

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

**In Re: SIRIUS AMERICA )  
INSURANCE COMPANY )  
SERFF TRACKING NUMBER ) Case No. 150311191C  
LWEL-129959062 )**

**ORDER DISAPPROVING FORM FILING**

Upon review and consideration of the filing of Sirius America Insurance Company, SERFF Tracking Number LWEL-129959062, specifically forms SAM-14-1000MO and SAM-14-1000MOC, 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. Sirius America Insurance Company ("Sirius America"), NAIC Number 38776, is a foreign life and health insurance company organized pursuant to the laws of the state of New York and transacting insurance business in the state of Missouri 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 section 374.075 with the review of forms that are filed by insurance companies.
5. Lewis & Ellis, Inc., on behalf of Sirius America, filed policy forms with the Director via the System for Electronic Rate and Form Filing ("SERFF") on March 9, 2015. The SERFF Tracking Number is LWEL-129959062 ("Filing").
6. The Filing contains, in pertinent part, forms SAM-14-1000MO, identified as a Blanket Accident Insurance Policy ("Group Policy") and SAM-14-1000MOC, identified as a Blanket Accident Insurance Certificate ("Certificate").
7. Brackets ( [ . . . ] ) within a policy form reviewed by the Division indicate that the language within the brackets may be included or excluded from the policy form, or the brackets may indicate a numeric range.

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

8. Potentially, all benefits, coverages, or terms in brackets could be included in an issued policy form.
9. Conversely, all benefits, coverages, or terms in brackets could be excluded from an issued policy.
10. Based upon the bracketing within this filing, the forms could offer almost no benefits whatsoever.
11. Sirius America filed the forms within SERFF as a Group 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 Group Policy include, but are not limited to: accidental death benefit, bomb scare benefit, carjacking benefit, catastrophic total disability benefit, child care center benefit, hospital stay benefit, invalidation of life insurance benefit, natural disaster benefit, pilot and crew benefit, and seatbelt and airbag benefit.
14. All benefits offered within the Group Policy are contingent upon specific events occurring, which Sirius America refers to as "Conditions of Coverage," that are conditions precedent.
15. All Conditions of Coverage are bracketed.
16. In addition to every Conditions of Coverage being bracketed, all Scheduled Benefits, as well as descriptions of each, are bracketed.
17. Nearly every General Definition and General Exclusion is contained within a bracket.
18. Nowhere within the Group Policy is there a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued.
19. The Filing also contains form SAM-14-5000, identified as the Application for Blanket Accident Insurance, which would be used in conjunction with the other filed forms.
20. On page 32 of the Group Policy under the section titled General Provisions and the bracketed subsection Certificates, the form states:

Where required by law, We will provide a certificate of insurance for delivery to the Covered Person. Each certificate will list the benefits, conditions and limits of this Policy. It will state to whom benefits will be paid.

21. On page 28 of the Group Policy and page 27 of the Certificate under the sections titled Claim Provisions and the subsections Notice of Claim, the forms state:

Written or authorized electronic/telephonic notice must be given to Us or Our agent within 31 days after a Covered Accident occurs or the loss begins or as soon as reasonably possible, but in no case any longer than 15 months after the date of loss. If written or authorized electronic/telephonic notice is not given in that time, the claim will not be invalidated or reduced if it is shown that notice was given as soon as was reasonably possible. Notice can be given at Our Home Office in White Plains, New York, such other place as We may designate for the purpose, or to Our authorized agent. Notice should include the Policyholder's name and policy number and the Covered Person's name and address.

22. On page 28 of the Group Policy and page 27 of the Certificate under the sections titled Claim Provisions and the subsections Time of Payment of Claims, the forms state:

We will pay benefits due under this Policy for any loss, other than a loss for which this Policy provides any periodic payment, immediately upon receipt of due written or authorized electronic proof of such loss. Subject to due written or authorized electronic proof of loss, all accrued benefits for loss for which this Policy provides periodic payment will be paid monthly unless otherwise specified in the benefit descriptions. Any balance remaining unpaid at the termination of liability will be paid immediately upon receipt of proof satisfactory to Us, unless otherwise stated in this Policy.

