**Section 7100.85 Administration of Claims Against Securities, Indemnity or Bonds of Self Insurers**

a) Determination of Self-Insurer's Insolvent Condition

Whenever:

1) Any self-insured employer who is unable to pay compensation under the Workers' Compensation Act (Ill. Rev. Stat. ch. 48, pars. 138.7(f), 8 (a), 8(b), 8(c), 8(d)1, 8(d)2, 8(e), 8(f), 19(b) and 19(h) and Workers' Occupational Diseases Act, (Ill. Rev. Stat. 1983, ch. 48, pars. 172.42(7), 172.7(a)-(f) has filed a written notice of such inability with the Industrial Commission; or

2) Any person who has filed an Application for Adjustment of claim against a self-insured employer gives written notice to the Industrial Commission which the Commission determines has raised a question with respect to that employer's ability to pay compensation under the Workers' Compensation Act and Workers' Occupational Diseases Act; 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 Workers' Compensation Act and Workers' Occupational Diseases Act; or

4) Any self-insurer has filed for or is the subject of any proceeding under the federal Bankruptcy Reform act of 1978; or is a party whether plaintiff of defendant in any proceeding in which a receiver, liquidator, custodian, rehabilitator, sequestrator or trustee or similar officer for such self-insurer or its property has been appointed;

b) The Industrial Commission on its own motion or on the motion of any other party shall hold a hearing to determine the ability fo the self-insurer to pay compensation under the Act of the existence and status of any proceeding or proceedings referenced above. *The Commission or any member thereof 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.* (Ill. Rev. Stat. 1983, ch. 48, par. 138.16).

c) Duty to Notify

A self-insured employer which is claiming it is unable to pay compensation under the Workers' Compensation Act and Workers' Occupational Diseases Act, which is a party to a bankruptcy proceeding described in subparagraph (a)(4) above, or which is the subject of an order set forth in subparagraph (a)(3) or (4) above, shall file written notice of such fact with the Industrial Commission within 10 days of the occurrence of such event.

d) Stay

Upon notification of any of the events in 50 Ill. Adm. Code 7100.85(a)(1)(4) the Industrial Commission shall on its own motion stay all proceedings before the Industrial Commission involving said self-insured employer for no less than 60 days.

e) Transfer of Securities, Indemnity of Bond to the Commission

1) The Industrial Commission will issue notification within 20 days after a hearing that the self-insured employer is unable to pay compensation due under the Workers' Compensation Act and Workers' Occupational Diseases Act, or has filed for or is the subject of any bankruptcy proceeding set forth in subparagraph (a)(4) above, or is the subject of an order under subparagraph (a)(3) or (4) above, any holder of any securities, indemnity or bonds furnished by such employer guaranteeing the payment of compensation under the Workers' Compensation Act and Workers' Occupational Diseases Act, shall notify the Industrial Commission in writing whether or not it is willing to and able to administer such funds. Unless the holder has provided written notification to the Commission within such 20 days period that it is able and willing to administer the funds, such holder shall immediately deliver all such securities, indemnity or bonds to the Industrial Commission; otherwise the Industrial Commission shall order such 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 the said securities, indemnity or bonds with any state or national bank or trust company having trust authority in the State of Illinois which has been ranked in the upper 10% in the Annual Report submitted by the State of Illinois Commissioner of Banks and Trust Companies and which has the lowest fees for administration of escrow funds. Deposits in said bank or trust company shall be in the form of negotiable United States government bonds of negotiable general obligation bonds of the State of Illinois. The said bank or trust company shall administer the funds and upon the order of the Commission shall distribute the funds. The administration fees for said bank or trust company shall be payable only from the interest accrued on said proceeds from time of deposit.

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

1) If the bankruptcy proceedings set forth in subparagraph (a)(4) above have been commenced or the order under subparagraph (a)(3) or (4) above has been 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 not already been filed pursuant to 50 Ill. Adm. Code 7020.20 must be filed on or before September 17, 1984.

2) If the bankruptcy proceedings set forth in subparagraph (a)(4) above have been commenced or the order under subparagraph (a)(3) or (4) above has been 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 7020.20 must be filed on or before 12 months after the date of the commencement of such proceedings or the entry of such order.

g) Distribution of Securities, Indemnity or Bonds

1) Upon determination by the Commission of the extent of the Self-Insured'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 prior to 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 paragraph (1) above, the Commission has determined that the proceeds of the securities, indemnity or bonds are sufficient to pay all claim against such assets in full, it shall order the holder or the depositary bank or trust company to make payment to the parties entitled thereto who have perfected claims against such assets, in accordance with the terms of awards or settlements which the Commission has 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, then such claims which 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, and if the proceeds of securities, indemnity or bonds are not sufficient to pay all claims within said class in full, then payment of such claims will be pro rated 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, then payments of all other claims will be pro rated on the basis of the amount of each such claim in proportion to the amount of the remainder of the securities, indemnity or bonds.

5) If after all such claims are paid in full there exists any surplus securities, indemnity or bond amounts, the Commission shall order said amounts returned to the employer, bond company, or other party with legal right to such monies.

(Source: Added at 9 Ill. Reg. 3705, effective March 12, 1985)