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

IN THE MATTER OF)
)
AMERICAN INTERSTATE INSURANCE)
COMPANY)
)
Appellant.)
)
)

Case No. H 14-02

PROPOSED DECISION

Introduction

Earhart Roofing Company, Inc. (Earhart) paid its employees working away from home on a public contract a per diem at a flat rate of \$75 per day and sought to exclude the \$75 per diem payments from its payroll when determining payroll for purposes of calculating Earhart's workers' compensation insurance premium. Earhart's workers' compensation insurer, American Interstate Insurance Company (American) limited the payroll exclusion to \$30 per day (per diem) absent Earhart providing verifiable receipts from Earhart's traveling employees of their actual expenses. Earhart contested American's action before the Alaska Review and Advisory Committee's Workers' Compensation Grievance Committee (Committee) which adopted Earhart's position. American appealed to the director of the Alaska Division of Insurance (director) who appointed a hearing officer to hear the case. For the reasons which follow, I, as

In the Matter of American Interstate Insurance Company
H 14-02

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
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1 the hearing officer, grant the appellee's Motion To Dismiss Or Alternatively For Summary
2 Judgment (Motion) and affirm the Committee's decision.

3 **Discussion**

4 I. ISSUE PRESENTED

5 When an insured in this state is required under the *Laborers' & Mechanics' Minimum*
6 *Rates of Pay, Wage and Hour Administration Pamphlet No. 600* (Pamphlet) to pay its
7 employees per diem in lieu of meals and lodging at the basic rate of \$75 per day, may the
8 insured under Rule 2-B of the Basic Manual deduct the entire \$75 per diem payment from its
9 payroll?
10

11 II. BACKGROUND

12 A. Workers' Compensation

13 AS 23.30.045 makes an employer liable for workers' compensation payments to its
14 employees. AS 23.30.075 requires an employer under AS 23, unless exempted, to either insure
15 the employer's liability under AS 23 or furnish to the Division of Workers' Compensation,
16 Alaska Department of Labor and Workforce Development (DOLWD), satisfactory proof of the
17 employer's ability to pay directly the compensation provided for.

18 Workers' compensation insurance rates, manuals and rating rules are proposed by the
19 National Council of Compensation Insurance (NCCI) and approved by the director under
20 AS 21.39.040. The NCCI is a licensed rating organization approved by the director under
21 AS 21.39.060. NCCI's *Basic Manual for Workers Compensation and Employers Liability*
22 *Insurance - 2001 Edition* (Basic Manual) includes rules by which insurers determine premium
23 basis and payroll allocation.
24

1 The Basic Manual Rule 2-A provides: "Premium¹ is calculated on the basis of the total
2 payroll paid or payable by the insured for services of individuals who could receive workers'
3 compensation benefits for work-related injuries as provided by the policy." For purposes of the
4 Basic Manual, under Rule 2-B "payroll" means money or substitutes for money. The Basic
5 Manual also lists items to be included or excluded in determining the payroll allocation.
6 Further, each state may adopt exceptions to the Basic Manual rating rules.

7
8 The proper determination of payroll for workers' compensation purposes is critical for
9 premium determination.

10 B. Public Contracts

11 AS 36.05.010 requires "[a] contractor or subcontractor who performs work on a public
12 construction contract in the state [to]... pay not less than the current prevailing rate of wages
13 for work of a similar nature in the region where the work is done." The same statute section
14 also provides that "[t]he current prevailing rate of wages is that contained in the latest
15 determination of prevailing rate of wages issued by the DOLWD at least 10 days before the
16 final date for submission of bids for the contract."

17 DOLWD publishes its current prevailing rate wages twice a year in a pamphlet titled
18 *Labors' & Mechanics' Minimum Rates of Pay, Wage and Hour Administration Pamphlet No.*

19 600.² The Pamphlet includes a per diem requirement for certain workers:

20 [T]he employer shall ensure that a worker who is employed on a project that is 65 road miles or
21 more from the international airport in either Fairbanks, Juneau or Anchorage or is inaccessible

22 _____
23 ¹ The Basic Manual defines premium as "[t]he amount of money an insurance company charges to provide the
24 coverage described in the policy."

