THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of the Final Premium Audit of	)	**Case No. INS 03-09-006**
	)	
REDDING LUMBER TRANSPORT INC.	)	
dba PROFESSIONAL TOWING RLC, INC.	)	**REVISED[1]**
a California Corporation	)	**PROPOSED ORDER**
	)	
	)	

HISTORY OF THE CASE

On July 26, 2003, insurer issued a final premium audit billing to employer for the period of April 1, 2002 to March 31, 2003 (audit period). Employer timely requested a hearing challenging insurer's billing. On September 17, 2003, the Department of Consumer and Business Services, Insurance Division (the department) referred this matter to the Office of Administrative Hearings (OAH) for hearing.

OAH assigned Administrative Law Judge (ALJ) Ella D. Johnson to conduct the hearing in this matter. ALJ Johnson conducted the hearing on March 30, 2004. Attorney at Law John A. Anderson represented employer Redding Lumber Transport, Inc. (petitioner or RLT). Assistant Attorney General David B. Hatton represented responding insurer SAIF Corporation (SAIF or insurer). Petitioner called RLT President Albert L. Shufelberger to testify. SAIF Premium Audit Program Analyst Teresa Smith and SAIF Auditor Alice Johnson testified on behalf of SAIF. The record was left open for written closing argument and closed on May 26, 2004.

ISSUE

Whether insurer incorrectly assessed premium on payments made to owner/operators who were allegedly not workers as defined by ORS 656.005(30)

OFFICIAL NOTICE

As noted at hearing, I take official notice of the *Basic Manual of Workers' Compensation and Employers Liability Insurance* (*Basic Manual*). The *Basic Manual* is a publication of the National Council on Compensation Insurance (NCCI). It includes the rules insurers follow to arrive at the correct class code for a business and the official description for all class codes filed with the department. The *Basic Manual* is a required part of every insurer's audit procedure guide. OAR 836-43-0115(1)(a). I also take official

[1] Revisions are in bold type.

notice of another publication of NCCI, the *Scopes Manual.* The *Scopes Manual* consists of a numerical listing of class codes with descriptive terminology and examples of types of business activities that have been included in class codes in the past.

EVIDENTIARY RULING

Petitioner's Exhibits P1 through P29 and insurer's Exhibits A1 through A26 and A28 through A33 were admitted into the record without objection. Petitioner objected to Exhibit A27 because it dealt with settlement negotiations and SAIF withdrew the exhibit.

FINDINGS OF FACT

(1) The National Council on Compensation (NCCI) is the authorized rating organization for the State of Oregon. NCCI also acts as the administrator of the Oregon Workers' Compensation Insurance Plan (assigned risk pool). At all times relevant herein, SAIF provided coverage to RLT as the insurer assigned under the assigned risk pool. In April 2001, RLT first applied for coverage through the assigned risk pool as "Professional Towing RLT, Inc.," noting that it did not use subcontractors in its work.[2] SAIF became the assigned carrier on April 4, 2001. (Exs. A1; A2; A9.).

(2) RLT is a California corporation engaged in the business of interstate trucking. Interstate trucking is highly regulated by the Federal Motor Carrier Safety Administration (FMCSA). The FMCSA regulations governing the leasing of trucks for interstate commerce are found at 49 CFR Part 376. The regulations require: a written lease specifying the responsibilities of each party; the payment of compensation within 15 days of delivery of cargo documents; authorized deductions at settlement; legal obligations in providing insurance; identification of the leased truck with the motor carrier's authority; exclusive possession, use and control over the leased vehicle by the motor carrier during the lease; and escrow funds. (Exs. P28; P29; test. of Shufelberger.)

(3) RLT has been in the interstate trucking business for 30 years and is headquartered in Redding, California, where its trucks are dispatched. Albert Shufelberger is the president of the company. (Ex. P2; test. of Shufelberger.) RLT operates in thirteen western states but does 95 percent of its business in Oregon, Washington and California, hauling general commodities for others. The company has 14 trucks and approximately 175 to 200 employees. It has 40 owner/operators that lease their trucks to RLT. RLT uses owner/operators to haul commodities in a variety of types of trucks, including flatbed trucks, dry vans and refrigerated trucks. A majority of the owner/operators live in California and their payroll is reported there. RLT has a yard in

[2] Mr. Shufelberger testified that he did not fill out the insurance application and he did not recognize the signature on the insurance application.

