

BWC Board of Directors

BOARD MEETING

Friday, May 29, 2009, 8:00 A.M.

William Green Building

30 West Spring St. 2nd Floor (Mezzanine)

Columbus, Ohio 43215

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

Members Absent: None

Counsel Present: James Barnes, General Counsel and Chief Legal Officer

CALL TO ORDER

Mr. Lhota called the meeting to order at 8:00 a.m. and the roll call was taken. Mr. Pitts arrived at 8:15 a.m.

MINUTES OF APRIL 30, 2009

Mr. Harris moved to approve the minutes of April 30, 2009. Mr. Haffey seconded the motion.

Mr. Lhota requested that the reason given on paragraph 3 of page 2 be moved to paragraph 1. He also requested references to FY2009 in paragraphs 2 and 3 of page 6 include "year to date." Tracy Valentino, Chief, Fiscal and Planning, concurred in the changes.

The motion to approve the minutes was approved by a roll call vote of ten ayes and no nays.

AGENDA

Mr. Lhota reviewed the agenda and added a review of the 2010 calendar as an item.

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

Mr. Lhota announced that there would be an executive session at the end of the meeting, followed by adjournment.

COMMITTEE REPORTS

AUDIT COMMITTEE

Mr. Haffey reported that the Audit Committee received a report from Raj Subramanian, OBM Chief of Business Process and IT Audit, on the audit of Information Technology. The IT auditors of BWC's Internal Audit will be moved to the Office of Budget and Management effective June 22. The Audit Committee discussed the fiscal year 2010 budget and considered two motions.

Mr. Haffey moved that Workers' Compensation Board of Directors approve the Administrator's recommendation for the Fiscal Year 2010 annual administrative budget. The motion consents to a Fiscal Year 2010 budget of 305.9 million dollars for the operation of the Bureau of Workers' Compensation and the Bureau of Workers' Compensation Board of Directors as presented at the Audit Committee. Mr. Harris seconded and the motion was approved by a unanimous roll call vote of ten ayes and no nays.

Mr. Haffey further reported that the Audit Committee held discussions with Ms. Valentino on net assets and the correct level. The goal is to finish setting policy by July.

The Audit Committee discussed the 50 /50 payment program, employer participation, and payments. Ms. Valentino added that June 1 is the deadline for the second payment of premiums for the February reporting period. BWC will be discussing changes in the due dates.

Mr. Haffey moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to amend Rule 4123-17-14.2 of the Administrative Code, Bureau 50/50 Program. The motion consents to the Administrator amending the rule as presented at the Audit Committee. Mr. Smith seconded and the motion was approved by unanimous roll call vote of ten ayes and no nays.

Mr. Haffey also reported that Caren Murdock, Chief of Internal Audit, presented the quarterly audit report. Five additional audits were completed since the last quarterly

executive summary. She also reported on work over the last three months to resolve outstanding comments. Ms. Murdock also reported to the Committee management has decided to assume the risk of five (5) Internal Audit findings.

GOVERNANCE COMMITTEE

Ms. Falls reported that the Governance Committee had approved eight sets of rules as part of the five year rule review. She is pleased with the increased emphasis on transparency of rule revisions and stakeholder input.

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 4123:1-7 of the Administrative Code, the Metal Casting Safety Rules. The motion consents to the Administrator amending one rule and retaining without change thirteen rules of the Metal Casting Safety Rules as presented at the Governance Committee. Mr. Price seconded and the motion was approved by a unanimous roll call vote of ten ayes and no nays.

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 4123:1-9 of the Administrative Code, the Steel Making, Manufacturing, and Fabricating Safety Rules. The motion consents to the Administrator amending the five Steel Making, Manufacturing, and Fabricating Safety Rules as presented at the Governance Committee. Mr. Hummel seconded and the motion was approved by a unanimous roll call vote of ten ayes and no nays.

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 4123:1-11 of the Administrative Code, the Laundering and Dry Cleaning Safety Rules. The motion consents to the Administrator amending two rules and retaining without change two rules of the Laundering and Dry Cleaning Safety Rules as presented at the Governance Committee. Mr. Caldwell seconded and the motion was approved by a unanimous roll call vote of ten ayes and no nays.

Mr. Pitts arrived at the meeting at 8:15 a.m.

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 4123:1-1 of the Administrative Code, the Operation of Elevators Safety Rules. The motion consents to the Administrator amending two rules and retaining without changes three rules of the Operation of Elevators Safety Rules as presented at the Governance Committee. Mr. Harris seconded and the motion was approved by a unanimous roll call vote of eleven ayes and no nays.

Mr. Price moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123:1-13 of the Administrative Code, the Rubber and Plastics Safety Rules. The motion consents to the Administrator amending one rule and retaining without change three rules of the

Rubber and Plastics Safety Rules as presented at the Governance Committee. Mr. Hummel seconded and the motion was approved by a unanimous roll call vote of eleven ayes and no nays.

Mr. Price moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123:1-17 of the Administrative Code, the Window Cleaning Safety Rules. The motion consents to the Administrator amending five rules and retaining without change two rules of the Window Cleaning Safety Rules as presented at the Governance Committee. Mr. Caldwell seconded and the motion was approved by a unanimous roll call vote of eleven ayes and no nays.

