SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BERNARD J. FRIED J.S.C. PART 60

FBEM

Index Number : 401726/2006
PEOPLE OF THE STATE OF N.Y.
vs
LIBERTY MUTUAL HOLDING CO. INC
Sequence Number : 002
DISMISS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

This motion is decided in accordance with the accompanying memorandum.

SO ORDERED

Dated: 3/27/07

BERNARD J. FRIED J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

FBEM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 60

----------X

THE PEOPLE OF THE STATE OF NEW YORK, by ELIOT SPITZER, The Attorney General of the State of New York,

Index No. 401726/06

Plaintiff,

- against -

LIBERTY MUTUAL HOLDING COMPANY, INC., LIBERTY MUTUAL INSURANCE COMPANY, LIBERTY MUTUAL FIRE INSURANCE COMPANY, FIRST LIBERTY INSURANCE CORPORATION, LIBERTY INSURANCE CORPORATION, LIBERTY MARINE UNDERWRITERS, INC., EMPLOYERS INSURANCE COMPANY OF WAUSAU, WAUSAU BUSINESS INSURANCE COMPANY, WAUSAU GENERAL INSURANCE COMPANY, WAUSAU UNDERWRITERS INSURANCE COMPANY,

Defendants.

----------X

APPEARANCES:

For Plaintiff:

Eliot Spitzer

Attorney General of the State of New York
120 Broadway, 23rd Floor
New York, New York 10271
(James J. Park, Esq.)

For Defendants:

Kornstein Veisz Wexler & Pollard, LLP
757 Third Avenue
New York, New York 10017
(Kevin J. Fee)

Vinson & Elkins LLP
666 Fifth Avenue
New York, New York 10103
(David R. Lurie)

FRIED, J.:

Motion sequence numbers 002 and 003 are consolidated for disposition. In motion sequence number 002, defendants Liberty Mutual Insurance Company, Liberty Mutual Fire

Insurance Company, First Liberty Insurance Company, Liberty Insurance Corporation, Liberty Marine Underwriters, Inc., Employers Insurance Company of Wausau, Wausau Business Insurance Company, Wausau General Insurance Company, and Wausau Underwriters Insurance Company move, pursuant to CPLR 3211 (a), without specifying the particular subdivisions, for an order dismissing all causes of action contained in the first amended complaint.

In motion sequence number 003, defendant Liberty Mutual Holding Company, Inc. (Liberty Holding) moves, pursuant to CPLR 3211 (a), also without specifying the particular subdivisions, for an order dismissing all causes of action against it contained in the first amended complaint.

The amended complaint alleges that action is brought by the Attorney General on behalf of the People of the State of New York based upon his authority under General Business Law §§ 340 and 349, Executive Law § 63 (12), Insurance Law § 2316, and the common law of New York (Amended Complaint, ¶ 10). The factual allegations are as follows:

Since the mid-1990's, Liberty Holding, together with its insurance company subsidiaries, which are also defendants in this action (collectively, Liberty Mutual), participated in a scheme to pay undisclosed kickbacks to insurance intermediaries (*id.*, ¶ 3). The vast majority of businesses and consumers purchase insurance through insurance intermediaries known as brokers or independent agents (Producers), which hold themselves out to the insurance buying public as the best way to purchase insurance because they can offer unbiased advice about the coverage options available (*id.*, ¶ 4). Producers represent the

client, obtain price quotes, present the quotes to the client, and make recommendations that include factors other than price (*id.*, ¶ 21).

Producers in this structure receive an up-front fee or a commission for locating the best insurance coverage at the lowest price (*id.*, ¶ 22). In addition, Producers sometimes also receive a contingent commission that comes from insurance companies on an annual basis and which are generally based upon (1) the amount of business that the clients of Producers place with the insurer, (2) the number of clients of the Producers that renew policies with the insurer, and (3) the profitability of the business placed by the Producers (*id.*, ¶ 23).

