

BYLAWS OF
THE WASHINGTON UNITED STATES LONGSHORE AND HARBOR WORKERS'
COMPENSATION ACT ASSIGNED RISK PLAN

ARTICLE I

Authority

The Washington United States Longshore and Harbor Workers' Compensation Act Assigned Risk Plan (the "Plan") is authorized by RCW 48.22.070 and Chapter 22 of Title 284 of the Washington Administrative Code.

ARTICLE II

Governing Committee

2.1 Management Responsibility. The Plan shall have a Governing Committee, which shall be responsible for the exercise of all Plan powers. The Governing Committee (the "Committee") shall manage the business affairs, assets and liabilities of the Plan. The Committee shall select a Plan Administrator subject to approval by the Insurance Commissioner. The term "Plan Administrator" may be used interchangeably with the terms "Executive Director" and "Plan Director." The role of the Executive Director shall be established by contract with the Executive Director.

2.2 Number and Qualification of Committee members. Pursuant to WAC 284-22-050 (5) the Committee shall consist of thirteen members. The director of the Department of Labor and Industries or his/her designee shall be one member. The remaining members shall be selected to insure equal representation of each of the following interest groups ("Interest Groups"): authorized insurers writing primary or excess workers' compensation insurance, insurance producers, organized labor, and maritime employers.

2.3 Term of Office. Recognizing that the Insurance Commissioner retains the authority to appoint Committee members,

(a) Each Committee member shall hold office for a three-year term expiring at the call-to-order of the Regular Meeting held during the first quarter, except that the member from the Department of Labor and Industries shall not have a limited term.

(b) The term of one member from each Interest Group shall expire each year.

(c) A Committee member may serve more than one term.

(d) If a Committee member dies, resigns, or is removed, the Committee member's replacement shall serve throughout the remaining portion of the Committee member's term and thereafter until the Committee member's successor is appointed.

(e) A Committee member whose term has expired shall continue to serve as a Committee member, officer, and Subcommittee member while awaiting reappointment or until a successor has been appointed.

2.4 Alternate Member. Any member of the Committee may nominate one individual for appointment by the Commissioner of Insurance to serve as the alternate member ("Alternate Member") of the Committee for that Committee member. An Alternate Member attending a duly constituted meeting in the absence of the Committee member shall have all of the rights of the Committee member but in the presence of the Committee member shall not have the rights of the Committee member. An Alternate Member is encouraged, but not required, to attend all Committee meetings. The term of appointment of an Alternate Member shall end upon termination of membership of the Committee member.

2.5 Committee Member or Alternate Member Application Process. The Committee shall have available a Committee member application form for use by those persons who wish to serve or be reappointed to serve as Committee members or Alternate Members. The application form shall be available to the public on the Plan's web site and applicants shall submit the completed application forms to the Plan Executive Director who will forward the applications to the Insurance Commissioner. The Committee shall not make recommendations to the Insurance Commissioner on the selection of Committee members or Alternate Members.

2.6 Resignation. A Committee member may resign at any time by delivering written notice to the Office of the Insurance Commissioner

2.7 Continued Absence from Regular Meetings. If a Committee member, or in the absence of the Committee member the Committee member's Alternate Member, fails to attend three consecutive Regular Meetings, the Committee shall recommend to the Insurance Commissioner that the Committee member and Alternate Member be replaced. This attendance requirement does not apply to the Committee member position held by the director of the Department of Labor and Industries or his/her designee.

2.8 Duties and Obligations of Committee Members and Alternate Members.

(a) Obligations of Due Care and Loyalty. Each person who is a Committee member shall perform the duties of a Committee member, including any duties the Committee member may have as a member of any Subcommittee or as officer:

- (1) In good faith;

(2) In a manner the Committee member reasonably believes to be in the best interests of the Plan;

(3) With the care an ordinarily prudent person in a like position would use under similar circumstances; and

(4) With the acknowledgement that, when serving as a Committee member in conducting the business of the Plan, the interests of the Plan take priority over the Committee member's personal or business interests.

