CASE NO. 6134 CRB-3-16-10 CLAIM NO. 300109694	: COMPENSATION REVIEW BOARD
JOSEPH LAMPO CLAIMANT	: WORKERS' COMPENSATION COMMISSION
v.	: JANUARY 31, 2018

ANGELO'S PIZZA EAST ROCK, L.L.C.
EMPLOYER

and

THE HARTFORD
INSURER
RESPONDENT-APPELLANT

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant, who did not appear at oral argument, was represented by Alphonse J. Balzano, Esq., The Law Offices of Balzano & Tropiano, P.C., 321 Whitney Avenue, New Haven, CT 06511.

The respondent-employer, Angelo's Pizza East Rock L.L.C., who did not appear at oral argument, was represented by Charles E. Tiernan III, Esq., Lynch, Traub, Keefe & Errante, P.C., 52 Trumbull Street, P.O. Box 1612, New Haven, CT 06510.

The respondent-insurer, The Hartford, was represented by Michael J. McAuliffe, Esq., Pomeranz, Drayton & Stabnick, L.L.C., 95 Glastonbury Boulevard, Suite 216, Glastonbury, CT 06033-4453.

The respondent Second Injury Fund was represented by Joy L. Avallone, Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120.

This Petition for Review from the September 2, 2016 Ruling on Respondent-Second Injury Fund's Motion to Preclude of Nancy E. Salerno, the Commissioner acting for the Sixth District, was heard August 25, 2017 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Christine L. Engel and Daniel E. Dilzer.[1]

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondent-insurer The Hartford has appealed from a September 2, 2016 "Ruling on Respondent-Second Injury Fund's Motion to Preclude" [hereinafter "Preclusion Ruling"] reached by the trial commissioner. The commissioner concluded that the statute governing insurance coverage for employers in Connecticut, General Statutes § 31-343, barred The Hartford from raising as a defense to liability the circumstances which allegedly caused the policy to the respondent-employer to lapse.[2] The Hartford appealed this ruling, arguing that Stickney v. Sunlight Construction, Inc., 248 Conn. 754 (1999), stands for the principle that the trial commissioner should have held an evidentiary hearing on whether insurance coverage was in force on the date of the claimant's injury. The Second Injury Fund [hereinafter "fund"] argues that Rossini v. Morganti, 127 Conn. 706 (1940), and DiBello v. Barnes Page Wire Products, Inc., 67 Conn. App. 361 (2001), stand for the proposition that the Workers' Compensation

[1] We note that Motions for Extensions of Time and a Motion for Postponement were granted during the pendency of this appeal.

[2] General Statutes § 31-343 states: "As between any such injured employee or his dependent and the insurer, every such contract of insurance shall be conclusively presumed to cover the entire liability of the insured, and no question as to breach of warranty, coverage or misrepresentation by the insured shall be raised by the insurer in any proceeding before the compensation commissioner or on appeal therefrom."

Commission [hereinafter "Commission"] is not empowered to hold hearings on the validity of what appears, on its face, to be a valid policy of insurance under Chapter 568. We find the trial commissioner in this case properly applied the law, in part because we cannot distinguish the facts and law herein from the issues discussed in Yelunin v. Royal Ride Transportation, 121 Conn. App. 144 (2010), which decision supports the trial commissioner's decision. We affirm the Preclusion Ruling.

