

WORKERS' COMPENSATION REVIEW COMMITTEE

Presentation by Randy Christianson

Thursday, September 5, 2019

Thank you Chairman and the Committee for the opportunity to present my concerns today regarding the dual filing of workers' compensation claims and its negative impact on North Dakota employers insured by North Dakota Workforce Safety and Insurance.

I am President and majority shareholder of Beverage Wholesalers, Inc. and Reliance Transportation, Inc. (RTI). As a member of the North Dakota Beer Wholesalers Association, I requested the assistance of Janet Seaworth, Executive Director, to review a claim management issue relating to RTI. On June 27, 2019 a meeting was held with North Dakota Workforce Safety and Insurance (WSI) along with Representative George Keiser, Janet Seaworth and me, which led to this presentation opportunity. Following is a summary of facts and events impacting RTI's North Dakota employer workers' safety insurance coverages.

- The claim involved an RTI employee working as an interstate truck driver. He suffered the work injury in North Dakota (ND) on 9/1/17, but he was a Minnesota (MN) resident and his widow filed for workers compensation benefits in MN. A release of Information dated 6/21/19 was signed allowing Representative Keiser and Janet Seaworth to discuss the claim with WSI.
- Reliance Transportation, Inc. (RTI) was spun out of Beverage Wholesalers, Inc. and set up as a ND corporation in May 1979. RTI is a motor carrier engaged in interstate commerce and for the past 40 years has used WSI for workers compensation insurance, including extra-territorial coverage. Summary of events:
 - The claimant in this case was hired in August 2009 and RTI reported wages to WSI and paid premiums annually.
 - The claimant had four WSI claims during employment. All were accepted by WSI including the injury on 9/1/2017.
 - On 10/20/17 a petition was filed with the MN Department of Labor Workers' Compensation Division on a Claim for Dependent or Estate Benefits. Then on 12/6/2017 WSI suspended benefits citing N.D.C.C. 65-05-05 due to the MN petition. The notice of decision suspending benefits and MN demand for discovery are attached (*Exhibit A*).
 - Since RTI did not have a MN Workers' Compensation insurance policy, the MN statutes required the MN Special Compensation Fund to pay benefits to an injured worker. The financial exposure to RTI was about \$600,000 in benefits plus a potential \$400,000 (65%) penalty. An uninsured loss due to WSI suspension and exclusions under ND employer liability coverages.
 - WSI denied RTI request for extra-territorial coverage stating the injury occurred in ND and not in another State.

- On 4/16/2018 Nationwide Insurance denied coverage under the RTI employer Stop-Gap policy. Coverages did not apply to a MN jurisdiction claim, only a ND claim.
 - On 11/6/2018 WSI refused a settlement compromise by RTI with the MN Special Compensation Fund. Basically stating that any payment to MN Department of Labor would constitute settlement of the claim.
 - On 11/7/2018 RTI had the good fortune that Judge Hartman dismissed the MN workers' compensation claim through the efforts of RTI legal counsel.
 - On 11/16/18 WSI finally reinstated benefits on the original claim effective 12/6/2017.
 - In January 2019 the Independent Insurance Agents of ND contacted WSI in regards to the coverage gap with the extra-territorial WSI did not provide (*Exhibit B*). It appears there is no current method for a ND employer to insure WSI coverage gaps.
- This case was a rare anomaly, but given the huge potential exposure for being uninsured in another State, a ND based business owner needs to make sure the necessary insurance protection is in place. RTI had a year long battle, taking up over 150 hours of staff time, and incurred \$37,153 in legal fees and expenses (*Exhibit C*). There are many ND based employers that have MN residents reporting to work in ND on a daily basis, including Beverage Wholesalers, Inc.

At the June 27th meeting WSI agreed that the organization should have advocated on behalf of the employer, RTI. Also, it was indicated that by Administrative Code, WSI could reimburse fees and expenses paid by RTI, but it was limited to a \$160 per hour for all actual and reasonable time. This was very much appreciated, but the process of getting to this point required significant employer perseverance. WSI, as an organization, is very protective of the fund throughout the employer claims process, which should be differentiated from an employee claim process. Particularly for North Dakota employers in good standing with WSI and actively participating in claims management and safety programs.

In addition, on July 9, 2019, John Halvorson sent an email to Representative Keiser, stating the following:

“In follow-up to our meeting with Janet and Randy in regards to RTI, we have drafted a proposed rule that may alleviate this issue moving forward. After each session, we do a comprehensive administrative rule review. If the draft proposal below suffices, we will include with WSI's rules packet which is scheduled to be filed on Friday of this week.

Please review and let us know your thoughts and suggestions. We would be happy to sit down and discuss further. The draft below attempts to incorporate a variation of the duty to defend language of a standard work comp policy (see below) with the specific set of facts that arose in the RTI case.”

Proposed Rule: Subsection X of 92-01-02-50

If a claim for workers compensation benefits is compensable in this state and a subsequent claim for workers compensation benefits for the same injury or death is filed in another state, the organization may defend, at the organization's expense, using counsel and resources of the

organization's choosing, any claim, proceeding or suit against a North Dakota covered employer. The organization may exceed the fees and caps set forth in section 92-01-02-11.1 for this subsection. The organization has the right to investigate and settle these claims, proceedings or suits.

