

Case: *Alaska Insurance Guaranty Association and Northern Adjusters vs. Edwin Simons, Fairbanks Nissan, and Alaska Workers' Compensation Benefits Guaranty Fund, Alaska Workers' Comp. App. Comm'n Dec. No. 011 (June 2, 2006)*

Facts: "This motion for extraordinary review challenges the board's construction of AS 21.80.060(a)(1). The movant, Alaska Insurance Guaranty Association (AIGA), asked the board to be dismissed as a party to the employee's claim, arguing it was not liable for claims filed after December 31, 2003, the deadline set by the court for presentation of claims to the liquidator of Reliance Insurance, the employer's bankrupt insurer." Comm'n Dec. No. 011 at 1.

Applicable law: Former 8 AAC 57.076(a), repealed in 2011:

The commission will grant a motion for extraordinary review if the commission finds the sound policy favoring appeals from final orders or decisions is outweighed because

(1) postponement of review until appeal may be taken from a final decision will result in injustice and unnecessary delay, significant expense, or undue hardship;

(2) an immediate review of the order or decision may materially advance the ultimate termination of the litigation, and

(A) the order or decision involves an important question of law on which there is substantial ground for difference of opinion; or

(B) the order or decision involves an important question of law on which board panels have issued differing opinions;

(3) the board has so far departed from the accepted and usual course of the board's proceedings and regulations, or so far departed from the requirements of due process, as to call for the commission's power of review; or

(4) the issue is one that otherwise would likely evade review, and an immediate decision by the commission is needed for the guidance of the board.

AS 21.80.060(a)(1) requires the AIGA to pay "covered claims existing before the order of liquidation and arising within 30 days after the order of liquidation[.]" A "covered claim" is defined at AS 21.80.180(6) as "an unpaid claim . . . that arises out of and is within the coverage . . . of an insurance policy issued by an insurer . . . if the insurer becomes an insolvent insurer and (A) the claimant or insured is a resident of this state at the time of the insured event[.]" AS 21.80.060(a)(1) concludes with two exceptions to AIGA's obligation to pay covered claims:

[T]he association is not obligated

(A) to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises; or

(B) to pay a claim filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer[.]

Issue: Should the commission agree to review the board's construction of AS 21.80.060(a)(1)?

Holding/analysis: The commission reached the merits in that it concluded that the board had misconstrued AS 21.80.060(a)(1). However, the commission did not dismiss AIGA as a party because even under the commission's reading of the statute, AIGA might still be liable if, for example, the court that set the filing deadline permitted a period after the initial deadline under which claims could be filed late for good cause. The commission therefore stated that it was denying the motion for extraordinary review (MER).

Note: The commission's MER regulations, 8 AAC 57.072, .074, .076, were repealed effective 3/27/11. The commission enacted new regulations, 8 AAC 57.073, .075, .077, effective 12/23/11, providing for petitions for review of non-final board decisions based on similar but not identical criteria as those under the MER regulations.