STATE OF OREGON

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

DIVISION OF FINANCIAL REGULATION

IN THE MATTER OF:	)	FINAL ORDER
	)	
PRO-CURE, INC.,	)	OAH Case No. 2019-ABC-02520
dba PRO-CURE BAIT SCENTS	)	Agency Case No.: INS-WCA 18-12-009

Procedural History

The Director of the Oregon Department of Consumer and Business Services (Director), by and through Division of Financial Regulation, (Division), commenced the above entitled administrative proceeding to review a workers' compensation insurance final premium audit billing issued by SAIF Corporation to Pro-Cure, Inc, dba Pro-Cure Bait Scents, (Employer) pursuant to Oregon Revised Statutes (ORS) 737.256(1), ORS 737.505(3), and Oregon Administrative Rules (OAR) 836-043-0200 *et. seq.*

On February 20, 2019, the Division referred employer's hearing request contesting the billing to the Office of Administrative Hearings (OAH). The issue before OAH was whether insurer's Final Premium Audit, dated October 26, 2018, was correct. By Proposed Order dated January 28, 2021, Senior Administrative Law Judge (ALJ) Samantha A. Fair, affirmed SAIF's October 26, 2018 Final Premium Audit Billing for the audit period July 1, 2017, to July 1, 2018, finding Pro-Cure Bait Scents is liable for the adjusted premium.

Findings of Fact, Conclusions of Law and Opinion

The Director adopts, and incorporates herein by this reference, the findings of fact, conclusions of law, and reasoning of the Proposed Order as the findings of fact, conclusions of law, and reasoning of this Final Order.

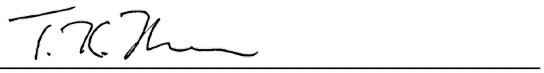
Order

SAIF Corporation's Final Premium Audit issued October 26, 2018 is AFFIRMED. The Stay of Collections dated March 1, 2019, is withdrawn.

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 Division of Financial Regulation..

Dated September 7, 2021



TK Keen
Administrator, Division of Financial Regulation
Department of Consumer and Business Services

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER & BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION
PREMIUM AUDIT PROGRAM

IN THE MATTER OF:	)	**PROPOSED ORDER**
	)	
PRO-CURE, INC.,	)	OAH Case No. 2019-ABC-02520
dba PRO-CURE BAIT SCENTS	)	Agency Case No. INS-WCA 18-12-009
	)	

HISTORY OF THE CASE

On October 26, 2018, SAIF Corporation (SAIF) issued a Final Premium Audit Billing to Pro-Cure, Inc., dba Pro-Cure Bait Scents, (Pro-Cure) for the period of July 1, 2017, to July 1, 2018. On December 21, 2018, Pro-Cure filed a request for hearing with the Division of Financial Regulation (Division) of the Department of Consumer and Business Services. On February 19, 2019, Pro-Cure filed with the Division a Petition that included a request for stay of collection. In the Petition, Pro-Cure contested the change in classification of its employees from classification code (Code) 8018 to Code 4665.

On February 20, 2019, the Division referred the matter to the Office of Administrative Hearings (OAH). On March 1, 2019, the OAH assigned Administrative Law Judge (ALJ) Dove Gutman to preside at hearing, issued an Order Granting Stay of Collection, and scheduled a prehearing conference for April 24, 2019.

On April 19, 2019, Pro-Cure requested a postponement of the prehearing conference. ALJ Gutman granted the request and rescheduled the prehearing conference to July 2, 2019.

On July 2, 2019, Presiding ALJ Monica Whitaker convened a prehearing conference. Attorney Joy Wang represented SAIF. Michelle Summerlin also appeared on SAIF's behalf. Dennis Odman, Secretary and authorized representative of Pro-Cure, represented Pro-Cure. ALJ Whitaker reassigned the matter to ALJ Alison Webster, scheduled the hearing for November 13, 2019, and set deadlines for the submission of witness lists and exhibits.

