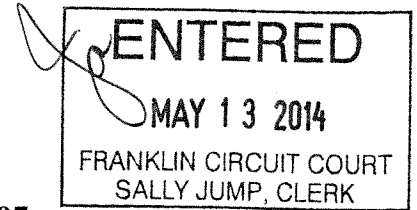


**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II**

**CIVIL ACTION No. 13-CI-01282
CONSOLIDATED WITH 13-CI-01296 and 13-CI-01297**



**SHARON P. CLARK, in her official capacity as
COMMISSIONER, KENTUCKY DEPARTMENT
OF INSURANCE**

PETITIONER

vs.

**KENTUCKY LEAGUE OF CITIES INSURANCE
SERVICES ASSOCIATION;
KENTUCKY LEAGUE OF CITIES, INC., et al.**

RESPONDENTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing without intervention of a jury on March 12-13, 2014 pursuant to a Notice approved by the Court and given by the Petitioner on or about January 21, 2014. The hearing was scheduled by the Court pursuant to KRS 304.33-160 on the request of the Rehabilitator to approve a plan of reorganization and a plan of assessment for the KSBIT Workers' Compensation Fund and the KSBIT Property and Liability Fund ("The Funds"). The Petitioner, Sharon P. Clark, is the duly appointed Commissioner of the Kentucky Department of Insurance ("DOI"), Commonwealth of Kentucky, and she is the Court appointed Rehabilitator of the Funds pursuant to KRS 304.33-150. The Rehabilitator was represented by Peter F. Ervin and Shaun T. Orme of the Office of Legal Services, Public Protection Cabinet. The Trustees of the KSBIT Funds were represented throughout these proceedings and at the hearing by Janet A. Craig and Gregory P. Parsons of Stites and Harbison, PLLC. Kentucky Employers

Mutual Insurance (“KEMI”) was represented throughout these proceedings by Justin D. Clark and Paul C. Harnice, Stoll Keenon Ogden, PLLC.

Also appearing at the hearing were intervenors Green River Regional Educational Cooperative (“GRREC”), represented by Sarah Payne-Jarboe of English, Lucas, Priest & Owsley, LLP, and the Bourbon County Board of Education, represented by Sam P. Burchett. Also appearing and providing a statement of position at the conclusion of the hearing was the Fayette County Board of Education represented by Shelly Chatfield. The other members were given notice of the proceedings. No procedural objections to notice or to the conduct of the proceedings were heard or presented.

Witnesses called on behalf of the Petitioner were Sharon P. Clark (hereinafter “the Rehabilitator” or “Petitioner”) Rehabilitator and Joseph N. Pope, Jr. (“Pope”), Special Deputy Rehabilitator.

Witnesses called on behalf of KSBIT were Doug Goforth (“Goforth”), Chief Insurance Services Officer for the Kentucky League of Cities, Steve Smith, Chief Financial Officer for the Kentucky School Board Association (“KSBA”), Jeffrey P. Kadison (“Kadison”), of Practical Actuarial Solutions, Inc. and Judith K. Spry, BDO Consulting, consulting CPA.

This case involves two self-insurance funds operated by KSBIT that provided workers’ compensation as well as liability and property coverage for its membership, consisting of Kentucky school districts, colleges and universities. Both Funds suffered substantial losses during a twenty-three year span from 1990 through 2013. As of June 30, 2013, before adjustments or discounts on reserves, the Workers’ Compensation Self-Insurance Fund deficit was \$37,089,129 and the Liability & Property Self-Insurance

Fund deficit was \$8,829,533. The Rehabilitator and KSBIT each filed proposed plans of assessment and methodology for consideration by the Court for rehabilitating the Funds. Although the Kentucky insurance statutes do not prescribe a model or formula for assessing members of self-insurance funds, those statutes do contain requirements that any assessment plan must satisfy. First, the assessment methodology shall be fair and equitable. Second, it shall not unfairly discriminate between members of the same classification. Third, it shall not have the effect of relieving former members of the self-insurance funds from liabilities, obligations and assessments incurred during their period of membership. Finally, any plan for dissolution of a worker's compensation self-insurance fund must discharge all of its liabilities. The assessment plans submitted by KSBIT and the Rehabilitator are before this Court and under review in order to determine whether the presented plans meet the above criteria.

