

**STATE OF TENNESSEE**

*Workers' Compensation Advisory Council*

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**ANNUAL REPORT - CALENDAR YEAR 2006**

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**DALE SIMS, STATE TREASURER  
CHAIR**

# **STATE OF TENNESSEE**

## ***Workers' Compensation Advisory Council***

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**DALE SIMS, STATE TREASURER  
CHAIR**

**M. LINDA HUGHES  
EXECUTIVE DIRECTOR**

ANNUAL REPORT



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**STATE OF TENNESSEE  
WORKERS' COMPENSATION ADVISORY COUNCIL  
ANNUAL REPORT  
CALENDAR YEAR 2006**

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Pursuant to *Tennessee Code Annotated* §50-6-121(c), the Workers' Compensation Advisory Council herewith submits its annual report for calendar year 2006:

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**HISTORICAL BACKGROUND**

The Workers' Compensation Advisory Council was created initially by the legislature in the Workers' Compensation Reform Act of 1992. The Workers' Compensation Reform Act of 1996 terminated that existing Advisory Council and created a new advisory council on workers' compensation. The Advisory Council initially was to be comprised of seven (7) voting members [six (6) appointed members and a chair to be selected by the appointed voting members], four (4) nonvoting members, and four (4) ex officio members.

In 1996, the Governor, the Speaker of the Senate and the Speaker of the House of Representatives each appointed one voting member to represent employers and one voting member to represent employees. The Governor appointed the four (4) nonvoting members: an attorney, a health care provider, an insurance company representative and a local government representative. The chair and vice chair of the Special Joint Committee on Workers' Compensation<sup>1</sup> and the commissioners of Labor and Commerce & Insurance, or their designees, were designated as ex officio, nonvoting members. [*See, TCA* §50-6-121.]

In 1997, the statute was amended to add an additional nonvoting attorney member to be selected from a list of three names submitted by the Tennessee Trial Lawyers Association. During

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<sup>1</sup> *Tennessee Code Annotated* §50-6-130 created a "Special Joint Committee on Workers' Compensation"; however, it is often referred to as the "Joint Oversight Committee" or the "Joint Committee".

the 1998 legislative session the General Assembly amended *TCA* §50-6-121 to designate the State Treasurer, or the Treasurer's designee, as Chair of the Advisory Council. According to the statute, the Chair is permitted to vote only on matters related to the administration of the Advisory Council or the Advisory Council's research and the chair cannot vote on any matter which constitutes the making of a policy recommendation to the Governor or to the General Assembly.

During the legislative session of 2001, the General Assembly added an additional non-voting attorney member to the Advisory Council to be appointed by the Governor from a list of three names submitted by the Tennessee Defense Lawyers Association. In 2003, another non-voting member was added to the Council to represent health care providers. The Governor appoints the member from three names submitted by the Tennessee Hospital Association. Since 2003, no new representative positions have been added to the Advisory Council by the General Assembly.

#### **MEMBERSHIP CHANGES - 2006:**

During 2006, four new members were appointed to the Advisory Council to replace members who either resigned or whose four-year terms had expired. The Speaker of the House of Representatives, Jimmy Naifeh, appointed Mr. Tom Hayes, from Lawrenceburg, as a voting member to represent employers. He replaced Mr. Steve Turner, who resigned. Three new non-voting members were appointed by the Governor:

- Sam Murrell, M.D., Memphis, as the health care representative from a list submitted by the Tennessee Medical Association. He replaced Claiborne "Chip" Christian, M.D.
- A. Gregory Ramos, Esquire, Nashville, as the attorney representative selected from the nominees submitted by the Tennessee Bar Association. He replaced Jacqueline B. Dixon, Esquire.
- Kenny McBride, Mayor, Carroll County, Tennessee, as the local governments representative. He replaced Mr. Bob Kirk.

Attached as "APPENDIX - A" to this report is a chart listing the members of the Advisory Council as of December 31, 2006.

