

December 10, 1990

The Honorable Lydia Justice Edwards  
State Treasurer  
*STATEHOUSE MAIL*

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Letter of Credit as Security for Self Insurers  
Under the Worker's Compensation Law

Dear Ms. Edwards:

This is in response to your question whether a letter of credit issued by an out of state bank would be adequate security for a self insurer under the worker's compensation law. Idaho Code § 72-301 requires every employer to secure the payment of compensation either by obtaining a policy of workmen's compensation insurance or by qualifying as a self insurer with approval of the industrial commission. Idaho Code § 72-301(2) provides, in pertinent part:

An employer may become self insured by obtaining the approval of the Industrial Commission, and by depositing and maintaining with the Commission security satisfactory to the Commission securing the payment by said employer of compensation according to the terms of this law. Such security may consist of a surety bond or guaranty contract with any company authorized to transact surety insurance in Idaho. The Commission shall adopt rules and regulations governing the qualifications of self insured employers, the nature and amount of security to be deposited with the Commission, and the conditions under which an employer may continue to be self insured.

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Thus, a person seeking to be self insured under the act must either obtain a surety bond or guaranty contract from an Idaho surety or deposit security satisfactory to the commission consistent with the commission's rules. I understand the commission will be considering the question of what security should be allowed.

The state treasurer's office is involved with respect to such deposits pursuant to Idaho Code § 72-302, which provides in pertinent part:

*The securities so deposited* [pursuant to § 72-301] with the state treasurer *shall be an exclusive trust* for the benefit of the employees of the employers whose compensation liability is so secured, to remain with the treasurer in trust to answer any default of any employer, self insured employer or surety upon any such obligation established by final judgment upon which execution may lawfully be issued against the employer or surety; the surety, however, at all times shall have the right to collect the interest, dividends and profits upon the securities . . . . [Emphasis added.]

This section indicates that the security used by a self- insured employer should be "securities" held in an exclusive trust and upon which execution may lawfully be issued. This implies that the securities tendered must be something other than a letter of credit. Rather, the section requires deposit of "securities" upon which execution may lawfully be issued against the employer or surety. This section goes on to provide, in pertinent part:

The surety shall not be permitted to withdraw from the state treasurer the *deposits of money or bonds* or permit the surety bonds to lapse for a period of one (1) year after discontinuing business within this state . . . *Securities which are used to satisfy the requirements* of this section may be held in the federal reserve book entry system, as defined in section 41-2870(4) and interests in such securities may be transferred by bookkeeping entry in the federal reserve book-entry system without physical delivery of certificates representing such securities. [Emphasis added.]

Again, this section implies that the deposit will involve money or bonds or securities, including securities eligible for the federal book-entry system.

I understand the commission currently accepts certificates of deposit issued by Idaho banks. If certificates of deposit are allowed, I would encourage the continued acceptance only of Idaho certificates of deposit. Certificates of deposit are unsecured obligations of the banks. Thus, their value as security depends upon the solvency of the bank. The state is likely to be aware of potential financial problems of Idaho banks. This would likely not be the case with respect to out of state banks. This is important since the commission

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has the right to withdraw its approval of self insured employers if it shall appear to the commission that workmen are not fully protected. Idaho Code § 72-301.

In your discussions with the industrial commission, it is important to look for a solution which adequately protects employees but which is not too restrictive on employers. However, with respect to any instruments which may not provide adequate security for Idaho's workers, in my opinion, the policy of the law would favor insistence upon adequate security as opposed to convenience of employers.

I hope this letter will be useful to you in your discussions with the industrial commission.

Sincerely,

David G. High  
Deputy Attorney General  
Chief, Business Regulation  
and State Finance Division

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