

# REGULAR MEETING OF THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

Thursday, April 9, 2015  
1:30 p.m.  
Commission Chambers  
1915 N. Stiles Ave.  
Oklahoma City, Oklahoma  
[www.wcc.ok.gov](http://www.wcc.ok.gov)

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## *AGENDA*

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**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 March 23, 2015, will be considered for approval.

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

**1. Proposed Commission Approval of Group Self-Insurance Application 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 applicant to the self-insurance group association to which it is applying for membership:

**Oklahoma Automobile Dealers Self-Insurance Association (#75058)**

**Orr Motors of Greenville, Inc. dba Toyota of Lawton**

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, approving or not approving Orr Motors of Greenville, Inc. dba Toyota of Lawton as a new member of the Oklahoma Automobile Dealers Self-Insurance Association.

**2. Discussion and Consideration of Approving the Distribution of Surplus Monies to Members of the Oklahoma Health Care Association**

Oklahoma Health Care Association (Association), a group self-insurance association, is requesting a distribution of surplus back to its members in the amount of \$600,000 from the three fiscal years ending on June 30, 2011, June 30, 2012, and June 30, 2013. The Association's December 31, 2014, financial statement shows an overall surplus for the Association of more than \$3,665,000. Commission Rule 810:25-11-10 states that any surplus monies may be declared refundable by the association's board. The date and manner of the distribution shall be declared by the association's board and shall be in accordance with the association's bylaws. The board shall submit the distribution request to the Commission, with all supporting documents. The Commission will consider approving the distribution of surplus monies to members of the Oklahoma Health Care Association.

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, approving some, all or none of the distribution of the surplus monies to the members of the Oklahoma Health Care Association.

**3. Discussion and Consideration of Adopting Urine Drug Screen Guidelines**

85A O.S. § 17(B) provides that the Physician Advisory Committee (PAC) will advise the Commission regarding utilization review as it relates to the medical practice and treatment of work-related injuries. Such utilization review shall include a review of reasonable and necessary medical treatment; abusive practices; needless treatments, testing, or procedures; or a pattern of billing in excess of or in violation of the Schedule of Medical Fees. The Physician Advisory Committee shall review and make findings and recommendations to the Commission with respect to charges of inappropriate or unnecessary treatment or procedures, abusive practices, or excessive billing disclosed through utilization review. The PAC received input from a wide variety of sources and held a public hearing on the development of the proposed urine drug

screen testing guidelines. The PAC unanimously voted at its March meeting to recommend the following policy to the Commission:

**Urine Drug Screen Testing in Workers' Compensation**

1. A Dipstick Urine Drug Screen is allowable at each individual office visit.
2. A Confirmatory Analysis following a suspected abnormality on the Dipstick Urine Drug Screen is permissible for no more than forty (40) individual tests every twelve (12) months.

The Commission will consider adopting the urine drug screen guidelines as proposed by the PAC.

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, adopting the urine drug screen guidelines as proposed, or adopting alternative urine drug screen guidelines.

**4. Discussion and Consideration of Assessment and Assessment Rate for the Multiple Injury Trust Fund (MITF)**

The commissioners of the Workers' Compensation Commission shall establish an assessment rate applicable to each mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier writing workers' compensation insurance in this state, each employer carrying its own risk, and each group self-insurance association, for purposes of computing the assessment necessary to pay the annual obligations of the Multiple Injury Trust Fund determined on or before December 31 of each year by the MITF Director, to be outstanding for the next calendar year. The rate shall be equal for all parties required to pay the assessment. The maximum assessment rate is six percent (6%). The Commission will consider establishing the assessment rate for the MITF. Mark Bolerjack, the Chief Financial Officer, from the Multiple Injury Trust Fund will be available to answer questions about the upcoming annual assessment.

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, approving an assessment rate.

**5. Proposed FY-2016 Contract between the Commission and the Oklahoma Office of the Attorney General**

The Commission will consider a proposed contract engaging the legal services of the Oklahoma Office of the Attorney General for FY-2016. The cost of the contract is \$137,568.00, which includes salary, benefits and charges by the Office of the Attorney General.

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, or approving the contract with the Attorney General's Office in the amount of \$137,568.00.

**6. 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.

**7. 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.

**8. 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 and provide an overview of the security required to be posted by those employers.
- The receipt of funds 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 the following:

- Current financial report for the Commission.
- Performance Management Process (PMP) for the Commission

**9. 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 and the Ongoing Investigation by Commission's Compliance Division and Related Ongoing Bankruptcy Involving Texoma Peanut Company, 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 and the ongoing investigation by the Commission's Compliance Division and the bankruptcy involving the Texoma Peanut Company, a former self-insured.

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

**10. Possible Executive Session Pursuant to Title 25 O.S. § 307(B)(1) for the purpose of discussing the hiring, salary or employment of the**

**Candidate A, Candidate B, Candidate C and/or Candidate D for the position of Commission ALJ; and for the purpose of discussing employment evaluations, promotion, or performance of Commission's Administrative Law Judges: Shane Curtin, Mike Egan, Tara Inhofe and Tish Sommer**

**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 LLC and the ongoing investigation and bankruptcy proceeding of Texoma Peanut Company; and

(ii) Go into Executive Session for purposes of:

- a. Discussing the pending claim with ongoing compliance investigation of A to Z Recycling LLC and ongoing investigation and bankruptcy of Texoma Peanut under §307(B)(4); and
- b. Discussing the hiring, salary or employment of the Candidate A, Candidate B, Candidate C and/or Candidate D for the position of Commission ALJ; and discussing the employment evaluations, promotion, or performance of the Administrative Law Judges Shane Curtin, Mike Egan, Tara Inhofe and Tish Sommer, 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 instructing counsel to make any necessary filings in the bankruptcy proceeding; or taking other actions as discussed and recommended by counsel in Executive Session.

c. Discussion and possible action on hiring, salary or employment of Candidate A, B, C or D for future ALJ position as discussed in Executive Session.

d. No action is anticipated nor will be taken by the Commission with regard to the employment evaluations, promotion or performance of Commission's Administrative Law Judges Shane Curtin, Mike Egan, Tara Inhofe or Tish Sommer.

**11. Announcements**

Commission's next regularly scheduled meeting has been rescheduled for May 8, 2015.

**ADJOURNMENT.....Mr. Wilson, Chair**