



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE

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REPORT ON EXAMINATION  
OF THE  
WORKERS' COMPENSATION SELF-INSURANCE GROUP FUND  
OF THE  
COMPTRUSTAGC...TENNESSEE  
NASHVILLE, TENNESSEE

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AS OF  
MARCH 31, 2013

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Dept. of Commerce & Insurance  
Company Examinations



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Nashville, Tennessee  
September 10, 2014

Honorable Julie Mix McPeak  
Commissioner  
Tennessee Department of Commerce and Insurance  
Nashville, Tennessee 37243

Dear Commissioner:

Pursuant to your instructions and in accordance with Tennessee Insurance Laws, regulations, and resolutions adopted by the National Association of Insurance Commissioners (NAIC), a financial examination and market conduct review was made of the condition and affairs of the

**WORKERS' COMPENSATION SELF-INSURANCE GROUP FUND  
of the  
COMPTRUSTAGC...TENNESSEE**

2612 Westwood Drive  
Nashville, Tennessee 37204

hereinafter, and generally referred to as the "Fund" and "Trust" respectively, and a report thereon is submitted as follows:

**INTRODUCTION**

This examination was called by the Tennessee Department of Commerce and Insurance on April 8, 2014, in accordance with Tenn. Code Ann. § 50-6-405 and Tenn. Comp. R. & Regs. ch. 0780-01-54-20. On-site examination work commenced on April 28, 2014. The examination was performed by duly authorized representatives of the Tennessee Department of Commerce and Insurance (TDCI).

This is the second full-scope financial examination and market conduct review of the Trust since its inception.

**SCOPE OF EXAMINATION**

This examination report covers the period from April 1, 2008, to the close of business on March 31, 2013, and includes any material transactions and/or events occurring subsequent to the examination date and noted during the course of the examination.

The examination of the Trust's financial condition was conducted in accordance with guidelines and procedures contained in the NAIC Financial Condition Examiners Handbook. The examination was planned and procedures performed to evaluate the financial condition and to identify prospective risks of the Trust. This was accomplished by gathering information about the Trust, including controlling governance, identifying and assessing inherent risks within the Trust, and evaluating internal controls used to mitigate those risks. The examination also included assessing accounting principles used and significant estimates made by management as well as evaluating the overall financial statement presentation.

During the course of the examination, all asset and liability items contained in the financial statements of this report were examined and verified with relative emphasis according to their amount and potential impact on solvency. Test checks were made of income and disbursement items for selected periods, and a general review was made of the Trust's compliance with applicable statutes and regulations. The examination included a review of the March 31, 2013, fiscal year-end audit workpapers prepared by the Trust's independent auditor, Crowe Horwath, LLP (CH). The audited financial statements were reconciled to their corresponding general ledger account balances.

## **COMPLIANCE WITH PREVIOUS EXAMINATION FINDINGS**

The previous examination of the Trust was made as of March 31, 2008. The prior Report of Examination was dated December 10, 2009, and covered the period from April 1, 2003, through March 31, 2008. The Commissioner issued three (3) directives, as set forth in the January 19, 2010, "Order Adopting Examination Report With Directive No. 10-003." A summary of the directives and the corrective action taken by the Trust is discussed below:

### Directive #1

The Trust was directed to comply with Tenn. Comp. R. & Regs. 0780-01-54.04 by ensuring that written contracts, including but not limited to, administrative agreements and service fee agreements, are filed with the TDCI, as required.

### Corrective Action

During the current period of examination, a written agreement was consummated between Associated General Contractors of Tennessee, Inc. (AGC of TN) and the Trust, indicating services provided and reimbursement formulas. Also, written agreements describing the services performed by the branches of AGC of TN and describing reimbursement calculations were consummated. Additionally, a written agreement was executed between the Trust and the Associated General Contractors of East Tennessee. In order to comply with Tenn. Comp. R. & Regs. 0780-01-54.04, these written agreements were submitted to the TDCI on February 19, 2010. Prior to the completion of formal written agreements, the

Trust had verbal agreements with AGC of TN, the branches of AGC of TN and the Associated General Contractors of East Tennessee.

Directive #2

The Trust was directed to comply with Tenn. Comp. R. & Regs. 0780-01-54.05 by ensuring that any amendments to the organizational documents or written contracts required to be provided to the Commissioner by Rule 0780-01-54-.04 are filed with the Commissioner no later than thirty (30) days prior to the proposed effective date of the amendments, along with a non-refundable filing fee of \$90.00.

Corrective Action

During the current period of examination, the Trust entered into one (1) agreement that was required to be filed with the Commissioner no later than thirty (30) days prior to the proposed effective date. This agreement was submitted to the Commissioner after the effective date and did not meet the requirement of Tenn. Comp. R. & Regs. 0780-01-54.05. This issue is further noted in the "Subsequent Events" and "Comments and Recommendations" sections of this examination report.

Directive #3

The Trust was directed to comply with Tenn. Comp. R. & Regs. 0780-01-54.13 by ensuring that an amount equal to at least eighty-five percent (85%) of its net assets are maintained in permitted investments, and that funds not needed for current obligations may be invested by the board of trustees in "Tennessee Securities" as defined in Tenn. Code Ann. § 56-4-210(b).

Corrective Action:

The Trust was found to be in compliance with Tenn. Comp. R. & Regs. 0780-01-54.13 as of March 31, 2013, and March 31, 2009. However, the Trust was not compliant with the rule as of March 31, 2014, March 31, 2012, and March 31, 2011. This issue is further noted in the "Subsequent Events" and "Comments and Recommendations" sections of this examination report.

## COMPANY HISTORY

The AGC of TN, a general welfare non-profit corporation organized and existing under the laws of the state of Tennessee was chartered on January 20, 1920. The purpose of this organization is to further the purposes of the Associated General Contractors of America, Inc., on a local level, and to promote the principles of Skill, Integrity, and Responsibility among the construction industry in Tennessee. The AGC of TN has Branch Offices in Memphis, Nashville, Knoxville and the Tri-Cities areas. Membership is comprised of General Contractors, Subcontractors and businesses who provide services or products used in the construction of Buildings, Highways and Municipal/Utility projects in Tennessee. A separate Chapter, the Associated General Contractors of East Tennessee, is located in Chattanooga and provides similar service to the construction industry in that area.

The AGC of TN was formed is to bring unity to the construction industry in Tennessee; the coordination of legislative activities among its members; constant liaison with the State and Federal agencies on construction rules and regulations important to the membership; constant development and coordination of training programs for construction craftsmen; promotion of better relations among its members; to maintain high professional standards in the conduct of business of its members; and to join together its members to improve the business conditions within the construction industry in Tennessee.

The Trust is an unincorporated association that was created by the AGC of TN on January 13, 1994, to act as a self-insurance group. The operation of the Trust is confined to Tennessee, where it is licensed to transact the business of workers' compensation and employers' liability group self-insurance. Membership in the Trust is composed of qualifying members of the AGC of TN who have pooled their liabilities under the Tennessee Workers' Compensation Law.

