

BWC Board of Directors

BOARD MEETING

Friday, October 30, 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
David Caldwell
Alison Falls
Ken Haffey
James Hummel
Jim Matesich
Thomas Pitts
Larry Price
Robert Smith

Member Absent: Charles Bryan

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. Bryan was absent because of a previously scheduled commitment.

MINUTES OF SEPTEMBER 25, 2009

Ms. Falls requested that the last paragraph of page 3 be changed to read: “. . . September 24. An additional meeting was scheduled immediately following the meeting of the Workers' Compensation Board.”

Mr. Lhota requested that Tom Croyle be identified on page 8, paragraph 2, as the Chief Information Officer. He also requested that in the Call to Order that all members were present except Mr. Caldwell.

Mr. Hummel moved to approve the September 25, 2009, minutes as amended. Mr. Haffey seconded and the motion was approved by a roll call vote of ten ayes and no nays.

AGENDA

Mr. Lhota noted that an amended agenda was distributed this morning. The amended agenda included a presentation for the Medical Services and Safety Committee; adding items to the Actuarial Committee for rules; and moved the Governance Committee report to the last committee report. There is no executive session. A public forum will begin at 10 a.m. Mr. Lhota reserved the right to recess at an appropriate time.

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

COMMITTEE REPORTS

ACTUARIAL COMMITTEE

Mr. Matesich reported that the Actuarial Committee had met on October 26 because of the planned absence of Committee Chairman Bryan. The major issue was discussion and second reading of the private employer credibility table for the policy year beginning July 1, 2010 and of the private employer break-even factor. John Pedrick, Chief Actuarial Officer, and Liz Bravender, Actuarial Director, walked the Actuarial Committee through a discussion of both issues, with extensive questions and discussion by members of the Workers' Compensation Board present. Among the issues considered were the group employer and non-group employer loss ratios, the effect of the break even factor, group and non-group utilization, the stratified break-even factor for the 2010 policy year, and objectives for the future.

The members of the Actuarial Committee are aware of the current economy. Nevertheless, it should be noted that the changes approved do not take effect until July 1, 2010, and no payment will be made by employers until February 2011. Tracy Valentino, Chief, Fiscal & Planning, reviewed employer payment options which help reduce any hardship. In any case, many employers will see only a small increase, or an actual decrease. Mr. Matesich requested comments from the Workers' Compensation Board, however, none were offered at this time.

Upon the recommendation of the Actuarial Committee, Mr. Matesich moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to amend Rule 4123-17-05.1 of the Administrative Code, Private Employer Credibility Table Used for Experience Rating. The motion consents to the amendment of Rule 4123-17-05.1, effective July 1, 2010, as presented to the Actuarial Committee. Mr. Caldwell seconded and motion was approved by a roll call vote of ten ayes and no nays.

Mr. Lhota commented that as Mr. Matesich stated the committees do the bulk of the heavy lifting in their sessions. Members of the public who attend the committee sessions recognize the robust discussion of issues. The five committees offer 45 opportunities for directors to attend and participate. For the month of October, directors participated in 84% of these opportunities to attend. If one includes directors listening to the sessions by phone, there was 89% participation.

Upon the recommendation of the Actuarial Committee, Mr. Matesich moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to adopt Rule 4123-17-64.1 of the Administrative Code, Private Employer Group Experience Rating Break-Even Factor. The rule establishes break-even factors to be applied to group rating experience modifications for private employers effective July 1, 2010. The motion consents to the Administrator amending the rule as presented at the Actuarial Committee. Mr. Hummel seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Upon the recommendation of the Actuarial Committee, Mr. Matesich moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to amend Rule 4123-17-37 of the Administrative Code, Employer Contribution to the Safety and Hygiene Fund. The motion consents to the Administrator amending the rule as presented at the Actuarial Committee. Mr. Caldwell seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Mr. Matesich reported that the Actuarial Committee also held first readings on rules for the public employer taxing district base rate rules, break-even factors, the capping rule, and the one claim rule. The Actuarial Committee voted to waive the second reading for these rules and recommend their approval.