(b) *Conflicting-Interest Transactions.* A Committee member is responsible for recusing himself or herself from any Committee proceeding:

(1) In the event a Committee member's personal or business interest has a higher priority than the interests of the Plan; or

(2) Whenever the Committee member believes a conflicting interest might prevent the Committee member from fulfilling his or her obligations under Subsection 2.8 of Article II.

(c) *Right to Rely on Experts.* In performing Plan duties, a Committee member has the right to rely on information, opinions, reports, or statements, including financial statements or other financial data prepared or presented by:

(1) One or more officers or employees of the Plan whom the Committee member reasonably believes to be reliable and competent in the matters presented;

(2) The Plan's legal counsel and the Plan's public accountants, or other persons engaged by the Plan concerning matters which the Committee member reasonably believes to be within their professional or expert competence; or

(3) A Subcommittee, the deliberations of which the Committee member reasonably believes merits confidence, concerning matters within the Subcommittee's designated authority.

(d) *Failure to Act in Good Faith.* A Committee member fails to act in good faith if the Committee member relies on information provided by the above persons even though the Committee member has knowledge concerning a particular matter that would make reliance on the information unwarranted.

(e) *Nondisclosure and Confidentiality.*

(1) Each Committee member acknowledges that, in the course of the member's service to the Plan, the member will become acquainted with confidential information

belonging to the Plan. Each Committee member must acknowledge that the member may not, at any time during the period of the member's service to the Plan or thereafter, except as authorized in writing by the Executive Subcommittee, directly or indirectly, use, disclose, reproduce, or in any other way publicly or privately disseminate any "Confidential Information" as defined herein.

(2) "Confidential Information" means all information not generally known to the public or the insurance community, which relates to the business of the Plan or any third parties doing business with the Plan. By way of example, Confidential Information includes, but is not limited to, information relating to the Plan's applicants, policyholders and their producers or brokers (i.e., bonded producers), pricing, contracts, costs and other financial information and specifications disclosed to or known by Committee members in connection with a Committee member's service to the Plan.

(3) Each Committee member shall further acknowledge that in the event the Committee member has any doubt that information is Confidential Information, the member has the obligation to inquire with the Executive Subcommittee as to whether the information is Confidential Information. Furthermore, each Committee member will acknowledge that the member has the obligation to notify the Executive Subcommittee in the event the member has disseminated Confidential Information.

(f) *Servicing Carrier Contact Policy*

(1) A purpose of the Servicing Carrier Contact Policy ("Policy") is to protect the Plan and its Committee members from accusations of impropriety. Another purpose of the Policy is to provide guidance to Committee members concerning the appropriate manner of dealing with the servicing carrier. This Policy is intended to supplement but not replace any obligations imposed upon the Committee members by these bylaws.

(2) In the event a Committee member has reason to contact the Plan's servicing carrier, unless the contact is made for the purposes set forth in paragraph 5 of this Policy, the contact with the servicing carrier must be made through the Plan Executive Director. The Committee member should state the reasons for the contact in writing, by email message or otherwise, and forward the reasons to the Executive Director. The Executive Director shall promptly review the issue with the servicing carrier and provide to the Committee member the servicing carrier's response.

(3) If the Executive Director believes that the request might not align with the policies of the Plan, the Executive Director shall forward the Committee member's request to the Chair for review. The Chair may elect to discuss the matter with the Executive Subcommittee and will provide a prompt response to the Committee member on a direct basis or through the Executive Director.

(4) In the absence of the Executive Director, the contact with the servicing

carrier must be made through the Chair utilizing the procedures described in paragraphs 1 and 2 of the Policy.

(5) This Policy is not intended to prohibit a Committee member from approaching the servicing carrier on behalf of the Committee member's client or insured to discuss placement or renewal of coverage or matters involving a client's or insured's claims.

(g) *Duties and Obligations Apply to Alternate Members.* The duties and obligations described in this Section 2.8 of Article II apply to Alternate Members.

(h) *Acknowledgment of Duties and Obligations.* The Committee shall require each Committee member and Alternate Member to acknowledge by written statement his or her duties and obligations stated in this Subsection 2.8 of Article II.

