

BWC Board of Directors
Thursday, August 28, 2008, 8:00 a.m.
William Green Building
Neil Schultz Conference Center
30 West Spring Street, 2nd Floor (Mezzanine)
Columbus, Ohio 43215

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

Members Absent: None

CALL TO ORDER

Mr. Lhota called the meeting to order at 8 a.m. and the roll call was taken. Mr. Caldwell was not present for the opening session.

Mr. Lhota tabled the approval of the July minutes until the Board session on August 29.

SWEARING IN OF WORKERS' COMPENSATION BOARD MEMBERS

Mr. Lhota welcomed Thomas Pitts as the new member of the Workers' Compensation Board. Mr. Pitts is a 1979 graduate of the University of Akron School of Law and serves as adjunct professor of law for the school's workers' compensation seminar. Since graduation, he has been in private practice representing workers in workers' compensation and Social Security disability claims. Mr. Pitts is a member of the Ohio Association for Justice and President, Summit County Association for Justice.

Mr. Lhota individually swore in Mr. Hummel and Mr. Price for new terms of membership on the Workers' Compensation Board and swore in Mr. Pitts as the new member.

ANNOUNCEMENTS

The Workers' Compensation Board would meet first at 7:45 a.m. August 29 in the Auditorium for an official photograph.

RECESS

Mr. Smith moved that the meeting of the Workers' Compensation Board be recessed until 11:30 a.m. Mr. Hummel seconded and the meeting was recessed by Mr. Lhota.

RECONVENING

Mr. Lhota reconvened the meeting at 11:30 a.m. Following a roll call vote, all members were present. Mr. Caldwell was present when reconvened.

COMMITTEE ASSIGNMENTS

Ms. Falls reported that the Governance Committee had met earlier this morning and approved recommendations of committee assignments. She noted that the following changes to the committee assignments of the Workers' Compensation Board were recommended to Chairman Lhota: Mr. Smith to be re-assigned from the Governance Committee to the Audit Committee as a new member and vice chair; Mr. Pitts to be assigned to the Actuarial Committee and Governance Committee. Mr. Lhota concurred in those recommendations. Ms. Falls made a motion that the Board adopt these recommendations and Mr. Bryan seconded. The motion was approved by unanimous roll call vote.

RECESS

Mr. Smith moved that the meeting of the Workers' Compensation Board be recessed until 8:00 a.m., August 29, 2008. Mr. Hummel seconded and meeting was recessed by Mr. Lhota.

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Columbus, Ohio 43215

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

Members Absent: None

Others Present: John Williams, Assistant Attorney General;
Ron O'Keefe, Fiduciary Counsel

CALL TO ORDER

Mr. Lhota reconvened the meeting at 8:00 am. Roll call was taken, and all members were present. Mr. Caldwell and Mr. Price thanked former member Philip Fulton for his dedicated service to the Board, and wished him well.

Mr. Lhota expressed his sincere gratitude for the service and dedication of former director, Philip Fulton. Mr. Lhota introduced a resolution extolling the contributions of Mr. Fulton. Mr. Price made a motion to adopt the resolution, which Mr. Caldwell seconded. By unanimous roll call vote, the Board expressed,

WHEREAS, Governor Ted Strickland appointed Philip J. Fulton to the Ohio Bureau of Workers' Compensation Board of Directors on June 12, 2007;

WHEREAS, Philip J. Fulton served with distinction on the Audit Committee, the Actuarial Committee and the Board of Directors;

WHEREAS, Philip J. Fulton provided valuable input on the formation of the Board and its committees during the inaugural year of the Board;

WHEREAS, in recognition of his commitment and knowledge of the workers' compensation system, his colleagues on the Board of Director's looked to him for information and advice on the injured worker's issues;

NOW THEREFORE, it is hereby resolved as follows:

RESOLVED, that the Ohio Bureau of Workers' Compensation Board of Directors recognizes the unique skills and dedication of Philip J. Fulton to the Board;

BE IT FURTHER RESOLVED, that the Board herewith expresses its sincere gratitude to the "man who wrote the book" on Ohio workers' compensation law for the invaluable contributions he has made to the Ohio workers' compensation system;

BE IT FURTHER RESOLVED, that this resolution be included in the minutes of this meeting, and that a copy of this resolution be sent to Philip J. Fulton.

William J. Lhota, Chairman

James Hummel

James W. Harris, Vice-chairman

Jim Matesich

Charles A. Bryan

Thomas R. Pitts

David Lee Caldwell

Larry Price

Alison L. Falls

Robert C. Smith

Kenneth M. Haffey

The Board recognized the reappointments of Mr. Hummel and Mr. Price, as well as the appointment of Mr. Pitts.

