

LAWRENCE G. WASDEN  
Attorney General

THOMAS A. DONOVAN  
Deputy Attorney General  
Idaho Department of Insurance  
700 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0043  
Telephone: (208) 334-4204  
Facsimile: (208) 334-4298  
I.S.B. No. 4377

**FILED** 

**MAR 23 2010**

**Department of Insurance  
State of Idaho**

Attorneys for Department of Insurance

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

IN THE MATTER OF:	)	
	)	
Employers Resource Benefit Trust	)	<b>ORDER ADOPTING</b>
	)	<b>REPORT OF EXAMINATION</b>
Idaho Registration No. 3842	)	<b>AS OF JUNE 30, 2009</b>
	)	
	)	Docket No. 18-2604-10
	)	
	)	
	)	
	)	

---

The Report of Examination as of June 30, 2009, (Report) of *Employers Resource Benefit Trust* (Plan) was completed by examiners from the Idaho Department of Insurance (Department) and signed the 19<sup>th</sup> day of March 2010 by the Examiner-in-Charge, Kelvin Ko, CFE. The verified (attested) copy of the Report was filed with the Department effective March 19, 2010. Previously, an initial draft copy of the Report was delivered to the Plan on March 1, 2010, with the verified Report being transmitted electronically (PDF file, via e-mail) on March 19, 2010, to Mr. Lou Esposito, Executive Administration, and Mr. Greg

Rutherford, CFO of *Employers Resource Management Company* (Trustor and Sponsor of the Plan). The verified Report is attached hereto and incorporated herein as Exhibit A.

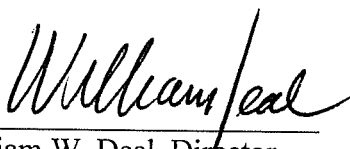
WAIVER

Attached hereto and incorporated herein as Exhibit B is a copy the original Waiver signed by Mr. Douglas Gersema, President of *American Guaranty Title & Trust, Inc.* (Trustee of the Plan), on March 22, 2010, and received by the Department via e-mail (PDF file) on March 22, 2010. Based upon the Waiver/Exhibit B, this is a final order, and the Plan has waived its rights to seek reconsideration and judicial review of this order.

ORDER

NOW THEREFORE, after carefully reviewing the above described Report of Examination attached hereto as Exhibit A and good cause appearing therefor, it is hereby ordered that the above-described Report, which includes the findings and conclusions supporting this order, is hereby ADOPTED as the final examination report and as an official record of the Department under Idaho Code §§ 41-4013(3) and 41-227(5)(a).

DATED and EFFECTIVE at Boise, Idaho, this 23<sup>RD</sup> day of March 2010.



William W. Deal, Director  
IDAHO DEPARTMENT OF INSURANCE

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of March 2010, I caused to be served the foregoing document on the following parties in the manner set forth below:

Mr. Douglas Gersema, President American Guaranty Title & Trust, Inc. (Trustee of Employers Resource Benefit Trust) 1301 S. Vista Ave., Suite 200 Boise, Idaho 83705	X	certified mail first class mail hand delivery Facsimile e-mail
---	---	--

Mr. Lou Esposito, Executive Administration Employers Resource Management Company 1301 S. Vista Ave., Suite 200 Boise, Idaho 83705 Lesposit@emplyersresiurce.com	X	certified mail first class mail hand delivery e-mail
---	---	---

Georgia Siehl, CPA, CFE Bureau Chief / Chief Examiner Idaho Department of Insurance 700 W. State St., 3 <sup>rd</sup> Floor Boise, Idaho 83720-0043 Georgia.Siehl@doi.idaho.gov	X  X	certified mail first class mail hand delivery Facsimile e-mail
--	------------	--

---



William R. Michels, MBA, CPA, CFE  
Examination Supervisor  
IDAHO DEPARTMENT OF INSURANCE

