

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF IOWA

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IN THE MATTER OF PETITION )  
FOR WAIVER OF RULE BY: )  
ANNETT HOLDINGS, INC. d/b/a TMC )  
TRANSPORTATION, INC. )

**ORDER**  
Waiver of 191- 57.3(1)

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Now comes the Iowa Insurance Division ("Division") pursuant to Iowa Code section 17A.9A (2015) and 191 Iowa Administrative Code ("IAC") Chapter 4, and issues the following ruling on Annett Holdings, Inc. d/b/a TMC Transportation, Inc.'s ("Annett") Petition for Waiver.

Course of Proceedings

1. On May 19, 2015, Annett filed a Petition for Waiver of Rule ("Petition"), renewable on an annual basis, of the following administrative rule:

191 IAC 57.5(1) - An applicant for a certificate of relief from insurance shall submit a completed application to the Division together with the following:

a. A surety bond or other security, in the amount determined under 191 IAC 57.3.

2. Annett's Petition requests that the surety bond amount remain unchanged for the current licensure period.

3. The Division has considered the Petition.

Findings of Fact

4. Annett is required to file a surety bond as a requirement to receive a certificate of relief from workers' compensation insurance pursuant to 191 IAC 57.3(1).

5. Annett's surety bond as determined by the formula found in 191 IAC 57.3(1), is \$3,328,000 for the renewal period August 1, 2015 through July 31, 2016 due on June 1, 2015.

6. Annett has been self-insured for the purposes of workers' compensation since 1993. Throughout this time, Annett has consistently resolved and settled workers' compensation claims aggressively and maintained a low open file count. The Division has received no complaints from Annett employees during this period. Additionally,

Annett's latest experience modification factor is below 0.6 with the National Council on Compensation Insurance, Inc.

7. Annett's current workers' compensation claims reflect reserves totaling \$1,475,000. Annett currently has a surety bond with the State of Iowa for \$2,859,000.

8. Annett has experienced persons managing workers' compensation claims. Annett uses a software program called "Risk Master," that allows the company to pay and track claims history, develop trends and run various reports. Annett also reviews its claim reserves on a monthly basis.

9. In 1995, Annett built a hotel on its campus which encompasses a medical and therapy office, fitness room, Jacuzzi, hot tub and pool. Annett has brought a number of doctors and licensed therapists to the campus to familiarize them with the facilities. The Annett staff works very closely with the treating physicians and therapists by requesting updates on their evaluations and working with them on programs available for the injured employees. This entire process allows Annett to be very active in tracking employee's medical care and progress during their recovery.

10. Since Annett is a transportation company, most employees are over the road drivers who spend one to two weeks away from home while performing their jobs. This allows Annett the flexibility to bring most injured employees to its facility in Des Moines for medical services, rehabilitation and modified work without disrupting their lifestyle as they recover from injuries. By keeping employees in the work environment during this process, it has enhanced Annett's success in getting employees healthy and back to work in a timely manner.

11. Annett requests in its Petition for Waiver that the surety bond amount remain unchanged for the current licensure period.

#### Summary of Law

12. Iowa Code section 87.14A (2015) provides that an employer that desires to be a workers' compensation self-insurer may not do business in Iowa without first obtaining relief from insurance as provided in Iowa Code chapter 87 (2015).

13. 191 IAC 57.5(1)(a)-(e) delineates the items that an applicant shall submit in its application for a certificate of relief from insurance. These items include, but are not limited to, the following provision for which waiver has been requested:

191 IAC 57.5(1) - An applicant for a certificate of relief from insurance shall submit a completed application to the division together with the following:

a. A surety bond or other security, in the amount determined under 191 IAC 57.3.

14. The certificate of relief from insurance is effective from August 1 to July 31, and is valid for one year.

15. A renewal application for a certificate of relief from insurance is due by June 1 of each year, and the requirements for a renewal application are contained in 191 IAC 57.9(1).

16. The Division may, in its sole discretion, issue an order waiving, in whole or in part the requirements of a rule only if the Division finds, based upon clear and convincing evidence, all of the following:

- a. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
- b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal right of any person;
- c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

191 IAC 4.24

17. The Division's rules provide that "the burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the Division should exercise its discretion to grant a waiver from a Division rule." 191 IAC 4.30(2).

#### Criteria for Waiver

##### 18. Undue Hardship

As noted in the Findings of act, Annett has a history of satisfactorily adjusting, managing, and settling workers' compensation claims at a very aggressive rate. Annett continues to maintain very low open workers' compensation file counts. The Division has not received any complaints from Annett's employees.

##### 19. Prejudice to the Rights of Others

A waiver of Annett's surety bond amount as determined by 191 IAC 57.3(1), in the sum of \$3,328,000, will not substantially prejudice the rights of others.

20. Statutory Mandate

The rule from which Annett seeks a waiver is not specifically mandated by statute or any other provision of law and, accordingly, may be waived by the Division.

21. Protection of Public Health, Safety, and Welfare

Annett has a history of resolving and settling workers' compensation claims at a very aggressive rate, and maintains a very low open file count. The Division has not received any complaints from Annett's employees. Annett's latest experience modification factor is below 0.6 with the National Council on Compensation Insurance, Inc.

Further, Annett has experienced individuals personally managing workers' compensation claims through a software program called "Risk Master" which allows the company to pay and track claims history, develop trends and run various reports. Annett also reviews their claim reserves on a monthly basis. Taking into account Annett's unique approach to the management of their workers' compensation claims, the public health, safety, and welfare will not be substantially compromised or placed at risk as a result of the Division granting the waiver requested in this case.

Order

IT IS HEREBY ORDERED that the requirement of 191 IAC 57.5(1)(a) with respect to the required surety of \$3,328,000 is waived for Petitioner. This waiver is valid until the next renewal date of its certificate of relief from workers' compensation self-insurance. At any time, the Division may request additional security if one or more of the factors found at 191 IAC 57.4 is present. The waiver is conditioned upon Annett's compliance with all of the following:

- A. A surety bond in the amount of \$2,859,000 shall be filed and maintained by Annett. The surety bond amount will be assessed and reviewed on, not less than, an annual basis.
- B. Annett shall file with the Division unaudited or audited financial statements as requested by the Division.
- C. Annett shall promptly notify the Division if Glen McCravy is no longer working with it.

All other provisions of the Division's rules remain applicable to Annett Holdings, Inc.

Dated this 28 day of August, 2015.

Iowa Insurance Division



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NICK GERHART  
Commissioner of Insurance

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