COMMITTEE REPORTS:

ACTUARIAL COMMITTEE

Mr. Bryan presented the Actuarial Committee report. The committee had the first reading of the reserve audit report from June 30, 2008. At the September 2008 meeting, the committee will decide whether to accept or reject the report, which will then go to the Workers' Compensation Council. The committee continues to evaluate reserving issues. The committee had the first reading of proposed adjudicating committee policy, which will be evaluated again at the next meeting. Finally, the Chief Actuarial Officer report provided updates on department projects.

AUDIT

Mr. Haffey presented the Audit Committee report. The committee had first consideration of claims procedure and firefighting protective equipment rules. The committee had the second reading of professional service fees, including a presentation by Bob Coury, Chief of Medical Services and Compliance.

Motion was made by Mr. Haffey, seconded by Mr. Smith, as follows: that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend rule 4123-6-08 of the Administrative Code, "Bureau Fee Schedule," to adopt the provider fee schedule effective January 1, 2009. This motion consents to the Administrator amending rule 4123-6-08 and enacting Appendix A to the rule as presented at the Audit Committee.

Motion was made by Mr. Harris, seconded by Mr. Caldwell, to amend the motion of Mr. Haffey, as follows: to add the language "except physical medicine fee shall remain at \$51.00".

Mr. Harris commended the Bureau staff for its work on the professional fee schedules. Mr. Harris noted, however, that it was discussed at a public forum that there has been no increase in fee reimbursement in ten years, more specifically with regard to rehabilitation medicine. Mr. Harris noted that the Bureau should not be reducing the fee, but rather, leave it set at \$51.00. Mr. Smith noted the commitment that BWC has made to review these fees yearly, but is in favor of the proposed \$50.00 fee. Mr. Bryan asked what the cost impact of leaving the fee at \$51.00 or using the proposed \$50.00. Mr. Coury indicated the estimated savings with regard to physical medicine reimbursement could be around 2.6 percent. The spending differential is estimated at a reduction from \$22.3 million to \$17.75 million per year.

Lengthy discussion ensued concerning this matter. Mr. Coury discussed the development of the Bureau fee schedule, including the analysis of ten thousand CPT codes, and the evaluation of industry best practices and the Medicare relative value scale. The Bureau pays one hundred thirty two percent of Medicare. Local codes are developed by the Bureau. Due diligence is exercised in developing conversion factors. Discussion was made by Mr. Matesich and Mr. Pitts regarding the study of private insurers and their fee schedules. Mr. Coury has evaluated this issue and others. Mr. Coury reminded the Board that the Bureau does face different dynamics, including an open provide network, freedom of choice of doctor, and due process that is built into the system.

Ms. Falls expressed understanding of Mr. Harris' concerns, and acknowledged the importance of the yearly review that the Bureau will be undertaking of this issue. However, she raised concern over the possible relative insignificance of one dollar in savings generated by a one dollar reduction in reimbursement. Mr. Price noted that it is important to listen to constituents at forums. Mr. Pitts raised the issue of policy considerations and the Bureau's working relationships with front line medical providers. Mr. Matesich inquired as to whether other types of providers had fee schedules that were lowered. Mr. Coury noted that fee reductions were recommended for many other types of providers. Mr. Matesich expressed concern with selecting a particular type of provider to be treated as an exception to the general staff recommendations for fee schedules. Marsha Ryan, Bureau Administrator, suggested that if current fee levels are to be maintained, then it could be across the board, with regard to all fee schedules and provider types. Mr. Coury noted that it is important to have consistency with conversion factors.

Mr. Harris noted that he took exception to the idea that questioning a particular item is micro-managing. He stated that the Board was not intended to do no more than simply rubber stamp recommendations of the Bureau staff. Mr. Price stated that the Board must look beyond the numbers. Mr. Matesich indicated his position is consistent with Ms. Ryan, to the extent that any adjustments to fees should be consistent.

Motion was made by Mr. Pitts, seconded by Mr. Matesich, to amend the amendment as follows: "to remain at the current fee level".

After discussion and agreement of all movers and seconders all motions, and amendments to motions, were withdrawn.

ETHICS TRAINING

David Freel, Executive Director of the Ohio Ethics Commission, made a presentation on ethics matters, including financial disclosure and transactions. Mr. Lhota and Mr. Haffey stated the Board appreciates what the Ethics Commission does. Mr. Price encouraged Board members to avoid problems by asking questions early.