The organization may not defend a claim for workers compensation benefits, proceeding or suit if that claim for workers compensation benefits is not compensable in this state.

Our response to the above is as follows:

Thank you so much for your response to RTI case concerns and for the time you spent with us to discuss the issues. We really appreciate it. I think the draft is good – it gives WSI the authority to defend these claims against covered North Dakota employers. Perhaps consider removing the word “subsequent.” We read the draft rule as providing WSI the right to defend only if a “subsequent” claim is filed in another state. One can imagine, however, a scenario where a claimant files simultaneous claims for the same injury in multiple states to see what “sticks” and in that case, a strict reading of the rule would not allow WSI to defend proceedings brought in another state against a covered North Dakota employer.

We also read the draft rule to *allow* WSI to defend, but not *require* WSI to defend. In other words, there is no duty to defend imposed. So, what would happen, for example, if in RTI's case, the MN court would not have dismissed the proceedings, but had accepted the claim and imposed serious penalties on the covered North Dakota employer for failure to have coverage in MN? What would WSI's duty to the covered employer be then? Would WSI reimburse the covered employer – who should have had coverage? This is something RTI has raised as a key issue, and wondering how you see the WSI draft language addressing that.

The Proposed Rule was revised on July 10 and submitted with the WSI administrative rule packet by the Friday deadline of July 12, 2019. A copy of the email correspondence is attached (*Exhibit D*).

Subsequent to submitting the request for reimbursement of legal fees on July 30, 2019, I was contacted by Anne Green, Director of Legal Services at WSI. Anne indicated that by administrative rule WSI was limited to paying a maximum of \$5,950 of the legal fees, plus the \$318 of expenses. This was very disappointing. In my opinion the employer, RTI, is being treated once again as an employee claimant under the “other states coverage”, which was used to deny advocacy for the employer, RTI, on the MN claim, since the incident occurred in ND.

It appears that WSI is relying on the existing rule to reimburse RTI, the employer, and in turn the existing rule provides that you can only be reimbursed pursuant to 92-02-02-11.1. As it is, one could argue that WSI has an incentive not to defend employers sued in other districts because under the current version of the rule, if the employer loses (fails to show that jurisdiction is with WSI), WSI would pay nothing. If the employer prevails in proving that WSI has jurisdiction, WSI's exposure and responsibility for attorneys' fees is limited to the amounts specified, rather than what it costs the employer to secure its rights to coverage by WSI and to be free from any action against the employer.

Even if WSI applies 92-02-02-11.1 to limit attorney's fees pursuant to that section, it does nothing to secure RTI rights to coverage with WSI. North Dakota law is clear that employers who comply with the provisions of Chapter 65-04, mandating coverage "shall not be liable to respond in damages at common law or by statute for injury to or death of any employee, wherever occurring, during the period covered by the premiums paid into the fund." It appears WSI has not abided by its side of the bargain in this instance either, which leaves all North Dakota employers susceptible to insurance coverage gaps. A summary of what I believe WSI is relying on for further limiting the reimbursement and protecting the fund is attached (*Exhibit E*).

WSI does have some protection provided for coverages through annual employer premium experience rate calculation. Because of the loss incurred, RTI will pay a 56.7% experience rate surcharge through at least 9/30/2020 (*Exhibit F*).

In addition to the Independent Insurance Agents of North Dakota, the Fargo Moorhead West Fargo Chamber of Commerce supports necessary changes to WSI Administrative Rules in order to alleviate confusion and ensure a clear and fair policy for both ND employers and employees (*Exhibit G*).

As a ND employer, it is expected that any insurance company be an advocate for the policy holder and provide adequate coverage and endorsements. We appreciate the time and consideration given the past few weeks and today.

Respectfully submitted,



Randy Christianson

EXHIBIT A



3514



North Dakota Workforce
Safety & Insurance

Bryan Klipfel
Director

November 15, 2017

Injured worker:
Claim number: 2017-991662
Body part: Death

Birth date:
Date of injury: 09/01/2017

Notice of Decision Suspending Benefits, Out-of-State

Please read this notice carefully as it may require action within 30 days. This notice is to inform you of Workforce Safety & Insurance's (WSI) decision to suspend benefits after 12/06/2017.

You have applied for benefits through the Minnesota Workers' Compensation system for your 09/01/2017 injury. Under North Dakota Century Code (N.D.C.C.) § 65-05-05, if an employee applies for benefits from another state for the same injury, WSI will suspend all future benefits pending resolution of the application. If an employee is determined to be eligible for benefits through some other state act or enters into an agreement to resolve a claim through some other state act, no future compensation shall be allowed under this title and the employee must reimburse the organization for the entire amount of benefits paid.

All further workers' compensation benefits on this claim are suspended after 12/06/2017. If the Minnesota Workers' Compensation system accepts liability or enters into an agreement to resolve your 09/01/2017 injury, WSI will demand repayment of all North Dakota workers' compensation benefits paid on this claim.

If the Minnesota Workers' Compensation system denies liability for your 09/01/2017 injury, WSI will review to reinstate benefits, however, under N.D.C.C. § 65-05-08.1, a doctor may not certify or verify past disability commencing more than 60 days before the doctor's examination of the employee.