The Trust began operations on April 1, 1994, with contributions from the initial members equal to twenty-five percent (25%) of their first-year estimated annual net premium for workers' compensation coverage in accordance with Tenn. Comp. R. & Regs. ch. 0780-01-54-04. The Trust continues to maintain the members' deposits and new members in the Trust are also required to make a contribution equal to twenty-five percent (25%) of their first-year estimated annual net premium, if they are accounted for on a self-reporting basis.

Premiums are paid in advance, using estimated annual net premium, if a member selects a quarterly or monthly payment option.

The following exhibit depicts certain aspects of the growth and financial history of the Trust since the previous examination, according to audited financial statements filed with the TDCI:

<u>Policy Year Ending March 31</u>	<u>Earned Premiums</u>	<u>Total Reserves for Losses &amp; LAE*</u>	<u>Assets</u>	<u>Liabilities</u>	<u>Members' Equity or Surplus Funds</u>
2013	\$5,007,962	\$8,070,622	\$14,529,200	\$9,294,708	\$5,234,492
2012	\$4,378,808	\$8,610,000	\$16,186,933	\$9,602,665	\$6,584,268
2011	\$4,054,104	\$8,450,000	\$15,911,365	\$9,561,039	\$6,350,326
2010	\$4,387,276	\$8,979,836	\$16,064,993	\$10,119,070	\$5,945,923
2009	\$5,637,550	\$10,701,552	\$17,788,258	\$12,796,966	\$4,991,292

\* This represents the total reserves for losses and loss adjustment expenses for all policy years with open claims since the Trust's inception.

### **TRUST AGREEMENT AND DECLARATION OF TRUST AND BYLAWS**

The Trust was created through the adoption of the Declaration of Trust and Bylaws (Bylaws) which was executed on January 13, 1994, and formally approved by the TDCI effective April 1, 1994. The Trust was formed to act as a workers' compensation self-insurance group as defined by Tenn. Comp. R. & Regs. 0780-01-54-02(17) and as authorized by Tenn. Code Ann. § 50-6-405. The Trust operated under its original name of "Associated General Contractors Self-Insured Workers' Compensation Trust" until 1996. On April 18, 1996, the Trust Agreement and Declaration of Bylaws was amended in order to change the Trust's legal name to: "CompTrustAGC...Tennessee."

The Trust Agreement and Bylaws state the purpose of the Trust as follows:

"to hold and administer the Fund through which its Members can fulfill their responsibilities under the Tennessee Workers' Compensation Act; to form a workers' compensation self-insurance group pursuant to the Act; to provide for workers' compensation coverage and for benefits to employees and dependents of its Members; to provide, at such time as the solvency and reserves of the Fund permit, in the sole discretion of the Trustees, the discounts or dividends on contributions made by Members for workers' compensation coverage; and to contain the cost of providing workers' compensation coverage by developing and refining specialized claim techniques and a loss prevention program."

The Trust was formed in accordance with Tenn. Code Ann. § 50-6-405(c) for the benefit of its member owners. The term "member" includes those individuals, corporations, and partnerships or other legal entities executing, or otherwise being bound by, the Indemnity Agreement and Power of Attorney, which are members in good standing of the AGC of TN and which contribute to the Fund as a participating member in the Trust.

### **INDEMNITY AGREEMENT AND POWER OF ATTORNEY**

In accordance with Tenn. Comp. R. & Regs. 0780-01-54-04(2)(e)2, each member is required to execute and be bound by an indemnity agreement and power of attorney as a condition of membership in the Trust. Significant terms that each member agrees to include the following:

The Members, jointly and severally, will pay any final award based upon a claim against any of them under the workers' compensation laws of the State of Tennessee, and the Trust will pay any assessments lawfully levied against it by the State of Tennessee.

The members intend for this agreement to be a mutual covenant of assumption and not a partnership.

The Board of Trustees will set up, operate and enforce the administrative rules, regulations and bylaws of the Trust and the Fund.

The Board may admit as members of the Trust only those who meet the criteria for membership established by the Board. Except as otherwise provided by the Regulations, the Board shall, subject to the approval by the TDCI, be the sole judge of whether an applying entity shall be admitted to membership and the eligibility of an entity to remain a member.

The Board will promulgate the rules and regulations for administering the Trust, the expulsion of or suspension of members and, subject to the Regulations, the admission of members. Each member of the Group agrees to abide by such rules and regulations.

Each Member shall initiate and maintain a safety program to provide its employees safe and sanitary working conditions and shall follow the general recommendations of the Trust in this field to promote the general welfare of its employees.

## MANAGEMENT AND CONTROL

The operation and administration of the Trust is the joint responsibility of a Board of Trustees consisting of not more than fifteen (15) or less than five (5) individuals. Pursuant to Tenn. Comp. R. & Regs. 0780-01-54-.06, all Trustees are required to be residents of the State of Tennessee or officers of corporations authorized to do business in the State of Tennessee. At least two-thirds of the Trustees are required to be employees, officers, or directors of members of the Trust. No affiliate of the administrator or the service agent shall serve as a Trustee. The Board of Trustees shall elect officers from among its members to serve for terms of one year. The officers of the Trust shall consist of a Chairman, a Vice-Chairman, and a Secretary.

As of March 31, 2013, the following persons were serving as members of the Board of Trustees and officers of the Trust:

<u>Name</u>	<u>Business/Occupation and Address</u>
Larry Parks Chairman, Board of Trustees	T.U. Parks Construction Chattanooga, TN
Cecil Morgan, Jr. Vice-Chairman	Morgan, Inc. Clarksville, TN
Todd Wolf Secretary	Shoffner Kalthoff Mechanical Electric Service, Inc. Knoxville, TN
Craig Christenbury	Chris-Hill Construction Company, LLC Memphis, TN
Bill Prince	BurWil Construction Co. Inc. Bristol, TN
Kate Gilbert	The Strauss Company, Inc. Chattanooga, TN

The initial Board of Trustees was empowered by the Declaration of Trust and Bylaws and served until the first meeting of the members of the Trust. Thereafter, the Trustees shall be elected by the members of the Trust. Each Trustee shall serve for a term of three (3) years. A Trustee may resign and be fully discharged from all further duties or responsibilities by giving at least 30 days prior written notice to the Chairman of the Board of Trustees. A Trustee may be removed, with or without cause, by a majority vote of all Trustees. If a Trustee dies, becomes incapacitated, refuses to act, resigns or is removed, his successor shall be appointed by the remaining Trustees to fill the unexpired term of office, such appointment to be subject to confirmation by the members at their next regularly scheduled meeting. Responsibilities of the Trustees as stated in the Bylaws include the following:

- The Trustees shall be responsible for all monies collected or disbursed by the Trust and for the segregation of all monies into the claims fund account and the administrative fund account.

