

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

IDAHO INDUSTRIAL COMMISSION,

v.

SEABRIGHT INSURANCE CO.,

Surety.

**SUPPLEMENT TO ORDER TO SHOW
CAUSE**

On or about June 25, 2015, the Commission entered its Order to Show Cause in the matter above-referenced requiring Seabright Insurance to appear before the Commission for the purpose of demonstrating why its approval to write workers' compensation insurance in the State of Idaho should not be withdrawn. Attached as exhibits to that Order were two documents, a March 31, 2015 Order Awarding Attorney's Fees to Claimant and a June 10, 2015 Order Denying Motion for Payment of Benefits and Attorney's Fees. Referenced in the June 10, 2015 Order, but not attached to the Order to Show Cause, is a May 8, 2015 Motion filed by Stella Underwood, asking of the Commission that it require Surety to comply with the March 31, 2015 Order awarding Claimant attorney's fees in the amount of \$2,816.72. Attached as Exhibit A hereto is a true and correct copy of the May 8, 2015 Motion filed by Claimant along with a Certificate of Service demonstrating that it was served on counsel for Surety on or about May 8, 2015. The Commission relies on these pleadings in support of its Order requiring Seabright to demonstrate why approval to write workers' compensation insurance should not be withdrawn.

Following the filing of the June 25, 2015 Order to Show Cause, counsel for Surety favored the Commission with his letter of June 29, 2015, a true and correct copy of which is attached hereto as Exhibit B. Mr. Bailey's unsworn averments raised more questions than they

answered, leading the Commission to vacate the scheduled Order to Show Cause for the purpose of conducting further investigations.

As set forth in Mr. Bailey's letter, on June 24, 2015, prior to the issuance of the Order to Show Cause, the Commission asked Deputy Attorney General Blair Jaynes to contact Mr. Bailey to ascertain why the March 31, 2015 Order Awarding Attorney's Fees had not been satisfied. Mr. Jaynes has reported to the Commission that Mr. Bailey made some immediate inquiries and later called Mr. Jaynes back on June 25, 2015 to report that the surety was unaware of the March 31, 2015 Order but that a check "had been cut" to rectify the situation. Indeed, Mr. Jaynes' recollection is consistent with what Mr. Bailey has reported in his June 29, 2015 letter. What is puzzling about Mr. Bailey's letter is that he states, in two places, that following the issuance of the March 31, 2015 Order, he was altogether unaware that it had not been satisfied until he received Mr. Jaynes' call of June 24, 2015. This is puzzling because on May 8, 2015, Mr. Owen filed his Motion requiring Surety to comply with the March 31, 2015 Order, and further asking for an award of attorney's fees to address what he thought was Surety's unreasonable delay/denial in the payment of the Commission award. The Certificate of Service reflects that Mr. Bailey was served with the May 8, 2015 Motion.

The Commission's June 10, 2015 Order Denying Motion for Payment of Benefits and Attorney's Fees was also served on Mr. Bailey, and the body of that Order reflects that the Commission's March 31, 2015 Order unambiguously required Defendants to pay attorney's fees to Claimant in the amount of \$2,816.72. Claimant's Motion was denied merely because the Commission deemed it pointless to again order surety to pay the award of attorney's fees. Ms. Underwood and her attorney were directed to the provisions of Idaho Code § 72-735 in order to enforce the Commission's original March 31, 2015 Order.

Mr. Bailey admits to receiving the March 31, 2015 Order. He candidly admits that his office failed to transmit this Order to Surety, or its third-party administrator for payment. He states that no action was taken because he was unaware that the March 31, 2015 Order had not been received by his client and because nothing else put him on alert that something was other than it should have been. He points out that in numerous conversations with Mr. Owen, Mr. Owen did not inquire as to the status of the payment of the award for attorney's fees. The Commission's conversations with Mr. Owen confirm that Mr. Owen did not make such inquiry of Mr. Bailey. The Commission's investigations further confirm that the adjuster assigned to this claim did not receive a copy of the March 31, 2015 Order Granting Attorney's Fees, and, indeed, did not know that such an award had been issued until contacted by Mr. Bailey following his telephone call with Mr. Jaynes on or about June 24, 2015. However, what is left unexplained is how Surety could be altogether ignorant of the nonpayment of the award between March 31, 2015 and June 24, 2015, when Mr. Bailey was served with a copy of Mr. Owen's May 8, 2015 Motion as well as the Commission's June 10, 2015 Order.

Further, in investigating this matter with Mr. Owen, Scott McDougal of the Industrial Commission Benefits Department learned that as of the morning of July 2, 2015, the check that had been promised on June 25, 2015 had not yet been received. This caused Mr. McDougal to contact Dave Ward of Intermountain Claims, the third-party administrator for Surety, to make further inquiries. Mr. Ward reported to Mr. McDougal that the check, though ordered by the adjuster assigned to the claim, was cancelled at the instance of Surety for reasons that are not entirely clear. This raises the question of whether decisions relevant to the adjusting of the claim have been made out of state, in derogation of the provisions of IDAPA 17.02.10.051 which

ATTEST:

_____/s/_____
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2015, a true and correct copy of the foregoing SUPPLEMENT TO ORDER TO SHOW CAUSE was served upon each of the following, as follows:

Regular United States Mail and Certified Mail, Return Receipt:

SEABRIGHT INSURANCE CO.
Chief Executive Officer
1501 4th Avenue, Suite 2600
Seattle, WA 98101

Regular United States Mail:

DEAN CAMERON, Director
Idaho Department of Insurance
700 West State Street
Boise, ID 83720-0043

Courtesy Copy by Regular United States Mail to:

RICHARD S OWEN
PO BOX 278
NAMPA ID 83653

ERIC BAILEY
PO BOX 1007
BOISE ID 83701-1007

DEAN WILLIS COURT REPORTING
1695 East Comisky St.
Meridian, Idaho 83646

/s/