved.
4. The Division of Market Regulation (the "Division") is designated pursuant to §374.075 with the review of forms that are filed by insurance companies.
5. Perr & Knight, Inc. filed policy forms on behalf of Liberty with the Director via the System for Electronic Rate and Form Filing ("SERFF") on March 18, 2014. The SERFF Tracking Number is PERR-129463222 ("Filing").
6. The Filing contains, in pertinent part, forms: LIUI BACC P001 MO (Ed. 12 13), identified as the Blanket Accident Policy ("Group Policy") and LIUI BACC C001 MO (Ed. 12 13), identified as the Blanket Accident Certificate ("Certificate").

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<sup>1</sup> All statutory citations are to RSMo (Supp. 2013).

7. Brackets ( [ ... ] ) within a form reviewed by the Division indicate that the language within the brackets may be included or excluded from the form, or the brackets may indicate a numeric range.
8. Potentially, all benefits, coverages, or terms in brackets could be included in an issued form.
9. Conversely, all benefits, coverages, or terms in brackets could be excluded from an issued form.
10. Based upon the bracketing within this filing, the forms could offer no benefits whatsoever.
11. Liberty filed this Group Policy within SERFF as a Blanket Accident and Sickness policy.
12. Due to the extensive bracketing within this Filing, it is impossible to determine the actual type of policy that will be issued.
13. Some benefits offered within the Filing include, but are not limited to: compensation for loss of life, compensation for bodily harm, coverage for inpatient hospital services, coverage for outpatient services, coverage for physician services, coverage for dental services, coverage for rehabilitation services, coverage for baggage delay or theft, coverage for loss of travel documents, and coverage for trip cancellation.
14. All benefits offered within the Policy are contingent upon specific events occurring, which Liberty refers to as "Conditions of Coverage," that are conditions precedent.
15. All Conditions of Coverage are bracketed.
16. In the event that all Conditions of Coverage were excluded from the issued Policy, no covered benefit would be payable.
17. In addition to every Conditions of Coverage being bracketed, all Scheduled Benefits, as well as descriptions of each, are bracketed.
18. Nearly every General Definition and Common Exclusion is contained within a bracket.
19. Liberty admitted that one quadrillion, three hundred eighty-two trillion, four hundred forty-nine billion, five hundred seventy-four million, one hundred fifty-six thousand two hundred and eighty (1,382,449,574,156,280) different variations of this policy can be generated based upon the bracketing.

20. On page 55 of the Group Policy and page 50 of the Certificate under the section titled Date Insurance Ends and the subsection titled Termination of Insurance, the forms state:

Insurance for the **Insured Person** will end on the earliest of:

1. the date the person is no longer in an Eligible Class;
2. the date the person enters full time active duty in any Armed Forces. The Company will refund any premium paid for any period of active duty when the Company receives proof of active duty. Active duty does not include Reserve or National Guard duty for training]
3. the end of the period for which the last premium is made;
4. the date this Policy ends;
- [4. the date the Certificate ends;]
5. the date the Subscriber with which the **Insured Person** is affiliated ceases to be a Subscriber under this Policy;] [or]
- [6. the end of the **School** year.]

21. On page 81 of the Policy and page 72 of the Certificate under the section titled Excluded Expenses, the forms state:

The following will not be considered **Covered Expenses** unless coverage is specifically provided.

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7. [Any mental or nervous disorders;]

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11. [In connection with alcoholism and drug addiction, or use of any drug or narcotic agent;]

#### CONCLUSIONS OF LAW

22. The Director shall approve only those policy forms that are in compliance with Missouri insurance laws, and "which contain such words, phraseology, conditions, and provisions which are specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured," pursuant to §376.405.
23. The Director may disapprove a form filed with the Department, and in doing so must state the reasons for the disapproval in writing, pursuant to §376.405.

#### Liberty's Filing Does Not Substantively Provide All Provisions Required In a Group Policy Under Section 376.426

24. Section 376.426 states in relevant part:

*No policy of group health insurance* shall be delivered in this state unless it contains in substance the following provisions, or provisions which ... are more favorable...:

\* \* \*

(15) A provision specifying the conditions under which the policy may be terminated. *Such provision shall state that except for nonpayment of the required premium or the failure to meet continued underwriting standards, the insurer may not terminate the policy prior to the first anniversary date of the effective date of the policy* as specified therein, and *a notice of any intention to terminate the policy by the insurer must be given to the policyholder at least thirty-one days prior to the effective date of the termination*[.]

(Emphasis added.)