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## DUTIES AND RESPONSIBILITIES OF THE ADVISORY COUNCIL

*Tennessee Code Annotated* §50-6-121 (as amended by the Reform Act of 2004 ) outlines the authority given to the Advisory Council, its specific responsibilities and its general duties. While the Advisory Council's role is strictly advisory, the statute specifically authorizes the Advisory Council to:

- make recommendations to the governor, the general assembly, the special joint committee on workers' compensation, the standing committees of each house that review the status of the workers' compensation system, the commissioner of labor and workforce development and the commissioner of commerce and insurance relating to the promulgation or adoption of legislation or rules;
- make recommendations to the commissioner of labor and workforce development and the commissioner of commerce and insurance regarding the method and form of statistical data collections; and
- monitor the performance of the workers' compensation system in the implementation of legislative directives.

Additional responsibilities of the Advisory Council are contained in other sections of the workers' compensation law and in the insurance law, codified in *Tennessee Code Annotated*, Titles 50 and 56, respectively. Annually, the Advisory Council is required to review the workers' compensation system in Tennessee and report its findings to the Governor, the Speakers of the Senate and House of Representatives and other specified members of the legislature. This Annual Report fulfills that responsibility.

The Advisory Council is also directed to provide the Commissioner of Commerce and Insurance with a recommendation regarding advisory prospective loss costs filings made by the National Council on Compensation Insurers (NCCI), the authorized Tennessee rating bureau. The Advisory Council's actions regarding the loss costs filing submitted in 2006 is outlined herein.

~CALENDAR YEAR 2006~

## ACTIVITIES OF THE ADVISORY COUNCIL

~CALENDAR YEAR 2006~

The Advisory Council is required by statute to meet at least two times during a calendar year. In 2006, the Advisory Council met on five (5) different dates: January 13; March 17; September 5; October 5; and December 14. The Council met generally for 2-3 hours on these dates, except for the March meeting at which legislation was reviewed and this meeting required several hours. The minutes of the meetings of the Workers' Compensation Advisory Council for Calendar Year 2006 and prior years can be reviewed at the Advisory Council's website: [www.state.tn.us/labor-wfd/wcac](http://www.state.tn.us/labor-wfd/wcac) under the "Minutes" link.

During calendar year 2006, the Advisory Council considered and discussed many different issues that impact the Tennessee workers' compensation system. The following summarizes the most significant of those issues.

### **I. WORKERS' COMPENSATION LEGISLATION - Filed in 2006**

The Workers' Compensation Reform Act of 2004 changed the manner of the review of workers' compensation legislation by the Advisory Council. While the Reform Act specifically permits a standing legislative committee that reviews workers' compensation to refer pending legislation to the Advisory Council, the Reform Act placed limitations on the Council's legislation review. A portion of the Reform Act of 2004, codified in *TCA* §50-6-121(I), provides the following concerning the Advisory Council's review of legislation:

... "The comments of the council shall not include recommendations for or against passage of the proposed legislation but shall describe the potential effects of the proposed legislation on the workers' compensation system and its operation and any other information or suggestions which the council may think helpful to the sponsors, the standing committees or the general assembly."

During 2006, Senator Jerry Cooper, Chair of the Senate Commerce, Labor and Agriculture Committee, once again referred the workers' compensation bills assigned to the Senate Committee to the Advisory Council for review and comments. The Advisory Council met on March 17, 2006 to review, discuss and make comments regarding workers' compensation legislation. The Advisory Council provided the Senate Committee a written report that included the following regarding each bill: a summary of the present law; a summary of the proposed change in the law as a result of the bill; an explanation of the practical effect of the proposed legislation on the current workers' compensation law and system; and the comments of the individual members of the Advisory Council regarding the specific bill. A copy of the 2006 legislation review report to the Senate Commerce Committee can be found on the Advisory Council's website under the "Reports" link.

## **II. FILINGS BY THE NATIONAL COUNCIL ON COMPENSATION INSURANCE**

The National Council on Compensation Insurance [hereinafter, NCCI] is the authorized rate making entity for all workers' compensation carriers in the State of Tennessee. The NCCI makes various filings on behalf of the carriers and these filings are submitted to the Commissioner of Commerce and Insurance. While some filings require action by only the Commissioner of Commerce and Insurance two types of filings require the Advisory Council to meet and provide written recommendations to the Commissioner. These filings are Advisory Prospective Loss Costs Filings and Law Only Filings. In 2006, the NCCI submitted only the annual Advisory Prospective Loss Costs Filing; no law changes required it to submit a Law Only Filing. The statute requires the Council to meet and consider the NCCI's filings. The Advisory Council met on October 5, 2006 to review, discuss and make recommendations to the Commissioner of Commerce and Insurance regarding the filing.

