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Meeting Transcript

**Workers' Compensation Division Rules
Workers' Compensation Division Rules OAR chapter 436, division 050
Employer/Insurer Coverage Responsibility
July 25, 2016, 9 a.m. to Noon
Room F, Labor and Industries Building, Salem, Oregon**

<p>Attendees:</p> <p>Chris Hill, S D A O Diane Janzen, Norpac Foods Jaye Fraser, SAIF Corporation Jennifer Flood, Ombudsman for Injured Workers Lisa Johnson, Kaiser Foundation Healthplan of the Northwest Mark Davison, Mark J. Davison LLC Risk Consulting Michael Doherty, S D A O Michael Mischkot, CIS citycounty insurance services Schrandra Wiltse, Providence Steve Divine, Safety National</p>	<p>WCD attendees:</p> <p>Adam Breitenstein Angie Sousa Barbra Hall Cara Filsinger Chris Clark Colette Hittner David Dahl Fred Bruyns Jody Howatt Tasha Fisher Troy Painter</p>
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BEFORE THE WORKERS' COMPENSATION DIVISION OF
THE STATE OF OREGON
RULEMAKING ADVISORY COMMITTEE
WORKERS' COMPENSATION DIVISION RULES
OAR 436-050, EMPLOYER/INSURER COVERAGE RESPONSIBILITY

The proceedings in the above-entitled matter were held in Salem, Oregon, on the 25th day of July, 2016, before Fred Bruyns, Administrative Rules Coordinator for the Workers' Compensation Division.

1 TRANSCRIPT OF PROCEEDINGS

2
3 00:00: Good morning. Thank you very much for coming. We're going
4 to be talking about OAR Chapter 436, Division 50, the Employer/Insurer Coverage
5 Responsibility Rules, especially some additional implementation of Senate Bill 1558
6 that was passed into law a couple of years ago. There's extra copies of the agenda
7 and draft rules at the back of the room, so I would encourage you to pick up a copy if
8 you didn't print one before you came.

9 And this is an Advisory Committee. I think probably most of you have
10 been involved in them before, but it's informal. It's not like a public hearing. It's
11 really a conversation, and the Division staff here are here primarily to listen. And
12 we'll provide information if we can, but we really want to take your input back to the
13 administrator and really help us to decide what to do with these rules. Of course,
14 after this we would propose rule changes more formally, and then you could provide
15 input on that testimony. So this is an important part of the process, however, so we
16 have a little more control over what we actually put forward as proposed rules.

17 As we're going along, if you have any input at all on the fiscal impacts
18 of what we might propose, any potential changes, whether those are, you know,
19 positive or negative to you or the people that you represent, we want to hear about
20 those fiscal impacts, because when we file proposed rules with the Secretary of
21 State we have to estimate what those, you know, fiscal and economic impacts are,
22 so we rely on the information from folks like you.

23 If you're on the telephone with us today, keep in mind we'll pick up
24 background noises in your office, but please don't put us on hold unless you're
25 absolutely certain you don't have any background music or messages that play for

1 your customers, because we cannot turn them off. You may leave and rejoin the
2 conference as many times as you like, so I'd just ask you to keep that in mind.
3 Other than that-- I don't know if I said who I am. I'm Fred Bruyns. I'm the rules
4 coordinator for the Workers' Compensation Division. And in a few moments, I'm
5 going to turn things over to Chris Clark to actually conduct the meeting.

6 But before that, I'd like everybody to introduce themselves so we kind
7 of--especially for the folks on the phone. They'll know who's here, and you'll know
8 who's on the phone with us. So starting with the folks on the telephone, could you
9 introduce yourselves to the Committee?

10 02:28: Diane Janzen, Norpac Foods.

11 02:31: Welcome, Diane.

12 02:32: Thank you.

13 02:34: Julie Riddle, The Hartford.

14 02:37: Welcome, Julie.

15 02:39: Hello.

16 02:40: Mark Davison, Self-Insured.

17 02:42: Welcome, Mark.

18 02:47: Anyone else?

19 02:48: Yes. This is Steve Divine, Safety National.

20 02:53: Welcome.

21 02:53: My last name is D-I-V-I-N-E.

