

No. 13-1405

IN THE
SUPREME COURT OF OHIO

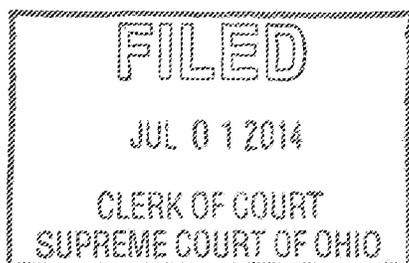
DUANE HOYLE,
Plaintiff-Appellee

-and-

THE CINCINNATI INSURANCE COMPANY
Intervening Plaintiff-Appellant

v.

DTJ ENTERPRISES, INC., et al.,
Defendants-Appellees.



JURISDICTIONAL APPEAL FROM THE
COURT OF APPEALS, NINTH APPELLATE DISTRICT
SUMMIT COUNTY, OHIO
CASE NOS. CA-26579 & CA-26587

**MOTION OF APPELLANT THE CINCINNATI INSURANCE
COMPANY FOR LEAVE TO FILE POST-ORAL ARGUMENT
SUPPLEMENTAL MATERIAL**

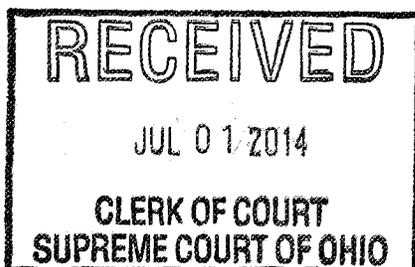
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NOW COMES, Appellant The Cincinnati Insurance Company (“CIC”), by and through its undersigned counsel, and respectfully moves this Court for an order pursuant to S.Ct.Prac.R. 17.09(A) granting leave to allow the filing of the attached post-oral argument supplemental material. This supplemental material is being proffered in order to address an area of inquiry and questioning by justices during oral argument regarding how CIC treated the premium charged to Appellees DTJ Enterprises, Inc. and Cavanaugh Building Corporation (“DTJ/Cavanaugh”) for the Employers Liability Coverage endorsement (Form GA 106 OH 01 96) on policy No. CPP 081 75 12 (“the Policy”) following and as a result of this Court’s March 23, 2010 decisions in *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027, 927 N.E.2d 1066 and *Stetter v. R.J. Corman Derailment Servs., L.L.C.*, 125 Ohio St.3d 280, 2010-Ohio-1029, 927 N.E.2d 1092.

During the argument on June 10, 2014, undersigned counsel for CIC, in response to a question by Justice Lanzinger, stated that, following the *Kaminski* and *Stetter* decisions, a credit would have been given by CIC to its insureds for the portion of premiums charged for the employer intentional tort coverage provided in the Employers Liability Coverage endorsement for any remaining term on the policy period after March 23, 2010.¹ In rebuttal to that point, Mark Bernlohr, counsel for DTJ/Cavanaugh, affirmatively stated during his argument that no refund had been given to his clients.² Upon being questioned by Justice Lanzinger, Mr. Bernlohr reiterated that point.³ Later however, when asked again by Chief Justice O’Connor about whether a refund had been given, Mr. Bernlohr equivocated, saying “Your Honor, I don’t believe there was. I honestly may be wrong about that but I don’t believe there was. I believe my client

¹ Oral argument archived video, 8:10-8:42.

² Id., 24:49-24:50.

³ Id., 25:06-25:10.

would have sent it back saying ‘What is this all about?’”⁴ This post-oral argument supplemental material is necessary to clarify and set the record straight on this issue that a credit was given to DTJ/Cavanaugh.

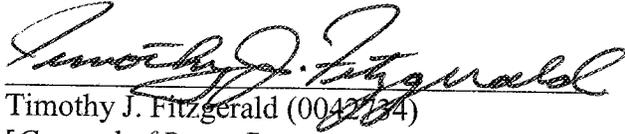
The record in this case already reflects that the premium for the employer intentional tort coverage provided in the Employers Liability Coverage endorsement to the Policy was calculated using a premium rate of 0.069.⁵ As the attached affidavit and supplemental materials confirm, the premium rate for the Employers Liability Coverage endorsement was reduced to 0.038 post-*Kaminski* and *Stetter* which adjustment resulted in a credit equivalent to Fifteen Dollars (\$15.00) to the DTJ/Cavanaugh account for the eight (8) day period between March 23, 2010, when the *Kaminski* and *Stetter* decisions were announced, and March 31, 2010.

WHEREFORE, to correct and clarify the record, Appellant The Cincinnati Insurance Company respectfully requests that this Court grant this motion pursuant to S.Ct.Prac.R. 17.09(A) and enter an order permitting the filing of the post-oral argument supplemental materials attached hereto.

⁴ Id., 32:19-32:30.

⁵ Supp. p. 109.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing *Motion of Appellant The Cincinnati Insurance Company for Leave to File Post-Oral Argument Supplemental Material* was sent via e-mail pursuant to S.Ct.Prac.R. 3.11(B)(1) this 30th day of June 2014 to:

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equivalent to Fifteen Dollars (\$15.00) for the eight (8) day period between March 23, 2010, when the *Kaminski* and *Stetter* decisions were announced, and March 31, 2010.