### **A. Advisory Prospective Loss Costs Filing**

**\*Filed in August, 2006 - effective March 1, 2007**

The NCCI submitted an Advisory Prospective Loss Costs filing to the Commissioner of Commerce and Insurance in August, 2006, that recommended an increase of +1.6% in the loss costs to be

effective March 1, 2007. As required by statute, Commissioner Flowers forwarded the filing to the Advisory Council for review and comment. During the October 5 meeting, it was explained by the NCCI representatives that the calculations that resulted in the proposed overall increase of +1.4% included: a proposed lowering of the indemnity loss ratio trend to -1.0%; maintaining the medical trend factor at +3.0% (unchanged from 2005); and an increase of the overall loss adjustment expense from the current level of 16.5% of losses to 16.8% of losses.

After discussion of the proposed filing, the voting members of the Workers' Compensation Advisory Council unanimously approved the following recommendation for submission to the Commissioner of Commerce and Insurance regarding the advisory prospective loss costs that were to be effective on March 1, 2007: that the indemnity trend factor of -1.0% requested in the NCCI filing be approved; that the current LAE of 16.5% should not be changed (i.e., the requested increase in the NCCI filing should not be approved); and that the medical trend factor of +3.0% requested in the NCCI filing should be revised downward in order to achieve a *0.0% overall average change from the current loss costs*. In addition, the Council recommended the adjustment of the class code relativities as a result of the +0.0% overall average change from the current loss costs

**B. Historical Summary of Loss Costs Filings, Recommendations & Approvals**  
**\* 1996 - 2006**

The following chart outlines the loss costs filings and law only filings submitted by the NCCI, the recommendations of the Advisory Council recommendations and the approvals of the Department of Commerce and Insurance from 1996 through 2006:

Year Filing Made	NCCI Filed Rate	Advisory Council Recommendation	Commerce & Insurance Approved Rate	Effective Date
1996	-5.4%	-8.2%	-8.2%	1/1/1997
1997	-3.4%	-10.0%	-7.0%	1/1/1998
1998	-10.3%	-9.0%	-9.0%	3/1/1999

1999	+3.3%	+7.0%	+7.0%	3/1/2000
2000	No Filing Submitted			rates effective 3-1-00 continue
2001	+0.5%	+1.4%	+1.4%	3/1/2002
2002	-3.1%	0.0% with each class code relativity to be adjusted accordingly	0.0% with each class code relativity to be adjusted accordingly	3/1/2003
2003	+7.9%	+7.9% with each class code relativity to be adjusted accordingly	+7.9% overall increase with each classification code within the industry groups to be readjusted as specified by Dept.	3/1/2004
2004	-6.3% "Law Only Filing	-6.3%	-6.3%	9/1/2004
2004	+3.4%	+3.4% from loss costs effective on 9/1/04; individual loss costs for each classification as included in NCCI filing to be approved effective March 1, 2005	Commissioner of Commerce and Insurance issued an order on December 22, 2004 disapproving the loss costs filing to be effective on March 1, 2005	Disapproved

2004	+3.9%	+3.9%	+3.9%	7/1/2005
	filed in Dec. 2004 with proposed changes to class code 5537 filed in early 2005	Advisory Council also approved 3 year transition program for class code 5537 as requested by Department		
2005	-6.9%	-6.9%	-6.9%	7/1/2005 <b>Note: Net change = -3.3% as of 7/1/05</b>
	"Law Only Filing"			
2005	+1.6%	+1.6%	+1.6%	3/1/2006
2006	+1.4%	0.0%	+1.4%	3/1/2007
		[Advisory Council recommended - 1.0% indemnity trend be approved; no change to the current LAE factor of 16.5% and a downward revision of the proposed +3.0% medical trend factor to achieve an overall 0.0% change in the current loss costs]		

