

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
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STATE OF ALASKA

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

IN THE MATTER OF)
)
TANTIKIL UNLIMITED, INC.,)
)
Appellant.)
_____)

Case No. H 13-01

PROPOSED DECISION

Introduction

On January 17, 2013, the Alaska Workers' Compensation Grievance Committee (committee) heard a return premium dispute brought by Tantikil Unlimited, Inc. (TUI) against Alaska National Insurance Company (ANIC). According to the case summary and minutes provided by the committee, Mr. Larry Lau, President of TUI, informed the committee that he founded Tantikil Unlimited in 1991 as sole proprietorship. Tantikil Unlimited incorporated in 2001, becoming TUI, and currently has four employees who are family members and officers of the corporation. In 2004 TUI obtained workers' compensation insurance on the advice of its insurance agent and renewed the policy annually. The four officers and sole employees excluded themselves from coverage. Sometime in 2010 (after renewal) Mr. Lau learned that TUI did not need coverage because TUI had no covered employees. In November 2010 TUI asked its agent to cancel the August 2010 - August 2011 policy. However, TUI did not send ANIC a written cancellation request at that time. ANIC did cancel the policy effective 2/18/11 after receiving TUI's written request and returned premium of \$95. Mr. Lau argued ANIC

1 should have returned the entire \$200 premium because TUI never needed the coverage and the
2 request to cancel was made in November 2010.

3 ANIC, represented by Ms. Carmen Reese, did not dispute the facts described by Mr.
4 Lau, but claimed ANIC timely cancelled TUI's policy when it received the signed written
5 request and ANIC properly calculated the return premium consistent with the terms of the
6 policy.

7 Responding to questions from a committee member, Mr. Lau said he never read the
8 policy and that he did not request cancellation in writing until he submitted a letter to ANIC
9 dated Jan. 21, 2011.

10 The committee found PART SIX-CONDITONS D of the policy required mailing or
11 delivery of a written notice of cancellation to the carrier and decided ANIC properly canceled
12 the policy in February 2011 after receiving mailed written notice. The committee also decided
13 ANIC properly determined the return premium for TUI's 2010-2011 policy of \$95. TUI now
14 appeals the committee's decision.

15
16
17 **Discussion**

18 Mr. Lau and Mrs. Lau appeared for TUI at the July 25, 2013 appeal hearing. They
19 argued TUI was never an employer and should never have had obtained a workers'
20 compensation policy. They said ANIC and State Farm should have been have aware of this and
21 should have assisted them in resolving this situation. Instead of helping them though, the Laus
22 claimed ANIC and State Farm added to the confusion. Because of the mistakes by ANIC and
23 State Farm the Laus claim they are entitled to a full refund of the \$200 premium paid for the
24 2010-2011 policy.

25 Ms. Vallentine represented ANIC. She argued TUI was an employer, but one where all
26 employees had claimed executive exclusions. She said it was the sole responsibility of the

1 producer and employer to determine if workers' compensation insurance was required. She
2 explained there may be situations where an employer would want a policy even though, at the
3 time of application there were no covered employees. She claimed, in essence, that it was not
4 up to ANIC to look behind the application for reasons why coverage may or may not be
5 appropriate, but to provide coverage if asked to do so by the producer and employer.

6 Ms. Vallentine also affirmed the \$95 return premium was properly calculated on a pro
7 rata basis by the terms of the policy and based upon the cancellation date of February 18, 2011.
8 This date was based in turn on ANIC's receipt of a mailed written cancellation request signed
9 by Mr. Lau dated January 21, 2013. Ms. Vallentine stated it was reasonable for ANIC to
10 request a written cancellation because a mistaken cancellation could have serious repercussions
11 for employees and is supported by policy conditions.

12 Conclusion

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15 The decision of the Alaska Workers Compensation Grievance Committee of November
16 29, 2012 is affirmed.

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18 The argument that ANIC or NCCI were responsible for TUI's mistaken coverage is not
19 supported by the applicable rule. The Workers' Comp-Assigned Risk Supplement 2- Duties
20 and Responsibilities (2010 edition) sections E.1 and F.1 state the producer and employer are
21 responsible for determining if workers' compensation coverage is required. It would have been
22 the responsibility of the Karen Griggs State Farm Agency to guide TUI through the decision to
23 get workers' compensation coverage, not ANIC or NCCI.

24 Section F.2 states a producer "acts on behalf of the insured or employer applying for
25 coverage under the Plan and not as agent of the Plan Administrator or of any assigned carrier
26

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1 for Plan Business” therefore if coverage was not needed, ANIC and NCCI cannot be liable
2 because the Karen Griggs Agency was not an agent of ANIC and NCCI.

3 The record does not support the conclusion that ANIC wrongly determined the return
4 premium of \$95. TUI requested coverage for renewal for 2010-2011 by written request and
5 returned the payment form with a signed check. The terms of the policy required a written
6 request for cancellation to be delivered or mailed. The request for cancellation was not made in
7 written form until the letter dated January 21, 2011 arrived at ANIC and the letter does not
8 provide any additional dates for cancellation. The policy specifies the return premium will be
9 based upon a pro rata computation and there was nothing on the record to indicate this
10 calculation was in error.

11 For these reasons, I affirm the committee decision.

12
13 Dated this 23rd day of December, 2013.

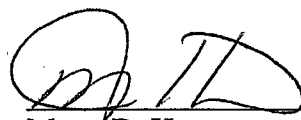
14 *Joanne S. Bennett.*
15 Joanne S. Bennett
16 Hearing Officer

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Adoption

The undersigned director of the Division of Insurance adopts this Proposed Decision in Case No. H 13-01 as the final administrative determination in this matter. Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See attached Notice of Final Order and Appeal Rights.

Dated this 26 day of Dec, 2013,



Marty D. Hester
Acting Director

Non-Adoption Options

1. The undersigned director of the Division of Insurance declines to adopt this Proposed Decision in Case No. H 13-01 and instead orders that the case be returned to the hearing officer to

___ take additional evidence about _____

___ make additional findings about _____

___ conduct the following specific proceedings: _____

DATED this _____ day of _____, 2013.

Marty D. Hester
Acting Director

2. the undersigned director of the Division of Insurance revises the Proposed Decision in Case No. H 13-01 as follows:

Pursuant to AS 21.30.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

DATED this _____ day of _____, 2013.

Marty D. Hester
Acting Director