
BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF UTAH

COMPLAINANT:

Utah Insurance Department

RESPONDENTS

Liberty First Risk Retention Group Insurance
Company
5679 South Redwood Road, Suite 25
Salt Lake City, UT 84123
Utah Company Id. No. 15459

ORDER OF SUPERVISION

Docket No. 2013-107 AD
E-Case No. 3357

Todd E. Kiser, Utah Commissioner of Insurance (“Commissioner”), hereby makes the following:

FINDINGS OF FACT

1. Liberty First Risk Retention Group Insurance Company (“Liberty”) is licensed with the Utah Insurance Department (“Department”) as a Utah domestic captive insurance company organized a risk retention group pursuant to the Product Liability Risk Retention Act of 1981, 15 U.S.C. Section 3901, et seq., and as such, is also an industrial insured group pursuant to Utah Code Ann. § 31A-37-102(18(b)), having been continually licensed in the State of Utah since May 26, 2006, under Utah company identification number 15459, and NAIC Company Code Number 12627.

2. Liberty is only licensed to offer commercial automobile liability insurance in the State of Utah and in 14 other jurisdictions.

3. CDS Transport, Inc., Gilco Trucking Company, Inc., Rush Transport, Inc., Time Dispatch Services, Inc., Transportation, Inc., and Transportation Services, Inc., are all trucking companies (“Trucking Companies”) CDS Transport Agent Group, Inc., Rush Transport Agent Group, Inc., Time Dispatch Services Agent Group, Inc., Transportation Inc. Agent, Inc. and Quality International Cartage, LLC are (“Related Entities”) .

4. The Trucking Companies and Related Entities are collectively the members and owners (“Member-Owners”) of Liberty.

5. The Member-Owners are owned, either directly or indirectly by either Gary Aliengena (Mr. Aliengena) alone, or by Mr. Aliengena and Susan Aliengena.

6. In order to obtain insurance from Liberty, a person must either be employed by, or under contract to provide services to, one of the Member-Owners.

7. On May 15, 2013, Liberty filed its Quarterly Statement for the quarter ending March 31, 2013 (“March 31 Statement”).

8. Shortly after the beginning of the first quarter of 2013, four withdrawals totaling approximately \$4.2 million (“\$4.2 M Withdrawal”) were made from Liberty by at least some, if not all, of the Member-Owners to meet cash flow problems of those Member-Owners.

9. The \$4.2 M Withdrawal was not shown on the March 31 Statement, i.e., the March 31 Statement showed Liberty’s assets to be the same as they would have been had the \$4.2 million not been withdrawn.

10. The \$4.2 M Withdrawal would be an “extraordinary dividend” under Utah Code Ann. § 31A-16-106(2), which would require notification to the Commissioner before Liberty could pay the extraordinary dividend.

11. Neither Liberty nor any of the Member-Owners nor anyone else notified the Commissioner of the \$4.2 M Withdrawal until V. J. Petitt (“Petitt”), the captive manager for Liberty, and Randall R. Smart (“Smart”), the attorney representing Liberty in this matter, met with Department personnel on July 19, 2013.

12. Liberty’s audit report for its financial statements for 2012 (“2012 Audit”) was due on June 1, 2013 under Utah Admin. Code R590-254-4, but has still not been filed.

13. The Commissioner imposed a forfeiture of \$1,500 on Liberty for its failure to file its 2012 Audit by June 1, 2013, which forfeiture has still not been paid to the date of this order.

14. On or about July 19, 2013, Petitt informed the Department that Liberty wants to voluntarily dissolve, and that Liberty already began to transfer assets out of the company.

15. Liberty has not filed with the Commissioner a plan of voluntary dissolution, as required by Utah Code Ann. § 31A-5-504.

16. At the meeting between Petitt and Smart and Department personnel on July 19, 2013, it was recognized that pursuant to Utah Code Ann. §§ 31A-27a-102(22)(b), 31A-27a-104(1)(e)(ix) and 31A-37-104 Liberty is insolvent as of March 31, 2013.

17. Liberty, through Petitt and Smart, expressed the desire to work with the Commissioner and the Department in rectifying the violations of applicable statutes and administrative rules, including those set forth above in these “Findings of Fact.”

18. Despite the representations in Paragraph 17 of these Findings of Fact, Liberty has not presented a plan by which it would restore the funds that were withdrawn in the \$4.2 M Withdrawal:

a. Liberty represented that it determined that as of June 30, 2013, its required loss and loss adjustment expense reserve (“LAE”) would be only approximately \$3.6 million.

b. Liberty represented would fund the \$3.6 million amount, in part, as follows:

\$ 400,000	Cash on hand
\$ 850,000	Letter of credit from Zions First National Bank
\$1,359,000	Premium due for month of August 2013
<u>\$ 873,000</u>	Contracts secured by trucking rigs
\$3,482,000	TOTAL

c. In addition, Liberty represents that it will be receiving approximately \$1.6 million from its reinsurer, though the funds will not be received immediately, but will be received over a period of time that could be up to two years.

19. Liberty has asked the Commissioner to consider the package of assets presented in Paragraph 18.b. and 18.c. above as meeting the required reserves it has determined it needs, as set forth in Paragraph 18.a. above.

20. The \$873,000 in contracts secured by trucking rigs in Subparagraph 18.b. are not qualified assets under the Utah Insurance Code (Title 31A-17-201, Utah Code Ann.).

