

# FINAL REPORT

## TASK FORCE ON THE PRIVATIZATION OF COMPSOURCE OKLAHOMA



Senator Cliff Aldridge, Co-Chairman

Representative Daniel Sullivan, Co-Chairman

**December 1, 2009**

FINAL REPORT

**TASK FORCE ON THE PRIVATIZATION OF  
COMPSource OKLAHOMA**

House Bill 1963 (2009)

Senator Cliff Aldridge, Co-Chairman

Representative Daniel Sullivan, Co-Chairman

Report Submitted: December 1, 2009

This publication is available on the Oklahoma House of Representatives Publications webpage, under Final Reports of Task Forces and Commissions, Task Force on the Privatization of CompSource Oklahoma Final Report 2009, at the following link:

[http://www.okhouse.gov/Information/Info\\_Publications.aspx](http://www.okhouse.gov/Information/Info_Publications.aspx).

Required notice and copies have been provided to the Oklahoma Department of Libraries.

## **Task Force on the Privatization of CompSource Oklahoma Members**

Senator Cliff Aldridge, *Task Force Co-Chairman*  
Representative Daniel Sullivan, *Task Force Co-Chairman*  
Insurance Commissioner Kim Holland  
James Stergiou, Chairman and CEO, SGRisk, LLC  
Michael Clingman, Director, Office of State Finance  
Mike Seney, Senior Vice President, Operations, The State Chamber  
Lee Ann Alexander, Liberty Mutual  
Dan Ramsey, President & CEO, Independent Insurance Agents of Oklahoma

---

### **Task Force Staff**

#### **House of Representatives Staff**

Katie Altshuler, Policy Director & Counselor to the Speaker  
Craig Perry, Deputy Leadership Assistant to the Speaker  
Amy Alden, General Counsel  
Dante Giancola, Director of Committee Staff-Research  
Arnella Karges, Committee Staff-Research  
Scott Raybern, Committee Staff-Legal  
John McPhetridge, Committee Staff-Fiscal

#### **State Senate Staff**

Gwendolyn Caldwell, Majority Leadership Legislative Director  
Brittnee Preston, Majority Leadership Legislative Assistant  
Marsha Bond, Legislative Analyst  
Tracy Kersey, Legislative Analyst and Attorney  
Cheryl Purvis, Attorney  
Randy Dowell, Director of Fiscal Staff

# Table of Contents

Task Force Members .....	iv
Introduction .....	1
Background.....	2
Task Force Members' Findings And Recommendations.....	3
Senator Cliff Aldridge, Co-Chairman	
Representative Daniel Sullivan, Co-Chairman	
Insurance Commissioner Kim Holland	
James Stergiou	
Submitted Memo Re: Recommendations	
Michael Clingman	
Mike Seney	
Submitted Memo Re: Findings & Recommendations	
Lee Ann Alexander	
Dan Ramsey	
Proceedings Of Task Force .....	25
October 21, 2009 Meeting: Task Force Member Comments	
November 5, 2009 Meeting: Task Force Member Comments	
Index To Appendices .....	39
Appendices	

# Introduction

In the First Session of the 52nd Legislature, House Bill 1963 was enacted, creating the Task Force on the Privatization of CompSource Oklahoma. As the bill states, the goal of the privatization of CompSource Oklahoma is “to create a stable, predictable, competitive workers’ compensation market place in the State of Oklahoma for the benefit of Oklahoma employers and employees.” To fulfill the Legislature’s intent to privatize CompSource Oklahoma, the Task Force was charged with identifying the steps necessary and developing a plan to convert CompSource Oklahoma into a private insurance company.

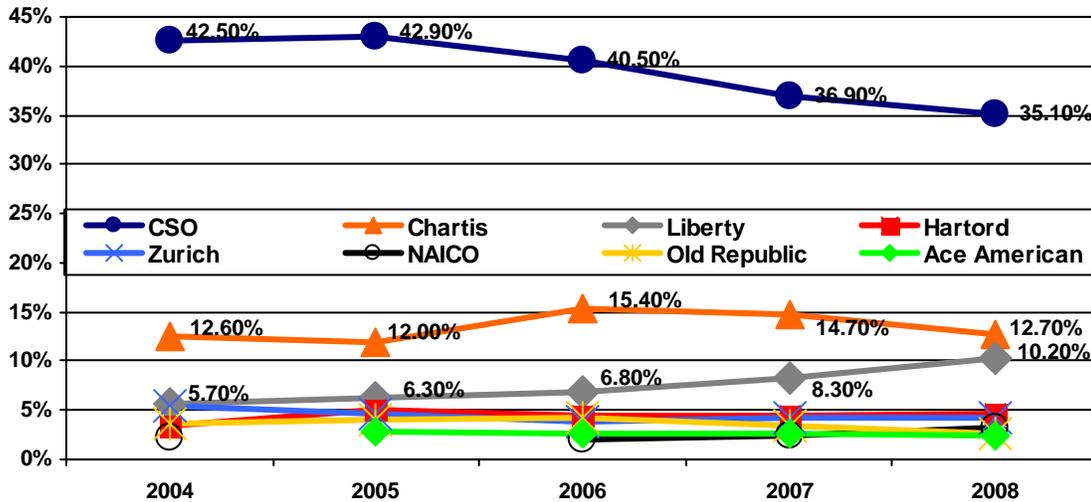
As required by HB 1963, this is a report of the Task Force’s findings, general recommendations, and recommendations for any resulting legislation, for submission to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor by December 1, 2009.

# Background

Oklahoma's State Insurance Fund, now known as CompSource Oklahoma, was created by legislation in 1933 to provide a source for obtaining workers' compensation insurance coverage for Oklahoma employers that may otherwise be unable to access such coverage. CompSource Oklahoma is a nonprofit, self-funded insurance company for Oklahoma employers.

CompSource Oklahoma provides over 26,000 businesses and government agencies with workers' compensation coverage, including industries such as manufacturing, natural resources, trucking, wheat, and cattle. According to its website, CompSource Oklahoma is one of the largest workers' compensation insurance carriers in the state.

**Top Workers' Compensation Carriers in Oklahoma  
Market Share by Calendar Year**



**Oklahoma Workers' Compensation Policy Distribution**

Policy Years 2007 & 2008		
Premium Range	Private Carriers	CompSource
\$1 - \$2,499	24,736	29,693
\$2,500 - \$4,999	7,045	7,220
\$5,000 - \$9,999	6,405	5,987
\$10,000 - \$19,999	4,771	4,056
\$20,000 - \$49,999	3,819	2,771
\$50,000 - \$99,999	1,647	924
\$100,000 - \$199,999	998	371
\$200,000 +	820	223

Source: Oklahoma Insurance Department

# Task Force on the Privatization of CompSource Oklahoma

## Task Force Members' Findings and Recommendations

### Senator Cliff Aldridge, Co-Chairman

**Conclusion:** As legislators, we owe it to the citizens of the state to look at the option of a sale of CompSource Oklahoma.

- **Findings:** The Task Force's debate and consideration has surrounded whether or not to mutualize CompSource Oklahoma (CSO). In past meetings, the Task Force's examination included a review of Nevada's and other states' mutualized options. In the beginning of the Task Force's study, mutualization seemed the way to go.
- One case discussed, *Moran v. State ex rel. Derryberry*, 1975 OK 69, 534 P.2d 1282, must be considered in its historical context, as the state attempted to raid the funds of the State Insurance Fund (now known as CompSource Oklahoma) at that particular point in time. The court's ruling in the *Moran* case prevented such action by the Legislature.
- **Recommendations:** As legislators, we owe it to the citizens of the state to look at the option of a sale, so, the state is not walking away from its own asset. In this regard, please consider:
  - Questions on tax-exempt status and ownership would need to be reviewed prior to a sale of CompSource Oklahoma; and
  - The state owes it to CSO employees to examine ways of working through this process.
    - For example, Nevada had a good plan of giving its state fund employees first in line priority for state jobs, if they did not want to move over to the newly created, private carrier.
- I have a firm philosophy that government should not be in business that private companies can provide. Pertaining to this philosophy, it should be kept in mind that:
  - Regardless if CSO is an asset of the state or not, even considering current, bad economic times, we should allow the private sector to perform where it can;
  - In terms of the residual market, the government still needs to insure. The state's responsibility is to protect the residual market;
  - The state also owes it to the taxpayers that those in the residual market do not see a huge increase in premiums. If CSO is not truly being subsidized, then we should not see an increase in rates; and
  - Since workers' compensation premiums are an aspect of economic development (considering the cost of doing business), in order to attract employers to Oklahoma, premium costs are an important consideration.

- It is important to be concerned about state employees and the business market, but that we also do the right thing for the people of Oklahoma, whether a sale of CSO or mutualization is chosen, and allow the private sector to flourish without government interference. Thus:
  - As a legislator, privatization through a sale is an option that should be examined for the potential good of the state;
  - To reiterate, my aim for the state is not to make money, but to keep government out of competing with private business; and
  - From that angle, the state should look at privatizing CSO through a sale.
- A bill should be filed this coming session to get an answer and ask the question, “Is CSO an asset of the state or property of CSO’s policyholders?”
  - The state has a Supreme Court whose job it is to rule on questions. If we don’t utilize the Court, why do they exist? They should be utilized for this purpose.

## Representative Daniel Sullivan, Co-Chairman

**Conclusion:** Believe CompSource Oklahoma is an asset of the state – as a legislator it is difficult to walk away from an asset, and not consider a sale.

- **Findings:** House Bill 1963 (2009), through the Legislature’s consideration, affirmative vote, and the Governor’s signature, the philosophy has been established that the state should not be in the business of workers’ compensation insurance. As a result, privatization must be considered and the Task Force’s responsibility is to consider how to privatize CompSource Oklahoma.
- Considering the original purpose of the Oklahoma State Insurance Fund, which has been expanded through legislation over the years, do believe the *Moran* case states that the State of Oklahoma cannot appropriate money from CSO funds as if it were part of the General Revenue Fund. (Although the law does allow trusts to be changed and transferred.)
- The Memorandum from CompSource Oklahoma regarding the *Moran* case and its federal tax-exempt status, if read in its entirety, explains that a sale of CSO can be allowed and that resulting assets would belong to the state. Though it is important to note I am aware of and concerned about the importance of considering the residual market, with any change to the status of CSO.
- **Recommendations:** After considering the option of privatization – it is difficult as a legislator to walk away from an asset – believe CompSource Oklahoma is an asset of the state.
  - Although, at the beginning of the Task Force meetings, did believe mutualization of CSO was the way to go.
- If CSO is an asset of the state, we have an obligation to explore that, while considering the following:
  - At the same time we need to protect the residual market – we would not want to sell an asset that creates a bigger problem, by increasing rates, etc.;
  - Need to recognize it is the current system we are dealing with that is currently driving the costs;
  - Not until Oklahoma’s workers’ compensation system is stabilized will we cease experiencing fluctuations in Oklahoma’s market;
  - Eleven percent rate increases with no changes in the law shows the problem lies with the [Oklahoma Workers’ Compensation] Court; and, thus
  - It is imperative to address the issues in the system, regardless of what is done with CSO.
- Simply put, we have an obligation to look at a sale, to see if it belongs to the state. We have the obligation to find out who is the owner.
- As an asset of the state, we owe it to the taxpayers to recoup the asset.
- The state should not be in the business of insurance.

- If CSO does not belong to the state, then mutualization is the option – while protecting the residual market by having the Department of Insurance protect the market and rates in a rate stabilization plan. It is important to keep in mind:
  - That we must also consider what happens to CSO's tax-exempt status if CSO is owned by its policyholders. (It has been suggested that as long as CSO remains the insurer of last resort, CSO can retain its tax-exempt status; and the way a continuing operational board is comprised, for example, with five public members and a similar structure to the current organization, can also protect CSO's tax status.)
- The proposed legislation earlier discussed [at the October 21 Task Force meeting], establishing that CSO is an asset of the state, would be necessary to get a court ruling. Due to the fact:
  - An Attorney General opinion would not resolve the CSO asset issue; and
  - Oklahoma does not have declaratory judgments in state court.

## Insurance Commissioner Kim Holland

**Conclusion:** Given the uncertainty regarding state ownership of CompSource Oklahoma, and the time and cost to the state to resolve this question in the courts, the most pragmatic approach is mutualization. The state's mission in creating CompSource was to serve the public's interests by creating a workers' compensation safety net, not to create an asset. That stated, I recognize the duty of the Legislature to protect the interests of the public as taxpayers.

- **Findings:** The Insurance Department's responsibility, in part, is to ensure a level playing field so that companies can operate equally without an unfair advantage. To that end:
  - As a nonregulated entity, CompSource Oklahoma (CSO) has certain advantages over private companies. To the extent that these advantages are necessary to perform its obligation as the insurer of last resort, they are appropriate. However, to the extent they create a competitive advantage for CSO over the private marketplace for risks that can be assumed by the private marketplace, the state is exceeding its role as a safety-net provider and disrupts the "free market."
- In obligating employers to provide workers' compensation insurance, the state has a prevailing interest in ensuring that all are covered. As such, ensuring that a safety-net mechanism is in place is essential.
- In those states that have a residual market mechanism in place, on average only 7 percent of the market is covered by this safety-net provision, in contrast to the nearly 40 percent currently insured through CSO which suggests that the private marketplace can and will compete effectively for all but a small portion of the potential business to be written.
- **Recommendations:** To extract the state from the business of insurance, privatization of CSO is required. The most expeditious approach appears to be mutualization, a transaction which also inures to the sole benefit of CSO's policyholders as contemplated by its establishment. A residual market mechanism must be established. The interests of current CSO employees must be preserved and protected.

**James Stergiou, Chairman and CEO, SGRisk, LLC (actuary expert)**

**Conclusion:** Oklahoma should consider mutualizing CompSource Oklahoma, using Texas' model, to continue to be faithful to the original principle founded upon the creation of the Oklahoma State Insurance Fund.

- **Findings:** The private marketplace has not always been there for the small businesses, whereas CSO has been there due to state law.
- If it is not broke – why fix it? However, HB 1963 requires a change. To that end, the Task Force has discussed many options:
  - Loss portfolio transfer does not make sense in Oklahoma, since the key ingredient is for someone to pick up the reserves.
  - In considering selling CSO to private interests, concerned that private companies can enter and also leave the market. When a company leaves the market, it may result in a 30 to 40 percent rate increase.
    - From an actuarial standpoint, a sale would not result in a lot of money (current estimate totaling \$200 million). A comparable number toward a reasonable argument for a sale would be \$400 to \$500 million.
    - Also, concerned about the profit motives of an entity who may purchase CSO. Further concerns about privatization include the following:
      - Whoever may buy CSO, will they insure questionable entities? Will they want to take on that risk? No, they will want to protect their interests;
      - Rate hike concerns are spread over a swing of five to ten years, not two to three years;
      - The private sector had the opportunity to come in and insure people over the years of premium swings, but they chose not to; and
      - Would like to know where those companies are that would take the business, because they have not over the last 30 years or more.
- Beyond what the Task Force considered, the mission of CSO is to be the insurer of last resort and provide coverage to those entities that have been rejected by the private market or for other reasons they could not find insurance in the private market.
- The state is not technically in the insurance business, since no state subsidies are provided. Concerned about the philosophy that the state is considered as being in the insurance business. Further explanation of the finding, as follows:
  - Originally, what is now CSO was established with a cash infusion from the state, which has been repaid;
  - CSO provides discounts to counties and other public entities; and
    - (Note – Concerned that if CSO were privatized, would such discounts continue to be provided in a profit-making organization?)

- CSO would not be considered as being subsidized, since it does not pay taxes and assessments as other insurance companies are required, as long as CSO is required to provide insurance to any entity that comes to them.
- CSO's loss development and pay-out patterns are similar to private companies.
- CSO's operating costs would not increase if it did not participate as a state entity, since CSO does not contribute to state health insurance or state employee retirement.
- The Oklahoma Workers' Compensation Court's decisions have caused increases in awards – about an 11 percent annual increase, compounded over the last three years.
- **Recommendations:** Oklahoma should consider mutualizing CompSource Oklahoma, using Texas' model, to continue to be faithful to the original principle founded upon the creation of the State Insurance Fund. As a part of mutualizing CompSource Oklahoma, consider:
  - CSO should pay premium taxes and Guaranty Fund assessments, contributing as part of the Oklahoma insurance team;
  - Unable to go to a level playing field as long as the state is required to have an insurer of last resort – will accept having the premium cost, despite the increase in cost; and
  - Since changes to CSO's Board could result in higher rates, the Insurance Department's oversight, triennial examinations, and other regulations should be welcomed.
- Regarding mutualization, there should be a level playing field but must consider is it possible, considering private companies can come and go, write business or not write business, while CSO does not have that option. Though CSO does enjoy some advantages, such as not paying premium taxes or Guaranty Fund assessments.
- Mutualization is by far the best option, not a loss portfolio transfer and not a sale – keeping the insurer of last resort concept is the only way to go.
- (See also: submitted Memo Re: Recommendations on the Privatization of CompSource Oklahoma (CSO).)

# Memorandum

Date: October 29, 2009

To: Members of the Task Force on the Privatization  
of CompSource Oklahoma

From: E. James Stergiou, FCAS, MAAA  
Chairman and CEO  
SGRisk, LLC  
Task Force Member

Re: Recommendations Regarding the Privatization of  
CompSource Oklahoma (CSO)

My first preference would be to leave things as is, simply because CSO has done an admirable job serving the people of Oklahoma and fulfilling its mission. It has "been there" and provided a definite marketplace for the insuring public (and, by that, I mean both employers, as well as the workers they employ) consistently and without equivocation, since I became involved with it in the late 1970's, and it has *never* failed to live up to its mission statement.

At the outset, let me reiterate that the notion of a level playing field can *never* be achieved, simply because CSO is *not* the master of its own fate. Unlike commercial carriers, it *must* insure all those who seek insurance (and cannot get it elsewhere), and cannot withdraw from the market at will, based on changes in underwriting philosophy, management or any other reason. The proof of that lies with my initial Page 3, reproduced as page 6A in my second Presentation. No insurer in its right mind would plan on being available for all comers and seeing its premiums go from, essentially, \$X to \$3X (or more) five years later, then back down to \$X, etc.!

*In short, CSO has been there for Oklahoma employers when commercial carriers chose to go elsewhere. And, it has been there with affordable rates.*

This is not to say I would not accept at least some modification, as a compromise, in the way CSO is governed, to wit:

- Insurance Department oversight, and
- The already enacted Imposition of a Premium Tax, and, even, a

- Guarantee Fund Assessment.

I would not be in favor of an imposition of an FIT provision, unless I am dissuaded in some dramatic way, simply because of the unique service it provides to Oklahoma employers. No other carrier does this, or wants to be the market of last resort.

I also cannot see the logic of a sale, an Assigned Risk (AR) Plan, nor a Loss Portfolio Transfer (LPT). I will discuss the options, at least as I see them presently, below.

### **1. Loss Portfolio Transfer (LPT)**

LPTs are usually done when an insurance entity is in financial difficulty and, from a Statutory accounting point of view, wants to decrease its liabilities (by discounting them; discounting is normally not allowed under Statutory Accounting Principles, or SAP), to generate a surplus, or a greater than usual SAP surplus.

To effect this, the assuming carrier must be financially responsible to take on such liabilities, *and* provide the ceding carrier with a deep enough discount on its loss reserves to make it worthwhile.

*Doing an LPT in the case of CSO obviously makes no sense, because:*

a) CSO is *not* in a distressed financial condition. In fact, its reserves are conservative, its assets solid, and a good and solid surplus position has emerged and been confirmed by both KPMG and by Insurance Department Examinations over the past decade. CSO did suffer investment losses last year, and will show a reserve increase and underwriting loss this year, but those are due to the following:

i) In the case of investments last year, the entire investment market place with any equity exposure suffered similarly during 2008. CSO was no different than most. However, it should be noted, that, in fact, all the 2008 equity loss and more, has already been recovered by the first 9 months of 2009, and that over the past 20 years, CSO's annualized rate of return has exceeded 7% (over the past 10 years, over 5%), even with the 2008 losses!

ii) In the case of the anticipated underwriting loss this year, this is caused by the normal swings of the insurance market, which has resulted in a "soft" market, whereby CSO has lost some of its "better" business to the private sector. This has happened continuously over, at least, the past 35 years, as indicated by Page 3 of my first Task Force Presentation, which was reproduced as page 6A of my second Presentation. As a result, we increased loss reserves in 2009 to reflect these changes.

If someone were to offer an LPT to CSO, there would have to be a deep discount in the loss reserves, akin to about \$120 million for the total book, and about \$60 million for case reserves only. This would, in essence, "guarantee" a 7% interest rate for CSO over the life of the payout period of its reserves. If someone were to guarantee that, it may be a good deal to consider, but who would? Any other deal would simply *not* make sense and would be a *bad* deal for CSO, the State, and its policyholders.

*In addition, serious consideration needs to be given to the financial condition of the assuming carrier.*

b) In short:

i) Who can take on \$450 million to \$900 million of liabilities in the first place?

ii) Who can afford to, essentially, *guarantee* an interest rate of 5% to 7% for the life of the claims?

## **2. Assigned Risk Plan**

First, it is unclear exactly *who* comprises the "assured" marketplace in Oklahoma. Over the last 20 years, CSO's premium has fluctuated from a low of about \$85 million to as high as \$280 million. Even assuming the total Oklahoma workers' compensation market produces a premium of about \$750 million, those insureds whom no one else wants, comprise, at various points in time (and depending on how "soft" or "hard" the market is) about 11% to 40%.

*The facts are these:*

- a) CSO provides its insurance with total reflection of investment income earned on its premiums, and assumes it will earn (and it has) between a 5
- b) and 7% rate of return on those assets.

b) For ratemaking purposes, its expense ratio has traditionally hovered, as a percentage of premium, in the 12% to 15% area. Even if we include a provision for Guarantee Fund assessments and a premium tax, we anticipate the expense ratio to be no more than 20%.

c) The 20% is directly comparable to the testimony by Roy Wood, who stated the typical expense ratios of AR plans are in the 40% area. Keep in mind that even if the AR plans totally reflect investment earnings, *a la* CSO, they would still have to come up with an expense ratio close to half that observed in other states, to make the premiums cost effective, and comparable to those used by CSO.

Hence, I conclude that costs arising from AR plans would be raised by 20%, perhaps, more.

On top of that, under an AR plan, it is unclear whether any losses would be discounted to give policyholders credit for the investment income on their premium dollars. Assuming CSO continues its present policy of discounting its losses to reflect investment income, that's another 15% on rate levels. Hence, an AR Plan could raise rates by at least 35%! It is clear that an AR program for Oklahoma would not be cost effective and, frankly, makes *no* sense!

As a corollary to the above, some discussion ensued as to whether some insureds were being subsidized by others under the current system. Nothing could be further from the truth. CSO's premiums are based entirely on its insured population, over the long term. Rates are made by classification using only Oklahoma CSO data, using the loss experience of CSO by class over the past 6 years. Insurance, by its nature, is a pooling mechanism, but workers' compensation insurance has a unique mechanism whereby an individual employer's final rate, for the most part, and for those insureds who qualify, is determined by its experience modification (i.e., E Mod), which is reflective of its own loss experience.

### **3. Selling CSO to Private Interests**

I will not address the major issue here, that is, regarding who really "owns" CSO, as that has been addressed, and debated in earlier Task Force Meetings, by learned counsel. Furthermore, it will likely be the subject of litigation and a decision will ultimately be rendered by the State Supreme Court.

What I *can* say regarding the issue of ownership is that if policyholders *are* considered, the issue becomes *which* policyholders? Current ones? Those who have contributed to its surplus over time? How far back do we go? Does the State get a piece? How much? How are those monies divided among the

policyholders? From a non lawyer's perspective, I can see this as becoming a legal nightmare, tied up in the courts for many years to come.

Given the above uncertainty and legal questions, I prefer to confine myself to the value of CSO, based on its current surplus, any reserve equity, discounting its reserves, equity in the unearned premium reserve (i.e., prepaid expenses) and its going forward profits.

a) As derived in my first Presentation (page 7), I estimated the value of CSO, at this point in time, as being in the area of about \$265 million, or, likely, more. This is derived as the sum of its current surplus (i.e., Assets less Liabilities), plus the discount in its loss reserves, and its prepaid expenses. In addition, it is usual and customary to also reflect in the price of an insurer its good will and, more

importantly, anticipated future profits over the next “X” number of years, with “X” being the subject of negotiation.

b) I reject the simplistic application of a percentage times book value, as book value is subject to much interpretation. It is a fact that CSO's loss reserves, and assets, have been attested to by competent auditors (KPMG), and its reserves confirmed by competent actuaries (SGRisk and those retained by the Oklahoma Insurance Department).

i) I especially reject the notion that CSO is worth between 0.7 and 1.2 times its book value. The other factors, as set forth above, also have to be considered. As an example, as earlier testimony stated, the Michigan Accident fund, with a surplus of \$110 million, sold for \$255 million, almost 2.4 times book value! There are a lot of things to be considered in a sale of an insurance company, any insurance company.

ii) Another thing to consider is who would pay \$265 million, or, likely, much, much more, and still allow it to become the insurer of last resort.

Previous testimony indicated that possible buyers would allow a three year window, during which time the newly purchased CSO would continue to be that insurer at last resort, with premiums similar to those charged to day. However, after that, what would happen? Would there be an AR plan with increased costs?

In short, it is inconceivable to me that someone would pay \$200, \$300, \$400, or \$500 million for an entity and be willing to abide by a 3 year, 5 year, 10 year, or any other period of rate stabilization and/or be willing to continue CSO's mission statement of taking on all comers and, by extension, see its premiums, and profits, fluctuate as wildly as we've seen since the 1970s.

On the other hand, I understand that the State's current revenue shortage and budget challenges may require this Task Force to consider privatization through a sale, which would, in theory, generate additional revenues to the State of Oklahoma. If privatization is elected through a sale, it is imperative the State receive a fair price for CompSource Oklahoma. This purchase price should reflect expected investment income to be earned (at the 5% to 7% interest traditionally earned by CSO) on its loss reserves, equity in its unearned premium reserve, as well as some expected future profits. I also firmly believe there should be a long term plan of rate stabilization created through enabling legislation, and the successful bidder should be required to remain as a carrier of last resort guaranteeing the availability of workers' compensation for all Oklahoma employers. This availability should be reflective of a rate level philosophy currently in effect at CSO (i.e. reflection of investment income and expense ratios in the area of 20%).

With regard to the ownership issues of CompSource, I think it is very important the Task Force evaluate the Internal Revenue Code Sections referenced in earlier Task Force meetings to ensure that CompSource will not be exposed to a significant tax liability if the position is taken that it is owned by the policyholders. We should make certain that whatever outcome is chosen is best for the State of Oklahoma, the Oklahoma businesses and the overall insurance marketplace.

#### **4. Mutualization of CSO**

This, of course, should be considered, but in what form? At first glance, one can say there is nothing wrong with "leveling the playing field" by making CSO responsible for Premium Taxes (PT), Guarantee Fund Assessments (GFA), and Federal Income Taxes (FIT) as any other "mutual insurance Company". However, would it still be the insurer of last resort?

The tradeoff of being the insurer of last resort, and insuring high risk businesses, is that CSO should be exempt from some costs, to offset its increased loss ratio.

In my opinion, as long as the State wishes to have an insurer of last resort, the "playing field can *never* be completely level".

If CSO is subject to exactly the same criteria as any other insured, then it can be, and should also be allowed to withdraw from the insured marketplace as it deems fit, by definition. If it is allowed to continue as the insurer of last resort, some latitude should be allowed, to reflect the uncertainty of who it insures and the operating results (mostly losses) resulting therefrom.

Simply stated, if CSO becomes a privatized mutual, it cannot be an insurer of last resort, by definition, unless it takes on losses and has no ability to pick and choose ( i.e., underwrite ) risks. If CSO is an insurer of last resort, the "playing field" should be tilted, at least a little. That means either exempting CSO from FIT, at the very least, or giving it some other "considerations" or exemptions.

If the Committee chooses to level the playing field by merely making CSO just another insurer, Oklahoma will need an AR pool, which, as discussed above, would definitely raise costs for employers.

a) In the past, CSO needed exemptions from those PT and GFA assessments to be able to serve the Oklahoma business community, with relatively competitive rates. Taking those exemptions away would drive costs up, by 2.25% in the case of Premium Taxes, and by additional 2% or so, for Guarantee Fund Assessments, for a total of about 5%. This would be a direct add on to current premiums. However, it is something I could accept.

b) The issue of FIT is unclear to me at this time. However, over the long term, it is clear CSO rates are made in a not for profit manner, and are keyed to an operating ratio of 100% (i.e., the present value of its expected losses, plus expenses, is expected to be about 100%, the break even level). Hence, profits, and, therefore, FIT, should be, over the long term, close to zero.

## **5. Conclusions**

It is my opinion at this time that either:

- a) CSO be left as it is, to serve the Oklahoma business community as a protection against fluctuations in the workers' compensation marketplace, by guaranteeing insureds stable workers' compensation availability and premiums over the long term; or
- b) Convert CSO to a tax exempt mutual carrier, subject to a PT, GFA, and jurisdiction under the Insurance Department, like a Texas Mutual. While this approach will cost its policyholders some money (5% on the average), its basic structure and mission would still be applicable to protect employers from the insurance marketplace and *guarantee* to them a place for their workers' compensation needs

Respectfully submitted.

**Michael Clingman, Director, Office of State Finance and Member of the CompSource Oklahoma Board of Managers (represents CSO)**

**Conclusion:** Mutualization can achieve good goals and effects – the main advantage to privatization of CompSource Oklahoma would be to allow policyholders a chance to be elected directly to the Board of Managers, possibly giving policyholders a greater voice. The downside is the chance that decisions could be made by a new mutual company to give greater economic benefits to current policyholders, resulting in possible higher rates for new business or renewals of existing business. Also, more regulation may lead to higher costs than CompSource policyholders currently face.

- **Findings:** The intent of HB 1963 is to privatize in some manner.
- A sale of CompSource with the state as the prime recipient of assets from the sale seems unlikely if [you] examine what the *Moran* case says. Regarding mutualization, the following concerns should be considered:
  - Mutualization could result in a new mutual board; this new Board might choose to operate as other carriers operate. Such a change could result in redirecting investment income and surplus, so the new policyholder would face increased premium rates;
  - CSO's policy for decades has devoted its investment income to keep future insurance rates low. That decision is the primary reason for the "non-level playing field" that has been much discussed. A change in that policy – returning investment income to past policyholders as dividends with a subsequent increase in rates for new business and renewals – would level the playing field but result in higher workers' compensation insurance rates. The current system acts as an economic development tool to insure policyholders get the most competitive rate possible; and
  - CSO does not have subsidized rates.
- Believe that CSO belongs to the policyholders, of which the state is the largest policyholder. Although, it should also be noted that if CSO is found not to belong to its policyholders (if *Moran* case was overturned), that changes everything and the state may well choose to utilize the surplus of CompSource for other purposes. Overturning *Moran* would seem highly unlikely.
- There is competition. The state fund is the ultimate competition, though it may not be easy to compete with given CSO's target loss ratio of 95-100 percent, much larger than the ratio that allows private carriers profitability.
- The residual market in every state is a question of price, as follows:
  - A tiny residual market will reflect in high rates; and
  - When CompSource rates increase, the historical result has always been that CompSource's market share decreases and more private carriers write workers' compensation premium.
- **Recommendations:** The advantages to privatization include allowing policyholders a voice or vote on the Board, rather than all Board members be state officials. This could be a positive effect of mutualization.

- It should be cautioned that mutualization could still result in higher rates. A cautionary tale:
  - In 1994, the consulting actuary of CompSource Oklahoma, Mr. Stergiou, recommended IBNR for the accident years 1993 and prior to be about \$130 million. (IBNR is the reserve put up beyond those done in individual cases to reflect late reported claims and adverse development of known claims.) The Oklahoma Insurance Department utilized Mark Crawshaw as a consulting actuary to assist in CSO's triennial audit, a consultant who had repeatedly given the opinion in rate hearings that CSO's rates should be raised in excess of 20 percent in testimony given in each of three straight years. His opinion was that CSO's IBNR exposure was \$211 million, over \$80 million higher than the amount CSO's consulting actuary recommended. The Board's outside accounting firm chose to side with the Department's examination findings removing \$80 million from CSO's surplus resulting in a needless (in my opinion) double-digit rate increase on its policyholders. Premium over the next four years dropped by over 60 percent as policyholders were left looking for lower rates. By 1997 it was recognized that, indeed, Mr. Stergiou's opinion was right, Crawshaw's was wrong, and the money was removed from claims back into surplus. Under mutualization there could be even more pressure from outside market factors determining what is the best practice for CSO other than its own Board, possibly again resulting in higher rates for its policyholders. It is critical to have an Insurance Department that understands the market and the intent of a state fund in the market, especially after any privatization.
- If the money from a sale does come to the state, other considerations should occur; but *Moran* is clear that cannot be the case – it holds that CSO is owned by the policyholders.
- CSO's current market practice does create a somewhat unlevel playing field, but the beneficiary of that practice is small to medium-sized businesses employing Oklahomans. Any change in CSO's operation could adversely impact those employers.

**Mike Seney, Senior Vice President, Operations, The State Chamber** (statewide organization that is an advocacy association for business and industry)

**Conclusion:** The Texas model of mutualization is what Oklahoma should follow; while privatizing to some degree, this model also provides for a continuing market for an insurer of last resort.

- **Findings:** Though wrestled with decision for a recommendation, and currently would make no change at all; HB 1963 does not allow for a recommendation of no change to CompSource Oklahoma.
- Learned that CompSource Oklahoma responsibly fulfills its role as the insurer of last resort. In considering a change, concerned about the percentage of small businesses CSO insures, and the insurance companies that have left over time, if Oklahoma were to sell CSO.
- Workers' compensation coverage is required in Oklahoma; this differs from other lines of insurance offered.
- Workers' compensation insurance companies leave the market due to losses and loss exposure.
- Volunteer firefighters' workers' compensation insurance rates are kept artificially low through state law. To take them out of their current situation and place them in the residual market, would prevent volunteer fire departments from being able to find coverage without providing some concessions for them.
- **Recommendations:** The Texas model of mutualization is what Oklahoma should follow; while privatizing to some degree, this model also provides for a continuing market for an insurer of last resort. Supporting factors for the recommendation include the following:
  - The Texas model of a mutualized, insured entity maintains the same non-federal tax status CSO has;
  - A three-year rate stabilization plan, as proposed in privatization, is not long enough to preserve stability in the market;
  - The state should be careful considering models in monopolistic fund states, which are not like Oklahoma;
  - CSO has nearly 80 years of small businesses' and state agencies' investment that will be able to continue through mutualization;
  - Mutualization provides the best recourse with the least cost;
  - Fear losing the counter-balance of insurance companies that can come and go. The counter-balance must be maintained. Currently, CSO does not have that option under state law; they must continue to exist;
  - Concerned about private companies' aim to make a profit for their stockholders, which could result in a rate hike for employers;
  - Understand rate hikes occur, but concerned about a drastic change and effect on the [workers' compensation insurance] market in Oklahoma if a sale of CSO should occur; and
  - A level playing field is not a benefit if it results in policyholders experiencing a rate increase to achieve a level playing field.

- It would be a waste of time and money to send a question, as to whether CSO is an asset of the state or not, back to the Supreme Court.
- (See also: submitted Memo Re: Findings & Recommendations.)



**THE STATE CHAMBER OF OKLAHOMA**  
LEGISLATIVE ADVOCATES FOR BUSINESS

330 NE 10th Street  
Oklahoma City, OK 73104  
(405) 235-3669 - phone (405) 235-3670 - fax

**MEMO**

**TO:** CompSource Privatization Task Force

**FROM:** Mike Seney, Senior V.P. – Operations  
The State Chamber of Oklahoma

**SUBJECT:** Findings & Recommendations

**DATE:** November 5, 2009

**Finding:** CompSource Oklahoma is a well-run, fiscally sound workers' compensation insurance company conducting its business as set out in Oklahoma's statutes.

**Finding:** CompSource Oklahoma does adequately serve as the "insurer of last resort" for Oklahoma businesses, and serves as a "counter-balance" to the vagaries of the private insurance market in Oklahoma.

**Finding:** CompSource Oklahoma does enjoy some small advantage over the private insurance market in that it is not a participant in the Oklahoma Guaranty Fund and therefore does not pay the 2.25% Guaranty Fund assessment.

**Finding:** It is critical that Oklahoma maintain a market for small businesses as more than 75% of all businesses in Oklahoma have less than 10 employees...and 98% have less than 100 employees.

**Recommendation:** Since the legislative intent in HB 1963 states that "...CompSource Oklahoma be converted into a private insurance company...", we support the "mutualization" of CompSource Oklahoma in a manner similar to what was accomplished in Texas.

**Recommendation:** In that regard, the following elements need to be included in any legislation moving forward:

- CompSource Oklahoma shall operate as, and exercise the powers of, a domestic mutual insurance company called the Oklahoma Mutual Insurance Company.
- The company is not a state agency.

- The commissioner of insurance shall issue a certificate of authority to the company to write workers' compensation insurance.
- The company shall exercise all the rights, privileges, powers, and authority of any other mutual corporation organized to transact workers' compensation insurance business in Oklahoma.
- The legislation shall transfer the powers and duties of the fund to the company.
- The company shall be prohibited from being dissolved.
- The company shall be governed by a board of nine directors (board) that serve staggered six-year terms. Five of the members will be required to be appointed by the governor with the remaining four being elected by the company's policyholders. The board shall be authorized to perform all necessary or convenient administrative and business functions of the company.
- The company shall pay all appropriate premium taxes or other taxes required of other workers' compensation carriers.
- All revenues, monies and assets shall be governed by the laws applicable to domestic mutual insurance companies.
- The company shall only be liable for assessments by the Oklahoma Property and Casualty Insurance Guaranty Association regarding, and that association with respect to an insolvency of the company is only liable for, a claim with a date of injury that occurs on or after January 1, 2012.
- The state shall have no liability to or responsibility to the policyholders, persons receiving workers' compensation benefits, or the creditors of the company if the company is placed in conservatorship or receivership or becomes insolvent.
- The State of Oklahoma shall covenant with the policyholders of the company, persons receiving workers' compensation benefits, and the company's creditors that the state will not borrow, appropriate, or direct payments from the company from those revenues, monies, assets or from the stabilization fund for any purpose.

**Lee Ann Alexander, Liberty Mutual** (member of the Board of Directors of the Oklahoma Property and Casualty Insurance Guaranty Association)

**Conclusion:** For a sale of CompSource Oklahoma to be considered, the question needs to be asked, “Is CSO an asset of the state or does it belong to CSO’s policyholders?”

- **Findings:** Private insurers have not had a chance to compete with CompSource Oklahoma on a level playing field. Looking at other states, the residual market is about 5 to 6 percent compared to CSO’s market share of approximately 35 percent.
- Comparing to Texas and its mutualization model is difficult because they are an optional state for workers’ compensation coverage. Therefore, in looking to create a level playing field, Texas is not the right model to follow.
- It is important to have a separately established residual market.
- The main question facing the Task Force is whether CSO is an asset of the state, and, accordingly, whether the state would have the legal right to any assets resulting from a sale of CSO.
  
- **Recommendations:** After reviewing the CSO memo, regarding the *Moran* case and CSO’s federal tax-exempt status, feel even more strongly that the question needs to be asked, “Upon dissolution, do CSO’s assets belong to the state or do they belong to CSO’s policyholders,” due to the following considerations:
  - Most other states’ cases cited and *Moran* say that the state cannot appropriate (“raid”) CSO’s funds while it exists as an ongoing entity; and
  - Page 4, of the CSO memo states, “CompSource funds can be used only for the following purposes: (1) paying incurred losses of policyholders, (2) paying expenses of CompSource, (3) paying policyholder dividends, or (4) retention by CompSource;” all of which also assume an ongoing entity.
- If the Task Force remains undecided between a sale of CSO and mutualization, what is ultimately important is that we achieve a level playing field through either avenue.
- If the answer to the CSO asset question is, “No, CSO is not an asset of the state;” then Oklahoma should implement HB 1963 and privatize CSO through mutualization.
- An outstanding concern is: What happens to CSO’s federal tax exemption if, upon dissolution, CSO’s assets do not revert to the state? How is CSO currently getting a federal tax exemption if it is not an asset of the state?

**Dan Ramsey, President and CEO, Independent Insurance Agents of Oklahoma**  
(independent insurance agents organization)

**Conclusion:** Oklahoma should move toward the privatization of CompSource Oklahoma by following the Texas model of mutualization.

- **Findings:** The original purpose of the State Insurance Fund, when it was formed, was not to make money, but to provide a fairly competitive workers' compensation market for Oklahoma businesses. At the same time it was to serve as the "market of last resort." The two approaches being considered – to sell CompSource Oklahoma or to mutualize it – are at competing values:
  - For a "for-profit" business, the number one focus is a profitable return on investment for its stockholders; and
  - For CompSource Oklahoma, the number one focus is the responsibility to provide a fairly competitive market for its policyholders and serve as the "market of last resort."
  
- **Recommendations:** The Texas model of mutualization has worked there, and follows the key points and interests, listed below. Therefore, Oklahoma should move toward the privatization of CompSource Oklahoma by following the Texas model of mutualization. Keeping in mind:
  - There are differences to consider between Oklahoma's and Texas' laws;
  - Mutualization would help preserve the original intent of CSO;
  - Though appreciate the legislators' perspective, even if CSO is an asset of the state, a sale may not be in the best interest of the policyholders; and
  - As a residual market may be considered, should look at how the other 29 non-NCCI (National Council of Compensation Insurance) states operate.
  
- If the purpose of this Task Force is just to make money – that is a short-sighted goal. It should also be considered whether a sale of CSO is the right way to go.
  
- Transition should be as seamless as possible for policyholders and employees, such as using Nevada's plan for its state employees as a model.
  
- For the policyholder, premium rates should decrease and the way their business is handled should improve from where it is now with whichever change is made.
  
- We need to have the residual market within the new entity that is created – otherwise the move from company to company when an account is re-assigned to another company through an Assigned Risk pool will create angst from policyholders.

# Proceedings of Task Force

The Task Force on the Privatization of CompSource Oklahoma met seven times: August 6, 2009, August 19, 2009, September 2, 2009, September 23, 2009, October 7, 2009, October 21, 2009, and November 5, 2009.

At the first, organizational meeting of the Task Force, on August 6, 2009, members of the Task Force reviewed the objectives and Task Force's responsibilities outlined in HB 1963. The Co-Chairmen asked for names and contact information of experts that could assist the Task Force in their duties. CompSource Oklahoma's current and past market share was discussed. Jason Clark, President/CEO of CompSource Oklahoma (CSO), reported the latest indicators showed CSO's market share at 35 percent. James Stergiou, actuary for CompSource Oklahoma and Task Force member, added that CSO has had as much as 50 percent of the market and as little as 15 percent. Mr. Stergiou also reported that CSO has a current loss ratio of 98-100 percent. Concerns about how the privatization of CSO would affect the Guaranty Fund were raised. Larry Fitch, General Manager of the Oklahoma Property and Casualty Insurance Guaranty Association, explained that any privatized entity of CSO would become a member of the Association and would pay into the fund. A copy of the meeting agenda and a shared article are included in Appendices B and C of this report.

The Task Force met for a second time on August 19, 2009. At this meeting presentations were made by James Stergiou, actuary for CompSource Oklahoma and Task Force member, regarding CompSource Oklahoma's financial standing; Jason Clark, President/CEO of CompSource Oklahoma, on CSO's policy distribution and market share; Steve Harding, Chief Financial Officer for CompSource Oklahoma, with a financial overview; and Larry Derryberry, attorney-at-law with Derryberry & Naifeh, LLP, on CSO's history and precedent. At the end of the meeting, Dan Ramsey, Task Force member, shared a copy of Michigan's Workers' Disability Compensation Act of 1969, the law converting Michigan's state fund. A copy of the meeting agenda, actuarial presentation, CSO handouts, legal citations, and Michigan's act are included in Appendices D through H of this report.

At the third meeting of the Task Force, on September 2, 2009, the Oklahoma Insurance Department shared information that Task Force members had requested at the previous meeting, including information on those insurance companies that have withdrawn from the market in Oklahoma, a list of the top ten workers' compensation carriers in Oklahoma by written premium, policy distribution between private carriers and CompSource Oklahoma, and National Council on Compensation Insurance (NCCI) residual market data. Presenters for this meeting were Ann Nelson, Executive Vice President of Corporate and Public Affairs for Employers Holdings, Inc. and Douglas Dirks, President and CEO of Employers Holdings, Inc. Ms. Nelson explained Nevada's mutualization process and their experience when

Nevada converted its state fund to a mutual company, now a publicly traded company with clients in thirty states. Mr. Dirks shared the financial conditions in Nevada's workers' compensation market since mutualization. Nevada's workers' compensation insurance rates have continued to decline since January of 2000, after mutualization was complete.

At the September 2, 2009 meeting, the Task Force also heard from Bruce Wood, Associate General Counsel and Director of Workers' Compensation, for the American Insurance Association (AIA). Mr. Wood shared AIA's policy considerations for Oklahoma, a profile of CompSource Oklahoma, and a summary of state workers' compensation funds' key provisions. Mike Seney, Task Force member, also shared a breakdown of industries and the size of companies in those industries in Oklahoma with data compiled from the Oklahoma Employment Security Commission (OESC). A copy of the meeting agenda, Insurance Department information, AIA handouts, and OESC data are included in Appendices I through Q of this report.

The Task Force held a fourth meeting on September 23, 2009, to further examine the residual market and operations in NCCI states. Jason Clark, President/CEO of CompSource Oklahoma, shared NCCI data comparing CSO with private carriers in Oklahoma. CompSource Oklahoma staff also shared information regarding volunteer firefighters including, a cover letter; Senate Concurrent Resolution 14, praising volunteer firefighters; Title 85, Section 132a, of the Oklahoma Statutes, regarding the Volunteer Firefighters Group Insurance Pool; and CSO data on volunteer firefighter coverage. Guest presenters from the National Council on Compensation Insurance (NCCI) were Roy Wood, State Relations Executive, and Melissa Palmer, Director of Residual Market Operations. Mr. Wood discussed NCCI's operations and its role in Oklahoma. Ms. Palmer discussed residual markets and the various options for states. Pursuant to requests for information made at this meeting, NCCI later sent a list of the National Workers' Compensation Reinsurance Pool Board of Governors and NCCI's Board of Directors and the disposition of risks in neighboring NCCI states. A copy of the meeting agenda, CSO information, and NCCI presentations and information are included in Appendices R through Z of this report.

The fifth meeting of the Task Force, on October 7, 2009, included a proposal for privatizing CompSource Oklahoma through a sale and rate stabilization plan for small Oklahoma employers by Lance LaGere, Executive Vice President and Chief Operating Officer; Pat Gilmore, General Counsel and Senior Vice President; Mark Paden, President for NAICO; and Brent LaGere, Chairman and CEO for the National American Insurance Company (NAICO). NAICO representatives shared their Blueprint for Privatizing CompSource with the Task Force members. Another presenter, Russell R. Oliver, the former President of the Texas Mutual Insurance Company, shared Texas' experience with mutualizing the Texas Compensation Insurance Fund. Mr. Oliver pointed out that Texas does not have a mandatory workers' compensation insurance coverage law, leaving about 34-35 percent of

employers who choose not to be covered. James Stergiou, actuary for CompSource Oklahoma and Task Force member, presented information on loss portfolio transfer (LPT) issues. Prior to this meeting, CompSource Oklahoma sent the Task Force members a letter with recommendations and information regarding CSO employees for their consideration. A copy of the meeting agenda; NAICO, information, presentation and blueprint; Texas legislation; LPT presentation; and CSO employee information are included in Appendices AA through FF of this report.

On October 21, 2009, the Task Force held its sixth meeting, to discuss the mutualization or sale of CompSource Oklahoma. At this meeting CompSource Oklahoma shared the top classification codes with the highest workers' compensation rates and largest loss ratios with CSO, pursuant to a request at a previous meeting. NAICO also responded to a request for their loss ratios that are more favorable than CSO in a letter with accompanying exhibits. The Task Force members shared their thoughts on what they had learned from the meetings and what they would recommend. A record of the Task Force members' comments from this meeting can be found on the following pages of this report. At this meeting Mike Seney, Task Force member, shared a handout from the Oregon Department of Consumer & Business Services Rate Ranking Summary citing Oklahoma as having the ninth highest workers' compensation premium rate in 2008. A copy of the meeting agenda, CSO and NAICO loss ratio information, and Oregon report are included in Appendices GG through JJ of this report.

Prior to the final meeting, on November 5, 2009, Task Force members received a Memorandum from CompSource Oklahoma, regarding a legal analysis of *Moran v. State ex rel. Derryberry* and information on CompSource's federal tax-exempt status. At the final meeting Task Force members discussed their thoughts on the memo and continued discussion on deciding whether to mutualize or sell CompSource Oklahoma to fulfill HB 1963 requirements for privatization. A copy of the final meeting agenda and CSO memo are included in Appendices KK and LL of this report.

At the conclusion of the meeting, Rep. Daniel Sullivan, Co-Chair of the task Force, made a motion to provide the individual Task Force members' comments from the October 21 and November 5 meetings as the final findings and recommendations of the Task Force on the Privatization of CompSource Oklahoma in its report to be submitted to the Governor, President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The motion was seconded by Sen. Cliff Aldridge, Co-Chair of the Task Force; and the motion was approved upon a unanimous voice vote of the Task Force.

**Task Force on the Privatization of CompSource Oklahoma**  
Task Force Discussion on the Mutualization or Sale of CompSource Oklahoma

**6th Meeting**

Wednesday, October 21, 2009, 9:30 a.m.  
Room 412C, State Capitol Building

**Task Force Members:**

Sen. Cliff Aldridge, Co-Chair

Rep. Daniel Sullivan, Co-Chair

Insurance Commissioner Kim Holland

James Stergiou, Chairman and CEO, SGRisk, LLC (actuary expert)

Michael Clingman, Director, Office of State Finance and Member of CompSource Oklahoma Board of Managers (represents CompSource Oklahoma)

Mike Seney, Senior Vice President, Operations, The State Chamber (advocacy association for business and industry)

Lee Ann Alexander, Liberty Mutual (member of the Board of Directors of the Oklahoma Property and Casualty Insurance Guaranty Association)

Dan Ramsey, President and CEO, Independent Insurance Agents of Oklahoma (independent insurance agents association)

**Task Force Member Comments \***

**Mike Seney**

- Though wrestled with a decision for a recommendation and currently would make no change at all, HB1963 does not allow for a recommendation of no change to CompSource Oklahoma.
- After the last few meetings, have learned that CompSource Oklahoma (CSO) responsibly fulfills its role as the insurer of last resort.
  - In considering a change, concerned about the percentage of small businesses CSO insures, and the insurance companies that have left over time, if Oklahoma were to sell CSO.
- The Texas model of mutualization is what Oklahoma should follow, while privatizing to some degree, this model also provides for a continuing market for an insurer of last resort.
  - The Texas model of a mutualized, insured entity maintains the same non-federal tax status CSO has.
  - A three-year rate stabilization plan, as proposed in the privatization presentation, is not long enough to preserve stability in the market.
  - Fear losing the counter-balance of insurance companies that can come and go. The counter-balance must be maintained as is. Currently, CSO does not have that option under state law; they must continue to exist.
  - Concerned about private companies' aim to make a profit for their stockholders, which could result in a rate hike for employers.
  - Understand rate hikes occur, but concerned about a drastic change and effect on the [workers' compensation insurance] market in Oklahoma if a sale of CSO occurs.

- A level playing field is not a benefit if it results in policyholders experiencing a rate increase to achieve a level playing field.

### **Dan Ramsey**

- Transition should be as seamless as possible for policyholders and employees.
  - Thought Nevada's plan for its state employees' provided good ideas.
- For the policyholder, whether CompSource Oklahoma is sold or mutualized, the premium rates should be expected to decrease and the way their insurance business is handled should improve from where it is now.
- We need to have the residual market within whatever new entity is created; otherwise re-assignment to a new carrier through an Assigned Risk mechanism will likely create angst from policyholders.
- The Texas model of mutualization has worked in their state – and follows these key points and interests.

### **Lee Ann Alexander**

- Undecided between sale and mutualization – what is important is a level playing field.
  - Private insurers have not had a chance to compete with CSO on a level playing field. Looking at other states, the residual market is about 5 to 6 percent, compared to CSO's market share of approximately 35 percent.
  - Comparing to Texas and its mutualization model is difficult because they are an optional state for workers' compensation coverage. Therefore, to achieve a level playing field, Texas is not quite the right model.
- If a sale generates funding for the state and best serves its citizens, that avenue should be considered in spite of the threat of litigation. Other states have dealt with litigation and are moving forward.
- It is important to have a separately established residual market.

### **James Stergiou**

- The private marketplace has not always been there for the small businesses, whereas CSO has been there due to state law.
- If it is not broke – why fix it? However, HB 1963 requires a change.
  - CSO's loss development and pay-out patterns are similar to private companies.
- The Task Force has discussed many options:
  - Loss portfolio transfer does not make sense in Oklahoma, since the key ingredient is for someone to pick up the reserves.
  - In considering selling CSO to private interests, have the same concerns as Seney. From an actuarial standpoint a sale would not result in a lot of money (estimate totaling \$200 million). A comparable number toward a reasonable argument for a sale would be \$400 to \$500 million.
    - Beyond that, the mission of CSO is to be the insurer of last resort and provide coverage to those entities that have been rejected by the private market or for other reasons that they could not find insurance in the private market. Whoever may buy CSO, will they insure questionable entities? Will they want to take on that risk? No, they will want to protect their interests.

- Rate hike concerns are spread over a swing of five to ten years, not two to three years.
- The private sector had the opportunity to come in and insure people over the years of premium swings, but they chose not to.
- Would like to see where those companies are that would take the business, because they have not over the last 30 years or more.
- Mutualization – there should be a level playing field, but is it possible? Private companies can come and go, write business or not write business, CSO does not have that option. Though CSO does enjoy some advantages – it does not pay any premium tax or Guaranty Fund assessments.
  - CSO should pay – contributing as part of the Oklahoma insurance team.
  - Unable to go to a level playing field as long as the state is required to have an insurer of last resort – will accept having the premium cost, despite increase in cost.
    - The Oklahoma Workers' Compensation Court's decisions have caused increases in awards – about an 11 percent annual increase, compounded over the last three years.
- Mutualization is by far the best option, not a loss portfolio transfer and not a sale – keeping the insurer of last resort concept is the only way to go.
- (Also see submitted written comments.)

### **Michael Clingman**

- Believe that CSO belongs to the policyholders, of which the state is the largest policyholder. CSO is owned by the policyholders of the state insurance fund.
  - If CSO is found not to belong to its policyholders, that changes everything. (Though does not agree with selling CSO per se.) If the money from a sale does come to the state, other considerations should occur; but *Moran* is clear that is not the case – it holds that CSO is owned by the policyholders.
- There is competition. The state fund is the ultimate competition, though it may not be easy to compete with given its target loss ratio of 95-100 percent, much larger than the ratio that allows private carriers profitability.
- The residual market in every state is a question of price.
  - A tiny residual market will reflect in high rates.
  - When CSO rates increase, the result has always been that CSO's market share decreases and more private insurance companies write workers' compensation premium.

### **Rep. Daniel Sullivan, Co-Chair**

- At beginning of the Task Force meetings, believed mutualization of CSO was the way to go.
- After considering the option of privatization – it is difficult as a legislator to walk away from an asset – believe it is an asset of the state. If CSO is an asset, we have an obligation to explore that, at the same time protecting the residual market. We would not want to sell an asset that creates a bigger problem, by increasing rates, etc.
  - Need to recognize it is the system we are dealing with that is currently driving the costs.

- Not until Oklahoma's workers' compensation system is stabilized will we cease experiencing fluctuations in Oklahoma's market.
- Eleven percent rate increases with no changes in the law shows the problem lies with the [Oklahoma Workers' Compensation] Court.
- It is imperative to address the issues in the system, regardless of what is done.
- We have an obligation to look at a sale, to see if it belongs to the state. We have the obligation to find out who is the owner.
- As an asset of the state, we owe it to the taxpayers to recoup the asset.
- If CSO does not belong to the state, then mutualization is the option – while protecting the residual market by having the Department of Insurance protect the market and rates in a rate stabilization plan.
  - We must also consider what happens to CSO's tax-exempt status if CSO is owned by its policyholders. (It has been suggested that as long as CSO remains the insurer of last resort, CSO can retain its tax-exempt status; and the way a continuing operational board is comprised, for example, with five public members and a similar structure to the current organization, can also protect CSO's tax status.)
- The state should not be in the business of insurance.

#### **Sen. Cliff Aldridge, Co-Chair**

- Firm philosophy that government should not be in business that private companies can provide.
  - Regardless if CSO is an asset of the state or not, even considering current, bad economic times, we should allow the private sector to perform where they can.
  - In terms of the residual market, the government still needs to insure. The state's responsibility is to protect the residual market.
  - The state also owes it to the taxpayers that those in the residual market do not see a huge increase in premiums. If CSO is not truly being subsidized, then we should not see an increase in rates.
  - Since workers' compensation premiums are an aspect of economic development (considering the cost of doing business), in order to attract employers to Oklahoma, premium costs are an important consideration.
- As legislators owe it to citizens of the state to look at the option of a sale, so the state is not walking away from its own asset.
  - Questions on tax status and ownership would need to be reviewed prior to a sale of CompSource Oklahoma.
  - The state owes it to CSO employees to examine ways of working through this process.
    - For example, Nevada had a good plan of giving its state fund employees first in line priority for state jobs, if they did not want to move over to the newly created, private carrier.
- In the beginning of the Task Force's study, mutualization seemed the way to go.
- Concerned about state employees and the business market, but that we also do the right thing for the people of Oklahoma, whether sale of CSO or mutualization is chosen, and allow the private sector to flourish without government interference.

\* Updated with corrections requested at the Thursday, November 05, 2009, meeting of the Task Force on the Privatization of CompSource Oklahoma.

**Task Force on the Privatization of CompSource Oklahoma**  
Task Force Review of Findings and Recommendations on the Mutualization or Sale of  
CompSource Oklahoma

**7th Meeting**

Thursday, November 05, 2009, 9:30 a.m.

Governor's Conference Room, 2nd Floor, State Capitol Building

**Task Force Members:**

Sen. Cliff Aldridge, Co-Chair

Rep. Daniel Sullivan, Co-Chair

Insurance Commissioner Kim Holland

James Stergiou, Chairman and CEO, SGRisk, LLC (actuary expert)

Michael Clingman, Director, Office of State Finance and Member of CompSource Oklahoma Board of Managers (represents CompSource Oklahoma)

Mike Seney, Senior Vice President, Operations, The State Chamber (advocacy association for business and industry)

Lee Ann Alexander, Liberty Mutual (member of the Board of Directors of the Oklahoma Property and Casualty Insurance Guaranty Association)

Dan Ramsey, President and CEO, Independent Insurance Agents of Oklahoma (independent insurance agents association)

**Task Force Member Comments and Recommendations for Final Report**

**Mike Seney**

- Keep in mind that the title of the Task Force is the “Task Force on the Privatization of CompSource Oklahoma.”
- The Task Force has previously discussed filing legislation that says, “CSO belongs to the state;” but the CSO memo Re: *Moran* and Federal Tax Exempt Status, received on November 4, led to drafting the included recommendations.
- It would be a waste of time and money to send a question, as to whether CSO is an asset of the state or not, back to the Supreme Court.
- Suggest moving toward privatization of CompSource Oklahoma by following the Texas model of mutualization.
  - Texas was able to maintain their tax-exempt status in their mutualization process; which is another reason, Oklahoma should follow the Texas mutualization model.
  - Should be careful in looking at models in monopolistic state fund states.
  - A sale is not a transfer.
  - Have nearly 80 years of small businesses’ and state agencies’ investment that will be able continue through mutualization.
    - As a small business owner, from any sale that may occur, I should get part of any resulting assets.
    - For the state to say, the state retains the money from a sale and now you as a business owner must go to the residual market seems unfair.
  - Volunteer firefighters’ workers’ compensation insurance rates are kept artificially low through the law. To take them out of their current situation and

place them in the residual market, would prevent volunteer fire departments from being able to find coverage without providing some concessions for them.

- Mutualization provides the best recourse with the least cost.
  - Workers' compensation insurance is required in Oklahoma; this differs from other lines of insurance offered.
  - Workers' compensation insurance companies leave the market due to losses and loss exposure.
- Best solution would be to leave CSO alone, but provide level playing field in requiring payment of taxes, assessments and regulation.

### **Dan Ramsey**

- In reviewing past notes from meetings, at the August 19 meeting, the past question the Task Force focused was, "Is writing workers' compensation insurance a core function of government?" Concerned the focus has shifted to whether the state can make money on the sale of CompSource Oklahoma (CSO). This shift in discussion is a concern.
  - Is the Task Force's purpose to figure out how to make money for the state of Oklahoma or how to determine the best way to get the state out of the workers' compensation insurance business?
- The original purpose of the State Insurance Fund, when it was formed, was not to make money.
  - For a "for-profit" business, the number one focus is on the responsibility to the stockholders to make a profit.
  - For CompSource Oklahoma, the number one focus is the responsibility to its policyholders to provide a fairly competitive marketplace and to serve as the "market of last resort."
- If the purpose of this Task Force is just to make money – that is a short-sighted goal.
  - It should also be considered whether a sale of CSO is the right way to go.
- Second Seney's recommendation of "moving towards privatization of CompSource Oklahoma by following the Texas model of mutualization."
  - Though there are differences to consider between Oklahoma's and Texas' laws.
  - Mutualization would help preserve the original intent of CSO.
  - Though appreciate the legislators' perspective, even if CSO is an asset of the state, a sale may still not be the best option.
  - As a residual market may be considered, should look at how the other 29 non-NCCI states operate.

### **James Stergiou**

- One repeated argument is disturbing – concerned about the philosophy that the state is in the insurance business.
  - The state is not technically in the "insurance business," since no state subsidies are provided.
  - Originally, what is now CSO was established with a cash infusion from the state, which has been repaid.
  - CSO provides discounts to counties and other public entities.
    - If CSO were privatized, would such discounts continue to be provided in a profit-making organization?

- CSO would not be considered as subsidized, due to not paying taxes and assessments as other insurance companies are required to do, as long as CSO is required to provide insurance to any entity that comes to them.
  - Not against CSO paying premium taxes or Guaranty Fund assessments.
- Concerned about the profit motives from an entity who may purchase CSO.
  - Who is responsible if CSO is found insolvent? *Moran* says policyholders are responsible.
  - Worst case scenario – when a company leaves the market, it may result in a 30-40 percent rate increase.
  - Would CSO's costs be raised if it did not participate as a state entity, i.e. without state health insurance and public employee retirement? CSO does not contribute to state health insurance or retirement.
- Would follow the idea of mutualizing per Texas' model, to continue to be faithful to the original principle founded upon the creation of the State Insurance Fund.
  - Changes to CSO's Board could result in higher rates, which is why the state has the Insurance Department's oversight and triennial examinations. These regulations should be welcomed.

### Michael Clingman

- The intent of HB 1963 is to privatize in some manner.
- Advantages to privatization (outside of fulfilling the goal to get government out of the insurance business), include allowing policyholders a chance to be elected directly to the Board of Managers, possibly giving policyholders a greater voice. This is a good goal and effect of mutualization.
- In 1994, the Oklahoma Insurance Department conducted CSO's triennial audit, citing that CSO's IBNR exposure to pay its backlog of claims was \$211 million, which was over \$80 million more than CSO's consulting actuary said was needed for late reported claims and adverse development of known claims (at the time recommended \$130 million). The Insurance Department's examination findings were used, which removed \$80 million from CSO's surplus, making CSO virtually insolvent. Under mutualization, it is important to have an Insurance Department that understands the market and the intent of a state fund in the market.
- Mutualization does not make sense if examine what the *Moran* case says.
- Disadvantages of mutualization include a new mutual Board that might choose to operate as other carriers operate.
  - Such a decision could result in losing investment income, increasing rates for new business or renewals of existing business.
- For decades, CSO has kept its investment income to keep its rates low. This is the primary reason for the "non-level playing field" that has been discussed. If investment income is required to go back to past CSO policyholders as dividends with a subsequent increase in rates for new and renewed policies, this would level the playing field but would also result in higher workers' compensation insurance rates.
- CSO does not have subsidized rates.
- It should be cautioned that mutualization could still result in higher rates, as exemplified above.

### Lee Ann Alexander

- After reviewing the CSO memo Re: *Moran* and CSO's federal tax-exempt status, feel even more strongly that the question needs to be asked, "Upon dissolution, do CSO's assets belong to the state or do they belong to CSO's policyholders?"
  - Most other states' cases cited in the memo and *Moran v. State ex rel. Derryberry* say that the state cannot appropriate ("raid") CSO's funds while it is an ongoing entity.
  - Page 4, of the CSO memo states, "CompSource funds can be used only for the following purposes: (1) paying incurred losses of policyholders, (2) paying expenses of CompSource, (3) paying policyholder dividends, or (4) retention by CompSource." These points also assume an ongoing entity.
- The question should be asked, "When CompSource Oklahoma ceases to exist, what happens to the assets?"
  - Concerned about what happens to the federal tax exemption if CSO's assets, upon dissolution, cannot revert to the state. How is CSO currently getting a federal tax exemption if its assets do not revert to the state?
- If the answer to the CSO asset question is, "No, CSO is not an asset of the state;" then Oklahoma should implement HB 1963 and privatize CSO through mutualization.
- The Task Force has gathered the information, so despite the concerns raised, need to use the information gathered thus far and pursue getting answers to the outstanding issues presented.

