

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

IDAHO INDUSTRIAL COMMISSION,

v.

GUIDEONE MUTUAL INSURANCE
COMPANY, an Iowa Corporation.

**ORDER ON
ADJUSTING PRACTICES**

On July 26, 2016, the Commission issued its Order requiring GuideOne Mutual Insurance Co. (hereinafter "GuideOne") to show cause why the Commission should not withdraw its approval to transact workers' compensation insurance in Idaho, pursuant to the provisions of Idaho Code § 72-301. In that Order, the Commission noted that an audit of GuideOne had revealed certain instances of out-of-state adjusting on a number of current claim files. A hearing on the matter was held as scheduled on August 24, 2016 at the Commission's offices in Boise, Idaho. In this proceeding GuideOne is represented by Susan Veltman, Esq. GuideOne appeared in the person of Rebecca Rose, a GuideOne Medical Operations Manager from Texas. Also in attendance were Steven Thompson and Victor Frech, employees of CorVel Corporation (hereinafter "CorVel"), GuideOne's third party administrator. The Commission was represented by Blair Jaynes. Without objection, Commission Exhibits and GuideOne Exhibits 1-4, were entered into evidence.

Courtney Butler, of the Commission's Benefits Department, testified to the audit findings, which led to the issuance of the Order to Show Cause. Generally, she described a number of instances of out-of-state adjusting potentially violative of the provisions of Idaho Code § 72-305 and IDAPA 17.02.010.051. These instances of out-of-state adjusting include out-of-state approval of an in-state adjustors reserve recommendations, out-of-state approval of

medical bills incurred in connection with the treatment of Idaho claimants and out-of-state approval of the payment of certain expenses, i.e., investigative expenses, incurred in connection with Idaho claims.

Idaho Code § 72-305 provides:

Claims services and medical supervision. – Each surety shall provide prompt claims services through its own adjusting offices or officers located within the state, or by independent, licensed, resident adjusters.

The surety shall provide medical supervision of cases from its insureds through medical consultants located within the state or near enough to provide prompt and continuous service.

Therefore, Idaho law unambiguously anticipates that claims shall be serviced promptly by the surety, or its independent licensed adjustor, from within the confines of the state of Idaho. Further, medical supervision of claims shall be provided through medical consultants located within the state “or near enough to provide prompt and continuous service.” The provisions of IDAPA 17.02.10.051.01 provide further elaboration on in-state adjusting requirements:

01. Idaho Office.

a. All insurance carriers and licensed adjusters servicing Idaho workers’ compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business.

b. The insurance carrier shall authorize a member of its staff or a resident licensed claims adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. That authority shall include, but is not limited to, the following responsibilities:

i. Investigate and adjust all claims for compensation;

ii. Pay all compensation benefits due;

iii. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers’ Compensation Law;

iv. Enter into compensation agreements and lump sum settlements with Claimants; and

v. Provide at the insurance carrier's expense necessary forms to any worker who wishes to file a claim under the Workers' Compensation Law.

c. As staffing changes occur and, at least annually, the insurance carrier or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code.

Here, GuideOne concedes that CorVel inappropriately gave approval of certain medical bills from outside the state of Idaho. Similarly, GuideOne concedes that CorVel required approval of reserves by CorVel employees located outside the state of Idaho, although GuideOne stops short of conceding that this is a violation of Idaho law. Regardless, GuideOne has agreed to modify its handling instructions with CorVel Corporation to correct these deficiencies identified by the Commission. A copy of the revised handling instructions is provided as Exhibit 1 to GuideOne's Exhibits. As set forth at page 10 of those instructions, CorVel is now given full authority and responsibility to establish initial and subsequent reserves without approval from GuideOne. At page 11 of Exhibit 1, a further change has been initiated to reflect that "prior to denying any claim GuideOne claims adjuster must be notified *for the exception* of Idaho WC claims files." (Emphasis added.) This revision is somewhat ambiguous. Possibly, it contains a typographical error and is intended to read ". . . *with* the exception of Idaho WC claims files . . .". GuideOne is directed to inform the Commission what this revision is intended to convey and, if necessary, provide corrected language. Page 11 also contains a revision which reflects that Idaho adjusters employed by CorVel have full authority to accept or deny losses without consultation from GuideOne.