22 02:55: Welcome, Steve.

23 02:56: Thank you.

24 02:59: Hi, this is Schandra Wiltse with Providence Health and
25 Services.

1 03:03: Welcome, Schandra. Anyone else? Okay.

2 03:15: My name is Chris Clark. I'm a policy analyst with the Workers'

3 Compensation Division.

4 03:19: Jaye Fraser, SAIF Corporation.

5 03:20: Troy Painter, WCB.

6 03:22: Jody Howatt, Workers' Compensation Division.

7 03:25: Chris Hill, Special Districts Association of Oregon.

8 03:28: Michael Doherty, Special Districts Association of Oregon.

9 03:30: Mike Mischkot, Citycounty Insurance Services.

10 03:33: Adam Breitenstein, Workers' Compensation Division.

11 03:36: Colette Hittner, Workers' Compensation Division.

12 03:38: Tasha Fisher, Workers' Compensation Division.

13 03:41: Angie Sousa, Workers' Compensation Division.

14 03:44: Cara Filsinger, Workers' Compensation Division.

15 03:47: Barbra Hall, Workers' Compensation Division.

16 03:48: Jennifer Flood, Ombudsman.

17 03:50: Lisa Johnson, Kaiser.

18 03:53: And here we have coming Dave Dahl. Introduce...

19 03:56: David Dahl, DCBS.

20 03:57: Welcome, Dave. Welcome to you all. And with that, I'm going

21 to turn things over to Chris, who's done a lot of work on these rules, and so-- Chris?

22 04:09: Well, yeah. Thank you all again for coming. We really do

23 appreciate your feedback. And this will be not the first time most of you have

24 discussed this issue, but we have come up with a proposal and would greatly

25 appreciate hearing what you have to say.

1 So the issue is, what information should applicants for individual self-
2 insurance certification and certified self-insured employers provide to the director to
3 demonstrate acceptable financial viability? Should the information and ratios or
4 measures required for individual self-insured employers be the same or differ from
5 those currently required for self-insured groups? And should different information or
6 measures be required for individual self-insured employers that are government
7 entities or public utilities than are used for private sector self-insured entities?

8 So the background is--as Fred mentioned, this is rulemaking to
9 complete implementation of 2014's Senate Bill 1558 that required all self-insured
10 employers, in addition to providing the security deposit, to demonstrate "acceptable
11 financial viability based on information required by the director by rule." Rules
12 effective September 2014 added related requirements for self-insured groups. This
13 rule is one of several that need to be amended to similarly implement Senate Bill
14 1558 for individual self-insured entities.

15 OAR 436-050-0260, effective September 15, 2014, required self-
16 insured groups to demonstrate acceptable current and liquidity ratios, or cash ratio,
17 two measures of liquidity used to evaluate how well a firm can meet its short-term
18 obligations, and a longer-term insurance industry metric, the premium to surplus
19 ratio, which measures how leveraged a risk pool is.

20 Both the Workers' Compensation Division and the DCBS Insurance
21 Division consider liquidity to be an important factor, since it reflects an entity's ability
22 to access its net worth to pay claim liabilities. While WCD isn't required to use
23 certain ratios, its certification and annual financial reviews for both applicants and
24 certified entities have long relied on nine ratios, four of them having an associated
25 point scoring system.

1 I'm not going to go in-depth with all nine ratios. I will provide a little
2 more context for the three that we're proposing. But for your reference, the nine
3 ratios are the current ratio, which is equal to current assets divided by current
4 liabilities; the quick ratio, which is current assets which may be expected to be
5 turned into cash within less than one year divided by current liabilities; the cash ratio,
6 which is cash divided by current liabilities; the equity ratio, which is total liabilities
7 divided by net assets; the asset ratio divided by total liability divided by total assets;
8 the long-term debt to equity or just the debt-to-equity ratio, which is long-term debt
9 divided by shareholder equity; the return-on-investment ratio, which is a change in
10 investment income divided by investment costs; return on net assets, which is
11 change in net assets divided by net assets; the net income-to-sales ratio, which is
12 net income divided by sales.

