STATE OF OREGON

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

DIVISION OF FINANCIAL REGULATION

IN THE MATTER OF:	)	FINAL ORDER
Millwood, LLC	)	OAH Case No. 2024-ABC-06606
	)	Agency Case No.: INS-WCA 24-06-11

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 (billing) issued by SAIF Corporation (SAIF) to Millwood, LLC, (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 June 16, 2024, the Division referred employer's hearing request contesting the billing to the Office of Administrative Hearings (OAH). The issue before OAH was whether SAIF's Final Premium Audit, dated May 29, 2024, was correct. By Proposed Order March 20, 2025, Senior Administrative Law Judge (ALJ) Elizabeth Jarry Affirmed SAIF's May 29, 2024 Final Premium Audit Billing for the audit period June 1, 2022 to June 1, 2023.

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 May 29, 2024 is AFFIRMED. The Order Granting Stay of Collection, issued on June 28, 2024, is lifted.

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 October 8, 2025

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

IN THE MATTER OF:	)	**PROPOSED ORDER**
	)	
MILLWOOD, LLC	)	OAH Case No. 2024-ABC-06606
	)	Agency Case No. INS-WC 24-06-11

HISTORY OF THE CASE

On May 29, 2024, SAIF Insurance (SAIF) issued a Final Premium Audit Billing (Audit Billing) to Millwood, LLC (Millwood) for the period June 1, 2022, to June 1, 2023. On June 16, 2024, Millwood filed a request for hearing with the Department of Consumer and Business Services, Division of Financial Regulation (Department). On or about June 23, 2024, Millwood filed a Petition with the Department, requesting a stay of collection during the pendency of the contested case proceeding.

On June 26, 2024, the Department referred the matter to the Office of Administrative Hearings (OAH) and requested that the hearing be consolidated with the hearing for *In the Matter of Verheyden Works, Inc.* (V Works), OAH Case No. 2024-ABC-06604. On June 27, 2024, SAIF filed a partial objection to the stay request. On June 28, 2024, the OAH issued an Order Granting Stay of Collection. The OAH assigned Senior Administrative Law Judge (ALJ) Elizabeth Jarry to preside at the hearing.

On August 27, 2024, ALJ Jarry held a prehearing conference for both the present matter and OAH Case No. 2024-ABC-06604. James Verheyden, MD, represented V Works and Millwood. Special Assistant Attorney General Allison Lesh represented SAIF, and Premium Audit Analyst Ena Pullman appeared for SAIF. The parties agreed to consolidate the two matters for hearing. ALJ Jarry identified the issues for the hearing, set a deadline for submission of witness lists and exhibits, and set the hearing for January 9, 2025.

ALJ Jarry convened the telephone hearing on January 9, 2025. Dr. Verheyden represented V Works and Millwood and testified. Ms. Lesh represented SAIF, and Ms. Pullman testified on behalf of SAIF. The record remained open for an additional exhibit from SAIF and the parties' written closing arguments. On January 13, 2025, SAIF submitted Exhibit A48. On January 31, 2025, the parties submitted their initial closing arguments. The record closed on February 14, 2025, after receipt of Millwood's final closing argument.[1]

/ / /

[1] The ALJ did not receive a final closing argument from SAIF.

ISSUES

Whether SAIF's May 29, 2024 Final Premium Audit Billing correctly billed Millwood by:

- Classifying $61,406 in subject payroll to classification code (Code) 2702 instead of Codes 0124 and 9015. ORS 737.318, OAR 836-042-0001 *et seq*. and OAR 836-043-0001 *et seq*.

- Classifying $42,203 in subject payroll to Code 5403 rather than classifying a portion of that payroll to Code 9015. ORS 737.318, OAR 836-042-0001 *et seq*. and OAR 836-043-0001 *et seq*.

- Classifying $33,507 in subject payroll to Code 7219 rather than classifying a portion of that payroll to Code 9328. ORS 737.318, OAR 836-042-0001 *et seq*. and OAR 836-043-0001 *et seq*.