The circumstances in the present matter were set in motion when the fund filed a Motion to Preclude on July 18, 2016. The fund's motion asserted that its investigator had determined that the respondent-employer had a workers' compensation insurance policy with The Hartford which was in force as of the date of the claimant's alleged injury and originally scheduled to run until June 13, 2015. Notice of policy cancellation was received by the Commission's designated agent, the National Council of Compensation Insurance, Inc., [hereinafter "NCCI"] on July 25, 2014, and pursuant to General Statutes § 31-348, the cancellation of insurance was effective fifteen days later. [3] The fund sought to bar The Hartford from introducing any testimony or documentary evidence challenging the validity of the policy The Hartford had issued. While The Hartford claimed malfeasance had predated the issuance of this policy which voided the coverage, the fund argued that once a workers' compensation insurance policy was on file at NCCI, the carrier was then estopped from denying that coverage was in force until the policy was cancelled in accordance with

[3] General Statutes § 31-348 states: "Every insurance company writing compensation insurance or its duly appointed agent shall report in writing or by other means to the chairman of the Workers' Compensation Commission, in accordance with rules prescribed by the chairman, the name of the person or corporation insured, including the state, the day on which the policy becomes effective and the date of its expiration, which report shall be made within fifteen days from the date of the policy. The cancellation of any policy so written and reported shall not become effective until fifteen days after notice of such cancellation has been filed with the chairman. Any insurance company violating any provision of this section shall be fined not less than one hundred nor more than one thousand dollars for each offense."

the provisions of General Statutes § 31-348. The trial commissioner found this argument persuasive and granted the Motion to Preclude.

The Hartford filed a Motion to Correct seeking to have the trial commissioner review evidence it claimed would show the subject insurance policy should be deemed void ab initio. The trial commissioner denied this motion in its entirety and The Hartford pursued an appeal. The gravamen of its argument is that based on its interpretation of the statutes, the trial commissioner has the equitable power to take evidence regarding the formation of the contract for insurance, and it was error for the trial commissioner not to do so.

In considering this appeal, we note that because no evidence was presented, this case is based solely on the trial commissioner's application of the law and, therefore, the general deference to fact-finding promulgated in Fair v. People's Savings Bank, 207 Conn. 535 (1988), does not apply. Nonetheless, we still extend great deference to the findings of a trial commissioner. "As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Daniels v. Alander, 268 Conn. 320, 330 (2004), *quoting* Burton v. Mottolese, 267 Conn. 1, 54 (2003). We may only reverse a decision under these circumstances if it is contrary to law. See Neville v. Baran Institute of Technology, 5383 CRB-8-08-10 (September 24, 2009), and Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

The trial commissioner cited General Statutes § 31-343 as a basis for issuing the Preclusion Ruling. We note that in interpreting statutes, we are governed by the terms of

General Statutes § 1-2z.[4] The "plain meaning" of General Statutes § 31-343 creates a conclusive presumption as to the validity of a workers' compensation insurance policy, and bars an insurer from raising any challenge "as to breach of warranty, coverage or misrepresentation by the insured…." In arguing that the policy in this matter was void ab initio, The Hartford is attempting to do precisely what this statute specifically proscribes: i.e., prove that the insured engaged in some form of breach of warranty or misrepresentation. We cannot see how such an argument is tenable given the plain meaning of the statute. The General Assembly has clearly directed this Commission to give any policy of insurance filed with the Commission full faith and credit until it is duly cancelled pursuant to General Statutes § 31-348.

As our Supreme Court pointed out in Piscitello v. Boscarello, 113 Conn. 128 (1931), "[t]he purpose of the statute requiring notice of insurance effected or cancelled to be filed with the board of compensation commissioners is to make an authentic record of the insurance policies in existence, so that any employee or prospective employee may ascertain whether the employer is insured and if so in what company." Id., 130-131. See also DiBello, supra, 369. Essentially, once an insurance policy is filed with the Commission, the public record creates a promissory estoppel and third parties need not make further inquiry into the validity of an insurance policy appearing of record.