- The Trustees shall receive applications for membership from prospective new members of the Trust and shall approve or disapprove such applications in accordance with rules promulgated by the Trustees.
- The Trustees shall be responsible for establishing such trusts, loss funds, or other funds as may be required from time to time by the Rules or as may be established by the Trustees from time to time.
- The Trustees shall be responsible for and shall undertake the posting of such security deposits and/or security bonds as may be required to be posted with the TDCI.
- The Trustees shall be responsible for and shall cause to be filed with the TDCI and elsewhere such annual or other periodic audits, reports, and disclosures as may be required from time to time by applicable federal or state statutes or governmental regulations.
- The Trustees shall take all necessary precautions to safeguard the Fund and the other assets of the Trust including designating the administrator and the service agent of the Fund.

#### **REFUNDS OR DISTRIBUTIONS**

Pursuant to Tenn. Comp. R. & Regs. 0780-01-54.15, self-insured workers' compensation pools are allowed to provide refunds to the members of the pool when there is an excess amount of premium above what is necessary to fund all obligations for that fund year with the written approval of the Commissioner. The Board of Trustees must declare the refund not less than eighteen (18) months after the end of the fund year, and if the refund is declared, ten percent (10%) of the refundable amount must be retained by the pool for an additional year to cover any obligations that may not yet have been reported.

The approval history of distributions, categorized by calendar year, since the previous examination is as follows:

<b><u>Date of Approval by Board of Trustees</u></b>	<b><u>Date of Approval by TDCI</u></b>	<b><u>Amount</u></b>
January 21, 2009	March 5, 2009	\$1,000,000
January 18, 2010	March 8, 2010	\$1,000,000
February 27, 2012	April 10, 2012	\$1,000,000
February 17, 2013	March 7, 2013	\$1,000,000

As of March 31, 2013, the Trust had approved the distribution of a total of \$6,959,708 to its members since its inception.

### **CONFLICTS OF INTEREST AND PECUNIARY INTERESTS**

Tenn. Comp. R. & Regs. 0780-01-54.07(6) and (7) state:

"No administrator or its employees or the pool's board of trustees shall accept, or be the beneficiary of, either directly or remotely, any fee, brokerage, commission, gift or other consideration for or on account of any loan, deposit, sale payment, exchange, or reinsurance transaction made by or on behalf of such pool, or be pecuniarily interested in such purchase, sale, loan, either as borrower, principle, co-principle, agent or beneficiary, except that if a member, such person shall be entitled to all of the benefits accruing under the terms of the membership."

"No administrator or its employee(s) or the pool's board of trustees shall take or receive for their own use any fee, brokerage, commission, gift or other consideration of the pool except for reasonable compensation for services performed or sales or purchases made to or for the pool in accordance with the terms of the administrator contract approved by the Commissioner. No administrator or its employees or the pool's board of trustees shall collect a commission for the procurement of excess insurance for the pool."

During the course of the examination, no instances of non-compliance with the Rule were found.

### **CORPORATE RECORDS**

The Trust's Bylaws state that the members of the Board of Trustees shall meet quarterly, or as often as required, at the principal office of the Trust, or at such other location as may be acceptable to the Trustees. Special meetings of the Trustees may be called at any time and may be by telephone conference calls or other methods of communication by which all Trustees participating may simultaneously hear each other. The members of the Trust shall meet annually on the first Tuesday in October of each year at the offices of the Trust or at such other place and time as may be determined by the Board of Trustees. During the period under examination, there were forty-four (44) regular and special meetings of the Board of Trustees and five (5) meetings of the members of the Trust. The minutes of the meetings were reviewed and appear to reflect properly the acts of the respective bodies. Membership requirements, powers and duties of board members, and Trust members were verified to be in accordance with the Rules of the TDCI.

## MANAGEMENT AGREEMENTS

### ADMINISTRATIVE AGREEMENT

The Trust has used only one administrator, Mr. William B. Young, since its inception in 1994. The "Application to Serve as Administrator of Self-Insurance Group Pool" which was filed with the TDCI was dated January 26, 1994, and was filed as part of the license process. The document on file with the TDCI does not have a date received stamp affixed. Mr. Young continues to act as "Administrator" as defined within the meaning of Tenn. Comp. R. & Regs. 0780-01-54-02(1).

On March 21, 2003, the Trust and Mr. Young executed an "Administrator Agreement" whereas, the Trust desires to engage the administrator to carry out certain policies and perform day to day management of the Trust. The administrator shall also conduct such other activities as required by applicable state laws and regulations. The Agreement on file with the TDCI was stamped received February 24, 2006.

Specific delineated areas of authority include the following:

- Purchase and selection of excess insurance;
- Purchase and selection of errors and omissions coverage for the Board;
- Purchase and selection of surety bond;
- Implementation of marketing policies approved by the Board;
- Final underwriting authority to the extent not retained by the Board;
- Payment of vendors and other expenses;
- Hiring and firing of staff of the administrator; and
- Execution, on behalf of the Trust and with approval of the Board, of contracts for claims administration, accounting and actuarial services.

"Trust shall pay the Administrator for expenses incurred relating to the authority granted under this Agreement." "Trust and Administrator agree that all fees payable to Administrator under this Agreement are reasonable expenses pursuant to the engagement."

The administrator does not receive a salary from the Trust. Mr. Young's formal employment is "Executive Vice President" of the AGC of TN. The Trust reimburses the administrator for travel expenses incurred on behalf of the Trust which are immaterial in relation to the Trust's overall financial operation. The Agreement does not define the specific expense items to be reimbursed.

Either party may terminate the agreement without cause upon giving not less than 30 days written notice.

## **CLAIMS PROCESSING AGREEMENT**

During the period of examination, and effective from April 1, 2007, through April 1, 2010, the Trust had an agreement with Brentwood Services Administrators, Inc. (BSA) that provided "Specified Third Party Administrator Services" in regards to claims processing and other related services.

The agreement with BSA in effect as of the date of this examination was effective April 1, 2010, to remain in effect until April 1, 2013. The agreement is automatically renewed for consecutive one (1) month terms at the ending date unless written notice of termination is provided by one party to the other party thirty (30) days prior to the ending date of the agreement or any one (1) month extension thereof, or a new agreement is entered into between the parties. Either party may terminate the agreement during its term by providing one hundred twenty (120) days prior written notice of termination to the other party.

The agreement stipulates that BSA will provide the following services:

- Providing claims services
- Providing marketing and marketing assistance services
- Providing account management services

Examples of claims services to be provided are:

- Service, review, investigate, adjust, process and/or resist workers' compensation claims presented against the Trust
- Establish claim reserves and provide continuous review and update as necessary
- Prepare loss reports for Trust management no less than fifteen (15) days following the last day of the previous calendar month
- Prepare, maintain and file any and all records and reports that may be required by any state regulatory agencies in connection with BSA's handling of claims as instructed by the Trust
- Coordinate the assignment of and/or provide utilization management services on claims requiring or needing such services (Medical Case Management)

Examples of marketing and marketing assistance services to be provided:

- Develop and implement a marketing plan with the Trust's assistance to promote and present to prospective members

Examples of account management services to be provided:

- Develop underwriting rules for member employers to obtain workers' compensation coverage through the Trust in accordance with Trust rules and excess insurance carrier(s)'s rules and guidelines

- Review each prospective member employer with regard to the promulgated underwriting rules and guidelines for acceptance into the Fund.
- Maintain underwriting files which shall be available for review by the Fund
- Develop appropriate premium amounts for each member using classification codes, rates, modifiers, etc. consistent with appropriate law
- Present the appropriate billing to the participating member employer for payment by them to the Fund
- Promulgate experience modification factors for each participating member employer utilizing ModMaster
- Provide the Fund with documents evidencing the amount of any insurance producer commissions paid

The Trust agrees to pay to Brentwood a service fee equal to a percent of the Fund's participating employers' payroll subject to a minimum annual service fee.

