**Section 9100.60 Administration of Claims Against Securities, Indemnity or Bonds of Self-Insurers**

a) Determination of Self-Insurer's Insolvent Condition

This Section applies whenever:

1) Any self-insured employer who is unable to pay compensation under Sections 7(f), 8(a), 8(b), 8(c), 8(d)(1), 8(d)(2), 8(e), 8(f), 19(a) and 19(g) of the Workers' Compensation Act (the Act) and Section 7 of the Workers' Occupational Diseases Act (WODA) has filed a written notice of that inability to pay with the Commission; or

2) Any person who has filed an Application for Adjustment of Claim against a self-insured employer gives written notice to the Commission that the Commission determines has raised a question with respect to that employer's ability to pay compensation under the Act/WODA; or

3) It is established that a court of competent jurisdiction has determined or is conducting proceedings to determine that a self-insured employer is unable to pay compensation under the Act/WODA; or

4) Any self-insurer has filed for, or is the subject of, any proceeding under the federal Bankruptcy Reform Act of 1978 (11 U.S.C. 101 et seq.) or is a party, whether plaintiff or defendant, in any proceeding in which a receiver, liquidator, custodian, rehabilitator, sequestrator or trustee, or similar officer for the self-insurer or its property, has been appointed;

b) The Commission, on its own motion or on the motion of any other party, shall hold a hearing to determine the ability of the self-insurer to pay compensation under the Act and to determine the existence and status of any action described in subsection (a). *The Commission or any member of the Commission shall have the power to administer oaths, to subpoena and examine witnesses, and to issue subpoena duces tecum requiring the production of such books, papers, records or documents as may be evidence to determine such issues.* [820 ILCS 305/16]

c) Duty to Notify

A self-insured employer that is claiming it is unable to pay compensation under the Act/WODA and that is a party to a bankruptcy proceeding described in subsection (a)(4), or that is the subject of an order set forth in subsection (a)(3) or (4), shall file written notice of that fact with the Commission within 10 days after the occurrence of the event.

d) Stay

Upon notification of any of the actions described in subsection (a), the Commission shall, on its own motion, stay all proceedings before the Commission involving that self-insured employer for at least 60 days.

e) Transfer of Securities, Indemnity or Bonds to the Commission

1) The Commission will issue notification, within 20 days after a hearing, of its determination that the self-insured employer is unable to pay compensation due under the Act/WODA, has filed for, or is the subject of, any bankruptcy proceeding (see subsection (a)(4)), or is the subject of an order under subsection (a)(3) or (4). Any holder of any securities, indemnity or bonds furnished by that employer guaranteeing the payment of compensation under the Act/WODA shall notify the Commission in writing whether it is willing and able to administer those funds. Unless the holder has provided written notification to the Commission within the 20-day period that it is able and willing to administer the funds, the holder shall immediately deliver all such securities, indemnity, or bonds to the Commission; otherwise, the Commission shall order the delivery or refer the matter to the Attorney General's Office for litigation to collect or recover all such securities, indemnity, or bonds.

2) Upon receipt of the securities, indemnity, or bonds, the Commission shall deposit the proceeds of those securities, indemnity, or bonds with any state or national bank or trust company having trust authority in the State of Illinois that has been ranked in the upper 10% in the Annual Report submitted by the State of Illinois Director of the Division of Banking of the Department of Financial and Professional Regulation and that has the lowest fees for administration of escrow funds. Deposits in the bank or trust company shall be in the form of negotiable United States government bonds or negotiable general obligation bonds of the State of Illinois. The bank or trust company shall administer the funds and, upon the order of the Commission, shall distribute the funds. The administration fees for the bank or trust company shall be payable only from the interest accrued on the proceeds from the time of deposit.

f) Filing Periods for Claims Against Securities, Indemnity, or Bonds

1) If the bankruptcy proceedings described in subsection (a)(4) have been commenced or the Order affecting an entity under subsection (a)(3) or (4) was entered prior to September 17, 1984, any claim against the securities, indemnity, or bonds with respect to a case for which an Application for Adjustment of Claim has not already been filed pursuant to 50 Ill. Adm. Code 9020.20 must have been filed on or before September 17, 1984.

2) If the bankruptcy proceedings described in subsection (a)(4) have been commenced or the Order affecting an entity under subsection (a)(3) or (4) was entered on or after September 17, 1984, any claim with respect to a case for which an Application for Adjustment of Claim has not already been filed pursuant to 50 Ill. Adm. Code 9020.20 must be filed on or before 12 months after the date of the commencement of those proceedings or the entry of the Order.

g) Distribution of Securities, Indemnity, or Bonds

1) Upon determination by the Commission of the extent of the self-insured employer's liability under the Act in all cases for which Applications for Adjustment of Claims or Settlement Contract Petitions have been filed or for which claims are pending against the securities, indemnity, or bonds, the Commission shall hold a hearing to determine the proceeds of the securities, indemnity, or bonds. Notice of this hearing will be by mail at least 15 business days before the hearing and shall be given to all parties, including the holders of the securities, indemnity, or bonds.

2) If, after a hearing pursuant to subsection (g)(1), the Commission determines that the proceeds of the securities, indemnity, or bonds are sufficient to pay all claims against the assets in full, it shall order the holder or the depository bank or trust company to make payment to the parties entitled to the assets who have perfected claims against those assets, in accordance with the terms of awards or settlements the Commission entered or approved.

3) If the Commission determines that the proceeds of securities, indemnity, or bonds are not sufficient to pay all claims in full, those claims that are for compensation for death and for temporary and total permanent disability and claims for medical expenses shall, as a class, be payable prior to payment of any other claims. If the proceeds are not sufficient to pay all claims within this class in full, payment of those claims will be prorated on the basis of the amount of each claim in proportion to the amount of the securities, indemnity, and bonds available for distribution.

4) After all claims within the class have been paid in full, if any amount from the proceeds of securities, indemnity, or bonds remains for distribution, payments of all other claims will be prorated on the basis of the amount of each identified claim in proportion to the amount of the remainder of the securities, indemnity, or bonds.

5) If, after all identified claims are paid in full, any surplus securities, indemnity, or bond amounts remain, the Commission shall order those amounts returned to the employer, bond company, or other party with legal right to those monies. Any interest earned from the Commission's deposit of such securities, indemnities, or bonds will be retained by the Commission and deposited into the Self-Insurers Security Fund.

(Source: Amended at 47 Ill. Reg. 6166, effective April 13, 2023)