25 ² The Pamphlet includes a letter to all contracting agencies from the DOLWD commissioner stating the "pamphlet
26 is designed to help contractors awarded public construction contracts understand the most significant laws of the
State of Alaska pertaining to prevailing wage...requirements." The letter also provides the "pamphlet identifies
current prevailing wage rates...for public construction contracts."

1 by road in a 2-wheel drive vehicle and who is not a domiciled resident of the locality of the
2 project shall receive meals and lodging...

3 Where the employer provides or furnishes board, lodging or any other facility, the cost or
4 amount thereof shall not be considered or included as part of the required prevailing wage basic
5 hourly rate and cannot be applied to meet other fringe benefit requirements. The taxability of
6 employer provided board and lodging shall be determined by the appropriate taxation
7 enforcement authority...

8 Employers are encouraged to use commercial facilities and lodges; however, when such
9 facilities are not available, per diem in lieu of meals and lodging must be paid at the basic rate
10 of \$75.00 per day, or part thereof, the worker is employed on the project...

11 Pamphlet, pp. v – vi.³

12 III. FACTS AND PROCEEDINGS

13 A. Initial Facts and Proceedings

14 Earhart bid on and was awarded a public contract to provide services for a project
15 location which was more than 65 road miles or more from the international airport in either
16 Fairbanks, Juneau or Anchorage and was inaccessible by road in a 2-wheel drive vehicle.
17 Earhart did not provide or furnish board or lodging and no commercial facilities and lodges
18 were available. Earhart therefore paid its employees a per diem at a flat rate of \$75, as required
19 by DOLWD on public contracts. During the period of the contract, American was Earhart's
20 workers' compensation insurer.

21 Earhart, under its interpretation of the Basic Manual, sought to deduct the \$75 per diem
22 payments to its employees from its payroll when determining payroll for purposes of

23 ³ The appellant's exhibit list includes Issue 23 of the Pamphlet dated September 1, 2011 and revised November 1,
24 2011 while the appellee's exhibit list includes Issue 28 of the Pamphlet dated April 1, 2014. The relevant portions
25 of the Pamphlet referred to herein, however, are identical in both versions cited by the parties, with the one
26 exception that the 2014 version includes the sentence "In the event that a contractor provides lodging facilities but
no-meals, the department will accept payment of \$36 per day for meals to meet the per diem requirements.", while
the 2011 version does not. The additional sentence was added in Issue 26, effective April 1, 2013 and is not
germane here.

1 calculating Earhart's workers' compensation insurance premium. American, under its
2 interpretation of the Basic Manual, limited the payroll deduction for Earhart's employees to \$30
3 per day absent Earhart providing verifiable receipts from Earhart's traveling employees of their
4 actual expenses. After efforts at resolving the matter between the parties failed, Earhart
5 appealed American's action in not deducting the full \$75 per diem from payroll to the
6 Grievance Committee in accordance with the dispute resolution procedures set forth in the
7 Basic Manual.

8
9 B. Grievance Committee Facts and Proceedings

10 Earhart in its statement to the Grievance Committee noted that Earhart was required by
11 state law to pay their employees a flat \$75 per diem as indicated by the Pamphlet and that this
12 was a verifiable expense to them for their continued operation and compliance with their
13 contracts. Earhart's position before the Grievance Committee was the \$75 per diem payments
14 should be excluded in its entirety from payroll under Basic Manual Rule 2-B-2-h. This rule
15 provides:

16 Rule 2 – Premium Basis and Payroll Allocation

17 B. Payroll

18 For purposes of this manual, payroll means money or substitutes for money.

19 2. Excludes:

