



STATE OF OKLAHOMA

**WORKERS' COMPENSATION COMMISSION**

M I N U T E S

of the

WORKERS' COMPENSATION COMMISSION  
FOR THE STATE OF OKLAHOMA

for the  
October 30, 2014  
Special Public Meeting

MINUTES OF THE MEETING OF THE WORKERS' COMPENSATION COMMISSION FOR THE STATE OF OKLAHOMA

NOTICE OF THIS MEETING WAS FILED WITH THE SECRETARY OF STATE ON THURSDAY, DECEMBER 12, 2014.

The members of the Workers' Compensation Commission for the state of Oklahoma met at 1915 N. Stiles Ave., Oklahoma City, Oklahoma, on October 30, 2014.

Members present: Chairman Troy Wilson, Commissioner Denise Engle, Commissioner Bob Gilliland. Others in attendance: Neal Leader, Rick Farmer, Andrea Bair, Jay Cannon, Kim Bailey, Holly Miller. Chairman Wilson expressed appreciation for those in attendance. After the roll was taken, he announced the presence of a quorum and the Statement of Compliance with the Open Meetings Act was read. The meeting was called to order at approximately 9:30 a.m.

**1. Discussion and Consideration of Approving an Accounting by Self-Insurance Guaranty Fund of Amount Paid for Arrow Trucking Claims and Withdrawal of Excess Funds to Deposit into a Separate 701 Account**

The Commission received and deposited into the Self-insurance Guaranty Fund (Guaranty Fund) a distribution of \$652,304.45 from the Thureus Insurance Group, Inc. receivership. Thureus was a captive insurance company and affiliate of Arrow Trucking Company, a former Oklahoma self-insured employer which had gone into receivership. An accounting by the Guaranty Fund was necessary to determine the amount the Guaranty Fund actually paid for Arrow Trucking claims. The accounting the Commission received shows the Guaranty Fund has made payments to date of \$201,304.90 for Arrow Trucking obligations. The Commission considered approving the accounting and withdrawing from the Guaranty Fund the excess monies, \$450,999.56, from the distribution over the amount the Guaranty Fund paid for Arrow Trucking claims and depositing those funds in a 701 account used exclusively for Arrow Trucking workers' compensation obligations.

Chairman Wilson recognized Executive Director, Dr. Rick Farmer, to present Agenda Item 1.

**Motion:** Chairman Wilson moved that the Commission approve the accounting and the transfer of funds to a 701 account.

**Second:** Commissioner Gilliland.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

**2. Discussion and Consideration of an Assessment and Assessment Rate for the Self-insurance Guaranty Fund**

85A O.S. §98 provides as follows: Until the Self-insurance Guaranty Fund contains Two Million Dollars (\$2,000,000.00) or in the event the amount in the fund falls below One Million Dollars (\$1,000,000.00), an assessment against each private self-insurer and group self-insurance association based on an

assessment rate to be determined by the commissioners, not exceeding one percent (1%) of actual paid losses of the self-insurer during the preceding calendar year, payable to the Tax Commission for deposit to the fund. The assessment against private self-insurers shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to private self-insurers bears to the actual paid losses of all private self-insurers for the year period of January 1 through December 31 preceding the assessment. The assessment against group self-insurance associations shall be determined using a rate equal to the proportion that the deficiency in excess of the surplus of the Group Self-Insurance Association Guaranty Fund at the date of the transfer attributable to group self-insurance associations bears to the actual paid losses of all group self-insurance associations cumulatively for any calendar year preceding the assessment.

Chairman Wilson recognized Executive Director, Dr. Rick Farmer, to present a report on Item 2, which is described below.

85A O.S. §98 indicates the Workers' Compensation Commission (WCC) should issue an assessment against the actual paid losses of all private self-insured employers if the SIGF balance falls below \$1,000,000. The balance is checked in March and September each year and an official letter is issued by the Oklahoma Tax Commission stating the balance. The statute does not provide a deadline for making an assessment. In September, 2013 the SIGF had a balance of \$1,427,762. The SIGF board and its third party administrator (TPA) worked tirelessly to settle as many claims as possible before the new workers' compensation law took effect. This effort reduced the SIGF's monthly benefit payout, its long-term liability and its cash-on-hand balance. In March, 2014 the SIGF had \$248,951.

The Self-Insurance Guaranty Fund (SIGF) is established to pay claims to injured workers whose self-insured employer became impaired. Currently, the SIGF pays about \$200,000 per year in benefits to claimants. The SIGF has always met its obligations and no assessment has ever been levied. Although the SIGF settled several claims, drawing down its balance, it continues to be financially sound.

Self-insured companies are required to post a security against outstanding claims reserves. If the employer becomes impaired the security is called and the proceeds are deposited into a separate trust account. The trust is used to pay outstanding claims. If this trust becomes exhausted all remaining claims become the responsibility of the Self-insurance Guaranty Fund.

