



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

**REPORT ON EXAMINATION
OF THE
TENNESSEE FORESTRY ASSOCIATION
SELECTIVE WORKERS' COMPENSATION GROUP
NASHVILLE, TENNESSEE**

**AS OF
DECEMBER 31, 2019**

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Nashville, Tennessee
June 16, 2021

Honorable Carter Lawrence
Commissioner
Tennessee Department of Commerce and Insurance
500 James Robertson Parkway
Nashville, Tennessee 37243

Dear Commissioner:

In accordance with your instructions and pursuant to Tennessee Code Annotated (“Tenn. Code Ann.”) § 56-1-408 and Tenn. Comp. R. & Regs. 0780-01-54-.20, a full-scope financial examination and market conduct review, as of December 31, 2019, has been made of the condition and affairs of:

**TENNESSEE FORESTRY ASSOCIATION
SELECTIVE WORKERS’ COMPENSATION GROUP**
2605 Elm Hill Pike, Suite G
Nashville, Tennessee 37214

hereinafter referred to as the “Group”, “Pool”, or “Company” and a report thereon is submitted as follows:

INTRODUCTION

This examination was arranged by the Tennessee Department of Commerce and Insurance (TDCI or “Department”). The examination was conducted by duly authorized representatives of the Department.

SCOPE OF EXAMINATION

The last examination of the Company was made as of December 31, 2014. This examination covers the period from January 1, 2015, through the close of business on December 31, 2019, and includes any material transactions and/or events occurring subsequent to the examination date and noted during the course of the examination.

The examination was conducted in accordance with rules and procedures as prescribed by the statutes of the State of Tennessee, and in accordance with practices and procedures promulgated by the National Association of Insurance Commissioners (NAIC)

Financial Condition Examiners Handbook (“Handbook”), as deemed appropriate. The examination was planned and performed to evaluate the financial condition of the Group as of December 31, 2019. The examination sought to identify prospective risks by obtaining information about the Group, including its corporate governance, by identifying and assessing inherent risks within the Group, and by evaluating system controls and procedures 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 examination, the Company’s business policies and practices, management and corporate matters were reviewed, and assets, liabilities, income, and disbursements were evaluated. In addition, our examination included tests to provide reasonable assurance that the Company was in compliance with applicable laws, rules, and regulations. In planning and conducting our examination, we considered the concepts of materiality and risk, and our examination efforts were directed accordingly.

A separate market conduct review was performed concurrently with the financial examination. See the “Market Conduct Activities” section of this report.

The Group’s Certified Public Accountant (CPA) workpapers were reviewed for the 2019 audit and copies were incorporated into the examination, as deemed appropriate.

The Company provided a letter of representation confirming that management has disclosed all significant matters and records.

COMPLIANCE WITH PREVIOUS EXAMINATION FINDINGS

The examination included a review to determine the current status of the comments and recommendations noted in the previous report on examination, as of December 31, 2014. A summary of the Commissioner’s directives and the corrective actions taken by the Company is discussed below:

Comments

- (1) It was noted that the Group’s custodial agreement with PNC Bank was not in compliance with Tenn. Comp. R. & Regs. 0780-01-46 and 0780-01-54.13(4).

Corrective Action

The Group added an addendum to its custodial agreement that satisfied the requirements of Tenn. Comp. R. & Regs. 0780-01-46 and 0780-01-54.13(4), on September 1, 2017.

Recommendations

- (1) Pursuant to Tenn. Comp. R. & Regs. 0780-01-54-.04, any amendments to the organizational documents or written contracts required to be provided to the Commissioner, must be filed with the Commissioner no later than thirty (30) days prior to the proposed effective date of the contract. The Group's Administrator Agreement that was effective March 17, 2010, was received by the Commissioner after the effective date, on November 4, 2010.

Corrective Action

The Group is up-to-date on its filings and has been in compliance with the filing requirements of Tenn. Comp. R. & Regs. 0780-01-54.05 since the last examination.

- (2) It was recommended that the Group put in place controls in order to maintain eighty-five percent (85%) of its net assets in permitted investments in accordance with Tenn. Comp. R. & Regs., 0780-01-54.13(1) and (2).

Corrective Action

The Group was not in compliance with Tenn. Comp. R. & Regs., 0780-01-54.13(1) and (2) in 2015 and 2019 with only eighty four percent (84%) of their net assets in permitted investments. The Group did meet the requirements of this regulation in 2016, 2017, and 2018. For more information on this matter, see the "Comments and Recommendations" section of this report.

- (3) It was recommended that the Group's Trustees comply with Tenn. Comp. R. & Regs. 0780-01-54-.15, which states that "Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared refundable by the board of trustees not less than eighteen (18) months after the end of the fund year and only with the written approval of the Commissioner."

Corrective Action

The Group continued to declare funds that were in excess of the amount necessary to fund all obligations as refundable for years 2015, 2016, 2017, and 2018, without the Commissioner's approval. The Group did not make further declarations after the declaration of October 25, 2018. See the "Refunds or Distributions" and "Comments and Recommendations" sections in this report.