Aurora, Oregon for loading/unloading and fueling. The company has five owner/operators who live in Oregon and work out of the Aurora yard. The owners/operators who work out of the Aurora yard are Oregon residents and their payroll is reported in Oregon. RLT's owner/operators must hold a valid commercial driver's license and have two years of experience. The owner/operators provide their own commercial vehicles. RLT has employees who also haul commodities for the employer. The owner/operators occasionally drive for other entities owned by Shufelberger. When that occurs, the owner/operators are paid by the other entity. (Exs. A9; A13; test. of Shufelberger.)

(4) RLT recruited the owner/operators by advertising in newspapers and magazines. The owner/operators had no contact with RLT's customers. The owner/operators were given several days of orientation to familiarize them with company service standards, DOT safety requirements, and RLT's logbook and paperwork procedures. They did not wear uniforms but were required by their contract with RLT to be neat in appearance with hair, beard and/or mustache trimmed. The owner/operators were paid bi-monthly. The employee drivers were also paid bi-monthly but their paydays were not the same as the owner/operators. The owner/operators negotiated the manner of payment, but the company set the amount paid to the owner/operators. They were paid by a percentage of the load or by the miles and the type of vehicle leased from the owner/operator. The employees were paid by the hours, actual mileage or salary. The customer paid RLT and RLT paid the owner/operators. The route used by the owner/operator in hauling the load was up to the owner/operator but the mileage beyond that set by the mileage chart was not compensated. The owner/operators received a tax form 1099 at the end of the tax year. They worked under RLT's PUC permit. They were required to check in with the RLT dispatcher every day and were dispatched by RLT's Dispatch Department. They called in when they were "empty" and the owner/operators were dispatched on a "first in first out" basis. After they agreed to take the load, the owner/operators were told what the load was and when and where to take the load. They were not required to call in while transporting the load, unless there was a problem. When the owner/operator delivered the load, the customer signed the delivery receipt and gave the driver a bill of lading with the time and date of delivery. The owner/operator made out a freight bill and placed the freight bill, logs and other documents in a preaddressed envelope and mailed it or hand delivered it to the company. The owner/operator was paid when the documents and delivery receipt were submitted. The owner/operators could refuse loads and were usually given two or three choices of loads available. Some owner/operators had their own helpers or employees; they could hire helpers but not other drivers, unless the other drivers were covered by the owner/operator's insurance and met the requirements for owner/operator drivers. RLT had an "Independent Contractor Information Guide" that listed all of the requirements and conditions of the work. (Exs. A13; A19; P4; P23; test. of Shufelberger.)

(5) The contract[3] signed by the owner/operators provided that the owner/operators worked exclusively for RLT and gave exclusive possession, control and use of the

[3] By the "contract," I refer to both the Independent Contractor Qualification Policy and the Master Lease Agreement.

owner/operators' commercial vehicle to RLT. Under the contract, RLT assumed responsibility and liability to the shippers and consignees for damages arising from the transportation services provided under the contract, and to the public for damages arising from the unsafe operation of the commercial vehicle. It also provided that the lease of the owner/operators' vehicle to RLT was for one year and could be terminated by either party with 30 days written notice. It required the owner/operators to comply with all federal, state and local laws or regulations and to warrant that the vehicles met all standards of FMCSA and the Federal Department of Transportation (DOT). (Ex. A13 at 23-24.)

