BWC Board of Directors

GOVERNANCE COMMITTEE

Wednesday, December 16, 2009, 3:30 p.m.
William Green Building
30 West Spring Street, 2nd Floor (Mezzanine)
Columbus, Ohio 43215

Members Present: Alison Falls, Chair
Larry Price, Vice Chair
William Lhota

Members Absent: None

Other Directors Present: James Harris, Kenneth Haffey, Robert Smith, James Matesich, James Hummel, Thomas Pitts, Charles Bryan

CALL TO ORDER

Ms. Falls called the meeting to order at 4:07 PM and the roll call was taken.

MINUTES OF NOVEMBER 19, 2009

The minutes were approved without changes by unanimous roll call vote on a motion by Mr. Price, seconded by Mr. Lhota.

REVIEW/ APPROVE AGENDA

Ms. Falls reviewed the agenda and noted no changes.

The agenda was approved by unanimous roll call vote on a motion by Mr. Lhota, seconded by Mr. Price.

NEW BUSINESS / ACTION ITEMS

1. Review of Directors' Fiduciary Liability Insurance Policy

General Counsel James Barnes reviewed a two-page memorandum he prepared for the Board with respect to fiduciary liability insurance. Prior to 2005, the BWC Oversight Committee members were not considered to be fiduciaries, but instead had director and officer liability coverage. Fiduciary liability coverage is more encompassing than director and officer coverage.

There was difficulty involved in obtaining fiduciary liability coverage for the Board. Although the Directors are considered fiduciaries by statute, the insurance industry does not necessarily classify them as " insurance" fiduciaries. Lloyd's of London eventually agreed to provide a policy for fiduciary liability insurance coverage.

Mr. Barnes then discussed potential conflicts between several Ohio statutes: R.C. 109.981, which authorizes the Attorney General to initiate a civil action against the Board and/or its members for breach of fiduciary duty, and R.C. 9.86 and 9.87, which provide for indemnity and immunity. The language in the referenced statutes is one of the reasons fiduciary coverage is necessary.

Under the referenced statutes, the normal procedure for determining whether a Director is acting within the scope of his/her duties is that the Governor's Office will conduct an investigation. If the Governor's Office determines the action is within the scope of duty, the Attorney General's Office then performs its own independent investigation. If the Attorney General's Office determines the action is within the scope of duty, they will defend the Director in any court action. If the Attorney General's Office determines that the Directors' actions were not within the scope of duty, the Attorney General's Office may bring a civil action against the Directors. In that instance, the Board Directors, under their fiduciary liability insurance coverage, would be entitled to be defended by legal counsel appointed by the insurance carrier.

The policy is $10 million primary coverage and $10 million excess coverage. Per a question from Mr. Lhota, the coverage limits are aggregate. Mr. Barnes reported that although BWC continues to open the process for bids, Lloyd's of London remains the only carrier willing to provide coverage. For the current year which began in October 2009, BWC was granted a lower rate. Mr. Barnes emphasized that if a Director becomes aware of a high probability that a claim will be filed, the carrier <u>must</u> be notified or the carrier will not assume the defense. This is one of the reasons the Board receives frequent litigation updates, because there is personal liability involved.

Mr. Lhota asked what happens if a Director departs the Board. Mr. Barnes explained that there is a claims-made extension clause, so a Director would still have coverage for the policy period.

DISCUSSION ITEMS

1. Committee Calendar

Ms. Falls noted that the January meeting will take place on the 22nd after the regular Board meeting, and a mid-year review of the Board self-assessment and Administrator's performance will take place in Executive Session. The next Governance Committee meeting will then occur in April.

ADJOURNMENT

Mr. Price moved to adjourn the meeting at 4:22 PM, seconded by Ms. Falls and approved by unanimous roll call vote.

Prepared by Jill Whitworth, Staff Counsel
December 17, 2009