

IN THE MATTER OF

JOHN HANCOCK MUTUAL LIFE INSURANCE CO., ET
AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS*Docket C-2930. Complaint, Sept. 19, 1978 — Decision, Sept. 19, 1978*

These four (4) consent orders, among other things, require four (4) Boston, Massachusetts insurance companies to cease interlocking directors by allowing any individual to sit on their boards who is simultaneously sitting on the board of any of the other boards or of any other competitive firms. The consent orders additionally require the companies to initiate prescribed procedures designed to eliminate interlocking directorates, and to submit detailed compliance reports to the Commission annually for a five-year period.

Appearances

For the Commission: *Patrick J. Quinlan* and *Alan Proctor*.

For the respondents: *Andrew C. Hartzell, Jr.* for John Hancock Mutual Life Insurance Co., *John S. Kingdon* for New England Mutual Life Insurance Co. and *Edwin M. Zimmerman* for State Mutual Life Assurance Co. and Liberty Mutual Insurance Co., Boston, Mass.

COMPLAINT

The Federal Trade Commission having reason to believe that the above-named respondents have violated Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof, would be in the interest of the public, issues this complaint, stating its charges as follows:

PARAGRAPH 1. The following definitions apply in this complaint:

(a) "John Hancock" means John Hancock Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(b) "Liberty Mutual" means Liberty Mutual Insurance Company, the respondent, Liberty Mutual Fire Insurance Company and all of their insurance company subsidiaries.

(c) "New England Mutual" means New England Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(d) "State Mutual" means State Mutual Life Assurance Company of America, the respondent, and all insurance company members of

"The America Group," including American Variable Annuity Life Assurance Company, The Hanover Insurance Company, Worcester Mutual Insurance Company, and The Beacon Mutual Indemnity Company, and all of their insurance company subsidiaries.

(e) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(f) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(g) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(h) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(i) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

PAR. 2. Respondent John Hancock Mutual Life Insurance Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at John Hancock Place, Boston, Massachusetts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 3. Respondent Liberty Mutual Insurance Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at 175 Berkeley St., Boston, Massachusetts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 4. Respondent New England Mutual Life Insurance Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at 501 Boylston St., Boston, Massachu-

setts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 5. Respondent State Mutual Life Assurance Company of America is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at 440 Lincoln St., Worcester, Massachusetts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 6. Roger C. Damon is a member of the boards of directors of Liberty Mutual Insurance Company and New England Mutual Life Insurance Company. He is also a member of the Finance Committee of New England Mutual Life Insurance Company.

PAR. 7. Thomas J. Galligan, Jr., is a member of the boards of directors of Liberty Mutual Insurance Company and New England Mutual Life Insurance Company. He is also a member of the Finance Committee of New England Mutual Life Insurance Company.

PAR. 8. Richard D. Hill is a member of the boards of directors of Liberty Mutual Insurance Company and John Hancock Mutual Life Insurance Company.

PAR. 9. D. Thomas Trigg is a member of the boards of directors of Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America.

PAR. 10. John Hancock conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975, its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

Lines of Business	Annual Premiums Written During 1975
Group Accident and Health	407,519,427
Ordinary Life	586,604,681
Group Life	212,735,047
Individual Annuities	5,619,142

PAR. 11. Liberty Mutual conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975, its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

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Lines of Business	Annual Premiums Written During 1975
Fire	6,482,256
Allied Lines	4,561,932
Homeowner's Multiple Peril	56,062,660
Commercial Multiple Peril	21,324,904
Inland Marine	12,081,305
Group Accident and Health	98,410,880
Other Accident and Health	2,924,900
Workmen's Compensation	413,965,016
Other Liability	112,867,361
Auto Liability	271,919,902
Auto Physical Damage	124,330,409
Fidelity	2,157,232
Burglary/Theft	2,025,214
Ordinary Life	5,766,025
Group Life	8,811,364
Individual Annuities	66,331

PAR. 12. New England Mutual conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975, its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

Lines of Business	Annual Premiums Written During 1975
Group Accident and Health	56,167,752
Ordinary Life	318,329,892
Group Life	21,133,487
Individual Annuities	22,791,633

PAR. 13. State Mutual conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975 its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

Lines of Business	Annual Premiums Written During 1975
Fire	24,765,253
Allied Lines	10,683,161

Homeowner's Multiple Peril	34,434,834
Commercial Multiple Peril	23,957,896
Inland Marine	6,497,439
Group Accident and Health	50,636,102
Other Accident and Health	4,086,048
Workmen's Compensation	31,998,014
Other Liability	108,356,934
Auto Liability	55,692,894
Auto Physical Damage	41,380,235
Ocean Marine	6,004,993
Aircraft	9,767,027
Surety	2,329,641
Ordinary Life	103,594,266
Group Life	18,621,943
Individual Annuities	1,198,888

PAR. 14. (a) By the nature of their business and the locations of their operations as hereinabove described, Liberty Mutual and New England Mutual are competitors of each other in the sale of insurance, including but not necessarily limited to, the sale of the following lines of insurance: group accident and health, ordinary life, group life, and individual annuities.

