

**New York State Workers' Compensation Board
Frequently Asked Questions Related to Deficit Assessment
Billing Package for
The OHI Workers Compensation Trust
("OHI" or "Trust")**

I. ALLOCATION METHODOLOGY FOR PRO RATA BILLING

How was my pro rata share of the deficit determined?

Your share of any existing deficit was determined consistent with the language in the documents which govern OHI's operations (trust document, bylaws, etc.). The deficit was allocated to members as a proportional share of their contribution (i.e., premium) to total contributions for a specific year. Please note that for each year (or part of a year) in which you were a member of OHI, you are jointly and severally liable for the entire ***amount of the deficit for that year for which you were a member of OHI*** (see Section II below on joint and several liability) ***and that this joint and several liability could result in additional billings.***

What is the impact of the legislation signed into law by Governor Cuomo on April 1, 2011 as Chapter 57 of the Laws of 2011 have on the deficit assessment?

The bill provides assessment relief for insolvent and inactive trusts. Specifically, assessments levied pursuant Workers' Compensation Law (WCL) §§151, 15(8), and 25-a were eliminated prospectively effective January 1, 2011. However, WCL §50(5) assessments will continue to be issued. The impact on OHI is reflected in the Financial Statements.

What if a member disputes the period of participation it was in OHI, or the amount of credits for prior payments made by the member as reflected in the invoice for the pro rata deficit assessment?

The member needs to provide supporting documentation on these issues to the WCB's designated third party administrator at the address set forth in the information previously received from the WCB. If, based on the documentation provided, the WCB's designated third party administrator determines, in consultation with the WCB, that the invoice was in error in this regard, a revised invoice will be sent. However, the 45 day deadline for execution of a repayment agreement set forth in the accompanying cover letter will remain in effect. Also, please note that for each year (or part of a year) in which you were a member of OHI, you are jointly and severally liable for the entire ***amount of the deficit for that year for which you were a member of the group*** (see Section II below on joint and several liability) ***and this joint and several liability could result in additional billings.***

I was a member in fiscal year ending December 31, 2003, which is listed as a surplus. Can these funds be used to offset deficits from other years?

No: a potential surplus in any given year cannot be used by a member to offset deficits that exist in different years. Thus, a surplus attributed to the fiscal year ending

December 31, 2003, will be credited/refunded to the members participating in OHI during that year, but only if all of the obligations of OHI for that year (i.e. 2003) have been satisfied.

What if a member does not agree with the contribution they paid for any given period, or believes that other members were not paying the appropriate contributions and, therefore, the deficit assessment is based on an incorrect contribution percentage?

Because members are jointly and severally liable for the assessment, the WCB could merely pursue only certain members for the entire amount of the deficit under joint and several liability provisions. Instead, the WCB has made a good faith effort to reasonably calculate each member's pro rata share of the deficit using generally accepted allocation methodologies prevailing in the industry.

I was never a member of OHI because the WCB rejected my application for membership. Why am I being considered a member for purposes of the assessment?

Employers are required to obtain workers' compensation coverage for their employees - significant civil and criminal penalties exist for an employer's failure to do so.

The laws governing group trusts like OHI require that coverage becomes effective when a new member executes its participation agreement. If a member's application is later rejected, the WCB notifies both the group administrator and the member; however, the WCB provides coverage in the group for at least thirty days after the rejection to provide adequate time for the employer to obtain alternate coverage. Therefore, if your application was rejected, you were provided at least thirty days of coverage in OHI and are responsible for your portion of the assessment applicable to that year.

II. JOINT AND SEVERAL LIABILITY

What does joint and several mean?

Joint and several liability means that each member is liable for the entire amount of the deficit in each year in which the member participated in OHI. The liability may be apportioned either among the members or assessed against only one member. This means that each member is potentially liable for the entire amount of the deficit owed for the period for which it was a member of the group. ***It must also be remembered that this joint and several liability could result in additional billings.***

What companies am I jointly and severally liable with?

As a member of a group trust, an employer is jointly and severally liable for all obligations incurred during its period of membership. You are jointly and severally liable with the other employers who participated in OHI at the same time.

If my company never had a claim, am I still jointly and severally liable?

Yes. Joint and several liability exists even if a workers' compensation claim was never made against your company.

III. POTENTIAL ACTIONS AGAINST OTHER PARTIES AND RECOVERIES

Is the WCB pursuing other parties such as the Trustees or group administrator for their actions or inactions?