(6) The contract characterized the owner/operators as independent contractors, and not partners, joint venturers, employees or agents of RLT. The owner/operators were required to operate their vehicles under RLT's authority and the vehicles were to carry RLT's insignia and identification markers. RLT required the owner/operators to be available to work on the weekends and holidays. They were required to abide by all of RLT's policies. They were required to check in daily but could refuse to take loads. The manner and amount of compensation varied and was set forth in an attachment to the contract. The owner/operators were not required to purchase or rent any products, equipment or services from RLT. However, RLT was entitled to deduct from any settlement expenses for indemnity insurance, property damage, advances and charges. In the event that all advances or charges could not be deducted from the current monthly settlement, the owner/operators agreed to pay 10 percent interest on the unpaid balance until the balance was paid. The contract required the owner/operators to maintain the commercial vehicles in a clean and safe condition at their own expense. It also required the owner/operators to insure that they and any driver employed or used by the owner/operator to operate the commercial vehicle attended RLT's safety meetings, unless on the road. At the safety meeting, additional employee issues were discussed. During the audit period, owner/operator Donald Jones received a safety bonus of $125. All owner/operators and their drivers had to be certified by RLT's Safety Department and comply with the Interstate Commerce Commission (ICC) and DOT safety and inspection requirements. Their contract with the company was terminated if they failed to comply with FMCSA Safety Regulations. They were also terminated if RLT's business needs changed. The failure to comply with the safety requirements was considered a material breach of the contract and would result immediate termination without further notice. The owner/operators assumed the risk of any loss of damage to the vehicle and contents. The owner/operators were required to maintain a $1,500 escrow account upon which RLT would pay interest and would provide an accounting. The owner/operators were responsible for providing fuel, oil, tires and repairs for the operation of the vehicle. RLT provided fueling charge accounts at various locations for owner/operators to purchase fuel **at RLT's expense. If owner/operators chose to purchase fuel at a location not designated by RLT, the price difference** would be charged back to the owner/operators at settlement.[4] The owner/operators were responsible for payment of tolls, ferries, fuel

[4] As of January 1, 2000, RLT revised the lease agreement to require owner/operators to obtain fuel at locations designated by RLT. Fuel obtained at other locations would be at the owner/operator's expense.

taxes, state vehicle license, lost license plates, federal highway use taxes and any other tax, fine or fee, except for yearly renewal fees imposed or assessed by any state on the operating authorities held by RLT. In the event of an accident, the owner/operators were required to notify RLT immediately before the vehicle was removed from the scene and complete a written report for RLT. (Ex. A13 at 24-45; A32 at 8; P4; P12; test. of Shufelberger.)

(7) The contract also contained an Equipment Lease, which expanded the conditions set forth in the contract but was inconsistent with the contract in some respects.[5] It provided that the vehicle lease would run for a period of three months and thereafter in three month period subject to the right of either party to cancel the lease with 30 days notice and could be immediately terminated upon the disqualification of the owner/operator lessor or the lessor's driver or violation of the rules of DOT's Federal Highway Administration. It gave RLT the right to approve any equipment based on weight and required the owner/operators to comply with RLT's rules and regulations. It required the owner/operators to comply with the directions of the dispatchers. The lease also gave the RLT the right to deduct from the settlement or payment to the owner/operators up to $1,000 for any loss, costs or expenses resulting from damage to the freight and withhold sufficient funds from the final settlement for up to 45 days to cover any deductions. The owner/operators were to be paid bi-weekly upon the submission of properly executed delivery receipts, trip manifests, fuel receipts, driver logs, lumper and detention receipts properly endorsed by the shipper, consignee, and driver. Mileage was to be calculated based on the most direct route between the point of dispatch and point of origin and destination via any in transit loading or unloading points. The lease required the owner/operators to devote the vehicle to the transportation of RLT's commodities and also gave RLT exclusive possession, control and use of the owner/operator's vehicle. The owner/operators were responsible for payment of all maintenance and costs of operation and the cost of all detention, accessorial, loading and unloading. The lease required owner/operators to provide workers' compensation and employers' liability coverage for any individuals employed by the owner/operator and to provide proof of such coverage upon request. RLT was responsible for payment of all licenses and permit costs but required the owner/operator to reimburse RLT for the prorated unused portions of these costs upon termination by either party. RLT was also responsible for payment of fuel taxes, tolls and permits, public liability, property damage and cargo insurance. (Ex. A13 at 38–45; A22 at 1.)

(8) Included in the Equipment Lease was Attachment "A" that set forth the compensation to be paid to the individual owner/operator. Leroy Kincaid was paid 46 cents per mile plus $20 per stop to load and unload. (Ex. A22; P7.) Donald Jones was paid 47 cents per mile plus $20 per stop to load or unload. (Ex A23; P8.) Dick Hyder was paid 90 percent of the gross revenue of the freight charges. (Ex. A24; P11.) Ralph Hyder was also paid 90 percent of the gross revenue of the freight charges. (Ex. A25;

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[5] The lease requirements concerning the length of the contract and what the owner/operator was required to pay for differed from the contract

P10.) Stephen Bernard was paid 86 percent of the gross revenue of the freight charges. (Ex. A26; P9.)