#### **CUSTODIAL AGREEMENT**

The Trust and its custodian, Pinnacle Bank, completed a new custodian agreement during the period of examination. Except for one (1) omission, the new agreement signed by the custodian and by the Trust on March 30, 2011, exhibited language compliant with Tenn. Comp. R. & Regs. 0780-01-46 (revised effective May 26, 2013). This issue is further noted in the "Subsequent Events" section of this examination report.

#### **INVESTMENT ADVISORY AGREEMENT**

The Trust was a party to an "Investment Advisory Services Agreement" with IPI Asset Management, Inc. (IPI) during the period of examination. The most recent agreement was executed and signed by the then Vice Chairman of the Board of Trustees on behalf of the Trust on September 8, 2008.

This agreement gives IPI discretion to supervise and direct, on a continuing basis, as agent and attorney-in-fact on behalf of the Trust without prior consultation, the investment and reinvestment of all assets, subject to the limitations, needs and objectives imposed by the Trust's Investment Policy. The agreement includes a schedule of compensation which was reviewed as part of the examination and was determined to be reasonable.

This agreement's schedule of compensation notes that fees are calculated quarterly, based upon market value of all assets under management in the account. Generally, one fourth of the annual fee will be billed in arrears each quarter.

An "Addendum To Investment Advisory Agreement" with IPI was signed effective September 8, 2008, and allowed, with the Trust's consent, IPI to retain outside vendors to

perform services described in the "Investment Advisory Services Agreement." As of March 31, 2013, Garrison Financial Corp. (GFC) acted as a subsidiary advisor for the Trust's investment account and prepared financial statements for the Trust.

#### **ADMINISTRATIVE SERVICES AGREEMENT**

On July 22, 2010, the Trust and its sponsoring association, AGC of TN, entered into an administrative services agreement. AGC of TN agreed to provide office supplies, including necessary information technology, and personnel for the operation of the Trust. The agreement provides for the Trust to pay a fee each quarter to AGC of TN in order to reimburse for services and personnel.

#### **MEMOS OF UNDERSTANDING**

A formal "Memorandum of Understanding" was executed in 2010 between the Trust and AGC of East Tennessee, AGC of Tennessee, West Tennessee Branch; AGC of Tennessee, Tri-Cities Branch; AGC of Tennessee, Knoxville Branch; and AGC of Tennessee, Middle Tennessee Branch.

These memos disclose that in exchange for specified compensation, safety and loss control activities shall be performed by safety directors employed by the branches of AGC of TN which are located in Memphis, Nashville, Knoxville and the Tri-Cities, and AGC of East Tennessee, whose office is located in Chattanooga. These activities are considered paramount to the operations of the Trust. The memos state the Trust will pay each branch a percentage of the premium generated from members of that specific branch, but no less than a fixed minimum annual premium. During the fiscal year ending March 31, 2013, the Trust incurred safety and loss expenses to the branches and AGC of Tennessee in the amount of \$558,338.

The Trust also reimburses AGC of TN for the purchase of certain fixed assets used by the Safety Director, such as automobiles for travel to job sites.

#### **FIDELITY BONDS AND OTHER INSURANCE**

The Trust maintained fidelity coverage with St. Paul Fire & Marine Insurance Company in the form of an "Insurance Company Bond" with employee coverage in the amount of \$500,000. This policy was effective from April 1, 2011, through April 1, 2014, and was renewed on April 1, 2014, and is effective until April 1, 2017.

The Trust maintains an Errors and Omissions policy with Navigators Specialty Insurance Company in the amount of \$5,000,000 each claim with a \$5,000,000 policy aggregate and a \$25,000 deductible. This policy's definition of insured would include the Trustees and members. The policy complies with Tenn. Comp. R. & Regs. 0780-01-54-.04(2)(b)(5) which

requires each applicant for a certificate of authority to have in place an errors and omissions policy "for the board of trustees issued to protect the pool from damages, if any."

The above referenced polices also comply with Tenn. Comp. R. & Regs. 0780-01-54-.07(3)(b) and (c) which exhibit the following requirements under the heading, Administrators:

- "Evidence that the applicant has obtained a fidelity bond in the amount of \$200,000 written by a company licensed to transact business in this state, which may be obtained either by the administrator or the pool on the administrators' behalf;"
- Evidence that the applicant has obtained an errors and omissions insurance policy for the protection of the pool in the amount of \$200,000 written by company licensed to transact business in this state, unless waived by the Commissioner upon a showing of proof that the applicant is unable to obtain such coverage;"

BSA maintains certain insurance coverage as required under its "Agreement to Provide Specified Third Party Services" dated April 1, 2010. These include general liability, auto liability, workers' compensation, contractual liability, and crime coverage. The following policies are issued by insurance companies within the Travelers umbrella of companies and Fidelity and Deposit Company of Maryland:

- The crime policy is issued by Fidelity and Deposit Company of Maryland and covers employee theft up to \$5,000,000 with a \$50,000 deductible.
- The workers compensation policy is issued by The Travelers Casualty and Surety Company with standard limits for both workers compensation and employers liability.
- The auto policy is issued by The Travelers Indemnity Company of Connecticut with a \$1,000,000 liability limit for one accident or loss, a \$2,000 limit for medical, and a standard limit for uninsured motorist. The policy provides for the lesser of actual cash value or cost of repair minus the deductible for auto physical damage.
- The commercial general liability policy is issued by Travelers Property Casualty Company of America with a \$2,000,000 general aggregate limit and a \$1,000,000 limit each occurrence with a \$1,000 deductible for business owners property coverage per occurrence and a \$250 deductible for building glass per occurrence.
- The commercial excess liability (umbrella) policy is issued by The Travelers Indemnity Company with a \$10,000,000 aggregate limit and a \$10,000 retained limit per occurrence.

All of the above insurance companies are licensed in the State of Tennessee, with the exception of Navigators Specialty Insurance Company, which operates as surplus lines carrier pursuant to Tennessee insurance statutes.

