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BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL FROM THE DIRECTOR OF THE DIVISION OF INSURANCE

In the Matter of: )  
)  
LIBERTY MUTUAL GROUP ) OAH No. 06-0864-INS  
Agency Case No. D 06-12

**STIPULATED SETTLEMENT AGREEMENT AND ORDER**

The State of Alaska, Department of Commerce, Community, and Economic Development, Division of Insurance (the "Division") and Liberty Mutual Group ("LMG") (hereinafter sometimes collectively referred to as the "Parties") stipulate and agree, in lieu of administrative hearing and without admission of wrong doing by LMG, to resolve by this Settlement Agreement ("Agreement") the compliance issues raised in paragraphs two through seven of the C&D Order issued by the Division on November 15, 2006. The terms and conditions of the agreement are set forth below.

**Background**

1. On November 15, 2006, the Director for the Division issued a Cease and Desist Order ("C&D Order") to LMG regarding an insurance program written for Alyeska Pipeline Service Company ("Alyeska") that the Division alleged violated Alaska law. The insurance program is an owner controlled insurance program ("OCIP") for certain Alyeska contractors performing maintenance or support work on the Trans-Alaska Pipeline ("TAPS") and was first implemented as a three year program in 2002 and was renewed as a three year program in 2005. The current program is set to expire on January 1, 2008.

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

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2           2.     The C&D Order alleged that LMG and the Alyeska OCIP violated  
3 various provisions of the insurance code, because it was not reviewed and approved in  
4 advance by the Director and because it did not comply with new requirements for  
5 OCIPs enacted by the legislature in 2005. Specifically, the order alleged that the  
6 Alyeska OCIP as a maintenance or non-construction OCIP violated AS 21.36.065,  
7 which the Division contends restricts the use of OCIPs to large construction projects.  
8 Also, the order alleged that the Alyeska OCIP violated AS 21.36.190, which prohibits  
9 fictitious groups and requires Director approval of rates, forms, and the plan of  
10 insurance covering a group or combination of persons or risks. The plan of insurance  
11 for the Alyeska OCIP had not been specifically submitted to the Division for review and  
12 approval in advance of its implementation in 2002 and its renewal in 2005.

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15           3.     In response to the C&D Order, LMG requested a hearing, which  
16 stayed the effectiveness of the order pending a hearing and an order issued following the  
17 hearing, pursuant to AS 21.06.190. LMG specifically denied the Divisions allegations  
18 contending that the Alyeska OCIP did not violate the insurance code, because  
19 1) AS 21.36.065 does not apply to Alyeska's insurance program; 2) the Alyeska  
20 insurance program complied with the rules approved at the time it was written and did  
21 not require specific approval of the Director; 3) the Alyeska insurance program was not  
22 a fictitious group based on a preferred rate or on a form not available to others; and  
23 4) the Alyeska insurance program policies were issued consistent with previously  
24 approved rates, rating rules, and forms.  
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4. There is no agreement or, as yet, final agency decision regarding point one of the C&D Order regarding the application of AS 21.36.065. Nothing in this Agreement prohibits either Alyeska or the Division from continuing to litigate over resolution of point one, provided however, that except as specifically provided in Section B below, any future decision by the Division or courts regarding point one shall have no bearing on this Agreement or adverse effect upon LMG.

**Terms and Conditions**

In resolution of paragraphs two through seven of the C&D Order the Division and LMG agree as follows:

- A. LMG agrees that in the future it will not write, deliver, or issue for delivery in Alaska any OCIP or contractor controlled insurance program ("CCIP") without prior approval of the OCIP or CCIP by the Director.
- B. The Division agrees that, unless terminated due to the final resolution of the application of AS 21.36.065, including any appeals to the Alaska Superior and Supreme Court, the Alyeska OCIP may remain in place until the expiration of the three-year term on December 31, 2007.
- C. LMG agrees that, unless changed by legislation, regulation duly adopted under AS 44.62 or decision of the Alaska Supreme Court, LMG will abide by the Division's interpretation of AS 21.36.190 with respect to property/casualty insurance covering a group or combination of persons or risks in this state in addition to complying with all other applicable laws. The Division interprets AS 21.36.190 as follows: (1) OCIPs or CCIPs are not *per-se* prohibited by AS 21.36.190, but such insurance programs are reviewed on a case-by-case basis to determine compliance with the statute; (2) any OCIP and CCIP that constitutes a fictitious group offering a preferred rate or premium would be prohibited by AS 21.36.190(a); and (3) even if not a fictitious group, AS 21.36.190(b) requires that the plan of insurance for an OCIP or

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CCIP be submitted to the Director for review and approval prior to implementation.

- D. LMG agrees to pay to the Division in full and final settlement of the alleged violations of the insurance code raised in points two through seven of the C&D Order the amount of \$32,500, which in the Division's view is an appropriate amount to remit pursuant to AS 21.36.320 and AS 21.90.020 for the alleged violations. These alleged violations include: the failure to submit to the Director for approval the Alyeska OCIP plan of insurance pursuant to AS 21.36.190(b); the use of multiple un-filed or unapproved forms constituting violations of AS 21.42.120; and the use of un-filed rating rules constituting violations of AS 21.39.040. The Division also contends that LMG should have known that the OCIP plan of insurance needed to be filed with the Division for review and approval before implementation or renewal, which, in the Division's view, would warrant an additional fine under AS 21.36.320(e). Except as agreed in Section E below, LMG denies each and every one of the Division's allegations and contends its actions were lawful in all respects.
- E. LMG agrees to replace the unapproved forms with approved versions, if they exist. To the extent that any unapproved forms need to be filed, the DOI will approve them for general use or for use only on the Alyeska OCIP, provided they meet the requirements of AS 21.42 and do not otherwise violate any law. The Alternate Employer Endorsement, which LMG has already removed from Alyeska's policy, will not be approved as it was disapproved when filed by NCCI.
- F. The Division agrees to the dismissal of paragraphs two through seven of the Cease and Desist Order with prejudice.
- G. This Agreement is the result of negotiations by the Parties, and neither this Agreement, nor any payment made hereunder, shall in any way be construed as an admission by LMG that it has violated any provision of the insurance code, any other law or acted wrongfully in any manner.
- H. This Agreement is intended to be a full and final resolution of this matter and sets forth the entire agreement between the Parties. No amendment of this Agreement shall be binding unless in writing

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and signed by the Parties. This Agreement supersedes any other agreements between LMG and the Division, whether written or oral, express or implied.

- I. LMG, by signing this Agreement, understands and agrees that failure to comply with the terms and conditions of this Agreement will be grounds to suspend, revoke, or not renew certificates of authority of LMG member company or companies doing business in this state who fail to comply with this agreement.
- J. LMG understands that this Agreement is not binding on the parties unless and until the Director signs the order approving the Agreement.

Dated: July 13, 2007

DIVISION OF INSURANCE

By: Sarah McNair-Grove  
Sarah McNair-Grove,  
FCAS, MAAA Actuary

Dated: 7/17/07

TALIS J. COLBERG  
ATTORNEY GENERAL

By: Signe P. Andersen  
Signe P. Andersen  
Attorney for Division Staff

Dated: July 9, 2007

LIBERTY MUTUAL GROUP

By: Allian K. Scott  
Its: Regional Underwriting Manager

Dated: July 11, 2007

PATTON BOGGS LLP

By: Michael D. White  
Michael D. White  
Attorneys for Liberty Mutual Group

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BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL FROM THE DIRECTOR OF THE DIVISION OF INSURANCE

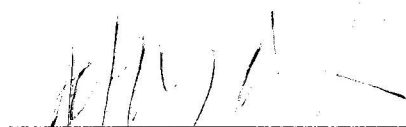
In the Matter of: )  
)  
LIBERTY MUTUAL GROUP )  
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OAH No. 06-0864-INS  
Agency Case No. D 06-12

**ORDER APPROVING STIPULATED SETTLEMENT AGREEMENT**

IT IS ORDERED that the Stipulated Settlement Agreement is approved in full resolution of paragraphs two through seven of the Cease and Desist Order issued on November 15, 2006 and that paragraphs two through seven of that Order are hereby dismissed with prejudice.

