

**STATE OF OREGON**  
**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**  
**INSURANCE DIVISION**

In the Matter of **Curtis W. Kruse and**  
**Sharon Kruse**

) **FINAL ORDER**  
) Case No. INS 05-11-017

The Director of the Oregon Department of Consumer and Business Services (director), commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 737.318(3)(d) and ORS 737.505(4), and Oregon Administrative Rules (OAR) 836-043-0101 *et seq.* to review a workers' compensation insurance final premium audit billing (billing) issued by Twin City Fire Insurance Company (insurer)<sup>1</sup> to Curtis W. Kruse and Sharon Kruse, a partnership (employer).<sup>2</sup>

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<sup>1</sup> There was some confusion about who is the insurer. The employer's petition dated 10/31/05 identified the insurer as "The Hartford." Attached to the employer's petition was a document entitled "Statement of Premium Adjustment – Workers Compensation and Employers Liability – Final Premium Audit Billing" (billing) dated 8/22/05 for policy number 52 WEC JD2022 for the audit period from 5/1/04 to 5/1/05 which identified the insurer in one location as "The Hartford Insurance Group, Inc." and then as "Twin City Fire Insurance Company" in another location. According to Insurance Division records, "The Hartford Insurance Group, Inc." is not, but "Twin City Fire Insurance Company" is, licensed as an insurer in Oregon, and "Twin City Fire Insurance Company" is an insurer within the "Hartford Fire and Casualty Group." The referral memorandum dated 11/30/05 from the Insurance Division to the Office of Administrative Hearings (OAH) identified the insurer as "Twin City Fire Insurance Company." At the hearing on 4/11/06, the insurer introduced Exhibit 103, page 12, which is an endorsement, dated 3/8/04, to policy number 52 WEC JD2022, effective 5/1/04, which identified the insurer as "Twin City Fire Insurance Company." However, OAH issued a proposed order dated 5/15/06 and a corrected proposed order dated 5/18/06 both of which identified the insurer as "The Hartford Insurance Group" or "Hartford." Since the policy endorsement and billing both identify the insurer as "Twin City Fire Insurance Company" and Insurance Division records show that "Twin City Fire Insurance Company" is a licensed insurer in Oregon, the director finds that the insurer is "Twin City Fire Insurance Company." Thus, all references to the insurer as "The Hartford Insurance Group" or "Hartford" in the corrected proposed order are corrected to "Twin City Fire Insurance Company."

<sup>2</sup> Similarly, there was some confusion about who is the employer. The employer's undated request for a hearing, but received by the Insurance Division on 9/19/06, was on letterhead of "Redwood Property Investments, LLC" and was signed by Curtis W. Kruse as "manager [of] Redwood Property Investments LLC." Attached to the employer's request was the billing dated 8/22/05 which identified the insured employer as "Curtis & Sharon Kruse." Also attached to the employer's request was a copy of an undated and unentitled document containing information about the employer which identified the employer as "Curtis W. & Sharon K. Kruse," organized as a "partnership," and doing business as "Redwood Property Investments." The employer's petition dated 10/31/05 identified the employer as "Curtis Wayne Kruse" doing business as "Redwood Property Investments, LLC." The referral memorandum dated 11/30/05 from the Insurance Division to the Office of Administrative

## History of the Proceeding

On or about 9/12/05, the employer received from the insurer a billing dated 8/22/05 for the audit period from 5/1/04 to 5/1/05.<sup>3</sup> The billing informed the employer that it may request a hearing by sending to the director a written request for a hearing so that the director receives the request within 60 days after the employer received the billing. See ORS 737.318(3)(d), ORS 737.505(4), and OAR 836-043-0170(1).

On 9/19/05, the director timely received from the employer a written request for a hearing to review the billing.

On 9/19/05, the director also received from the employer a request for an order staying all collection efforts by or on behalf of the insurer of any amount billed in the billing as a result of the audit until this proceeding is concluded. See OAR 836-043-0170(5).

