IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2015-WC-01695-COA

MISSISSIPPI MANUFACTURERS ASSOCIATION WORKERS' COMPENSATION GROUP	**APPELLANT**
v.	
MISSISSIPPI WORKERS' COMPENSATION GROUP SELF-INSURER GUARANTY ASSOCIATION	**APPELLEE**

DATE OF JUDGMENT:	10/06/2015
TRIBUNAL FROM WHICH APPEALED:	MISSISSIPPI WORKERS' COMPENSATION COMMISSION
ATTORNEYS FOR APPELLANT:	R. ANDREW TAGGART MONA PATEL GRAHAM DAVID GLYN PORTER SARAH LINDSEY OTT
ATTORNEYS FOR APPELLEE:	ANDREW D. SWEAT JENNIFER HUGHES SCOTT
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
DISPOSITION:	REVERSED AND RENDERED - 01/29/2019
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

CONSOLIDATED WITH

NO. 2017-WC-01680-COA

MISSISSIPPI MANUFACTURERS ASSOCIATION WORKERS' COMPENSATION GROUP	**APPELLANT**
v.	
MISSISSIPPI WORKERS' COMPENSATION GROUP SELF-INSURER GUARANTY ASSOCIATION	**APPELLEE**

DATE OF JUDGMENT:	03/10/2017
TRIBUNAL FROM WHICH APPEALED:	MISSISSIPPI WORKERS' COMPENSATION COMMISSION
ATTORNEYS FOR APPELLANT:	R. ANDREW TAGGART MONA PATEL GRAHAM DAVID GLYN PORTER SARAH LINDSEY OTT
ATTORNEYS FOR APPELLEE:	ANDREW D. SWEAT JENNIFER HUGHES SCOTT
NATURE OF THE CASE:	WORKERS' COMPENSATION
DISPOSITION:	REVERSED AND RENDERED - 01/29/2019
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

CONSOLIDATED WITH

NO. 2017-WC-01678-COA

MISSISSIPPI MANUFACTURERS ASSOCIATION WORKERS' COMPENSATION GROUP — **APPELLANT**

v.

MISSISSIPPI WORKERS' COMPENSATION GROUP SELF-INSURER GUARANTY ASSOCIATION — **APPELLEE**

DATE OF JUDGMENT:	07/28/2017
TRIBUNAL FROM WHICH APPEALED:	MISSISSIPPI WORKERS' COMPENSATION COMMISSION
ATTORNEYS FOR APPELLANT:	R. ANDREW TAGGART MONA PATEL GRAHAM DAVID GLYN PORTER SARAH LINDSEY OTT
ATTORNEYS FOR APPELLEE:	ANDREW D. SWEAT JENNIFER HUGHES SCOTT
NATURE OF THE CASE:	WORKERS' COMPENSATION
DISPOSITION:	APPEAL DISMISSED - 01/29/2019
MOTION FOR REHEARING FILED:	

MANDATE ISSUED:

BEFORE GRIFFIS, C.J., WILSON AND WESTBROOKS, JJ.

WILSON, J., FOR THE COURT:

¶1. This appeal involves an assessment levied by the Workers' Compensation Group Self-Insurer Guaranty Association (the Group Guaranty Association or "GGA"), an association established by the Legislature to pay workers' compensation claims on behalf of any group self-insurer that becomes insolvent. Miss. Code Ann. §§ 71-3-153 & -159 (Rev. 2011). The dispute in this case arises out of the cessation of operations and withdrawal of one of the GGA's members, the Mississippi Manufacturers Association Workers' Compensation Group (MMAWCG). The MMAWCG stopped issuing self-insured workers' compensation coverage and later obtained an insurance policy to insure and pay all of its liabilities arising from its prior periods of self-insurance. Thereafter, the GGA imposed an assessment on all of its members, including the MMAWCG. The MMAWCG challenged the assessment, arguing that the GGA lacked authority to impose it because the balance of the GGA's guaranty fund never declined to the level at which the applicable statute, Miss. Code Ann. § 71-3-163(1)(c) (Rev. 2011), authorizes assessments. The MMAWCG also argued that the GGA lacked authority to assess the MMAWCG because it had withdrawn from the GGA and ceased to operate as a group self-insurer. Finally, the MMAWCG argued that the GGA's method of calculating the assessment violated section 71-3-163(1)(c). The Mississippi Workers' Compensation Commission (the Commission) ultimately upheld the assessment, ruling in favor of the GGA on all issues. On appeal, the MMAWCG challenges the

Commission's rulings on all three issues.

