

JDI, LLC

ASSESSMENTS

Limited Liability Company

Members of a limited liability company that manage the company are exempt from mandatory coverage.*In re JDI, LLC, BIIA Dec., 09 18829 (2010)*

COVERAGE AND EXCLUSIONS

Elective adoption

By failing to pay premiums for elective coverage when filing a quarterly report, the limited liability company canceled elective coverage effective the date the Department received the quarterly report.*In re JDI, LLC, BIIA Dec., 09 18829 (2010)*

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: J D I, LLC**) **DOCKET NO. 09 18829**
2)
3 **FIRM NO. 139,488-00**) **DECISION AND ORDER**

4 **APPEARANCES:**

5 Firm, J D I, LLC, by
6 Joel Ihrke, Member

7 Department of Labor and Industries, by
8 The Office of the Attorney General, per
9 Brian L. Dew, Assistant

10 The firm, J D I, LLC, filed an appeal with the Board of Industrial Insurance Appeals on
11 August 24, 2009, from the Order and Notice Reconsidering Notice and Order of Assessment
12 No. 0469526, dated August 6, 2009. In this order, the Department, pursuant to RCW 51.48.131,
13 modified Notice and Order of Assessment No. 0469526, dated September 4, 2008, and ordered
14 taxes due and owing the State Fund in the amount of \$3,654.09, for the third quarter of 2007,
15 through the second quarter of 2008, including penalties and interest. The Department order is
16 **REVERSED AND REMANDED.**

17 **DECISION**

18 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for
19 review and decision. The employer filed a timely Petition for Review of a Proposed Decision and
20 Order issued on March 17, 2010, in which the industrial appeals judge affirmed the order of the
21 Department dated August 6, 2009.

22 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
23 no prejudicial error was committed. The rulings are affirmed.

24 The principle basis for the Notice and Order of Assessment, which resulted from an audit,
25 was the Department's determination that Daniel Wanless, a member of the LLC, was a worker
26 subject to mandatory coverage under the Industrial Insurance Act. We have granted review
27 because we disagree with this determination. The record before us supports the firm's contention
28 that this was a limited liability corporation managed by members, and that both members "qualify
29 for exemption under subsection (5) of this section" because they were partners.
30 RCW 51.12.020(13)(a). JDI presented the testimony of its members, Joel Ihrke and Daniel
31 Wanless, and eighteen exhibits labeled 1A through 1M. Mr. Ihrke's testimony in reference to
32

1 Exhibits 1C-1, 1C-2, and 1C-3, JDI's "Limited Liability Company License Renewal & Annual
2 Reports," dated July 2, 2007, June 21, 2008, and June 30, 2009, establishes that the limited liability
3 corporation was managed by members. In reference to Exhibits 1C-1, 1C-2, and 1C-3, Mr. Ihrke
4 testified that:

5 Q. And right above your signature do you see some -- a line?

6 A. Yes.

7 Q. Can you read that line to me today?

8 A. "Is the limited liability company managed by managers?"

9 Q. Did you make a mark on that box?

10 A. Yes. I checked "No."

11 Q. Why did you check "No"?

12 A. Because my understanding of LLC's at that point was you could have like a group
13 of executives or managers that manager [*sic*] your LLC or the LLC is just managed
14 by the members itself. And that's what we were, two members that were
managing this company.

15 Q. Now, was that always the case with JDI?

16 A. Yes.

17 1/19/10 Tr. at 8-9.

18 RCW 25.15.150(1) provides:

19 (1) Unless the certificate of formation vests management of the limited liability
20 company in a manager or managers: (a) Management of the business or affairs of the
21 limited liability company shall be vested in the members; and (b) each member is an
22 agent of the limited liability company for the purpose of its business and the act of any
23 member for apparently carrying on in the usual way the business of the limited liability
24 company binds the limited liability company unless the member so acting has in fact
25 no authority to act for the limited liability company in the particular matter and the
26 person with whom the member is dealing has knowledge of the fact that the member
27 has no such authority. Subject to any provisions in the limited liability company
agreement or this chapter restricting or enlarging the management rights and duties of
any person or group or class of persons, the members shall have the right and
authority to manage the affairs of the limited liability company and to make all
decisions with respect thereto.

28 There has been no evidence introduced to show that the "certificate of formation vests
29 management of the limited liability company in a manager or managers." Accordingly the
30 "(m)anagment of the business or affairs of the limited liability company" are vested in the members,
31 Joel Ihrke and Daniel Wanless.