### III. TENNESSEE'S WORKERS' COMPENSATION INSURANCE MARKETS

#### A. Tennessee Workers' Compensation Insurance Markets - In General

At the September 5, 2006, Advisory Council meeting, the Department of Commerce and Insurance reported the Tennessee workers' compensation insurance market totaled \$1.7 billion in premiums at the end of **2005**. The following chart compares **2004 and 2005 premiums** and shows

the percentage growth in each market segment from 2003 through 2004 and from 2003 through 2005:

Type of Market Segment	Total Premiums (in millions)		Percentage of Total Market		Market Segment Percentage Growth
	2004	2005	2004	2005	2004 to 2005
Voluntary Market	\$573	\$670	33%	38%	17%
Large Deductible Insurance Policies *	\$667	\$626	38%	36%	-6.0%
Self-Insured Employers † [2004: 145 self- insured employers; 290,141 covered employees]	\$314	\$303	18%	17%	-4.0%
Self-Insured Groups † ‡ [2004: 9 self-insured groups, excluding govt. groups; 56,644 covered employees]	\$55	\$51	4%	3%	-7.0%
TWCIP (Assigned Risk Plan)	\$132	\$104	8%	6%	-21%

\* Large deductible premium is gross/estimated: for 2005, 73% was deductible credit; 27% was reported premium; therefore, those employers who had large deductible policies paid premium taxes on only 27% of the \$626 million in total premiums, or approximately \$169 million. Those employers who were insured in the voluntary market or the assigned risk plan paid premium taxes on 100% of their total premiums (\$774 million). Those who were either self-insured or members of self-insured groups paid premium taxes on 100% of the “assumed premium” calculated by the Department of Commerce and Insurance as if they were insured.

‡ Self-Insured Groups exclude government groups

## **B. Tennessee Assigned Risk Market:**

### **1. Relative Size of the Assigned Risk Pool**

*TCA*§56-5-314(c)(3) requires the Department of Commerce and Insurance to make an annual determination concerning the relative size of the workers' compensation assigned risk pool as compared to the entire workers' compensation insurance marketplace. The statute also requires, if the size is determined to be greater than 15%, the Commissioner of Commerce and Insurance to report to the Advisory Council on whether any actions authorized by the statute should be implemented.

In 2004, the Commissioner of Commerce and Insurance reported to the Advisory Council that the relative size of the assigned risk plan (relative to the entire Tennessee workers' compensation insurance marketplace) was 15.65% and recommended two initiatives to reduce the percentage in the assigned risk plan to less than 15%. In July, 2005, the Commissioner reported to the Advisory Council that the relative size of the assigned risk plan had been reduced to 14.94%, which was primarily due to the initiatives the Department had recommended in 2004.

In June, 2006, the Commissioner of Commerce and Insurance reported to the Advisory Council that according to the NAIC (National Association of Insurance Commissioners) "2005 Detail - Share By Line and Loss Ratio Report" for workers' compensation, total direct premiums written in Tennessee were \$943,425,797 and the assigned risk written premium reported by AON, the entity that administers the Tennessee assigned risk plan, was \$103,956,875. Therefore, the resulting ratio was 11.02% for the assigned risk plan. This represented a 26% decrease from the 2005 ratio of 14.94%.

### **2. Tennessee Workers' Compensation Insurance Plan (TWCIP)**

During the September 5, 2006, meeting of the Advisory Council, a representative of AON Risk Services, Inc., the Tennessee assigned risk plan administrator, presented a report concerning the Tennessee assigned risk plan. The following table contains the cumulative premiums in the

assigned risk market for the various plan years. For comparison purposes, the totals as of June 30 or both 2005 and 2006 are listed. The amounts change from one year to another as the plan years are updated with premium collected, etc.

Plan Year	Cumulative Premium As of June 30, <u>2005</u>	Cumulative Premium As of June 30, <b>2006</b>
1998	\$ 23,184,345	\$ 23,188,818
1999	\$ 20,454,066	\$ 20,443,302
2000	\$ 34,759,938	\$ 34,756,636
2001	\$ 68,772,008	\$ 68,607,640
2002	\$ 115,802,200	\$ 115,929,092
2003	\$ 131,035,084	\$ 132,123,430
2004	\$ 134,758,291	\$137,896,332
2005	\$ 57,714,558 *	\$107,960,004
2006		\$ 42,285,708 *

\* Note: This total is only six months of premium.