- (4) It was found that the Group did not report fund year results to the TDCI following the end of the 2010, 2011, and 2012 policy years pursuant to Tenn. Comp. R. & Regs. 0780-01-54.24(1)(b).

Corrective Action

The Group correctly reported its fund year results to the TDCI during 2017, 2018, and 2019; however, the Group was not in compliance in 2015 (the Group did not have any corrections to fund year deficits in 2016). See Comment #3 in the “Comments and Recommendations” section of this report.

- (5) It was recommended that the Group non-admit member premium receivable over ninety (90) days past due pursuant to Tenn. Comp. R. & Regs. 0780-1-54.09(3)(a) in future audited financial statements submitted to the TDCI.

Corrective Action

The Group still reports premium receivable ninety (90) days past due. Approximately ninety percent (90%) of these premiums are also over one hundred twenty (120) days past due and, therefore, should be written off, and the members who owe said premiums should be canceled in accordance with Tenn. Comp. R. & Regs. 0780-1-54.08(9). See the “Comments and Recommendations” section in this report.

- (6) It was recommended that the Group cancel members that are more than one hundred twenty (120) days late in making premium payments, pursuant to Tenn. Comp. R. & Regs. 0780-1-54.08(9).

Corrective Action

During the review of the Group’s premium aging detail, it was noted that the Group had thirty-seven (37) out of their sixty-nine (69) members with premiums more than 120 days past due. See the “Accounts and Records” and “Comments and Recommendations” sections of this report.

COMPANY HISTORY

The Group's sponsoring association, Tennessee Forestry Association (TFA), is a Tennessee non-profit trade association of saw millers, landowners, pulp and paper companies, loggers, manufacturers, foresters, and business people, which was organized in 1951.

In April 1993, the Group was created by members of TFA to act as a self-insured workers' compensation pool in accordance with Tenn. Code Ann. § 50-6-405(c)(1). The current Certificate of Authority was issued to the Group by the TDCI on March 3, 2008, authorizing the Group to operate as a self-insured workers' compensation pool as defined by Tenn. Comp. R. & Regs. 0780-01-54-.02(17). The operation of the Group is confined to the State of Tennessee where it is licensed to transact the business of workers' compensation and employers' liability group self-insurance.

Declaration of Trust and Bylaws

The Group was created through the adoption of the Declaration of Trust and Bylaws ("Bylaws") which was executed on April 15, 1993. The Group was established "for the purpose of holding and administering the Fund through which its members can meet and fulfill their obligations and liabilities under the Tennessee Workers' Compensation Act."

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 Group. Beginning in 2011, the Group began requiring all new members to execute an indemnity agreement approved by the TDCI. Significant terms to which each member agrees include the following:

- The member agrees that the Pool and each member that has entered into this agreement will, jointly and severally, assume and discharge by payment all expenses, liabilities, and claims asserted against the Pool by any person or entity.
- The Pool shall cancel the member if the member is more than one hundred twenty (120) days late in making a premium payment or if the member does not pay an assessment when due.
- A member who elects to terminate membership in the Group or is cancelled by the Pool remains jointly and severally liable for the financial obligations of the Pool and its members incurred during any fund year in which the person was a member of the Pool.

- This agreement shall be irrevocable and remain in effect for the entire year in which the member receives any workers' compensation coverage through the Pool, shall bind any successor in interest, and shall remain in effect as long as there is any obligation or liability of the Pool in this State.

MANAGEMENT AND CONTROL

Classes of Membership

There is one (1) class of Membership in the Fund. All Members are voting Members and shall be entitled to premium discounts, return of excess premium and the payment of incentives pursuant to the Company's Bylaws. Qualification for membership shall be established by the Board of Trustees and is set for the in the Fund's operations manual. Qualifications for membership includes, at a minimum, that the applicant demonstrate acceptable loss history and financial responsibility.

Board of Trustees

The operation and administration of the Group is the responsibility of a Board of Trustees ("Board" or "Trustees") consisting of not more than fifteen (15), nor less than five (5) individuals. The Trustees shall be elected by the members of the Group. Each Trustee shall serve for a term of five (5) years. 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, a successor shall be appointed by the remaining Trustees to fill the unexpired term of office.

Pursuant to Tenn. Comp. R. & Regs. 0780-01-54-.06(1), no less than two-thirds (2/3) of the Trustees of the Board shall be comprised of members of the Pool. In addition, 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.

During 2018, it was noted that the Group was not in compliance with Tenn. Comp. R. & Regs. 0780-01-54-.06(1), due to less than two-thirds (2/3) of the Trustees of the Board being comprised of members of the Pool. The Group added a new Trustee (replacing a retiring Trustee) to meet the requirements of Tenn. Comp. R. & Regs. 0780-01-54-.06(1). For more information, see the "Comments and Recommendations" section of this report.

Officers

Pursuant to the Bylaws, the Trustees shall elect officers from among its Board members to serve for a term of one (1) year. The officers of the Group shall consist of a Chairman, Vice-Chairman, and a Treasurer. In addition, said Trustees may elect a

Secretary, Assistant Secretary, and Assistant Treasurer, who need not be Trustees, and may elect other officers if the need arises.