32 The Application for Elective Coverage, Exhibit 1N, identifies Mr. Ihrke as manager and owner
of 90 percent of the LLC, and Mr. Wanless as member and owner of 10 percent of the LLC. Based

1 on the clear provisions of RCW 25.15.150(1) Mr. Ihrke is not the manager of the LLC, rather the
2 LLC is managed by the members, Mr. Ihrke and Mr. Wanless. Although there is great disparity in
3 ownership interest, no such disparity exists in the work management of the LLC. When Mr. Ihrke
4 was asked to relate how he and Mr. Wanless worked together he responded:

5 Q. Now, Mr. Ihrke, I want to direct you a little bit to the L&I insurance that you had
6 obtained.

7 A. Okay.

8 Q. Can you tell me a little bit about your experience with L&I before you formed JDI?

9 A. Before I formed JDI?

10 Q. Correct.

11 A. Very little experience, other than I knew what they did. They provided industrial
12 insurance for workers and stuff.

13 Q. Now, when you and Dan Wanless were working together, can you please explain
14 the kind of duties that Dan Wanless had?

15 A. Well, I mean, we both worked in the field doing all the labor. But we also both
16 were always trying to recruit work and trying to find jobs for us to do. We both
17 could, like, go purchase materials on our account that we had at the lumber store,
18 both had company credit cards. So we -- I did most of the books, but I also then
19 hired a bookkeeper to have her kind of teach me how to do it because I wasn't real
20 good at it.

21 Q. Did Mr. Wanless ever bid out jobs?

22 A. He -- We did some together. He didn't have as much experience in the
23 construction trade as I did. So we just -- We bid some together, but he never really
24 bid one on his own while we were together. He's doing that a little bit now on his
25 own.

26 Q. And when you say he went to go find customers, what did you mean by that?

27 A. He would just, I don't know, when he wasn't at work, just in his personal time he
28 was always talking to people about jobs we could do for them, just friends and
29 acquaintances, and recruiting work. I don't know, kind of like sales jobs, I guess.

30 Q. And then he would purchase materials for the firm, too?

31 A. Yes.

32 Q. And did you supervise him, or was he able to do that by himself?

A. No. He could go get whatever he wanted.

1/19/10 Tr. at 10-11.

Mr. Wanless was asked what kind of jobs, what kind of tasks did he have at JDI:

A. Well, at JDI I basically did everything that Joel did. I hammered nails and I found
new clients and I had a JDI business card and credit card. Basically, I did

1 everything that Joel did. But I never did any bid work. He always took care of the
2 bids. It was an equal partnership, other than that, as far as duties were concerned.

3 Q. And what about making decisions?

4 A. Well, when it came to making decisions, we made all the decisions together.

5 1/19/10 Tr. at 18.

6 The record supports our determination that Joel Ihrke and Daniel Wanless, friends and
7 construction workers, formed an LLC managed by member partners. Although they may not have
8 performed all of the necessary work equally, they both performed all of the work some of the time.
9 Both clearly had the power to contract for the LLC, had the ability and the power to bid and perform
10 construction jobs, and shared in the work and profits. Both Joel Ihrke and Daniel Wanless were
11 exempt from mandatory coverage under the provisions of RCW 51.12.020(5) and 13(a), as partners
12 in a member-managed LLC.

13 The other issue raised by this appeal concerns the effective date of cancelation of elective
14 coverage by JDI. Joel Ihrke and Daniel Wanless argue that elective coverage was terminated
15 when the LLC filed its report for the fourth quarter and did not pay premiums for elective coverage.
16 Jerold Billings, a litigation specialist for the Department of Labor and Industries, testified that for
17 each quarter covered by the audit JDI filed reports and paid premiums in full. He stated in regard to
18 the report for the third quarter of 2007:

19 A. No, they didn't stop paying premiums altogether. Their premium level went down
20 significantly, but they continued to file and pay a report form during the entire audit
21 period.

22 1/19/10 Tr. at 41-42.

23 On cross-examination Mr. Billings was asked about Exhibit 1N, the Application for Elective
24 Coverage:

25 Q. And what does that statement say?

26 A. "I understand that the Department will terminate this coverage for failure to report
27 or pay premiums and assessments."

28 Q. And if you look at Exhibit M, on August 3, 2007.

29 A. Yes.

30 Q. There's a line there which was read on direct: "If we do not receive it, if it is late, or
31 if you do not pay in full, we must cancel your elective coverage."

32 A. Yes.

Q. How does that square away with your analysis that written notification had to be
given to the Department?

1 A. Perfectly squares away. And let me explain why. This says that if we don't receive
2 a quarterly report form, if it's late, or it's not paid in full, we'll cancel. In this
3 particular case, that never happened. We continued to receive quarterly report
4 forms. If you go back and look at Exhibit A, we received a report form for the
5 fourth quarter of '07, the first quarter of '08 and the second quarter of '08 as
6 evidenced by the premiums that were due from the employer report fees. So we
7 have no way of knowing as an agency what premiums they're reporting because
8 our report forms don't say that. They just say, what's your hours, here's your
9 premiums, send it in. So until such time as we audit, we can't determine if what
10 you've reported is correct or full or not. So in this case we continued to get a
11 report form, it was paid in full on time, so we did not cancel the coverage. There's
12 nothing in our file that says we canceled that covered until he contacted us in
13 January and sent in the cancellation of coverage form.