### STATUTORY DEPOSITS

In compliance with Tenn. Comp. R. & Regs. 0780-01-54-.04(3)(e), the Trust maintained the following deposit as of March 31, 2013:

<u>Description</u>	<u>Par Value</u>	<u>Statement Value</u>
Blount County TN 5.0%, due 6/01/2017	\$100,000	\$117,621

### EXCESS OF LOSS INSURANCE

In accordance with Tenn. Comp. R & Regs. 0780-01-54-.04(3)(c), the Trust had in effect, for the period April 1, 2011, to April 1, 2013, an excess of loss agreement for workers compensation and employers liability claims with Safety National Casualty Corporation. The agreement contained only specific coverage.

Under the agreement's specific coverage, the excess insurer agrees to indemnify the Trust for the amount in excess of the Trust's \$600,000 specific retention for each accident or employee disease, up to the statutory limit for workers' compensation and up to \$1,000,000 for employers' liability.

The Trust obtained aggregate retention coverage in its early years and then requested approval from the TDCI to maintain specific coverage only after its financial position strengthened. A request was made for the policy years beginning April 1, 2008, April 1, 2009, April 1, 2010, April 1, 2011, and April 1, 2014, pursuant to Tenn. Comp. R. & Regs., Ch. 0780-01-54-.04(3)(c)(1) to the TDCI to forgo aggregate excess insurance and is accompanied by an actuarial analysis supporting the request. However, the Trust's actuary did not submit to the TDCI a letter certifying that the Trust did not need to purchase aggregate excess of loss insurance coverage for the policy years beginning April 1, 2012, and April 1, 2013. This issue is noted in the "Recommendations and Subsequent Events Sections" of this examination report.

A summarization by policy year for the period under examination is listed below:

<u>Policy Year</u>	<u>Specific Retention</u>	<u>Aggregate Indemnity</u>	<u>Aggregate Retention</u>	<u>Insurer</u>
4/01/2012-13	\$600,000	None	None	Safety National Casualty
4/01/2011-12	\$600,000	None	None	Safety National Casualty
4/01/2010-11	\$600,000	None	None	Safety National Casualty
4/01/2009-10	\$600,000	None	None	Safety National Casualty
4/01/2008-09	\$600,000	None	None	ACE American Insurance Co.

The policies provide coverage for losses sustained by the Trust as a result of injury by accident occurring during the policy period, or by disease caused or aggravated by exposure to conditions causing the disease occurring during the policy period. The policies have provisions for the continuation of coverage in the event of plan insolvency. The policies were written by companies authorized to do business in the State of Tennessee.

Reliance National Indemnity Company provided the Trust specific and aggregate excess insurance coverage from April 1, 2000, through September 1, 2000. During the year 2000, Reliance National Indemnity Company was merged into its parent company, Reliance Insurance Company. On October 3, 2001, Reliance Insurance Company was placed in liquidation by the Commonwealth Court of Pennsylvania and recoveries from the Reliance companies ceased.

The Trust's reserves reflect the insolvency of the Reliance companies and were increased to reflect the unlikely nature of any recoveries for the closed excess claim incurred on July 17, 2000. In addition, Trust's audited financial statements did not reflect any recovery amounts from Reliance as they were considered immaterial and uncollectable by the Trust and its auditor.

## LOSS EXPERIENCE

<u>Year</u>	<u>Premiums Earned</u>	<u>Incurred Losses &amp; LAE</u>	<u>Underwriting Ratio</u>	<u>General &amp; Adm. Expense</u>	<u>Gen. &amp; Adm. Expense to Premium</u>	<u>Combined Ratio</u>
2013	\$5,007,962	\$1,738,069	34.7%	\$2,113,243	42.2%	76.9%
2012	\$4,378,808	\$2,901,774	66.3%	\$1,938,593	44.3%	110.6%
2011	\$4,054,104	\$2,327,830	57.4%	\$2,196,487	54.2%	111.6%
2010	\$4,387,276	\$1,700,652	38.8%	\$1,991,352	45.4%	84.2%
2009	\$5,637,550	\$3,316,798	58.8%	\$2,561,536	45.4%	104.2%

### Fund Year Deficit Corrections

Pursuant to Tenn. Comp. R. & Regs. 0780-01-54.24(1)(b), the Trust on March 23, 2012, and March 5, 2013, reported deficiencies to the TDCI for the following fund years:

	<u>March 23, 2012</u>	<u>March 5, 2013</u>
March 31, 2013		\$71,136
March 31, 2010	\$942,630	903,894
March 31, 2009	280,753	199,522
March 31, 2007	60,261	63,632
March 31, 2000	587,672	550,856
March 31, 1999	319,087	314,087
March 31, 1996	<u>3,569</u>	<u>3,569</u>
Total	<u>\$2,193,972</u>	<u>\$2,106,696</u>

The Trust requested approval to transfer surplus to cover the fund year deficits totaling \$2,385,770 and \$2,354,429 on March 23, 2012, and March 5, 2013, respectively as follows:

	<u>March 23, 2012</u>	<u>March 5, 2013</u>
March 31, 2012		\$ 71,136
March 31, 2001	\$ 168,063	243,416
March 31, 1998	187,487	60,000
March 31, 1997	1,980,798	1,930,455
March 31, 1995	<u>49,422</u>	<u>49,422</u>
Total	<u>\$2,385,770</u>	<u>\$2,354,429</u>

On April 10, 2012 and March 7, 2013, the TDCI approved the surplus transfers in accordance with Tenn. Comp. R. & Regs. 0780-01-54.24(1)(b).

## **ACCOUNTS AND RECORDS**

### Financial Records

Tenn. Comp. R. & Regs. 0780-01-54-09(2) requires the Trust to submit to the Commissioner a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth (6th) month following the end of the Trust's fiscal year. Tenn. Comp. R & Reg. 0780-01-54-09(5) allows the Trust's audited financial statements to be prepared in accordance with Generally Accepted Accounting Principles (GAAP).

The Trust retained an independent accounting firm, CH, to issue the Trust's GAAP audited financial statements and to prepare their federal income tax returns.

During the period of examination, CH recorded all assets, liabilities, cash receipts, and disbursements, and produced a detailed General Ledger using Business Works software. CH, also, prepared all year-end adjusting entries and a trial balance as of year-end in conjunction with its annual audit of the Trust.

Claims accounting records were originally produced from cash disbursement source documents prepared by BSA, CH, and actuarial firm, Casualty Actuarial Consultants, Inc. (CAC), rely upon BSA for individual case reserve estimate information for use in the Trust's audited financial statements and actuarial reports.

Member premium calculation and billing records originated from BSA's underwriting division including the calculation of loss experience modification factors. BSA relied upon audited member payroll information from Millennium Insurance Solutions, Inc. to calculate audited premium.

GFC and Pinnacle Bank provides fair market values for the Trust's debt securities shown on the balance sheet in the audited financial statements.

### **Information Systems**

The majority of the Trust's information systems and data requirements were provided by the Trust's sponsoring association, AGC of TN, and BSA under the two (2) management agreements previously discussed.