### Insurance Commissioner Kim Holland

- Position is based on a philosophical bent, that the state should not be in the business of insurance, particularly when the market has demonstrated it can competitively meet the need for workers' compensation insurance in Oklahoma.
- The Insurance Department's responsibility, in part, is to ensure a level playing field so that companies can operate equally without an unfair advantage. To that end:
  - As a nonregulated entity, CompSource Oklahoma (CSO) has certain advantages over private companies. To the extent that these advantages are necessary to perform its obligation as the insurer of last resort, they are appropriate. However, to the extent they create a competitive advantage for CSO over the private marketplace for risks that can be assumed by the private marketplace, the state is exceeding its role as a safety-net provider and disrupts the "free market."
- In obligating employers to provide workers' compensation insurance, the state has a prevailing interest in ensuring that all are covered. As such, ensuring that a safety-net mechanism is in place is essential.
- In those states that have a residual market mechanism in place, on average only 7 percent of the market is covered by this safety-net provision, in contrast to the nearly 40 percent currently insured through CSO which suggests that the private marketplace can and will compete effectively for all but a small portion of the potential business to be written.

### Rep. Daniel Sullivan, Co-Chair

- HB 1963, through the Legislature's consideration, affirmative vote, and the Governor's signature, the philosophy has been established that the state should not be in the business of workers' compensation insurance. As a result, privatization must be considered and the Task Force's responsibility is to consider how to privatize CompSource Oklahoma.
- The proposed legislation earlier discussed [at the October 21 Task Force meeting], establishing that CSO is an asset of the state, would be necessary to get a court ruling.
  - An Attorney General opinion would not resolve the CSO asset issue.
  - Oklahoma does not have declaratory judgments in state court.
- Considering the original purpose of the Oklahoma State Insurance Fund, which has been expanded through legislation over the years; do believe the *Moran* case states that the State of Oklahoma cannot appropriate money from CSO funds, as if it were part of the General Revenue Fund. (Although the law does allow trust to be changed and transferred.)
- CSO's memo regarding *Moran* and its tax-exempt status, if read in its entirety, explains that a sale of CSO can be allowed and that resulting assets would belong to the state.
  - I am aware of and concerned about the importance of considering the residual market, with any change to the status of CSO.
  - The state must maintain a place for entities to be insured, because it is required by law to have workers' compensation coverage.
  - Could include an option for pooling agreements.
- If CSO is an asset and it could be determined that the asset does wholly belong to the state, we have an obligation to examine the possibility.
  - If CSO is not an asset of the state, there may not be any assets left for a sale; if the tax-exempt status is revoked, there may not be any money left after tax liabilities are dealt with.
- The question should be asked so it can be answered.

### Sen. Cliff Aldridge, Co-Chair

- The Task Force's debate and consideration has surrounded whether or not to mutualize.
- In past meetings, the Task Force's examination included a review of Nevada's and other state's mutualized options.
- As a legislator, privatization through a sale is an option that should to be examined for the potential good of the state.
- *Moran* must be considered in its historical context, as the state attempted to raid the funds of the State Insurance Fund at that particular point in time. The ruling in the *Moran* case prevented such action by the Legislation.
- My aim for the state is not to make money, but to keep government out of competing with private business.
  - From that angle, should look at privatizing CSO.
- A bill should be filed to get an answer and ask the question, "Is CSO an asset of the state or property of CSO's policyholders?"

- The state has a Supreme Court whose job it is to rule on questions. If we don't utilize the Court, what do they exist for? They should be utilized for this purpose.
- The court's decision would affect whether the next step would be to privatize CSO through a sale or mutualization process.
- The legislative leaders will do what they want, despite Task Force recommendations.

**Motion:** Co-Chair, Rep. Sullivan moved to provide the individual Task Force members' comments as the Final Findings and Recommendations of the Task Force, which would include comments from the October 21 and November 5 meetings, of the Task Force on the Privatization of CompSource Oklahoma. Motion was seconded by Co-Chair, Sen. Aldridge. The motion was approved upon a unanimous voice vote of the Task Force members.

**Other Business:** There will be no meeting as previously scheduled on Wednesday, November 18 unless there are objections to the emailed report, distributed for approval. Wednesday, November 18 will be the deadline for a response on comments and recommendations to be printed in the Task Force's final report.

The meeting was adjourned at 11:00 a.m.



# INDEX TO APPENDICES

- Appendix A: Enacting Legislation – Enrolled House Bill 1963 (2009)
- Appendix B: Organizational Meeting Agenda, August 6, 2009
- Appendix C: “Reforms lead to improvement,” *Times West Virginian*, July 12, 2009 (Handout from Dan Ramsey), August 6, 2009
- Appendix D: 2nd Meeting Agenda, August 19, 2009
- Appendix E: Actuarial Presentation by James Stergiou, Actuary for CompSource Oklahoma and Task Force Member, August 19, 2009
- Appendix F: CompSource Oklahoma (CSO) Financial Overview and Policy and Market Distribution, presented by Steve Hardin, CFO of CSO, and Jason Clark, President/CEO of CSO, August 19, 2009
- Appendix G: Review of CompSource Oklahoma History and Legal Precedent, presented by Larry Derryberry, Attorney-at-Law, Derryberry & Naifeh, LLP, August 19, 2009
- Appendix H: Michigan’s Worker’s Disability Compensation Act of 1969 (handout from Dan Ramsey), August 19, 2009
- Appendix I: 3rd Meeting Agenda, September 2, 2009
- Appendix J: Insurance Companies that have Withdrawn from the Market, (Information from the Oklahoma Department of Insurance, pursuant to a Task Force request), September 2, 2009
- Appendix K: Number of Small Employers by State (for policy year 2008) and Top Ten Workers’ Compensation Carriers in Oklahoma (written premium by calendar year 2004-2008) (Information from the Oklahoma Department of Insurance, pursuant to a Task Force request), September 2, 2009
- Appendix L: Oklahoma Workers’ Compensation Policy Distribution between private carriers and CompSource Oklahoma (Information from the Oklahoma Department of Insurance, pursuant to a Task Force request), September 2, 2009

- Appendix M: National Council on Compensation Insurance (NCCI) Residual Market Data with selected exhibits from NCCI's *Residual Market Management Summary 2008* (Information from the Oklahoma Department of Insurance, pursuant to a Task Force request), September 2, 2009
- Appendix N: American Insurance Association (AIA) State Funds Policy Considerations Outline, handouts and information presented by Bruce Wood, Associate General Counsel and Director of Workers' Compensation, AIA, September 2, 2009
- Appendix O: AIA CompSource Oklahoma Profile, handouts and information presented by Bruce Wood, Associate General Counsel and Director of Workers' Compensation, AIA, September 2, 2009
- Appendix P: AIA State Fund Survey, July 2008 Summary Chart, handouts and information presented by Bruce Wood, Associate General Counsel and Director of Workers' Compensation, AIA, September 2, 2009
- Appendix Q: Statewide Private Ownership, Firm Size by Business Sector 2008 (Informational chart shared by Mike Seney), September 2, 2009
- Appendix R: 4th Meeting Agenda, September 23, 2009
- Appendix S: CompSource Oklahoma Market Analysis, with accompanying cover letter from Jason Clark, President/CEO, CSO, September 23, 2009
- Appendix T: CompSource Oklahoma cover letter for September 23, 2009 volunteer firefighter presentation handouts
- Appendix U: Senate Concurrent Resolution 14 (2009), praising volunteer firefighters (handout from CompSource Oklahoma), September 23, 2009
- Appendix V: Title 85, Section 132a, of the Oklahoma Statutes – Volunteer Firefighters Group Insurance Pool (handout from CompSource Oklahoma), September 23, 2009
- Appendix W: CompSource Oklahoma data on Volunteer Firefighters presented by Jason Clark, President/CEO, and Justin Hinson, Assistant Underwriting Manager, CompSource Oklahoma, (charts from CompSource Oklahoma), September 23, 2009

- Appendix X: About the National Council on Compensation Insurance (NCCI), presented by Roy O. Wood, State Relations Executive, NCCI Holdings, Inc., September 23, 2009
- Appendix Y: Residual Markets and Assigned Risk, presented by Melissa Palmer, Director, Plan Administration, NCCI Residual Markets, September 23, 2009
- Appendix Z: NCCI Supplemental Information – 2009-10 National Workers’ Compensation Reinsurance Pool Board of Governors, NCCI Holdings, Inc. Board of Directors, and Disposition of risks in neighboring states with NCCI Residual Market (submitted pursuant to a Task Force request), October 28, 2009
- Appendix AA: 5th Meeting Agenda, October 7, 2009
- Appendix BB: A Blueprint for Privatizing CompSource presented by Lance LaGere, Executive Vice President and Chief Operating Officer, National American Insurance Company (NAICO Press Release, PowerPoint presentation, and Executive Summary), October 7, 2009
- Appendix CC: Texas HB 3458 Bill Analysis, legislation converting the Texas Workers’ Compensation Insurance Fund to a mutual company, October 7, 2009
- Appendix DD: Texas Enrolled HB 3458 (2001), relating to the Texas Workers’ Compensation Insurance Fund, creating the Texas Mutual Insurance Company, October 7, 2009
- Appendix EE: Loss Portfolio Transfer Issues presented by James Stergiou, Actuary for CompSource Oklahoma and Task Force Member, October 7, 2009
- Appendix FF: CompSource Oklahoma letter with recommendations regarding CSO employees and employee data from Jason Clark, President/CEO, CSO, October 6, 2009
- Appendix GG: 6th Meeting Agenda, October 21, 2009
- Appendix HH: CompSource Oklahoma letter with top loss ratio industry classifications (submitted pursuant to a Task Force Request), October 21, 2009
- Appendix II: NAICO letter regarding loss ratios (submitted pursuant to a Task Force Request), October 21, 2009

Appendix JJ: 2008 Oregon Workers' Compensation Premium Rate Ranking Summary (March 2009, handout from Mike Seney), October 21, 2009

Appendix KK: 7th Meeting Agenda, November 5, 2009

Appendix LL: CompSource Oklahoma Memorandum, Re: Legal Analysis of *Moran v. State ex rel. Derryberry*; Information Regarding Federal Tax Exempt Status of CompSource, November 4, 2009

## **Appendix A**

ENROLLED HOUSE  
BILL NO. 1963

By: Bengé and Sullivan of  
the House

and

Aldridge of the  
Senate

An Act relating to workers' compensation; creating Task Force on Privatization of CompSource Oklahoma; stating purpose of task force; providing for membership; providing for service of members and vacancy; providing for date of appointment; providing for quorum; requiring designation of cochairs by certain persons; providing for convening of certain meeting and scheduling of subsequent meetings; providing for staff; requiring CompSource Oklahoma to provide certain information; prohibiting compensation; authorizing travel reimbursement; stating duties and responsibilities of task force; providing for a plan for privatization; providing requirements; requiring certain publication; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 131c of Title 85, unless there is created a duplication in numbering, reads as follows:

A. In order to create a stable, predictable, competitive workers' compensation market place in the State of Oklahoma for the benefit of Oklahoma employers and employees, it is the intent of the Legislature that CompSource Oklahoma be

converted into a private insurance company no later than December 31, 2010.

B. In order to accomplish the conversion of CompSource Oklahoma to a private insurance company, there is hereby created until December 31, 2011, the Task Force on Privatization of CompSource Oklahoma. The task force will examine the issues as they relate to privatizing CompSource Oklahoma. The resulting private entity shall operate in the same manner as any domestic insurer in the state and shall be subject to the same laws, taxes, guaranty fund assessments and other regulatory requirements.

C. The task force shall consist of nine (9) members as follows:

1. The Insurance Commissioner;

2. Four members appointed by the President Pro Tempore of the Senate as follows:

- a. one actuary expert,
- b. one member who represents CompSource Oklahoma,
- c. one member of the Senate, and
- d. one member from a statewide organization that is an advocacy association for business and industry; and

3. Four members appointed by the Speaker of the House of Representatives as follows:

- a. one member who represents the private insurance industry and is among the top ten writers of workers' compensation premiums in this state,
- b. one member of the House of Representatives,
- c. one member of the Board of Directors of the Oklahoma Property and Casualty Insurance Guaranty Association, and
- d. one member from an independent insurance agents association.

D. 1. Members shall serve at the pleasure of their appointing authorities. A vacancy on the task force shall be filled by the original appointing authority.

2. Appointments to the task force shall be made by July 1, 2009.

3. A majority of the members of the task force shall constitute a quorum. A majority of the members present at a meeting may act for the task force.

4. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair from among the members of the task force.

5. The cochairs of the task force shall convene the first meeting of the task force on or before July 15, 2009, at which time a schedule of the meetings shall be determined.

E. The task force may use the services of the staffs of the Senate and the House of Representatives and may, as necessary, seek the advice and services of experts in the field of insurance.

F. CompSource Oklahoma shall cooperate with the task force in fulfilling its duties and responsibilities including, but not limited to, providing any information, records or reports requested by the task force.

G. Members of the task force shall receive no compensation for their service, but shall receive travel reimbursement as follows:

1. Legislative members of the task force shall be reimbursed for necessary travel expenses incurred in the performance of their duties in accordance with the provisions of Section 456 of Title 74 of the Oklahoma Statutes; and

2. Nonlegislative members of the task force shall be reimbursed by their appointing authorities or respective agencies for necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

H. Consistent with the intent of the Legislature that CompSource Oklahoma be privatized no later than December 31, 2010, the task force shall identify the steps necessary and

develop a plan to convert CompSource Oklahoma into a private insurance company. Such plan shall include, but not be limited to, the following areas:

1. Establishment of a residual market mechanism that will protect the interests of all Oklahoma employers and employees, including a plan for rate stabilization to ensure the guaranteed availability of workers' compensation insurance;

2. Review of the current financial condition of CompSource Oklahoma;

3. Loss portfolio transfer;

4. Request for proposal process;

5. Consideration of the impact of privatization and the most appropriate way to accommodate current CompSource Oklahoma employees;

6. Studying current statutes regarding the responsibilities of CompSource Oklahoma;

7. Identification of all necessary statutory changes including, but not limited to, securing funding for volunteer firefighters workers' compensation premiums; and

8. Any other issues identified by the task force as necessary to accomplish the privatization of CompSource Oklahoma.

I. The task force shall publish and submit to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor its findings and recommendations by December 1, 2009, including recommendations for any resulting legislation.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 13th day of May,  
2009.

---

Presiding Officer of the  
House of Representatives

Passed the Senate the 18th day of May, 2009.

---

Presiding Officer of the  
Senate

**The complete Task Force report  
including Appendices B-LL  
can be found at the following link:**

[http://www.okhouse.gov/Information/Info\\_Publications.aspx](http://www.okhouse.gov/Information/Info_Publications.aspx)

## **Appendix B**

# Oklahoma Legislature

Chris Bengtson  
Speaker  
House of Representatives



Glenn Coffee  
President Pro Tempore  
State Senate

August 4, 2009

## AGENDA

**TO:** Members of the Task Force on the Privatization of CompSource Oklahoma

**DATE:** Thursday, August 6, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 419C, State Capitol Building – **ROOM CHANGE**

**AGENDA:** Organizational Meeting

- I. Welcome and Introductions by Co-Chairs: Senator Aldridge and Representative Sullivan
- II. Review of the task force objectives outlined in HB 1963
- III. Review of all parties' priorities/objectives for legislation
- IV. Update from prior informal meetings
- V. Update from any issues from 2009 legislative session
- VI. Action items
  - a. Set schedule of meetings
- VII. Additional attendees for next meeting? Presentations needed?
- VIII. Other Business and Adjournment

Sen. Cliff Aldridge, Co-Chair

Rep. Daniel Sullivan, Co-Chair

**Members:**

Insurance Commissioner Kim Holland  
Dan Ramsey  
James Stergiou

Michael Clingman  
Mike Seney

## **Appendix C**



## Reforms lead to improvement

By Jessica Legge  
Times West Virginian

FAIRMONT July 12, 2009 01:49 am

— Workers' compensation in West Virginia keeps progressing, Insurance Commissioner Jane Cline said. West Virginia's workers' compensation system changed from a state system to the private market when Gov. Joe Manchin signed Senate Bill 1004 into law in February 2005. Workers' comp insurance in the state is under the regulation of the West Virginia Offices of the Insurance Commissioner and the Industrial Council. BrickStreet Mutual Insurance Co. officially began its operations on Jan. 1, 2006, as the first private company to offer workers' compensation coverage to state businesses. The company remained the single source until July 1 of last year, when the market opened up to private insurance carriers licensed to do business in West Virginia.

The Insurance Commission has worked to manage the claims from the state's "Old Fund," which was set up to take care of all the liabilities before July 1, 2005. The office should be able to pay the Old Fund by 2014 or 2016.

Cline said a number of reforms in the system have contributed to the improvement that the state has experienced.

"It's just getting a better management system in place for the handling of claims," she said.

Today's system concentrates on making sure people with legitimate claims get appropriate treatment fast and actively examines dishonest claims that might not be related to the workplace, she said.

"We've gotten much more aggressive in investigating fraudulent claims," Cline said. "We want deserving claimants ... to be taken care of in a quick manner and have worked to improve that."

The number of claims filed has decreased from 40,000 to 29,000 since the privatization of workers' compensation, she said.

Cline said claims adjusters are especially trained to deal with and take care of the needs of any claimant who has an occupational disease. Also, training has improved for adjusters looking into fraudulent claims on the part of the employer or employee.

"With the reforms and again getting fraud out of the system ... you much improve a claimant's opportunity for improved outcome and return to work," she said.

There has been a 68 percent decrease in the protests being filed when a claimant feels he or she is being inappropriately denied workers' comp, which Cline says is positive and indicates that the system has improved.

It could take up to 45 days for a claim to be processed under the old workers' comp system, but industry standards are now 24 to 48 hours. Claims are reported and handled quickly so the worker can get the necessary treatment, Cline said.

As the system and private insurers have moved forward, employers have established better safety and loss programs, she said.

"Companies are more aggressive about managing their losses up front and providing safety training," Cline said. "With that and the revenue streams that are in place, I think we've made significant progress."

The cost that employers are paying for workers' compensation coverage has gone down, she said. Since 2005, employers have seen an overall rate reduction of 30 percent, which results in more than \$150 million to the employer community.

July 1 of this year marked the first anniversary of when private insurance carriers entered the workers' comp market. Cline said the transition to the open market went better than she expected.

"I thought we would have more companies taking a wait-and-see approach," she said. "I'm very encouraged

by the activity we've seen thus far.”

A number of companies have entered the marketplace. Cline said 198 private insurance carriers have filed products with the Rates and Forms Division of the Offices of the Insurance Commissioner, which means they can sell workers' comp in West Virginia. Of those carriers, 154 have written coverage.

“Competition is good,” she said. “It brings out the best in the companies and their management and their implementation of safety and loss programs, and I believe that's very good for the business community in West Virginia.”

Cline said the Offices of the Insurance Commissioner has done a lot of outreach with the industry, including meeting with trade associations and the agent community and holding training seminars.

E-mail Jessica Legge at [jlegge@timeswv.com](mailto:jlegge@timeswv.com).

Copyright © 1999-2008 cnhi, inc.

## **Appendix D**

# Oklahoma Legislature

Chris Bengtson  
Speaker  
House of Representatives



Glenn Coffee  
President Pro Tempore  
State Senate

August 14, 2009

## - AGENDA -

**TO:** Members of the Task Force on the Privatization of CompSource Oklahoma

**DATE:** Wednesday, August 19, 2009

**TIME:** 9:30 a.m.

**PLACE:** Room 412C, State Capitol Building

**AGENDA:** 2nd Meeting

- I. Welcome and Introductions by Co-Chairs: Senator Aldridge and Representative Sullivan
- II. Actuarial Presentation by James Stergiou, Actuary for CompSource Oklahoma and Task Force member
- III. Exhibit on CompSource Oklahoma Policy and Market by Jason Clark, President and CEO of CompSource Oklahoma
- IV. CompSource Oklahoma Financial Overview by Steve Hardin, CFO of CompSource Oklahoma
- V. Review of CompSource Oklahoma History and Precedent by Larry Derryberry, Derryberry & Naifeh, LLP
- VI. Other Business and Adjournment

### Future Meeting Dates

Wednesday, September 2, at 9:30 a.m., Rm 412C

Wednesday, September 23, at 9:30 a.m., Rm 419C

October meetings will be set at September 2 meeting.

Sen. Cliff Aldridge, Co-Chair

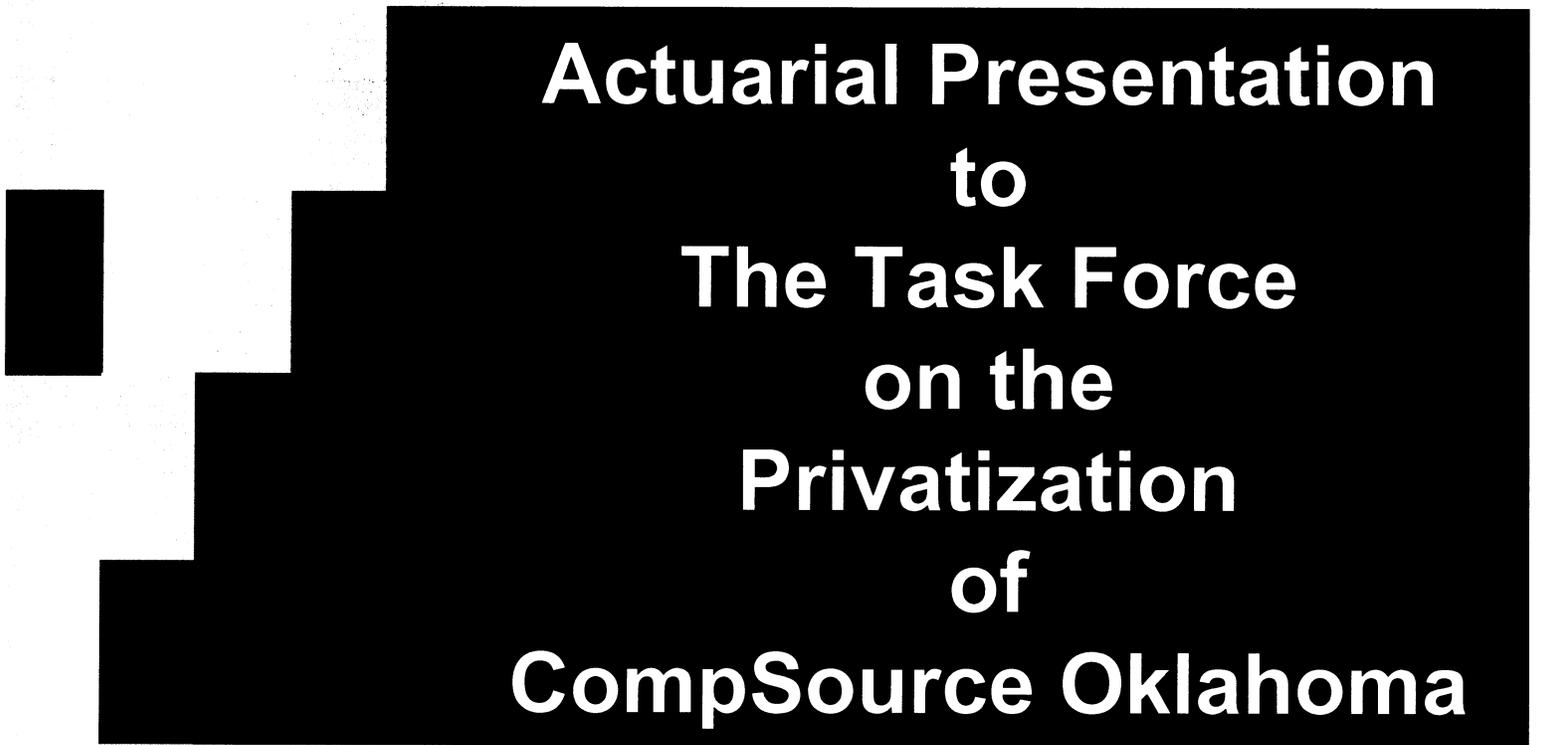
Rep. Dan Sullivan, Co-Chair

### Members:

Insurance Commissioner Kim Holland  
Dan Ramsey  
James Stergiou

Michael Clingman  
Mike Seney

## **Appendix E**



**Actuarial Presentation  
to  
The Task Force  
on the  
Privatization  
of  
CompSource Oklahoma**

August 19, 2009

Presented by:  
E. James Stergiou,  
FCAS,MAAA

*Actuarial Presentation to the Task Force on  
The Privatization of CompSource Oklahoma (CSO)*

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
1. General Actuarial Formulas and Comments Relating To CSO Loss Patterns, as Compared with Those of the Insurance Industry	1 1A-1E
2. Composition of CSO's Loss Reserve as of 6/30/09	2
3. CSO Premiums, Losses, and Loss Ratios by Policy Year	3
4. Actuarial "Early Warning" Tests of CSO's Solvency and Financial Solidity	4A-4E
5. CSO Risk Factors and Potential Vulnerabilities Based on Changes in its Loss Ratio and Investment Earnings	5
6. Rate Level Needs for CSO for the 2009/10 Policy Year	6, 6X 6A-6G
7. Preliminary Hypothetical "Value" of CSO	7

# General Actuarial Formulas and Comparison of CSO with Industry

**Loss & Loss  
Adjustment  
Expenses**

X

**Loss  
Development  
Factors**

X

**Insurance  
Inflation  
(Trend Factor)**

X

**Present  
Value  
Factor**

a) Paid Losses on Closed Claims

a) Based on CSO Results- shows how losses grow over time due to

a) Insurance Inflation

a) Payout Patterns

- i. Newly reported claims
- ii. Changes in Reserves on existing claims
- iii. Payout Patterns

- i. Frequency
- ii. Severity

b) Reserves on Open Claims

b) Contingencies

b) Indemnity Inflation

b) Interest Rate Assumed

c) Loss Expenses Paid

c) Used combined Self-insurance & Standard Business LDFs

c) Medical Inflation

- i) 0% for reserves
- ii) 5% to 7% for rate making

d) Loss Expense Reserves

**Comments:**

**Loss & Loss Adjustment Expenses**

**Loss Development Factors**

**Insurance Inflation (Trend Factor)**

**Present Value Factor**

- CSO's Experience Good & Credible
- CSO's "eras" depend on the external market

- Expect 90% Development within 4 years.
- Slightly upward development, in spots, from year 5 to year 15.
- Little or no (1% or 2%) development thereafter.
- Comparable to other OK Cos. & Region, Better than C/W average.

- Varies by Era

- No Discounting for Reserves
- Rates use PV of 7% Yielding PVF of .84
- 5% would yield .88
- 3% would yield .93
- If reserves were PV'd, the PVF at 3% would also be about .93 and have about a \$60 million effect
- Zero Profit Loading

## Comparison of Oklahoma Loss Growth Patterns

### Loss Development Factors CSO and Industry

#### A. INCURRED (Paid + Outstanding)

<u>Maturity to Ultimate</u>	<u>NCCI Industry-Wide</u>		<u>CSO</u>
	<u>(2009)</u>	<u>(2008)</u>	
1	1.893	1.935	1.703
2	1.340	1.339	1.276
3	1.207	1.211	1.205
4	1.144	1.160	1.164
5	1.113	1.126	1.139
6	1.089	1.102	1.120
7	1.071	1.083	1.103
8	1.061	1.075	1.088

## Comparison of Oklahoma Loss Growth Patterns

### Loss Development Factors CSO and Industry

#### B. PAID

<u>Maturity to Ultimate</u>	<u>NCCI Industry-Wide</u>		<u>CSO</u>
	<u>(2009)</u>	<u>(2008)</u>	
1	4.578	4.768	5.167
2	1.846	1.883	1.973
3	1.403	1.418	1.489
4	1.249	1.259	1.324
5	1.178	1.187	1.244
6	1.136	1.140	1.196
7	1.110	1.215	1.166
8	1.093	1.100	1.143

## General Notes on CSO's Actuarial Patterns

### A. LOSS DEVELOPMENT

1. Compsource's loss growth patterns are comparable to those in the commercial insurance industry in Oklahoma. This is true on both an incurred and paid basis.

a) Reserves on open claims are established quickly, and the expected final value of the claim is determined within a time frame which is comparable to the industry.

b) Payout patterns for Compsource are slightly longer than that observed for commercial carriers, due to the generally more serious nature of its claims, especially during "hard market" times.

After four or five years of "maturity", a Compsource policy year's losses mature and level off. This pattern is comparable with the industry, and has been so over the past decade. Generally speaking, these loss growth patterns remained stable during both "hard market" and "soft market" times.

### B. TREND

1. Insurance Trends regarding claim costs and frequency, the two components of insurance inflation, are also comparable to those of the industry and show

a) Medical inflation rising at an annual rate of 7% to 10%.

b) Indemnity Inflation ( based on awards ) increasing over the past three years at a rate of 8% to 10%, as well. Traditionally, this cost rose by 3% to 5%.

c) Offsetting those is payroll inflation, which allows Compsource, and commercial carriers, to get more premiums, based on higher payrolls. Until the recent economic downturn, "premium trend" rose by 2% to 3% annually.

Hence, the "NET" Annual Trend Factor for Compsource is in the 3% to 6% area. This pattern has also held true over the past decade, but, in the past, depending on the situation of the Oklahoma marketplace, it varied to reflect Compsource's market penetration. The market penetration dramatically affected CSO's claim profile.

For example, in "soft market" times, Compsource's loss experience suffered, and its premium dropped as it insured only those risks which the commercial carriers absolutely did NOT want. That situation left Compsource only with the least "desirable" or least profitable, risks, those which generally showed a propensity for high claim costs and more serious injuries.

## General Notes on CSO's Actuarial Patterns

Conversely, in "hard market" times, when its premium increased, the "less desirable" risks were supplemented by those insureds which were considered "borderline" profitable by the private sector, but were either canceled or not renewed. However, these borderline risks reflected an improvement over the least desirable risks Compsource always accepted.

### **C. PAYMENT VALUE FACTOR – CREDIT FOR INVESTMENT INCOME**

1. Present Value Factor - Compsource has ALWAYS provided its policyholders with rate levels and premiums which fully reflected the investment income it earned over the long term.
  - a) Losses, for rate making purposes, were discounted to reflect the time value of money, and using an appropriate rate of return assumption, based on its history.
  - b) For CompSource, this meant using 7% interest rate assumption, along with an approximate 3 year average payout pattern. This meant that losses were discounted, for rating purposes, at about 84 to 85 cents on the dollar.
  - c) No profit loading was ever used in the ratemaking process.
  - d) The lone exception to the above occurred this year, when the 7% assumption was reduced to 5%, which converted the discount factor to about 89 cents on the dollar. That was the single biggest reason for the 5% rate increase recommended by the Compsource actuary, and adopted by its Board of Managers.

**Investment Income Rate of Return  
By Calendar Year 1991-08  
Results**

<b>Calendar Year Return</b>	<b>CompSource Total Portfolio</b>
<i>Average Return All Years</i>	7.42%
12/31/08	(4.32%)
12/31/07	7.27%
12/31/06	6.60%
12/31/05	3.65%
12/31/04	5.05%
12/31/03	9.02%
12/31/02	4.43%
12/31/01	5.69%
12/31/00	8.03%
12/31/99	2.52%
12/31/98	10.75%
12/31/97	12.99%
12/31/96	7.13%
12/31/95	20.14%
12/31/94	(3.58%)
12/31/93	9.94%
12/31/92	8.47%
12/31/91	19.74%

**Indicated 6/30/09 Reserves**  
(in millions of dollars)

**Summary**

**Summary of Reserves**

Standard Business Portion	\$ 713.7
Self Insurance Portion	\$ 57.9
Accident Year 2009 Portion**	\$ 109.8
<b>Subtotal</b>	<b>\$ 881.4</b>
ULAE	\$ 29.1
<b>Total</b>	<b>\$ 910.5</b>
Reinsurance Recoverable	\$ -0.9
<b>Net Total Reserves</b>	<b>\$ 909.6</b>

## CSO

### Display of Loss Experience Since 1983 and Market Penetration as Expressed by Earned Premium

<u>Year</u>	<u>Proj. Ultimate Losses</u>	<u>Earned Premium</u>	<u>Loss Ratio</u>	
2008	265,705	261,898	101.45%	Era 6
2007	253,318	268,338	94.40%	
2006	255,178	289,983	88.00%	Era 5
2005	240,830	280,872	85.74%	
2004	261,681	254,307	102.90%	
2003	228,332	219,807	103.88%	
2002	197,312	176,719	111.65%	
2001	161,075	127,739	126.10%	Era 4
2000	109,743	91,307	120.19%	
1999	109,969	85,239	129.01%	
1998	90,615	93,845	96.56%	
1997	109,651	136,433	80.37%	Era 3
1996	161,549	205,339	78.67%	
1995	239,335	265,403	90.18%	
1994	281,907	289,920	97.24%	
1993	271,676	254,202	106.87%	
1992	230,783	183,159	126.00%	Era 2
1991	199,146	133,466	149.21%	
1990	159,631	107,630	148.31%	
1989	123,591	118,558	104.25%	
1988	101,939	107,670	94.68%	
1987	86,787	101,346	85.63%	
1986	79,129	89,343	88.57%	Era 1
1985	63,071	52,330	120.53%	
1984	51,183	47,909	106.83%	
1983	49,488	47,076	105.12%	
1982	40,405	54,686	73.89%	
1981	39,402	56,557	69.67%	
1980	44,261	56,633	78.15%	
<b>Last 5</b>	<b>1,276,712</b>	<b>1,355,398</b>	<b>94.19%</b>	
<b>Last 10</b>	<b>2,083,144</b>	<b>2,056,209</b>	<b>101.31%</b>	
<b>Last 15</b>	<b>2,966,201</b>	<b>3,047,149</b>	<b>97.34%</b>	
<b>All</b>	<b>4,506,693</b>	<b>4,457,714</b>	<b>101.10%</b>	



## Notes on CompSource's Traditional Loss Experience

1. CompSource has traditionally written risks which commercial carriers have either canceled, non-renewed, or just did not want to write.

Many of those risks have:

- a) been rather small, with premiums less than \$5,000,
- b) shown unstable, and/or, unfavorable, loss experience, and
- c) new risks, or those with probabilities of high claim cost profiles ( more serious injuries, such as Permanent Total and Permanent Partial Disabilities).

2. This has caused CompSource's Premiums to fluctuate wildly over time based mostly, on the desires of the commercial marketplace. Those desires either to write or not write WC business in Oklahoma, could be fueled by:

- a) the perception that Oklahoma WC rates in general were inadequate or "super-adequate",
- b) investment earnings, or lack thereof,
- c) the desire to maintain market share, or to dedicate resources (capital) and other states and/or other coverages,
- d) deals made on other lines of business, whereby WC was either the "loss leader" or thrown in with other coverages such as Property, General Liability, Automobile, etc.

A key consideration here may be commercial carriers' perception that their surplus or capital could be better used in other states, or other lines of business. Remember, CompSource writes **ONLY** in Oklahoma and writes **ONLY WC**.



## Notes on CompSource's Traditional Loss Experience

The chart shows the wild fluctuations in CompSource premiums, and in Loss Ratios over the past two decades. Generally speaking, and these loss ratios lag about a year or two, when "hard markets" occur CompSource's premiums increase and its loss ratios drop. When "soft markets" are in effect, premiums drop and loss ratios rise. CompSource has always been **REACTIVE TO THE MARKETS, and NOT PROACTIVE.**

However, it is true that CSO has always provided a fair market price for WC to Oklahoma policyholders..

# Actuarial Tests of CSO's Financial Solidity

(in 000's)

## 1. Premium to Surplus Ratio

	<u>12/03</u>	<u>12/04</u>	<u>12/05</u>	<u>12/06</u>	<u>12/07</u>	<u>12/08</u>	<u>6/09</u>
CSO Earned Premium =	<u>220</u>	<u>253</u>	<u>281</u>	<u>290</u>	<u>268</u>	<u>262</u>	<u>240</u>
CSO Surplus To Policyholders (in '000's)	160	163	183	230	259	184	203
	1.38	1.55	1.54	1.26	1.03	1.42	1.18

**Note: Excluding \$20 MM in Surplus for 2007, 1.12**

**Acceptable Range: Lower Than 3.0 (2.0 these days) on a Net Basis**

*Comment: This is a measure of capacity. Insurance regulatory agencies do not want to have insurance carriers write premiums, which are more than three times their surplus. In Cayman, Bermuda and other off-shore jurisdictions, the acceptable ratio is closer to 5:1 or, in some cases, even 10:1. CSO, of course, is well within all of these guidelines. The premium volume rose throughout the decade due to the continued hard market, and has only recently started to decline.*

## 2. Liquidity Ratio

Cash & Invested Assets = Bank Balances + Investments + Depreciated Property  
Loss Reserves & Unearned Premium Reserves = Case & IBNR Reserves + Unearned Premiums

<u>12/03</u>	<u>12/04</u>	<u>12/05</u>	<u>12/06</u>	<u>12/07</u>	<u>12/08</u>	<u>6/09</u>
<u>795</u>	<u>881</u>	<u>992</u>	<u>1,070</u>	<u>1,142</u>	<u>1,081</u>	<u>1,073</u>
669	755	877	925	963	<u>978</u>	962
= 1.19	= 1.17	= 1.13	= 1.16	= 1.19	= 1.11	= 1.12

**Note: Excluding \$20 MM in Surplus for 2007, 1.17**

**Acceptable Range: Over 1.00**

*Comment: CSO continues to be in an excellent liquidity position*

### 3. Quality of Assets

	<u>12/03</u>	<u>12/04</u>	<u>12/05</u>	<u>12/06</u>	<u>12/07</u>	<u>12/08</u>	<u>6/09</u>
Cash & Invested Assets	<u>795</u>	<u>881</u>	<u>929</u>	<u>1,070</u>	<u>1,142</u>	<u>1,081</u>	<u>1,073</u>
Total Assets	901	1,002	1,060	1,153	1,223	1,161	1,190
	= 88%	= 88%	= 88%	= 93%	= 93%	= 93%	90%

**Note: Excluding \$20 MM in Surplus for 2007, 93%**

**Comment:** This measures the quality of a company's assets. CSO's excellent ratio implies it is not dependent on receivables (such as reinsurance recoverables) for survival.

### 4. Investment Income Rate of Return

	<u>2007</u>	<u>2008</u>	<u>2009</u>
A. Investment Income*	6	19	21
B. Mean Cash and Invested Assets	1,106	1,111	1,060
Return (A/B)	5.5%	1.7%	4.0% annualized

\* Including realized capital gains

### 5. Operating Ratios

	<u>Loss</u>	+	<u>Expense</u>	-	<u>Investment Income</u>	
(Keyed to Net Premium)						
<b>2003</b>	1.06	+	.16	-	.28	= 0.94
<b>2004</b>	1.03	+	.13	-	.12	= 1.04
<b>2005</b>	.93	+	.14	-	.11	= .96
<b>2006</b>	.94	+	.14	-	.11	= .97
<b>2007</b>	.98	+	.13	-	.23	= .88
<b>2008</b>	.92	+	.13	-	.07	= .98
<b>2009</b>	1.11	+	.16	-	.17	= 1.10

**Acceptable Range: Under 1.100**

**Comment** CSO has had excellent loss experience in recent years with the hard market but must be conservatively reserved due to the fact that insurance markets are extremely fickle and that the soft market will return

## 6. Expense Ratio and Volume

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
<u>Expenses</u> Net Premium	= 13%	12%	12%	11%	13%	13%	16%

**Comment** *There is no hard and fast rule for an acceptable expense ratio but this expense ratio is well within reasonable industry guidelines. However, it is also very much a function of premium. In "soft" markets, the ratio is expected to rise, as premium falls. Over the long term, a 13% to 16% expense factor is observed.*

## CSO Risk Factor

### Updating the Alternative Operating Scenario

**What Happens if Our Loss Ratio is Much Higher than 100%,  
(or 96%, at 5%, or 93% at 3% Rate of Return (ROR)) Long Term?**

**(Amounts in Millions of Dollars)**

1. Expected Breakeven Loss Ratio		100% Using 7% ROR	96% Using 5% ROR	93% Using 3% ROR
			<b>240</b>	
		<b><u>At 7%</u></b>	<b><u>At 5%</u></b>	<b><u>At 3%</u></b>
3. Net Operating Loss at Loss Ratios of:	100%	0	10	17
	105%	12	22	29
	115%	36	46	53
	125%	60	70	77
	135%	84	94	101
		<b><u>At 7%</u></b>	<b><u>At 5%</u></b>	<b><u>At 3%</u></b>
4. With a Starting 12/31/08 Surplus of \$184MM CSO can have a zero Surplus in:	100%	-	18.4 yrs	10.8 yrs
	105%	15.3 yrs	8.4 yrs	6.3 yrs
	115%	5.1 yrs	4.0 yrs	3.5 yrs
	125%	3.1 yrs	2.6 yrs	2.4 yrs
	135%	2.2 yrs	1.9 yrs	1.8 yrs

## Derivation of the 100% “Breakeven Loss Ratios”

### Question:

How much Does It Cost, In Premium To Pay For \$1 of CSO Loss Cost?

Assumed Loss:	\$1		
Credit For Investment Income:	15¢	to	10¢
	(at 7% credit)		(at 5% credit)
Present Value of Loss Cost:	85¢	to	90¢
Add Expense Cost	=		15¢
Total Premium Charge to Pay for \$1 Loss	\$1.00	to	\$1.05
	(at 7%)		(at 5%)
Breakeven Loss Ratios	\$1 of Loss ÷ \$1 of Premium (at 7%) or 100%		

## Derivation of Rate Change Using 6/30/09 Loss Data

	(a)	(b)
1) Expected Ultimate Loss Ratio	100%	102%
2) Present Value Factor for Investment Income Assuming		
a) 3 Year Average Payout Pattern		
b) Investment Income		
i) 7%	.816	
ii) 6%	.840	
iii) 5%	.864	
iv) 4%	.889	
v) 3%	.915	
3) Present Value Loss Ratio at		
a) 7%	.816	.832
b) 6%	.840	.857
c) 5%	.864	.881
d) 4%	.889	.907
e) 3%	.915	.933
4) Total Rate Index & Rate Change Assuming Long Term 15% Overhead Expense Ratio		
a) 7%	.966	.982
b) 6%	.990	1.007
c) 5%	1.014	1.031
d) 4%	1.039	1.057
e) 3%	1.065	1.083
5) Recommended Rate Increase:		5%

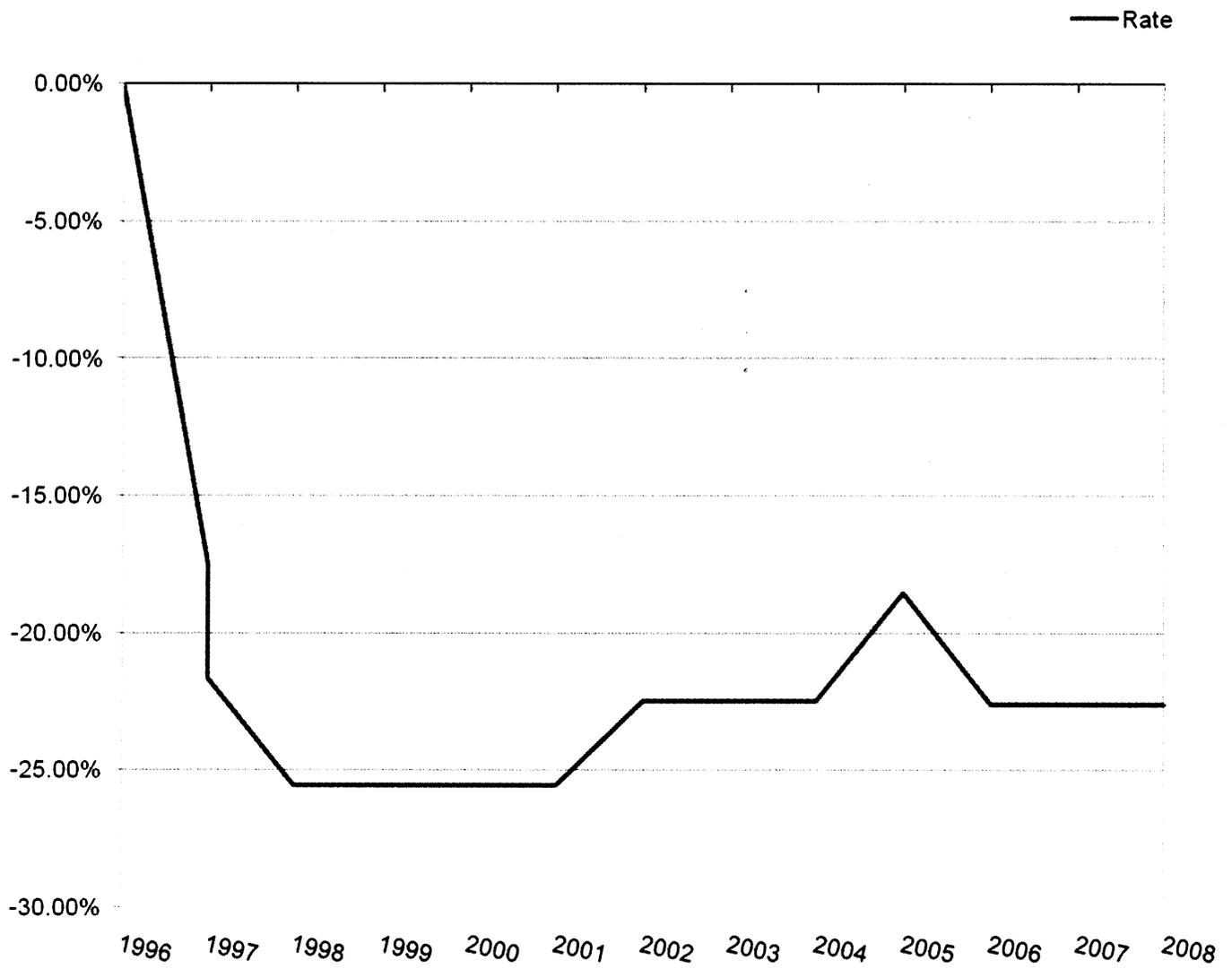
**Note:** Expected Insurance Inflation is 6% a Year.

## Compsource Rates Compared to 1996 Rates

Year	Percentage Decrease from 1996 Rates	As a Percentage of 1996 Rates	Changes in Rates
1996	0.00%	100.00%	0.00%
1997*	-17.50%	82.50%	-17.50%
1997*	-21.63%	78.38%	-5.00%
1998	-25.54%	74.46%	-5.00%
1999	-25.54%	74.46%	0.00%
2000	-25.54%	74.46%	0.00%
2001	-25.54%	74.46%	0.00%
2002	-22.49%	77.51%	4.10%
2003	-22.49%	77.51%	0.00%
2004	-22.49%	77.51%	0.00%
2005	-18.54%	81.46%	5.10%
2006	-22.61%	77.39%	-5.00%
2007	-22.61%	77.39%	0.00%
2008	-22.61%	77.39%	0.00%
2009	-18.74%	81.26%	5.00%

\* Two Rate Changes in 1997

# CompSource Rates Compared to 1996 Rates



## Notes on Rate Setting

1. Compsource's Rates will be increased by 5%, effective 11/1/09, reflecting investment results which caused a decrease in the rate of return assumption from 7% to 5%. This caused an increase in the present value factor ( applied to expected losses ) from about 84 cents on the dollar to about 89 cents.
2. We also anticipate, with the softening marketplace, a rise in Compsource's Loss ratio from 100% to about 102%. This will be a temporary phenomenon, as the Loss ratio has usually hovered in the 90% to 110% range over an extended period of time, with exceptions.
3. Compsource can generally break even with a 100% Loss Ratio, as follows:
  - a) Assumed, or Calculated, Loss Ratio : 100%
  - b) Present Value Loss Ratio 85%, depending on the payment pattern and rate of return assumed.
  - c) Expense Ratio : About 15%, depending on the Premiums written by Compsource. With the premium tax recently enacted, it is anticipated this expense ratio will rise to 16% or 17%, again, depending on Premium volume.
  - d) Given the assumptions stated above, the anticipated Operating ratio will be about 84% + 16%, or about 100%

Therefore, Compsource can breakeven with a 100% Loss ratio because:

- i) every dime of investment income it earns is credited back to its policyholders. That has been the case at least since the late 1970s.
- ii) while its loss ratio has fluctuated according to market forces, its expense ratio has remained fairly constant, and relatively "low," ranging over time between 14% to 19%,



# Circular

FEBRUARY 4, 2005

APPROVAL

OK-2005-01

---

## Oklahoma--Approved Advisory Loss Costs and Rating Values Effective January 1, 2005-- File Number 2004-2828C

---

**ACTION  
NEEDED**

As communicated in circular OK-2004-03, the Oklahoma Board for Property and Casualty Rates approved an overall average loss cost level increase of 5.5% effective January 1, 2005.

After the approval of the loss cost filing, the Oklahoma Board for Property and Casualty Rates approved Item Filing B-1391. The implementation of this item filing requires revisions to the loss costs and rating values for certain classifications. These changes are included in the attached manual pages.

Insurance companies submitting expense (loss cost) multiplier filings to the Oklahoma Board for Property and Casualty Rates must include the file number from NCCI's filing. The Oklahoma file number for the loss costs effective January 1, 2005 is 2004-2828C.

**BACKGROUND**

The revisions to loss costs and rating values due to the implementation of Item Filing B-1391 are included in the attached manual pages.

**IMPACT**

The recently approved loss cost and rating values filing reflects an overall average increase of 5.5%, effective January 1, 2005, applicable to new and renewal policies.

**NCCI ACTION**

Revised manual pages will be mailed shortly to subscribers of NCCI's *Basic Manual* and *Experience Rating Plan Manual*. If you would like to subscribe to any of our manuals, please contact our Customer Service Center at 800-NCCI-123 (800-622-4123).

NCCI has posted this approval circular on [ncci.com](http://ncci.com).

**PERSON TO  
CONTACT**

If you have any questions, please contact:

Larry Hochstetler  
State Relations Executive  
NCCI, Inc.  
2050 W. Iles Avenue, Suite B  
Springfield, IL 62704  
217-793-1100

Technical Contact:

Jay Rosen, FCAS, MAAA  
Actuary  
NCCI, Inc.  
901 Peninsula Corporate Circle  
Boca Raton, FL 33487  
561-893-3062



# Circular

NOVEMBER 29, 2006

APPROVAL

OK-2006-17

## Oklahoma--Approved Advisory Loss Costs and Rating Values Effective January 1, 2007--File Number 2006-3566

**ACTION  
NEEDED**

Please review the following information.

**BACKGROUND**

This approval circular is a supplement to Filing Circular OK-2006-14 and accompanying State Information Circular OK-2006-15. The Oklahoma Insurance Department has accepted, as originally filed, an overall average loss cost level decrease of 1.4% for the industrial classes effective January 1, 2007 based on private carrier experience only.

As communicated by the Oklahoma Insurance Department,

House Bill 2905, Section 38-New Law, pertaining to Section 1148 of Title 36 states: "Applicable to workers' compensation insurance only, every member of, or subscriber to, a licensed advisory organization shall adhere to the loss cost filings made on its behalf by such organization within ninety (90) days of the effective date of the loss cost filing." The word "adhere" means that a company must adopt NCCI loss costs within 90 days of the effective date of the new loss cost filing. Companies no longer have the option to non-adopt NCCI loss costs.

Insurance companies submitting expense (loss cost) multiplier filings to the Oklahoma Insurance Department must include the file number from NCCI's filing. The Oklahoma file number for the loss costs effective January 1, 2007 is 2006-3566C.

**IMPACT**

The advisory loss costs and rating values reflect an overall average decrease of 1.4%, effective January 1, 2007, applicable to new and renewal policies.

No policy may be cancelled or rewritten to avoid using these loss costs and rating values. For specific application of the Anniversary Rating Date Rule, refer to the *Basic Manual for Workers Compensation and Employers Liability Insurance*.

**NCCI ACTION**

Manual pages will be mailed shortly to subscribers of NCCI's *Basic Manual* and *Experience Rating Plan Manual*. If you would like to subscribe to any of our manuals, please contact our Customer Service Center at 800-NCCI-123 (800-622-4123).

We have posted this circular on [ncci.com](http://ncci.com).

**PERSON TO  
CONTACT**

If you have any questions, please contact:

Roy O. Wood  
State Relations Executive  
NCCI, Inc.  
11430 Gravois Road, Suite 310  
St. Louis, MO 63126  
314-843-4001

Technical Contact:

Jay Rosen, FCAS, MAAA  
Director and Actuary  
NCCI, Inc.  
901 Peninsula Corporate Circle  
Boca Raton, FL 33487  
561-893-3062



# Circular

OCTOBER 31, 2007

APPROVAL

OK-2007-09

**Oklahoma—Approved Advisory Loss Costs and Rating Values Effective January 1, 2008—SERFF File Number NCCI-125300567**

**ACTION NEEDED**

Please review the following information for impact on your company's systems and procedures.

**BACKGROUND**

This approval circular is a supplement to Filing Circular OK-2007-06 and accompanying State Information Circular OK-2007-07.

The Oklahoma Insurance Department has accepted, as originally filed, an overall average loss cost level increase of 7.2% for the industrial classes effective January 1, 2008 based on private carrier experience only.

As communicated by the Oklahoma Insurance Department, House Bill 2905, Section 38—New Law, pertaining to Section 1148 of Title 36 states: "Applicable to workers' compensation insurance only, every member of, or subscriber to, a licensed advisory organization shall adhere to the loss cost filings made on its behalf by such organization within ninety (90) days of the effective date of the loss cost filing."

The word "adhere" means that a company must adopt NCCI loss costs within 90 days of the effective date of the new loss cost filing. Companies no longer have the option to non-adopt NCCI loss costs. Insurance companies submitting expense (loss cost) multiplier filings to the Oklahoma Insurance Department must include the file number from NCCI's filing. The Oklahoma file number for the loss costs effective January 1, 2008 is NCCI-125300567.

**IMPACT**

The advisory loss costs and rating values reflect an overall average increase of 7.2%, effective January 1, 2008, applicable to new and renewal policies.

Note that the Oklahoma Insurance Department has recently approved Item 04-OK-2007 relating to the elimination of the *Manual of Underground Coal Mine Rules* (refer to NCCI Circular OK-2007-08). As a result, revised loss cost and rating value pages to incorporate the pertinent changes for classification Code 1016 are attached. In addition, the table of W and B values (weights and ballasts) specific to coal mine risks included in the attachment to Circular OK-2007-06 has been eliminated.

No policy may be cancelled or rewritten to avoid using these loss costs and rating values. For specific application of the Anniversary Rating Date Rule, refer to the *Basic Manual for Workers Compensation and Employers Liability Insurance*.

**NCCI ACTION**

Manual pages will be mailed shortly to subscribers of NCCI's *Basic Manual* and *Experience Rating Plan Manual*. If you would like to subscribe to any of our manuals, please contact our Customer Service Center at 800-NCCI-123 (800-622-4123). We have posted this circular on [ncci.com](http://ncci.com).

**PERSON TO CONTACT**

If you have any questions, please contact:  
Roy O. Wood  
State Relations Executive  
NCCI, Inc.  
11430 Gravois Road, Suite 310  
St. Louis, MO 63126  
314-843-4001

Technical Contact:  
Cary Ginter  
Manager and Associate Actuary  
NCCI, Inc.  
901 Peninsula Corporate Circle  
Boca Raton, FL 33487  
561-893-3110



# Circular

OCTOBER 24, 2008

APPROVAL

OK-2008-13

## Oklahoma—Approved Advisory Loss Costs and Rating Values Effective January 1, 2009— File Number NCCI-125787109

<b>ACTION NEEDED</b>	Please review the following information for impact on your company's systems and procedures.	
<b>BACKGROUND</b>	<p>This approval circular is a supplement to Filing Circular OK-2008-08 and accompanying State Information Circular OK-2008-09.</p> <p>The Oklahoma Insurance Department has accepted, as originally filed, an overall average loss cost level increase of 9.1% for the industrial classes effective January 1, 2009, based on private carrier experience only.</p> <p>As communicated by the Oklahoma Insurance Department, House Bill 2905, Section 38-New Law, pertaining to Section 1148 of Title 36 states: "Applicable to workers' compensation insurance only, every member of, or subscriber to, a licensed advisory organization shall adhere to the loss cost filings made on its behalf by such organization within ninety (90) days of the effective date of the loss cost filing."</p> <p>The word "adhere" means that a company must adopt NCCI loss costs within 90 days of the effective date of the new loss cost filing. Companies no longer have the option to non-adopt NCCI loss costs. Insurance companies submitting expense (loss cost) multiplier filings to the Oklahoma Insurance Department must include the file number from NCCI's filing. The Oklahoma file number for the loss costs effective January 1, 2009 is NCCI-125787109.</p>	
<b>IMPACT</b>	<p>The advisory loss costs and rating values reflect an overall average increase of 9.1%, effective January 1, 2009, applicable to new and renewal policies.</p> <p>No policy may be cancelled or rewritten to avoid using these loss costs and rating values. For specific application of the Anniversary Rating Date Rule, refer to the <i>Basic Manual for Workers Compensation and Employers Liability Insurance</i>.</p>	
<b>NCCI ACTION</b>	<p>Manual pages will be mailed shortly to subscribers of NCCI's <i>Basic Manual</i> and <i>Experience Rating Plan Manual</i>. If you would like to subscribe to any of our manuals, please contact our Customer Service Center at 800-NCCI-123 (800-622-4123).</p> <p>We have posted this circular on <a href="http://ncci.com">ncci.com</a>.</p>	
<b>PERSON TO CONTACT</b>	<p>If you have any questions, please contact:</p> <p>Roy O. Wood State Relations Executive NCCI, Inc. 11430 Gravois Road, Suite 310 St. Louis, MO 63126 314-843-4001 <a href="mailto:roy_wood@ncci.com">roy_wood@ncci.com</a></p>	<p>Technical Contact:</p> <p>Cary Ginter Manager and Associate Actuary NCCI, Inc. 901 Peninsula Corporate Circle Boca Raton, FL 33487-1362 561-893-3110 <a href="mailto:cary_ginter@ncci.com">cary_ginter@ncci.com</a></p>

**Hypothetical Approximate Value of CompSource**  
(in Millions of Dollars)

<b>Step 1</b>	Assets* – Liabilities, or “Surplus”	=	<b>\$203</b>
<b>Step 2</b>	Theoretical Equity in its Loss Reserves Due to the Time Value of Money (at 3% interest)		<b>\$ 60</b>
<b>Step 3</b>	Equity in its Unearned Premium Reserves (Prepaid Expenses) (16% of \$14 Million)		<b>\$ 2</b>
<b>Subtotal 1</b>			<b>\$265</b>
<b>Step 4</b>	Miscellaneous Factor a) Risks going forward as the “insurer of last resort” b) “Goodwill” c) Anticipated Profits over the next “x” yrs		
		<b>Total:</b>	<b>\$265, Plus</b>
* At Market Value			

## **Appendix F**

# CompSource Oklahoma

## Financial Summary (Statutory Basis) June 2009

(UNAUDITED)

(\$ in thousands)

### Selected Balance Sheet Information

	<u>June 30, 2009</u>
Investments	\$1,034,435
Total assets	\$1,165,051
Total loss reserves	\$909,600
Total liabilities	\$984,182
Total policyholder surplus	\$180,869

### Selected Income Statement Information

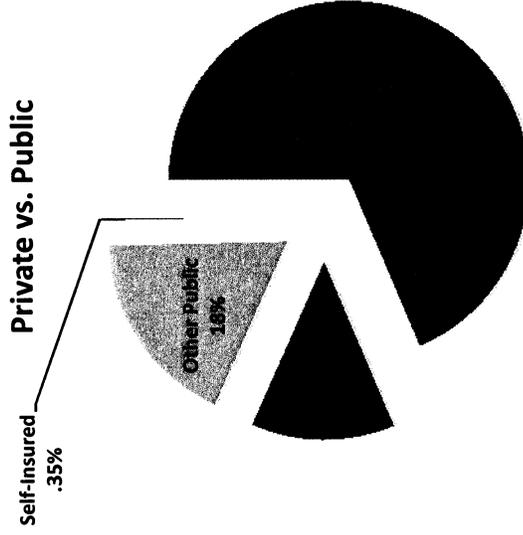
	<u>June 30, 2009</u> <u>Year-to-date</u>
Net premium income	\$122,028
Investment income	\$20,832
Losses and loss adjustment expenses incurred	(\$135,334)
Other underwriting and administrative expenses	(\$19,742)
Net Loss (before dividends)	<u>(\$12,216)</u>
Dividends	\$0
Net Loss (after dividends)	<u><u>(\$12,216)</u></u>

# CompSource Oklahoma

## Policy Distribution As of July 31, 2009

Premium Size (\$)	Policy Count	Total Percent of Policies	Estimated Annual Premium	Total Percent of Premium	Average Premium
0 - 4,999	18,258	70.46%	\$26,079,297	10.16%	\$1,428
5,000 - 9,999	3,202	12.36%	22,745,386	8.86%	7,103
10,000 - 99,999	4,093	15.80%	109,815,602	42.77%	26,830
100,000 - 199,999	245	0.95%	33,789,046	13.16%	137,914
200,000 +	114	0.44%	64,336,989	25.06%	564,360
<b>Totals</b>	<b>25,912</b>	<b>100.00%</b>	<b>\$256,766,320</b>	<b>100.00%</b>	<b>\$9,909</b>

Average Policy Size is \$9,909; 82.8% of bound business is under \$10,000 in premium size.





The Source for Workers' Compensation Insurance

August 18, 2009

The Honorable Cliff Aldridge  
The Honorable Dan Sullivan  
Members of the Task Force on the Privatization of CompSource Oklahoma  
State Capitol Building  
Oklahoma City, OK 73105

Dear Task Force Members:

In connection with the Task Force evaluation of alternative organizational structures for CompSource Oklahoma, we would respectfully propose Task Force Members explore the various structures of other state workers' compensation funds in our region who have mutualized their organizational structures. Representatives of these funds, including Missouri, New Mexico, Texas, Kentucky and Utah, have agreed to visit with the Task Force to discuss their individual structures and to field any questions.

Texas Mutual Insurance Company  
Russ Oliver  
President  
6210 East Highway 290  
Austin, TX 78723-1098  
Phone: 512-224-3800

New Mexico Mutual Casualty Company  
John G. Franchini  
Vice President & Public Affairs and  
C. Quinn Lopez  
Vice President & General Counsel  
Albuquerque, NM 87109  
Main: 505-345-7260

Missouri Employers Mutual Insurance  
Dennis Smith  
CEO Emeritus  
101 N. Keene St.  
Columbia, MO 65201  
Phone: 1-800-442-0590

Kentucky Employers' Mutual Insurance  
Roger Fries  
President & CEO  
250 West Main Street, Suite 900  
Lexington, KY 40507  
Phone: 1-800-640-KEMI (5364)

Utah Workers Compensation Fund  
Dennis V. Lloyd  
Senior Vice President/General Counsel  
392 East 6400 South  
Salt Lake City, Utah 84107  
Phone: 801-288-8060

If you require further information, please contact me at (405) 962-3334, or [jason\\_c@compsourceok.com](mailto:jason_c@compsourceok.com). Thank you.

Sincerely,

Jason Clark  
President/CEO

## **Appendix G**

**AUGUST 19, 2009**  
**TASK FORCE ON THE PRIVATIZING OF**  
**COMPSOURCE OKLAHOMA**  
**SIGNIFICANT EVENTS**

- 1933 CompSource was created by legislation in 1933, signed by then Governor, “Alfalfa Bill” Murray. 85 O.S. § 131, *et seq.*
- 1937 CompSource was originally placed under the jurisdiction of the State Industrial Commission. It became a separate entity in 1937.
- 1939 State Insurance Fund is recognized as a “department of the state” in that SIF does not need to file an appeal bond - *O.K Const. Co. v. Burwell*, 1939 OK 248, 93 P.2d 1092.
- 1959 The Court in *State v. Bone*, 1959 OK 135, 344 P.2d 562, addresses the dual nature of the Fund, and the Supreme Court recognizes that on one hand the Fund is a "department", "agency" or "instrumentality" of the State, and on the other hand it performs a purely business function, running a workers' compensation insurance company.
- 1963 The Attorney General, in opinion 63-119, determined it was constitutional for Governor Nigh to place the employees of the State Insurance fund under the protection of the State Merit System because the State Insurance Fund came within the Merit System Act's definition of "agency,"[noting that the Oklahoma Supreme Court in *State Insurance Fund v. Bone*, 344 P.2d 562, 568 (Okla.1959), had referred to the Fund as an "agency or instrumentality of the State"].
- 1975 *Moran v. State Ex Rel. Derryberry*, 1975 OK 69, 534 P.2d 1282 (all Justices concurring), explains statutes that provide State Insurance Funds could be expended only upon legislative appropriation, were unconstitutional as an impairment of the obligation of insurance contracts, since these funds did not belong to the State, where employers who paid premiums into the Fund had been issued contract of insurance, and since employers had a vested legal right, when they entered into their insurance contracts, to rely upon the Fund being maintained in accordance with the State Insurance Fund Act.
- 1988 Attorney General’s opinion, 1988 OK AG 61 (same opinion as 1988 OK AG 41) explains CompSource is a “state agency” for purposes of the Oklahoma Central Purchasing Act and must comply with its provisions, unless the item is specifically excluded in the Act.
- 1995 Attorney General’s opinion, 1995 OK AG 36, analyzes a state hiring freeze applies to CompSource, explains CompSource has attributes of a State agency and a private business, explains the State Insurance Fund comes withing the Oklahoma Personnel Act’s definition of “agency” and it is a “department ... of the executive branch of state government,” and refers to Attorney General Opinion 63-119.



Home	Courts	Court Dockets	Legal Research	Calendar	Help
Previous Case	Top Of Index	This Point in Index	Citationize	Next Case	Print Only

Oklahoma Supreme Court Cases

**O. K. CONSTR. CO. v. BURWELL**  
 1939 OK 248  
 93 P.2d 1092  
 185 Okla. 444  
 Case Number: 28638  
 Decided: 05/16/1939  
 Supreme Court of Oklahoma

---

Cite as: 1939 OK 248, 185 Okla. 444, 93 P.2d 1092

---

O. K. CONSTRUCTION CO. et al.  
 v.  
 BURWELL et. al.

Syllabus

¶0 1. WORKMEN'S COMPENSATION--*Time for Filing Proceeding to Review Award Where 30th Day Was Legal Holiday.*

Where the 30th day within which to file a proceeding to review an award falls on Decoration Day, a legal holiday, the proceeding is properly filed on the next secular day.

2. SAME--*Bond not Required Before Commencing Proceeding to Review Award Where State Insurance Fund One of Petitioners.*

The State Insurance Fund is not required to file the bond required by section 13363, O. S. 1931 (85 Okla. Stat. Anti. sec. 29) in order to have reviewed in this court an award of the State Industrial Commission entered against the said State Insurance Fund as an insurance carrier.