23. On page 30 of the Group Policy under the section titled Administrative Provisions and the bracketed subsection Cancellation, the form states:

**[Cancellation**

*(Optional, depending on Policy Term)*

We may not cancel this Policy prior to the first anniversary date of this Policy except for nonpayment of the required premium or the failure to meet continued underwriting standards. We or the Policyholder may cancel this Policy, after the first year [or Policy Term], [as of any Premium Due Date] by giving the other party {31; 45; 60 days} advance written or authorized electronic notice. Any premium rate guarantee will not affect Our or the Policyholder's right to cancel this Policy.

If We cancel this Policy, any earned premium will be computed pro rata and any unearned portion promptly returned to the Policyholder. If the Policyholder cancels this Policy, any unearned premium paid to Us will be returned to the Policyholder immediately; or the Policyholder will

immediately pay any earned premium to Us that has not been paid. Earned premium will be computed pro rata.

If a premium is not paid when due, We will cancel this Policy at the end of the last period for which premium was paid, subject to the Grace Period provision. Premium Due Dates are shown in the *Schedule of Benefits*.

Cancellation does not affect a claim for a Covered Loss when the Covered Accident occurs before the cancellation date.]

24. On page 20 of the Group Policy and page 19 of the Certificate under the sections titled General Definitions, the forms define a dependent to include:

\* \* \*

{3.} the Covered Person's unmarried child who meets the following requirements:

\* \* \*

c. a child who is 25 or more years old, primarily supported by the Covered Person, and incapable of self-sustaining employment by reason of mental or physical handicap. Proof of the child's condition and dependence must be submitted to Us within [31 days] after the date the child ceases to qualify as a Dependent for the reasons listed above. During the next two years, We may, from time to time, require proof of the continuation of such condition and dependence. After that, We may require proof no more than once a year.

### CONCLUSIONS OF LAW

25. 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.
26. "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>
27. 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.

<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).

**Sirius America's Filing Does Not Comply Will All  
Provisions Required in a Policy Under Section 376.426**

28. 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...:

\* \* \*

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or, in the event of the death or incapacity of the insured person, to the individual's beneficiary or personal representative;

\* \* \*

(7) A provision that the insurer shall issue to the policyholder, for delivery to each person insured, a certificate setting forth a statement as to the insurance protection to which that person is entitled, to whom the insurance benefits are payable, and a statement as to any family member's or dependent's coverage;

(8) A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible;

\* \* \*

(11) A provision that all benefits payable under the policy other than benefits for loss of time shall be payable not more than thirty days after receipt of proof and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time shall be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period shall be paid as soon as possible after receipt of such proof;

\* \* \*

(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. Any termination by the insurer shall be without prejudice to any expenses originating prior to the effective date of termination. An expense will be considered incurred on the date the medical care or supply is received;

(16) A provision stating that if a policy provides that coverage of a dependent child terminates upon attainment of the limiting age for dependent children specified in the policy, such policy, so long as it remains in force, shall be deemed to provide that attainment of such limiting age does not operate to terminate the hospital and medical coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental or physical handicap and chiefly dependent upon the certificate holder for support and maintenance. Proof of such incapacity and dependency must be furnished to the insurer by the certificate holder at least thirty-one days after the child's attainment of the limiting age. The insurer may require at reasonable intervals during the two years following the child's attainment of the limiting age subsequent proof of the child's incapacity and dependency. After such two-year period, the insurer may require subsequent proof not more than once each year[.]

29. Sirius America's Group Policy is not compliant with Missouri insurance laws. Nowhere within the form is there a statement that a copy of the application will be attached to the policy, as required by §376.426(3). Because such statement is not within the form, the Group Policy does not comply with §376.426(3). As such, the Group Policy does not comply with the laws of this state as required by §376.405.
30. Sirius America's Group Policy is not compliant with Missouri insurance laws. Under the bracketed subsection titled Certificates, the form may provide language sufficient to satisfy the statutorily required provision notifying the insured that Sirius America "shall issue to the policyholder, for delivery to each person insured, a certificate setting forth a statement as to the insurance protection to which that person is entitled, to whom the insurance benefits are payable, and a statement as to any family member's or dependent's coverage." Section 375.426(7). However, the Group Policy's certificate provision is bracketed, and, therefore, may be included or excluded from the form. Pursuant to §376.426(7) the provision is required to be substantively included within the policy and, thus, may not be bracketed. As such, the Group Policy does not comply with the laws of this state as required by §376.405.
31. Neither Sirius America's Group Policy nor its Certificate is compliant with Missouri insurance laws. Under the subsection titled Notice of Claim, the forms add an additional requirement that the notice of claim must be submitted no later "than 15 months after the date of loss." Section 376.426(8) does not have such a deadline for submission of notice of claim; instead, it requires that such notice be made as soon as reasonably possible. Because the forms have added an additional requirement to the



notice of claim provision, they are neither substantially similar to nor more favorable than the requirements of §376.426(8). As such, the Group Policy and Certificate do not comply with the laws of this state as required by §376.405.