On October 25, 2019, SAIF submitted Exhibits A1 to A29.

On November 7, 2019, Pro-Cure requested a postponement of the hearing. On November 8, 2019, ALJ Webster granted the request.

On November 13, 2019, ALJ Webster convened a prehearing conference. Ms. Wang and Ms. Summerlin appeared on SAIF's behalf. Mr. Odman appeared on Pro-Cure's behalf. ALJ Webster scheduled an in-person hearing for April 7, 2020, and closed the record for the

submission of any further exhibits.

On January 6, 2020, the OAH reassigned the matter to ALJ Samantha Fair. On January 14, 2020, ALJ Fair sent a letter to the parties. In the letter, ALJ Fair identified the issue for the hearing as which of the two Codes (8018 or 4665) should SAIF use for Pro-Cure's payroll. ALJ Fair requested that parties notify her if her understanding of the hearing issue was incorrect. In the letter, ALJ Fair also reopened the record and requested SAIF provide copies of the *Scopes* and *Basic Manuals*' entries for the disputed Codes as additional exhibits. On January 22, 2020, in compliance with the ALJ's request, SAIF submitted Exhibits A13A, A13B, and A13C. Neither party notified ALJ Fair that her understanding of the hearing issue was incorrect.

On March 13, 2020, because of the coronavirus pandemic, ALJ Fair contacted the parties and proposed converting the in-person hearing to a telephone hearing. In response, Pro-Cure requested a postponement of the hearing. ALJ Fair granted the request.

On April 7, 2020, ALJ Fair convened a prehearing conference. Ms. Wang and Jamie Powell appeared on SAIF's behalf. Mr. Odman appeared on Pro-Cure's behalf. ALJ Fair scheduled an in-person hearing for September 9, 2020, and confirmed with the parties that the issue for the hearing is SAIF's use of Code 4665 instead of Code 8018.

On July 31, 2020, because of the ongoing coronavirus pandemic, ALJ Fair converted the in-person hearing to a telephone hearing. On August 28, 2020, Pro-Cure requested a postponement. On September 1, 2020, ALJ Fair granted the request and converted the telephone hearing to a telephone prehearing conference.

On September 9, 2020, ALJ Fair convened a prehearing conference. Ms. Wang and Mr. Powell appeared on SAIF's behalf. Mr. Odman appeared on Pro-Cure's behalf. ALJ Fair scheduled an in-person hearing for January 20, 2021. She informed both parties that the matter would be converted to a telephone hearing if the coronavirus pandemic did not subside and that no further postponements would be granted.

On November 20, 2020, because of the ongoing coronavirus pandemic, ALJ Fair converted the in-person hearing to a telephone hearing.

On January 19, 2021, Pro-Cure submitted Exhibits A and B.[1]

On January 20, 2021, ALJ Fair convened a telephone hearing. Pro-Cure appeared and was represented by Mr. Odman. SAIF appeared and was represented by Ms. Wang. Stephen Lynch, part owner and vice president of Pro-Cure, testified on its behalf. Mr. Powell, a SAIF premium audit analyst, testified on SAIF's behalf. The record closed on January 21, 2021, at the conclusion of the hearing.

[1] Mr. Odman emailed the exhibits on January 19, 2021, but the OAH did not receive the exhibits until January 20, 2020, when Ms. Wang emailed them to ALJ Fair at the ALJ's request. It appeared that there was a typographical error in the email address that Pro-Cure used for the OAH.

ISSUE

Whether SAIF's October 26, 2018 Final Premium Audit Billing correctly billed Pro-Cure when it changed the payroll classification from Code 8018 to Code 4665. ORS 737.318, OAR 836-042-0001 *et seq*. and OAR 836-043-0001 *et seq*.

EVIDENTIARY RULINGS

Exhibits A1 through A29, A13A, A13B, and A13C, offered by SAIF, were admitted into the record without objection.