20 h. Expense reimbursements to employees to the extent that an employer's records
21 confirm that the expense was incurred as a valid business expense. Reimbursed
22 expenses and flat expense allowances (except for hand or hand-held power tools) paid
23 to employees may be excluded from the audit only if all three of the following
24 conditions are met:

- 25 1. The expenses are incurred for the business of the employer
- 26 2. The amount of each employee's expense payments or allowances are shown
separately in the records of the employer
3. The amount of each employee's expense reimbursement is a fair estimate of the
actual expenses incurred by the employee in the conduct of his/her work

Note: When it can be verified that the employee was away from home overnight on the
business of the employer, but the employer did not maintain verifiable receipts for

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1 incurred expenses, a reasonable expense allowance, limited to a maximum of \$30 per
2 day, is permitted.

3 Earhart contended the three conditions of the rule were met in that they were required to
4 pay the \$75 per diem so the payments were expenses incurred for the business of the employer,
5 each employee's payments were shown separately in Earhart's records, and the rule clearly
6 stated that the expense could be an estimate.

7 American's position before the Grievance Committee was the \$75 payment was a per
8 diem payment and according to the same Basic Manual rule, the per diem paid for overnight
9 stays without supporting receipts must be charged for that exposure, less a \$30 flat allowance.

10 American noted that if the insured had receipts that confirmed the actual expenses incurred, the
11 total amount would be excluded as per diem reimbursement, however, American had not
12 received copies of any receipts from Earhart that reflected actual expenses. Therefore,
13 American applied the \$30 flat limitation allowed by the rule.

14 The Grievance Committee on April 17, 2014 resolved "that payments required by the
15 Alaska Department of Labor, section 36, addressing public service contracts, or any other
16 similar governmental statute or contract requirement, qualifies as a [sic] 'verifiable receipts for
17 incurred expenses' as defined by Basic Manual Rule 2-B-2-h and are to be treated as excluded
18 expenses."⁴ American, under the Basic Manual's dispute resolution process for Alaska,
19 appealed the Grievance Committee's decision to the director for review by letter dated May 6,
20 2014. The director on May 20, 2014, appointed Joanne S. Bennett to serve as the hearing
21 officer in the matter.
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23
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⁴ The hearing officer takes official notice that the Grievance Committee was referring to the Alaska Department of
25 Labor and Workforce Development and AS 36 Public Contracts.
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1 C. H 14-02 Facts and Proceedings to Date

2 On July 11, 2014, a telephonic pre-hearing conference was held before the hearing
3 officer. On July 14, 2014, a Pre-Hearing Order (Order) was issued by the hearing officer. The
4 Order required that motions by the parties be filed no later than August 11, 2014. On that date,
5 Earhart filed a Motion To Dismiss Or Alternatively For Summary Judgment (Motion) and a
6 Memorandum In Support Of Motion To Dismiss Or Alternatively For Summary Judgment
7 (Memorandum). American filed a Brief Of Appellant, American Interstate Insurance Company
8 In Opposition To Motion To Dismiss And Motion For Summary Judgment (Opposition) on
9 August 28, 2014. Earhart filed its Reply To Opposition To Motion To Dismiss And Motion For
10 Summary Judgment (Reply) on September 16, 2014.⁵

11
12 On September 22, 2014, American requested oral argument on Earhart's Motion.
13 American's request was approved by the hearing officer and oral argument on the Motion was
14 heard before the hearing officer on October 21, 2014.

