

**BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS**

**IN THE MATTER OF  
LARRY DYER**

**A.I.D. NO. 2015- 085**

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**ORDER**

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On this day, the matter of Larry Dyer came before Allen Kerr, Arkansas Insurance Commissioner (“Commissioner”). The Arkansas Insurance Department (“Department”) is represented by Amanda Capps Rose, Associate Counsel, in this matter. From the facts and law before him, the Commissioner finds as follows:

**FINDINGS OF FACT**

1. Mr. Dyer made a claim against Walmart Stores, Inc. (“Walmart”) regarding an incident in which his wife’s method of payment was declined. In correspondence dated January 27, 2015, Walmart’s claims administrator denied the claim, citing no negligence on the part of Walmart.

2. For general liability claims’ coverage, Walmart has a general liability policy with a self-insured retention endorsement. Walmart self-insures its general liability risks up to \$2,000,000.00 per occurrence, with the general liability policy applying in excess of the self-insured retention limit.

3. On or about June 1, 2015, the Commissioner received correspondence from Mr. Dyer stating that he had visited with an employee of the Department and was told that because

Walmart has self-insured retention for this type of claim, the Commissioner did not have regulatory authority in the matter.

4. The Department's Consumer Services Division conducted an investigation into the matter and closed its file on or about July 29, 2015 after confirming that Walmart was self-insured for this type of claim. Mr. Dyer was informed in writing that the Department had no regulatory authority in this matter.

5. The investigation was reopened in the Department's Legal Division at Mr. Dyer's request. The legal investigation was closed on or about September 24, 2015 with a finding that no violation of the law in this matter.

6. In correspondence dated October 6, 2015, Mr. Dyer requested an administrative hearing pursuant to Ark. Code Ann. § 23-61-303. The administrative hearing was held on November 5, 2015, before Russ Galbraith, Chief Deputy Commissioner and designated Hearing Officer.

### **CONCLUSIONS OF LAW**

From the Findings of Fact contained herein, the Commissioner concludes as follows:

1. The Commissioner granted Mr. Dyer's request for an administrative hearing, following the disposition of his consumer complaint, pursuant to Ark. Code Ann. § 23-61-303.

2. Businesses or organizations that utilize self-insured retention programs to cover their own general liability risks or exposures are not subject to regulation by the Department as insurance companies. Under its self-insured retention limits, Walmart is assuming and covering its own general liability risks and exposures without an insurer or insurance policy covering such risks within the self-insured retention limits. Walmart is also not acting, in its self-insured

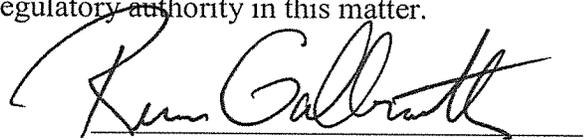
retention program, to insure or confer insurance benefits or insurance contracts to third persons, in exchange for premium, or otherwise engaged in "insurance," as defined in Ark. Code Ann. § 23-60-102(1)(A) or conferring or contracting to provide liability insurance protection to third person as defined in Ark. Code Ann. § 23-62-105(a)(2).

3. Given that Walmart is not acting as an insurer or providing insurance contracts or policies in its self insured retention program, the Commissioner lacks regulatory authority over Walmart's self-insured retention plan.

**RECOMMENDATIONS OF THE HEARING OFFICER**

WHEREFORE, based upon the foregoing Findings of Fact, Conclusions of Law, and other matters before him, the Hearing Officer recommends:

1. That the matter of Larry Dyer, on his own behalf and on his spouse, Debbie Dyer's, behalf be dismissed due to a lack of regulatory authority in this matter.



RUSS GALBRAITH,  
CHIEF DEPUTY COMMISSIONER and  
HEARING OFFICER

**CERTIFICATION**

I, Allen Kerr, Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer were made by and under my authority and supervision by Russ Galbraith, Chief Deputy Commissioner and Hearing Officer in this proceeding. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendations in full and enter this Order.

**IT IS THEREFORE ORDERED:**

1. The matter of Larry and Debbie Dyer, Consumer Complaint Division Tracking No. 97416, is hereby closed.

**IT IS SO ORDERED** this 24<sup>th</sup> day of November, 2015.



ALLEN KERR  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS