



**COMMONWEALTH OF MASSACHUSETTS**  
**OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION**  
**DIVISION OF INSURANCE**

***REPORT OF EXAMINATION OF THE***  
**HVAC COMPENSATION CORPORATION**

**West Springfield, Massachusetts**

**As of December 31, 2014**

**EMPLOYER ID NUMBER 04-3167335**

# HVAC COMPENSATION CORPORATION

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**COMMONWEALTH OF MASSACHUSETTS**  
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February 1, 2017

The Honorable Daniel R. Judson  
Commissioner of Insurance  
Commonwealth of Massachusetts  
Division of Insurance  
1000 Washington Street, Suite 810  
Boston, MA 02118-6200

Honorable Commissioner:

Pursuant to your instructions and in accordance with Massachusetts General Laws, Chapter 152, Section 25I, an examination has been made of the financial condition and affairs of

**HVAC COMPENSATION CORPORATION**

at its administrative office located at 123 Interstate Drive, West Springfield, Massachusetts 01089.  
The following report thereon is respectfully submitted.

## HVAC Compensation Corporation

### **SCOPE OF EXAMINATION**

HVAC Compensation Corporation ("Group") was last examined as of December 31, 2010, by the Massachusetts Division of Insurance ("Division"). The current examination was also conducted by the Division and covers the four-year period from January 1, 2011 through December 31, 2014, including any material transactions and/or events occurring subsequent to the examination date and noted during the course of this examination.

The current examination was conducted in accordance with standards and procedures established by the National Association of Insurance Commissioners ("NAIC") Financial Condition (E) Committee and prescribed by the current NAIC *Financial Condition Examiners Handbook*, the examination standards of the Division and with Massachusetts General Laws. The Handbook requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Group by obtaining information about the Group, including corporate governance, identifying and assessing inherent risks within the Group, and evaluating system controls and procedures used to mitigate those risks. An examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management's compliance with Statutory Accounting Principles and annual statement instructions, when applicable to domestic state regulations. All accounts and activities of the Group were considered in accordance with a modified risk-focused examination process.

In addition to a review of the financial condition of the Group, the examination included a review of the Group's business policies and practices, corporate records, reinsurance treaties, conflict of interest disclosure statements, fidelity bond and other insurance, disaster recovery plan, treatment of policyholders and other pertinent matters to provide reasonable assurance that the Group was in compliance with applicable laws, rules and regulations. In planning and conducting the examination, consideration was given to the concepts of materiality and risk and examination efforts were directed accordingly.

The Group is audited annually by the firm of Feeley & Driscoll, P.C. an independent certified public accounting firm. The firm expressed unqualified opinions on the Group's financial statements for the calendar years 2011 through 2014. A review and use of the certified public accountants' work papers were made available to the examiners and were utilized to the extent considered appropriate.

### **SUMMARY OF SIGNIFICANT FINDINGS OF FACT**

#### *Unclaimed Property*

The Group does not file the unclaimed property report in compliance with 960 CMR 4 and Massachusetts General Law, Chapter 200A, Section 7.

#### *Annual Meeting of the Members*

## HVAC Compensation Corporation

The bylaws require the annual meeting to be held on the third Thursday of February. The annual meeting has been held in September. The Members should formally amend, in accordance with Article IX of the bylaws to allow for this meeting schedule structure.

### *Contingencies*

The Group is a party to a lawsuit with a former member relating to unpaid dividends and although management feels the outcome will be favorable, this lawsuit is not considered in the normal course of business and proper disclosure should be included in the Notes to Financial Statements, Note 14 – Liabilities, Contingencies, and Assessments.

### *Funds Due Members*

The Group has an unsettled liability to current and former members. The liability is based on funds advanced by the members to the Group in previous years to maintain adequate cash flow and surplus. The Group continues to carry this liability on its balance sheet while using accumulated surplus funds to pay dividends to current members. This liability should be settled and retired with all members having a corresponding receivable before dividends are calculated and distributed to any members.

### *Membership Qualifications*

211 CMR 67.02 requires that members of a Workers' Compensation Self-Insurance Group must be members of the same bona fide industry, trade or professional association which has been in existence for not less than two years. Section 3.2 of the Group's bylaws also requires such membership as designated by the Board of Directors ("Board"), however, no such association has been designated by the Board. Therefore, current members do not have a common affiliation with the same industry, trade, or professional association. The Board should move to designate such an affiliation and membership requirement.