15 On December 16, 2014, without objection of the parties, a three page document was
16 included in the record of this case and the parties were provided the opportunity to submit a
17 memorandum limited to a discussion of the document and the interpretation of the Basic
18 Manual Rule 2-B-2-c. This document consists of

19 A. A one page NCCI Memorandum dated May 29, 1991 relating to an Alaska Item
20 Filing,;

21 B. A one page NCCI Filing Memorandum, Item 01-AK-91-Davis-Bacon And Service
22 Contract Act Fringe Benefits; and
23

24
25 ⁵ The parties also filed Stipulated Facts on August 4, 2014. American filed its Exhibit List and Witness List on
26 September 23, 2014 and Earhart filed theirs on September 29, 2014.
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1 C. A one page NCCI Item 01-AK-91-Davis-Bacon And Service Contract Act Fringe
2 Benefits Basic Manual Part One—Rules, Special Rules, containing present and proposed
3 phraseology.
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7 1. Earhart's Position before the Hearing Officer

8 Earhart, in its Memorandum cited an additional Basic Manual rule in support of its
9 position that the \$75 per diem payment should be excluded. Rule 2-B-2-c cited by Earhart
10 provides:

11 Rule 2 – Premium Basis and Payroll Allocation
12 B. Payroll

13 For purposes of this manual, payroll means money or substitutes for money.

14 2. Excludes:

15 c. Fringe benefit payments by an employer (other than those payments covered by Rule
16 2-B-1)⁶ made in accordance with the Davis-Bacon Act, Service Contract Act or a similar
17 statute, if the insured's payroll records show separately the amounts paid for such fringe
18 benefits.

19 Earhart's position was this rule makes clear that the state intended to allow an employer
20 to exclude required fringe benefits under public contracts. They noted that their records showed
21 separately the amounts for such fringe benefits and provided a sworn affidavit from James
22 Meinel, a certified public accountant that such payments were tax deductible as "[t]he Internal
23 Revenue Service only taxes per diem rates which are greater than the maximum per diem rates
24 allowed by the Defense Travel Office of the Department of Defense" and "[Earhart's] per diem
25 payments are far below the rates allowed by the Department of Defense and thus are excluded."

26 ⁶ Basic Manual Rule 2-B-1-n includes in payroll "Davis-Bacon wages paid to employees or placed by an employer
into third party pension trusts."

1 Earhart, in its Reply, quoting from *Black's Law Dictionary*, (which defined 'fringe
2 benefit" to mean "[a] benefit (other than direct salary or compensation) received by an
3 employee from an employer") noted "[t]he per diem paid by Earhart was not part of its
4 employees' direct salary nor was it compensation. Instead the required payment is an alternative
5 to Earhart providing its employees with meals and lodging when they are working overnight in
6 specified areas."

7
8 Earhart also stated in its Reply: "Because the per diem payment is a fringe benefit, it is
9 subject to Alaska's NCCI Rule 2-B-2-c, which excludes from payroll fringe benefits made in
10 complying with...Alaska's version of the Davis Bacon Act. This may not be the case for every
11 per diem payment made by employers but because the per diem in question stems from
12 Earhart's obligation to either provide room and board or provide a \$75.00 per diem, the per
13 diem is a fringe benefit."

14
15
16 B. American's Position before the Hearing Officer

17 American's position in their Opposition was that "[t]o qualify for an exemption from
18 wages for premium purposes, those per diem payments should have been limited to travel by
19 employees involving overnight stays" and "per NCCI rules, Earhart needed to supply receipts
20 reflecting actual expenses that were reimbursed by per diem payments." American noted that
21 "under NCCI Rule 2-B-2-h, per diem payments in excess of \$30.00 are presumed to be wages,
22 for which premium is due, absent 'verifiable receipts' to show the per diem payments were for
23 expenses incurred by employees, not wages."
24