# EXHIBIT A

DEPARTMENT OF INSURANCE

STATE OF IDAHO



REPORT OF EXAMINATION

of

EMPLOYERS RESOURCE BENEFIT TRUST

(a multiple employer welfare arrangement self-funded health care plan)

as of

June 30, 2009

## TABLE OF CONTENTS

	<u>Page</u>
Salutation .....	1
Scope of Examination .....	2
Prior Examination .....	2
History and Description .....	2
Management and Control.....	3
Conflict of Interest.....	3
Contracts and Agreements.....	4
Corporate Records .....	4
Minutes of Meetings.....	4
Fidelity Bond and Other Insurance .....	5
Territory and Plan of Operation .....	5
Growth of ERBT .....	5
Reinsurance.....	5
Insurance Products and Related Practices.....	6
Policy Forms and Underwriting .....	6
Treatment of Policyholders .....	7
Accounts and Records.....	7
General Accounting.....	7
Independent Accountants .....	7
Actuarial Memorandum .....	8
Financial Statements .....	8
Statement of Net Assets/Trust Fund Surplus as of June 30, 2009 .....	9
Statement of Contributions, Income and Expenses for the Year Ended June 30, 2009 .....	10
Reconciliation of Examination Changes to the Statement of Net Assets/Surplus as of June 30, 2009 .....	11
Reconciliation of Changes in Net Assets/Surplus, June 30, 2007 through June 30, 2009.....	12
Notes to the Financial Statements.....	13
Note (1) – Estimated Health Claims Incurred But Not Reported.....	13
Note (2) – Total Net Assets.....	14
Note (3) – Voluntary Contributions from Sponsor .....	14
Summary, Comments, and Recommendations .....	14
Summary .....	14
Comments and Recommendations .....	15
Conclusion .....	15
Affidavit of Examiner.....	16

*State of Idaho*

**DEPARTMENT OF INSURANCE**

C. L. "BUTCH" OTTER  
Governor

700 West State Street, 3rd Floor  
P.O. Box 83720  
Boise, Idaho 83720-0043  
Phone (208)334-4250  
FAX # (208)334-4398

WILLIAM W. DEAL  
Director

Boise, Idaho  
March 19, 2010

The Honorable William W. Deal  
Director of Insurance  
State of Idaho  
700 West State Street  
Boise, Idaho 83720

Dear Director:

Pursuant to your instructions, in compliance with Sections 41-219(1) and 4013(1), Idaho Code, we have conducted an examination as of June 30, 2009, of the financial condition and corporate affairs of:

Employers Resource Benefit Trust  
1301 South Vista Avenue, Suite 150  
Boise, Idaho 83705

hereinafter referred to as "ERBT" at its office in Boise, Idaho. The following Report of Examination is respectfully submitted.

## SCOPE OF EXAMINATION

This examination covered the period from December 5, 2007, the date the Certificate of Registration was issued, through June 30, 2009, and included such prior transactions and any material transactions and/or events occurring subsequent to the examination date and noted during the course of this examination. The examination was conducted in accordance with Sections 41-219(1) and 4013(1), Idaho Code. Verification and valuation of assets, liabilities, and net assets and an analysis and review of such other accounts and records as appropriate to the examination were also performed. There was some reliance upon the independent auditor's and the consulting actuary's work in this examination.

A letter of representation attesting to ERBT's ownership of all assets and to the nonexistence of unrecorded liabilities or contingent liabilities was signed by and received from Andy Loyst, Vice President of ERBT's trustee and administrator, American Guaranty Title & Trust, Inc. (AGT).

## PRIOR EXAMINATION

As noted below under *HISTORY AND DESCRIPTION*, ERBT was registered as a self-funded health care plan under Title 41, Chapter 40, Idaho Code, effective December 5, 2007. This is the first comprehensive examination of ERBT since the registration process.

## HISTORY AND DESCRIPTION

In 2006, the Idaho State Legislature amended Title 41, Chapter 40 of the Idaho Code. This amendment clarified that multiple employer welfare arrangement (MEWA) self-funded health care plans, among other entities, are subject to registration and regulation under Chapter 40.

Employers Resource Benefit Trust was organized on December 7, 2006 as a MEWA self-funded health care plan and commenced operations on January 1, 2007. Prior to that, the sponsor's self-funded health care benefits were provided through American Employers Benefit Trust, which was not registered with the Department. Its sponsor and trustor, Employers Resource Management Company (ERMC), is an administrative employer (a.k.a. professional employer organization or PEO) based in Boise, Idaho. ERMC provides administrative human resource services such as payroll processing, procuring/arranging for workers' compensation insurance and safety services, offering employee health benefits, providing HR consultation and dispute resolution services through eight branch offices located in North Carolina, Georgia, Arizona, Texas, California and Idaho. ERBT, a self-funded healthcare trust, was established solely to provide self-funded healthcare benefits for the employees of ERMC and "co-employees" of ERMC and ERMC's client companies.