## **GROUP HISTORY**

### **General**

The Group was organized within the Commonwealth of Massachusetts on July 28, 1992, pursuant to and in accordance with Massachusetts General Law, Chapter 180, to establish a not-for-profit association of employers to constitute a workers' compensation self-insurance group. Consistent with Massachusetts General Laws, Chapter 152, Section 25E through 25U, the Group was created to provide workers' compensation insurance coverage for eligible companies which are engaged in the heating, ventilating, air conditioning, sheet metal or mechanical contracting trades within the Commonwealth of Massachusetts. The Group commenced business on October 1, 1992.

## HVAC Compensation Corporation

The Group, by a written administrative service agreement, engages FutureComp to perform and manage the day-to-day activities of the Group. FutureComp is a subsidiary of USI Insurance Services, which acquired FutureComp with its purchase of TD Insurance on November 1, 2012.

### Dividends

In accordance with 211 CMR 67.08 (4), if actuarially sound, the Group may declare and accrue dividend liabilities from a fund year's operating activity during that fund year, but shall not begin distributions for that fund year until at least 24 month after the end of the fund year.

The following amounts were reported as dividends declared and unpaid each year covered by this examination.

2014	\$1,116,216
2013	806,326
2012	235,302
2011	430,633

Under the distribution formula provided for by 211 CMR 67.08 (4) the following amounts were paid and distributed as dividends to policyholders (members) during the period covered by this examination.

2014	\$ 31,179
2013	(54,466)
2012	206,307
2011	(26,124)

## MANAGEMENT AND CONTROL

### Annual Meeting of the Members

As noted previously, the annual meeting of the members is to be held on the third Thursday of February or such other date as designated by the Board. During the period covered by the examination, the annual meetings have been held in September. Although this condition does not appear to have impeded any operations of the Board of Directors or the Group in general, the Group should schedule and hold the annual meeting of the members in compliance with its bylaws.

### Board of Directors Minutes

The minutes of meetings of the Board of Directors for the period under examination were reviewed. Actions taken and approved by the Board at each meeting appear to meet the requirements of the bylaws and laws of the Commonwealth of Massachusetts.

## HVAC Compensation Corporation

### Articles of Organization and Bylaws

The articles of organization and bylaws of the Group were reviewed. The Group was formed under Massachusetts General Laws, Chapter 180 to operate as a workers' compensation self-insurance group as defined by Chapter 152 of the General Law in order to support the activities and further a group of eligible companies which are engaged principally in the heating, ventilating, air conditioning, sheet metal or mechanical contracting trades within the Commonwealth of Massachusetts.

### Board of Directors

According to the bylaws, the Group's business shall be managed by a Board of Directors which may exercise all of the powers of the Group, except as otherwise provided by the articles of incorporation, by law, or the bylaws. The Board of Directors shall consist of not fewer than three trustees and the Officers are also trustees. The Group's Board of Directors consisted of the following individuals:

<u>Name of Director</u>	<u>Title</u>
Barry Dwyer	Owner and President, Boston Air Systems, Inc.
Shane Hamel	Chief Financial Officer, Hamel & McAlister, Inc.
Paul LeBel Jr.	Vice President, LeBel, Inc./Walsh Mechanical Contractors
Kevin Gill	President, McGusker-Gill, Inc.
William J. Lynch	President and Treasurer, William F. Lynch Company, Inc.
James Morgan	President and CEO, Worcester Air Conditioning, LLC.

### Officers

Officers of the Group as of December 31, 2014 were as follows:

<u>Name of Officer</u>	<u>Title</u>
Kevin Gill	President
William J. Lynch	Vice President
James Morgan	Treasurer / Clerk

### Management Services Agreement

The Group has in place a Management Services Agreement with FutureComp whereby the management company ("Third Party Administrator") has the authority and responsibility to conduct, supervise and manage the day-to-day operations of the Group. Included in the scope of this agreement is all accounting and reporting functions; premium billing, collection and underwriting; claim administration and case management; and all other administrative functions deemed necessary.

## HVAC Compensation Corporation

### **TERRITORY AND PLAN OF OPERATION**

The Group is a workers' compensation self-insurance group permitted to transact workers' compensation business only in the Commonwealth of Massachusetts to qualifying members engaged in the HVAC, sheet metal or mechanical contracting of similar business in the Commonwealth of Massachusetts. Members must also be a party to an agreement with a collective bargaining unit covering its employees. As noted previously, members are also required to be members in good standing of a bona fide industry, trade or professional organization designated by the Board of Directors, however no such designation has been made.