Original proceeding in the Supreme Court by the O. K. Construction Company et al. to review an award of the State Industrial Commission in favor of J. A. Burwell. Motion to dismiss denied.

Rolland O. Wilson and Jarman, Brown, Looney & Watts, for petitioners.  
 Melville F. Boddie and Mac Q. Williamson, Atty. Gen., for respondents.

OSBORN, J.

¶1 On the 30th day of April, 1938, the State Industrial Commission entered an award in favor of respondent J. A. Burwell against petitioners, the O. K. Construction Company and the State Insurance Fund. On the 31st day of May, 1938, the O. K. Construction Company and the State Insurance Fund filed a petition in the Supreme Court seeking to review the award. The State Industrial Commission is named as a respondent. A motion to dismiss has been filed by respondents, alleging, first, that the proceeding was not filed within the 30 days provided by section 13363, O. S. 1931 (85 Okla. Stat. Ann. sec. 29); and, second, that no bond has been provided either by the employer, O. K. Construction Company, or the State Insurance Fund.

¶2 We hold that the question first raised is amply covered by the rule announced by this court in Grant v. Creed, 35 Okla. 190, 128 P. 511. Therein we held:

"The judgment sought to be reviewed was rendered on December 30, 1911; the motion for new trial being filed and overruled on the same day. The proceeding In error was commenced on July 1, 1912. The 30th day of June, 1912, fell on Sunday. The six months in which a proceeding for

reviewing said judgment may be commenced in this court expired on that day, which must be excluded. The proceeding being commenced on July 1, 1912, was within time."

¶3 The enactment relating to the commencement of proceeding provides the act shall be done "within" 30 days, just as the statute provides for appeal within six months. Such holding tends to make uniform the rule as to commencement of proceedings in the Supreme Court and thus eliminates confusing, if not conflicting, rules. The 30<sup>th</sup> day of May was a legal holiday. Section 46, O. S. 1931 (25 Okla. Stat. Ann. sec. 72). The proceeding was filed in time. Section 22, O. S. 1931 (12 Okla. Stat. Ann. sec. 73); section 13363, O. S. 1931 (85 Okla. Stat. Ann. sec. 29).

¶4 Petitioners urge that the State Insurance Fund is not required to file an appeal bond, since it is a department of the state of Oklahoma. Section 514, O. S. 1931 (12 Okla. Stat. Ann. sec. 66), provides:

"Whenever an action is filed in any of the courts in the state of Oklahoma by the state of Oklahoma, or by direction of any department of the state of Oklahoma, no bond, including cost, replevin, attachment, garnishment, redelivery, injunction bonds appeal bonds or other obligations of security shall be required from the state of Oklahoma or from any party acting under the direction aforesaid, either to prosecute said suit, answer or appeal same. In case of an adverse decision, such costs as by law are taxable against the state of Oklahoma, or against the party acting by its direction, as aforesaid, shall be paid out of the contingent fund of the department under whose direction the proceedings were instituted."

¶5 Under this section the only question presented is whether or not the State Insurance Fund is "a department of the State of Oklahoma." The fund was created by chapter 28, S. L. 1933. Section 1 of the act provides that the same shall be a supplement to chapter 72, O. S. 1931, which is the chapter containing the Workmen's Compensation Law. The act was substantially amended by article 3, chapter 72, S. L. 1936-37. The 1933 act appropriated \$25,000 for the purpose of paying awards, but provided for the repayment of said appropriation to the general revenue fund. The 1933 act provided for the administration of the fund by the State Industrial Commission and provided that the State Insurance Board should have power and authority to determine the rates to be charged by the fund for compensation insurance. The 1937 act provided for the administration of the fund by a board of managers, including the Governor, Chairman of the Industrial Commission, Secretary of the State Insurance Board, the Insurance Commissioner, and the Secretary of the State Highway Commission. It further provided that the board of managers should have full power and authority to fix the rates to be charged by the fund for insurance.

¶6 Sections 4, 5, and 6 of the 1937 act fix the powers and duties of the Insurance Fund. Such powers are to enter into contracts of insurance, insuring employers against liability for compensation; to sue and be sued in all of the courts of the state in all actions arising out of the administration of the affairs of the fund; invest and reinvest all monies belonging to the fund; conduct all business and affairs of the fund.

¶7 Section 7 of the 1937 act provides that the State Treasurer shall be the custodian of till monies and securities belonging to the fund and that all monies shall be paid out by him upon vouchers signed by the State Insurance Fund Commissioner.

¶8 It is noted that none of the state officers constituting the board of managers or the State Treasurer are granted extra compensation for the duties provided by the act involved herein. Section 11 of the 1937 act provides that the entire expense of administering the fund shall be paid out of the fund, and further provides for the submission of budgets to the Governor and board of managers to be approved by them on the first days of January and July of each year, as estimated budgets of expenses for each succeeding six months; that in no event shall the entire expense of administration exceed 20 per cent. of the earned premiums of said year. Section 17 of the 1937 act provides:

"The state and all departments thereof must insure against their liability for compensation with the State Insurance Fund and every municipal corporation within the state, including counties, cities, towns and townships may each insure against their liability for compensation with the State Insurance Fund, and may not insure with any other insurance carrier unless the State Insurance Fund refuses to accept the risk when the application for insurance is made, but any county, city, town or township may carry its own insurance; provided, such Municipality shall have made an appropriation of funds to take care of such claims."

¶9 Other provisions of the 1937 act are that said fund shall be fairly competitive with other insurance carriers; that it is the intent of the Legislature that said fund shall become nothing more nor less than selfsupporting, and that in no event shall the state be liable beyond the amount of the fund.

¶10 It is observed that no legislative, judicial, or governmental functions are authorized by the terms of the act, but the powers granted are administrative in character and may be terminated at any time at the will of the Legislature. The powers and duties are exercised by elected and appointed state officers who perform said functions without added compensation. We are not here dealing with an independent corporate entity or a governmental agency created by law and vested with a measure of governmental power, but a mere department created for a fixed and limited purpose, over which the state, through its Legislature and its officials, retains absolute domination and control. The State Insurance Fund, therefore, is a department of the state of Oklahoma within the meaning of that term as used in section 514, supra, and is not required to give an appeal bond.

¶11 The motion to dismiss is overruled.

¶12 BAYLESS, C. J., WELCH, V. C. J., and RILEY, CORN, GIBSON, HURST. DAVISON, and DANNER, JJ., concur.

**Citationizer® Summary of Documents Citing This Document**

Cite Name	Level	
<b>Oklahoma Supreme Court Cases</b>		
Cite	Name	Level
<u>2001 OK 11, 19 P.3d 276, 72 OBJ 545,</u>	<u>FEHRING v. STATE INS. FUND</u>	Discussed at Length
<u>1954 OK 171, 278 P.2d 841,</u>	<u>STATE v. DISTRICT COURT OF OKLAHOMA COUNTY</u>	Cited
<u>1959 OK 144, 342 P.2d 560,</u>	<u>GARRETT v. WATSON</u>	Cited
<u>2003 OK 82, 78 P.3d 534,</u>	<u>STATE ex rel. STATE INSURANCE FUND v. JOA, INC.</u>	Discussed

**Citationizer: Table of Authority**

Cite	Name	Level
None Found.		



THE OKLAHOMA STATE COURTS NETWORK *www.oscn.net*

[Home](#) [Courts](#) [Court Dockets](#) [Legal Research](#) [Calendar](#) [Help](#)  
[Previous Case](#) [Top Of Index](#) [This Point in Index](#) [Citationize](#) [Next Case](#) [Print Only](#)

Oklahoma Supreme Court Cases

## STATE v. BONE

1959 OK 136

344 P.2d 570

Case Number: 38228

Decided: 06/30/1959

Supreme Court of Oklahoma

Cite as: 1959 OK 136, 344 P.2d 570

STATE OF OKLAHOMA EX REL. STATE INSURANCE FUND, AND THEODORE RILEY,  
PLAINTIFFS IN ERROR

v.

A.B. BONE, DEFENDANT IN ERROR.

Syllabus by the Court

¶0 1. The legislature of this state by the enactment of 85 O.S.1951 § 133, waived the sovereign immunity of the State Insurance Fund from all suits arising out of any act, deed, matter or things made, omitted, entered into, done or suffered in connection with the State Insurance Fund in the administration and management of the business and affairs of said Fund; and, the Fund, while engaged in the insurance business, a purely business enterprise, as distinguished from a mandatory duty or governmental function, assumes the obligations and liabilities incident to the business the same as when carried on by private corporations or individuals, including actions for damages caused by one of their employee's negligence in driving his car while on a mission for the Fund. In applying this rule, we overrule State ex rel. State Insurance Fund v. District Court of Oklahoma County, Okl., 278 P.2d 841, in so far as it conflicts with our holding herein.

2. Where the instructions to the jury, as in the instant case, fairly and reasonably present the issues joined by the pleadings and presented by the evidence, the instructions are sufficient.

3. A judgment on a jury's verdict determining the question of negligence will not be disturbed, where there is evidence reasonably tending to support the judgment.

4. Record examined and held that there is evidence reasonably tending to sustain the jury's verdict and the trial court's judgment based thereon, and that the judgment is not contrary to law.

Appeal from the District Court of Oklahoma County; W.R. Wallace, Jr., Judge.

Action for personal damages. Judgment for plaintiff. Defendant appeals. Affirmed.

Mac Q. Williamson, Atty. Gen., Fred Hansen, First Asst. Atty. Gen., Jack Baird, Dudley, Dudley & Dudley, Oklahoma City, for plaintiffs in error.

John B. Ogden, Oklahoma City, Busby, Stanfield, Deaton & West, Ada, for defendant in error.

JOHNSON, Justice.

¶1 This is an appeal from a jury verdict and judgment for A.B. Bone against Theodore Riley, employee of the State Insurance Fund, and the State Insurance Fund for damages to his car and for personal injuries sustained by him while driving his car upon a public highway. It was alleged that Riley's negligence in driving his car while on a mission for the State Insurance Fund caused the plaintiff's damages.

¶2 This is a companion case to the case of State of Oklahoma ex rel. State Insurance Fund v. Bone, No. 38,150, Okl., 344 P.2d 562.

¶3 By order of this Court the two causes were consolidated for the purpose of briefing. They each involve the same material factual matters and questions of law.

¶4 The answers to the questions of fact and problems of law being the same, so far as material herein, and for the reasons given in the opinion filed in cause No. 38,150, we apply the reasoning of said opinion to the instant case and adopt the syllabus in No. 38,150 as the law in this case and affirm the verdict and judgment in favor of A.B. Bone.

¶5 DAVISON, C.J., WILLIAMS, V.C.J., and WELCH and BLACKBIRD, JJ., concur.

¶6 HALLEY, JACKSON, IRWIN and BERRY, JJ., dissent.

**Citationizer® Summary of Documents Citing This Document**

Cite Name	Level
<b>Oklahoma Supreme Court Cases</b>	
Cite	Name Level
<u>1964 OK 210, 398 P.2d 92,</u>	<u>MID-CONTINENT CASUALTY CO. v. STATE INSURANCE FUND</u> Cited

**Citationizer: Table of Authority**

Cite Name	Level
<b>Oklahoma Supreme Court Cases</b>	
Cite	Name Level
<u>1954 OK 171, 278 P.2d 841,</u>	<u>STATE v. DISTRICT COURT OF OKLAHOMA COUNTY</u> Cited
<u>1959 OK 135, 344 P.2d 562,</u>	<u>STATE v. BONE</u> Cited



Home	Courts	Court Dockets	Legal Research	Calendar	Help
Previous Case	Top Of Index	This Point in Index	Citationize	Next Case	Print Only

Oklahoma Attorney General's Opinions

**Question Submitted by: The Honorable Gene Stipe, Oklahoma State Senate,  
Alexander B. Holmes, Director of State Finance**

1988 OK AG 61

Decided: 08/24/1988

Opinion No. 88-41 and 88-61

Oklahoma Attorney General

Cite as: 1988 OK AG 61, \_\_\_

¶0 The Attorney General has received your requests for an official opinion asking, in effect:

1. Is the State Insurance Fund a "state agency" for purposes of the Oklahoma Central Purchasing Act, 74 O.S. 85.1 (1981) et seq., and amendments thereto?
2. Is the State Insurance Fund required to comply with the Oklahoma Central Purchasing Act in the acquisition of telephone equipment, motor vehicles, and other material and equipment that is deemed necessary or convenient for the operation of the Fund's insurance business?
3. Is the State Insurance Fund required to comply with the Oklahoma Central Purchasing Act in its retention of the services of a financial advisor and fund manager?

I.

¶1 The Oklahoma Central Purchasing Act, 74 O.S. 85.1 (1987) et seq., expressly provides that "*all activities of any state agency . . . relating to purchasing shall be under the direction of the Purchasing Division [of the Office of Public Affairs], except such acquisitions as are excluded by the Oklahoma Central Purchasing Act.*" *Id.*, 85.3. (Emphasis added). The pertinent provisions of 74 O.S. 85.4 and 74 O.S. 85.5, also provide:

74 O.S. 85.4.

A. Except as provided in 74 O.S. 85.12 of this title, *every state agency* shall acquire all contractual services, supplies, equipment, or materials used, consumed or spent by such agency in the performance of its official functions by the presentation of requisitions for such services, supplies, materials, or equipment to the Purchasing Division established in 74 O.S. 85.3 of this title and no such items or service shall be acquired by *any state agency* for such presentation of such requisition and receipt of the items or service requisitioned through the Purchasing Division.

74 O.S. 85.5.

Subject to the provisions of 74 O.S. 85.4 of this title, *the State Purchasing Director, under the supervision of the Director of Public Affairs, shall have sole and exclusive authority and responsibility for the acquisition of all materials, supplies, equipment, and services acquired, used or consumed by agencies of the state government.* The State Purchasing Director, after consultation with the requesting or purchasing agency, shall have authority to determine the particular brand, model, or other specific classification of each item or group of materials, supplies, equipment, or services to be acquired for such use or consumption, and to draft specifications establishing the requirements for all such leases or purchases under the restrictions provided in the Oklahoma Central Purchasing Act.

(Emphasis added).

¶2 In view of these statutory provisions, the key inquiry to determine whether the Fund is subject to the requirements of the Central Purchasing Act, is whether the Fund is a "state agency" for purposes of that Act.

¶3 Section 85.2 of the Central Purchasing Act contains the following definitions:

As used in the Oklahoma Central Purchasing Act the following terms, *in addition to their usual definitions*, shall have the meanings ascribed to them in this section unless context otherwise requires:

1. "State agency" or "agency" includes any office, officer, bureau, board, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of the state government, whether elected or appointed, excluding only municipalities, counties and other governmental subdivisions of the state.

74 O.S. 85.2 (1987) (Emphasis added).

¶4 A review of the applicable authorities demonstrates that the State Insurance Fund falls within this definition of a "state agency." The statutes creating the State Insurance Fund vest supervisory powers over the administration and operation of the fund in a "board to be known as the *Board of Managers of the State Insurance Fund*." 85 O.S. 131a (1987). Moreover, the powers conferred by the Legislature on the Board and the State Insurance Fund Commissioner in 85 O.S. 131 (1981) et seq., and amendments thereto, are "executive powers." See, e.g., Webster's Ninth New Collegiate Dictionary (1985) (defining "executive" as having "administrative" or "managerial" responsibility); *Spivey v. State of Oklahoma*, 104 P.2d 263, 267 (Okla. Crim. App. 1940) (officers which are neither judicial nor legislative necessarily belong to the executive branch of government). In view of the foregoing, the State Insurance Fund clearly constitutes a "board . . . of the executive branch of state government," one of the definitions of "state agency" in the Central Purchasing Act.

¶5 Our conclusion that the State Insurance Fund falls within the scope of the Central Purchasing Act finds further support in prior opinions of the Supreme Court of Oklahoma and the Attorney General. In *State v. Bone*, 344 P.2d 562, 568 (Okla. 1959), the Supreme Court explicitly recognized that the State Insurance Fund is an "agency or instrumentality of the State," and in Attorney General Opinion No. 63-119, the Attorney General held that the State Insurance Fund constituted a "state agency" for the purposes of the merit system of personnel administration, construing a definitional provision of the then current version of 74 O.S. 802, that was similar to the definition of "state agency" in the Central Purchasing Act. Significantly, both the Bone decision and Attorney General Opinion No. 63-119 were issued prior to the most recent amendments to the Central Purchasing Act in 1986, Laws 1986, c.173, 1, eff. May 12, 1986. Those amendments made only stylistic changes to the provision of the Central Purchasing Act defining "state agency" and "agency." The Legislature's failure to change the statutory language should be regarded as acquiescence or approval of the interpretation previously given to the statute by the courts and the Attorney General. *Arkansas Louisiana Gas Co. v. Travis*, 682 P.2d 225 (Okla. 1984); *National Cowboy Hall of Fame and Western Heritage Center v. State ex rel. Oklahoma Human Rights Commission*, 579 P.2d 1276 (Okla. 1978).

¶6 In holding that the State Insurance Fund is a "state agency" for the purposes of the Oklahoma Central Purchasing Act, we are not unmindful of those cases where the Supreme Court has held that the Fund, in certain respects, is like a private insurance company. See e.g., *State Insurance Fund v. Taron*, 333 P.2d 508 (Okla. 1958) (statute of limitations applies to the Fund in an action arising out of management and administration of its insurance business to same extent as to any other private insurance carriers). But it is well recognized that a public entity may be a state agency for some purposes, but not for other purposes. See e.g., *State v. Grand River Dam Authority*, 154 P.2d 946 (Okla. 1945). The State Insurance Fund may be treated like a private carrier for certain purposes. Nevertheless, it remains a creation of the Legislature which derives its powers and authority, including those comparable to a private carrier, from legislative enactment. This was recognized by the Supreme Court in the *Bone* case, where the Court held that since the Fund was engaged in the insurance business at the time of an automobile accident involved therein, it was liable for damages just like a private insurance company. But the Court in that very case recognized that the fund was an "agency or instrumentality of the State." 344 P.2d at 568.

¶7 In our analysis of this issue, we recognize that the statutes creating the Fund confer broad powers on the Commissioner and the Board of Managers. Title 85 O.S. 132 (1987) states:

The State Insurance Fund Commissioner is hereby vested with full power, authority and jurisdiction

over the State Insurance Fund. He shall perform any duties which are necessary or convenient in the exercise of any power, authority, or jurisdiction over the fund in the administration thereof, or in connection with the insurance business to be carried on by him under the provisions of 85 O.S. 131 through 85 O.S. 151 of this title as fully and completely as a governing body of a private insurance carrier might or could do including the acquisition, operation and maintenance of an electronic data processing facility.

¶8 In addressing the import of this statute, our duty is to determine the intention of the Legislature, recognizing that the various portions of the enactments on a particular subject should be construed together and be given effect as a whole. Whenever it is possible to construe two statutes by giving effect to both without doing violence to either, such a construction is preferable to one that may produce a conflict between them. *Grand River Dam Authority v. State*, 645 P.2d 1011 (Okla. 1982).

¶9 Governed by this principle of statutory construction, we find no language in 85 O.S. 132 (1987) which conflicts with the detailed provisions of the Central Purchasing Act setting forth procedures for the acquisition of materials and supplies. We harmonize the two statutes at issue here by holding that while 85 O.S. 132 (1987) confers upon the Commissioner broad authority to purchase materials and services deemed necessary for the operation of the Fund's insurance business, the Fund is nevertheless subject to the Central Purchasing Act as to the manner by which such items are acquired.<sup>1</sup>

¶10 Finally, we emphasize that in 74 O.S. 85.12 (1987), amended by Act of March 25, 1988, c. 81, 1988 Okla. Laws, p. 201, the Legislature specifically excluded certain state agencies from the scope of the Central Purchasing Act, including the Oklahoma Municipal Power Authority and the Grand River Dam Authority. The 1988 amendment to 74 O.S. 85.12 changed only the language of the statute which exempted from the Act certain right-of-way purchases by the Department of Transportation. That the Legislature has exempted by name certain agencies from the Central Purchasing Act, but has not included the Fund among those exempted agencies, demonstrates that the Legislature clearly intended the Fund to remain subject to the Central Purchasing Act. See, *City of Duncan v. Bingham*, 394 P.2d 456, 460 (Okla. 1964) (Legislature's silence, when it has authority to speak, may be considered as giving rise to an implication of legislative intent); *State ex rel. Caldwell v. Oldheld*, 98 P. 925 (Okla. 1908) (presumption is that Legislature does not intend to make any change in existing law, except as expressly declared).

## II.

¶11 Since we have answered question number one in the affirmative, the issue of whether the Fund's purchase of telephone equipment, motor vehicles, and other materials and equipment, is subject to the Central Purchasing Act must be determined by reference to the specific provisions of that Act. As discussed above, 74 O.S. 85.4 (1987) provides that all state agencies "shall acquire all contractual services, *supplies, equipment, or materials* . . . by the presentation of requisitions . . . to the Purchasing Division . . ." (Emphasis added). Similarly, 74 O.S. 85.5 gives the State Purchasing Director exclusive authority for "the acquisition of all *materials, supplies, equipment* and services acquired . . . by agencies of the state government." (Emphasis added).

¶12 Section 85.2 of the Central Purchasing Act provides the following definitions of "materials," "supplies," and "equipment."

4. "Materials" or "supplies" includes all property except real property acquired by a state agency for its use or consumption, except equipment;

5. "Equipment" means all personal property acquired by a state agency for its use which is in the nature of a tool, device or machine and shall be deemed to include all personal property used or consumed by a state agency and not included within the category of materials and supplies[.]

74 O.S. 85.2 (1987).

¶13 Given these expansive definitions, it is clear that the purchase of telephone equipment and motor vehicles is subject to the requisitions and other requirements of the Central Purchasing Act. As to the application of the Act to the acquisition of other "materials and equipment," you may wish to examine 74 O.S. 85.12 (1987), as amended, to determine whether the Legislature has exempted from the scope of the Act any specific materials or equipment which the Fund plans to acquire. In the absence of such a statutory exclusion, the Act would apply.

III.

¶14 Section 85.2 of the Central Purchasing Act contains the following definitions, relevant to the issue of whether the Fund is required to comply with the Central Purchasing Act in the retention of a financial advisor and fund manager.

3. "Acquisition" includes all types of purchases and rentals, whether bought or leased by contract or otherwise, and includes every means by which a state agency obtains for its use any materials, supplies, service or equipment covered by this act, except those specifically excluded in this act;

\*\*\*

7. "Services" or "contractual services" includes any type of personal or professional service, employment or undertaking, including such services as utilities, pest control, maintenance and repairs, except the employment of regular officers and employees by a state agency or such extra seasonal help as is authorized by law and irregularly used;

\*\*\*

10. "Professional services" means services which are predominantly mental or intellectual in character, rather than physical or manual and which do not involve the supplying of products. Professional services include those services requiring special, usually advanced education and skill.

74 O.S. 85.2 (1987) (Emphasis added).

¶15 When the Legislature defines terms that appear in legislative enactments, those definitions are binding in the interpretation of those sections of the statute in which those terms appear. *E.g., Oliver v. City of Tulsa*, 654 P.2d 607 (Okla. 1982). The Legislature is presumed to be aware of such established rules of statutory construction, and it is entitled to expect that the courts will follow these principles in interpreting its enactments. *Wimberly v. Deacon*, 144 P.2d 447 (Okla. 1944). Accordingly, the definitions set forth above are incorporated by reference in those specific provisions of the Central Purchasing Act which describe the obligations of agencies under the Act, including 74 O.S. 85.4 (1987) (requisitions to Purchasing Division required for acquisitions of "contractual services"); 74 O.S. 85.5 (State Purchasing Director given sole authority over "acquisition" of "services by agencies"); 74 O.S. 85.7 (with certain exceptions, competitive bid procedures apply to "acquisitions").

¶16 The definition of "services" or "contractual services" in 74 O.S. 85.2(7) specifically excludes the "employment of regular officers and employees by a state agency." (Emphasis added). Further, since the Legislature defined "acquisition" in 74 O.S. 85.2(3) to include purchases of "services," it follows that the Legislature intended to exclude, from the statutory definition of "acquisition," the acquisition of services through the employment of regular officers and employees. The statutory exception for regular officers and employees would apply even if the work performed is professional in nature, since the statute includes "professional services" within the broader definition of "services." 74 O.S. 85.2(7), 74 O.S. 85.2(10) (1987). Accordingly, we conclude that even though the Fund is a state agency for the purpose of the Central Purchasing Act, the specific requirements of the Act do not apply where the Fund obtains professional services, including those of a financial advisor and fund manager, through the employment of the Fund's regular officers and employees.

¶17 A different situation arises, however, if the Fund obtains the services of a financial advisor and fund manager other than through the employment of regular officers or employees. Such an acquisition would constitute an "acquisition" of "contractual services" as those terms are defined in 74 O.S. 85.2(3) and 74 O.S. 85.2(7) (1987), and would also constitute an "acquisition" of "professional services" under 74 O.S. 85.2(10) (1987). Such an acquisition would fall within the scope of the requisition requirements of 74 O.S. 85.4, and would also fall within the scope of the provision vesting sole authority for acquisitions in the Purchasing Director. 74 O.S. 85.5 (1987).

¶18 The Fund's acquisition of the services of a financial advisor and fund manager, other than through the employment of regular officers or employees, is also subject to the competitive bidding procedures of 74 O.S. 85.7 (1987), as amended. Until 1988, 74 O.S. 85.7 stated:

A. No acquisition or contract shall be made without the submission of competitive bids by the State

Purchasing Director, except as provided in this section.

\* \* \*

2. Contracts for architectural, engineering, legal or other professional services as such term is defined in 18 O.S. 803 of the Oklahoma Statutes shall be exempt from competitive bidding procedures.

(Emphasis added).

¶19 By this language, the Legislature explicitly incorporated into 85.7(A)(2) of the Oklahoma Central Purchasing Act, the definition of "professional services" contained in 18 O.S. 803 of the Professional Corporation Act, 18 O.S. 801 (1987) et seq. 18 O.S. 803, in turn, lists fifteen specific types of services in that statute's definition of "professional services." Since the services of fund managers and financial advisors are not included among the services set forth in 18 O.S. 803, it is clear that the Legislature did not intend to exempt such services from the competitive bidding requirements of 74 O.S. 85.7 (1987), as amended.

¶20 The 1988 amendments to the competitive bidding requirements of 74 O.S. 85.7 (1987) confirm our conclusion that the Legislature did not intend to exempt the Fund's acquisition of the services of a fund manager and investment advisor. The amended statute states:

No acquisition or contract shall be made without the submission of competitive bids by the State Purchasing Director, except as provided in this section.

\* \* \*

2. Contracts for *pension fund custodians, investment managers and investment consultants for state retirement systems, the pension fund management consultants of the Oklahoma State Pension Commission and actuarial*, architectural, engineering, legal or other professional services as such term is defined in 18 O.S. 803 of the Oklahoma Statutes shall be exempt from competitive bidding procedures. The Office of Public Affairs shall send a copy of such contracts or a list of such contracts to any member of the House or Senate Appropriations Committee, if requested by such member.

Act of June 30, 1988, H.B. 1582, eff. July 1, 1988. (Emphasis in original, indicating changes to former law).

¶21 In the amended statute, the Legislature specifically excluded "investment managers and investment consultants for *state retirement systems*" from the competitive bid requirements of the Central Purchasing Act. The Legislature specifically singled out for exemption the acquisition of these services by retirement systems, but left unchanged the former law as it related to the acquisition of such services by other agencies, including the Fund. The Legislature thus signified its intent to continue to subject the Fund's acquisition of the services of a fund manager and investment advisor to the competitive bid requirements of 74 O.S. 85.7. See *City of Duncan v. Bingham, supra; State ex rel. Caldwell v. Oldfield, supra*.

#### IV.

¶22 We hold that the Fund is subject to the Central Purchasing Act in its acquisition of telephone equipment, motor vehicles, and other equipment, as well as the acquisition of the services of a fund manager and investment advisor (other than through the services of regular officers or employees). However, we draw your attention to certain provisions of the Central Purchasing Act which give the requisitioning agency some degree of control in the matters entrusted by that statute to the Purchasing Director. For example, 74 O.S. 85.4 (1987), provides:

[E]very state agency shall have the authority to determine its own quantitative needs for services, supplies, equipment and materials, insofar as it has such authority under existing law and shall have the authority to determine the general class or nature of supplies, equipment, materials, or services, subject to the provisions of 74 O.S. 85.5 of this title.

¶23 With regard to contracts for professional services, the Act provides:

Bids for professional service contracts that are subject to the competitive bid requirements of the

Oklahoma Central Purchasing Act shall be evaluated by the State Purchasing Director *and the agency contracting for such service. Both cost and technical expertise shall be considered in determining the lowest and best bid. Further, such agency shall present its evaluation and recommendation to the State Purchasing Director.* A documented evaluation report containing the evaluations of the State Purchasing Director and the agency contracting for such service shall be completed prior to the awarding of a professional service contract and such report shall be a matter of public record.

74 O.S. 85.7(C) (1987), *as amended*, Act of June 30, 1988, H.B. 1582, eff. July 1, 1988. (Emphasis added).

¶24 The legal relationship between the State Insurance Fund and the Purchasing Director should properly be viewed as that of principal and agent, consistent with our holding in Attorney General Opinion No. 84-066, issued May 29, 1984. The Fund, as the requisitioning agency, has input into the decisions entrusted by statute to the Purchasing Director as the state's duly appointed purchasing agent, pursuant to the statutory provisions cited above. Further, the Purchasing Director "stands in a fiduciary relationship with any requisitioning agency," and as such "is held to a very high standard of care" in making the award of the services or materials contract in question. A.G. Opin. No. 84-066.

¶25 It is, therefore, the official opinion of the Attorney General that:

1. The State Insurance Fund is a "state agency" for purposes of the Oklahoma Central Purchasing Act, 74 O.S. 85.1 (1981) et seq., and amendments thereto, and accordingly, the Fund's obligations relating to the acquisition of materials, supplies, services or equipment must be determined by reference to that Act.
2. The State Insurance Fund is required to comply with the provisions of the Central Purchasing Act in its acquisition of telephone equipment and motor vehicles, including 74 O.S. 85.4 (1987) (requisitions procedures) and 74 O.S. 85.5 (1987) (vesting authority over acquisitions in State Purchasing Director). The acquisition of other materials and equipment is also subject to these provisions, unless such items are specifically excluded from the Act pursuant to 74 O.S. 85.12 (1987), *as amended* in the Act of March 25, 1988, c. 81, 1988 Okla. Laws, p. 201.
3. The Fund's acquisition of the services of a fund manager and financial advisor is exempt from the Central Purchasing Act if such services are obtained from the Fund's regular officers and employees, pursuant to the definitions found in 74 O.S. 85.2(3), 74 O.S. 85.2(7), and 74 O.S. 85.2(10) (1987). However, if the Fund acquires such services other than from its regular officers and employees, such acquisitions are subject to the requirements of the Central Purchasing Act, including the competitive bid procedures of 74 O.S. 85.7 (1987), *as amended* in Act of June 30, 1988, H.B. 1582, eff. July 1, 1988.

ROBERT H. HENRY  
ATTORNEY GENERAL OF OKLAHOMA  
ROBERT A. BUTKIN  
ASSISTANT ATTORNEY GENERAL

#### FOOTNOTE:

<sup>1</sup>The specific authorization in 85 O.S. Supp. 1987, § 132 for the purchase of an electronic data processing facility should not be construed as exempting that purchase from the requirements of the Central Purchasing Act. The language authorizing the Fund to purchase a data processing facility was added to § 132 in 1982. At the time of that amendment, there was a statute, since repealed, which listed the specific state agencies which were authorized to own a data processing facility. Data Processing Planning and Management Act of 1971, 74 O.S. 1981, §§ 118.1 et seq., *repealed* by Laws 1984, c. 290, § 15, eff. July 1, 1984. The original version of that Act did not include the State Insurance Fund among the agencies authorized to own data processing facilities. Thus, the 1982 amendment to 85 O.S. § 132, should be viewed as an expression of the Legislature's intent to permit the Fund to own a data processing facility, but not to exempt the Fund from the Central Purchasing Act in the acquisition of such a facility.

Cite Name	Level
<b>Oklahoma Court of Civil Appeals Cases</b>	
Cite	Name Level
<u>2002 OK CIV APP 7, 38 P.3d 248,</u> <u>73 OBJ 409,</u>	<u>CUNNINGHAM LINDSEY CLAIMS MANAGEMENT, INC. v. OKLAHOMA STATE INS. FUND</u> Cited

**Citationizer: Table of Authority**

Cite Name	Level
<b>Title 18. Corporations</b>	
Cite	Name Level
<u>18 O.S. 801,</u>	<u>Short Title</u> Cited
<u>18 O.S. 803,</u>	<u>Definitions</u> Discussed at Length
<b>Title 74. State Government</b>	
Cite	Name Level
<u>74 O.S. 85.1,</u>	<u>Short Title</u> Discussed at Length
<u>74 O.S. 85.2,</u>	<u>Definitions</u> Discussed at Length
<u>74 O.S. 85.3,</u>	<u>Purchasing Division - Director - Employees - Encouragement of Certain Purchases - Conflict of Interest</u> Cited
<u>74 O.S. 85.4,</u>	<u>Requisitions - Determination Of Quantitative Need By Agencies - Forms - Information Required - Lease-Purchase Agreements - Change Order Or Addendum - Lease of Products.</u> Discussed at Length
<u>74 O.S. 85.7,</u>	<u>Competitive Bid Procedures.</u> Discussed at Length
<u>74 O.S. 85.12,</u>	<u>Act Not To Affect Nonconflicting Procedures - Acquisitions Excluded</u> Discussed at Length
<u>74 O.S. 118.1,</u>	<u>Repealed by Laws 1984, c. 290, § 15, operative July 1, 1984</u> Cited
<u>74 O.S. 802,</u>	<u>Repealed by Laws 1982, SB 339, c. 338, § 61, emerg. eff. July 1, 1982</u> Cited
<b>Title 85. Workers' Compensation</b>	
Cite	Name Level
<u>85 O.S. 131,</u>	<u>Creation of Fund - Purpose - Character and Contents - Use</u> Discussed
<u>85 O.S. 131a,</u>	<u>Board of Managers of State Insurance Fund - Members - Meetings - Powers and Duties</u> Cited
<u>85 O.S. 132,</u>	<u>Powers and Jurisdiction of State Insurance Fund Commissioner - Fixing of Rates by Board of Managers</u> Discussed at Length
<u>85 O.S. 151,</u>	<u>Invalidity Clause</u> Cited



THE OKLAHOMA STATE COURTS NETWORK [www.oscn.net](http://www.oscn.net)

[Home](#) [Courts](#) [Court Dockets](#) [Legal Research](#) [Calendar](#) [Help](#)  
[Previous Case](#) [Top Of Index](#) [This Point in Index](#) [Citationize](#) [Next Case](#) [Print Only](#)

Oklahoma Attorney General's Opinions

**Question Submitted by: The Honorable Gary C. Bastin, Oklahoma House of Representatives, District 94**

1995 OK AG 36

Decided: 10/12/1995

Oklahoma Attorney General

---

Cite as: 1995 OK AG 36, \_\_\_

---

¶0 This office has received your request for an Attorney General Opinion, in which you ask the following questions:

1. Was it the intent of the Legislature, in enacting the provisions of 74 O.S.Supp.1994, § 840-2.14, which authorize the Governor to implement a "freeze in hiring," to have such freeze apply to the State Insurance Fund, created at 85 O.S.1991, § 131?
2. Do the provisions of 74 O.S.Supp.1994, § 840-2.14, which authorize the Governor to implement a freeze in hiring, also empower the Governor to declare and implement a freeze on entering into professional or personal service contracts?

I.

**PERSONNEL ACT'S "FREEZE IN HIRING"  
Intent And Applicability Of "Freeze In Hiring" Provision**

¶1 To determine the Legislature's intent in enacting the provisions of 74 O.S.Supp.1994, § 840-2.14, we must look to the language used in enacting the statute as "[t]he cardinal rule for construction of statutes is to ascertain the intent of the legislature by consideration of the statutory language." *Grand River Dam Authority v. State*, 645 P.2d 1011, 1018 (Okla.1982).

¶2 The general intent of the Legislature in enacting the provision you inquire about, 74 O.S.Supp.1994, § 840-2.14, was articulated in subsection A:

The *intent of the Legislature* is to *increase* individual *agency skill* and *accountability in managing the costs associated with personnel* and in applying controls that will *enhance* the *ability of the State* of Oklahoma *to manage the overall costs of human resources as efficiently as possible*, while continuing to maintain fairness to employees.

74 O.S.Supp.1994, § 840-2.14(A) (emphasis added).

¶3 The next two subsections of 74 O.S.Supp.1994, § 840-2.14 require "[a]ll agencies, boards and commissions" to report all employee reallocation decisions, all adjustments to pay grade, salary adjustments, and all transactions involving the establishment of new positions not specifically authorized by legislation:

**B. All agencies, boards, and commissions** shall *report* all reallocation decisions for both classified and unclassified positions and all adjustments to pay grades or *salary* assignments for classes in the unclassified service to the Office of Personnel Management on a quarterly basis. The Office of Personnel Management shall submit the quarterly reports to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, along with an analysis of statewide reallocation decisions.

**C. All agencies, boards and commissions** shall report to the Office of Personnel Management on a quarterly basis all transactions in both the classified and unclassified service involving the establishment of new positions that have not been authorized specifically by legislative action. The

Office of Personnel Management shall forward the quarterly reports to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives, accompanied by an analysis of agency decisions concerning such positions.

74 O.S. Supp. 1994, § 840-2.14 (emphasis added).

¶4 The freeze in hiring you inquire about is provided for in subsection D of Section 840-2.14. In providing for the applicability of such a freeze, the Legislature specifically exempted the University Hospitals Authority, including all hospitals or other institutions operated by the Authority, from the provisions of subsection D:

As a further control on human resource costs, the **Governor may declare** a financial emergency or **implement a freeze in hiring**, by declaring this section to be in effect, provided, **however, the University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority, shall not be subject to the provisions of this subsection.**

74 O.S. Supp. 1994, § 840-2.14(D) (emphasis added).

¶5 A reading of the language of the section as a whole makes it clear that it was the intent of the Legislature that the hiring freeze provisions apply to all State "agencies, boards and commissions," with the exception of the University Hospitals Authority, "including all hospitals or other institutions operated by" that authority. The term "agency" as used in the Oklahoma Personnel Act, of which Section 840-2.14 is a part, is defined at 74 O.S. Supp. 1994, § 840-1.3(1), which provides:

"Agency" means any office, department, board, commission or institution of the executive branch of state government[.]

¶6 To determine whether the provisions of 74 O.S. Supp. 1994, § 840-2.14 and the hiring freeze provided for in that statute, apply to the State Insurance Fund, we must determine whether the Fund is an "agency" as defined above. If the Fund is an "agency" as defined, the statute and its hiring freeze apply to the Fund.

#### **General Nature Of The State Insurance Fund**

¶7 As the Oklahoma Supreme Court noted in *Moran v. State ex rel. Derryberry*, 534 P.2d 1282, 1284 (Okla. 1975), the State Insurance Fund ("the Fund") was created by an act of the Legislature in 1933 (Okla. Sess. Laws 1933, ch. 28). The Fund, as described by the Supreme Court, "was created during the Great Depression to satisfy the need for Workmen's Compensation insurance for companies unable to procure coverage from private insurance companies and for employers in high risk industries." The statute creating the Fund in its present form, 85 O.S. 1991, § 131, specifies the purpose of the Fund in the following language:

There is hereby created and established a fund to be known as "The State Insurance Fund", to be administered by the State Insurance Fund Commissioner, without liability on the part of the state beyond the amount of said fund, for the purpose of insuring employers against liability for compensation under Sections 131 through 151 of this title, and for assuring for the persons entitled thereto compensation provided by the workers' compensation law, and for the further purpose of insuring persons, firms and corporations against loss, expense or liability by reason of bodily injury, death by accident, occupational disability, or occupational disease suffered by employees, for which the insured may be liable or have assumed liability. Said fund may further provide insurance for employers against liability incurred as the result of injuries sustained by employees engaged in employment subject to the Longshoremen's and Harbor Workers' Compensation Act as enacted or as may be amended by the Congress of the United States.

85 O.S. 1991, § 131.

¶8 In its three subsections, the provisions of 85 O.S. 1991, § 131 describe the Fund in more detail, providing that it is a revolving fund consisting of premiums, interest and other assets, and that the Fund may be used to both pay losses sustained on account of insurance policies sold, and to pay the expenses of the Fund. Further, subsection (c) of Section 131 provides that the Fund is to be competitive with other insurance companies, but never more than self-supporting. The Fund is managed by a Board of Managers who shall have "supervision over the administration

and operation" of the Fund. 85 O.S. 1991, § 131a(A). In addition to one member appointed by the Governor, two members appointed by the Speaker of the House of Representatives, and two members appointed by the President Pro Tempore of the Senate, the following State officials, or their designees, serve as members of the Board of Managers: the Director of State Finance, the Lieutenant Governor and the State Auditor and Inspector. *Id.* The Director of Central Purchasing of the Office of Public Affairs also serves on the board, but does not have the power to have a designee serve in his or her stead. *Id.*

¶9 Under the provisions of 85 O.S. 1991, § 131b, the Board of Managers of the State Insurance Fund is required to appoint a Fund Commissioner who "shall be the executive manager" of the Fund. The Commissioner is vested with "full power, authority or jurisdiction" over the Fund. The Commissioner is to perform any duties which are necessary or convenient in the exercise of that power, authority or jurisdiction, or in connection with the insurance business to be carried on by the Fund "as fully and completely as a governing body of a private insurance carrier might or could do including the acquisition, operation and maintenance of an electronic data processing facility." 85 O.S. 1991, § 132.

¶10 The Commissioner's powers include the full power and authority to "manage and conduct all business and affairs relating" to the Fund. 85 O.S. 1991, § 133. The affairs of the Fund, conducted by the Commissioner, are to be carried out "under the name of the State Insurance Fund." The Commissioner is vested with the power to sue and be sued in the name of the Fund, make and enter into contracts of insurance on behalf of the Fund, and invest and reinvest the Fund's monies.

¶11 All receipts of money, with the exception of investment income, are to be deposited into the State Insurance Fund fund in the State Treasury, and monies used for investment purposes may be transferred from the State Treasury to the custodian bank or trust company of the Fund. 85 O.S. 1991, § 135(A).

¶12 The statutes impose a limit on the amount of monies in the Fund that may be used for the expenses of running the Fund's business. This limit is contained in 85 O.S. 1991, § 136(A), which in pertinent part reads:

The Commissioner shall appoint, with the approval of the Board of Managers of the State Insurance Fund, such assistants, accountants, claim adjusters, and other employees as may be necessary to conduct the business and carry out the provisions of Section 131 et seq. of this title, or to perform the duties imposed upon him by this act; provided, that ***in no event shall the salaries of such employees, together with all other expenses of said fund, exceed twenty percent (20%) of the earned premiums . . . .***

85 O.S. 1991, § 136(A) (emphasis added).

¶13 We thus see from the statutes creating the State Insurance Fund, that it has attributes of both a private business and a State agency.

**Court's View Of The State Insurance Fund As, On The One Hand,  
A Department, Agency And Instrumentality Of The State,  
And On The Other Hand, An Insurance Company**

¶14 A few years after the Fund was created, the Oklahoma Supreme Court, in *O.K. Const. Co. v. Burwell*, 93 P.2d 1092 (Okla. 1939), was for the first time called upon to determine the nature of the State Insurance Fund. The issue in the *Burwell* case was whether the State Insurance Fund was relieved of the responsibility of filing an appeal bond by virtue of a statute which provided that whenever an action was filed in any court "by the State of Oklahoma, or by direction of any department of the State," no bond was required. *Id.* at 1093.

¶15 Holding that the State Insurance Fund was a ***department of the State*** and thus not required to post an appeal bond, the Supreme Court stated:

It is observed that no legislative, judicial or governmental functions are authorized by the terms of the Act, but the powers granted are administrative in character and may be terminated at any time at the will of the Legislature. The ***powers and duties are exercised by elected and appointed state officers*** who perform said functions without added compensation. We are ***not here dealing with an independent corporate entity or a governmental agency created by law and vested with a measure of governmental power, but a mere department created for a fixed and limited***

**purpose, over which the State, through its legislature and its officials retains absolute domination and control. The State Insurance Fund, therefore, is a department of the State of Oklahoma** within the meaning of that term as used in Section 514, supra, and is not required to give an appeal bond.

*Burwell*, 93 P.2d at 1094 (emphasis added).

¶16 In 1954 the Oklahoma Supreme Court held that the State Insurance Fund was protected by the State's sovereign immunity in *State v. District Court of Oklahoma County*, 278 P.2d 841 (Okla.1954). In that case the Court in its first syllabus, held that the Fund was a department of the State created for a public purpose:

The State Insurance Fund is a department of the State of Oklahoma, administered by state officials, and created for the public purpose of insuring employers against liability for compensation under the Workmen's Compensation Act and against liability by reason of bodily injury, death by accident or occupational disease suffered by employees and for assuring for the persons entitled thereto compensation provided by said act. **As a department of the State it is not liable in a civil action for damages for the tort of one of its officers or employees.**

278 P.2d at 841 (emphasis added).

¶17 In 1958, in *State Insurance Fund v. Taron*, 333 P.2d 508 (Okla.1958), the Fund attempted to bring an indemnity action, and in doing so, argued that because the Fund is a department of the State of Oklahoma, the statute of limitations did not run against it. Rejecting this argument, the Court held that while the general rule is that the statute of limitations does not apply to the State when engaged in a sovereign capacity, the rule is otherwise when the State goes into business in concert, or in competition with, individuals, or when a suit in its name or for its benefit concerns private, as distinguished from public, rights. *Taron*, 333 P.2d at 513.

¶18 Concluding, the Court found that the action brought by the Fund rose out of the management and administration of its insurance business, and that, "[t]he statutes of limitations therefore apply to it to the same extent as to any other private insurance carrier." *Taron*, 333 P.2d at 513.

¶19 Less than a year later, the Oklahoma Supreme Court, in *State v. Bone*, 344 P.2d 562 (Okla.1959), had occasion to further look at the nature of the State Insurance Fund. In *Bone*, a tort action arising out of an automobile collision was brought against the Fund and the Court was asked to reconsider its holding that tort actions against the Fund were barred by sovereign immunity.

¶20 After once again examining the nature of the Fund, the Court concluded that the Fund was not protected by traditional sovereign immunity. So holding, the Court overruled a prior holding in *State v. District Court of Oklahoma County*, 278 P.2d 841 (Okla.1954), to the extent the prior opinion could be understood to extend the State's immunity to a State agency's performance of a non-governmental function. In addressing the issue, the *Bone* Court noted that under the provisions of Title 85, Sections 132 and 133, the Fund's Commissioner is vested with the full power, authority and jurisdiction over the Fund's insurance business, and shall perform any duties "which are necessary or convenient in the exercise of any power, authority, or jurisdiction over such Fund in the administration thereof, or in connection with the insurance business to be carried on by him," under the provisions of the act "**as fully and completely as a governing body of a private insurance carrier might or could do.**" *Bone*, 344 P.2d at 567-568. Concluding that immunity did not protect the Fund from suit, the *Bone* Court relied on both the Fund's managerial independence and its financial independence. Yet, in so ruling the Court recognized that the Fund was an "agency or instrumentality of the State." *Id.* at 568.

¶21 These decisions of the Supreme Court touch on the dual nature of the State Insurance Fund. The Court in these opinions recognized that on one hand, the Fund is a "department," "agency" or "instrumentality" of the State, and on the other hand, performs a purely business function -- that of running a workers' compensation insurance company.

¶22 In 1975, when the Legislature attempted to appropriate monies out of the Fund for general governmental uses, the Court had occasion to take yet a further look at the nature of the Fund when the constitutionality of the act, which attempted to appropriate money from the Fund, was challenged in *Moran v. State ex rel. Derryberry*, 534 P.2d 1282 (Okla.1975). In *Moran*, an action was brought by policy holders of the State Insurance Fund seeking to enjoin the statutorily directed liquidation of certain assets of the Fund. The statute in question sought to take and

appropriate monies that were excess and surplus to the Fund. Finding that, as a matter of fact, there were no surplus funds, the trial court held that accordingly the removal of such monies from the Fund would, also as a matter of fact, impair the Fund's policyholders' contract rights. Thus the trial court found the challenged legislation unconstitutional. The State Supreme Court affirmed, ruling that the challenged act unconstitutionally impaired insurance contract rights of the Fund's policyholders. Of course, whether a legislative enactment impairs a contract is a fact intensive inquiry. Thus, we express no opinion on whether implementation of a "freeze in hiring" under 74 O.S.Supp.1995, § 840-2.14 would impair any existing contract rights.

¶23 In discussing the "legal status" of the Fund, the *Moran* Court relied on the holdings in *State v. Bone*, 344 P.2d 562 (Okla.1959), and cited with approval from its holdings in *Bone* as follows:

Therein we stated at page 568:

"\* \* \* Under no circumstances can the general funds of the State be reached in order to satisfy an obligation of the Fund. **Independent control exists** in the Fund to **operate** and maintain an **insurance company in the same manner as may be done by any privately owned insurance company**. These factors permit it (the Fund) to be regarded as an independent business enterprise or entity."

And on page 569:

"\* \* \* we now hold that the State Insurance Fund **is a business enterprise as distinguished from purely governmental activities**, and tort liability attaches and may be adjudicated pursuant to the consent statute, Sec. 133, 85 O.S.1951, supra. In creating and undertaking the operation of the State Insurance Fund, it is reasonable to think that the same responsibilities were intended to be assumed as ordinary insurance companies are obliged to assume."

[2] These statements i.e., "**Independent Control**," and "**operate and maintain in the same manner as privately owned insurance company**," and "**independent business**," and "**a business enterprise as distinguished from purely governmental activities**," when joined with the legislative injunction "that said Fund shall become neither more nor less than self-supporting." (§ 131, supra), compel the conclusion that the Legislature did not intend for the State to gain a pecuniary profit from the operation, nor to gain by reason of an unexpected "windfall" in the nature of an alleged surplus or excess reserve . . . .

*Moran*, 534 P.2d at 1286 (emphasis added).

¶24 In concluding that the State Insurance Fund monies were not State funds subject to appropriation, the *Moran* Court concluded the monies in the Fund were trust funds to be held for the benefit of employers and employees who have rights under insurance policies issued by the Fund:

It is our conclusion the funds of the State Insurance Fund are not State funds and do not belong to the State, that **such funds are trust funds for the benefit of employers and employees**, and are not available for the general or other purposes of the State, nor are they subject to appropriation by the Legislature for purposes other than those contemplated by the State Insurance Fund Act.

*Moran*, 534 P.2d at 1288 (emphasis added).

¶25 These rulings of the Oklahoma State Supreme Court demonstrate that the Court, while considering the Fund a department or agency of the State, understands that the State Insurance Fund also has attributes of a private company -- a private insurance company.

**Attorney General Opinions Viewing The State Insurance Fund  
As An Agency Or Instrumentality Of The State**

¶26 In spite of the fact that the Fund has many attributes of a private insurance company, the Attorney General,

like the courts, has recognized that it is nevertheless a State entity, subject to statutory control by the State.

¶27 In Attorney General Opinion 63-119, the Attorney General was asked to determine whether it was constitutional for then Governor Nigh to place the employees of the State Insurance Fund under the protection of the State Merit System. After examining the statutory laws relating to the "Merit System of Personnel Administration" and the "State Personnel Board" set forth at 74 O.S.1961, §§ 801 to 839, the Attorney General concluded that it was within the Governor's power to bring the employees of the State Insurance Fund within the protection of the Merit System. So holding, the Attorney General first looked to the "general purpose" of the Merit System Act, set forth at Section 801 of Title 74. That section provided that the general purpose of the act was to establish a merit system for certain specified "departments and agencies" of the State, and:

[T]o provide for the extension of the merit system to the employees of such *other State agencies or departments* as the Governor may direct by an Executive Order.

A.G. Opin. 63-119, p. 1.

¶28 Turning to the Merit System Act's definition section, the Attorney General quoted from Section 802 of Title 74, which more specifically addressed the Governor's power to add state "agencies" to the Merit System:

The word *agency* as used in this Act is defined to mean *any board, commission or institution of the State Government*. The Governor of the State of Oklahoma, upon determining that the merit system of personnel administration with the rules and regulations adopted thereunder shall be required, is hereby empowered and authorized, at his discretion, by an Executive Order, *to place any agency or department of the State Government, and the employees thereof, with exempt positions as stipulated by said order, under the merit system of personnel administration prescribed by this Act . . . .*

A.G. Opin. 63-119, pp. 1-2.

¶29 In concluding that the Governor could constitutionally add employees of the State Insurance Fund to the State Merit System, the Attorney General found that the State Insurance Fund came within the Merit System Act's definition of "agency," noting that the Oklahoma Supreme Court in *State Insurance Fund v. Bone*, 344 P.2d 562, 568 (Okla.1959), had referred to the Fund as an "agency or instrumentality of the State."

¶30 More recently, in Attorney General Opinion 88-61,<sup>1</sup> the Attorney General concluded that the State Insurance Fund was "a 'state agency' for the purposes of the Oklahoma Central Purchasing Act, 74 O.S.1981, §§ 85.1 et seq.," and was therefore subject to the requirements of that act. The provisions of the Oklahoma Central Purchasing Act expressly provide that "*all activities of any state agency . . . relating to purchasing shall be under the direction of the Purchasing Division [of the Office of Public Affairs], except such acquisitions as are excluded by the Oklahoma Central Purchasing Act.*" A.G. Opin. 88-61, quoting from 74 O.S.Supp.1987, § 85.3.

¶31 After noting the other provisions of the Act also spoke in terms of "every State agency" and purchases "by agencies of the State government," the Attorney General found that the key inquiry in the opinion was whether the Fund was a "state agency" for the purposes of the Central Purchasing Act. A.G. Opin. 88-61, p. 143. Turning to the Act's definition of "state agency," or "agency," the Attorney General found that the definition included "any office, officer, bureau, *board*, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of the state government, whether elected or appointed, excluding only municipalities, counties and other governmental subdivisions of the state." A.G. Opin. 88-61, p. 143, quoting from 74 O.S.Supp.1987, § 85.2. The Attorney General concluded that the Fund came within the definition of "agency" as it was administered by a "board," the Board of Managers, and further concluded the Fund was in the executive branch of state government, citing *Spivey v. State*, 104 P.2d 263 (Okla.Crim.App.1940), which held:

Officers that are neither judicial nor legislative necessarily belong to the executive department of government, and are "executive" or "administrative" officers; those terms being equivalent.

104 P.2d at 277, quoting with approval from *Sheely v. People*, 129 P. 201 (Colo.1913).

## Conclusion

¶32 After review of the above-discussed case law, statutory law, and Attorney General opinions, we conclude, as the Oklahoma courts have, that the State Insurance Fund has attributes of both a private insurance company and a State entity. We further conclude that the State Insurance Fund comes within the Oklahoma Personnel Act's definition of "agency" at 74 O.S.Supp.1994, § 840-1.3(1), as it is a "department . . . of the executive branch of state government."

¶33 Because the provisions of 74 O.S.Supp.1994, § 840-2.14, which authorize the Governor to implement a "freeze in hiring," are part of the Oklahoma Personnel Act, and because that Act defines "agency" to include "department[s]" of the State, *id.* at § 840-1.3(1), such as the State Insurance Fund, and further because it was clearly the intent of the Legislature to have the provisions of 74 O.S.Supp.1994, § 840-2.14 applied to all "agencies" of the State, we conclude that the section's provisions, including its "freeze in hiring" provisions, apply to the State Insurance Fund.

## II.

### "FREEZE" ON CONTRACTING POWER

¶34 In your second question you ask whether, under the power vested in him by 74 O.S.Supp.1994, § 840-2.14 to implement a "freeze in hiring," the Governor is also empowered to implement a freeze on State agencies, boards and commissions entering into professional or personal service contracts.

¶35 While the provision of Article VI, § 8 of the Oklahoma Constitution requires the Governor to "cause the laws of the State to be faithfully executed," the Oklahoma Supreme Court has held that the constitutional provision does not vest the Governor with law-making power. In *Russell Petroleum Co. v. Walker*, 19 P.2d 582 (Okla.1933), constitutional challenges were made to executive orders issued by then Governor William H. Murray. Governor Murray had issued executive orders calling out the State Militia to take possession of oil wells to enforce laws relating to the prevention of waste. The executive orders attempted to stabilize the price of crude oil by limiting its production. The Court ruled that the executive orders had no force and effect, for "no order, proclamation, or decree of the Governor of the state, as the chief executive thereof, has the force of law; the lawmaking power of the state being vested exclusively elsewhere." *Id.* at 587.

¶36 As the Attorney General opined in Opinion 77-191, "[t]he Governor has no prerogative powers, but possesses only such powers and duties as are vested in him by constitutional or statutory grant. The extent and exercise of the Governor's powers under statute will depend upon the particular provisions thereof . . ." *Id.* at 148, quoting with approval from 81 C.J.S. States, § 60 at 982. In Attorney General Opinion 77-191, the Attorney General was asked to determine whether the Oklahoma Water Resources Board could, by virtue of an executive order, establish and administer comprehensive rules and regulations on flood plain management. In holding the Governor's executive orders could not vest such power in the board, the Attorney General found that there was nothing in the Constitution which would remove the Governor from the general rule of law, laid down in *Shaw v. Grumbine*, 278 P. 311 (Okla.1929). In that case, the Oklahoma Supreme Court, held in its syllabus that:

Public officers have only such authority as is conferred upon them by law, and such authority must be exercised in the manner prescribed by law.

¶37 Speaking specifically of the Governor's power to issue executive orders, the Attorney General stated:

In view of this holding [in *Shaw v. Grumbine*], it is significant that neither the Constitution nor the Statutes of Oklahoma expressly confer authority to issue Executive Orders carrying the force of law. This is not to infer from such silence the absence of authority to issue Executive Orders carrying the force of law. This is not to infer from such silence the absence of authority to issue Executive Orders. Certainly, the discharge of "supreme Executive power" entails the capacity to issue Executive Orders to accomplish sufficient administration within the Executive Branch. The prohibition goes to the issuance of Executive Orders intended to accomplish a legislative effect.

A.G. Opin. 77-191, p. 149.

¶38 In the case of the State Insurance Fund, it is the Commissioner of the Fund that is empowered to manage or conduct all the business affairs of the Fund, including the power to enter into contracts. Nowhere in the provisions of 74 O.S.Supp.1994, § 840-2.14 is the Governor authorized to control the contracting power of state agencies. Rather, that statute is specifically addressed and limited to procedures regarding State employees. The statute

does not either expressly or by implication grant the Governor the power to interfere with the contracting powers of agencies, boards and commissions. Since an executive order may be used to enforce the law but not to make the law, the Governor, by issuing an executive order, may not exercise power not already vested in him by law. Accordingly, we conclude that the Governor does not have the power to issue an executive order prohibiting agencies, boards and commissions from entering into professional or personal service contracts.

¶39 It is, therefore, the official Opinion of the Attorney General that:

1. The Oklahoma State Insurance Fund, created and established at 85 O.S.1991, § 131, is an "agency" of the State as that term is used in the Oklahoma Personnel Act, 74 O.S.1991, §§ 840.1 to 841.24 and (as renumbered) in 74 O.S.Supp.1994, §§ 840-1.1 to 840-6.9, and is subject to the "freeze in hiring" provided for at 74 O.S.Supp.1994, § 840-2.14.
2. The Governor is not empowered, under the provisions of 74 O.S. Supp.1994, § 840-2.14, to issue executive orders freezing or limiting the power of State agencies, boards and commissions to enter into professional or personal service contracts.

W.A. DREW EDMONDSON  
 ATTORNEY GENERAL OF OKLAHOMA  
 NEAL LEADER  
 SENIOR ASSISTANT ATTORNEY GENERAL

**FOOTNOTE:**

<sup>1</sup> This opinion was assigned two numbers "88-61 and 88-41"; throughout this Opinion we will refer to its higher number only.

**Citationizer® Summary of Documents Citing This Document**

Cite Name Level  
 None Found.

**Citationizer: Table of Authority**

Cite Name	Level
<b>Title 74. State Government</b>	
Cite	Name
<u>74 O.S. 85.1,</u>	<u>Short Title</u>
<u>74 O.S. 85.2,</u>	<u>Definitions</u>
<u>74 O.S. 85.3,</u>	<u>Purchasing Division - Director - Employees - Encouragement of Certain Purchases - Conflict of Interest</u>
<u>74 O.S. 801,</u>	<u>Repealed by Laws 1982, SB 339, c. 338, § 61, emerg. eff. July 1, 1982</u>
<u>74 O.S. 840.1,</u>	<u>Renumbered as 74 O.S. § 840-1.1 Laws 1994, c. 242, § 54</u>
<u>74 O.S. 840-1.1,</u>	<u>Short Title</u>
<u>74 O.S. 840-1.3,</u>	<u>Definitions</u>
<u>74 O.S. 840-2.14,</u>	<u>Management of Overall Costs of Human Resources - Quarterly Reports</u>
<b>Title 85. Workers' Compensation</b>	
Cite	Name
<u>85 O.S. 131,</u>	<u>Creation of Fund - Purpose - Character and Contents - Use</u>
<u>85 O.S. 131a,</u>	<u>Board of Managers of State Insurance Fund - Members - Meetings - Powers and Duties</u>
<u>85 O.S. 131b,</u>	<u>CompSource Oklahoma President and Chief Executive Officer</u>
<u>85 O.S. 132,</u>	<u>Powers and Jurisdiction of State Insurance Fund Commissioner - Fixing of Rates by Board of Managers</u>
<u>85 O.S. 133,</u>	<u>Management and Conduct of Business and Affairs of Fund</u>
<u>85 O.S. 135,</u>	<u>Deposits and Transfers - Commissioner to Manage Fund - Warrants, Checks, Drafts, and Vouchers</u>
<u>85 O.S. 136,</u>	<u>Commissioner to Appoint Employees - Salaries - Chief Attorney's Salary</u>



THE OKLAHOMA STATE COURTS NETWORK

[www.oscn.net](http://www.oscn.net)

Home	Courts	Court Dockets	Legal Research	Calendar	Help
Previous Case	Top Of Index	This Point in Index	Citationize	Next Case	Print Only

Oklahoma Supreme Court Cases

## MORAN v. STATE EX REL. DERRYBERRY

1975 OK 69

534 P.2d 1282

Case Number: 47716

Decided: 05/02/1975

Supreme Court of Oklahoma

Cite as: 1975 OK 69, 534 P.2d 1282

JOHN C. MORAN ET AL., APPELLEES,

v.

STATE OF OKLAHOMA EX REL. LARRY DERRYBERRY, ATTORNEY GENERAL, APPELLANT.

Appeal from the District Court of Oklahoma County; Jack R. Parr, Trial Judge.

¶10 Appeal by State of Oklahoma, ex rel., Larry Derryberry, Attorney General, from judgment declaring 85 O.S. Supp. 1974 §§ 152, 153, and Senate Bill No. 434, § 4, Session Laws 1974, unconstitutional and enjoining the State Insurance Fund Commissioner and the Board of Managers of the State Insurance Fund from proceeding as therein directed. Affirmed.

Stipe, Gossett, Stipe & Harper by Gene Stipe, John Estes and Carl Hughes, Oklahoma City, for appellees.

Larry Derryberry, Atty. Gen., James R. Barnett, Asst. Atty. Gen., William W. Gorden, Legal Intern, for appellant.

John Christopher Sturm, Commissioner, Edmund, Sam Hill and Mary Elizabeth Cox, Oklahoma City, for State Ins. Fund, amicus curiae.

DAVISON, Justice:

¶11 State of Oklahoma, ex rel. Larry Derryberry, Attorney General (Appellant), prosecutes this appeal from a judgment enjoining the State Insurance Fund Commissioner and the Board of Managers of the State Insurance Fund from proceeding, as directed by 85 O.S. Supp. 1974 §§ 152 and 153 (Senate Bill No. 726, Session Laws 1974), to liquidate assets of the State Insurance Fund to the extent of \$4,000,000.00 and then deposit the proceeds in the Fund's account, to be expended only upon appropriation by the Legislature.

¶12 This action was instituted in the lower court by John C. Moran, William R. Allen, Anderson Development Company, Inc., and Lawrence Drilling Company, Inc., (Appellees), as employers in business activities subject to the Workmen's Compensation Law and insurable by the "State Insurance Fund", and currently policyholders with the State Insurance Fund. Their action was against the State Insurance Fund Commissioner (Executive Manager of the Fund) and the Board of Managers of the Fund, to enjoin the above mentioned liquidation of assets and the subjection thereof to Legislative appropriation. The Appellant, State of Oklahoma, ex rel. Larry Derryberry, Attorney General, intervened therein under authority of 12 O.S. 1971 § 1653, permitting such entry when a statute is alleged to be unconstitutional. The original defendants are not parties to this appeal. However, the State Insurance Fund by its Commissioner and attorneys appear Amicus Curiae.

¶13 The Journal Entry states the judgment was rendered when plaintiffs' (Appellees') Motion for Summary Judgment was sustained. The Journal Entry of Judgment further recites:

"That based upon the pleadings of the parties on file herein, the evidence and testimony adduced at this and prior hearings, and, the announcements of all counsels of record that there is no further evidence or testimony to be offered, the court finds that there are no facts at issue or yet to be determined."

¶4 Included in the above enumerated factors was the evidence and testimony produced by Appellees at the hearing relative to issuance of a temporary restraining order. The Appellant produced no witnesses or evidence.

¶5 The trial court found and adjudged there "are no excess, surplus funds in the trust funds of the State Insurance Fund," and further that said 85 O.S. Supp. 1974 §§ 152 and 153, and a companion appropriation bill (Sec. 4, of Senate Bill No. 434), infra, were unconstitutional and void on several grounds, including Art. 2, § 15, Oklahoma Constitution forbidding the passage of any law impairing the obligation of contracts.

¶6 The general proposition in this appeal concerns the authority of the Legislature to take and then appropriate, for other than Workmen's Compensation purposes, the funds or alleged surplus funds of the State Insurance Fund.