13 And this is not one of the nine, but it is relevant for the self-insured
14 employer groups, is the premium-to-surplus ratio, which is earned contributions
15 divided by adjusted net worth. I know you're all probably intimately familiar with all
16 of those ratios, but if anybody does have any specific questions about any of them,
17 I'm happy to answer them.

18 So when we were looking at this, we did have a list of several
19 alternatives. Well, going to Page 5 here, so one of our questions were, should we
20 use the same set of three ratios that we use for indiv--self-insured groups as we do
21 for individual self-insurers? And we identified some--both theoretical and practical
22 reasons why that's probably not the case.

23 So skipping to the alternatives, we were essentially faced with the
24 choice of whether to require the same three ratios. We thought that might not be
25 appropriate. Whether to recognize the difference between groups and individual

1 entities among individual self-insured entities by requiring different financial viability
2 measures. For example, the premium-to-surplus ratio is an appropriate measure for
3 groups, but return on equity or return on net assets may be more relevant for
4 government entities, public utilities, or individual businesses. Similarly, the
5 emphasis that we put on liquidity for groups may not be appropriate for a wide range
6 of individual self-insureds.

7 So we could propose a different set of ratios for individual firms,
8 including a long-term solvency ratio. We could require different financial measures
9 for government entities and public utilities. We could allow employers who disagree
10 with their rating to submit an actuarial report under the same provisions under
11 0185(3)(d). We could look at Moody and Standard and Poor's investment or bond
12 rating measures for utilities and cities, looking at cash flow from operations, ability to
13 service capital needs and dividends, and recognize lines of credit. And we can
14 determine if there are other private individual self-insureds that also warrant different
15 financial ratio--measures, sorry. For example, higher-risk operations, or those
16 whose revenue and financial mechanisms differ significantly from most businesses.

17 So the recommendation that you will find in Rule 150 currently
18 replaces the cash regis--cash ratio which is used for groups with a measure of
19 leverage or indebtedness for individual self-insureds. That is the debt-to-equity ratio
20 which essentially gives a picture of what percentage of the individual self-insured's
21 owned assets are financed through debt. We've replaced the premium-to-surplus
22 ratio, which is really an insurance industry metric, with the return on net assets ratio,
23 which is a measure of probability. And we are suggesting a return on net assets
24 standard of around 10 percent to account for public and non-private organizations,
25 so non-profit, that should say, which may have lower profitability than some private

1 sector firms.

2 And we're allowing firms whose business model is sustainable, but is
3 structured in a way that results in an unfairly low or disqualifying score to submit an
4 actuarial report under Rule 0180. The report will identify--be used to identify the
5 proper reserve amount which the director will base the security deposit on. So I
6 went through that pretty quick. Does anybody--before we start talking about it, does
7 anybody have any clarifying questions or-- Yes?

8 11:53: Are these three bullets under recommendations for individual
9 self-insureds, or do these include groups as well?

10 12:00: No, they were only for individual self-insureds.

11 12:02: Okay.

12 12:02: Yeah. So these changes are reflected in Rule 150, which is
13 only relevant to individual self-insureds. We did make some small changes to 260,
14 but the basic ratios and scoring rubric are the same.

15 12:23: So can I make sure that I understand? So the three ratios
16 you're recommending are the current ratio,--

17 12:28: Right.

18 12:29: --debt to equity--

19 12:30: Uh-huh.

20 12:30: --and return on net assets--

21 12:31: Yes.

22 12:31: --ratio? Okay. And then you would expect a favorable score
23 for each, or are you--

24 12:40: So it's--

25 12:40: --(unintelligible) score those?

1 12:40: --taken together. The three are taken together. So there's zero
2 to six points assigned for each.

3 12:48: Okay.

4 12:50: The sum of those three scores are--determine, basically, what
5 the director's actions may be, and if there will be a premium added to the security
6 deposition. And that's all under Section 5.

7 13:05: Okay.

8 13:12: So our hope would be if somebody was to--for some reason
9 their business structure made them have a bad score on one, it would be balanced
10 out if other aspects of their business structure were favorable, so...

11 13:29: Chris?

12 13:29: Yeah.

13 13:29: Just to clarify, we are proposing to allow self-insured employer
14 groups to also submit an actuarial--

15 13:33: Oh.

16 13:34: --report as well; right?