The WCB is in the process of reviewing the OHI 2012 Performance and Operational Report. In the event that it is determined that one or more former key agents of OHI were at least in part responsible for the OHI deficit, the WCB will commence an action or actions against those responsible parties for the damages they caused. In the event that the WCB commences such an action and monies are obtained from third parties, these funds will be used to reduce the deficit amounts owed by the members of OHI. However, and notwithstanding any potential future third party recoveries, the OHI members remain responsible to make payments on the deficit assessments so as to ensure that OHI's injured workers continue to receive their benefits in a timely fashion.

Is the WCB making a claim under any E&O or D&O policies that the group administrator or other such entities may have had?

As indicated above, the WCB continues to gather and evaluate information and will pursue any claims where applicable and appropriate, including filing a claim against such policies.

OHI had an excess policy on a per occurrence basis. Does that mean that my exposure under joint and several is limited?

Every group trust is required to maintain excess coverage on a per occurrence basis. This means that, on a given claim, an insurance carrier will be responsible for any amounts which exceed the self-insured retention, or deductible limit (i.e., the amount the trust is required to pay before the coverage afforded by an excess policy becomes available to pay the balance of the claim.) That said, excess coverage essentially protects OHI from catastrophic claims, as the value of most claims falls below the self-insured retention limit.

Moreover, the forensic accounting, and the resultant invoices, reflect appropriate reductions in liabilities as a result of excess insurance where such coverage was triggered.

What happens if collections exceed the amount assessed?

If more money is collected than is needed to meet all obligations of OHI such funds will be returned to members proportionally, if they are current in their repayment obligations (see section VI; supra). However, surpluses attributable to any particular year will not be credited/refunded to the members participating in OHI until all of the obligations of OHI for that particular year have been satisfied.

IV. INFORMATION AVAILABLE

Under what section of the Workers' Compensation Law are group self-insured trusts permitted?

Group self-insured trusts are permitted under WCL Section 50 (3-a). Rules and regulations governing group trusts can be found in NYCRR Title 12 Part 317.

As a member, what information is available to me regarding OHI?

As a former member of an inactive trust, an employer is entitled to any of the records which pertain to their period of membership including financial and actuarial reports and membership information. However, any information provided may be redacted to protect the privacy of individual claimant's and/or other employer members. The WCB has established a website with relevant information for OHI and that link is included in the cover letter that you received with the invoice.

V. DISSOLUTION OR BANKRUPTCY

What if my company is dissolved or bankrupt?

The WCB requires that additional information and documentation be provided in order for the WCB to review and consider the impact, if any, of the claimed dissolution or bankruptcy.

As to dissolution of corporations, please provide the following information: 1) the "Consent" issued by the State Tax Commission, required by the New York State Business Corporation Law (BCL) as a condition to the corporation's dissolution; 2) the Certificate of Dissolution issued by the New York State Department of State; 3) the corporate resolutions and records, in whatever media, memorializing the dissolution of the corporation, the distribution of its assets, and whether any assets remain in the corporation; 4) all financial statements produced during the two years immediately preceding the corporation's dissolution, and any such statements produced after its dissolution; 5) the cash disbursements records for the two years immediately preceding the corporation's dissolution, and any such disbursements since its dissolution; 6) the corporation's complete, final federal and state tax returns, including all schedules, statements, and attachments filed therewith, and any amendments thereto; 7) a statement indicating whether the corporation gave notice to its creditors, pursuant to BCL § 1007, or otherwise, and, if so, documentation of such notice and the creditors to which such notice was given; 8) a statement indicating whether any proceeding was instituted pursuant to Article 10 of the BCL, including but not limited to BCL § 1008, and, if so, the documentation identifying the parties to the proceeding, the court and county in which the proceeding was commenced, and the index number of the proceeding; 9) a statement indicating whether the corporation was dissolved pursuant to Article 11 of the BCL, and, if so, the documentation identifying the parties to the case, the court and county in which the case was commenced, and the index number of the case; 10) a statement detailing the disposition of all of the assets of the corporation regardless of the manner in which the corporation was dissolved or otherwise liquidated, and documentation memorializing such disposition of assets, and 11) documentation of any litigation, judicial, administrative, arbitral or otherwise, commenced by, or against, the corporation after its dissolution. Such documentation

should include the identities of the parties to such litigation, the court (tribunal), county, and state in which the case was commenced, and the index or other identifying number of the case.

