

BEFORE THE COMMISSONER OF INSURANCE
OF THE STATE OF KANSAS

In the Matter of the)
OLD REPUBLIC INSURANCE COMPANY) **Docket No. 3985-SO**

CONSENT ORDER

The Kansas Insurance Department (“KID”) and Old Republic Insurance Company (“Old Republic”) wish to resolve this case arising out of a fraud and abuse complaint and investigation of a workers’ compensation claim brought by attorney Joe Patton in behalf of his client Dawn Brumbaugh (the “Claimant”). 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 Old Republic’s tender of payment in the amount of \$5,000.00 in exchange for dismissal of this action with prejudice.

Findings of Fact

KID and Old Republic agree to the following findings of fact:

1. Old Republic is a licensed insurance carrier doing business in the State of Kansas, and its NAIC number is: 24147. KID records indicate the insurance carrier is domiciled in the state of Pennsylvania with its statutory office at 133 Oakland Avenue, PO Box 789, Greenburg, Pennsylvania 15601.
2. Ms. Brumbaugh’s attorney, Joe Patton II, filed for post award medical for post award medical expenses for physical therapy, possible surgery, and

other recommendations of her treating doctor July 13, 2006, Docket Number 261,507.

3. Administrative Law Judge, Brad E. Avery, granted the request for additional surgery with Dr. Michael Smith, and the cost to be paid by the insurance carrier and Respondent.
4. Respondent and its insurance carrier requested a review before the Appeals Board for the Kansas Division of Workers' Compensation of the **May 30, 2007 Order**. The Board affirmed ALJ Avery's Post Award Medical Order.
5. Respondent and its insurance carrier requested a review before the Kansas Court of Appeals of the August 30, 2007 Appeals Board Order. The Kansas Court of Appeals affirmed the Board's Order for Post Award Medical October 3, 2008. That Order was not appealed.
6. Ms. Brumbaugh obtained an appointment with her treating physician on January 2, 2009 after a complaint was filed with KID December 23, 2008 by her attorney, Joe Patton, II.
7. The complaint was assigned to Eliehue Brunson, Staff Attorney, for his review to determine if violations cited in paragraph 8 below had taken place and specifically to find whether the insurance carrier had intentionally, knowingly, and willfully failed to confirm medical compensation benefits coverage concerning medical bills duly authorized and ordered paid by an Administrative Law Judge and the Workers' Compensation Appeals Board.

8. The Kansas Division of Insurance issued a Summary Order on May 12, 2009 contending that the Carrier failed or refused to grant medical confirmation pending an appeal while also violating the following sections of the Kansas Workers' Compensation Fraud and Abuse Act (K.S.A. 44-5,120(d) (15), K.S.A. 44-5,120(d) (16), K.S.A. 44-5,120(d) (19) and K.S.A. 44-556 (b) and (g)). It is also contended that those sections of the act were intentionally violated on multiple occasions between October 2, 2007 and October 3, 2008 when the Carrier continued to fail to respond to Complainant's attorney's requests for confirmation of medical benefits, even after a favorable Kansas Court of Appeals decision for complainant. The carrier denied those allegations.
9. The Carrier is now more fully aware, sensitive and understanding of the purposes of K.S.A. 44-556 (b) and (g) which mandates the payment of medical benefits for claimants pending an appeal; and, K.S.A. 44-534ab which provides for reimbursements to a party who is ultimately found not liable for the payment of workers' compensation benefits.
10. 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.
11. In lieu of further administrative litigation in this matter by the Kansas Insurance Department for alleged acts of conduct as defined in K.S.A. 44-5,120(d), both KID and Old Republic have jointly agreed to the terms of this Consent Order.

12. KID and Old Republic jointly agree to the terms of this Consent Order and Old Republic will pay the sum of Five Thousand Dollars (\$5,000.00), and KID will dismiss this action with prejudice.
13. KID acknowledges that Old Republic admits no liability 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 Old Republic 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, *Dawn Brumbaugh v. Atria Hearthstone and Old Republic Insurance Company*, Docket No. 261,507.

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 OLD REPUBLIC INSURANCE COMPANY (“OLD REPUBLIC”):

14. Old Republic agrees to make a payment of Five Thousand Dollars (\$5,000) to KID in exchange for the dismissal of this action with prejudice.
15. KID acknowledges that Old Republic admits no liability 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 Old Republic 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, Dawn Brumbaugh's workers' compensation claim.

16. The fact of this payment, the settlement negotiations between KID and Old Republic, and the entry of this Consent Order shall not be admissible in evidence in any respect in Dawn Brumbaugh's workers' compensation claim, Docket No. 261,507.
 - 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 the Old Republic and may not be used as evidence in any other proceeding.
 - c. Old Republic will deliver, within twenty (20) days of the entry of this Order, the sum of Five Thousand Dollars (\$5,000) to Eliehue Brunson, 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 13th DAY OF NOVEMBER, 2009, 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

Old Republic Insurance Company

By: /s/ Michael Weber
Michael Weber

Certificate of Service

The undersigned hereby certifies that he served a true and correct copy of the above and foregoing Consent Order on this 13th day of November, 2009, by placing the same in the United States Mail, first class postage prepaid, addressed to the following:

Richard W. Morefield, Jr., Attorney at Law
BOTTARO, MOREFIELD, KUBIN & YOCUM, L.C.
1001 E. 101 Terrace, Ste., 120
Kansas City, Missouri 64131

Spencer Leroy III, Secretary
Old Republic Insurance Company
133 Oakland Avenue, PO Box 789
Greensburg, PA 15601

/s/ Eliehue Brunson
Eliehue Brunson
Staff Attorney