The following table contains AON's projected surplus or deficit for the servicing carriers in the Tennessee assigned risk plan. For comparison purposes, the table contains the projections for the servicing carriers reported previously by AON and included in the Advisory Council's Annual Report for calendar years 2003 through 2005 and the projections reported by AON to the Advisory Council in September, 2006.

PLAN YEAR	SERVICING CARRIERS PROJECTED SURPLUS OR (DEFICIT) AS OF 12/31/02	SERVICING CARRIERS PROJECTED SURPLUS OR (DEFICIT) AS OF 12/31/03	SERVICING CARRIERS PROJECTED SURPLUS OR (DEFICIT) AS OF 12/31/04	SERVICING CARRIERS PROJECTED SURPLUS OR (DEFICIT) AS OF 12/31/05
1998	( \$ 3,385,044)	( \$ 3,326,501)	( \$ 5,918,261)	( \$ 6,698,272)
1999	( \$ 1,703,404)	( \$ 1,354,943)	( \$ 1,916,962)	( \$ 1,543,976)
2000	( \$ 6,998,284)	( \$ 7,419,786)	( \$ 6,502,673)	( \$ 3,046,520)
2001	\$ 1,256,390	( \$ 227,562)	\$ 2,172,507	\$ 2,816,323
2002	( \$15,700,050) * Estimated	( \$12,726,465)	\$ 3,687,246	\$ 3,780,511
2003		( \$34,886,105) Estimated *	\$ 6,273,762	\$ 5,903,903
2004			( \$ 28,784,259) Estimated *	\$ 5,829,623
2005				Estimated Not Included In 2006 Presentation

\* These figures are based on very green, inaccurate data as a policy could be written on December 31 of a plan year and the losses would not yet be determined and all the premiums for the plan year would not have been collected. AON reported each year that it expected the figure would decline as the plan year progresses.

### **C. Update on Company Insolvencies**

The Department of Commerce and Insurance presented an update on insurance carrier insolvencies at the September 5, 2006 meeting. The following chart contains the information reported by the Department in both 2005 and 2006 for comparison purposes.

Company *State of Incorporation *Date Placed in Liquidation	Total # of Claims as of 6/30/05	Total Dollars Paid as of 6/30/05	Total Unpaid Claims as of 6/30/05	Total # of Claims as of 6/30/06	Total Dollars Paid as of 6/30/06	Total Unpaid Claims as of 6/30/06
Reliance Ins Company *Pennsylvania *10/3/2001	1,727	\$ 23,954,383	\$ 24,208,144	1,736	\$ 26,300,509	\$ 24,080,487
Home Ins Company *New Hampshire *6/13/2003	111	\$ 1,263,111	\$ 7,617,693	115	\$ 1,465,036	\$ 3,007,383
Reciprocal of America *Virginia *6/20/2003	308	\$ 841,512	\$ 4,271,456	310	\$ 1,017,756	\$ 3,103,003
Legion & Villanova Ins Company *Pennsylvania *7/28/2003	1,790	\$ 21,333,495	\$ 34,494,606	1,841	\$ 27,057,303	\$ 24,184,211
Casualty Reciprocal *Missouri *8/18/04	47	\$ 228,014	\$ 945,570	50	\$ 758,726	\$ 843,282
Realm National Ins Company *New York *6/15/2005				48	\$ 658,350	\$ 1,716,883

The Department also reported the Commissioner of Commerce and Insurance suspended Kemper Group, an Illinois domestic insurance company, on July 6, 2005. Premium for Kemper as of December 31, 2005 totaled \$873,858. Anticipated unpaid losses were \$18.5 million.

In August, 2005, the Department of Commerce and Insurance had reported to the Advisory Council that the Truckers Self-Insurance Group, which operated primarily in 2002-2003, entered liquidation on February 6, 2004 and as of liquidation, the Group had a \$7.4 million deficiency with approximately 300 open claims. As of the 2005 report, there had been one assessment of \$2.8 million dollars for 2002 and approximately half had been collected through collection actions, including garnishments.