- Including payments made to Jose Mendoza as subject payroll. ORS 656.029.

EVIDENTIARY RULINGS

Exhibits A1 through A48, submitted by SAIF, were admitted into the record without objection. Exhibits R1 through R11, R12A, R12B, R13 through R23, and R30 through R59, submitted by Millwood, were admitted into the record with objection.[2]

FINDINGS OF FACT

1. Millwood is located at 18400 Bull Springs Road in Bend, Oregon. Millwood is engaged in the long-term development of the owners' 752-acre timber property. (Ex. A13 at 4.)

2. During period June 1, 2022, to June 1, 2023, Millwood employees performed various types of work at the property, including the "Road project," which involved activities such as widening and grading a road; the "Camera project," which involved tree removal and installation of cameras; the "Pond project," which involved maintaining and cleaning the pond and filtration box; the "Liley [p]roject," which involved surface land grading and gluing conduit for water and electricity; the "K[i]ewit project," which involved watering the roads for dust abatement and firewood loading and delivery; mechanized brush mowing; weed spraying; raking leaves and pine needles; raking the pond's beach; and miscellaneous maintenance projects. (Ex. A13 at 5.)

3. On October 27, 2023, SAIF notified Millwood that its workers' compensation policy was selected for a premium audit for the period June 1, 2022, through June 1, 2023. (Ex. A15 at 135; test. of Pullman.) On January 11, 2024, SAIF requested various documents from Millwood, including a summary of payroll separated by individual and class codes and sample timecards for employees who performed work in more than one class code. (Ex. A16 at 15.)

[2] Millwood did not submit Exs. R24 through R29.

4. During the audit, SAIF utilized Millwood's gross payroll information from a QuickBooks Payroll Summary for the period June 2022 through December 2022 and Employee Earnings Reports for the period January 2023 to June 1, 2023. The Quickbooks Payroll Summary showed the gross number of hours each employee worked during that period, their rates of pay (salary, hourly, overtime, prevailing), and total payroll for each rate of pay. The Employee Earnings Reports showed the gross number of hours each employee worked during that period and the total payroll for that period for each type of pay (salary, regular hourly, and overtime). The Employee Earnings Reports did not show the rates of the different types of pay. (Ex. A15 at 142-146.)

5. During the audit period, Millwood employees prepared weekly timecards that were reviewed by the general manager, Donald Lindstrom. (Test. of Verheyden.) The timecards include the employee's name, the pay period, and the date, as well as a table that includes rows for days of the week and columns to enter the following information: date; time in; time out; brief job description; various class codes; and total hours worked. (*See e.g.,* Ex. A13 at 11.)

6. Millwood also maintained computerized time sheets for employees. (*See e.g.,* Ex. A15 at 36-37.) The time sheets include similar information to what is included on the timecards. No pay amounts, either rates of pay or total pay, are shown on the time sheets or timecards. (*See id*.)

7. During the audit, Millwood did not provide summaries that supported the payroll calculations by class code. (A16 at 1; test. of Pullman.)

8. On May 29, 2024, SAIF issued the Audit Billing to Millwood for the audit period June 1, 2022, to June 1, 2023. (Ex. A17.) In the Audit Billing, SAIF stated the following:

> During the policy year employees performed work reportable to more than one class. Weekly time records were maintained. However, the VTRS [verifiable time records] provided did not meet the requirements to allow a division of payroll. The description of work on the timecards was not always enough to determine the correct classification and no summarization was provided. Therefore, each employee has been classified to the highest-rated class code they had exposure.

(*Id*. at 1.) SAIF classified $61,406 in payroll to Code 2702, $42,203 in payroll to Code 5403, $33,507 in payroll to Code 7219, and $565 in payroll (payments made to Julieta's Cleaning) to Code 9015. (*Id*. at 3.)

