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STATE OF ALASKA

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

IN THE MATTER OF)
)
PALMER SENIOR CITIZENS' CENTER, INC.,)
CASE NO. AK-GC-03-2010)
)
Appellant.)
)
_____)

Case No. H 10-01

PROPOSED DECISION

Introduction

Pursuant to its *Experience Rating Plan Manual* (manual), the National Council on Compensation Insurance, Inc. (NCCI) issued an ownership ruling that combined Palmer Senior Citizens Center, Inc. (Palmer Senior) with Chugach Colony Estates LP and Colony Estates LP for purposes of experience rating. The ruling affected Palmer Senior's 10/1/08 and 10/1/09 experience rating modifiers.

Palmer Senior disputed the NCCI ownership combination before the Alaska Workers' Compensation Rating and Classification Grievance Committee (Committee). The Committee upheld NCCI's ownership combination and Palmer Senior appealed that decision to the director of the Division of Insurance. The undersigned was appointed by the director to act as hearing officer in this matter. The parties briefed the issues and a hearing was held.

Pursuant to the director's appointment, I hereby submit this proposed decision affirming the Committee's decision.

1 **Discussion**

2 Palmer Senior is in partnership with Key Community Development Corporation
3 (Key). Palmer Senior and Key are owners of the Colony entities. Palmer Senior is a general
4 partner and Key is a limited partner. Palmer Senior manages the partnerships and has authority
5 to direct the safety operations of the Colony entities and itself. Palmer Senior's authority to
6 direct the safety operations of the three combined entities is significant because "experience
7 rating" is concerned with safety and loss prevention. See NCCI's *Experience Rating Plan*
8 *Manual*, Rule 1A.

9
10 The manual has rules for when combining ownership for experience rating
11 purposes is appropriate. Palmer Senior asserts that those rules were not properly followed and
12 that they do not permit combining Palmer Senior with the Colony entities and that, therefore,
13 the decision of the Committee should be reversed. The gist of Palmer Senior's argument is that
14 combination of two or more entities is only allowed when common *majority ownership* exists.

15 According to Palmer Senior's reading of the manual, Palmer Senior could only
16 be combined with the Colony entities if Palmer Senior owned more than 50 percent of each
17 entity. Palmer Senior cites to Rule 3 of the manual. It is uncontested that Palmer Senior does
18 not own more than 50 percent of either of the Colony entities.

19 The problem with Palmer Senior's argument is that it ignores the clear meaning
20 of Rule 3.D.2.d. of the manual. That rule states that determination of majority ownership
21 interest is based on: "[p]articipation of each general partner in the profits of a partnership.
22 ***Limited partners are not considered in determining majority interest.***" *Experience Rating*
23 *Plan Manual*, Rule 3.D.2.d. (emphasis added). Although Palmer Senior participates in less
24 than 1 percent of the profits of the partnership, it is the only general partner participating in the
25 profits. The limited partners' participation in the profits, no matter how great, is "not
26

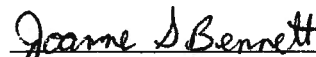
1 considered in determining majority interest.” *Id.* Thus, Palmer Senior takes 100 percent of the
2 profits of the partnership that count, for purposes of the combining rules.

3 Palmer Senior raised new issues in its prehearing brief, issues that were not
4 raised before the Committee. However, I find that they are unpersuasive and that they do not
5 justify a remand to the Committee. Palmer Senior asserted that if the manuals relied on by
6 NCCI could affect an insurance policy, they should be provided free to every insured.
7 However, it was uncontested that the insureds had access to the manuals through their
8 insurance broker. Palmer Senior complained that the Experience Rating Plan Manual was not
9 part of the “Basic” manual or the “Scopes” manual. This complaint is irrelevant. Finally,
10 Palmer Senior argued that NCCI should not be allowed to interpret any of the rules that NCCI
11 produces. There is no authority cited for this proposition, nor is there any discernable logic or
12 reason to it. In any event, although I agree with NCCI’s and the Committee’s interpretation of
13 the relevant rules, I did my own review of them too and base my decision on that review.

14
15 **Conclusion**

16 Because Palmer Senior controls safety operations for the Colony entities and
17 itself, I find and conclude that it was appropriate for NCCI to consider combining those entities
18 for purposes of experience rating. I further find and conclude that the ownership combination
19 was proper under the applicable manual rules. As the only general partner participating in the
20 profits of the partnership, Palmer Senior is considered to have a majority ownership under Rule
21 3.D.2.d, as required to combine the entities for experience rating. For these reasons, I affirm
22 the Committee decision.

23
24 Dated this 26th day of July, 2010.

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26 Joanne S. Bennett
Hearing Officer

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I hereby certify that on the 26th day of July, 2010 I mailed copies of this document to the following persons:

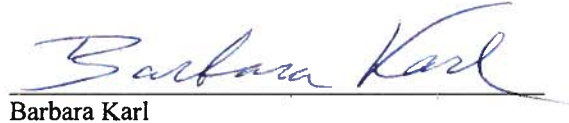
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Adoption

The undersigned director of the Division of Insurance adopts this Proposed Decision in Case No. H 10-01 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 the attached Notice of Final Order and Appeal Rights.

DATED this ____ day of _____, 2010.

Linda S. Hall
Director

Non-Adoption Options

1. The undersigned director of the Division of Insurance declines to adopt this Proposed Decision in Case No. H 10-01 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 _____, 2010.

Linda S. Hall
Director

2. The undersigned director of the Division of Insurance revises the Proposed Decision in Case No. H 10-01 as follows:


I affirm the proposed decision. I understand the positions of both parties but, as the Experience Rating Plan Manual is written, the interpretation of the National Council on Compensation Insurance (NCCI) complies with Rule 3 – D. Combination of Entities.

However, I agree that it does not seem logical to evaluate majority ownership based on a general partner that has less than a one percent ownership of a separate entity.

1 While I am assuming that the Division of Insurance has approved the Experience Rating Plan
2 Manual, I will have Division of Insurance staff evaluate the combination of entities rule to
3 determine if the rules as written, in particular Number D, 2, d, achieve the desired objectives in
4 determining what constitutes majority ownership and to determine whether the rules should be
5 amended.

6 Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may
7 appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal
8 Rights.
9

10 DATED this 13th day of December, 2010.

11
12 
13 Linda S. Hall
14 Director

15 I hereby certify that on the 13th day of December, 2010 I mailed copies of this document to the following
16 persons:

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