17 13:35: Yes. Yes.

18 13:37: And what would that look like? I mean, with--would that have
19 to be a hired outside actuarial firm to create a report and create extra fees then for
20 the self-insured?

21 13:50: Yeah. For us to accept an actuarial study, it would need to be
22 prepared by a certified actuary.

23 13:56: Outside? Okay.

24 13:58: Yeah.

25 13:59: But...

1 13:59: It doesn't necessarily have--
2 14:00: So for, like,--
3 14:00: --to be outside.
4 14:01: --Kaiser, we have certified actuaries. So would an internal
5 report be acceptable, or would you require something from an independent source?
6 14:12: I think that's a good question, and maybe one that we didn't
7 fully contemplate. I'd open up to the room to see if...
8 14:20: Are they certified in property/casualty or health? Those are
9 separate practice areas for actuaries. I mean, I know you have health actuaries.
10 14:32: Right.
11 14:33: Yeah.
12 14:33: So you're thinking of...
13 14:35: So someone that's qualified in health may not necessarily be
14 qualified--
15 14:37: Oh, right.
16 14:38: --to issue an opinion on Workers' Comp or--
17 14:40: Yeah.
18 14:41: --a property/casualty area. So that's...
19 14:46: Yeah. And I--yeah, I think that's a good point. So if they were
20 qualified to submit an actuarial study on Workers' Compensation, then...
21 14:57: Then that would be acceptable?
22 14:58: Yeah.
23 14:49: So I mean, are you opening it up for comments now, or do--
24 15:05: Yeah. And...
25 15:06: --you have more presentation?

1 15:07: No, no, no. Yeah, please.

2 15:09: So I will just say that Kaiser will not fare under this--fare well
3 under this model. And yet we're heavily regulated by the Insurance Division, and we
4 are very healthy from a risk-based capital and premium-to-surplus ratio view. And
5 so, you know, I think that--my point would be that we are a unique business. We're
6 not for profit. We, you know, tend to invest heavily. We have, you know, great cash
7 flow, but then we invest heavily. And some of our investments are considered long-
8 term, and yet they are very liquid. And so I'm just saying, we would not do well with
9 these three ratios. The return on net assets one, we would be fine, but the other
10 two, no.

11 And so I guess one recommendation or question I would have is-- You
12 mentioned the Standard and Poor's or Moody's. We do have both financial strength
13 ratings from Fitch and Standard and Poor's, as well as bond ratings from those. And
14 I would like to suggest that though a rating of BBB or better would be considered a
15 strong indicator, rather than the three--as an alternative to those three ratios.

16 16:51: Yeah, thank you very much. And...

17 16:53: Yeah. Because those rating agencies do a very thorough
18 analysis of the financial health of the organization, so I think you should be able to
19 feel comfortable and rely on that.

20 17:04: Yeah. And one change we did make to Rule 180 would be just
21 to clarify that the director would consider a rating from a national rating institution as
22 part of the consideration for determining the security deposit and actual...

23 17:26: Okay. But I guess,--

24 17:27: Yeah.

25 17:28: --you know, would that...

1 17:28: So we're-- Yeah.

2 17:29: Could that override, or do you--is--are we going to go through
3 a, well, consideration every year?

4 17:34: Yeah. I think that's one of the things we're trying to tease out
5 here, because we do know that there's not going to be one set of three ratios that's
6 really realistic for every single insurer. So we are trying to build enough flexibility
7 into the system to--

8 17:50: Yeah.

9 17:50: --offer this, so I...

10 17:52: And I think recognizing that, you know, gr--employers that tend
11 to be self-insured--I mean, there's quite a range of financial situations and ways to
12 look at their-- I mean, they're complex organizations, especially Kaiser, and there
13 would be, you know, different ways to view financial health.

14 18:15: Does anybody else have comments about providing an
15 alternative model, including bond ratings or financial ratings? Okay. And I guess
16 one other question for you would be, are there any adjustments to the rating--the
17 scoring scale that would make a difference, or is just the unique nature of Kaiser that
18 these--this set of three ratios will never be appropriate?

19 18:54: I think it's the latter.

20 18:55: Okay.