¶2. We hold that GGA had continuing authority to assess the MMAWCG for at least three years after it withdrew from the GGA. However, based on the plain language of section 71-3-163(1)(c), we hold that the assessment at issue in this appeal was invalid because the balance of the GGA's guaranty fund never declined to the level at which the controlling statute authorizes the GGA to make additional assessments. Therefore, we reverse and render the judgment of the Commission upholding the assessment. Because we reverse and render the assessment in its entirety, we need not address the MMAWCG's contention that the assessment was calculated improperly. We also reverse and render a separate order of the Commission reinstating a loan agreement between the MMAWCG and a nonparty.

FACTS AND PROCEDURAL HISTORY

¶3. An employer covered by the Mississippi Workers' Compensation Act has two options: obtain an insurance policy to pay workers' compensation claims and benefits or, subject to approval by the Commission, self-insure its workers' compensation liabilities. With respect to self-insurance, an employer may either self-insure its own obligations or, with the approval of the Commission, join with a group of employers to pool and self-insure the group's liabilities. Under the Workers' Compensation Self-insurer Guaranty Association Law, Miss. Code Ann. §§ 71-3-151 to -181 (Rev. 2011), all group self-insurers must be members of a guaranty association. *Id.* § 71-3-159 (Rev. 2011). Prior to 2004, individual self-insurers and group self-insurers were required to be members of a single guaranty association. In 2004, the Legislature created the GGA for group self-insurers. Individual self-insurers remained

members of the original guaranty association, which was renamed the Mississippi Workers' Compensation Individual Self-Insurer Association.

¶4. The primary purpose of the GGA is to pay workers' compensation claims and benefits on behalf of any group self-insurer that becomes insolvent. *Id.* The GGA's guaranty fund and operations are funded by assessments levied on its members pursuant to statute. *Id.* § 71-3-163(1)(c). As required by statute, upon its creation, the GGA established its Plan of Operation—essentially, its bylaws—which became effective upon approval by the Commission. *Id.* § 71-3-165 (Rev. 2011).

¶5. The MMAWCG was one of eleven founding members of the GGA. However, in 2010 the MMAWCG began the process of ceasing operations as a group self-insurer. The MMAWCG continued to pay all obligations and claims under self-insured coverage issued to its member employers for prior periods, but as of May 2010 it stopped renewing coverage or issuing new coverage. Finally, in 2014 the MMAWCG purchased an insurance policy from AmFed National Insurance Company (the AmFed policy) to cover all claims and liabilities arising from prior periods of self-insurance.

¶6. On November 19, 2014, the Commission entered an order approving the termination of a loan agreement between the Mississippi Manufacturers Association and the MMAWCG. The order provided that, as a condition of the Commission's approval, the MMAWCG was required to obtain an insurance policy that would cover all of the MMAWCG's workers' compensation obligations (i.e., the AmFed policy).

¶7. On November 21, 2014, the director of the MMAWCG, Foster Welburn, notified the

GGA that the MMAWCG had ceased operations as a group self-insurer and that the AmFed policy would cover all remaining claims and any future claims arising from prior periods of self-insurance. Welburn acknowledged that the MMAWCG could be liable for additional assessments until November 20, 2017. Welburn's letter cited section II.F of the GGA's Plan of Operation, which provides that a withdrawing member "will continue to be liable for assessment for three (3) years or until there are no liabilities outstanding under its previous self-insured pooling status, which [sic] is greater."

¶8. On March 13, 2015, the GGA invoiced the MMAWCG for an assessment of $12,767.99 for the 2014 calendar year. The invoice stated that the assessment was equal to two percent of all "[g]ross compensation and medical services" reported as paid by the MMAWCG for the 2014 calendar year.