21. While the \$1.6 million described in Subparagraph 18.c. may be a good-faith estimate by Liberty, Liberty admits that the bulk of these funds will not be coming into Liberty immediately, or even possibly over the next year.

22. The Department questions the validity of the \$1,359,000 “premium due for the month of August 2013” as Liberty reported to the Department that it cancelled its insurance contracts as of August 20, 2013.

23. By its own records, Liberty does not currently have enough admissible assets to meet its reserve requirements and required minimum capital and surplus under the Utah Insurance Code.

CONCLUSIONS OF LAW

1. Liberty has committed or engaged in an act, practice, or transaction that would subject the insurer to a formal delinquency proceeding under Title 31A, Chapter 27a, Insurer Receivership Act;

2. Liberty is committing or engaging in an act, practice, or transaction that would subject the insurer to a formal delinquency proceeding under Title 31A, Chapter 27a, Insurer Receivership Act;

3. Liberty is about to commit or engage in an act, practice, or transaction that would subject the insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act;

4. Liberty is in or is about to be in a condition that would subject the insurer to a formal delinquency proceeding under Chapter 27a, Insurer Receivership Act; and

5. Liberty is in hazardous financial condition or potentially hazardous financial condition, as defined by rule made under Utah Code Ann. § 31A-27a-101(3)(c).

6. The Commissioner has authority to place in supervision a domestic insurance company pursuant to Utah Code Ann. § 31A-27-503.

7. Pursuant to Utah Code Ann. § 31A-27-503(2)(a), (i) the conditions of Utah Code Ann. § 31A-27-503(1) are satisfied; and (ii) irreparable harm to the property or business of Liberty or to the interests of its policyholders, creditors or the public may occur unless the Commissioner issues, with immediate effect, this Order of Supervision.

WHEREFORE, in light of the foregoing “Findings of Fact” and “Conclusions of Law,” the Commissioner hereby enters the following:

ORDER

1. Liberty is hereby placed under supervision pursuant to Utah Code Ann. § 31A-27-501(1)(c), effective immediately upon service of this Order upon Liberty.

2. Pursuant to Utah Code Ann. § 31A-27-503(3)(b), during the period of supervision, Liberty is prohibited from doing the following without the express written approval of the Commissioner or the supervisor appointed by the Commissioner:

- a. transferring any of its assets or its business in force;
- b. withdrawing funds from any of its bank accounts;
- c. lending any of its funds;
- d. investing any of its funds;
- e. transferring any of its property;
- f. incurring any debt, obligation, or liability other than in the ordinary and usual course of business; or
- g. entering into any new reinsurance contract or treaty.

3. The Commissioner may appoint as the supervisor any “person,” as that term is defined in Utah Code Ann. § 31A-1-301, including a law firm or accounting firm, and may appoint as supervisor a person who is not an employee of the Department.

4. Liberty shall pay the fees and costs of the person appointed as supervisor by the Commissioner.

a. Payment of the supervisor’s fees and costs shall be made by Liberty upon the Commissioner’s written approval of the supervisor’s bill.

b. The supervisor’s fees and costs shall be “reasonable,” with the Commissioner being the sole determiner as to what is “reasonable.”

5. The Member-Owners shall transfer back to Liberty assets with a current market value equal to the amount of qualified assets that were withdrawn (the “\$4.2 M Withdrawal” amount) not later than August 12, 2013.

a. The assets that replace the assets withdrawn in the \$4.2 M Withdrawal shall be in the form of cash, bonds, or other assets acceptable to the Commissioner and the Department.

b. The assets that replace the assets withdrawn in the \$4.2 M Withdrawal shall not be in the form of contracts.

6. Liberty shall file its audited financial statements for the year ended December 31, 2012, not later than August 12, 2013.

7. Liberty shall cooperate fully with the Department in the Department’s ongoing financial examination of Liberty.

8. Liberty shall immediately begin providing documentation of transactions, bank statements, etc., to the Department.

9. Liberty shall immediately file with the Department a plan of voluntary dissolution under Utah Code Ann. § 31A-5-504.

10. Liberty may, and shall, continue efforts either to find an acquiror for Liberty, or another insurer to acquire Liberty’s current insurance policies.

11. Liberty shall not solicit or write any new business without the express written consent of the Commissioner or the supervisor appointed by the Commissioner.

12. Liberty shall continue to make direct payments on claims on policies it has issued only to the third-party claimants, i.e., not to the Member-Owners; or

13. Liberty shall immediately notify all of its insureds of the suspension of its Certificate of Authority, and that any coverage under any of Liberty’s insurance policies will be null and

void as of 12:00 p.m. (Noon), Mountain Daylight Time, on August 7, 2013, as required in the “Emergency Proceeding Suspension of Certificate of Authority” which is being served upon Liberty concurrently with this order.

NOTIFICATION

Respondent is hereby notified that failure to abide by the terms of this Order may subject it to further penalties, including additional forfeitures of up to \$5,000.00 per violation, and the filing of an action to enforce this Order in District Court, which may impose penalties of up to \$10,000.00 per day for continued violation.

Pursuant to Utah Code Ann. § 31A-27-503, Liberty has a right to a hearing on this Order of Supervision.

You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them.

UTAH INSURANCE DEPARTMENT



TODD E. KISER
Utah Commissioner of Insurance

DATED this 6th day of August, 2013.