As of December 31, 2019, the following persons were serving as Trustees and officers of the Group:

<u>Name</u>	<u>Business/Occupation and Address</u>
Don Miller, Chairman	Cleveland Wood Products (Retired) Chattanooga, Tennessee
Randy Roberts, Vice-Chairman	R & R Lumber Oliver Springs, Tennessee
Bobby Cunningham, Secretary/Treasurer	White Lumber Company, Inc. Doyle, Tennessee
Mike Barnes	The Sawmill, LLC Hohenwald, Tennessee
Mike Goodpasture	Fabrication Specialties Corp Centerville, Tennessee
James Savage	Savage Lumber Bone Cave, Tennessee

CONTROL

The Annual meeting of the Members, for the purpose of electing Trustees and for the transaction of such other business as may properly come before the meeting shall be held in conjunction with the TFA Annual Meeting on or about the last week of August. All meetings of Members shall be held at the principal office of the corporation, except that a meeting may be held at such other place as the Board may from time to time determine.

Special meetings of the Members may be called at any time by the Chairman or any two (2) Trustees, or any Member, pursuant to the written request of twenty percent (20%) of all Members entitled to vote at the meeting.

Written or printed notice stating the time and place of a meeting of Members is delivered, personally or by mail, by or at the direction of the Chairman; the Secretary; or other person authorized to call such meeting, to each Member not less than thirty (30), nor more than sixty (60) days, prior to the date of such meeting.

During the examination period, five (5) annual meetings of the Members and twenty (20) regular meetings of the Board were held. No special meetings were held.

CONFLICTS OF INTEREST AND PECUNIARY INTEREST

During the course of the examination, there were no instances of conflicts of interest and pecuniary interest noted, which is in compliance with Tenn. Comp. R. & Regs. 0780-01-54.07(6) and (7). However, it is noted that the Company did not have a written conflict of interest policy or require the Trustees to complete annual conflict of interest disclosure forms. For more information on this, see the “Comments and Recommendations” section of this report.

CORPORATE RECORDS

The Group’s Bylaws state that the Trustees shall meet quarterly, or as often as required, at the time and place, specified by the Chairman or Secretary. Special meetings of the Trustees may be called at any time by the Chairman or any two (2) Trustees. The Members of the Group shall meet annually in conjunction with the TFA annual meeting. During the period under examination, there were twenty (20) regular and no special meetings of the Trustees, and five (5) meetings of the Members of the Group. The minutes of the meetings were reviewed and appear to reflect properly the acts of the respective bodies. Membership requirements, powers and duties of the Trustees, and Group Members were verified to be in accordance with the Tenn. Comp. R. & Regs. 0780-01-54.

MANAGEMENT AGREEMENTS

Administrator Agreement

During the period under examination, Mr. Robert M. Whitley, Jr. served as the Group’s Administrator. On March 17, 2010, the Group and Mr. Whitley executed an “Administrator Agreement”, under which the Administrator will perform day-to-day management of the Group and perform underwriting services, as well as engaging third-parties to provide auditing, excess insurance, claims administration, loss control, accounting, actuarial, and other services. The Administrator shall also conduct such other activities as required by applicable federal and state laws and regulations. The Administrator’s compensation is set by the Trustees, and per the agreement, a fixed fee is paid monthly to the Administrator. Either party may terminate the agreement upon giving not less than thirty (30) days’ written notice.

Effective March 16, 2009, Tenn. Comp. R. & Regs. 0780-01-54-.07 required a person who acts as an administrator for a pool to obtain a license from the Commissioner of the TDCI. On July 29, 2010, Mr. Whitley signed an “Application to Serve as Administrator of a Self-Insurance Group Pool”. His application was received by the TDCI on November 4, 2010, and a Certificate of Authority was issued to Mr. Whitley in 2014.

Mr. Whitley continues to act as Administrator as defined within the meaning of Tenn. Comp. R. & Regs. 0780-01-54-.02(1).

Claims Processing Agreement

During the period of examination, the Group had a Claims Administration and Loss Control Services Agreement with ERS, Inc. (ERS). ERS is licensed by the TDCI as an administrator of workers' compensation programs, pursuant to Tenn. Comp. R. & Regs. 0780-01-81-.09.

The agreement with ERS, in effect as of the date of this examination, was originally effective January 1, 2018 for a three-year term. Pursuant to the terms of this agreement, ERS continued to provide the Group claims administration and loss control services on December 31, 2019. This agreement may be terminated with cause by either party by providing sixty (60) days' prior written notice, or without cause by either party by providing ninety (90) days' prior written notice.

The Group agrees to pay to ERS a service fee based on a percentage of the Group's earned premium. After the end of the annual policy period, adjustments are made based on the audit of members' payroll for that period. Medical bill review for claims adjudicated is also provided by ERS for a fee based on a percentage of the amount saved.

Related Party Services

Article VII, Section 4 of the Group's Bylaws state that the Group shall pay TFA an annual royalty fee for the use of its name and logo. The Bylaws further state that the payment shall be made from the Group in an amount and period as determined by the Trustees. During the period of examination, the Group provided quarterly royalty payments to TFA equal to one percent (1%) of earned premium with no adjustment made for end of year member premium audits.