Dated this 2<sup>nd</sup> day of November, 2007.

  
\_\_\_\_\_  
Jeffery Troutt,  
Deputy Director (Director's designee)  
Alaska Division of Insurance

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL FROM THE DIRECTOR OF THE DIVISION OF INSURANCE

In the Matter of: )  
LIBERTY MUTUAL GROUP ) OAH NO. 06-0864-INS  
 ) Agency Case No. D 06-12  
\_\_\_\_\_ )

**DEPUTY DIRECTOR'S  
DECISION AND FINAL ORDER**

This matter concerns a Cease and Desist Order issued by the Director of the Division of Insurance on November 15, 2006 against Liberty Mutual Group.

**Facts**

Alyeska Pipeline Service Company (hereinafter referred to as "Alyeska") operates the Trans Alaska Pipeline System (hereinafter referred to as "TAPS"). Since 2002, Alyeska has contracted with Liberty Mutual Group to place and administer an insurance program that provides commercial general liability and workers' compensation for Alyeska and for several TAPS contractors. The TAPS service providers supply maintenance, warehousing, security, lodging, catering, medical response, surveying, monitoring, and ship escort services, as well as spill response and contingency plan services. None of the services involve construction or a major renovation of a structure, building, facility, or roadway having a contract cost of \$50 million with a definite term at a geographically defined project site. *Decision and Order Granting Summary Adjudication*, July 19, 2007 at pp. 2-3 (Hereinafter referred to as "*Decision*")

The insurance program for Alyeska and the five TAPS service providers are generally referred to in the industry as an Owner Controlled Insurance Program (hereinafter known as "OCIP"). OCIPs are a common way of insuring large construction projects. Prior to legislation passed in 2005, there were no provisions of Alaska law specific to OCIPs. *Decision* at p. 2.

After significant correspondence between the Division and Alyeska, on November 15, 2006, the Division issued a Cease and Desist order to Alyeska. This action followed. Among the procedural events that occurred in this case, on March 13, 2007, Alyeska filed a motion for summary judgment on the issue of whether its OCIP violated AS 21.36.065.

By order of Director Linda Hall, this matter has been delegated to me as Deputy Director.

In July of 2007, the Division and Liberty Mutual entered into a settlement agreement resolving all issues outstanding in this matter, except the issue of whether or not the OCIP violated AS 21.36.065. Alyeska's summary judgment motion was left outstanding, and after briefing among the parties, the ALJ concluded that the OCIP did not violate AS 21.36.065. The ALJ reads the

plain language of AS 21.36.065 not to prohibit OCIPs that do not meet the statutory criteria, but merely to provide for the regulation of those entities.

I have concluded that, while the ALJ's reading of the statute language is not unreasonable, it is not necessarily the only reasonable, nor the best, reading of the statute. The Division's interpretation--that the statute prohibits OCIPs that are not approved by the director--is also a reasonable interpretation, and a better reading, and one that is supported by the legislative history. Given the State of Alaska's law on statutory construction, I believe that the Division's interpretation of the statute is correct, and I affirm Count One of the Cease and Desist order.