25. Liberty's Group Policy and Certificate are not compliant with Missouri insurance laws. Under the subsection titled Termination of Insurance, the forms notify the insured of conditions in which the policy may be terminated; however, the forms fail to notify the insured that the policy may not be terminated before the first anniversary year of the effective date of coverage, and that Liberty must provide at least 31-days notice before the date of termination. Because the forms do not contain such provisions, they do not meet the substantive requirements of §376.426(15). As such, the Group Policy and Certificate do not comply with the laws of this state as required by §376.405.

**Liberty's Group Policy and Certificate Do Not Provide the Mandated Coverage for Treatment of Alcoholism**

26. Section 376.779 states in relevant part:

*1. All health plans or policies that are individually underwritten or provide for such coverage for specific individuals and the members of their families, which provide for hospital treatment, shall provide coverage, while confined in a hospital or in a residential or nonresidential facility certified by the department of mental health, for treatment of alcoholism on the same basis as coverage for any other illness, except that coverage may be limited to thirty days in any policy or contract benefit period. All Missouri individual contracts issued on or after January 1, 2005, shall be subject to this section. Coverage required by this section shall be included in the policy or contract and payment provided as for other coverage in the same policy or contract notwithstanding any construction or relationship of interdependent contracts or*

plans affecting coverage and payment of reimbursement prerequisites under the policy or contract.

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5. This section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, hospitalization-surgical care policy, short-term major medical policy of six months or less duration, or any other supplemental policy as determined by the director of the department of insurance, financial institutions and professional registration.

(Emphasis added.)

27. Neither Liberty's Group Policy nor its Certificate is compliant with Missouri insurance laws. Section 376.779 requires all health plans, which provide coverage for specific individuals and their family members for hospital treatment, to provide coverage for the treatment for alcoholism. While the Group Policy and Certificate do provide hospital treatment to individuals and their families, the forms do not provide coverage for the treatment of alcoholism. Moreover, under certain coverages, the forms specifically exclude treatment for alcoholism. The failure to provide coverage and the exclusion of coverage for the treatment for alcoholism are in direct conflict with the requirement of §376.779. As such, the Group Policy and Certificate do not comply with the laws of this state as required by §376.405.
28. Pursuant to §376.779.5, the mandated coverage under §376.779 does not apply to supplemental insurance policies including, most relevantly, hospital policies providing a fixed daily benefit. These exceptions are not applicable to this policy of insurance for the following reasons:
  - a. Nothing within Liberty's Filing indicates that the Group Policy is intended to be issued as a supplemental insurance policy. As such, this policy does not fit within the supplemental policy exception for this section.
  - b. In the event Liberty's Group Policy was sold strictly as a supplemental policy, it is not exclusively a hospital policy providing a fixed daily benefit. The Group Policy does have within it a hospital policy providing a fixed daily benefit, but it then provides additional coverages that are not found within such a specified policy. As such, the Group Policy exceeds the exception provided within §376.779.5.

**Liberty's Group Policy and Certificate Do Not Provide the Mandated Offer of Coverage for Chemical Dependency and Mental Health Treatment**

29. Section 376.811 provides in relevant part:

1. Every insurance company and health services corporation doing business in this state *shall offer* in all health insurance policies benefits or coverage for chemical dependency meeting the following minimum standards:

- (1) Coverage for outpatient treatment through a nonresidential treatment program, or through partial- or full-day program services, of *not less than twenty-six days* per policy benefit period;
- (2) Coverage for residential treatment program of *not less than twenty-one days* per policy benefit period; [and]
- (3) *Coverage for medical or social setting detoxification of not less than six days per policy benefit period*[.]

\* \* \*

4. *Every insurance company, health services corporation and health maintenance organization doing business in this state shall offer* in all health insurance policies mental health benefits or coverage as part of the policy or as a supplement to the policy. *Such mental health* benefits or *coverage shall include at least two sessions per year* to a licensed psychiatrist, licensed psychologist, licensed professional counselor, licensed clinical social worker, or, subject to contractual provisions, a licensed marital and family therapist, acting within the scope of such license and under the following minimum standards:

- (1) Coverage and benefits in this subsection shall be *for the purpose of diagnosis or assessment*, but not dependent upon findings[.]

\* \* \*

6. This section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, hospitalization-surgical care policy, short-term major medical policy of six months or less duration, or any other supplemental policy as determined by the director of the department of insurance, financial institutions and professional registration.

(Emphasis added.)