The Group and TFA share the costs of human resources, office space, telephone, internet, office equipment, office supplies, property tax, postage, office cleaning, and utilities.

GROWTH OF GROUP

The following exhibit depicts certain aspects of the growth and financial history of the Company for the period subject to this examination, according to financial statements filed with the TDCI:

<u>Year</u>	<u>Earned Premiums</u>	<u>Total Reserves for Losses & LAE*</u>	<u>Assets</u>	<u>Liabilities</u>	<u>Members' Equity or Surplus **</u>
2019	\$2,892,077	\$5,105,670	\$10,368,186	\$8,626,485	\$1,741,701
2018	\$3,138,726	\$3,700,752	\$9,737,615	\$8,401,198	\$1,336,417
2017	\$3,681,097	\$3,812,102	\$9,187,171	\$7,850,754	\$1,336,417
2016	\$3,254,273	\$3,402,127	\$8,855,769	\$7,519,352	\$1,336,417
2015	\$3,576,391	\$3,952,648	\$8,707,460	\$7,371,043	\$1,336,417

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

**Pursuant to Tenn. Comp. R. & Regs. 0780-1-54-.11(1), beginning in 2012, the Group established surplus funds equal to at least thirty percent (30%) of its unpaid claims' liability, as reported in its audited financial statements submitted to the TDCI.

LOSS EXPERIENCE

The following exhibit depicts the ratio of incurred losses (losses including LAE) and administrative expenses of the Group since the previous examination, according to audited financial statements filed with the TDCI:

<u>Year</u>	<u>Premiums Earned</u>	<u>Incurred Losses & LAE</u>	<u>Underwriting Ratio</u>	<u>General & Admin Expenses</u>	<u>General & Admin Expenses to Premium Earned</u>	<u>Combined Ratio</u>
2019	\$2,892,077	\$2,448,765	84.67%	\$969,442	33.52%	118.19%
2018	\$3,138,726	\$1,366,390	43.53%	\$1,060,294	33.78%	77.31%
2017	\$3,681,097	\$2,369,893	64.38%	\$1,206,353	32.77%	97.15%
2016	\$3,254,273	\$1,084,742	33.33%	\$1,071,352	32.92%	66.25%
2015	\$3,576,391	\$1,201,197	33.59%	\$1,047,412	29.29%	62.88%

CORRECTION OF FUND YEAR DEFICITS

On June 29, 2020, the Group notified the TDCI of fund year deficit corrections as follows:

Year	Deficit	Year	Surplus Transfer
1994	\$87,235	1999	\$21,348
1995	\$34,537	2000	\$32,981
1996	\$57,790	2004	\$32,938
1997	\$119,038	2006	\$49,208
2001	\$15,325	2007	\$138,782
2002	\$88,437	2011	\$93,504
2003	\$5,220	2015	\$1,808
2005	<u>\$120,673</u>	2019	<u>\$157,686</u>
Total	<u>\$528,255</u>	Total	<u>\$528,255</u>

The Group requested a transfer of surplus to cover the combined fund year deficits totaling \$528,255 from the policy years as shown above. On July 28, 2020, the TDCI approved the surplus transfers pursuant to Tenn. Comp. R. & Regs. 0780-01-54.24(1)(b).

The Group filed a correction of fund year deficits and surplus transfers for 2017, 2018, and 2019, all of which were approved by the TDCI in accordance with Tenn. Comp. R. & Regs. 0780-01-54-24(1)(b). However, the Group was not in compliance with Tenn. Comp. R. & Regs. 0780-01-54-24(1)(b) in 2015, as it did not make this request and receive this approval in 2015. This was a finding in the report of the last examination and has been corrected since the last examination. For more information see the “Comments and Recommendations” section of this report.

REFUNDS OR DISTRIBUTIONS

Tenn. Comp. R. & Regs. 0780-01-54.15 states that “Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared refundable by the board of trustees not less than eighteen (18) months after the end of the fund year and only with the written approval of the Commissioner.” 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.

During 2015, 2016, 2017, and 2018, the Group’s Trustees declared all policy year surplus in excess of the funds not needed to comply with Tenn. Comp. R. & Regs. 0780-1-54-.11(1) as payable to the members, without the written approval of the Commissioner. Therefore, the Group was not in compliance with Tenn. Comp. R. & Regs. 0780-01-54.15. It is noted that this issue was reported in the reports of examination for the examinations as of December 31, 2004, December 31, 2009, and December 31, 2014. This issue is further addressed in the “Compliance with Previous Examination Findings” and “Comments and Recommendations” sections of this report.

The Group’s liability for “Member distribution payable” was composed of undistributed earnings and is considered by the Group to be surplus funds on a generally accepted accounting principles (GAAP) basis, in addition to “Members’ Equity”. Although excess monies have been declared refundable by the Group’s Trustees, the Trustees have not approved any actual distribution of monies to members since 2000. As of December 31, 2019, total distributions of \$1,566,030 have been made to members since the Group’s inception.

