



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

September 10, 2015

Special Public Meeting

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

The members of the Workers' Compensation Commission for the state of Oklahoma met at 1915 N. Stiles Ave., Oklahoma City, Oklahoma, on September 10, 2015.

Members present: Chairman Gilliland, Commissioner Liotta, and Commissioner Young.

Others in attendance on behalf of the Commission: Kim Bailey, Neal Leader, Jay Cannon, Clif Cypert, Lindsey Christopher, Stormy Moore, and Tiffany Pratt.

Chairman Gilliland 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 Meeting Act was read. The meeting was called to order at approximately 1:35 p.m.

**Approval of Minutes**

Chairman Gilliland presented the minutes of the August 19, 2015 public meeting for approval.

**Motion:** Commissioner Liotta moved to approve the minutes of the August 19, 2015 public meeting.

**Second:** Commissioner Young.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

***The motion carried.***

**1. Discussion and Consideration of Releasing the Letter of Credit for Continental Resources, a Former Own Risk Employer (#17950)**

*A security deposit posted with the Commission as required by 810:25-9-4 must remain in place, at its existing amount, for two years after an individual own risk employer voluntarily leaves self-insurance. A security deposit may be reduced at the Commission's discretion after the two year waiting period upon application by the employer and submission of current financial statements and workers' compensation loss runs.*

*A security deposit may be released at the Commission's discretion upon application by the employer and submission of current financial statements and a signed and notarized affidavit, from a duly authorized officer of the employer, affirming that all workers' compensation claims incurred under the own risk permit of the employer have been permanently closed, and the statute of repose for reopening the claims has passed. The Commission considered whether to release a Letter of Credit for Continental Resources in the amount of \$375,000.*

Stormy Moore, Insurance Director, made a presentation and recommended approval.

**Motion:** Commissioner Young moved to release the Letter of Credit for Continental Resources, a Former Own Risk Employer, which is labeled as Agenda Item 1 and included as a part of these minutes.

**Second:** Commissioner Liotta.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

**2. Discussion and Consideration of Distribution of Surplus Monies to Members of the Oklahoma Automobile Dealers Self Insured Association**

*Oklahoma Automobile Dealers Self Insured Association (Association), a group self-insurance association, requested a distribution of surplus back to its members in the amount of \$3,400,000 from the five fiscal years ending on June 30, 2008, June 30, 2011, June 30, 2012, June 30, 2013 and June 30, 2014. The Association's financial statement shows an overall surplus of more than \$10,495,937 for all years combined. 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 submitted the distribution request to the Commission, with all supporting documents. The Commission considered approving the distribution of surplus monies to members of the Oklahoma Automobile Dealers Self Insured Association.*

Stormy Moore, Insurance Director, made a presentation and recommended approval.

**Motion:** Chairman Gilliland moved to distribute the surplus monies to the members of the Oklahoma Automobile Dealers Self Insured Association which is labeled as Agenda Item 2 and included as a part of these minutes.

**Second:** Commissioner Liotta.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

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

*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.*

*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.*

Chairman Gilliland recognized Stormy Moore, Insurance Director to present the account balances of each of the Option Guaranty Funds to the Commission.

**Motion:** Chairman Gilliland moved to determine the account balances of the Oklahoma Option Insured Guaranty Fund and the Oklahoma Option Self-Insured Guaranty Fund were below the statutory amount requiring an assessment.

**Second:** Commissioner Liotta.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

#### 4. **Personnel Policy**

The Human Resources Director, Clif Cypert made a report on the proposed At Will Employment Policy and Family Leave and Medical Act.

The Commission discussed and considered approving the following agency policies: At Will Employment Policy and Family Leave and Medical Act.

Clif Cypert recommended the Commission approve policies.

**Motion:** Commissioner Liotta moved to amend the 1<sup>st</sup> paragraph of the At Will Employment Policy by striking the words “and therefore” to say ...”All employees of the WCC are “at will” who serve at the pleasure of the Chairman or Commission as specified in statute.”

**Second:** Commissioner Young.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

**The motion carried.**

**Motion:** Commissioner Young moved to amend the 3rd paragraph At Will Employment Policy to say ... “before the Chairman or Commission as specified in the statutes may exercise discretion... “and approve the At Will Policy which is labeled Agenda Item 4 and included as a part of these minutes.