¶9. In response to the invoice, the MMAWCG, through Welburn, sent two letters to the GGA and a letter to the Commission's director of self-insurance. Welburn raised a series of issues related to the GGA's authority to impose the assessment and its method of calculating the assessment. Among other things, Welburn questioned the GGA's authority to impose the assessment given that the GGA's guaranty fund balance apparently remained in excess of $750,000. *See* Miss. Code Ann. § 71-3-163(1)(c). Welburn also questioned whether the GGA had the authority to impose assessments based on a full calendar year period rather than a single six-month period. *See id.*

¶10. The GGA's chairman, Michael Callahan, responded to Welburn's letters. Callahan stated that the assessment was authorized by section XI.A.3 of the GGA's Plan of Operation,

which authorizes the GGA to impose assessments whenever "payment by the [GGA] of its obligations will reduce the level of the Fund below [$750,000]." According to Callahan, the GGA's February 2015 bank statements showed that the GGA's operating and investment accounts had a combined balance of $787,148.47. Callahan stated that the GGA's directors and officers liability policy was up for renewal at an anticipated cost of approximately $46,000. Callahan also stated that the GGA's insurer, Lloyd's of London, had sent a notice of nonrenewal based on the decline in the GGA's assets between 2009 and 2014. Callahan stated that renewal of the Lloyd's policy or the purchase of a replacement policy "would drop the [GGA's] assets below the mandatory assessment amount of $750,000."

¶11. The Commission subsequently notified the MMAWCG that the GGA would issue an amended invoice for the same amount as the original invoice ($12,767.99) but with minor changes. The GGA issued the amended invoice on April 7, 2015.

¶12. On April 13, 2015, the MMAWCG filed an appeal of the assessment with the Commission. The MMAWCG argued that Mississippi Code Annotated section 71-3-163(1)(c) did not permit an assessment until the GGA's guaranty fund balance actually declined to $750,000. The MMAWCG also argued that the GGA's assessment based on a full calendar year was invalid because the statute permitted assessments based on six-month periods only. In response to the appeal, the GGA argued that the assessment was authorized under section XI.A.3 of its Plan of Operation. The GGA also argued that the statute permitted assessments based on multiple six-month periods. Finally, the GGA argued that, pursuant to its Plan of Operation, the MMAWCG remained liable for assessments until at

least November 20, 2017, notwithstanding its withdrawal from the GGA.

¶13. On August 24, 2015, the full Commission held a hearing on the MMAWCG's appeal. At the hearing, the GGA introduced an invoice and a copy of a check for the renewal of the GGA's directors and officers insurance policy. The actual cost to renew the policy, including taxes and fees, was $40,083.62, which the GGA paid on May 22, 2015. However, as counsel for the MMAWCG emphasized during the hearing, the GGA offered no evidence that the balance of its guaranty fund ever dropped to or below $750,000.

¶14. During the hearing, the Commission questioned counsel for the MMAWCG regarding the terms of the AmFed policy and whether it covered all workers' compensation liabilities of the MMAWCG. However, counsel for the MMAWCG stated that he was not prepared to speak to the terms of the AmFed policy.

¶15. On October 6, 2015, the Commission entered an order vacating its prior order approving the termination of the loan agreement between the Mississippi Manufacturers Association and the MMAWCG. The Commission noted its prior order required the MMAWCG to immediately obtain an insurance policy that would cover all of its workers' compensations obligations (i.e., the AmFed policy). The Commission concluded that counsel's inability to answer questions about the AmFed policy during the August hearing cast doubt on whether the MMAWCG had satisfied that condition. Therefore, the Commission ordered that the loan agreement (for $1,500,000) between the Mississippi Manufacturers Association and the MMAWCG was "reinstated in full." The Commission concluded by stating that it would "continue to consider the remaining issues [in the] appeal

and issue a subsequent [o]rder in due course."

¶16. On October 16, 2015, the MMAWCG filed a motion asking the Commission to reconsider or vacate its October 6 order. The MMAWCG argued, inter alia, that the Commission erred by addressing the loan agreement sua sponte and by attempting to impose a legal obligation on a nonparty (i.e., the Mississippi Manufacturers Association). Then, on October 26, 2015, the MMAWCG filed a notice of appeal from the Commission's October 6 order. On November 11, 2015, the Commission entered an order stating that it would not rule on the MMAWCG's motion for reconsideration because the MMAWCG had already filed a notice of appeal to the Mississippi Supreme Court.