JURISDICTION

Pursuant to KRS 304.33-040(1), the Petitioner has the authority to commence a delinquency or receivership proceeding against the Funds.

Pursuant to KRS 304.33-040(1), this Court has exclusive jurisdiction to hear and determine all matters in any way relating to the Funds' receivership, including all issues presented at the hearings before this Court, which are identified herein. The Court may issue any Order, process, or judgment necessary or appropriate to carry out the provisions of KRS 304, Subtitle 33.

FINDINGS OF FACT

KSBIT was created in 1978 to provide coverage through nonprofit self-insurance funds authorized under Kentucky law. It is an unincorporated association of members

who qualify as a workers' compensation self-insured group and a property and liability self-insured group under Kentucky law. KRS 342.350(4); KRS 304.50-010; KRS 304.48-030. The trustees of the Funds are the trustees duly appointed by the Funds' sponsoring organization, Kentucky School Boards Association, and also through a Master Agreement with the Kentucky League of Cities.

The Membership of the Funds includes Kentucky school districts, members of KSBA and other educational associations or universities who, between January 1, 1979 and June 30, 2013 participated in the Funds. These group members filed applications for coverage with the Funds, and in so doing, would have been required to agree to the bylaws of KSBIT, the indemnity agreement filed by KSBIT with the then Kentucky Department of Workers' Claims or the DOI, as the case may be, and agree to be bound by Kentucky law.

Both, the KSBIT Workers' Compensation Fund and the KSBIT Property and Liability Fund, have been operating for several years in a deficit position. Based on the years for which financial records are readily available, the KSBIT Workers' Compensation Self-Insurance Fund ("WC Fund") sustained operating losses during all years, from 1990 through 2013, except 1995, 2004, 2005, and 2006. Those sustained operating losses have eroded the WC Fund's surplus, resulting in a deficit such that the WC Fund has insufficient assets to discharge its legal liabilities and other obligations and maintain required statutory reserves. Workers' Compensation claims typically have a long tail; therefore, the WC Fund could be exposed to liability for members' claims for the next 30 or more years. Any member having withdrawn from the WC Fund has continued to have its claims paid by the Fund, and the payment of those claims has

eroded the Fund's surplus and contributed to its deficit. The total deficit in the WC Fund based on its audited financials as of June 30, 2013 was \$37,089,129 before any adjustments and discounts on reserves.

Based on the years for which financial records are readily available, the KSBIT Liability and Property Self-Insurance Fund ("LP Fund") sustained operating losses during all years, from 1995 through 2013, except 1999 and 2007. Those sustained operating losses have eroded the LP Fund's surplus, resulting in a deficit such that the LP Fund has insufficient assets to discharge its legal liabilities and other obligations and maintain required statutory reserves. Liability claims against educational institutions can have a long tail because claims involving minors can be filed many years after the occurrence when the minor child reaches the age of majority. In fact, the LP Fund received notice of 4 such claims 12 years after the alleged occurrences from a member who had left the Fund and is not being assessed under the KDI plan. Any member having withdrawn from the LP Fund has continued to have its claims paid by the Fund and the payment of those claims has eroded the Fund's surplus and contributed to its deficit. The total deficit in the LP Fund based on its audited financials as of June 30, 2013 was \$8,829,533 before any adjustments and discounts on reserves.

As stipulated by the parties, the lists of members and their years of participation in the WC Plan as contained in the parties' alternative assessment plans fairly and accurately represent the identity of members and their participation in the WC Fund during the proposed plan periods. With respect to the LP Fund, there were 199 school districts and colleges that were members of the Fund at some point from 1995 to 2013, during which time the fund had consistent operating losses that eroded its surplus.

The first KSBIT financial report that Clark reviewed, after her appointment as Commissioner in 2008, demonstrated substantial fund deficits. Clark initiated remedial actions in an effort to cause KSBIT to cure its deficits. The remedial efforts were ineffective and in 2009, Clark ordered KSBIT to assess its members or merge or otherwise find capital to offset its deficits. In response, KSBIT entered into a transaction with the Kentucky League of Cities, Inc. (“KLC”) which resulted in the transfer of responsibility for claims handling and loss control administration to the Kentucky League of Cities Insurance Services Association (“KLCIS”). The KSBIT/KLC transaction included the infusion of a substantial amount of capital from KLC and control of the KSBIT Board by KLC. By the time KSBIT submitted its first financial report after it began administration under the control of KLC, it was apparent that the amount of capital invested by KLC had been insufficient to cure the deficit.