(9) From June 2002 through March 2003, RLT paid Donald Jones $36,932.50. He was covered by an occupational accident policy, which applied to all coverage except workers' compensation insurance. He obtained the coverage through the group policy provided by National Association of Independent Trucker, Inc. (NAIT). (Ex. A13.)

(10) From April 2002 through March 2003, RLT paid Stephen Bernard $39,628.98, Leroy Kincaid $48,443.72, Ralph Hyder $107,795.17, and Dick Hyder $129,925.45. They were all covered by occupational accident policies, which applied to all coverage except for workers' compensation insurance. In addition, Bernard carried a non-occupational policy, Kincaid carried a senior occupational accident policy and a passenger accident policy, and Ralph Hyder and Dick Hyder carried non-occupational policies. They obtained all of this insurance through the group policies provided by NAIT. (Exs. A13; P13; test. of Shufelberger.)

(11) The NAIT occupational accident policy ("Plan A") provided medical benefits up to $2 million, temporary disability up to $400 per week, continuous total disability up to age 65 and an accidental death benefit of $300,000 for injuries sustained in the course of the owner/operator's regular occupation while under dispatch and on duty for the named motor carrier. (Ex. P6.)

(12) RLT also carried contract Liability Insurance through NAIT, which covered the company in the event that an owner/operator filed a workers' compensation claim against the company. The policy would pay for expenses in litigating the claim and benefits associated with the claim. The policy was designed to indemnify and defend against allegations form owner/operators that they had an employment relationship with RLT. SAIF was an additional insured under the policy. (Ex. A17; P13.)

(13) SAIF auditor Alice Johnson conducted the audit for the audit period on July 25, 2003. The audit assessed premium on payments made to the five owner/operators who reside in Oregon: Donald T. Jones; Stephen Bernard; Leroy Kincaid; Ralph Hyder; and Dick Hyder. The owner/operators were assessed at a rate of 25 percent of the total contract price, based on the lease agreement and the auditor's determination that the owner/operators**' work was** an "essential and regular part" of RLT's trucking business. The audit resulted in an additional premium due of $18,761.57 for the audit period. (Exs. A13; A14; test. of Johnson.)

CONCLUSIONS OF LAW

Insurer correctly assessed premium on payments made to owner/operators who were workers as defined by ORS 656.005(30).

OPINION

The issue here is whether SAIF incorrectly assessed premium on payments made to owner/operators who were allegedly not workers as defined by ORS 656.005(30). Inasmuch as RLT is the party seeking redress before the department concerning its final premium audit billing, it has the burden to prove its position on the issue by a preponderance of the evidence. *See* ORS 183.450(2); *Harris v. SAIF*, 292 Or 683 (1982) (general rule regarding allocation of burden of proof is that burden is on the proponent of the fact or position); *Cook v. Employment Div.*, 47 Or 437 (1982) (in the absence of legislation adopting a different standard, the standard in an administrative hearing is by a preponderance of the evidence); *Salem Decorating v. Natl. Council on Comp. Ins.*, 116 Or App 166 (1992), *rev den* 315 Or 643 (1993) (in premium audit cases, burden of proof is on the employer). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General contractors v. Tandy Corp.*, 303 Or 390 (1989). I find that petitioner has failed to meet its burden.

<u>"Right to Control" test</u>

In making the determination of whether the owner/operators are subject "workers," the initial inquiry is whether they are "workers" within the meaning of the workers' compensation law. *S-W Floor v. Nat'l Council on Comp Ins.*, 318 Or 614, 622 (1994). ORS 656.005(30) provides in pertinent part that a "worker" is "any person * * * who engages to furnish services for a remuneration, subject to the direction and control of an employer * * *." There is no dispute that the owner/operators received remuneration for their services. Therefore, my analysis is limited to the question of whether they were subject to the trucking company's direction and control.

The initial determination of whether the owner/operators were subject to RLT's direction and control is made under the judicially created "right to control" test. *S-W Floor,* 318 Or at 622. The critical question in determining direction and control under the "right to control" test is not the actual exercise of control, but whether the right of control exists. *Id.* The factors to be considered in determining whether the right to control exists are: (1) direct evidence of the right to, or the exercise of, control; (2) the furnishing of tools and equipment; (3) the method of payment; and (4) the right to fire. *Salem Decorating v. Nat'l Council of Comp. Ins.*, 116 Or App 166, 171 (1992) *rev den* 315 Or 643 (1993); *Castle Homes v. Whaite*, 95 Or App 269, 272 (1989).