¶7 In 1974 the Legislature enacted 85 O.S. Supp. 1974 §§ 152 and 153, above mentioned.

¶8 § 152 stated the purpose of the Act was to provide for disposition and use of "existing surplus funds of the State Insurance Fund in excess of the reserves and surplus authorized to be maintained by law."

¶9 § 153 directed the State Insurance Fund Commissioner with the approval of the Board of Managers of the State Insurance Fund to liquidate assets in the State Insurance Fund Workmen's Compensation Account sufficient to cause \$4,000,000.00 to be transferred to the State Insurance Fund, and such funds to be expended only upon appropriation by the Legislature.

¶10 § 4, of Senate Bill No. 434, Oklahoma Session Laws, 1974, appropriated \$4,000,000.00 to the State Board of Education, "from any monies in the State Insurance Fund" for the support of the public school activities.

¶11 The State Insurance Fund is an entity first created by an Act of the Legislature in 1933 (Laws 1933, Chap. 28, p. 58). The Act of 1933, with intervening amendments and some repealed sections, now appears in our statutes as 85 O.S. 1971 §§ 1 to 151, except as § 131 was amended in 1972 to permit expansion of insurance coverage to employment subject to the Longshoremen's and Harbor Workers' Compensation Act. The Fund was created during the Great Depression to satisfy the need for Workmen's Compensation insurance for companies unable to procure coverage from private insurance companies and for employers in high risk industries.

¶12 We are confronted with the proposition of, the status of the State Insurance Fund, the legal nature of its funds, including reserve funds, and the right of the State, acting through the Legislature, to take and use these funds.

¶13 Title 85 O.S. 1971 § 131, provides that the Fund shall be administered "without liability on the part of the State beyond the amount of said Fund" (Emphasis added); that it shall be a Revolving Fund consisting of premiums received, all property and securities acquired through use of its moneys, and all interest earned upon its moneys; and that "Said Fund shall be fairly competitive with other insurance carriers and it is the intent of the Legislature that said Fund shall become neither more nor less than self-supporting."

¶14 § 134 thereof provides in part that the Fund shall have power and authority to enter into contracts of insurance within prescribed limits; to reinsure any risk or any part thereof; "To produce a reasonable surplus to cover catastrophe hazard." (Emphasis added).

¶15 § 137 thereof provides in part, that ten (10%) per centum of the premiums shall be set aside for the creation of a surplus until it amounts to \$250,000.00, and thereafter five (5%) per centum of the premiums until in the judgment of the State Insurance Board "such surplus shall be sufficiently large to cover the catastrophe hazard, and all other unanticipated losses." (Emphasis added), and further that "Reserves shall be set up and maintained adequate to meet anticipated losses and to carry all claims and policies to maturity, which reserves shall be computed in accordance with such rules as approved by the State Insurance Board." (Emphasis added).

¶16 The "State Insurance Board" mentioned above is now the State Board for Property and Casualty Rates. (36 O.S. 1971 §§ 107, 332). It is a part of the Insurance Department of the State of Oklahoma. (36 O.S. 1971 § 301).

¶17 In connection with § 137, we note that in the corresponding section in the 1933 Act (§ 7) supra, it was provided that the ten (10%) per centum portion of the premiums collected should initially be set aside for repayment of the appropriation made by State out of the General Revenue Fund for the purpose of putting the State Insurance Fund Act into operation. This has reference to a \$25,000.00 appropriation provided in the original 1933 Act (§ 22), supra. The only evidence in the record before us is that this appropriation was never paid or set over to the State Insurance Fund. It appears to be agreed, or conceded, that no State appropriation has ever been used by the State Insurance Fund.

¶18 Under the provisions of 85 O.S. 1971 § 149, the State and all its departments are required to insure against liability for compensation with the State Insurance Fund, and all municipal corporations, including counties, cities, towns and townships, may insure with the Fund, unless rejected by the Fund, or any county, city, town or township may carry their own insurance.

¶19 At the hearing on the temporary restraining order all of the testimony was to the effect that the money reserves of the State Insurance Fund were not excessive and were in fact considerably below a safe margin when considered in connection with those of other similar State insurance funds.

¶20 The evidence supplied by Appellees (there was no contra testimony) reflected a premium income for the previous year (1973) of close to \$6,000,000.00, with a pay-out of \$1.04 for each \$1.00 of premium income; that total reserves for losses were in the area of \$8,000,000.00, to cover about 3000 open claims then pending, reserves for catastrophe losses, Longshoremen and unreported claims, and policyholders' liability reserve for about 1700 policies outstanding. In addition it was shown there was an expense reserve of about \$650,000.00 required annually to operate the State Insurance Fund. It was the opinion of the State Insurance Fund Commissioner and of an expert consulting actuary in the field of Workmen's Compensation that the reserves were excessively low and inadequate; that the reserves, percentage-wise, were clearly below those maintained by the sixteen (16) other States having similar insurance funds; that the nature of the business of many of the Fund's policyholders, being high risk type or persons the private insurers would not accept, made reserve fund formulas used by private insurers not applicable in determining the amount of the Fund's reserves; that the 1972 inclusion of coverage Longshoremen and Harbor Workers was a recognized potential for large claims and expenditures; and that, considering all of the circumstances, the existing reserves should be increased by at least \$4,000,000.00 or more.

¶21 In this connection, the Appellant contends that the practice of the State Insurance Fund in making refunds to policyholders (safety refunds) shows the Fund is making a "profit" and is evidence of a surplus. The record reflects that this is not an isolated situation, but is practiced generally in writing workmen's compensation, and is considered good practice by insurers. However, in view of our conclusions in determining the legal status of funds of the State Insurance Fund, the contention has no merit.

¶22 In view of the language in the statutes (supra), permitting considerable discretion in determining the amount of reserve funds, the fact that the reserve funds are the only source for paying claims (the State not being liable), and in the light of the undisputed evidence, we conclude that the trial court's finding of no "excess, surplus funds" in the funds of the State Insurance Fund is more than amply supported by the record.

¶23 This brings us to the matter of the legal status of the funds of the State Insurance Fund. The Appellant contends the funds are State monies, but admits this is a minority view.

¶24 In State v. Bone, Okl., 344 P.2d 562, we held the State Insurance Fund, as an agency or instrumentality of the State, did not have the immunity of the State from suit, and could be sued and held liable for damages because of negligence of its employee in operating a motor vehicle. Therein we stated at page 568:

"\* \* \* \* Under no circumstances can the general funds of the State be reached in order to satisfy an obligation of the Fund. Independent control exists in the Fund to operate and maintain an insurance company in the same manner as may be done by any privately owned insurance company. These factors permit it (the Fund) to be regarded as an independent business enterprise or entity."

And on page 569:

"\* \* \* \* we now hold that the State Insurance Fund is a business enterprise as distinguished from purely governmental activities, and tort liability attaches and may be adjudicated pursuant to the consent statute, Sec. 133, 85 O.S. 1951, supra. In creating and undertaking the operation of the State Insurance Fund, it is reasonable to think that the same responsibilities were intended to be assumed as ordinary insurance companies are obliged to assume."

¶25 These statements i.e., "Independent Control," and "operate and maintain in the same manner as privately owned insurance company," and "independent business," and "a business enterprise as distinguished from purely governmental activities," when joined with the legislative injunction "that said Fund shall become neither more nor less than self-supporting". (§ 131, supra), compel the conclusion that the Legislature did not intend for the State to gain a pecuniary profit from the operation, nor to gain by reason of an unexpected "windfall" in the nature of an alleged surplus or excess reserve, at the expense of the premium-paying employers or the employee beneficiaries, in a declared non-profit and non-loss insurance activity. That such is the clear majority view is shown by the authorities and decisions.

¶26 There is no question that should the State Insurance Fund become insolvent or fail to pay a workmen's compensation award, the employers insured by the Fund would be called upon to pay the award according to its terms. *Atlas Wiring Co. v. Dorchester*, 168 Okl. 337, 32 P.2d 913, and *Rucks-Brandt Const. Corporation v. Silver*, 194 Okl. 324, 151 P.2d 399. It is plain the insured employer is interested in seeing the Fund maintains reserves sufficient to pay any claims. It is also clear the employees of such employer have an interest in the maintenance of the reserves.

¶27 In *Appleman, Insurance Law and Practice*, Vol. 7A, § 4592 [7A-4592], p. 190, "State Insurance Funds" it is stated:

"The purpose of a compensation act is to provide compensation for workmen injured in occupations defined by the act, and the funds created by the act, together with the revenues by which they are sustained, are trust funds devoted to the special purposes designated by the act."

And at page 192, as follows:

"The fund, itself, is not synonymous with the state, and claims against the fund are not claims against the state, the fund not being considered a state fund."

¶28 Also in *Appleman*, Vol. 7A, § 4594 [7A-4594], pages 202, 203, "State Insurance Funds - Payment Out of Funds" it is stated:

"The Industrial Accident Board, Compensation Commission, or whatever department stands in that stead, occupies a position of trust in relation to every person who is entitled to receive benefits from the funds, of which the Board is made trustee. The revenues received from the contributions of employers are a trust fund in the sense that a moral and legal obligation is imposed upon the state to use the revenues for the declared purposes for which they are collected."

¶29 In 100 C.J.S. *Workmen's Compensation* § 357b, page 40, relative to State Funds, we find the following:

"\* \* \* \* The fund is a public fund in the sense of being administered by a public body, and its character as a public fund is indicated by a statute providing that industrial insurance premiums shall be paid into the state treasury for the accident and medical aid funds; but it is not public money in the sense of being money of the state to be used for, and on behalf of, the state for a state expenditure."

¶30 It appears from the decision in *Chez v. Industrial Commission of Utah*, 90 Utah 447, 62 P.2d 549, 108 A.L.R. 365, that Utah had created a State Insurance Fund very similar to that of Oklahoma. In that case the determination of the rights of the parties depended on whether a debt or obligation owing to the Fund was an obligation or liability to the State. The Court held that a debt owing the Fund was not an obligation due the State, and in doing so determined the status or nature of the funds (premiums) received from employers, stating (62

P.2d p. 550), "The employer really pools his premiums in the State Fund to create a fund for the payment of an obligation for which it is liable. It is a common fund belonging to the participating employers. It is therefore not derived from anything owing to the state nor paid out on behalf of any state obligation," and at page 551, "The fund is publicly administered, but its debtors are not debtors to the state. It belongs, not to the state, but to the contributing employers for their mutual benefit." The court (p. 551) concluded that the State Insurance Fund, "while a public fund in the sense of being administered by a public body, is not public money in the sense that it is money of the state to be used for and on behalf of the state for a state expenditure \* \* \*."

¶31 In *State v. Yelle*, 174 Wash. 547, 25 P.2d 569, 28 P.2d 1119, the State, as a part of its Workmen's Compensation Act, created and established a fund known as the "accident fund," and industries engaged in extrahazardous work were required to pay into this fund certain premiums, to provide compensation for injured workmen. The fund was to be "neither more nor less than self-supporting." The Legislature inserted in a general appropriation act a provision appropriating "From the Accident Fund" \$1,000.00 for the relief of a named person in full settlement of his claim for injuries. The court ruled the appropriation invalid, stating, "These funds are therefore trust funds drawn from particular sources and devoted to special purposes. By the act itself the fund is impressed with a trust." The Court further held at 25 P.2d page 570:

"\* \* \* \* These funds are therefore not subject to appropriation by the Legislature for purposes other than those contemplated by the act nor by methods that run counter to the effective operation of the act." (Emphasis added)

¶32 The situation is the same in Oklahoma. Our Statute, 85 O.S. 1971 § 131 (b) also specifies the uses the funds held by the State Insurance Fund shall be put to, as follows:

"Said Fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of expenses in the manner provided in this Act."

¶33 Other decisions supporting the view that such funds are trust funds are: *State v. Padgett*, 54 N.D. 211, 209 N.W. 388, 391 ("The claims against the fund are not claims against the state, and the fund itself is not a state fund."); *Senske v. Fairmont & Waseca Canning Co.*, 232 Minn. 350, 45 N.W.2d 640, 646, ("It is a fund which belongs to the industry, in which the state has no interest other than its proper administration."); *State v. Olson*, 43 N.D. 619, 175 N.W. 714, 717 ("not a state fund,") *State v. Musgrave*, 84 Idaho 77, 370 P.2d 778, 782 ("The money in the fund does not belong to the state,"); *State v. McMillan*, 36 Nev. 383, 136 P. 108, 110 (premiums could not be used or made available for payment of ordinary expenses of state government.); *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (are trust funds for workmen's compensation purposes, page 432.)

¶34 It is our conclusion the funds of the State Insurance Fund are not State funds and do not belong to the State, that such funds are trust funds for the benefit of employers and employees, and are not available for the general or other purposes of the State, nor are they subject to appropriation by the Legislature for purposes other than those contemplated by the State Insurance Fund Act.

¶35 This brings us to the matter of the constitutionality of 85 O.S. Supp. 1974 §§ 152, 153, and Senate Bill 434, § 4, Session Laws 1974, supra. There is no question about this, the legislative acts are unconstitutional.

¶36 Pursuant to the provisions of 85 O.S. 1971 § 148, every person, firm or corporation insuring in the "State Insurance Fund" shall receive from the State Insurance Fund "a contract or policy of insurance," for which these parties pay a premium to the Fund. The accumulated premiums, and property and securities acquired by use of such moneys, and interest earned therefrom are a "Revolving Fund," to be used to pay insurance losses and to pay expenses as provided in the Act. (§ 131). We have held (supra) that this fund is a trust fund for the benefit of insured employers and for their employees. The employers had a vested legal right, when they entered into the insurance contracts with the Fund and paid the premiums, to rely upon this trust being maintained and administered in accordance with the State Insurance Fund Act, supra, and the law applicable thereto.

¶37 In *Baker v. Tulsa Building & Loan Ass'n*, 179 Okl. 432, 66 P.2d 45, 46, we stated the well established rule of law as follows:

"The existing statutes and the settled law of the land at the time a contract is made become a part of it and must be read into it."

Therein we further stated:

"A 'vested right' is the power to do certain actions or possess certain things lawfully, and is substantially a property right, and may be created either by common law, by statute, or by contract. And when it has once been created, and has become absolute, it is protected from the invasion of the Legislature by those provisions in the Constitution which apply to such rights."

¶38 Article 2, § 15, Constitution of Oklahoma, provides that no law impairing the obligation of contracts shall ever be passed.

¶39 The 1974 legislative laws, 85 O.S. Supp. 1974 §§ 152, 153, and § 4, of Senate Bill 434, Session Laws 19741 do impair the insurance contracts and rights of Appellees thereunder, and are unconstitutional and void.

¶40 Judgment of Trial Court is affirmed.

¶41 All Justices concur.

**Citationizer® Summary of Documents Citing This Document**

Cite Name	Level	
<u>1999 10CIR 1313, 195 F.3d 561,</u>	<u>State Ins. Fund v. Ace Transp. Inc.</u>	Cited
<b>Oklahoma Attorney General's Opinions</b>		
Cite	Name	Level
<u>1980 OK AG 175,</u>	<u>Question Submitted by: The Honorable J. Mike Lawter, Oklahoma House of Representatives</u>	Cited
<u>1980 OK AG 208,</u>	<u>Question Submitted by: The Honorable Bob A. Trent, Oklahoma House of Representatives</u>	Cited
<u>1980 OK AG 229,</u>	<u>Question Submitted by: Mr. David B. Gillogly, Commissioner, State Insurance Fund</u>	Cited
<u>2003 OK AG 18,</u>	<u>Question Submitted by: The Honorable Dan Boren, State Representative, District No. 28</u>	Discussed at Length
<u>2000 OK AG 40,</u>	<u>Question Submitted by: The Honorable M.C. Leist</u>	Cited
<b>Oklahoma Court of Criminal Appeals Cases</b>		
Cite	Name	Level
<u>1999 OK CR 14, 989 P.2d 949, 70 OBJ 1076,</u>	<u>State v. Young</u>	Discussed at Length
<b>Oklahoma Court of Civil Appeals Cases</b>		
Cite	Name	Level
<u>2001 OK CIV APP 30, 24 P.3d 861, 72 OBJ 1099,</u>	<u>MULTIPLE INJURY TRUST FUND v. DEAN</u>	Discussed
<b>Oklahoma Supreme Court Cases</b>		
Cite	Name	Level
<u>1986 OK 52, 742 P.2d 1077, 57 OBJ 1886,</u>	<u>Roberts v. South Oklahoma City Hosp. Trust</u>	Cited
<u>1989 OK 93, 776 P.2d 556, 60 OBJ 1616,</u>	<u>Initiative Petition No. 332, In re</u>	Cited
<u>2001 OK 11, 19 P.3d 276, 72 OBJ 545,</u>	<u>FEHRING v. STATE INS. FUND</u>	Discussed
<u>2007 OK 73, 170 P.3d 1024,</u>	<u>STATE ex rel. WRIGHT v. OKLAHOMA CORPORATION COMMISSION</u>	Discussed
<u>1998 OK 32, 958 P.2d 156, 69 OBJ 1419,</u>	<u>PFL LIFE INSURANCE CO. v. FRANKLIN</u>	Discussed

**Citationizer: Table of Authority**

Cite Name	Level	
<b>Oklahoma Supreme Court Cases</b>		
Cite	Name	Level
<u>1936 OK 568, 66 P.2d 45, 179 Okla. 432,</u>	<u>BAKER v. TULSA BLDG. &amp; LOAN ASS'N.</u>	Cited
<u>1959 OK 135, 344 P.2d 562,</u>	<u>STATE v. BONE</u>	Cited

1934 OK 66, 32 P.2d 913, 168 Okla. 337, ATLAS WIRING CO. v. DORCHESTER Cited

1944 OK 215, 151 P.2d 399, 194 Okla. 324, RUCKS-BRANDT CONSTR. CORP. v. SILVER Cited

**Title 12. Civil Procedure**

Cite Name Level  
12 O.S. 1653, Declaratory Relief - Venue - Parties Cited

**Title 36. Insurance**

Cite Name Level  
36 O.S. 301, Insurance Department Cited

**Title 85. Workers' Compensation**

Cite Name Level  
85 O.S. 131, Creation of Fund - Purpose - Character and Contents - Use Discussed  
85 O.S. 133, Management and Conduct of Business and Affairs of Fund Cited  
85 O.S. 148, Contract or Policy of Insurance - Payment of Premiums - Receipts Cited

## **Appendix H**

**WORKER'S DISABILITY COMPENSATION ACT OF 1969 (EXCERPT)**  
**Act 317 of 1969**

**418.700 "Effective date of the transfer" and "permitted transferee" defined.**

Sec. 700. As used in this chapter:

(a) "Effective date of the transfer" means the date on which a transfer authorized by section 701a occurs.

(b) "Permitted transferee" means an insurer organized pursuant to chapter 51 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.5100 to 500.5114 of the Michigan Compiled Laws.

**History:** Add. 1993, Act 198, Eff. Dec. 28, 1994.

**Compiler's note:** Section 3 of Act 198 of 1993 provides as follows:

Except as provided in subsection (2), this amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws, as added by this amendatory act.

Sections 700 and 701a as added by this amendatory act shall take effect upon the date of enactment of this amendatory act."

**Popular name:** Act 317

**WORKER'S DISABILITY COMPENSATION ACT OF 1969 (EXCERPT)**  
**Act 317 of 1969**

**418.700a Privatization; minority, women, and persons with disabilities owned and operated businesses.**

Sec. 700a. To help ensure participation by minority, women, and persons with disabilities owned and operated businesses in state privatization efforts under this act, the state of Michigan strongly encourages businesses, when responding to privatization requests for proposals and quotations, to either joint venture with or subcontract to minority, women, and persons with disabilities owned and operated businesses.

**History:** Add. 1993, Act 198, Eff. Dec. 28, 1994;—Am. 1998, Act 74, Imd. Eff. May 4, 1998.

**Compiler's note:** Section 3 of Act 198 of 1993 provides as follows:

"Section 3. (1) Except as provided in subsection (2), this amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws, as added by this amendatory act.

"(2) Sections 700 and 701a as added by this amendatory act shall take effect upon the date of enactment of this amendatory act."

**Popular name:** Act 317

**WORKER'S DISABILITY COMPENSATION ACT OF 1969 (EXCERPT)**  
**Act 317 of 1969**

**418.701 State accident fund; creation; purpose; transfer of fund created in 1912; membership and coverage; premiums or assessments; administration; disbursements; liability; appointment and term of chief executive officer; cessation of insurance transactions and operations; winding up affairs.**

Sec. 701. (1) The state accident fund is created to provide only worker's compensation insurance and employer's liability insurance for employers until the effective date of the transfer. The state accident fund created in 1912, with all its authority, powers, duties, and functions, records, personnel, property, and unexpended balances of funds, including the functions of budgeting and procurement and management related functions shall be transferred to and shall be an autonomous entity in the department of commerce. Upon compliance with underwriting standards adopted by the state accident fund, membership in and coverage by the state accident fund shall be provided to employers subject to this act who shall request such membership and coverage of the fund in writing. Thereupon the accident fund shall assume charge of levying and collecting from the employers such premiums or assessments as may be necessary from time to time to pay the sums which become due under the provisions of this act and also the expense of administration; and shall disburse such sums in accordance with the provisions of this act. The state shall not be liable or responsible for the payment of claims for compensation under the provisions of this act beyond the extent of the sums so collected and received.

(2) The chief executive officer of the state accident fund shall be the executive director who shall be appointed by the governor with the advice and consent of the senate who shall serve at the pleasure of the governor for a term not to exceed 4 years or until 1 year following the effective date of the transfer, whichever is less.

(3) Except as otherwise provided in this chapter, after the effective date of the transfer, the state accident fund shall not transact insurance in this state, and all operations of the state accident fund pursuant to former sections 705, 711a, 712, 714, 715, 722, 723, 725, 735, 742, 745, 746, 755, and 756 shall cease. Section 751 shall not apply in the event of a transfer authorized by section 701a. Fees imposed pursuant to section 713 shall accrue until the effective date of the transfer and shall not apply after the effective date of the transfer. The permitted transferee shall be prohibited from asserting any claim for a tax refund against the fees paid in lieu of taxes by the state accident fund pursuant to section 713.

(4) For a period of not more than 1 year after the effective date of the transfer, the commissioner of insurance or his or her designee shall be authorized to wind up the affairs of the state accident fund including, but not limited to, the completion of records and reports required under section 741 as to the business of the state accident fund through the effective date of the transfer.

**History:** 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1990, Act 157, Imd. Eff. June 29, 1990;—Am. 1993, Act 198, Eff. Dec. 28, 1994.

**Compiler's note:** Section 3 of Act 198 of 1993 provides as follows:

Except as provided in subsection (2), this amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws, as added by this amendatory act.

Sections 700 and 701a as added by this amendatory act shall take effect upon the date of enactment of this amendatory act."

**Popular name:** Act 317

**WORKER'S DISABILITY COMPENSATION ACT OF 1969 (EXCERPT)**  
**Act 317 of 1969**

**418.701a Agreement for sale of state accident fund assets and assumption of liabilities; conditions; consideration; authority of state administrative board or executive director of state accident fund; jurisdiction of court; cause of action; liens, claims, or interests; establishing terms and conditions; evaluating and rejecting proposals; report.**

Sec. 701a. (1) The state administrative board created pursuant to 1921 PA 2, MCL 17.1 to 17.3, may authorize the executive director of the state accident fund to enter into and consummate, under terms and conditions approved by the state administrative board, an agreement in the name of the state of Michigan for the sale of all or substantially all of the assets of the state accident fund to a permitted transferee, and assumption of all or substantially all of the liabilities of the state accident fund by the permitted transferee subject to the following conditions:

(a) The state administrative board shall have received before the effective date of the transfer an opinion of a nationally recognized investment banking firm that the consideration for the assets to be transferred is fair from a financial point of view.

(b) The state administrative board shall have received before the effective date of the transfer an opinion of a nationally recognized actuarial firm that the assets of the state accident fund transferred to a permitted transferee are adequate to permit the payment of all liabilities under policies of insurance assumed by the permitted transferee based upon sound actuarial principles.

(c) The state administrative board shall have determined before the effective date of the transfer that the consideration for the assets to be transferred is among the highest cash offers by a qualified bidder as provided for in this section not using the state accident fund assets, is fair from a financial point of view and is sufficient such that the credit of the state shall not have been granted to, nor in aid of any person, association, or corporation, public or private. A person seeking to purchase the state accident fund shall not include as part of its bid the existing assets of the state accident fund. The state administrative board with the advice of the insurance commissioner shall make a determination that the bidder has adequate resources to capitalize the permitted transferee, and will operate the permitted transferee as a Michigan domestic insurer pursuant to chapter 51 of the insurance code of 1956, 1956 PA 218, MCL 500.5100 to 500.5114.

(d) The state administrative board, as it considers appropriate from time to time, may consult with or receive information or recommendations from the insurance commissioner or any other person considered appropriate by the state administrative board, for purposes of assisting the state administrative board in making a final decision in evaluating 1 or more offers from any person seeking to become or establish a permitted transferee for purposes of acquiring the state accident fund pursuant to this section.

(e) The state administrative board shall give due consideration to minority, women, and persons with disabilities owned businesses and prospective bidders that have minority, women, and persons with disabilities owned business participation. A prospective bidder shall indicate in its proposal the name, address, and amount of equity participation for each minority, women, or persons with disabilities owned and operated

business that is included as part or all of the bidding group.

(2) The consideration in the transaction referred to in subsection (1) shall be the property of the state of Michigan. The consideration shall not be subject to the assessment of fees pursuant to section 713. The consideration shall be appropriated as follows:

(a) Not more than 1% of the consideration to a separate segregated fund to be held by the state treasurer and administered by the commissioner of insurance and the executive director of the state accident fund for the purposes of winding up the affairs of the state accident fund pursuant to section 701(4).

(c) The remainder to the general fund for transfer to the countercyclical budget and economic stabilization fund established pursuant to section 351 of the management and budget act, 1984 PA 431, MCL 18.1351.

(3) The state administrative board or the executive director of the state accident fund with the authorization of the state administrative board, in furtherance of the transactions permitted under this section, may do any of the following:

(a) Sell, convey, lease, exchange, transfer, or otherwise dispose of the assets and liabilities including any real or personal property of the state accident fund, wherever situated.

(b) Sell, exchange, transfer, or otherwise dispose of bonds and other obligations, shares or other securities or interests issued by others, whether engaged in similar or different businesses, or governmental or other activities, including banking corporations or trust companies.

(c) Have and exercise all powers necessary or convenient to effect or complete the transactions permitted under this section.

(4) A court in this state shall not have jurisdiction to enjoin or otherwise restrain the transfer of assets and liabilities under this section. The court of claims shall have exclusive jurisdiction over any claims asserted against the state of Michigan arising out of or related to this section.

(5) No cause of action on behalf of any holder of a policy of insurance issued by the state accident fund shall lie against the permitted transferee arising out of the sale of assets or other transactions permitted under this section, except that this subsection shall not limit the rights or remedies of the holder under a policy of insurance issued by the state accident fund and assumed by the permitted transferee to contest the insurance coverage arising under a policy of insurance issued by the state accident fund. No cause of action on behalf of any holder of a policy of insurance issued by the state accident fund shall lie against the state of Michigan or any political subdivision of the state arising out of the sale of assets or other transactions permitted under this section, or arising under policies of insurance issued by the state accident fund.

(6) Except for taxes otherwise imposed by the state of Michigan or any political subdivision of the state or any fees imposed pursuant to section 713, the sale of assets permitted under this section shall be free and clear of any liens, claims, or interests of the state of Michigan or any person claiming through or under the state of Michigan.

(7) The state administrative board for and on behalf of the state of Michigan and subject to the requirements of this section shall have the right in its sole and absolute discretion to establish the terms and conditions of any proposal for the sale of the state accident fund on the basis of its own criteria, to evaluate those proposals by its own criteria, and to reject any or all proposals without assigning any reasons. If 2 or more prospective bids are substantially similar in terms and conditions and the dollar amount of the bids are within 5% of each other, the board shall give preference to a bidder agreeing to retain, for a period of 5 years after the effective date of the transfer, not less than 75% of the employees employed by the accident fund on the effective date of the transfer. The board shall not consider a bidder who does not agree to offer health coverage without preexisting conditions or exclusions to employees employed by the accident fund on the effective date of the transfer and who are retained by the bidder. The state administrative board shall permit a group that is composed solely of a majority of the employees of the state accident fund the opportunity to meet the bid that the board determines is the most favorable for the sale of the fund. If the employees meet this bid, including the standards and preferences of this section, they must do so within 60 days of the presentation to the state administrative board. The employees shall be given the opportunity to form an insurer for the purpose of acquiring the fund and shall be permitted a period of time not to exceed 10 years within which to consummate the sale of the state accident fund. The state administrative board for and on behalf of the state of Michigan expressly reserves the right without giving any reasons and without any liability therefor, at any time and in any respect, to amend or terminate any activities with respect to the sale of the state accident fund, commence or terminate discussions with any or all persons seeking to purchase the state accident fund, reject any or all proposals to acquire the state accident fund, and to negotiate and consummate the sale of the state accident fund with any person. If a proposal submitted by a nonprofit health care corporation operating under the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704, is accepted, the nonprofit health care corporation, in addition to payment of the purchase price, shall remit to the state treasurer an additional amount calculated by the state treasurer as being equal to the

single business tax that a nonprofit health care corporation would have paid on the accumulated assets used to acquire the accident fund if the nonprofit health care corporation were a for-profit mutual insurer.

(8) Nothing in this section shall require the state administrative board to approve or authorize any transaction for the sale of the state accident fund.

(9) Not less than 30 days before the transfer is consummated with a permitted transferee, the state administrative board shall make a report to the legislature providing the name and business address of each bidder; the amount, terms, and conditions of each respective bid; and the copies of the opinions required by subsection (1)(a) and (b).

**History:** Add. 1993, Act 198, Eff. Dec. 28, 1994;—Am. 1998, Act 74, Imd. Eff. May 4, 1998.

**Compiler's note:** Section 3 of Act 198 of 1993 provides as follows:

"Section 3. (1) Except as provided in subsection (2), this amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws, as added by this amendatory act.

"(2) Sections 700 and 701a as added by this amendatory act shall take effect upon the date of enactment of this amendatory act."

The following provision of this section, as added by Act 198 of 1993, was vetoed by the governor on October 18, 1993:

"(b) An amount equal to \$5,500,000.00 to the pension reserve fund and the dental-vision reserve fund created by section 11 of the state employees' retirement act, Act No. 240 of the Public Acts of 1943, being section 38.11 of the Michigan Compiled Laws, to be divided between the funds in the same proportion that each bears to the total percent of payroll charged to state agencies for the cost of these benefits for the fiscal year ending September 30, 1994."

**Popular name:** Act 317

## **WORKER'S DISABILITY COMPENSATION ACT OF 1969 (EXCERPT)**

### **Act 317 of 1969**

#### **418.702 Cessation of operation or dissolution of certain authorities, municipal councils, or municipal corporations with contract to provide transportation services; payment of claims; determination of amount; processing of claims; compensation for services; assignment of carrier; duties; conditions; lien; use of state funds for payment of private obligations.**

Sec. 702. (1) If the suburban mobility authority regional transportation authority created pursuant to the metropolitan transportation authorities act of 1967, Act No. 204 of the Public Acts of 1967, as amended, being sections 124.401 to 124.426 of the Michigan Compiled Laws, an authority created by interlocal agreement pursuant to the urban cooperation act of 1967, Act No. 7 of the Public Acts of the Extra Session of 1967, being sections 124.501 to 124.512 of the Michigan Compiled Laws, an authority created pursuant to the public transportation authority act, Act No. 196 of the Public Acts of 1986, being sections 124.451 to 124.479 of the Michigan Compiled Laws, a metropolitan council established pursuant to the metropolitan council act, Act No. 292 of the Public Acts of 1989, being sections 124.651 to 124.685 of the Michigan Compiled Laws, an authority or a municipal corporation that has entered into an intergovernmental contract to provide transportation services pursuant to Act No. 35 of the Public Acts of 1951, being sections 124.1 to 124.13 of the Michigan Compiled Laws, or Act No. 55 of the Public Acts of 1963, being sections 124.351 to 124.359 of the Michigan Compiled Laws, or an authority created pursuant to Act No. 55 of the Public Acts of 1963, as amended, being sections 124.351 to 124.359 of the Michigan Compiled Laws, ceases to operate or is dissolved, and a successor agency is not created to assume its assets, liabilities, and perform its functions, and if the authority is authorized to secure the payment of compensation under section 611(1)(a), then the state hereby guarantees the payment of claims for benefits arising under this act against the authority. Payment of claims by the state under this section shall be made from the general fund.

(2) Except as otherwise provided in subsection (3), the accident fund shall determine in detail as the director of the department of management and budget may require the amount necessary to pay the claims for benefits for which the state is responsible pursuant to subsection (1). The accident fund shall be responsible for the processing of these claims and shall be compensated for its services in the same manner as a carrier is compensated for processing the claims of state employees.

(3) The Michigan worker's compensation placement facility shall randomly assign a carrier licensed to write worker's disability compensation insurance to determine in detail as the director of the department of management and budget may require the amount necessary to pay the claims for benefits for which the state is responsible pursuant to subsection (1). The carrier so assigned shall be responsible for the processing of these claims and shall be compensated for its services in the same manner as for processing the claims of state employees. This subsection shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the

## **Appendix I**

# Oklahoma Legislature

Chris Bengé  
Speaker  
House of Representatives



Glenn Coffee  
President Pro Tempore  
State Senate

August 31, 2009

## - AGENDA -

**TO:** Members of the Task Force on the Privatization of CompSource Oklahoma

**DATE:** Wednesday, September 2, 2009

**TIME:** 9:30 a.m.

**PLACE:** Room 412C, State Capitol Building

**AGENDA:** 3rd Meeting

- I. Welcome and Introductions by Co-Chairs: Senator Aldridge and Representative Sullivan
- II. Presentation on Nevada's Mutualization Process and Experience by Ann Nelson, Executive Vice President, Corporate and Public Affairs, Employers Holdings, Inc.
- III. Presentation on Financial Implications for Nevada by Douglas Dirks, President and CEO of Employers Holdings, Inc.
- IV. Schedule Task Force Meetings for October
- V. Other Business and Adjournment

### Future Meeting Dates

Wednesday, September 23, at 9:30 a.m., Rm 419C

October meetings will be set at September 2 meeting.

Sen. Cliff Aldridge, Co-Chair

Rep. Dan Sullivan, Co-Chair

### Members:

Insurance Commissioner Kim Holland  
Lee Ann Alexander  
Dan Ramsey  
James Stergiou

Michael Clingman  
Bradley J. McClure  
Mike Seney

## **Appendix J**

## **Insurance Companies that have Withdrawn from the Market**

### **Insurance Department Rule (7/14/07) OAC 365:15-1-18. Withdrawal or discontinue writing**

(a) Any insurer desiring to withdraw from the state or discontinue the writing of certain classes of insurance or programs in this state shall give ninety (90) days notice in writing to the Property and Casualty Division of the Insurance Department and shall state in writing its reasons for such action. The insurer shall also provide the following information:

- (1) The number of policyholders effected;
  - (2) The number of insurance agents effected;
  - (3) The date the insurer will cease writing new business;
  - (4) The date the insurer will start non-renewing insurance policies;
  - (5) Whether the insurer has made arrangements with another insurer to pick up the renewals;
  - (6) The lines of insurance on which the insurer plans to concentrate; and
  - (7) Whether the insurer anticipates re-entering the market.
- 

As a result of the Department's review of filings pertaining to this rule for the last five years, we have found 3 companies that have withdrawn from the market. (Please note that these companies still offer other products in the market)

**January 2008** – Cumis Insurance Society withdrew from offering workers compensation. Policyholders were offered replacement policies with Liberty Mutual Insurance Company.

2007 written premium                      \$370,000 (Less than 1% of the market)

**November 2006** – Virginia Surety Company, Inc withdrew from offering workers' compensation. Policyholders were offered replacement policies with Republic Insurance Company.

2005 written premium                      \$5,271,000 (Approximately 1.42% of the market)

**March 2004** – Atlantic Mutual Insurance Company and Centennial Insurance Company withdrew from offering workers' compensation. Some policyholders were offered replacement policies with OneBeacon.

Centennial – 2003 written premium                      \$ 361,000  
Atlantic Mutual – 2003 written premium                      \$            0  
(Both less than 1% of the market)

## **Appendix K**



**Number of Small Employers By State\*  
Policy Year 2008**

<u>State</u>	<u>Oklahoma</u>	<u>Arkansas</u>	<u>Colorado</u>	<u>Kansas</u>	<u>Missouri</u>	<u>New Mexico</u>	<u>Texas</u>
Employer Count	34,239	26,277	73,860	35,074	50,696	20,289	93,541
% of Total Employers	67%	78%	78%	76%	68%	73%	64%
% of Total Std Premium	5%	14%	11%	10%	9%	11%	4%

\* A Small Employer is defined as having Standard Premium of less than \$5,000.

**Top 10 Workers Compensation Carriers in Oklahoma  
Written Premium by Calendar Year**

**Calendar Year 2008**

<u>Carrier Name</u>	<u>Written Premium</u>	<u>Market Share %</u>
Compsource Oklahoma	263,390,232	35.1%
Chartis, Inc	95,191,837	12.7%
Liberty Mutual Insurance Group	76,138,915	10.2%
Hartford Fire & Casualty Group	35,446,462	4.7%
Travelers Group	32,447,772	4.3%
Zurich Insurance Group	31,826,175	4.2%
National American Insurance Co	23,659,462	3.2%
Amerisafe Group	22,922,929	3.1%
Old Republic Insurance Group	20,163,416	2.7%
Ace American Ins Co	18,454,958	2.5%
Statewide Total	749,969,072	

**Calendar Year 2007**

<u>Carrier Name</u>	<u>Written Premium</u>	<u>Market Share %</u>
Compsource Oklahoma	269,284,362	36.9%
Chartis, Inc	107,533,561	14.7%
Liberty Mutual Insurance Group	60,636,861	8.3%
Hartford Fire & Casualty Group	32,236,746	4.4%
Zurich Insurance Group	31,097,195	4.3%
Old Republic Insurance Group	24,968,451	3.4%
Travelers Group	23,186,926	3.2%
Ace American Ins Co	19,635,940	2.7%
National American Insurance Co	17,827,536	2.4%
CNA Insurance Group	17,695,956	2.4%
Statewide Total	730,563,617	

**Top 10 Workers Compensation Carriers in Oklahoma  
Written Premium by Calendar Year**

**Calendar Year 2006**

<u>Carrier Name</u>	<u>Written Premium</u>	<u>Market Share %</u>
Compsource Oklahoma	288,397,675	40.5%
Chartis, Inc	109,501,649	15.4%
Liberty Mutual Insurance Group	48,232,947	6.8%
Hartford Fire & Casualty Group	31,155,876	4.4%
Old Republic Insurance Group	29,873,831	4.2%
Zurich Insurance Group	27,908,229	3.9%
Ace American Ins Co	18,776,209	2.6%
CNA Insurance Group	16,226,895	2.3%
Amerisafe Group	14,523,452	2.0%
National American Insurance Co	14,485,604	2.0%
 Statewide Total	 712,282,943	

**Calendar Year 2005**

<u>Carrier Name</u>	<u>Written Premium</u>	<u>Market Share %</u>
Compsource Oklahoma	282,306,741	42.9%
Chartis, Inc	78,714,194	12.0%
Liberty Mutual Insurance Group	41,508,752	6.3%
Hartford Fire & Casualty Group	32,985,099	5.0%
Zurich Insurance Group	31,145,338	4.7%
Old Republic Insurance Group	27,079,166	4.1%
CNA Insurance Group	18,718,826	2.8%
Ace American Ins Co	18,606,677	2.8%
Amerisafe Group	11,684,292	1.8%
GE Global Insurance Holding Group	11,439,872	1.7%
 Statewide Total	 657,874,392	



**Top 10 Workers Compensation Carriers in Oklahoma  
Written Premium by Calendar Year**

**Calendar Year 2004**

<u>Carrier Name</u>	<u>Written Premium</u>	<u>Market Share %</u>
Comsource Oklahoma	255,089,781	42.5%
Chartis, Inc	75,737,330	12.6%
Liberty Mutual Insurance Group	34,332,226	5.7%
Zurich Insurance Group	32,255,202	5.4%
Old Republic Insurance Group	22,216,116	3.7%
Hartford Fire & Casualty Group	20,884,329	3.5%
Travelers Group	19,944,445	3.3%
CNA Insurance Group	19,619,874	3.3%
GE Global Insurance Holding Group	14,167,376	2.4%
National American Insurance Co	13,776,951	2.3%
Statewide Total	600,435,661	

## **Appendix L**

### Oklahoma Workers' Compensation Policy Distribution

Risk Count		
Policy Years 2007 & 2008		
Premium Range	Carrier	
	Private Carriers	CompSource
\$1 - \$2,499	24,736	29,693
\$2,500 - \$4,999	7,045	7,220
\$5,000 - \$9,999	6,405	5,987
\$10,000 - \$19,999	4,771	4,056
\$20,000 - \$49,999	3,819	2,771
\$50,000 - \$99,999	1,647	924
\$100,000 - \$199,999	998	371
\$200,000 +	820	223

## **Appendix M**

## Comparison of NCCI-Reported Direct Compensation Premiums to Residual Market Premiums

Calendar Years 2008 and 2007

State	Preliminary 2008					Final 2007				
	Direct Premiums Written	Reinsurance Pool Premiums Written	Direct Assignment Premiums Written	Total Residual Market Premium	(%)	Direct Premiums Written	Reinsurance Pool Premiums Written	Direct Assignment Premiums Written	Total Residual Market Premium	(%)
AL	\$367,554,122	\$8,629,757	\$4,284,124	\$12,913,881	3.5%	\$388,646,269	\$11,004,777	\$8,659,435	\$19,664,212	5.1%
AK	284,711,267	36,358,127	1,647,930	38,006,057	13.3%	325,610,593	42,632,785	2,270,812	44,903,597	13.8%
AZ	776,201,298	5,525,527		5,525,527	0.7%	893,073,933	6,214,290		6,214,290	0.7%
AR	259,537,959	13,664,886		13,664,886	5.3%	285,917,299	18,852,862		18,852,862	6.6%
CT	692,897,122	17,526,030	14,875,084	32,401,114	4.7%	721,730,989	28,208,598	24,248,713	52,457,311	7.3%
DC	142,215,547	8,410,820		8,410,820	5.9%	160,904,200	13,160,483		13,160,483	8.2%
GA	1,250,784,109	42,858,078	13,560,287	56,418,365	4.5%	1,351,348,784	57,534,429	25,367,499	82,901,928	6.1%
ID	320,186,622	2,431,544		2,431,544	0.8%	359,980,355	3,365,759		3,365,759	0.9%
IL	2,588,042,667	95,029,793		95,029,793	3.7%	2,698,114,356	127,844,853		127,844,853	4.7%
IA	563,170,711	30,142,909		30,142,909	5.4%	553,303,067	27,310,798		27,310,798	4.9%
KS	447,529,253	49,252,836		49,252,836	11.0%	429,655,084	59,714,049		59,714,049	13.9%
NV	431,218,695	28,262,311		28,262,311	6.6%	524,090,044	38,343,202		38,343,202	7.3%
NH	250,478,405	15,032,572	3,046,482	18,079,054	7.2%	270,050,081	20,399,010	5,447,483	25,846,493	9.6%
NM	261,458,107	10,700,351		10,700,351	4.1%	278,108,328	17,982,827		17,982,827	6.5%
OR	706,537,678	38,185,424		38,185,424	5.4%	936,322,824	55,558,794		55,558,794	5.9%
SC	721,802,189	23,276,001	11,833,820	35,109,821	4.9%	793,616,937	36,419,724	24,820,983	61,240,707	7.7%
SD	137,959,952	7,658,169		7,658,169	5.6%	138,615,749	9,268,158		9,268,158	6.7%
VT	173,588,538	10,003,281	1,566,816	11,570,097	6.7%	189,985,373	12,390,181	2,477,912	14,868,093	7.8%
VA	847,558,103	39,662,279	19,988,346	59,650,625	7.0%	913,681,291	49,524,305	37,675,297	87,199,602	9.5%
<b>Sub-Totals*</b>	<b>\$11,223,432,344</b>	<b>\$482,610,695</b>	<b>\$70,802,889</b>	<b>\$553,413,584</b>	<b>4.9%</b>	<b>\$12,212,755,556</b>	<b>\$635,729,884</b>	<b>\$130,968,134</b>	<b>\$766,698,018</b>	<b>6.3%</b>
DE	195,555,788	14,273,418	2,693,648	16,967,066	8.7%	261,942,845	23,362,798	5,220,763	28,583,561	10.9%
MA	865,002,659	45,033,230	90,909,438	135,942,668	15.7%	1,116,977,372	65,168,257	119,474,047	184,642,304	16.5%
MI	994,209,192	58,031,630		58,031,630	5.8%	1,087,839,291	67,205,667		67,205,667	6.2%
NJ	1,945,287,376	116,990,945	56,454,561	173,445,506	8.9%	1,962,779,374	173,887,289	76,339,216	250,226,505	12.7%
NC	1,404,343,598	67,829,797	31,299,769	99,129,566	7.1%	1,520,110,190	79,009,902	40,896,830	119,906,732	7.9%
<b>Grand Totals</b>	<b>\$16,627,830,957</b>	<b>\$784,769,715</b>	<b>\$252,160,305</b>	<b>\$1,036,930,020</b>	<b>6.2%</b>	<b>\$18,162,404,628</b>	<b>\$1,044,363,797</b>	<b>\$372,898,990</b>	<b>\$1,417,262,787</b>	<b>7.8%</b>

\* Subtotals in this chart represent the results for all NCCI Plan-administered states (excluding Mississippi).

Exhibit R

## Residual Market Share

### Residual Market Plan Premiums as a Percentage of NCCI-Reported Direct Premiums Written Calendar Years 2004–2008

State	2008 <sup>1</sup>	2007	2006	2005	2004
Alabama	3.5%	5.1%	5.7%	7.1%	8.3%
Alaska	13.3%	13.8%	15.8%	18.0%	20.2%
Arizona	0.7%	0.7%	1.1%	1.2%	0.9%
Arkansas	5.3%	6.6%	8.5%	8.5%	11.5%
Connecticut	4.7%	7.3%	6.4%	8.4%	10.0%
District of Columbia	5.9%	8.2%	8.8%	12.4%	10.9%
Georgia	4.5%	6.1%	6.5%	7.7%	8.7%
Idaho	0.8%	0.9%	1.0%	1.1%	1.4%
Illinois	3.7%	4.7%	5.4%	7.6%	9.5%
Iowa	5.4%	4.9%	6.2%	8.4%	10.7%
Kansas	11.0%	13.9%	17.1%	16.9%	20.7%
Nevada	6.6%	7.3%	8.7%	11.3%	12.7%
New Hampshire	7.2%	9.6%	12.9%	14.0%	16.9%
New Mexico	4.1%	6.5%	9.7%	12.5%	12.8%
Oregon	5.4%	5.9%	7.9%	8.3%	8.5%
South Carolina	4.9%	7.7%	9.7%	12.1%	14.6%
South Dakota	5.6%	6.7%	9.9%	13.5%	14.8%
Vermont	6.7%	7.8%	8.5%	11.6%	16.8%
Virginia	7.0%	9.5%	10.8%	13.5%	15.5%
<b>Subtotals<sup>2</sup></b>	<b>4.9%</b>	<b>6.3%</b>	<b>7.5%</b>	<b>9.2%</b>	<b>10.8%</b>
Delaware	8.7%	10.9%	16.4%	21.3%	23.7%
Indiana <sup>3</sup>					8.6%
Massachusetts	15.7%	16.5%	18.7%	20.9%	22.6%
Michigan	5.8%	6.2%	6.9%	8.3%	8.8%
New Jersey	8.9%	12.7%	18.3%	22.8%	23.2%
North Carolina	7.1%	7.9%	8.4%	10.0%	11.5%
<b>Grand Totals</b>	<b>6.2%</b>	<b>7.8%</b>	<b>9.6%</b>	<b>11.6%</b>	<b>12.7%</b>

<sup>1</sup> Preliminary.

<sup>2</sup> Subtotals in this chart represent NCCI Plan-administered states (excluding Mississippi).

<sup>3</sup> Effective January 1, 2005, reinsurance of new or renewal policies is no longer provided through NWCRP.

Exhibit T

## Comparative Number of Assigned Risk Policies

Policy Years 2008 and 2007\*

State	Number of Assigned Risk Policies			
	2008	2007	Variance	% Change
Alabama	2,284	2,873	(589)	(20.5)
Alaska	8,178	8,357	(179)	(2.1%)
Arizona	427	424	3	0.7%
Arkansas	5,256	6,125	(869)	(14.2%)
Connecticut	13,094	14,347	(1,253)	(8.7%)
District of Columbia	1,402	1,648	(246)	(14.9%)
Georgia	21,735	28,139	(6,404)	(22.8%)
Idaho	781	1,014	(233)	(23.0%)
Illinois	26,343	27,389	(1,046)	(3.8%)
Iowa	3,951	4,343	(392)	(9.0%)
Kansas	10,837	12,314	(1,477)	(12.0%)
Mississippi	2,621	3,247	(626)	(19.3%)
Nevada	5,369	6,271	(902)	(14.4%)
New Hampshire	6,129	7,311	(1,182)	(16.2%)
New Mexico	2,818	3,521	(703)	(20.0%)
Oregon	10,611	12,023	(1,412)	(11.7%)
South Carolina	13,815	16,768	(2,953)	(17.6%)
South Dakota	1,792	2,109	(317)	(15.0%)
Vermont	3,459	3,797	(338)	(8.9%)
Virginia	18,142	22,281	(4,139)	(18.6%)
<b>Subtotal</b>	<b>159,044</b>	<b>184,301</b>	<b>(25,257)</b>	<b>(13.70%)</b>
<b>Other Pool States</b>				
Delaware	1,667	2,345	(678)	(28.9%)
Indiana	6,589	7,668	(1,079)	(14.1%)
New Jersey	29,346	37,913	(8,567)	(22.6%)
North Carolina	25,225	33,388	(8,163)	(24.4%)
<b>Subtotal</b>	<b>62,827</b>	<b>81,314</b>	<b>(18,487)</b>	<b>(22.7%)</b>
<b>Grand Totals</b>	<b>221,871</b>	<b>265,615</b>	<b>(43,744)</b>	<b>(16.5%)</b>

\* 2007 figures have been restated to account for additional data available since the publication of *Residual Market Management Summary 2007*.

Exhibit U

## Assigned Risk Premium Size Profile

Policy Year 2008\*

Premium Size	Policy Count	Total Percent of Policies	Estimated Annual Premium	Total Percent of Premium	Average Premium
\$0– 2,499	172,174	77.6%	\$134,856,659	19.0%	\$783
\$2,500– 4,999	22,663	10.2%	\$80,299,697	11.3%	\$3,543
\$5,000– 9,999	13,728	6.2%	\$95,761,106	13.5%	\$6,976
\$10,000– 19,999	7,395	3.3%	\$102,444,170	14.5%	\$13,853
\$20,000– 49,999	4,233	1.9%	\$127,677,959	18.0%	\$30,163
\$50,000– 99,999	1,174	0.5%	\$79,439,233	11.2%	\$67,665
\$100,000–199,999	395	0.2%	\$52,602,782	7.4%	\$133,172
\$200,000+	109	0.0%	\$35,500,544	5.0%	\$325,693
<b>Totals</b>	<b>221,871</b>	<b>100%</b>	<b>\$708,582,150</b>	<b>100%</b>	<b>\$3,194</b>

\* Total policy and estimated annual plan premium totals include servicing and direct assignments carriers for those states where NCCI provides Plan administration, Pool administration, or other services including policies cancelled short term and the associated prorated premium. All premium totals in the state exhibits are estimated annual premiums because direct written is not available on an individual policy basis until 18 months after policy inception, according to NCCI's *Statistical Plan for Workers Compensation and Employers Liability Insurance*.

## Premium Size Profiles by State (Cont'd)

### Virginia Premium Size Profile—Policy Year 2008

Premium Size	Policy Count	Total Percent of Policies	Estimated Annual Premium	Total Percent of Premium	Average Premium
\$0– 2,499	14,006	77.2%	\$10,934,677	21.7%	\$780
\$2,500– 4,999	2,053	11.3%	\$7,200,150	14.3%	\$3,507
\$5,000– 9,999	1,145	6.3%	\$7,994,365	15.9%	\$6,981
\$10,000– 19,999	552	3.0%	\$7,593,063	15.1%	\$13,755
\$20,000– 49,999	288	1.6%	\$8,472,966	16.8%	\$29,420
\$50,000– 99,999	77	0.4%	\$5,236,172	10.4%	\$68,002
\$100,000–199,999	18	0.1%	\$2,230,043	4.4%	\$123,891
\$200,000+	3	0.02%	\$699,337	1.4%	\$233,112
<b>Totals</b>	<b>18,142</b>	<b>100%</b>	<b>\$50,360,773</b>	<b>100%</b>	<b>\$2,776</b>

Exhibit V

## Classifications With Largest Premium Volume

### Policy Year 2008\*

Estimated Annual Premium totals were accumulated using the dominant state theory for multistate policies.

Classification Code	Premium Amount	Classification Description
5645	\$31,628,708	Carpentry—Detached One or Two Family Dwellings
5551	\$15,544,315	Roofing—All Kinds & Yard Employees, Drivers
7228	\$12,536,187	Trucking—Local Hauling Only & Drivers
7229	\$12,269,125	Trucking—Long Distance Hauling & Drivers
8835	\$12,083,908	Nursing—Home Health Public and Traveling—All Employees
5474	\$10,819,211	Painting or Paperhanging NOC & Shop Operations, Drivers
9015	\$8,979,690	Buildings—Operation by Owner or Lessee
5403	\$8,824,835	Carpentry NOC
9014	\$7,997,862	Janitorial Services by Contractors—No Window Cleaning Above Ground Level & Drivers
5437	\$7,977,209	Carpentry—Installation of Cabinet Work or Interior Trim

NOC = Not Otherwise Classified

\* Estimated Annual Premium totals include servicing and direct assignment carriers for those states where NCCI provides Plan administration, Pool administration, or other services

Exhibit W

## Classifications With Largest Policy Count

### Policy Year 2008\*

Policy Count totals were accumulated using the dominant state theory for multistate policies

Classification Code	Policy Count	Classification Description
5645	18,380	Carpentry—Detached One or Two Family Dwellings
5437	7,969	Carpentry—Installation of Cabinet Work or Interior Trim
5474	6,929	Painting or Paperhanging NOC & Shop Operations, Drivers
8810	6,671	Clerical Office Employees NOC
7228	6,324	Trucking—Local Hauling Only & Drivers
9014	4,166	Janitorial Services by Contractors—No Window Cleaning Above Ground Level & Drivers
5551	3,678	Roofing—All Kinds & Yard Employees, Drivers
5445	3,647	Wallboard Installation Within Buildings & Drivers
5022	3,344	Masonry NOC
5403	2,989	Carpentry NOC

NOC = Not Otherwise Classified

\* Policy Count totals include servicing and direct assignment carriers for those states where NCCI provides Plan administration, Pool administration, or other services.

Exhibit X

## Hazard Group Distribution

### Policy Year 2008

Exhibit X shows that the residual markets have a higher percentage of high hazard group (increased operational exposure) accounts than the voluntary market.

Hazard Group	Voluntary Market 2008		Assigned Risk Plan 2008	
	Policy Count	Total Percent	Policy Count	Total Percent
I	82,672	7.8%	3,876	2.6%
II	171,917	16.3%	10,045	6.6%
III	328,462	31.1%	33,709	22.2%
IV	139,132	13.2%	12,068	7.9%
V	186,194	17.6%	37,582	24.7%
VI	131,348	12.4%	47,911	31.5%
VII	11,807	1.1%	6,450	4.2%
Not Classified	5,460	0.5%	226	0.1%

Note: Variances in the number of policies occur due to timing of reports and availability of data on some states.

## **Appendix N**



American Insurance Association

2101 L Street NW  
Suite 400  
Washington, DC 20037  
202-828-7100  
Fax 202-293-1219  
[www.aiadc.org](http://www.aiadc.org)

## **STATE FUNDS: PRESENT AND FUTURE**

### **POLICY CONSIDERATIONS**

- I History/Role of State Funds
- II State Funds Today; Purpose/Design
- III Policy Considerations: Retaining a State Fund
  - A. Public Policy Justification
  - B. Objectives in the Marketplace
  - C. Design Issues
- IV Policy Considerations: Privatization
  - A. "Privatization" or Privatization
  - B. Governance
  - C. Residual Market
  - D. Guaranty Fund
  - E. Rating Law
  - F. Surplus
- V Conclusion -- Peering into the Mirror

American Insurance Association  
September 2000

## **Appendix O**

# OKLAHOMA

## COMPSOURCE OKLAHOMA

### I. COVERAGE

#### **A. Writes only W/C to In-State Employers for In-State Operations**

No. Fund may insure out-of-state employees of in-state employers, and may offer medical malpractice insurance and reinsurance to health care employers. Okla. Stat. Ann. tit. 76, §22; tit. 85, §134.

#### **B. Authorized to Write Longshore and Black Lung Coverages**

Yes. Okla. Stat. Ann. tit. 85, §131.

### II. SERVES AS RESIDUAL MARKET

Yes. Okla. Stat. Ann. tit. 85, §134.

### III. SOLVENCY REGULATIONS SAME AS PRIVATE CARRIERS

#### **A. Regulated by Insurance Dept. on Same Basis as Private Insurers For Rate Adequacy, Reserves, and Financial Reporting Examinations**

No. Fund is not subject to Insurance Department regulation. Reserves are to be set according to standards proposed by Board. Okla. Stat. Ann. tit. 85, §137. Insurance Commission may conduct examinations of Fund and Fund must provide department with an annual financial statement. Okla. Stat. Ann. tit. 85, §139.

#### **B. Mechanism for Generating Additional Income (Higher Rates) or Returning Excess Assets (Dividends) Through Price Changes**

Fund may issue dividends to policyholders. Okla. Stat. Ann. tit. 85, §134E. In practice, Fund does not pay dividends.<sup>1</sup>

#### **C. Annual Accounting Certified by Independent Actuarial Firm**

Yes. Okla. Stat. Ann. tit. 85, §134D.

### IV. MEMBER OF GUARANTY FUND

No. Okla. Stat. Ann. tit. 85, §134F.

---

<sup>1</sup> Source: NCCI.

## V. RATEMAKING/DATA REPORTING

### **A. Express Mechanism for Guaranteeing Self-Sustaining Rates**

No. Rates are to be set so that fund is self-funding. Okla. Stat. Ann. tit. 85, §134. Board has authority to fix and determine rates. Okla. Stat. Ann. tit. 85, §132.

### **B. Mandatory Participation in Rating/Advisory Organization**

Fund is a member of the rating organization.

### **C. Participation in Ratemaking System (Adherence to Uniform Statistical Plan, Uniform Classification System and Experience Rating Plan)**

Fund adheres to uniform statistical plan, and uniform classification system and provides its data to rating organization. However, Fund establishes its own rates.

### **D. Authority to Impose Surcharges**

Fund has no apparent authority under current statutes and regulations to impose surcharges.

## VI. SOURCE OF CAPITAL

### **A. Start-up Capital**

Expenses paid out of warrants issued by state treasurer. Okla. Stat. Ann. tit. 85, §139.

### **B. Subsequent Infusions from State**

No provision in statutes or regulation.

### **C. Private Market Implicated**

No.

## VII. INDEPENDENT GOVERNANCE

### **A. Instrumentality of State**

No. An Attorney General Opinion states that the Fund has a dual nature -- it is both a state agency and a private business. Att. Gen. Op. 91-17. Legislative Commission recommended "privatizing" the Fund and converting it to solely the market of last resort (Bell Commission).

### **B. Surplus Owned by Policyholders**

Yes. Fund holds assets in trust for the benefit of employers and employees. Att. Gen. Op. 95-36.

**C. State Claim on Capital/Surplus**

No. Assets of Fund are not owned by the state. Att. Gen. Op. 95-36.

**D. Majority of Board Selected by Policyholders**

Board is selected by the Governor and legislature. Okla. Stat. Ann. tit. 85, §131a.

**E. Management Appointed by Board--Serves at Pleasure of Board**

Board selects fund commissioner who manages and administers Fund. Okla. Stat. Ann. tit. 85, §132.

**VIII. UNFAIR COMPETITION**

**A. No Free Services--Office Space, Other Support (Legal, Materials)**

Not addressed by statutes or regulations.

**B. Subject to Premium Taxes and Other Assessments**

No. Each year fund must report amount of premium taxes it would have been liable for if it were a private carrier. Okla. Stat. Ann. tit. 85, §131. Fund pays no premium taxes.<sup>1</sup> Fund does pay its proportionate share of administration expenses (Okla. Stat. Ann. tit. 40, §418) and the second injury fund assessment (Okla. Stat. Ann. tit. 85, §173).

**C. Subject to Federal Taxes**

No.

**D. Shifting Other Costs to Private Insurers or Other Employers**

No provision in current statutes or regulations expressly authorizing the shifting of any costs to private insurers or employers.

**IX. COMMENTS**

1. Fund must provide safety services for its policyholders. Okla. Stat. Ann. tit. 36, §6701.
2. Fund may provide premium credits. Okla. Stat. Ann. tit. 85, §142a.
3. NCCI estimates Fund has a 12% advantage over private market because it does not pay premium taxes, commissions or dividends.<sup>2</sup>

---

<sup>1</sup> Source: NCCI.

<sup>2</sup> Source: NCCI.

## **X. CONCLUSION**

Fund fails to meet critical test for acceptable state fund design, in not adhering to insurance regulatory requirements and rate approval process applicable to private market. This has permitted the Fund to underprice its risks, which in previous years has led to financial problems. Furthermore, its authority to write workers' compensation insurance for non-Oklahoma operations is inconsistent with AIA policy.

## **Appendix P**

# STATE WORKERS' COMPENSATION FUNDS – SUMMARY OF KEY PROVISIONS

State Fund (Year of Creation)	Serves as Residual Market	Coverage Available (See Key at bottom of page)	Authorized to Write Longshore and Black Lung	Regulated on same basis as Private Market by Insurance Department	Member of Guaranty Fund	Participates In Rating/ Advisory Organization	Adheres to Industry Rate- making System	Authorized To Impose Surcharge	Method of Board Selection	Tax Liability: Pays Federal Tax/ Subject to Premium Taxes and Assessments
Arizona 1925	Yes <sup>1</sup>	2	Yes	No <sup>2</sup>	No <sup>3</sup>	Yes	Yes	No	Governor	No/Yes
California 1913	Yes	2	Yes	No <sup>4</sup>	Yes	Yes	Yes	No	Governor	No/Yes
Colorado 1915	Yes	1	No	No <sup>5</sup>	No	Yes	Yes	No	Governor	No/No
Hawaii 1997	Yes	1	Yes	No	Yes <sup>6</sup>	Yes	Yes	Yes	Policyholders/	No/No
Idaho 1917	No	1	Yes	Yes	No	Yes	Yes	No	Governor	No/Yes
Kentucky 1995	Yes	1	Yes	Yes <sup>8</sup>	No	Yes	Yes	No	Governor	No/Yes
Louisiana 1991	Yes	4 <sup>9</sup>	Longshore only	No <sup>10</sup>	Yes <sup>11</sup>	Yes	Yes	No	Majority by Governor <sup>12</sup>	No/Yes
Maine 1992	Yes	3 & 4 <sup>13</sup>	Longshore only	No	No	Yes	Yes	No	Majority by Policyholders	Yes/Yes
Maryland 1914	Yes	2 <sup>14</sup>	No	No	Yes <sup>15</sup>	No	No	No	Governor	No/No
Minnesota <sup>16</sup> 1983	No	4 <sup>17</sup>	No	Yes	Yes	Yes	Yes	No	Majority by Governor	Yes/Yes
Missouri 1993	No <sup>18</sup>	2	Longshore only	Yes	Yes	Yes	Yes	No	Majority by Governor <sup>19</sup>	No <sup>20</sup> /Yes
Montana 1915	Yes	1 <sup>21</sup>	No	No	No	Yes	Yes	Yes	Governor	No/No
New Mexico 1991	No	2	No	Yes	Yes	Yes	Yes	No	Majority by Governor	Yes/Yes
New York 1914	Yes	1 <sup>22</sup>	Yes	No	No	No	Yes	No	Governor	No/Yes <sup>23</sup>
Oklahoma 1933	Yes	4 <sup>24</sup>	Yes	No	No	Yes	Yes	No	Governor	No/No
Oregon 1913	No	1 <sup>25</sup>	Longshore only	No	No	Yes	Yes	No	Governor	No/Yes
Pennsylvania 1915	Yes	1	Yes	No	Yes	Yes	Yes	No	Governor <sup>26</sup>	No/Yes
Rhode Island 1992	Yes	1	Longshore only	No	No	No	Yes	No	Majority by Governor	No/No
Tennessee <sup>27</sup> 1992	No	1	No	Yes	No	Not Operational	Not Operational	Yes	Initial Board by Governor <sup>28</sup>	No/Yes
Texas 1991	Yes	2	Yes	Yes	Yes <sup>29</sup>	Yes	Yes	Yes	Majority by Governor	No/Yes
Utah 1917	Yes	3 & 4 <sup>30</sup>	No	Yes	Yes	Yes	Yes	No	Governor	No/Yes

KEY FOR COVERAGE AVAILABLE CATEGORY: 1-Writes only coverage for in-state employers for in-state operations; 2-May write coverage for employers with employees temporarily out-of-state; 3-May form or acquire subsidiary insurers to provide coverage in other states; 4-May write out-of-state operations coverage for in-state employers.

