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**Rules of  
Department of Labor and  
Industrial Relations  
Division 50—Workers' Compensation  
Chapter 8—Tort Victims**

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**Title 8—DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS  
Division 50—Workers' Compensation  
Chapter 8—Tort Victims**

**8 CSR 50-8.010 Rules Governing Tort Victims**

*PURPOSE: This rule sets forth requirements for filing and pursuing claims against the Tort Victims' Compensation Fund, sections 537.675 through 537.693, RSMo.*

(1) Compliance with Rule. Any party pursuing a claim against the Tort Victims' Compensation Fund shall comply with this rule.

(2) Terms Defined.

(A) Terms defined in section 537.675, RSMo, shall have the same meaning when used in this rule.

(B) The following terms, when used in this rule, shall mean:

1. Award—A final administrative determination made by the division on a claim against the Tort Victims' Compensation Fund, or a final decision made by an administrative law judge or legal advisor following an evidentiary hearing, or a final decision by the Labor and Industrial Relations Commission or by the appellate court;

2. Claimant—A person filing a claim against the Tort Victims' Compensation Fund, alleging to be an uncompensated tort victim;

3. Due diligence in enforcing the judgment—Utilization of reasonable lawful efforts to collect the amount of the judgment (in whole or in part) from the judgment debtor, from the judgment debtor's policy or policies of insurance, and from the judgment debtor's property, without unreasonable delay;

4. Judgment debtor—A person or entity against whom judgment has been obtained and which judgment remains unsatisfied;

5. Tortfeasor—A person or entity whose negligent, grossly negligent, reckless or intentional act or acts, or failure to act, personally or through an agent, results in injury or death to any other person.

(3) Filing of Claims and Supporting Documentation.

(A) A claim against the Tort Victims' Compensation Fund must be commenced by the filing of an Application for Tort Victims Compensation (form WCT-1) with the Tort Victims' Compensation Program at the division's Jefferson City office. An application may be made on the WCT-1 form printed by the division, or an accurate photocopy thereof.

(B) The Application for Tort Victims' Compensation (form WCT-1) may be filed in person at the division's Jefferson City office or by mailing to the division's Jefferson City office. An Application for Tort Victims' Compensation presented or mailed to a division office other than the Jefferson City office shall be rejected for filing.

(C) Any Application for Tort Victims' Compensation shall not be considered filed with the division until completed in its entirety and date-stamped by the division. Upon the filing of an Application for Tort Victims' Compensation with the division, the division shall assign a case identification number to the proceedings and acknowledge receipt of the Application for Tort Victims' Compensation by mailing an acknowledgment letter by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative. The case identification number for a case commenced during the initial claims period shall contain the prefix "ICP." The case identification number for a case commenced after December 31, 2002, shall have as its prefix the calendar year of its filing (e.g., "2003," "2004").

(D) All correspondence and communications concerning any pending Application for Tort Victims' Compensation shall be directed to the division's Jefferson City office, and shall bear the case identification number assigned by the division. All forms, reports, affidavits, medical records, and other documents concerning any Application for Tort Victims' Compensation shall be filed with the division's Jefferson City office, and shall bear the case identification number assigned by the division.

(E) Within thirty (30) days after filing of the Application for Tort Victims' Compensation, the claimant shall file with the division's Jefferson City office a certified copy of a final monetary judgment against a tortfeasor for personal injury or wrongful death, as well as documentation that all appeals are final, or that the time for appeal has expired. In a case where no final judgment has been rendered, within thirty (30) days after filing of the Application for Tort Victims' Compensation, the claimant shall file with the division's Jefferson City office the affidavit establishing the basis upon which the requirement of a final judgment should be waived, in accordance with section 537.678.2, RSMo.

(F) Within thirty (30) days after filing of the Application for Tort Victims' Compensation, the claimant shall file with the division's Jefferson City office all documentation evidencing that the claimant has not collected

the full amount of the judgment and that the claimant has exercised due diligence in enforcing the judgment against the tortfeasor. This documentation may include, but is not limited to, certified copies of the tortfeasor's discharge in bankruptcy, insurance policies of the tortfeasor, documents evidencing insolvency of the tortfeasor's insurer, affidavits, documents evidencing attempts at execution, attachment, garnishment, sequestration, etc., results of asset searches, and other similar documentation.