On December 5, 2007, the Idaho Department of Insurance issued a certification of registration (No. 3842) to ERBT under Title 41, Chapter 40 of the Idaho Code.



## MANAGEMENT AND CONTROL

ERBT neither has a board of trustees, nor does it have any officers. However, American Guaranty Title & Trust, Inc. serves as trustee and administrator of ERBT. This arrangement is documented by an *Agreement and Declaration of Trust* between Employers Resource Management Company and AGT, where AGT was designated as the trustee and administrator of ERBT. As administrator and trustee, AGT is specifically designated a fiduciary of ERBT and is bound to carry out its responsibilities with the care, skill, prudence and diligence of a prudent man. In addition, under a service agreement between AGT and ERBT, AGT has agreed to administer the health plan for ERBT by providing services to ERBT necessary for it to operate in compliance with all applicable laws and regulations. AGT is solely owned by Douglas Gersema, who also is the sole director, president, secretary and treasurer. Mr. Gersema is responsible for ERBT's operation. Andy Loyst, Vice President of AGT was in charge of ERBT's daily operation. Mr. Loyst resigned on February 10, 2010 and, as of the end of this examination's fieldwork, there has been no replacement named for Mr. Loyst. Greg Rutherford, Chief Financial Officer of ERM, is the person in charge of the accounting records of ERBT. AGT also engaged Mercer Health & Benefits LLC and Columbia Benefits Inc. for consulting and brokerage services relating to the operation of ERBT.

ERM, ERBT's trustor and sponsor, is owned by the following individuals: George Gersema, Chairman & Chief Executive Officer (37%), Raymond O'Leary, President (29%), Mary Gersema, Vice President of Operations (27%), Douglas Gersema, Executive Vice President, Secretary, and Treasurer (7%) and various employees (non-voting shares).

### Conflict of Interest

ERBT's trustee and administrator, American Guaranty Title and Trust, Inc., did not have procedures in place which required persons having responsibility for the management of ERBT to disclose conflicts of interest as defined under Section 41-4015, Idaho Code. Upon recommendation by the examiner, the directors and officers of Employers Resource Management Company, Trustor and Sponsor of ERBT, and AGT, having responsibility for the management of ERBT, all completed conflict of interest statements covering the period from the inception of ERBT to June 30, 2009. No conflicts of interest were noted on these statements. It is recommended that AGT implement a procedure which requires each individual having responsibility for the management of ERBT to fill out a conflict of interest statement annually to document compliance with the aforementioned Code section.

## Contracts and Agreements

ERBT had the following agreement in effect at June 30, 2009:

### Agreement and Declaration of Trust

This agreement was made effective January 1, 2007 and amended on August 22, 2008 by Employers Resource Management Company (ERMC) and its affiliates, referred to as settlor and American Guaranty Title and Trust, Inc (AGT), referred to as trustee. The settlor “co-employs” individuals in tandem with its clients (the employers). The agreement states: “Settlor, clients and their employees desire to establish a trust for the purpose of providing health care benefits to the employees who are eligible under the plan to receive the benefits.” Through this agreement, ERBT was established and American Guaranty Title & Trust, Inc. was appointed trustee and administrator to run the operations of ERBT.

### Service Agreement

The service agreement was made effective January 1, 2007 between ERBT and AGT. In this agreement, ERBT retained AGT as an independent contractor and AGT agrees to act as administrator and to provide services to run the operations of ERBT. The agreement is continuous. Either party can terminate this agreement by providing notice to the other party effective the third month following the month in which such notice is given. For the years ended June 30, 2009 and 2008, ERBT incurred administrative support fees to AGT of \$201,000 and \$273,700 respectively.

### Third-Party Administration Services Agreement

This agreement was made between ERBT and JSA P5, Utah, LLC (a.k.a. P5) located at Salt Lake City, Utah. In this contract, P5 agreed to provide claims administration services, medical care management services and subrogation and recovery services to ERBT. This contract was renewed annually on a calendar basis. For the years ended June 30, 2009 and 2008, ERBT incurred claims administration expenses to P5 of \$250,567 and \$210,896 respectively.