9. SAIF assigned all wages for employees Randi Harju and William White to Code 5403. (Ex. A13 at 11, 13.) The following are examples of the information included in their timecards:

Pay Period 7-24 to 7/30 Millwood

	Tm In:	Tm Out:	Brief Job Description	270 Property Project - 5403	Total

Mon	500	200	Pond		10
Tues	430	230	Projects		10
Wed	500	200	Shower install		10
Thu	430	330			11
Total:					41

Name: Randi Harju Date: _____

(Ex. A13 at 11; unused columns and rows and illegible notes by total hours omitted.)

Pay Period 8-14-2022 to 8-20-2022 Millwood

	Tm In:	Tm Out:	Brief Job Description	5403 270 Property Project	Total
Mon	5:30 am	4:00 pm	Pond Project		10
Tues	5:30 am	5:30 pm	Shower Install		11.5
Wed	5:30 am	5:00 pm	[Shower install]		11.5
Thu	5:30 am	1:30 pm	[Shower install]		8
Total:					41

Name: Willie White Date: 8-20-2022

(*Id*. at 13.)

10. SAIF assigned all wages for employee Donald Lindstrom to Code 2702. The following is an example of Donald Lindstrom's timecards:

Pay Period 5/1/2023 Millwood

	Time In	Time Out	Brief Job description	270 Property Projects-6217	Equipment maintenance/shop-8232	Clerical Office Work-8810	Total
Mon	730	1530	cameras tree removal sick late		8		8
Tues	600	1630	Road	10.5			10.5
Wed	700	1730	Road Office	8.5		2	10.5
Thu	700	1700	Road Office	8		2	10
Total:				27	8	4	39

Employee Name: Donald Lindstrom $1731✓ Date: 5/4/2023 $513✓ $256✓

(Ex. A13 at 12; date column and unused columns and rows omitted.)

11. SAIF assigned all wages for employees Joshua Alire and Jeremy Lindstrom to Code 7219. (Ex. A13 at 14, 15.) The following are example of their timecards:

Pay Period 9/5 to 9/9 Millwood

	Tm In:	Tm Out:	Brief Job Description	270 Property Projects- 6217	Total
Mon			Holiday		
Tues	5:30	4:30	Pond Project	11	11
Wed	0615	1530	[Pond Project]	10.5	10.5
Thu	0630	1815	Water Truck – Prevailing Wage	10.5	10.5
Fri	6	1	[Water Truck – Prevailing Wage]	7	7
Total:					39

Employee Name: Josh Alire Date: _____

(*Id*. at 14; date column and unused columns and rows omitted.)

Pay Period 4-9-23 to 4-15-23 Millwood

	Time In	Time Out	Brief Job description	Equipment maintenance/shop-8232	Land Grading/Snow Plowing of Co Roads - 8232	Total
Mon	0630	1700	Mechanic/Road	6.5	4	10.5
Tues	0630	1700	Road		10.5	10.5
Wed	0630	1700	Road Office		10.5	10.5
Thu	0630	1700	Road Office		10.5	10.5
Total:				6.5	35.5	42

Employee Name: Jeremy Lindstrom Date: 4-13-23

(*Id*. at 15.)

12. Code 2702 applies to non-mechanized logging for tree removal. (Test. of Pullman; Ex. A29 at 1.) SAIF determined that this was the highest-rated class code to which employee Donald Lindstrom had been exposed based on a timecard showing that he engaged in tree removal.[3] (Test. of Pullman.) He cut down small trees during camera placement on the property. (Ex. R2 at 1.)

13. Code 5403 applies to carpentry work that is not otherwise classified. (Test. of Pullman; Ex. A34 at 2.) The class code can apply to commercial structures and outbuildings. SAIF determined that this was the highest-rated class code to which employees Randi Harju and William White had been exposed based on their timecard job description of shower installation, which had been allocated to Code 5403 on the timecards. (Test. of Pullman.)

[3] There are other class codes that apply to tree removal; however, Code 2702 was the best fit for Millwood's operations. (Test. of Pullman.)