ARTICLE III

Officers

3.1 *Officers and Their Duties.* The following officers shall be elected by the Committee members as the first order of business at the first Regular Meeting of each odd-numbered year and shall have the duties enumerated below. If the Committee fails to elect the officers at that meeting, it shall convene a meeting to elect the officers as soon thereafter as possible. If a vacancy occurs in an officer position, the Committee shall elect a replacement at the next Committee Regular Meeting or a special meeting.

(a) *Chair.* The Chair shall be the chief executive officer of the Plan and shall supervise the business affairs of the Plan. The Chair shall preside at all meetings of the Committee. The Chair may sign deeds, mortgages, bonds, contracts, or other instruments, unless these powers have been expressly delegated by the Committee to some other officer or agent of the Plan or are otherwise required by law to be signed or executed by some other officer or in some other manner. The Executive Director shall report to the Chair. If the Chair resigns or becomes unable to act, the Vice Chair shall perform the duties of the Chair, except as may be limited by resolution of the Committee.

(b) *Vice Chair.* The Vice Chair shall have the powers and perform the duties accorded to him or her by the Committee or as delegated to him or her by the Chair. If no Chair has been elected or in the absence or disability of the Chair, the Vice Chair shall perform the duties of the Chair. When so acting, the Vice Chair shall have all the powers of, and be subject to the same restrictions as is the Chair. In the absence of the Chair and the Vice Chair at a Committee meeting, the Committee member position held by the director of the Department of Labor and Industries or his/her designee shall preside at the meeting.

(c) *Secretary.* The Secretary shall:

(1) Ensure the minutes of meetings of the Committee members have been prepared for approval by the Committee, keep the minutes in one or more books provided for that purpose, and be responsible for authenticating the records of the Plan;

(2) Ensure that all notices are given in accordance with the provisions of these Bylaws and as required by law;

(3) Keep a register of the address of each Committee member and Alternate Member;

(4) When required by law or resolution of the Committee, sign the Plan's deeds, mortgages, bonds, contracts, or other instruments; and

(5) Perform all other duties incident to the office of Secretary or assigned by the Chair or the Committee.

(d) *Treasurer.*

The Treasurer shall:

(1) Account for all funds and securities held by the Plan;

(2) Serve as chair of the Investment Subcommittee;

(3) At each regular meeting of the Committee, report to the Committee on the status of Plan investments, assets and liabilities; and

(4) Perform all other duties incident to the office of treasurer or assigned to the Treasurer by the Chair or the Committee.

(e) *Authority to Enter Into Contracts and to Issue Checks and Drafts.* The Committee may authorize any officer, Committee member or agent of the Plan to enter into contracts or to execute and deliver instruments in the name of and on behalf of the Plan. The Committee may grant either general or limited authority to its officers, Committee members and agents to make contracts or execute instruments. The Committee shall authorize any Committee Member or agent of the Plan to sign the Plan's checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Plan.

3.2 *Qualifications.* All of the officers are required to be Committee members. The same person may not hold two or more officer positions.

ARTICLE IV

Subcommittees

The Plan shall have the following subcommittees:

4.1 Executive Subcommittee. The Executive Subcommittee shall consist of five (5) Committee members: the Chair, the Committee member from the Department of Labor and Industries, plus three (3) Committee members selected by the Committee, provided that each Interest Group has at least one (1) member on the Executive Subcommittee. Alternate Members are not allowed to serve on the Executive Subcommittee.

The roles of the Executive Subcommittee shall be determined by the Committee and shall include, but not be limited to, the authority to select and contract with the Executive Director, carry out the directives and policies of the Committee between Regular Meetings, and resolve, upon discussion with the Executive Director, major issues involving the servicing carrier.

4.2 Investment Subcommittee. The Investment Subcommittee shall consist of the Plan Treasurer, the Committee member from the Department of Labor and Industries, and at least one other Committee member nominated by any Committee member and approved by the Committee. A representative of the Office of the Insurance Commissioner shall be invited to participate with the members of the Investment Subcommittee. The Treasurer shall serve as chair of this Subcommittee.

The role of the Investment Subcommittee shall be to carry out the investment policies adopted by the Committee. The Subcommittee chair shall work closely with any Plan investment advisor. The Subcommittee chair shall have the authority to order the purchase and sale of securities and investments upon consultation with the other Investment Subcommittee members consistent with the Plan's established investment policy.