EXCESS OF LOSS INSURANCE

In accordance with Tenn. Comp. R. & Regs. 0780-01-54-.04(3)(c), the Group had in effect, for the period January 1, 2015, to December 31, 2019, excess of loss agreements for workers’ compensation and employers’ liability claims with Midwest Employers Casualty Company. The agreements contain both specific and aggregate coverage.

The policies provide coverage for losses sustained by the Group 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 a company authorized to do business in the State of Tennessee.

ACCOUNTS AND RECORDS

Tenn. Comp. R. & Regs. 0780-01-54-.09(2) requires the Group 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 Group's fiscal year. Tenn. Comp. R. & Regs. 0780-01-54-.09(5) allows the Group's audited financial statements to be prepared in accordance with GAAP.

The Group's independent auditor issued the Group's GAAP audited financial statements and prepared their federal income tax returns. The auditor also prepared all year-end adjusting entries and an adjusted trial balance as of year-end 2019.

Accounting, underwriting, marketing, excess insurance, and member records are kept at the office of the Group located at:

2605 Elm Hill Pike, Suite G
Nashville, Tennessee 37214

Claims and loss control records are kept at the office of ERS located at:

1240 Fairway Street
Bowling Green, Kentucky 42102

The Group has one (1) employee and relies upon its Administrator and third parties for the performance of the day-to-day operations of the Group.

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 Group's financial statements. Test checks were made of income and disbursement items for selected periods. The year-end 2019 general ledger and trial balance were reconciled with the financial statements.

The Group and PNC Bank of Pittsburgh, Pennsylvania, executed a Custody Agreement in October 2010. The agreement did not meet all requirements of Tenn. Comp. R. & Regs. 0780-01-46 (revised effective May 26, 2013) and Tenn. Comp. R. & Regs. 0780-01-54.13(4). To meet the requirements, the Group added an addendum to its Custody Agreement with PNC Bank. The addendum was signed by both parties on September 1, 2017.

The Group's 2015 and 2019 audited financial statements submitted to the TDCI during the period of examination reported less than eighty-five percent (85%) of its net assets were maintained in permitted investments, in violation of Tenn. Comp. R. & Regs., 0780-01-54-13. See the "Comments and Recommendations" section of this report.

As of December 31, 2019, the Group had Members with audit premium over one hundred twenty (120) days past due. The Group did not write-off premium receivable for these Members, which amounted to \$401,000 in 2019. Of this amount, approximately eighty-five percent (85%) is one (1) year or more past due. In addition, the Group did not cancel these Members, which is a violation of Tenn. Comp. R. & Regs. 0780-1-54.08(9). See the "Comments and Recommendations" section in this report.

MARKET CONDUCT ACTIVITIES

In conjunction with this examination, a market conduct review was made of the Company, as of December 31, 2019. The following items were addressed:

Underwriting

During the period of examination, the Group had published Underwriting Guidelines ("Guidelines") that were used in the acceptance and rejection of underwriting risks. The Guidelines, which were approved by the Trustees and filed with the TDCI prior to the period of examination, were found to be in compliance with Tenn. Comp. R. & Regs. 0780-01-54-.08(1).

During the period of examination, member actions were examined and found to be performed in accordance with the Guidelines and in compliance with Tenn. Comp. R. & Regs. 0780-01-54-.08 (1) and (7).

The examination focused on member file documentation evidencing compliance with Tenn. Comp. R. & Regs. 0780-01-54-.08(2) through (6) and Tenn. Comp. R. & Regs. 0780-01-54-.08(12). No exceptions were noted.

Rate and Premium Contributions

Group 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 Tenn. Comp. R. & Regs. 0780-01-54-.10(4), the Group filed its Loss Cost Multiplier (LCM) and supporting documents with the TDCI for each year during the period of examination. The Group's use of the LCM was further verified during the review of member underwriting files.

The examination of member underwriting files focused on the Group'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 December 31, 2019. No exceptions were noted.

Producer Licensing

During a review of producer licensing and appointments, it was noted that some of the Company's producers were not appointed by the Company, as required by Tenn. Code Ann. § 56-6-115. For additional details, see the "Comments and Recommendations" section later in this report.

Advertising

Advertising items issued by the Group were examined for compliance with the advertising sub-sections of the Unfair Trade Practices Act, as found in Tenn. Code Ann. §§ 56-8-104 (1) and (2). The Group's print material, bulletins, and internet website were examined and found to be in compliance with these provisions.

Claims Review

The Group's processing of workers' compensation claims was examined for compliance with claims handling standards, as required by the Tennessee Department of Labor and Workforce Development Bureau of Workers Compensation (BWC), Tenn. Comp. R. & Regs. 0800-02 and Tenn. Code Ann. § 56-8-105.

A sample of claims that were open as of December 31, 2019, as well as a sample of closed claims incurred during the period of examination were reviewed. Information regarding the examination of these open and closed claims files is described below:

Reporting Requirements

The BWC requires that decisions on compensability be made by the adjusting entity within fifteen (15) calendar days of the verbal or written notice of injury in accordance with Tenn. Comp. R. & Regs. 0800-02-14-.04(6). No exceptions were found.