FIDUCIARY RESPONSIBILITY

Mr. Lhota directed the attention of the Board members to the memorandum regarding fiduciary duties included in the Board materials. Mr. Lhota requested Mr. O'Keefe, fiduciary counsel to the Board, to review the memorandum with the Board. Mr. O'Keefe noted that the prior Board discussion today regarding Ethics Training touched upon the duties of care and loyalty, which are critical elements of fiduciary duty. Board members are trustees to the BWC fund, and as trustees are required to exercise the highest duty of care. The duty of care further requires Board members to provide advice and consent regarding the recommendations of the Administrator and general oversight of the Bureau. Another fiduciary duty of the Board is the duty of loyalty to both the BWC fund and its stakeholders, which requires acting in good faith and without conflict of interest. Ms. Falls inquired about any new court decisions with regard to governance and exercising fiduciary responsibility. Mr. O'Keefe indicated there was nothing new that needed to be noted. Mr. Pitts inquired as to how to proceed when there was a potential conflict of interest. Mr. O'Keefe responded that it was important for the director to identify and resolve a potential conflict of interest or exercise recusal from acting on the matter under discussion. Assistant Attorney General John Williams participated in the discussion.

MINUTES

Upon motion by Mr. Smith, seconded by Mr. Harris, the minutes of the July 25, 2008 meeting were approved by a unanimous roll call.

(return to) AUDIT COMMITTEE

Mr. Haffey presented the remaining report. A presentation of the fiscal year 2010 – 2011 biennial budget was made by Tracy Valentino, Chief of Fiscal and Planning. Motion was made by Mr. Haffey, seconded by Mr. Harris, as follows: that the Workers' Compensation Board of Directors adopt the recommendation of the Audit Committee and approve the Bureau's proposed biennial budget for fiscal years 2010 and 2011 for submission to the Office of Budget and Management. Roll call was taken, and the motion to approve the biennial budget was approved unanimously 11-0.

The fourth quarter executive summary report of the Internal Audit Department was delayed until September 2008.

INVESTMENT COMMITTEE

Mr. Smith presented the report. Due diligence was exercised to discover that Barclays uses derivatives that conflict with our IPS. Mercer Consulting made a discussion of derivatives. Use of derivatives is pervasive and widely accepted with public institution investors. All Ohio pension funds use derivatives.

Motion was made by Mr. Smith, seconded by Ms. Falls, as follows: that the Board of Directors approve and adopt the recommendation of the Investment Committee to amend current section IV.C.vii and current section IV.C.ix.b. of the Statement of Investment Policy and Guidelines to permit the conservative and controlled use of derivatives by the funds or their investment managers. The exact changes adopted as a result of this motion will be incorporated in the minutes of this meeting of the Board. Roll call was taken and the motion passed 11-0.

Motion was made by Mr. Smith, seconded by Mr. Pitts, as follows: that the Board of Directors approve and adopt the recommendation of the Investment Committee to rescind the Board's April 2008 approval of Barclays Global Investors as the Bureau's Intermediate Duration U.S. Fixed Income Commingled Passive Index Manager for both the Public Work Relief Employees' Fund and Marine Industry Fund, for the reasons set forth in the memorandum dated August 28, 2008. Roll call was taken and the motion passed 11-0.

Motion was made by Mr. Smith, seconded by Mr. Caldwell, as follows: that the Board of Directors approve and adopt the recommendation of the Investment Committee to approve State Street Global Advisors as the Bureau's Intermediate Duration U.S. Fixed Income Commingled Passive Index manager for both the Public-Work Relief Employer's Fund and Marine Industry Fund, for the reasons set forth in the memorandum dated August 28, 2008, and upon such terms as are outlined in State Street's response to the request for quote issued March 11, 2008 and such other terms as are favorable to the Bureau. Roll call was taken and the motion passed 11-0.

GOVERNANCE COMMITTEE

Ms. Falls presented the report. Discussion was made of the process for the Board's advice and consent regarding a possible new hire for the position of Superintendent of Safety and Hygiene. In addition, Governance Committee discussed committee assignments and made recommendations to the Chair. Finally, a new Board member orientation program was discussed. Motion was made by Ms. Falls, seconded by Mr. Price, as follows: that the Workers' Compensation Board of Directors adopt the recommendation of the Governance Committee and approve the new board member orientation program. Roll Call was taken and the motion passed 11-0.

A break was taken in the meeting at 9:50 am. Chairman Lhota reconvened the meeting at 10:05 am.

MONTHLY FINANCIAL REPORT

The enterprise report was presented by Ms. Valentino. Discussion was made of the July 31, 2008 financial position, and the external financial statement audit. Adjustments will be posted September 2008. The adjustments may impact the fiscal year 2009 opening balances. Net assets have decreased due to a net investment loss. Bruce Dunn, Chief Investments Officer, discussed Bureau investments, and normal fluctuations. Mr. Bryan raised issues concerning the collection of premiums in arrears, noting that this is unusual.

