

Workforce Safety and Insurance

Testimony before the Workers' Compensation Review Committee

on the

Performance Review of Modified Workers' Compensation Coverage Program and Safety Review of Roughrider Industries Work Programs

September 8, 2014

Chair Laffen and members of the committee:

My name is Barry Schumacher, Chief of Employer Services, at Workforce Safety and Insurance (WSI). I am here today to provide an update on the status of the modified workers' compensation program performance review and Roughrider Industries safety review as required by North Dakota Century Code (NDCC) section 65-06.2-09.

The modified workers' compensation coverage program was established to provide coverage for inmates incarcerated at the State Penitentiary who are working in a prison industry program. NDCC Chapter 65-06.2 established requirements for the modified workers' compensation coverage program including reinsurance for all excess risks through the Risk Management Division and any claims for workers' compensation benefits which are subject to NDCC section 65-05-01.

In May 2014, members of our Loss Control staff conducted a safety review of the work program at Roughrider Industries. Limited recommendations have been made regarding workplace hazards and accident investigations.

In July 2014, WSI's Internal Audit function completed the performance review of the modified workers' compensation coverage program. As a result of the review, Internal Audit concluded that although there was limited coverage available through the Risk Management Fund and its excess carrier, separately purchased reinsurance or excess coverage was not secured by the Department of Correction and Rehabilitation (DOCR). It was determined that it is not feasible for DOCR to separately purchase workers compensation excess or reinsurance coverage. However, it was determined by WSI and the Risk Management Division that WSI's current excess/reinsurance program provides adequate coverage.

Internal Audit recommended the DOCR work with WSI and the State's Risk Management Division to make the necessary language changes to all applicable sections of the North Dakota Century Code and Administrative Rules relating to securing excess or reinsurance coverage under the modified workers' compensation program. Our understanding is the Risk Management Division and DOCR will bring an agency bill with clarifying language during the 2015 legislative session.

Copies of the performance review and safety review have been provided for your review.

This concludes our report and I would be happy to answer any questions at this time.

WSI

North Dakota Workforce
Safety & Insurance

Internal Audit Report

of the

Modified Workers'
Compensation
Coverage Program

Report Date:

July 16, 2014

Report No.

2015-01

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July 16, 2014

Members of the North Dakota Interim Workers' Compensation Review Committee

Members of Workforce Safety and Insurance Board of Directors

Mr. Bryan Klipfel, Director, Workforce Safety & Insurance

Transmitted herewith is the performance review of the modified workers' compensation coverage program and safety inspection of the Rough Rider Industries work programs. This report contains the results of our review for the fiscal years 2013 and 2014. The performance review contains a review of Rough Rider Industries' evidence of excess or reinsurance coverage, any claims for benefits, and minimum premium and allocated loss adjustment expenses.

This review was conducted as mandated in North Dakota Century Code Chapter 65-06.2. Included in the report are the review objectives, findings, and conclusions.

Sincerely,

Micole Kvas
Internal Audit Director
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INTRODUCTION

Purpose of the Review

North Dakota Century Code (NDCC) section 65-06.2-09, requires Workforce Safety & Insurance (WSI) to perform a biennial safety review of the Rough Rider Industries work programs covered under NDCC chapter 65-06.2 "Inmates of Penal Institutions" and a biennial performance review of the program of modified workers' compensation coverage. If WSI makes any recommendation for a change in either program as a result of the review, WSI shall submit a report with the recommendation to the legislative council no later than thirty days before the commencement of each regular session of the legislative assembly.

The performance review of the program for modified workers' compensation coverage was conducted by WSI's Internal Audit Department while the safety inspection of Rough Rider Industries' Prison Industry Enhancement (PIE) Certification work programs was conducted by a WSI Safety Consultant.

Background Information

To allow Rough Rider Industries to transport inmate produced goods through interstate commerce under the PIE Certification Program, the modified workers' compensation coverage program was established to provide coverage for inmates incarcerated in the State Penitentiary system who are working in a certified prison industry program.

In accordance with NDCC section 65-06.2, WSI, in cooperation with the Department of Corrections and Rehabilitation (DOCR), adopted administrative rules and fee schedules for the modified workers' compensation coverage program effective May 1, 1998. In March 1999, the DOCR, on behalf of Rough Rider Industries, applied for participation in the modified workers' compensation coverage program.