1 American also responded to Earhart's contention that the \$75 per diem payments were
2 fringe benefits noting "[i]n the Department of Labor publication relied on by Earhart, and in the
3 NCCI rules, fringe benefits and per diem are treated as distinctly different payments" and that
4 "[t]he distinction is clear. Per diem is to reimburse employees for expenses incurred while away
5 from home on construction projects. Fringe benefits are to be paid to third parties such as a
6 union trust fund to cover insurance and pensions. Alternatively, the employer can pay the
7 employee, directly, denominating the value of fringe benefits in the payroll records." American
8 pointed out that "Earhart's own books treated fringe benefits and per diem separately."⁷
9 American dismissed any suggestion "that IRS rules allow the treatment of per diem as 'fringe
10 benefits' as opposed to wages... because the issues presented here are in the NCCI environment,
11 not the realm of the Internal Revenue Code." American, with a quote from Readylink Health
12 Care, Inc. v. Jones, 184 Cal. Rptr. 3d 881, 210 Cal. App. 4th 1168, 1176 (2012) review denied
13 Feb. 13, 2013, stated: "The problem of the reliance by Readylink on the IRS treatment of per
14 diem was said by the court to be misplaced because 'it attempts to compare two distinct areas of
15 law. The IRS collects revenue from employers and employees to fund a variety of Federal
16 programs whereas the purpose of the USRP [the insurance commissioner's workers'
17 compensation statistical reporting plan] is to accurately recognize the amount of an employee's
18 real wages to ensure...sufficient reserves to pay a worker his or her wages if injured on the
19 job".⁸
20
21
22

⁷ Earhart replied by noting it "kept separate records of per diem from other fringe benefits to insure compliance with Alaska law and to further the State's policies regarding 'Little Davis Bacon' jobs".

⁸ American citing committee minutes also contended that the Grievance Committee considered amending the rule and determined they did not have the power to do and therefore simply decided to ignore it. The NCCI, however, did not record the Grievance Committee proceedings. The cited minutes were from the Alaska Review and Advisory Committee meeting occurring after the Grievance Committee had already met and ruled on the matter at In the Matter of American Interstate Insurance Company

1 On December 29, 2014, American submitted a memorandum limited to the discussion
2 of the document which was included in the record of this case by order dated December 16,
3 2014 and Basic Manual Rule 2-B-2-c. American's memorandum stated: "[t]he documents
4 confirm that American Interstate was correct in its hearing brief to point out that the term
5 "fringe benefits" refers to payments to pension trust funds, not to payments for per diem. Since
6 non-union employees may not have established qualified pensions or trust funds, employees are
7 allowed under the Little Davis-Bacon Act to receive wages in lieu of pension payments to third
8 parties and under Rule 2-B-2-c those payments are not considered wages for the purpose of
9 calculating premium."⁹
10

11 IV. Conclusion

12 Rule 2-B-2-h

13 Rule 2-B-2-h excludes from payroll certain "expense reimbursements." Under the rule
14 the term "expense reimbursements" can refer either to "reimbursed expenses" or to "flat
15 expense allowances." The common and ordinary meaning of "flat" is fixed and unvarying and
16 the common and ordinary meaning of "allowance" is something given as money, at regular
17 intervals or for a particular purpose. The \$75 per diem payments were money, were fixed and
18 unvarying (determined by the day or portion of the day worked), were given at regular intervals
19 (each pay period), and were for a particular purpose (meals and lodging). The \$75 per diem
20 payments, therefore, are flat expense allowances and not reimbursed expenses.
21

22
23
24 ~~hand. Even though the committees may have the same members, the functions of the two committees are distinctly~~
~~different.~~

25 ⁹Earhart chose not to submit a memorandum.

1 Under the rule the \$75 flat expense allowance can only be excluded if three conditions
2 are met. First, the expense must have been incurred for the business of the employer. Applying
3 this condition to the facts at hand the term "expense" in this first condition refers to the \$75 flat
4 expense allowance. Given Earhart was required under its public contract to pay this flat
5 expense allowance, the first condition is met.

6
7 The second condition is the amount of each employee's expense allowance must be
8 shown separately in the records of the employer. Given there is no dispute that Earhart did so,
9 the second condition is met.

10 The third condition is the amount of each employee's expense reimbursement, in this
11 case the \$75 flat expense allowance, must be a fair estimate of the actual expenses incurred by
12 the employee in the conduct of his/her work. While an argument could be made that the state
13 determined the \$75 per diem to be a fair estimate of each employee's cost for meals and
14 lodging, there is no record of the actual expenses incurred by Earhart's employees in this case.
15 Thus, without more, there is no way to determine whether the state's \$75 per diem requirement
16 actually is a fair estimate of the actual expenses incurred by the employee for meals and
17 lodging in this case. Given this, the third condition is not met.

