





amount billed in the billing as a result of the audit until this proceeding is concluded.

On 4/7/09, the director referred the requests to the Office of Administrative Hearings (OAH).

On 4/14/09, OAH issued an order granting the stay.

On 4/27/09, OAH scheduled a hearing to be conducted on 10/7/09.

On 9/30/09, OAH rescheduled the hearing to be conducted on 12/8/09.

On 10/19/09, OAH rescheduled the hearing to be conducted on 12/8/09.

On 12/8/09, OAH conducted a hearing. The hearing was conducted by Rick Barber, an administrative law judge of OAH. The employer appeared and was represented at the hearing by Bill Replogle, an attorney. The employer called Jannai Cornett and Robert Cornett as its witnesses. The employer offered Exhibits P1 to P17 as its documentary evidence all of which were admitted into the record. The insurer appeared and was represented at the hearing by Ethan R. Hasenstein, an Assistant Attorney General assigned to represent the insurer. The insurer called Denise Ashley, Ed Grove, and Teresa Smith, as its witnesses. The insurer offered Exhibits A1 to A30 as its documentary evidence all of which were admitted into the record. <sup>2</sup>

On 2/18/10, OAH issued a proposed order and mailed it to the parties. The proposed order recommended that the director affirm the billing because the employer did not meet its burden of production and persuasion. ORS 183.450(2); *Salem Decorating v. Natl. Council on Comp. Ins.*, 116 Or App 166, 170, (1992), *reviden* 315 Or 643 (1993). The proposed order informed the employer and insurer that they could file with the director written exceptions to the proposed order and the director must receive them within 30 days after the proposed order was mailed to the employer and insurer.

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<sup>2</sup> The proposed order indicated that OAH added to the record the insurer's hearing memorandum, entitled "Opening Statement" dated 11/24/09. It was unnecessary and redundant for OAH to add the document to the record because it is automatically included the record of a case. ORS 183.417(9).



On 3/5/10, the director received from the employer written exceptions to the proposed order.

The director did not receive from the insurer any exceptions to the proposed order.

On 3/17/10, the director received from the insurer a written response to the employer's exceptions.

On 3/24/10, the director received from the employer a written response to the insurer's response.

The director considered the exceptions. The director is not persuaded by the exceptions that the director must or should take any action different than that recommended in the proposed order.

On 4/12/10, the director issued a final order.

On 5/19/10, the employer filed with the Court of Appeals a petition for judicial review of the final order.

On 1/27/11, the director withdrew the final order to reconsider the final order pursuant to ORS 183.482(6).

Therefore, the director now makes the following final decision on reconsideration in this proceeding.

#### **Findings of Fact, Conclusions of Law and Opinion**

The director continues to adopt, and incorporate herein by this reference, the findings of fact, conclusions of law, and reasoning of proposed order as the findings of fact, conclusions of law, and reasoning of this final order except as noted herein.

#### **Order**

The billing is affirmed and the stay is terminated.

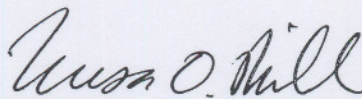
#### **Notice of Right to Judicial Review**

A party has the right to judicial review of this order pursuant to ORS 183.480 and ORS 183.482. A party may request judicial review by sending a petition for judicial review to the Oregon Court of Appeals. The court must receive the petition within 60 days from the date this order was served on the party. If the order was personally delivered to a party, then the date of service is the date the party



received the order. If the order was mailed to a party, then the date of service is the date the order was mailed to the party, not the date the party received the order. If a party files a petition, the party is requested to also send a copy of the petition to the Insurance Division.

Dated FEB 01 2011



Teresa D. Miller  
Administrator  
Insurance Division  
Department of Consumer and Business Services

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STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE DIVISION

In the Matter of R & R Tree Service, Inc.

) CERTIFICATE of  
) SERVICE of  
) FINAL ORDER  
) ON RECONSIDERATION  
) Case No. INS 09-04-002

I certify that I sent the final order on reconsideration to the following person(s) on the date and by the means indicated below:

Jannai Cornett  
Secretary  
R & R Tree Service, Inc.  
1710 Commercial Street NE  
Salem, OR 97301-0707

US First Class Mail

David L. Jorling  
Attorney  
PO Box 853  
Lake Oswego, OR 97034-0139

US First Class Mail

DeAnne J. Hoyt  
Premium Audit Analyst, Premium Audit Program  
Underwriting Services  
SAIF Corporation  
400 High Street SE  
Salem, OR 97312-1000

State inter-agency mail

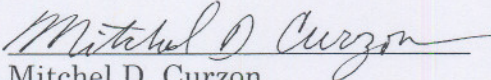
Ethan R. Hasenstein  
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Government Services Section, General Counsel Division  
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Jamie K. Contreras  
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Civil/Administrative Appeals Section, Appellate Division  
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State inter-agency mail

Dated           FEB 01 2011          

  
Mitchel D. Curzon  
Chief Enforcement Officer