## CORPORATE RECORDS

### Minutes of Meetings

A review of the minutes of the trustee actions for the period January 1, 2007 through January 11, 2010, indicated proper approval and recordings of ERBT’s major transactions, including approvals of the following: agreements with other parties, appointments of certified actuary and auditors, investments, benefit plans, stop-loss agreement, investment advisor and investment policy, etc. The minutes of these trustee actions were acknowledged and signed by Douglas Gersema, President and Andy Loyst, Vice President of AGT.

### FIDELITY BOND AND OTHER INSURANCE

An employee dishonesty insurance policy for the protection of ERBT was maintained through the period under examination. The coverage provided on this dishonesty insurance policy met the requirements specified in Section 41-4014 (3), Idaho Code.

The insurance company providing coverage to ERBT was licensed or otherwise authorized in the State of Idaho.

### TERRITORY AND PLAN OF OPERATION

As previously reported, ERBT was registered with the Idaho Department of Insurance as a self-funded health care plan on December 5, 2007. In this connection, Certificate of Registration Number 3842 was granted to ERBT to transact business in the State of Idaho. Operations of ERBT are performed at the trustee's office at Boise, Idaho.

ERBT currently provides services to approximately 800 individuals (employees) of client companies of Employers Resource Management Company (ERMC) and employees of ERMC and their dependents.

### GROWTH OF ERBT

ERBT's growth for the years indicated, as taken from the audited financial statements for the fiscal years ending June 30, 2008 and 2009, is shown in the following schedule:

<u>Year</u>	<u>Assets</u>	<u>Liabilities</u>	<u>Net Assets/ Trust Fund Surplus</u>	<u>Change in Net Assets</u>
2008	\$ 858,960	\$623,471	\$235,489	\$124,411
2009*	\$1,162,757	\$806,903	\$355,854	\$120,365

\*As determined by Examination.

### REINSURANCE

Under an excess policy (stop loss) between Companion Life Insurance Company (Companion Life) Columbia, South Carolina and ERBT, effective from January 1, 2009 through December 31, 2009, Companion Life agreed to provide coverage of up to a life time maximum of \$1,875,000 with a deductible of \$125,000 per person for the above period.

Effective January 1, 2010 through December 31, 2010, ERBT entered into another excess policy (stop loss) policy with QBE Insurance Corporation (QBE) New York, New York. This policy

also provides coverage of up to a life time maximum of \$1,875,000 with a deductible of \$125,000 per person for the 2010 calendar year.

Both of the above reinsurers are authorized insurers in Idaho.

## INSURANCE PRODUCTS AND RELATED PRACTICES

### Policy Forms and Underwriting

As previously mentioned, ERBT provides health care benefits to approximately 800 individuals (employees) of client companies of Employers Resource Management Company (ERMC), employees of ERMC, and their dependents. The benefit period is January 1st through December 31<sup>st</sup>.

ERBT offered the following four medical plans in 2009:

Preferred Medical Plan-provides coverage of a life time maximum of \$1 million with a calendar year deductible of \$1,500 for individuals and a \$3,000 deductible for a family (in network) and a calendar year deductible of \$3,000 for individuals and \$6,000 deductible for a family (out of network).

Deluxe Medical Plan-provides coverage of a life time maximum of \$2 million with a calendar year deductible of \$500 for individuals and \$1,000 deductible for a family (in network) and a calendar year deductible of \$1,000 for individuals and \$2,000 deductible for a family (out of network).

Consumer Direct \$20K-provides coverage (medical and Rx combined) up to a maximum of \$20,000 per calendar year with no deductible and a life time maximum of \$1 million. Routine and preventative services are limited to \$500 per year.

Consumer Direct \$50K- provides coverage (medical and Rx combined) up to a maximum of \$50,000 per calendar year with no deductible and a life time maximum of \$1 million. Routine and preventative services are also limited to \$500 per year.

Starting 1-1-2010, the above two consumer direct plans had been discontinued and were replaced by the following two plans:

2010 Sensible Basic Medical Plan – there is no calendar year deductible; however, there are limitations on medical services received such as the following: 15-day limit per year up to 300 days life time maximum for in-patient hospital and up to \$1,500 per day, doctor office visits are limited to 4 per year and \$50 per visit.

