

November 11, 2020

VIA E-MAIL

Raymond Farmer
President, National Association of Insurance Commissioners
South Carolina Department of Insurance
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Re: Request for Investigation into Arch Insurance Company

Dear President Farmer:

My law firm, Davis Goldberg & Galper PLLC, represents Pinner Construction Co., Inc. (“Pinner”). I am writing on behalf of my client to bring facts involving Arch Insurance Company (“Arch”) to the attention of the National Association of Insurance Commissioners (“NAIC”). I believe these facts indicate fraud and other intentional malfeasance and violations of various state insurance laws and regulations. We believe Arch is an insurance company licensed by all 50 states in the U.S. as providing liability insurance as well as performance and payment bonds for public works construction projects.

The attached letter my office sent to the California Insurance Commissioner details factual allegations that we believe indicated fraudulent and deceptive behavior. While the letter describes allegations surrounding Arch’s refusal to honor a performance bond in the state of California, we are bringing it to NAIC’s attention because we believe that Arch is licensed by all 50 states in the U.S. Therefore, if in fact Arch has acted fraudulently regarding honoring its contractual obligations in one state, that should be of interest to all other state insurance regulators, where we assume that Arch, as a licensed insurer, also undertakes insurance obligations.

Since filing the attached request with the California Insurance Commissioner, our office has been informed that Alan Othman, the alleged owner of Pinner’s subcontractor and indemnitor on Arch’s performance bond named in our attached letter, was directed by Arch to intentionally mislead Pinner during discussions of the bond in question. That intentional misleading is defined by Othman as follows: at a meeting between Arch and Pinner to discuss the subcontractor’s performance, Othman was told by Arch to say that he was a consultant for Arch and not an indemnitor or owner of the problematic subcontractor, so Pinner had no idea that the subcontractor was actually present for these discussions.

Additionally, since filing the attached request with the California Insurance Commissioner, my office has researched a random sampling of a small number of cases filed against Arch over surety bond issues in a few different states over the last ten years. Our research

into the details of these cases has gleaned a disturbing pattern in all cases: even if there appears to be no serious factual disputes that would cause Arch to deny honoring its insurance bond obligations – similar to Pinner’s experience – the pattern and practice of Arch is virtually identical: Deny, delay, pile up litigation expenses, and then, ultimately, settle for a fraction of the face value. Even when it cannot reasonably deny liability, it appears Arch still forces litigation by refusing to pay its obligations on its surety bonds. Sometimes Arch will require the insured to be the ultimate indemnitor of the bond, i.e., they shift all risk to the party performing the contract. There is nothing wrong with that, indeed it is common in performance or bail bonds, for example. But what should catch NAIC and an individual state insurance regulator’s attention is that Arch appears to use the technique of delay, litigate, and settle for fractions on the dollar as a profit-model not based on the merits or genuine issues of fact. If that were true in one or two instances, that would be one thing. But even in our brief survey of cases filed against Arch in recent years, we are finding the same story again and again and again. The names and brief descriptions of the cases are attached.

To be clear, this is just a pattern we have detected from the sample size of companies we have been able to connect with. However, it is a disturbing one, and if true, represents bad faith and possibly fraudulent behavior worthy of investigation by NAIC and all its resources. It is especially worthy of investigation by NAIC considering NAIC’s historic commitment to rooting out unfair and deceptive practices on the part of insurers, even writing the model statute prohibiting such behavior. We’d also ask that you pass this letter and its attachments onto each of your individual members for their own potential investigations.

In sum: I believe that Arch’s alleged conduct in California – intentionally and willfully misleading an insured by withholding the material fact of the presence of an indemnitor for my client, Pinner’s, policy who turned out to be a losing bidder on the same contract Pinner was working on and looked to Arch to cover a performance bond, is prima facie evidence of fraud. And add to that is the work we have done indicating insurance fraud at its essence – don’t pay a policy that is required, on the face of the policy, to be honored, but rather, apparently use litigation and other tactics to squeeze out extra profits by coercing a settlement for pennies on the dollar by contractors who cannot afford the litigation and delay costs. That is, in essence, fraud and what insurance regulators in all 50 states, in my experience, are primarily sensitive to.

I will call your office within the next week to see if we can arrange a brief telephone call with you or a senior member of your staff. Please feel free to reach my assistant, Maddie Melendez at (202) 320-0751 or me on my cell phone (202-744-2792) and by email at ldavis@dggpllc.com.

Sincerely,



Lanny J. Davis
Davis Goldberg & Galper

Attachments