The Trust's administrator, using AGC of TN information technology equipment, conducted business electronically using basic contemporary computing and networking methods. AGC of TN had a domain server/client computing arrangement facilitated by a server. AGC of TN employees worked from individual personal computer desktop workstations authenticating against a server file and print server. Users communicate internally and externally via electronic mail (e-mail). AGC of TN's access control software consisted of a firewall and included data encryption technology. AGC of TN used basic database management software and basic business accounting software.

BSA utilized a hardware platform and operating system. BSA had operating system security software protection in place. BSA implemented a state of the art firewall system that prevented any outside access to BSA's information technology system or BSA's claims system. BSA had a local area network of connected desk top computers that ran on Windows operating systems. BSA used a software program for workers' compensation claim processing. BSA's underwriting division used underwriting software and software for premium computation and billing.

The Trust's administrator and BSA both have disaster recovery plans for their information technology systems and provide for offsite recovery of data. However, AGC of TN's disaster recovery plan was not formally documented in writing.

#### **Examination of Accounts and Records**

The Trust had no employees and was totally dependent upon related parties or third parties for the performance of the day-to-day operations of the Trust. The Trust's overall control environment had limited documented internal controls and segregation of duties by those engaged by the Trust to perform key activities.

During the course of the examination, accounts were verified by various tests and procedures deemed necessary to confirm values for assets and liabilities appearing in the Company's financial statements. General ledger trial balances were reconciled with the financial statements, and all were reviewed for completeness of disclosure and conformity to GAAP as permitted by Tenn. Comp. R & Reg. 0780-01-54-.09(5).

Books and records of the Trust are kept at the office of the Trust:

2612 Westwood Drive  
Nashville, Tennessee 37204

Claims and underwriting records are kept at the office of BSA located at:

104 Continental Place, Suite 200  
Brentwood, Tennessee 37027

### **LITIGATION AND CONTINGENT LIABILITIES**

As of March 31, 2013, the Trust had committed no reserves to cover any contingent liability. Various lawsuits against the Trust have arisen in the normal course of business relating to workers' compensation claims' settlements. Liabilities arising from litigation are not considered material in relation to the financial position of the Trust.

## MARKET CONDUCT ACTIVITIES

In conjunction with this examination, a market conduct review was made of the Trust as of March 31, 2013. The following areas were addressed:

### UNDERWRITING

#### Underwriting - Membership Files

Tenn. Comp. R. & Regs. 0780-01-54-.08 (1) (*Members of the Pool*), states:

"The board of trustees shall establish underwriting guidelines with respect to the addition of members to the pool as well as the renewal of its members. At a minimum, such underwriting guidelines shall set forth requirements for the members to be able to provide the pool evidence that the member is solvent. Each pool shall file such guidelines and any amendments thereto with the Commissioner no later than thirty (30) days prior to their proposed effective date."

During the period of examination, the Trust had published Underwriting Guidelines that were used in the acceptance and rejection of underwriting risk. The guidelines, which were filed with the TDCI prior to the period of examination, were found to be in compliance with the above rule requirements.

During the period of examination, the Trust conducted thirteen (13) member actions, including four (4) new member additions and nine (9) member cancellations. All member actions were examined and found to be performed in accordance with Trust Underwriting Guidelines and in compliance with Tenn. Comp. R. & Regs. 0780-01-54-.08 (1).

#### Underwriting - Rate and Premium Contributions

Trust underwriting rate and premium contributions were examined for compliance with Tenn. Comp. R. & Regs. 0780-01-54-.10 (Rates and Rate Reporting). In compliance with Section .10(4) of this rule, the Trust filed with TDCI its loss cost multiplier (LCM) and supporting documents for each year during the period of examination. The Trust's use of the LCM was further verified in the review of member underwriting files.

In the examination of member underwriting files, the examiners used ACL software to randomly select fifteen (15) files from the Trust's total membership of fifty-seven (57). The examination focused on the Trust's calculation of the members' estimated and audited premiums to include use of authorized rates, experience modifications, and discounts in determining member premium contributions for the policy year ending March 31, 2013. As a result of the examination, there were no exceptions.

### **ADVERTISING**

In the examination of Trust's advertising, items issued by the Trust were examined in accordance with Tenn. Code Ann. § 56-8-104 (1) (Misrepresentations and False Advertising of Insurance Policies) and Tenn. Code Ann. § 56-8-104 (2) (False Information and Advertising Generally). The Trust's print material, bulletins, and internet website was examined in accordance with the statute and found to be in compliance. The Trust was found to have strong controls in place for the production and use of all advertising materials approved by the Trust's administrator.

### **CLAIMS REVIEW**

The Trust's processing of workers' compensation claims was examined for compliance with claims handling standards as required by the Department of Labor, Division of Workers' Compensation Tenn. Comp. R. & Regs. 0800-2-14.

ACL software was used to randomly select two samples from the claims population. One sample of twenty-eight (28) claims was selected from ninety-four (94) open claims as of March 31, 2013. A second sample of twenty-eight (28) claims was selected from seven thousand, six hundred thirty-six (7,636) claims that were opened and closed during the examination period, April 1, 2008, to March 31, 2013. In total, a combined sample of fifty-six (56) claim files was examined for compliance with Tenn. Comp. R. & Regs. 0800-2-14. As a result of the examination, the following exception findings are noted by rule section:

#### **Reporting Requirements**

There were eight (8) exceptions where the Trust was unable to provide the original paper claim file for examination. Without the original claim file, the examiners were unable to verify compliance with Tenn. Comp. R. & Regs. 0800-2-14.

Tenn. Comp. R. & Regs. 0800-2-14-.03 (1) requires employers to report accidents to their insurer within one (1) working day of knowledge of injury. In the sample, there were eighteen (18) exceptions found where employers failed to report an accident within five (5) or more working days of knowledge of the injury.

#### **Investigation**

Tenn. Comp. R. & Regs. 0800-2-14-.06 requires medical rating and date of maximum medical improvement (MMI) by the treating physician, and information needed to settle a claim to be documented in writing, and that insurers make an offer of settlement in writing within thirty (30) days of MMI. In the sample examined, six (6) claim files did not contain the medical impairment date of MMI, and settlement documents. Of the six (6) files tested, three (3) files were related to aged claims (1997 - 2000) that BSA inherited from the Trust's former TPA, Sedgwick James. Although the documents were not available for examination, the electronic diary maintained on each claim contained information as to the agreed MMI

and processing of claim settlement. It is recommended the Trust maintain copies of all medical impairment data of MMI and settlement documents, where applicable.

### **Payment of Benefits**

Tenn. Comp. R. & Regs. 0800-2-14-.05 requires compensation payments for an injury be received by the claimant no later than fifteen (15) days after notice of injury, and that compensation benefits be issued timely to assure the injured employee receives the benefits before the date they are due. All sampled payments were made within the required timeframe.

### **Case Reserves**

The Trust established and maintained adequate reserves for known claims and expenses, claims incurred but not reported (IBNR), and bad or uncollectible debt pursuant to Tenn. Comp. R. & Regs. 0780-01-54-.11(4).