2010 Sensible Medical Plan-There is no calendar year deductible. Similar to the 2010 Sensible Basic Medical Plan, this plan provides slightly better benefits such as the following: 30-day

limit per year up to 300 days life time maximum for in-patient hospital and up to \$1,500 per day. Doctor office visits are limit to 4 per year and \$50 per visit.

### Treatment of Policyholders

#### Claims

As previously reported, JSAP5, Utah, LLC (P5) administers claims on behalf of ERBT under a third-party administration services agreement. A sample of claims handled by P5 was reviewed and no violations of Idaho Code Section 41-1329 (unfair claim settlement practices) were noted.

#### Complaints

ERBT offered to its members an inquiry and appeals procedure. In this regard, ERBT's third party administrator, P5, maintained a complaint log which recorded inquires and complaints received from providers and its members in compliance with Section 41-1330, Idaho Code. In addition, there was a procedure which allows members to appeal any adverse benefit determination to ERBT's administrator (AGT). No appeals were received by AGT during this examination period.

#### Privacy Practices

ERBT maintains privacy practices set forth under the Federal Health Insurance Portability and Accountability Act (HIPAA). The policy describes procedures used by ERBT to protect the privacy of employees and family members covered by ERBT.

## ACCOUNTS AND RECORDS

#### General Accounting

ERBT's accounting records are maintained on, and its financial reports are produced by, Employer Resource Management Company's accounting and information systems.

#### Independent Accountants

The annual independent audits of ERBT for the fiscal years (June 30) 2008 and 2009 were performed by Severn, Winkle & Magette, LLP, Boise, Idaho. The financial statements in each report were on a GAAP basis. There was some reliance on the 2008 and 2009 audit workpapers in this examination of ERBT.

### Actuarial Memorandum

Actuarial memorandums were prepared for the liability for incurred but not reported (IBNR) health claims by Kevin K. Gabriel, MBA, FSA, MAAA, Newington, Connecticut for fiscal years ending June 30, 2008 and 2009.

The claim reserve (IBNR) indicated by Mr. Gabriel's actuarial memorandum as of June 30, 2009 was \$697,020. This amount agreed with the IBNR reserve presented in the 2009 CPA report.

However, the review of the IBNR claim reserve by the contract actuary for the Idaho Department of Insurance indicated a reserve deficiency for the fiscal year ended June 30, 2009. See "Note 1" in the subsequent section of this report entitled "NOTES TO THE FINANCIAL STATEMENT" for a detailed discussion of the related examination adjustment. There was also a recommendation from the Department's actuary (see Note 1) that the ERBT actuary provide a "certification" within the actuarial memorandum.

### FINANCIAL STATEMENTS

The financial section of this report contains the following statements:

Statement of Net Assets/Trust Fund Surplus as of June 30, 2009

Statement of Contributions, Income & Expense for the Year Ending June 30, 2009

Reconciliation of Examination Changes for the Statement of Net Assets/Trust Fund Surplus as of June 30, 2009

Reconciliation of Net Assets/Trust Fund Surplus, June 30, 2007 through June 30, 2009

Statement of Net Assets/Trust Fund Surplus  
As of June 30, 2009

<u>Assets</u>	Per <u>ERBT</u>	<u>Examination</u> <u>Adjustments</u>	Per <u>Examination</u>
Cash	\$ 583,250	\$ 0	\$ 583,250
Investment, at fair value	523,525	0	523,525
Accrued interest receivable	3,057	0	3,057
Other receivable (stop loss)	<u>52,925</u>	<u>0</u>	<u>52,925</u>
Total Assets	<u>\$1,162,757</u>	<u>\$ 0</u>	<u>\$1,162,757</u>
 <u>Liabilities &amp; Net Assets/Trust Fund Surplus</u>			
Liabilities:			
Estimated health claims incurred but not reported – IBNR (Note 1)	\$697,020	\$ 73,951	\$ 770,971
Accounts payable	(2,568)	0	(2,568)
Due to Trustee	16,000	0	16,000
Accrued expenses	<u>22,500</u>	<u>0</u>	<u>22,500</u>
Total Liabilities	<u>\$ 732,952</u>	<u>\$ 73,951</u>	<u>\$ 806,903</u>
 Net Assets/Trust Fund Surplus:			
Surplus notes (Note 2)	\$ 240,000	\$ 0	\$ 240,000
Unassigned funds (Note 2)	<u>189,805</u>	<u>(73,951)</u>	<u>115,854</u>
Total Net Assets/Trust Fund Surplus (Note 2)	<u>429,805</u>	<u>(73,951)</u>	<u>355,854</u>
 <i>Total Liabilities &amp; Net Assets/Surplus</i>	 <u>\$1,162,757</u>	 <u>\$ 0</u>	 <u>\$1,162,757</u>

