



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

21 SOUTH FRUIT STREET SUITE 14
CONCORD, NEW HAMPSHIRE 03301

Christopher R. Nicolopoulos
Commissioner

David J. Bettencourt
Deputy Commissioner

In the Matter of
Colonial Green Products Distributors, LLC
Docket: INS No. 21-050-DJ

ORDER

In December 2019, Colonial Green Products Distributors, LLC (Colonial) filed a Declaratory Judgment action in Cheshire Superior Court (Court) against Cincinnati Insurance Company (Cincinnati) pertaining to Colonial's workers' compensation insurance policy with Cincinnati. That dispute included Colonial's requests for and access to manuals of rules of the National Council on Compensation Insurance (NCCI), which are applicable to workers' compensation policies in New Hampshire. In that action Colonial asked the Court to determine the following two questions:

1. Whether NCCI rules are incorporated and binding in Colonial's workers' compensation policies, even though NCCI rules are "literally inaccessible" to Colonial and other policyholders?
2. Whether the NCCI rules are incorporated into the workers' compensation policies, and said rules are adopted and approved by the Department, is it a violation of Colonial's constitutional safeguards of fundamental fairness and due process rights, under Part I, Article 15 of the State Constitution when said NCCI rules are not provided to Colonial free of charge?

On June 15, 2021, after Colonial filed a motion for summary judgment, the Court, analyzing whether Colonial had failed to exhaust administrative remedies, issued

an order holding the court's proceedings in abeyance pending administrative review of Colonial's questions by the New Hampshire Insurance Department (Department).

On July 26, 2021, Colonial filed a Petition for Declaratory Ruling (Petition) with the Department, pursuant to Ins 209.01, seeking declaratory rulings for the following questions:

1. Whether the NCCI rules are incorporated and binding in workers' compensation policies, even though the NCCI rules are "literally inaccessible" to Colonial and other policyholders?
2. Whether the non-disclosure of NCCI rules to policyholders violates RSA 412:1 (X), which states that the purpose of this chapter is "to protect policyholders and the public against the adverse effects of any policy provision that is not in the public interest or is contrary to public policy"? And/or a violation of RSA 412:5(I), which states, "Every insurer and advisory organization shall file policy forms, endorsements, and other contract language. . . The commissioner may disapprove such form if it contains a provision that does not comply with the requirements of law, is not in the public interest, is contrary to public policy, is inequitable, misleading, deceptive, or encourages misrepresentation of such policy"?
3. Whether the NCCI rules are administrative rules adopted by the Department?
4. Whether the practice of charging and attempting to collect disputed premiums by incorporating the disputed amounts into a subsequent policy period violates RSA 417:4(XII) and/or RSA 417:4(XIV)?
5. Whether the NCCI Dispute Resolution Process violates RSA 412:5(V) and/or RSA 417:4(XVII)(d) in that the Process does not provide "reasonable means" to "be heard" considering the NCCI rules are not provided to policyholders?
6. If the NCCI rules are incorporated into the workers' compensation policies and said rules are adopted and approved by the Department, is it a violation of policyholders' constitutional safeguards of fundamental fairness and due process rights, under Part I, Article 15 of the State Constitution when said NCCI rules are not provided to policyholders when requested, free of charge in order to being the Dispute Resolution Process?

7. Whether the inclusion of payroll for vacation, sick days and holiday pay into the premium, where there is no exposure for a workers' compensation claim, violates RSA 412:35, whereby "a final premium shall be charged based upon actual exposure existing during the term of the policy coverage"?

In its petition, Colonial states that its insurance premium audit dispute is not limited to Cincinnati, as it currently has a dispute with Travelers Property Casualty Company of America (Travelers) about the same issue. As a result, Colonial states that on November 5, 2020 it began the dispute resolution process with Travelers. However, Colonial has requested an abeyance of that process until a final Court ruling on its Declaratory Judgment action.

Assuming, without deciding, that a petition for declaratory ruling with the Department, pursuant to Ins 209 and RSA 541-A, applies under these circumstances, Ins 209.02(a) states that if a petition for a declaratory ruling reveals that other persons would be substantially affected by the proposed ruling, "the department shall require service of the petition on such persons" with notice that they may file a reply. Here, Cincinnati, Travelers, and NCCI would be substantially affected by the rulings sought by Colonial. As a result, Colonial must serve its petition and this Order to Cincinnati, Travelers, and NCCI on or before August 31, 2021, so that they may provide a response to said Petition. Colonial shall provide the Department with proof that they have complied with this Order within that timeframe to avoid dismissal of Colonial's petition. If Cincinnati, Travelers, and NCCI choose to submit a response to the petition, they must do so within thirty (30) days of receiving Colonial's petition and this Order. All future

correspondence with the Department pertaining to the Petition shall be sent to the attention of Linda Zalinskie, Administrative Assistant to the Deputy Commissioner, with all of the foregoing interested parties copied on said correspondence.

SO ORDERED.

Date: 7/30/2021

A handwritten signature in blue ink, appearing to read "C. Nicolopoulos", written over a horizontal line.

Christopher Nicolopoulos, Commissioner