Since at least the mid 1990's, Liberty Mutual and other insurers have paid hundreds of millions of dollars in contingent commissions to large insurance Producers, including Marsh & McLennan Companies, Inc. (Marsh), the Aon Corporation, Willis Group Holding Ltd., and Arthur J. Gallagher & Co. (Gallagher) to induce them to steer insurance business to them (*id.*, ¶ 24). In December 2003, a senior Gallagher executive sent an email to all branch and regional managers urging them to "pump" business to seven favored insurers including Wausau, a Liberty Mutual subsidiary (*id.*, ¶ 27). Customers in New York State and throughout the United States bore the costs of this steering scheme by being steered to more expensive and perhaps inferior products (*id.*, ¶ 28). Contingent commissions created incentives for Producers to recommend insurance that they knew was more expensive or otherwise less advantageous to the customer because the contingent commission structure was more advantageous to the Producer (*id.*, ¶ 34).

In the area of excess casualty insurance, Liberty Mutual, together with Marsh and several other major insurers, colluded to rig bids and submit false quotes to unwitting clients

(*id.*, ¶ 35).[1] The center of this collusive scheme was Marsh's "Global Broking" division in Manhattan (*id.*, ¶ 36). From 2001 through 2004, Liberty Mutual participated in the scheme in two ways: where Liberty Mutual was the incumbent on a "layer" of business, Marsh generally sought to protect its incumbency and gave it an unfair competitive advantage, and (2) where Liberty Mutual was not the incumbent on a layer, Liberty Mutual agreed to provide less attractive quotes or to decline to quote to protect the incumbent, sometimes with the understanding that Liberty Mutual would receive business on another excess layer without competition (*id.*, ¶ 37). Marsh would instruct other insurance companies to provide intentionally losing bids that were inferior to those provided by the favored insurer known as "fakes," "backup," "supportive" or "protective quotes." This pretense of competition was intended to give, and gave, clients the impression that the favored insurer's bid was the best available (*id.*, ¶ 40).

Liberty Mutual was an active participant in the collusive bid rigging scheme set up by Marsh. On August 8, 2005, Kevin Bott, a Liberty Mutual assistant vice president underwriter in the excess casualty division at Liberty International Underwriters in New York, pled guilty to criminal charges in connection with his involvement in the scheme, and he confessed that brokers at Marsh instructed him to submit protective quotes on certain pieces of business where Marsh had predetermined which insurance carrier would win the

---

[1]Liberty Mutual asserts that the "better and proper term" for the alleged conduct is "bid rotation," rather than "bid rigging," as such term is used in the amended complaint. Although the phrase "bid rotation" may, indeed, sound *better* (i.e., less offensive), Liberty Mutual's description of a bid rotation scheme does not make that conduct seem any more *proper* (*see* Memorandum of Law in Support, at n 1). In any event, as to these motions, this is an inconsequential distinction.

bid so as to enable Marsh to maintain control of the market and protect the incumbent (*id.*, ¶ 41). In return, Marsh provided benefits to Liberty Mutual in the form of placements on other layers of coverage and other accounts (*id.*, ¶ 42).

In March 2003, Marsh "Client A" was seeking a renewal of its property and casualty insurance, including excess casualty. Marsh set a price target for the incumbent, AIG, of $140,000, a 20% premium increase. AIG met Marsh's target, and Marsh received protective quotes from Liberty Mutual and another insurer, as revealed in emails involving Edward Keane, a senior executive at Marsh, and Greg Doherty, the Marsh excess casualty executive on the placement (*id.*, ¶ 45).

In October 2001, Marsh "Client B" sought renewal of its excess casualty coverage for several properties, and Marsh and AIG agreed that the premium on the lead layer excess policy would be approximately $80,000. As evidenced by emails involving Josh Bewlay, a senior Marsh executive, his subordinate, and Bott, Marsh was able to procure a protective quote, and AIG was awarded the lead layer excess casualty policy (*id.*, ¶ 46).

In April 2003, Marsh "Client C" sought excess casualty insurance from Marsh. After deciding to award a layer of coverage to Zurich American Insurance Company, Marsh was able to procure protective quotes from Liberty Mutual and ACE, Ltd., as evidenced by an email dated April 10, 2003 from Edward Keane at Marsh to a subordinate, with a follow-up to Bott (*id.*, ¶ 47). A similar scenario involved Marsh "Client D" who approached Marsh in September 2003 for a property and casualty program (*id.*, ¶ 48).