14. Code 7219 applies to trucking under contract for others. (Test. of Pullman; Ex. A41 at 1.) SAIF determined that this was the highest-rated class code to which employees Joshua Alire and Jeremy Lindstrom had been exposed based on time records showing they drove a water truck for the Keiwitt Project. (Ex. A14 at 14-15.)

15. Code 0124 applies to employers that perform brush cutting related to reforestation and contractors who perform a variety of work related to reforestation. Tree removal is not included unless trees are less than eight inches in diameter and removed pursuant to a brush-cutting contract. (Ex. A28 at 1-2.)

16. Code 9015 applies to building or property management operations, including maintenance personnel, doorman, security personnel, and superintendents. (Test. of Pullman; Ex. A46 at 3.) SAIF included payments made to Jose Mendoza under Code 9015. (Test. of Pullman.) Millwood hired Julieta's Cleaning to clean a rental house on the property. The business owner, Mr. Mendoza, typically performed the cleaning work with the assistance of one of his employees. (Test. of Verheyden.) During the audit period, Millwood paid Jose Mendoza $205, $185, and $175 for the work. (Ex. A13 at 16.) SAIF could not locate an active workers' compensation policy for the business. At the time of the audit, Julieta's Cleaning had been registered as an assumed business name with the Secretary of State, but the registry had been inactive since 2014. (*Id*. at 4.)

17. Code 9328 applies to "employees who work in the warehouse when delivery work is subject to Code 7219." (Ex. A48 at 2.)

18. SAIF provides an example of a verifiable payroll record on its website. (Test. of Pullman; *see* Ex. R21.) The example includes the following information: employee name; pay period; date; job number or customer; job description; class code; hours worked by date and class code; total hours worked; and a summary of hours worked per class code converted into wages. The job descriptions include "Carpentry – Framing Movie Theater," which is sufficient to identify the class code as 5403 for commercial framing, and "Pouring Concrete Sidewalk," which is sufficient to identify the class code as 5221 for concrete flatwork. (Ex. R21 at 1; test. of Pullman.)

CONCLUSIONS OF LAW

SAIF correctly billed Millwood when it:

- Classified $61,406 in subject payroll to Code 2702;
- Classified $42,203 in subject payroll to Code 5403;
- Classified $33,507 in subject payroll to Code 7219; and
- Included payments made to Jose Mendoza as subject payroll.

/ / /

OPINION

Millwood contests SAIF's May 29, 2024, Final Premium Audit Billing. Millwood bears the burden to establish that SAIF's premium audit is incorrect. *Salem Decorating v. NCCI,* 116 Or App 166 (1992), *rev den*, 315 Or 643 (1993). To sustain this burden, Millwood must prove its case by a preponderance of the evidence. *Sobel v. Board of Pharmacy,* 130 Or App 374, 379 (1994), *rev den*, 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.,* 303 Or 390 (1987).

Division of Payroll

Millwood asserts the following: that $61,406 in subject payroll should be allocated to Codes 0124 and 9015 rather than to Code 2702; that a portion of $42,203 in subject payroll, which SAIF assigned to 5403, should be assigned to Code 9015; and that a portion of $33,507 in subject payroll, which SAIF assigned to Code 7219, should be assigned to Code 9328.

ORS 737.310(10) directs the Department to prescribe, by rule, the conditions under which a division of payroll between different manual classifications is permitted for purposes of computing workers' compensation premiums. The Department has prescribed those conditions in OAR 836-042-0060, which provides, in pertinent part:

> (1) When there is an interchange of labor, the payroll of an individual employee shall be divided and allocated among the classification or classifications that may be properly assigned to the employer, provided verifiable payroll records maintained by the employer disclose a specific allocation for each such individual employee, in accordance with the standards for rebilling set forth in OAR 836-043-0190 and this rule.[4]
>
> * * * * *
>
> (3) When verifiable payroll records are required with respect to a single employee and the employer does not maintain them as required in this rule, the entire payroll of the employee shall be assigned to the highest rated classification exposure in accordance with the standards for rebilling set forth in OAR 836-043-0190.[5]
>
> (4) For purposes of this rule, payroll records of an employee are verifiable if they have the following characteristics:

[4] OAR 836-042-0055(1)(d) defines "interchange of labor" as "an employee or employees who at different times perform duties described by two or more classifications assigned to an employer according to the classification system used by the insurer."