(b) The elimination, by agreement or otherwise, of competition between Liberty Mutual and New England Mutual would constitute a violation of the antitrust laws.

PAR. 15. (a) By the nature of their business and the locations of their operations as hereinabove described, John Hancock and Liberty Mutual are competitors in the sale of insurance, including but not necessarily limited to, the sale of the following lines of insurance: group accident and health, ordinary life, group life, and individual annuities.

(b) The elimination, by agreement or otherwise, of competition between John Hancock and Liberty Mutual would constitute a violation of the antitrust laws.

PAR. 16. (a) By the nature of their business and the locations of their operations as hereinabove described, State Mutual and Liberty Mutual are competitors of each other in the sale of insurance, including but not necessarily limited to, the sale of the following lines of insurance: fire, allied lines, homeowner's multiple peril, commercial multiple peril, inland marine, group accident and health, other accident and health, workmen's compensation, other

liability, auto liability, auto physical damage, ordinary life, group life, and individual annuities.

(b) The elimination, by agreement or otherwise, of competition between State Mutual and Liberty Mutual would constitute a violation of the antitrust laws.

PAR. 17. (a) John Hancock, Liberty Mutual, New England Mutual and State Mutual conduct their business, as hereinabove described, in the District of Columbia and in various States of the United States.

(b) John Hancock, Liberty Mutual, New England Mutual and State Mutual engage in "commerce" and conduct their business, including activities involving their boards of directors, so as to have an effect upon "commerce," as the term "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44 and in Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 18. Roger C. Damon's simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and New England Mutual Life Insurance Company is a violation by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company.

PAR. 19. Thomas J. Galligan, Jr.'s simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and New England Mutual Life Insurance Company is a violation by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company.

PAR. 20. Richard D. Hill's simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and John Hancock Mutual Life Insurance Company is a violation by Liberty Mutual Insurance Company and John Hancock Mutual Life Insurance Company of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual

Insurance Company and John Hancock Mutual Life Insurance Company.

PAR. 21. D. Thomas Trigg's simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America is a violation by Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America.

DECISION AND ORDER RE RESPONDENT JOHN HANCOCK
MUTUAL LIFE INSURANCE COMPANY

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent for the purpose of this proceeding only of the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as set forth in said agreement; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at John Hancock Place, Boston, Massachusetts.
2. The Federal Trade Commission has jurisdiction over the

subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That the following definitions shall apply in this order:

(a) "John Hancock" means John Hancock Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

II

It is further ordered, That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such individual is or would be at the same time a director or nominee for director of Liberty Mutual Insurance Company so long as respondent and Liberty Mutual Insurance Company are in competition in the underwriting of one or more lines of insurance.

III

It is further ordered, That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of Liberty Mutual Insurance Company. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with John Hancock, or that all legally available steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within John Hancock, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition with any line of insurance underwritten by John Hancock for which, during the immediately preceding calendar year, annual premiums received by John Hancock exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph

III(b) hereof discloses the existence of competition in any line of insurance between John Hancock and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the Respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

IV

It is further ordered, That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of John Hancock above or is John Hancock's (1) parent, (2) sister, or (3) subsidiary.

DECISION AND ORDER RE RESPONDENT LIBERTY MUTUAL INSURANCE COMPANY

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent for the purpose of this proceeding only of the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as set forth in said agreement; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at 175 Berkeley St., Boston, Massachusetts.
2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That the following definitions shall apply in this order:

(a) "Liberty Mutual" means Liberty Mutual Insurance Company, the respondent, Liberty Mutual Fire Insurance Company and all of their insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an

insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

II

It is further ordered, That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such individual is or would be at the same time a director or nominee for director of John Hancock Mutual Life Insurance Company or New England Mutual Life Insurance Company or State Mutual Life Assurance Company of America so long as respondent and any of the said companies of which said individual is or would at the same time be a director or nominee for director are in competition in the underwriting of one or more lines of insurance.

