

REGULAR MEETING OF THE
OKLAHOMA WORKERS' COMPENSATION
COMMISSION

Friday, May 8, 2015
1:30 p.m.
Commission Chambers
1915 N. Stiles Ave.
Oklahoma City, Oklahoma
www.wcc.ok.gov

AGENDA

- CALL TO ORDER** **Mr. Wilson, Chair**
- ROLL CALL** **Mr. Wilson, Chair**
- NOTICE OF COMPLIANCE**..... **Holly Miller**

MINUTES

The drafted Minutes of Regular Commission Meeting on April 9, 2015, will be considered for approval.

INTRODUCTIONS

Chairman Wilson will welcome guests and recognize the newly appointed Commissioners.

Commissioner Gilliland will introduce the Commission's new Administrative Law Judge, Blair McMillin.

THE FOLLOWING MATTERS ARE PRESENTED FOR CONSIDERATION AND ACTION, IF ANY, DEEMED APPROPRIATE BY THE COMMISSION.

1. Proposed Commission Approval of Group Self-Insurance Applications for New Membership

Commission Rule 810:25-11-3 states a new membership to a self-insurance group may not become effective without Commission approval. All applications for membership are filed with the Commission. The application includes evidence of the execution of the indemnity agreement, power of attorney, and joint and several liability agreement, as required by 810:25-11-15, with signed approval of the applicant by the association, and is accompanied by a current balance sheet and income statement. The Commission will consider approving the following

applicants to the self-insurance group association to which they are applying for membership:

Oklahoma Automobile Dealers Self-Insurance Association (#75058)

Bartlesville Chrysler Dodge Jeep Ram, LLC
David Stanley of MWC, LLC

Possible Action:

Possible action may include, but is not limited to: taking no action, continuing the matter, approving or not approving David Stanley of MWC, LLC and/or Bartlesville Chrysler Dodge Jeep Ram, LLC as new member(s) of the Oklahoma Automobile Dealers Self-Insurance Association.

2. Discussion and Consideration of Procedure for Determining Account Balances of Option Guaranty Funds for Assessments under Section 205(D)

- A. Until the Insured Guaranty Fund under the Oklahoma Option contains Two Million Dollars (\$2,000,000.00) or if the amount in the fund falls below One Million Dollars (\$1,000,000.00), each insurer shall be assessed. The assessment is two percent (2%) of all gross direct premiums written during each quarter of the calendar year for insurance covering a benefit plan under this act after deducting from such gross direct premiums, return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings and other similar returns paid or credited to policyholders. 85A O.S. § 205(D)(1).
- B. Until the Self-insured Guaranty Fund under the Oklahoma Option contains One Million Dollars (\$1,000,000.00) or if the amount in the fund falls below Seven Hundred Fifty Thousand Dollars (\$750,000.00), each self-insurer shall be assessed a fee at the rate of one percent (1%) of the total compensation for permanent partial disability awards paid out during each quarter of the calendar year by the employers. 85A O.S. § 205(D)(2).

Therefore, the assessments are triggered when the fund balances fall below a specified amount, (a) Two Million Dollars (\$2,000,000.00) for the Insured Guaranty Fund, and (b) Seven Hundred Fifty Thousand Dollars (\$750,000.00) for the Self-insured Guaranty Fund. The Commission will consider establishing the following procedure for determining the Option Guaranty Funds' account balances each quarter: Deputy, Insurance Services reports the account balance of each Option Fund to the Commission at a Commission meeting prior

to the close of the quarter. The Commission determines if the balance has fallen below the amount that prompts the assessment. If the insureds or self-insureds are required to be assessed, each shall be assessed as provided in 85A O.S. Supp. 2013, § 205(D).

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; adopting the procedure as set forth; adopting a different procedure; or not approving a procedure.

3. Discussion and Determination of Account Balances of the Oklahoma Option Insured Guaranty Fund and the Oklahoma Option Self-insured Guaranty Fund

- A. If the account balance prompts an assessment to be issued for the Option Insured Guaranty Fund, it shall be paid to the Insured Guaranty Fund, care of the Commission. Each insurer shall be assessed two percent (2%) of all gross direct premiums written during each quarter of the calendar year for insurance covering a benefit plan under this act after deducting from such gross direct premiums, return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings and other similar returns paid or credited to policyholders.
- B. If the account balance prompts an assessment to be issued for the Option Self-insured Guaranty Fund, it shall be paid to the Self-insured Guaranty Fund, care of the Commission. Each self-insurer shall be assessed a fee at the rate of one percent (1%) of the total compensation for permanent partial disability awards paid out during each quarter of the calendar year by the employers.