This board applied similar reasoning when an insurer did not file a policy of insurance with NCCI but, instead, induced reliance by issuing an insurance certificate and subrogation waivers. In Lee v. Empire Construction Special Projects, LLC, 5751

[4] General Statutes § 1-2z states: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

CRB-2-12-5 (August 8, 2013), *appeal withdrawn*, A.C. 35991 (February 6, 2015), the carrier raised arguments similar to those made by The Hartford in the present case regarding malfeasance by an issuing agent which voided coverage. We concluded, consistent with our prior opinion in DiBello v. Barnes Page Wire Products, Inc., 3970 CRB-7-99-2 (March 2, 2000), *aff'd*, 67 Conn. App. 361 (2001), *cert. granted*, 260 Conn. 915 (2002), *appeal withdrawn* (June 26, 2002), that "a certificate of insurance issued by a licensed agent has 'special significance' within the Workers' Compensation Act, as it establishes prima facie proof of insurance before the commissioner." Id. Obviously, a policy on file at NCCI also establishes prima facie proof of insurance coverage. In Lee, supra, we further cited this tribunal's analysis in DiBello for the proposition that when an allegation of misconduct between an insurer and its agent is raised, the issue is outside this Commission's jurisdiction. Alleged misrepresentation or failure to provide notification between the insured and its carrier is also outside our jurisdiction. See Verrinder v. Matthew's Tru Colors Painting & Restoration, 4936 CRB-4-05-4 (December 6, 2006), *appeal dismissed*, A.C. 28367 (July 25, 2007).

The Hartford relies in part on Stickney, supra, to support its argument that the trial commissioner should have held an evidentiary hearing regarding the validity of the insurance policy. We are perplexed by this argument. Our Supreme Court specifically determined that a trial commissioner does not have the equitable power to consider issues relating to disputes between insurance carriers. [5] Id., 766. In distinguishing the case from

[5] The Hartford's brief cites this tribunal's decision in Stickney v. Sunlight Construction Co., 12 Conn. Workers' Comp. Rev. Op. 364, 1738 CRB-6-93-5 (August 2, 1994), *rev'd*, 48 Conn. App. 609 (1998), *aff'd*, 248 Conn. 754 (1999), and asserts it was affirmed by the Supreme Court in Stickney v. Sunlight Construction, Inc., 248 Conn. 754 (1999). In actuality, the Supreme Court affirmed the Appellate Court's decision in Stickney v. Sunlight Construction, Inc., 48 Conn. App. 609 (1998), which reversed this tribunal's decision. See Stickney v. Sunlight Construction, Inc., 248 Conn. 754, 756-57 (1999).

Hunnihan v. Mattatuck Mfg. Co., 243 Conn. 438 (1997), the Supreme Court, in Stickney, concluded that no statute gives the Commission the jurisdiction to address a dispute which "sounds in contract law," and such a dispute would need to be resolved in another forum. Id., 768-69. A dispute concerning whether the employer misled The Hartford prior to issuing the policy in this case is a contractual dispute, not an issue for determination under Chapter 568. The principle clearly espoused in Stickney, supra, is that disputes which are at most tangential to Chapter 568 should be addressed in another, more appropriate forum.[6]

The Appellate Court has already been presented with the question of whether records at NCCI should be given conclusive effect by this Commission relative to the presence or absence of insurance coverage. The court has answered this question in the affirmative. In Yelunin, supra, The Hartford, as the insurance carrier which had insured the employer, argued that the trial commissioner need not have conducted a factual inquiry regarding whether the employer received a cancellation notice prior to the claimant's date of injury. The Hartford argued that once NCCI received a cancellation notice from the carrier, the notice should be given conclusive effect regardless of whether the employer ever received notice of cancellation. The Appellate Court agreed with that reasoning:

> Cancellation of a workers' compensation insurance policy occurs in accordance with § 31-348. Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 459, 774 A.2d 992 (2001). Section 31-348 provides in relevant part that "[t]he cancellation of any [workers' compensation insurance policy] shall not become