Claims Handling and Investigation

The BWC requires medical rating and date of Maximum Medical Improvement (MMI) by the treating physician, and information needed to settle a claim be documented in writing, and that insurers make an offer of settlement in writing within thirty (30) days of MMI in accordance with Tenn. Comp. R. & Regs. 0800-02-14-.05. No exceptions were found.

Payment of Benefits

The BWC 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 no later than the date they are due in accordance with Tenn. Comp. R. & Regs. 0800-02-14-.06. All sampled payments were made within the required timeframe.

Payment of Medical Costs

The BWC requires all medical costs owed under the Tennessee Workers Compensation Law be paid pursuant to the Medical Fee Schedule contained in Tenn. Comp. R. & Regs. 0800-02-17, 0800-02-18, and 0800-02-19 and in accordance with Tenn. Comp. R. & Regs. 0800-02-14-.07. No exceptions were noted.

Case Reserves

The Group established and maintained reserves for known claims and expenses and claims Incurred But Not Reported (IBNR), 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 Group established and maintained adequate reserves. The examiner found that the case reserves tested as of December 31, 2019, appeared to be adequate at the time of review, based on known health information of the injured employee.

In general, during the period of examination the Group exercised a conservative reserving policy that resulted in establishment of an adequate reserve in compliance with rule requirements.

Policy Complaints

During the review of the Group's complaint handling procedures, it was noted that the Group does not have any written complaint handling procedures and does not maintain a complaint log. ERS does not maintain a complaint log on behalf of the Group. This is not in compliance with Tenn. Code Ann. § 56-8-104(11). See further discussion in the "Comments and Recommendations" section of the report.

Complaints for workers' compensation claims are handled through the BWC. Information on how to request assistance is posted on the BWC website. The website provides contact information to file a complaint with the BWC.

Privacy of Non-Public Personal Information

The Group's Members are commercial businesses. Accordingly, Tenn. Comp. R. & Regs. 0780-01-72-.02(2), Privacy of Consumer Information Regulations, does not apply to commercial businesses.

The third-party vendors engaged by the Group for accounting, claims, excess insurance, investments, and member premium audits have written privacy policies. The vendor agreements with the Group contain confidentiality and protection language governing Group, member, and injured employee information.

Anti-Fraud Plan

The Group has a formalized anti-fraud plan, which was filed with the TDCI on June 19, 2008. The anti-fraud plan language is in compliance with Tenn. Code Ann. § 56-47-112(a).

SUBSEQUENT EVENTS

During the examination, a review of subsequent events was performed. No events were noted that required additional disclosure in this examination report. Management stated in its Letter of Representation that they were not aware of any events subsequent to December 31, 2019, that could have a material effect on the Company's financial condition. Our review confirmed the Company's disclosures in its 2019 Annual Statement and in its Letter of Representation.

FINANCIAL STATEMENTS

There follows a balance sheet and a statement of income and comprehensive income, as of December 31, 2019, for the period under review, as reported by the Group:

STATEMENT OF FINANCIAL POSITION

Assets

Cash and cash equivalents	\$980,461
Debt securities available-for-sale	<u>7,758,431</u>
Total cash and invested assets	<u>8,738,892</u>
Premiums receivable	683,581
Accrued interest receivable	74,762
Excess insurance recoverables on paid losses	22,955
Excess insurance recoverables on unpaid losses	826,573
Excess insurance premium prepaid	13,208
Prepaid expenses and other assets	<u>8,215</u>
Total	<u>\$10,368,186</u>

Liabilities and Members' Equity

Unpaid losses and loss-adjustment expenses	\$5,105,670
Member distribution payable	2,991,746
Member overpayments	371,182
Accounts payable and other accrued liabilities	<u>157,887</u>
Total Liabilities	<u>8,626,485</u>
Members' equity	<u>1,741,701</u>
Total	<u>\$10,368,186</u>

STATEMENT OF INCOME AND COMPREHENSIVE INCOME

Revenue

Premiums	\$2,892,077
Net investment income including realized losses	<u>171,189</u>
Total revenue	<u>3,063,266</u>

Expenses

Losses and loss adjustment expenses	2,448,765
Excess insurance premiums	275,118
Commission expense	202,446
Claims service fee	209,675
Premium tax expense	68,390
Loss control expense	79,532
Royalty fee expense	28,921
Salary and payroll taxes	125,846
Other administrative expenses	<u>323,022</u>
Total expenses	<u>3,761,715</u>
Net loss before member distribution and provision for income taxes	(698,449)
Reduction in accrual for member distribution to policyholders	(1,097,592)
Current income tax benefit (expense)	<u>(6,141)</u>
Net income (loss)	405,284
Unrealized holding gains arising during the period, net of deferred taxes	59,165
Reclassification adjustment for losses included in net income, net of deferred taxes	19,346
Increase in the accrual of excess income as distributable to the members	<u>(78,511)</u>
Comprehensive earnings	<u>\$405,284</u>

ANALYSIS OF CHANGES IN FINANCIAL STATEMENTS

Total Members' Equity

\$1,741,701

Total members' equity, as established by this examination, is the same as what was reported by the Company in its 2019 annual statement. There were no changes made to any asset or liability item as a result of the examination performed as of December 31, 2019.