Andrea Bair, Deputy, Insurance Services, will present the account balances of each of the Option Guaranty Funds to the Commission.

Possible Action:

- a. Option Insured Guaranty Fund- Possible action may include, but is not limited to: taking no action; continuing the matter; determining the balance is below the statutory amount requiring an assessment; or determining the balance is above the statutory amount not requiring an assessment.
- b. Option Self-insured Guaranty Fund- Possible action may include, but is not limited to: taking no action; continuing the matter; determining the balance is below the statutory amount requiring an assessment; or determining the balance is above the statutory amounts not requiring an assessment.

4. **Discussion and Consideration of Proposed Contract between the Commission and the Self-insurance Guaranty Fund Board**

Under 85A O.S. Supp. 2013, § 99 the Commission may contract with an appropriate state governmental entity, as approved by the Commission, for claims administration, including processing, investigating and paying valid claims against an impaired self-insurer with the monies from the released security. The Commission will consider approving a proposed contract with the Self-insurance Guaranty Fund Board to administer all impaired self-insurer claims.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; approving the contract as proposed; approving the contract with amendments; or not approving the contract with the Self-insurance Guaranty Fund Board.

5. **Discussion and Consideration of Appointing a Presiding Appellate Officer for Issues on Claims filed under the Oklahoma Employee Injury Benefit Act (Option)**

The Commission en banc hears appeals from an adverse benefit determination by the internal appeal process under the Option. With Option benefit plans being unfamiliar to many, there is confusion over procedures. Therefore the Commission recognizes the need for a Presiding Appellate Officer. The Presiding Appellate Officer or his designee will be authorized to handle routine appeal matters including, but not limited to the following: grant continuances, issue letters requesting information, issue notices of removal, and issue notices to parties regarding procedures. The Commission will consider appointing Commissioner Gilliland as the Presiding Appellate Officer, due to his many years' experience as a trial attorney.

Possible Action:

Possible action may include, but is not limited to: taking no action, continuing the matter, appointing Commissioner Gilliland as the Presiding Appellate Officer or appointing someone else as the Presiding Appellate Officer.

6. Discussion and Consideration of Proposed Lease for 3rd Floor Office Space for FY-16

The Commission will consider approving a proposed lease with the Office of Management and Enterprise Services (OMES) for the 3rd Floor office space in the Denver Davison Building for FY 2016 in the amount of \$82,515.96.

Possible Action:

Possible action may include, but is not limited to: taking no action, continuing the matter, approving the lease with OMES in the amount of \$82,515.96 or not approving the lease.

7. Consent Agenda for Travel Vouchers Currently Outstanding

85A O.S. §23 states any commissioner or employee of the Commission shall be entitled to receive his or her necessary traveling expenses as provided in the State Travel Reimbursement Act. The expenses shall be certified by the person who incurred them and shall be allowed and paid on presentation of vouchers approved by the Commission. In accordance with this section, the Commission will consider a vote to approve the currently outstanding vouchers.

All vouchers listed within this Consent Agenda have been made available to each Commissioner prior to today's meeting, are considered routine, and will be enacted by one motion of the Commission. If separate discussion is desired, that item may be removed from the Consent Agenda and separately voted upon.

Possible Action:

Possible action may include, but is not limited to: taking no action; approving some, all or none of the vouchers listed in this Consent Agenda; continuing the matter.

8. Consent Agenda for Payments Made from the Workers' Compensation Fund Currently Outstanding

85A O.S. §22(A)(5) states that all expenditures in the administration of the act shall be allowed and paid from the Workers' Compensation Fund on the presentation of itemized vouchers approved by the Commission. In accordance with this section, the Commission will consider a vote to approve the currently outstanding vouchers.

Possible Action:

Possible action may include, but is not limited to: taking no action; approving some, all or none of the vouchers listed in the Consent Agenda; continuing the matter.