Pro-Cure submitted Exhibits A and B the day before the hearing. Pro-Cure offered the exhibits to establish that SAIF should apply a different code for the work performed by Pro-Cure. SAIF objected to the exhibits as untimely-filed and irrelevant. Exhibit A was a letter, dated December 5, 2019, from a safety consultant for Oregon Occupational Safety and Health Administration (OSHA) to Mr. Lynch that included the consultant's observations from his inspection and a determination that the North American Industry Classification System (NAICS) for Pro-Cure was "339920 fishing supplies and bait manufacturing and the corresponding [Standard Industrial Classification] SIC is 3949." Exhibit A at 1 (emphasis removed). Exhibit B was SIC 3949's description.

ORS 737.205 requires insurers to file copies of rates, rating plans and rating systems with the Division. ORS 737.205(2) provides for insurers to subscribe to licensed rating organizations, which then meet the filing requirements. The National Council on Compensation Insurance, Inc. (NCCI) is the licensed rating organization used by Oregon insurers. OAR 836-042-0045. NCCI's *Basic* and *Scopes Manuals* contain the industry codes used by NCCI in determining rates for workers' compensation insurers. Because NCCI is the rating organization for Oregon workers' compensation insurers, SIC codes created by NAICS and used by OSHA are irrelevant in determining workers' compensation rates.[2]

ALJ Fair upheld the objection to Exhibit B and excluded it from the record. ALJ Fair upheld, in part, the objection to Exhibit A and admitted it for the limited purpose of providing information about Pro-Cure's business activities[3] but not for the purpose of asserting the use of the Standard Industrial Classification (SIC) 3949.

FINDINGS OF FACT

1. Pro-Cure, headquartered in Salem, Oregon, produces and sells bait scents and bait

[2] Additionally, OAR 836-043-0170(2) requires the insured, here Pro-Cure, to file a petition in which "the insured must explain why it believes the billing is incorrect." In this matter, Pro-Cure's Petition sought the use of Code 8018, not Code 4665. After the issuance of the ALJ's January 14, 2020, Pro-Cure did not dispute that the contested hearing issue was which of the two Codes, 8018 or 4665, was the appropriate Code. During the April 7, 2020 prehearing conference, Pro-Cure confirmed that was, indeed, the issue for the hearing. An insured cannot, on the day of the hearing, raise a new issue.

[3] SAIF did not object to this use of Exhibit A.

products for sport and commercial fishing. Pro-Cure sells approximately 75 percent of its products to distributors and the remaining 25 percent to dealer or direct internet sales. (Ex. A27 at 4.)

2. Pro-Cure purchases fish oils, fish filets and trimmings, whole small fish, crawfish, shrimp, and salmon eggs. It also purchases additives, such as food grade stabilizers, dyes, ultraviolet liquid, and amino acid blends. Pro-Cure runs the solids (fish and fish pieces, crawfish and shrimp) through a grinder, dehydrates the ground product, and uses a vertical chopper to mix the dehydrated product, along with a selection of additives, into the oils, and another additive into some of the oil that causes it to gel. These bait-scented oils and gels are packaged and sold, primarily for fisherman to inject or marinate (oils) their bait or apply (gels) to lures. The salmon eggs are either dehydrated and vacuum packed or crushed and packaged for crab bait. (Test. of Lynch.)

3. Pro-Cure's grinder is housed in an enclosed room at its facility. Pro-Cure rebuilt the grinder to include a small motor because the bait products (fish, crawfish and shrimp) did not require the original, larger motor. The grinder has a complete feed table guard so that an operator's hand or arm cannot reach the processing worm drive. The grinder includes a plastic push tube tool to feed the bait products into the machine so that hands and fingers are not exposed to any moving parts. The bait products are run through the grinder twice: the first run with a coarse blade and a second run with a fine blade. Only two employees (one primary user and the other as a backup) utilize the grinder and have been trained in its safe usage. An Oregon Occupational Safety and Health Administration (OSHA) inspector concluded that the grinder's use and operation was fully compliant with all of Oregon OSHA rules. (Ex. A at 2; test. of Lynch.)