III

It is further ordered, That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of John Hancock Mutual Life Insurance Company or New England Mutual Life Insurance Company or State Mutual Life Assurance Company of America. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with Liberty Mutual, or that all legally

available steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within Liberty Mutual, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition with any line of insurance underwritten by Liberty Mutual for which, during the immediately preceding calendar year, annual premiums received by Liberty Mutual exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph III(b) hereof discloses the existence of competition in any line of insurance between Liberty Mutual and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal

within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

IV

It is further ordered, That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of Liberty Mutual above or is Liberty Mutual's (1) parent, (2) sister, or (3) subsidiary.

DECISION AND ORDER RE RESPONDENT NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent for the purpose of this proceeding only of the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as set forth in said agreement; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at 501 Boylston St., Boston, Massachusetts.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That the following definitions shall apply in this order:

(a) "New England Mutual" means New England Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

II

It is further ordered, That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such

individual is or would be at the same time a director or nominee for director of Liberty Mutual Insurance Company so long as respondent and Liberty Mutual Insurance Company are in competition in the underwriting of one or more lines of insurance.

III

It is further ordered, That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of Liberty Mutual Insurance Company. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with New England Mutual, or that all legally available steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine, by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within New England Mutual, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition

with any line of insurance underwritten by New England Mutual for which, during the immediately preceding calendar year, annual premiums received by New England Mutual exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph III(b) hereof discloses the existence of competition in any line of insurance between New England Mutual and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

IV

It is further ordered, That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of New England Mutual above or is New England Mutual's (1) parent, (2) sister, or (3) subsidiary.

DECISION AND ORDER RE RESPONDENT STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to

present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent for the purpose of this proceeding only of the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as set forth in said agreement; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at 440 Lincoln St., Worcester, Massachusetts.
2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

I

It is ordered, That the following definitions shall apply in this order:

(a) "State Mutual" means State Mutual Life Assurance Company of America, the respondent, and all insurance company members of "The American Group," including American Variable Annuity Life Assurance Company, The Hanover Insurance Company, Worcester Mutual Insurance Company, and The Beacon Mutual Indemnity Company, and all of their insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled

by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

II

It is further ordered, That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such individual is or would be at the same time a director or nominee for director of Liberty Mutual Insurance Company so long as respondent and Liberty Mutual Insurance Company are in competition in the underwriting of one or more lines of insurance.

III

It is further ordered, That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of Liberty Mutual Insurance Company. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with State Mutual, or that all legally available

steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within State Mutual, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition with any line of insurance underwritten by State Mutual for which, during the immediately preceding calendar year, annual premiums received by State Mutual exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph III(b) hereof discloses the existence of competition in any line of insurance between State Mutual and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the Respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal

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INTERLOCUTORY ORDER

within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

IV

It is further ordered, That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of State Mutual above or is State Mutual's (1) parent, (2) sister, or (3) subsidiary.

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IN THE MATTER OF

CENTURY 21 COMMODORE PLAZA, INC., ET AL.

Docket 9088. Interlocutory Order, Sept. 21, 1978

ORDER DENYING AS MOOT RESPONDENTS' MOTIONS TO
COMPEL PRODUCTION OF DOCUMENTS SUBMITTED TO THE
COMMISSION ON PROPOSED INJUNCTION AND FOR DISCOVERY OF
ALL MEMORANDA, DOCUMENTS, COMMUNICATIONS OR
CONTACTS WITH THE COMMISSION REGARDING PROPOSED
INJUNCTION

Administrative Law Judge Lewis F. Parker has certified to the Commission respondents' motions to compel production of documents submitted to the Commission on an injunction proposed by complaint counsel, and for discovery of all memoranda, documents, communications or contacts with the Commission regarding the proposed injunction. The administrative law judge has recommended that all *ex parte* communications regarding the merits of this case which staff may have made to the Commission with respect to the proposed injunction be released.

The matter is moot. By minute of July 31, 1978, the Commission directed that all such *ex parte* communications from the staff, which contain statements of fact and mixed statements of fact and law which appear to relate to facts in issue, be placed on the public record. By reason of a clerical oversight, this was not done; however, the Commission has been informed that the pertinent materials have since been placed on the public record, pursuant to its July 31, 1978 directive. This procedure fully conforms to Rules of Practice Section 4.7(f), which governs communications, like these, that are *not* prohibited by Section 4.7(b). Accordingly, inasmuch as the Commission is unaware of any further *ex parte* communications on this subject, either written or oral,

It is ordered, That respondents' motions be, and hereby are, denied as moot.