AS 21.36.065 states:

- (a) An owner controlled insurance program or a contractor controlled insurance program is subject to both AS 21.39 and AS 21.42, must be approved by the director, and shall be allowed only for a major construction project. Owner controlled and contractor controlled insurance programs are limited to property insurance as defined in AS 21.12.060 and casualty insurance as defined in AS 21.12.070.
- (b) In this section, an owner controlled or contractor controlled insured program does not include
  - (1) builder's risk or course of construction insurance;
  - (2) insurance relating to the transportation of cargo or other property;
  - (3) insurance covering one or more affiliates, subsidiaries, partners, or joint venture partners of a person; or
  - (4) insurance policies endorsed to name one or more persons as additional insureds.
- (c) In this section"
  - (1) "contractor" means a person who meets the definition of "contractor" in AS 08.18.171 and who undertakes the performance of a construction project for a project owner, its agent, or its representative;
  - (2) "contractor controlled insurance program" means an insurance program where one or more insurance policies are procured on behalf of a contractor, its agent, or its representative, by its insurance producer, as defined in AS 21.27.900, or the purpose of insuring the contractor and one or more of the following:
    - (A) the project owner;
    - (B) a subcontractor;
    - (C) an architect;
    - (D) an engineer; or
    - (E) a person performing professional services;
  - (3) "major construction project" means the process of constructing a structure, building, facility, or roadway or major renovation of more than 50 percent of an existing structure, building, facility, or roadway having a contract cost of more than \$50,000,000 of a definite term at a geographically defined project site;
  - (4) "owner controlled insurance program" means an insurance program where one or more insurance policies are procured on behalf of a project owner, its agent, or its representative, by its insurance producer, as defined in AS 21.27.900, for the purpose of insuring the project owner and one or more of the following:



- (A) the contractor;
  - (B) a subcontractor;
  - (C) an architect;
  - (D) an engineer; or
  - (E) a person performing professional services;
- (5) “project owner” means a person who, in the course of the person’s business, engages the service of a contractor for the purpose of working on a construction project;
- (6) “subcontractor” means a person to whom a contractor sublets all or part of a contractor's initial undertaking.

## Statutory Construction

The Division and counsel for Alyeska correctly note that, under Alaska law, statutory construction is intended:

to give effect to the intent to the legislature, with due regard for the meaning that the statutory language conveys to others. Statutory construction begins with the language of the statute construed in the light of the purpose of the enactment. If the statute is unambiguous and expresses the legislature’s intent, statutes will not be modified or extended by judicial construction. If we find a statute ambiguous, we apply a sliding scale of interpretation, where ‘the plainer the language, the more convincing contrary legislative history must be.’

*Tesoro Petroleum Corp. v. State of Alaska and Bruce M. Botelho*, 42 P.3d 31, 537 (Alaska 2002). While legislative history may inform a court’s interpretation of an ambiguous statute, where a statute is clear and unambiguous, “and expresses the legislature’s intent, a court will not modify it or extend it by judicial construction. *Young v. Embley*, 143 P.3d 936, 944 (Alaska 2006). But, “in cases where the plain language of the statute permits more than one plausible interpretation,” *Id.*, Alaska courts use a sliding scale: [T]he plainer the language, the more convincing contrary legislative history must be. *Id.*, quoting *Tesoro Petroleum* at 42 P.3d 537 (citation omitted). The Supreme Court of Alaska, has rejected a “mechanical application of the plain meaning rule,” *Mueller v. BP Exploration (Alaska) Inc.*, 923 P.2d 783, 787 (Alaska 1996), but has stated that there is a “heavy burden on parties who urge us to adopt an interpretation that appears contrary to a statute’s plain language.” *Ranney v. Whitewater Engineering*, 122 P.3d 214, 217 (Alaska 2005).

## Analysis

The ALJ states that the definition of “owner controlled insurance program” does not apply to Alyeska’s Liberty Mutual program. *Decision*, pp. 5-6. Specifically, to be an OCIP, the insurance must be procured by the “project owner” or agent. “Project owner” is defined as one who engages a contractor to work “on a construction project”. AS 21.36.065(c)(3). According to this reasoning, because the project is a “maintenance” rather than “construction” project, the Liberty Mutual program is not an OCIP, and is therefore not prohibited by AS 21.36.065. *Id.* I find that the ALJ’s interpretation of the statute is a reasonable one, given that the phrase

“construction project” is undefined. But I do not believe that it is the only reasonable reading of the statute, nor the best.