Upon the recommendation of the Actuarial Committee, Mr. Matesich moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations relating to the public employer rate rules, effective January 1, 2010. The motion consents to the Administrator amending rules 4123-17-33 and 4123-17-34 of the Administrative Code as presented at the Actuarial Committee. Mr. Pitts seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Upon the recommendation of the Actuarial Committee, Mr. Matesich moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to adopt Rule 4123-17-64.2 of the Administrative Code, Public Employer Group Experience Break-Even factors. The rule establishes break-even factor to be applied to group rating experience

modifications for public employers effective January 1, 2010. The motion consents to the Administrator amending the rule as presented at the Actuarial Committee. Mr. Hummel seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Upon the recommendation of the Actuarial Committee, Mr. Matesich moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to amend Rules 4123-17-03 and 4123-17-71 of the Administrative Code. The amendments relate to the cap or limit on the annual increase in a public employer's experience modification. Mr. Caldwell seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Mr. Matesich also reported that Joy Bush, Manager, New Programs, updated the Actuarial Committee on the group retrospective rating program. Don Berno, Board Liaison, led a discussion of the committee charter and changes, especially the duties of the vice chair. The Actuarial Committee approved the amended charter and forwarded it to the Governance Committee.

INVESTMENT COMMITTEE

Mr. Smith reported that the assets of the investment portfolio as of October 28, 2009 were \$18.459 billion, a slight decrease from September 30, 2009 of \$100 million. The portfolio consists of 71% in bonds, 26% in equities, and 2% in cash. Net assets declined to an estimated \$3.75 billion from \$3.85 billion at the end of September from the month to date portfolio market value decline. Net assets have increased by \$1.2 billion for the fiscal year, an overall 7% increase for the fiscal year to date. He thanked BWC staff for the work done in the transition of the portfolio.

Mr. Smith reported that the Investment Committee had approved an investment manager for three fixed income mandates of the Passive Indexed Manager Requests for Proposal (RFP) for the State Insurance Fund as reflected in the Statement of Investment Policy and Guidelines.

Mr. Smith moved that the Workers' Compensation Board of Directors adopt the recommendation of the Investment Committee to approve State Street Global Advisors as the exclusive U.S. Aggregate Fixed Income Passive Index Manager for the State Insurance Fund for the full asset class mandate, representing a targeted fifteen percent (15%) of total State Insurance Fund invested assets, for the reasons set forth in the presentation of the Passive Indexed Manager RFP Evaluation Committee dated October 29, 2009, and the memorandum prepared by Mercer Investment Consultants dated October 26, 2009, and upon such terms as are outlined in State Street's 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 ten ayes and no nays.

Mr. Smith moved that the Workers' Compensation Board of Directors adopt the recommendation of the Investment Committee to approve State Street Global Advisors as a Long U.S. Credit Fixed Income Passive Index Manager for the State Insurance Fund for a portion of this asset class mandate, such portion representing a targeted twenty percent (20%) of the total State Insurance Fund invested assets, for the reasons set forth in the presentation of the Passive Index Manager RFP Evaluation Committee dated October 29, 2009, and the memorandum prepared by Mercer Investment Consultants dated October 26, 2009, and upon such terms as are outlined in State Street's Response to the Request for Proposals issued July 2, 2009, and such other terms as are favorable to the Bureau. Mr. Harris seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Mr. Smith moved that the Workers' Compensation Board of Directors adopt the recommendation of the Investment Committee to approve State Street Global Advisors as a U.S. Treasury Inflation Protected Securities Fixed Income Manager for the State Insurance Fund for a portion of this asset class mandate, such portion representing a targeted five percent (5%) of total State Insurance Fund invested assets, for the reasons set forth in the presentation of the Passive Index Manager RFP Evaluation Committee dated October 29, 2009, and memorandum prepared by Mercer Investment Consultants dated October 26, 2009, and upon such terms as are outlined in State Street's 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 ten ayes and no nays.

Mr. Smith reported that representatives of State Street were at the Investment Committee meeting to make a presentation and take questions from directors.

For the Asset Class Annual Report, the Investment Committee held a discussion over its contents and approved it for submission to the Governor.

Mr. Smith moved 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 submitted to the Investment Committee on October 29, 2009, and that it submit the report to the Governor and legislative leaders in fulfillment of the Board's obligation under Revised Code § 4121.12(F) (12). Mr. Caldwell seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Mr. Smith reported that the report would be forwarded to the Governor. For next month's meeting, the Investment Committee will consider the specialty funds and additional investment managers.