18
19 Additionally, the note to Rule 2-B-2-h provides: "When it can be verified that the
20 employee was away from home overnight on the business of the employer, but the employer
21 did not maintain verifiable receipts for incurred expenses, a reasonable expense allowance,
22 limited to a maximum of \$30 per day, is permitted." There is no dispute that Earhart's
23 employees in this case were away from home overnight on the business of the employer and
24

25 that Earhart did not maintain verifiable receipts for incurred expenses. This note clearly limits
26 In the Matter of American Interstate Insurance Company

1 an excludable reasonable expense allowance to a maximum of \$30 per day where the employer
2 did not maintain verifiable receipts.

3
4 Therefore, I hold the \$75 per diem payments made by Earhart to its employees are not
5 excludable from payroll under Basic Manual Rule 2-B-2-h and the Grievance Committee
6 incorrectly applied the rule in this case.

7 Rule 2-B-2-h

8
9 Rule 2-B-2-h excludes from payroll "[f]ringe benefit payments by an employer (other
10 than those payments covered by Rule 2-B-1)¹⁰ made in accordance with the Davis-Bacon Act,
11 Service Contract Act or a similar statute, if the insured's payroll records show separately the
12 amounts paid for such fringe benefits.

13
14 There is no dispute that Earhart's public contract was subject to the state's version of the
15 Davis-Bacon Act. Nor is there any dispute that the state's version of the Davis-Bacon Act is a
16 "similar statute" as that term is used in the rule. Finally, there is no dispute that Earhart made
17 the \$75 per diem payments in accordance with both the Pamphlet implementing the state's
18 version of the Davis-Bacon Act and the public contract itself. There is, however, a dispute as to
19 whether the \$75 per diem payments were "fringe benefit payments."

20 The state's Pamphlet provides: "Where the employer provides or furnishes board,
21 lodging or any other facility, the cost of amount thereof shall not be considered or included as
22 part of required prevailing wage basic hourly rate and cannot be applied to meet other fringe
23

24
25 ¹⁰ Rule 2-B-1-n includes in payroll Davis-Bacon wages paid to employees or placed by an employer into third
party pension trusts.

1 benefit requirements." *Emphasis added.* Thus, board or lodging is, under the Pamphlet,
2 considered to be a fringe benefit. Therefore, the \$75 per diem payment, which is in lieu of
3 meals and lodging, is also considered to be a fringe benefit under the Pamphlet.¹¹
4

5 Moreover, the federal act, 23 U.S.C. 114, from which the Pamphlet requirement of the
6 \$75 per diem payment first arose, specifically states that "[w]here the contractor provides or
7 furnishes room or lodging or pays a per diem, the cost of the amount shall not be considered a
8 part of wages and shall be excluded from the calculation of wages." Therefore, the \$75 per
9 diem payment is a fringe benefit payment made in accordance with the state's version of the
10 Davis-Bacon Act.¹²

11 There is, however, a third requirement of Rule 2-B-c and that is the insured's payroll
12 records must show separately the amounts paid for such fringe benefits. There is no dispute that
13 Earhart's records show separately the amounts paid to each employee for the \$75 per diem
14 payments. There is a dispute whether Earhart's classification of these separate payments as per
15 diem payments in its records rather than as fringe benefit payments means that Earhart failed to
16 meet this requirement of the rule. Given that the \$75 per diem payment is a fringe benefit and
17 given that Earhart did show separately the amounts paid, arguing that Earhart failed to comply
18 with the rule simply because it labeled the payments as per diem payments is placing form over
19 substance. The intent of the rule is clear that separate payments be shown which Earhart did.
20
21 The fact the payments are both flat allowance per diem payments and fringe benefit payments
22

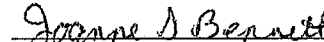
23 ¹¹ American's argument that AS 36.95010(7) defines wages to include fringe benefits has no more merit than does
24 Earhart's argument that for tax purposes the per diem payments are treated as fringe benefits and not compensation
as the issue here is the proper interpretation of the NCCI Basic Manual rules.