¶17. The MMAWCG's appeal (No. 2015-WC-01695-COA) was assigned to this Court. The GGA filed a motion to dismiss the appeal, arguing (1) that the Commission's October 6 order was interlocutory and (2) that the appeal was premature for the additional reason that the Commission had not ruled on the MMAWCG's motion for reconsideration. This Court passed the GGA's motion to dismiss for consideration with the merits of the appeal.

¶18. The parties subsequently filed a joint motion to stay the appeal. They represented that they had reached an agreement in principle that, if approved by the Commission, would resolve all issues in the appeal. We granted the parties' request for a stay and later extended the stay three times. As a result, the appeal was stayed from May 2016 to February 2017. During the stay, the parties reached a settlement agreement; however, the Commission declined to approve that agreement. Therefore, the parties eventually asked this Court to lift the stay and set a new briefing schedule. On February 15, 2017, we granted the parties'

request, lifted the stay, and reset the briefing schedule.

¶19. On March 10, 2017, while the MMAWCG's first appeal was pending before this Court, the Commission entered an order affirming the GGA's April 2015 assessment of the MMAWCG. The Commission ruled that the governing statute, Miss. Code Ann. § 71-3-163(1)(c), and the GGA's Plan of Operation authorized assessments when the GGA's anticipated expenditures were projected to reduce its fund balance to $750,000—even if the fund had not yet declined to that level. The Commission also ruled that the same statute permitted assessments based on a full calendar year. Finally, the Commission ruled that the MMAWCG remained subject to assessments by the GGA notwithstanding its withdrawal. On April 7, 2017, the MMAWCG filed a notice of appeal from the Commission's order. That appeal (No. 2017-WC-01680-COA) was also assigned to this Court.

¶20. In May 2017, the MMAWCG the parties again informed the Court that they had reached a negotiated settlement. They asked the Court to stay the appeal again and to remand the case to the Commission for further action by the Commission. We granted both motions and remanded the case to the Commission.

¶21. On July 28, 2017, the Commission entered an order denying the MMAWCG's motion to approve the parties' settlement. The Commission concluded that the proposed settlement agreement was unacceptable because it purported to abrogate the Commission's statutory responsibility to regulate group self-insurers and the GGA. The MMAWCG filed a notice of appeal from the Commission's order. That appeal (No. 2017-WC-01678-COA) was also assigned to this Court.

¶22. On July 31, 2017, the MMAWCG filed a "Motion for Conditional Dismissal of Appeal." In short, the MMAWCG asked this Court to enforce the parties' settlement agreement—despite the Commission's refusal to approve it—and to vacate prior orders entered by the Commission. The MMAWCG stated that if this Court took such action, it would dismiss its appeals to this Court. The GGA filed a response in opposition to MMAWCG's motion. The GGA argued, in essence, that the parties' settlement agreement was unenforceable because the Commission had not approved it. On September 28, 2017, we denied the MMAWCG's motion and reset the briefing schedule. Subsequently, we granted the MMAWCG's motion to consolidate its three related appeals.

ANALYSIS

¶23. The MMAWCG lists eight issues in its statement of issues in this consolidated appeal. However, these issues fairly may be combined and summarized as follows: (1) whether the GGA had authority to impose an assessment on the MMAWCG even after the MMAWCG ceased operations as a group self-insurer, purchased the AmFed policy, and withdrew from the GGA; (2) whether the GGA had statutory authority to impose assessments even though there is no evidence that its guaranty fund balance ever declined to $750,000; (3) whether the GGA must calculate assessments based on benefits paid during a single six-month period rather than benefits paid during an entire calendar year; (4) whether the Commission erred by sua sponte reinstating the loan agreement between the MMAWCG and the nonparty Mississippi Manufacturers Association; (5) whether the Commission lacked jurisdiction to enter its March 10, 2017 order because the case was already on appeal before this Court; and

(6) whether the Commission erred by refusing to approve the parties' settlement agreement. We consider these issues in turn below.