AUDIT COMMITTEE

Mr. Haffey reported there were no actions taken by the Audit Committee. The committee had three presentations.

Mr. Berno reviewed the changes proposed for the committee charter. The changes were mostly standard ones which will apply to all committees.

Ms. Valentino conducted a walk-through of investment accounting. Among those looking at BWC investments are BWC Fiscal and Planning; BNY Mellon, the outside investment accountant; JPMorgan Chase, the investments custodian; and the investment managers themselves. Mr. Haffey stated that the Workers' Compensation Board and others can be assured that there is excellent oversight over investments.

Caren Murdock, Chief of Internal Audit, conducted an open discussion. Three current projects are winding-up; eight audits are in process. Ms. Murdock updates Mr. Haffey on a regular basis.

Finally, Mr. Haffey reported Ms. Valentino will conduct a session in November on reinsurance including Towers Perrin Consulting, the BWC reinsurance consultant. The Audit Committee conducted an executive session to discuss investigations by the Inspector General and the litigation update from James Barnes, Chief Counsel.

MEDICAL SERVICES AND SAFETY COMMITTEE

Mr. Harris reported that the Medical Services and Safety Committee met on October 29 for the first time. Mr. Berno and Ann Shannon, Legal Counsel, presented the committee charter and changes were made. The charter was approved and recommended to the Governance Committee.

Freddie Johnson, Director of Managed Care Services, and Robert Coury, Chief, Medical Services and Compliance, presented the calendar of future fee schedule considerations. The Medical Services and Safety Committee also approved the selection of Mr. Hummel as vice chair.

GOVERNANCE COMMITTEE

Ms. Falls reported that the Governance Committee had met on October 29 and conducted the second reading of the five-year rule review rules and of the 2010

Inpatient Fee Schedule rule, Ohio Administrative Code Rule 4123-6-37.1. The fee schedule presentation was conducted by Freddie Johnson and Anne Casto, Consultant, Medical Services.

Upon the recommendation of the Governance Committee, Ms. Falls moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend Rule 4123-6-37.1 of the Administrative Code, Payment of Hospital Inpatient Services. Mr. Price seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Upon recommendation of the Governance Committee, Ms. Falls moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123-6 of the Administrative Code, the Health Partnership Program rules, and Chapter 4123-7 of the Administrative Code, the Payments to Health Care Providers rules. The Bureau presented these rules for first consideration in four presentations at prior meetings of the Governance Committee beginning in June 2009. The motion consents to the Administrator amending, rescinding, and retaining without change the rules of Chapters 4123-6 and 4123-7, as presented at the Governance Committee for second consideration. Mr. Smith seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Ms. Falls commented that the Governance Committee this year had been able to clean up the backlog of 248 rules for the five year rule review. She thanked staff for the work done on that project, especially since stakeholder feedback needed to be documented. The task involved rewriting of medical management rules and elimination of Chapter 7.

Ms. Falls further reported that the Governance Committee completed review of its charter and was presenting it to the Workers' Compensation Board. The Governance Committee completed the annual review of the governance guidelines and there was an extensive discussion of the process of waiving a second reading of rules. In the end, the Governance Committee adopted the original recommendation of Mr. Price that waivers be made only after motion and roll call vote.

Upon the recommendation of the Governance Committee, Ms. Falls moved that the Board of Directors amend the portion of the Governance Guidelines concerning Rules/New Business Submittal Process to clarify the procedure for a Committee to waive the second reading of a rule or policy. The new language shall read:

“ Rules/New Business Submittal Process

“ Generally, BWC staff should submit proposed rules and new business items to the Board Liaison at least two weeks prior to the upcoming Board meeting or Committee meeting. It is recognized that unforeseen circumstances may prevent such advance submission. For issues concerning the various Committees, the Board Chair, with the advice and consent of the Committee Chair, shall determine whether issues are presented to the Board for resolution.

“ Information regarding major policy initiatives or rule changes that may be contemplated by the BWC should be submitted for the agendas of its Committees for a ‘first reading’ and subsequent reporting by the Committee chair to the full Board. The same major policy initiative or rule change would then be included on the agendas of the Committee at a later meeting for a ‘second reading’ and possible approval. The first and second readings provide the Board and its Committee members the opportunity to obtain background information, ask questions of BWC staff members, and engage in discussion regarding the topics that are under consideration. The same major policy initiative or rule change would proceed from a first reading to a second reading at a later Committee meeting before the Board would consider approval.