25 ¹² There is nothing in the Basic Manual which suggests that the \$75 per diem payments in this case must be either
per diem payments or fringe benefits but not both.

1 and the fact that Earhart had to choose to classify them in its records one way or the other does
2 not change the fact that the amounts paid to Earhart's employee's were made, were separately
3 accounted for, and were fringe benefits.
4

5 Therefore, I hold the \$75 per diem payments made by Earhart to its employees in this
6 case are excludable from payroll under Basic Manual Rule 2-B-2-c.

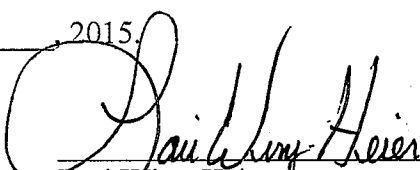
7 Dated this 27 day of January, 2015.

8 
9 Joanne S. Bennett
10 Hearing Officer

11 **Adoption**

12 The undersigned director of the Division of Insurance adopts this Proposed
13 Decision in Case No. H 14-02 as the final administrative determination in this matter. Pursuant
14 to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision
15 within 30 days. See the attached Notice of Final Order and Appeal Rights.

16 DATED this 2nd day of February, 2015.

17 
18 Lori Wing-Heier
19 Director

20 **Non-Adoption Options**

21 1. The undersigned director of the Division of Insurance declines to adopt this Proposed
22 Decision in Case No. H 14-02 and instead orders that the case be returned to the hearing officer
23 to

24 _____ take additional evidence about _____

_____ make additional findings about _____

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_____ conduct the following specific proceedings: _____

DATED this _____ day of _____, 2015.

Lori Wing-Heier
Director

2. The undersigned director of the Division of Insurance revises the Proposed Decision in Case No. H 14-02 as follows: _____

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 _____, 2015.

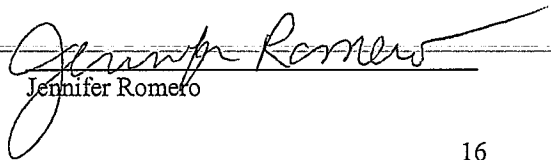
Lori Wing-Heier
Director

I hereby certify that on the 2nd day of February, 2015, I mailed copies of this document to the following parties:

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Jennifer Romero

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**NOTICE OF FINAL ORDER
AND APPEAL RIGHTS
Case H 14-02**

The enclosed order signed by the Director of the Division of Insurance is the final order in this action.

Pursuant to AS 21.39.170(c), and the Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days.

AS 21.39.170(c) provides:

An order or decision of the director is subject to review by appeal to the superior court at the instance of a party in interest. The court shall determine whether the filing of the appeal will operate as a stay of an order or decision of the director. The court may, in disposing of the issue before it, modify, affirm, or reverse the order or decision of the director in whole or in part.

Alaska Appellate Rule 602(a)(2) provides:

An appeal may be taken to the superior court from an administrative agency within 30 days from the date that the decision appealed from is mailed or otherwise distributed to the appellant. If a request for agency reconsideration is timely filed before the agency, the notice of appeal must be filed within 30 days after the date the agency's reconsideration decision is mailed or otherwise distributed to the appellant, or after the date the request for reconsideration is deemed denied under agency regulations, whichever is earlier. The 30 day period for taking an appeal does not begin to run until the agency has issued a decision that clearly states that it is a final decision and that the claimant has thirty days to appeal. An appeal that is taken from a final decision that does not include such a statement is not a premature appeal.

For other applicable rules of court, see Alaska Appellate Rules 601-611.