

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

In the Matter of)
ST. PAUL FIRE AND MARINE INSURANCE) **Docket No. 76013**
NAIC #24767)

SUMMARY ORDER
(Pursuant to K.S.A. 44-5,120 and
K.S.A. 2017 Supp. 77-537)

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 44-559a (b) and K.S.A. 44-5,120 (d) (18) and (19) and in accord with K.S.A. 2017 Supp. 77-537, the Commissioner orders that St. Paul Fire and Marine Insurance (“St. Paul”) cease and desist from violating applicable provisions of the Kansas Insurance Code and further assesses a penalty against St. Paul.

This Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for a hearing is made, pursuant to K.S.A. 77-542.

Findings of Fact

The Commissioner has been shown the following facts:

1. St. Paul is located at One Tower Square, Hartford, CT 06183.
2. St. Paul has been authorized to do business in Kansas since May 6, 1967.
3. A workers compensation claimant alleged she suffered accidental injury on February 19, 2003 involving her neck, back and right leg, which arose during the course and scope of her employment with Protection One, Inc.
4. St. Paul provided workers compensation insurance for Protection One.
5. The policy with Protection One was a client-funded account, which required Protection One to pay all amounts owed up to the deductible amount of \$250,000.00.
6. Under the policy, St. Paul was responsible for making payments above the deductible amount.

7. In 2004, St. Paul and Travelers merged. Travelers assumed responsibilities under St. Paul/Travelers policy and retained a third party administrator (“TPA”) to assist in managing the claim.
8. The TPA had authority to pay benefits and seek reimbursement from Protection One for charges less than \$5,000.00. However, prefunding was required from Protection One for any bills in excess of \$5,000.00.
9. In 2016, a dispute arose regarding the need for surgery and whether the injury was the direct and natural consequence of the claimant’s work accident or whether it stemmed from a preexisting injury. There was also an issue regarding whether the claimant was entitled to treatment for her hip, which was not included in the original settlement.
10. On October 26, 2017, the Administrative Law Judge issued a Post Award Medical Award finding that the claimant had sustained her burden of establishing that she was entitled to payment of pain management treatment. The judge also determined that there was no evidence that the claimant’s left hip complaints were causally related to her work injury. As a result, the claimant was entitled to payment of medical bills related to treatment of her low back but not bills related to treatment of her left hip.
11. The award was appealed and the ruling was suspended pending the Appeals Board’s issuance of a decision. On February 28, 2018, the Board issued its order affirming the ruling of the Administrative Law Judge.
12. The claimant scheduled another hearing in March 2018 seeking to have all bills paid. On March 26, 2018, the Administrative Law Judge issued a Preliminary Order directing respondent to pay all of the outstanding medical bills including those related to treatment for the claimant’s hip. The court noted that the respondent could seek reimbursement from the Fund for any bills it paid related to the claimant’s left hip, which had been determined to be non-compensable.
13. The claimant made a demand for payment within twenty days.
14. The TPA reports that it had difficulty determining fee schedule pricing, checking whether any of the service dates listed in the bill had been included in previous payments, and segregating bills for hip treatment from bills for low back treatment.
15. Payment was not made within twenty days, and the claimant scheduled a penalty hearing in May 2018.
16. On June 1, 2018, the Administrative Law Judge issued an Order on the claimant’s request for penalties. In the order, the judge determined that the doctor was owed \$5,060.00 and assessed penalties of \$506.00.

17. When payment had still not been made, by August 30, 2018, Annette Tate, an agent for the TPA, wrote in an email acknowledging the possibility of penalties for the nonpayment of the award:

“Yes, there is penalties...

Penalty Statute is 10% of the pass (sic) due amount (\$5,060)

+ possible additional fees for Fraud & Abuse and Lawsuit alleged to be filed by Opposing Counsel against the Insurance Company for failing the courts order.”

18. In an instant message conversation on September 12, 2018, Annette Tate stated to Colleen Gallo: **“So I can advise defense and hopefully keep OPC from filing a FRAUD claim against us.”**

19. On October 16, 2018, a check was issued and on October 22, 2018, it was hand delivered to the doctor.

Applicable Public Policy

The purpose of this action is to enforce the policy set forth in K.S.A. 44-5,120.

Applicable Law

K.S.A. 44-559a (b) provides, in part:

the insurer shall pay all or part of the deductible amount . . . to the person or medical provider entitled to the benefits conferred by the workers compensation act and seek reimbursement from the insured employer for the applicable deductible amount.

K.S.A.44-5,120 provides, in part:

(d) Fraudulent or abusive acts or practices for purposes of the workers compensation act include, willfully, knowingly or intentionally:

...

(18) refusing to pay compensation as and when the compensation is due;

(19) refusing to pay any order awarding compensation;

K.S.A. 44-5,120 provides, in part:

(g) If . . . the commissioner . . . determines that the person . . . engaged in a fraudulent or abusive act . . . the commissioner shall issue an order . . . requiring such person to cease and desist from engaging in such act or practice and, in the exercise of discretion, may order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$2,000 for each and every act constituting the fraudulent or abusive act

Conclusions of Law

Based on the Findings of Fact enumerated in paragraphs 1 through 23, the applicable public policy, and the applicable law, the Commissioner finds as follows:

- 35. The Commissioner has jurisdiction over St. Paul and the subject matter of this proceeding and such proceeding is held in the public interest.
- 36. St. Paul has violated K.S.A. 44-5,120 by wrongfully refusing to pay.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE

- 37. Pursuant to K.S.A. 44-5,120, St. Paul shall pay a fine of \$2,000.00.
- 38. St. Paul shall cease and desist from failing to make prompt delivery to the medical provider of funds belonging to the provider as a result of an order or award.
- 39. The Commissioner shall retain jurisdiction over this matter to issue any orders deemed necessary.

IT IS SO ORDERED THIS 16th DAY OF APRIL 2019 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Vicki Schmidt,
Commissioner of Insurance

BY:


Justin L. McFarland
General Counsel

NOTICE OF RIGHTS
(Pursuant to K.S.A. 77-542)

St. Paul is entitled to a hearing pursuant to K.S.A. 77-537 and K.S.A. 77-542, the Kansas Administrative Procedure Act. If St. Paul desires a hearing, the company must file a written request for a hearing with:

Justin L. McFarland, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612


This request must be filed within fifteen (15) days from the date of service of this Order. If St. Paul requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of the same.

If a hearing is not requested in, the time and manner stated above, this Summary Order shall become effective as a Final Order pursuant to K.S.A. 77-613(e).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the above and foregoing Summary Order and Notice of Rights on this 16th day of April 2019, by causing the same to be deposited in the United States Mail, first-class postage prepaid, addressed to the following:

Mr. Nicholas Seminara
President
St. Paul Fire and Marine Insurance Company
One Tower Square
Hartford, CT 06183


Susan Ellmaker
Staff Attorney