[6] The Hartford also attempts to rely on Omachel v. Sunshine Masonry Construction, 5148 CRB-1-06-10 (October 22, 2007), *appeal dismissed*, A.C. 29366 (February 27, 2008), *cert denied*, 286 Conn. 923 (2008), as a basis for the legal principle that a trial commissioner must hold an evidentiary hearing regarding issues of insurance coverage. We find Omachel factually distinguishable from and inapposite to this case. In Omachel, the trial commissioner refused to make any decision regarding whether insurance coverage was in force, asserting he lacked subject matter jurisdiction over the issue of whether the employer was insured. We held that the decision was inconsistent with precedent and reversed and remanded the matter. In the present case, the trial commissioner granted the Preclusion Ruling because the fund presented prima facie evidence that the employer had insurance in place as of the date of the alleged injury. Unlike Omachel, the trial commissioner reached a decision on this issue and we will defer to that decision.

> effective until fifteen days after notice of such cancellation has been filed with the chairman [of the workers' compensation commission]." The only precondition to effective cancellation contained in § 31-348 is that an insurer provide notification to the chairman of the workers' compensation commission. Although notification to the chairman is surely governed by the mandate of § 31-321, there is no independent requirement within the workers' compensation statutory scheme that a workers' compensation insurer provide notification directly to an insured that would serve to trigger the mandate of § 31-321. Indeed, "§ 31-348 has been interpreted as protecting employees or anyone examining coverage records in the commissioner's office. In that regard, *an employer's understanding as to when coverage terminated is largely irrelevant*…." (Emphasis added.) Dengler v. Special Attention Health Services, Inc., supra, 461. Therefore, the board's review of the adequacy of Hartford's notice to Royal was unnecessary, as Hartford was not required to provide notice of the cancellation to Royal in order for the cancellation to become effective.

Id., 149.

If, as The Hartford successfully argued in Yelunin, the records of NCCI are to be given conclusive effect as to whether a policy of insurance under Chapter 568 has been cancelled, we cannot logically understand how the records of NCCI would not be given conclusive effect relative to the inquiry of whether a policy of insurance under Chapter 568 had been issued and was in effect. The precedent in Dengler, supra, citing Rossini, supra, suggests that these records must be given conclusive effect by the trial commissioner.

> Our Supreme Court has explained the importance of providing sufficient notice of cancellation by noting that "[workers'] compensation is a peculiar type of insurance, and that to every policy each employee of the insured is in a very real sense a party… [T]he purpose of the notice was to make an authentic record so that any employee or prospective employee might ascertain whether the employer is insured, and, if so, in what company, and that the insurer is estopped to deny the truth of the formal record, whether or not the particular employee whose rights are in question examined the files where such records are kept; and … that, as the record stated that the policy was in effect, the insurer could not deny that this was so." Rossini v. Morganti, 127 Conn. 706, 708, 16 A.2d 285 (1940). That rule protects employees' interests by affording them

> access to accurate records filed in the chairman's office about an employer's compensation coverage.

Dengler, supra, 460.

The statutory scheme under General Statutes §§ 31-343 and 31-348, as well as prior decisions such as Dengler, Rossini, and Yelunin, are in accordance with the policy objective of allowing third parties who examine the insurance coverage documentation on file at NCCI to rely on the validity of these records and to prevent insurance carriers from denying what is essentially prima facie evidence of coverage. If a carrier issues coverage in error, it should immediately exercise its remedies under General Statutes § 31-348. To allow a carrier to essentially "back date" cancellation of coverage would be inconsistent with our statutes, precedent, and public policy, given that a party could then easily rely to its detriment on the coverage information at NCCI. As this board has clearly pointed out in decisions such as Lee, supra, and Verrinder, supra, the Commission's lack of jurisdiction over certain insurance disputes does not bar the exercise of remedies in other forums to redress a carrier's grievances.

The trial commissioner's decision to grant the Motion to Preclude was consistent with our statutes and binding precedent. We therefore affirm the Preclusion Ruling.

Commissioners Christine L. Engel and Daniel E. Dilzer concur in this opinion.

CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed this 31st day of January 2018 to the following parties:

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