The KSBIT deficits only worsened in the ensuing three years under KLCIS management. According to the Independent Audit Report for years ended June 30, 2013 and 2012, prepared by Dean Dorton Allen Ford, PLLC, KSBIT Workers’ Compensation Fund had a total net deficit of \$37,089,129. According to the Independent Audit Report for years ended June 30, 2013 and 2012, also prepared by Dean Dorton Allen Ford, PLLC, the KSBIT Property and Liability Fund has a total net deficit of \$8,829,533.

On June 30, 2013, KSBIT ceased writing coverage. In July, 2013, in response to the demand of the Commissioner, KSBIT submitted a draft assessment plan showing an assessment and novation of the two funds for a total cost in excess of \$70 million. With this, the Commissioner began talks with Kentucky Employer’s Mutual Insurance (“KEMI”). KEMI agreed to a Loss Portfolio Transfer (in which loss obligations are

ceded to a reinsurer in return for a payment from and/or a transfer of assets from the ceding entity) at a substantial savings compared to the novation proposed by KSBIT. From there, the Commissioner developed the plans submitted with her Petition. They have a combined total cost of approximately \$48 million.

On November 7, 2013, Commissioner Clark filed her Petitions for the rehabilitation of the KSBIT Workers' Compensation Fund Action No. 13-CI-1296 and the KSBIT Property and Liability Fund Action No. 13-CI-1297 (these actions were later consolidated with an earlier action filed by Kentucky League of Cities).¹ The Petitioner included exhibits to the Petitions: a proposed plan of assessment for the Workers' Compensation Fund; a proposed plan of assessment for the Property and Liability Fund; and a Loss Portfolio Transfer Agreement for the transfer of administration and assumption of all liability of the Workers' Compensation Fund to KEMI.

On November 15, 2013, the Court entered Orders of Rehabilitation for each of the two Funds and appointed Clark as Rehabilitator and Joseph N. Pope, Jr., as Special Deputy Rehabilitator of the Funds. The following parties requested and were permitted to intervene in the action: Green River Regional Educational Cooperative and Bourbon County Board of Education.

On January 17, 2014, the Court entered its Procedural Order establishing a date for the hearing on March 12 and 13, 2014, on the question of the methodology and amount of assessment of the Funds; providing for timely Notice of the hearing in satisfaction of due process requirements; and providing a procedure for Fund members to present a plan, object to or support any proposed assessment plans.

¹ A declaratory action and claims regarding certain Kentucky Surplus Notes have been bifurcated from this proceeding for determination later.

Before the date of the hearing, a substantial number of KSBIT's membership filed position statements voicing their objections or support, as the case may, for one or another of the proposed plans. Many of the members submitted their position on a prepared statement in which they merely checked a box summarizing their position. Under the terms of the Court's Procedural Order and Notice, any member submitting a position statement would likewise be permitted to address the Court at the time of the hearing. Numerous members filed written statements and a representative of the Fayette County School Board spoke at the hearing in favor of the KSBIT Plan and in opposition to DOI's plan. The Court appreciates these statements from the members, and it has considered them on equal plane with other evidence offered by the parties.

On March 5, 2014, KSBIT submitted proposed alternative plans of assessment for both the Workers' Compensation Fund and the Property and Liability Fund.

Each of the plans submitted by the Rehabilitator and by KSBIT is premised on the fact that audited financial statements as of June 30, 2013 reflect that the KSBIT Workers' Compensation Fund had a deficit in the sum of \$37,089,129 and the KSBIT Property and Liability Fund had a deficit of \$8,829,533. The first question for determination by this Court is what assessment amount is necessary to cure these deficits and ensure payment and administration of the claims of injured workers and of property and liability claimants. Additionally, the Court must determine a methodology that fairly and equitably distributes the responsibility for payment of the assessment amount among the group members without unfair discrimination between classes.

