

BWC Board of Directors

BOARD MEETING

Friday, September 25, 2009, 8:00 A.M.

William Green Building

30 West Spring St. 2nd Floor (Mezzanine)

Columbus, Ohio 43215

MEMBERS PRESENT: William Lhota, Chair
James Harris, Vice Chair
Charles Bryan
David Caldwell
Alison Falls
Ken Haffey
James Hummel
Jim Matesich
Thomas Pitts
Larry Price
Robert Smith

Members Absent: None

Counsel Present: John Williams, Assistant Attorney General

CALL TO ORDER

Mr. Lhota called the meeting to order at 8:00 a.m. and the roll call was taken.

Mr. Lhota reported that Mr. Caldwell would be late because of traffic

MINUTES OF AUGUST 28, 2009

Mr. Lhota requested three changes to the minutes: Page 2, last paragraph, should read, "Also, essentially all directors attend all meetings of the Workers' Compensation Board and its committees." Page 3, first incomplete paragraph, should read, "Issues are generally resolved at the Committee level, so Board meetings are very efficient." Page 8, paragraph 2, should read, "Mr. Haffey asked how often BWC would provide progress reports to the Board."

Mr. Bryan moved to approve the August 28, 2009, minutes as amended. Mr. Harris seconded and the motion was approved by a roll call vote of ten ayes and no nays.

AGENDA

Mr. Lhota amended the agenda by adding, “ Policies and Procedures for Public Forums” to the Governance Committee; adding, “ Private Employer Group Marketing, Rule 4123-17-61.1,” and removing, “ Private Employer Credibility Table, Rule 4123-17-05.1,” from Actuarial Committee; and adding, “ Recommendations for Committee Appointments,” following the Audit Committee. A second session of the Governance Committee will convene immediately after conclusion of the Workers' Compensation Board meeting.

Mr. Pitts moved to adopt the agenda as amended. Mr. Matesich seconded and the agenda was adopted by a roll call vote of ten ayes and no nays.

COMMENTS BY CHAIR

Mr. Lhota commented that the heavy lifting of the Workers' Compensation Board is done at the four committee meetings. On September 24, there were forty-four opportunities for directors to participate in discussions of workers' compensation issues, of which forty-one were used. The Directors attendance at Committee meetings allows the Board meeting to proceed very efficiently.

COMMITTEE REPORTS

GOVERNANCE COMMITTEE

Ms. Falls reported that the Governance Committee had continued its discussion on the board committee structure for medical issues. As the discussion evolved, it was decided there was a need for a Medical Services Committee. First, the use of committees has served the Workers' Compensation Board well in its functioning. Second, medical services are mission-critical for the Board, BWC, and the workers' compensation community. The creation of new committees is a prerogative of the Workers' Compensation Board under the Ohio Revised Code.

Ms. Falls moved that the Bureau of Workers' Compensation Board of Directors create a Medical Services Committee for review and advising the Board on medical issues. Mr. Price seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Ms. Falls stated that establishing the Medical Services Committee was a landmark event for the Workers' Compensation Board. Recommendations on membership would be presented later in the meeting.

Ms. Falls reported that the Governance Committee had also recommended approval of amendments to safety rules for workshops and factories, Ohio

Administrative Code Chapter 4123:1-5. During the second reading before the Governance Committee, a robust discussion regarding this rule continued.

Ms. Falls moved that upon recommendation of the Governance Committee the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123:1-5 of the Administrative Code, the Workshops and Factories Safety Rules. The motion consents to the Administrator Amending thirty-two rules of the Workshops and Factories Safety rules as presented at the Governance Committee. Mr. Hummel seconded the motion.

Mr. Caldwell reported to the meeting at 8:10 a.m.

Mr. Pitts congratulated BWC staff for the work on revising the rules. This is the largest section of the safety rules and involved much input from stakeholders. The work done to reach a consensus on these rules is a remarkable achievement in light of the differences of opinion. Mr. Harris also commended the constituent groups for their input.

The motion was approved by a roll call vote of eleven ayes and no nays.

Ms. Falls reported that there was also a first reading of rules on inpatient care fees and Health Partnership Plan (HPP) provider rules. In the future, these rules will be ceded to the new Medical Services Committee.

Ms. Falls also reported that the Governance Committee had recommended a new policy on the conduct of public forums. There were minor changes and the policy formalizes the proceedings.