4.3 Insurance Subcommittee. The Insurance Subcommittee shall consist of at least two (2) Committee members nominated by any Committee member and approved by the Committee. At least one of the Subcommittee members must be a licensed insurance professional.

The role of the Insurance Subcommittee shall be to review the insurance needs of the Plan, other than the relationship with the servicing carrier or the plan reinsurers, and to make recommendations to the Committee of said insurance needs. The insurance needs might include, but are not limited to, directors and officers, errors and omissions, general liability and property insurance.

4.4 Reinsurance Subcommittee. The Reinsurance Subcommittee shall consist of at least two (2) Committee members nominated by any Committee member and approved by the Committee who preferably have experience with the reinsurance market. The Reinsurance Subcommittee will work with the Executive Director to negotiate the terms of reinsurance treaties with reinsurers for

approval by the Committee.

4.5 Additional Subcommittees. The Committee may create one or more additional Subcommittees of Committee members. Each Subcommittee must have two or more members and shall be given a stated purpose by the Committee.

4.6 Rules Governing Subcommittees. The rules governing meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the Committee under Article V do not apply to Subcommittees.

4.7 Appointment of Members of Subcommittees. At the first Regular Meeting of each odd-numbered year, the Committee shall appoint or re-affirm the appointments of Committee members to Subcommittees. If a vacancy occurs on a Subcommittee, the Committee shall elect a replacement at the next Committee meeting.

ARTICLE V

Committee Meetings

5.1 Regular Meetings. The Plan shall hold an in-person meeting of the Committee members at least once each calendar quarter. The order of business at these regular meetings (“Regular Meetings”) of Committee members shall include, but not be limited to, as follows:

- (a) Calling the meeting to order;
- (b) Approval of minutes of the previous Committee meeting;
- (c) Reports from officers and Executive Director;
- (d) Reports from Plan Subcommittees;
- (e) Election of officers, if necessary; and
- (f) Other business.

5.2 Special Meetings. The Plan shall hold a special meeting of the Committee members at the written request of at least two members from different Interest Groups or the Chair.

5.3 Meeting Time and Place. Committee meetings shall be held at the time and place designated by the Chair and identified in the notice of the meeting.

5.4 Chair of the Meeting. The Chair shall serve as chair of all Committee meetings. In the

absence of the Chair, the Vice Chair or any other person appointed by the Committee shall serve as chair of a Committee meeting. The Chair need not serve as the chair of any Subcommittee meeting.

5.5 *Notice of Committee Meetings.*

(a) *Regular Meetings.* The Chair or the designee of the Chair shall notify the Committee members of each Regular Meeting. The Chair or the designee of the Chair shall deliver notice, as provided in Section 7.1, at least twenty (20) calendar days before the meeting date. Notice of a Regular Meeting need not include a description of the topics to be addressed at the meeting. At least ten (10) days prior to a Regular Meeting, the Chair or the designee of the Chair shall circulate an agenda. Topics may be discussed and approved at a Regular Meeting that were not identified on the agenda.

(b) *Special Meetings.* The notice of a special meeting must include a description of the purposes for which the meeting was called. The Chair, the Secretary, or the designee of either must deliver the notice at least three (3) business days before the special meeting date. Only issues identified in the notice of a special meeting may be addressed at that meeting.

(c) *Reconvening of Meetings.* The Chair need not provide notice to the Committee members of a reconvened meeting if the time, date, and place for reconvening the meeting are announced before the meeting is adjourned.

5.6 *Waiver of Notice.*

(a) *Waiver by Attendance.* A Committee member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Committee member in advance of or at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(b) *Waiver of Objection to Particular Matter.* A Committee member waives objection to consideration of a particular matter at a special meeting that is not within the purposes described in the meeting notice, unless the Committee member objects to considering the matter when it is presented.

5.7 *Quorum.*

(a) *Action if Quorum Present.* Seven of the Committee members shall constitute a quorum, provided that the Committee member or the designated Alternate Member from the Department of Labor and Industries must be present, and provided that at least one Committee member or designated Alternate Member from each of the four Interest Groups must be present.

(b) *Action in Absence of a Quorum.* The Committee may not take any action at a meeting at which a quorum does not or no longer exists.