COMMENTS AND RECOMMENDATIONS

Comments

1. As noted in the "Management and Control" section of this report, the Group did not have the required two-thirds (2/3) of their Trustees being members of the Pool in 2018, which is not in compliance with Tenn. Comp. R. & Regs. 0780-01-54-.06(1).

The Group addressed this issue in 2018 by replacing a retiring Trustee with one that was a member of the Pool.

2. As noted in the "Management and Control" section of this report, the Group does not have a written conflict of interest policy nor does the Group require conflict of interest disclosure forms to be completed by Trustee's, officers, or employees. Maintaining a conflict of interest policy and disclosure form, and requiring annual disclosures of Trustees, officers, and employees is considered a best practice because it documents the Group's compliance with Tenn. Comp. R. & Regs. 0780-01-54.07(6) and (7), which prohibits Group officers from having a pecuniary interest in any funds of the Group.

The Company addressed this issue during the examination by creating a conflict of interest policy and disclosure form.

3. As noted in the "Compliance with Previous Examination Findings" and "Correction of Fund Year Deficits" sections of this report, the Group was not in compliance with Tenn. Comp. R. & Regs. 0780-01-54-24(1)(b) in 2015, as the Group did not make the request and receive approval from the Commissioner in 2015 to correct the fund year deficits.

To comply with Tenn. Comp. R. & Regs. 0780-01-54-24(1)(b), the Group requested and received approval in 2017, 2018, and 2019 (the Group did not have a correction of fund year deficits in 2016).

Recommendations

1. As noted in the “Compliance with Previous Examination Findings” and “Refunds or Distributions” sections of this report, during 2015, 2016, 2017, and 2018, the Group’s Trustees declared all policy years’ surplus in excess of the funds not needed as “Members distribution payable”. These declarations were in violation of Tenn. Comp. R. & Regs. 0780-1-54-.15(1), which states the following: “Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than eighteen (18) months after the end of the fund year and only with the written approval of the Commissioner.” It is further noted that this issue was also included in the reports of examination for the examinations as of December 31, 2004, December 31, 2009 and December 31, 2014.

It is recommended that the Group’s financial statements only reflect as “Member distribution payable” an amount approved by the Commissioner, and as these declarations were made without the written approval of the Commissioner, the Group take such action as is appropriate to come into compliance with Tenn. Comp. R. & Regs. 0780-1-54-.15(1).

2. As noted in the “Compliance with Previous Examination Findings” and “Accounts and Records” sections of this report, the Group’s 2015 and 2019 audited financial statements reported that less than eighty-five percent (85%) of its net assets were maintained in permitted investments, which is not in compliance with Tenn. Comp. R. & Regs. 0780-01-54.13.

The finding was addressed by the Group in 2016; however, the Group was not in compliance with Tenn. Comp. R. & Regs. 0780-01-54.13 during 2015 and 2019.

3. As noted in the “Accounts and Records” section of this report, the Group did not cancel members who had premiums one hundred twenty (120) days past due, as is required by Tenn. Comp. R. & Regs. 0780-1-54.08(9) and in accordance with the Company’s indemnity agreement. In addition, the Group did not write-off premium receivable for these members, which amounted to \$401,000 in 2019. Of this amount, approximately eighty-five percent (85%) is one (1) year or more past due. In addition, the Group did not adjust their premium receivable balances for these members that had premiums receivable more than one hundred twenty (120) days past due.

It is recommended that the Group comply Tenn. Comp. R. & Regs. 0780-1-54.08(9) and cancel members with premiums one hundred twenty (120) days past due and write-off any premium receivable for these members.

4. As noted in the "Market Conduct Activities" section of this report, the Group did not properly appoint its agents as required by Tenn. Code Ann. § 56-6-115.

It is recommended that the Group appoint all of its agents within the fifteen (15) day timeframe as outlined in Tenn. Code Ann. § 56-6-115.

5. As noted in the "Market Conduct Activities" section of this report, the Group did not have any formal complaint handling procedures, or a complaint log as required in Tenn. Code Ann. § 56-8-104(11).

The Group created a complaint log during the examination. It is recommended that the Group create and implement formal complaint handling procedures as is required by Tenn. Code Ann. § 56-8-104.

CONCLUSION


Rules and procedures as prescribed by the statutes of the State of Tennessee and guidance from the NAIC Handbook, as deemed appropriate, have been followed in connection with the verification and valuation of assets and the determination of liabilities of Tennessee Forestry Association Selective Workers' Compensation Group.

In such manner, it was found that as of December 31, 2019, the Group had assets of \$10,368,186 and liabilities of \$8,626,485 in the form of members' equity. Tenn. Comp. R. & Regs. 0780-01-54.11(1) requires a self-insured workers' compensation Pool to accrue and maintain an aggregate surplus equal to thirty percent (30%) of the unpaid claims' liability of the Pool, which was \$1,741,701, as of December 31, 2019. Therefore, for this examination, as of December 31, 2019, the Group maintained surplus in excess of the amount required to satisfy Tenn. Comp. R. & Regs. 0780-01-54.11(1).