4. Pro-Cure has never had a work injury claim filed by an employee. (Ex. A at 1; test. of Lynch.)

5. In May 2007, Pro-Cure applied for a workers' compensation policy from SAIF, at which time Pro-Cure used Codes 2111 (Cannery NOC) and 8742 (Outside Sales) for its business operations. (Exs. A1 and A2.) In November 2009, after a review of Pro-Cure's manufacturing process, SAIF determined that Code 4665 matched Pro-Cure's operations, not Code 2111.[4] (Ex. A4 at 1.) On November 4, 2009, SAIF issued Pro-Cure a Premium Audit Result for the period July 1, 2008, to June 30, 2009. In the Premium Audit Result, SAIF used Code 2111 but advised Pro-Cure that Code 2111 would be discontinued and replaced with Code 4665 (Fish Oil Manufacturing), effective February 1, 2010. (Ex. A5 at 1.) On September 10, 2010, SAIF issued Pro-Cure a Final Premium Audit Billing for the period July 1, 2009, to July 1, 2010. In the billing, SAIF used Code 2111 for the period July 1, 2009, to February 1, 2010, and then used Code 4665 for the remainder of the period. (Ex. A8 at 1.) On November 21, 2011, SAIF issued Pro-Cure a Final Premium Audit Billing for the period July 1, 2010, to July 1, 2011, in which it used Code 4665. (Ex. A10 at 1.)

6. On November 2, 2012, SAIF issued Pro-Cure a Final Premium Audit Billing for the period July 1, 2012, to July 1, 2013. For this billing, SAIF discontinued Code 4665 and replaced

[4] SAIF also used Codes 8742 and 8810 (Office Clerical). (Ex. A5 at 2.)

it with Code 8018 (Wholesale Store). (Ex. A12 at 1.) During the audit, Mr. Lynch advised SAIF that Pro-Cure no longer produced its own fish oil and now bought large drums of fish oil from suppliers; sometimes added a dye or petroleum jelly to the oil; and then repackaged the oil into smaller bottles for resale. The SAIF auditor concluded that "all products are purchased in bulk and repackaged in smaller containers" without any machinery other than small bottle fillers and labelers. (Ex. A11 at 6.)

7. On December 20, 2016, NCCI conducted a test audit and a classification inspection at Pro-Cure. (Exs. A14 and A15.) During the on-site inspection, Pro-Cure's manufacturing process included the receipt of fresh bait from suppliers; the use of machinery to grind, screen, and mix the bait ingredients with various additives; the use of augers to package the product into plastic containers ranging in size from 2 to 32 ounces; the labeling and boxing of the containers; and the shipping of the boxes to distributors and dealers. (Ex. A15 at 5.) On January 18, 2017, NCCI informed SAIF that it should reclassify Pro-Cure's business operations from Code 8018 to Code 4665. (Exs. A14 at 1, 3; A15 at 1, 6.) In response, SAIF performed its own inspection of Pro-Cure and determined that NCCI's conclusion was correct. (Test. of Powell.)

8. On June 5, 2017, SAIF issued Pro-Cure a Final Premium Audit Billing for the period July 1, 2015, to July 1, 2016. In the billing, SAIF used Code 8018 but advised Pro-Cure that Code 8018 would be discontinued and replaced with Code 4665, effective September 1, 2017, as a result of NCCI's test audit and classification inspection. (Ex. A18 at 1.) On September 1, 2017, SAIF issued Pro-Cure a Final Premium Audit Billing for the period July 1, 2016, to July 1, 2017. In the billing, SAIF used Code 8018 but again advised Pro-Cure that Code 8018 would be discontinued and replaced with Code 4665, effective September 1, 2017. (Ex. A12 at 1.)

9. On October 26, 2018, SAIF issued Pro-Cure a Final Premium Audit Billing for the period July 1, 2017, to July 1, 2018, in which SAIF used Code 8018 for the period July 1, 2017, to September 1, 2017, and used Code 4665 for the remainder of the period.[5] (Ex. A27 at 1-2.)

