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Court Limits CDI's Authority In Contract Disputes

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The Fourth District Court of Appeal says the California Department of Insurance's administrative law judges and Insurance Commissioner Ricardo Lara do not have the authority to decide breach of contract disputes through the administrative hearing process. The decision came in a 12-year-old premium audit case, but observers say the findings apply broadly to the common contractual disputes that arise between employers and insurance companies.

Drew Pomerance, a partner in Roxborough, Pomerance, Nye & Adreani (RPNA), successfully argued the instant case for ReadyLink Healthcare, a nurse staffing firm. ReadyLink is fighting State Compensation Insurance Fund over the amount of premium owed on the per diem payments the employer made to nurses. It will now get a new trial on that issue.

However, Carmel Attorney Larry Lichtenegger says the published decision will be beneficial in the numerous cases he has at the Department involving Applied Underwriters and its EquityComp program. He says the decision reinforces an argument that he has been making and which Commissioner Lara rejected.

"The importance of the case is that it reaffirms the ALJs and Commissioner do not have authority to determine anything beyond the question presented to them. And [even then] they don't have the authority to determine a breach of contract claim," Lichtenegger tells *Workers' Comp Executive*.

Lara Interference

He notes that he finally convinced one of the Department's ALJs of this fact last year, and then Commissioner Lara intervened in the process. Lara rejected the ALJ's proposed decision and sent it back, telling the judge to rule on the breach of contract claim, which the Fourth District now says the ALJ cannot do (for past coverage see Ricardo Lara Investigations...).

The interference came as Lara was holding private meetings with senior Applied Underwriters executives. The executives were seeking Departmental approval of Berkshire Hathaway's sale of California Insurance Company to Applied CEO Steve Menzies. CIC is now operating under a state conservation order after Menzies and Applied attempted an end-run around the state's oversight authority. The conservation order has put all the EquityComp cases on hold pending the outcome of the state's action against CIC.

"The RPNA firm did an extraordinarily good job in this case, and I want to congratulate them," says Lichtenegger. "This case is a benefit to all of my clients."

Case History

In the instant case, State Fund contends the employer, Readylink Healthcare, owes over $1 million in additional premium and interest. The case had spawned litigation in multiple jurisdictions, including cases before the California Department of Insurance, two superior courts, two courts of appeal, the California Supreme Court, as well as a purported federal class action that went to the Ninth Circuit Court of Appeal. The latest decision from the Fourth District says that despite this long history of litigation, there are still unresolved issues.

"*A full review of the collateral administrative and judicial proceedings demonstrates that ReadyLink and SCIF have not previously litigated the vast majority of issues raised by SCIF's action seeking to collect additional premium amounts from ReadyLink, and* ***further reveals that those issues could not have been litigated in the administrative action,***" the court says in *State Compensation Insurance Fund v. ReadyLink Healthcare Inc.* (emphasis added).

In 2005, ReadyLink was paying nurses an hourly rate of $6.75, well below the average hourly rate, and then provided them with stipulated per diems that amounted to over 50% of their remuneration according to the court. State Fund's payroll audit manager decided to include these per diem payments as payroll, which produced a bill for $550,000 in audit premium. SCIF maintained in this action for breach of contract that it is also owed another $572,000 in prejudgment interest.

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SCIF attempted to shut down the issue by arguing to the Fourth District that ReadyLink should have challenged the bill's amount during the administrative hearing. The Fourth District, however, says ReadyLink couldn't have raised the issue at the time, even if it wanted to because of case law established over two decades ago.

"*We have been directed to no authority that would suggest that the Insurance Commissioner has any authority to consider other aspects of a premium calculation dispute, beyond the specific matters identified in sections 11753.1 and 11737, subdivision (f),"* the court wrote. *"In fact, case law and the records, in this case, suggest otherwise."*

The court goes on to point out that the ALJ in the case specifically informed the parties that she could not determine whether the ultimate premium charged by SCIF was correct and was unable to say whether ReadyLink would have to pay it. The Fourth District based its conclusions in part on the 1996 case *Lance Camper v. Republic Indemnity*.

The issues are analogous to the Applied Underwriters disputes where the Commissioner, through the actions of CDI counsel Bryant Henley, refused to adopt a proposed decision finding the Commissioner lacked the authority to say if the California Insurance Company policy was valid or enforceable. Lichtenegger notes that the Department wants the aggrieved employers to pay what was required under the CIC guaranteed cost policy even though the employers never entered an agreement with CIC.

Under the Fourth District's ruling, it is clear that determining what is owed and to whom is up to a court, not CDI's ALJs to decide. It is especially not up to an elected official who accepted campaign contributions from the affected insurance carrier and only returned them once they became publicly known.

Copies of the court's decision in *State Compensation Insurance Fund v. ReadyLink Healthcare* is available in our Resources section or by clicking here.