32. Neither Sirius America's Group Policy nor its Certificate is compliant with Missouri insurance laws. Under the subsection titled Time of Payment of Claims, the forms notify the insured that benefits will be paid immediately. Immediately is not defined within the forms and, as such, could mean a period of time less than or greater than 30 days. Section 376.426(11) requires payment within 30 days. Because immediately is not defined and the law requires payment within a maximum number of days, 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.
33. Sirius America's Group Policy is not compliant with Missouri insurance laws. Under the bracketed subsection titled Cancellation, the form may provide language sufficient to satisfy the statutorily required provision notifying the insured that Sirius America may not terminate the policy prior to the first anniversary date; however, the termination provision is bracketed. Further, Sirius America states that the language is optional depending on the policy term, and, therefore, may be included or excluded from the form. Pursuant to §376.426(15) the provision is required to be substantively included within the policy and, thus, is not optional and may not be bracketed. As such, the Group Policy does not comply with the laws of this state as required by §376.405.
34. Neither Sirius America's Group Policy nor its Certificate is compliant with Missouri insurance laws. Section 376.426(16) states coverage for a dependent child will continue in force while the child remains "both incapable of self-sustaining employment by reason of mental or physical handicap and chiefly dependent upon the certificate holder for support and maintenance." Further, §376.426(16) permits proof of incapacity and dependency be furnished to the insurer at least 31 days after attainment of the limiting age. Under the section titled General Definitions, the forms fail to substantively provide several of the required provisions from §376.426(16) and are, therefore, noncompliant for the following reasons:
  - a. Sirius America's Group Policy and Certificate state a dependent child's coverage will continue if the dependent child is: unmarried; primarily supported by the Covered Person; and, incapable of self-sustaining employment due to mental incapacity or physical handicap. Section 376.426(16) does not provide that a handicapped dependent must be unmarried. Because the Group Policy and Certificate add the requirement that the handicapped dependent be unmarried, the language is not substantially similar to nor more favorable to the insured than §376.426(16).

- b. Sirius America's Group Policy and Certificate state a dependent child's condition and dependence must be submitted to Sirius America within a bracketed time frame of 31 days. While a provision providing a 31-day or greater time frame to submit such proof to Sirius America is compliant with the requirements of §376.426(16), no lesser time frame is permissible. Because the brackets indicate that Sirius America's Group Policy and Certificate may have a time frame that is less than 31 days, it does not substantively provide the requirements of §376.426(16).

As such, neither the Group Policy nor the Certificate complies with the laws of this state as required by §376.405

**Sirius America's Group Policy and Certificate Are Not  
Specific, Certain, and Unambiguous**

35. Sirius America'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 General Exclusion is contained within a bracket. 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 precise, nor 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.
36. After review and consideration of the policy forms included in Sirius America's Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.
37. While there may be additional reasons as to why these policy form do not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the forms.
38. Each reason stated herein for disapproval of a policy form is a separate and sufficient cause to disapprove such form.
39. Sirius America's Group Policy and Certificate do not comply with Missouri law. As such, said forms are not in the public interest.
40. This Order is in the public interest.



**IT IS THEREFORE ORDERED** that forms SAM-14-1000MO and SAM-14-1000MOC are hereby **DISAPPROVED**. Sirius America Insurance Company is hereby prohibited from delivering or issuing for delivery any policies of health insurance utilizing said forms.

**SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED** this 21<sup>st</sup> day of April, 2015.



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

**NOTICE**

**TO: Sirius America Insurance Company 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 21<sup>st</sup> day of April, 2015, a copy of the foregoing Order and Notice was

Served via certified mail addressed to:

Daniel J. Wilson  
President  
Sirius America Insurance Company  
140 Broadway 32<sup>nd</sup> Floor  
New York, NY 10005

Monica Spearman  
Compliance Consultant  
Lewis & Ellis, Inc.  
700 Central Expy S  
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