

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

IDAHO INDUSTRIAL COMMISSION

v.

T.H.E. INSURANCE COMPANY,
a Florida Corporation.

ORDER

Filed April 10, 2013

By Order dated January 31, 2013, T.H.E. Insurance Company (“T.H.E.”) was ordered to appear before the Idaho Industrial Commission (“Commission”) to show cause why the Commission should not:

1. Withdraw its approval of T.H.E. to transact workers’ compensation insurance in the state of Idaho; and
2. Order T.H.E. 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 held on March 1, 2013. At hearing on the Order Show Cause, T.H.E. was represented by B. Newal Squyres, Esq. At hearing, the Commission admitted into evidence exhibits identified as T.H.E. Exhibits 1-4 and Commission Exhibits 1-30. Testimony was adduced from Industrial Commission employees Scott McDougall and Faith Cox. Additional testimony was adduced from Charles Landrum, President of T.H.E., and Tami Hill, claims adjuster for Crawford & Company.

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. T.H.E., a Florida corporation, received approval from the Commission to transact workers' compensation insurance covering the liability of employers on April 1, 2002.

2. T.H.E. has a national contract with Crawford & Company to provide in-state adjusting services in many states in which T.H.E. does business, including Idaho.

3. In July 2012, the Commission received a First Report of Injury ("FROI") sent by an Idaho workers' compensation claimant, Daniel Johnson. Mr. Johnson's FROI identified T.H.E. as the surety and Crawford & Company as the in-state claims adjuster for his claim. As is standard procedure, the Commission staff provided Crawford & Company with a copy of Mr. Johnson's FROI.

4. Contemporaneously, Faith Cox, the Commission's Surety Audit Claim Coordinator, was conducting an all sureties audit with Crawford & Company.

5. Tami Hill, claims adjuster for Crawford & Company, contacted the Commission to ask if Crawford & Company was the designated instate adjuster for T.H.E. Ms. Cox was surprised to hear that Ms. Hill was unaware that Crawford & Company had been the registered in state adjuster for T.H.E. since 2002.

6. Ms. Cox then began a more thorough investigation of T.H.E. claims. Crawford & Company had two claims of record but T.H.E. provided a list that showed nine claims of record in Idaho. Ms. Cox testified that it was clear that if Crawford & Company did not have the files, those files were being adjusted somewhere other than in Idaho by an in-state adjuster.

7. During the investigation, Carol Lewis-Wilson, the Workers Compensation Claims Manager for T.H.E., corresponded with Commission staff regarding the concerns about out of state adjusting. In an October 18, 2012 email, Ms. Wilson stated, "It is our clear understanding

that according to The Idaho Commission...all claim handling is to be handled by an in-state Licensed Idaho Claims Adjuster; and that if we were to issue checks out of Florida a waiver approved by the commission will be necessary.” Commission Exhibit 10.

8. Ms. Cox had difficulty receiving copies of claim files from T.H.E., but even without the files she was able to find that T.H.E. was adjusting Idaho claims out-of-state and issuing checks from Florida.

9. T.H.E.’s practices are memorialized in Ms. Cox’s letter of December 7, 2012, to Crystal Hageman of T.H.E. Commission Exhibit 18. Among the listed issues were the inability of Crawford & Company to immediately access claim files, the adjusting of Idaho claims out-of-state, and the issuing of compensation benefit checks out-of-state without a waiver. T.H.E. was advised that it must give decision making authority to the local in-state adjusters, must send all original claim correspondence from the local in-state office, must ensure that the in-state adjuster has immediate access to all claim files, and must ensure that all benefit checks are issued from Idaho. The letter included ten findings and compliance notes on each finding. The above notes are not a complete list of the findings, but they do fairly represent the concerns expressed in the letter.