6. The adjustment in the premium rate and corresponding credit set forth above is confirmed in the attached corrected audit (see attached Exhibit A) conducted by the Cincinnati Insurance Company of the Cavanaugh account in December 2010.

7. The premium rate adjustment referencing the corrected audit is reflected in the General Change Endorsement to the Policy which is attached hereto as Exhibit B.

AFFIANT FURTHER SAYETH NAUGHT.

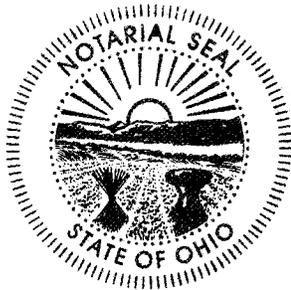


JOEL W. DAVENPORT

Subscribed and sworn to before me on this 27th day of June, 2014 by Joel Davenport.



NOTARY OF PUBLIC



AMI M. ARMBRUSTER
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
July 11, 2015

My Commission Expires:
July 15, 20 2015

THE CINCINNATI INSURANCE COMPANY
LIABILITY PREMIUM ADJUSTMENT STATEMENT

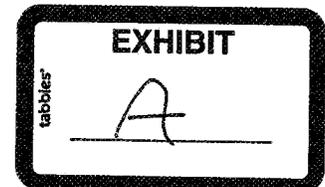
INSURED: CAVANAUGH BUILDING CORPORATION ETAL

POLICY NO: CPP 0817512

AGENT: DAWSON & PELGER INS. INC. (34215)

POLICY PERIOD				ADDITIONAL PREMIUMS ARE DUE UPON PRESENTATION OF A STATEMENT							
From <u>03/31/07</u> To <u>03/31/12</u>				* * CORRECTED * *							
TERM OF AUDIT		PREMIUM BASIS		RATES		DEPOSIT PREMIUM		EARNED PREMIUM		DIFFERENCE	
CLASS# CODE	CLASSIFICATION	A. Area B. Payroll C. Sales E. Cost/ Each/ Other		Prod/ Comp.	All Other	Prod/ Comp.	All Other	Prod/ Comp.	All Other	Prod/ Comp.	All Other
				20490 OH	COMPOSITE RATED	B	1663210	0.000	10.100	0	22337
20498 OH	COMPOSITE RATE - OTHER THAN GROSS SALES OR PAYROLL	E	9252245	0.000	1.250	0	13000	0	11565	0	-1435
29970 OH	AUTOMATIC ADDITIONAL INSURED-CONTRACTORS OPS		28363	0.000	0.035	0	1264	0	993	0	-271
29975 OH	CONTRACTORS BROADENED COVERAGE 3/31/2009 TO 3/23/2010		28363	0.000	0.035	0	1264	0	993	0	-271
20390 OH	EMPLOYER LIABILITY - CONTRACTORS 3/23/2010 TO 3/31/2010	B	2018041	0.000	0.069	0	2125	0	1392	0	-733
20390 OH	EMPLOYER LIABILITY - CONTRACTORS	B	45396	0.000	0.038	0	0	0	17	0	17

Total Earned Premium:	\$0	\$31,758
Deposit Premium:	\$0	\$39,990
Return Premium:	\$0	(\$8,232)
Net Return Premium:	(\$8,232)	



THE CINCINNATI INSURANCE COMPANY
GENERAL CHANGE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

Attached to and forming part of Policy No. CPP 0817512

Issued to: CAVANAUGH BUILDING CORPORATION, CAVANAUGH LANDSCAPE
CO INC,

Effective Date of Endorsement 03/23/2010

Agency: DAWSON INSURANCE INC/CANTON 34-215

Additional Premium Due at Endorsement Effective Date NONE

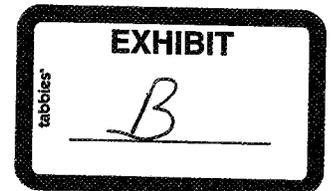
Subsequent Semi Annual Installments Increased by
Revised Installment Payments

Not Including Auto Premium

AMENDING RATES DUE TO OHIO SUPREME COURT DECISIONS OF 03/23/2010 PERTAINING TO EMPLOYERS
LIABILITY

ANY CHANGE IN PREMIUM WILL BE SHOWN ON CORRECTED AUDIT

NEW EMPLOYERS LIABILITY RATE: .038



User ID: RPERRY

Activity Date: 11/23/2010

Ratebook: 01/01/2010 (OH)

Quote Number: 1171868

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

IA 407 01 95

THE CINCINNATI INSURANCE COMPANY
GENERAL CHANGE ENDORSEMENT

Endorsement Number:

Policy Number: CPP 0817512

Change Effective: 03/23/2010

Policy Expiration Date: 03/31/2012

Pay Plan: SEMI-ANNUAL

Additional Premium NONE
Increased Installment
Revised Installment

Combined Annual Difference	1	0
Installment Premium	2	
Total Annual Financed Premium	3	
Pro Rate Factor	4	0.022
Additional Premium for Balance of Policy Year	5	0
Number of Remaining Installments X #2	6	
Cash Additional Due Now	7	
Old Installment Premium	8	
Increase each Remaining Installment	9	
New Installment Premium	10	

User ID: RPERRY

Activity Date: 11/23/2010

Ratebook: 01/01/2010 (OH)

Quote Number: 1171868

MI 1204 07 03