¶24. The material issues in this appeal are all issues of law. In an appeal from the Commission, "we review issues of law de novo." *Huey v. RGIS Inventory Specialists*, No. 2013-CT-00310-COA, 2018 WL 1918540, at *3 (Miss. Ct. App. Apr. 24, 2018) (citing *Gregg v. Natchez Trace Elec. Power Ass'n*, 64 So. 3d 473, 475-76 (¶9) (Miss. 2011)), *cert. denied*, 258 So. 3d 286 (Miss. Dec. 13, 2018). In addition, we review an administrative agency's interpretation of a statute governing the agency's operation de novo, without deference to the agency's interpretation of the statute. *King v. Miss. Military Dep't*, 245 So. 3d 404, 407-08 (¶¶8-12) (Miss. 2018).

I. The GGA's Authority To Impose Assessments On The MMAWCG Following Its Withdrawal From The GGA

¶25. The MMAWCG begins with the broad argument that the GGA lacked authority to impose *any* assessments on it once it ceased operations as a self-insurer, obtained a third-party insurance policy to cover all of its remaining workers' compensation obligations, and withdrew from the GGA. However, we conclude that the GGA retained authority and jurisdiction to impose such assessments.

¶26. By statute, employers are permitted to form and operate self-insurance groups only with the prior approval of the Commission and subject to "such rules and regulations as [the Commission] prescribes." Miss. Code Ann. § 71-3-75(3) (Rev. 2011). The Commission has exercised its authority to regulate group self-insurers by providing that "[a]ny group self-insurer which ceases to act as a self-insurer shall remain subject to regulation by the

Commission until such time as all claims are paid and an appropriate amount of time, as determined by the Commission, has passed to insure that no additional liability under the Act will be incurred." Miss. Workers' Comp. Comm'n Gen. R. 7(B)(12)(c); Miss. Admin. Code § 20-2-1:1.7(B)(12)(c). During this time, "[t]he Commission maintains the ultimate responsibility for regulation" of the group self-insurer.

¶27. In addition, "all group self-insurers shall be and remain members of the [GGA] as a condition of their authority" to pool liabilities and self-insure. Miss. Code Ann. § 71-3-159. By law, the GGA was required to submit a "plan of operation" to the Commission for the Commission's approval. Miss. Code Ann. § 71-3-165(1) (Rev. 2011). That plan must include, among other things, procedures for the performance of all of the GGA's duties under section 71-3-163 and any other provisions necessary and proper to the execution of those powers and duties. *Id.* § 71-3-165(3). The GGA's Plan of Operation became "effective" upon its approval by the Commission in 2004. *Id.* § 71-3-165(1). Section II.F of the GGA's Plan of Operation specifically provides that a withdrawing member "will continue to be liable for assessment for a period of three (3) years or until there are no liabilities outstanding under its previous self-insured pooling status, which [sic] is greater."

¶28. Here, the MMAWCG withdrew from the GGA and also obtained a third-party insurance policy (the AmFed policy) to pay all of its liabilities under its previous self-insured status. However, there is no dispute that the assessment at issue in this case was levied within three years of the MMAWCG's withdrawal from the GGA. Therefore, there is also no dispute that the assessment was consistent with the terms of section II.F of the GGA's

Plan of Operation. Furthermore, the MMAWCG does not argue that there is any statute that specifically prohibits the three-year "trailing" assessment period provided for in section II.F. Rather, the MMAWCG contends that the trailing period is invalid because it is not specifically described by any statute. We disagree.

¶29. As set out above, the MMAWCG's authority to operate as a group self-insurer has always been subject to and conditioned on its compliance with applicable rules and regulations of the Commission. Miss. Code Ann. § 71-3-75(3). The Commission approved the GGA's Plan of Operation, including section II.F, which specifically authorizes the assessment at issue in this case. As a result of the Commission's approval, the GGA's Plan of Operation became "effective" and binding on all of the members of the GGA. Miss. Code Ann. § 71-3-165(1). In essence, the MMAWCG's continuing liability for assessments under section II.F was simply one of the conditions of its privilege to operate as a group self-insurer. *See* Miss. Code Ann. § 71-3-75(3).

