

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

IN THE MATTER OF)
ALASKA NATIONAL INSURANCE COMPANY,))
Appellant,)
vs.)
H2O GUIDES, INC.,)
Apellee.)

Case No. H 07-04

DECISION AND ORDER

Based on the briefs and documents provided by the parties, I am prepared to render a decision in this matter. The background of this case is briefly as follows:

Background

Alaska National Insurance Company (ANIC) wanted to collect premium from H2O Guides, Inc. (H2O) for workers' compensation coverage of a pilot and a mechanic that had done some work for H2O in the past. ANIC argued that the pilot and mechanic were risks under the workers' compensation policy that H2O had with ANIC and that, therefore, ANIC should be able to collect premium for that risk. H2O argued that the pilot and mechanic were not their employees, were not subject to Alaska's Workers' Compensation Act (AWCA), and were covered by a California workers' compensation policy. The parties brought their dispute to the Alaska Workers' Compensation Rating and Classification Grievance Committee (committee). The committee agreed with H2O, determining that the pilot and mechanic were not subject to the AWCA.

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1 ANIC appealed the committee's decision to me, arguing first and foremost that
2 the committee did not have the authority to make determinations regarding who is or is not
3 covered under the AWCA. At the pre-hearing conference on this matter, ANIC made it clear
4 that it was seeking to collect premium on the disputed workers only for the policy year 2007.
5

6 Decision

7 I agree with ANIC that the committee did not have the authority to determine
8 whether the helicopter pilot and mechanic that provided services to H20 were persons engaged
9 in work that could make ANIC liable under its workers' compensation policy with H20.
10 However, this appears to be a question of first impression regarding the scope of authority of
11 the committee. As such, I conclude that this decision should have prospective application only.
12 For this reason and others outlined below, I am not going to order H20 to pay any additional
13 premium to ANIC for the policy year 2007.

14 Beyond the prospective nature of my decision on the committee's authority,
15 other factors support my conclusion to not order H20 to pay additional premium for the 2007
16 policy year. The paperwork submitted shows that ANIC never billed H20 for the additional
17 premium it now seeks. Also, the findings of the committee (authorized or not) demonstrate that
18 reasonable minds can differ on whether the disputed workers were required to be covered under
19 the AWCA.

20 If a workers' compensation claim was made in Alaska by the pilot or mechanic
21 under the AWCA, the workers' compensation board or a court could be persuaded, as the
22 committee was, that they were independent contractors. If so, it could be concluded that ANIC
23 is not liable. The point here is simply that, from a risk perspective, the indirect relationship
24 between the personnel at issue and H20 means there are more arguments to be made to avoid
25 liability than would be available with respect to a direct employee of H20.
26

1 It also appears that the personnel in question were covered by a California
2 workers' compensation policy, including for injury by accident obtained in the course of
3 employment for work outside of California. ANIC points out that the policy "does not purport
4 to provide insurance under the laws of any state other than the state of California." ANIC then
5 asserts that "the California policy clearly did not provide any coverage for liabilities under the
6 AWCA." That may or may not be the case.

7
8 If the Alaska workers' compensation board or an Alaska court concludes that the
9 disputed personnel are covered under the California policy, it may also be concluded that the
10 personnel are not individuals covered by the AWCA. It might otherwise be concluded that
11 there is dual coverage under the California policy and the AWCA. In that event, one could
12 expect the Alaska workers' compensation board or a court to off-set any recovery available
13 under the California policy against what would otherwise be due under the AWCA (to avoid a
14 windfall or double recovery). In short, the existence of a California policy that may provide
15 coverage for injuries to the disputed personnel reduces the risk to ANIC of being liable for the
16 full amount that it could be liable for injuries to a direct Alaskan employee of H2O.

17 For these reasons, under the totality of the circumstances, I conclude that it
18 would be unfair to order H2O to pay additional premium for the policy year 2007, especially
19 when doing so could amount to giving ANIC a windfall.

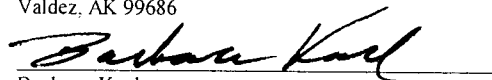
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21 IT IS SO ORDERED this 1st day of May, 2008.

22 
23 Linda S. Hall
24 Director and Hearing Officer

25 I hereby certify that on the 1st day of May, 2008 I mailed copies of this document to the following persons:

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