**Second:** Chairman Gilliland.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

**The motion carried.**

**Motion:** Chairman Gilliland moved to approve the FMLA policy which is labeled Agenda Item 4 and included as part of these minutes.

**Second:** Commissioner Young.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

**The motion carried.**

## **5. Discussion and Consideration of Bifurcated Proposed Judgment for Failing to Secure Coverage Form**

*The reviewing attorney in a compliance investigation may recommend bifurcating the proposed judgment and penalty assessment to allow employers the opportunity to remedy violations prior to penalty assessment. First, a proposed judgment of non-compliance may be issued notifying the employer of the WCC's determination and intent to assess penalties. If the employer then remedies the violation by securing coverage, the penalty may be reduced accordingly. If the employer fails to secure coverage, the Commission may petition to enjoin the business from engaging in further employment and issue stricter penalties. Employers may still have the opportunity to challenge the proposed judgment and the subsequent penalty assessment in a final hearing. The Commission considered a new Proposed Judgment for bifurcating the Proposed Judgment for Non-Compliance from the Proposed Judgment to Assess a Penalty as another option for the Compliance division in issuing a Proposed Judgment.*

Commission Counsel, Lindsey Christopher, made a report on the Bifurcated Proposed Judgment for Failing to Secure Coverage. She recommended approval of this policy.

**Motion:** Chairman Gilliland moved to approve the Bifurcated Proposed Judgement policy as another option that can be used by the Commission in addition to those in place.

**Second:** Commissioner Young.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

## **6. Commission Consideration of Sponsorship of Educational Programs for Independent Medical Examiners**

*Under Commission Rule 810:15-9-1, one of the requirements is that Independent Medical Examiners must attend "Commission sponsored education programs at least once every two (2) years . . ." Presented for the Commission's consideration were the following programs presented at the Oklahoma Annual Workers' Compensation Commission Educational Conference on October 1, 2015, with additional programs to be considered at future meetings: a) Practical Use of AMA Guides Requirements for IME Panel Discussion; and b) Practical Use of ODG with Real Case Studies.*

Chairman Gilliland recognized Dr. Jay Cannon, Medical Director for discussion. Dr. Cannon recommended approval.

**Motion:** Commissioner Young moved to approve the programs for Commission sponsorship.

**Second:** Commissioner Liotta.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

## **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 considered a vote to approve the currently outstanding vouchers, listed as Agenda Item 7 as included as part of these minutes.

**Motion:** Commissioner Young moved to approve the travel vouchers currently outstanding.

**Second:** Commissioner Liotta.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

## **8. Report on the National Workers' Compensation Regulators College**

Chairman Gilliland reported on his participation at the National Workers' Compensation Regulators College in Orlando, and the IAIABC 101<sup>st</sup> Annual Convention in Chicago, IL. His reports are labeled as Agenda Item 8 and are included as a part of these minutes.

## **9. Executive Session**

*Pursuant to 25 O.S. § 307(B)(1), an Executive Session was proposed for the purpose of discussing the hiring, salary or employment of Candidates A or B for the position of Financial Analyst; and for the purpose of discussing the hiring, salary or employment of Candidate A or B for Insurance Services clerk.*

**Motion:** Chairman Gilliland moved to go into Executive Session for the purpose discussing the hiring, salary or employment of Candidate A or B for the position of Financial Analyst and discussing the hiring, salary or employment of Candidate A or B for Insurance Services clerk under § 307(B)(1).

**Second:** Commissioner Liotta.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

**The motion carried**

## **B. Vote to Reconvene in Open Session**

**Motion:** Commissioner Liotta moved to reconvene in Open Session.

**Second:** Commissioner Young.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

**The motion carried.**

No action was taken with regard to the hiring, salary or employment of Financial Analyst or Insurance Services clerk.

**Announcements**

The next regular meeting of the Commission is scheduled for October 8, 2015.

**Adjournment**

*Motion:* Commissioner Liotta moved to adjourn.

*Second:* Commissioner Young.

Those voting aye: Commissioner Liotta, Commissioner Young, and Chairman Gilliland.

**The motion carried.**

Chairman Gilliland announced the meeting was adjourned.