¶30. We hold that the trailing period in section II.F is a valid condition of a group self-insurer's privilege to operate as such. There is nothing in any statute that prohibits such a provision. Moreover, section II.F is consistent with the statutory purpose of guaranteeing payment of workers' compensation benefits in the event of the insolvency of one or more group self-insurers. *See* Miss. Code Ann. § 71-3-153. If every solvent group self-insurer could withdraw from the GGA and immediately avoid any further assessment, the GGA's ability to guarantee claims and benefits on behalf of insolvent groups would be compromised. Therefore, we hold that section II.F of the GGA's Plan of Operation, as

approved by the Commission, is a valid exercise of the Commission's regulatory authority under the Mississippi Workers' Compensation Self-insurer Guaranty Association Law.

II. The GGA's Authority To Impose Assessments While Its Fund Balance Remains Above $750,000

¶31. The MMAWCG next argues that Mississippi Code Annotated section 71-3-163(1)(c) prohibits the GGA from imposing assessments until the balance of the GGA's guaranty fund declines to or below $750,000. We begin our analysis of this issue with the text of the relevant statute. *See Pinkton v. State*, 481 So. 2d 306, 309 (Miss. 1985) ("It is elementary that in applying a statute, this Court will look first to that statute's own words."). In relevant part, section 71-3-163(1)(c) provides:

> [The GGA] shall . . . [a]ssess its . . . group self-insurers amounts necessary to pay the obligations of the association under subsection (2) of this section, the expenses of handling covered claims and other expenses authorized by Sections 71-3-151 through 71-3-181. The assessments of . . . each group self-insurer shall be two percent (2%) of the gross paid compensation and medical supplies and services of said member self-insurer during each period of six (6) months. . . . The two percent (2%) assessment on . . . each group self-insurer shall be collected by the [C]ommission until . . . the sum of One Million Dollars ($1,000,000.00) is accumulated by the [GGA]. *At that time the assessments shall be suspended.* . . . The two percent (2%) assessment shall be reinstituted for all member self-insurers of the [GGA] at any time that the guaranty fund balance of the group association reaches Seven Hundred Fifty Thousand Dollars ($750,000.00) and such assessment shall continue until such time as the balance is One Million Dollars ($1,000,000.00). . . .

Miss. Code Ann. § 71-3-163(1)(c) (emphasis added).

¶32. The parties offer competing interpretations of this statutory provision. The GGA argues that the first quoted sentence provides broad authority for the GGA to impose assessments regardless of the balance of its guaranty fund. The GGA argues that it "shall"

(i.e., must) impose assessments if the fund balance declines to $750,000, but it argues that it may also, in its discretion, impose assessments at any other time permitted by its own Plan of Operation. The GGA argues that if the Legislature had intended to prohibit assessments at other times, it would have provided that assessments could "only" be reinstituted when the guaranty fund balance declined to $750,000. The GGA views the Legislature's omission of the word "only" as dispositive. The Commission agreed with the GGA, reasoning that "the statute does not prohibit an assessment prior to [the] time" that the guaranty fund balance actually declines to $750,000. The GGA emphasizes that Section XI.A.3 of its Plan of Operation authorizes an assessment "if payment by the [GGA] of its obligations will reduce the level of the fund below Seven Hundred Fifty Thousand ($750,000)." Thus, the GGA argues that the assessment at issue was authorized because an anticipated expense—the premium for the GGA's directors and officers liability policy—was expected to reduce the balance of the fund below $750,000 in the near future.

¶33. In contrast, the MMAWCG argues that the statute *does* prohibit the GGA from imposing assessments before the guaranty fund balance actually declines to $750,000. Specifically, the statute mandates that "assessments *shall be suspended*" if the fund balance reaches $1,000,000. Miss. Code Ann. § 71-3-163(1)(c) (emphasis added). The GGA's fund reached $1,000,000 following its 2006 assessment, triggering the mandatory suspension. The MMAWCG reasons that the mandatory suspension must continue until such time as the fund balance actually declines to $750,000. The GGA has never alleged or produced any evidence that its fund balance actually declined to $750,000 prior to the assessment at issue in this

case.[1] Thus, the MMAWCG argues that the statute prohibited the assessment. The MMAWCG acknowledges that the assessment may have been consistent with the GGA's Plan of Operation. However, the MMAWCG argues that the Plan of Operation cannot authorize an assessment that is prohibited by the plain language of the statute.