The definition of OCIP applies to a “project owner” that engages the services of a contractor to work on a “construction project.” AS 21.36.065(4), (5). As noted above, the term “construction project” is undefined. However, the term “major construction project” is defined in subparagraph (3). All parties agree that the TAPS project is not a “major construction project.”

Subsection (a) states that an OCIP is only allowable for a “major construction project.” Looking at the statute as a whole, an OCIP may include a construction project, or it may include a major construction project. But OCIPs are only allowed for major construction projects. The difference between the two is significant. Given that Alaska courts “interpret statutes ‘so that no part will be inoperative or superfluous, void, or insignificant,’” *Leigh v. Seekins Ford*, 136, P3d 214, 219 (Alaska 2006), *citing, City of St. Mary’s v. St. Mary’s Native Corp.*, 9 P3d 1002, 1008 (Alaska 2000), the difference between a construction project and a major construction project cannot be overlooked or ignored. OCIPs are defined by law to include construction projects. But only major construction projects may be approved by the director.

It is not a stretch to suggest that the maintenance of an aging, approximately 1,000 mile pipeline is an ongoing “construction project”, and that the other services appurtenant thereto--those provided by the TAPS contractors--are routine services that would be provided in a construction project of this nature. I find it significant that earlier language that would have excluded “maintenance or repair of structures, buildings, facilities, or roadways, even if such activities include minor construction activities” from a proposed definition of “construction project” to be significant, though not definitive, indication that the legislature intended that such activities may be considered to be construction projects.

The ALJ did note that Alyeska is not an owner of the pipeline, and reasoned that it could not be a “project owner” as defined by the statute. Again, I find this is a reasonable interpretation. However, the Division’s argument that Alyeska is an agent of the pipeline owners and, therefore, stands in the shoes of the project owners, is the better argument, and has support in the principles of agency law. Generally, a common law term used in a statute is generally construed in a manner consistent with the common law definition. *U.S. v. Shabani*, 115 S.Ct. 382, 513 S.Ct. 10, 13, 130 L.Ed.2d 225, 229 1994) *on remand* 48 F.3d 401. Singer, *Southerland Statutory Construction* §§ 50:01-05 (6th Ed. 2000).

For these reasons, it appears that AS 21.36.065 is capable of supporting the construction supported by Alyeska and the ALJ, and the construction supported by the Division. I find that the latter appears to be more consistent with the wording of the statute. However, the statute is ambiguous, and the only tool available to resolve the ambiguity is legislative history.

That legislative history is clear that the intention of the statute is to proscribe OCIPs other than those that meet the criteria set forth in AS 21.36.065(a). Director Hall on several occasions spoke to committees in both houses and expressed her view that this was both the intent and the meaning of the language. In addition, the Labor and Commerce Committee Chair noted that revisions to bill were intended to address “the limitations on the use of owner-controlled

insurance programs . . . to the construction of large \$50 million plus projects of public or private nature over a defined period of time at a specific location or region.” *Decision* at p. 6. The bill was heard in three other legislative committees. No countervailing opinion was expressed.

The ALJ attempts to minimize the impact of this legislative history by suggesting that the bill language was “industry” language, and minimizing the degree to which the legislators read or were paying attention to the language. That information does not seem relevant to the analysis of either the language or the legislative history, but seems designed to place the statute in a negative light, as an ill-considered and hastily inserted last minute addition to the bill. Criticizing the interest of the supporters of legislation, the legislators who passed it, and questioning whether they paid sufficient attention to the language of the statute is an invitation to begin the statutory interpretation process with the assumption that the job was botched. This error is reflected in the ALJ’s statement that if the legislature had intended to ban OCIPs that do not involve major construction projects, it would have done so explicitly. *Decision* at p.5. In my view, they did just that.

**Conclusion**

For the reasons set forth above, I find that Alyeska’s Liberty Mutual insurance program is an OSIP as defined in AS 21.36.065. The OSIP does not meet the requirements of AS 21.36.065(a), and is proscribed by that statute. I reverse the decision of the ALJ with respect to Count One of the Cease and Desist Order, and affirm that count. All other matters related to settlement of the case are affirmed.