If you feel this decision is incorrect, please write to your claims adjuster within 30 days of the date on this notice to request reconsideration. Please explain why you think the decision is wrong and what you think the correct decision should be. Also enclose any additional information for WSI to consider. The request for reconsideration must be in writing from you, not your physician. If a request for reconsideration is not received within 30 days, this decision will be final. If you agree with this decision, nothing more is required.

Sincerely,

Tanya S.
Tanya S., Claims Adjuster

cc: Reliance Transportation Inc

FL737

STATE OF MINNESOTA
DEPARTMENT OF LABOR & INDUSTRY
WORKERS' COMPENSATION DIVISION
443 LAFAYETTE ROAD
~~ST. PAUL, MN 55155~~

SSN#
DOI: 09/01/17
DOD: 09/13/17

Employee,
v. **DEMAND FOR DISCOVERY**
TO MINNESOTA RULES PART 1420.2200
Reliance Transportation, Inc.

Employer,
and
ND Workforce Safety Insurance,

Insurer.

TO: THE ABOVE-NAMED EMPLOYER AND INSURER:

The above-named Employee, pursuant to Minnesota Rules 1420.2200 demands that the Employer/Insurer and their attorney respond within thirty (30) days with the following information:

1. Identify any photographs, films, videotapes, or motion pictures that relate to the subject matter of this litigation, of which you, your agents, or attorneys have taken, are aware of, and/or have in their possession. Attach copies of same to the Response to Demand for Discovery.

2. Identify all investigation reports compiled relative to this incident, including a First Report of Injury and indicate who prepared said reports, employment capacity of that individual, and when the report was prepared. Attach copies of same to Response to Demand for Discovery.
3. The names and addresses of all witnesses that you intend to call at the hearing of this case. The employee further demands that all witnesses unknown at the time of first disclosure to these demands shall be disclosed as soon as they become known.
4. A copy of any relevant written or recorded statement that has been taken on behalf of any party as defined in Rule 26.02 (3) of Minnesota Rules of Civil Procedure.
5. A list and copies of any and all medical records relating to the injuries described in the Employee's Claim Petition.
6. A copy of the Employee's entire wage and personnel file.
7. A copy of the Chicago Index Bureau Report on the above Employee.
8. Do you, your attorneys or representatives, know of any impeaching material against the Employee as that term is defined in the case of Boldt v. Sanders, 261 Minn. 160, 111 N.W.2d 225 (1961)? If so, please identify all persons possessing such knowledge and all documents that are evidence of or referred to the impeaching material known by you, your attorneys or representatives.

PLEASE TAKE NOTICE, that these discovery demands are deemed continuing. Should you, in the future, discover any information relating to any of the above matters of inquiry, you are required

to notify the employee of said information by way of supplemental answers, or objection will be made at hearing to the use of information not revealed.

BRABBIT & SALITA, P.A.

Dated: _____

10/20/17



Robert T. Brabbit, #218017
Attorney for Employee
901 Marquette Avenue, Suite 500
Minneapolis, MN 55402
(612) 333-4500

Copy

February 14, 2018



BY CERTIFIED MAIL

RELIANCE TRANSPORTATION
717 21ND ST N
FARGO, ND 58102

Re: Notice of Receipt of Workers' Compensation Claim

Employee:
WID: 5116140
DOI: 9/1/2017

Dear Reliance Transportation:

has named you as an employer in a workers' compensation claim. Enclosed is a copy of the Employee's Claim Petition outlining the nature of the claim.

Minnesota Statutes § 176.183 requires the Special Compensation Fund (the "Fund") of the Department of Labor and Industry (the "Department") to pay benefits to an injured worker if all of the following requirements have been met:

1. At the time of the injury, there was an employer/employee relationship between the worker and the person or company that hired the worker;
2. The worker was injured arising out of and in the course of employment; and
3. The employer was uninsured for Minnesota workers' compensation insurance on 9/1/2017.

State law requires that the Fund must accept or deny payment of a claim within 14 days of notice of the injury. The Fund received notice of this injury 2/12/2018.

The Fund has been unable to establish the name of your workers' compensation carrier for the claimed date of injury.

Enclosed is a copy of Minnesota Statutes §§ 176.181 and 176.183. Under these laws, if the Fund determines that the injured worker is entitled to workers' compensation benefits, that you were the employer and that you did not have workers' compensation insurance on the claimed date of injury, you may be legally obligated to reimburse the Fund for workers' compensation benefits the Fund pays to or on behalf of the injured worker. You may also be assessed penalties.

Private or confidential information you provide to the Department, now or in the future, may be used to process this workers' compensation claim, for the investigation and enforcement of mandatory workers' compensation laws and for other state investigations and statistics. You may refuse to supply the information, but your position will not be taken into consideration when the Fund decides whether to pay or deny workers' compensation benefits. The information may also be supplied to:

- The injured worker
- The Department of Labor and Industry staff
- Other Minnesota State Agencies
- Other Employers and Insurers for this claimed date of injury
- The Attorney General's Office
- The Office of Administrative Hearings or courts
- The Workers' Compensation Reinsurance Association
- A person with a court order to obtain the information
- Any person authorized by law to obtain the information.