[5] OAR 836-043-0190 was repealed, effective January 1, 2013.

> (a) The records must establish a time basis, and the time basis must be hourly or a part thereof, daily or part thereof, weekly or part thereof, monthly or part thereof or yearly or part thereof;
>
> (b) For each salaried employee, the records must also include time records in which the salary is converted to an hourly, daily, weekly, monthly or yearly rate and then multiplied by the time spent by the employee in each classification exposure;
>
> (c) The records must include a description of duties performed by the employee, to enable the insurer to determine correct classification assignment. Records requiring additional explanation or interpretation are not considered to be verifiable; and
>
> (d) The records must be supported by original entries from other records, including but not limited to time cards, calendars, planners or daily logs prepared by the employee or the employee's direct supervisor or manager. * * *. Verifiable records must be summarized in the insured employer's accounting records.

Millwood contends that it provided sufficient payroll records to allow for the division of payroll between class codes. More specifically, Millwood contends that its payroll records include a sufficient description of duties performed and an allocation of work time by class code to support a division of payroll. *See* Millwood's Final Closing Argument at 1.

First, SAIF contends that Millwood failed to provide payroll records that satisfy the requirements of OAR 835-042-0060(4)(a) and (b). SAIF's Initial Closing Argument at 2. Second, SAIF contends that even if Millwood had provided payroll records that satisfied the requirements of OAR 836-042-0060(4)(a) or (b), such records did not include sufficient descriptions of job duties needed to assign an employee's pay to multiple class codes. Finally, SAIF contends that Millwood failed to provide summaries of payroll by employee and class code at the time of the audit. *See id*. at 3.

The payroll of an employee may be divided if verifiable payroll records maintained by the employer disclose a specific allocation for the individual employee. *See* OAR 836-042-0060(1). Pursuant to OAR 836-042-0055(1)(f), "[p]ayroll" is defined as "money or substitutes for money that are payable to workers for their services and that are specified or defined by the rating system used by the insurer * * *." Accordingly, to qualify as "payroll records," the records must include pay (money) information. Millwood provided four forms of records to SAIF during the audit: the QuickBooks Payroll Summaries, the Employee Earnings Reports, timecards, and time sheets. The timecards and timesheets do not include any references to monetary amounts. As such, they do not qualify as payroll records. The QuickBooks Payroll Summaries and the Employee Earnings Reports are the records Millwood provided that include pay information in the form of total pay for the periods of June through December 2022 and January to June 1, 2023. Thus, these summaries and reports are the "payroll records."

Although the summaries and reports show total payroll for two six-month periods, these payroll records do not show each employee's hours by class code and a conversion of those hours into pay by class code. Because the records failed to allocate each individual employee's payroll by classification on a time basis, Millwood failed to produce payroll records that meet the requirements of OAR 836-042-0060(4)(a) and, for Donald Lindstrom who received some salary, the requirements of OAR 836-042-0060(4)(b).[6]

Furthermore, as SAIF contends, even if Millwood had submitted payroll records satisfying the requirements of OAR 836-042-0060(4)(a) and (b), the records provided were insufficiently descriptive to meet the requirements of OAR 836-042-0060(4)(c). The timecards and time sheets do not consistently include descriptions of job duties that would permit SAIF to determine the correct classification assignment. For instance, timecards for the employees included the generic names of projects, such as "Road" and "Pond Project" under the description of job duties. Exhibit A13 at 11-15. Those job descriptions do not detail any actual job duties performed by the employees with which SAIF could determine the correct class code. Such records would require additional explanation or interpretation. Millwood contends that the labels on the class code columns in the timekeeping records provide sufficient descriptions; however, the insurer must be able to independently identify the correct class code by the job descriptions, not by the class code assignment made by the employer (or employee who completed the timecard). For example, listing an employee's hours as Code 9015 does not identify the actual work the employee performed – maintenance, security, superintendent, etc. SAIF must know the duties actually performed so that SAIF can confirm the accuracy of the employer's class code allocation. Accordingly, Millwood's records do not meet the requirements of OAR 836-042-0060(4)(c).