The Rehabilitator and KSBIT agree on one major element of the methodology – the formula of allocation per member. Each of the proposed plans submitted by the

Rehabilitator and KSBIT utilize a 60%-40% methodology of allocation to each member based on earned premiums 60% and excess losses 40%. There are two primary differences between the proposed sets of plans. The first difference is the fair and equitable start date to determine which group members should be assessed for liability incurred during the member's period of membership. The proposed start dates for the Rehabilitator's plans are January 1, 1997, for the Workers' Compensation Fund and January 1, 2007², for the Property and Liability Fund. The proposed start dates for KSBIT's plans are January 1, 1990³, for the Workers' Compensation Fund and January 1, 1993, for the Property and Liability Fund. The second difference is that the proposed KSBIT plans "capped" the member's assessment to no more than 50% of the member's total premium paid for assessable years. The Rehabilitator's plans do not contain a cap.

The difference in the amount of the assessments in each of the parties' plans is generally due to divergence between the parties as to the estimation of the costs of administration of the claims, calculation of the Kentucky Special Fund Assessment, and allowance for attorney fees expected to be incurred in defense of the assessment. Also, the amount of the assessment is dependent on whether there is an obligation to make

² The 2007 date is patterned after the methodology used by the Rehabilitator in the AIK Comp rehabilitation. In that case, this Court adopted an amended plan of Rehabilitation reached through an agreed settlement between the Commissioner and most of the intervening members, none of whom objected to the use of the 1999 date as the basis for the assessment of members to fund the deficit in that worker's compensation self-insurance fund. The use of 1999 in the AIK Comp litigation was premised upon that being the year that AIK Comp went into deficit never to emerge again. The primary reason offered at the hearing to approve that cut-off date was that there were over 3,800 members of AIK Comp from 1999 forward. AIK Comp was founded in 1979 and many of the members prior to 1999 were no longer in business or for other reasons could not be found. The process of finding all of those members, all of whom were in the private sector, and collecting assessments from them would have been an extraordinarily burdensome and arguably impossible task. For the members in this case, just the opposite is true. KSBIT membership numbers less than 200, and all of the KSBIT members are easily found, as they are school boards, colleges and universities who are still in business and all, with the exception of colleges and universities, have the power of taxation to meet the unexpected burdens of the assessment. Collecting assessments from KSBIT membership from 1997 forward will be fairly simple as all are well known and easily located from records retained by KSBIT and the Rehabilitator.

³ There is inadequate documentation to determine adequately the financial condition of KSBIT prior to 1990.

“repayments” (\$607,681.00 to the Property and Liability Fund and \$1,694,713.00⁴ to the KSBIT Unemployment Fund) to the KSBIT Guaranty Fund.⁵

1. Start Date

The controlling statutes require both fairness and non-discrimination and mandate that former members remain liable for obligations incurred while they were members. KRS 304.50-055(4); KRS 304.48-150(3); KRS 304.50-090(8). One of the purposes of the Insurer’s Rehabilitation and Liquidation Law is the “protection of the interests of insureds, creditors, and the public generally, [. . .] through: [. . .] equitable apportionment of any unavoidable loss.” KRS 304.33-010 (4)(d). “Assessments shall be fair and equitable and shall not unfairly discriminate between members of the same classification.” KRS 304.50-055(4). Finally, a member of a self-insurance fund who withdraws from membership shall not be relieved of liabilities incurred during its period of membership. KRS 304.48-150(3) and KRS 304.50-090(8).

For the WC Fund, DOI does not assess any member who departed the Fund before 1997, whereas the KSBIT methodology proposes to assess all who were members of the Fund from 1990 forward. For the LP Fund, DOI does not propose assessing those members who withdrew from membership before 2007, whereas KSBIT proposes to assess those who were members of the Fund from 1993 forward. The KSBIT assessment periods coincide with the years during which each of the Funds suffered operating losses that eroded the surplus, leading to the deficits.

⁴ The principal amount from the Unemployment Fund is \$1,571,349.00. The sum above includes that amount attributable to the Special Fund Assessment. For the reasons that follow, the Rehabilitator believes this total was erroneously included in her original proposed assessment plan, and is excluded by the Court.