- <sup>1</sup> In a technically legal sense, the Fund is not the market of last resort. NCCI administers a traditional assigned risk pool. However, historically the Fund has assumed the obligation *de facto* as the residual market, as the pool is extremely small (about 12 risks). The Fund's *de facto* role was memorialized in 1997, with a Board of Directors resolution committing the Fund to "provide workers' compensation insurance for the Arizona exposure of each and every employer who applies for such coverage with the Fund."
- <sup>2</sup> If the DOI determines Fund is either insolvent or fails to meet risk-based capital requirements, its recourse is limited to notifying Fund's manager and board of directors, and eventually the Governor and Legislature if Fund fails to comply with recommendations for abating the determination.
- <sup>3</sup> Workers' compensation insurance is excluded from the property and casualty insurance guaranty fund, with the guaranty obligation, for insurers and self-insurers, financed through the special fund that also serves as the second injury fund (secs. 23-966; 23-1065). The State Fund is obligated to assume liability for benefit payments, where any employer or insurer fails to make such payments, with a lien against the employer's or insurer's assets to recover the cost of benefits paid. The Fund also may recover administrative costs from the special fund in connection with its payment-guaranty obligation. Thus, the State Fund effectively assumes the administrative role of a guaranty fund. The State Fund's own insolvency is not clearly contemplated. The statute requires the insurance director, upon a determination that the Fund is impaired, to impose on the Fund a remediation plan which the Fund is required to implement within 60 days. If the Fund fails to comply, the director is required to notify the governor and the legislature (Sec. 23-986).
- <sup>4</sup> Fund is "subject to the powers and authority of the commissioner to the same extent as any other insurer transacting workers' compensation insurance, except where specifically exempted by reference."
- <sup>5</sup> Chapter 351, Laws of 2003, eliminated Pinnacol's exemption with respect to the filing of rates, approval of policy forms and the ability to reduce established rates or offer rebates.
- <sup>6</sup> The Hawaii Employers' Mutual Insurance Company has become a member of the guaranty fund, based on its compliance with surplus requirements applicable to private insurers.
- <sup>7</sup> The initial board is appointed by the governor and all subsequent members are elected by policyholders.
- <sup>8</sup> The Kentucky Employers' Mutual Insurance Company (KEMI) is exempt from surplus requirements for the fund's first seven years of operation.
- <sup>9</sup> The Louisiana Workers' Compensation Corporation (LWCC) may provide out-of-state operations coverage for insureds with a Louisiana nexus. Total premium for out-of-state operations coverage may not exceed 20% of the fund's total premium. No more than 30% of the premium of any insured may be attributable to its out-of-state operations.
- <sup>10</sup> The LWCC is regulated by Insurance Department, but it is exempt from the rate approval process applicable to the private market.
- <sup>11</sup> Guaranty fund exposure (and LWCC exposure for assessments) is prospective, applicable to liability arising from claims filed on or after enactment.
- <sup>12</sup> Of twelve Board members, five are appointed by the Governor with the advice and consent of the Senate; four are elected by policyholders; and three (members of the House and Senate, and the Insurance Commissioner or a designee) serve as non-voting *ex officio* members.

- <sup>13</sup> The Maine Employers' Mutual Insurance Company (MEMIC) is licensed to write workers' compensation insurance in 41 states other than Maine.
- <sup>14</sup> The Maryland Injured Workers' Insurance Fund (IWIF) may also provide coverage to out-of-state employers for work within Maryland.
- <sup>15</sup> Fund has been approved for guaranty fund membership by a legislative audit.
- <sup>16</sup> Chapter 63, Laws of 2001, privatized the Fund and repealed all sections in the statute creating and authorizing the Fund. The new law provides that notwithstanding the repealed statutory provisions, the Fund "may continue to operate after the effective date of this act as a corporation under Minnesota [law] and as a mutual insurance company..." Despite the apparent privatization of the Fund, Fund officials have indicated that the operations of the Fund have not changed and the State Fund Mutual Insurance Company shall continue to operate as a state fund. Accordingly, for present purposes we have continued to include the Minnesota fund in the survey.
- <sup>17</sup> The Minnesota fund may apply for license in any other state in order to issue "all states" coverage.
- <sup>18</sup> Fund guarantees a quote for coverage for any applicant employer meeting reasonable business terms and conditions deemed sufficient to meet the Code's requirements.
- <sup>19</sup> By statute, MEMIC's initial board of directors is to be appointed by the Governor, and subsequent selection of board members is to be by the policyholders. MEMIC has changed its bylaws so that a majority of the Board will continue to be selected by the governor.
- <sup>20</sup> MEMIC paid federal income tax from 1994 through 1997, but has filed tax-exempt status since 1998, based upon an interpretation that exempt status pursuant to IRC 501(c)(27) does not require a state fund to be the market of last resort to the extent an applicant fails to meet "reasonable requirements." Although MEMIC is not statutorily the market of last resort, it guarantees a quote for coverage for any applicant employer meeting reasonable business terms and conditions deemed sufficient to meet the Code's requirements.
- <sup>21</sup> The Montana fund may enter into agreements with other insurers to provide coverage in other states to Montana-domiciled employers.
- <sup>22</sup> The New York fund also administers disability benefits fund to cover benefits for injuries not arising out of or in the course of employment. Amounts in the workers' compensation and disability funds are kept separate, but advances between the funds are permitted.
- <sup>23</sup> Fund claims an exemption from requirement that it collect assessments from its policyholders to finance the funding obligations of the Special Disability Fund.
- <sup>24</sup> By statute, the Oklahoma fund may offer medical malpractice insurance and reinsurance to health care employers.
- <sup>25</sup> The Oregon State Accident Insurance Fund (SAIF) may provide reinsurance to Oregon employers and excess insurance to self-insured employers.
- <sup>26</sup> The board of directors of Pennsylvania's State Workers' Insurance Fund (SWIF) consists of the Secretary of Labor & Industry, the State Treasurer and the Insurance Commissioner.
- <sup>27</sup> The Tennessee fund is not operational. The Commissioner of Commerce and Insurance must determine annually whether membership in the assigned risk pool for the prior calendar year exceeded 15% of the eligible employer market, based on premium. Following this, the Commissioner must issue a report to the Advisory Council that recommends (i) activating the Fund, (ii) implementing a plan of direct assignment, or (iii) taking other or no action. The Advisory Council must then provide written comments to the Commissioner, who may then take such action as he deems appropriate -- though a hearing is required for options (i) and (ii).
- <sup>28</sup> After selection by the governor of the Tennessee fund's initial board, subsequent board members are to be selected by the policyholders.

---

<sup>29</sup> Texas Mutual became a member of the guaranty fund based on Chapter 1126, Laws of 1999. Guaranty fund exposure (and company's exposure for assessments) is prospective, applicable to liability arising from claims filed on or after January 1, 2000.

<sup>30</sup> Chapter 33, Laws of 2001 permits the Utah fund to expand its operations to other states by allowing the fund to offer workers' compensation insurance to public and private insurers who contract with the fund's claims administration subsidiary. The fund may enter into "joint enterprises" to provide workers' compensation and property or liability coverage in Utah, so long as fund does not bear any non-workers' compensation risk, and non-workers' compensation coverage is offered as part of a program involving workers' compensation provided by the fund. The fund may offer out-of-state coverage for Utah employers.

## **Appendix Q**

**STATEWIDE SIZE OF FIRMS BY SECTOR 2008**

<b>Statewide Private Ownership 2008 Average</b>				
<b>Industry</b>	<b>Size Class</b>	<b># of Firms</b>	<b>Employment</b>	<b>Average</b>
<b>AG</b>	1	350	835	2
	2	165	1,064	6
	3	79	1,018	13
	4	43	1,311	31
	5	9	602	69
	6	5	866	165
	7	3	0	0
	8	1	0	0
	<b>TOTAL</b>		<b>731</b>	<b>7,461</b>
<b>MINING</b>	1	1,376	2,639	2
	2	384	2,486	6
	3	266	3,621	14
	4	215	6,555	31
	5	83	5,461	66
	6	50	7,370	149
	7	18	5,957	331
	8	8	5,198	693
	9	6	11,879	2062
<b>TOTAL</b>		<b>2,715</b>	<b>51,294</b>	<b>19</b>
<b>UTILITIES</b>	1	92	219	2
	2	29	189	7
	3	10	137	14
	4	17	539	31
	5	21	1,523	73
	6	9	1,135	126
	7	2	0	0
	8	2	0	0
	9	3	5,403	1801
<b>TOTAL</b>		<b>200</b>	<b>10,962</b>	<b>55</b>
<b>CONST</b>	1	4,430	9,212	2
	2	1,613	10,485	6
	3	983	13,201	13
	4	576	17,088	30
	5	139	9,413	68
	6	67	10,066	150
	7	11	0	0
	8	2	0	0
	<b>TOTAL</b>		<b>9,418</b>	<b>74,609</b>

## STATEWIDE SIZE OF FIRMS BY SECTOR 2008

Industry	Size Class	# of Firms	Employment	Average
<b>MFG</b>				
	1	1,423	3,097	2
	2	736	4,937	7
	3	626	8,498	14
	4	521	16,228	31
	5	225	16,150	72
	6	182	27,751	152
	7	87	29,572	340
	8	26	17,195	668
	9	17	28,970	1756
	<b>TOTAL</b>	<b>4,192</b>	<b>152,559</b>	<b>36</b>
<b>WHOLESALE</b>				
	1	2,889	5,247	2
	2	843	5,523	7
	3	622	8,403	14
	4	418	12,217	29
	5	131	8,870	68
	6	63	9,541	151
	7	18	5,913	329
	8	3	0	0
	9	2	0	0
	<b>TOTAL</b>	<b>5,697</b>	<b>61,080</b>	<b>11</b>
<b>RETAIL</b>				
	1	4,048	9,030	2
	2	1,933	12,646	7
	3	1,138	15,053	13
	4	627	18,771	30
	5	196	13,624	70
	6	109	16,789	154
	7	41	13,681	338
	8	18	12,626	711
	9	19	64,258	3338
	<b>TOTAL</b>	<b>8,913</b>	<b>176,968</b>	<b>20</b>
<b>TRANS</b>				
	1	1,273	2,364	2
	2	328	2,141	7
	3	244	3,301	14
	4	182	5,541	30
	5	75	5,202	69
	6	35	5,694	164
	7	12	4,133	344
	8	5	3,153	631
	9	4	12,070	3017
	<b>TOTAL</b>	<b>2,503</b>	<b>43,702</b>	<b>17</b>

## STATEWIDE SIZE OF FIRMS BY SECTOR 2008

Industry	Size Class	# of Firms	Employment	Average
<b>INFO</b>				
	1	525	1,005	2
	2	161	1,074	7
	3	124	1,693	14
	4	82	2,336	28
	5	32	2,235	71
	6	31	4,687	150
	7	7	2,546	351
	8	7	4,420	680
	9	7	10,886	1613
	TOTAL	1,159	30,932	27
<b>FIRE</b>				
	1	2,871	5,478	2
	2	507	3,167	6
	3	280	3,805	14
	4	226	7,162	32
	5	99	6,862	69
	6	62	9,633	157
	7	18	6,892	383
	8	9	6,153	703
	9	5	9,150	1830
	TOTAL	4,689	58,432	12
<b>REAL ESTATE</b>				
	1	1,963	3,597	2
	2	371	2,363	6
	3	191	2,540	13
	4	114	3,340	29
	5	36	2,463	69
	6	18	2,818	161
	7	5	1,845	410
	8	2	0	0
	9	1	0	0
	TOTAL	3,246	22,590	7
<b>PRO,SCI,TECH.SEV</b>				
	1	6,125	10,934	2
	2	1,325	8,624	7
	3	679	9,003	13
	4	383	11,255	29
	5	104	7,087	68
	6	62	9,232	150
	7	9	3,172	343
	8	6	3,584	597
	TOTAL	10,364	63,233	6

## STATEWIDE SIZE OF FIRMS BY SECTOR 2008

Industry	Size Class	# of Firms	Employment	Average
<b>MGMT OF COMP.</b>				
	1	110	193	2
	2	27	184	7
	3	27	358	13
	4	23	723	31
	5	7	453	70
	6	6	1,039	181
	7	4	1,391	327
	8	3	0	0
	9	1	0	0
	<b>TOTAL</b>	<b>238</b>	<b>7,179</b>	<b>30</b>
<b>ADMIN SUPPORT</b>				
	1	2,973	5,568	2
	2	801	5,163	6
	3	491	6,493	13
	4	309	9,251	30
	5	155	10,604	69
	6	121	18,188	151
	7	51	17,614	347
	8	23	15,001	659
	9	12	21,374	1819
	<b>TOTAL</b>	<b>6,083</b>	<b>109,619</b>	<b>18</b>
<b>EDUCATIONAL SERVICE</b>				
	1	270	544	2
	2	118	787	7
	3	81	1,056	13
	4	74	2,352	32
	5	19	1,282	67
	6	16	2,343	151
	7	3	1,179	363
	8	4	0	0
	9	2	0	0
	<b>TOTAL</b>	<b>698</b>	<b>14,117</b>	<b>20</b>
<b>HEALTH CARE</b>				
	1	3,394	7,231	2
	2	1,868	12,214	7
	3	941	12,345	13
	4	617	18,892	31
	5	380	26,747	70
	6	174	24,800	143
	7	52	18,167	353
	8	24	16,604	699
	9	15	38,341	2599
	<b>TOTAL</b>	<b>8,044</b>	<b>175,715</b>	<b>22</b>

**STATEWIDE SIZE OF FIRMS BY SECTOR 2008**

Industry	Size Class	# of Firms	Employment	Average
<b>ARTS, ENTERT. &amp; RE</b>				
	1	410	849	2
	2	160	1,031	6
	3	130	1,832	14
	4	88	2,575	29
	5	43	2,921	69
	6	34	5,073	148
	7	5	0	0
	8	3	0	0
	<b>TOTAL</b>	<b>1,025</b>	<b>18,367</b>	<b>18</b>
<b>ACCOMMO. &amp; FOOD SEV</b>				
	1	1,370	3,339	2
	2	919	6,160	7
	3	893	12,301	14
	4	953	28,685	30
	5	254	16,743	66
	6	108	16,479	153
	7	35	12,092	343
	8	17	11,280	684
	9	7	15,740	2171
	<b>TOTAL</b>	<b>4,944</b>	<b>123,326</b>	<b>25</b>
<b>OTHER SERVIC</b>				
	1	3,760	7,060	2
	2	1,048	6,806	6
	3	473	6,130	13
	4	204	5,957	29
	5	57	3,785	67
	6	30	4,420	147
	7	8	0	0
	8	2	0	0
	<b>TOTAL</b>	<b>6,270</b>	<b>37,995</b>	<b>6</b>
<b>OVERALL TOTAL</b>				
	1	39,650	78,443	2
	2	13,334	87,045	7
	3	8,277	110,787	13
	4	5,670	170,777	30
	5	2,061	142,025	69
	6	1,179	177,926	151
	7	388	124,154	320
	8	161	95,214	591
	9	100	218,070	2186
		<b>70,819</b>	<b>1,204,441</b>	<b>17</b>
<b>CONCLUSION:</b>		<b># OF FIRMS</b>	<b>EMPLOYMENT</b>	<b>AVERAGE</b>
1-9 EMPLOYEES		52,983	165,487	3
10-19 EMPLOYEES		8,277	110,787	13
20-49 EMPLOYEES		5,670	170,777	30
50-99 EMPLOYEES		2,061	142,025	69
100-249 EMPLOYEES		1,179	177,926	151
250-499 EMPLOYEES		388	124,154	320
500-999 EMPLOYEES		161	95,214	591
1000 + EMPLOYEES		100	218,070	2181

## **Appendix R**

# Oklahoma Legislature

Chris Bengé  
Speaker  
House of Representatives



Glenn Coffee  
President Pro Tempore  
State Senate

September 21, 2009

## - AGENDA -

**TO:** Members of the Task Force on the Privatization of CompSource Oklahoma

**DATE:** Wednesday, September 23, 2009

**TIME:** 9:30 a.m.

**PLACE:** Room 419C, State Capitol Building

**AGENDA:** 4th Meeting

- I. Welcome and Introductions by Co-Chairs: Senator Aldridge and Representative Sullivan
- II. Market Analysis and Volunteer Firefighters Group Insurance Pool by Jason Clark, President and CEO, and Justin Hinson, Assistant Underwriting Manager, of CompSource Oklahoma
- III. Role of NCCI in Oklahoma by Roy Wood, State Relations Executive, and Residual Market and Assigned Risk by Melissa Palmer, Residual Market Operations, of the National Council on Compensation Insurance (NCCI)
- IV. Other Business and Adjournment

### Future Meeting Dates

Wednesday, October 7, 2009, at 9:30 a.m., Rm 412C

Wednesday, October 21, 2009, at 9:30 a.m., Rm 412C

Sen. Cliff Aldridge, Co-Chair

Rep. Dan Sullivan, Co-Chair

### Members:

Insurance Commissioner Kim Holland

Lee Ann Alexander

Dan Ramsey

James Stergiou

Michael Clingman

Bradley J. McClure

Mike Seney

## **Appendix S**



The Source for Workers' Compensation Insurance

September 2, 2009

The Honorable Cliff Aldridge
The Honorable Dan Sullivan
Members of the Task Force on the Privatization of CompSource Oklahoma
State Capitol Building
Oklahoma City, OK 73105

Dear Task Force Members:

At the Task Force meeting on August 19, 2009, several members discussed the legislative intent of CompSource Oklahoma, formerly known as the State Insurance Fund, when it was created by the 14th Oklahoma Legislature. The question arose whether the Legislature intended for the fund to be a competitive state fund. At the supplement to Chapter 72 Oklahoma Statutes, Article 2, Section 1, the original legislation stated:

“Section 1. There is hereby created and established a fund to be known as “The State Insurance Fund”...(c) Said fund shall after a reasonable time, during which it may establish a business, be fairly competitive with other insurance carriers and it is the intent of the Legislature that said fund shall ultimately become neither more nor less than self-supporting.”

In regards to tax exemption status of other state funds, we respectfully submit the following. According to the American Association of State Compensation Insurance Funds, the states listed below qualify for tax exemptions:

Table with 3 columns: State, State Tax Exemption, Federal Tax Exemption. Lists states from Arizona to Washington with their respective exemption statuses.

\*Pennsylvania is exempt for some purposes
\*Washington is exempt from state income tax



The Source for Workers' Compensation Insurance

---

In addition, at the August meeting various members of the Task Force had questions about a number of other issues, including advertising and dividends:

- The five year average expenditures for advertising is approximately \$57,000
- Policyholder Dividends for the period from 1998 – 2008 totaled about \$82.4 million

In an effort to provide insight to the residual market, we have compiled data comparing CompSource Oklahoma with the workers' compensation industry in Oklahoma. Some of the data was downloaded from the National Council on Compensation Insurance website ([www.ncci.com](http://www.ncci.com)). Further, we have included the Disclaimers from NCCI.

The Task Force's additional questions, including market share, loss ratio, residual market and policy distributions are supported by the attached documents. If you require further information, please contact me at (405) 962-3334, or [jason\\_c@compsourceok.com](mailto:jason_c@compsourceok.com).

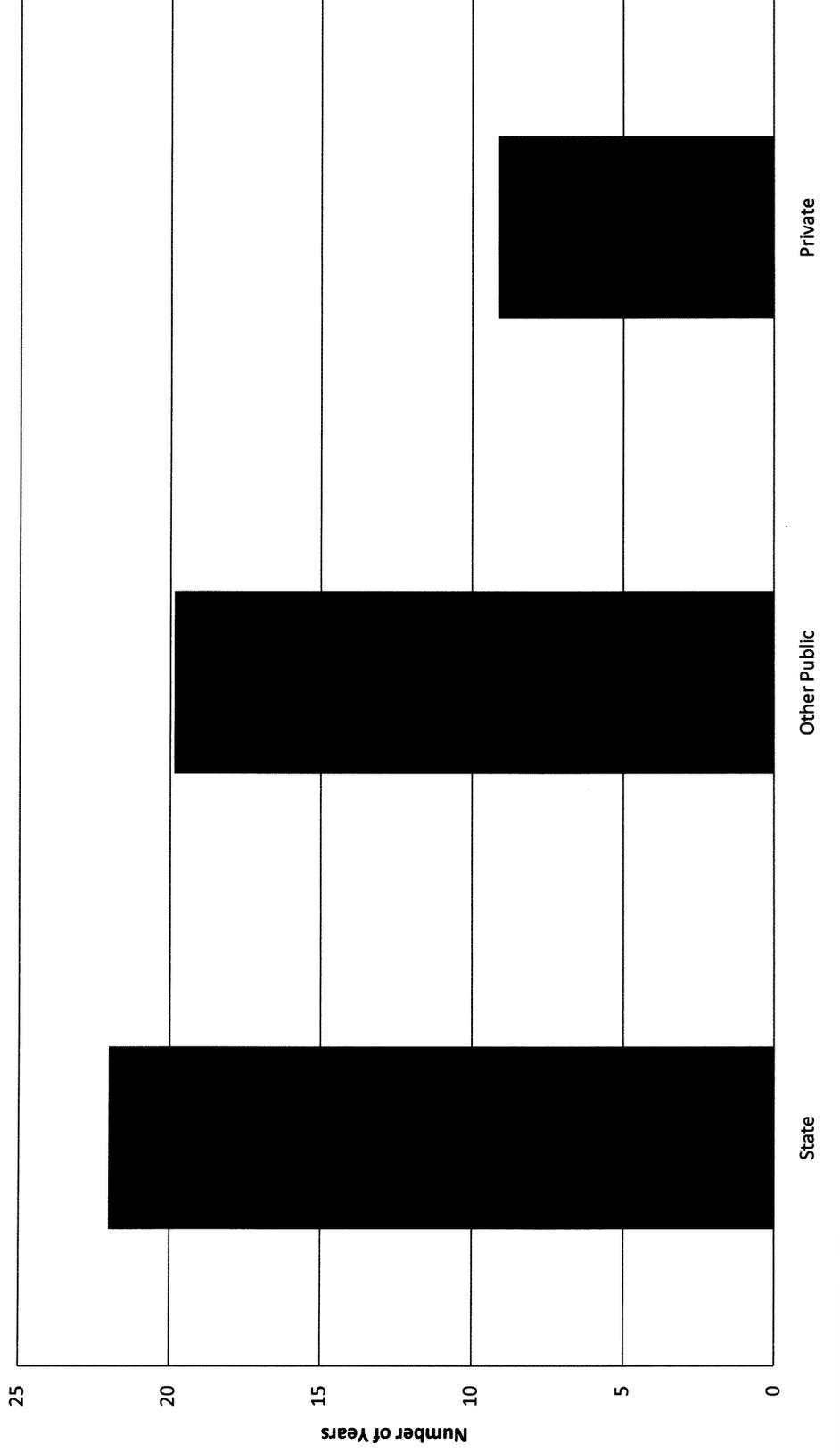
Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Clark", written over a horizontal line.

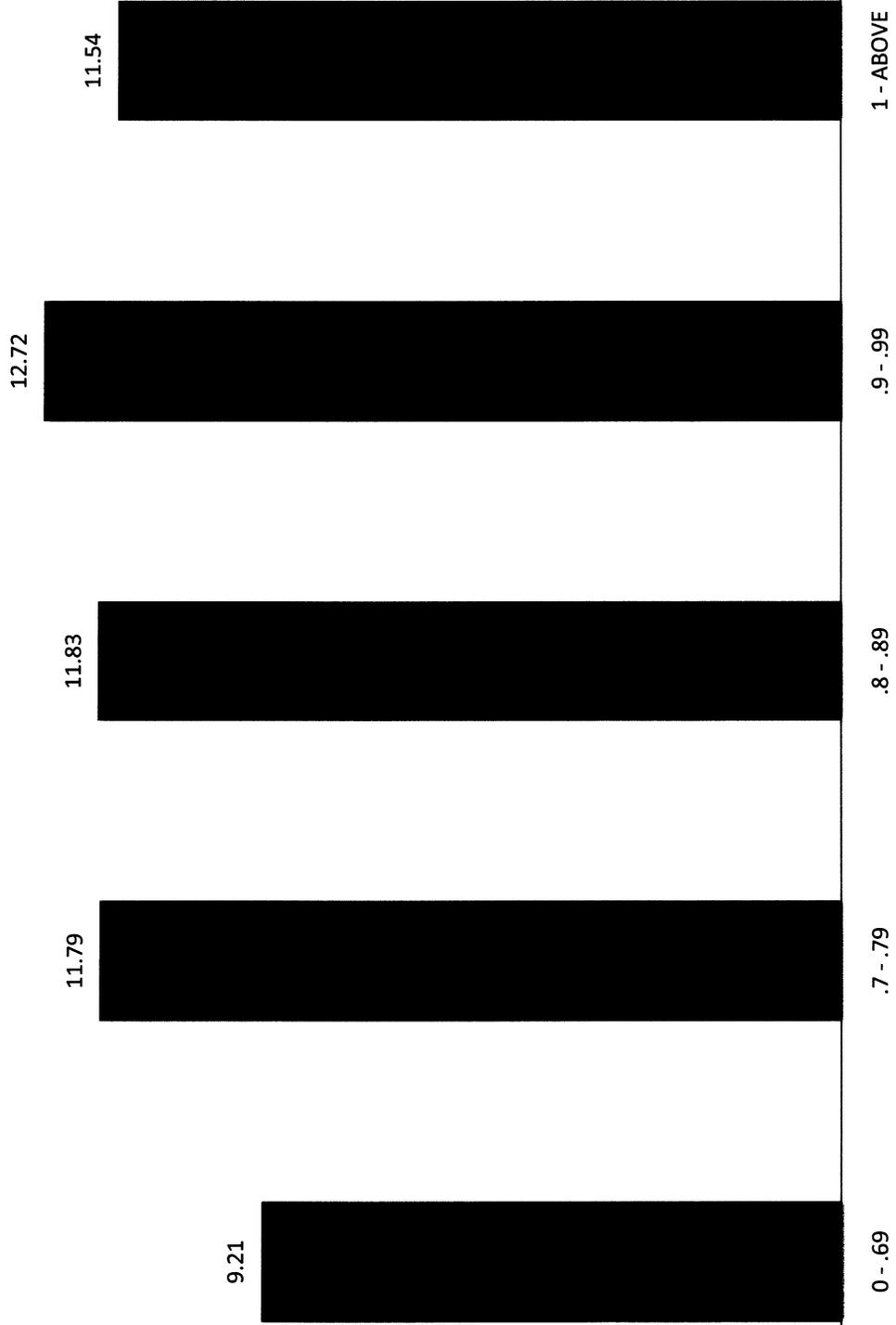
Jason Clark  
President/CEO

# CompSource Oklahoma Average Number of Years by Business Type

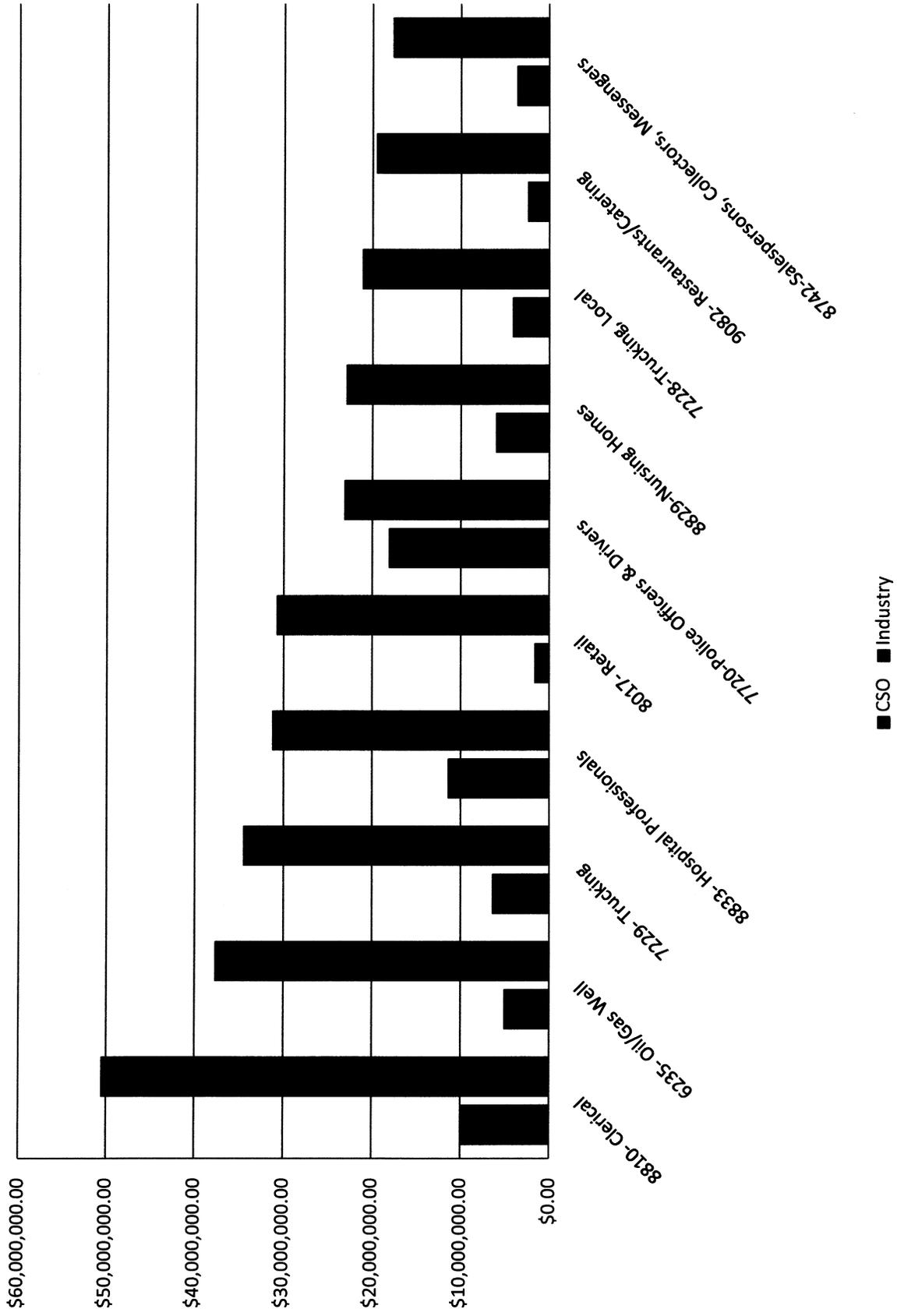


# CompSource Oklahoma Average Number of Years per Policy By Loss Ratio

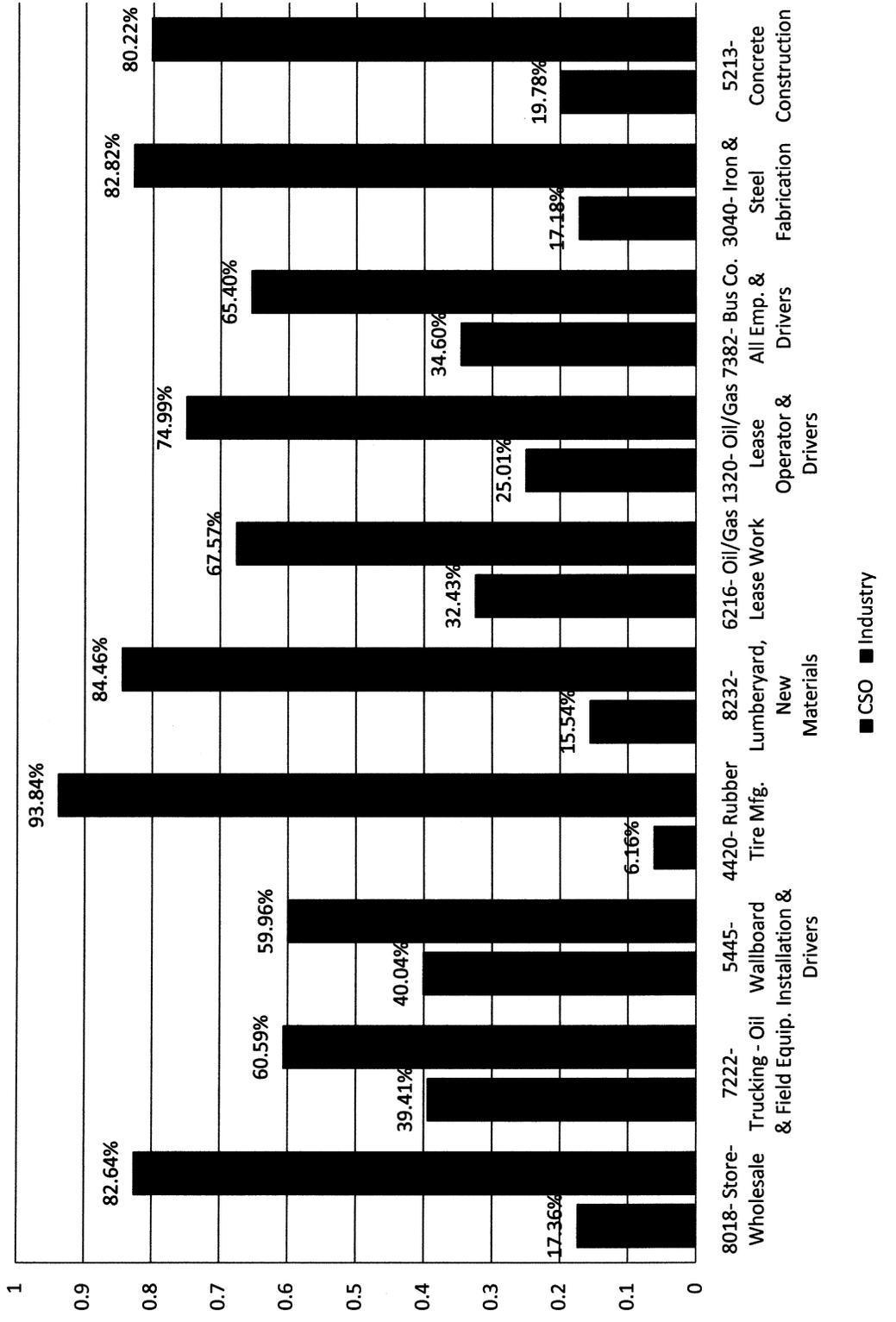
■ Average Number of Years per Policy



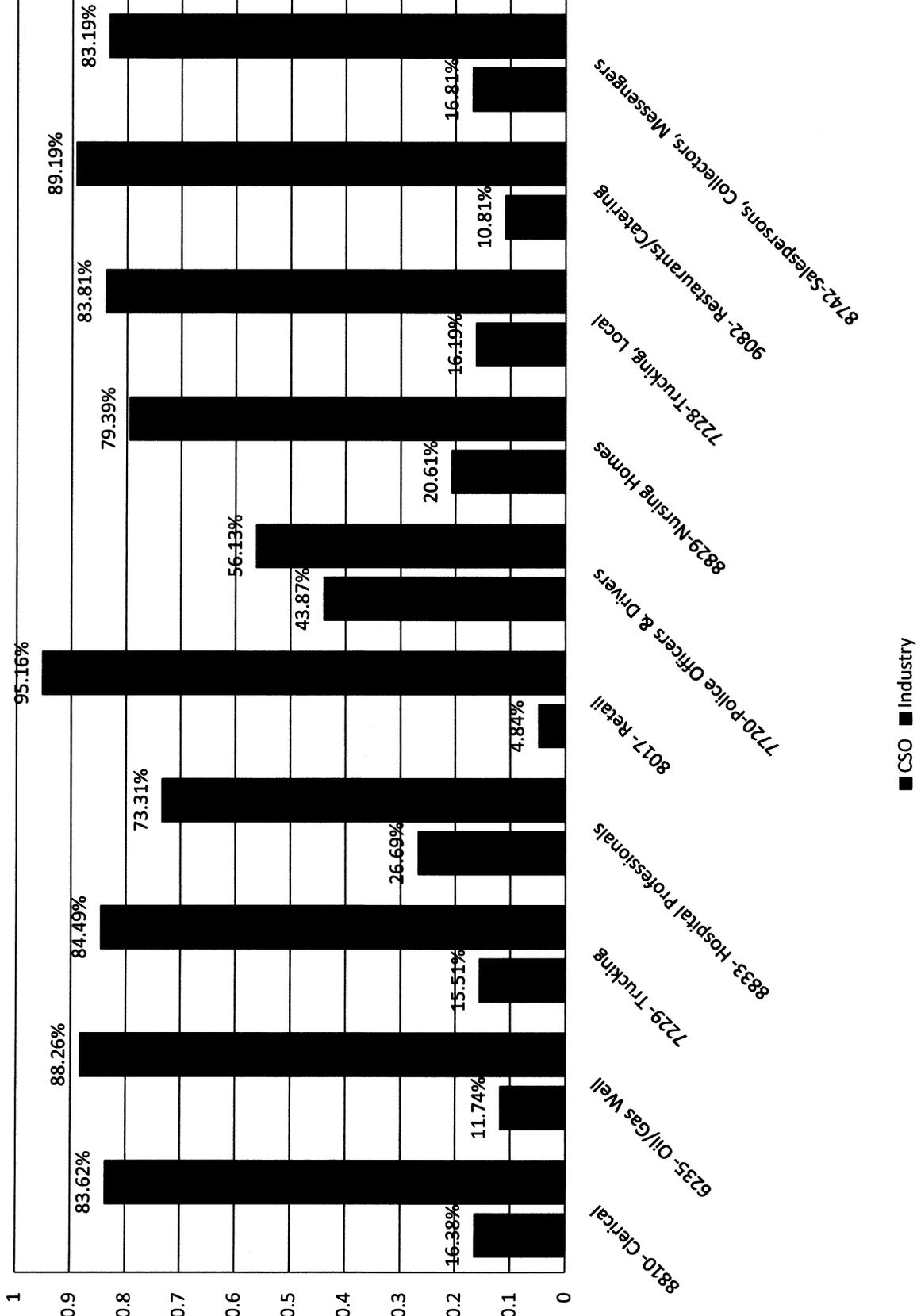
# Top 10 Industry Codes by Premium - Policy Year 2006 NCCI Data



# Top 10 Industry codes by Loss Ratio - Policy Year 2006 NCCI Data

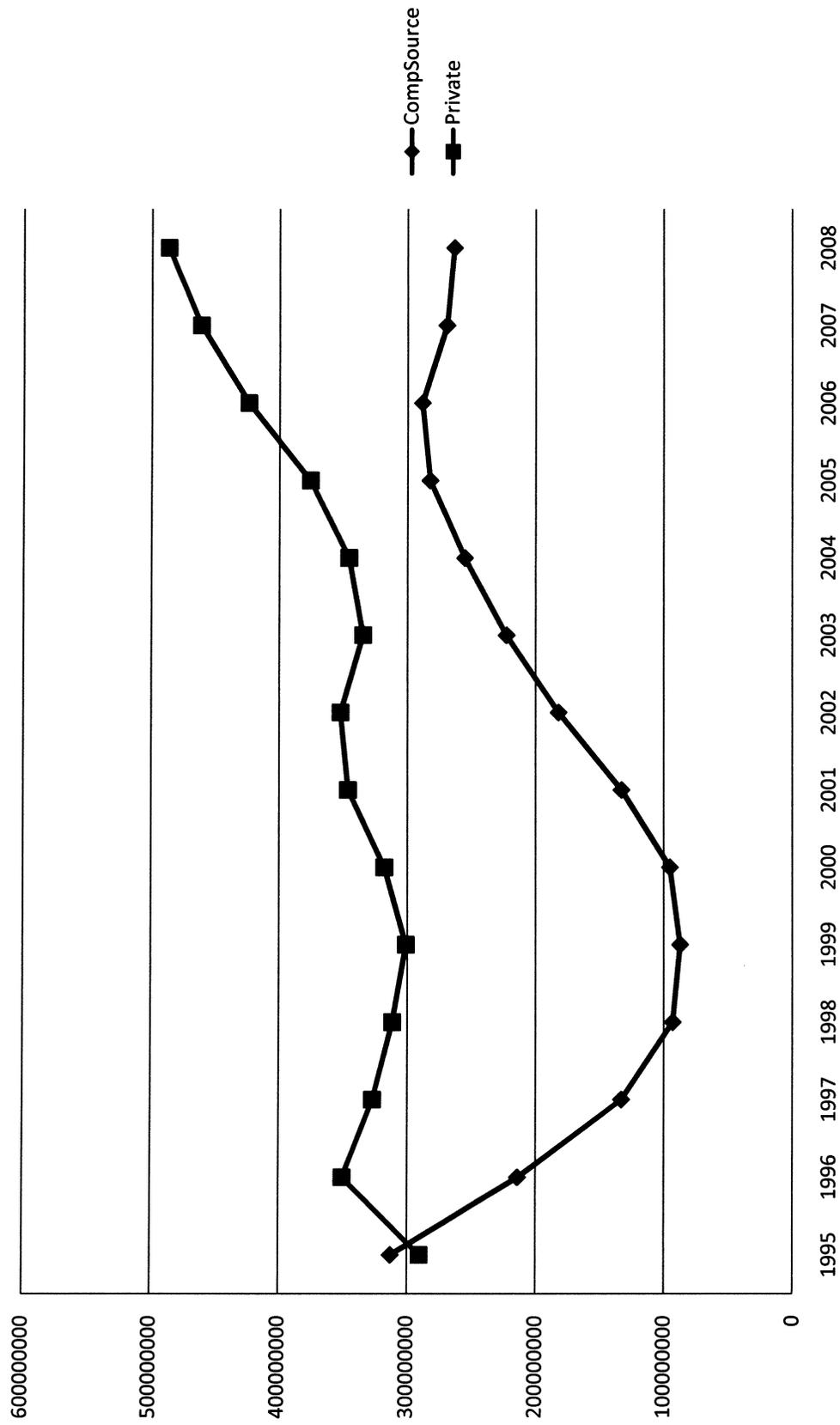


# Top 10 Industry Codes by Premium - Policy Year 2006 NCCI Data



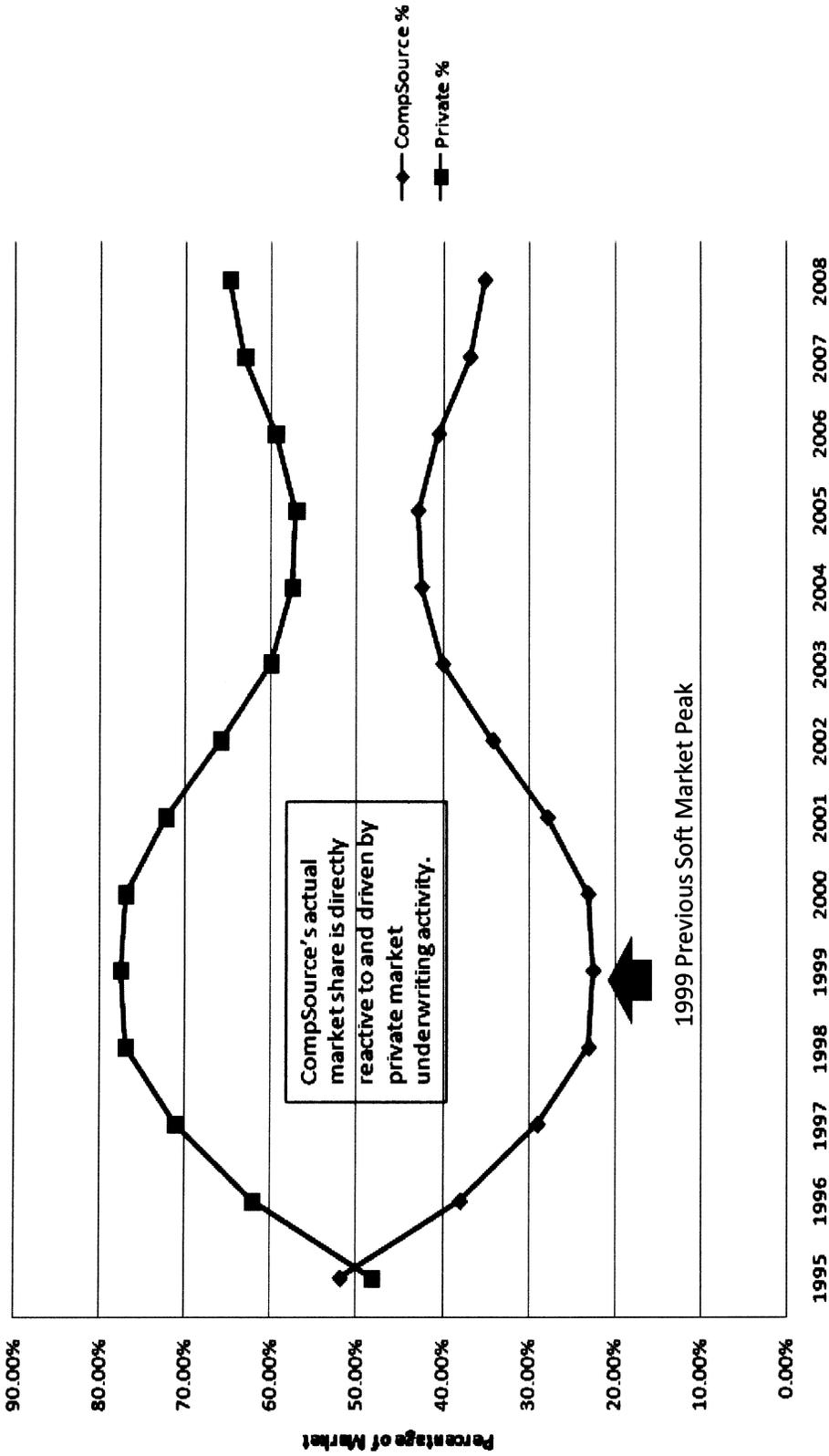
Year	CompSource	CompSource %	Private	Private %	Total
1995	\$312,702,805	51.86%	\$290,265,222	48.14%	\$602,968,027
1996	\$214,015,015	37.94%	\$350,126,153	62.06%	\$564,141,168
1997	\$132,995,449	28.92%	\$326,801,372	71.08%	\$459,796,821
1998	\$92,930,711	22.99%	\$311,324,337	77.01%	\$404,255,048
1999	\$87,252,064	22.48%	\$300,872,313	77.52%	\$388,124,377
2000	\$95,113,094	23.05%	\$317,608,622	76.95%	\$412,721,716
2001	\$132,963,400	27.76%	\$345,975,025	72.24%	\$478,938,425
2002	\$182,217,935	34.12%	\$351,895,880	65.88%	\$534,113,815
2003	\$222,728,944	39.98%	\$334,425,386	60.02%	\$557,154,330
2004	\$255,089,781	42.48%	\$345,345,880	57.52%	\$600,435,661
2005	\$282,306,742	42.91%	\$375,567,651	57.09%	\$657,874,393
2006	\$288,397,679	40.49%	\$423,885,268	59.51%	\$712,282,947
2007	\$269,284,362	36.86%	\$461,279,255	63.14%	\$730,563,617
2008	\$263,390,232	35.12%	\$486,578,840	64.88%	\$749,969,072

# CompSource Oklahoma - Private Oklahoma Carriers Market Share Comparison



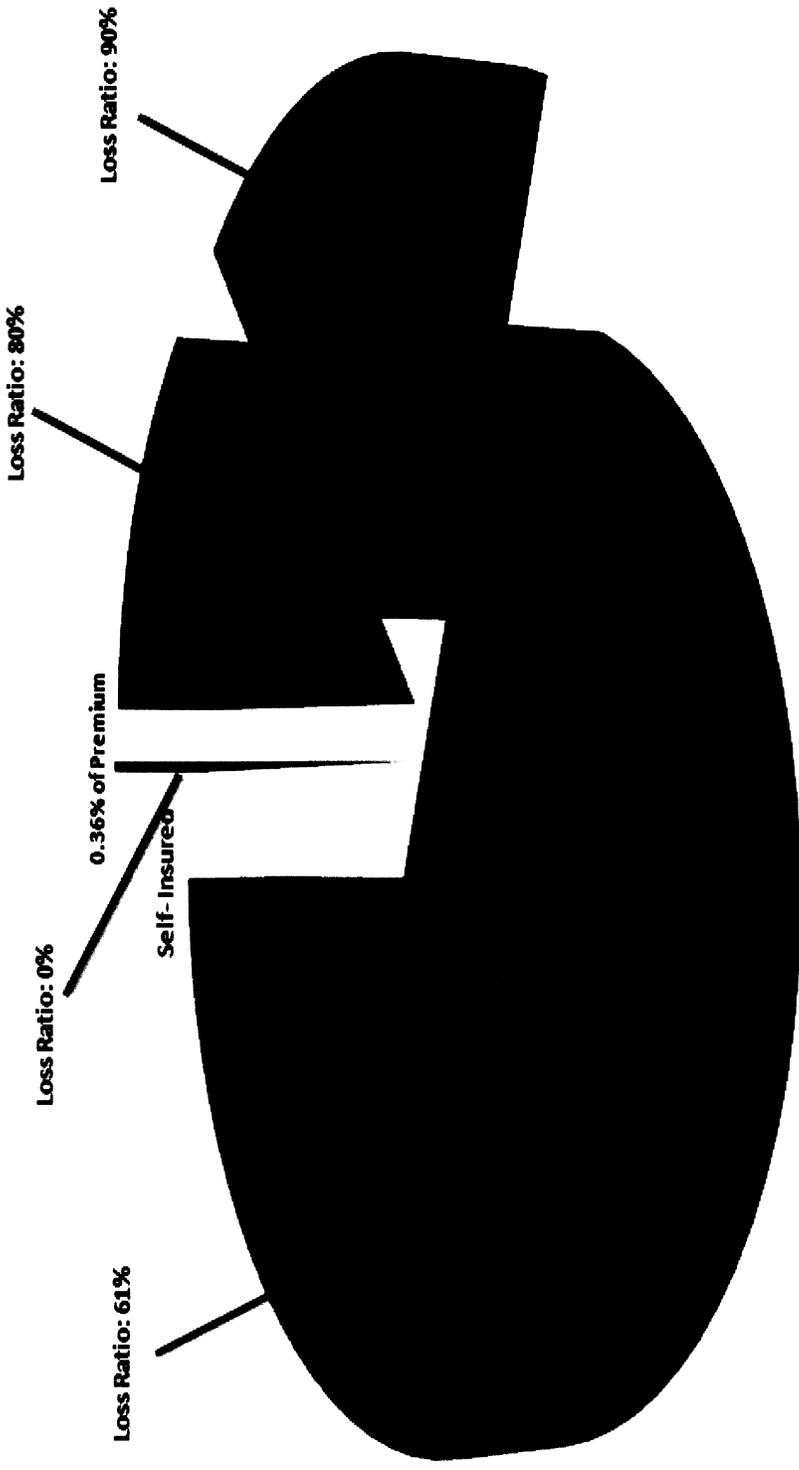
\*\*Data gathered from Annual Statements filed with the Oklahoma Insurance Department.

# CompSource Oklahoma - Private Oklahoma Carriers Market Share Comparison

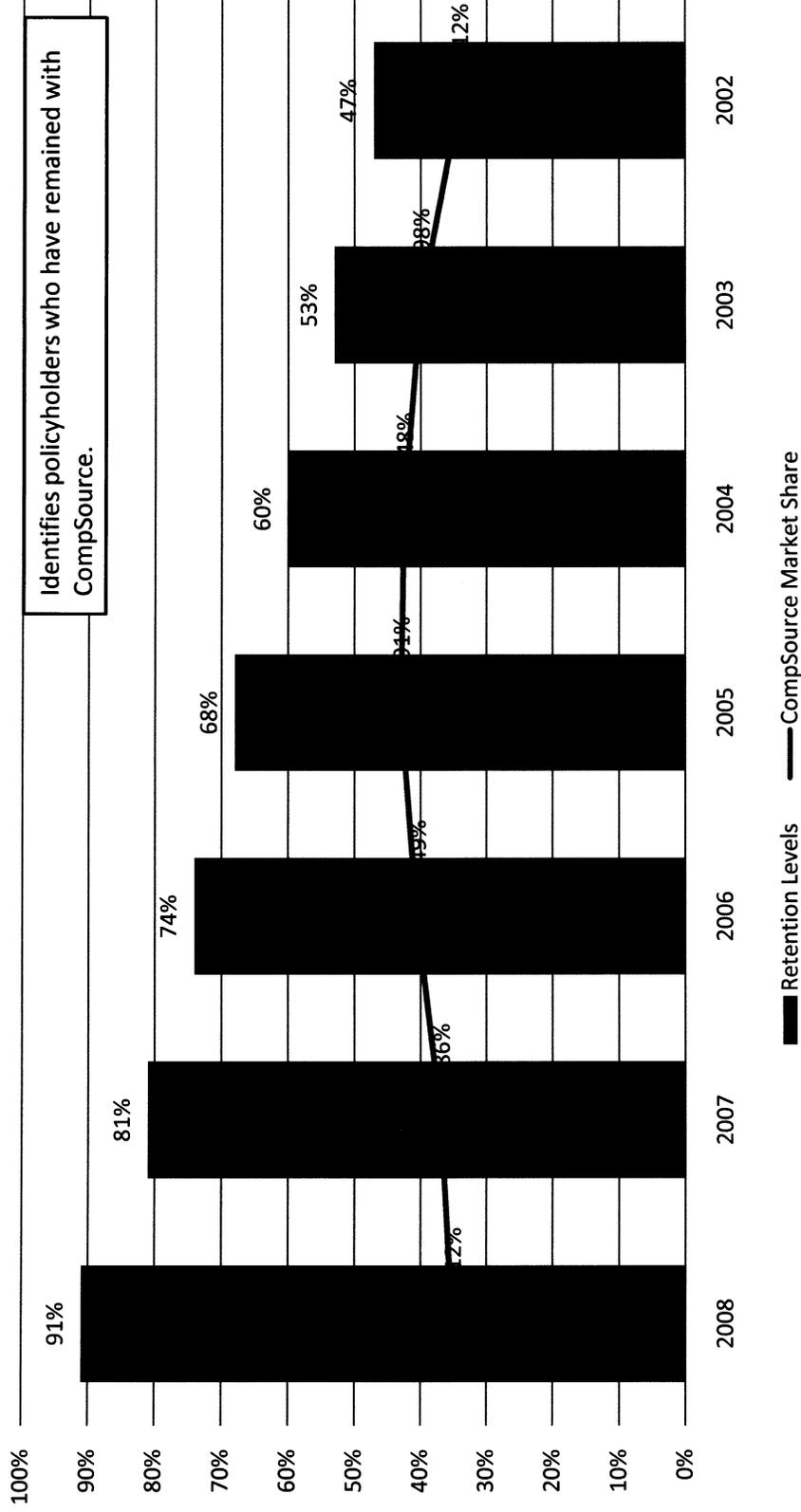


\*\* Data gathered from Annual Statements filed with the Oklahoma Insurance Department.

# CompSource Oklahoma Loss Ratio by Business Type



## CompSource Policyholder Retention Levels (as % of 7/31/09 In-Force Policies)



Over half of CompSource's current book of business has joined CompSource in the last 7 years. The CompSource market share has been relatively stable during that same period.

## NCCI Assigned Risk Premium - Policy Year 2008 (most recent available) \*

Premium Size	Policy Count	Total Percent of Policies	Estimated Annual Premium	Total Percent of Premium	Average Premium
\$0- 2,499	172,174	77.6%	\$134,856,659.00	19.0%	\$783
\$2,500- 4,999	22,663	10.2%	\$80,299,697.00	11.3%	\$3,543
\$5,000- 9,999	13,728	6.2%	\$95,761,106.00	13.5%	\$6,976
\$10,000- 19,999	7,395	3.3%	\$102,444,170.00	14.5%	\$13,853
\$20,000- 49,999	4,233	1.9%	\$127,677,959.00	18.0%	\$30,163
\$50,000- 99,999	1,174	0.5%	\$79,439,233.00	11.2%	\$67,665
\$100,000-199,999	395	0.2%	\$52,602,782.00	7.4%	\$133,172
\$200,000+	109	0.0%	\$35,500,544.00	5.0%	\$325,693
<b>Totals</b>	<b>221,871</b>	<b>100.0%</b>	<b>\$708,582,150.00</b>	<b>100.0%</b>	<b>\$3,194</b>

\* Source: NCCI Residual Market Management Summary 2008

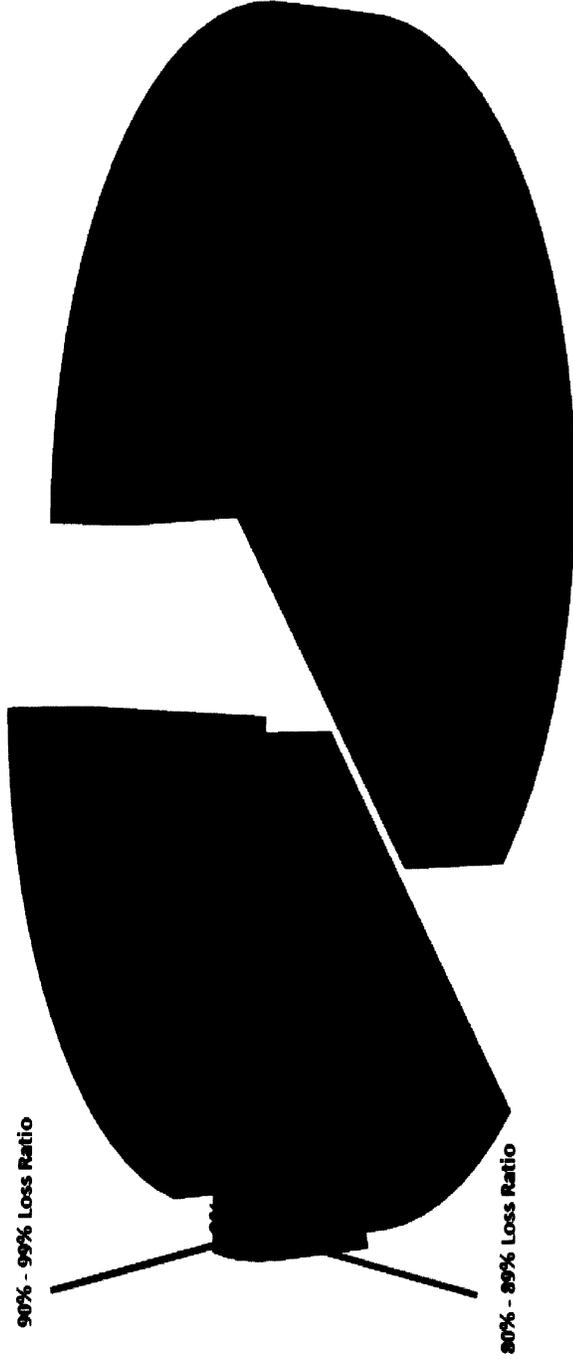
## CompSource Policy Distribution - As of July 31, 2009

Premium Size	Policy Count	Total Percent of Policies	Estimated Annual Premium	Total Percent of Premium	Average Premium
\$0- 2,499	14,614	56.40%	\$13,100,917	5.10%	\$896
\$2,500- 4,999	3,644	14.06%	\$12,978,380	5.05%	\$3,562
\$5,000- 9,999	3,202	12.36%	\$22,745,386	8.86%	\$7,103
\$10,000- 19,999	2,131	8.22%	\$29,854,601	11.63%	\$14,010
\$20,000- 49,999	1,459	5.63%	\$44,935,797	17.50%	\$30,799
\$50,000- 99,999	503	1.94%	\$35,025,204	13.64%	\$69,633
\$100,000-199,999	245	0.95%	\$33,789,046	13.16%	\$137,914
\$200,000+	114	0.44%	\$64,336,989	25.06%	\$564,360
<b>Totals</b>	<b>25,912</b>	<b>100.00%</b>	<b>\$256,766,320</b>	<b>100.00%</b>	<b>\$9,909</b>

Premium Size	Number of Covered Employees	Percent of Covered Employees	Loss Ratios
\$0 - \$2,499	27,862.00	14.68%	41.11%
\$ 2,500 - \$4,999	15,528.00	8.18%	51.23%
\$5,000 - \$9,999	19,251.00	10.14%	49.70%
\$10,000 - \$19,999	20,996.00	11.06%	60.80%
\$20,000 - \$49,999	29,216.00	15.39%	61.33%
\$50,000 - \$99,999	23,019.00	12.13%	74.83%
\$100,000 - \$199,999	19,294.00	10.16%	75.11%
\$200,000 +	34,674.00	18.26%	85.29%
	<u>189,840.00</u>	<u>100.00%</u>	

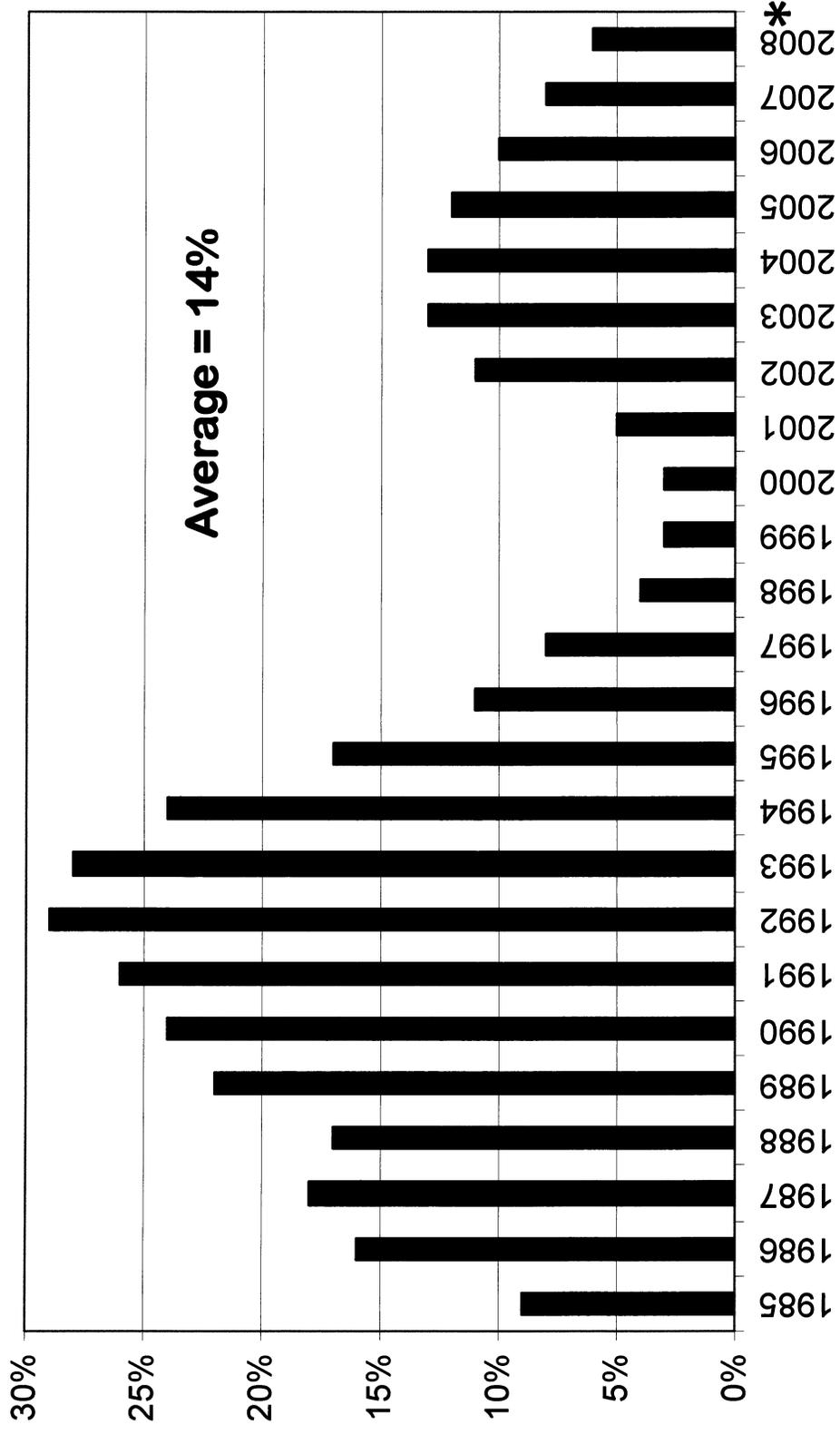


# CompSource Oklahoma In-Force Premium % by Loss Ratio



38% of CompSource premium in-force has a loss ratio of 70% or more.

# Residual Market Share



Source: NCCI (NCCI Plan states plus DE, IN, MA, MI, NJ, NC)

\* 2008 number is preliminary

## Disclaimer

**STATE INSIGHT AND NCCI.COM ARE FURNISHED ON AN "AS IS", "AS AVAILABLE" BASIS WITH ALL DEFECTS. YOUR USE OF STATE INSIGHT MAY BE GOVERNED BY A SEPARATE AGREEMENT. NCCI CANNOT AND DOES NOT WARRANT THE ACCURACY, COMPLETENESS, CURRENTNESS, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF STATE INSIGHT OR NCCI.COM. IN ADDITION, NCCI DOES NOT WARRANT YOUR ABILITY OR INABILITY TO USE OR ACCESS STATE INSIGHT OR NCCI.COM OR ANY RESULTS DERIVED OR OBTAINED THERE FROM. STATE INSIGHT IS INTENDED TO BE USED IN YOUR INTERNAL OPERATIONS AS AN INFORMATIONAL REFERENCE TOOL. STATE INSIGHT MAY NOT BE USED IN ANY ADVERTISING OR MARKETING MATERIALS. YOU MAY E-MAIL OR OTHERWISE PROVIDE THE INFORMATION OBTAINED THROUGH STATE INSIGHT TO OTHER THIRD PARTIES PROVIDED THAT THE APPROPRIATE COPYRIGHT NOTICE AND DISCLAIMER REMAINS INTACT AND ARE NOT REMOVED OR MASKED. NCCI DOES NOT ENDORSE, APPROVE, OR OTHERWISE ACQUIESCE IN YOUR OR ANY THIRD PARTY RECIPIENT'S ACTIONS, RESULTS, ANALYSIS OR DECISIONS NOR SHALL NCCI HAVE ANY LIABILITY THERETO. ACCORDINGLY ANY AND ALL WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED ARE DISCLAIMED WITH RESPECT TO STATE INSIGHT . NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NCCI, ITS AGENTS AND EMPLOYEES WILL CREATE A WARRANTY AND YOU MAY NOT RELY ON SUCH INFORMATION OR ADVICE. THE INFORMATION PROVIDED THROUGH STATE INSIGHT AND NCCI.COM HAVE BEEN CREATED FROM DATA AND INFORMATION PROVIDED BY THIRD PARTIES WHICH HAVE BEEN MADE AVAILABLE TO NCCI FOR SUCH USE. ALL RESPONSIBILITY OR LIABILITY FOR DAMAGES CAUSED BY VIRUSES, WORMS AND SIMILAR DEVICES CONTAINED IN ANY ELECTRONIC FILE OR ON NCCI.COM IS DISCLAIMED.**

© Copyright 2004 - 2009 National Council on Compensation Insurance, Inc. All Rights Reserved.