The courteous cooperation of the officers and employees of the Company extended during the course of the examination is hereby acknowledged.

In addition to the undersigned, James Pearce, Insurance Examiner, and Bryant Cummings, CFE, Supervising Examiner, from the State of Tennessee, participated in the work of this examination.

Respectfully submitted,



Dustin Rice
Examiner-in-Charge
State of Tennessee

AFFIDAVIT

The undersigned deposes and says that he has duly executed the attached examination report of Tennessee Forestry Association Selective Workers' Compensation Group located in Nashville, Tennessee, dated June 16, 2021, and made as of December 31, 2019, on behalf of the Tennessee Department of Commerce and Insurance. Deponent further says he is familiar with such instrument and the contents thereof, and the facts therein set forth are true to the best of his knowledge, information, and belief.

Dustin Rice

Dustin Rice
Examiner-in-Charge
State of Tennessee

State Tennessee

County Sumner

Subscribed to and sworn before me

this 3rd day of March, 2022

Angela D Oeser
(NOTARY)

My Commission Expires: August 19, 2025



EXHIBIT B



**TENNESSEE FORESTRY ASSOCIATION
SELECTIVE WORKERS' COMPENSATION GROUP**

P.O. BOX 290693 • NASHVILLE, TENNESSEE 37229
2605 ELM HILL PIKE, SUITE G • NASHVILLE, TENNESSEE 37214
PHONE: (615)-883-3832 FAX: (615)-883-0515

March 25, 2022

VIA Email &
US Certified Mail#
70192970000108494849

E. Joy Little, CPA, CFE, MCM
Insurance Examinations Director/Chief Examiner
Division of Insurance
Department of Commerce and Insurance
State of Tennessee
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243

RE: *TFASWCG – Response to Examination Report*

Dear Ms. Little:

We are in receipt of Mr. Dustin Rice's report, dated March 3, 2022, in which Mr. Rice reports on his examination of the Tennessee Forestry Association Selective Workers' Compensation Group [hereinafter the "Group"]. We will focus on the recommendations contained within the report, starting on page 21, where we'll list the recommendation number and our response/rebuttal.

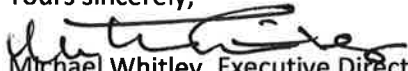
1. **Member Distribution Payable Accounting Issue.** We would note, and Mr. Rice acknowledges, that the Group has not declared a dividend of any excess funds since the latter part of 2018. There would be significant legal and accounting issues created if such amounts were moved on the Group's financial statements, and so we would respectfully suggest that we meet with appropriate Department and/or Division personnel to discuss this issue further, especially given that the Group is now no longer actively pooling its members' workers' compensation insurance liabilities.
2. **Permitted Investments Limitation.** We would respectfully suggest that Mr. Rice is not applying the appropriate rule correctly. The rule (Tenn. Comp. R. & Regs, ch. 0780-1-54-.13) states, in pertinent part, that a Group "shall maintain an amount equal to at least eighty-five percent (85%) of its net assets in the following: ...". It seems the critical issue is what constitutes "net assets". We believe, and generally accepted definitions of the term "net assets" in the accounting literature confirms, that the term "net assets" is best defined as assets minus liabilities. Net assets is not defined in the TN statutes. Thus, we relied on authoritative accounting literature. By this measure, the Group is now, and was during the term of the examination, in full compliance with Tenn. Comp. R. & Regs, ch. 0780-1-54-.13.
3. **Accounts and Records.** While the basis for Mr. Rice's recommendation is accurate as a technical matter, the past due contribution amounts were typically due to reconciliations being in process, and not to participants not paying their monthly contributions timely. All former participants have been non-

renewed, given that the Group is no longer actively pooling its participants workers' compensation liabilities, so this issue would now appear to be moot.

4. **Producer Appointments.** For reasons that have been stated to Mr. Rice during the Group's examination, Tenn. Code Ann. § 56-6-115 would not appear to apply to workers' compensation self-insured groups, and thus the Group is not in violation of this section. We would note that this particular issue has not been picked up on any previous examination, which suggests that it has traditionally been the position of the Department that this statute does not apply to workers' compensation self-insured groups.
5. **Complaint Log.** Tenn. Code Ann. § 56-8-104(11) states that it is an unfair trade practice for an entity subject to that subsection to fail to "maintain a complete record of all the complaints it received since the date of its last examination...". Given that the Group had not received a complaint as defined in that subsection, the subsection does not require a log to be maintained. Notwithstanding that the Group was in full compliance with the rule, the Group created a complaint log during the course of this examination as by confirmed. Rice in his examination report.

We would like to acknowledge you, Mr. Rice, and the others that worked on the Group's examination, and thank you for your professionalism and your willingness to answer our questions as we went through the examination process. If you have any questions, or if you have any additional information you would like for us to provide, please don't hesitate to contact me. Thank you for your consideration of this matter.

Yours sincerely,


Michael Whitley, Executive Director
TN Forestry Association WC Group