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INDEPENDENT REGULATORY  
REVIEW COMMISSION

June 1, 2009

George Knehr, Chief  
Self-Insurance Division  
Bureau of Workers' Compensation  
Department of Labor & Industry  
1171 South Cameron Street, Room 103  
Harrisburg, PA 17104-2501

**Sent Via Email to [gknehr@state.pa.us](mailto:gknehr@state.pa.us)**

Re: Proposed Amendments to Regulations Governing Individual Self Insurance

Dear Mr. Knehr:

On behalf of the Port Authority of Allegheny County ("Port Authority"), I submit the following comments for your consideration, regarding proposed amendments affecting public employers who are self-insured for purposes of Workers' Compensation. We truly appreciate efforts being made by the Bureau to assure that obligations to injured workers are being met in a financially responsible manner, as well as the opportunity afforded to employers to contribute to this process.

**Section 125.10**

As you are aware, the proposed amendments to Section 125.10 envision the abolition of the current Trust Fund concept, and replacement of the Trust Fund with a Dedicated Asset Account. Requirements for the Dedicated Asset Account are dependent upon the length of time that the public employer has been self-insured. The proposed amendments further contain provisions for a "phase in compliance" period of up to six years.

**Comments**

Under the proposed amendments, Port Authority, an agency of the Commonwealth of Pennsylvania organized and established to provide public transportation services in Allegheny County, Pennsylvania, would be required to establish and fund a Dedicated Asset Account, presumably over a six year period, which could not be expended for any purpose absent prior approval by the Bureau.

Port Authority respectfully questions whether the imposition of such an account serves to improve the security of future payments to our injured employees. As the Bureau is no

doubt aware, Port Authority has established its ability to meet benefit obligations for over four decades, without incident or instability.

The development of the Dedicated Asset Account will, however, adversely impact our financing of general operations because the funds in the Account are unable to be used even for current benefit obligations. We, therefore have a concern that such an Account would not be an efficient use of our public funding. Approximately sixty-one percent of our budgeted revenue is derived from the Public Transportation Trust Fund (PTTF) under the Commonwealth's Act 44 legislation enacted in 2007. Our current projection is that Act 44 Funding will be "flat" for the foreseeable future, while operating expenses are likely to increase. The remainder of Port Authority's budgeted operating revenue is derived primarily from other State, Federal and Local grant funds which historically have experienced no growth, while only 20% of operating revenue is generated from actual passenger fares/transit operations. While we are confident in our ability to address future operational financing issues, the imposition of an additional account funding requirement means that fewer operating funds will be available to the Port Authority to meet the task of maintaining and improving our public transit services. In essence, this additional dedicated funding requirement will only result in a further burden on Pennsylvania taxpayers.

In summary, Port Authority requests that the Bureau reconsider its proposal for the establishment of Dedicated Asset Accounts for public employers. In the alternative, Port Authority requests that the Bureau, in establishing Dedicated Asset Accounts, give further consideration towards eliminating the requirements for public self-insured entities that have an extended, established history of being financially responsible towards funding workers' compensation benefits. We note that under the proposed classifications of employers for purposes of determining the requirements of the Dedicated Asset Accounts, the category set forth in subsection (d) lumps all employers with seven or more years of consecutive self-insured experience into a single group. Port Authority believes that self-insured public employers who have demonstrated a continuous ability to meet and fund their self-insured obligations for more than forty years (i.e., Port Authority) warrant separate consideration or exemption, by eliminating the Dedicated Asset Account requirements for such public employers.

### **Section 125.11**

Proposed amendments to Section 125.11 would modify existing requirements for excess insurance coverage, with an emphasis on catastrophic loss obligations and funding.

### **Comments**

To date, the Port Authority has not been able to fully assess the potential impact of the proposed excess insurance amendments on premium expenses. Some difficulty exists in making such an assessment, as the proposed amendment refers to "a liability limit acceptable to the Bureau to provide an adequate level of protection to cover the losses

from a catastrophic event.” Absent more specific guidelines regarding what coverage the Bureau might deem sufficient, it is difficult to determine financial impact.