Through these actions, Liberty Mutual and the other participants in the excess casualty bid rigging scheme have succeeded in allocating customers and raising premiums

for all customers who purchased excess casualty insurance throughout the United States from 2001 through 2004 (*id.*, ¶ 50).

These allegations are the basis for five causes of action. The first cause of action, for fraudulent business practices, alleges that Liberty Mutual's acts violate Executive Law § 63 (12) in that it has engaged in repeated fraudulent or illegal acts in the transaction of business.

The second cause of action, for anti-competitive behavior, alleges that beginning no later than in 2001, and continuing through 2004, Liberty Mutual, together with Marsh and others, conspired unreasonably to restrain trade and commerce in violation of Insurance Law § 2316 by (1) providing persons seeking to purchase primary insurance with collusive, fictitious, or otherwise non-competitive bids or other terms of sale, (2) allocating the opportunity to sell, and the sale of, insurance to clients, and (3) creating a scheme to pay Marsh to implement the unlawful conspiracy. This scheme caused clients to purchase insurance at prices higher than they would otherwise have paid. If the conduct is not regulated by Article 23 of the Insurance Law, then Liberty Mutual's acts violated the Donnelly Act, General Business Law § 340.

The third cause of action is for common-law fraud.

The fourth cause of action alleges that Liberty Mutual unjustly enriched itself and deprived its clients and the investing public of a fair market place.

The fifth cause of action alleges that Liberty Mutual induced Producers to breach their fiduciary duties to their clients.

Liberty Mutual argues that the amended complaint should be dismissed in its entirety because (1) insurance agents and their brokers do not owe a fiduciary duty to their customers,

and even if they did, Liberty Mutual did not induce its breach; (2) plaintiff lacks standing to assert the antitrust claim, the Donnelly Act preempts it, and it is time-barred; (3) plaintiff lacks *parens patriae* standing to assert the common-law or antitrust claims; (4) the amended complaint does not plead the common-law and Executive Law § 63 (12) fraud claims with sufficient particularity; and (5) the express insurance contracts preclude the unjust enrichment claim. Liberty Mutual also asserts that the amended complaint fails to plead a proper factual basis for imposing punitive damages or treble damages on it.

Liberty Holding joins in the above arguments for dismissal. Additionally, Liberty Holding argues that the court should dismiss the amended complaint as against it based upon lack of personal jurisdiction.

For the reasons that follow, motion number 002 is denied and motion number 003 is granted.

Motion 002

The first cause of action, for fraudulent business practices, alleges that Liberty Mutual has engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality in the carrying on, conducting, or transacting of business in violation of Executive Law § 63 [12]). Liberty Mutual argues that this cause of action is not validly stated because it is based upon contingent commissions claims, and the law does not prohibit an insurance company from paying insurance brokers or agents contingent commissions regarding the business they produce (*citing Amusement Bus. Underwriters v American Intl. Group*, 66 NY2d 878 [1985]). Liberty Mutual also argues that the amended complaint fails to plead fraud with adequate particularity, and the claim is time-barred.

None of these assertions have merit. Paragraphs 39-48 of the amended complaint, described above, sets forth in adequate detail the components of the alleged fraudulent conduct so as to inform Liberty Mutual of the substance of the claim against it (*Marcus v Jewish Natl. Fund (Keren Kayemeth Leisrael)*, 158 AD2d 101, 105 [1st Dept 1990]). Moreover, even if contingent compensation arrangements are lawful, the amended complaint also alleges bid rigging (*see e.g.* ¶ 45). Furthermore, the cause of action is not time-barred, because fraud claims, as well as claims brought pursuant to Executive Law § 63 (12), are governed by a six-year limitation period (*Morelli v Weider Nutrition Group*, 275 AD2d 607 [1st Dept 2000]). The specific instances of alleged wrongdoing, detailed in the amended complaint, fall within this six-year period (*see* Amended Complaint, ¶¶ 45-48).