“ This process of providing both a first and second reading ensures a fully informed vote by the Board concerning a major policy initiative or rule change. *However, the Committee may wish to waive a ‘second reading’ of a major policy initiative or rule change. In the event a Committee wishes to waive the second reading of a major policy initiative or rule change, a motion to waive shall be submitted for consideration, and voted upon by roll call vote. If the motion to waive the second reading passes at the Committee level by a majority vote, the Committee may proceed to consider the underlying major policy initiative or rule change for recommendation to the Board.*” [Emphasis by Ms. Falls.]

Mr. Price seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Ms. Falls raised the issue that when any committee waives the second reading, what is the status and significance of stakeholder input for those who are waiting for the second reading to comment. The Governance Committee concluded that it was an administrative issue and that BWC post at its website that an issue was being accelerated for consideration and urge stakeholder comment.

Mr. Price observed that in his two years on the Workers' Compensation Board, stakeholder input has been a tremendous and valuable source for his deliberations.

Ms. Falls reported that all members of the Governance Committee were present at the meeting of the Medical Services and Safety Committee and concurred in the appointment of Mr. Hummel as vice chair of that committee.

Mr. Harris thanked Ms. Falls for her leadership of the Governance Committee and the work it accomplished in undertaking the embarrassing backlog of rules for the five year rule review and reducing the volume of the medical management rules.

Mr. Lhota moved to nominate Mr. Hummel as vice chair of the Medical Services and Safety Committee. Mr. Pitts seconded and the motion was approved by a roll call vote of ten ayes and no nays.

MONTHLY ENTERPRISE REPORT

Ms. Valentino delivered the October Enterprise Report. She reported that the table at the top of page 3 had been changed to reflect that month's financial information more clearly.

September marked the end for payroll reporting period for private employers because August 31 fell on a Monday and there was a lag in cash reporting in September. The largest change was in investment income. The net assets are at \$3.848, which are double the net assets of September 2008 and the beginning of the decline of the markets. BWC experienced \$49 million in net income. The portfolio had \$28 million in net realized gains and \$386 in net unrealized gains. Cash and cash equivalents are somewhat less than \$1 billion, most of which is set aside to settle a trade, due in October.

Receipts from private employers totaled \$88 million, which is 43% less than September 2008. The difference relates mostly to timing. Net assets rose by \$1.3 billion mostly in gains in the investment portfolio. The reserve for uncollectible accounts receivable rose by \$14 million. Employer use of the 50/50 program declined slightly over 2008, at \$149 million. Accounts receivable lapses were consistent with the past; there is also consistency in certifications to the Attorney General.

Concerning the administrative cost budget, delays in payments were the result of the timing of the receipt of invoices. The decrease in the payroll expenditures was caused by hiring controls mandated by the Department of Administrative Services: the lack of a health insurance payment for the third payroll of July; and the use of 187,000 hours of Cost Savings Days (CSD's) by BWC employees. Forty percent of cost savings days have been taken and more are predicted to be used in November and December holidays. The CSDs have created a \$2 million reduction in spending. Information Technology undertook an evaluation of its consultants and renegotiated the consultant contract rates to 15% less. There was

also a decrease in Safety Grants. BWC just completed new equipment orders. Overall, BWC spending was \$32 million less than appropriated. When money is not spent by a department or payroll is not used, BWC Finance moves it to contingency fund for later use.

Mr. Harris asked why Safety Grants are down. Tina Kielmeyer, Chief of Customer Services, replied that there was some decline because of the timing of premium receipts. Abe Al-Tarawneh, Superintendent of Safety and Hygiene, reported to her an overall alarming decline. So the Safety and Hygiene Division is integrating the Safety Grants into overall safety programs. The recently completed comprehensive study commends use of Safety Grants.

Mr. Harris asked if the Workers' Compensation Board had done anything to contribute to the decline. Ms. Kielmeyer replied the board had not. Mr. Al-Tarawneh is planning to present ideas in the future to enhance safety.