As to the dissolution of a Limited Liability Company, please provide the following information and documentation: 1) whether the LLC was dissolved pursuant to the provisions of the New York Limited Liability Company Law (NYLLCL), and all documentation effecting such dissolution, including but not limited to the LLC's records, in whatever media, memorializing the dissolution/termination of the LLC, and a certified copy of the articles of dissolution that were filed with the New York Department of State; 2) if the LLC was dissolved judicially, provide a certified copy of the order of dissolution granted by the supreme court and filed with the New York Department of State; 3) whether the LLC's assets were distributed pursuant to the NYLLCL, (or otherwise) – provide a list of the LLC's assets, the manner in which they were distributed, when they were distributed, and to whom they were distributed, a list of any assets that remain in the LLC after dissolution, and all documentation relating to the distribution or retention of the LLC's assets; 4) whether the creditors of the LLC (including the OHI Trust, its TPA or other authorized representatives), were notified of the dissolution of the LLC – identify such creditors, the manner in which any notice of the dissolution was made to such creditors, whether the debts owed to such creditors were paid, or, if not paid, whether adequate reserves were established to pay such debts, and all documentation relating thereto; 5) a certified copy of the LLC's articles of organization and all amendments, changes, restatements, or corrections made thereto; 6) a copy of the LLC's operating agreement, duly authenticated by the LLC's authorized representative, and all amendments and changes made thereto; 7) all financial statements produced during the two years immediately preceding the LLC's dissolution, and any such statements produced after its dissolution; 8) the cash disbursements records for the two years immediately preceding the LLC's dissolution, and any such disbursements since its dissolution; 9) the LLC's complete, final federal and state tax returns, including all schedules, statements, and attachments filed therewith, and any amendments thereto; 10) documentation of any litigation, judicial, administrative, arbitral or otherwise, commenced by, or against, the LLC after its dissolution. Such documentation should include the identities of the parties to such litigation, the court (tribunal), county, and state in which the case was commenced, and the index or other identifying number of the case.

As to bankruptcies, please provide the following information: 1) the notice of the filing of the bankruptcy case; 2) any notice of the conversion of the bankruptcy case from one chapter of the bankruptcy code to another; 3) the original case number under which the bankruptcy case was filed and the court in which the bankruptcy case was filed, and, if applicable, other case numbers of associated bankruptcy cases; 4) the notice/order granting a bankruptcy discharge, if any, or any other disposition of the bankruptcy case, and 5) the notice/order dismissing the bankruptcy case, if any, and the reason for such dismissal.

In either event, the above information should be provided to the WCB's Litigation Unit located at 20 Park Street, Albany, New York, 12207 and must be received by the WCB no later than the 45 day deadline set forth in the Deficit Assessment Billing Package you received from the WCB.

What is the impact if a member is dissolved or bankrupt?

As previously stated, the members of OHI are jointly and severally liable for any deficits attributable to the period in which they participated in OHI. Therefore, an additional deficit assessment of the other members could occur.

VI. RESPONSE TO WCB DEFICIT ASSESSMENT BILLING

What will happen if I do not sign the Deficit Assessment Contractual Agreement (DACA), but do send a check for my first payment in an appropriate amount and continue to make the appropriate monthly payments?

The WCB appreciates a member's attempt at showing good faith and cooperation by making the proper payment(s). Despite this, the DACA is the only legal mechanism which preserves the WCB's rights, and those of the other members, who could be potentially impacted by your failure to pay in the future. Therefore, absent a signed Agreement, the WCB must refer this matter to the Attorney General's Office for collection. However, ***if the proper payment is received on or before 45 days from the date of the invoice enclosed in the Assessment Billing Package, even though the Agreement is not signed***, the WCB will recommend that the member be considered, at the Attorney General Office's discretion, for the following relief: a significant extension on the time to answer any summons and notice/complaint issued to that member, and no assessment of a collection fee or any interest for late payment (as opposed to interest associated with your chosen payment plan) provided for pursuant to State Finance Law Sections 18 (4) and 18 (5).

What happens if I do not pay my obligation to the trust?

As stated in the correspondence from the WCB, if a member does not pay the obligations incurred in connection with its membership in OHI, the WCB will consider the member in default. This will subject the member to enforcement and collection proceedings as authorized by law, including but not limited to referral to the Attorney General's Office with the potential for an additional 22% collection cost plus interest being added to the pro rata assessment against the member as authorized by State Finance Law Section 18 and/or the imposition of a judgment, pursuant to WCL §26, in the amount of unpaid claims expenses.

Why am I being given only 45 days to respond to the Deficit Assessment Billing Package from the WCB?

This is necessary to ensure that the State is acting in a manner fully compliant with the legal requirements of the WCL and to protect all of the rights and interests of the members of OHI, and the injured workers of the employer members of OHI. In this regard it is noted that the WCB has been making the claims payments and paying medical bills of injured workers of the employer members of OHI from funds borrowed pursuant to WCL § 50(5)(g).