Millwood further contends that its records are similar to, or better than, the verifiable payroll record example on SAIF's website. As previously discussed, Millwood's timecards and time sheets do not include adequate descriptions of job duties that would enable SAIF to identify the correct class code. Additionally, unlike the verifiable payroll record example, Millwood's timecards and time sheets do not include a summary converting work hours into pay by class code. *See* Exhibit R21 at 1.

Millwood disputes the assignment of Code 2702 to Donald Lindstrom's work tree removal. Millwood failed to show that Code 0124, which applies to employers that perform brush cutting related to reforestation and contractors who perform a variety of work related to reforestation, is a more appropriate class code for the work. The only tree removal allowed under Code 0124 are trees less than eight inches in diameter and whose removal was pursuant to a brush-cutting contract. There was no evidence that Donald Lindstrom's work met either of those requirements. Because Code 2702 includes tree removal and is the highest classification

[6] Even assuming Millwood's timecards are considered payroll records for purposes of satisfying the requirements OAR 936-042-0060(4)(a) through (c), those payroll records "must be supported by original entries from *other* records" in order to be verifiable. OAR 836-042-0060(4)(d); emphasis added. In *R&R Tree & Landscape, Inc. v. Department of Consumer & Bus. Services*, 264 Or App 568 (2014), the Oregon Court of Appeals held that the petitioner's daily logs could not be used to satisfy both the requirements of OAR 836-042-0060(4)(c) and OAR 836-042-0060(4)(d).

code for work performed by Donald Lindstrom, SAIF properly classified his payroll as 2702 and not Code 0124.

Millwood also disputes the assignment of Code 5403 to work performed with the job description of "shower install," contending that no carpentry was performed and that the outdoor showers consisted of nothing more than two metal pipes. *See* Millwood's Initial Closing Argument at 2. As SAIF argues, the employer classified the employees' "shower install" work as Code 5403 on the employees' timecards. *See* Exhibit A15 at 57-59, 69-74, 109-111. Additionally, the generic description of "shower install" does not allow SAIF to determine whether the work should be classified to something other than the unspecified carpentry code. Millwood failed to show that the two employees, Randi Harju and William White, whose payroll SAIF assigned to Code 5403 as the highest-rated class to which they had exposure, were inappropriately assigned that class code.

In sum, Millwood has not established by a preponderance of the evidence that it maintained verifiable payroll records for the audit period at issue in accordance with the criteria set forth in OAR 836-042-0060(4). Because Millwood did not satisfy the conditions required for a division of payroll, the payroll for employees was properly assigned to the highest-rated classification exposure, pursuant to OAR 836-042-0060(3). Accordingly, SAIF properly classified $61,406 in subject payroll to Code 2702, $42,203 in subject payroll to Code 5403, and $33,507 in subject payroll to Code 7219.

Payments to Julieta's Cleaning

ORS 656.017 through ORS 656.174 are part of a "statutory scheme that seeks to ensure that workers are, in fact, covered by workers' compensation insurance." *In the Matter of the Compensation of Sparks*, 171 Or App 65, 69 (2000).[7] *Sparks* further states that the "rule has been that general contractors are responsible for providing coverage to all persons working under the contract." *Id*. Thus, ORS 656.027(1) provides that "[a]ll workers are subject to this chapter except those nonsubject workers described" in a series of specifically enumerated classes that includes the independent contractor.

Millwood contends that Mr. Mendoza was an independent contractor hired to perform cleaning work at its rental property. Thus, Millwood argued that it was relieved of any responsibility to provide workers' compensation insurance to those individuals who actually performed the work. This same argument was raised by K-Mart Corporation in *K-Mart Corp. v. Claussing*, 162 Or App 558 (1999), a case which dealt with the application of ORS 656.029.