Upon the recommendation of the Governance Committee, Ms. Falls moved that the Bureau of Workers' Compensation Board of Directors approve the Policies and Procedures for Public Forums as presented here today. Mr. Pitts seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Ms. Falls reported that the policy has two items derived from the Workers' Compensation Board self-assessment process: The policy now permits directors to question presenters. Also, there are formal procedures on follow-ups to presentations. Ms. Falls noted that this is evidence that the self-assessment process has led to substantial improvements in Board functioning.

Ms. Falls reported that the Governance Committee was unable to complete its agenda on September 24, and would continue its meeting after the meeting of the Workers' Compensation Board.

ACTUARIAL COMMITTEE

Mr. Bryan reported that the Actuarial Committee took action on three rules. The first was on group sponsorship requirements, proposed to level the playing field in creating groups.

Upon recommendation of the Actuarial Committee, Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend Rule 4123-17-61.1, Sponsorship Certification Requirements. The motion consents to the Administrator amending Rule 4123-17-61.1 as presented at the Actuarial Committee. Mr. Matesich seconded and the motion was approved by roll call vote of eleven ayes and no nays.

Upon recommendation of the Actuarial Committee, Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation concerning the public employer taxing district employer premium rates effective January 1, 2010. The resolution consents to the Administrator fixing public employer taxing district employer rates to achieve an overall decrease of seventeen percent in the total collectible premium from the previous year, and consents to the Administrator preparing rate rules consistent with this policy. Mr. Caldwell seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Bryan also reported that the Actuarial Committee approved changes to eligibility for retrospective rating by both private employers and public employer taxing districts. The primary change is that reviewed financial statements may be accepted for public employers participating in a Tier II plan.

Upon the recommendation of the Actuarial Committee, Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to amend Rule 4123-17-42 and to adopt new Rule 4123-17-42.1 of the Administrative Code, relating to public employer taxing district eligibility for retrospective rating. The motion consents to the Administrator amending and adopting the rules as presented at the Actuarial Committee. Mr. Pitts seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Bryan reported that the Actuarial Committee held a discussion on private employer rate reform. BWC had proposed a reduction of the credibility table to a maximum rate of 65% and to add three new levels for small employers. BWC also proposed a break-even factor rule for 2010 which varied in accordance with experience rating. However, the proposals were subject to a first reading and there was not general agreement on waiver of the first reading. So these two proposals will be under consideration for a second reading in October for action.

Mr. Bryan also reported that the Actuarial Committee still has some difficult but important tasks yet to complete. One critical issue is the competitiveness of Ohio workers' compensation to that of other states. Prior studies show Ohio rates are high. BWC has undertaken much effort in recent years to lower them. The issues are which factors to compare between states and insurers and which states Ohio rates should be compared to. Mr. Bryan noted that trying to develop a better measure of competitiveness of Ohio with other states is not easy to do, nor is there consensus on the best way to approach this. BWC has not completed its studies and it will be several months before there is a full report.

INVESTMENT COMMITTEE

Mr. Smith reported that the investment portfolio market value as of September 23, 2009 was over \$18.6 billion, an increase of \$354 million or 1.9% month to date. Unaudited net assets rose to an estimated \$3.95 billion as a result of this portfolio value increase. The portfolio consists of 72% in bonds, 24% in equities, and 4.5% cash.

Based on the recommendation of the RFP Evaluation Committee, the Investment Committee selected a manager for implementation of the international investments mandate. The Investment Committee recommends Barclays Global Investors. Preceding the Investment Committee's recommendation, Barclays conducted a presentation.

Mr. Smith moved that the Workers' Compensation Board of Directors adopt the recommendation of the Investment Committee to approve Barclays Global Investors as the non-U.S. international passive equities manager for the State Insurance Fund, for the reasons set forth in the presentation of the Passive Indexed Manager RFP Evaluation Committee dated September 24, 2009, and the memorandum prepared by Mercer Investment Consulting dated September 22, 2009, and upon such terms as are outlined in Barclays' response to the Request for Proposals issued July 2, 2009, and such other terms as are favorable to the Bureau. Ms. Falls seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Smith also reported that the Investment Committee heard the annual report on brokerage activities. BWC traded \$5.5 billion in bonds and \$1.3 billion in equities, chiefly as the result of rebalancing the State Insurance Fund portfolio. Yet, BWC incurred only \$215,000 in equity commissions. The commissions were paid at the very low average commission rate of \$0.004 per share.