⁵ Questions as to the liability of KSBIT for the repayment of certain Kentucky Surplus Notes have been reserved and bifurcated from this proceeding, but may result in the additional assessment of members according to the same methodology adopted by the Court. *See*, Note 1, *supra*.

Selected examples of the unfairness and inequity that would result from DOI's assessment plan for the WC Fund are:

a. It relieves members who withdrew from the WC Fund before 1997 of liability from claims incurred during their period of membership. Under the KSBIT plan those same former members of the WC Fund would be assessed \$1,087,099.

b. The Floyd County school district was a member of the WC Fund for 14 years with a loss ratio of 119.5% and is assessed \$0 under DOI's plan. In contrast, the Graves County school district was a member of the WC Fund for 16 years with a loss ratio of 69% and is assessed \$443,262 under DOI's plan.

c. The Bourbon County and Gallatin County school districts were both members of the WC Fund for 21 years with similar loss ratios, yet DOI's plan assesses Bourbon County school district \$115,721 more than Gallatin County school district. In contrast, under the KSBIT plan the difference is only \$64,135.

d. DOI's plan fails to assess 4 former members of the WC Fund whose losses exceeded their premiums by \$2,194,615.

Furthermore, DOI's plan has the direct result of violating at least one of the requirements that appears in the statutes. Under both the workers' compensation and liability and property subtitles of the insurance code, a member of a self-insurance fund who withdraws from membership shall not be relieved of liabilities incurred during its period of membership. KRS 304.48-150(3) and KRS 304.50-090(8). KSBIT's proposed assessment methodologies assess those who were members of the Funds during the years

in which the funds sustained operating losses that eroded the surplus thereby causing the deficit. For example, the WC Fund sustained losses of approximately \$19,000,000 between 1990 and 1997. Similarly, under DOI's LP Fund proposed assessment methodology, 79 members who withdrew from the Fund before 2006 entirely escape assessment, leaving the remaining members to shoulder the full burden. That same group of former members would be assessed \$1,238,595 under the KSBIT Plan and would share proportionately in the losses.

KSBIT's approach is fairer since it allocates the losses among members who benefited from the discounted premiums that led to the deficiencies. It is certainly more fair and equitable to allocate to those former members their proportionate share of the accumulated losses than to force that additional financial burden on the remaining members.

2. Capped Losses

DOI challenges KSBIT's assessment methodology for the WC Fund because it caps the individual assessment amounts to 50% of the total premiums paid in by the member from 1990 to 2013. However, the capping applies to only nine members of the WC Fund, and the aggregate amount redistributed to other members was about \$470,000.00, which is 1.3% of the total assessment amount. Mr. Kadison explained that the 50% capping was fair and equitable because to do otherwise would defeat the risk spreading purpose of insurance pooling by unfairly penalizing a handful of members who had very unusual loss experiences. Redistributing the \$470,000.00 among the other members results in only *de minimis* increase to their assessment amounts, but it fairly and significantly assists the nine members at issue.

3. **Administration and Closure Costs**

The assessment plan submitted by KSBIT projects claims administration cost based on competitive bidding and resulted in lower projected costs for administering claims and closing the Funds. The KSBIT claims and administration costs for the LP Fund are approximately \$4,300,00 lower than the DOI's projected costs for that Fund, and KSBIT's claims administration and closure costs for the WC Fund are approximately \$1,360,000 less than DOI's projected cost for that Fund. However, the Rehabilitator's projected administration costs are more reasonable and are not contingent upon a competitive bidding process which is speculative. The Rehabilitator's estimations of administrative costs and claims expense are based upon the thirty years of experience of the special Deputy Rehabilitator. This Court will have final approval over all administrative costs of the estates. If it turns out that the estimates are higher than necessary to meet the obligations of the Funds, the amounts can be returned to the members on a pro rata basis under the supervision of the Court.

4. **Loss Portfolio Transfer**

Finally, the Court finds that the Loss Portfolio Transfer ("LPT") to KEMI as contained in the Rehabilitator's Workers' Compensation Fund plan is a secure and economic means by which to continue the workers' compensation coverage and claims administration.