Mr. Haffey remarked that the overall maintenance budget seemed high at 29%, but did not request an answer at this time. Ms. Valentino responded that some of this budget involves timing and includes Safety Grants, supplies, and printing.

Ms. Valentino further reported that cash receipts were \$100 million less than expected, 12% over 2008. Marsha Ryan, BWC Administrator, added that some decrease in collections was expected because of the rate decrease effective July 1, 2009.

Ms. Valentino reported that the funding and net leverage ratios are falling within the guidelines adopted by the Workers' Compensation Board. The ratios are mostly driven by investment income. Ms. Falls cautioned that the growth of net assets to \$3 billion reflected the volatility of the markets. The guidelines put high returns into perspective because the current performance falls in the mid-point of the range of the ratios.

ADMINISTRATOR BRIEFING

Ms. Ryan reported that the month of October has been quite busy. Deloitte Consulting has begun work as the new BWC actuarial consultant. Jan Lommele, Lead Principle for Deloitte, commented positively on the actions of the Workers' Compensation Board on investment policy.

There has been tremendous interest by the General Assembly in workers' compensation issues. Ms. Ryan acknowledged the presence of Virginia McInerney, Director, Workers' Compensation Council, at the meeting. Ms. Ryan further reported that she gave presentations on the Comprehensive Deloitte Report to the insurance committees of both houses. The House of Representatives

has made recommendations on statutory changes. Testimony before the Senate concerned rate reform.

Dozens of communications were made with members of the General Assembly and much correspondence was received from employers on group rating and rate reform. Responses were made by Communications and Employer Services under the direction of Ray Mazzotta, Chief Operating Officer; Tom Prunte, Director of Employer Management Services; and Ms. Kielmeyer. BWC has responded to every employer. Many of the responses were made to correct misinformation on rates.

Ms Ryan introduced John Hanna, the new Pharmacy Program Director. He formerly worked at Adena Health systems and will work with Dr. Robert Balchick, Medical Director.

BWC is now conducting roundtables with local government and business leaders on economic development in Ohio. The first was held in Mansfield during the week of October 19.

There are only three weeks before the next meetings of the Workers' Compensation Board. Directors will receive copies of the audited financial statements as released by the Ohio Auditor of State for inclusion in the annual report. BWC will continue development on the Drug Free Workplace and other safety programs for the Medical Services and Safety Committee.

BWC is partnering with other agencies on pandemic planning. Dr. Balchick has presented a plan to the Ohio Department of Health.

BWC is continuing work on investment of the specialty funds. Since administration of risk and benefits has been placed in Special Claims, there will be coordination with the Investments Department. There will be forthcoming reports on investment performance and reinsurance.

Ms. Ryan reported that she will soon be meeting with the CEOs of other state insurance funds. There is high interest in other states with developments in workers' compensation.

Senator Jay Rockefeller had introduced an amendment that would incorporate workers' compensation into the national health care program. This proposal is not currently found in current versions of any of the bills.

Christine Madriguera, Legislative and Policy Officer, reported on pending legislation. Most of the information is found in her written report submitted to the Workers' Compensation Board. She added that Ms. Ryan appeared at two

legislative hearings in the House of Representatives, although no bills have been introduced. Ms. Ryan's testimony has been distributed to the Board. At the request of Senator Steve Buehrer ten to twenty individuals presented "interested party" testimony. This has been a busy time for responding to correspondence and making presentations before the General Assembly. The first year of this General Assembly shows a different legislative environment. With each house controlled by different parties, fewer bills are passed because there must be true consensus. BWC activities are of high interest to the General Assembly.

Ms. Madriguera reported that Senate Resolution 118 was introduced on October 29, to examine the feasibility of private insurance. Mr. Lhota requested a copy be distributed to directors.

Mr. Smith commented that the Workers' Compensation Council was established to address the concerns of the General Assembly with workers' compensation, yet the committees of the General assembly still direct their questions to BWC and Administrator Ryan. Ms. Ryan replied that this reflects that the Workers' Compensation Council is still in its growing phases. Ms. McInerney is working to address this issue.

EXECUTIVE SESSION

There was no executive session.

ADJOURNMENT

Mr. Lhota reported that the next meetings will be held on November 19 and 20.

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

Prepared by: Larry Rhodebeck, Staff Counsel
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November 4, 2009