

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Before the Commissioner of Financial and Insurance Services

**Liberty Mutual Insurance
Company,**

Petitioner

v

Case No. 05-466-WC

**Michigan Workers Compensation
Placement Facility,**

Respondent

For the Petitioner:

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**Issued and entered
this 3rd day April 2006
by Linda A. Watters
Commissioner**

The Administrative Law Judge issued a Proposal for Decision dated February 16, 2006. She recommended that the Commissioner uphold the ruling of the Respondent that the Petitioner must return the excess service carrier allowance paid by the Respondent. This is estimated to be \$1.8 million.

The Petitioner filed Exceptions and the Respondent filed its Response to those Exceptions.

The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. The PFD is attached, adopted, and made part of this Final Decision.

The following discussion is premised upon a reading of the PFD. The Commissioner will address the Exceptions in brief because the issues are dealt with cogently and thoroughly in the PFD.

The Petitioner makes four main arguments in its Exceptions: 1. It was a mutual mistake of the parties to state in the contract that the service carrier allowance would be based upon collected premiums; 2. The Respondent was culpably negligent in answering Question #36 incorrectly; 3. The Respondent unduly delayed asserting its rights under the contract and should not be allowed to seek reimbursement; and, 4. The Petitioner reasonably relied on the wrong answer given to Question #36 and it is, thus, unfair to allow reimbursement.

First, there was no mutual mistake of the parties as to the contract language. Virtually all the evidence--from the RFP to the confirmation letter to the contract itself [prepared by the Respondent]--show that the Respondent intended to base service carrier allowances on collected premiums. In this context, the answer to Question #36, which stated otherwise, was simply in error.

Second, while the Respondent answered Question #36 incorrectly, that had no bearing on the unambiguous language of the contract. As a general matter, statements

made before a contract are not allowed to contradict the plain terms of a written contract. As a particular matter, in the integration clause of this contract, the parties agreed that the contract and its attachments constituted the entire agreement of the parties. The written questions and answers were not attached to the contract.

Third, the Respondent took action to correct the overpayment promptly after the audit revealed the overpayment. The overpayment occurred because, in advance of the audit, the Petitioner persistently miscalculated its service carrier allowance.

Fourth, the Petitioner's reliance on the answer to Question #36 was not reasonable. The answer conflicted with the RFP, the confirmation letter, and the contract itself. The conflict between the RFP, the answer, and the confirmation letter called for a careful examination of the final contract language. Instead, the Petitioner signed the contract without review.

The overarching law governing this dispute is that the interpretation of unambiguous contract language, "...begins and ends with the actual words of a written agreement." *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496 (2001). This was dramatically underscored last summer by *Rory v Continental Ins Co*, 473 Mich 457 (2005), where the Court abandoned the reformation of unreasonable contract provisions where they are clear. In this contested case, the Petitioner did not establish grounds for departure from this precedent.

ORDER

Therefore, it is ORDERED that the ruling of the Respondent that the Petitioner must return the excess service carrier allowance is upheld.