Statement of Contributions, Income & Expense  
For the Year Ended June 30, 2009

	<u>Per</u> <u>ERBT</u>	<u>Examination</u> <u>Adjustments</u>	<u>Per</u> <u>Examination</u>
<i>Contributions:</i>			
Contributions from members	\$2,899,322	\$ 0	\$2,899,322
Voluntary contributions from sponsor (Note 3)	<u>400,000</u>	<u>0</u>	<u>400,000</u>
Total Contributions	<u>\$3,299,322</u>	<u>\$ 0</u>	<u>\$3,299,322</u>
<i>Investment Income:</i>			
Investment income	\$ 13,983	\$ 0	\$ 13,983
Realized change in fair value of investments	(151,400)	0	(151,400)
Unrealized change in fair value of investments	20,596	0	20,596
Less: investment expenses	<u>660</u>	<u>0</u>	<u>660</u>
Net investment income (loss)	<u>(117,481)</u>	<u>0</u>	<u>(117,481)</u>
Total additions	<u>\$3,181,841</u>	<u>\$ 0</u>	<u>\$3,181,841</u>
<i>Payments:</i>			
Health claims	\$2,329,268	\$ 0	\$2,329,268
Insurance expense (stop loss)	247,249	0	247,249
Claims administration-TPA	<u>250,567</u>	<u>0</u>	<u>250,567</u>
Total Payments	<u>\$2,827,084</u>	<u>\$ 0</u>	<u>\$2,827,084</u>
<i>Other expenses:</i>			
Increase in estimated health claims incurred but not reported	\$ 101,020	\$ 73,951	\$ 174,971
Legal and professional fees	28,518	0	28,518
Administrative expenses	<u>210,903</u>	<u>0</u>	<u>210,903</u>
Total other expenses	<u>\$ 340,441</u>	<u>\$ 73,951</u>	<u>\$ 414,392</u>
Total expenses	<u>\$3,167,525</u>	<u>\$ 73,951</u>	<u>\$3,241,476</u>
<i>Net Contributions, Income &amp; Expense</i>	<u>\$ 14,316</u>	<u>\$ (73,951)</u>	<u>\$ (59,635)</u>



Reconciliation of Examination Changes  
To the Statement of Net Assets/Trust Fund Surplus  
As of June 30, 2009

Net Assets/Trust Fund Surplus per ERBT, June 30, 2009 \$ 429,805

<u>Account</u>	<u>Per</u> <u>ERBT</u>	<u>Per</u> <u>Examination</u>	<u>Increase/</u> <u>(Decrease)</u> <u>In Net Assets</u>
Estimated health claims incurred but not reported (Note 1)	\$ 697,020	\$ 770,971	\$ (73,951)

Net decrease in net assets (73,951)

Net Assets/Trust Fund Surplus per Examination, June 30, 2009 \$ 355,854

The rest of this page was intentionally left blank.

Reconciliation of Changes in Net Assets/Trust Fund Surplus  
June 30, 2007 through June 30, 2009

	<u>2008</u>	<u>2009*</u>
Net Assets/Surplus, End of Previous Year,	<u>\$ 111,078</u>	<u>\$ 235,489</u>
Net Contributions, Income & Expense	124,411	(59,635)
Surplus contribution (surplus note) from plan sponsor	<u>0</u>	<u>180,000</u>
Change in Net Assets/Surplus	<u>124,411</u>	<u>120,365</u>
Net Assets/Surplus, End of Current Year	<u>\$ 235,489</u>	<u>\$ 355,854</u>

\*Per Examination

The rest of this page was intentionally left blank.