Please contact me **immediately** to discuss this claim against you. If I am unavailable at the time of your call, please leave a detailed message noting the name of the injured worker and the times you will be available for my call. If I do not receive a response from you within 10 days from the date of this letter, I may assume the information I have been provided is accurate, and may commence payment of benefits. **It is imperative that you take this matter seriously.**

Sincerely,

Richard Klemond

Richard Klemond
Special Compensation Fund
Claims Management Specialist Senior
218-733-7814 direct dial
651-215-9099

RLK:sk

Enclosures

OGC: revised 8/5/15

7017 0530 0000 6806 9235

US Postal Service CERTIFIED MAIL Return Receipt Only	
For delivery information visit us online at www.usps.com	
Certified Mail Fee	
Return Receipt Fee	
Postage and Fees	
Total	
Postmark	
Date	

EXHIBIT B



Independent Insurance
Agents of North Dakota

June 25, 2019

Dear IAND Directors,

I'm writing to provide an update and acknowledge an important issue being researched and worked on by our IAND Legislative Committee. While the committee has been involved in researching and spearheading issues that are channeled through the legislative process, we are hopeful this is an issue that can be resolved without going to that length.

The issue I'm referring to involves a gap in coverage that in non-monopolistic can be addressed via a workers' compensation insurance policy. Specifically, ND employers with employees that live and or travel in states other than ND and rely on ND WSI "Other States Coverage" could have exposure to this coverage gap.

ND WSI has been involved in discussions with our IAND Legislative Committee and we are optimistic that a resolution can be achieved. Over the coming months our efforts will continue and it's important that you know the "Big I" in ND is advocating for ND employers on this important issue.

Please feel free to reach out to myself or one of the committee members (Jon Erickson, Matt Peterson, Sherri Samson) if you wish to discuss further.

Thank you.

Sincerely,

Jeff Kleven
Executive Director
IAND



721 First Avenue North Box 1067
Fargo, ND 58107
Tel: 701.237.3311 Tel: 800.220.45
Fax: 701.232.4142
www.Dawsonins.com

June 20, 2019

Reliance Transportation Inc.
Attn: Randy Christianson
717 21st Street North
Fargo, ND 58102

Dear Randy:

Part of the coverage that Reliance Transportation (RTI) pays WSI premium for involves the "other states coverage" that is provided by Accident Fund. We have reviewed the policy and are of the opinion that Accident Fund had a duty to defend the RTI claim.

A) Exhibit B (Accident Fund Declarations Page): Item 3C states *"Part 3 of the policy applies to the states, if any, listed here. Alf states other than Wyoming, Washington, Ohio, and ND".* MN would thus be a covered state.

B) Page 4 of 6 of Exhibit C (WC 00 00 OOA) reads as follows:
Part 3-OTHER STATES INSURANCE

A2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of this policy will apply as though that state were listed in item 3A of the information page.

C) From page 1 of 6 of exhibit C (WC 00 00 OOA):

Part One Workers Compensation Insurance

C) We will defend---We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits. We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D) Part One and Part Three of WC 33 03 01 are both written in this way:

We Will Pay---We will pay any compensable claim arising out of a temporary and incidental exposure in a state other than North Dakota promptly when due. We will pay the benefits required by the workers compensation law of the jurisdiction in which the claim is filed unless:

1) A determination is made that the insured's exposure is not temporary and incidental in the filing state. "Temporary and incidental" operations are determined by the applicable law in the filing state, but may not exceed thirty (30) consecutive days.

The claim did in fact arise out of a temporary and incidental exposure in MN. The injury occurred to a





721 First Avenue North | Box 1358
Fargo, ND 58107
+1 701 237 3311 | +1 800 220 4514
Fax +1 701 232 4442
www.DawsonIns.com

trucker who was a Minnesota resident who had occasion to drive truck in MN. As such, we contend that there was an obligation for Accident Fund to defend RTI for such a claim.

Sincerely,

Matt Peterson

CC: Kevin Bruggeman

Enclosed: Exhibit A (WC 33 03 01A)
 Exhibit B (Accident Fund Declarations Page)
 Exhibit C (WC00 00 00 A)



NORTH DAKOTA AMENDATORY ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because North Dakota is shown in Item 3.A. of the Information Page. In the event of any conflict between the language of the policy and this amendatory endorsement, the language in this endorsement applies.

GENERAL SECTION

B. Who is Insured

You are insured if you are a North Dakota employer, in good standing. For eligibility of North Dakota owners and officers, optional coverage through Workforce Safety and Insurance (WSI) must be in force.

PART ONE

WORKERS COMPENSATION INSURANCE

B. We Will Pay

We will pay any compensable claim arising out of a temporary and incidental exposure in a state other than North Dakota promptly when due. We will pay the benefits required by the workers compensation law of the jurisdiction in which the claim is filed unless:

1. a determination is made that the insured's exposure is not temporary and incidental in the filing state. "Temporary and incidental" operations are determined by the applicable law in the filing state, but may not exceed thirty (30) consecutive days.
2. the claim is filed by an owner or officers for whom optional coverage was not in force on the date of injury under North Dakota Workforce Safety and Insurance.

