

**BOISE, IDAHO, JANUARY 8, 2025, at 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>Re: Verified Petition for Writ of Mandate.</b>	)	
-----	)	
<b>CRAIG SWAPP &amp; ASSOCIATES,</b>	)	<b>Docket No. 51998-2024</b>
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>FIRST JUDICIAL DISTRICT OF THE</b>	)	
<b>STATE OF IDAHO, HONORABLE BARRY</b>	)	
<b>McHUGH, Presiding,</b>	)	
	)	
<b>Respondent.</b>	)	
_____	)	

Original proceeding in the Idaho Supreme Court seeking writ of mandate.

Craig Swapp & Associates, Spokane Valley, Washington, for Petitioner.

Raúl R. Labrador, Idaho Attorney General, Boise, for Respondent.

\_\_\_\_\_

The law firm, Craig Swapp and Associates (“Swapp”), filed this original action requesting a writ of mandate directing the First Judicial District Court of the State of Idaho and First District Judge Barry McHugh to lift an order (1) disqualifying Swapp attorney Erin Dyer as Timothy Munchalfen’s counsel for pretrial depositions and trial in a breach of contract, insurance bad faith, and negligent adjustment suit against Union Insurance Company (“Union”); and (2) denying Munchalfen’s motion to strike Union’s motion to disqualify for lack of standing.

Swapp represents Munchalfen in a bad faith and breach of contract claim against Union. Munchalfen was injured in an automobile accident caused by an underinsured motorist while working as a commercial driver. His employer had an insurance policy with Union and provided insurance for damage caused by underinsured motorists. The policy extended coverage to Munchalfen and provided a coverage limit of \$1 million per occurrence.

In November 2020, an attorney employed by Swapp sent a policy demand letter to Union on behalf of Munchalfen. Union requested information from Munchalfen’s worker’s compensation claim file, and Munchalfen provided a signed release allowing Union to obtain the information. The worker’s compensation carrier provided some, but not all, of the documents from Munchalfen’s file. In January 2021, Union tendered \$400,000 to Munchalfen and explained that it needed further documentation to determine if additional money was owed to Munchalfen under the policy. Munchalfen provided another release for Union to obtain the documentation. In July 2022, Munchalfen’s attorney requested the remaining funds available under the policy limits, to

which Union replied that it had learned that Munchalfen was receiving monthly social security disability benefits and required further benefits-related documentation.

Dyer substituted in as Munchalfen's counsel in August 2023. She wrote to Union demanding the remaining \$600,000 under the policy and expressed frustration that Union had not completed its investigation. After Dyer's communication, Union located Munchalfen's release and requested a copy of Munchalfen's worker's compensation file from the worker's compensation surety. However, the surety would not provide the documents because the release was then three years old.

Union communicated its efforts to Dyer, to which she responded that Union could no longer rely on the release and should refrain from attempts to obtain the information it sought without obtaining new consent from Munchalfen. In November 2023, the worker's compensation surety provided Dyer a ShareFile link with documents and video from the worker's compensation file. However, Dyer did not provide the information to Union.

In November 2023, Dyer filed a lawsuit on Munchalfen's behalf, alleging claims against Union for breach of contract, bad faith, and negligent adjustment claims. The lawsuit argued that Union breached the policy by failing to tender the remaining \$600,000 and that it acted in bad faith by refusing to conduct an economic valuation despite having all documentation it requested in January 2021. Union moved for the district court to disqualify the Swapp law firm, including Dyer, claiming that Dyer had become a necessary witness because she was the only person who could address why the worker's compensation documents were kept concealed, whether she had seen the material before receiving the ShareFile link, and why she refused to provide the documentation to Union.

Munchalfen moved to strike Union's motion for lack of standing. Judge McHugh determined that Union had standing to bring its motion to disqualify and granted the motion in part, disqualifying Dyer from participating in depositions or trial, but allowing her to continue representing Munchalfen in a limited capacity that would not lead her to argue her own credibility to the jury. Judge McHugh declined to disqualify the rest of the Swapp law firm.

Swapp thereafter filed a writ of mandate with the Idaho Supreme Court and argued that the Court should direct the district court to lift the order disqualifying Dyer from participating in depositions or trial. Swapp argues that the district court committed clear error by disqualifying Dyer because Union did not have standing to raise the argument and the district court incorrectly applied the facts to the law. It argues that a writ of mandate is the proper remedy under the five *Bauman v. United States District Court*, 557 F.2d 650 (9th Cir. 1977), factors. In response, Judge McHugh argues that he properly exercised his discretion by disqualifying Dyer and that the *Bauman* factors do not support the grant of a writ in this case. He further argues that Swapp's writ should be dismissed because it failed to name an indispensable party.