### **REINSURANCE**

Massachusetts General Law, Chapter 152, Section 25G and 211 CMR 67.21 requires the Group to have in place reinsurance or excess insurance coverage. The Group's retention is required to be actuarially sound and shall not be more than 30% of the net premium of the Group up to a maximum of \$500,000. The specific excess coverage shall be at least \$5,000,000 per occurrence. The Regulation allows for these limits to be revisited after a Group has been in operation for three years.

Under the above guidelines, the Group's retention would be restricted to a maximum of approximately \$325,000 based on 2014 net premium for the year. For 2014 and 2013 the net retention was set at \$700,000 and for 2012 and 2011 the net retention was \$600,000. The policy does not provide for any aggregate excess coverage.

The Group's excess reinsurance coverage is placed with Safety National Casualty Company, which is licensed and authorized in the Commonwealth of Massachusetts and rated "A" by A.M. Best & Company, which meets the guidelines included in the regulation.

### **Loss Portfolio Transfer**

On July 27, 2012 the Group entered into a loss portfolio transfer arrangement with Safety National Casualty Corporation in which Safety would assume responsibility for paying all losses and ALAE incurred from October 1, 1992 through December 31, 2010. The undiscounted reserves for these years at 12/31/11 was \$1,917,613. The Group made payments on these claims from 1/1/12 through 7/26/12 amounting to \$469,456. This left 1,448,157 of the 12/31/11 reserves unpaid. The payment to Safety of 1,855,938 was treated as paid losses and ALAE while the reserves were written off as a change in reserves.



## HVAC Compensation Corporation

### **FINANCIAL STATEMENTS**

The following financial exhibits are based on the statutory financial statements prepared by the Third Party Administrator and filed by the Group with the Division and present the financial condition of the Group for the period ending December 31, 2014. The financial statements are the responsibility of the Group's management.

Statement of Assets, Liabilities, Surplus and Other Funds as of December 31, 2014

Statement of Income for the Year Ended December 31, 2014

# HVAC Compensation Corporation

## HVAC Comensation Corporation Statement of Assets, Liabilities, Surplus and Other Funds as of December 31, 2014

	Per Annual Statement
<b>Assets</b>	
Bonds	\$2,117,461
Cash, cash equivalents, and short-term investments	360,538
Subtotals, cash and invested assets	<u>2,477,999</u>
Investment income due and accrued	25,067
 Total Assets	 <u><u>\$2,503,066</u></u>
 <b>Liabilities</b>	
Losses	\$848,984
Loss adjustment expense	61,135
Other expenses	49,775
Taxes, licenses and fees	7,396
Dividends declared and unpaid:	
Policyholders	1,116,216
Ceded Reinsurance premiums payable	7,560
Funds held from members to meet statutory requirements	<u>412,001</u>
 Total Liabilities	 2,503,066
 Surplus as regards policyholders	 <u>0</u>
 Total liabilities and policyholder surplus	 <u><u>\$2,503,066</u></u>

# HVAC Compensation Corporation

## HVAC Compensation Corporation Statement of Income For the Year Ended December 31, 2014

	Per Annual Statement
<b>Underwriting Income</b>	
Premiums earned	\$1,084,263
<b>Deductions</b>	
Losses incurred	528,101
Loss adjustment expenses incurred	94,472
Other underwriting expenses incurred	166,441
Total underwriting deductions	789,014
Net underwriting gain (loss)	295,249
<b>Investment Income</b>	
Net investment income earned	38,324
Net realized capital gains or (losses)	7,495
Net investment gain or (loss)	45,819
Net income before dividends to policyholders and before federal income taxes	341,068
Dividends to Policyholders	341,068
Net Income	\$0

HVAC Compensation Corporation

**SIGNATURE PAGE**

Acknowledgement is made of the cooperation and courtesies extended by the Directors and employees of the Group's administrator, FutureComp, during the examination.

The assistance rendered by the following Division examiner who participated in the examination is hereby acknowledged.

D. Bob Dowd, Examiner II



John M. Curran, CFE  
Supervising Examiner & Examiner-In-Charge  
Commonwealth of Massachusetts  
Division of Insurance