

BWC Board of Directors

## **Board Meeting**

**Friday, November 21, 2008, 8:00 a.m.**

**William Green Building**

30 West Spring Street, 2<sup>nd</sup> Floor (Mezzanine)

Columbus, Ohio 43215

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Members Present: William Lhota, Chairman  
Charles Bryan  
David Caldwell  
Alison Falls  
Kenneth Haffey  
James Harris  
James Hummel  
Thomas Pitts  
Larry Price  
Robert Smith  
James Matesich

Members Absent: None

### **CALL TO ORDER**

Mr. Lhota called the meeting to order at 8 a.m.

### **ROLL CALL**

Roll call was taken by the scribe. All members were present.

### **OCTOBER 31, 2008 MINUTES**

Motion was made by James Harris, seconded by Charles Bryan, to approve the minutes. Roll call was taken and the motion to approve the minutes passed 11-0.

The meeting agenda was reviewed. The Deep Dive section was deleted. The executive session purpose is to discuss pending litigation. Chairman Lhota announced the Board does not intend to conduct business subsequent to the executive session. Alison Falls noted the next meeting Thursday, December 18, not Friday as listed on the agenda.

### **COMMITTEE REPORTS:**

## **ACTUARIAL COMMITTEE**

Charles Bryan presented the Actuarial Committee report. The public employer taxing district manual class rates were discussed. These manual rates reflect the Board's decision to decrease PEC rates overall by 5%, with each class's rate varying according to its own claim experience. Mr. Bryan noted the recommended 5% rate reduction was also discussed in the context of its impact on net assets. The Board must decide if a net asset provision should be built into rates. For the next PA rate change discussion in the spring of 2009, the Committee hopes to provide better insight from the current asset-liability modeling. Motion was made by Mr. Bryan, seconded by Mr. Hummel, as follows: that the Bureau of Workers' Compensation Board of Directors approve changes to the public employer taxing district rules 4123-17-33 and 4123-17-34 of the Administrative Code. The motion consents to the Administrator adopting the public employer taxing district credibility tables and rate rules as presented at the Actuarial Committee. Roll call was taken and the motion passed 11-0.

Motion was made by Mr. Bryan and seconded by James Matesich as follows: that Workers' Compensation Board of Directors approve the amended charter of the Actuarial Committee as presented here today. Roll call was taken and the motion passed 11-0. Mr. Bryan deferred discussion of experience modifier caps for a later date, pending further discussion of a court decision. The Committee also reviewed the retrospective annual run-off of our liabilities, which was provided by Oliver Wyman. The report reviewed claims subsequent to December 31, 2002 through June 30, 2008. It appears the reserve estimate has been conservative – meaning our initial estimate of reserves was higher than subsequent estimates. This run-off only reviewed 7 years of claim payments.

A request for proposal for an actuarial consultant is being developed. The Committee hopes to bring it to the Board for approval during the first quarter of 2009. Reserves and pricing will be crucial components of the RFP. The current consultant is Oliver Wyman through the first quarter of 2009. If a different consultant is ultimately selected, the start date should be three out of six months before the current contract expires, December 31, 2009. Mr. Bryan noted that John Pedrick and Liz Bravender are doing an outstanding job, and have plans to expand their staff. The additional staff will allow greater focus on rates and reserves, and allow for additional analyses such as the impact of new legislation. The implementation of the MIRA reserving system is proceeding well. Mr. Bryan congratulated staff on what seems to date to be a successful transition and implementation of the new system.

## **AUDIT COMMITTEE**

Kenneth Haffey presented the Audit Committee report. Mr. Haffey shared the report of the external auditor, Schneider Downs. The financial statements received an unqualified opinion, the internal control audit found no instances of noncompliance and no material weaknesses, and all the comments in the management letter were being

addressed by the Administration. The committee entered executive session to discuss personnel matters with Joe Montgomery of the Office of the Inspector General. Caren Murdock, Chief of Internal Audit, provided the committee with a quarterly summary update. During the past quarter, 4 audits have been completed. Ms. Murdock reviewed many of the material weaknesses from these audits. She noted the Audit Division was on track with their audit schedule.

Motion was made by Mr. Haffey, seconded by Robert Smith, as follows: that the Bureau of Workers' Compensation Board of Directors approves the amended charter of the Audit Committee as presented here today. Roll call was taken and the motion passed 11-0.

The committee had first readings on rules, including interstate jurisdiction by Michael Glass, Director of Underwriting and Premium Audit, and the ambulatory surgical center fee schedule by Fred Johnson, Director of Managed Care Services.

### **INVESTMENT COMMITTEE**

Mr. Smith presented the Investment Committee report. Mr. Smith noted an extensive educational session conducted by Mercer Consulting on the Asset-Liability Modeling project.

Motion was made by Mr. Smith, seconded by Ms. Falls, as follows: that the Workers' Compensation Board of Directors approve the amended charter of the Investment Committee as presented here today. Roll call was taken and the motion passed 11-0.