C. We Will Defend

We have the right and duty to defend, at our expense using counsel and resources of our choosing, any claim, proceeding or suit against you for benefits payable by this Insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this Insurance.

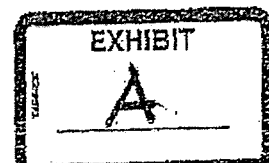
D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this Insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earning;
2. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this Insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.



F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you are found to be in noncompliance with the workers compensation laws of another jurisdiction or are assessed noncompliance premium, penalty and interest;
4. you fail to comply with a health or safety law or regulation; or
5. you discharge, coerce or otherwise discriminate against an employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
4. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law. Nothing in these paragraphs relieves you of your duties under this policy.

PART THREE

C. We Will Pay

We will pay any compensable claim arising out of a temporary and incidental exposure in a state other than North Dakota promptly when due. We will pay the benefits required by the workers compensation law of the jurisdiction in which the claim is filed unless:

1. a determination is made that the insured's exposure is not temporary and incidental in the filing state. "Temporary and incidental" operations are determined by the applicable law in the filing state, but may not exceed thirty (30) consecutive days.
2. the claim is filed by an owner or officer for whom optional coverage was not in force on the date of injury under North Dakota Workforce Safety and Insurance.

D. We Will Defend

We have the right and duty to defend, at our expense using counsel and resources of our choosing, any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

3. reasonable expenses incurred at our request, but not loss of earnings;
4. expenses we incur.

F. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

PART FOUR
YOUR DUTIES IF INJURY OCCURS

Give us and WSI the names and addresses of the injured persons and of witnesses, and other information we may need.

PART FIVE
PREMIUM

- A. Premium for this policy is included in the premium you pay for coverage through Workforce Safety and Insurance.
- B. Classifications
This is a flat premium policy for all classifications.
- C. Premium for this policy is included in the premium you pay for coverage through Workforce Safety and Insurance.
- D. Premium for this policy is included in the premium you pay for coverage through Workforce Safety and Insurance.
- E. Premium for this policy is included in the premium you pay for coverage through Workforce Safety and Insurance.
- F. Premium for this policy is included in the premium you pay for coverage through Workforce Safety and Insurance.
- G. Audit
You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records; and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX
CONDITIONS

D. Cancellation

1. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
2. The policy period will end on the day and hour stated in the cancellation notice
3. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of this policy.)

Endorsement
Insured

Effective Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____



Workers Compensation and Employers Liability Insurance Policy

Policy Number	Policy Period From	To
XXXXXXXXXX	XX-XX-XXXX 12:01 A.M. Standard Time at the described location	XX-XX-XXXX

Transaction	
INFORMATION PAGE	
ITEM 1. Named Insured and Address	Agent
Example North Dakota Employer 222 Adams Street Bismarck, North Dakota	Treas Re: 775 Prairie Center Drive, Suite 420 Eden Prairie, MN 55344
Other Workplaces Not Shown Above: Extended Named Insured:	
Interstate ID: XXXXXXXX Insured Is: xxxxxx Bureau/Risk ID: xxxxxx Unemployment ID Number: xxxx	Intrastate ID: xxxxxxxx FEIN #: xxxx NCCI #: xxxx

ITEM 2. POLICY PERIOD is from 12:01 A.M., to 12:01 A.M., Standard Time at the Insured's mailing address.

ITEM 3. COVERAGE

A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here: North Dakota

Employers Liability Insurance: Part Two of the policy applies to work in each state listed in Item 3A.
The limits of our liability under Part Two are: Not Applicable

Bodily Injury by Accident	\$	each accident
Bodily Injury by Disease	\$	policy limit
Bodily Injury by Disease	\$	each employee

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here. All states other than Wyoming, Washington, Ohio and North Dakota

D. This policy includes these endorsements and schedules: WC 00 00 00A, WC 33 03 01A

ITEM 4. PREMIUM

The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates, and Rating Plans. All information required below is subject to verification and change by audit.

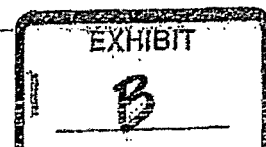
CLASSIFICATIONS

SEE SCHEDULE OF CLASSIFICATIONS ON FOLLOWING PAGE(S)

Minimum Premium	Deposit Premium	Total Estimated Annual Premium	Premium Adjustment Period:
\$ 38.00	\$ 38.00	\$ 38.00	None

Printed on

INSURED COPY
Page 1 of 4





Workers Compensation and Employers Liability
Insurance Policy

Policy Number	Policy Period	
	From	To
XXXXXXXXXX	XX-XX-XXXX 12:01 A.M. Standard Time at the described location	XX-XX-XXXX

INFORMATION PAGE

Named Insured and Address	Agent
Example North Dakota Employer 222 Adams Street Bismarck, North Dakota	Treas Re: 775 Prairie Center Drive, Suite 420 Eden Prairie, MN 55344

SCHEDULE OF EXTENDED NAMED INSUREDS

Number	Name	Name Is	FEIN
--------	------	---------	------

INSURED COPY

Printed on 00/00/0000

Page 2 of 4



Policy Number	Policy Period	
	From	To
XXXXXXXXXX	XX-XX-XXXX 12:01 A.M. Standard Time of the described location	XX-XX-XXXX