30. Neither Liberty's Group Policy nor Certificate is compliant with Missouri insurance laws. Section 376.811.1 requires all health insurance policies to offer coverage for treatment of chemical dependency. The forms do not offer

to provide coverage for the treatment of chemical dependency. Moreover, under certain coverages, the forms specifically exclude treatment drug addiction. The failure to offer to provide coverage and the exclusion of coverage for drug addiction is in direct conflict with the requirements of §376.811. As such, the Group Policy and Certificate do not comply with the laws of this state as required by §376.405.

31. Neither Liberty's Group Policy nor Certificate is compliant with Missouri insurance laws. Section 376.811.4 requires all health insurance policies to offer coverage for mental health treatment. The forms do not offer to provide coverage for the treatment of mental health. Moreover, under certain coverages, the forms specifically exclude treatment for mental or nervous disorders. The failure to offer to provide coverage and the exclusion of treatment for mental disorders is in direct conflict with the requirements of §376.811. As such, the Group Policy and Certificate do not comply with the laws of this state as required by §376.405.
32. Pursuant to §376.811.6, the mandated offers under §376.811 do not apply to supplemental insurance policies including, most relevantly, hospital policies providing a fixed daily benefit. These exceptions are not applicable to this policy of insurance for the following reasons:
  - a. Nothing within Liberty's Filing indicates that the Group Policy is intended to be issued as a supplemental insurance policy. As such, this policy does not fit within the supplemental policy exception for this section.
  - b. In the event Liberty's Group Policy was sold strictly as a supplement, it is not exclusively a hospital policy providing a fixed daily benefit. The Group Policy does have within it a hospital policy providing a fixed daily benefit, but it then provides additional coverages that are not found within such a specified policy. As such, the Group Policy exceeds the exception provided within §376.811.6.

### **Liberty's Group Policy and Certificate Are Not Specific, Certain, and Unambiguous**

33. "Specific" is defined as "precisely formulated or restricted; definite; explicit; of an exact or particular nature."<sup>2</sup> "Certain" is defined as "ascertained; precise; identified; settled; exact; definitive; clearly known; unambiguous..."<sup>3</sup> "An ambiguity exists when there is duplicity, indistinctness, or uncertainty in the meaning of the language in the policy. Language is ambiguous if it is reasonably open to different constructions."<sup>4</sup>

<sup>2</sup> *Black's Law Dictionary* 1398 (6<sup>th</sup> ed., West 1990)

<sup>3</sup> *Id.* at 225.

<sup>4</sup> *Seeck v. Geico Gen. Ins. Co.*, 212 S.W. 3d 129, 132 (Mo. banc 2007).

34. Liberty's Group Policy and Certificate contain extensive bracketing. Every Condition of Coverage and Scheduled Benefit, as well as descriptions of the foregoing, and nearly every General Definition and Common Exclusion is contained within a bracket. By Liberty's own admission, the language is open to one quadrillion, three hundred eighty-two trillion, four hundred forty-nine billion, five hundred seventy-four million, one hundred fifty-six thousand two hundred and eighty (1,382,449,574,156,280) different constructions. Were each bracketed provision removed, little would remain that could be identified as an insurance product of any type. Because the filed forms are not definite and explicit, nor ascertainable, precise or clearly known, the Group Policy and Certificate use words, phraseology, conditions, and provisions which are not specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured as required by §376.405.
35. After review and consideration of the policy forms included in the Liberty Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.
36. While there may be additional reasons as to why these forms do not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the forms.
37. Each reason stated herein for disapproval of a policy form is a separate and sufficient cause to disapprove such forms.
38. Liberty's Group Policy and Certificate do not comply with Missouri law. As such, said forms are not in the public interest.
39. This Order is in the public interest.

**IT IS THEREFORE ORDERED** that Forms LIUI BACC P001 MO (Ed. 12 13) and LIUI BACC C001 MO (Ed. 12 13) are hereby **DISAPPROVED**. Liberty Insurance Underwriters, Inc. is hereby prohibited from delivering or issuing for delivery any policies of group health insurance utilizing said forms.

**SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS** 2d  
day of May, 2014.



  
**JAMES R. McADAMS**  
**DEPUTY DIRECTOR**

**NOTICE**

**TO: Liberty Insurance Underwriters, Inc. and any unnamed persons aggrieved by this Order:**

You may request a hearing on the disapproval of these forms. You may do so by filing a pleading with the Director of the Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, MO 65102, within 30 days after the mailing of this notice pursuant to 20 CSR 800-1.030.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31 day of May, 2014, a copy of the foregoing Order and Notice was

Served via certified mail addressed to:

Christopher L. Peirce  
President  
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