In September, 2006, the Department updated the Council on the situation with the Trucking Self-Insurance Group Trust. As of that report, there were 63 open claims, down from the 306 as of the date of liquidation. Two assessments had been made against the members of the group trust totaling \$7.8 million (up from \$2.8 million as of August, 2005). The Department reported extensive litigation - including objections to the assessment methodology; refusal to pay the court ordered assessment; and objections to the Liquidator's fees and expenses - - had slowed the liquidation process.

## CONCLUSION

The Workers' Compensation Advisory Council met on five (5) occasions in calendar year 2006. As in past years, these meetings ranged in length from as few as two (2) hours to as long as a full day. This Annual Report is intended to provide the reader a synopsis of the topics considered at the meetings during the year. For a more detailed summary of the activities of the Advisory Council the reader is urged to review the Advisory Council's website: [www.state.tn.us/labor-wfd/wcac](http://www.state.tn.us/labor-wfd/wcac).

The members of the Advisory Council appreciate the opportunity to be of service to the Governor and the General Assembly as well as to the employees and employers of the great State of Tennessee. They respectfully submit this Annual Report for Calendar Year 2006.

Respectfully submitted on behalf of the  
Workers' Compensation Advisory Council



Dale Sims, State Treasurer  
Chair

**APPENDIX A**

**WORKERS' COMPENSATION ADVISORY COUNCIL**

**Members and Ex-Officio Members**

**[As of December 31, 2006]**

<b>Name</b>	<b>Affiliation</b>	<b>Address</b>	<b>Status</b>
<b>Chair</b>			
Dale Sims	Treasurer, State of Tennessee	First Floor, State Capitol Nashville, TN 37243-0225	Chair
<b>Employer Representatives</b>			
Ronnie Hart	Tennessee Restaurant Association	504 Autumn Springs Court Suite 21 Franklin, TN 37067	Voting Member
Bob Pitts	Associated Builders and Contractors	1604 Elm Hill Pike Nashville, TN 37210	Voting Member
Thomas Hayes	Businessman	P.O. Box 994 Lawrenceburg, TN 38464	Voting Member
<b>Employee Representatives</b>			
Jack A. Gatlin	Employee/Member International Brotherhood of Electrical Workers	365 Blankenship Road Covington, TN 38019	Voting Member
Jerry Lee	Tennessee AFL-CIO Labor Council	1901 Lindell Avenue Nashville, TN 37201	Voting Member
Othal Smith, Jr.	International Brotherhood of Boilermakers	100 Torrington Court Thompson Station, TN 37179	150 Voting Member

## Local Government Representative

Kenny McBride	Mayor, Carroll County, Tennessee	625 High Street Suite 101 Huntingdon, TN 38344	Non-voting Member
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## Insurance Representative

Jerry Mayo	Praetorian Insurance Group	9005 Overlook Boulevard Brentwood, TN 37027	Non-voting Member
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## Health Care Representative

Sam Murrell, M.D.	Tennessee Medical Association	6286 Briarcrest Memphis, TN 38120	Non-voting Member
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David. C. Stout	Tennessee Hospital Association	Mountain States Health Alliance 711 South Mountain View Circle Johnson City, TN 37601	Non-voting Member
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## Attorney Representatives

Katherine D. (Kitty) Boyte, Esquire	Tennessee Defense Lawyers Association	150 Second Avenue, North Suite 201 Nashville, TN 37201	Non-voting Member
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A. Gregory (Gregg) Ramos, Esquire	Tennessee Bar Association	Bank of America Plaza, Suite 1850 414 Union Street Nashville, TN 37219	Non-voting Member
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J. Anthony Farmer, Esquire	Tennessee Trial Lawyers Association	61356 Papermill Point Way Knoxville, TN 37909	Non-voting Member
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## Ex Officio Members

Co-Chair, Joint Committee on Workers' Compensation	State Senator	Not Appointed as of December 31, 2006	Ex Officio Member
Co-Chair, Joint Committee on Workers' Compensation	State Representative	Not Appointed as of December 31, 2006	Ex Officio Member
James G. Neeley	Commissioner of Labor and Workforce Development	710 James Robertson Pkwy Andrew Johnson Tower 8th Floor Nashville, TN 37243-0655	Ex Officio Member
Paula A. Flowers	Commissioner of Commerce and Insurance	500 James Robertson Pkwy Davy Crockett Tower Suite 500 Nashville, TN 37243-0565	Ex Officio Member