21 18:57: I mean, like I say, we do we--we're fine on the return on net
22 assets ratio, at least, you know, currently. But the other two-- I mean, our current
23 ratio doesn't ever look good, and that's just because of the classification of our long-
24 term investment portfolio, which most of it is very liquid. It's just that it's classified as
25 long-term, so we're never going to score well.

1 19:29: Yeah. Well, thank you. Are there any other comments?

2 19:43: Anyone on the phone?

3 20:00: Well, hearing no comments, then I guess we'll kind of take back
4 that we--you want to build that flexibility into the system. And we'll take a look at that
5 again, because I think that is our intention. And yeah, hopefully we'll be--adequately
6 address that.

7 20:21: Okay. Great. Thanks.

8 20:29: Well, I guess I could throw this out there. We had the same
9 concern with self-insured going through these-- But if you look at the definition of
10 current assets, it looks like they've gone in and loosened that up a little bit from-- So
11 if you look at Page 17 of these rules, it appears they kind of put in there, "or may be
12 converted to cash without penalties or fees." So it looks like there's a little bit of
13 leniency there. So you may be able to throw some things in there that you couldn't--
14 maybe traditionally wouldn't be able to when the rest of the financial industry looks at
15 a current ratio. That was my take on it. Correct me if I'm wrong, please.

16 21:12: Yeah. I think--from our perspective, the financial statements
17 obviously still need to meet GAAP standards, and they need to be prepared by a
18 CPA. So whether they would really be able to consider an asset that would--has a
19 maturity date of longer than a year, even if you could liquidate it without penalty, is
20 maybe something beyond the scope of our authority, certainly. But we wou--I think
21 we would consider-- If you had some sort of instrument that you could just cash out
22 without a penalty and you could get face value for it, I think that would be
23 appropriate. I mean, we would consider it as a cash asset or as a current asset, but
24 it would really be up to the CPA to determine whether that would be an appropriate
25 classification. So I guess that's kind of a...

1 22:10: Yeah. And I was just basing it on our--

2 22:12: Yeah.

3 22:13: --audited gap financial statements, so...

4 22:16: And your assets are rated by NAIC; right? Just curious.

5 22:19: Uh-huh.

6 22:20: So maybe if it was a certain class it could be considered liquid.

7 22:26: I mean,--

8 22:27: Yeah.

9 22:27: --I guess another option would be to-- But I feel like it's more
10 complex and more specific for Kaiser. But to say some percentage of risk-based
11 capital, you know, would be considered strong as well, because that's another
12 measure that the regulators look at, and we're very strong when it comes to risk-
13 based capital. So it just seems like sticking to those three strict measures is not
14 going to get the right answer for us. And to have that alternative of either the
15 investment or the--you know, Moody's or Standard and Poor's rating, or some--
16 But--it's more complicated, but to go into the RBC, you know, would also work.

17 23:17: Yeah, and that is definitely something we looked at. And I think
18 at this point, frankly, we don't have the internal capacity to completely switch our
19 perspective on risk ratings, although if that was an issue that we should look at more
20 at in the future I think we're definitely open to the suggestion, especially if we're--if
21 we find that this method is not producing the kind of outcomes that we want, so--
22 But also, that is something that we can take to the program staff and see how--if--as
23 one of the alternative measures that we could look at, if this first measure kind of
24 failed, to see if that is a possibility. So that's--we'll certainly discuss that more, but--
25 All right. Yeah. I'm going to get the awkward, like, anthropologist silence. Okay.

1 Well, hearing nothing else, Fred, should we open it up to...

2 24:44: Might as well.

3 24:45: Yeah. So if there's any other comments on the Division 50s in
4 this current draft, then we'd be happy to hear any other comments or concerns or
5 support. If you-- So this is just a draft, and we are still in revisions, and will be
6 making small amounts of non-substantial changes. And we're also happy to take
7 written feedback on this for-- I don't know.

8 25:16: Maybe the next two weeks--

9 25:17: Next...

10 25:17: --or so?

11 25:18: Yeah, next two weeks or so.

12 25:29: The draft changes were made after the input we received in
13 two meetings--at least two meetings we had last fall, or last September and October.