DATED this 30th day of October, 2007.

DEPARTMENT OF COMMERCE,  
COMMUNITY, AND ECONOMIC  
DEVELOPMENT  
DIVISION OF INSURANCE

By:   
Jeffery D. Troutt  
Deputy Director

**CERTIFICATE OF SERVICE:** I certify that on October 30, 2007, a correct copy of this document was faxed to Michael D. White, counsel for Liberty Mutual Group; Assistant Attorney General Signe P. Andersen; and Kenneth P. Eggers, counsel for intervenor, Alyeska Pipeline Service Company.

By: \_\_\_\_\_  
Barbara Karl



1 STATE OF ALASKA  
2 DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT  
3 DIVISION OF INSURANCE

4 CEASE AND DESIST ORDER D06-12

5 TO: Liberty Mutual Group  
6 175 Berkley Street  
7 Boston, MA 02117

8 ATTN: Grahame Wells

9 The Division of Insurance (the division) has determined that the insurance program currently underwritten by  
10 Liberty Mutual Group (Liberty Mutual) for Alyeska Pipeline Service Company (Alyeska) violates Alaska law  
11 under provisions of the insurance code (AS 21) including AS 21.36.065, AS 21.36.190, AS 21.39.040(h), AS  
12 21.39.070 and AS 21.42.120. Liberty Mutual is ordered to cease and desist from violating Alaska law and  
13 from continuing the insurance program for Alyeska that is in violation of Alaska law.

14 Background

15 On June 25, 2005, new statutes, Alaska Statute (AS) 21.36.065 and AS 21.36.190(f), took effect and placed  
16 restrictions on the use of owner controlled insurance programs (OCIP). Under these provisions, an OCIP  
17 must be approved by the Director and is only allowed for major construction projects as defined under AS  
18 21.36.065(c)(3). Even if allowed under AS 21.36.065, an OCIP must comply with the rate and form filing  
19 provisions of AS 21.39 and 21.42.

20 Prior to the effective date of these new laws, an OCIP could not be offered by an insurer if it involved a  
21 fictitious group in violation of AS 21.36.190 or, if not a fictitious group, if the OCIP was not expressly  
22 approved by the Director under AS 21.36.190(b). In addition, an insurer's use of rates or forms not  
23 previously approved by the Director in conjunction with an OCIP or an insurer's use of rates that were  
24 unfairly discriminatory would constitute violations of Alaska law under provisions in AS 21.39 and AS 21.42.  
25 Based on these provisions, the division has historically taken the position that an OCIP must be approved by  
26 the Director before it can be used and, to that end, the division has held hearings on proposed OCIPs to take  
public comment and/or to determine compliance with Alaska law.

The 2005 OCIP provisions were intended to confirm the division's past practice regarding OCIPs and clarify  
when OCIPs were allowed. Testimony before the House Labor & Commerce Committee meeting on March  
30, 2005 and the House Finance Committee on April 15, 2005 reflects this legislative intent. In particular,  
this legislative history makes it clear that the OCIP provisions were intended to prohibit the use of OCIPs for  
occupational situations other than for major construction projects.

Liberty's OCIP

As a result of the 2005 changes to the insurance code, the division learned that Liberty Mutual had an existing  
OCIP for Alyeska that had not been approved by the Director and that did not comply with the new  
requirements for OCIPs. This OCIP also did not comply with statutory requirements that existed prior to the  
2005 legislation. The Alyeska OCIP was first written for the three-year period from January 1, 2002 to  
January 1, 2005 and included workers' compensation and general liability coverage. The OCIP originally  
included only one contractor, but by the end of the three-year period, five contractors were included in the  
OCIP. The OCIP was renewed on January 1, 2005 for another three-year period ending on January 1, 2008  
and covered six contractors at its inception. The 2002 policy was rated on a retrospective rating basis while  
the 2005 policy was rated on a loss reimbursement plan. The OCIP was intended to cover the on-going  
maintenance and service work on the Trans-Alaska Pipeline (TAPS) and facilities.