14 1/19/10 Tr. at 54-55.

15 Exhibit 1N, signed by the partners, contains a clear statement that:

16 "I understand that the coverage will remain in effect until the department receives
17 written notice of cancellation. Cancellation for sole proprietors, partners, or LLC
18 members in 3A above is effective immediately upon receipt of written request."

19 The cancellation of elective coverage was received by the Department of Labor and Industries on
20 January 25, 2008, which is the effective date of cancellation.

21 After consideration of the Proposed Decision and Order, the firm's Petition for Review filed
22 thereto, and a careful review of the entire record before us, we reverse the Department Notice and
23 Order of Assessment dated August 6, 2009, and remand the matter to the Department to issue a
24 Notice and Order of Assessment based on our determination that Mr. Wanless was exempt from
25 mandatory coverage that determines elective coverage was canceled on January 25, 2008,
26 reassesses premiums, penalties, and interest, if any, and to take such further action as is
27 consistent with the facts and the law.

28 **FINDINGS OF FACT**

29 1. On September 4, 2008, the Department issued a Notice and Order of
30 Assessment No. 0469526, for taxes due and owing the State Fund in
31 the amount of \$2,403.91 for the third quarter of 2007 through the second
32 quarter of 2008, including penalties and interest. On October 1, 2008,
J D I, LLC appealed the Notice of Assessment No. 0469526.

On October 17, 2008, the Department entered an order in which it held
the Department order dated September 4, 2008, in abeyance. On
October 21, 2008, the Board of Industrial Insurance Appeals, in Docket
No. 08 19229, returned this case to the Department for further action.

On August 6, 2009, the Department, pursuant to RCW 51.48.131,
modified Notice of Assessment No. 0469526 for taxes due and owing
the State Fund in the amount of \$3,654.09, for the third quarter of 2007

1 through the second quarter of 2008, including penalties and interest. On
2 August 24, 2009, J D I, LLC filed a Notice of Appeal with the Board of
3 Industrial Insurance Appeals from the August 6, 2009 Department order.
4 On September 2, 2009, J D I, through counsel, timely filed an amended
5 appeal to the Department's August 6, 2009 order. On September 10,
6 2009, the Board issued an Order Granting Appeal under Docket No. 09
7 18829, and agreed to hear the appeal.

- 8 2. On July 1, 2006, Joel Ihrke and Daniel Wanless formed J D I, LLC as a
9 limited liability company managed by members; the license for J D I,
10 LLC was renewed annually through July 31, 2009.
- 11 3. Joel Ihrke and Daniel Wanless, as members of J D I, LLC, formed an
12 association of two, a partnership in which they shared power to contract
13 for the LLC, had the ability and the power to bid and perform
14 construction jobs, and shared in the work and profits.
- 15 4. Joel Ihrke and Daniel Wanless, as members of J D I, LLC, a limited
16 liability company managed by members, and a partnership, were
17 exempt from mandatory coverage under the Act, during the second and
18 third quarters of 2007, and the first and second quarters of 2008.
- 19 5. J D I elected coverage for the employments of Joel Ihrke and Daniel
20 Wanless effective August 1, 2007, and cancelled elective coverage on
21 January 25, 2008, when it filed a Cancellation of Elective Coverage form
22 with the Department of Labor and Industries.

CONCLUSIONS OF LAW

- 23 1. The Board of Industrial Insurance Appeals has jurisdiction over the
24 parties to and the subject matter of this appeal.
- 25 2. Joel Ihrke and Daniel Wanless were exempt from mandatory coverage
26 by the provisions of RCW 51.12.020(13)(a) and RCW 51.12.020(5) as
27 members of a partnership conducted by a member managed LLC.
- 28 3. J D I, LLC terminated elective coverage within the meaning of
29 RCW 51.12.110 for Joel Ihrke and Daniel Wanless effective January 25,
30 2008.
- 31 4. The order of the Department of Labor and Industries dated August 6,
32 2009, is incorrect and is reversed and the matter remanded to the
Department to issue a Notice and Order of Assessment for JDI LLC, for
the period of the third quarter of 2007 through the second quarter of

1 2008, accessing premiums, penalties, and interest, if any, based on the
2 quarterly reports filed by JDL LLC and assessing premiums for elective
3 coverage for the partners through January 25, 2008.

4 DATED: June 15, 2010.

5 BOARD OF INDUSTRIAL INSURANCE APPEALS

6
7 /s/ _____
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9
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