10. NCCI is the workers' compensation rating organization for Oregon. (Test. of Powell.) NCCI publishes a *Basic Manual* and a *Scopes Manual* with its rules and classifications. NCCI defines the terms and classification codes for work performed by employees for use by workers' compensation insurance providers. (Exs. A13A, A13B, A13C, A15 at 1-4.) NCCI performs test audits and classification inspections of insureds and reports the results to the insurance company. (Test. of Powell.)

11. NCCI's *Basic Manual* Rule 1, titled "Classification Assignment," provides, in part:

> **A. Classification System**
>
> 1. The purpose of the classification system is to group employers with similar operations into classifications so that:
>
> - The assigned classification reflects the exposures common to

[5] The adjusted rate for Code 8018 is 0.015162, and the adjusted rate for Code 4665 is 0.033419. (Ex. A26 at 1.)

those employers

- The rate charged reflects the exposure to loss common to those employers

2. Subject to certain exceptions, it is the business of the employer within a state that is classified, not separate employments, occupations or operations within the business.

* * * * *

D. Classification Procedures

* * * * *

The purpose of the classification procedure is to assign the one basic classification that best describes the business of the employer within a state. * * *.

It is the business that is classified, not the individual employments, occupations or operations within the business.

2. Businesses Not Described by a Classification

If no basic classification clearly describes the business, the classification that most closely describes the business must be assigned[.]

(Ex. A29 at 1-2.) (Emphasis in original.)

12. NCCI's *Basic Manual* Rule 1(D)(3) allows for the assignment of more than one basic classification if one of the following three conditions exist:

- The principal business is described by a basic classification that requires employees to be separately rated;

- The business is construction, farming, employee leasing, or a mercantile business;

- The business conducts operations in more than one state.

(Ex. A29 at 2-3.)

13. NCCI's *Scopes Manual* defines Code 4665, titled "Rendering Works NOC[6] and Drivers," and provides, in part:

[6] NOC means "not otherwise classified." (Ex. A13A at 2.)

> Code 4665 is applied to insureds engaged in operating rendering works. Animal cadavers from farms, stockyards or slaughterhouses; offals and viscera from meat packing plants; fish brought to shore by fishing boats; and fish livers and fish scraps from fish markets are usually picked up by the insureds' drivers. * * *. The carcasses are cut into workable sizes and placed into rendering tanks along with offals. * * *. When the grease is drawn off, the tank water is drained and the meat and bones drop into the slush box. This slush is then pressed to remove more water and grease before going to steam pressure dryers. In other plants, the material being processed is sealed in a steam-jacketed rendering tank and the cooking, drawing off of grease, evaporating of the water and drying of slush is performed from start to finish in this single piece of equipment. * * * fish are rendered to produce herring, salmon, sardine and tuna oils. * * *. This classification contemplates within its scope the processing of the dried slush or tankage by crushing, grinding, pressing, drying and pulverizing to produce fish or bone meal, feed concentrates and fertilizer which is bagged prior to shipment.

(Ex. A13A at 1-2.) NCCI does not provide a Code specific to the manufacturing of bait or bait scents. (Test. of Powell.)

14. NCCI's *Scopes Manual* defines Code 8018, titled "Store Wholesale NOC," and provides, in part:

> Store Wholesale NOC applies to stores that are engaged in the wholesale selling of merchandise not described by a specialty wholesale store classification in the Basic Manual. Stores assigned to this classification sell items such as art supplies, books, candy, carpets and linoleum, cigars and cigarettes, * * *, sheet music, soft drinks, stationary and related items, tires (no installation), toys, pets, wines, and liquors.
>
> Stores engaged principally in the wholesale or retail mail order sales of merchandise such as described above are also included in this classification. * * *. Wholesale operations generally include the maintenance of warehouse inventories; the physical assembling, sorting, and grading of goods; the breaking of bulk quantities and repackaging into smaller lots; and the promoting of sales through utilization of an outside sales force. Other types of operations assigned to this classification are:
>
> 1. Package consolidators – receiving packages from other firms for sorting and consolidating
> 2. Packing – receiving bulk merchandise for repackaging
> 3. Storage of rugs and carpets
> 4. Incubating and shipping of day-old chicks

5. Dealers in charcoal in bags
6. Sawdust dealers – no grinding operations
7. Dealers in sausage casings – no cleaning

(Ex. A13C at 1-2.)

