

BEFORE THE IOWA INSURANCE COMMISSIONER

IN RE STEVE'S ROOFING, INC.) ORDER ON REMAND
Appellant.) DIVISION DOCKET NO.: 70835

This case is before First Deputy Insurance Commissioner James R. Mumford (“Hearing Officer”) on remand from the Iowa District Court for Johnson County. In a motion captioned “Uncontested Motion for Remand by Iowa Insurance Commissioner” dated June 12, 2013, the parties agreed to remand this other agency action case back to the Insurance Commissioner for reconsideration of the Hearing Officer’s original order in light of the Iowa Supreme Court’s recent decision in *Chartis Insurance v. Iowa Insurance Commissioner*, 831 N.W.2d 119 (Iowa 2013) (“Chartis”).

BACKGROUND FACTS AND PROCEEDINGS

In a final agency order issued on December 9, 2011, the Hearing Officer held that the Iowa Insurance Division did not have subject matter jurisdiction to hear Appellant Steve’s Roofing’s (SR) appeal in this matter. The Hearing Officer found that determining the contractual classification of subcontractors as employees or independent contractors for workers’ compensation insurance purposes was outside the authority granted to the Insurance Commissioner by the legislature.

SR did not immediately seek judicial review of the Insurance Commissioner’s decision, and instead sought a declaratory order from the Workers’ Compensation Commissioner on February 24, 2012. The Workers’ Compensation Commissioner entered a final order declining to issue a declaratory order on March 19, 2012. On October 11, 2012, SR filed a Petition for Judicial Review in Johnson County. Under the Petition SR sought a determination of whether the Insurance Commissioner and/or the Workers’ Compensation Commissioner have authority or jurisdiction to declare the status of subcontractors as independent contractors or employees under a private contract

between SR and Liberty Mutual Insurance Corporation subject to Iowa's Workers' Compensation Act pursuant to Iowa Code section 85.61(11). SR requested a remand to either the Workers' Compensation Commissioner or the Insurance Commissioner to decide this contractual interpretation issue.

THE COMMISSIONER'S AUTHORITY UNDER THE *CHARTIS* DECISION

In *Chartis*, the Iowa Supreme Court stated the issue was whether the Insurance Commissioner had authority to make a determination as to whether the rate Chartis applied to Action Warehouse was consistent with the requirements of Iowa Code chapter 515A. *Id.* at 125. The Court went through a detailed analysis of Iowa Code section 515A.9 and related chapter 515A provisions, and concluded that the Insurance Commissioner had only "very specific avenues" to review how the statute is applied. *Id.* at 129. The Court concluded that the Insurance Commissioner's statutory authority did not permit a retroactive application of an adjusted rate when Chartis had followed the requirements in the National Council on Compensation Insurance ("NCCI") Basic Manual. *Id.* at 127-28. The Court ultimately held that the Insurance Commissioner lacked authority to determine whether Chartis charged an excessive premium to Action Warehouse when Chartis had followed NCCI classification rules in making its classification of Action Warehouse's employees.

The *Chartis* Court stated that "[t]he Commissioner's authority is limited to reviewing the 'manner in which [the approved] rating system has been applied.'" *Id.* at 127 (citing Iowa Code section 515A.9). This is consistent with the Court's decision in *Travelers Indemnity Co. v. Commissioner of Insurance*, 792 N.W.2d 242 (Iowa 2010), in which the Court discussed the scope of review the Insurance Commissioner applies in workers' compensation insurance rate cases:

NCCI is a rating agency organization licensed to do business in the State of Iowa under chapter 515A. However, this Court has noted that "**[t]he legislature has delegated to the commissioner of insurance authority**

to determine whether rates charged by companies providing workers' compensation insurance are excessive." *Travelers Indem. Co. v. Comm'r of Ins.*, 767 N.W.2d 646, 650 (Iowa 2009) (citing Iowa Code section 515A.1 for the proposition that chapter 515A's purpose "is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive"). The Commissioner of Insurance has exercised this statutory authority by delegating a portion of its charged task to NCCI. See Iowa Code § 515A.15B (stating Iowa's assigned risk plan for workers' compensation insurance "shall be administered by a rating organization licensed under this chapter"). NCCI is acting, at least when offering these dispute resolution procedures, as an arm of the Commissioner of Insurance and in an administrative manner.

Id. at 248 (emphasis added).

The Insurance Commissioner's December 9, 2011 decision quoted a letter from the NCCI Workers' Compensation Appeals Board (the Board) notifying SR that "coverage or employment status disputes require an interpretation of state or federal law ... [and] is not within [NCCI's] jurisdiction." (Order at pp. 2-3.) As such, the Board declined to hear SR's appeal and referred SR to the Insurance Commissioner.

The *Chartis* decision stands for the proposition that the Insurance Commissioner simply cannot create authority not otherwise specifically granted to him by the legislature. *Chartis* makes it clear that the scope of the hearing authority granted to the Insurance Commissioner by section 515A.9 is extremely narrow. The legislature has not conferred upon the Insurance Commissioner subject matter jurisdiction to determine a contractual dispute between SR and Liberty Mutual Insurance Corporation, SR's assigned workers' compensation carrier, about whether subcontractors should be characterized as independent contractors or employees. *Chartis* confirms that SR was not entitled to a hearing on this question before the Insurance Commissioner under section 515A.9. In light of *Chartis*, the Insurance Commissioner properly dismissed SR's appeal for lack of subject matter jurisdiction. The Hearing Officer correctly concluded that the Insurance Commissioner's jurisdiction is limited to determining disputes over premium rates charged by insurers. (Order at p. 5.)

ORDER

IT IS THEREFORE ORDERED that, in light of the *Chartis* decision, the Commissioner's December 09, 2011 order remains in full force and effect. This matter remains dismissed for lack of subject matter jurisdiction.

DATED this 20th day of August, 2013.



JAMES R. MUMFORD
First Deputy Iowa Insurance Commissioner

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ATTORNEY FOR THE IOWA
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Proof of Service	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on the <u>20</u> day of August, 2013.	
<input checked="" type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> Electronically	
Signature: <u>Wendy Vega</u>	

