

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the Examination of the Kansas)
Building Industry Workers Compensation Fund) Docket No. 3550-ER

ORDER

Comes Now before the Commissioner of Insurance an appeal by the Kansas Building Industry Workers Compensation Fund (Fund) seeking a reduction in the costs billed by the Department in connection with the 2005-06 examination of the affairs and financial condition of the Fund as of December 31, 2004 by the Kansas Insurance Department (Department). On May 10, 2006 a hearing was held in this matter. Appearing on behalf of the Fund is Michael R. O'Neal of the firm of Gilliland & Hayes, P.A. Appearing on behalf of the Department is John W. Campbell, General Counsel. Also appearing is Janet Stubbs, Administrator of the Fund; Bradley N. Owen of Mize, Houser & Company; and Kenneth G. Abitz, Director of the Financial Surveillance Division of the Department.

The proceedings in this matter are governed by the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.* The parties to these proceedings have waived all notice and formality requirements. All parties are in agreement that this matter is properly before the Commissioner for hearing. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-103 and K.S.A. 44-584.

FINDINGS OF FACT

1. The Fund is a Group-Funded Workers Compensation Pool organized and operated by authority of that portion of the Kansas Workers Compensation Act found at K.S.A. 44-581 through 44-594.

2. The Fund is currently the subject of a financial examination by the Department. The examination is being conducted pursuant to K.S.A. 44-584(c). Pursuant to that statute, the examination is being conducted in accordance with K.S.A. 44-222 and 40-223.

3. A draft of the report is in the process of being completed and will be provided to the Fund. The draft report is incorporated by reference and is made a portion of the finding of fact of this order.

4. To date, the Department has billed the Fund for 480 hours of work. The billing is an accurate accounting of the time spent in conducting the examination. The amount charged to the fund for this work is \$22,912.30.

5. Work on the examination continues. It is currently unknown how many more hours will be needed for its completion.

6. The Fund has fully cooperated in the examination and there is no evidence of undue delay, unusual complexity or non-cooperation with the examiners by the Fund.

7. It is the opinion of the Department personnel who attended the hearing, that an examination of the scope and nature of the one currently being conducted would normally be completed in a time less than what has been expended to date on the current examination.

CONCLUSIONS OF LAW

K.S.A. 40-222 and 40-223 obligates the Fund to reimburse the Department for its reasonable expenses acquired in conducting financial condition examinations.

Based upon the information enumerated in the Findings of Fact contained in paragraphs one through seven above and the representations made on behalf of the Fund and the Department, the reasonable costs of the examination is an amount less than that which has been charged.

IT IS THEREFORE, BY THE COMMISSIONER OF INSURANCE, ORDERED THAT:

1. The reasonable cost of this examination is the amount of \$16,000.00.
2. The amount of money collected by the Department from the Fund pursuant to K.S.A. 40-222, associated with the current examination, which is in excess of \$16,000.00, shall be refunded by the Department to the Fund.
3. No further billings shall be presented to the Fund for payment for work connected with the current examination.
4. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further Orders deemed appropriate or to take such further action as necessary to dispose of this matter.

NOTICE OF RIGHT TO JUDICIAL REVIEW

The Fund has the right to judicial review in accordance with the provisions set forth in the Act for Judicial Review and Civil Enforcement of Agency Actions (K.S.A. 77-601, *et seq.*, as amended). If it wishes to appeal this decision, it must file a petition for judicial review after exhausting all administrative remedies available in this matter within 30 days. Its written petition for judicial review shall be served upon: Sandy Praeger, Commissioner of Insurance, Kansas Insurance Department, 420 SW 9th Street, Topeka, Kansas 66612-1678.

**IT IS SO ORDERED THIS 18th DAY OF MAY 2006, IN THE CITY OF
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



_____/s/ Sandy Praeger_____
Sandy Praeger
Commissioner of Insurance

By: ____/s/ John W. Campbell_____
John W. Campbell
General Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Order on this 18th day of May, 2006, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Michael R. O'Neal
Gilliland & Hayes, P.A.
P.O. Box 2977
Hutchinson, Kansas 67504-2977

/s/ John W. Campbell
John W. Campbell, General Counsel