AUDIT COMMITTEE

Mr. Haffey reported there were no actions taken by the Audit Committee. The committee received the Fiscal Year 2009 fourth quarter Executive Summary Report from Caren Murdock, Chief of Internal Audit. Comments were issued in five audits: Mellon Daily Automated Compliance, Change Management, Bankruptcy Self-Insured Securitization Process, Collections, and Ethics Program. In the discussion on comments, it was noted that two-thirds of the eighty-two outstanding comments arose in fiscal year 2009. Therefore, there are not a lot of old, unresolved comments. Seventy of the eighty-two are scheduled for resolution by June 2010. There was also a discussion on comments that BWC management chooses not to resolve.

There was also a continuation of the August discussion of accrual accounting and Generally Accepted Accounting Principles (GAAP) led by Barb Ingram, Director of Accounting. This month's report focused on liabilities, expenses, and matching items. Mr. Haffey invited questions be directed to himself, Ms. Ingram, or Tracy Valentino, Chief, Fiscal and Planning. The BWC audited report must be delivered by September 30. With respect to the 2009 fiscal year external audit, there was a report from Ms. Valentino on the process of the transition from June 30 to July 1. There will be a future report on the Comprehensive Annual Financial Report (CAFR) of the State of Ohio.

Finally, there was an executive session on litigation and the external audit.

RECOMMENDATIONS FOR COMMITTEE APPOINTMENTS

Mr. Lhota reported that the Ohio Revised Code mandates three committees for the Workers' Compensation Board. The Governance Committee was created by the Board in order to enhance its functioning. Mr. Lhota commended Ms. Falls for her chairmanship of the Governance Committee. Mr. Lhota further reported that today the Workers' Compensation Board authorized a Medical Services Committee to strengthen the resources of the Workers' Compensation Board. Ms. Falls and the Governance Committee have recommended reducing the Governance Committee from five to three members because much of the work of that committee is finished. Director reassignments are set forth in the motion.

Upon the recommendation of the Governance Committee, Mr. Lhota moved that the Bureau of Workers' Compensation Board of Directors approve a new "Medical Services Committee," and approve the following revisions to committee assignments:

- Accept the resignation of Directors Hummel and Pitts from the Governance Committee;
- Accept the resignation of Director Harris from the Investment Committee;

- Appoint Director Haffey to the Investment Committee;
- Appoint Directors Harris, Hummel, and Pitts to the Medical Services Committee; and,
- Appoint Director Harris as Chair of the Medical Services Committee.

Ms. Falls seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Lhota reported that the Medical Services Committee will first convene in October.

MONTHLY ENTERPRISE REPORT

Ms. Valentino delivered the September Enterprise Report. She reported that BWC had just completed the payroll reporting cycle for July and August. Compared with prior years, collections are 11% less. The rates had been reduced by 5%, so some decrease was expected. Thirty-eight thousand employers were lapsed. This was a lower percentage, 15%, than expected, whereas the average for past years is between 16 and 17%. The process for obtaining compliance after lapse is first to contact the employer by email, where the email address is available. Then, BWC contacts the TPA and employer by mail. The next step is for BWC to estimate the payroll and bill the employer. BWC Collections and field staff will work through October. The remaining lapsed employers, which are estimated to be about 12,000, will be certified to the Attorney General for collection. Employers can bring themselves into compliance by paying the premium, entering a payment plan, or use the 50/50 program. Fewer participated in the 50/50 program this reporting period, reporting \$149 million in premiums versus \$175 million in past years. BWC usually expects a spike in payments at one point, but receipts were distributed fairly evenly over the collection period.

The cash balance as of August 31 was \$1.7 billion, of which \$931 million represents trade payables for the investment transition. Net investment income was \$897 million, consisting of \$103 million in net realized losses, \$143 in net realized gains, and \$155 million in interest and dividend income. These elements drove the increase in net assets to \$3.5 billion. The funding ratio was 1.21 and the net leverage ratio was 5.72, both within the guidelines set by the Workers' Compensation Board. The benefits and compensation adjustment expense will have a full report in November. There was an increase in reserves, but a net benefit claims declined by \$10 million because of a decline in lump sum settlements.

The Administrative Cost Fund (ACF) expenses are less than projected. BWC employees have already taken 27% of their cost savings days, resulting in savings

of \$1.5 million. BWC is observing equipment purchase controls and travel restrictions. This has forced BWC management to be more creative with training.