## NOTES TO THE FINANCIAL STATEMENTS

Note (1) – Estimated Health Claims Incurred But Not Reported

\$770,971

### Reserve Deficiency

The captioned liability as of June 30, 2009 was examined by Taylor-Walker & Associates, Inc., contract actuary for the Idaho Department of Insurance. The result of its review and analysis indicates that ERBT's IBNR liability as of June 30, 2009 was deficient by \$85,985.

The examination adjustment resulted from reviewing the adequacy of the liability in retrospect, with the benefit of actual claims development subsequent to June 30, 2009. The Department's actuary stated that ERBT generally followed accurate and appropriate procedures in establishing its IBNR reserve, given information available at the time of the reserve analysis.

Additionally, the examination identified anticipated stop-loss recoverables (reserve credit for ceded losses) on unpaid claims in the amount of \$12,034; the effect of which was to offset the proposed examination adjustment of \$85,985. As a result, the following net examination adjustment was made to the June 30, 2009 IBNR liability:

IBNR Liability at 6/30/2009		\$ 697,020
Adjustments:		
Reserve Deficiency	85,985	
Anticipated Stop-Loss Recoverables	(12,034)	73,951
Adjusted IBNR Liability at 6/30/2009		<u>\$ 770,971</u>

Taylor-Walker concluded with the following recommendation: "It is recommended that ERBT continue to review its lag studies, methodologies and selections, and utilize those that will most closely estimate its IBNR reserve."

### Actuarial Certification

In accordance with Section 41-4010, Idaho Code, the Trust's reported reserve must be certified by a member of the American Academy of Actuaries as being necessary for payment of claims against the trust fund for benefits, including both claims reported and not yet paid and claims incurred but not yet reported. The Trust's consulting actuary, Mr. Kevin K. Gabriel, MBA, FSA, MAAA, issued an actuarial memorandum in support of his estimate of the Trust's IBNR reserve as of June 30, 2009. The Trust reported his estimate as IBNR in its June 30, 2009 financial statement. While it can be implicitly surmised that the actuary is certifying the Trust's reported reserve, the memorandum does not include an explicit certification of the booked reserve, as outlined in Section 41-4010, Idaho Code. We, therefore, recommend that the actuary include specific language in future actuarial memoranda certifying to the IBNR reserve booked by the Trust.

Note (2) – Total Net Assets/Trust Fund Surplus

\$355,854

The total net assets/trust fund surplus amount of \$355,854 as of June 30, 2009 is composed of two surplus note contributions from its trustor and sponsor, Employers Resource Management Company (ERMC) totaling \$240,000, with remaining unassigned funds of \$115,854. One surplus note was issued on January 1, 2007 in the amount of \$60,000 and the other was issued on December 1, 2008 in the amount of \$180,000. Both notes did not carry any interest. Pursuant to Sections 41-4021, and 41-2841, Idaho Code such loans are not allowed to be paid back to ERMC without prior approval by the Director of Insurance.

Note (3) – Voluntary Contributions from Sponsor

\$400,000

Employers Resource Management Company (ERMC), ERBT’s trustor and sponsor made the following voluntary contributions to ERBT: a total of \$300,000 for fiscal year 2008: \$150,000 on March 31, 2008 and \$150,000 on June 30, 2008; and \$400,000 for fiscal year 2009: \$150,000 on March 31, 2009 and \$250,000 on June 30, 2009. Subsequent to June 30, 2009, ERMC made an additional voluntary contribution of \$250,000 to ERBT on December 30, 2009.

SUMMARY, COMMENTS AND RECOMMENDATIONS

Summary

The results of this examination disclosed that as of June 30, 2009, ERBT had assets of \$1,162,757, liabilities of \$806,903 and net assets/trust fund surplus of \$355,854. Based on the adjusted June 30, 2009 IBNR reserve as stated in the financial statements in this examination report, ERBT’s minimum trust fund surplus as prescribed under Section 41-4010 (3), Idaho Code should be:

Minimum Surplus Computation

Adjusted trust fund surplus per this Report		\$355,854
Adjusted IBNR claims liability per this Report	\$770,971	
Percentage per Idaho Code	x .30	
Minimum surplus required by Idaho Code		<u>231,291</u>
Surplus in Excess of Idaho Code Requirement		<u>\$124,563</u>

Therefore, it appears that ERBT has complied with the minimum surplus requirement under Section 41-4010 (3), Idaho Code. However, as discussed earlier, the trust fund surplus included two surplus notes that totaled \$240,000 (see Note 2). In addition, ERMC made numerous voluntary contributions to ERBT that totaled \$950,000 during the period from January 1, 2008 through December 31, 2009. ERBT would be in adverse financial condition without the aforementioned assistance from ERMC.