Motion was made by Mr. Smith, seconded by Mr. Pitts, as follows: that the Workers' Compensation Board of Directors approve and adopt the recommendation of the Investment Committee to proceed to implement the Intermediate Duration Fixed Income Commingled Passive Index Investment with State Street Global Advisors, as originally approved in August 2008 for both the Public Work Relief Employees' Fund and the Marine Industry Fund, for the reasons set forth in the memorandum of the Chief Investment Officer dated November 10, 2008. Roll call was taken and the motion passed 11-0.

Motion was made by Mr. Smith, seconded by David Caldwell, as follows: that the Workers' Compensation Board of Directors approve and adopt the recommendation of the Investment Committee to suspend securities lending activity in the approved Intermediate Duration Fixed Income Commingled Passive Index Investment with State Street Global Advisors for both the Public Work Relief Employees' Fund and the Marine Industry Fund, for the reasons set forth in the memorandum of the Chief Investment Officer dated November 10, 2008. Roll call was taken and the motion passed 11-0.

Motion was made by Mr. Smith, seconded by Mr. Harris, as follows: that the Board of Directors approve and adopt the recommendation of the Investment Committee to amend current section IV.B of the Statement of Investment Policy and Guidelines to include language pertaining to exceptions to the implementation of required rebalancing

actions. The exact changes adopted as a result of this motion will be incorporated in section IV.B of the Statement of Investment Policy and Guidelines as set forth in the memorandum of the Chief Investment Officer dated November 10, 2008. Roll call was taken and the motion passed 11-0. This action does not represent a full revision of the portfolio rebalancing policy. Generally equities should represent between seventeen and twenty- three percent of total invested assets, as opposed to the approximately twelve percent portfolio allocation at present. However, current market liquidity restraints and transaction costs prevent a portfolio rebalance without incurring significant economic harm to the Bureau. At the Investment Committee meeting of yesterday, Ms. Falls voted against this recommendation. Ms. Falls indicated that she supports allowing the Bureau flexibility in making a portfolio rebalancing decision, and has now voted in favor of this motion, as presented to the Board.

Motion was made by Mr. Smith, seconded by Ms. Falls, as follows: that the Workers' Compensation Board of Directors adopt the recommendation of the Investment Committee to approve the annual report on the performance and value of each investment class, as prepared by the Chief Investment Officer and dated November 10, 2008, and to submit the report to the Governor and legislative leaders in fulfillment of the Board's obligation under Revised Code section 4121.12(F) (12). Roll call was taken and the motion passed 11-0.

Discussion was made of portfolio performance for the fourth quarter to date. Mr. Smith indicated that the estimated unaudited value of the bonds and stocks in the BWC portfolio declined by \$1.58 billion in October and increased by \$236 million in November through close of yesterday. Ms. Falls noted an excellent presentation by Mercer Consulting, with regard to asset allocation process. The asset liability modeling is only a tool, and she anticipated a robust discussion concerning the results. The process will result in either an affirmation or change to the current asset allocation strategy. The private equity sale is complete and was a success.

## **GOVERNANCE COMMITTEE**

Ms. Falls presented the report. There was discussion of the annual review of the charter. The committee shall be the lead committee on rule review, except for the Actuarial Committee, which will continue to handle rate rules. There will be a transition of rule review from the Audit Committee to the Governance Committee in January of 2009. The Governance guidelines are a complete reference document, with the addition of ethics, conflicts of interest, as well as director education and orientation.

Motion was made by Ms. Falls, seconded by Mr. Price, as follows: that the Workers' Compensation Board of Directors approve the amended Governance Guidelines, as discussed here today, and approve the amended charter of the Governance Committee as presented here today. Roll call was taken and the motion passed 11-0.

Ms. Falls thanked Ann Shannon, Assistant Law Director, and Don Berno, Board Liaison for their support and work on the Governance Guidelines and Committee charters. The next committee meeting shall be January 2009. Mr. Price thanked staff and Ms. Falls

for their hard work on the Governance Guidelines and the charters. He further noted that these documents should be of great help to future members of the Board of Directors

### **MONTHLY ENTERPRISE REPORT**

The enterprise report was presented by Tracy Valentino, Chief of Fiscal and Planning. Financial statements were reviewed and discussed at length. Financial materials included an adjustment due to the quarterly reserve adjustment by Oliver Wyman. Charles Bryan inquired as to whether securities were sold and repurchased. According to Bruce Dunn, Chief Investment Officer, the answer is no. Mr. Bryan made discussion of the recording of permanent and temporary impairment. Mr. Bryan inquired as to changing the amount recorded. There is no capping. Ms. Valentino noted there are marked to market entries. Mr. Bryan inquired as to details of entries with regard to net investment income. Mr. Bryan inquired as to who is eligible for safety discounts. All employers are, potentially. Mr. Bryan inquired with regard to short term change for medical inflation. John Pedrick, Chief Actuarial Officer, indicated that assumptions utilized were developed by consultants.