In the examination of case reserves, the examiner considered the reserve established in each case and the overall reserve pattern present in the sample in determining if the Trust established and maintained adequate reserves. The examiner found no exceptions where the case reserve appeared to be inadequate. In general, during the period of examination, the Trust exercised a conservative reserve policy that resulted in establishment of an adequate reserve in compliance with rule requirements.

### **POLICYHOLDER COMPLAINTS**

Complaints for Workers Compensation Claims are handled through the Tennessee Department of Labor and Workforce Development (TDOL). All information on how to request assistance is posted on the TDOL website: [www.tn.gov/labor-wfd/wcomp.shtml](http://www.tn.gov/labor-wfd/wcomp.shtml). The website also provides information assistance related to the filing of a complaint and provides a C-40A form for submission of a request for assistance.

In the examination of claims in the claims review portion of the examination, the examiner reviewed two (2) files that contained copies of requests for assistance submitted by claimants through the TDOL website. In each case, the examiner reviewed the request submitted by the claimant and the response provided by the Trust back to TDOL. In all cases, the Trust responded in compliance with TDOL requirements.

### **PRIVACY OF NON-PUBLIC PERSONAL INFORMATION**

The Trust's members (policyholders) are commercial businesses. Tenn. Comp. R. & Regs. 0780-1-72, (Privacy of Consumer Information Regulations), includes the following in the definition of "Scope":

"These rules do not apply to information about companies or about individuals who obtain products or service for business, commercial, or agricultural purposes."

BSA processes the claims of the beneficiaries of the workers' compensation policies issued by the Trust to its members. In the agreement for "Specified Third Party Administrator Services" with the Trust, BSA includes confidentiality and protection language in Exhibit F, "Part 1" as follows:

"all electronically stored information made accessible by Brentwood to TAASIT will not under any circumstance be revealed or released to any person or entity not directly in the decision making process of handling the claim to which the information refers;..."

The relationship of a beneficiary is addressed by Tenn. Comp. R. & Regs. 0780-1-72-.04(6)(b)5. A beneficiary in a workers' compensation plan is not solely considered a consumer of the "licensee" provided that the "licensee" does not disclose nonpublic information about the individual to a nonaffiliated third party, other than as permitted under Rules 0780-1-72-.14, 0780-1-72-.15, and 0780-1-72-.16.

#### **ANTI-FRAUD PLAN**

The Trust has a formalized anti-fraud plan which was adopted June 10, 2009, and filed with the TDCI on June 29, 2009. The "CompTrustAGC...Tennessee Anti-Fraud Plan" language is in compliance with Tenn. Code Ann. § 56-47-112(a).

## SUBSEQUENT EVENTS

(1) Pursuant to Tenn. Comp. R. & Regs. 0780-01-54.24(1)(b), the Trust on February 14, 2014, reported deficiencies to the TDCI for the following fund years:

	February 14, 2014
March 31, 2010	\$ 903,894
March 31, 2009	199,522
March 31, 2007	252,060
March 31, 2000	573,354
March 31, 1999	327,087
March 31, 1996	<u>26,742</u>
Total	<u>\$2,282,659</u>

The Trust requested approval to transfer surplus to cover the known fund year deficits and potential additional deficits totaling \$2,283,293 on February 14, 2014, as follows:

	February 14, 2014
March 31, 2001	\$ 243,416
March 31, 1998	60,000
March 31, 1997	1,930,455
March 31, 1995	<u>49,422</u>
Total	<u>\$2,283,293</u>

On March 17, 2014, the TDCI approved the surplus transfers in accordance with Tenn. Comp. R. & Regs. 0780-01-54.24(1)(b) in conjunction with the approval of a requested refund.

(2) A refund of \$1,000,000 from the Fund Years ending March 31, 2003, 2004 and 2006 were distributed to the Members during the last half of March 2014. The request for this distribution was made to the TDCI on February 18, 2014, and subsequently approved by the TDCI on March 17, 2014.

(3) The Tennessee Workers' Compensation Reform Act of 2013 became effective July 1, 2013, and is the most significant revision to the Tennessee workers' compensation law since the original 1919 act was passed. The 2013 Workers' Compensation Reform Act applies to injuries that occur on or after July 1, 2014.

(4) The Trust and BSA entered into a new agreement to provide "Specified Third Party Administrator Services". The agreement was filed with the Commissioner on September 10, 2013, with an effective date of April 1, 2013. The Trust's submission of the agreement to the Commissioner after the effective date did not meet the requirement of Tenn. Comp. R. & Regs. 0780-01-54.05. This issue is noted in the "Recommendations Section" of this examination report.

(5) The Trust added an addendum to its "Individual Custodian Agreement" with Pinnacle Bank in order to become compliant with TDCI Rule 0780-01-46 and TDCI Rule 0780-01-54.13(4). The addendum was effective July 29, 2014.

(6) The Trust's engagement with its previous accountant, Fox & Kolb Associates, PLLC, ended on July 31, 2014. The Board of Trustees on July 8, 2014, approved a contract with KraftCPAs, PLLC to provide accounting services beginning August 1, 2014.

(7) On May 1, 2014, Mr. William "Bill" B. Young submitted an application to the TDCI for an administrator license in an effort to meet the requirements of Tenn. Comp. R. & Regs., Ch. 0780-01-54-.07. Mr. Young's application met the requirements of Tenn. Comp. R. & Regs., Ch. 0780-01-54-.07(3) and on May 16, 2014, he received his "Certificate of Authority Administrator of Self-Insured Workers Compensation Pools".

(8) The Board of Trustees on October 9, 2013, voted to engage a new actuary. Effective October 9, 2013, the Trust hired By The Numbers Actuarial Consulting, Inc.

(9) The Trust's audited financial statements as of March 31, 2014, submitted to the TDCI reported that less than eighty-five (85%) of its net assets were maintained in permitted investments in accordance with Tenn. Comp. R. & Regs., Ch. 0780-01-54-.13. The Trust reported that 79.1% of its net assets were invested pursuant Tenn. Comp. R. & Regs., Ch. 0780-01-54-.13.

(10) Effective August 21, 2014, the Board of Trustees approved a third amendment to the declaration of trust and bylaws. This third amendment provides for the replacement of the chairman, vice chairman and secretary in the event of death, resignation, inability or refusal to act or removal.

(11) In order to insure the continuation of effective management and oversight of the operation of the Trust, the Trustees formalized a written "Succession Plan for the CompTrustAGC...Tennessee" by vote on October 9, 2014, made effective as of August 21, 2014. The Plan addresses the course of action to be followed in the event of an unexpected temporary absence or the permanent absence of the Trust's Administrator. This Plan further describes the duties to be carried out by the temporary or permanent replacement installed as Administrator.

