

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

IDAHO INDUSTRIAL COMMISSION

vs.

ULLICO CASUALTY COMPANY, a
Delaware Corporation.

FILED

AUG - 6 2012

ORDER

INDUSTRIAL COMMISSION

By Order dated April 13, 2012, Ullico Casualty Company (hereinafter "Ullico") was ordered to appear before the Commission to show cause why the Commission should not:

1. Withdraw its approval of Ullico to transact workers' compensation insurance in the state of Idaho; and
2. Order Ullico to cease selling workers' compensation insurance policies in Idaho to Idaho businesses, or to secure payment of workers' compensation under the Idaho Workers' Compensation law.

Hearing on the matter was originally scheduled for May 15, 2012, but was rescheduled for June 7, 2012, at the request of Ullico. At hearing on the Order Show Cause, Ullico was represented by Eric S. Bailey, Esq. At hearing, the Commission admitted into evidence those exhibits identified on the Witness & Exhibit List filed on or about June 1, 2012. Testimony was adduced from Industrial Commission employees Scott McDougall and Faith Cox. Additional testimony was adduced from Christopher Nolan, Assistant Vice-President of Compliance for Ullico.

Now being advised of the law and the premises, the Commission issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Ullico, a Delaware corporation, received approval from the Commission to transact workers' compensation insurance covering the liability of employers on or about July 1, 1992.
2. Ullico has a contractual relationship with Patriot Underwriters, Inc., who serves as the managing general underwriter for Ullico in all states to write workers' compensation coverage. Patriot Underwriters, Inc., also provides adjusting services to Ullico through a sister company, Patriot Risk Services.
3. Ullico also has a national contract with Crawford & Company to provide in-state adjusting services in the several states in which Ullico does business, including Idaho.
4. Ullico terminated its contract with Patriot in March 2012. It continues to have a contractual relationship with Crawford & Company to provide in-state adjusting services.
5. In mid-2010, the Industrial Commission Benefits Department became aware of certain out-of-state adjusting practices in connection with two claims on which Ullico was the designated surety. These practices are memorialized in Mr. McDougall's letter of July 14, 2010 to Lou Ajallow of Ullico. Among the listed issues was the adjusting of Idaho claims by Patty Kelty, an out-of-state adjuster employed by Patriot Risk Services. Ullico was advised that Idaho workers' compensation claims must be assigned to and adjusted by an in-state adjuster.
6. By letter dated September 13, 2010, Douglas Dvorak, Vice President of Claims for Ullico acknowledged receipt of the Commission's July 14, 2010 letter. Mr. Dvorak explained that Patty Kelty is a "remote Patriot adjuster" whose duties include only review and oversight of actual claims-handling of Idaho claims performed by Crawford & Company. Mr.

Dvorak stated that all claims decisions are actually made by Crawford & Company in Idaho.

Concluding his comments, Mr. Dvorak stated:

“Ullico Casualty performs an audit of Patriot at least twice a year and will definitely revisit this issue at its next audit in the 4th quarter of 2010. We will periodically monitor this issue prior to the scheduled audits.”

7. Christopher Nolan testified that in addition to authoring the September 13, 2010 letter to the Industrial Commission, Mr. Dvorak also authored, in October 2010, a letter to Patriot in which Ullico’s expectations concerning compliance with State of Idaho in-state adjusting requirements were reiterated.

8. However, the record unambiguously establishes that other than the October 2010 letter to Patriot, Ullico made no effort to verify Crawford’s and Patriot’s compliance with in-state adjusting requirements via biannual audits, as referenced the in the September 13, 2010 letter from Mr. Dvorak.

9. In fact, the record tends to suggest that Patriot/Crawford adjusting practices did not significantly change, notwithstanding the specific direction given to these contractors by Ullico. For example, Faith Cox testified that her investigations revealed that within a little over two months following the September 13, 2010 letter, Ms. Kelty was, again, making adjusting decisions on Idaho workers’ compensation claims from out-of-state.