Cash disbursements from the OHA lawsuit continue. 50/50 premium program payments are due. Ms. Valentino and James Matesich entered into discussion regarding employer noncompliance and reinstatement. James Harris discussed resolution of noncomplying employer liability. Ms. Valentino and Mr. Dunn discussed the cash flow statement and cash redemption strategy. Mr. Dunn indicated that an effective cash redemption strategy has been developed by staff to withdraw sufficient cash from outside investment managers for the remainder of calendar 2008. Such cash to be redeemed will come from monthly interest income received on bonds and a specific equity holding corporate action regarding Anheuser Busch so as to preclude the need to have outside managers sell securities, likely at net losses, to meet the Bureau's liquidity needs. Revised financial projections are incorporated into the minutes for fiscal year 2009. Mr. Bryan wants the Actuarial Committee to become more familiar with reserve figures to determine accuracy for forecasting reserves. Mr. Pedrick discussed prior review of reserve statement and method for projecting 2009 reserves for June 30, 2009. Ms. Falls inquired as to what will the projected funding ratio will be. Ms. Falls requested this be included in future reports.

### **ADMINISTRATOR BRIEFING**

Ms. Ryan noted in the Bureau is preparing budgeting information for the next fiscal biennium, and much work is being conducted regarding projected budget needs. The Bureau is finalizing the budget for the Governor and the Office of Budget and Management to review, and subsequently submitted to the General Assembly. The budget will be reduced in anticipation of decreases in employer reported payroll, and subsequent premium decreases. The Bureau is engaging in contingency planning to maintain expense ratios. Annual reports are being compiled since the audit report has been released by the Auditor of State. Contract negotiations with OCSEA shall begin the first week of December. During the lame duck session, the Bureau is anticipating passage of amendments to clarify funding of the Workers' Compensation Council. A

search warrant has been executed with regard to an investigation of a chiropractor, named Eric Bliss, suspected of possible billing misrepresentation. Future public forums will consider more focused topics. The Bureau is developing a tentative schedule, including a January 2009 topic of paperwork, forms, and communications. Future announcements will be made on the balance of the public forums. Mr. Bryan raised the issue of the forums serving as mechanisms for responses to individuals making comment. Ms. Ryan noted the Bureau conducts extensive evaluation and follow up. Mr. Berno indicated that extensive and detailed summaries are diligently put together. Mr. Price emphasized the importance of delivering important issues to the Administrator, and obtaining follow up on responses. Ms. Ryan noted that all forums have a video record maintained by the Bureau.

### **FIDUCIARY RESPONSIBILITY**

James Barnes, Chief Legal Officer, made a presentation on the importance of directors exercising fiduciary responsibility and avoiding conflicts of interest. Mr. Barnes emphasized the importance of making a determination as to whether directors should recuse themselves from executive session, in the event they may have a personal interest in the outcome of litigation involving the Bureau. Emphasis was placed on the duty of directors to exercise the utmost loyalty and care. Individual constituent interests are preempted by fiduciary duty to the fund. Ms. Falls inquired as to whether the duty integrates with the Governance Guidelines that includes perceived conflicts. Mr. Barnes answered yes. Mr. Matesich commented that since some directors are also employers, would there be a continuing conflict for such directors. Mr. Barnes emphasized the importance of determining whether or not the decision will have a direct impact on the director's interests. It is important to act solely in the interests of the workers' compensation system. Mr. Hummel raised this issue as well. Mr. Barnes noted that litigation may involve an attorney client privilege issue, and a director may possibly be deposed. The question is whether or not they are being deposed in their capacity as a director or in the capacity of an employer. Ms. Falls requested an extended break prior to entering into executive session. Mr. Harris noted that these issues have been handled well by Mr. Hummel and Mr. Matesich. Mr. Price noted the Board has received outstanding training with regard to fiduciary responsibility. The Board has further demonstrated such responsibility. The Board, Mr. Hummel, and Mr. Matesich have excelled at putting aside personal interests. According to Mr. Price, if a director can look at an issue objectively, then they do not have to recuse themselves. Mr. Matesich inquired, in the event a director excuses himself, how can the director make an informed decision without having the information. According to Mr. Barnes, the director must not participate in the decision making, in that event.

Mr. Lhota recessed the meeting at 9:45 am, and reconvened the meeting at 10:10 am.

John Williams, Assistant Attorney General noted the Ethics Commission and General Assembly acknowledge that a certain degree of conflict will exist in these circumstances; however, the expertise of such directors, by way of their background is essential. The specific issue today involves discussion of litigation strategy, and ultimately, there is very little for the Board to decide regarding this issue. The disclosure

of the information will be to assist the Board in making decisions as to how it moves forward, and conducts business, in light of pending litigation. Mr. Hummel noted that he understands his fiduciary duty and has no conflict.

Motion was made by Mr. Bryan, seconded by Mr. Caldwell, to enter executive session to discuss pending litigation. Roll call was taken and the motion passed 11-0.

Motion was made by Mr. Bryan, seconded by Mr. Pitts to adjourn executive session. Roll call was taken and the motion passed 11-0.

Motion was made by Mr. Matesich, seconded by Mr. Hummel to adjourn the meeting at 11:30 am. Roll call was taken and the motion passed 11-0.

Upon motion by Mr. Harris, seconded by Mr. Smith, the Board adjourned at 11:28 am. Roll call was taken, and the motion passed 11-0.

November 24 prepared by: Thomas Woodruff, Interim Director Self Insured Department.