

Thank you for joining our call. Due to the significant number of participants on the call we will be unable to accommodate an interactive session. Therefore, we will begin by placing all participants on mute and then begin our program.

As you know, legislation passed on March 31st which enacts significant changes to the existing group self insurance program. This legislation was contained in Part G of Assembly budget bill A-4007-C and Senate budget bill S-2807-C. Governor Cuomo signed the bill into law on April 1st as Chapter 57 of the Laws of 2011. Basically, the bill provides assessment relief for insolvent and inactive trusts and revamps the qualifications for groups in the future. Today we will explain the actual provisions of the bill and then we will discuss its impact on the different categories of groups (i.e., active, inactive, and insolvent). After we have covered those areas we will address the questions we received in advance of the conference call.

Section 1

This section amends Section 15.8 of the Workers' Compensation Law to eliminate the separate assessment allocation for group self insurers for the special disability fund. It does so by defining the term "self insurer" so as to include only active group self insurers, group self insurers which meet the requirements of new section ten (which will be discussed in a moment) and municipalities. Therefore, effective January 1, 2011, all active group self insurers will be assessed in the same manner as the Individual Self Insurers, municipalities, and the State Insurance Fund; i.e based upon relative percentage of indemnity payments. In effect this will return the active groups to the same methodology that was in existence before the 2007 change to pure premium. It important to note that the overall amount of the WCL §15(8) assessment will remain unchanged; rather the only change will be how that amount is allocated upon the participants in the workers' compensation industry. This section also allows groups that are inactive prior to 12/31/11 to be eliminated from future special fund and administrative assessments.

Section 2

Before the actual text of this section of the Legislation is discussed, I pause to note the Board has become aware of several statements by parties in the self insurance community to the effect that the Legislation provided a waiver of all Workers' Compensation Board assessments for members of insolvent group self insurers until 2016. While none of these statements cited any particular provision of the Legislation in support of this claim, it is believed that the allegation is based upon section two of the Legislation. However, a reading of the actual statutory text finds that the provisions of new WCL §15-a do no such thing. Rather, it withdraws the relief granted by section one of the Legislation for those members of certain insolvent GSITs who do not take any of the following actions by 2016:

- Enter into a settlement agreement and remain current on their payments;
- The Trust in which they participated transfers all of its remaining obligations pursuant to ALP; or

- Pay all monies billed to them by the Board at the time such assessment was due.

In the event that none of these conditions are satisfied, then the member will become subject to an assessment in the amount the group self insurers share of the WCL §156(8) assessment multiplied by the employers remaining unpaid obligations to their former trust. Any funds collected under this section will be used as an offset against future 15(8) & 151 assessments imposed on other employers.

Section 3

This section amends the security deposit provisions established for the Individual Self Insurers to include new groups qualifying under the new provisions of subdivision 10 of section 50-3 of the WCL. In addition, it clarifies that the exit fee determined by the Chair shall be adjusted as needed and will be reduced immediately due to the passage of this Chapter.

Section 4

This section repeals the current provisions of the law authorizing group self insured trusts effective 12/31/11 and replaces them with a new program whereby the existing groups must reapply and qualify under these new provisions. To qualify as a new group self-insured trust, existing groups must:

- File a new application with the WCB;
- Hire a licensed group administrator;
- Post a security deposit with the Board on or before November 1, 2011 in an amount equal to its outstanding claims obligations;
- Post security for all other present and future obligations by November 1, 2014 in accordance with a schedule set by the Chair;
- Ensure all other obligations, including but not limited to future assessment liabilities and Unallocated Loss Adjustment Expenses are placed in a Trust in accordance with Regulation 114 of the Insurance Department Regulations or deposit said amounts with the WCB directly;
- Have been actively providing coverage as of March 31, 2011;
- must meet the more stringent homogeneity standards , except that existing members will be allowed to continue even if they don't meet their homogeneity standards, provided they continue to remain in good standing in their existing trust;
- Have been fully funded for three of the last five years and have one other of those years at 90 percent funded or better;
- Have an acceptable safety program; and

- Agree to adhere to any other provision established by the Chair through rules and regulations.