5.8 *Attendance at In-Person Meetings.* For a Committee member to participate in an In-Person meeting, the Committee member or the designated Alternate Member must be physically present. The Committee member or Alternate Member cannot participate by electronic device.

5.9 *Voting.* A majority of the Committee members in attendance at a meeting must vote in favor of the proposed action for the Plan to take the action. No proxy voting is allowed at any meeting.

5.10 *Committee Member List at Meeting.* The Secretary shall record and maintain a written list of the Committee members, Alternate Members and other persons who attend a meeting and such list shall be included in the minutes.

5.11 *Action by Committee Members Without an In-Person Meeting.*

(a) *Action Agreed by All Committee Members.* The Committee may take any action within its powers without a meeting if the action is agreed to by all the Committee members entitled to vote on the action. To take an action without a meeting, each Committee member entitled to vote on the action must sign a written consent or transmit an email message (which shall constitute a consent) approving the action to be taken. The consents must be delivered to the Secretary or Chair for inclusion in the minutes or filing with the Plan records. The action shall be effective when all consents are in possession of the Secretary or Chair, unless the consents specify a later effective date.

(i) *Withdrawal of Consent.* A Committee member may withdraw consent only by delivering a written notice of withdrawal to the Secretary or Chair prior to the time that all consents are in possession of the Plan.

(ii) *Action by Consent.* An action taken by consent shall have the effect of a meeting vote and may be described as such in any document.

(b) *Meeting by Conference Call.* Upon proper notice and with a proper agenda circulated beforehand, a special meeting, but not a Regular Meeting, can be conducted by conference call. All of the requirements and provisions stated in Section 5 shall apply to such a conference-call meeting. During the process of a vote during a conference call meeting, each member shall be asked to declare his or her vote for the record.

5.12 *Rules of Order.*

(a) *Robert's Rules Govern.* The rules contained in the most recent edition of Robert's Rules of Order, Newly Revised, shall govern all meetings of Committee members where those rules do not conflict with these Bylaws.

(b) *Chair of Meeting.* The chair of the meeting shall have absolute authority over

matters of procedure. There shall be no appeal from a procedural ruling by the chair of the meeting.

(c) *Adjournment Due to Disorder.* If disorder should arise which prevents continuation of the legitimate business of any meeting, the chair of the meeting may adjourn the meeting. Any meeting so adjourned may be reconvened in accordance with Section 5.5(c) of these Bylaws.

(d) *Matters the Proper Subject of Action.* The Committee members may consider and vote on a resolution or motion at a Committee meeting only if:

(1) The resolution or motion was proposed by a Committee member; and

(2) The resolution or motion was seconded, if required, by an individual who is a Committee member other than the person who proposed the resolution or motion.

ARTICLE VI

Investment Policy

The Committee shall implement a policy for the investment and maintenance of the assets of the Plan.

ARTICLE VII

Notices

7.1 Method of Notice.

(a) *General.* Notices called for under these Bylaws shall be given in writing or by email transmission to the email address provided by each Committee member.

(b) *Effective Date of Notice to Committee Member.* Written notice to a Committee member, if in a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the Committee member's address shown in the Plan's current record of Committee members. The Secretary or Chair may send notices to a Committee member by delivering or mailing the notice to the Committee member's most recent address on file. Any notice sent to that address shall be deemed sufficient if the Committee member fails to furnish a current address to the Secretary. Email notice is likewise effective when transmitted to the email address shown in the Plan's current record of Committee members and the Committee member responds to the emailed notice.

(c) *Notice to the Plan.* Written notice to the Plan may be addressed to its Secretary or Chair.

7.2 *Waiver of Notice.* A Committee member may waive notice of any meeting by submitting a written signed waiver of notice either before or after the time for holding the meeting, or by attending the meeting without objecting to a lack of notice.