AGENCY GOALS / OPERATING PERFORMANCE METRICS

A hand out and chart are incorporated into the minutes. Presentation was made by Ms. Ryan and Ray Mazzotta, Chief Operating Officer, along with Ms. Valentino. Discussion was made on how the Bureau works to achieve its goals, including the maintenance of adequate reserves and stable premiums. It is important to bring goals and objectives together. Long range planning is critical. Discussion was made of agency wide goals, division goals and iteration. The goals package must be communicated to employees as employees need to know what to do to implement strategy and achieve goals. Mr. Mazzotta and Ms. Valentino discussed three hand outs and a power point presentation that are incorporated into the minutes. All of this information was discussed with Mercer Consulting. A shared services model was discussed. Further discussion was made of an enterprise reporting package, including financial soundness and operational soundness. Metrics include lost cost measures, expense / efficiency measures, premium measures, and others. There was robust discussion of strategic goals.

Mr. Matesich left the meeting at 11:00 am.

Efficiency was discussed at length. Mr. Bryan commended the staff on its breakthrough with this report. He believes it is as good as he has seen from comparable organizations. Ms. Falls indicated that she and Ms. Ryan may revisit Bureau Administrator goals for 2008 and 2009 based upon this new information. Ms. Falls asked how the Bureau makes sure it remains sensitive to the customer service aspect of the organizations. With regard to the issue of sensitivity to customer service, Ms. Ryan noted there are specific steps to be taken with regard to driving customer service. Reinforcing that customer service is the agency's first internal priority is important. Decision making must be customer focused, but also consistent with policy and law. Mr. Pitts suggested that when examining the return to work rates in this performance metrics, the Bureau consider economic activity and trends, including the unemployment rate.

DEEP DIVE

Mike Travis, Chief Ombudsperson, made a presentation to the Board. Such presentations are to be made on a semi-annual basis. A handout and pamphlet are incorporated into the minutes. Mr. Travis' office handles complaints, determines future trends, and identifies problems. His office is on pace for ten thousand customer contacts this year. Contacts include claimants, employers, and providers. The Ombuds office will be using e power for tracking complaints. Mr. Price is interested in how customers are dealt with both in contact and tracking, handling and control.

ADMINISTRATOR BRIEFING

Ms. Ryan introduced the new Executive Director of the Industrial Commission of Ohio, Christa Deegan. Ms. Deegan spoke briefly, and emphasized the significance of accountability and consistency from her office.

Ms. Ryan discussed Workers' Compensation University. It is the largest outreach forum for the Bureau. The Bureau has also attended a legislative reform session, which was sponsored by several Ohio legislators as a forum for the business community to discuss regulatory reform. The first session was held August 13, 2008, and one more is scheduled for September. There was some workers' compensation discussion, with respect to group rating and small businesses. Outreach to constituents with the Ombuds office was mentioned. David Hollingsworth, consultant, is meeting with stakeholders concerning rating reform efforts. Discussion was also made with regard to web interactive tools, including MIRA II.

There was a MIRA II briefing at the Workers' Compensation Council meeting by Rex Blateri, Rate Adjustment Supervisor. Ms. Ryan thanked Mr. Bryan for arranging visits to the call centers

of Safe Auto and Medical Mutual. Ms. Ryan announced the filling of the position of Medical Director, by Robert Balchick, who shall begin next week. There shall be a self insuring employer public forum in September 2008. There are ten speakers signed up at this point. The Office of Budget and Management shall receive the Bureau's biennial budget for 2010 and 2011. Preparation of this budget has been marked by a period of intense activity by Bureau employees.

Ms. Ryan discussed the internal ethics training occurring at the Bureau. The one hour training is required every other year, and the training is more frequent for financial filers. Ninety-nine percent of the staff has completed the training.

Ms. Ryan noted that there have been four worker fatalities since the last meeting. Ms. Ryan reviews all worker fatality reports, and facilitates the claims process. The fatalities in 2008 have represented a decrease in total fatalities from 2007. There have been fifty-seven fatalities in 2008, whereas there were ninety-five fatalities in 2007, at the same point in time, with a total of one hundred thirty-six total fatalities in 2007. Mr. Lhota indicated that it is very important to reduce the number of accidents, and to strive towards reaching the safety goal of zero fatalities. Mr. Harris commended Ms. Ryan for the sensitivity and relevance of her report.

Upon motion by Mr. Caldwell, seconded by Mr. Haffey, the Board recessed into executive session, for the purpose of reviewing pending litigation matters. Roll call was taken, and the motion passed 10-0.

Upon motion by Mr. Pitts, seconded by Mr. Caldwell, the Board returned from executive session into open meeting by a roll call vote of 10-0. Following this return, Mr. Smith moved to adjourn, and Mr. Hummel seconded. By unanimous roll call vote, the Board adjourned at 1:04 PM.

August 28 prepared by: Larry Rhodebeck, Staff Counsel
August 29 prepared by: Thomas Woodruff, Staff Counsel
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August 29, 2008