The Commission appreciates these changes. The Commission notes that no revision was deemed necessary by GuideOne to correct the two incidents noted by the Commission of permission for the payment of medical bills being obtained out-of-state. As explained by GuideOne these were “one off” instances created by manpower issues. The Commission accepts GuideOne’s explanation concerning these instances of out-of-state adjusting, and further accepts GuideOne’s representation that in the future, all decisions concerning the acceptance or rejection of medical bills incurred in connection with the treatment of an injured worker will be made by in-state adjustors.

Further review of the claim handling instructions reveals certain other elements of concern to the Commission. At page 13, under the heading “Surveillance”, the instructions specify that all external investigations (surveillance) require prior approval from GuideOne. This requirement is inconsistent with the requirements of Idaho law that in-state adjustors have full authority to make decisions concerning a claim. Of greater concern are the handling instructions at pages 14 through 23, devoted to “telephonic case management” accomplished from outside the state of Idaho. Though described as medical management, the duties assigned to the telephonic case manager appear to include many which fall outside the bounds of “medical supervision.” Moreover, the ability to conduct medical supervision from outside the state does not mean that the medical consultant authorized by Idaho Code § 72-305 has authority to make decisions concerning the adjusting of a claim. We do not believe that the statute’s authorization of a medical consultant to provide medical supervision relieves the surety from providing an in-state adjustor who has the authority and responsibility to “service and make decisions regarding claims,” which obviously includes the responsibility to oversee medical treatment. Of course, we recognize that an in-state adjustor may not be equipped with the expertise to make a medical

decision concerning this or that aspect of a workers' compensation claim. To the end that an injured worker receives the medical care to which he or she is entitled, an in-state adjuster is certainly authorized, if not required, to consult with such experts as may be necessary to allow the adjuster to make an informed decision about medical care. However, the ultimate responsibility to make a decision and take action on a claim lies with the in-state adjuster, not a remote telephonic case manager. The provisions of the handling instructions appear to the Commission to give too much authority to such out-of-state telephonic case manager. The ultimate authority to adjust a claim and process recommendations made by an expert, such as a telephonic nurse case manager, resides with the in-state adjuster. To the extent that GuideOne's practices concerning telephonic case managers departs from the Commission's expectations and the provisions of Idaho law, GuideOne is instructed to further revise its claim handling instructions consistent with this Order.

ORDER

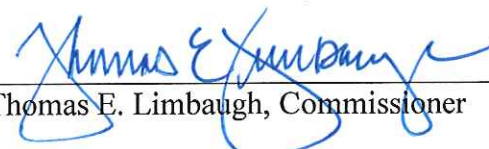
The Commission will conduct a further audit of GuideOne within approximately six months from the date of this Order, in order to gauge compliance with this Order and the provisions of Idaho Code § 72-305 and other applicable rules. **IT IS SO ORDERED.**

DATED this 8th day of September, 2016

INDUSTRIAL COMMISSION



R.D. Maynard, Chairman



Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner

ATTEST:



Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2016, a true and correct copy of the foregoing **ORDER ON ADJUSTING PRACTICES** was served by regular United States Mail upon each of the following:

SUSAN VELTMAN
BREEN VELTMAN WILSON PLLC
1703 W HILL ROAD
BOISE ID 83702

CC:

DEAN L. CAMERON, DIRECTOR
ATTN. ASSISTANT TO THE DIRECTOR
IDAHO DEPARTMENT OF INSURANCE
700 W. STATE ST. 3RD FLOOR
BOISE ID 83720-0043