ARTICLE VIII

Plan Records

Maintenance of Plan Records. The Plan shall keep the Plan's minute books and all other official records of all meetings at a location selected by the Committee. The Plan shall keep all minutes and records in written form, or in a form which may be easily converted to written form. The Plan shall also maintain in its records no less than the following items:

- (a) The current Bylaws or restated Bylaws and all amendments to the Bylaws;
- (b) The Operating Procedures of the Plan;
- (c) The minutes of all Committee meetings and records of all actions taken by the Committee members;
- (d) All financial statements and the documents identified in Subsections 9.1 and 9.2 of Article IX for the past seven (7) years;
- (e) A record of all policies written on behalf of the Plan. Actual policy files shall be maintained for a minimum of seven (7) years. After that time, as an alternative, an abstract showing at a minimum the issuing insurance carrier, policy number, term of coverage, named insured, and any special coverage endorsements (e.g. maritime liability) shall be maintained indefinitely. Regardless of the forgoing, the original application documents and original request-for-renewal documents submitted to the Plan shall be maintained in perpetuity.
- (f) All claim files. Files on open claims and any claim involving ongoing periodic payments shall be maintained indefinitely. Closed claim files shall be maintained in their original format for a period not less than seven (7) years following closure, after which they may be maintained in electronic or film format, provided that all file documents be maintained in such original format.
- (g) The written agreements with Executive or Plan Directors and the servicing carriers;
- (h) A register of names and contact information of each Committee member and Alternate Member; and

(i) The annual investment reports for the previous 7 years.

ARTICLE IX

Financial Matters

9.1 *Books and Records of Account.* The Plan shall maintain correct books, financial statements, and records of account. The books, records of account, and financial statements shall be in written form or in any other form capable of being converted into written form within a reasonable time.

9.2 *Annual Balance Sheet and Income Statement.* The Plan shall prepare annually (1) a balance statement showing in reasonable detail the financial condition of the Plan as of the close of its fiscal year and (2) an income statement showing the results of the Plan's operations during its fiscal year. The Plan shall prepare these statements after the close of each fiscal year and before the second calendar quarter Regular Meeting. These statements shall be prepared in accordance with generally accepted accounting principles which shall be applied on a consistent basis from period to period.

9.3 *Fiscal Year.* The Plan shall use a calendar year fiscal year unless the Committee expressly determines otherwise.

9.4 *Advice From Plan Professionals.* The Committee members shall not incur the expense of seeking the advice of the Plan's attorneys, accountants and other professionals unless authorized by the Committee or the Executive Subcommittee.

ARTICLE X

Indemnification

The Plan shall indemnify and save each Committee member, Alternate Member and the Executive Director ("Indemnitees") harmless from any and all claims, costs, expenses, demands, attorney fees, suits, liabilities, judgments and damages arising from the performance or exercise of any of the duties, obligations, powers, or authorities granted to an Indemnitee. The Plan shall pay to each Indemnitee on demand any monies an Indemnitee shall be required to pay for items covered by this Article. The provisions of this Article shall survive the termination of the Indemnitee's service to the Plan. The provisions of this Article do not restrict the Committee from entering into indemnity agreements with other persons or entities.

ARTICLE XI

Amendment of Bylaws

The Committee may amend the Bylaws by vote of two-thirds of the number of the Committee members at a Regular Meeting of the Committee, or by unanimous emailed consent of the Committee members, provided that the notice of the Regular Meeting must provide notice of the proposed amendment. The Bylaws may be amended by a vote of two-thirds of the number of the Committee members at a special meeting of the Committee only if notice of the proposed amendment was contained in the notice of the meeting. The Committee members may repeal, by a vote of two-thirds of the number of the Committee members at a Regular Meeting, any amendment to or alteration of the Bylaws adopted by the Committee.

ARTICLE XII

Miscellany

12.1 *Number and Gender.* When required by the context:

(a) The word "it" will include the plural and the words "they, them, their, etc." will include the singular;

(b) The masculine will include the feminine gender and the neuter, and vice versa; and

(c) The word "person" will include corporation, firm, partnership or any other form of association.

12.2 *Severability.* If any provision of these Bylaws or any application of any provision is found to be unenforceable, the remainder of the Bylaws shall be unaffected. If the provision is found to be unenforceable when applied to particular persons or circumstances, the application of the provision to other persons or circumstances shall be unaffected.

ARTICLE XIII

Authentication

The foregoing Bylaws were read, approved, and duly adopted by the Committee on the 24th day of August, 2010.