Self-insured employers carry stop-loss (excess) insurance to limit large losses. The SIGF receives reimbursements from these excess carriers from time to time. The March balance did not constitute an urgent need because the SIGF was anticipating income from these reimbursements. The board was able to fully meet its obligations. At that time the Workers' Compensation Commissioners faced a conflict of interest between their role on the Commission and their statutory membership on the SIGF board. The SIGF chairman did not schedule any meetings of the board until the Legislature resolved the conflict of interest. Members of the Commission felt they could not act on a possible assessment while this conflict remained in statute. The conflict was resolved in SB 1948 (2014).

In June, the Commissioners received official word that a distribution of \$652,304 would be received from the Thureus Insurance Group receivership payable jointly to the SIGF and the WCC. Thureus was a captive insurance company of Arrow Trucking. Upon the recommendation of its attorney, the Commission voted to deposit the full amount into the SIGF. This brought the SIGF near \$1,000,000. The

fund balance and likelihood of additional income from reimbursements suggested that no immediate assessment was needed and the Commissioners chose to table discussion of an assessment at the same meeting.

October 6, 2014 the Commission received notice from the Tax Commission that the official SIGF balance on September 1 was \$834,171. By September 24 the balance had climbed to \$981,000. However, the new attorney advising the Commission recommended transferring a portion of the Arrow Trucking distribution back to the trust fund and recommended that the Commission consider an assessment.

The Commission staff assembled the actual paid loss data for both active and inactive private self-insured employers. Collecting these data from the inactive companies was a multistep process. Also, the staff contacted the SIGF and its TPA to gather information about account balances, claims and expenses. All of this information is essential for the Commission to make an informed decision on assessing employers. The SIGF chairman and their TPA acted swiftly to provide the information. The chairman of the SIGF and the chairman of the Commission met October 23 to discuss the situation. They agreed that it was appropriate to transfer \$450,999 from the SIGF to the Arrow Trucking trust account. The SIGF retained \$201,305 as reimbursement for Arrow claims paid over the years. That would leave the SIGF with a balance of \$530,001.

The assessable paid losses for 2013 are \$105,805,629. A maximum assessment of 1 percent will yield \$1,058,056, giving the SIGF a balance of \$1,588,057. Since the SIGF distributes about \$200,000 per year in benefits, this balance could keep the SIGF solvent for more than seven years. Any assessment will have a significant impact on Oklahoma employers. No assessment has ever been issued. Each of the Commissioners and the members of the guaranty board take this responsibility seriously. All parties involved want to make sure that the Commissioners have the needed financial information before reaching a conclusion.

On October 27, the chairman of the SIGF provided an analysis indicating a need for an assessment. Once the Arrow funds are transferred out, a full 1% assessment will be needed to put the SIGF balance safely above the \$1,000,000 threshold. The SIGF has met all of its past obligations and is able to meet its current obligations. An assessment will assure that it can meet its future obligations for many years to come.

***Motion:*** Commissioner Engle moved that the Commission approve an assessment at a rate of 1 percent of 2013 actual paid losses.

***Second:*** Commissioner Gilliland.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

### **3. Discussion and Consideration of Setting Oral Arguments Before the Commission en banc**

The Commission has approximately eight (8) appeals fully briefed and ready to be set before the Commission en banc. The Commission considered a recommendation to approve the setting of the appeals as soon as proper notice can be given to the parties and the schedules of the Commissioners coordinated.

**Motion:** Commissioner Gilliland moved to set any pending cases ready to be heard before the Commission En Banc, as soon as proper notice is given to the parties and the schedules of the Commissioners can be coordinated.

**Second:** Chairman Wilson.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

#### **4. Consent Agenda**

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 vote to approve the currently outstanding vouchers attached hereto as **Attachment A**.

**Motion:** Chairman Wilson moved to approve all of the vouchers listed in **Attachment A** except number 7, which would be considered in a separate motion.

**Second:** Commissioner Gilliland.

Those voting aye: Commissioner Engle, Commissioner Gilliland, and Chairman Wilson.

**The motion carried.**

**Motion:** Commissioner Gilliland moved to approve the voucher listed as number 7 in **Attachment A**.

**Second:** Commissioner Engle.

Those voting aye: Commissioner Engle and Commissioner Gilliland.

Abstentions: Chairman Wilson.

**The motion carried.**

#### **Adjournment**

Chairman Wilson announced the next Regular Meeting of the Commission for Thursday, November 20, 2014.

**Motion** to adjourn: Commissioner Engle.

**Second:** Commissioner Gilliland.

Those voting aye: Chairman Wilson, Commissioner Engle, Commissioner Gilliland.

**The motion carried.** The meeting was adjourned.

## CONSENT AGENDA

<u>PAYEE</u>	<u>VOUCHER #</u>	<u>VOUCHER AMOUNT</u>
1. Patricia Sommer- Travel	00000828	\$68.23
2. Bryce A. Hill- Travel	00000829	\$125.40
3. Tara Inhofe- Travel	00000847	\$69.84
4. Tara Inhofe- Travel	00000848	\$69.70
5. Valerie Rossiter- Travel	00000849	\$67.32
6. Shane Curtin- Travel	00000850	\$68.00
7. Troy Wilson- Travel	00000851	\$59.41
8. Kathryn Fothergill- Travel	00000852	\$70.81
9. Kathryn Fothergill- Travel	00000853	\$70.81