

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of)	
)	
EMPLOYERS INSURANCE COMPANY)	
OF WAUSAU)	
NAIC # 21458)	Docket No. 3646-CO

CONSENT ORDER

The Kansas Insurance Department (“KID”) and Employers Insurance Company of Wausau (“Wausau”) wish to resolve an incident arising out of the investigation and adjustment of a workers compensation claim brought by Scott Lilienthal against Employers Insurance Company of Wausau. Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 44-5,120(e), K.S.A. 40-103 *et seq.* and K.S.A. 77-501 *et seq.* the Commissioner hereby agrees to the terms of this Consent Order and accepts Employer Insurance Company of Wausau’s tender of payment in the amount of \$2,000.00 in exchange for dismissal of this action with prejudice.

Findings of Fact

KID and Wausau agree to the following findings of fact:

1. Employers Insurance Company of Wausau (“Wausau”) located at 105 Decker Court, Suite 500, Irving, Texas 75062, has been authorized to transact insurance business in the State of Kansas.
2. On or about November 3, 2006, a complaint referral from the Fraud and Abuse Unit of the Kansas Division of Workers Compensation, against the above-named insurance carrier was received at the Kansas Insurance

Department.

3. The complaint was assigned to Ezra J. Ginzburg, Staff Attorney, for his review to determine if a violation of K.S.A. 44-5,120 had taken place and specifically to find whether the insurance carrier had intentionally, knowingly and willfully failed to pay court ordered medical bills duly authorized and ordered by Administrative Law Judge Ken Hursh.
4. The Kansas Insurance Department (“KID”) has jurisdiction over this matter pursuant to K.S.A. 44-5,120, K.S.A. 40-103 *et seq*, and K.S.A. 77-501.
5. In lieu of filing a Summary Order alleging a violation of K.S.A. 44-5,120(d) arising out of Wausau’s conduct in this Kansas workers compensation claim involving claimant Scott Lilienthal and in lieu of further administrative litigation in this matter by the Kansas Insurance Department for alleged acts of abusive conduct as defined in K.S.A. 44-5,120(d), both KID and Wausau have jointly agreed to the terms of this Consent Order.
6. KID and Wausau jointly agree that Wausau will pay the sum of Two Thousand Dollars (\$2,000.00) and KID will dismiss this action with prejudice.
7. KID acknowledges that Wausau admits no liability whatsoever in agreeing to this Consent Order. The payment made pursuant to this agreement shall not be construed in any fashion as an admission of liability on behalf of Wausau or as an admission that Wausau was in any way at fault or

committed any wrongful acts for the purposes of this administrative action or for the purposes of any other litigation, administrative or civil, arising out of this incident including, but not limited to, *Scott Lilienthal v. Concrete Materials, Inc. and Employers Insurance Company of Wausau*, Docket No. 1,010,037.

Applicable Law

1. K.S.A. 77-501 *et seq.* – The Kansas Administrative Procedures Act
2. K.S.A. 77-601 *et seq.* – The Act for Judicial Review and Civil Enforcement of Agency Action.
3. K.S.A. 44-5,120 *et seq.*- Fraudulent or abusive acts or practices; defined; powers, duties and functions of director of workers compensation and commissioner or insurance, etc...

Conclusions of Law

IT IS, THEREFORE, AGREED UPON BY THE COMMISSIONER OF INSURANCE AND EMPLOYERS INSURANCE COMPANY OF WAUSAU (“WAUSAU”):

- a. Wausau agrees to make a payment of Two Thousand Dollars (\$2,000) to KID in exchange for the dismissal of this action with prejudice.
8. KID acknowledges that Wausau admits no liability whatsoever in agreeing to this Consent Order. The payment made pursuant to this agreement is in settlement of disputed claims and shall not be construed in any fashion as an admission of liability on behalf of Wausau or as an admission that Wausau was in any way at fault or committed any wrongful acts for the purposes of this administrative action or for the purposes of any other litigation, administrative or civil, arising out of this incident including, but

not limited to, *Scott Lilienthal v. Concrete Materials, Inc. and Employers Insurance Company of Wausau, Docket No. 1,010,037.*

9. The fact of this payment, the settlement negotiations between KID and Nationwide and the entry of this Consent Order shall not be admissible in evidence in any respect in *Scott Lilienthal v. Concrete Materials, Inc. and Employers Insurance Company of Wausau, Docket No. 1,010,037.*
 - a. Upon the entry of this Consent Order this action shall be dismissed with prejudice.
 - b. The entry of this Consent Order is based upon a strict compromise of disputed issues between KID and Wausau and may not be used as evidence in any other proceeding.
 - c. Wausau shall deliver, within twenty (20) days of the entry of this Order, the sum of Two Thousand Dollars (\$2,000) to Ezra J. Ginzburg, KID Staff Attorney, on behalf of the Kansas Insurance Department.
 - d. If payment is not made as required, KID may vacate and/or declare this Consent Order void and proceed with a Summary Order and a hearing.

IT IS SO ORDERED THIS 19th DAY OF APRIL, 2007, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Sandy Praeger
Commissioner of Insurance

By: /s/ John W. Campbell
John W. Campbell
General Counsel

Employers Insurance Company of
Wausau

By: /s/ Dwight S. Vogt

Certificate of Service

The undersigned hereby certifies that he served a true and correct copy of the above and foregoing Consent Order on this 19th day of April, 2007, by placing the same in the United States Mail, first class postage prepaid, addressed to the following:

Dwight Vogt
Employers Insurance Company of Wausau
P.O. Box 152800
105 Decker Court, Suite 500
Irving, Texas 75062

/s/ Ezra J. Ginzburg
Ezra J. Ginzburg
Staff Attorney