The "relative nature of the work" test must be considered "if there is some evidence suggesting the employer retained the right to control the method and details of the [owner/ operators'] work." *Rubalcaba v. Nagaki Farms, Inc.*, 333 Or 614, 627 (2002).

<u>Direct evidence of the right to control</u>: Although the contract between the parties here states that the owner/operators are independent contractors, the parties' understandings do not determine whether an employee or independent contractor

relationship exists. *Woody v. Waibel*, 276 Or 189, 198-99 (1976).

In *Salem Decorating*, the court found *inter alia* that procuring the contract with the customer, selecting the contractors to perform the work, instructing the contractor on the work and maintaining the right to stop using the contractor or remove the contractor if problems arose or the contractor failed to perform the work demonstrated "fundamental control" over the work. 116 Or App at 171. The court also noted that the employer used both employees and contractors who were formerly employees and provided the contractor with a description of the job. The court further found that payment directly to the individual by the employer instead of by the customer indicated a right to control. *Id.* at 172. It is not the degree of control by the employer, but the employer's right to control that indicates worker status. *HDG Enterprises v. Nat'l Council on Comp. Ins.*, 121 Or App 513, 518 (1993).

The undisputed evidence here demonstrates that RLT had "fundamental control" over the means and manner of the owner/operators' work beyond that required by the FMCSA and other regulatory agencies. RLT procured the contract with the customer and selected the owner/operator to perform the work. RLT also instructed the owner/operator on how to perform the work, through the orientation given to all owner/operators, the requirement that owner/operators follow all of RLT's policies and procedures, through the safety meetings, and subtly through its payment/reimbursement policies. For example, RLT claims that the route taken by the owner/operators to deliver the load was up to them. However, mileage beyond what RLT had determined was the most direct route was not paid. RLT also maintained the right to stop using the owner/operator for any reason. RLT provided a job description to the owner/operators through the "Independent Contractor Information Guide" that listed all of the requirements and conditions of the work. RLT also had employees that performed essentially the same duties. Finally, the customer paid RLT and did not pay the owner/operator directly. In addition, the contract and lease agreement gave RLT higher control than the regulations required. RTL controlled the owner/operators appearance and required them to abide by company service standards and paperwork procedures and comply with RLT's policies. The owner/operators were required to be willing to haul loads on weekends and holidays. They were required to attend the safety meetings where employee issues were discussed, and like the employees, they participated in the safety bonus program. The owner/operators could not hire their own drivers without RLT's approval and RLT reserved the right to approve any equipment based on the weight of the equipment. Consequently, on this record, I find that this first factor indicates an employment relationship.

Furnishing of tools and equipment: It is uncontroverted that the owner/operators supplied their own tools and equipment and were required to pay for all of the maintenance to operate their trucks. Consequently, this factor weighs in favor of independent contractor status.

Method of payment: "When payment is by quantity or percentage, the method of

payment test largely becomes neutral. To the extent that it indicates continuing service, it suggests employment; to the extent that it lessens an employer's interest in the details of how the employee spends [their] time, it has been said to suggest an independent contractor relationship." *Henn v. SAIF*, 60 Or App at 592. The evidence establishes that three of the owner/operators were paid a percentage of the gross revenue while the other two were paid by the mile. Consequently, I find that this factor is neutral.

Right to fire: The right to terminate the relationship at any time without liability is strong evidence that the contract was one of employment. *Bowser v. State Indus. Accident Comm*., 182 Or 42, 54 (1947). The right to control whether further work would be done is also indicative of the right to fire. *Cy Inv. Inc. v. Nat'l Council on Comp. Ins.*, 128 Or App 579, 584 (1994). The evidence here establishes RLT had the right to terminate the relationship immediately for safety violations or with 30 days notice without liability. Additionally, RLT also controlled through its dispatcher whether the owner/operator was given additional loads to transport. RLT argues that this factor indicates independent contactor status because, if it failed to give 30 days notice of termination, it would be subject to "substantial liability." However, I do not find this argument persuasive inasmuch as a fired employee who the right to 30 days notice may also have the same recourse under the employment law. Consequently, I conclude that RLT retained the right to fire the owner operator and that this factor indicates an employment relationship.