CONCLUSION OF LAW

SAIF's October 26, 2018 Final Premium Audit Billing correctly billed Pro-Cure when it changed the payroll classification from Code 8018 to Code 4665.

OPINION

In its Petition to the Division, Pro-Cure disputed SAIF's change in the classification of its payroll from Code 8018 to Code 4665. Pro-Cure bears the burden to establish that SAIF erred in its premium audit billing. *Salem Decorating v. NCCI,* 116 Or App 166 (1992) *rev den* 315 Or 643 (1993) (the employer has the burden to establish that an insurer's premium audit billing is incorrect). To sustain this burden, Pro-Cure must prove its case by a preponderance of the evidence. *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, burden of proof is by a preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor v. Tandy Corp*., 303 Or 390, 402 (1987).

Pursuant to ORS 737.310, ORS 737.560 and OAR 836-043-0001 *et seq.*, NCCI is the rating organization licensed in Oregon to establish and file rates and classifications for workers' compensation insurance. OAR 836-043-0005(14). NCCI produces a *Basic Manual* and a *Scopes Manual* for workers' compensation rates and classifications that are used by Oregon insurers in their audit procedures. OAR 836-043-0115.

Classification Codes 8018 and 4665

Pro-Cure contends that its payroll should be classified as Code 8018 because it is a repackager. SAIF contends that it properly classified the payroll as Code 4665 because Pro-Cure is a manufacturer, not a repackager. The evidence establishes that SAIF correctly classified the payroll as Code 4665.

Basic Manual Rule 1(A) requires the grouping of employers with similar operations into the same classifications and that it is not the individual, distinct operations or occupations that determines the classification but rather the whole business operations. *Basic Manual* Rule 1(D) requires the assignment of "one basic classification that best describes the business of the employer." First, there is no NCCI Code specific to the manufacturing of Pro-Cure's bait and bait scents. Thus, the question becomes whether Code 8018 or Code 4665 best describes Pro-Cure's business.

Code 4665 involves insureds that work with animal cadavers, including "fish * * *; and fish livers and fish scraps." Although Pro-Cure no longer renders its own fish oils, it still

acquires whole small fish, fish filets and trimmings, shrimp, and crawfish, which it coarsely and finely grinds, similar to Code 4665's "cut into workable sizes." It also uses a vertical slicer to mix these ground fish and crustacean remains into the oils and gels. Because Pro-Cure dries, grinds and slices fish and crustacean remains and then packages the resulting mixture for shipment, its business practices are similar to the business practices contemplated by Code 4665 ("crushing, grinding, pressing, drying and pulverizing to produce fish * * * meal, * * *which is bagged prior to shipment").

Code 8018 applies to stores that engage in the wholesale selling of merchandise. Although Pro-Cure does package its products and sell them to distributors, it is not in the business of physically assembling, sorting and grading of goods. Instead, it is in the business of producing a new product (bait scents) by acquiring oil and mixing it with the fish, shrimp and crawfish that it has dried, ground and sliced, as well as a variety of additives. Although Pro-Cure acquires drums of fish oil, it does not simply pour the fish oil into small bottles for resale (i.e. "the breaking of bulk quantities and repackaging into smaller lots"). Instead, Pro-Cure is acquiring a variety of products (oil, additives, fish and crustaceans); drying and grinding the fish and crustaceans; combining the oil, additives and ground fish/crustaceans to make finished products; and then packaging and selling the finished and altered products. Pro-Cure is a manufacturer, not a repackager, and Code 8018 does not adequately describe its business practices.