1 On June 27, 2005, the division wrote to Liberty Mutual requesting additional information on the Alyeska  
2 OCIP. The division also noted that Alyeska had contacted the division in 2000 indicating they were  
3 interested in using an owner controlled insurance program and that Alyeska would have further discussions  
4 with the division in the implementation of this program. The division records do not indicate that any further  
5 discussions were held or that the program itself was approved as required by AS 21.36.190.

6 Since the June 2005 letter, the division exchanged a series of letters and telephone calls with Liberty Mutual  
7 to understand how the Alyeska insurance program was constructed and to determine its compliance with  
8 Alaska law. The division also reviewed the policies and pricing for the Alyeska OCIP. In addition, the  
9 division reviewed pricing for other insureds that Liberty Mutual issued on either a loss reimbursement plan or  
10 through the Large Risk Alternative Rating Option. On October 26, 2005, the division sent Liberty Mutual a  
11 letter pointing out several areas in which the Alyeska OCIP did not comply with Alaska's insurance code and  
12 requesting additional information regarding Liberty Mutual's OCIP and Non-OCIP rating plans. The division  
13 also requested Liberty Mutual to redesign the Alyeska OCIP so that it would comply with the new OCIP  
14 requirements as of January 1, 2006. Subsequent to that letter, Liberty Mutual requested an extension of the  
15 deadline for rewriting the Alyeska program until legal issues were addressed that were raised by Alyeska  
16 regarding the applicability of AS 21.36.065 to non-construction OCIPs. The division also needed to review  
17 additional information regarding the Liberty Mutual OCIP as well as information related to another Alyeska  
18 OCIP written by ACE Insurance Company. As a consequence, Liberty Mutual did not meet the division's  
19 request to have a redesigned OCIP in effect on January 1, 2006. In June 2006, the division again contacted  
20 Liberty Mutual as no follow-up discussion had taken place with the division on how to bring the Alyeska  
21 OCIP into compliance with the insurance code.

#### 22 Compliance Issues

23 On September 15, 2006, the division sent a letter to Liberty Mutual reiterating the areas in which the Alyeska  
24 OCIP did not comply with the insurance code and addressing the legal questions raised about the applicability  
25 of AS 21.36.065 to existing contracts. The division has concluded that AS 21.36.065 applied to the Alyeska  
26 OCIP as of January 1, 2006 and that the OCIP violates Alaska law as follows:

1. In its present form, the OCIP is designed to cover on-going maintenance and is not restricted to a large construction project in violation of AS 21.36.065.
2. Prior to the effective date of AS 21.36.065, the OCIP did not comply with AS 21.36.190 which prohibits fictitious groups and requires the Director to approve rates, forms and the plan of insurance covering a group or combination of persons or risks.
3. Rule 3.A.23 of the NCCI manual defines a wrap-up construction project to be a large construction, erection or demolition project. The Alyeska policies were not written for a construction, erection or demolition project but for on-going maintenance as indicated in a May 22, 2000 e-mail from Richard Ruse to Robert Nicholson. Also, some of the classifications shown on the Alyeska OCIP policies are not construction related classifications. Simply because the classifications were incidental to the central purpose of the wrap-up does not qualify them as eligible classifications to be included in a wrap-up. The policies were not written in compliance with the approved NCCI OCIP rules and therefore were written in violation of AS 21.39.040(h).
4. Not all of the policies in the OCIP qualify for the Large Risk Alternative Rating Option. Liberty Mutual has noted that while the premium attributable to the work performed on the OCIP may not meet the eligibility thresholds, the contractors themselves are large enough to qualify. Rule III.E of the NCCI Retrospective Rating Plan Manual states that a risk is eligible for the Large Risk Alternative Rating Option (LRARO) if the estimated standard premium exceeds an average of \$1,000,000 annually for the term of the plan. Liberty Mutual has an approved filing with a different eligibility threshold. Regardless of the eligibility threshold, this rule logically requires that the premium applicable to the policy that will be rated under the LRARO is the qualifying premium. It is not reasonable or logical to interpret the rule to mean that the total premium for all policies that the insured may have, including those outside the LRARO rating plan, is the qualifying premium. Some



1 of the policies were not written in compliance with the approved LRARO rules and therefore were  
2 written in violation of AS 21.39.040(h).