¶34. The proper interpretation of a statute is an issue of law. Therefore, as stated above, we interpret the statute de novo and without deference to the Commission's interpretation. *King*, 245 So. 3d at 407-08 (¶¶8-12). Applying a de novo standard of review, we agree with the MMAWCG that the plain language of the statute prohibited the assessment at issue in this case. *See State ex rel. Hood v. Madison Cty. ex rel. Madison Cty. Bd. of Supervisors*, 873 So. 2d 85, 90 (¶19) (Miss. 2004) ("The most fundamental rule of statutory construction is the plain meaning rule, which provides that if a statute is not ambiguous, then this Court must apply the statute according to its terms."). The Legislature clearly mandated that "assessments *shall be suspended*" once the guaranty fund balance reaches $1,000,000. Miss. Code Ann. § 71-3-163(1)(c) (emphasis added). The GGA seeks to avoid the import of this language by arguing that it can reinstitute assessments—and, thus, lift the mandatory suspension—any time it sees fit. Under the GGA's interpretation of the statute, the duration of the suspension is entirely within the GGA's discretion. We cannot agree with the GGA's

[1] As discussed above, the GGA represented that the combined balance of its operating and investment accounts was $787,148.47 as of February 2015, and there is evidence that the GGA paid $40,083.62 to renew its directors and officers insurance policy on May 22, 2015. *See supra* ¶¶10, 13. However, most of the GGA's assets are invested and, thus, could have appreciated in value between February and May. Before the Commission, the GGA did not provide any evidence (or even allege) that the fund balance ever declined to $750,000.

interpretation, which would allow the GGA to reduce the mandatory suspension to only a brief, meaningless pause. *See Swindol v. Aurora Flight Scis. Corp.*, 194 So. 3d 847, 854 (¶23) (Miss. 2016) (refusing to interpret one provision of a statute in a manner that would render another provision meaningless). We hold that once assessments "shall be suspended" by operation of the statute, the assessments may be reinstituted only in accordance with the statute. That is, under section 71-3-163(1)(c), the GGA lacks authority to reinstitute assessments unless the fund balance actually declines to $750,000.

¶35. Because the statute prohibits the assessment at issue in this case, it necessarily follows that the GGA's Plan of Operation cannot provide authority for the assessment. The Commission has authority to regulate self-insurers and their guaranty associations and to administer the provisions of the Workers' Compensation Self-insurer Guaranty Association Law, including section 71-3-163(1)(c). However, the Commission cannot exercise its authority in a manner that is contrary to the terms of an applicable statute. *See King*, 245 So. 2d at 808 (¶¶11-12). Therefore, although the Commission approved Section XI.A.3 of the GGA's Plan of Operation, that provision is invalid to the extent that it is contrary to the plain language of section 71-3-163(1)(c). And the assessment at issue in this case was invalid because there is nothing to show that the GGA's fund balance ever declined to $750,000.

III. Remaining Issues

¶36. As noted above, the MMAWCG raises four additional issues. *See supra* ¶23. However, the remaining issues require less discussion.

¶37. The MMAWCG argues that the assessment was calculated improperly because it was

based on compensation and medical benefits paid during a full calendar year rather than a six-month period. *See* Miss. Code Ann. § 71-3-163(1)(c). However, because we hold that the assessment was invalid, we need not decide whether it was calculated properly. *See Univ. of Miss. Med. Ctr. v. Lanier*, 97 So. 3d 1197, 1198 (¶1) (Miss. 2012) (noting that if a case must be reversed and rendered on one issue, "the remaining issues are moot").

¶38. Next, the MMAWCG argues that the Commission erred in its October 6, 2015 order by sua sponte reinstating the loan agreement between the MMAWCG and the nonparty Mississippi Manufacturers Association. We agree with the MMAWCG that this issue was not raised and thus was not before the Commission.[2] Moreover, the Commission erred by reinstating the loan agreement simply because MMAWCG's counsel was unable to answer the commissioners' questions about the terms of the AmFed policy. The policy, which is in the record, covers all workers' compensation liabilities arising from the MMAWCG's prior periods of self-insurance. Indeed, in a later concurring opinion, one commissioner suggested that the AmFed policy was broad enough to cover even the assessment at issue in this case. There is nothing in the record to show that the policy did not satisfy the Commission's November 19, 2014 order authorizing the termination of the loan agreement. Therefore, we hold that the Commission erred by reinstating the loan agreement, and we reverse and render the Commission's October 6, 2015 order.

