

**BWC Board of Directors**  
**Audit Committee**  
**Thur, April 24, 2008, 12:00 P.M.**  
**William Green Building**  
**Neil Schultz Conference Center**  
30 W. Spring St., 2<sup>ND</sup> Floor (Mezzanine)  
Columbus, Ohio 43215

Members Present: Kenneth Haffey, Chair  
Philip Fulton  
William Lhota

Members Absent: None

Other Directors Present: Alison Falls, Larry Price, James Hummel, David Caldwell, James Harris, Jim Matesich, Robert Smith, and Charles Bryan (arrived at 1:00 PM).

### **Call to order**

Mr. Haffey called the meeting to order at 12:27 PM and the roll call was taken.

### **Minutes of March 27, 2008**

The minutes were approved on a motion by Mr. Fulton, seconded by Mr. Lhota without further changes.

### **New business /Action items**

#### **1. Rule Review**

##### **Notice Provisions**

Tom Sico, Assistant Legal Counsel, presented changes to Rule 4123-1-01, amending subpart (A) to reflect that BWC will obtain advice and consent of the Board of Directors for rule amendments. Mr. Sico noted that extensive changes to this rule were instituted in 2002 and BWC developed an on-line notice system for proposed rule changes. Mr. Fulton added that informal notice is provided to other parties. According to Mr. Sico, the constituent distribution list includes the Industrial Commission, the Attorney General, and approximately 80 external customers. The proposed changes comply with the Common Sense Business Regulation checklist.

Mr. Fulton moved to recommend approval of the proposed changes to Rule 4123-1-01 to the Board of Directors, seconded by Mr. Lhota. The motion was approved by unanimous roll call vote.

**b. Acupuncture Rules**

Mr. Sico and Judy Brabb, Manager of Medical Policy, presented changes prescribed by Senate Bill 33 to two rules involving payment for acupuncture treatment. Rule 4123-6-31 applies to HPP providers, and Rule 4123-7-14 applies to self-insured employers. These changes allow a doctor of chiropractic to be reimbursed for services, if they have a certificate to practice acupuncture from the Ohio State Chiropractic Board. These changes were reviewed and approved by the Chiropractic Board, therefore complying with the Common Sense Business Regulation checklist. Mr. Sico stated three chiropractors are currently certified, with seventy-five others enrolled in the 300-hour certification program.

Mr. Lhota moved to recommend approval of the proposed changes to Rule 4123-6-31 and 4123-7-14 to the Board of Directors, seconded by Mr. Fulton. The motion was approved by unanimous roll call vote.

**c. Construction Safety Rules**

These proposed amendments were tabled at the March 27, 2008 meeting. Mr. Lhota moved to remove them from the table, seconded by Mr. Fulton.

Mr. Sico, Mark Garver, Employer Management Services Supervisor, and Dan Feeney, Management Analyst Supervisor, Division of Safety and Hygiene, presented proposed amendments to approximately twenty-five (25) Construction Safety rules governing violations of specific safety requirements (VSSR) found in OAC 4123-1-3.

Mr. Garver emphasized that all paragraphs in 4123-1-3 were directly compared to OSHA rules by the review committee, which contained representatives from both labor and management. A standing committee has also been created to perform more frequent comparative reviews of BWC rules with the OSHA rules.

Mr. Price inquired if this meant all bases are now covered. Mr. Lhota, Mr. Fulton and Mr. Caldwell discussed that sufficient due diligence has been done to satisfy that the appropriate parties are involved in this review.

Mr. Feeney reviewed the proposed amendments by categories relevant to “purpose of change”, as follows:

No Changes - 6

Change OAC (if an employer complies with the BWC safety rule but violates OSHA, BWC recommends a change) - 22

Change OAC (if an employer violates the BWC safety rule but complies with OSHA, BWC recommends a change) – 31

Grammar – 29

Format – 28

Clarity – 1

There are a total of 126 changes.

The Committee members each reiterated their comfort level with the rule changes and appropriate due diligence. Mr. Fulton moved to recommend approval of the proposed changes retaining 5 rules and amending 22 rules of Chapter 4123-1-3 to the Board of Directors, seconded by Mr. Lhota. The motion was approved by unanimous roll call vote.

## **Discussion items**

### **1. Discussion of External Audit**

Tracy Valentino, Chief of Fiscal and Planning, and Joe Bell, Chief Internal Auditor, led a discussion of the Schneider Downs external audit. Ms. Valentino met with Schneider Downs on April 17 to inform the auditors of various internal changes at BWC. Interim field work will begin May 19, with the audit report signed off and submitted to the State Auditor by September 30, 2008. New risk assessment and GASB (Government Accounting Standards Board) standards will also be discussed.

Mr. Haffey also met with Joe Patrick of Schneider Downs. Schneider Downs will provide BWC with a preliminary management letter in July. The process is moving more smoothly this year, particularly as BWC Internal Audit is committed to provide 1500 hours of assistance.

### **2. Office of Budget and Management, Internal Audit Update**

Mr. Bell is now also filling the chief auditor role at the Office of Budget and Management in addition to his BWC duties. He will be in charge of presenting the state audit plan provided in House Bill 166 to the Controlling Board. The plan is similar to what BWC already has in place. Mr. Bell is meeting with several entities in the next two weeks, including the State Audit Committee Chair, State Auditor, both legislative branches and the Controlling Board.

(Mr. Bryan joined the meeting at 1:00 PM)

Mr. Bell advised that the internal audit quarterly summary will be presented to the Committee at the May meeting, followed by the internal audit plan in June. Mr. Bell will schedule brief meetings with each of the directors regarding the audit plan.

### **3. Other Business**

James Barnes, Chief Legal Officer, presented a litigation update of two recent Ohio Supreme Court opinions resulting from mandamus actions.

In the Pilkington case, BWC received a favorable decision from the Ohio Supreme Court affirming the “last injurious exposure” rule for claims arising from asbestos exposure. This holds that the employer responsible for the injured worker’s final exposure to asbestos is responsible for the claim. The rule was developed to maintain consistency where an injured worker worked multiple jobs where asbestos exposure occurred.

In the Wise case, the Ohio Supreme Court granted the writ of mandamus to overturn a settlement agreement in a 1997 claim because the parties did not clearly set forth the justification for the settlement. While the settlement agreement form (C-240) contains the space to provide this information, it is typically not completed. RC §4123.65 states that the Industrial Commission has

the obligation to review settlements and determine their fairness. In strictly construing the statute, the court held that the Commission could not make this determination if the information was not provided.

BWC is still ascertaining what exposure could result from the Wise decision, given that BWC has been doing claim settlements since 1993. BWC has pulled all settlement agreements currently in the 30-day "hold" period and provided an amended settlement agreement form (C-241) to complete. Approximately 170,000 settlements could potentially be re-opened. Sixteen or 17% of these cases were unrepresented by legal counsel.

Mr. Fulton advised that he discussed a motion for reconsideration with BWC, the IC and the Attorney General. At this point, the Attorney General is unwilling to pursue such a motion. Mr. Fulton is very concerned about the potential impact of this decision.

Ms. Falls asked whether this could create a material liability in auditing terms. Mr. Barnes responded in the affirmative.

## **Adjournment**

The next Audit Committee meeting is May 29, 2008 at 4:00 PM.

Mr. Haffey moved to adjourn the meeting at 1:28 PM, seconded by Mr. Lhota.

Prepared by Jill Whitworth, BWC Staff Counsel  
April 25, 2008