In addition, members must draft new trust agreements to comply with the new provisions of this program. The new trust documents must include an acknowledgment of the members' joint and several liability and must provide for collection of additional funds if the deposits with the WCB are insufficient.

All group self-insurers, both active and inactive, will continue to be liable for WCL §50(5) assessments.

Section 5

This section repeals the Group Self Insurance Advisory Committee.

Section 6

Section 6 of the bill amends subdivision 4 of WCL § 141-a. WCL § 141-a is a statute created in 2007 that permits the Board to issue Stop Work Orders if an employer fails to secure compensation insurance or where the employer fails to pay penalties assessed against it. The new bill provides Stop Work Orders can be issued against employers who fail to pay a judgment under WCL § 26 within 90 days after notice of the judgment and where the employer has not moved to modify or vacate the judgment. This is a new enforcement tool that will permit the Board, under certain limited circumstances, to ensure that employers pay their workers compensation liabilities.

Section 7

This section amends the allocation methodology for the Administrative assessment levied pursuant to section 151 of the WCL. Consistent with the changes under the special disability fund, it eliminates the separate assessment allocation for group self insurers and assesses active group self insurers in the same manner as the Individual Self Insurers, municipalities, and the State Insurance Fund; i.e. based upon relative percentage of indemnity payments. This change is retroactive to January 1, 2011 and appropriate changes to the WCL §151 assessment allocations will be reflected in the next quarterly billing. As with the changes to WCL §15(8), it important to note that the overall amount of the WCL §15(8) assessment will remain unchanged; rather the only change will be how that amount is allocated upon the participants in the workers' compensation industry.

Section 8

This section allows the chair to set regulations as needed to implement this Chapter.

Section 9

This section requires the Board to report to the Governor and Legislature every six months on the status of group trusts with the first report due on June 30th, 2011.

Section 10

This section makes the changes to the assessments retroactive to January 1, 2011. Therefore, bills will be amended accordingly. The remainder of the provisions became effective on March 31, 2011.

II. What does this mean to me?

A. Inactive Group Trusts

Any group that is currently inactive will be immediately relieved from any non WCL §50(5) assessment beginning on or after January 1, 2011. Therefore, the most recent special fund bill that was issued in February, 2011 may be disregarded. For those of groups that have paid this assessment already, the Board will be issuing either credits or refunds as needed. However, as discussed above, members of certain insolvent GSITs may face an assessment pursuant to §15-a in the event that their liabilities have not been satisfied in one of the three ways set forth in WCL §15-a by January 1, 2016.

Inactive groups will continue to be liable for the Self Insurers' Assessment Levied pursuant to section 50-5 of the WCL.

Finally, inactive or insolvent members who do not pay their obligations assessed by the Board may be subject to a WCL §26 judgment. A stop work orders can be issued against employers who fail to pay a judgment under WCL § 26 within 90 days after notice of the judgment and where the employer has not moved to modify or vacate the judgment.

B. Active Group Trusts who will not be continuing under the new program

Groups that are currently active will continue to be assessed for 2011. The basis for their 2011 assessment will be indemnity and bills will be adjusted accordingly. However, since they will no longer be offering coverage after 12/31/11 they will receive the same assessment relief discussed above for fiscal cycles beginning on or after January 1, 2012.

C. Active Groups that will continue under the new program.

Groups that meet the minimum qualifications outlined under the new subdivision 10 will be allowed to continue to offer coverage provided they meet the posting requirements outlined therein. It is important to note, however, that they will not be relieved of their assessment obligations prospectively. Rather, their assessment allocation has been changed from pure premium to indemnity. Therefore, to the extent the group is able to close claims quickly or complete an assumption of workers' compensation liability policy; their assessments will be reduced accordingly.