## FINANCIAL STATEMENTS

There follows a balance sheet and a statement of operations and fund balance as of March 31, 2013, for the period under review, as established by this examination:

### BALANCE SHEET

#### Assets

Cash and cash equivalents	\$ 2,165,648
Marketable Securities – Municipal Bonds	10,116,451
Accounts receivable: Regular Premiums	236,079
Accounts receivable: Reinsurance	45,942
Accounts receivable: Audit Premiums	352,785
Accrued investment income	127,629
Prepaid Expenses	261,113
Investment Property, net of accumulated depreciation \$13,486	<u>1,223,553</u>
Total	<u>\$ 14,529,200</u>

#### Liabilities and Members' Equity

Loss and loss-adjustment expense reserves	\$ 8,070,622
Audit premiums payable	331,207
Premium deposits	533,187
Advance premiums	2,793
Accounts payable and accrued expenses	247,489
Premium taxes payable	<u>109,410</u>
Total Liabilities	<u>9,294,708</u>
Accumulated other comprehensive income	304,493
Retained earnings	<u>4,929,999</u>
Total Members' equity	<u>5,234,492</u>
Total	<u>\$ 14,529,200</u>

## STATEMENT OF OPERATIONS AND FUND BALANCE

<u>Revenues</u>	
Premiums Earned	\$5,007,962
Investment income	<u>308,589</u>
Total revenues	<u>5,316,551</u>
<u>Expenses</u>	
Claims and claim adjustments	1,738,069
Service fees	334,075
Excess insurance	443,864
Premium taxes	119,558
Commissions	259,708
Safety and loss control	558,338
General and administrative expense	<u>397,700</u>
Total expenses	<u>3,851,312</u>
Income before income taxes	1,465,239
Income tax expense	<u>789,556</u>
Net Income	675,683
Holding (loss) arising during the period - net of tax of \$11,552	(22,424)
Reclassification adjustment for (gains) on marketable securities included in net income - net of tax of \$1,564	<u>(3,035)</u>
Total other comprehensive loss	<u>(25,459)</u>
Comprehensive Income	<u>\$ 650,224</u>

## COMMENTS AND RECOMMENDATIONS

### Comments

- (1) A letter signed by the Commissioner and dated December 21, 2010, granted the Trust approval to purchase real property pursuant to TN Rules & Regs. 0780-01-54-.13(3) (revised effective March 16, 2009). On December 29, 2010, the Trust purchased land and a building located at 2612 Westwood Drive, Nashville, Tennessee.

The Trust's investment in real property is income producing. As of June 1, 2014, the Trust had three (3) building lease agreements and one (1) lease agreement for the parking lot. The combined annual rental income is approximately \$125,000 per year.

The Trust's investment in real property, net of depreciation, rose from \$1,223,553 to \$2,025,786 per the Audited Financial Statements as of March 31, 2013, and March 31, 2014, respectively.

Due to the increase in the investment in real property, the Trust will need to continue to monitor its asset composition for future financial statements submitted to the TDCI, in order to meet the investment requirements of Tenn. Comp. R. & Regs., Ch. 0780-01-54-.13(1) and (2).

- (2) The Trust, through the efforts of its outside counsel, received an excess insurance recovery in March 2012 from Reliance Insurance Company (Reliance) (in liquidation) in the amount of \$4,898. This payment was forty percent (40%) of the \$12,246 total recovery recognized by the liquidator of Reliance.

This was the first excess insurance recovery the Trust received since Reliance was placed in liquidation on October 3, 2001, by the Commonwealth Court of Pennsylvania.

### Recommendations

- (1) It is recommended that the Trust implement controls in order to ensure compliance with the filing requirements of Tenn. Comp. R. & Regs. 0780-01-54.05. Any amendments to the organizational documents or written contracts required to be provided to the Commissioner, pursuant to Tenn. Comp. R. & Regs. 0780-01-54-.04, must be filed with the Commissioner no later than thirty (30) days prior to the proposed effective date of the contract.

A third party administrator service agreement with BSA, effective April 1, 2010, was signed by the Chairman of the Board of Trustees of the Trust and the President and CEO of BSA on August 26, 2010, and August 30, 2010, respectively. The Trust's

submission of the agreement to the Commissioner after the effective date did not meet the requirement of Tenn. Comp. R. & Regs. 0780-1-54.05.

- (2) It is recommended that the Trust put in place controls in order to maintain eighty-five (85%) of its net assets in permitted investments in accordance with Tenn. Comp. R. & Regs., Ch. 0780-01-54-13(1) and (2).
- (3) The Trust's actuary did not submit to the TDCI a letter certifying that the Trust did not need to purchase aggregate excess of loss insurance coverage for the policy years beginning April 1, 2012, and April 1, 2013. It is recommended that the Trust establish controls in order to achieve compliance with Tenn. Comp. R. & Regs., Ch. 0780-01-54-04(3)(c)(1) and submit to the TDCI an actuarially justified request to forgo the procurement of aggregate excess of loss insurance.
- (4) It is recommended that the Trust refine its internal controls in order to more completely comply with the claim-handling requirements of Tenn. Comp. R. & Regs. 0800-2-14 - Claims-Handling Standards. These exceptions were disclosed in the Claims Review subsection of the Market Conduct Activities section of this examination report.

## CONCLUSION

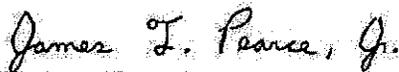
Insurance examination practices and procedures, as promulgated by the National Association of Insurance Commissioners, have been followed in connection with the verification and valuation of assets and the determination of liabilities of CompTrustAGC...Tennessee. Additionally, Tennessee Code Annotated and Tennessee Comprehensive Rules and Regulations have been followed in connection with the verification and valuation of assets and the determination of liabilities of the Trust.

In such manner, it was determined that, as of March 31, 2013, the Trust had assets of \$14,529,200 and liabilities of \$9,294,708. Thus, there existed for the additional protection of the members of the Trust, the amount of \$5,234,492 in the form of members' equity.

The courteous cooperation extended by the Chairman of the Trust's Board of Trustees, the Trust's Administrator and his assistant, representatives of Brentwood Services Administrators, Inc., representatives of Crowe Horwath LLP, representatives of Fox & Kolb Associates, PLLC, and representatives of Casualty Actuarial Consultants, Inc., during the course of the examination is hereby acknowledged.

In addition to the undersigned, Gregory Bronson, CIE, AMCM, ALMI, AIRC, Insurance Examiner, Keith Patterson, Insurance Examiner, and Brian Sewell, CFE, Insurance Examiner, representing the State of Tennessee, participated in the work of this examination.

Respectfully submitted,



James T. Pearce, Jr.  
Insurance Examiner  
State of Tennessee

**AFFIDAVIT**

The undersigned deposes and states that he has duly executed the attached examination report of CompTrustAGC...Tennessee dated September 10, 2014, and made as of March 31, 2013, on behalf of the Department of Commerce and Insurance, State of Tennessee. Deponent further states he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information, and belief.

*James T. Pearce, Jr.*

James T. Pearce, Jr.  
Insurance Examiner  
State of Tennessee

State Tennessee

County Davidson

Subscribed to and sworn before me

this 9th day of December, 2014

Notary Helen W. Dorsey

My Commission Expires: 11/06/2017