The Port Authority does note, however, that while the proposed amendment focuses on retention amounts, it does not appear to take into consideration cash flow protection coverage, which limits the exposure of an entity to catastrophic losses so that the loss can be spread over a number of years. For instance, an entity may have a five million per occurrence retention, but additionally, cash flow protection coverage limits the entity’s exposure to a maximum of \$250,000 per occurrence, per year. While the self-insured portion of the loss will ultimately be paid by the entity, the impact will be spread over the number of years required to reach the retention amount, at a rate of \$250,000 per year. It seems appropriate and prudent for the Bureau to consider this coverage, when adopting guidelines for excess insurance protection and in its consideration of requiring Dedicated Asset Accounts under Section 125.10. For ease of reference, I am enclosing a copy of the Certificate of Insurance for Port Authority’s Excess Workers’ Compensation and Employer’s Liability, which you will note includes cash flow protection retention of \$250,000.00 per year/per occurrence.

On behalf of the Port Authority, we thank you for your review and consideration of these comments. Of course, should you have any questions or wish to discuss Port Authority’s comments further, please contact me at your convenience.

Respectfully Submitted,



Claudia Allen  
Chief Financial Officer  
Port Authority of Allegheny County

Enclosure

cc: S. Bland  
T. Stoker  
J. Wyvrat  
M. Cetra  
B. Campbell  
R. O’Driscoll  
T. Moore-McGee  
*(all via e-mail; w/encl.)*

**MEADOWBROOK, INC. DBA  
US SPECIALTY UNDERWRITERS**  
6140 PARKLAND BLVD., #300, MAYFIELD HEIGHTS, OH 44124

**CERTIFICATE OF INSURANCE**

This is to certify to

Bureau of Workers' Compensation  
Self-Insurance Section  
1171 South Cameron Street, Room 103  
Harrisburg, Pennsylvania 17104-2501  
Attn.: Mr. George Knehr

That the following described Certificate(s) or Policy(ies) in force at this date have been issued through the office of the undersigned on behalf of insurers set forth below:

Assured: PORT AUTHORITY OF ALLEGHENY COUNTY

Address: 345 SIXTH AVENUE, 3<sup>RD</sup> FLOOR, PITTSBURGH, PA 15222-2527

INSURERS	CERTIFICATE(S) OR POLICY(IES)	EXPIRATION
<u>GREAT AMERICAN SPIRIT INSURANCE COMPANY</u>	<u>GSP-3703020-09</u>	<u>JANUARY 1, 2010</u>

TYPE OF COVERAGE	LIMITS
<u>EXCESS WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY</u>	<u>\$5,000,000. EACH OCCURRENCE AS RESPECTS WORKERS' COMPENSATION ACT BENEFITS, \$1,000,000. EACH OCCURRENCE, \$1,000,000. POLICY LIMIT AS RESPECTS EMPLOYER'S LIABILITY, EXCESS OF A</u>
<u>COMMONWEALTH OF PENNSYLVANIA</u>	<u>\$5,000,000. PER OCCURRENCE SELF-INSURED RETENTION. CASH FLOW PROTECTION RETENTION OF \$250,000. PER YEAR/PER OCCURRENCE.</u>

Notice is hereby given that US Specialty Underwriters are not the insurers hereunder and they shall not be held liable for any loss or damage. However, it is agreed that if the Certificate(s) or Policy(ies) mentioned herein are cancelled, or if the amount of insurance is reduced, Us Specialty Underwriters will undertake to give forty-five (45) days notice to the holder of this Certificate. For particulars concerning the limitations, conditions and terms of the coverage you are referred to the original Certificate(s) or Policy(ies) in the possession of the Assured.

Dated at MAYFIELD HEIGHTS, OHIO, January 29, 2009

US SPECIALTY UNDERWRITERS

By



Dean M. Williams

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**Knehr, George**

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**From:** MAsmith@PortAuthority.org

**Sent:** Monday, June 01, 2009 4:39 PM

**To:** Knehr, George

**Cc:** SBland@PortAuthority.org; TStoker@PortAuthority.org; JWyvrat@PortAuthority.org; MCetra@PortAuthority.org; BCampbell@PortAuthority.org; RO'Driscoll@PortAuthority.org; TMoore-McGee@PortAuthority.org

INDEPENDENT REGULATORY  
COMMISSION

**Subject:** Proposed Amendments to Regulations Governing Individual Self Insurance

<<DOC095>>

Sent for Claudia L. Allen, CFO  
By Margaret Smith  
Administrative Assistant - Finance  
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Pittsburgh, PA 15222  
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