10. In March 2012, the Industrial Commission was contacted by an Idaho workers’ compensation claimant named Daniel Belcher concerning a date of injury of February 27, 2012. Mr. Belcher explained that he had not received income benefits to which he thought he was entitled. He told Commission staff that his claim was being adjusted by Jason Wagenblast of Patriot Risk. Commission staff contacted Mr. Wagenblast who explained that the claim was actually being adjusted by Erica Holman, with Patriot Risk out of St. Louis, Missouri. Ms. Cox

contacted Ms. Holman on March 19, 2012, and Ms. Holman confirmed that she was the adjuster on the claim. Ms. Holman explained that she had determined that Mr. Belcher was not entitled to TTD benefits because he had consistently refused suitable light-duty work. Further investigation revealed that although Crawford & Company was identified as the in-state adjuster, Crawford & Company had no record of the claim as of March 19, 2012.

11. Contemporaneous with Ms. Cox's investigation into the Belcher matter, she discovered that the claims of Chisholm Proctor and Jamie Stokes-Thornton were also being adjusted by an out-of-state Patriot adjuster.

12. It was only after Patriot was contacted by Commission staff concerning these practices that the claims files were forwarded by Patriot to Ullico's designated in-state adjuster, Crawford & Company.

13. In the course of conducting its investigation into this matter in March 2012, the Commission did not contact Ullico to advise it of the results of its investigations of the entities with whom Ullico had contracted to provide adjusting services. Ullico's first notice of the investigations undertaken by Commission staff in March 2012 was Ullico's receipt of the Order to Show Cause served on or about April 13, 2012.

14. Christopher Nolan, Ullico's Assistant Vice-President of Compliance, testified that he first became aware of the Industrial Commission's concerns over out-of-state adjusting practices sometime after Mr. Dvorak's letter of October 2011. He candidly admitted that neither he, nor anyone at Ullico, to his knowledge, did anything to follow-up on these issues with Patriot. Specifically, he conceded that the biannual audits referenced in Mr. Dvorak's letter of September 13, 2010 did not occur, at least with respect to the promised detailed review of compliance with State of Idaho in-state adjusting requirements.

15. Preparatory to the Order to Show Cause hearing, Mr. Nolan met with representatives of Patriot and Crawford & Company sometime in May 2012. He testified that at that meeting, he was assured by the representatives of Crawford & Company and Patriot that the Commission's Order to Show Cause misapprehended certain important facts, and that the averments made in the Commission's April 13, 2012 Order to Show Cause were erroneous. Mr. Nolan testified that following this meeting, he believed that Ullico had an explanation for the Commission's allegations that out-of-state adjusting was taking place.

16. Prior to the June 7, 2012 hearing on this matter, the Commission served Ullico with its proposed exhibits. Mr. Nolan testified that his review of these exhibits revealed the existence of a number of documents which had neither been provided to him, nor alluded to, in the course of his May 2012 meeting with representatives of Patriot and Crawford & Company. Mr. Nolan's review of these new documents caused him to conclude that the Commission's averments concerning out-of-state adjusting practices were, in essence, correct. Mr. Nolan testified that he takes no issue with the Commission's averments in this regard, and acknowledges that out-of-state adjusting of Ullico claims took place as alleged.

17. Mr. Nolan testified that he has asked both Crawford & Company and Patriot to address the additional documentation contained in the Commission exhibits, but as of the date of hearing, had not received any response to his inquiry from either Crawford & Company or Patriot.

18. At hearing, Mr. Nolan was invited to describe his plans for assuring compliance with Idaho in-state adjusting requirements should the Commission decide on a penalty less onerous than withdrawing the company's right to transact workers' compensation insurance in this state. Mr. Nolan testified that Ullico would regularly review all open and new Idaho claims

to assure that all adjusting is accomplished in-state and in compliance with applicable law. He also testified that it was his intention to explore renegotiation of Ullico's contract with Crawford, to give explicit direction concerning compliance with Idaho in-state adjusting requirements. However, Mr. Nolan did not rule out the termination of Ullico's contract with Crawford & Company, should Ullico determine that the removal of its business to another in-state adjuster would best assure compliance with Idaho law. Finally, Mr. Nolan testified that the company is amenable to doing whatever is necessary to assure that its in-state adjuster either maintains workers' compensation files within the state, or has immediate electronic access to those files. As noted, the Industrial Commission's investigation into this matter has revealed a number of instances in which Crawford & Company did not have such access, or even an inkling that certain of these claims were extant and open.

