

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CODY DROTZMAN,)
)
 Claimant,)
)
 v.)
)
COORS BREWING COMPANY,)
)
 Employer,)
)
 and)
)
ZURICH AMERICAN INSURANCE CO.,)
)
 Surety,)
)
 Defendants.)
_____)

I.C. No. 06-006711

**ORDER ON CLAIMANT COUNSEL’S
MOTION FOR RECONSIDERATION
OF DENIAL OF ATTORNEY’S FEES**

filed July 27, 2010

On June 8, 2010, the Commission entered its Order on Attorney’s fees in the matter above referenced. Counsel’s timely motion for reconsideration was filed on June 28, 2010. In his motion, Counsel requests that the Commission’s Order on Attorney’s Fees be corrected to reflect the following:

1. That Counsel’s request for approval of his claim for attorney’s fees is not based “simply” on the fact that the requested fees are authorized in his contingent fee agreement with Claimant, and
2. That certain “boilerplate” language contained in Counsel’s Form 1022 template was inadvertently included in the subject Form 1022, and not for the purpose of intentionally mischaracterizing the matters in dispute at the time of Counsel’s retention.

The Commission acknowledges that Counsel's request for approval of his claimed fee does not derive solely from the fact that he has a signed contingent fee agreement which authorizes the same. The Commission recognizes that Counsel has taken the position that in exchange for providing Claimant with legal services, he is entitled to a fee for the same, even if those services did not result in securing Claimant monies that he would not otherwise have gotten absent Counsel's efforts. We recognize that attorneys frequently provide valuable services to their clients which do not result in the creation of a fund from which the attorney might be paid. However, the Commission's review of the applicable regulation has led it to conclude an attorney is entitled to apply for a fee only against "available funds", as discussed in the original decision. Since we have found that the PPI award in question in this matter does not constitute "available funds" as defined by the applicable regulation, Counsel is not entitled to a fee from those monies.

Although the Commission might permissibly conclude that if certain language in a document is "boilerplate", it is included in all documents of the type in question, Counsel's criticism of Finding of Fact No. 23 is well taken. The Commission is not aware of any facts which would denigrate Counsel's explanation that although the language in question is "boilerplate" in his Form 1022 template, that language appears in the subject Form 1022 only due to Counsel's inadvertent or erroneous inclusion of the same. It is notable, however, that this is an error which has been repeated in each of three Form 1022 Memoranda recently submitted by Counsel's office to the Industrial Commission. *See, Kulm v. Mercy Medical Center*, Findings of Fact and Conclusions of Law Relating to Counsel's Request for Approval of Attorney's Fees, I.C. 2006-012770 (filed May 20, 2010); *Drotzman v. Coors Brewing Company and Zurich*

American Insurance Company, Order on Attorney's Fees, I.C.2006 – 006711 (filed June 8, 2010); *Gomez v. Nampa Lodging Investors, Inc.*, Order on Attorney's Fees, I.C. 2005-510285 (filed July 22, 2010).

Subject to the aforementioned corrections, the Commission continues to abide by the original Order on Attorney's Fees filed June 8, 2010.

IT IS SO ORDERED.

Dated this ___27th___ day of July, 2010.

INDUSTRIAL COMMISSION

_____/s/_____
R. D. Maynard, Chairman

_____/s/_____
Thomas E. Limbaugh, Commissioner

_____/s/_____
Thomas P. Baskin, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of July, 2010, a true and correct copy of **ORDER ON CLAIMANT COUNSEL'S MOTION FOR RECONSIDERATION OF DENIAL OF ATTORNEY'S FEES** were served by regular United States Mail upon each of the following:

Breck Seiniger
942 W MYRTLE ST
BOISE ID 8370

csn

_____/s/_____