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Hearings identified the insured employer as “Curtis W. and Sharon Kruse, a partnership.” At the hearing on 4/11/06, the insurer introduced Exhibit 103, page 3, which is the first page of policy number 52 WEC JD2022, effective 5/1/04, which identified the insured employer as “Curtis & Sharon Kruse” and described them as a “partnership.” Also, the insurer introduced Exhibit 103, page 11, which is an endorsement, dated 3/8/04, to policy number 52 WEC JD2022, effective 5/1/04, which identified the insured employer as “Curtis & Sharon Kruse dba Redwood Property Investments.” However, OAH issued a proposed order dated 5/15/06 which identified the employer in the caption as “Curtis W. & Sharon Kruse, a partnership” but in the text of the order as “Redwood Property Investments, LLC” or “Redwood”. Later, at the suggestion of the Insurance Division, OAH issued a corrected proposed order dated 5/18/06 which identified the employer in the caption as “Curtis W. & Sharon Kruse, a partnership,” but in the text of the order as “Curtis W. & Sharon Kruse, a partnership, dba Redwood Property Investments, LLC.” According to the Oregon Secretary of State, Corporation Division, Business Name Registry online as on 9/20/05, “Redwood Property Investments LLC” has been registered as an Oregon limited liability company since 2/21/01, Curtis W. Kruse is the managing member of “Redwood Property Investments, LLC,” and “Redwood Property Investments” has been the registered assumed business name of “Redwood Property Investments, LLC” since 6/10/03 in only Josephine County. Since the policy endorsement and billing identified the insured employer as “Curtis & Sharon Kruse” and described them as a “partnership,” the director finds that the employer to be “Curtis W. & Sharon Kruse, a partnership.” Thus, all references in the corrected proposed order to the employer as being or including “Redwood Property Investments, LLC” are deleted.

<sup>3</sup> Both the proposed and corrected proposed orders incorrectly stated that the insurer issued the billing on 4/9/06. According to the employer’s undated request for a hearing, received by the Insurance Division on 9/19/05, the employer “received a premium audit adjustment notice on 9/6/05.” Attached to the request was a document entitled “Statement of Premium Adjustment – Workers Compensation and Employers Liability – Final Premium Audit Billing” (billing) dated 8/22/05 for policy number 52 WEC JD2022 for the audit period from 5/1/04 to 5/1/05. Thus, the insurer issued the billing on or about 8/22/05.

On 9/22/06, the director mailed to the employer a letter and a petition form. The letter informed the employer that it must complete the form and return it to the director so that director receives it within 60 days after the director received the request for a hearing, otherwise the director will dismiss the employer's request for a hearing. See OAR 836-043-0170(2)-(3) & (9).

On 11/3/05, the director timely received from the employer the completed petition.

On 11/30/05, the director referred the request to the Office of Administrative Hearings (OAH).

On 12/2/05, OAH scheduled a hearing to be held on 3/8/06.

On 12/2/05, OAH issued an order granting the stay.

On 2/6/06, OAH rescheduled the hearing to be held on 4/11/06.

On 4/11/06, OAH held a hearing. The hearing was conducted by Catherine P. Coburn, an administrative law judge of OAH. The employer appeared and was represented at the hearing by Curtis W. Kruse, as the employer's authorized representative pursuant to OAR 836-005-0112 and 137-003-0555. The employer called Curtis W. Kruse and Sharon Kruse as its witnesses. The employer's exhibits 1 to 9 were admitted into the record. The insurer appeared and was represented at the hearing by David C. Gormel, as the insurer's authorized representative. The insurer did not call any witnesses. The insurer's exhibits 101 to 109 were admitted into the record.

On 5/15/06, OAH issued a proposed order. The sole issue was whether the insurer may, after a policy period, charge an employer in the construction business additional premium because during an audit of the employer the insurer discovered that the employer had been incorrectly classified during the audit period and paid insufficient premium. The proposed order concluded that the insurer may retroactively correct the classification and charge the additional premium due pursuant to the National Council on Compensation Insurance, Inc.'s (NCCI) *Basic Manual of Workers' Compensation Insurance (Basic Manual)*, Rule 1-F(3)(b), even though the employer correctly reported its work activities to the insurer, the insurer

incorrectly assigned the classification to the employer, and the employer owes an additional \$17,746 in premium as a result of retroactively correcting the classification codes. The proposed order recommended that the director affirm the billing. The proposed order informed the employer and insurer that they could file with the director written exceptions to the proposed order within 30 days after the proposed order was served on the employer and insurer.

On 5/18/06, OAH issued a corrected proposed order only “to correct references to the petitioning employer.”<sup>4</sup>

The director did not receive from the parties any exceptions to the proposed or corrected proposed orders.

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

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

The director adopts, and incorporates herein by this reference, the findings of fact, conclusions, and reasoning of proposed order as the findings of facts, conclusions, and reasoning of this final order, except as noted herein about the identity of the employer and insurer, and the date the insurer issued the billing.

### **Order**

The billing is affirmed and the stay is withdrawn.

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

A party has the right to appeal this final order to the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. A party may institute a proceeding for judicial review by filing with the court a petition for judicial review 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 day the party received the order. If the order was mailed to a party, then the date of service is the day the order was mailed to the party, not the day 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.

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<sup>4</sup> See footnote 2 herein.

Dated October 31, 2006

/s/ Joel Ario

Joel Ario

Administrator

Insurance Division

Department of Consumer and Business Services

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