## Disclaimer

**WORKCOMP WORKSTATION IS PROVIDED "AS IS" AND NCCI MAKES NO REPRESENTATIONS OR WARRANTIES RELATING TO WORKCOMP WORKSTATION, INCLUDING ANY EXPRESS, STATUTORY OR IMPLIED WARRANTIES INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO EMPLOYEE OR AGENT OF NCCI OR ITS AFFILIATES ARE AUTHORIZED TO MAKE ANY WARRANTIES OF ANY KIND REGARDING WORKCOMP WORKSTATION. ANY AND ALL RESULTS, CONCLUSIONS, ANALYSIS OR DECISIONS DEVELOPED OR DERIVED FROM, ON ACCOUNT OF OR THROUGH YOUR USE OF WORKCOMP WORKSTATION ARE YOURS AND NCCI DOES NOT ENDORSE, APPROVE OR OTHERWISE ACQUIESCE IN YOUR ACTIONS, RESULTS, ANALYSIS, OR DECISIONS, NOR SHALL NCCI OR OTHER CONTRIBUTORS TO THE WORKCOMP WORKSTATION HAVE ANY LIABILITY THERETO. A PORTION OF WORKCOMP WORKSTATION IS BASED, IN PART, ON INFORMATION COMPILED AND OBTAINED WITH PERMISSION OF VARIOUS STATE INSURANCE DEPARTMENTS FROM FILINGS MADE BY WORKERS COMPENSATION INSURANCE CARRIERS. WHILE NCCI PERFORMS QUALITY CHECKS ON THE INFORMATION OBTAINED THROUGH THE STATE INSURANCE DEPARTMENT AND MADE AVAILABLE THROUGH THE WORKCOMP WORKSTATION, NEITHER NCCI NOR ANY STATE INSURANCE DEPARTMENT CAN GUARANTEE THE ACCURACY, COMPLETENESS, FUNCTIONALITY, TIMELINESS OR USEFULNESS OF SUCH INFORMATION NOR HAVE ANY LIABILITY THERETO.**

© Copyright 2005 National Council on Compensation Insurance, Inc. All Rights Reserved.

## **Appendix T**



**CROWE & DUNLEVY**  
A PROFESSIONAL CORPORATION  
Attorneys and Counselors at Law  
Founded 1902

**Amanda L. Maxfield Green**  
Direct Tel: (405) 234-3241  
Direct Fax: (405) 272-5286

amanda.maxfield@crowedunlevy.com

September 21, 2009

**Via E-mail: Arnella.Karges@okhouse.gov**

Senator Cliff Aldridge, Co-Chair  
Task Force on the Privatization of  
CompSource Oklahoma  
2300 N. Lincoln Blvd., Room 511  
Oklahoma City, OK 73105

Representative Dan Sullivan, Co-Chair  
Task Force on the Privatization of  
CompSource Oklahoma  
2300 N. Lincoln Blvd., Room 435  
Oklahoma City, OK 73105

**Re: House Bill 1963 Task Force: Information Requested From CompSource**

Dear Senator Aldridge and Representative Sullivan,

Please find enclosed the following documents, which relate to CompSource Oklahoma's agenda item for the September 23, 2009 Task Force meeting. The documents have been Bates-labeled for convenience of reference.

- Senate Concurrent Resolution 14 (CS 00426-00428); and
- Title 85, Section 132a of the Oklahoma Statutes (CS 00429-00431).

Also attached to the e-mail by which this letter was transmitted to you, via Arnella Karges, are two PowerPoint graphs:

- Number of Volunteer Firefighters Insured By CompSource Oklahoma
- Volunteer Firefighters, 5 Year Loss Ratio

If you should have any questions or concerns, do not hesitate to contact me.

Sincerely,

Amanda L. Maxfield Green

20 NORTH BROADWAY, SUITE 1800  
OKLAHOMA CITY, OK 73102-8273  
TEL: 405.235.7700 • FAX: 405.239.6651  
www.crowedunlevy.com

OKLAHOMA CITY  
20 NORTH BROADWAY, SUITE 1800  
OKLAHOMA CITY, OK 73102-8273  
TEL: 405.235.7700 • FAX: 405.239.6651

www.crowedunlevy.com

20 NORTH BROADWAY, SUITE 1800  
OKLAHOMA CITY, OK 73102-8273  
TEL: 405.235.7700 • FAX: 405.239.6651  
www.crowedunlevy.com

## **Appendix U**

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE CONCURRENT  
4 RESOLUTION 14

By: Bingman of the Senate

and

5  
6 McNiel of the House

7  
8 AS INTRODUCED

9 A Concurrent Resolution praising volunteer  
10 firefighters; mourning the loss of volunteer  
11 firefighter John Adams; and directing distribution.

12  
13 WHEREAS, on Friday, February 20, 2009, grass fires burned out of  
14 control a few miles west of the Highway 51-Highway 48 Intersection  
15 near Mannford, Oklahoma. The grass fire eventually covered 600  
16 acres. The 12-member Silver City Fire Department and other area  
17 fire departments spent the next twelve hours battling the blaze. A  
18 total of nine fire departments, 23 brush trucks, three tankers, two  
19 pumpers, a Blackhawk helicopter, and 60 firefighters were necessary  
20 to contain the conflagration. A number of outbuildings were  
21 destroyed and some homes sustained minor damage; and

22 WHEREAS, John Adams, his wife Marcie Adams, and son Drew Canady,  
23 all aggressively trained to become fully qualified for wildland  
24 firefighting, structural firefighting, vehicle firefighting, rescue

1 and extraction, and medical response. They are members of a unique  
2 fraternity of men and women who risk their lives daily for the sake  
3 of others. They put their lives on the line. They do not do this  
4 for compensation. They do it for the community. That is what kind  
5 of people they are; and

6 WHEREAS, John Adams, a 45-year-old volunteer firefighter, died  
7 on duty, after fighting a 12-hour wildfire west of Mannford,  
8 Oklahoma. A Silver City Volunteer Firefighter for the past three  
9 years and a board member of the fire department, John Adams laid  
10 down his life for those he loved and those he did not know; and

11 WHEREAS, John Adams was a brother in arms with his fellow  
12 firefighters. He was a visionary board member, a loving father and  
13 husband. He was expected to become an officer in his department in  
14 the near future. John Adams leaves behind a wife, Marcie, and five  
15 children, Nicole Canady, Drew Canady, Douglas Adams, James Adams and  
16 Cheyenne Adams. Marcie and Drew continue to volunteer to fight  
17 fires and have already responded since John's death; and

18 WHEREAS, John Adams was a 1981 graduate of Sand Springs High  
19 School and was a manager at Lowe's. He enjoyed camping and fishing.  
20 Adams had served as a Silver City Volunteer Firefighter for more  
21 than three years and was a member of their board since 2006; and

22 WHEREAS, approximately 200 Oklahoma firefighters from 27 fire  
23 departments attended the funeral ceremony. Forty-five fire trucks  
24

1 and command cars were included in the two-mile-long procession to  
2 the Oakhill Cemetery.

3 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE 1ST SESSION  
4 OF THE 52ND OKLAHOMA LEGISLATURE, THE HOUSE OF REPRESENTATIVES  
5 CONCURRING THEREIN:

6 THAT the Oklahoma State Legislature praises the work of all  
7 Oklahoma volunteer firefighters, recognizing that their hard work  
8 and bravery are often overlooked and not adequately appreciated by  
9 those whom they protect.

10 THAT the Oklahoma State Legislature mourns the loss of Silver  
11 City Volunteer Firefighter John Adams and joins with the residents  
12 of the Silver City community and the firefighting community in  
13 extending its most sincere condolences to the family and friends of  
14 John Adams.

15 THAT a copy of this resolution be distributed to John Adams'  
16 wife, Marcie Adams, an EMT for Mannford and also a Silver City  
17 Volunteer Firefighter; his son Drew Canady, also a volunteer  
18 firefighter; his brother-in-law Brett Whitten, a Mannford  
19 firefighter; and his other children, Nicole Canady, Douglas Adams,  
20 James Adams and Cheyenne Adams.

21  
22 52-1-1785 THC 9/14/2009 1:33:37 PM

23  
24

## **Appendix V**

Westlaw.

85 Okl.St. Ann. § 132a

Page 1



Oklahoma Statutes Annotated Currentness

Title 85. Workers' Compensation (Refs &amp; Annos)

☐ Chapter 7. Compsource Oklahoma

→ § 132a. Volunteer Firefighters--Volunteer Firefighters Group Insurance Pool

A. 1. Volunteer fire departments organized pursuant to state law may obtain workers' compensation insurance for **volunteer firefighters** through the Volunteer Firefighter Group Insurance Pool pursuant to requirements established by CompSource Oklahoma which shall administer the Pool. For the premium set by CompSource Oklahoma, the state shall provide Fifty-five Dollars (\$55.00) per firefighter per year. Except as otherwise provided by subsection D of this section, the total amount paid by the state shall not exceed Three Hundred Twenty Thousand Three Hundred Thirty-eight Dollars (\$320,338.00) per year or so much thereof as may be necessary to fund the Volunteer Firefighter Group Insurance Pool.

2. CompSource Oklahoma shall collect the premium from state agencies, public trusts and other instrumentalities of the state. Any funds received by CompSource Oklahoma from any state agency, public trust, or other instrumentality for purposes of workers' compensation insurance pursuant to this section shall be deposited to the credit of the Volunteer Firefighter Group Insurance Pool. CompSource Oklahoma shall collect premiums, pay claims, and provide for excess insurance as needed.

B. CompSource Oklahoma shall report, annually, to the Governor, the Speaker of the Oklahoma House of Representatives, and the President Pro Tempore of the State Senate the number of enrollees in the Volunteer Firefighter Group Insurance Pool, and the amount of any anticipated surplus or deficiency of the Pool; and shall also provide to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the State Senate sixty (60) days advance notice of any proposed change in rates for the Volunteer Firefighter Group Insurance Pool.

C. The amount of claims paid, claim expenses, underwriting losses, loss ratio, or any other financial aspect of the Volunteer Firefighter Group Insurance Pool shall not be considered when determining or considering bids for the amount of any premiums, rates, or expenses owed by, or any discounts, rebates, dividends, or other financial benefits owed to any other policyholder of CompSource Oklahoma.

D. Except as otherwise provided by law, any increase in the state payment rate for **volunteer firefighters** under the Volunteer Firefighter Group Insurance Pool shall not exceed five percent (5%) per annum. Any proposed change in rates for the Volunteer Firefighter Group Insurance Pool must be approved by the Board of Managers of CompSource Oklahoma with notice provided pursuant to subsection B of this section. CompSource Oklahoma shall not increase premiums for the Volunteer Firefighter Group Insurance Pool more than once per annum.

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

CS 00429

E. For purposes of this section, the term “volunteer fire departments” includes those volunteer fire departments which have authorized voluntary or uncompensated workers rendering services as firefighters and are created by statute pursuant to Section 592 of Title 18 of the Oklahoma Statutes, Sections 29-201 through 29-205 of Title 11 of the Oklahoma Statutes, and those defined by Section 351 of Title 19 of the Oklahoma Statutes.

#### CREDIT(S)

Laws 2001, c. 367, § 1, emerg. eff. June 4, 2001; Laws 2004, c. 403, § 1, emerg. eff. June 3, 2004.

#### HISTORICAL AND STATUTORY NOTES

##### 2006 Main Volume

Laws 2004, c. 403, § 1, substituted “CompSource Oklahoma” for “State Insurance Fund” throughout the section; rewrote subsection A, which prior thereto read:

“A. 1. Volunteer fire departments organized pursuant to state law may obtain workers’ compensation insurance for **volunteer firefighters** through the Volunteer Firefighter Group Insurance Pool pursuant to requirements established by the State Insurance Fund which shall administer the Pool. For the premium set by the State Insurance Fund, the state shall provide Fifty-five Dollars (\$55.00) per firefighter per year; provided, that the total amount paid by the state shall not exceed Two Hundred Seventy Thousand Three Hundred Thirty-eight Dollars (\$270,338.00) per year for a period of three (3) years.

“2. Any funds received by the State Insurance Fund from any state agency, public trust, or other instrumentality for purposes of workers’ compensation insurance pursuant to this section shall be deposited to the credit of the Volunteer Firefighter Group Insurance Pool. The State Insurance Fund shall collect premiums, pay claims, and provide for excess insurance as needed.”

; in subsection B, inserted “, and the amount of any anticipated surplus or deficiency of the Pool”; in subsection D, deleted “after the three-year period specified in subsection A of this section,” preceding “any increase”; and made nonsubstantive changes.

#### LIBRARY REFERENCES

##### 2006 Main Volume

Workers' Compensation  1048, 1049.  
Westlaw Topic No. 413.  
C.J.S. Workers' Compensation §§ 646 to 648.

85 Okl. St. Ann. § 132a, OK ST T. 85 § 132a  
Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

CS 00430

85 Okl.St. Ann. § 132a

Page 3

(c) 2009 Thomson Reuters

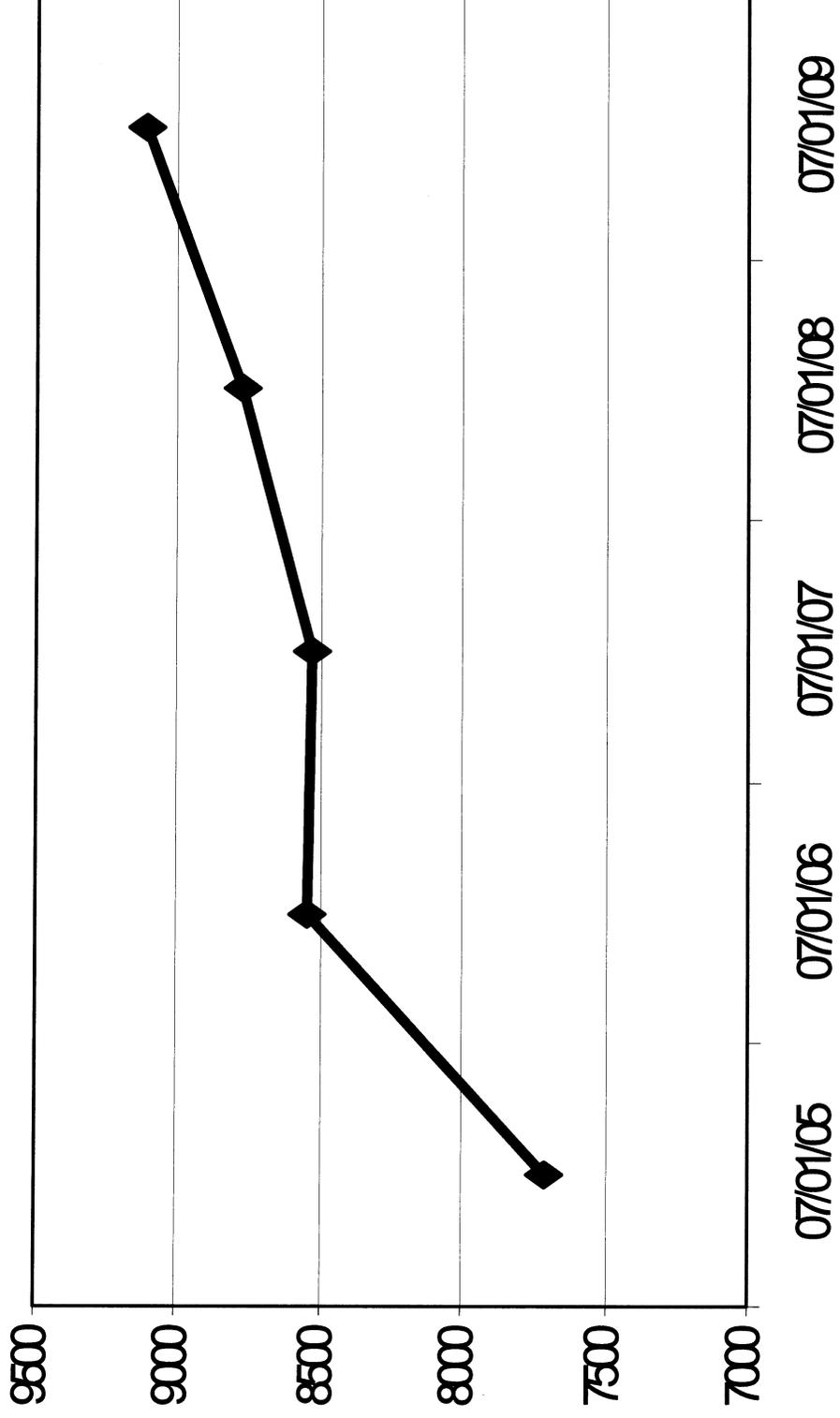
END OF DOCUMENT

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

CS 00431

## **Appendix W**

# Number of Volunteer Firefighters Insured by CompSource Oklahoma

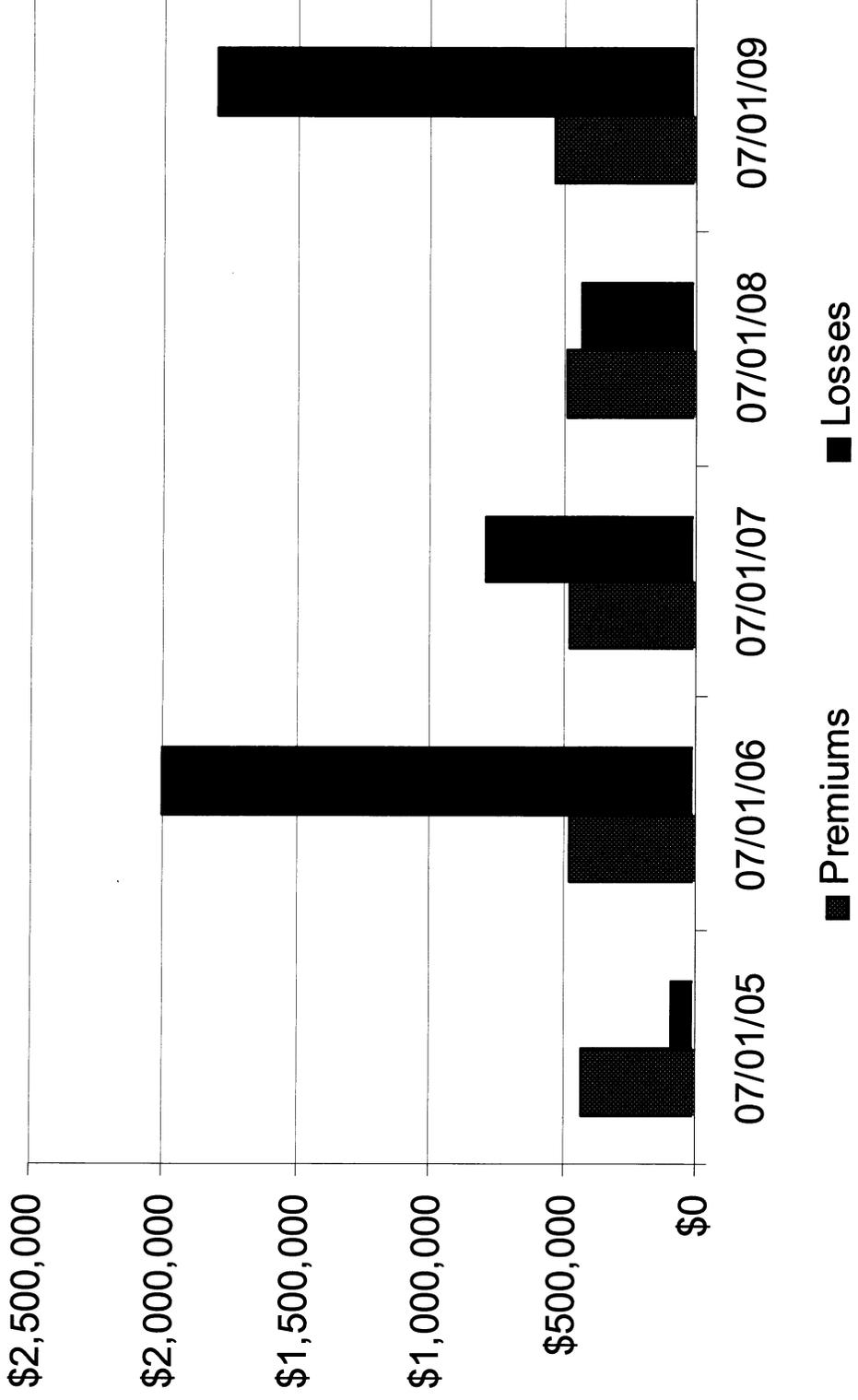


Average Increase of 4.6% Per Year

# Volunteer Firefighters

5 year Loss Ratio 215.23%

Losses exceed Premium by \$2,733,298



## **Appendix X**



## **CompSource Privatization Committee Presentation September 23, 2009**

Roy O. Wood  
State Relations Executive  
NCCI Holdings, Inc.  
roy\_wood@ncci.com  
(314) 843-4001

## **Who We Are:**

National Council on Compensation Insurance, Inc., based in Boca Raton, FL, manages the nation's largest database of workers compensation insurance information. NCCI analyzes industry trends, prepares workers compensation insurance rate recommendations, determines the cost of proposed legislation, and provides a variety of services and tools to maintain a healthy workers compensation system.

2



## **National Council on Compensation Insurance (NCCI)**

- Organized 80 years ago at urging of predecessor to NAIC
- Membership organization operating under not-for-profit philosophy
- Providing services to more than 900 reporting organizations
- Operating in over 38 states

3



## **NCCI Role in Oklahoma**

- Statistical Agent Services
  - Collection and validation of various types of data
  - Summarizing data and providing reports to Oklahoma Insurance Department (OID)
- Advisory/Rating Bureau Services
  - Filing of loss costs and experience rating values
  - Production of experience modifications
  - Develop/maintain classification system
  - Develop/maintain state specific programs
  - Regulatory and legislative reform analysis

4



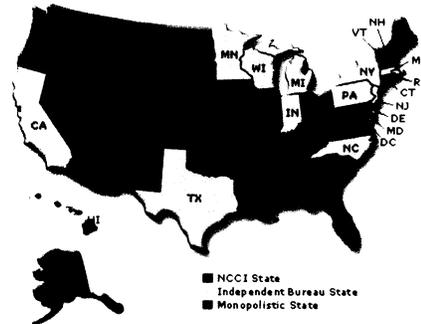
## Advisory Rating Organization

- NCCI performs various advisory/rating bureau services in over 38 states. This often includes:
  - Analyzing and compiling rate/loss cost estimates, in state aggregate, and for more than 600 classifications
  - Compiling and distributing over 1.5 million employer experience ratings annually
  - Providing residual market Plan administration in 21 states and limited administrative service in 3 other states

5



## NCCI State Map



6



## NCCI Collects, Validates and Aggregates Industry Data

- Financial Data
  - Premium and losses by carrier
  - Used to set overall loss cost level
  - Hundreds of data quality checks
- Workers Compensation Statistical Plan Data
  - Premium, payroll and losses by employer
  - Used to set individual classification loss costs
  - Hundreds of data quality checks

7



## Making Sure NCCI Has Sufficient, Quality Data

- NCCI works with carriers that do not meet timeliness or quality requirements to get clean data submitted in time to use in rate filings
- Carriers are assessed for not meeting timeliness or quality requirements
- If carriers have not submitted financial data due April 1, carriers are reported to the OID in June

8



## **NCCI Prepares and Files Rates or Loss Costs**

The historical data which was collected is the starting point but adjustments are needed:

- Premiums adjusted to reflect latest loss costs
- Expenses removed if loss costs are to be filed
- Losses developed...projected to their ultimate value
- Premium and losses trended to reflect anticipated changes over time

9

**NCCI**

## **In a Loss Cost State, NCCI's End Result Is Only the Beginning for Carriers**

Loss costs are filed, carriers apply a Multiplier to the NCCI benchmark

- The NCCI loss cost only reflects benefit costs and Loss Adjustment Expense (LAE)
- A carrier multiplier reflects that carrier's own expense load
- Carriers must file the multiplier with OID

10

**NCCI**

## **Statutory Rate Development Standards**

- Not excessive
- Not inadequate
- Not unfairly discriminatory

11

**NCCI**

## **Appendix Y**

## Workers Compensation Residual Markets

Melissa Palmer  
Director, Plan Administration  
Residual Markets  
September 2009

## What is a Residual Market?

- In order to ensure that all eligible employers have some means of complying with their statutory obligations, most states have created a market of last resort – the residual market

## What is a Residual Market?

- Can operate under various names:
  - State Fund
  - JUA (Joint Underwriting Association)
  - Alternative Assigned Risk Plan
  - Assigned Risk Reinsurance Pool
  - NCCI's WCIP (Workers Compensation Insurance Plan or Plan)

## What is NCCI's WCIP or Plan?

- State-approved rules governing administration:
  - Administration (Filings, Disputes, etc.)
  - Participation of carriers
  - Eligibility of employers
  - Quota management - random and equitable assignment
  - Policy issuance requirements
  - Duties & responsibilities of the Plan Administrator and assigned carriers

## What is the Pooling Mechanism?

- Quota share reinsurance agreement among participating insurers to share in the operating results arising out of Plan assignments
- National Workers Compensation Reinsurance Association NFP
- Other NCCI-serviced Pools include: MA, MI, NM

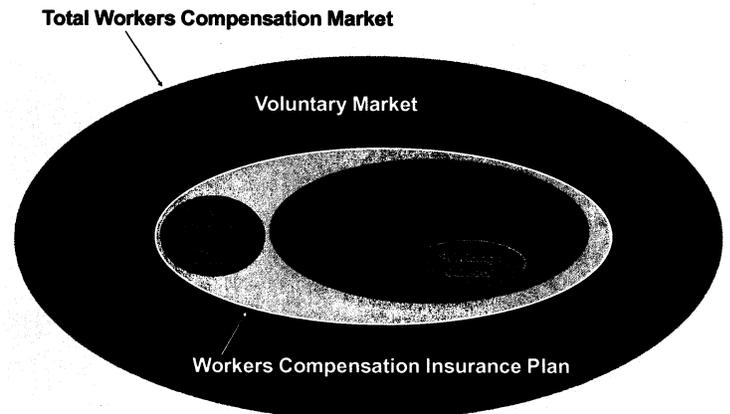
## Where does NCCI provide Plan or Pool Administration services?

- NCCI provides Plan Administration services in the following states as of January 2009:
  - AL, AK, AR, AZ, CT, DC, GA, IA, ID, IL, KS, MS, NH, NM, NV, OR, SC, SD, VA, VT, WV
  - Other Plan Services: DE, IN, NC
- NCCI provides Pool Administration services in the following states as of January 2009:
  - National Pool: AL, AK, AR, AZ, CT, DE, DC, GA, ID, IA, IL, KS, NH, NJ, NV, NC, OR, SC, SD, VA, VT, WV
  - New Mexico Pool
  - Financial and Actuarial Services: MA, MI

\* Shared administrative functions

## Carrier Participation

- All carriers that are licensed and writing in a state must participate in the Plan and can do so by:
  - Participation in a Reinsurance Pool:
    - Carriers share in the operating results of the Pool Mechanism for those states where they are participating in proportion to their share of the total voluntary workers compensation insurance premium in that state
  - Direct Assignment Carrier
    - Carriers are not participants in the Pool and are not reinsured by the Pool. They choose to participate in the Plan by receiving assignments and retaining the risk associated with such coverage.



## Plan Administration Responsibilities

- Assigned Risk Application Processing
- Plan Eligibility & Noncompliance/Compliance
- Plan Membership and Assignment Administration
- Filing Services – Rules & Pricing Programs
- Depopulation Initiatives
- Communications/Web Strategies

## Plan Administration Responsibilities

- Servicing Carrier Selection and Performance Oversight
- Incentive/Disincentive Programs
- Annual Self-Audit and Onsite Audit of Servicing Carriers to Ensure Compliance With Performance Standards
- Industry Relations & Training

## Pool Administration Responsibilities

- Financial Operations
  - Servicing carrier cession report validation and compilation
  - Financial statements
  - Distribution and assessment for quota share operating results
  - Oversight of financial credit policy
  - Pool cash management and investment activities

## Pool Administration Responsibilities

- Collections/Indemnification Administration
  - Servicing carrier collection and indemnification activities
  - Coordination of premium fraud and multi-carrier litigation activities
- Actuarial Services
  - Quarterly loss reserves
  - Annual Statement of Opinion for Pool reserves



## Residual Market Snapshot All Pools, Serviced by NCCI Policy Year 2008 as of 9/30/08

- 2008 Written Premium—\$752 million<sup>#</sup>
- 2008 Operating Losses—\$110 million<sup>#</sup>
- 2008 Combined Ratio—115%<sup>#</sup>
- 2008 Residual Market Share—5%<sup>\*</sup>

<sup>#</sup> projected to ultimate

<sup>\*</sup> preliminary



## Residual Markets Goals

- Self-Funded Residual Markets
- Noted for High Quality Services Aided by Automation
- Premier Provider of Residual Market Services – A Core NCCI Function Since 1929



## Things To Consider

- Plan and Pool Administration experience
- Broad support of the insurance industry
- Long term commitment of Administrator to manage accounting process
- Pool accounting and actuarial reserve analysis
- Online services and cash management
- Value added on-line application processing and review
- Availability of policy and application information in historical databases
- Depopulation programs
- Complete filing and pricing program analysis
- Availability of regular, frequent and detail reports
- Servicing carrier selection, incentives and oversight
- Dispute resolution services

## **Appendix Z**

**2009-2010 NATIONAL WORKERS COMPENSATION REINSURANCE POOL BOARD OF GOVERNORS**

**MEMBERS ARE FROM THE FOLLOWING COMPANIES:**

ADVANTAGE WC INSURANCE CO

TRAVELERS INSURANCE GROUP

TRUCK INSURANCE EXCHANGE

UTICA NATIONAL INSURANCE GROUP

FIRST COMP INSURANCE CO

COMPANION PROPERTY & CASUALTY INS CO

GRANGE MUTUAL CASUALTY CO

LIBERTY MUTUAL INSURANCE CO

ACE AMERICAN INSURANCE CO

TECHNOLOGY INSURANCE CO

AUTO-OWNERS INSURANCE CO

AMGUARD INSURANCE CO

## Board of Directors

The NCCI Holdings, Inc., Board of Directors includes:

- William R. Berkley, Jr., W.R. Berkley Corporation (*Chair*)
- John T. Hill, Magna Carta Companies
- Bruce G. Kelley, EMC Insurance Companies
- John T. Leonard, Maine Employers' Mutual Insurance Company
- Brian J. Melas, Liberty Mutual
- Craig L. Nodtvedt, Alaska National Insurance Company
- James C. Roberts, AIU Holdings
- Donald A. Smith, Jr., SCF Arizona
- George M. Reider, Jr., Former Connecticut Insurance Commissioner and NAIC President
- Coleman D. Ross, Retired Partner, PricewaterhouseCoopers LLP
- Craig Watson, Electronic Knowledge Interchange
- Bruce L. Kessler, ACE INA
- Michael F. Klein, Travelers
- Barbara A. Klein, Former Senior Vice President and Chief Financial Officer, Computer Discount Warehouse
- Steve Klingel, President and CEO, NCCI Holdings, Inc.

Note: this information is also found on-line at

<https://www.ncci.com/nccimain/AboutNCCI/FactsInfo/BoardDirectors/Pages/default.aspx>

NCCI - Assigned Risk.xlsx

2002-2003

STATE	YEAR	TOTAL ASSIGNED RISK POLICIES
AR	2002	4,801
IL	2002	25,657
KS	2002	13,605
<b>Total AR Policies</b>		44,063

STATE	YEAR	ASSIGNED RISK	VOLUNTARY			UNKNOWN	
AR	2003	3,272	68.15%	403	8.39%	1,078	22.45%
IL	2003	16,954	66.08%	2,661	10.37%	6,100	23.78%
KS	2003	10,144	74.56%	739	5.43%	2,712	19.93%
<b>Total Policies</b>		30,370	68.92%	3,803	8.63%	9,890	22.45%

2003-2004

STATE	YEAR	TOTAL ASSIGNED RISK POLICIES
AR	2003	5,593
IL	2003	30,447
KS	2003	14,744
<b>Total AR Policies</b>		50,784

STATE	YEAR	ASSIGNED RISK	VOLUNTARY			UNKNOWN	
AR	2004	3,663	65.49%	718	12.84%	1,151	20.58%
IL	2004	20,112	66.06%	3,824	12.56%	6,594	21.66%
KS	2004	11,384	77.21%	924	6.27%	2,414	16.37%
<b>Total Policies</b>		35,159	69.23%	5,466	10.76%	10,159	20.00%

2004-2005

STATE	YEAR	TOTAL ASSIGNED RISK POLICIES
AR	2004	5,428
IL	2004	32,466
KS	2004	15,590
<b>Total AR Policies</b>		53,484

STATE	YEAR	ASSIGNED RISK	VOLUNTARY			UNKNOWN	
AR	2005	3,509	64.65%	749	13.80%	1,142	21.04%
IL	2005	21,307	65.63%	3,832	11.80%	7,438	22.91%
KS	2005	10,115	64.88%	1,955	12.54%	3,437	22.05%
<b>Total Policies</b>		34,931	65.31%	6,536	12.22%	12,017	22.47%

2005-2006

STATE	YEAR	TOTAL ASSIGNED RISK POLICIES
AR	2005	6,099
IL	2005	32,215
KS	2005	15,025

## NCCI - Assigned Risk.xlsx

<b>Total AR Policies</b>			53,339				
<b>STATE</b>	<b>YEAR</b>	<b>ASSIGNED RISK</b>	<b>VOLUNTARY</b>			<b>UNKNOWN</b>	
AR	2006	4,121	67.57%	638	10.46%	1,272	20.86%
IL	2006	20,041	62.21%	4,174	12.96%	7,646	23.73%
KS	2006	10,647	70.86%	1,158	7.71%	4,232	28.17%
<b>Total Policies</b>		34,809	65.26%	5,970	11.19%	13,150	24.65%

2006-2007							
STATE	YEAR	TOTAL ASSIGNED RISK POLICIES					
AR	2006	6,549					
IL	2006	29,364					
KS	2006	13,344					
<b>Total AR Policies</b>		49,257					
STATE	YEAR	ASSIGNED RISK	VOLUNTARY			UNKNOWN	
AR	2007	4,177	63.78%	682	16.33%	1,597	24.39%
IL	2007	18,535	63.12%	3,667	19.78%	6,939	23.63%
KS	2007	9,853	73.84%	1,211	12.29%	2,596	19.45%
<b>Total Policies</b>		32,565	66.11%	5,560	17.07%	11,132	22.60%

<sup>1</sup> Policy data as reported by Data Providers as of 10/13/09.

<sup>2</sup> Policy data where the dominant state is Illinois, Arkansas or Kansas.

<sup>3</sup> Policies with effective dates between 1/1/02 and 12/31/07 are used for the following comparison:  
 -- 1/1/XX through 12/31/XX Assigned Risk policies compared to all policies for 1/1/XX+1 through 12/31/XX

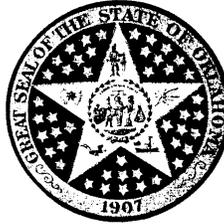
<sup>4</sup> FEIN used to match policies between years. When a single policy matches to multiple policies for the same year, only one is counted.

<sup>5</sup> Cancelled flat policies are excluded.

## **Appendix AA**

# Oklahoma Legislature

Chris Bengé  
Speaker  
House of Representatives



Glenn Coffee  
President Pro Tempore  
State Senate

October 6, 2009

## - AGENDA -

**TO:** Members of the Task Force on the Privatization of CompSource Oklahoma

**DATE:** Wednesday, October 7, 2009

**TIME:** 9:30 a.m.

**PLACE:** Room 412C, State Capitol Building

**AGENDA:** 5th Meeting

- I. Welcome and Introductions by Co-Chairs: Senator Aldridge and Representative Sullivan
- II. A plan for privatizing CompSource through a sale and rate stabilization plan for small Oklahoma employers by Lance LaGere, Executive Vice President and Chief Operating Officer; Pat Gilmore, General Counsel and Senior Vice President; Mark Paden, President for NAICO; and Brent LaGere, Chairman and CEO for the National American Insurance Company (NAICO)
- III. Russell R. Oliver, former President of Texas Mutual Insurance Company
- IV. Loss Portfolio Transfer Issues by James Stergiou, Actuary for CompSource Oklahoma and Task Force member
- V. Other Business and Adjournment

### Future Meeting Dates

Wednesday, October 21, 2009, at 9:30 a.m., Rm 412C

Thursday, November 5, 2009, at 9:30 a.m., Room to be determined

Wednesday, November 18, 2009, at 9:30 a.m., Rm 412C

Sen. Cliff Aldridge, Co-Chair

Rep. Dan Sullivan, Co-Chair

### Members:

Insurance Commissioner Kim Holland

Lee Ann Alexander

Dan Ramsey

James Stergiou

Michael Clingman

Bradley J. McClure

Mike Seney

## **Appendix BB**



October 7, 2009 **PRESS RELEASE**

---

*“Setting the standard that others strive for...”™*

For Immediate Release

RE: A Blueprint for Privatizing CompSource

National American Insurance Company representatives have urged the legislative Task Force studying the privatization of CompSource Oklahoma to adopt a plan of privatization that will result in a sale of CompSource Oklahoma to the highest bidder. The recommended plan focuses on the following key elements:

1. A fair price to the State of Oklahoma for CompSource determined by competitive bidding.
2. The development of a rate stabilization plan for Oklahoma businesses
3. The continued employment of most CompSource employees.
4. Guaranteeing the availability of workers compensation insurance to all Oklahoma employers by requiring the successful bidder to remain as the carrier of last resort
5. Successful bidder must be able to demonstrate to the Oklahoma Department of Insurance, through a FORM A Hearing, that they have the appropriate capital structure required for the new operations and have a plan to deal with all open claim liabilities that have been generated under previous CompSource policies.

CompSource is the state agency charged with providing workers' compensation insurance to businesses that cannot or choose not to obtain insurance through private companies.

National American's chief operating officer, Lance LaGere stated that "In a time of budget cuts and deficits a sale of CompSource would likely net the State of Oklahoma \$150,000,000 to \$200,000,000. There is no question that CompSource is a state agency and if it is a state agency, its assets have to go to the State if it is dissolved".

The Task Force had been told earlier that the issue of who is entitled to proceeds from the sale of CompSource if it is dissolved is a gray area. LaGere states this is not true. "CompSource claims Federal and a State income tax exemption based upon the fact that it is a component unit of the state and refers to itself as an integral part of the state in order to get the exemption. These are tax terms of art and mean that if it is dissolved, sold, or ceases to do business, its assets net of its liabilities revert to the state."

A competitive bidding process should require bidders to buy both the assets and liabilities of CompSource with all sale proceeds going to the State of Oklahoma. The new carrier should also function as the carrier of last resort and be subject to regulation by the Oklahoma State Insurance Commissioner. CompSource is not currently regulated.

LaGere pointed out that private, commercial insurance carriers serve as the carrier of last resort now in Missouri and Nebraska. He stated that through better operating efficiencies, privatizations in other states have resulted in reduced policyholder rates, increased policyholder service, increased insurance competition and there has been a decrease in the involuntary market, market share. Privatization of CompSource through a sale will ultimately benefit the policyholders, the state of Oklahoma monetarily and help attract new industry to the state in the same fashion as it has in other states that have privatized their state insurance funds.

According to LaGere, if there are legal questions, there are mechanisms in place to promptly get the issue of whether the state owns CompSource before the Oklahoma Supreme Court. "The legislature shouldn't give away an entity worth at least \$150,000,000 just because someone says there may be legal questions. The stakes are too high to just walk away," he said.

## **A Blueprint for Privatizing CompSource**

October 7, 2009 – Task Force Meeting  
Presented by:

**National American Insurance Company**

Lance LaGere, Executive Vice President; Brent LaGere, CEO; Mark Paden, President; Pat Gilmore, Sr. Vice President & General Counsel

## **A Blueprint for Privatizing CompSource**

Discussion Topics

- **A sale of CompSource is good for the State of Oklahoma** (pages 2-6)
- **Conversion to a Mutual is problematic** (pages 7-9)
- **What is CompSource?** (pages 12-13)
- **Pitfalls of Mutualization – A review of the financial condition of CompSource** (pages 16-17)
- **Review of House Bill 1963** (pages 14-17)

## **A Blueprint for Privatizing CompSource**

A sale of CompSource is good for the State of Oklahoma

- **Sale of a state asset**
  - Competitive bidding would produce proceeds to the state of \$150,000,000 to \$200,000,000
- **Policyholder rates reduced** (pages 2-4)
  - As seen in Texas, West Virginia, Nevada, Michigan
- **Removal of Government from the Insurance Business**
  - Not a “core competency” of the state

## **A Blueprint for Privatizing CompSource**

A sale of CompSource is good for the State of Oklahoma

- **Key Objectives in Privatizing CompSource:**
  - Fair price to the State of Oklahoma
  - Rates must remain stable for Oklahoma businesses
  - Remain as carrier of last resort
  - Continued employment of most CompSource employees
  - Successful bidder – Adequate capital structure approved by the Oklahoma Department of Insurance

## A Blueprint for Privatizing CompSource

Conversion to a mutual is problematic

- **Why give away a state asset?**
  - Nevada, Texas & West Virginia were different – they had state insurance funds struggling with solvency
  - Michigan had value... (Approximately \$110,000,000 in surplus at time of sale) – State received in excess of \$250,000,000
- **The assets of CompSource are owned by the State of Oklahoma** (pages 7-8, 12-13)
  - If CompSource assets are owned by its policyholders it will incur significant tax liability
- **How to resolve the issue** (page 9)
  - Oklahoma Supreme Court may take jurisdiction and issue a ruling establishing that CompSource assets belong to the State

## A Blueprint for Privatizing CompSource

Pitfalls of Mutualization – A review of the financial condition of CompSource

- **Mutualization alone doesn't change CompSource's poor operating performance** (page 10-11)
  - 2008 Net loss of -\$16,116,000
  - 2009 (as of 6/30/09) Net loss of -\$12,200,000
- **Additional expenses incurred as a mutual will only hinder future operating performance** (page 10-11)
  - Premium Tax 2.25%; Assessments 1-2%; and possibly federal income tax of 35%
  - If mutualized on 1/1/09 – net loss of \$16,100,000
- **CompSource has a highly leveraged balance sheet** (page 10-11)
  - CompSource's balance sheet leverage is twice that of the industry and its peer group. Net leverage is 6.8 vs industry average 3.2
  - A 15 to 20% change in their assets or liabilities would threaten their solvency
    - 2008 Fair Market Value Investment Portfolio loss of \$83,500,000 (2007 - \$1,053,598M vs 2008 - 970,097M)
    - Reduction in Policyholder Surplus of \$75,000,000 (2007 - \$259,000M vs 2008 - \$184,000M)
  - A loss portfolio transfer (LPT) only causes more problems (page 10, 15)
- **If CompSource continues to incur losses they will be forced to raise policyholder rates**

## A Blueprint for Privatizing CompSource

Pitfalls of Mutualization – A review of the financial condition of CompSource

- **CompSource's operational performance lags that of its industry peers** (page 5)
  - TX Mutual – Loss ratio is on average 25% points better than CompSource
- **Other states that privatized found more efficiencies in the private sector where more best practices are in place:**
  - Paperless environments
  - Better medical audit services
  - Better medical case management
  - More effective loss control techniques
  - More leverage of technology
- **A sale of CompSource will reduce policyholder rates**

## A Blueprint for Privatizing CompSource

Review of House Bill 1963 (pages 14-17)

- **Establish a residual market mechanism – Including a plan for rate stabilization and guaranteed availability of workers compensation insurance**
- **Review CompSource financial condition**
- **Efficacy of a loss portfolio transfer**
- **Define the RFP process**
- **Consider impact of privatizing on CompSource employees**
- **Study current statutes regarding the responsibilities of CompSource**
- **Identify all necessary statutory changes needed**

## **A Blueprint for Privatizing CompSource**

SUMMARY (page 18)

- **Fair price to the State of Oklahoma –\$150,000,000 to \$200,000,000**
- **Rates must remain stable for Oklahoma businesses – A plan of rate stabilization should be created through legislation and be a part of the RFP process**
- **Remain as carrier of last resort**
- **Continued employment of most CompSource employees**
- **Successful bidder – Adequate capital structure approved by the Oklahoma Department of Insurance**

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

## EXECUTIVE SUMMARY

The purpose of this document is to outline what we believe to be the key elements for successfully privatizing CompSource Oklahoma. This also addresses and provides solutions to the primary issues that the Task Force is charged with reviewing via House Bill 1963.

The following key elements of successfully privatizing CompSource are addressed in detail in the following sections:

### (1) A SALE OF COMPSOURCE – GOOD FOR OKLAHOMA

- This section addresses why a sale of CompSource is beneficial to the State of Oklahoma, it's employers and employees.

### (2) CONVERSION TO A MUTUAL IS PROBLEMATIC

- This section addresses the issues that will negatively affect the state if mutualization is chosen vs. a sale of CompSource. It outlines why CompSource and its policyholders will incur significant tax liabilities if CompSource takes the position it is owned by its policyholders. This section also provides reference to the Michigan model which elected to sell its state fund vs. mutualizing and how this has been beneficial to the state.

### (3) PITFALLS OF MUTUALIZATION – A REVIEW OF THE FINANCIAL CONDITION OF COMPSOURCE AS A MUTUAL

- This section is intended to review the financial impact mutualization would have on CompSource and how it negatively affects the state. This section outlines how mutualization will likely lead to increased rates to policyholders if mutualization is chosen.

### (4) WHAT IS COMPSOURCE?

- This section addresses the *Moran vs. Derryberry* case and its impact on CompSource. It provides evidence that CompSource is in fact a state agency and not owned by its policyholders.

### (5) A REVIEW OF HOUSE BILL 1963

- This section outlines the issues which must be addressed by the Task Force and provides recommendations and/or information regarding each issue.

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

## A SALE OF COMPSOURCE – GOOD FOR OKLAHOMA

The State of Oklahoma should receive a gain from the sale of an asset (i.e. CompSource).

- A sale of CompSource by the State of Oklahoma, based on the typical valuation of an insurance company, would result in \$150,000,000 to \$200,000,000 of proceeds to the State of Oklahoma.
- These proceeds would be valuable during times of shrinking state revenues and budget cuts.

Other states have successfully privatized their state owned workers compensation facilities resulting in lower rates and premiums to policyholders. The private carriers achieved these results through more efficient management of underwriting, claims, loss control, information systems, accounting, professional investment portfolio management and by the elimination of fraud.

Research contained within this document indicates that states that have switched from a state run insurance workers compensation fund or facility to a private workers compensation system have seen overall benefits to the states' employers and employees.

### West Virginia Privatization<sup>1</sup>

1. In 2005, the State of West Virginia approved the privatization of the state fund which had been the sole workers compensation provider. West Virginia Insurance Commissioner Jane L. Cline states that their privatized workers compensation system is offering better claims administration, lower cost for employers and better treatment of injured workers. Cline says the old fund was saturated with fraud by providers, employers and employees.

Since the switch, Cline says that the claims handling has improved such that:

- Claims protests have fallen 68%;
- The overall appeals process has been streamlined resulting in claims disputes being resolved in a shorter period of time;
- Claimants have received better claim management by claims adjusters having fewer claims to manage; and
- The unfunded liability on old fund claims has dropped from \$3.1 billion to \$1.5 billion.

---

<sup>1</sup> *The Insurance Journal*; 6-7-09 article, *West Virginia Touts Switch to Private Workers Compensation System*

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

The open workers compensation market is also performing well, according to Cline. As of June 30, 2009:

- Overall premiums have dropped 30.3% or more than \$150 million;
- 198 different workers compensation insurance companies have filed rates and forms; and
- There are only 120 policies in the residual market representing premium of \$1.9 million

## Nevada Work Comp Privatization<sup>2</sup>

Governor Kenny Guinns' privatization bill which was enacted in the 1999 legislative session enacted legislation that privatized the Nevada State Industrial Insurance System (SIIS). The following information is a summary of Pinnacle Actuarial Resources' review and findings of the impact of privatization and workers compensation reform that took place in the state over the last ten years.

Pinnacle Actuarial Resources, Inc.'s information endeavored to report on the following four items:

1. Examine the trends of the Nevada workers compensation system over the last decade.
2. Describe the substantive reforms that have been implemented in the state and their impact.
3. Provide an assessment on how Nevada's workers compensation rates loss trends and competitiveness compared to the systems in other states.
4. Discuss the potential for these reforms to be applied to other areas.

Significant findings and trends from the report are summarized below:

- Nevada's overall rate level in 2005 was approximately 23% lower than the rate level in place prior to the privatization of SIIS.
- Nevada's rates, which for most of the classes of employment were among the 10 highest states in 1996, are now generally near the countrywide average and comparable with most states. Notably, Nevada's rates have gone from being much higher than California's in 1996 to substantially lower in 2004.

---

<sup>2</sup> Pinnacle Actuarial Resources, Inc. : *Analysis of the Impact of Workers Compensation Reform in Nevada, a Report to the Republican Governors Association*

## A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

- Nevada has moved from having a disadvantage in attracting employers to the state due to relatively high workers compensation costs to having a work comp cost advantage over neighboring states.
- The Nevada workers compensation market has been able to attract enough insurance companies to the market to create a healthy level of competition.
- The reforms have reduced insurance rates since the privatization of SIIS while increasing average benefits to the injured worker over the last five years.
- During the period of privatization and renewed competition (1996 through 2001) workers compensation costs per employee nationally were steadily increasing at a rate of almost 7% per year. In contrast, Nevada's workers compensation costs per employee from 1997 to 2001 were reduced by almost 2% per year.
- Nevada's claim frequencies during the same period were decreasing at about 8½% annually which favorably compares to the national average of about plus 5% annually.
- Nevada's average claims severity increased at only about 7.2% annually during the period compared to the national claims severity trends of plus 12% to 13% a year.

### Texas Privatization <sup>3</sup>

The Texas work comp fund privatized January 1, 1992, replaced the Texas Workers Compensation Insurance Facility (the Facility) and became the market of last resort on January 1, 1994. A survey was conducted on employers who had coverage through the fund after the policies had expired with the Facility. The results are summarized:

- When asked about the relative cost of workers compensation insurance, over half (52%) of the employers indicated that their current premium was lower than what they were paying at the Facility in 1993.
- Lower insurance rates (77%) and fewer claims resulting in lower experience modifiers (66%) were also cited by many of the employers formerly with the Facility.
- The residual market policies decreased from 12% in 1993 to .8% in 1997.
- Workers compensation insurance rates in Texas declined an average of 8.36% a year from 1990 to 1997. Also, work comp rates per \$100 of payroll declined from \$4.56 in 1990 to \$2.70 in 1996.

---

<sup>3</sup> Texas Department of Insurance: *The Population of the Texas Workers Compensation Insurance Facility: A Survey of Employers (August 1996.)*

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

## In Summary

If CompSource is privatized, there are multiple changes needed to their operations for the State of Oklahoma to have results similar to those in Texas, Michigan, Nevada and West Virginia. At the present time, CompSource does not have in place an effective medical provider network compared to the private industry sector. On the indemnity side, too many vendors and too much politics are involved in the claim handling process. Drastic improvements can be made in this area which with all certainty will lead to reduced premium costs for CompSource policyholders. As seen in Nevada and Texas, the current CompSource operation is likely plagued by provider and vendor abuse. As you'll see from the table below Texas Mutual as a private company has been far more successful in generating profitable loss ratios than CompSource Oklahoma. A privatized CompSource should produce better loss ratios allowing for more aggressive rates due to better operating results.

<u>Year</u>	<u>CompSource Loss Ratio</u>	<u>TX Mutual Loss Ratio</u>	<u>% Worse</u>
2004	106.10%	70.90%	33.2%
2005	96.30%	74.00%	23.2%
2006	95.50%	74.00%	22.5%
2007	97.50%	71.90%	26.3%
2008	91.90%	64.80%	29.5%

In addition, the new owners must be able to demonstrate proof of an adequate capital base and proven operating platform and business plan through a Form A filing with the Oklahoma Insurance Department and be approved for a license. This plan should also guarantee that all prior policyholder obligations will be met through an adequate capital base and/or the use of proper reinsurance removing the State of Oklahoma from any future liabilities associated with CompSource.

Privatization will create a more stable, financially secure and competitive marketplace under regulation by the State Insurance Commissioner and the backing of the Oklahoma State Guaranty Fund. This will ensure that policyholder rates will not be excessive, discriminatory or inadequate. The surviving entity must have the ability to and must guarantee to work with all independent insurance agents within Oklahoma.

Due diligence will be necessary to appropriately allow for competitive bids, but at the end of the day, the state should emerge with sizeable dollars coming into the state coffers and the successful bidder for CompSource being able to demonstrate a sound operating platform and new capital. If a qualified bidder is chosen the states policyholder rates should start to reduce dramatically and improve even more over the next few years.

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

The key objectives in privatizing CompSource should be:

1. A fair price to the State of Oklahoma for CompSource determined by competitive bidding.
2. Rates must remain stable for Oklahoma businesses
  - a. Example: On policyholders with premiums of less than \$15,000, no increase on existing rates prior to the application of an experience rating modifier for a period of three years. Limit any rate increase to the same percentage as any NCCI pure loss cost rate increase for a class code that it is approved by the Oklahoma Department of Insurance. This takes the loss cost multipliers and experience rating modifiers out of the equation.
  - b. This will ensure that small policyholders will not receive any excessive or abnormal rate increases ensuring that privatization is beneficial to small Oklahoma employers.
3. The continued employment of most CompSource employees.
4. The successful bidder must remain as the carrier of last resort guaranteeing the availability of workers compensation insurance to all Oklahoma employers.
  - a. As previously demonstrated by NCCI presentations, the higher cost of an NCCI pool will not be applicable if the successor to CompSource is required to remain as the carrier of last resort. In presentations previously no one has ever demonstrated that privatizing would be more costly to small business owners. In fact, it has been just the opposite in other states that have privatized their state insurance funds.
5. Successful bidder must be able to demonstrate to the OK department of insurance, through a FORM A Hearing, that they have the appropriate capital structure required for the new operations and have a plan to deal with all open claim liabilities that have been generated under previous CompSource policies.

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

## CONVERTING COMPSOURCE TO A MUTUAL IS PROBLEMATIC

Mr. Derryberry told the Task Force that the ownership of CompSource assets is an open question. He has not said, and cannot say, that CompSource assets are owned by its policyholders. In fact, if CompSource assets are owned by its policyholders and if upon dissolution of CompSource its assets go to its policyholders, CompSource will incur significant tax liabilities.

Two basic models for privatization have been discussed – the Nevada model of mutualization and the Michigan model of an outright sale. Douglas Dirks, the chief executive officer of Employers Holdings, Inc. (the successor to the Nevada State Fund), stated in his testimony that one cannot compare the situation of the Nevada State Fund to CompSource because the Nevada State Fund was insolvent with no value. CompSource, evidently, has a value in excess of \$150 million dollars. Our situation is closer to the Michigan model. Michigan sold its state fund for more than \$250 million. According to the September 16, 2009 edition of the *Daily Oklahoman*, State Treasurer Scott Meacham implemented 5% budget cuts for all State agencies as a result of revenue shortfalls. It would be imprudent to simply give away an asset which could have a value of in excess of \$150 million based upon the threat of litigation with respect to ownership of CompSource assets.

### **I. CompSource is a State agency and its assets belong to the State of Oklahoma.**

No one who understands the issues, including Mr. Derryberry, contends that CompSource assets belong to its policyholders. He extensively discussed the Oklahoma case of *Moran v. Derryberry*. The strongest statement Mr. Derryberry has made is that ownership of CompSource assets is an open question and that litigation will most certainly result if the legislature sells CompSource. Conversely, because CompSource has significant value, litigation will most certainly result if the legislature simply gives away the assets of CompSource.

Interestingly, two courts of last resort, the Idaho Supreme Court<sup>4</sup> and the Michigan Supreme Court<sup>5</sup> have examined the *Moran v. Derryberry* case and concluded that the *Moran v. Derryberry* case did not deal with the issue of whether the State Insurance Fund (CompSource) assets belong to its policyholders. *Moran v. Derryberry* simply stands for the proposition that CompSource assets cannot be appropriated by the legislature and used for general purposes but that the assets of CompSource must be utilized for the purpose of fulfilling contractual obligations owed by CompSource to its policyholders. The Michigan case dealt with a situation where a policyholder attempted to stop the sale of the Michigan State Insurance Fund. The Michigan Supreme Court specifically and emphatically held that the policyholders had no vested rights in the assets but that the funds were simply held in trust for the purpose of fulfilling contractual obligations. CompSource assets belong to a State agency, CompSource, and are held in trust to fulfill CompSource's contractual obligations. Privatization resulting in the sale of those assets would accomplish the purpose of protecting policyholders, their employees and the taxpayers of Oklahoma.

---

<sup>4</sup> *Kelso and Irwin, P.A. v. State Insurance Fund*, 997 P.2d 591 (Idaho, 2000)

<sup>5</sup> *Fun 'N Sun RV, Inc. v. Michigan*, 527 N.W.2d 468 (Mich., 1994)

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

## **II. If CompSource takes the position that its assets belong to its policyholders CompSource will incur significant federal income tax liabilities.**

At an earlier meeting, Brent LaGere informed the Task Force that the Texas Windstorm Insurance Association (TWIA) encountered significant financial difficulties because its composition and method of operation was characterized as a “mutual” with its assets belonging to entities other than the State of Texas and it incurred significant federal income tax liabilities. That statement was questioned by Ms. Alexander, who, unfortunately, misunderstood Mr. LaGere’s statement and assumed his reference was to the Texas Workers’ Compensation Insurance Fund. We have attached a copy of a report discussing the TWIA issues. Simply put, because TWIA took the position that its assets did not belong to the State, it did not qualify for the “gross income exemption” provided by Section 115 of the Internal Revenue Code.

We have attached copies of an Internal Revenue Service private letter ruling explaining that if anyone *other than the state or a political subdivision of the state* benefits other than through insurance protection, premiums are included in “gross income” for federal income tax purposes. CompSource’s audited financial footnotes reveal that CompSource claims an exemption from federal income tax liability based upon its status as a component unit and integral part of the State. This is because sections 115 and 501 (C) (27) (B) are the only two statutes providing such exemption and both require that the entity seeking the exemption be an “integral part of the state”. One element of the test to determine that status is that the income ultimately accrues to the state. Section 501 (C) (27) (B) specifically requires that: “...the assets of such organization revert to the State upon dissolution...”.

If CompSource takes the position that its assets belong to its policyholders CompSource will incur significant federal income tax liabilities, including penalties and interest. In the absence of never filing a tax return, there would be no toll on the statute of limitations.

## **III. The Michigan model is the only viable alternative.**

There is no good reason for converting CompSource to a mutual. Such a conversion would be similar to converting a large apartment building to condominiums and simply giving the property to the current occupants of the building. In 1995, Michigan Governor John Engler recognized that the business of insurance is not a “core competency” of government and that the state-run workers’ compensation insurer was a valuable asset for a cash-strapped state. He directed the formation of a task force, similar to this one and the result was legislation enabling the sale of the State Insurance Fund under terms and conditions that would put money into Michigan’s state coffers, while at the same time, protecting policyholders and injured claimants. The Michigan experience has been a good one for all concerned. We have attached to these materials an article written by Michael D. LaFaive reviewing the Michigan experience 10 years post-privatization. He says:

\* The sale of Michigan’s Accident Fund was a slam-dunk for the State financially. It generated a large one-time revenue hike for the State Treasury,

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

while it increased, by all indications, the quality of service provided to the Funds' many customers.<sup>6</sup>

#### **IV. The Oklahoma Supreme Court may, in its discretion, expeditiously deal with the issue of ownership of CompSource assets.**

The Oklahoma Supreme Court may take original jurisdiction in the exercise of its superintending control of State agencies. Evidently, CompSource, through its various representatives who have testified before this Task Force, commented that a sale of CompSource assets might bring about litigation because it is unclear if the assets of CompSource belong to its policyholders. If CompSource is not taking that position, then CompSource representatives should so advise this Task Force. However, mutualization is not only unwise, but also imprudent since the legislature would, in effect, be giving away an asset that could have a value of \$150-200 million.

The Supreme Court of the State of Oklahoma should be asked to address this issue. In 1982, the State Department of Transportation requested a ruling regarding its use of State funds to implement the Oklahoma Railroad Revitalization Act. Because the matter was of great public interest and because there was urgency, the Oklahoma Supreme Court took jurisdiction and resolved the issue of the constitutionality of the Act.<sup>7</sup>

Contrary to Mr. Derryberry's assertions, this issue need not be "tied up in the courts" for extended periods of time.<sup>8</sup>

### **CONCLUSION**

If CompSource is viewed as a "mutual" in which policyholders have a vested property right in CompSource assets, there is no valid reason to mutualize CompSource. If CompSource assets belong to its policyholders, both CompSource and its policyholders will incur significant tax liabilities.

In fact, CompSource is a State agency whose assets belong to the State and should not be mutualized and any action on the part of the legislature to privatize CompSource through mutualization would be fiscally irresponsible and would benefit no one other than CompSource management and the various vendors who rely upon CompSource. Mutualization, would in effect, maintain the status quo as to those vendors.

Oklahoma should follow the Michigan model and privatize CompSource through a sale of its assets and liabilities.

---

<sup>6</sup> Mackinac Center for Public Policy – *The privatized accident fund of Michigan turns 10 – July 11, 2005*

<sup>7</sup> See *Application of State ex rel. Department of Transportation*, 1982 OK 36, 646 P.2d 605.

<sup>8</sup> Mr. Derryberry's comments also beg the question of whether litigation over ownership of an asset worth hundreds of millions of dollars is worthwhile. We assume the logical answer is "yes".

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

## PITFALLS OF MUTUALIZATION – A REVIEW OF THE FINANCIAL CONDITION OF COMPSOURCE

The Task Force is currently engaged in the review of the current financial condition of CompSource Oklahoma. An exam will be conducted by the Office of the Commissioner of Insurance of the State of Oklahoma. At the present time, CompSource's balance sheet is highly leveraged with approximately \$900,000,000 in claim obligations and only \$180,000,000 in policyholder's surplus (net worth). This poses two types of balance sheet risk to the solvency of CompSource, asset and liability risk. If the assets (primarily investments) of CompSource are reduced by market conditions by 15 to 20% CompSource would be insolvent.<sup>9</sup> If the liabilities (primarily claim reserves) are increased by 15 to 20%, CompSource would be financially insolvent. This balance sheet leverage exceeds industry norms and standards regarding other secure insurers by more than double.

If CompSource mutualizes these problems still exist and pose a threat to increasing policyholder rates. CompSource struggles to produce net income now even with the advantages of being a State Agency. If CompSource were to mutualize net income would be significantly impaired. They would have to pay a premium tax, guaranty fund assessments and possibly federal income tax at a rate of 35%. These additional costs would only decrease profits, ultimately requiring rate increases or worse, insolvency.

Beginning 1-1-10 CompSource will be responsible for paying a market assessment (like a premium tax) at a rate of 2.25%. In addition, if CompSource were privatized they would incur additional expenses of approximately 1% from Guaranty Fund assessments and they would likely lose their tax exempt status creating a 35% federal income tax liability.

2.25% premium tax  
1.00% assessments (1 to 2% of premium)  
3.25% - New Expenses

35% - Federal Income tax liability

If CompSource had been mutualized 1-1-09 and incurred these additional expenses, their net loss would have been approximately \$16,100,000.<sup>10</sup> How long can CompSource continue to incur losses before they are insolvent or forced to raise rates? If the first six months of 2009 are any indicator of 2010 and 2011 and beyond, if privatized, CompSource would incur sizeable net losses. If a loss portfolio transfer (LPT) is made to transfer claim liabilities to a reinsurer and to reduce leverage, resulting in a loss of over 75% of their investment income, then CompSource would be in significant trouble. **Refer to section - REVIEW OF HOUSE BILL 1963: - LOSS PORTFOLIO TRANSFER** for more detail.

If CompSource is mutualized policyholder rates will be increased significantly. CompSource did report (Jim Stergiou) at the first Task Force meeting that a 5% rate increase had been put in

---

<sup>9</sup> CompSource suffered a fair market value investment portfolio loss of \$83,060,000 in 2008

<sup>10</sup> Jim Stergiou's report at the first Task Force meeting stated CompSource incurred a \$12,200,000 loss for the first six months. 3.25% of the estimated 6 month premiums of \$120,000,000 equal an additional \$3,900,000 in losses.

## A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

place; however, more troubling is the fall of CompSource's reported loss ratio of 97.5% in 2007 to 91.9% in 2008 in times of a very soft (declining rates) marketplace.

Whatever happens, first and foremost, it must benefit the policyholders of CompSource Oklahoma. Rates must remain stable. Mutualization alone does not accomplish this; it only puts pressure on the stability of CompSource.

A closer look at CompSource's annual statement and results for the first 6 months of the year can be reviewed below. Their balance sheet leverage and continued poor operating performance pose risk to the stability of CompSource and the rates of policyholders.

(A.) Surplus of \$258,953,172 as of 12-31-07 vs. \$183,697,470 as of 12-31-08. A surplus (net worth) reduction of \$75,256,000 in one year – a reduction of 29%.

(B.) Net Leverage:

Net leverage calculation: Total liabilities + net earned premiums ÷ by surplus.  
CompSource's net leverage of 6.8 is more than double the industry at 3.2.<sup>11</sup> This is extremely high leverage compared to the normal ranges required by AM Best.

CompSource Balance Sheet as of 12-31-08: Total Assets = \$1,096,396,643; Total Liabilities = \$977,609,902; Net Earned Premiums: \$261,897,870

(C.) CompSource suffered a fair market value investment portfolio loss of \$83,501,000 in calendar year 2008.

(D.) CompSource suffered a net loss of \$16,116,210 for calendar year 2008 after a policyholder's dividend of \$20,006,816.