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[2] *See* Miss. Workers' Comp. Comm'n Proc. R. 2.6; Miss. Admin. Code § 20-2-1:2.6 (providing that an evidentiary hearing before the Commission "will be limited solely to the issues reflected by the pleadings, requests for admission, or prehearing statements"); *Cox v. S.B. Thomas Tr.*, 755 So. 2d 52, 57 (¶16) (Miss. Ct. App. 1999) (holding that the Commission erred by addressing an issue that was not properly raised in the pleadings or tried by implied consent).

¶39. The MMAWCG also argues that the Commission lacked jurisdiction to enter its March 10, 2017 order—which affirmed the assessment at issue in this appeal—because the case was already pending before this Court on appeal from the Commission's October 6, 2015 order. We disagree. The October 6, 2015 order was interlocutory.[3] The order did not address the primary issue in the case—i.e., the validity of the assessment. Moreover, that order expressly stated that the Commission would "continue to consider the remaining issues [in the MMAWCG's] appeal and issue a subsequent [o]rder in due course." Therefore, the MMAWCG's appeal from that order was premature,[4] and the Commission retained jurisdiction to issue a final decision in the case.

¶40. Finally, in its opening brief on appeal, the MMAWCG briefly asserted that the Commission erred by refusing to approve the parties' settlement agreement. However, during oral argument, counsel for the MMAWCG stated that his client no longer desired to enforce the settlement agreement. Because neither party wants to enforce the settlement, the issue is moot. *See, e.g.*, *Hunt v. Miss. Dep't of Corr.*, 217 So. 3d 789, 791 (¶6) (Miss. Ct. App. 2017) (explaining that an appeal is moot if the controversy expires by the time of

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[3] *Blankenship v. Delta Pride Catfish Inc.*, 676 So. 2d 914, 916-17 (Miss. 1996) (holding that a Commission order is interlocutory—and is not appealable—"when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action").

[4] As discussed above, the GGA moved to dismiss the MMAWCG's first appeal for precisely this reason, and we passed the motion for consideration with the merits of the appeal. *See supra* ¶17. We may now consider the Commission's interlocutory October 6, 2015 order because the Commission ultimately issued a final decision affirming the assessment, and the MMAWCG filed a timely notice of appeal from that final decision. Therefore, the GGA's motion to dismiss appeal No. 2015-WC-01695-COA is denied.

appellate review). Therefore, we dismiss the MMAWCG's appeal from the Commission's July 28, 2017 order denying the MMAWCG's motion to approve the settlement.

CONCLUSION

¶41. The primary issue in this consolidated appeal is the MMAWCG's challenge to the GGA's April 7, 2015 amended assessment. We hold that the assessment was invalid because it was prohibited by Mississippi Code Annotated section 71-3-163(1)(c). Therefore, we reverse and render the Commission's March 10, 2017 decision affirming the assessment.

¶42. We also hold that the Commission erred by reinstating the loan agreement between the MMAWCG and the nonparty Mississippi Manufacturers Association. That issue was never raised before the Commission, and there was no basis in the record for the Commission to reinstate the agreement. Therefore, we also reverse and render the Commission's October 6, 2015 order, and the loan agreement is once again terminated.

¶43. Finally, we dismiss the MMAWCG's appeal from the Commission's July 28, 2017 order denying the MMAWCG's motion to approve the party's settlement agreement. At this point, neither party wants to enforce their prior settlement agreement. Therefore, the Commission's order refusing to approve the agreement is moot.

¶44. **APPEAL NO. 2015-WC-01695: REVERSED AND RENDERED. APPEAL NO. 2017-WC-01680: REVERSED AND RENDERED. APPEAL NO. 2017-WC-01678: APPEAL DISMISSED.**

GRIFFIS, C.J., BARNES AND CARLTON, P.JJ., GREENLEE, WESTBROOKS, TINDELL, McDONALD, LAWRENCE AND McCARTY, JJ., CONCUR.