Comments and Recommendations

Page

- 3 It is recommended that AGT implement a procedure which requires each individual having responsibility for the management of ERBT to fill out a conflict of interest statement annually to document compliance with Idaho Code Section 41-4015.
- 13 ERBT's IBNR reserve was deficient by \$73,951 (net of anticipated stop-loss recoverables on unpaid claims) as of June 30, 2009. It is recommended that ERBT continue to review its lag studies, methodologies and selections, and utilize those that will most closely estimate its IBNR reserve.
- 13 It is recommend that ERBT's actuary include specific language in future actuarial memoranda certifying to the IBNR reserve booked by the Trust.

CONCLUSION

The undersigned acknowledges the assistance and cooperation of the employees of Employers Resource Management Company and American Guaranty Title & Trust, Inc. in conducting the examination.

In addition to the undersigned, Scott Garduno, FSA, MAAA, Taylor-Walker & Associates, Inc. participated in the examination.

Respectfully submitted,



Kelvin Ko, CFE  
Senior Insurance Examiner  
State of Idaho  
Department of Insurance

AFFIDAVIT OF EXAMINER

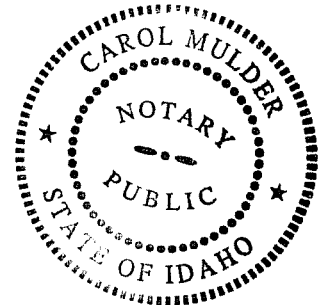
State of Idaho  
County of Ada

Kelvin Ko being duly sworn, deposes and says that he is a duly appointed Examiner for the Department of Insurance of the State of Idaho, that he has made an examination of the affairs and financial condition of *Employers Resource Benefit Trust* for the period from December 5, 2007 through June 30, 2009, that the information contained in the report consisting of the foregoing pages is true and correct to the best of his knowledge and belief; and that any conclusions and recommendations contained in this report are based on the facts disclosed in the information.

Kelvin Ko  
Senior Insurance Examiner  
Department of Insurance  
State of Idaho

Subscribed and sworn to before me the 19<sup>th</sup> day of March, 2010, at Boise, Idaho.

Carol Mulder  
Notary Public



My Commission Expires: 10-7-2010

# EXHIBIT B

C.L. "BUTCH" OTTER  
Governor

State of Idaho  
**DEPARTMENT OF INSURANCE**

700 West State Street, 3rd Floor  
P.O. Box 83720  
Boise, Idaho 83720-0043  
Phone (208)334-4250  
FAX # (208)334-4398

RECEIVED

MAR 22 PM 1:44  
WILLIAM W. DEAL  
Director  
STATE OF IDAHO  
DEPT OF INSURANCE

**WAIVER**

In the matter of the Report of Examination as of June 30, 2009, of:

**Employers Resource Benefit Trust**  
**1301 S. Vista Ave., Suite 200**  
**Boise, Idaho 83705**

By executing this Waiver, *Employers Resource Benefit Trust* (the Plan), hereby acknowledges receipt of the above-described examination report, verified as of the 19<sup>th</sup> day of March 2010, and by this Waiver hereby consents to the immediate entry of a final order by the Director of the Department of Insurance adopting said report without any modifications.

By executing this Waiver, the Plan/Trustee also hereby waives:

1. its right to examine the report for up to four (4) weeks as provided in § 41-4013(3), Idaho Code, and
2. its right to recommend to the director such corrections or changes therein as prescribed by § 41-4013(3), Idaho Code, and
3. any right to request a hearing under Idaho Code sections 41-227(5) and (6), 41-232(2)(b), or elsewhere in the Idaho Code, and
4. any right to seek reconsideration and appeal from the Director's order adopting the report as provided by section 41-227(6), Idaho Code, or elsewhere in the Idaho Code.

Dated this 22<sup>nd</sup> day of March, 2010

Douglas W. Gensema

Name (print)

Douglas W. Gensema

Name (signature)

President

Title