14 25:43: I had one, Fred. On--Page 5 of the proposed rules talk about
15 the request for administrative review, and it specifically says, "mail or deliver a
16 written request." There's not really any kind of a mention of electronic delivery. I
17 mean, we've talked in other meetings about trying to move to some form of always
18 adding--making it clear that electronic delivery would be okay.

19 26:12: We did. Thanks, Jaye.

20 26:33: Uh-huh. And then on Page 8...

21 26:36: Jaye?

22 26:37: Oh. Yeah?

23 26:37: Just so you know, written request...

24 26:39: Uh-huh.

25 26:40: In the definition, written includes electronic.

1 26:42: Okay. All right. Well, I missed that. Thank you.

2 26:45: Yeah. And this certainly isn't intended to prohibit electronic
3 transmission--

4 26:52: Yeah.

5 26:53: --of those requests.

6 26:54: Yeah.

7 26:55: This...

8 26:56: Sometimes mail can mean that to some people. It can
9 definitely mean U.S. Mail, but...

10 27:03: And then on Page 8, the rewritten--the reference around
11 656.029. I just wondered what the rationale there was.

12 27:20: Bef--we were just trying to make the-- There was some
13 confusion about the rule, the way it was written, and what it was actually intended to.
14 So we're--we were--this--it wasn't meant to change the way the rule was
15 implemented at all. It's just meant to provide a little more clarification on why those
16 definitions were there, instead of just kind of being there.

17 27:51: Well, as you've heard me say before, every time we go around
18 and start redrafting something that's been in place for a while and that's been
19 interpreted by an ALJ or the courts, then we end up going, "Hmm, why did they
20 make that change?" So that's just a caution. Thanks.

21 29:40: I think people are leaving us.

22 29:42: Yeah. Well, we certainly don't want to cut this short if anybody
23 does have other concerns, so...

24 30:03: On the other hand, we don't want to keep you here--

25 30:05: Yeah.

1 30:05: --unnecessarily when you probably have other things to do,
2 but...

3 30:18: Yeah.

4 30:21: Well, as Chris said, if you do have additional thoughts on the--
5 any aspect of the draft rules, of the ratios, we're--you know, we're heavily--very
6 much interested in--or other types of financial--evidence of financial viability. But,
7 you know, any aspect of the draft rules, because there were other changes, some--
8 maybe some in the recordkeeping area, other types of securitization. So I
9 appreciate your input on any of it. If you could get it into us, you know, within the
10 next two weeks or so, that will give us a chance to do--try to do the best we can in
11 terms of drafting, getting things ready to file.

12 We're looking at filing probably the middle of September for a hearing
13 in October. And that's going to be probably true for a lot of the Division's rules,
14 including Division 60, and probably the return-to-work rules, 105, 110 and 120. So
15 things are starting to fall under that general track of filing in September, and a
16 hearing in October probably effective the 1st of the year. That will depend somewhat
17 on how much time we think people need to get ready. If we think it's impossible for
18 people to actually gear up to do something by the 1st of the year, we'll certainly take
19 that into consideration in terms of the effective date of the rules, but that's our
20 current track.

21 So if you have nothing else at this point, we'll let you go. And thank
22 you very much for your time. I feel--always feel bad when people make a long trip
23 for about a half-hour meeting. But on the other hand, I really appreciate your time
24 and--whether you're on the phone or whether you're here with us in person. And so
25 you have--you undoubtedly have my email address, maybe Chris', too, in terms of

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being copied on anything. But if you get it to me, I'll get the information to Chris and Adam and other program managers, and we promise to fully consider what you provide. So have a safe trip. And that's the end of the meeting.

(WHEREUPON, the proceedings were adjourned.)

CERTIFICATION OF TRANSCRIPT

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I, Amanda Knapp, as the transcriber of the oral proceedings at the 7/25/16 hearing before Administrative Rules Coordinator Bruyns, certify this transcript to be true, accurate, and complete.

Dated this 27th day of August, 2016.



Transcriber

CERTIFICATION OF TRANSCRIPT

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I, Ashlee Kohan, as the proofreader of the oral proceedings at the 7/25/16 hearing before Administrative Rules Coordinator Bruyns, certify this transcript to be true, accurate, and complete.

Dated this 27th day of August, 2016.



Proofreader