(G) Within thirty (30) days after filing of the Application for Tort Victims' Compensation, the claimant shall file with the division's Jefferson City office the medical reports bearing upon claimant's injuries occasioned by the tortfeasor, including diagnosis, treatment, prognosis and description of permanent injury and disability.

(H) Within thirty (30) days after filing of the Application for Tort Victims' Compensation, the claimant shall file with the division's Jefferson City office legible identical photocopies of all bills and documents supporting the payment of all unreimbursed expenses and medical costs, and documents supporting claims of lost wages or other income, or loss of support occasioned by the injuries or the death.

(I) If, in the judgment of the division, additional documentation is required of the claimant, the claimant shall provide same upon written request of the division, within twenty (20) days of such written request.

(J) Upon application of the claimant, the division may allow additional time for the filing of any documents required under subsections (E), (F), (G), (H), and (I) of this section.

(K) After filing the Application for Tort Victims' Compensation, if the claimant fails timely to take all necessary steps to support the claim as may be required by the division, including, but not limited to, the filing of any documents required under subsections (E), (F), (G), (H) and (I) of this section, the division may dismiss the claim without prejudice. After such dismissal without prejudice, the claimant may refile the claim unless it is then barred by the applicable statute or statutes of limitation. A claim which is refiled after having been dismissed shall be given a different case identification number.

(L) Except for claims filed during the initial claims period, if it appears to the division that the claim has not been filed within the time limits established by section 537.684.2, RSMo, the division may enter its order dismissing the claim, and such dismissal shall be deemed a final award for purposes of

review by the Labor and Industrial Relations Commission.

(4) Administrative Review of Claims; Request for Hearing on Administrative Determination; Failure of Timely Request for Hearing.

(A) Within sixty (60) days after the filing of an Application for Tort Victims' Compensation, the division shall commence an administrative review of the Application for Tort Victims' Compensation and of the documentation provided by the claimant. During this review, the division may require the claimant to produce additional documentation as contemplated in subsection (3)(I) hereinabove, and may also require the claimant to file one (1) or more affidavits or to answer written questions under oath.

(B) Upon completion of the administrative review, the division shall issue its administrative determination awarding compensation in an amount certain or denying compensation in full. The division shall, immediately upon issuance of the administrative determination, send a copy thereof by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative. The administrative determination shall contain a notice advising the claimant of the claimant's right to a hearing on the claim, instructions for requesting a hearing, and a form for the filing of the request for hearing.

(C) In the event the claimant does not wish to accept the administrative determination, the claimant shall, within twenty (20) days after the issuance of the administrative determination, sign and file with the division's Jefferson City office the request for hearing, utilizing the form provided with the administrative determination.

(D) In the event the claimant does not file the request for hearing within twenty (20) days after the issuance of the administrative determination, the administrative determination shall become the final award in the case.

(E) Upon timely filing of the request for hearing, the division shall immediately assign the case to an administrative law judge or legal advisor for evidentiary hearing.

(F) The claimant may withdraw the request for hearing, with prejudice, at any time after the filing of the request and prior to the conclusion of the evidentiary hearing. The withdrawal of the request for hearing must be in writing and must be signed by the claimant and/or by the claimant's attorney. The claimant may not withdraw the request for hearing without prejudice. Upon withdrawal of the request for hearing, the administrative

determination shall become the final award in the case.

(5) Evidentiary Hearing; Where and When Held; How Conducted; Award; Review.

(A) All evidentiary hearings of claims against the Tort Victims Compensation Fund shall be held in the division's Jefferson City office.

(B) Within twenty (20) days after the timely filing of the request for hearing, the administrative law judge or legal advisor to whom the case is assigned shall set the date and time for the evidentiary hearing. The notice of the date and time of the evidentiary hearing shall be sent by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative.

(C) The evidentiary hearing shall be a simple informal proceeding. The rules of evidence in civil cases in the state of Missouri shall apply, except that the administrative law judge or legal advisor may take official notice of the contents of the division's file. A record shall be made of all evidentiary hearings held under this rule. All exhibits offered into evidence shall be marked for identification with the case identification number assigned by the division. All exhibits admitted into evidence shall become a part of the record and shall be retained in the division's file. Any exhibits offered into evidence, but not admitted into evidence by the administrative law judge or legal advisor, may be retained in the division's file for purposes of appellate review by the Labor and Industrial Relations Commission and/or the appropriate appellate court.