The second cause of action, for anti-competitive behavior, alleges that, beginning no later than in 2001, and continuing through 2004, Liberty Mutual, together with Marsh and others, conspired unreasonably to restrain trade and commerce in violation of Insurance Law § 2316 by (1) providing persons seeking to purchase primary insurance with collusive, fictitious, or otherwise non-competitive bids or other terms of sale, (2) allocating the opportunity to sell, and the sale of, insurance to clients, and (3) creating a scheme to pay Marsh to implement the unlawful conspiracy. This scheme caused clients to have purchased insurance at prices higher than they would otherwise have paid. If the conduct is not regulated by Article 23 of the Insurance Law, then Liberty Mutual's acts violated the Donnelly Act, General Business Law § 340.

Liberty Mutual argues that I should dismiss this cause of action on three grounds: (1) neither Insurance Law § 2316, nor the Donnelly Act, gives the Attorney General standing to

seek damages allegedly suffered by persons whom he contends were injured by anti-competitive behavior; (2) the Donnelly Act, by its own terms (General Business Law § 340 [2]), expressly prohibits plaintiff from addressing the legality of the alleged transactions, and (3) the three-year statute of limitations applicable to an action to recover upon a liability, penalty, or forfeiture created or imposed by statute (CPLR 214 [2]), renders as time-barred the antitrust claims under Insurance Law § 2316.

As for the first ground, Liberty Mutual argues that Insurance Law § 2316 (b) (2) permits any person injured in business to seek to enjoin any violation of Insurance Law § 2316 (a), but there is no language in that statute that enables the Attorney General to seek damages on any injured person's behalf. Liberty Mutual concedes, however, that the Superintendent, acting through the Attorney General, has the express power to bring an action to enjoin any violation of Insurance Law § 2316, and one form of relief sought here is the enjoining of the alleged violations. In addition, the Superintendent has authorized the Attorney General to take enforcement action in matters that, arguably, this action encompasses (*see* Exhibit C to Affidavit of James J. Park, Esq., sworn to September 29, 2006).

As for Liberty Mutual's preemption argument, General Business Law § 340 (2) (the Donnelly Act) provides in relevant part:

> "Subject to the exceptions hereinafter provided in this section, the provisions of this article shall apply to licensed insurers, licensed insurance agents, licensed insurance brokers, licensed independent adjusters and other persons and organizations subject to the provisions of the insurance law, *to the extent not regulated by provisions of article twenty-three of the insurance law . . .*" (emphasis added).

Hence, Liberty Mutual's argument that the civil penalty in the Donnelly Act is

inconsistent with the civil monetary penalty contained in Article 23 of the Insurance Law is inconsequential for purposes of this pre-answer motion, because the amended complaint alleges that, to the extent that the conduct is not regulated by Article 23 of the Insurance Law, then the conduct violates the Donnelley Act.

Some, but not all, of the antitrust claims under Insurance Law § 2316 are time-barred pursuant to CPLR 214 (2), because of the three-year statute of limitations applicable to an action to recover upon a liability, penalty, or forfeiture created or imposed by statute. The amended complaint describes four specific instances of alleged bid rigging in connection with Marsh's placement of insurance policies with other insurers, three of which occurred more than three years prior to the commencement of this action (*see* Amended Complaint, ¶¶ 45-47]). One instance allegedly occurred in September 2003 (*id.*, ¶ 48), which is less than three years from the filing of this action in July 2006.[2] Furthermore, as discussed above, to the extent that the claims fall within the ambit of the Donnelly Act, the cause of action is not time-barred, because that statute has a four-year limitations period (General Business Law § 340 [5]; *Big Apple Concrete Corp. v Abrams*, 103 AD2d 609 [1st Dept 1984]).

The third cause of action is for common-law fraud. As discussed above, Liberty Mutual's arguments – that plaintiff fails to allege how the contingent commission agreements are illegal or fraudulent and the complaint fails to plead the fraud claims with sufficient particularity – are without merit. The claim of lack of particularity is particularly puzzling, in that, among the allegations contained in the amended complaint is the assertion that Bott,

---

2

I note that there is a discrepancy between the amended complaint and an exhibit to it as to whether this occurred in September 2002 or 2003.

a Liberty Mutual assistant vice president underwriter in the excess casualty division at Liberty International Underwriters in New York, pled guilty to criminal charges in connection with his involvement in the scheme, and he confessed that brokers at Marsh instructed him to submit protective quotes on certain pieces of business where Marsh had predetermined which insurance carrier would win the bid so as to enable Marsh to maintain control of the market and protect the incumbent (Amended Complaint, ¶ 41).