(E.) Per Jim Stergiou's report at the first Task Force meeting, CompSource lost \$12,200,000 for the first six months of 2009 and surplus fell to \$180,900,000.

(F.) 5 year financial averages:

Loss Ratio	97.3%
Expense Ratio	<u>12.8%</u>
Combined Ratio	110.1% <sup>12</sup>

---

<sup>11</sup> AM Best Financial Reports – 2008; AM Best Aggregates and Averages – 2008

<sup>12</sup> Market Assessment/Premium Tax and Guarantee fund assessments at approximately 3.25% have not been included. These additional expenses would only increase their combined ratio.

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

## WHAT IS COMPSOURCE?

CompSource is a “state entity” coming within the term “agency” because it is an instrumentality designated to act in behalf of the State of Oklahoma. Its general purpose is simply to insure employers against liability for workers’ compensation claims and to assure employees entitled to benefits receive such benefits through the insurance. See *Fehring v. State Insurance Fund*, 19 P.3d 276 (Okla. 2001). The Oklahoma attorney general has also concluded that CompSource is an “agency” of the State of Oklahoma. There can be no doubt that CompSource is a state agency.

The premiums and investment earnings from those premiums within the possession of CompSource are funds held in trust for those who paid the premiums and entered into insurance contracts with CompSource as well as those entitled to benefits under the policies.<sup>13</sup>

In Opinion No. 95-36, the Oklahoma attorney general concluded that CompSource is a department or agency of the state.<sup>14</sup> Because CompSource is a creature of statute, the legislature may assign CompSource other duties and responsibilities.<sup>15</sup>

## CONCLUSION

CompSource is a state agency whose primary duty is to provide insurance for the benefit of employers and employees within the State of Oklahoma. CompSource has been statutorily delegated other duties and responsibilities, but the funds it holds are held in trust for the benefit of the employers and employees covered by its insurance contracts.

CompSource assets belong to the State of Oklahoma because CompSource is a State agency. There is no logical basis for concluding otherwise. CompSource assets are, however, subject to the obligation that they be used for the benefit of policyholders and their employees pursuant to the terms of the policies CompSource issued. Oklahoma statutes are silent on the issue of whether the State of Oklahoma is entitled to the assets when the activities of CompSource are discontinued. However, CompSource has continually taken the position that it is exempt from paying federal income tax. Regardless of whether it claims an exemption under an intergovernmental agency exemption, or as a “nonprofit” it cannot qualify for the exemption unless it meets all of the requirements under Section 115 or 501 (C) (27) (B) of the Internal Revenue Code. Those requirements are that the rights of ownership inure to the State or a political subdivision and not to any private entity and that the assets revert to the State upon dissolution. To satisfy this requirement all of its funds and assets must ultimately go to the State upon dissolution or discontinuance of business.<sup>16</sup>

---

<sup>13</sup> *Moran v. Derryberry* at 534 P.2d 1282 is the case most often cited for this proposition. In fact, other cases such as the *Fehring* case have reaffirmed that position.

<sup>14</sup> The Opinion relied on *Moran v. Derryberry* and 85 O.S. § 131, the CompSource organic statute.

<sup>15</sup> For example, 85 O.S. § 131 a. requires CompSource to administer the “Volunteer Firefighter Group Insurance Pool”. 85 O.S. § 175 requires CompSource to administer and protect the Multiple Injury Trust Fund.

<sup>16</sup> See e.g. Revenue Ruling 90-74 and *Florida Residential Property & Casualty Joint Underwriting Association v. U.S.A.*, 207 F.Supp.2d 1344.

## **A BLUEPRINT FOR PRIVATIZING COMPSOURCE**

---

The legislature's intent was to create an entity that is an integral part of the State of Oklahoma but whose assets must be used for a specified purpose and are not subject to general appropriation by the legislature, and that upon dissolution, the assets revert to the State.

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

## REVIEW OF HOUSE BILL 1963:

The following items are identified as issues which must be addressed by the Task Force:

- 1) Establishment of a residual market mechanism that will protect the interest of all Oklahoma employees and employers including a plan for rate stabilization to ensure the guaranteed availability of workers' compensation insurance.
- 2) Review the current financial condition of CompSource.
- 3) Efficacy of a Loss portfolio transfer.
- 4) Define the RFP process.
- 5) Consider and discuss the impact that privatizing CompSource may have on employees.
- 6) Study the current statutes regarding the responsibilities of CompSource.
- 7) Identify all necessary statutory changes including but not limited to securing funding for volunteer firefighters' workers' compensation premiums.
- 8) Identify other issues as necessary to accomplish the privatization of CompSource.

## RESIDUAL MARKET MECHANISM

The residual market demand should be assigned to the private successor to CompSource. Rate stabilization is needed to guarantee availability of workers' compensation insurance at an affordable price and can be assured by making the private successor to CompSource subject to the same rate making process as is currently imposed upon other private insurers. In addition, the task force could also consider a legislative rate stabilization plan such as:

Example: On policyholders with premiums of less than \$15,000, no increase on existing rates prior to the application of an experience rating modifier for a period of three years. Limit any rate increase to the same percentage as any NCCI pure loss cost rate increase for a class code that is approved by the Oklahoma Department of Insurance. This takes the loss cost multipliers and experience rating modifiers out of the equation. This will ensure that small policyholders will not receive any excessive or abnormal rate increases; ensuring that privatization is beneficial to small Oklahoma employers.

## REVIEW OF THE CURRENT FINANCIAL CONDITION OF COMPSOURCE OKLAHOMA

The section titled - **DANGERS OF MUTUALIZATION – A REVIEW OF THE FINANCIAL IMPLICATIONS ON COMPSOURCE AS A MUTUAL** reviews the current financial condition of CompSource Oklahoma.

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

## LOSS PORTFOLIO TRANSFER

A loss portfolio transfer (LPT) is a reinsurance product that allows a company to increase capital and/or reduce balance sheet leverage by transferring loss reserves to reinsurers. Of course, reinsurance companies have a profit motive in mind when they enter into these transactions, so there is a cost to the company purchasing the LPT.

An LPT has a dramatic effect on the purchasing company's operating statement. In the case of CompSource, as with most insurance companies, investment income is the most significant source of operating income. At the end of 2007 and 2008, loss reserves have averaged 82.7% of cash and investments. Assuming that CompSource purchased an LPT and all loss reserves were transferred to a reinsurance company for a charge 90% of those reserves as a premium, that would reduce cash and investments by 74.4% ( $82.7\% \times 90\%$ ).

If that reduction of cash and invested assets were applied retroactively to CompSource, the corresponding decrease in investment income over the last five years would have been \$149.5 million in total for an annual average of \$29.9 million. The loss of that investment income would have resulted in net losses totaling \$104.3 million for the five year period, or an average annual net loss of \$20.9 million.

In summary, using very basic assumptions, an LPT transaction for CompSource would be trading one problem, substantial balance sheet leverage, for another, operating losses. Without fundamental changes to improve profitability, it would likely force CompSource to increase premium rates to mitigate the operating losses and erosion of capital.

For the State of Oklahoma to realize the proceeds from the sale of CompSource, it is important that all of CompSource's obligations are fully transferred to its successor including, specifically, the liability for open claims. A loss portfolio transfer (LPT) would transfer the existing claim liabilities for all outstanding claims to reinsurers in exchange for the outstanding claim reserve liabilities less a discount. While this transfers the liability, it does not relieve CompSource of the ultimate liability to policyholders. Should any one of the reinsurers become financially impaired or insolvent, CompSource would remain liable for the claims in spite of having transferred the claim liability. At this point, approximately 75% of CompSource's investment income is gone.

CompSource would incur substantial annual operating losses without the benefit of its investment income. If CompSource were to privatize and enter into a LPT, its investment income would be substantially reduced, thus impairing its ability to meet policyholder obligations in the future without a substantial increase in rates. Further, the potential value of CompSource would likewise be substantially reduced and would likely result in fewer potential bidders. In Jim Stergiou's report at the first Task Force meeting, he estimated new surplus of \$50 million to \$100 million would result from the LPT. Therefore, the best alternative for the state, the CompSource policyholders and the state taxpayers of OK is to realize the proceeds from a sale of CompSource is to sell it as it exists today.

# **A BLUEPRINT FOR PRIVATIZING COMPSOURCE**

---

## **REQUEST FOR PROPOSAL PROCESS**

The process will depend upon the method of privatization. Suggestions will be made as the Task Force proceedings develop a method.

## **ACCOMMODATION OF CURRENT COMPSOURCE EMPLOYEES**

The task force should recommend that the successor to CompSource retain most of the current CompSource employees to continue operating the private entity and run-off of claims.

## **STATUTORY RESPONSIBILITIES AND NECESSARY STATUTORY CHANGES**

Items 6 and 7 of Subsection H charge the Task Force with:

6. Studying current statutes regarding the responsibilities of CompSource Oklahoma;
7. Identification of all necessary statutory changes including, but not limited to, securing funding for volunteer firefighters' workers' compensation premiums.

## **NECESSARY STATUTORY CHANGES**

- Generally, Chapter 7 of Title 85 creating CompSource Oklahoma and providing for its administration should be repealed. This is Section 131 through Section 154, both inclusive. Sections 138.1, 140, 143, 149, 150, 152, and 153 have already been repealed.
- The repeal of Section 132a, providing that CompSource must administer the Volunteer Firefighter Group Insurance Pool, should be dealt with, specially. That issue is addressed below. Additionally, 85 O.S. § 173 and 85 O.S. § 175 impose particular responsibilities upon CompSource with respect to the Multiple Injury Trust Fund. As has already been mentioned, 85 O.S. § 173 imposes certain responsibilities regarding investments upon the president and chief executive officer of CompSource while 85 O.S. § 175 imposes a general duty upon CompSource to administer and protect the Multiple Injury Trust Fund. That section also provides that the Administrator of the Workers' Compensation Court shall allocate to CompSource Oklahoma out of the Multiple Injury Trust Fund sufficient funds for administration expenses thereof in amounts to be fixed and approved by the Administrator of the Workers' Compensation Court for the Multiple Injury Trust Fund, unless rejected by the Governor and attorney general. Additionally, CompSource has standing and authority to appear in any case before the Workers' Compensation Court in which the Court is considering an award from the Multiple Injury Trust Fund. The Workers' Compensation Court Administrator is required to notify CompSource of all proceedings which may affect the Multiple Injury Trust Fund.
- Specific statutory duties imposed upon CompSource should, by special statute, be assigned to the private successor unless otherwise provided by statute.

## **VOLUNTEER FIREFIGHTER GROUP INSURANCE POOL**

## A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

- 85 O.S. § 132 a provides that volunteer fire departments may obtain workers' compensation insurance for volunteer firefighters pursuant to requirements established by CompSource which shall administer the Volunteer Firefighter Group Insurance Pool. The statute further provides that for the premiums set by CompSource Oklahoma, the state shall provide \$55 per firefighter per year. There is a cap of \$320,338 per year upon the state contribution.

Upon privatization of CompSource the successor to CompSource could be statutorily required to assume the same duties and responsibilities as CompSource subject to the same limitations and immunities enjoyed by CompSource and subject to the same requirements regarding rates including, but not limited to rate and premium increase limitations. The premium should include a fee to cover the cost of administration which should be retained by the private successor to CompSource.

### THE MULTIPLE INJURY TRUST FUND

- The responsibility for administering and protecting the Multiple Injury Trust Fund could be delegated to the private successor to CompSource subject to the same requirements and duties. The private successor should be paid a fee for administration of the Multiple Injury Trust Fund.

An implementing statute providing that all duties and responsibilities regarding administration and protection of the Multiple Injury Trust Fund shall be assumed by the resulting private company would be necessary. The implementing statute should also provide for reasonable cost of administration to be paid from the Multiple Injury Trust Fund upon proper application and approval by the State Finance Director and State Treasurer.

An alternative would be to amend 85 O.S. § 173, *et seq.* to provide for a commissioner of the Multiple Injury Trust Fund to be appointed by the Governor, subject to the approval of one or both houses of the legislature. This statutory scheme would further need to provide for funding for the office of the commissioner of the Multiple Injury Trust Fund.

# A BLUEPRINT FOR PRIVATIZING COMPSOURCE

---

## SUMMARY:

The key objectives in privatizing CompSource should be:

1. A fair price to the State of Oklahoma for CompSource determined by competitive bidding.
2. Rates must remain stable for Oklahoma businesses
  - a. Example: On policyholders with premiums of less than \$15,000, no increase on existing rates prior to the application of an experience rating modifier for a period of three years. Limit any rate increase to the same percentage as any NCCI pure loss cost rate increase for a class code that it is approved by the Oklahoma Department of Insurance. This takes the loss cost multipliers and experience rating modifiers out of the equation.
  - b. This will ensure that small policyholders will not receive any excessive or abnormal rate increases ensuring that privatization is beneficial to small Oklahoma employers.
3. The continued employment of most CompSource employees.
4. The successful bidder must remain as the carrier of last resort guaranteeing the availability of workers compensation insurance to all Oklahoma employers.
  - a. As previously demonstrated by NCCI presentations, the higher cost of an NCCI pool will not be applicable if the successor to CompSource is required to remain as the carrier of last resort. In presentations previously no one has ever demonstrated that privatizing would be more costly to small business owners. In fact, it has been just the opposite in other states that have privatized their state insurance funds.
5. Successful bidder must be able to demonstrate to the OK department of insurance, through a FORM A Hearing, that they have the appropriate capital structure required for the new operations and have a plan to deal with all open claim liabilities that have been generated under previous CompSource policies.

## **Appendix CC**

## **BILL ANALYSIS**

Office of House Bill Analysis

H.B. 3458  
By: Brimer  
Business & Industry  
7/17/2001  
Enrolled

### **BACKGROUND AND PURPOSE**

In 1991, the legislature created the Texas Workers' Compensation Insurance Fund (fund) to serve as a competitive force in the marketplace, guarantee the availability of workers' compensation insurance in Texas, and serve as the insurer of last resort. In 1999, the fund's statute was amended to make the fund a member of the Texas Property and Casualty Insurance Guaranty Fund. The assets of the fund could be better protected by converting the fund to a mutual company where the assets are owned by the policyholders. House Bill 3458 converts the fund to the Texas Mutual Insurance Company to be operated as a domestic mutual insurance company.

### **RULEMAKING AUTHORITY**

It is the opinion of the Office of House Bill Analysis that this bill does not expressly delegate any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

House Bill 3458 amends the Insurance and Labor codes relating to the Texas Workers' Compensation Insurance Fund.

The bill amends the Insurance Code to require the Texas Workers' Compensation Insurance Fund (fund) on September 1, 2001 to operate as and exercise the powers of a domestic mutual insurance company called the Texas Mutual Insurance Company (company) (Sec. 2). The company is not a state agency (Sec. 21). The bill requires the commissioner of insurance to issue a certificate of authority to the company to write workers' compensation insurance (Sec. 2). The bill authorizes the company to exercise all the rights, privileges, powers, and authority of any other mutual corporation organized to transact workers' compensation insurance business in Texas and transfers the powers and duties of the fund to the company (Sec. 2 and SECTION 3.01). The bill prohibits the company from being dissolved (Sec. 2).

H.B. 3458 provides that the company is governed by a board of nine directors (board) that serve staggered six-year terms. Five of the members are required to be appointed by the

governor with the remaining four being elected by the company's policyholders. The bill authorizes the board to perform all necessary or convenient administrative and business functions of the company. The bill sets forth the qualifications for board members and requires the governor to designate a chairman. The board is required to elect annually any other officers necessary for the performance of its duties. The bill sets forth provisions regarding potential grounds for removal and the filling of a vacancy on the board. The bill requires the board to hire a president and provides for the president's qualifications and authorizes the board to form committees and subcommittees. Board members shall receive board fees commensurate with industry standards. The bill requires the board to maintain its principal office in Travis County (Secs. 3 and 4). The members of the fund's board will serve as directors until the company's board is established (SEC. 3.04).

The bill requires the company to pay premium taxes, maintenance taxes, and the maintenance tax surcharge in the same manner as a domestic mutual insurance carrier authorized to write workers' compensation insurance (Sec. 11). The bill provides that all revenues, monies and assets are governed by the laws applicable to domestic mutual insurance companies (Sec. 12). The company is only liable for assessments by the Texas Property and Casualty Insurance Guaranty Association regarding, and that association with respect to an insolvency of the company is only liable for, a claim with a date of injury that occurs on or after January 1, 2000 (Sec. 11). The bill provides that the state has no liability to or responsibility to the policyholders, persons receiving workers' compensation benefits, or the creditors of the company if the company is placed in conservatorship or receivership or becomes insolvent. The bill authorizes funding for a grant issued to the Texas Workers' Compensation Commission to come only from the company's surplus (Sec. 12).

The bill provides that the State of Texas covenants with the policyholders of the company, persons receiving workers' compensation benefits, and the company's creditors that the state will not borrow, appropriate, or direct payments from the company from those revenues, monies, assets or from the stabilization fund for any purpose (Secs. 12 and 22). The bill prohibits the stabilization fund from being used by or for the benefit of the state or for the benefit of a creditor of the state and from being commingled with other assets (Sec. 22).

#### **EFFECTIVE DATE**

September 1, 2001.

## **Appendix DD**

AN ACT

relating to the operation of the Texas Workers' Compensation Insurance Fund as a domestic mutual insurance company and to the continuation of that entity as the Texas Mutual Insurance Company.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. OPERATION OF FUND AS MUTUAL INSURANCE COMPANY

SECTION 1.01. Article 5.76-3, Insurance Code, is amended to read as follows:

Art. 5.76-3. TEXAS MUTUAL [~~WORKERS' COMPENSATION~~] INSURANCE COMPANY [~~FUND~~].

Sec. 1. DEFINITIONS. In this article:

- (1) "Board" means the board of directors of the company [~~fund~~].
- (2) "Commission" means the Texas Workers' Compensation Commission.
- (3) "Company" means the Texas Mutual Insurance Company.
- (4) "Fund" means the Texas Workers' Compensation Insurance Fund.
- (5) [(4)] "Workers' compensation insurance" means the insurance for any risk under:
  - (A) Subtitle A, Title 5, Labor Code (the Texas Workers' Compensation Act);
  - (B) the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901);
  - (C) the Federal Mine Safety and Health Act of 1977 (33 U.S.C. Section 801 et seq.); [~~or~~]
  - (D) the Defense Base Act (42 U.S.C. Sections 1651-1654);
  - (E) the federal Employers' Liability Act (45 U.S.C. Section 51 et seq.);
  - (F) the Nonappropriated Fund Instrumentalities Act (5 U.S.C. Sections 8171-8173);
  - (G) the Outer Continental Shelf Lands Act (43 U.S.C. Section 1331 et seq.);
  - (H) the Merchant Marine Act of 1920 (46 U.S.C. Section 861 et seq.); or
  - (I) Chapter 504, Labor Code.

Sec. 2. CREATION; OPERATION. (a) Effective September 1, 2001, the [The] Texas Workers' Compensation Insurance Fund shall operate as, and exercise the powers of, a domestic mutual insurance company in accordance with Chapter 15 of this code, and shall be called the Texas Mutual Insurance Company. A reference in the laws of this state to the Texas Workers' Compensation Insurance Fund means the Texas Mutual Insurance Company. The commissioner shall issue a certificate of authority to the company as provided by Chapter 15 of this code to write workers' compensation insurance, not later than September 1, 2001 [~~is created as a corporate body with the powers provided by this subchapter and with all general corporate powers incident to its operation as a corporate body~~].

(b) The company is subject to Chapter 15 of this code, other than Article 15.22 of this code. In the event of a conflict between this article and Chapter 15 of this code or another law of this state applicable to a nonlife mutual insurance company, this article controls.

(c) The company [~~fund~~] shall:

- (1) serve as a competitive force in the marketplace;

- (2) guarantee the availability of workers' compensation insurance in this state; and
- (3) serve as an insurer of last resort as provided under Article 5.76-4 of this code.
- (d) ~~(b)~~ Except as otherwise provided by this subsection, the company [fund] is subject to the open meetings law, Chapter 551, Government Code, and the open records law, Chapter 552, Government Code. The board may hold closed meetings to consider and refuse to release information relating to claims, rates, the company's [fund's] underwriting guidelines, and other information that would give advantage to competitors or bidders.
- (e) ~~(e)~~ A decision by the company [fund] to deny, cancel, or refuse to renew a policy or risk insured under Article 5.76-4 of this code is appealable to the board not later than the 30th day after the date on which the affected party received actual notice that the act occurred or that the decision was made. The company [board] shall hear the appeal not later than the 30th day after the date on which the request for hearing is made and shall notify the [fund and the] appellant in writing of the time and place of the hearing not later than the 10th day before the date of the hearing. Not later than the 30th day after the last day of the hearing, the board shall affirm, reverse, or modify the act appealed to the board. A hearing under this subsection does not suspend the operation of any act, ruling, decision, or order of the company [fund], unless the board specifically so orders.
- (f) ~~(d)~~ A decision of the board under this section is subject to review by the commissioner [of insurance] in the manner provided by the administrative procedure law, Chapter 2001, Government Code. The commissioner's review of a decision by the board does not suspend the operation of any act, ruling, decision, or order of the company [fund] unless the commissioner specifically so orders on a showing by an aggrieved party of:
- (1) immediate, irreparable injury, loss, or damage; and
  - (2) probable success on the merits.
- (g) ~~(e)~~ A person aggrieved by the decision of the commissioner may appeal that decision to the district court. Judicial review under this section is governed by the substantial evidence rule.
- (h) ~~(f)~~ ~~The fund is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in effect as provided by that chapter, the fund is abolished September 1, 2007.~~
- ~~(g)~~ In addition to other rights of the company [fund] under this article, the company [fund] has the legal rights of a mutual insurance company operating under Chapter 15 of this code, and of a private person in this state, and has the power to sue in its own name. No procedure ~~[established under this article]~~ is a prerequisite to the exercise of the power by the company [fund] to sue.
- (i) ~~(h)~~ The company [fund] shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the company [fund] during the preceding fiscal year.
- (j) The company may not be dissolved. ~~[The annual report must meet the reporting requirements applicable to financial reporting provided by the General Appropriations Act.]~~

Sec. 3. BOARD OF DIRECTORS. (a) The company [fund] is governed by a board of

directors composed of nine members, all of whom shall be citizens of this state. Five [The] members shall be appointed by the governor with the advice and consent of the senate. The remaining members shall be elected by the company's policyholders~~[, and vacancies shall be filled in the same manner]~~.

- (b) The members of the board of directors serve staggered six-year terms, with the terms of three members expiring July [February] 1 of each odd-numbered year. A member of the board whose term has expired shall continue to serve until the member's replacement is elected by the policyholders or appointed by the governor, as applicable.
- (c) The governor shall fill a vacancy in the appointed directors by appointment with the advice and consent of the senate. A vacancy in the elected directors shall be filled as provided by the company's bylaws. If a vacancy occurs before the date on which the vacating member's term is set to expire, the successor member shall be elected or appointed for a term to expire on the same date as the vacating member's term. ~~[In making appointments to the board, the governor shall attempt to reflect the social, geographic, and economic diversity of the state. To ensure balanced representation, the governor may consider the geographic location of a prospective appointee's domicile and the prospective appointee's experience in business and insurance matters and shall consider those factors in appointing members to fill vacancies on the board. Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.]~~
- (d) A person may not serve as a member of the board if the person, an individual related to the person within the second degree by consanguinity or affinity, or an individual residing in the same household with the person:
  - (1) is registered or licensed under this code or is required to be registered or licensed under this code;
  - (2) is employed by or acts as a consultant to a person registered or licensed under this code or required to be registered or licensed under this code;
  - (3) owns, controls, has a financial interest in, or participates in the management of an organization registered or licensed under this code or required to be registered or licensed under this code;
  - (4) receives a substantial tangible benefit from the company [fund] or the Texas Department of Insurance; or
  - (5) is an officer, employee, or consultant of an association in the field of insurance.
- (e) It is a ground for removal from the board if a member:
  - (1) does not have at the time of appointment the qualifications required by this section;
  - (2) does not maintain during service on the board the qualifications required by this section;
  - (3) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or
  - (4) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.
- (f) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.
- (g) If the president has knowledge that a potential ground for removal exists, the president

shall notify the chairman of the board of the potential ground. If the potential ground for removal involves an appointed board member, the [The] chairman shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the chairman, the president shall notify the next highest officer of the board, who shall notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves a board member elected by the policyholders, the board shall act on the potential ground for removal as provided by the company's bylaws.

- (h) Subsection (d) of this section does not prohibit a person who is only a policyholder or a consumer of insurance or insurance products from serving as a member of the board.
- (i) A person who is ineligible to serve on the board under Subsection (d) of this section may not serve as a member of the board for one year after the date on which the condition that makes the person ineligible ends.
- (j) Each member shall receive fees for service on the board commensurate with industry standards and actual and necessary travel expenses and expenses incurred in the performance of the member's duties as a member.
- (k) The governor shall designate a member of the board as the chairman of the board to serve in that capacity at the pleasure of the governor. The members of the board shall elect annually any other officers the board considers necessary for the performance of its duties. The board may create committees and subcommittees [from their number a vice chairman and a secretary].
- (l) The board shall hold meetings at least once each calendar quarter and at other times at the call of the chairman and at times established in the company's bylaws [by board rule]. Special meetings may be called by any two members of the board on two days notice.
- (m) Five [A majority of the] board members constitutes a quorum.
- (n) The board shall maintain the principal office of the company [fund] in Travis County [Austin], Texas.
- ~~[(o) For cost control purposes and as is determined to be cost effective, as many functions as possible shall be performed by the fund.~~
- ~~[(p) A person may not serve as a member of the board or act as the general counsel to the board or the fund if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of any person or entity other than the fund.~~
- ~~[(q) The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the president and the staff of the fund.~~
- ~~[Sec. 3A. TRAINING PROGRAM FOR BOARD MEMBER. (a) Before a member of the board may assume the member's duties, the member must complete the training program established under this section.~~
- ~~[(b) A training program established under this section shall provide information to the member regarding:~~
- ~~[(1) the enabling legislation that created the fund and the board;~~

- ~~[(2) the programs operated by the fund;~~
- ~~[(3) the role and functions of the fund;~~
- ~~[(4) the current budget for the fund;~~
- ~~[(5) the results of the most recent independent audit of the fund;~~
- ~~[(6) the requirements of:~~
  - ~~[(A) the open meetings law, Chapter 551, Government Code; and~~
  - ~~[(B) the open records law, Chapter 552, Government Code;~~
- ~~[(7) the requirements of the conflict of interest laws and other laws relating to members of the board; and~~
- ~~[(8) any applicable ethics policies adopted by the fund or the Texas Ethics Commission.]~~

Sec. 4. POWERS AND DUTIES OF BOARD OF DIRECTORS ~~[AUTHORITY AND~~

~~PURPOSE].~~ (a) The ~~[According to this article and the plan of operation, the]~~ board has full power, authority, and jurisdiction over the company. The board may perform all acts necessary or convenient in the administration of the company or in connection with the insurance business to be carried on by the company. In this regard, the board is empowered to function in all aspects as a governing body of a domestic mutual insurance company. The board shall ~~[, on behalf of the fund]:~~

- (1) provide for the ~~[acceptance of applications and delivery or issuance for]~~ delivery in this state of workers' compensation insurance and for the transaction of workers' compensation insurance business to the same extent as any other insurance carrier transacting workers' compensation insurance business in this state;
- (2) ~~[enter into and approve contracts;~~
- ~~[(3)]~~ propose rates for workers' compensation insurance issued by the company ~~[fund];~~
- ~~[(4)]~~ appoint and supervise the activities of the president of the fund and other officers and employees;
- ~~[(5)]~~ adopt necessary bylaws and rules for the operation of the fund;
- ~~[(6)]~~ delegate specific responsibilities to the president of the fund;
- ~~[(7)]~~ develop a general plan of operation, in accordance with Section 5 of this article, to assure the orderly management and operation of the fund;] and
- (3) ~~[(8)]~~ exercise any other authority necessary to conduct a workers' compensation insurance business ~~[for the fund].~~
- (b) The company ~~[fund]~~ may not have affiliates, interlocking boards of directors, spinoffs, or subsidiaries that write lines of insurance other than workers' compensation insurance.
- (c) The board shall appoint an internal auditor ~~[in compliance with Chapter 2102, Government Code].~~ The internal auditor serves at the pleasure of the board.
- (d) The board shall appoint a president who shall serve at the pleasure of the board. The president must have proven successful experience as an executive at the general management level in the business of insurance. The president shall receive compensation as set by the board. [If the fund obtains legal services through the use of outside counsel, the attorney general shall annually review the use of outside counsel by the fund to ensure that:
  - ~~[(1) the use of outside counsel does not result in a conflict of interest; and~~
  - ~~[(2) the persons used as outside counsel comply with state and federal policies regarding the treatment of persons who are members of minority groups.]~~

(e) The company [~~board~~] shall provide requested information to appropriate legislative committees in the manner requested by those committees.

Sec. 5. [~~PLAN OF OPERATION. (a) The initial board of directors shall prepare and adopt a plan of operation that is consistent with this article. The plan must provide for the:~~

~~[(1) economic, fair, and nondiscriminatory administration of the fund and its duties;~~

~~[(2) prompt and efficient provision of workers' compensation insurance;~~

~~[(3) establishment of necessary facilities;~~

~~[(4) management of the fund;~~

~~[(5) reasonable and objective underwriting standards; and~~

~~[(6) obtainment of reinsurance.~~

~~[(b) The initial plan of operation is subject to approval by the State Board of Insurance.~~

~~[(c) With consent of the State Board of Insurance, the board may amend the plan of operation to provide for operation of the fund in a manner consistent with this article.~~

~~[Sec. 6. PRESIDENT AND CHIEF EXECUTIVE OFFICER. (a) The board shall appoint a person to serve as president and chief executive officer who serves at the pleasure of the board. The board shall appoint other officers as necessary to manage the fund prudently.~~

~~[(b) To be eligible for appointment as president, an individual must have had at least 10 years of administrative or professional experience and training and experience in the field of insurance.~~

~~[(c) The president shall manage and conduct the affairs of the fund under the general supervision of the board and shall perform duties as provided by this article and as directed by the board.~~

~~[(d) In addition to any other duties provided by this article or by the board, the president shall:~~

~~[(1) hire employees as necessary to conduct the business and carry out the provisions of this article or to perform the duties imposed on the president by this article;~~

~~[(2) receive and approve applications for workers' compensation insurance and issue policies to applicants who are eligible for workers' compensation insurance provided by the fund;~~

~~[(3) negotiate contracts on behalf of the fund;~~

~~[(4) issue renewals of workers' compensation insurance for those who qualify for renewal;~~

~~[(5) process and pay valid claims according to the rules of the board and the appropriate workers' compensation insurance laws;~~

~~[(6) collect premiums for workers' compensation insurance issued or renewed by the fund; and~~

~~[(7) collect and compile statistical information relating to the fund and provide this information to the board.~~

~~[(e) In addition to any other authority provided by this article or by the board, the president shall have full power and authority, in the name of the fund, to:~~

~~[(1) sue and be sued in all of the courts of the state in all actions arising out of any act, deed, matter, or things made, omitted, entered into, done, or suffered in connection with the fund and its administration, management, or conduct of its business and~~

affairs;

- ~~[(2) delegate to any officer of the fund, subject to any conditions prescribed by the president, any of the powers, functions, or duties conferred or imposed on the president under this article in connection with the fund, its administration, management, and conduct of business or related affairs; an officer to whom such a delegation is made may exercise the delegated powers with the same force and effect as the president, subject to approval by the president;~~
- ~~[(3) inspect and audit employers who apply to the fund for issuance of workers' compensation insurance or who seek renewal of that insurance;~~
- ~~[(4) purchase reinsurance from insurance carriers admitted or accredited to reinsure risks in this state;~~
- ~~[(5) cancel or refuse to renew workers' compensation insurance if a risk does not comply with a board-approved plan or any provision of this article;~~
- ~~[(6) with the approval of the board, enter into contracts on behalf of the fund;~~
- ~~[(7) draft guidelines for approval of the board relating to the settlement of claims against the fund; and~~
- ~~[(8) perform any other acts authorized by the board to carry out this article and the rules of the board.~~
- ~~[(f) The president shall develop a career ladder program that addresses opportunities for mobility and advancement for employees within the fund. The program shall require internal posting of all positions concurrently with any public posting.~~
- ~~[(g) The president shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for fund employees must be based on the system established under this subsection.~~
- ~~[(h) The president shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:~~
  - ~~[(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;~~
  - ~~[(2) a comprehensive analysis of the fund workforce that meets federal and state guidelines;~~
  - ~~[(3) procedures by which a determination can be made about the extent of underuse in the fund workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and~~
  - ~~[(4) reasonable methods to appropriately address those areas of underuse.~~
- ~~[(i) A policy statement prepared under Subsection (h) of this section must:~~
  - ~~[(1) cover an annual period;~~
  - ~~[(2) be updated annually;~~
  - ~~[(3) be reviewed annually by the Commission on Human Rights for compliance with Subsection (h)(1); and~~
  - ~~[(4) be filed with the governor's office.~~
- ~~[(j) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (i) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.~~

~~[(k)]~~ The president shall provide to members of the board and to fund employees, as often as necessary, information regarding their qualification for office or employment under this article and their responsibilities under applicable laws relating to standards of conduct for board members or employees.

~~[(l)]~~ In hiring employees for the fund under this article, the president shall ensure that the fund complies with the minority hiring practices guidelines adopted for state agencies and institutions by the General Appropriations Act.

[Sec. 7.] APPLICATIONS. (a) Applications to the company for workers' compensation insurance coverage [~~fund~~] shall be submitted on forms prescribed by the company [~~board~~] and shall be made:

(1) directly by the applicant; or

(2) on behalf of the applicant by a local recording agent.

~~(b)~~ [~~The fund shall adopt such rules as required to provide for the financing of all or part of the premiums by the fund or a person licensed under Chapter 24 of this code. Those rules shall require that the fund receive a minimum initial premium sufficient to cover the administrative costs of issuing and booking the policy in the event of cancellation. Those rules shall not unfairly discriminate against applicants based upon the amount of premium to be paid by the applicant for workers' compensation coverage. Notwithstanding the foregoing, the premium financing rules adopted by the fund may provide that premium financing shall not be offered to any applicant who appears to present an unacceptable credit risk.~~

~~[(c)]~~ If the premium is financed by the fund as provided by Subsection (b) of this section, the payment deferred earns interest payable to the fund at a rate annually determined by the board.

~~[(d)]~~ If an applicant is identified by the company as a credit risk, the company [~~fund~~] may refuse to write insurance coverage if the applicant does not:

(1) pay the total estimated premium and related charges before the policy is issued; or

(2) provide security for payment of the total estimated premium and related charges before the policy is issued.

~~(c)~~ ~~[(e)]~~ If the policy is written through a licensed agent, the company [~~fund~~] shall pay the agent a reasonable commission [~~The commission shall be paid at the time of the initial deposit, based on the annual estimated premium, and shall be adjusted at the final audit.~~].

~~(d)~~ ~~[(f)]~~ Notwithstanding any other provision of this code or another insurance law of this state, the company [~~fund~~] is not required to appoint a local recording agent to act as an agent for the company [~~fund~~]. An agent transacting business with the company [~~fund~~] does so as an agent for the applicant and not as an agent for the company, unless there is an express written agreement between the company and the agent that the agent acts on behalf of the company [~~fund~~].

~~(e)~~ ~~[(g)]~~ Information submitted to the company [~~fund~~] by a licensed agent on behalf of an employer, including a policy expiration date, is the work product of that agent, and the company [~~fund~~] may not use that information in any marketing or direct sales activity. Except as required or permitted by the open records law, Chapter 552, Government Code, the company [~~fund~~] may not provide information obtained from a licensed agent to any other licensed agent. This subsection does

not prevent an employer from designating another licensed agent or the company [~~fund~~] as the agent of record and does not prevent the company [~~fund~~] from using the information submitted to the company [~~fund~~] under this subsection for the purpose of underwriting or fraud investigation. [~~The fund shall adopt reasonable guidelines in the plan of operation to implement this subsection.~~]

Sec. 6 [8]. LIABILITY. Neither a member of the board nor the president or any officer or employee of the company [~~fund~~] is personally liable in the person's private capacity for any act performed or for any contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud, in connection with the administration, management, or conduct of the company [~~fund~~], its business, or other related affairs.

Sec. 7 [9]. RATES. (a) Except as otherwise provided by this subsection, the board shall have full power and authority to propose rates to be charged by the company [~~fund~~] for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the Casualty Actuarial Society or the American Academy of Actuaries to develop and recommend actuarially sound rates. The company [~~fund~~] is subject to the requirements of Article 5.55 of this code and shall include the recommendations of its independent actuary as part of its filing under that article.

(b) Rates shall be set in amounts sufficient, when invested, to:

(1) carry all claims to maturity;

(2) meet the reasonable expenses of conducting the business of the company [~~fund~~]; and

(3) maintain a reasonable surplus.

(c) Notwithstanding any other provision of this code or any other insurance law of this state, the company [~~fund~~] may establish multitiered premium systems to price workers' compensation insurance policies to insureds in the company's [~~fund's~~] competitive programs, as well as to insureds to whom policies are offered by the company [~~fund~~] under Article 5.76-4 of this code. Those multitiered systems shall be filed in accordance with Article 5.55 of this code. The systems may provide for higher or lower premium payments by insureds based on the company's [~~fund's~~] evaluation of the underwriting characteristics of the individual risk and the appropriate premium to be charged for the policy coverages.

Sec. 8 [10]. ACCIDENT PREVENTION. (a) The company [~~fund~~] may make and enforce requirements [~~rules~~] for the prevention of injuries to employees of its policyholders or applicants for insurance under this article. For this purpose, representatives of the company [~~fund~~], representatives of the commission, or representatives of the department [~~Texas Department of Insurance~~] on reasonable notice shall be granted free access to the premises of each policyholder or applicant during regular working hours.

(b) Failure or refusal by any such policyholder or applicant to comply with any requirement [~~rule~~] prescribed by the company [~~fund~~] for the prevention of injuries, or failure or refusal to make full disclosure of all information pertinent to the insuring or servicing of the policyholder or applicant, constitutes sufficient grounds for the company [~~fund~~] to cancel a policy or deny an application for insurance.

(c) A policyholder in the company [~~fund~~] who is insured under Article 5.76-4 of this code

shall obtain a safety consultation if the policyholder:

- (1) has a Texas experience modifier greater than 1.25;
  - (2) has a national experience modifier greater than 1.25 and estimated premium allocable to Texas of \$2,500 or more; or
  - (3) does not have an experience modifier but has had a loss ratio greater than 0.70 in at least two of the three most recent policy years for which information is available.
- (d) A policyholder in the company [~~fund~~] who is insured under Article 5.76-4 of this code shall obtain a safety consultation as required by the company [~~fund~~] if the policyholder:
- (1) has been in business for less than three years; and
  - (2) meets criteria for a safety consultation established by the company [~~fund~~], which may include the number and classification of employees, the policyholder's industry, and the policyholder's previous workers' compensation experience in this state or another jurisdiction.
- (e) The policyholder shall obtain the safety consultation not later than the 30th day after the effective date of the policy and shall obtain the safety consultation from the division of workers' health and safety [~~division~~] of the commission, the company [~~fund~~], or another professional source approved for that purpose by the division of workers' health and safety [~~division~~]. The safety consultant shall file a written report with the commission and the policyholder setting out any hazardous conditions or practices identified by the safety consultation.
- (f) The policyholder and the consultant shall develop a specific accident prevention plan that addresses the hazards identified by the consultant. The safety consultant may approve an existing accident prevention plan. The policyholder shall comply with the accident prevention plan.
- (g) The division of workers' health and safety of the commission [~~division~~] may investigate accidents occurring at the work sites of a policyholder for whom a plan has been developed under Subsection (f) of this section, and the division may otherwise monitor the implementation of the accident prevention plan as it finds necessary.
- (h) In accordance with rules adopted by the commission, not earlier than 90 days or later than six months after the development of an accident prevention plan under Subsection (f) of this section, the division of workers' health and safety [~~division~~] of the commission shall conduct a follow-up inspection of the policyholder's premises. The commission may require the participation of the safety consultant who performed the initial consultation and developed the safety plan. If the [~~health and safety~~] division [~~of the commission~~] determines that the policyholder has complied with the terms of the accident prevention plan or has implemented other accepted corrective measures, the [~~health and safety~~] division shall so certify. If a policyholder fails or refuses to implement the accident prevention plan or other suitable hazard abatement measures, the policyholder may elect to cancel coverage not later than the 30th day after the date of the division determination. If the policyholder does not elect to cancel, the company [~~fund~~] may cancel the coverage or the commission may assess an administrative penalty not to exceed \$5,000. Each day of noncompliance constitutes a separate violation. Penalties collected under this section shall be deposited in the general revenue

fund to the credit of the commission or reappropriated to the commission to offset the costs of implementing and administering this section.

- (i) In assessing an administrative penalty, the commission may consider any matter that justice may require and shall consider:
  - (1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
  - (2) the history and extent of previous administrative violations;
  - (3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
  - (4) any economic benefit resulting from the prohibited act; and
  - (5) the penalty necessary to deter future violations.
- (j) The procedures established under this section must be followed each year the policyholder meets the qualifications established under Subsection (c) of this section and is insured through Article 5.76-4 of this code.
- (k) The commission shall charge the policyholder for the reasonable cost of services provided under Subsections (e), (f), and (h) of this section. The fees for those services shall be set at a cost-reimbursement level including a reasonable allocation of the commission's administrative costs.
- (l) The compliance and practices division of the commission shall enforce compliance with this section through the administrative violation proceedings under Chapter 415, Labor Code.

Sec. 9 [44]. CONTROL OF FRAUD. (a) The company [~~fund~~] shall develop and implement a program to identify and investigate fraud and violations of this code relating to workers' compensation insurance by an applicant, policyholder, claimant, agent, insurer, health care provider, or other person. The company [~~fund~~] shall cooperate [~~contract~~] with the commission to compile and maintain information necessary to detect practices or patterns of conduct that violate this code relating to the workers' compensation insurance or Subtitle A, Title 5, Labor Code (the Texas Workers' Compensation Act).

- (b) The company [~~fund~~] may conduct investigations of cases of suspected fraud and violations of this code relating to workers' compensation insurance. The company may [~~fund shall~~]:
  - (1) coordinate its investigations with those conducted by the commission to avoid duplication of efforts; and
  - (2) refer cases that are not otherwise resolved by the company [~~fund~~] to the commission to:
    - (A) perform any further investigations that are necessary under the circumstances;
    - (B) conduct administrative violation proceedings; and
    - (C) assess and collect penalties and restitution.
- (c) The company [~~fund~~] may enter into [~~interdepartmental~~] funding agreements with local prosecutors for the prosecution of offenses against the company [~~fund~~].
- (d) Restitution collected under Subsection (b) of this section shall be paid [~~deposited~~] to the company [~~fund~~].
- (e) Penalties collected under Subsection (b) of this section shall be deposited in the general revenue fund to the credit of the commission and shall be appropriated to the commission to offset the costs of this program.

(f) The board, company [~~fund~~], and employees of the company [~~fund~~] are not liable in a civil action for any action made in good faith in the execution of duties under this section including the identification and referral of a person for investigation and prosecution for a possible administrative violation or criminal offense.

Sec. 10 [~~11A~~]. INVESTIGATION FILES CONFIDENTIAL. (a) Information maintained in the investigation files of the company [~~fund~~] is confidential and may not be disclosed except:

- (1) in a criminal proceeding;
  - (2) in a hearing conducted by the [~~fund or the~~] commission;
  - (3) on a judicial determination of good cause; or
  - (4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.
- (b) Company [~~Fund~~] investigation files are not open records for purposes of the open records law, Chapter 552, Government Code.
- (c) Information in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information.
- (d) For purposes of this section, "investigation file" means any information compiled or maintained by the company [~~fund~~] with respect to a company [~~fund~~] investigation authorized by law.

Sec. 11 [~~12~~]. PAYMENT OF TAXES AND FEES; GUARANTY ASSOCIATION. (a) The company [~~fund~~] shall pay premium taxes, maintenance taxes, and the maintenance tax surcharge established under Article 5.76-5 of this code in the same manner as a domestic mutual [~~an~~] insurance carrier authorized by the department [~~Texas Department of Insurance~~] to write workers' compensation insurance in this state.

(b) The company [~~fund~~] shall pay taxes and fees or any payments due in lieu of taxes in the same manner as a domestic mutual [~~an~~] insurance carrier authorized and admitted by the department [~~Texas Department of Insurance~~] to engage in the business of [~~do~~] insurance [~~business~~] in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(c) The company [~~fund~~] is a member of and is protected by the Texas Property and Casualty Insurance Guaranty Association. The company [~~fund~~] is subject to assessment under the Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code).

(d) Notwithstanding any other provision of this section, the company is only liable for assessments by the Texas Property and Casualty Insurance Guaranty Association regarding, and that association, with respect to an insolvency of the company, is only liable for, a claim with a date of injury that occurs on or after January 1, 2000.

Sec. 12 [~~13~~]. FINANCIAL ADMINISTRATION; NO STATE LIABILITY. (a) All revenues, monies, and assets of the company belong solely to the company and are governed by the laws applicable to domestic mutual insurance companies. The State of Texas covenants with the policyholders of the company, persons receiving workers' compensation benefits, and the company's creditors that the

state will not borrow, appropriate, or direct payments from those revenues, monies, and/or assets for any purpose. The state has no liability to or responsibility to the policyholders, persons receiving workers' compensation benefits, or the creditors of the company if the company is placed in conservatorship or receivership, or becomes insolvent [~~Revenues of the fund consist of:~~

~~[(1) premiums paid by employers for workers' compensation insurance from the fund;~~

~~[(2) investments and money earned from investments of the fund;~~

~~[(3) money received from the issuance and sale of bonds under Article 5.76-5 of this code; and~~

~~[(4) any other money received by the fund].~~

~~(b) [Administrative expenses of the fund shall be paid from the fund at the direction of the board.~~

~~[(c) Money in the fund shall be paid from the fund, without legislative appropriation, on vouchers approved by the board. That money shall be held exclusively for the purposes stated in this article and may not be used or appropriated for any other purpose.~~

~~[(d) Money in the fund shall be invested, subject to a policy developed by the board and approved by the comptroller commissioner, in the types of investments authorized by law for an insurer authorized to write workers' compensation insurance coverage in this state.~~

~~[(e) The company [~~fund~~] shall establish and maintain reserves for losses on an actuarially sound basis in accordance with Article 5.61 of this code.~~

~~(c) [(f)] The company [~~fund~~] must maintain a ratio of net written premiums on policies written after reinsurance to surplus of not more than [:~~

~~[(1) 3.1 to one, for the period beginning on September 1, 1997 and extending through August 31, 1998; and~~

~~[(2) 3.0 to one [on and after September 1, 1998].~~

~~[(g) Not more than once in any calendar year, the board may use up to 20 percent of any surplus that exceeds the ratio specified in Subsection (f) of this section to assist in prepaying or retiring before maturity the bonds issued pursuant to Article 5.76-5, Insurance Code.]~~

~~(d) [(h)] The company [~~fund~~] may pay cash dividends or allow a credit on renewal premium for policyholders [~~each policyholder~~] insured with the company [~~fund~~] other than a policyholder insured under Article 5.76-4 of this code, in accordance with criteria approved by the board, which may consider the policyholder's safety record and performance. A dividend or credit requires prior approval of the department.~~

~~(e) [(i)] The company [~~fund~~] shall file annual statements with the department and the commission in the same manner as required of other workers' compensation insurance carriers, and the commissioner shall include a report on the company's [~~fund's~~] condition in the commissioner's annual report under Section 32.021 [~~Article 1.25~~] of this code.~~

~~(f) [(j)] If the fund incurs a deficit for any reason, no other insurer is liable for or subject to an assessment for that deficit.~~

~~[(4)]~~ Notwithstanding any other law, the company [~~fund~~] may issue grants to the commission [~~Texas Workers' Compensation Commission~~] as provided by Section 402.062, Labor Code. Funding for a grant under this subsection may come only from the company's surplus. The amount of the grants may [~~grant is~~] not [~~to~~] exceed \$2.2 million for the four-year period of September 1, 1999, through September 1, 2003. This subsection expires September 1, 2003.

Sec. 13 [~~14~~]. REPORT TO BOARD. The president shall make periodic reports to the board with regard to the status of the company [~~fund~~] and its investments.

Sec. 14 [~~15~~]. POLICY FORMS. The company [~~fund~~] shall use the uniform policy and standard policy forms prescribed by the department [~~State Board of Insurance~~] under Articles 5.56 and 5.57 of this code.

Sec. 15 [~~16~~]. CANCELLATION AND NONRENEWAL. The company [~~fund~~] may cancel or refuse to renew coverage on a policyholder as provided by Section 406.008, Labor Code.

Sec. 16 [~~17~~]. ANNUAL REPORT; OTHER REPORTS. (a) The board shall publish an independently audited report analyzing the company's [~~fund's~~] activities and fiscal condition during the preceding fiscal year and shall file the report with the department [~~Texas Department of Insurance~~]. The board shall file the audited report with the department [~~Texas Department of Insurance~~] for submission simultaneously with its annual financial report. [~~The board's annual financial report shall be submitted by the Texas Department of Insurance by the date provided for in the General Appropriations Act.~~]

(b) The company [~~fund~~] shall file with the department [~~State Board of Insurance~~] and the commission all reports required of other workers' compensation insurers.

Sec. 17 [~~17A~~]. ADDITIONAL AUDIT REQUIREMENTS; INTERNAL AUDIT REPORT.

(a) [~~The state auditor shall periodically identify issues related to the operational efficiency, effectiveness, and statutory compliance of the fund. The fund shall include all issues identified by the state auditor in the fund's annual independent and internal audit plans.~~]

~~[(b)]~~ Each person who conducts an independent audit or internal audit of the company [~~fund~~] shall send a copy of the audit report prepared by the person to the office of the state auditor. The state auditor shall summarize the audit reports presented under this subsection in an annual memorandum to the Legislative Audit Committee.

~~(b)~~ ~~[(e)]~~ The internal auditor appointed under Section 4 of this article shall submit the internal audit report directly to the board and shall provide a summary of the report to the governor, lieutenant governor, and speaker of the house of representatives. The internal auditor's summary report must include an analysis of the use by the company [~~fund~~] of historically underutilized businesses. For purposes of this subsection, "historically underutilized business" has the meaning assigned by Section 2161.001, Government Code [~~1.02, State Purchasing and General Services Commission Act (Article 601b, Vernon's Texas Civil Statutes)~~].

Sec. 18. EXAMINATION OF COMPANY [~~FUND~~]. (a) The department [~~State Board of Insurance~~] shall conduct an examination of the company [~~fund~~] in the manner and under the conditions provided by Articles 1.15 through 1.19 of this code for the examination of insurance carriers.

- (b) The company [~~board~~] shall pay the costs of the examination [~~from the fund~~].
- (c) The company [~~fund~~] is subject to all provisions of this code and to the jurisdiction of the commissioner [~~of insurance~~] and the department [~~State Board of Insurance~~] in the same manner as private insurance carriers.

Sec. 19. [~~ASSISTANCE FROM INSURANCE DEPARTMENT. On the request of the board, the Texas Department of Insurance shall provide technical assistance to the board and the president as reasonably necessary to implement this article.~~

[~~Sec. 19A.~~] PUBLIC INFORMATION; ACCESSIBILITY. (a) The company [~~fund~~] shall prepare information of public interest describing the functions of the company [~~fund~~] and the procedures by which complaints are filed with and resolved by the company [~~fund~~]. The company [~~fund~~] shall make the information available to the public and appropriate state agencies.

(b) The company [~~board~~] shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the company [~~fund~~] for the purpose of directing complaints to the company [~~fund~~]. The company [~~board~~] may provide for that notification:

- (1) by a supplement or endorsement to a written policy;
- (2) on a sign prominently displayed in the place of business of each regional office of the company [~~fund~~]; or
- (3) in a bill for services provided by the company [~~fund~~].

(c) The company [~~fund~~] shall comply with federal and state laws related to program and facility accessibility. The president shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the company's [~~fund's~~] programs and services.

(d) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the company [~~fund~~].

Sec. 20 [~~19B~~]. COMPLAINT RESOLUTION. (a) The company [~~fund~~] shall keep information about each written complaint submitted to the company [~~fund~~]. The information shall include:

- (1) the date the complaint is received;
- (2) the name of the complainant;
- (3) the subject matter of the complaint;
- (4) a record of all persons contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) for complaints for which the company [~~fund~~] took no action, an explanation of the reason the complaint was closed without action.

(b) For each written complaint that the company [~~fund~~] has authority to resolve, the company [~~fund~~] shall provide to the person filing the complaint and the persons or entities complained about the company's [~~fund's~~] policies and procedures pertaining to complaint investigation and resolution. The company [~~fund~~], at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation.

[~~Sec. 20.~~] FUND SOLVENCY. (a) In addition to other regulatory authority granted the

~~commissioner of insurance, if the commissioner finds that the fund does not own assets at least equal to all liabilities and required reserves, together with the minimum basic surplus required under this article, or that the condition of the fund is such that continuing operation of the fund is hazardous to the public or to the policyholders of the fund, the commissioner shall:~~

- ~~[(1) notify the president and board of the finding; and~~
  - ~~[(2) furnish the fund with a written list of the commissioner's recommendations to abate the problems.~~
  - ~~[(b) If the fund fails to comply with the recommendations of the commissioner not later than the 60th day after the date of the recommendations, the commissioner shall notify the governor, the lieutenant governor, and the speaker of the house of representatives of the recommendations with which the fund is not in compliance, together with solutions and estimations of all fiscal implications.]~~
- Sec. 21. APPLICABILITY OF OTHER STATUTES; COMPANY NOT STATE AGENCY.
- (a) The company [~~fund~~] is an insurance company for purposes of Subtitle A, Title 5, Labor Code (the Texas Workers' Compensation Act).
  - (b) All regulatory authority granted to the commissioner [~~of insurance~~] relating to a [~~stock~~ ~~or~~] mutual insurance company is applicable to the company [~~fund~~].
  - (c) The company [~~Unless specifically defined as a state agency in a specific statute, the fund~~] is not a state agency.

## ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Article 5.76-4, Insurance Code, is amended to read as follows:

- Art. 5.76-4. COMPANY [~~FUND~~] AS INSURER OF LAST RESORT. (a) The Texas Mutual [~~Workers' Compensation~~] Insurance Company [~~Fund~~] may not, except as otherwise provided by this article and by Section 15 [~~16~~], Article 5.76-3 of this code, refuse to insure any risk that tenders the necessary premium and any applicable accident prevention service fees.
- (b) If an applicant to the company [~~fund~~] would be rejected for workers' compensation insurance under the company's [~~fund's~~] underwriting standards, the risk may not be rejected, but shall be insured at a higher premium as provided by the company's requirements [~~fund's rules~~]. The risk may be required to meet other conditions considered necessary to protect the company's [~~fund's~~] interests.
  - (c) The company [~~fund~~] shall develop statistical and other information as necessary to allow the company [~~fund~~] to distinguish between its writings in the voluntary market and its writings as the insurer of last resort.
  - (d) The company [~~fund~~] shall decline to insure any risk if insuring that risk would cause the company [~~fund~~] to exceed the premium-to-surplus ratios established by Article 5.76-3 of this code or if the risk is not in good faith entitled to insurance through the company [~~fund~~]. For purposes of this subsection only, "good faith" means honesty in fact in any conduct or transaction.
  - (e) The department [~~Texas Department of Insurance~~] shall develop and publish classification relativities specifically designed for the risks insured under this article.
  - (f) The company [~~fund~~] and the Texas workers' compensation insurance facility may exchange information relating to actual or suspected fraud by any applicant, policyholder, claimant, agent, or insurer with respect to workers' compensation

insurance policies issued by, or applications for coverage submitted to, the facility or the company [~~fund~~]. That information may be kept confidential and is not subject to disclosure under the open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

- (g) If the company [~~fund~~] suspects fraud or identifies conditions that may result in acts of fraud, the company [~~fund~~] may require an applicant for workers' compensation insurance coverage who is identified as a risk for purposes of Subsection (b) of this article to insure all business entities that are commonly owned or commonly controlled by the applicant.
- (h) The company [~~fund~~] shall report the statistical and other information developed under Subsection (c) of this article on request to the [~~Texas Workers' Compensation~~] Research and Oversight Council on Workers' Compensation [~~Center and the legislative oversight committee on workers' compensation~~], or to any successor entity for research and oversight of the workers' compensation system of this state.

SECTION 2.02. Article 5.76-5, Insurance Code, is amended by adding Section 15 to read as follows:

Sec. 15. APPLICATION TO TEXAS MUTUAL INSURANCE COMPANY. (a)

Notwithstanding any other provision of this article, effective September 1, 2001:

(1) the fund is operated as the Texas Mutual Insurance Company as provided by Article 5.76-3 of this code; and

(2) additional bonds may not be issued under this article.

(b) The Texas Mutual Insurance Company may exercise any power, and is liable to perform any duty, imposed on the fund as this article existed immediately before September 1, 2001.

SECTION 2.03. Section 1(2), Article 5.55, Insurance Code, is amended to read as follows:

(2) "Insurer" means a person authorized and admitted by the Texas Department of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance. The term includes the Texas Mutual [~~Workers' Compensation~~] Insurance Company [~~Fund~~].

SECTION 2.04. Article 5.59, Insurance Code, is amended to read as follows:

Art. 5.59. MAY REQUIRE SWORN STATEMENTS. The department [~~Board~~] may require sworn statements from any insurance company, including [~~or~~] the Texas Mutual [~~Workers' Compensation~~] Insurance Company, [~~Fund~~] showing the payroll reported to the company [~~it~~] and incurred losses by classifications and such other information which in the judgment of the department [~~Board~~] may be necessary to carry out its duties. The department [~~Board~~] shall prescribe the necessary forms for such statements and reports, having due regard to the methods and forms in use in other states for similar purpose in order that uniformity of statistics may not be disturbed.

SECTION 2.05. Article 5.60(c), Insurance Code, is amended to read as follows:

(c) This subchapter may not be construed to prohibit any stock company, mutual company, including the Texas Mutual Insurance Company, reciprocal or interinsurance exchange, [~~the Texas Workers' Compensation Insurance Fund,~~] or Lloyd's plan [~~association~~] from issuing participating policies; however, a dividend to

policyholders under Subtitle A, Title 5, Labor Code, [the Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes)] may not take effect until approved by the department [Board]. Such a dividend may not be approved until adequate reserves have been provided, those reserves to be computed on the same basis for all classes of companies operating under this subchapter.

SECTION 2.06. Article 5.65C(d), Insurance Code, is amended to read as follows:

- (d) If a policyholder commits an administrative violation under this article and obtains workers' compensation insurance coverage at a premium less than the premium that would have been charged had the policyholder not committed the administrative violation, the policyholder is liable to the insurer for the difference between the premium due and the premium actually charged, plus reasonable interest and reasonable attorney fees. For the purposes of this subsection, "insurer" includes the [~~Texas workers' compensation insurance facility and the~~] Texas Mutual [Workers' Compensation] Insurance Company [Fund].

SECTION 2.07. Section 3(b), Article 21.28-C, Insurance Code, is amended to read as follows:

- (b) This Act applies to insurance written through the Texas Mutual [Workers' Compensation] Insurance Company [Fund] only as provided by this subsection. The application of this article to the Texas Mutual [Workers' Compensation] Insurance Company [Fund] is on a prospective basis on and after January 1, 2000. That company [fund] is only liable for assessments for a claim with a date of injury that occurs on or after January 1, 2000. The association, with respect to an insolvency of the company [fund], is only liable for a claim with a date of injury that occurs on or after January 1, 2000.

SECTION 2.08. Section 402.062(b), Labor Code, is amended to read as follows:

- (b) Notwithstanding Chapter 575, Government Code, the commission may accept a grant paid by [~~from~~] the Texas Mutual [Workers' Compensation] Insurance Company [Fund] established under Article 5.76-3, Insurance Code, to implement specific steps to control and lower medical costs in the workers' compensation system and to ensure the delivery of quality medical care. The commission must publish the name of the grantor and the purpose and conditions of the grant in the Texas Register and provide for a 20-day public comment period before the commission may accept the grant. The commission shall acknowledge acceptance of the grant at a public meeting. The minutes of the public meeting must include the name of the grantor, a description of the grant, and a general statement of the purposes for which the grant will be used.

SECTION 2.09. Section 404.002(b), Labor Code, is amended to read as follows:

- (b) The council shall conduct professional studies and research related to:
- (1) the delivery of benefits;
  - (2) litigation and controversy related to workers' compensation;
  - (3) insurance rates and rate-making procedures;
  - (4) rehabilitation and reemployment of injured workers;
  - (5) workplace health and safety issues;
  - (6) the quality and cost of medical benefits;

- (7) the Texas Mutual [~~Workers' Compensation~~] Insurance Company [~~Fund~~] and the impact of that company [~~fund~~] on the workers' compensation system; and
- (8) other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system.

SECTION 2.10. Section 404.007(a), Labor Code, is amended to read as follows:

(a) The board shall:

- (1) approve the operating budget of the council;
- (2) adopt rules for the operations of the board and the council;
- (3) conduct professional studies and research on all matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system;
- (4) monitor the cost of income benefits under this subtitle, with emphasis on the availability and cost of supplemental income benefits;
- (5) monitor the performance and operation of the Texas Mutual [~~Workers' Compensation~~] Insurance Company [~~Fund~~], with emphasis on the insurer of last resort program;
- (6) hold regular public hearings and receive testimony and reports from:
  - (A) the commission;
  - (B) the Texas Mutual [~~Workers' Compensation~~] Insurance Company [~~Fund~~];
  - (C) the Texas Department of Insurance;
  - (D) the State Office of Risk Management; and
  - (E) any other public or private entity that is involved in the workers' compensation system;
- (7) receive information about workers' compensation rules and operations of an entity listed in Subdivision (6); and
- (8) review specific recommendations for legislation relating to the Texas Workers' Compensation Act formally proposed by an entity listed in Subdivision (6).

SECTION 2.11. Section 404.010(a), Labor Code, is amended to read as follows:

- (a) As required to fulfill the objectives of the council, the council is entitled to access to the files and records of:
  - (1) the commission;
  - (2) the Texas Workforce Commission;
  - (3) the Texas Department of Insurance;
  - (4) the Texas Department of Human Services;
  - (5) the Texas Mutual [~~Workers' Compensation~~] Insurance Company [~~Fund~~]; and
  - (6) other state agencies.

SECTION 2.12. Section 418.002(c), Labor Code, is amended to read as follows:

- (c) The court may order a person to pay restitution to an insurance company, including [~~the Texas workers' compensation insurance facility, or~~] the Texas Mutual [~~Workers' Compensation~~] Insurance Company, [~~Fund~~] if the person commits an offense under this section.

### ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.01. GENERAL TRANSITION. (a) The Texas Mutual Insurance Company may exercise all the rights, privileges, powers, and authority of any other mutual insurance company organized to transact workers' compensation insurance business in this state, subject to the requirements of Article 5.76-3, Insurance Code, as amended by this Act. On the effective date of this Act:

- (1) the company is considered to be a continuation of the Texas Workers' Compensation

Insurance Fund; and

- (2) the company is vested with all property of that fund.
- (b) The Texas Mutual Insurance Company may enforce all contract and statutory rights of the Texas Workers' Compensation Insurance Fund.

SECTION 3.02. ASSETS AND LIABILITIES. (a) Each debt, claim, and cause of action of the Texas Workers' Compensation Insurance Fund, and each property right, privilege, franchise, or other interest of the Texas Workers' Compensation Insurance Fund, remains the property of the Texas Mutual Insurance Company.

- (b) The rights of all policyholders and creditors and the standing of all claims under the Texas Workers' Compensation Insurance Fund shall be preserved unimpaired under the Texas Mutual Insurance Company.
- (c) Each debt, liability, and duty of the Texas Workers' Compensation Insurance Fund becomes a debt, liability, or duty of the Texas Mutual Insurance Company and may be enforced against the Texas Mutual Insurance Company as if it were incurred or contracted by the company.

SECTION 3.03. CAUSES OF ACTION. A cause of action or similar proceeding to which the Texas Workers' Compensation Insurance Fund was a party that is pending on the effective date of this Act:

- (1) is not affected by the establishment of the Texas Mutual Insurance Company under this Act;
- (2) may be continued to be prosecuted by or against the company; and
- (3) continues to be governed by and conducted under Article 5.76-3 and Article 5.76-4, Insurance Code, as applicable, as those articles existed before the effective date of this Act, and the applicable bylaws, rules, and regulations of the Texas Workers' Compensation Insurance Fund, as amended by the Texas Mutual Insurance Company.

SECTION 3.04. INITIAL BOARD OF DIRECTORS. (a) The members of the board of directors of the Texas Workers' Compensation Insurance Fund who are serving on the effective date of this Act shall serve as the initial board of directors of the Texas Mutual Insurance Company. Board members who are qualified to serve on the effective date of this Act are not disqualified by the amendments to Section 3(d), Article 5.76-3, Insurance Code, and may serve out their initial terms. The terms of the initial board members are extended from February 1 to July 1 of their respective expiring years, subject to Section 3, Article 5.76-3, Insurance Code, as amended by this Act, regarding election of members.

- (b) Before July 1, 2002, the company's initial board of directors shall draw lots to determine which four positions on the board shall be converted to elected board positions. The drawing by lot shall be conducted in a manner to ensure that not more than two board positions appointed to terms expiring in the same year will be converted to elected positions.
- (c) On or before July 1, 2002, the company shall hold its first meeting of the policyholders. At that meeting the policyholders shall elect four directors. The method of election shall be specified in the company's bylaws.
- (d) The remaining five directors from the initial board of directors shall constitute the appointed directors.

(e) The bylaws and board policies of the fund on the effective date of this Act become the bylaws and board policies of the company until amended or revised by the company's board.

SECTION 3.05. INITIAL RATES. The premium rates on file with the Texas Department of Insurance on the effective date of this Act for the Texas Workers' Compensation Insurance Fund are the initial premium rates for the Texas Mutual Insurance Company.

SECTION 3.06. EFFECTIVE DATE. This Act takes effect September 1, 2001.