(D) The claimant shall be prepared to present all evidence at the date and time set for the evidentiary hearing. The hearing shall be completed on the scheduled date, unless, in the sole discretion of the administrative law judge or legal advisor, there is insufficient time to conclude the hearing on the scheduled date, in which case the hearing shall be concluded on the next available date. The administrative law judge or legal advisor may grant the claimant additional time after the hearing, not exceeding ten (10) days, to submit additional documentary evidence, if, in the sole discretion of the administrative law judge or legal advisor, the failure to allow such additional time would result in substantial injustice to the claimant.

(E) All requests for continuance of an evidentiary hearing shall be in writing, shall bear the case identification number assigned by the division, and shall be filed with the division's Jefferson City office. The adminis-

trative law judge or legal advisor shall continue an evidentiary hearing only for good cause, and the evidentiary hearing, when continued, shall be rescheduled for the next available date.

(F) If the claimant fails to appear for the evidentiary hearing at the date and time scheduled, the administrative law judge or legal advisor, in his or her sole discretion, may reschedule the evidentiary hearing for the next available date, or may dismiss the request for hearing with prejudice. The dismissal of the request for hearing by the administrative law judge or legal advisor for such failure of the claimant to appear shall render the administrative determination the final award in the case. Immediately upon the rendering of a dismissal of a request for hearing by the administrative law judge or legal advisor for failure of the claimant to appear, the division shall send a copy thereof by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative. Such dismissal shall be deemed a final award for purposes of review by the Labor and Industrial Relations Commission.

(G) Within thirty (30) days after the conclusion of the evidentiary hearing, the administrative law judge or legal advisor shall issue the decision in the case, either awarding compensation in an amount certain or denying compensation in full.

(H) The division shall, immediately upon issuance of the decision, send a copy thereof by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative. The decision shall contain a notice advising the claimant of claimant's right to have the decision reviewed by the Labor and Industrial Relations Commission, and informing the claimant of the time for filing the petition for review.

(I) A petition for review must be filed with the Labor and Industrial Relations Commission within thirty (30) days following the date of notification or mailing of such decision to the claimant, as provided by section 537.690.1, RSMo, and such petition for review shall be filed with the commission on a form provided for such purpose by the commission.

(6) Procedure for Payment of Awards on Claims Made During Initial Claims Period.

(A) On June 30, 2003, the division shall determine the aggregated amount of all final, unappealable awards made on claims filed during the initial claims period, and bearing

case identification numbers with the prefix “ICP.” Any award that is not final as of June 30, 2003 (due to a pending petition for review before the commission, or due to a pending appeal before the court of appeals) shall not be figured into this determination, but shall be figured into the determination in the subsequent annual claims period (if funds are available).

(B) If the aggregated amount of all final, unappealable awards as of June 30, 2003 does not exceed the total amount of money in the fund, the division shall cause the awards to be paid in full on or before September 30, 2003. If the aggregated amount of all final, unappealable awards as of June 30, 2003 exceeds the total amount of money in the fund, the division shall cause the awards to be paid on a pro rata basis on or before September 30, 2003.

(C) The payments shall be made by check, payable to the claimant (or to such other person or persons as may be specified in the award), and shall be sent by first class mail, postage prepaid, to the claimant at the claimant’s last known address or to the last known address of the claimant’s attorney or other legal representative.

(7) Procedure for Payment of Awards on Claims Made During an Annual Claims Period.

(A) On June 30 of the year following the close of an annual claims period, the division shall determine the aggregated amount of all final, unappealable awards made on claims filed during the annual claims period, plus all final, unappealable awards made on claims filed during any prior claims period but which were not included in the determination made on June 30 of the year following the close of that claims period. Any award that is not final as of the date of the determination (due to a pending petition for review before the commission, or due to a pending appeal before the court of appeals) shall not be figured into this determination, but shall be figured into the determination in the subsequent annual claims period (if funds are available).