The fourth cause of action alleges that Liberty Mutual unjustly enriched itself and deprived its clients and the investing public of a fair market place. Liberty Mutual argues that the unjust enrichment claim is precluded because all premium payments were made pursuant to express contracts of insurance. However, the scope, enforceability, and applicability of the agreements cannot be determined on these papers (*ME Corp. S.A. v Cohen Bros.*, 292 AD2d 183 [1st Dept 2002]).

The fifth cause of action alleges that Liberty Mutual induced the Producers to breach their fiduciary duties to their clients. Liberty Mutual argues that insurance agents and brokers do not owe a fiduciary duty to their customers, and that, even if such duty existed, Liberty Holding did not induce a breach. Thus, it contends, the cause of action is not validly stated because the agent's only duty is to obtain the policy that the client requested within a reasonable period of time or inform the client of an inability to do so.

In asserting this proposition, Liberty Mutual relies primarily on the decisions of *Murphy v Kuhn* (90 NY2d 266 [1997]) and *Wender v Gilberg Agency* (304 AD2d 311 [1st Dept], *lv denied* 100 NY2d 507 [2003]). In *Murphy v Kuhn*, the Court of Appeals held that insurance agents have no continuing duty to advise, guide, or direct a client to obtain

additional coverage. In *Wender v Gilberg Agency,* the First Department held that, absent a special relationship of trust and confidence, the agent was under no duty to disclose to plaintiff his contractual commitments, and plaintiff could not justifiably rely on any advice that the agent gave guiding him to a particular policy. Neither of these cases stands for the proposition, as Liberty Mutual impliedly asserts here, that an insurance agent does not act in derogation of the duties owed to the insured by taking part in a bid rigging scheme, as alleged in the amended complaint.

Liberty Mutual contends that, rather than alleging an actual breach of fiduciary duty, the "Amended Complaint merely describes the Attorney General's inchoate suspicion about (and his unhappiness with a particular form of compensation that has been 'commonly known in the insurance industry' for decades" (Memorandum of Law in Support of Motion to Dismiss, at 15). This assertion is belied by the specific allegations in the amended complaint as to the complained of wrongdoing, including the assertions about Bott's guilty plea (Amended Complaint, ¶ 41).

To accede to Liberty Mutual's assertion that the amended complaint does not plead that it knowingly induced a breach of fiduciary duty would be to disregard the settled principle that on a motion to dismiss the court must accord plaintiff the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409 [2001]; *see also Kaufman v Cohen*, 307 AD2d 113, 126 [1st Dept 2003] [a person knowingly participates in a breach of fiduciary duty when that person provides substantial assistant to the primary violator]).

Liberty Mutual argues that the State is not entitled to punitive damages or treble damages, and that the amended complaint fails to plead a proper factual basis for imposing such damages on it. In support of its assertion – that it cannot be held liable in punitive damages for the acts of its employees – Liberty Mutual primarily relies upon *Loughry v Lincoln First Bank, N.A.* (67 NY2d 369 [1986]). According to that decision, however, an employer can be assessed punitive damages based upon the acts of its employees, provided that management has authorized, participated in, consented to, or ratified the conduct giving rise to such damages, or deliberately retained the unfit servant. Significantly, the determination in that case, as well as in the others that Liberty Mutual cites, were made after trial, not, as urged here, on a pre-answer motion (*see id.*; *Gardner v Federated Dept. Stores*, 907 F2d 1348 [2d Cir 1990]; *Orange & Rockland Util. v Muggs Pub*, 292 AD2d 580 [2d Dept 2002]; *Kelleher v F.M.E. Auto Leasing Corp.*, 192 AD2d 581 [2d Dept 1993]). The amended complaint contains allegations adequate to sustain the punitive damages claim (*see e.g.* ¶ 41-43 [the immediate supervisor of Bott, who himself was a vice president, was aware of Liberty Mutual's participation in the bid rigging scheme]).