ORS 656.029 provides, in part:

> (1) If a person awards a contract involving the performance of labor where such labor is a normal and customary part or process of the person's trade or business, the person awarding the contract is

[7] *Sparks* involved a general contractor of a construction project who contracted with a subcontractor to perform drywall services. A worker for the subcontractor was injured while performing work on the construction project. *Sparks* at 67.

> responsible for providing workers' compensation insurance coverage for all individuals, other than those exempt under ORS 656.027, who perform labor under the contract unless the person to whom the contract is awarded provides such coverage for those individuals before labor under the contract commences. If an individual who performs labor under the contract incurs a compensable injury, and no workers' compensation insurance coverage is provided for that individual by the person who is charged with the responsibility for providing such coverage before labor under the contract commences, that person shall be treated as a noncomplying employer and benefits shall be paid to the injured worker in the manner provided in this chapter for the payment of benefits to the worker of a noncomplying employer.
>
> * * * * *
>
> (3) As used in this section:
>
> (a) "Person" includes partnerships, joint ventures, associations, corporations, limited liability companies, governmental agencies and sole proprietorships[.]

In the *K-Mart Corp.* case, K-Mart contracted with a sole proprietor to provide janitorial services for its retail locations. Pursuant to the terms of the contract with the sole proprietor, the sole proprietor was to provide workers' compensation insurance for the workers. K-Mart understood that the sole proprietor would be hiring additional workers to perform the janitorial services needed by K-Mart. The Court of Appeals agreed with the Workers' Compensation Board's reasoning that because K-Mart contracted with the sole proprietor with the expectation that the sole proprietor would have additional workers perform the work that the sole proprietor was not "exempt from coverage." *Id*. at 563. Thus, the exemption under ORS 656.027 is only for individual workers, not for those who employ individual workers. *Id*. at 562.

Millwood is in the same position as K-Mart regarding its relationship with Julieta's Cleaning. Millwood contracted with Julieta's Cleaning to cleans its rental property, and Millwood knew that Mr. Mendoza, the owner, and one of his employees performed the work. These workers performed labor that is the normal part of Millwood's business (maintenance of its rental property). Therefore, Millwood was the "person awarding the contract" and was responsible for providing workers' compensation insurance coverage for all the workers who performed the labor.

ORS 656.029(1) provides an exception to holding the person awarding the contract responsible for providing the coverage. That exception applies if "the person to whom the contract is awarded provides such coverage." ORS 656.029(1). Additionally, "the burden is on the [general contractor] to make sure that the [subcontractor] provides the coverage." *Sparks* at 69. Here, there is no evidence that Julieta's Cleaning provided workers' compensation coverage. Therefore, Millwood was responsible to provide the coverage for those workers.

ORDER

I propose the Department of Consumer and Business Services Division of Financial Regulation, Premium Audit Work issue the following order:

SAIF's May 29, 2024 Final Premium Audit Billing, for the audit period June 1, 2022, to June 1, 2023, is AFFIRMED. Millwood, LLC is liable for the adjusted premium.

The Order Granting Stay of Collection, issued on June 28, 2024, will be lifted with the issuance of the Final Order.

Elizabeth Jarry
Senior 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

SERVICEMEMBERS' CIVIL RELIEF ACT

Unless otherwise stated in this order, the Office of Administrative Hearings has no reason to believe that a party to this proceeding is subject to the Servicemembers' Civil Relief Act (SCRA). If a party to this proceeding is a servicemember who did not appear for the hearing, within the servicemember's period of service, or 90 days after their termination of service, that party should immediately contact the agency to address any rights they may have under the SCRA.

CERTIFICATE OF MAILING

On March 20, 2025, I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 2024-ABC-06606.

By: First Class Mail

James Verheyden
Verheyden Works, Inc
18400 Bull Springs Road
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