10. By letter dated December 13, 2012, Carol Lewis-Wilson, Workers Compensation Claims Manager for T.H.E., acknowledged receipt of the Commission’s December 7, 2012 letter. Ms. Lewis-Wilson stated that Crawford & Company is T.H.E.’s only in-state claims administrator. Ms. Lewis-Wilson’s letter goes on to address each of the ten findings and states T.H.E.’s understanding of what is required for compliance with Idaho law regarding each finding.

11. At hearing, Charles Landrum, President of T.H.E. Insurance Company, explained that T.H.E. is a small multi-line, multi-state casualty insurer that focuses on underwriting amusement and entertainment liability insurance. T.H.E.'s packages generally include workers' compensation coverage. Mr. Landrum testified that he first became aware of the Industrial Commission's concerns over out-of-state adjusting practices sometime in the summer of 2012. He candidly admitted that claims were adjusted out-of-state, that checks were issued out-of-state without a waiver, and that Crawford & Company did not have immediate access to claim files. Mr. Landrum volunteered himself as the first contact person for any future concerns the Commission has with T.H.E.

12. Preparatory to the Order to Show Cause hearing, Mr. Landrum met with representatives Crawford & Company. He testified that Crawford & Company now has immediate access to all Idaho claim files and that he will ensure that Crawford & Company will have check printing capability soon. Until Crawford & Company has the ability to print checks in Idaho, pre-printed checks are available.

13. At hearing, Mr. Landrum 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. Landrum testified that he drafted a document setting forth the procedures in the Florida office, so there would be no misunderstanding amongst the staff or management about how Idaho claims are to be handled. T.H.E. Exhibit 2. He also testified that Crawford & Company understands that it has full authority to adjust claims and issue checks. Finally, Mr. Landrum offered an apology to the Commission and Ms. Cox for not taking the

Commission's concerns more seriously and promptly contacting both the Commission and Crawford & Company.

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.

2. Here, it is not disputed that T.H.E.'s conduct, as revealed by the Industrial Commissions' investigation commencing in October 2012, is in derogation of the requirements of the statutory and regulatory scheme. T.H.E. has admitted to adjusting Idaho claims out of state and issuing compensation checks out of state without a waiver. It is additionally unsettling that T.H.E., after being apprised of the Commission's concerns, did not act swiftly to bring itself into compliance with Idaho law. Finally, it is clear that T.H.E. did not implement procedures with Crawford & Company sufficient to assure compliance with Idaho law during any of the first ten years of their contract.

3. On the other hand, T.H.E., through its representative, has been candid and forthcoming about the aforementioned shortcomings, and has proposed a plan intended to guarantee future compliance with Idaho law. The Commission has been assured by testimony of Mr. Landrum, President of T.H.E., that he is personally responsible for adherence to the workers'

compensation laws of Idaho and that he will be the direct contact person for any questions by the Commission. Mr. Landrum has also improved communications with Crawford & Company and set up procedures necessary for the proper adjusting of claims and in-state issuance of compensation payments.

ORDER

Based on the foregoing, the Commission has determined to take the following action on the January 31, 2013, Order to Show Cause:

1. For a period of one year following the date of this order (“probationary period”), the Industrial Commission will hold in abeyance any decision on the issue of withdrawing T.H.E.’s authority to transact workers’ compensation insurance in Idaho. During this period, the Commission will, from time to time, revisit this matter to ascertain whether T.H.E. has, in fact, implemented practices and procedures sufficient to guarantee compliance with Idaho law. Failure to comply with Idaho law during the period of probation will result in the withdrawal of approval to transact workers’ compensation insurance in this state.

2. T.H.E. 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 Commission will entertain an application for waiver of in-state check writing requirements.

IT IS SO ORDERED.

DATED this 10th day of April, 2013.

IDAHO INDUSTRIAL COMMISSION

/s/
Thomas P. Baskin, Chairman

/s/
R.D. Maynard, Commissioner

/s/
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of April, 2013 a true and correct copy of the **ORDER** was served, by Certified United States mail, return receipt requested, postage pre-paid in an envelope, upon each of the following:

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/s/