Under the Rehabilitator's Assessment Plan and the related LPT Agreement, the Rehabilitator is to levy assessments against the members of the Fund, and permit members to finance the assessment payable in the form of an Installment Payment Agreement attached to the LPT Agreement. If the actual collections of the assessment

contemplated by the Assessment Plan are insufficient to satisfy in full the Transfer Payment, the Rehabilitator shall, subject to the oversight of this Court, levy additional assessments on the members of the Fund to satisfy the Transfer Payment. KSBIT's proposed plan does not allow KSBIT members to finance the assessments.

In addition to the concession by KSBIT that KEMI is an appropriate reinsurer for the continued claims administration, KEMI is acknowledged to be the largest workers' compensation insurer in Kentucky. The terms of the LPT provide a means of financing the cost of the assessment to school district members, include a means for collection of the assessment and provide for the refund of any amounts received in excess of portfolio costs and expenses.

KSBIT's assessment schedule contains a column applying KSBIT's assessment methodology with the KEMI transfer and without repayment of the surplus notes. KEMI has stated that it requires a payment of \$35,000,000.00 in order to accept the LPT, and KSBIT's assessment schedule satisfies that requirement. The final assessment will be determined by DOI applying the appropriate SFA and arriving at an amount that will complete the LPT.

CONCLUSIONS OF LAW

This Court has exclusive jurisdiction over this delinquency proceeding to entertain, hear or determine all matters in any way relating to this delinquency proceeding, and the Court may issue any order, process or judgment necessary or appropriate to carry out the provisions of KRS Chapter 304, Subtitle 33. *See* KRS 304.33-040. KRS Chapter 304, Subtitle 33 must be construed to effect its purpose to protect the interests of insureds, creditors and the public generally and proceeding under

its provisions are an integral aspect of the business of insurance and are of vital public interest and concern. KRS 304.33-010.

The proceedings authorized under KRS Chapter 304, Subtitle 33 may be applied to the KSBIT Workers' Compensation Fund and to the KSBIT Property and Liability Fund. KRS 304.33-020(11) and (12). The Commissioner determined and the Court concludes that the Funds are in such condition that the further transaction of business would be hazardous to its policyholders, creditors, and the public. Further, KSBIT has consented to the Rehabilitation. Finding that the statutory grounds for rehabilitation as set out in KRS 304.33-140 existed, the Court placed the Funds into Rehabilitation on November 15, 2013.

All of the Funds' members, policyholders, and other interested persons received adequate notice of the hearing on the assessment plans on March 12 and 13, 2014, and were awarded a full, fair and complete opportunity to be heard at the hearing with respect to the proposed plans.

KSBIT is an unincorporated association, formed for the purpose of providing self-insured workers' compensation coverage for its members in accordance with its by-laws and applicable statutes and regulations. Likewise KSBIT established a Property and Liability Fund for the purpose of providing self-insurance coverage for the members' property and casualty liabilities. Both Funds are in a deficit required by law to be cured or made up by an assessment of each of the members relative to their period of membership. *See* KRS 304.50-135 and KRS 304.48-250. Kentucky requires employers who wish to self-insure their workers' compensation liabilities through a group self-insurance fund to be jointly and severally liable for those obligations. *See* KRS 304.50-

090. Kentucky law also declares that members of the property and liability fund are to be liable for the obligations assessed, pursuant to KRS 304.48-150.

The Court has made no final and binding determination of the cause of the Funds' deficits, and the Court's findings should not be used or construed to determine the cause of the Funds' deficits or who was responsible for causing the deficits. The Commissioner, as Rehabilitator, has the power and duties set forth in KRS 304.33-160.

WORKERS' COMPENSATION FUND

The Kentucky insurance statutes do not prescribe a formula or model for assessing members of a workers' compensation self-insurance fund. However, those statutes do contain the following requirements that any assessment methodology must satisfy:

- a. Assessments "shall be fair and equitable". KRS 304.50-055 (4).
- b. Assessments "shall not unfairly discriminate between members of the same classification". KRS 304.50-055 (4).
- c. All members who withdraw from a workers' compensation self-insurance fund remain "liable for workers' compensation liabilities, obligations, and assessments" that occurred during their period of membership. KRS 304.50-100 (8).
- d. In addition, a plan for dissolution of a self-insurance fund shall not be approved unless it fully discharges all obligations of the group. KRS 304.50-100(2).