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 3458 was passed by the House on May 1, 2001, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 3458 on May 25, 2001, by a non-record vote.

---

Chief Clerk of the House

I certify that H.B. No. 3458 was passed by the Senate, with amendments, on May 22, 2001, by the following vote: Yeas 30, Nays 0, 1 present, not voting.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

---

Governor

## **Appendix EE**

# Actuarial Presentation to The Task Force on the Privatization of CompSource Oklahoma

October 7, 2009

Presented by:  
E. James Stergiou,  
FCAS, MAAA



# WHAT DOES IT COST TO PAY \$1 OF LOSS?

	<u>CSO/SIF</u>	<u>AR Pools</u>
Assumed Loss	\$1.000	\$1.000
Credit For Investment Income	.15	?
		(0 to .15)
Present Value of Loss	.85	1.000 to .85
Expenses	17% Now (max to 20%)	35% (35% to 40%)
Total Premium Cost (Appx)	1.024 to 1.063	1.43 to 1.30

**Savings of CSO From APR 20% to 30% or approximately \$15 to \$20 Million Dollars\***

**Breakeven Loss Ratio**

95% to 98%

77% to 70%

\* Assumes "residual market" in Oklahoma is 10% of \$750 M or about \$75 Million Dollars

## LPT ISSUES

### Issues on Loss Portfolio Transfer

- a) Interest Rate Assumed and Implied
- b) Payout Pattern Assumed and Implied
- c) Financial Responsibility of Assuming Carrier

#### 1. If All Reserves Were Transferred

\$900 Million = Undiscounted Reserves (Appx)

A "Fair Price" would be

- a) \$780 million (Disc'd Reserves at 5%),
- b) \$732 million (Disc'd Reserves at 7%), and
- c) \$828 (Disc'd Reserves at the "Risk Free" Rate of Return at 3%)

#### 2. If Case Reserves Only were Transferred

\$450 Million = Undiscounted (Appx)

A "Fair Price" would be

- a) \$390 million (Disc'd at 5%),
- b) \$366 million (Disc'd at 7%), and
- c) \$414 million (Disc'd at the "Risk Free Rate" of 3%)

Note that CSO has averaged a 7% annual rate of return since 1991, and 5% annually, since 2000

# CSO BALANCE SHEET

	<u>NOW (8/09)</u>	<u>AFTER LPT (At 3%)</u>	
	<u>Now (8/09)</u>	(a) <u>All Reserves</u>	(b) <u>Case Only</u>
<b><u>ASSETS</u></b>			
Cash & Investments	1055	227	641
Other	156	156	156
<b>Total</b>	<u>1211</u>	<u>383</u>	<u>797</u>
<b><u>LIABILITIES</u></b>			
Loss Reserves	912	0	450
Other	101	101	101
<b>Total</b>	<u>1013</u>	<u>101</u>	<u>551</u>
<b>Surplus</b>	<u>198</u>	<u>282</u>	<u>246</u>

## **ISSUES**

**CSO Loss Development Factors imply that its claims are generally:**

- a) reserved adequately, early on**
- b) paid out expeditiously**
- c) more severe**

### **Conclusion:**

**LDFs for CSO are comparable to those of the industry.**

## ISSUES

### **Investment Income is Dependent on**

- a) Rates of Return on Assets (averaged 7.4% from 1991-08; 5.0% since 2000) – assumed to be 5% to 7% now.
- b) Payout Patterns, which are comparable with those of industry.
- c) CSO Present Values Losses at about 85¢ on the dollar for ratemaking purposes.

## **ISSUES**

**CSO's Premiums, and Loss Ratios, have varied dramatically over the years, due to its market share.**

**CSO's Financials are in Excellent condition, with regard to**

- a) reserve adequacy**
- b) liquidity**
- c) assets/surplus considerations**

## Display of Loss Experience Since 1980 and Market Penetration as Expressed by Earned Premium

<u>Year</u>	<u>Proj. Ultimate Losses</u>	<u>Earned Premium</u>	<u>Loss Ratio</u>
2008	265,705	261,898	101.45%
2007	253,318	268,338	94.40%
2006	255,178	289,983	88.00%
2005	240,830	280,872	85.74%
2004	261,681	254,307	102.90%
2003	228,332	219,807	103.88%
2002	197,312	176,719	111.65%
2001	161,075	127,739	126.10%
2000	109,743	91,307	120.19%
1999	109,969	85,239	129.01%
1998	90,615	93,845	96.56%
1997	109,651	136,433	80.37%
1996	161,549	205,339	78.67%
1995	239,335	265,403	90.18%
1994	281,907	289,920	97.24%
1993	271,676	254,202	106.87%
1992	230,783	183,159	126.00%
1991	199,146	133,466	149.21%
1990	159,631	107,630	148.31%
1989	123,591	118,558	104.25%
1988	101,939	107,670	94.68%
1987	86,787	101,346	85.63%
1986	79,129	89,343	88.57%
1985	63,071	52,330	120.53%
1984	51,183	47,909	106.83%
1983	49,488	47,076	105.12%
1982	40,405	54,686	73.89%
1981	39,402	56,557	69.67%
1980	44,261	56,633	78.15%
<b>Last 5</b>	1,276,712	1,355,398	94.19%
<b>Last 10</b>	2,083,144	2,056,209	101.31%
<b>Last 15</b>	2,966,201	3,047,149	97.34%
<b>All</b>	4,506,693	4,457,714	101.10%

## **Appendix FF**



The Source for Workers' Compensation Insurance

October 6, 2009

Task Force Members  
c/o Senator Cliff Aldridge, Co-Chair  
c/o Representative Dan Sullivan, Co-Chair  
Task Force on the Privatization of CompSource Oklahoma  
State Capitol Building  
Oklahoma City, OK 73105

Dear Senator Aldridge, Representative Sullivan, and Task Force Members:

Pursuant to the directive in House Bill 1963 § 1(H)(5), I write to provide the task force with information relevant to the impact of privatization and the most appropriate way to accommodate current CompSource Oklahoma employees when making recommendations. CompSource Oklahoma has over three hundred fifty employees providing a great service to the employers of Oklahoma. I am proud of our employees and the feedback I receive regarding them from our policyholders and their employees, medical providers, and others in the community.

As shown by the fact that our average length of service is ten years, our employees have an outstanding depth of workers' compensation insurance knowledge and offer a superior level of customer service to our customers. We operate in an exceptionally lean and efficient manner. Our customers appreciate the care given by our employees in the services we provide. Our employees are loyal and proud to serve the employers of Oklahoma, which is demonstrated by their length of service.

You may not be aware of the level of community support provided by CompSource Oklahoma employees. Our employees are dedicated to community service for the citizens of Oklahoma. Since 2000, CompSource Oklahoma employees have donated \$395,166.43 to the United Way through the State Charitable Campaign. Additionally, CompSource Oklahoma employees collected over 20,000 pounds of food for the Regional Food Bank Annual Food Drive over the last five years. CompSource Oklahoma employees have also participated in blood drives with the Oklahoma Blood Institute.

CompSource Oklahoma employees also provide a financial benefit to Oklahoma. All of our employees are in Oklahoma, pay their taxes in Oklahoma and spend the bulk of their wages in Oklahoma. CompSource Oklahoma paid wages and salaries of \$16,580,969.54 in fiscal year 2009. All of CompSource's offices are in Oklahoma.

To assist the task force in determining how to accommodate current CompSource Oklahoma employees, I offer the attached information concerning our employees. Throughout this process, it is critical that the task force consider the employees are not statistics, but Oklahoma working men and women, and that any recommendations made will have an impact on our employees and their families. I ask that you please keep this in mind when considering any recommendation that could adversely impact these Oklahoma families, particularly in the current economic climate.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Clark", is written over a horizontal line.

Jason Clark  
President/CEO  
CompSource Oklahoma

cc: Arnella Karges



The Source for Workers' Compensation Insurance

### Current Employee Demographics as of 10/1/2009

Full-time Employees (FTE)	342
Part-time Employees (FTE)	2
999 Employee (FTE)	12.5
Average Age (Years)	47
Average CSO Service (Years)	10
Classified Employees	114
Unclassified Employees	230

### Current Employee Age Distribution (includes full-time and part-time employees)

Age Range	Employees
18 to 24	3
25 to 34	64
35 to 44	67
45 to 54	94
55 to 64	98
64+	18
	<hr/>
	344

### Salaries Fiscal Year 2009

CompSource Oklahoma paid **\$16,580,969.64** in non-appropriated funds during fiscal year 2009 for salaries to employees of CompSource Oklahoma.

### Employee State Tax Withholding

CompSource Oklahoma paid **\$625,062.00** in non-appropriated funds during fiscal year 2009 for employees' state tax withholdings.

### Health Insurance Benefits Fiscal Year 2009

CompSource Oklahoma contributed **\$3,209,866.92** in non-appropriated funds during fiscal year 2009 for employee health insurance benefits, which includes amounts paid to Oklahoma State and Education Employees Group Insurance Board (OSEEGIB).



The Source for Workers' Compensation Insurance

**Projected Retirement Eligible Employees at the end of FY 2010**

Retirement Option	Eligible Employees
Standard	36
80 Rule	20
90 Rule	0
Early Option (Age 55)	25
<b>Total</b>	<b>81</b>
Sick Leave and Annual Leave Liability	<b>\$1,094,657.84</b>

**Total Retirement Contributions for Fiscal Year 2009**

CompSource Oklahoma contributed **\$3,279,437.28** in non-appropriated funds during fiscal year 2009 for employee retirement benefits. Additionally, CompSource Oklahoma employees contributed **\$2,000,260.02** during fiscal year 2009 for retirement benefits.

**Retirement Information**

Retirement Option	Eligible Employees during FY 2010	Eligible Employees FY 2010 - FY 2015*	Eligible Employees FY 2010 - FY 2020*
Standard (Age 62 + 6 years of service)	36	95	147
80 Rule	20	54	38
90 Rule	0	15	33
Early Option (Age 55 + 6 years of service)	25	23	14
<b>Total</b>	<b>81</b>	<b>187</b>	<b>232</b>

\*assumes no retirements from 10/5/09 thru reporting timeframe and employee census is constant

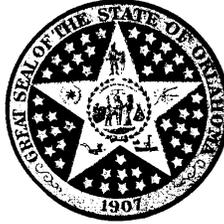
**Employee Vesting Eligibility**

Fiscal Year	Number of Employees Eligible of Current Employee Population
FY 2010	189
FY 2010 - FY 2015	308
FY 2010 - FY 2020	344

## **Appendix GG**

# Oklahoma Legislature

Chris Benge  
Speaker  
House of Representatives



Glenn Coffee  
President Pro Tempore  
State Senate

October 16, 2009

## - AGENDA -

**TO:** Members of the Task Force on the Privatization of CompSource Oklahoma  
**DATE:** Wednesday, October 21, 2009  
**TIME:** 9:30 a.m.  
**PLACE:** **Room 412C**, State Capitol Building  
**AGENDA:** 6th Meeting

- I. Welcome and Introductions by Co-Chairs: Senator Aldridge and Representative Sullivan
- II. Task Force Discussion on the Mutualization or Sale of CompSource Oklahoma
- III. Other Business and Adjournment

### **Future Meeting Dates**

Thursday, November 5, 2009, at 9:30 a.m., Large Conference Room, 2nd Floor  
Wednesday, November 18, 2009, at 9:30 a.m., Rm 412C

Sen. Cliff Aldridge, Co-Chair

Rep. Dan Sullivan, Co-Chair

### **Members:**

Insurance Commissioner Kim Holland  
Lee Ann Alexander  
Dan Ramsey  
James Stergiou

Michael Clingman  
Bradley J. McClure  
Mike Seney

## **Appendix HH**



The Source for Workers' Compensation Insurance

October 21, 2009

Task Force Members  
c/o Senator Cliff Aldridge, Co-Chair  
c/o Representative Dan Sullivan, Co-Chair  
Task Force on the Privatization of CompSource Oklahoma  
State Capitol Building  
Oklahoma City, OK 73105

Dear Senator Aldridge, Representative Sullivan, and Task Force Members:

Pursuant to your request at the task force meeting of October 7, 2009, I am providing the following information regarding the top classification codes with the highest rates and largest loss ratios at CompSource Oklahoma.

Classification Code	Description	Loss Ratio
7711	Firefighter & Driver – Volunteer*	3.317
5069	Iron or Steel: Erection	1.836
6251D	Mechanical Tunneling	1.807
5480	Plastering	1.758
7309F	Stevedoring (Dock Work)	1.748

If you have additional questions, please contact me at (405) 962-3334.

Sincerely,

Jason Clark  
President/CEO  
CompSource Oklahoma

cc: Arnella Karges

## **Appendix II**



*"Setting the standard that others strive for..."™*

**Brent LaGere, C.P.C.U.  
Chairman & CEO**

October 16, 2009

The Honorable State Senator Cliff A. Aldridge  
2300 North Lincoln Boulevard  
Room 511  
Oklahoma City, Oklahoma 73105

Dear Senator Aldridge,

When we made our presentation at the last task force meeting, you asked me to provide you with information regarding our loss ratios which are much more favorable than CompSource's for the last five years. I am enclosing for your review as Exhibit I, not only the last five years but also our current results through September of 2009.

Taking all of this into context, whatever happens first and foremost must be good for the CompSource policyholders resulting in rate stabilization and improvement in the efficiency of operations leading to reductions in policyholder rates.

- As mentioned, the NAICO loss results I have provided include a loss ratio for paid claims plus reserves on known claims and the ultimate loss ratio then includes IBNR. Please note that we insure many hazardous industries as identified by NCCI. As a specialty niche carrier, we insure high hazardous industries such as construction, trucking and oil and gas.
- As you will note from attached Exhibit II, NAICO's payout of claims is much faster than CompSource's which also leads to better claim results. As illustrated in Exhibit III, NAICO's plan provider results are superior to that of CompSource. NAICO's plan provider services would have reduced policyholder losses by approximately \$52,877,000 vs. CompSource's actual savings of \$3,555,000. NAICO insures very hazardous classes of industry and consistently produces workers compensation loss ratios in the mid 55% range vs. CompSource's mid 95% range. Through better operating efficiencies and claim handling practices NAICO has been able to produce loss ratios approximately 40 percentage points better than CompSource. These improved loss ratios will reduce policyholder rates.
- All business owners in Oklahoma must be protected from future rate increases and with the current state of CompSource, inevitably this will not happen. If CompSource is sold, we have provided an example of a rate stabilization plan which could be increased even longer than the three year period we have recommended, whatever the task force decides.
- House Bill 1963 states that CompSource will be privatized no later than 12-31-10 and if its dissolution is through being sold, which we recommend due to \$150,000,000 to \$200,000,000 of potential proceeds that would go to the State. In order to qualify for the federal and state tax exemptions, they would have to comply with IRS Regulation (501) C, Part 27B. They clearly are an agency of the State. The *Moran vs. Derryberry* case holds only that the net assets of CompSource are not subject to general appropriation by the legislature and the net assets are to be held in trust for the benefit of the Oklahoma employers and

their employees. Like the assets of any other State Agency, its net assets belong to the State of Oklahoma. If it is dissolved, its net assets must go to the State or CompSource will face a huge tax liability.

- If a court rules that CompSource's net assets are owned by the policyholders, which would be contrary to the evidence we have presented including the State Supreme Court cases in Michigan and Idaho, then they would have been operating as a mutual insurance company; therefore, a significant tax liability would doom CompSource.
- Any purchasing entity should be required to be the carrier of last resort based on Roy Woods' testimony since an NCCI pool would cost Oklahoma policyholders more money. As has been clearly demonstrated by presentations to the task force, everywhere privatization has occurred, policyholder rates have come down and service has improved.
- Due to CompSource's high balance sheet leverage, a new purchaser through the use of reinsurance and new capital will ensure that the current obligations of CompSource to existing and prior policyholders will be met. If CompSource elected to do a reinsurance transaction (loss portfolio transfer), their operating losses would increase dramatically as they have lost money in both 2008 and the first six months of 2009. They have only made money by generating sizeable investment income and 75% of that would go away if a loss portfolio transfer occurred. We have given illustrations of this in our presentation as they simply trade one problem for another.
- Exhibit IV demonstrates that the total investment return of CompSource on the average over the last five years has been 3.5% vs. Mr. Stergiou's testimony that it was 7%. They asked what our total investment return was and ours has been 4.1% over the last five years and again, this is backed up by Exhibit IV reflecting the A.M. Best Company reports. Charging rates based on a 7% return while making only a 3.5% return is unsustainable in my opinion.
- The sale of CompSource will reduce policyholder rates and encourage more competition within the State of Oklahoma with the residual market following suit like it has in the other states being only 5 to 6% of the marketplace. Also, any new purchaser should be required to make the new entity available to all licensed property and casualty agents in Oklahoma.
- I would challenge anyone to give me one good reason why CompSource should be privatized through mutualization. CompSource should be sold and the State should receive again \$150,000,000 to \$200,000,000 plus separate itself from any future policyholder obligations. This is clearly the best plan and the only one in my opinion that makes sense.

We certainly appreciated the opportunity to present to the task force and we can provide any additional information you would like to see. If you have any questions or we can be of any assistance, please do not hesitate to contact me.

Sincerely,



Brent LaGere  
Chairman and CEO  
NATIONAL AMERICAN INSURANCE COMPANY

enclosures

cc: The Honorable State House Representative Daniel Sullivan

Exhibit I

National American Insurance Company  
 Workers' Compensation Results  
 by Industry Segment and Type  
 Calendar Year Earned Premiums and Accident Date Losses \*  
 as of September 30, 2009

INDUSTRY SEGMENT	INDUSTRY TYPE	Dominant NCCI Hazard Class	Year 2004			Year 2005			Year 2006			Year 2007			Year 2008			Year 2009		
			Gross Earned Prem	NET INC LOSS	LOSS RATIO	Gross Earned Prem	NET INC LOSS	LOSS RATIO	Gross Earned Prem	NET INC LOSS	LOSS RATIO	Gross Earned Prem	NET INC LOSS	LOSS RATIO	Gross Earned Prem	NET INC LOSS	LOSS RATIO	Gross Earned Prem	NET INC LOSS	LOSS RATIO
CONSTRUCTION	CARPENTRY WORK	5403	445,352	56,112	12.80%	228,841	59,083	25.71%	170,782	4,302	2.52%	355,220	107,878	30.37%	528,038	303,787	57.53%	353,768	51,611	14.59%
CONSTRUCTION	CONCRETE WORK	5221	377,247	45,511	12.06%	448,011	177,314	39.58%	350,420	270,805	77.28%	468,730	43,034	9.18%	497,032	13,872	2.76%	489,208	128,576	26.48%
CONSTRUCTION	ELECTRICAL WORK	5190	650,497	44,116	6.78%	508,180	96,071	18.87%	587,628	328,580	55.58%	932,338	745,312	79.94%	1,384,559	328,108	23.70%	728,172	78,431	10.88%
CONSTRUCTION	EXCAVATION WORK	6219	559,877	258,335	46.16%	540,230	36,455	6.75%	381,752	71,270	18.67%	489,284	188,305	40.73%	639,872	133,841	20.92%	369,320	207,216	56.11%
CONSTRUCTION	HEAVY CONSTRUCTION, NEC	6219	510,900	186,480	36.50%	257,468	122,338	47.52%	121,287	0	0.00%	6,349	0	0.00%	0	0	0.00%	0	0	0.00%
CONSTRUCTION	HIGHWAY/STREET CONSTRUCTION	5506	419,567	142,906	34.14%	928,639	107,854	11.61%	295,633	454,084	153.60%	233,914	174,481	74.81%	278,444	212,089	76.72%	149,641	149,828	100.12%
CONSTRUCTION	INSTALLING BLDG EQUIPMENT	3724	111,252	432	0.39%	177,643	104,454	58.82%	104,454	166,308	159.22%	254,512	878,231	345.07%	658,484	1,111,217	169.44%	172,810	8,069	4.50%
CONSTRUCTION	MASONRY AND OTHER STONEWORK	5022	330,106	43,144	13.07%	198,722	141,965	71.08%	194,801	370,645	155.06%	108,308	243,630	224.94%	26,641	0	0.00%	119,966	138,771	117.48%
CONSTRUCTION	NONRESIDENTIAL CONSTRUCTION	5403	275,821	143,781	52.12%	126,833	34,521	27.23%	169,749	133,019	78.38%	80,468	13,956	16.95%	79,356	102,638	134.46%	67,213	0	0.00%
CONSTRUCTION	PLASTER DRYWALL & INSULATION	5445	169,455	208,334	122.94%	126,833	34,521	27.23%	169,749	133,019	78.38%	80,468	13,956	16.95%	79,356	102,638	134.46%	67,213	0	0.00%
CONSTRUCTION	PLUMBING HEATING AIR-COND	5183	939,729	518,634	55.19%	567,142	288,723	52.87%	658,472	512,898	77.80%	219,982	402,766	184.81%	994,877	498,104	50.07%	706,896	143,909	20.36%
CONSTRUCTION	ROOFING SIDING SHEET METAL	5551	488,313	68,704	14.13%	567,142	288,723	52.87%	658,472	512,898	77.80%	219,982	402,766	184.81%	994,877	498,104	50.07%	706,896	143,909	20.36%
CONSTRUCTION	SINGLE-FAMILY HOUSING CONSTR	5645	153,281	6,500	4.24%	177,661	81,463	45.85%	303,594	79,030	26.03%	602,855	145,736	24.17%	818,602	5,881	0.72%	175,675	0	0.00%
CONSTRUCTION	SPECIAL TRADE CONTRACTORS	5213	443,520	41,546	9.37%	533,412	117,813	22.09%	160,873	428	0.26%	365,840	70,024	19.14%	384,713	45,016	11.70%	331,868	9,318	2.81%
CONSTRUCTION	WATER-SEWER & UTILITY LINES	6306	1,408,845	738,074	52.46%	1,150,982	385,381	33.48%	598,382	122,785	20.49%	654,722	322,328	49.23%	884,927	338,745	37.96%	632,844	358,887	56.72%
MANUFACTURING	FABRICATED STRUCTURAL METAL	3030	187,268	86,387	46.13%	114,824	7,755	6.75%	85,158	2,963	3.48%	91,077	38,865	42.67%	120,185	12,952	10.78%	211,266	25,715	12.17%
MANUFACTURING	INDUSTRIAL MACHINERY, NEC	3632	345,604	11,277	3.26%	274,153	228,941	82.78%	318,281	209,688	65.89%	341,149	92,854	27.25%	316,522	70,688	22.33%	254,906	183,808	72.11%
MANUFACTURING	METAL COATING & ALLIED SERVS	3373	558,459	338,515	60.62%	489,464	228,941	46.78%	-304,548	0	0.00%	0	0	0.00%	0	0	0.00%	172,810	0	0.00%
MANUFACTURING	READY-MIXED CONCRETE	8232	86,241	0	0.00%	117,547	0	0.00%	172,528	110,393	63.99%	216,650	92,756	42.81%	186,541	62,482	33.50%	131,443	7,081	5.39%
OIL & GAS	CRUDE PETRO & NATURAL GAS	1320	187,272	25,410	13.57%	186,749	34,965	18.71%	216,216	5,355	2.48%	181,746	1,305	0.72%	180,293	419	0.23%	83,333	400	0.48%
OIL & GAS	OIL & GAS FIELD SERVICES NEC	6235	5,878,550	2,385,684	40.59%	8,224,382	6,513,286	79.19%	7,673,129	1,908,651	24.87%	9,169,250	2,642,676	28.82%	11,285,878	4,427,804	39.23%	9,157,934	2,930,524	32.00%
TRANSPORTATION	LOCAL TRUCKING, W/O STORAGE	7229	285,280	301,235	105.60%	262,701	104,137	39.64%	58,810	4,446	2.19%	46,019	0	0.00%	155,227	124,303	80.08%	165,682	35,325	21.32%
TRANSPORTATION	TRANSPORTATION SERVICES, NEC	7360	427,818	0	0.00%	259,814	346,444	133.34%	203,329	4,446	2.19%	158,758	237,771	149.77%	121,121	155,014	127.98%	11,020	0	0.00%
TRANSPORTATION	TRUCKING, EXCEPT LOCAL	7229	1,405,081	700,100	49.83%	2,837,413	1,291,352	45.51%	4,068,973	1,887,335	46.39%	4,834,873	2,350,753	48.62%	3,728,044	1,672,949	44.87%	2,641,310	181,738	7.96%
ALL OTHER	ALL OTHER INDUSTRIES		8,787,438	2,987,419	30.32%	6,197,852	2,188,111	35.47%	5,909,986	2,589,508	43.82%	7,070,489	3,200,289	45.26%	7,769,480	2,598,700	33.45%	6,449,579	1,388,527	21.22%
TOTAL ALL			26,510,533	9,298,576	35.08%	25,389,934	12,431,540	48.96%	23,013,545	9,110,547	39.59%	28,188,789	12,132,836	43.04%	31,825,281	11,845,404	37.22%	24,207,537	6,184,876	25.55%
Ultimate loss and loss ratios (includes IBNR) (1)			10,233,889	38,800%	13,771,562	54.24%	11,051,754	48.02%	14,745,544	52.31%	16,939,987	53.23%	12,982,784	53.63%						

\* Losses are net of deductibles and subrogation, but gross of reinsurance recoveries.

(1) The difference between the loss ratios and the ultimate loss ratios are the load for Incurred But Not Reported (IBNR) losses. The IBNR load assumes not all losses have been reported, some case reserves will develop adversely, some claims will be reopened and some claims in the current year are still in the pipeline and have not been processed.

## Exhibit II

The following is a comparison showing NAICO vs. CompSource claim payout patterns.

Ratio of cumulative paid to cumulative incurred at end of year shown:

	<u>NAICO</u>	<u>CompSource</u>
Year 1	28.4%	16.9%
Year 2	67.4%	47.9%
Year 3	83.5%	64.0%
Year 4	90.5%	71.1%
Year 5	95.9%	75.4%

This illustrates NAICO's ability to reduce claim cost significantly by closing claims much more expeditiously.

**CompSource loss ratio model**  
Based on 2008 actual (\$000's)

Exhibit III

CompSource actual:	
Net premiums earned	\$ 261,898
Total incurred losses and loss adjustment expenses	240,684
Loss and loss adjustment expense ratio	<u>91.9%</u>

<b>NewCo model adjusted for medical savings through the use of superior Plan Provider organizations and audit services</b>	
Total incurred losses and loss adjustment expenses for CompSource	\$ 240,684
Less loss adjustment expenses incurred	<u>(17,899) (1)</u>
Incurred losses only (medical and indemnity)	222,785
Medical portion only based on NCCI Oklahoma Law Memo %'s	<u>40.3%</u>
Assumed medical incurred losses	<u>89,782</u>
Savings reported by CompSource (2)	3,555
Medical incurred losses before savings deducted	<u>93,337</u>
Savings anticipated by NewCo - % (Based on NAICO actual) (3)	60.46%
Savings anticipated by NewCo - \$	<u>56,432</u>
Difference in savings NewCo vs. CompSource	(52,877)

The above savings alone would have reduced CompSource's loss ratio to 70.4%

In addition to more efficient medical provider network services, we anticipate other improvements will allow NewCo to improve its loss ratio even more such as more effective and expeditious claim settlements through the increased use of the Joint Petition (JP) procedure, improved loss control services, the application of better underwriting techniques, and better data analysis through the use of superior software.

(1) Per Annual Statement, page 11, Part 3-Expenses

(2) Per Annual 2008 Statement

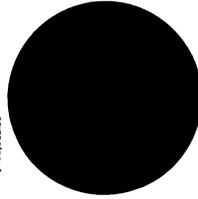
(3) See attached Exhibit III

National American Insurance Company  
Plan Provider Savings  
as of June 30, 2009

Quarter	Month	Bills	Bill Charges	FS/U&C Savings	PPO Savings	Total Savings	%Sav	Payment	Total Fees	Net Savings	Net %Sav
2009	January	1,552	\$1,609,870.93	\$984,886.42	\$86,792.18	\$1,071,678.60	66.57%	\$538,192.33	\$43,153.92	\$1,029,017.30	63.92%
Qtr 1	February	2,004	\$1,442,205.50	\$776,129.42	\$61,654.88	\$837,784.30	58.09%	\$604,421.20	\$31,774.80	\$806,503.34	55.92%
Qtr 1	March	2,040	\$1,863,307.46	\$1,116,090.10	\$81,264.34	\$1,197,354.44	64.26%	\$665,953.02	\$60,009.68	\$1,138,877.98	61.12%
Qtr 2	April	1,647	\$1,403,350.90	\$819,246.79	\$81,127.64	\$900,374.43	64.07%	\$504,976.47	\$50,415.32	\$851,484.61	60.59%
Qtr 2	May	1,805	\$1,313,302.48	\$658,622.50	\$70,818.79	\$729,441.29	55.54%	\$683,861.19	\$32,646.45	\$697,407.95	53.10%
Qtr 2	June	2,171	\$2,132,054.68	\$1,144,833.22	\$87,154.76	\$1,231,987.98	57.78%	\$900,066.70	\$48,834.55	\$1,184,131.12	55.54%
<b>Totals</b>		<b>11,219</b>	<b>\$9,766,091.95</b>	<b>\$5,499,808.45</b>	<b>\$468,812.59</b>	<b>\$5,968,621.04</b>	<b>61.12%</b>	<b>\$3,797,470.91</b>	<b>\$266,834.72</b>	<b>\$5,707,422.30</b>	<b>58.44%</b>

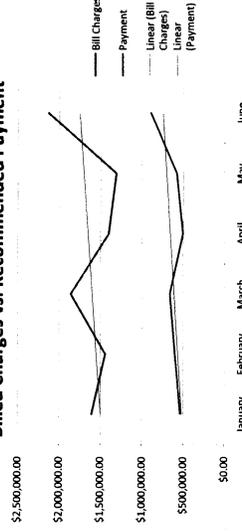
2009 Year to Date Savings

\$468,812.59

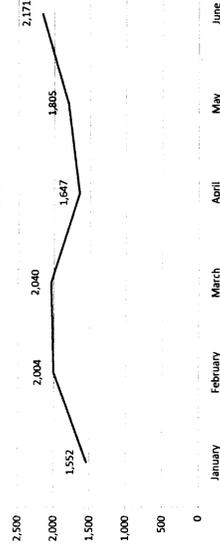


\$5,499,808.45

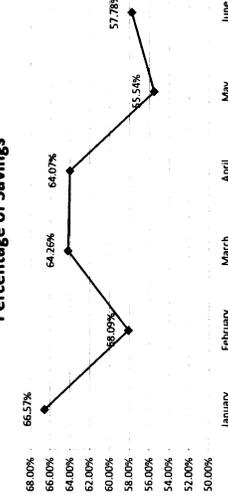
Billed Charges vs. Recommended Payment



Bill Volume



Percentage of Savings



Top 5 volume per Jurisdiction

Reprice State:	Bills	Bill Charges	FS/U&C Savings	PPO Savings	Total Savings	%Sav	Payment	Total Fees	Net Savings	Net %Sav
OK	6,015	\$5,853,583.93	\$3,421,419.20	\$253,429.69	\$3,674,848.89	62.78%	\$2,178,735.04	\$135,970.23	\$3,538,878.66	60.46%
Top 5 States Incl, OK	9,671	\$8,230,433.45	\$4,844,588.88	\$354,648.16	\$5,199,237.04	63.17%	\$3,031,196.41	\$221,180.53	\$4,978,056.51	60.48%

## CompSource - AM Best Report - Investment Income Section

<u>Ending</u>	<u>(%)</u>	<u>PHS(%)</u>	<u>Ratio</u>	<u>Ratio</u>	<u>(%)</u>	<u>PHS(%)</u>	<u>Ratio</u>	<u>Ratio</u>
2004	-6.1	1.4	117.9	106.1	5.9	9.9	106.7	95.1
2005	3.7	10.7	108.9	96.3	13.2	14.3	103.1	88.9
2006	7.9	23.1	107.0	92.3	15.5	13.2	103.4	84.3
2007	6.2	12.4	111.3	94.0	15.2	10.0	106.5	84.2
2008	3.1	-33.4	113.6	97.0	12.6	-4.1	111.2	86.4
5-Yr Avg	3.1	2.4	111.6	97.0	12.2	8.1	105.9	88.2

**UNDERWRITING EXPERIENCE**

<u>Year</u>	<u>Net Undrw Income (\$000)</u>	<u>Loss Ratios</u>			<u>Expense Ratios</u>			<u>Div. Pol.</u>	<u>Comb Ratio</u>
		<u>Pure Loss</u>	<u>LAE</u>	<u>Loss &amp; LAE</u>	<u>Net Comm</u>	<u>Other Exp.</u>	<u>Total Exp.</u>		
2004	-45,594	96.9	9.2	106.1	1.0	10.8	11.8	...	117.9
2005	-25,208	89.3	7.0	96.3	1.3	11.3	12.6	...	108.9
2006	-20,107	87.8	7.7	95.5	1.5	10.0	11.5	...	107.0
2007	-30,480	89.8	7.7	97.5	1.6	12.2	13.8	...	111.3
2008	-35,937	85.0	6.8	91.9	1.6	12.5	14.1	7.6	113.6
5-Yr Avg	...	89.7	7.7	97.3	1.4	11.3	12.8	1.5	111.6

**INVESTMENT INCOME ANALYSIS (\$000)**

<u>Year</u>	<u>Company</u>		
	<u>Net Inv Income</u>	<u>Realized Capital Gains</u>	<u>Unrealized Capital Gains</u>
2004	30,014	5,664	12,085
2005	35,382	4,018	3,901
2006	42,481	3,002	21,442
2007	46,554	14,313	-592
2008	43,639	-24,309	-57,718

<u>Year</u>	<u>Company</u>			<u>Industry Composite</u>	
	<u>Inv Inc Growth (%)</u>	<u>Inv Yield (%)</u>	<u>Total Return (%)</u>	<u>Inv Inc Growth (%)</u>	<u>Inv Yield (%)</u>
2004	-1.8	3.4	5.5	6.8	3.6
2005	17.9	3.7	4.6	15.8	3.8
2006	20.1	4.1	6.6	19.7	4.2
2007	9.6	4.2	5.5	10.9	4.4
2008	-6.3	3.9	-3.3	-7.1	4.2
5-Yr Avg	7.1	3.9	3.5	8.1	4.1

**INVESTMENT PORTFOLIO ANALYSIS**

<u>Asset</u>	<u>2008 Inv Assets</u>	<u>% of Invested Assets</u>	<u>Annual</u>
--------------	----------------------------	-----------------------------	---------------

## National American Insurance Company - AM Best Report - Investment Income Section

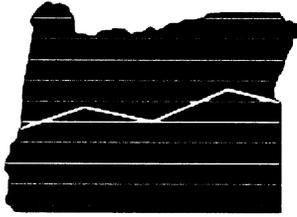
**INVESTMENT INCOME ANALYSIS (\$000)**

<u>Year</u>	<u>Company</u>			<u>Industry Composite</u>	
	<u>Net Inv Income</u>	<u>Realized Capital Gains</u>	<u>Unrealized Capital Gains</u>	<u>Inv Inc Growth (%)</u>	<u>Inv Yield (%)</u>
2004	3,060	652	147	0.9	4.5
2005	2,715	253	131	20.0	4.9
2006	9,637	491	-118	9.8	4.9
2007	-644	141	-128	9.8	5.0
2008	3,291	63	-43	-5.1	4.8
03/2008	880	...	...	XX	XX
03/2009	779	254	...	XX	XX
<u>Year</u>	<u>Inv Inc Growth (%)</u>	<u>Inv Yield (%)</u>	<u>Total Return (%)</u>	<u>Inv Inc Growth (%)</u>	<u>Inv Yield (%)</u>
2004	48.4	3.6	4.6	0.9	4.5
2005	-11.3	2.9	3.3	20.0	4.9
2006	254.9	10.3	10.7	9.8	4.9
2007	-99.9	...	-0.6	9.8	5.0
2008	611.2	3.1	3.1	-5.1	4.8
<b>5-Yr Avg</b>	7.3	3.8	4.1	6.4	4.8
03/2008	XX	XX	0.8	XX	XX
03/2009	XX	XX	0.9	XX	XX

**INVESTMENT PORTFOLIO ANALYSIS**

<u>Asset Class</u>	<u>2008 Inv Assets - % of Invested Assets</u>			<u>Annual % Chg</u>
	<u>(\$000)</u>	<u>2008</u>	<u>2007</u>	
Long-Term bonds	75,014	68.4	59.6	19.3
Stocks	76	0.1	0.1	-45.8
Affiliated Investments	6,169	5.6	6.0	-3.1
Other Inv Assets	28,435	25.9	34.3	-21.4
<b>Total</b>	<b>109,694</b>	<b>100.0</b>	<b>100.0</b>	<b>3.9</b>

## **Appendix JJ**



# 2008 Oregon Workers' Compensation Premium Rate Ranking Summary

Department of Consumer & Business Services

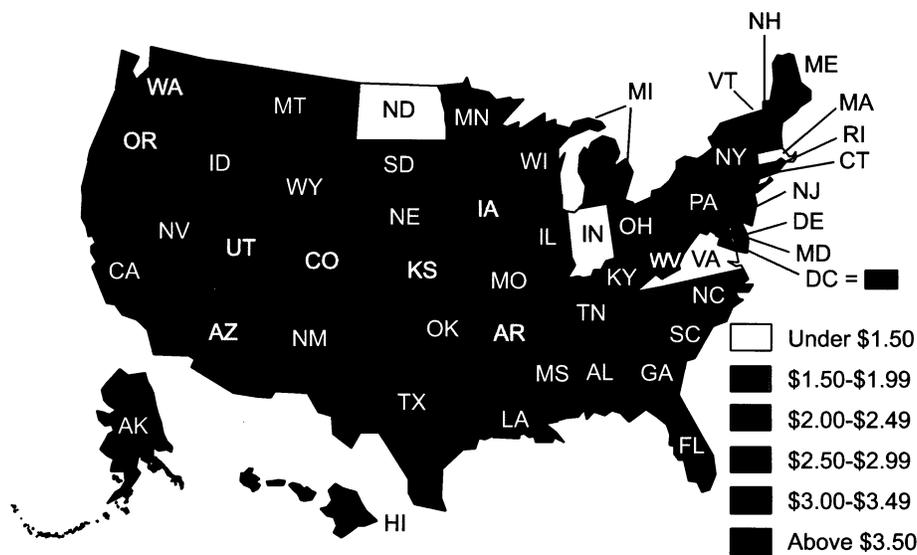
Revised March 2009

By Mike Manley and Jay Dotter

Oregon employers in the voluntary market pay, on average, the 39th highest workers' compensation premium rates in the nation.

Oregon's premium rate index is \$1.88 per \$100 of payroll, or 83 percent of the national median. National premium rate indices range from a low of \$1.08 in North Dakota to a high of \$3.97 in Alaska, with a median value of \$2.26. No jurisdictions have an index rate above \$4; five are in the \$3.00-\$3.99 range; 32 are in the \$2.00-\$2.99 range; and 14 have indices under \$2.00. Indices are based on data from 51 jurisdictions, for rates in effect as of Jan. 1, 2008. Numbers have been revised from the original summary; see Table 2 notes and the [full report](#).

**Figure 1. 2008 Workers' compensation premium index rates**



**Table 1. Oregon's ranking in the top 10 classifications**

Occupation	Ranking
Clerical office employees NOC	49
Salespersons – Outside	47
College: Professional employees & clerical	41
Physician and clerical	38
Restaurant NOC	45
Store: Retail, NOC	40
Hospital: Professional employees	40
Automobile service/repair center & drivers	34
Trucking: NOC – All employees & drivers	25
Health care employees – Retirement, nursing, convalescent	32

This study used classification codes from the National Council on Compensation Insurance (NCCI). Of approximately 450 active classes in Oregon, 50 were selected based on relative importance as measured by share of losses in Oregon. To control for differences in industry distributions, each state's rates were weighted by 2002-2004 Oregon payroll to obtain an average manual rate for that state. Listed in Table 1 are Oregon's rankings in the top 10 of the 50 classifications used.

**Table 2 (on the back) contains the premium rate ranking for all 51 jurisdictions.**

**Table 2. Workers' compensation premium rate ranking**

Rank	State	Index Rate	Percent of 2007 rate	Effective Date	
1	1	Alaska	3.97	176%	January 1, 2008
2	5	Montana	3.50	155%	July 1, 2007
3	12	Ohio	3.32	147%	July 1, 2007
4	7	Vermont	3.14	139%	April 1, 2007
5	8	Maine*	3.04	135%	January 1, 2008
7	3	Delaware*	2.96	131%	December 1, 2007
7	4	Kentucky*	2.96	131%	October 1, 2007
8	9	Alabama*	2.90	129%	March 1, 2007
9	13	Oklahoma*	2.89	128%	8/1/07 State Fund, 1/1/08 Private
10	21	Illinois*	2.79	124%	January 1, 2008
11	11	Louisiana*	2.76	122%	October 1, 2007
12	25	South Carolina*	2.74	121%	May 7, 2007
13	2	California*	2.72	121%	January 1, 2008
14	19	New Hampshire*	2.70	120%	January 1, 2008
15	18	Pennsylvania	2.68	119%	April 1, 2007
16	23	New Jersey	2.66	118%	January 1, 2008
17	17	Texas	2.61	116%	January 1, 2008
18	30	Nevada	2.58	115%	March 1, 2007
19	10	New York	2.55	113%	October 1, 2007
20	14	Connecticut	2.46	109%	January 1, 2008
21	26	Tennessee	2.44	108%	July 1, 2007
22	37	North Carolina	2.43	108%	April 1, 2007
24	21	Minnesota	2.33	103%	January 1, 2008
24	32	Mississippi	2.33	103%	March 1, 2007
25	41	Georgia	2.29	102%	August 3, 2007
26	22	Rhode Island	2.26	100%	February 1, 2007
28	6	Florida	2.20	98%	January 1, 2008
28	25	Missouri	2.20	97%	January 1, 2008
29	16	District of Columbia	2.16	96%	November 1, 2007
32	27	New Mexico	2.15	95%	January 1, 2008
32	39	Michigan	2.15	95%	January 1, 2007
32	33	Nebraska	2.15	95%	February 1, 2007
34	35	Wisconsin	2.12	94%	October 1, 2007
34	32	Idaho	2.12	94%	January 1, 2008
36	15	Hawaii	2.08	92%	January 1, 2008
36	44	South Dakota	2.08	92%	July 1, 2007
37	29	Wyoming	2.06	91%	January 1, 2008
38	37	Washington	1.98	88%	January 1, 2008
<b>39</b>	<b>42</b>	<b>OREGON</b>	<b>1.88</b>	<b>83%</b>	<b>January 1, 2008</b>
41	34	West Virginia	1.86	83%	July 1, 2007
41	45	Iowa	1.86	82%	January 1, 2008
42	43	Kansas	1.77	78%	January 1, 2008
43	29	Colorado	1.76	78%	January 1, 2008
44	40	Maryland	1.72	76%	January 1, 2008
45	46	Arizona	1.67	74%	January 1, 2008
46	38	Utah	1.63	72%	December 1, 2007
47	48	Arkansas	1.61	71%	January 1, 2008
48	49	Virginia	1.43	63%	April 1, 2007
49	47	Massachusetts	1.39	62%	September 1, 2007
50	50	Indiana	1.23	55%	January 1, 2008
51	51	North Dakota	1.08	48%	July 1, 2007

Notes: Starting with the 2008 study, when two or more states' Index Rate values are the same, they now are assigned the same ranking. The index rates reflect appropriate adjustments for the characteristics of each individual state's residual market. Rates vary by classification and insurer in each state. Actual cost to an employer can be adjusted by the employer's experience rating, premium discount, retrospective rating, and dividends.

\*The ranking of these states has been changed to reflect a data correction for New Hampshire. See [full report](#) for details.

Employers can reduce their workers' compensation rates through accident prevention, safety training, and by helping injured workers return to work quickly.

In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats. Please call 503-378-8254.

*The information in this report is in the public domain and may be reprinted without permission. Visit the DCBS Web site, <http://dcbs.oregon.gov>.*

*To sign up for electronic notification of new publications, see the Information Management home page, <http://www4.cbs.state.or.us/ex/imd/external/>.*



Information Management Division  
 350 Winter St. NE, Room 300  
 P.O. Box 14480  
 Salem, OR 97309-0405  
 503-378-8254

## **Appendix KK**

# Oklahoma Legislature

Chris Bengtson  
Speaker  
House of Representatives



Glenn Coffee  
President Pro Tempore  
State Senate

October 26, 2009

## - AGENDA -

**TO:** Members of the Task Force on the Privatization of CompSource Oklahoma  
**DATE:** Thursday, November 5, 2009  
**TIME:** 9:30 a.m.  
**PLACE:** Governor's Large Conference Room, 2nd Floor, State Capitol Building  
**AGENDA:** 7th Meeting

- I. Welcome and Introductions by Co-Chairs: Senator Aldridge and Representative Sullivan
- II. Task Force Review of Findings and Recommendations on the Mutualization or Sale of CompSource Oklahoma
- III. Other Business and Adjournment

### Future Meeting Dates

Wednesday, November 18, 2009, at 9:30 a.m., Rm 412C

Sen. Cliff Aldridge, Co-Chair

Rep. Dan Sullivan, Co-Chair

### Members:

Insurance Commissioner Kim Holland  
Lee Ann Alexander  
Mike Seney

Michael Clingman  
Dan Ramsey  
James Stergiou

## **Appendix LL**

## MEMORANDUM

TO: Senator Cliff Aldridge, Co-Chair,  
Representative Dan Sullivan, Co-Chair, and  
Members of the Task Force on the Privatization of CompSource Oklahoma

FROM: Sherry Oden, General Counsel of CompSource Oklahoma, and  
Robert G. McCampbell, on behalf of CompSource Oklahoma

DATE: November 4, 2009

RE: Legal Analysis of *Moran v. State ex rel. Derryberry*;  
Information Regarding Federal Tax Exempt Status of CompSource

---

### EXECUTIVE SUMMARY

The Task Force has asked CompSource Oklahoma to provide its opinion as to the validity and applicability of *Moran v. State ex rel. Derryberry*, 1975 OK 69, 534 P.2d 1282, and specifically as to whether a plan to sell CompSource to a private entity and to use the proceeds of the sale to benefit agencies or programs of the State of Oklahoma would be permissible under *Moran*.

*Moran* expressly prohibits such a plan. In *Moran*, the Oklahoma Supreme Court unanimously held that revenues of the State Insurance Fund (now known as CompSource) are to be held as a “trust fund” for the benefit of policyholders and their employees and cannot be utilized for the general purposes of the State. Rather, the Supreme Court declared that the State of Oklahoma has a “moral and legal obligation” to use CompSource’s revenues solely for the declared statutory purposes for which they were collected – (1) to pay policyholder losses, (2) to pay CompSource’s expenses, (3) to pay policyholder dividends, or (4) for retention by CompSource. 85 O.S. §§ 131(b) and 134(E). Numerous other state supreme courts and attorneys general are in agreement with the reasoning and holding of *Moran*.

The Task Force has also requested the basis for CompSource’s exemption from federal taxation under the Internal Revenue Code. CompSource claims its exemption from federal taxation based upon 26 U.S.C. § 501(c)(27)(B).

## DISCUSSION

**I. Under *Moran*, CompSource and The State of Oklahoma Have A “Moral And Legal Obligation” To Use CompSource’s Revenues Solely For The Declared Statutory Purposes For Which They Were Collected – To Pay Policyholder Losses, To Pay CompSource’s Expenses, To Pay Policyholder Dividends, Or For Retention By CompSource.**

In 1974 the Oklahoma Legislature enacted legislation that directed the Commissioner of the State Insurance Fund (“the Fund”) to liquidate \$4,000,000 of the Fund’s assets and to deposit the proceeds in an account, to be expended only upon appropriation by the Legislature. *Moran v. State ex rel. Derryberry*, 1975 OK 69, 534 P.2d 1282, 1284. By separate legislation, the Legislature appropriated the \$4,000,000 from the Fund to the State Board of Education “for the support of the public school activities.” *Id.* Policyholders of the Fund brought suit to enjoin the liquidation of assets and to declare the legislation unconstitutional. *Id.* at 1283. The Oklahoma Supreme Court took the case for the purpose of examining “the status of the State Insurance Fund, the legal nature of its funds, including reserve funds, and the right of the State, acting through the Legislature, to take and use these funds.” *Id.* at 1284.

In considering the legal status of the funds of the State Insurance Fund, the Court first observed that (1) the Fund is to operate as an independent, privately owned insurance company and not as an agency of the State, and (2) the Oklahoma Statutes provide that the Fund “**shall become neither more nor less than self-supporting.**” *Id.* at 1286 (quoting 85 O.S. § 131) (emphasis added). The Court held that these two facts

**compel the conclusion that the Legislature did not intend for the State to gain a pecuniary profit from the operation, nor to gain by reason of an unexpected ‘windfall’ in the nature of an alleged surplus or excess reserve, at the expense of the premium-paying employers or the employee beneficiaries, in a declared non-profit and non-loss insurance activity.**

*Id.* (emphasis added).

The Court went on to explain at length that the Fund is a trust fund for the benefit of the policyholders and their employees, which the state cannot utilize in any ways other than those specified in the statutes governing the Fund:

**“ . . . the funds created by the act, together with the revenues by which they are sustained, are trust funds devoted to the special purposes designated by the act.”**

...

“[t]he [Fund] . . . occupies a position of trust in relation to every person who is entitled to receive benefits from the funds, of which the Board is made trustee. **The revenues received from the contributions of employers are a trust fund in the sense that a moral and legal obligation is imposed upon the state to use the revenues for the declared purposes for which they are collected.**”

...

“The fund is a public fund in the sense of being administered by a public body . . . but it is not public money in the sense that it is money of the state to be used for, and on behalf of, the state for a state expenditure . . . .

...

“These funds are therefore trust funds drawn from particular sources and **devoted to special purposes.**”

*Id.* at 1286-87 (emphasis added) (quoting Appleman, Insurance Law and Practice, Vol. 7A §§ 4592, 4594; and 100 C.J.S. Workmen’s Compensation § 357b; and *State v. Yelle*, 25 P.2d 569, 28 P.2d 1119 (Wash. 1933)).

The *Moran* Court held,

[i]t is our conclusion the funds of the State Insurance Fund are not State funds and do not belong to the State, that such funds are **trust funds for the benefit of employers and employees**, and they are not available for the general or other purposes of the State, nor are they subject to appropriation by the Legislature for purposes other than those contemplated by the State Insurance Fund Act.

*Id.* at 1288 (emphasis added). The Court expressly stated those limited purposes authorized by the State Insurance Fund Act:

Our Statute, 85 O.S. 1971, § 131(b) . . . specifies the uses the funds held by the State Insurance Fund shall be put to, as follows: “Said funds shall be applicable to the **payment of losses** sustained on account of insurance and to **payment of expenses** in the manner provided in this Act.”

*Id.* at 1287 (emphasis added).

In holding the legislative acts at issue unconstitutional, the Court held,

[w]e have held . . . that this fund is a trust fund for the benefit of insured employers and for their employees. The employers had a vested legal right, when they entered into the insurance contracts with the Fund and paid the premiums, to rely upon this trust being maintained and administered **in accordance with the State Insurance Fund Act** . . . and the law applicable thereto.

*Id.* at 1288 (emphasis added). The court further held that

[a] ‘vested right’ is the power to do certain actions or possess certain things lawfully, and is substantially a property right, and may be created either by common law, **by statute**, or by contract. And when it has once been created, and has become absolute, it is protected from the invasion of the Legislature by those provisions in the Constitution which apply to such rights.

*Id.* at 1288 (quotation marks omitted) (emphasis added). Accordingly, the Court held that the legislative appropriations impaired the obligations of the insurance contracts and the rights of the policyholders thereunder, and thus were unconstitutional and void under Article 2, § 15 of the Oklahoma Constitution. *Id.*

Under *Moran*, any sale of CompSource in which the State of Oklahoma attempts to utilize the sale proceeds for any purposes other than those purposes specified in the statutes governing CompSource would likewise violate the Oklahoma Constitution. Pursuant to 85 O.S. §§ 131(b) and 134(E), CompSource funds can be used only for the following purposes:

- (1) paying incurred losses of policyholders,
- (2) paying expenses of CompSource,
- (3) paying policyholder dividends, or
- (4) retention by CompSource.

It should be noted that there is no practical or legal difference between the factual scenario encountered in *Moran* – CompSource assets being transferred directly from CompSource to the State of Oklahoma – and the sale scenario which has been suggested to the Task Force – CompSource assets being sold to a third party and the proceeds of the sale being transferred to the state of Oklahoma. Both scenarios result in a use of CompSource’s funds outside those specified in the governing statutes. Just as

CompSource's surplus cannot be used for general state budget items (*Moran*), CompSource's surplus cannot be sold to a third party with the proceeds of the sale being used for general state budget items.

## **II. Numerous Other States Are In Agreement With The Holdings of *Moran*.**

Numerous states have held, like *Moran*, that funds paid by employers into a state insurance fund cannot be utilized by the state and cannot be utilized for other than specified statutory purposes:

- *Eckles v. Oregon*, 760 P.2d 846 (Ore. 1988) (holding that legislation transferring \$81 million out of the Industrial Accident Fund to the state's General Fund was unconstitutional); *Alsea Veneer, Inc. v. State of Oregon*, 862 P.2d 95 (Ore. 1993) (holding, in litigation commenced after *Eckles*, and over 10 years after the transfer, that "the State of Oregon must be ordered to repay the \$81 million, with interest, to the IAF").
- *Workers' Comp. Fund v. Utah*, 125 P.3d 852 (Utah 2005) ("The State has no ownership interest in the WCF or its assets other than as a policyholder.").
- *Hansen v. Utah*, 652 P.2d 1332, 1341 (Utah 1982) ("The moneys paid into the Fund do not belong to the State but in effect to the contributing employers.").
- *Sherard v. Nebraska*, 509 NW.2d 194 (Neb. 1993) (holding that money in the State Injury Fund is not property of the State).
- *State v. Yelle*, 25 P.2d 569 (Wash. 1933) (The rights of "both employer and employee, with reference to the trust funds," would be jeopardized by allowing legislative appropriations from the workmen's compensation fund.).
- *Senske v. Fairmont and Waseca Canning Company*, 45 NW.2d 640, 646 (Minn. 1951) ("It is a fund which belongs to the industry, in which the State has no interest other than its proper administration.").
- *State v. McMillan*, 136 P.108, 110 (Nev. 1913) ("The state insurance fund should be regarded as separate from the state treasury . . .").
- *McArthur v. Smallwood*, 281 SW.2d 428, 432 (Ark. 1953) ("These funds are collected and must be used for workmen's compensation purposes and are not available for the general or other purposes of the State of Arkansas.").

- Ariz. Op. Atty. Gen. No. I79-091, 1979 WL 23160, \*3-4 (Ariz. A.G. 1979) (“We conclude that premiums and penalties paid into the [state compensation] fund are not state tax revenues . . . since they are not for the State’s own use.”) (relying on *Moran*).

It has been suggested that the reasoning of *Moran* has been called into question by the Supreme Court of Michigan’s 1994 opinion in *In re Certified Question Fun ‘N Sun RV, Inc. v. Michigan*, 527 N.W.2d 468 (Mich. 1994). However, an analysis of *Fun ‘N Sun* and the case upon which it relies reveals that, in fact, Michigan’s rulings are fully in accord with *Moran* and that the legislative context of the Michigan sale is easily distinguished from the proposed sale of CompSource.

In 1989, the Michigan Court of Appeals first addressed whether or not the state had an interest in the State Accident Fund’s monies, assets or surplus in *Commissioner of Insurance v. Advisory Board of the Michigan State Accident Fund*, 434 N.W.2d 433, 442 (Mich. App. 1989) (hereinafter “*Commissioner*”). The court held that, under Michigan’s statutes,

the Commissioner of Insurance, acting in concert with the State Treasurer, has the authority to hold the funds of the Accident Fund and to invest those funds. However, it must also be noted that [Michigan Statute, **Section 711**] provides that the Accident Fund **shall be neither more nor less than self-supporting. We interpret this provision to mean that just as the state does not subsidize the Accident Fund, neither can it receive any “profits” from the fund to expend for other purposes.** Thus, while the State of Michigan holds the assets of the Accident Fund **in trust** and, through the Commissioner of Insurance and the State Treasurer, has control over those funds and the authority to invest the funds, **it can withdraw no money from the fund to use for any other state expenditures and those funds may only be expended to further the purpose of the Accident Fund.**

*Id.* at 443 (emphasis added). Thus, the *Commissioner* opinion is fully consistent with *Moran*, and in fact relies on statutory language identical to that in the Oklahoma statutes – that CompSource “shall be neither more nor less than self-supporting,” 85 O.S. § 131(c), – to hold that the state cannot use the state insurance fund’s revenues for purposes other than those set forth in the statutes governing the fund.

Five years later, in *Fun ‘N Sun*, the court reaffirmed the holding of the *Commissioner* court, but distinguished it because the statutory scheme had been

substantially revised in the time between the 1989 *Commissioner* opinion and the 1994 *Fun 'N Sun* opinion. 527 N.W.2d at 468.

In *Gilmore v. S.I.F.*, 73 P.2d 640, 642 (Cal. App. 1937) the court also examined the same statutory language – that the fund would be neither more nor less than self supporting – and again found that the state could not take a profit from the fund. “It is evident that the law contemplates that since the fund is to become only ‘self-supporting,’ any portion of the premiums which are collected from insured employers in excess of compensation necessarily paid, and the cost of creating and maintaining the fund, is to be refunded in dividends or credited on the renewal of subsequent premiums paid by the insured.” These cases are instructive because they address statutory language identical to the Oklahoma provision that the fund “shall be neither more nor less than self supporting.” 85 O.S. § 131. Courts from Michigan (*Commissioner*), California (*Gilmore*), and Oklahoma (*Moran*) are in agreement that this language prevents the state from using a surplus in the fund for some purpose outside the fund.

The Idaho case of *Kelso & Irwin, Inc. v. S.I.F.*, 997 P.2d 591 (Idaho 2000), has also been suggested as being not in accord with *Moran*. However, as the opinion itself makes clear, the *Kelso* court confronted a different sort of claim than *Moran* or any of the other cases discussed above. In *Kelso*, the plaintiff policyholders did not seek to enjoin the state from utilizing assets of the state insurance fund for purposes other than those set forth in the governing statutes. Rather, the *Kelso* plaintiffs alleged that because the Fund had used its monies in illegal and invalid ways, thereby squandering policyholder premiums, the Fund must be compelled to return **to the policyholders** all monies in excess of the statutory minimum of reserves and surpluses. *Id.* at 593-94. The *Kelso* court specifically distinguished *Moran*, stating

the Oklahoma Supreme Court . . . faced the question of whether the money in the state insurance fund could be appropriated **by the state**. . . . [I]t must be emphasized that the Oklahoma court was not directly faced with the question of the nature of the **policyholders’** interest in the assets of the state insurance fund.

*Id.* at 598 (emphasis added). Even though making this distinction, the *Kelso* court’s reasoning was in accord with *Moran* and with the other cases cited above, holding that the statutory language becomes a part of the contract with the policyholder:

It is undisputed that [the policyholder] has a contract for worker’s compensation insurance with the SIF. . . . [T]he contract necessarily incorporates the statutory framework which both created the SIF and governs the actions that can be taken by the SIF with regard to the SIF’s funds. When [the policyholder] contracted with the SIF it was entitled to

rely on the statutes creating and regulating the SIF, and the limits those statutes place on how the SIF can invest its policyholders' premiums. Consequently, any act taken by the SIF beyond its statutory authority would also be a breach of the SIF's contract with [the policyholder].

*Id.* at 599. Ultimately, the *Kelso* court determined that under the statutory structure in place in Idaho, the assets of the State Insurance Fund belong neither to the state nor to the policyholders, but to the State Insurance Fund. *Id.* at 596-97. Therefore, *Kelso* too is in accordance with the reasoning of *Moran*.

### **III. Under *Moran* and Oklahoma's Statutory Scheme, CompSource Funds Cannot Be Used For State Programs, Even Those Programs Designed To Benefit Oklahoma Workers.**

While acknowledging that, under *Moran*, CompSource funds can be used only for certain purposes, the possibility was raised before the Task Force that such purposes might encompass funding state programs that are beneficial to Oklahoma workers, like vocational-technological education. However, such funding does not fit into any of the categories set forth in 85 O.S. §§ 131(b) and 134(E), which, as discussed above, specify the only purposes for which CompSource funds can be used – paying incurred losses, paying expenses of CompSource, paying policyholder dividends, or retention by CompSource. Indeed, two states with similar statutory schemes have relied on *Moran* to specifically reject such proposals.

The Colorado Attorney General was asked for an opinion as to “[w]hether it is appropriate for the general assembly to appropriate funds from the state compensation insurance fund for funding of the vocational rehabilitation officer of the Division of Labor whose duties are not part of the overhead costs of the state compensation insurance fund.” Glenn W. Adams, 1977 WL 29021 at \*1 (Colo. A.G. 1977). The Attorney General observed that the statutes governing the state insurance fund “set[] forth the parameters for use of the fund moneys and the general assembly’s power of appropriation vis-à-vis the state compensation insurance fund” and that the statutes authorize “[p]ayment of the salaries and operating expenses incurred in the administration of the fund and losses sustained by liabilities incurred under the contracts and policies of insurance issued by the state compensation insurance fund.” *Id.* at \*1. The Attorney General reasoned that “[t]he statutes provide no authorization to appropriate funds for purposes outside those provided by [the statute] . . . . Thus, the question . . . is essentially whether the general assembly’s appropriation of the state compensation insurance fund moneys is for purposes **within** the statutes.” *Id.* at \*2 (emphasis added).

The Attorney General found that the vocational rehabilitation officer of the Division of Labor did not carry out employee services which were properly part of the

state insurance fund's overhead costs, and performance of his/her duties provided no direct benefit or service to the state fund. *Id.* Moreover, since "the Oklahoma fund is established by statutory provisions virtually identical to those of Colorado," *id.* at \*3, the Attorney General relied on *Moran* to hold that state compensation insurance funds are "trust funds for the purposes expressed in the statutes; and, therefore, appropriation for purposes outside the scope of the statutes has been held to be improper because the funds were not state moneys subject to such appropriation." *Id.* Accordingly, the Attorney General's opinion was that the vocational rehabilitation officer of the Division of Labor could not be funded with moneys from the state insurance fund.

Similarly, in *Gronning v. Smart*, 561 P.2d 690 (Utah 1977), the Supreme Court of Utah held unconstitutional a legislative enactment proposing to appropriate monies from the state insurance fund to support safety inspectors hired by the Industrial Commission. The court held that "the conduct of a safety program requiring such inspectors is a general duty of the Industrial Commission and is not carried on at the request of or for the particular benefit of the Insurance Fund." *Id.* at 691. Noting *Moran* as supportive of its reasoning, the court concluded,

[t]he money in the Fund is not public money subject to appropriation to meet expenses of government. It is a trust fund to be used to meet liabilities of employers when an employee is entitled to compensation. If the appropriation were to be made [for the safety inspectors] it would amount to a seizure of trust funds for State purposes without due process of law.

*Id.* at 692.

In light of the foregoing, an attempt to use the proceeds of a sale of CompSource for state programs that benefit the Oklahoma workforce but that do not fit within the narrow statutory confines of Title 85 of the Oklahoma Statutes would not survive a legal challenge.

### CONCLUSION

Pursuant to *Moran*, CompSource revenues are to be held in trust for the benefit of policyholders and their employees and cannot be utilized for the general purposes of the State. CompSource and the State of Oklahoma have a "moral and legal obligation" to use CompSource's revenues solely for the declared statutory purposes for which they were collected – (1) to pay policyholder losses, (2) to pay CompSource's expenses, (3) to pay policyholder dividends, or (4) for retention by CompSource. *See* 85 O.S. § 131(b) and 134(E). Accordingly, a plan to sell CompSource to a private entity in order that the

proceeds of the sale could be used to benefit agencies or programs of the State of Oklahoma would not withstand a legal challenge.

### **FEDERAL TAX EXEMPTION**

The Task Force has requested the basis for CompSource's exemption from federal taxation under the Internal Revenue Code. 26 U.S.C. § 501 establishes exemptions from taxation for certain organizations. Section 501(a), Exemption from Taxation, states that an organization described in subsection (c) or (d) or Section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under Sections 502 or 503.

CompSource claims its exemption from federal taxation based upon Section 501(c)(27)(B). Congress added this section to the Internal Revenue Code in 1996 in order to eliminate perceived uncertainty regarding the tax-exempt status of state workers' compensation insurance funds. Section 501(c)(27) was effective for tax years beginning after December 31, 1997.

In Section 501(c)(27)(B), Congress generally described state workers' compensation insurance funds and expressly provided that they are not subject to federal income tax. By enacting this section, Congress recognized that state workers' compensation insurance funds are unique among insurers in that, unlike commercial workers' compensation insurance companies, state funds cannot simply stop providing workers' compensation coverage when the market hardens. This is especially significant in states like Oklahoma, where workers' compensation insurance is mandatory for employers. When an employer is denied coverage from the private market, it can obtain coverage from the state fund.

Section 501(c)(27)(B) provides an exemption for any organization (including a mutual insurance company) if:

- (i) such organization is created by State law and is organized and operated under State law exclusively to--
  - (I) provide workmen's compensation insurance which is required by State law or with respect to which State law provides significant disincentives if such insurance is not purchased by an employer, and

- (II) provide related coverage which is incidental to workmen's compensation insurance,
- (ii) such organization must provide workmen's compensation insurance to any employer in the State (for employees in the State or temporarily assigned out-of-State) which seeks such insurance and meets other reasonable requirements relating thereto,
- (iii) (I) the State makes a financial commitment with respect to such organization either by extending the full faith and credit of the State to the initial debt of such organization or by providing the initial operating capital of such organization, and (II) in the case of periods after the date of enactment of this subparagraph, the assets of such organization revert to the State upon dissolution or State law does not permit the dissolution of such organization, and
- (iv) the majority of the board of directors or oversight body of such organization are appointed by the chief executive officer or other executive branch official of the State, by the State legislature, or by both.

CompSource is a state workers' compensation insurance fund that meets all of the requirements of Section 501(c)(27)(B), and therefore, is exempt from federal taxation.