(B) If the aggregated amount of all final, unappealable awards as of June 30 of the year following the close of an annual claims period does not exceed the total amount of money in the fund, the division shall cause the awards to be paid in full on or before September 30 of that year. If the aggregated amount of all final, unappealable awards as of June 30 of the year following the close of an annual claims period exceeds the total amount of money in the fund, the division shall cause the awards to be paid on a pro rata basis on or before September 30 of that year.

(C) The payments shall be made by check, payable to the claimant (or to such other person or persons as may be specified in the award), and shall be sent by first class mail, postage prepaid, to the claimant at the claimant’s last known address or to the last known address of the claimant’s attorney or other legal representative.

(D) If there are no funds available, the procedures set forth in section 537.684.9 and 10, RSMo shall be followed.

(8) Attorney’s Fees. Sections 537.675 through 537.693, RSMo do not give the division jurisdiction to allow, deny or otherwise regulate attorney’s fees in proceedings against the Tort Victims’ Compensation Fund. Therefore, the division shall make no rulings or findings regarding attorney’s fees; however, upon written request made to the division by the claimant, the division may order that payment of any award be made jointly to the claimant and to the claimant’s attorney, in order to facilitate the payment of lawful attorney’s fees.

(9) Payor of Last Resort. The Tort Victims’ Compensation Fund is a payor of last resort. Therefore, the division shall examine all other payment sources or potential payment sources available to the claimant and shall take them into account when determining the amount of the final award. Other payment sources may include, but are by no means limited to, court-ordered restitution, medical insurance, life insurance, disability insurance, premises liability insurance, uninsured motorist coverage, underinsured motorist coverage, and workers’ compensation benefits.

(10) One (1) Claim per Occurrence. Only one (1) claim may be brought against the Tort Victims’ Compensation Fund for the injury of any one (1) person arising out of any occurrence or any causally related series of occurrences. Only one (1) claim may be brought against the Tort Victims’ Compensation Fund for the death of any one (1) person. Those parties identified in section 537.681.1(2)(a) and (b) must join in one (1) claim against the Tort Victims’ Compensation Fund and must prove their status to the satisfaction of the division and to the exclusion of any other parties who might be eligible for compensation under section 537.681.1, RSMo.

(11) Legal Disability of a Claimant. If any claimant is a minor, mentally or physically incapacitated or disabled, the division may require that a conservatorship be established and that any award be made payable to the conservator. In no instance shall payment be

made directly from the Tort Victims’ Compensation Fund to any person legally incompetent to receive such payment, but shall be made instead to a parent, conservator, guardian or attorney-in-fact under a durable power of attorney for the benefit of said person, as the division shall order.

(12) Acts or Conduct of Victim; Effect on Award. The division may consider the contributory fault, comparative fault, or other acts or conduct of the victim in determining the amount of the award, pursuant to sections 537.681.2 and 537.684.3(4), RSMo.

(13) Unjust Enrichment.

(A) In determining whether an award against the Tort Victims’ Compensation Fund can be made without unjustly enriching a tortfeasor, the division shall evaluate whether the tort victim can and will prevent access by the tortfeasor to the proceeds of any award.

(B) An unjust enrichment determination shall not be based solely on the presence of the tortfeasor in the household at the time of the injury or death, or at the time of the award. The presence of the tortfeasor in the household is only one (1) factor to be considered in determining unjust enrichment, and the determination shall be made on a case-by-case basis according to the unique facts and circumstances of each case.

(14) Disclosure.

(A) No information obtained by the division shall be disclosed to persons other than the parties to the proceedings, and their attorneys, except by order of the division or the commission, but information may be used for statistical purposes.

(B) A request to inspect, or to receive copies of, any documents in the possession of the division as a result of a claim made against the Tort Victims’ Compensation Fund shall be made in writing to the division’s Jefferson City office.

(C) The charge for copies of documents shall not exceed the actual cost of document search and duplication.

(D) Persons inspecting documents shall not alter, deface or mark the documents in any manner.

(15) Mailings to Attorney. When a claimant is represented by an attorney, the division shall make all mailings to both the claimant and to the claimant’s attorney.

*AUTHORITY: sections 537.675–537.693, RSMo Supp. 2001.\* Original rule filed Jan. 8, 2002, effective Aug. 30, 2002.*

*\*Original authority: 537.675–537.693, RSMo see Missouri Revised States 2000 and Supp. 2001.*