Pro-Cure asserted that it has no history of workplace injuries and objected to the higher rate charged for Code 4665 than Code 8018. However, as explained previously, NCCI is the rating organization for workers' compensation insurers. NCCI's codes and its rules must be used by insurers, such as SAIF, to determine the rates charged to its insureds.

Pro-Cure further asserted that SAIF had previously determined its operations were classified as Code 8018. However, SAIF is not estopped from changing its determination of the appropriate Code. A party asserting the application of equitable estoppel must prove the existence of a false representation; made with knowledge of the facts; made with the intention that it would induce action by the other party; and that actually induced the other party to act upon the representation. *See Wilkinson v. PERB*, 188 Or App 92 (2003). SAIF had previously used Code 4665; therefore, Pro-Cure was aware that Code 4665 had been attributed to its operations. In 2012, SAIF discontinued Code 4665 because it understood that Pro-Cure's business operations had changed and believed that it no longer used any machinery other than small bottle fillers and labelers. On June 5, 2017, after NCCI's inspection and determination that Code 4665 was the appropriate Code, SAIF notified Pro-Cure of its intent to discontinue Code 8018 and use Code 4665, effective September 1, 2017. Thus, SAIF did not make a false representation to Pro-Cure and, by providing Pro-Cure advance notice of the proposed change, gave Pro-Cure the opportunity to change its operations or seek coverage with another insurer before SAIF applied the new Code. SAIF is not estopped from changing the Code it applies to Pro-Cure's business.

Pro-Cure is a manufacturer of a bait scent product line, not a repackager of fish oils. Therefore, the Code that best describes Pro-Cure's business is Code 4665. *Basic Manual* Rule 1(D)(3) provides for exceptions to the use of one basic Code. Code 4665 does not require

employees to be separately classified; Pro-Cure is not a construction, farming, employee leasing, or a mercantile business; and Pro-Cure's operations are located solely in Oregon. The exceptions of Rule 1(D)(3) are not applicable. SAIF properly classified Pro-Cure's payroll as Code 4665.

ORDER

I propose the Department of Consumer & Business Services and its Division of Financial Regulation issue the following order:

SAIF's October 26, 2018 Final Premium Audit Billing, for the audit period July 1, 2017, to July 1, 2018, is AFFIRMED. Pro-Cure, Inc., dba Pro-Cure Bait Scents, is liable for the adjusted premium.

The Order Granting Stay of Collection, issued on March 1, 2019, will be lifted with the issuance of the Final Order.

Samantha A. Fair
Administrative Law Judge
Office of Administrative Hearings

EXCEPTIONS TO PROPOSED ORDER

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 **Division of Financial Regulation** within 30 days following the date of service of this Proposed Order. You may send exceptions via email to gail.m.gage@oregon.gov, or via mail to:

Gail M. Gage
Compliance Specialist 3
Division of Financial Regulation
PO Box 14480
Salem, OR 97309-0405

CERTIFICATE OF MAILING

On January 28, 2021, I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 2019-ABC-02520**.**

By: Electronic Mail

Pro-Cure Bait Scents
2990 Portland Rd. NE
Salem OR 97301
Email: dennis@odmanlaw.com

Dennis Odman
Pro-cure Bait Scents
1818 Barnes Circle
West Linn OR 97068
Email: dennis@odmanlaw.com

SAIF Corporation
400 Hight St. SE
Salem OR 97312
Email: Joywan@saif.com

Jamie Powell
SAIF Corporation
400 High St SE
Salem OR 97312
Email: jampow@saif.com

Joy Wang, Special Assistant Attorney General
SAIF Corporation
400 High Street SE
Salem OR 97312
Email: Joywan@saif.com

By: Electronic Mail

Gail Gage, Agency Representative
Insurance Division
350 Winter Street NE
Salem OR 97301

Anesia N Valihov
Hearing Coordinator