In sum, the right to control test indicates that two of the factors demonstrate an employment relationship between RLT and the owner/operators, one factor is neutral and one factor indicates independent contractor status. Having found "some evidence" of the right to control, I proceed to the "relative nature of the work" test.

"Relative Nature of the Work" Test

The "relative nature of the work" test involves an examination of:

> "The character of the claimant's work or business – how skilled it is, how much a separate calling or enterprise it is, to what extent it may be expected to carry its own accident burden * * * its relation to the employer's business, that is how much it is a regular part of the employer's regular work, whether it is continuous or intermittent, and whether the duration is sufficient to amount to the hiring of continuing services as distinguished for the completion of a particular job. *Woody v. Waibel*, [276 Or 189, 195 (1976)], quoting 1A Larson's *Workmen's Compensation Law*, section 43.51 (1973)

Before the court's decision in *Rubalcaba*, the test was only applied when the right to control test was inconclusive. *See Oregon Drywall Systems, Inc. v. Nat'l Council on Comp. Ins*, 153 Or App 662 (1998) (if the right to control is inconclusive, the relative nature of the work test may be applied.) In *Rubalcaba*, the Oregon Supreme Court

reversed the Court of Appeals and the Workers' Compensation Board because both the court and the board failed to apply the relative nature of the work test when there was "some evidence" that the employer retained the right of control. 333 Or at 627. Accordingly, I apply relative nature of the work test.

The owner/operators are unskilled because their jobs involve the type of skills and expertise gained through experience rather than through years of education or specialized training. The work of the owner/operator is not a separate business. RLT is engaged in the interstate trucking business, hauling general commodities for others. Without the owner/operators to transport the commodities, RLT could not operate its business. Furthermore, there was no evidence that any of the owner/operators hauled loads for other companies during the audit period. Therefore, I find that the owner/operators were a regular and integral part of RLT's business as opposed to a separate and distinct business.

The work of the contract drivers was also continuous and of sufficient duration to amount to the hiring of continuous services rather than the contracting for the completion of a specific job. They did not just deliver one load or deliver commodities to one customer one time. Some of the owner/operators had been transporting loads for RLT for years.

Finally, because RLT negotiated the contract with the customers, RLT was in a better position to bear the cost of injuries to the owner/operators. Consequently, I find based on the analysis set forth in the relative nature of the work test, that the owner/operators are "workers" under the Oregon workers' compensation statutory scheme.

In support of its position that the owner/operators are independent contractors, RLT argues that the facts in *Child Truck Line, Inc*. Case No. 94-03-006 (Final Order, July 17, 1997), which held that federally or state mandated regulations that were part of a lease agreement should not be considered in determining the employment status of the contract drivers, are strikingly similar to facts of this case. I disagree. The provisions indicating a right to control contained in RLT's agreement with the owner/operators go beyond what is required by state and federal regulation. Consequently, I do not find RLT's argument persuasive. RLT also attempts to distinguish the *Rubalcaba* case from the present case, arguing that there is no need to apply the relative nature of the work test. I disagree. As set forth above, there is sufficient evidence of an employment relationship to require me to apply the nature of the work test. In support of its argument, RLT points to the requirement that it give 30 days written notice to terminate the contract with the owner/operators but ignores rest of the indicia of the right to fire such as the right to control whether additional loads are given to the owner/operator which is evidence of the right to fire. RLT also attempts to contrast the owner/operators with its own employees to demonstrate the lack of control. However, as set forth above, I find more similarities than differences. Moreover, the question is not whether RLT exercised that right to control the owner/operators' work in the same manner as it does with its employees, but

rather whether it had the right to control the owner/operators' work. Accordingly, SAIF's final premium audit for the audit period is affirmed.

ORDER

I propose that the department issue the following Final Order:

SAIF's final premium audit billing for the audit period of April 1, 2002 to March 31, 2003 is correct and payable.

Dated this 15th day of March 2005 in Salem, Oregon.

/s/ Catherine P. Coburn
Catherine P. Coburn, Administrative Law Judge
Office of Administrative Hearings

NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW

NOTICE: Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this proposed order and to present written argument concerning those exceptions to the Director. Written exceptions must be received by the Department of Consumer and Business Services within 30 days following the date of service of this proposed order. Mail exceptions to:

Mitchel D. Curzon
Chief Enforcement Officer
Oregon Insurance Division
PO Box 14480
Salem, OR 97309-0405