Objectives of the Review

Our overall objective was to evaluate the performance of the modified workers' compensation coverage program as mandated in NDCC section 65-06.2. Specifically,

- Objective 1: Verify excess coverage or reinsurance has been obtained.
- Objective 2: Identify any claims filed for workers compensation benefits.
- Objective 3: Verify premiums and other costs being collected.

Scope and Methodology

Audit fieldwork was conducted in June and July 2014. The review period for which information was collected and reviewed was from July 1, 2012 through June 30, 2014. Internal Audit performed this review using criteria contained in the NDCC; North Dakota Administrative Code (NDAC); and employer account files maintained within WSI's Policyholder Services and Safety/Loss Control departments. To achieve the review objective, electronic documents from the employer account files were obtained from Policyholder Services and Safety/Loss Control departments. This documentation was evaluated and compared with requirements established by NDCC and NDAC. Specific methodologies are identified in the respective sections of this report.

MODIFIED WORKERS' COMPENSATION COVERAGE PROGRAM

Excess Coverage or Reinsurance

NDCC sections 65-06.2-06 and 65-06.2-07 require Rough Rider Industries to secure a means of reinsuring excess costs and expenses to minimize exposure of loss to the state general fund. The organization (WSI) may not provide the additional excess coverage or reinsurance. In addition, Rough Rider Industries must secure excess coverage or reinsurance to qualify for the modified workers' compensation coverage program. NDAC section 92-01-04-02 requires the DOCR to provide annual documentation of excess or reinsurance coverage to WSI.

Since the beginning of the modified workers' compensation coverage program in 1999, it had been determined that coverage available under the Risk Management Fund and its excess carrier were sufficient to meet the statutory requirements. WSI had been receiving a verification letter from the State's Risk Management Division annually indicating:

"This is to advise you that the excess and reinsurance coverages are in place to meet the requirements of N.D.C.C. § 65-06.2-06 and 65-06.2-07 with regard to the Rough Rider Industries Enhancements Certification Program. Said coverages will be provided by the North Dakota Risk Management Fund and its excess carrier."

WSI received this verification letter prior to the 2013 fiscal year, but did not receive one prior to the 2014 fiscal year, as Risk Management and DOCR were reviewing whether the prior interpretation/construction of the statutory requirements had been correct. The State's Risk Management Division has indicated that there is a limited amount of coverage available through the Risk Management Fund and its excess carrier, however there is no separately purchased workers' compensation excess or reinsurance coverage. It has been determined that it has not been feasible for Rough Rider Industries to separately purchase workers' compensation excess or reinsurance coverage.

It has since been determined by WSI and the State's Risk Management Division that the excess/reinsurance coverage maintained by WSI's third party is adequate for the purposes of covering Rough Rider Industries at this time regardless. WSI's current reinsurance coverage is for claims/events in excess of \$3 million and up to \$30 million. WSI has had excess/reinsurance coverage in place by a third party during calendar years 1999-2002 and 2010 to the present. The Risk Management Division and DOCR have indicated they will seek to clarify the necessary NDCC sections during the next legislative session. In addition, the applicable NDAC sections will be updated.

Claims for Workers Compensation Benefits

All claims for workers' compensation coverage benefits must be filed according to NDCC section 65-05-01. Between the period of July 1, 2012 and June 30, 2014, there were no inmate injury claims filed.

Minimum Premium

NDAC section 92-01-04-03 requires Rough Rider Industries be billed an annual amount equal to WSI's minimum premium charge to cover the expense of issuing coverage. WSI billed and Rough Rider Industries has paid the minimum annual premium of \$250 for the premium periods of July 1, 2012 through June 30, 2014.

REVIEW RESULTS

Internal Audit noted reinsurance or excess coverage was not secured by the DOCR:

Internal Audit recommends the DOCR work with WSI and the State's Risk Management Division to make the necessary language changes to all applicable sections of the North Dakota Century Codes and Administrative Rules relating to securing excess or reinsurance coverage under the modified workers' compensation program. If necessary language changes are not made, the Rough Rider Industries PIE Certification Program should be discontinued and the workers' compensation account cancelled if at any point in time the excess/reinsurance coverage is no longer maintained by WSI's third party.

