

Whatcom County

DEPARTMENT

Administration costs, self-insurers

The Department lacks authority, under RCW 51.44.150, to assess a self-insured employer for the under collected actual administrative costs associated with the self-insurance program for a period before the employer was certified as self-insured. ...***In re Whatcom County, BIIA Dec., 87 0826 (1988)*** [Editor's Note: *Affirmed sub nom, Department of Labor & Indus. v. American Adventures, Inc.*, 59 Wn. App 790 (1990).]

Scroll down for order.

1 the state fund included a portion attributable to state fund administrative costs. As a condition of
2 certification as a self-insured employer, this employer was required to make up a share of a deficit in
3 the state fund, in the amount of \$ 1,945.39, a portion of which was attributable to administrative costs.
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5 The Department's authority to assess self-insurers for administrative costs is contained in RCW
6 51.44.150 which provides as follows:
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8 The director shall impose and collect assessments each fiscal year on all
9 self-insurers in the amount of the estimated costs of administering their
10 portion of this title during such fiscal year. The time and manner of
11 imposing and collecting assessments due the department shall be set
12 forth in regulations promulgated by the director in accordance with chapter
13 34.04 RCW.
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15 Pursuant to this statute, the Department has adopted WAC 296-15-060 which provides as follows:
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17 (1) Assessments levied by the department against each self-insurer shall
18 be based on the self-insured employer's proportionate share of the
19 administrative costs determined to be attributable to self-insurers,
20 including expenses of the Safety Division, the Industrial Insurance
21 Division, the University of Washington Environmental Research Facility,
22 the Board of Industrial Insurance Appeals, appeals expenses, and other
23 general administrative expenses.
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25 (2) The director shall determine the assessment rate annually, prescribing
26 the self-insured employer's share of the attributable costs determined
27 pursuant to the provisions of subsection (1). For employers who have
28 been covered under the Workers' Compensation Act for a period of less
29 than two full calendar years, the assessment rate shall be a percentage of
30 the premium which would have been collected at manual rate had the
31 self-insurer been covered by the state fund. For employers who have
32 been subject to the provisions of the Workers' Compensation Act in
33 excess of two calendar years, the administrative assessment rate shall be
34 a percentage of the payments made on all claims involving the
35 self-insured employer....
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37 The Supreme Court has had the opportunity to review this statutory provision and the administrative
38 regulation in the case of Crown Zellerbach v. Department of Labor and Industries, 98 Wn.2d 102
39 (1982). At issue in that case was the Department's ability to assess self-insured employers for the
40 administrative costs of claims incurred while the employer was insured with the state fund. In reaching
41 its decision, the court was faced with precisely the same question as is before us, namely, whether the
42 statutory language "their portion of this title" refers to self-insurers as a group or to the individual
43 self-insured employers. The court stated:
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1 We read the language, however, as referring to the individual self-insured
2 employers. Each self- insured employer must be responsible for the
3 estimated total costs of administering its part of the Industrial Insurance
4 Act -- self-insured and prior continuing state fund claims.
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6 Crown Zellerbach, at 107. Based upon the Supreme Court's construction, it appears clear that
7 Whatcom County is only responsible for administrative costs associated with the self-insurance
8 program, which in some way might be attributed to this particular employer's activities in its
9 self-insured capacity. The Department, in making assessments, is entitled to wide latitude, and it is
10 not required that an assessment determine with exactitude a particular employer's responsibility. It is
11 the responsibility of the employer to show that there is no reasonable basis for the assessment. We
12 find no authority, however, to authorize the Department to assess this self-insured employer for
13 administrative costs associated with the self-insurance program, which are in no way attributable to its
14 own activities as a self-insured employer. Obviously, there were no self-insured administrative costs
15 attributable to this employer prior to January 1, 1984 when Whatcom County was certified as a
16 self-insured employer. This employer therefore cannot be assessed for the actual costs of
17 administration of the self-insurance program incurred in 1982 and 1983. The Department order must
18 be reversed and Whatcom County refunded the amount of \$ 1,398.76.
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26 **FINDINGS OF FACT**

- 27 1. On February 25, 1987 the Department issued an order indicating that a
28 review of the evidence disclosed no error or injustice in the method of
29 calculating the administrative assessment for 1984 and the request for
30 refund by Whatcom County in the amount of \$ 1,398.76 was denied. On
31 March 18, 1987 the Board of Industrial Insurance Appeals received a
32 notice of appeal from the February 25, 1987 Department order. On March
33 27, 1987 the Board issued an order granting the appeal, assigned it
34 Docket No. 87 0826, and directed that proceedings be held on the issues
35 raised by the appeal.
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- 37 2. Whatcom County was certified as a self-insured employer on January 1,
38 1984.
- 39 3. Prior to becoming self-insured, this employer was required to make up a
40 share of a deficit or insufficiency in the state fund, in the amount of \$
41 1,945.39, a portion of which was attributable to administrative costs.
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- 43 4. After Whatcom County was certified as a self- insured employer on
44 January 1, 1984, the Department assessed Whatcom County for
45 undercollection of actual costs attributable to administration of the
46 self-insurance program during the years 1982 and 1983, when this
47 employer was insured with the state fund, in the amount of \$ 1,398.76.

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5. The total amount paid for "net assessments undercollected during previous years" in 1984 and early 1985 by Whatcom County was \$ 1,398.76.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and the subject matter of this appeal.
2. The Department of Labor and Industries improperly assessed Whatcom County for a proportionate share of actual administrative costs of the self-insurance program undercollected for the years 1982 and 1983.
3. The order of the Department of Labor and Industries dated February 25, 1987, providing that Whatcom County's request for refund of administrative assessment paid during 1984 and early 1985 for the years 1982 and 1983 be denied, is incorrect and is reversed and the matter remanded to the Department with direction to refund \$ 1,398.76 to Whatcom County.

It is so ORDERED.

Dated this 13th day of October, 1988.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
SARA T. HARMON Chairperson

/s/
FRANK E. FENNERTY, JR. Member

/s/
PHILLIP T. BORK Member