The assessment methodology for the WC Fund submitted by KSBIT, which includes the KEMI transfer and excludes repayment of the surplus notes, satisfies these statutory requirements because it is fair and equitable. The WC Fund is a self-insurance fund whose current and former members have joint and several liability for all of its debts

and obligations. To remedy the WC Fund's deficit as provided in KRS 304.50-135, it is necessary and appropriate to order an assessment of current and former WC Fund members jointly and severally as calculated under KSBIT's methodology, provided that in the event the final closure and claims costs are less than this assessment, the difference shall be refunded to each of the WC Fund members in proportion to the assessment amounts they pay and provided that if more funds are necessary to satisfy the obligations of the WC Fund, members will be subject to additional assessments.

The current and former KSBIT WC Fund members shall be jointly and severally liable for payment of the assessment amounts calculated pursuant to the KSBIT plan assessment methodology. The Court adopts and orders the assessments listed in KSBIT's proposed methodology.

LIABILITY AND PROPERTY FUND

The Kentucky insurance statutes do not prescribe a formula or model for assessing members of a liability and property self-insurance fund. However, those statutes do contain the following requirements that any assessment methodology must satisfy:

- a. One purpose of rehabilitation of a self-insurance fund is equitable apportionment of unavoidable loss. KRS 34.33-010(4)(d).
- b. All members who withdraw from a liability and property self-insurance fund remain "liable for liability and property liabilities, obligations, and assessments" that occurred during their period of membership. KRS 304.48-150(3).

The assessment methodology for the LP Fund submitted by KSBIT, which excludes repayment of the surplus notes, satisfies these statutory requirements, and it is

fair and equitable. The LP Fund is a self-insurance fund whose current and former members have joint and several liability for all of its debts and obligations. To remedy the LP Fund's deficit as provided in KRS 304.50-135, it is necessary and appropriate to order an assessment of current and former LP Fund members jointly and severally in the total amount of \$8,829,533 plus estimated costs of administration to be determined by the DOI and approved by the Court, provided that in the event the final closure and claims costs are less than this assessment, the difference shall be refunded to each of the LP Fund members in proportion to the assessment amounts they pay. Further, provided that if more funds are necessary to satisfy the obligations of the LP Fund as it is liquidated, members will be subject to additional assessments.

The current and former KSBIT LP Fund members shall be jointly and severally liable for payment of the assessment amounts that appear in the KSBIT Plan Without Repayment of Surplus Notes.

CONCLUSION

The KSBIT Worker's Compensation Fund deficit requires rehabilitation and a plan of assessment as provided in KRS 304.50-135. As required by KRS 304.50-055(4) the assessment plan must be fair and equitable in its formula and must not discriminate between members of the same classification. The Court finds that the plan of assessment tendered by KSBIT meets the statutory criteria. In compliance with this statute and by separate Order, the Court approves the plan of assessment tendered by KSBIT as that the amount of the assessment is reduced, on a pro rata basis, by the sum of \$1,694,713.00 (this being the sum excluded by the Court from being returned to the Guaranty Fund). Also by the separate Order, the Court approves the Loss Portfolio Transfer to KEMI.

The KSBIT Property and Liability Fund deficit requires rehabilitation and a plan of assessment as provided in KRS 304.48-250. The Court hereby finds that the KSBIT plan equitably apportions assessments and holds all of the Funds' members, present and withdrawn, jointly and severally liable. The assessment methodology for the LP Fund as now found by the Court satisfies these statutory requirements, and it is fair and equitable. By separate Order, the Court approves the assessment tendered by KSBIT.

SO ORDERED, this 13th day of May, 2014.

***Signature on file with
original document***

THOMAS D. WINGATE
Judge, Franklin Circuit Court

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, this 13th day of May, 2014, to the following:

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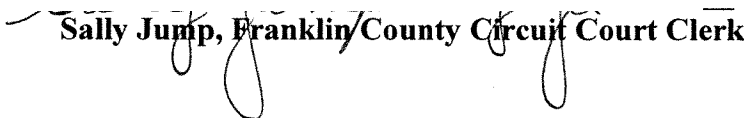
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Sally Jump, Franklin County Circuit Court Clerk