

NOTICE OF PUBLIC MEETING

WORKERS' COMPENSATION

MANAGEMENT-LABOR ADVISORY COMMITTEE

Labor & Industries Building, Conference Room 260

350 Winter Street NE, Salem, Oregon

Friday, January 17, 2014

LC 52 – Written testimony

I support, my company supports and our clients can support the general concepts surrounding the public policy proposal within LC 52. As an individual and through my companies we have established and administrated four private industry self-insured groups over the past eighteen years. Prior to this I was directly involved with the administration of Oregon's two public entity self-insured groups. There is likely no other individual or company in Oregon that has more intimate knowledge of self-insured groups.

The existing regulatory statutes and administrative rules regarding self-insured groups are typically more than three-decades old. Current statute and rule focus heavily on the establishing of a self-insured group, on-going operations but little regarding the decertification, demise and post-mortem administration of a self-insured group.

The obligation to ensure that injured workers receive statutory benefits through the workers' compensation system is embraced by every self-insurer. The catalysts for the DCBS's LC 52 proposal are clear to those within this industry. What must be made equally clear is that over the past three-plus decades no injured worker has gone without statutory benefits from either an active group or from one that has been decertified and creased general operations and no public dollars have been spent.

General support of a self-insured group public policy proposal does not include three specific areas of concern regarding both LC 52 and its associated "One Pager" updated 1/13/14.

1. Amnesty or Opportunity

The first specific area of strong disapproval is the extremely finite limits placed on the singular benefit of LC 52: Possible use of Worker Benefit Fund assets to cover expense in excess of group funds. I question how a universally beneficial public policy proposal, that encompasses an entire industry, can be limited to but a few months with a June 2014 sunset. As written LC 52 appears to be an amnesty offering: Self-insured groups are instructed to surrender all assets after communication is sent by the DCBS from the director followed by an enforce vote. A more egalitarian public policy would not have an April 15 decision date and a June 30, 2014 sunset. A more democratic approach would not have the director force a stakeholder referendum and choose amnesty over unknowable future ramifications.

2. Opportunity and/or Ramifications

The second area of strong disapproval is the prescribed and required communication from and by the DCBS director that is without known precedent. Questions unanswered by the DCBS: 1} When previously has the director ever written to every shareholder / every stakeholder of an entire financial industry and also required a "continuation / discontinuation" vote? 2} Has the director previously ignored corporate governance bypassed a company's board of a similar industry? 3} Has the DCBS director ever required similar action with community banks, credit unions or mutual insurance companies? 4} Would a larger industry with more political influence be subject to similar public policy strategies and tactics?

Taken directly from; "DCBS Self-Insured Groups – LC 52" <1/13/14> communication:

A] *"Director will notify all group members about the opportunity provided by the new law and possible ramifications of a group's decision to continue or stop self-insurance."*

B] *"Require groups to take a vote of all members to decide whether to continue as a self-insured group."*

C] *"Require all self-insured groups to notify the Department of Consumer and Business Services (DCBS) by April 15, 2014 of their intention to either continue being certified on and after July 1, 2014, or stop operating as a certified self-insured group."*

These prescribed and required communications are invasive and destructive. Candidly, the insurance community has already been rattled by the content within both LC 52 and associated communications. Unknown is whether the industry perception is permanently tainted.

3. Additional Authority, Increased Standards and Retention

The director needs additional authority over decertified groups because current law and rule is silent in this area. Increasing formation requirements and standards is prudent after thirty years. However, allowing the director to indiscriminately establish set items such as minimum/maximum self-insured retentions (SIR) and having non-specific sourced "incurred but not reported" (IBNR) increases to securitization creates regulatory uncertainty. And regulatory uncertainty is an insurmountable burden to any commercial enterprise. Specific examples follow:

A] SIR - Every self-insured entity whether group or stand-alone must purchase specific excess insurance. Market fluctuation and finite options make possible DCBS required "regulatory SIR maximum" to become a decertification hazard. Example: The director declares a statutory \$250,000 SIR maximum attachment point. No excess insurance market will provide that coverage resulting in instant decertification of all self-insurers.

B] Incurred but not reported (IBNR) is the insurance industry's most ill-defined acronym and misused definition. IBNR uses and results can be exploited for a variety of purposes. "*Actuarial valuation including incurred but not reported claims*" is not defined in either LC 52 or the associated "one pager" and as a result could be another decertification hazard. Example: The DCBS disallows use of an independent actuary's opinion. The state's actuary uses development factors inconsistent with the self-insurer's history which in-turn increases group securitization <*think capitalization*> by 100% from one year to the next resulting in another decertification hazard.

Summary

A public policy proposal that is equitable, reasonable, justifiable, that is long in duration and does not allow for regulatory decertification hazards is in the best interests of injured workers while preserving a workers' compensation coverage option that is most needed in Oregon. Failure to preserve self-insured groups would partially dismantle a most basic covenant for most states preferred coverage options. This is because most states have a "three-way system" that balances between private insurance companies, state accident funds and self-insurance. Legislatively dismantling of self-insured groups by not materially altering LC 52 could ultimately eliminate the self-insured option for those companies and entities that are not large enough to self-insure on a stand-alone basis (similar to the Fortune 500 companies and largest cities and counties). Today only a very small number of Oregon based companies and entities can enjoy the benefits of self-insuring outside a group structure. Without material changes LC 52 threatens this market option if misapplied subsequent to passage.

It is not too late to make small but material changes to LC 52 before it goes to the legislature. With these modest material changes to the 1] finite public benefit sunset, 2] mandated DCBS communication and 3] clarity -- limits regarding IBNR and SIR requirements my company and our clients could endorse LC 52 when it becomes a senate bill.

Sincerely,

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