9. Reports

THE FOLLOWING REPORTS ARE PRESENTED FOR INFORMATIONAL PURPOSES ONLY. NO ACTION WILL BE TAKEN.

A. Report from Andrea Bair, Deputy Insurance Services

Andrea Bair will report on the following activity in Insurance Services:

- Individual own risk employer permits issued by the Insurance Division.
- The receipt of funds, timeliness, and late penalties assessed for the annual assessment against the employers under the Oklahoma Employee Injury Benefit Act due April 1, 2015.

B. Report from Clif Cypert, Deputy Director

Clif Cypert will report on each active Commission 701 account. The 701 accounts maintain funds from a released security of an impaired self-insured. The funds are used to administer the workers' compensation obligations of that impaired self-insurer. A report of the payments made during the month of April from each active 701 account will be provided.

C. Report from Rick Farmer, Executive Director

- Executive Director, Rick Farmer will report on the Commission's 2014 and 2015 fiscal year budgets.
- Rick Farmer will report on the potential of utilizing Electronic Data Interchange (EDI) as the method of efficiently and accurately collecting required accident related data from trading partners via the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Release 3 EDI standard.

D. Report from Commissioner Gilliland

Commissioner Gilliland will report on the IAIABC 2015 Forum he attended on April 13-16, 2015.

E. Report from Commissioner Engle

Commissioner Engle will share some comments about her time at the Commission and the new position she is assuming at the end of the month.

10. Possible Executive Session for Confidential Communications Between the Commission and Its Attorneys Concerning Ongoing Investigation by Commission's Compliance Division Involving A to Z Recycling LLC Pursuant to Title 25 O.S. § 307(B)(4)

Pursuant to 25 O.S. § 307(B)(4), an Executive Session is proposed for the purpose of conducting confidential communications between the Commission and its attorneys concerning ongoing investigation by the Commission's Compliance Division involving A to Z Recycling LLC.

The Commission's counsel from the Attorney General's Office has advised that public disclosure of the communications relating to these investigations and claim will seriously impair the ability of the Commission and its counsel to take appropriate action related to the ongoing investigations and claim.

11. Possible Executive Session Pursuant to Title 25 O.S. § 307(B)(1) for the purpose of discussing the employment evaluations, promotion, or performance of Commission's Administrative Law Judges: Shane Curtin, Mike Egan, Tara Inhofe, Blair McMillin and Tish Sommer; and for the purpose of discussing the employment evaluations, promotion, demotion, or performance of Commission employees, Ray Andrews, Virginia Forshee, Ann Campbell, Eric Russell, and Teresa Allen

A. Motion and Vote to:

- (i) Determine that disclosure of the communications will seriously impair the ability of the Commission to take appropriate action in the ongoing investigation of A to Z Recycling; and
- (ii) Go into Executive Session for purposes of:
 - a. Discussing the pending claim with ongoing compliance investigation of A to Z Recycling under §307(B)(4); and
 - b. Discussing the employment evaluations, promotion, or performance of the Administrative Law Judges Shane Curtin, Mike Egan, Tara Inhofe, Blair McMillin and Tish Sommer; and the employment evaluations, promotion, demotion, or performance of Commission employees, Ray

Andrews, Virginia Forshee, Ann Campbell, Eric Russell, and Teresa Allen under § 307(B)(1).

B. Vote to Reconvene in Open Session

Possible Action:

a. Possible action may include but is not limited to taking no action; continuing the matter; or instructing counsel to take any necessary actions in the A to Z Recycling LLC compliance investigation case as discussed and recommended by counsel in executive session.

b. Possible action may include but is not limited to taking no action; continuing the matter; or promoting one of Commission's Administrative Law Judges Shane Curtin, Mike Egan, Tara Inhofe, Blair McMillin or Tish Sommer.

c. Possible action may include but is not limited to taking no action; continuing the matter; or taking action as discussed in executive on the Employment Evaluations of Ray Andrews, Virginia Forshee, Ann Campbell, Eric Russell, or Teresa Allen.

12. Announcements

Commission's next regularly scheduled meeting is scheduled for June 18, 2015.

ADJOURNMENT.....Mr. Wilson, Chair