- 3 5. In addition to the OCIP program itself, several of the specific forms used in the OCIP have not been  
4 approved by the division. The revised edition of the Commercial General Liability Coverage form  
5 NRD 207 RG R7 0402, the revised version of the General Amendatory Endorsement – Occurrence  
6 Form NRD 201 RG R13 0402, the Owner Controlled Consolidated Insurance Program-Amendment  
7 to Coverage, the Exclusion of Certified Acts of Terrorism and Other Acts of Terrorism CG 21 75 12  
8 02, the Notice of Cancellation Endorsement, the Alternate Employer Endorsement WC 00 03 01 A  
9 and the Fungi or Bacteria Exclusion CG 21 65 were not approved by the Director. The Alaska Loss  
10 Reimbursement Endorsement that was attached to the policy was not the version that was approved  
11 by the Director. AS 21.42.120 states that an insurer may not issue a policy or endorsement unless the  
12 form has been filed with and approved by the Director.
- 13 6. With respect to rates, some of the rates, the factors used to develop the rates, and the rating rules  
14 themselves result in “preferred rates” not offered to persons outside the group. For example, various  
15 rating factors for the general liability and workers’ compensation coverages are not subject to annual  
16 change. And any adjustment under the program will not be made until the end of the three year  
17 project term. As a result, there is no re-evaluation of the exposure at the annual anniversary of the  
18 policy, which would occur for policies outside of this group. Also, the initial application of the  
19 terrorism charge for 2003 and 2004 was not applied to the policy. In addition, the 2005 renewal  
20 quotes reduced the initial proposed premium by eliminating the more hazardous exposures from the  
21 wrap-up and retaining only the less hazardous exposures in the OCIP program thereby reducing the  
22 premium for the OCIP.
- 23 7. Any “deviation” from filed rates and rating rules filed by a rating organization on behalf of Liberty  
24 Mutual must be a uniform percentage deviation and must be approved by the Director under AS  
25 21.39.070. Accordingly, to the extent the rating plan, rating rules, and specific rates under this  
26 program represent deviations from rating organization filings that have not been filed with the  
Director, they are in violation of AS 21.39.070. The exemption of the OCIP from the terrorism  
charge for 2003 and 2004 is a deviation that was not approved by the Director. Another deviation is  
the expansion of the application of the NCCI rules for OCIPs from a construction project to on-going  
maintenance which was not filed with the Director nor is it an appropriate deviation as it is not a  
uniform percentage deviation from the rating organization rating rules.

Order

18 The division has requested that Liberty Mutual rewrite the Alyeska program in a manner that complies with  
19 Alaska law. Liberty Mutual has not yet taken steps to comply with this request. Accordingly, pursuant to the  
20 Director’s authority under AS 21.36.320(c), Liberty Mutual is hereby ordered to cease and desist from  
21 violating Alaska law and from continuing the existing OCIP for Alyeska beyond January 1, 2007. Further,  
22 Liberty Mutual’s violation of Alaska law as well as any violation of this order may, after hearing, subject it to  
23 civil penalties under AS 21.36.320, 21.39.160, and AS 21.90.020. Violation of this order or a provision of  
24 AS 21 also may subject an insurer, after a hearing, to suspension of its certificate of authority to do business  
25 in this state under AS 21.09.150.

26 This Order is effective immediately.

Date this 15<sup>th</sup> day of November, 2006 at Anchorage, Alaska.



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Linda S. Hall  
Director