Mr. Hummel asked how many of the 38,000 employers include bankrupt or closed business. Ms. Valentino replied the 38,000 includes all employers who lapse, regardless of reason. If there is a bankruptcy or close of business, the employers will contact BWC with updates and cancellations.

Mr. Lhota asked about the budget for elevator repair. Ms. Valentino replied the whole cost is in last year's budget. Tom Croyle, Chief Information, reported that the elevator repair had just started and will take about two years to complete.

ADMINISTRATOR BRIEFING

Marsha Ryan, BWC Administrator, reported that she had traveled to Cleveland last week for two presentations before a meeting of self-insuring employers and one before The Profit Factor, a minority-owned business conference. The presentations included reports on the implementation of the Deloitte Study. There were many favorable comments from employers. The self-insurers were particularly interested in recommendations concerning entrance to self-insurance and security requirements. There is a future conference on safety sponsored by Skoda, Minotti, and Co., Mr. Haffey's firm. BWC's Superintendent of Safety and Hygiene will be speaking at this event.

The fiscal year 2009 annual report is in progress. As requested, portions of the report will be distributed to directors as they become available. The complete report will be submitted to the General Assembly in December.

Ms. Ryan reported that she gave a report on comprehensive rate reform before the Workers' Compensation Council on September 23. An uncodified section of HB79 requires a report on group rating and that is contained in the report, "Plan for Adequacy and Equity in Ohio's Group-Experience-Rating Program." There was a robust question and discussion session following the report. Mr. Sesser, Taylor Lumber, had favorable comments on reductions of his premiums. On the "Comprehensive Review" by Deloitte, Ms. Ryan reported on the 146 recommendations and the resources needed to implement them over the next several years. There were good responses and challenging questions.

Ms. Ryan noted that Virginia McInerney, Director, Workers' Compensation Council, reported she had hired two lawyers and an administrative assistant. This is similar to the staffing for the pension oversight council. Senator Steve Buehrer solicited comments and issues for future agenda topics, and projected that the Workers' Compensation Council will be able to review proposed legislation in the future. Mr. Smith observed that he thought that the primary focus of the Workers'

Compensation Council was to review proposed legislation. He asked whether the Workers' Compensation Council had not yet done so to date. Ms. Ryan replied that Director McInerney reported the Workers' Compensation Council could not perform that task until the staff had been added.

Mr. Matesich requested a schedule of meetings of the Workers' Compensation Council. Kim Finley, Staff Attorney, Workers' Compensation Council, reported that the Council will have meetings on the last Wednesday of each month. The next one is scheduled for October 28. Mr. Harris added that the Workers' Compensation Council will send emails to the public with information and schedules.

Concerning pending legislation, Ms. Ryan reported that HB249 has been filed to permit trade and business associations access to confidential injured worker and dependent contact information by expanding the definition of "journalist." BWC is concerned about solicitation of injured workers. The position of BWC staff is to maintain the current confidentiality of injured worker information.

HB94 would create a rebuttable presumption that specific types of cancer or contagious or infectious diseases contracted by public safety workers are compensable for workers' compensation. Other states have adopted this provision. There has been no activity recently, but Ms. Ryan predicted future hearings. BWC is preparing actuarial projections if the bill is approved.

HB216 would impose financial capacity requirements on Professional Employer Organizations (PEOs). BWC would prefer that policies be in the name of the employer of record because of more accurate calculation of the experience rating. The aggregation of payroll obstructs accurate experience rating. BWC is coordinating its response with the Ohio Department of Jobs and Family Services and Ohio Department of Taxation.

HB259 is relatively new and has not been assigned to a committee. It would change the investment policy by removing the prudent person standard and mandate a laundry list of approved investments.

Ms. Ryan reported that Senator Jay Rockefeller, West Virginia, had amended the pending health reform bill in the United States Senate Finance Committee to require that the medical component of workers' compensation be folded into the national health care policy. Indemnity would not be included. Ms. Ryan reported she had discussed this provision with Ohio lobbyist Andrew McCracken. Other states oppose the provision. Mr. Harris requested copies of BWC comments on the proposal of Senator Rockefeller.

EXECUTIVE SESSION

There was no executive session.

ADJOURNMENT

Mr. Lhota reported that the next meetings will be held on October 29 and 30.

Mr. Smith moved to adjourn the meeting. Mr. Caldwell seconded and Mr. Lhota adjourned the meeting after the motion was approved by a roll call vote of eleven ayes and no nays.

Prepared by: Larry Rhodebeck, Staff Counsel
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