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September 21, 2007

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The Honorable Leslie A. Newman
Commissioner
Department of Commerce and Insurance
State of Tennessee
Fifth Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243

RE: Proposed Self-Insured Employer Rules

Dear Commissioner Newman:

On behalf of the Tennessee Self-Insurers Association (TNSIA), this letter will summarize our comments regarding the proposed amendments to the workers' compensation self-insured employer rules contained in Tennessee Compensation Rules & Regulations, titled Department of Commerce and Insurance, Chapter 0780-1-83.

You will see from the comments below, our main concern relates to the financial bonding and accounting requirements proposed. We believe that the proposed changes, as currently written, would (1) threaten the self-insured employer status of many currently self-insured employers, (2) may prevent many financial sound business entities from self-insuring their workers' compensation risk, and (3) could generally be harmful to the business climate in this state.

1. The proposed amendments would permit the Department of Commerce and Insurance to evaluate a self-insured employer's financial statements in accordance with insurance company statutory accounting principles as opposed to GAAP, including when determining whether to suspend or revoke a self-insured employer's certificate of authority. TNSIA has serious concerns about the impact of this suggested change. Unlike insurance companies and other insurance risk-bearing entities (some of which, like self-insured groups, are never subject to statutory insurance accounting), the majority of a self-insured employer's activities

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have nothing to do with insurance. Instead of being in the insurance business, they are in the business of providing whatever product or service they offer to the public. Our understanding is that statutory insurance accounting is designed specifically for insuring entities, entities that hold vast amounts of assets for the potential claims of their customers. For most TNSIA members, the amount of monies held in reserve to pay potential workers' compensation claims is small relative to the total liabilities for the entity. Overly restrictive accounting rules may unduly restrict the ability of self-insured employers to operate their businesses.

2. The proposed amendments would require a self-insured employer to have (a) positive working capital; and (b) a net worth that is twenty (20) times the self-insured employer's SIR on its excess insurance policy. TNSIA has serious concerns about the impact of this suggested change. (i) This requirement states that it applies to applicants for a certificate of authority. Does the Department of Commerce and Insurance interpret the rule to make this an on-going requirement to maintain a certificate of authority? (ii) Many of TNSIA's members are in retail businesses, and routinely maintain negative working capital as a sound business practice. Enclosed herewith is an article published at about.com entitled Investing Lesson #3, which highlights how cash retail businesses can routinely maintain negative working capital. If the positive working capital requirement will apply retrospectively, it will automatically disqualify many currently authorized self-insured employers. If the positive working capital requirement will only apply prospectively to applicants, then many retail cash businesses will be unable to self-insure in this state. Again, by requiring positive working capital for self-insured employers, an insurance company accounting principle would be applied to an entity that is not an insurance company in any traditional sense of the word. (iii) A typical SIR on a self-insured employer's excess insurance policy would be Five Hundred Thousand Dollars (\$500,000.00) on each claim. Under the proposed rule, that employer would be required to have a net worth of Ten Million Dollars (\$10,000,000.00). This seems unnecessarily harsh given the other requirements in current law, and could potentially impact many current self-insured employers.

3. The proposed amendments would create a much more sophisticated but complex system for determining the amount of security the self-insured employer must post with the Department of Commerce and Insurance. The net result of the proposed changes would appear to require a higher security amount for many self-insured employers. In the last few years, a multiplier has been placed on the amounts reserved for workers' compensation claims to account for development and incurred but not reported claims (IBNR)] in order to calculate each self-insured employer's security amount. However currently, actuarial numbers are generated and reported to take account of development and IBNR, so the use of a multiplier would appear to be unnecessary. We would also note that the proposed rule would increase a self-insured employer's security amount if it has negative working capital. As noted above, many companies, for legitimate business reasons, maintain negative working capital, and should not be penalized because of the nature of their business. The single item of negative working capital is not an indicator of the potential of future financial difficulties. 4. The proposed amendments would permit the Department of Commerce and Insurance to exempt a self-insured employer from having to get excess insurance when provided with documentation from the self-insured

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employer that "the coverage is unavailable or ... the cost of the coverage outweighs any benefit the coverage would provide to the employees." The exemption would only last a year, and the self-insured employer would be required to annually re-submit an exemption request. TNSIA's understanding is that it is the current practice of the Department of Commerce and Insurance to exempt certain employers from the aggregate excess insurance requirements on the bases delineated in the proposed rule. While we support this, we would be concerned if a self-insured employer was able to obtain an exemption from the specific excess insurance requirement. If the Department agrees with this concern, we would suggest that the proposed rule be amended to only allow a self-insured employer to obtain an exemption from the aggregate excess insurance requirement under the criteria stated.

5. The proposed amendments would require that a self-insured employer submit the opinion of a qualified actuary prior to surrendering its certificate of authority unless the Department of Commerce and Insurance finds it unnecessary. Furthermore, the proposed amendments would require a self-insured employer to submit an annual financial statement and loss runs to the Department of Commerce and Insurance for "a period of not less than ten (10) years after the surrender." TNSIA has serious concerns about the impact of this suggested change, and would suggest that the Department consider ways in which to permit self-insured employers to exit self-insurance more quickly. TNSIA understands that its members have an obligation to ensure that injured employees are paid benefits, even after a self-insured employer purchases a fully insured policy. However, there are alternative ways in which the self-insured employer can protect its injured employees in this scenario, and the rule should recognize these alternatives.

Although these comments are presented on behalf of TNSIA, individual members may have their own comments to be presented separately in writing, or at the rulemaking hearing. TNSIA Members intend to appear at the rulemaking hearing on September 18, 2007, and will be happy to expand upon these comments and answer any questions.

We appreciate any consideration given to these comments. Should you have any questions, please contact Susan Azar at 313-665-4519 or via email at susan.r.azar@gm.com.

Sincerely yours,

Susan Azar
Chairperson

Terry Hill
Executive Director