Named Insured and Address	Agent
Example North Dakota Employer 222 Adams Street Bismarck, North Dakota	Trean Re: 775 Prairie Center Drive, Suite 420 Eden Prairie, MN 55344

CLASSIFICATIONS	CODE NO	ESTIMATED REMUNERATION	RATE PER \$100	ESTIMATED ANNUAL PREMIUM
-----------------	---------	------------------------	----------------	--------------------------

Location 222 Adams Street
Bismarck, North Dakota

38.00

Premium for other states coverage is included in your North Dakota Premium Charge

Total State Premium				\$ 38.00
	Total Estimated Premium			\$ 38.00



Accident Fund®

INSURANCE COMPANY OF AMERICA
PO BOX 40790
LANSING, MI 48001-7990

Workers Compensation and Employers Liability
Insurance Policy

Policy Number	Policy Period	
	From	To
XXXXXXXXXX	12:01 A.M. Standard Time of the described location	

Agent

Transaction	
INFORMATION PAGE	
Named Insured and Address Example North Dakota Employer 222 Adams Street Bismarck, North Dakota	Agent Treas Re: 775 Prairie Center Drive, Suite 420 Eden Prairie, MN 55344

SCHEDULE OF COVERED WORKPLACES

Number	Address
--------	---------

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE
WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

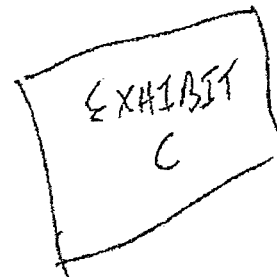
D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other



insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the

workers compensation law that apply to:

- a. benefits payable by this insurance;
- b. special taxes, payments into security or other special funds, and assessments payable by us under that law.

6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO

EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed

against such third party as a result of injury to your employee;

2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety

Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;

9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. bodily injury to a master or member of the crew of any vessel;
11. fines or penalties imposed for violation of federal or state law; and
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily Injury by Disease. The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and

2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE**OTHER STATES INSURANCE****A. How This Insurance Applies**

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR**YOUR DUTIES IF INJURY OCCURS**

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal

papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE—PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX—CONDITIONS**A. Inspection**

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

In Witness Whereof, Accident Fund Insurance Company of America has caused this policy to be issued and signed by its President and Corporate Secretary at Lansing, Michigan.

Elizabeth R. Haar, President and CEO

Lisa M. Domagalski, Corporate Secretary

WC 00 00 00 A
(Ed. 4-92)

EXHIBIT C

Reliance Transportation, Inc.
Legal Fees File No.: 2017-991862
Client Ledger Reports

	Hours	Rate	Fees	Expenses	Total
Anderson Botrell, Fargo, ND	36.4	\$ 250.00	\$ 9,100.00	\$ 125.80	\$ 9,225.80
Stinson, Bismarck, ND	29.7	\$ 300.00	\$ 8,910.00	\$ -	\$ 8,910.00
Aafedt Forde, Minneapolis, MN					
Simpson	41.2	\$ 200.00	\$ 8,240.00	\$ 193.00	\$ 8,433.00
Meland/Colling	58.8	\$ 180.00	\$ 10,584.00	\$ -	\$ 10,584.00
					<u>\$ 19,017.00</u>
Total Legal Fees					<u><u>\$ 37,152.80</u></u>

EXHIBIT D

Randy Christianson

From: Halvorson, John L. <jhalvorson@nd.gov>
Sent: Wednesday, July 10, 2019 1:59 PM
To: Janet Seaworth; Randy Christianson
Cc: Keiser, George J.; Schumacher, Barry A.; Green, Anne J.; Bjornson, Jodi; Steve Novak (snovak@treancorp.com)
Subject: RE: DRAFT Proposed rule

Thank you again for taking the time to discuss further today. To recap, we will include the version of the proposed rule below within WSI's administrative rule packet that will be filed on Friday.

Take care.

John

Proposed Rule: Subsection X of 92-01-02-50

If a claim for workers compensation benefits is compensable in this state and a claim for workers compensation benefits for the same injury or death is filed in another state, the organization may defend, at the organization's expense, using counsel and resources of the organization's choosing, any claim, proceeding or suit against a North Dakota covered employer. The organization may exceed the fees and caps set forth in section 92-01-02-11.1 for this subsection. The organization has the right to investigate and settle these claims, proceedings or suits.

The organization may not defend a claim for workers compensation benefits, proceeding or suit if that claim for workers compensation benefits is not compensable in this state.