CONCLUSIONS OF LAW

1. Pursuant Idaho Code § 72-301(2), no surety shall be permitted to transact workers' compensation insurance covering the liability of employers unless it shall have been authorized to do business under the laws of this state and until it shall have received the approval of the Idaho Industrial Commission. Idaho Code § 72-305 provides that each approved surety shall provide prompt claims services through its own adjusting offices or officers located within the state, or by independent, licensed, resident adjusters. Implementing these statutory requirements, the provisions of IDAPA 17.02.10.51, *et seq.* detail the Commission's specific requirements for maintaining Idaho workers' compensation claims files. Here, it is not disputed that Ullico's conduct, as revealed by the Industrial Commissions' investigation commencing in March 2012, is in derogation of the requirements of the statutory and regulatory scheme. It is further beyond cavil that Ullico was apprised of the Commission's concern over similar practices

in mid-2010, at which time, the Company gave its assurance that it would comply with all Idaho in-state adjusting requirements. Finally, it is clear that, for whatever reason, the company did not implement oversight of its contractors sufficient to assure compliance with Idaho law.

2. On the other hand, the company, through its representative, has been candid and forthcoming about the aforementioned shortcomings, and has proposed a plan of action intended to assure future compliance with Idaho law. It no longer has an ongoing contractual arrangement with Patriot, and is willing to revisit its relationship with Crawford & Company should Ullico determine that compliance with Idaho law can best be assured by establishing a relationship with another third party administrator.

ORDER

Based on the foregoing, the Commission has determined to take the following action on the April 13, 2012 Order to Show Cause:

1. For a period of one year following the date of this order (the "probationary period"), the Industrial Commission will hold in abeyance any decision on the issue of withdrawing Ullico's authority to transact workers' compensation insurance in Idaho. During this period, the Commission will periodically revisit this matter to ascertain whether Ullico has, in fact, implemented practices and procedures sufficient to guarantee compliance with Idaho law. A decision on the ultimate disposition of this matter will be accelerated by any evidence of noncompliance with the statutory/regulatory scheme during the aforementioned period of probation.

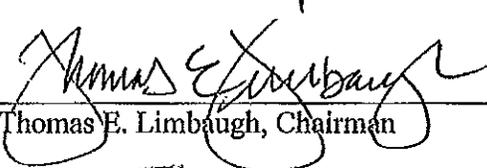
2. Effective sixty (60) days following the date of this order, and for the balance of the one year period of probation, the out-of-state check writing waiver granted to Ullico on or about July 27, 2009, is hereby withdrawn. Ullico is required to comply with the requirements of

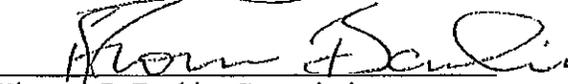
IDAPA 17.02.10.51.07 during the aforementioned period of probation. Upon successful completion of the period of probation, the industrial commission will entertain an application for waiver of in-state check writing requirements.

IT IS SO ORDERED.

DATED this 6th day of August, 2012.

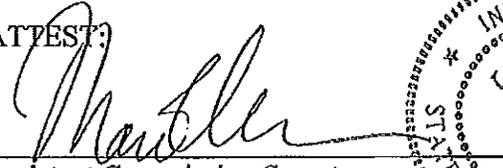
IDAHO INDUSTRIAL COMMISSION

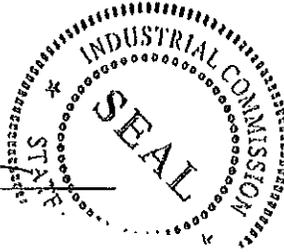

Thomas E. Limbaugh, Chairman


Thomas P. Baskin, Commissioner


R.D. Maynard, Commissioner

ATTEST:


Assistant Commission Secretary



CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of August, 2012 a true and correct copy of the **ORDER** was served by regular United States upon each of the following:

ERIC S BAILEY
PO BOX 1007
BOISE ID 83701-1007

amw