Hence, even though Executive Law § 63 (12) precludes punitive or treble damages (*State of N.Y. v Solil Mgt. Corp.*, 128 Misc 2d 767 [Sup Ct, NY County], *affd* 114 AD2d 1057 [1st Dept 1985], *appeal denied* 67 NY2d 606 [1986]; *Matter of State of New York v Hotel Waldorf-Astoria Corp.*, 67 Misc 2d 90 [Sup Ct, NY County 1971]), such damages are, nevertheless, available for the common-law fraud cause of action.

Finally, Liberty Mutual argues that plaintiff lacks *parens patriae* standing to assert the antitrust and common-law claims that make up the second through fifth causes of action

because plaintiff has failed to plead injury to a sufficiently substantial segment of the population, and the only injuries alleged are inflated premium payments made to policyholders, an identifiable group, and not to the State and to its general economy and citizenry at large.

To maintain a *parens patriae* action, the State must articulate an interest apart from the interest of particular private persons, i.e., the State must be more than a nominal party, and it must express a quasi-sovereign interest (*Alfred L. Snapp & Son v Puerto Rico ex rel. Barez*, 458 US 592, 607 [1982]). A State has a quasi-sovereign interest in the health and well-being – both physical and economic – of its residents in general (*id.*).

The amended complaint adequately alleges plaintiff's quasi-sovereign interest in an economic area that is likely to broadly affect a substantial segment of the population in the area of insurance. Allegedly, through its actions, Liberty Mutual and the other participants in the excess casualty bid rigging scheme, have allocated customers and raised premiums for all customers who purchased excess casualty insurance throughout the United States from 2001 through 2004 (Amended Complaint, ¶ 50).

As for the assertion that plaintiff cannot invoke *parens patriae* standing to usurp the statutory power relegated to the Superintendent of Insurance, as stated above, the Superintendent has authorized the Attorney General to take enforcement action in matters that, arguably, are encompassed by this action.

Motion 003

Liberty Holding argues that the court should dismiss the amended complaint as against it because of lack of personal jurisdiction. According to the amended complaint,

Liberty Holding is a mutual holding company organized under the Massachusetts General Laws with its corporate headquarters in Massachusetts and with subsidiaries around the world. Plaintiff argues that it has jurisdiction over Liberty Holding because that entity is doing business in New York through these subsidiaries. A showing of agency will not be inferred from the mere existence of a parent-subsidiary relationship (*Frummer v Hilton Hotels Intl.*, 19 NY2d 533 [1967]; *Insurance Co. of N. Am. v EMCOR Group, Inc.*, 9 AD3d 319 [1st Dept 2004]; *Edelman v Taittinger, S.A.*, 298 AD2d 301 [1st Dept 2002]). The vague statement in plaintiff's Opposition Memorandum of Law, that "[t]here is no doubt that Liberty Mutual Holding has 'some control' over the subsidiaries" does not salvage the amended complaint vis-a-vis jurisdiction over this entity. Indeed, "some control" is inconsequential; the control must be so complete that the subsidiary is merely a department of the parent (*Amsellem v Host Marriott Corp.*, 280 AD2d 357 [1st Dept 2001]). Although in *Amsellem v Host Marriott Corp.*, the Court determined that discovery should be permitted because the corporate relations were so complex, no such allegations are made here.

Accordingly, it is

ORDERED that motion sequence number 002 is denied; and it is further

ORDERED that defendants (except for Liberty Mutual Holding Company, Inc.) are directed to serve their answers to the amended complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that motion sequence number 003 by Liberty Mutual Holding Company, Inc. is granted and, as against it, the complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Liberty Mutual

Holding Company, Inc., with costs and disbursements as taxed by the Clerk.

Dated: 3/27/07

ENTER:

J.S.C.

BERNARD J. FRIED
J.S.C.

FILED
MAR 28 2007
COUNTY CLERK'S OFFICE
NEW YORK