From: Janet Seaworth <jseaworth@bis.midco.net>
Sent: Tuesday, July 9, 2019 4:17 PM
To: Halvorson, John L. <jhalvorson@nd.gov>; rchristianson@beveragewholesalers.com
Cc: Keiser, George J. <gkeiser@nd.gov>; Schumacher, Barry A. <baschumacher@nd.gov>; Green, Anne J. <agreen@nd.gov>; Bjornson, Jodi <jbbjornson@nd.gov>
Subject: Re: DRAFT Proposed rule

<p>CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.</p>
--

John,

Thank you so much for your prompt response to Randy's concerns and for the time you spent with us to discuss the issues. We really appreciate it. I think the draft below is good – it gives WSI the authority to defend these claims against covered North Dakota employers. I had one thought. Perhaps consider removing the word "subsequent." I read the draft rule as providing WSI the right to defend only if a "subsequent" claim is filed in another state. One can imagine, however, a scenario where a claimant files simultaneous claims for the same injury in multiple states to see what "sticks" and in that case, a strict reading of the rule would not allow WSI to defend proceedings brought in another state against a covered North Dakota employer. Something to think about.

I also read the draft rule to *allow* WSI to defend, but not *require* WSI to defend. In other words, there is no duty to defend imposed. So, what would happen, for example, if in RTI's case, the MN court would not have dismissed the proceedings, but had accepted the claim and imposed serious penalties on the covered North Dakota employer for failure to have coverage in MN? What would WSI's duty to the covered employer be then? Would WSI reimburse the covered employer – who should have had coverage? This is something Randy has raised as a key issue, and he is wondering how you see the draft language addressing that.

Thanks,

Janet

From: Halvorson, John L.

Sent: Tuesday, July 09, 2019 9:38 AM

To: jseaworth@bis.midco.net ; rchristianson@beveragewholesalers.com

Cc: [Keiser, George J.](#) ; [Schumacher, Barry A.](#) ; [Green, Anne J.](#) ; [Bjornson, Jodi](#)

Subject: FW: DRAFT Proposed rule

Janet and Randy,

Hope all is well. Please note the draft rule below that is intended to alleviate the issues RTI encountered moving forward. Rep Keiser is good with it and we wanted to know if you have any additional input prior to us filing. WSI's administrative rule filing deadline is this Friday.

Thanks.

John

From: Keiser, George J. <gkeiser@nd.gov>

Sent: Tuesday, July 9, 2019 9:23 AM

To: Halvorson, John L. <jhalvorson@nd.gov>

Subject: RE: DRAFT Proposed rule

Looks good.

From: Halvorson, John L.

Sent: Tuesday, July 9, 2019 9:21 AM

To: Keiser, George J. <gkeiser@nd.gov>

Cc: [Schumacher, Barry A.](#) <baschumacher@nd.gov>; [Green, Anne J.](#) <agreen@nd.gov>; [Bjornson, Jodi](#) <jbbjornson@nd.gov>

Subject: DRAFT Proposed rule

Rep. Keiser,

In follow-up to our meeting with Janet and Randy in regards to RTI, we have drafted a proposed rule that may alleviate this issue moving forward. After each session, we do a comprehensive administrative rule review. If the draft proposal below suffices, we will include with WSI's rules packet which is scheduled to be filed on Friday of this week.

Please review and let us know your thoughts and suggestions. We would be happy to sit down and discuss further. The draft below attempts to incorporate a variation of the duty to defend language of a standard work comp policy (see below) with the specific set of facts that arose in the RTI case.

Thanks.

John

Proposed Rule: Subsection X of 92-01-02-50

If a claim for workers compensation benefits is compensable in this state and a subsequent claim for workers compensation benefits for the same injury or death is filed in another state, the organization may defend, at the organization's expense, using counsel and resources of the organization's choosing, any claim, proceeding or suit against a North Dakota covered employer. The organization may exceed the fees and caps set forth in section 92-01-02-11.1 for this subsection. The organization has the right to investigate and settle these claims, proceedings or suits.

The organization may not defend a claim for workers compensation benefits, proceeding or suit if that claim for workers compensation benefits is not compensable in this state.

C. We Will Defend

We have the right and duty to defend, at our expense using counsel and res our choosing, any claim, proceeding or suit against you for benefits payab insurance. We have the right to investigate and settle these claims, proce suits.

We have no duty to defend a claim, proceeding or suit that is not covere insurance.

Workforce Safety & Insurance
PO BOX 5585
1600 East Century Ave., Suite #1
Bismarck, North Dakota 58506-5585
www.workforcesafety.com

Workforce Safety & Insurance (WSI) encourages everyone to develop safety programs that promote safety and claims management within their companies. Find out what is needed in a safety program by following this link:
<https://www.workforcesafety.com/employers/safety/safety-incentive-programs>

Confidentiality Notice:

This electronic mail transmission is intended for the use of the individual or entity to which it is addressed and may contain confidential information. If you are not the intended recipient, you are hereby notified that any disclosure, copying,

distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by e-mail and delete the original message.

EXHIBIT E

Exhibit E

N.D. Admin. Code 92-01-02-50 relates to other states' coverage and provides at subsection (4):

(4) The organization may pay, on behalf of an employer, any regular workers' compensation benefits the employer is obligated to pay under the workers' compensation laws of a state other than North Dakota, with respect to personal injury, illness, or death sustained as a result of work activities by an employee engaged in covered employment in that state, if the employee or the employee's dependents elect to receive benefits under the other state's laws in lieu of benefits available under the North Dakota Workers' Compensation Act. The term "dependents" includes an employee's spouse. The organization may pay benefits on behalf of an employer but may not act nor be deemed as an insurer, nor may the organization indemnify an employer for any liabilities, except as specifically provided in this section. The benefits provided by this section are those mandated by the workers' compensation laws of the elected state. This includes benefits for injuries that are deemed compensable in that other state but are not compensable under North Dakota Century Code chapters 65-05 and 65-08. Medical benefits provided pursuant to this section are subject to any fee schedule and other limitations imposed by the workers' compensation law of the elected state. The North Dakota fee schedule does not apply to this section.

The organization may reimburse an employer covered by this section for legal costs and for reasonable attorney's fees incurred. Reimbursement will be considered only if the employer is sued in tort in another state by an injured employee or an injured employee's dependents relative to a work-related illness, injury, or death; or if the employer is alleged to have failed to make payment of workers' compensation premium in that other state by the workers' compensation authorities of that state. This reimbursement may be made only if it is determined by the organization or by a court of competent jurisdiction that the employer is subject to the provisions of this section and was not required to purchase workers' coverage in that other state relative to the employment of the injured employee. Attorney fees and costs will be paid as set forth in section 92-01-02-11.1. If the other state has an appeal process that differs from the organization, the organization may pay fees consistent with, but may not exceed the fees and caps set forth in section 92-01-02-11.1.

The organization may not reimburse any legal costs, attorney's fees, nor any other costs to a coemployee sued in tort by an injured employee.

N.D. Admin. Code 92-01-02-11.1 provides:

92-01-02-11.1. Attorney's fees.

Upon receipt of a certificate of program completion from the decision review office, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to administrative hearing, district court, or supreme court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. **The organization shall pay attorneys at one hundred sixty dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at eighty dollars per hour.**

2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to ninety dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at forty-five dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.

3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:

a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.

b. Three thousand seven hundred seventy-five dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the hearing is called to order.

c. **Five thousand nine hundred fifty dollars, plus reasonable costs incurred, if the employee prevails after the hearing is called to order by the administrative law judge.**

d. Six thousand six hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. **Eight thousand eight hundred fifty dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.**

e. Ten thousand six hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. Eleven thousand six hundred fifty dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.

f. One thousand seven hundred fifty dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.

g. Should a settlement or order amendment offered during the DRO process be accepted after the DRO certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.

4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative

order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.

5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).

6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The organization may deny fees and costs that are determined to be excessive or frivolous.

7. The following costs will be reimbursed:

a. Actual postage, if postage exceeds three dollars per parcel.

b. Actual toll charges for long-distance telephone calls.

c. Copying charges, at eight cents per page.

d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.

e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other reasonable and necessary costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.

8. The following costs will not be reimbursed:

a. Facsimile charges.

b. Express mail.

c. Additional copies of transcripts.

d. Costs incurred to obtain medical records.

e. Online computer-assisted legal research.

f. Copy charges for documents provided by the organization.

The organization shall reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

EXHIBIT F



North Dakota Workforce
Safety & Insurance

**EXPERIENCE RATE
CALCULATION**
EMPLOYER SERVICES/
PHS DIVISION
SFN 61389 (04/2018)

copy

1600 E Century Ave, St
PO Box 5585
Bismarck ND 58506-5585
Telephone 800-777-5033
Toll Free Fax 888-786-8695
TTY (hearing impaired) 800-366-6888
Fraud and Safety Hotline 800-243-3331
www.workforcesafety.com

SECTION 1 - Employer's Information			
Employer's name Reliance Transportation Inc	Employer's account number [REDACTED]	Employer ID [REDACTED]	Calculation date 08/02/2019
Policy expiration date 09/30/2020	Experience ending date 09/30/2018		Experience rate 56.7%
SECTION 2 - Calculation Factors			
	Total losses	Primary losses limited to \$15,000	Losses in Excess of \$15,000
Actual reported losses	277,234	31,429	245,804
Expected losses	37,981	15,856	22,125
Ballast	25,000		
Credibility factor	.09		
Experience Modification Factor (EMF)			
$\frac{31,429 + (.09 \times 245,804) + ((1 - .09) \times 22,125) + 25,000}{37,981 + 25,000} = 1.567$			
Experience rate 56.7%			
This experience rate will be used to modify your annual premium for the period ending 09/30/2020			

1005 50.7

P13

EXHIBIT G



North Dakota Legislative Interim Committee
Workers' Compensation Review Committee

RE: The Chamber Supports Necessary Changes to WSI Administrative Rules

Chair Ruby, Members of the Workers' Compensation Review Committee:

The Fargo Moorhead West Fargo Chamber of Commerce advocates for our business communities on both sides of the river as we take a regional approach in working to foster a collaborative metro community. Numerous citizens cross the Red River each and every day, working and living in our broader region. With this, we understand there are difficulties that come with being a boarder city. The Chamber acknowledges that one of these issue areas relates to North Dakota employers with out-of-state residents and workplace incidents.

The Chamber supports necessary changes to the Workforce Safety and Insurance Administrative Rules in order to alleviate confusion and make it easier to navigate claims. The Chamber advocates for language that ensures a clear and fair policy for both North Dakota employers and employees, for all incidents occurring in and out of North Dakota.

Sincerely,

Craig Whitney
President & CEO
FMWF Chamber