Mr. Price moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123-18 of the Administrative Code, the Rehabilitation Rules. The motion consents to the Administrator amending thirteen rules and rescinding four rules of the Rehabilitation Rules as presented at the Governance Committee. Mr. Pitts seconded and the motion was approved by a unanimous roll call vote of eleven ayes and no nays.

Mr. Price moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123-5 of the Administrative Code, the Miscellaneous Claims Rules. The motion consents to the Administrator amending four rules, rescinding one rule, and retaining without change one rule of the Miscellaneous Claims Rules of chapter 4123-5, and amending related Rules 4123-3-08 and 4123-3-09 as presented at the Governance Committee. Mr. Haffey seconded and the motion was approved by unanimous roll call vote of eleven ayes and no nays.

Ms. Falls reported that the Governance Committee also discussed two additional sets of rules on a first reading: the new provider fee rules and non-complying employer rules. She thanked BWC for its staff support in the rule review process. She thanked Don Berno, Board Liaison, for his planning of rule presentations. So far, the Workers' Compensation Board has completed about 60% of the backlog of the five-year rule review.

Ms. Falls reported that the second major issue before the Governance Committee was the Workers' Compensation Board self-assessment. The Workers' Compensation Board will again request that Fiduciary Counsel, Ron O'Keefe coordinate receipt of responses and prepare summaries. The assessment form is now entitled the Workers' Compensation Board and Committees Self-Assessment form. The directors are to complete and return the form to Mr. O'Keefe by June 8.

Ms. Falls moved that the Bureau of Workers' Compensation Board of Directors approve the Board and Committee Self-Assessment Process and Form as presented to and approved by the Governance Committee on May 28, 2009. This motion consents to the recommendation of the Governance Committee to approve the above mentioned materials dated May 28, 2009. Mr. Hummel seconded the motion.

Mr. Hummel asked if the change was only to the form title and not its content. Ms. Falls confirmed that was the only change.

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

ACTUARIAL COMMITTEE

Mr. Bryan thanked all BWC staff management for work on changes in the group rating program.

Mr. Bryan reported that the Workers' Compensation Board had approved a 12% reduction in premiums, but needed to wait until groups were formed to set the break-even factor. The factor will be 1.311 and is applied to experience rating to bring equity to the July 1, 2009, rates.

Mr. Bryan 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, Group Experience Break Even Factor. The rule establishes a factor to be applied to group rating experience modifications. The motion consents to the Administrator adopting the rule as presented at the Actuarial Committee. Mr. Matesich seconded and the motion was approved unanimous roll call vote of eleven ayes and no nays.

Mr. Bryan also reported that the Actuarial Committee approved two rules on eligibility for group rating. One change was to retain the fifty-nine day lapse rule for policy year 2009.

Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to adopt Rule 4123-17-61 of the Administrative Code relating to an employer's cumulative lapses in coverage as criteria for group rating eligibility. The motion consents to the Administrator amending Rule 4123-17-61 as presented at the Actuarial Committee. Mr. Pitts seconded and the motion was approved unanimous roll call vote of eleven ayes and no nays.

Mr. Bryan reported that the Actuarial Committee approved rates for the four ancillary funds and conducted a discussion on pricing and benefits. At some point, BWC should be pro-active in advising and setting claims benefits for these programs.

Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations related to Rule 4123-17-29 of the Administrative Code, Disabled Workers' Relief Fund. The motion consents to the administrator retaining without change the current rates in the Disabled Workers' Relief Fund rule as presented at the Actuarial Committee. Mr. Hummel seconded and the motion was approved by a unanimous roll call vote of eleven ayes and no nays.

Mr. Bryan reported that Workers' Compensation Board was approving a 10% reduction in the premiums for the Marine Industry Fund. He moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to amend Rule 4123-17-19 of the Administrative Code, Marine Industry Fund. The motion consents to the Administrator amending the rule as presented here today. Mr. Matesich

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

Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations related to Rule 4123-17-20 of the Administrative Code, Coal Workers Pneumoconiosis Fund. The motion consents to the Administrator retaining without change the current rates in the Coal Workers Pneumoconiosis Fund rule presented at the Actuarial Committee. Mr. Caldwell seconded and the motion was approved by unanimous roll call vote of eleven ayes and no nays.

Mr. Bryan reported that the Actuarial Committee approved reduction of rates to Public Employer State Agencies by 3.75%. He moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to amend Rule 4123-17-35 of the Administrative Code, State Agency Rates. The motion consents to the Administrator amending the rule as presented at the Actuarial Committee. Mr. Matesich seconded and the motion was approved by unanimous roll call vote of eleven ayes and no nays.

Mr. Bryan reported that the Actuarial Committee also had information discussions on the reserve study being completed by June 30 by Oliver Wyman and to be included into the statement of net assets. The Deloitte study work group has been formed. The Actuarial Department has a new Director of Actuarial Analysis, Zia Rehman.

INVESTMENT COMMITTEE

Mr. Smith reported that for the month to date, the net assets of the State Insurance Fund had declined by 0.2%, or \$29 million. The net assets of the State Insurance Fund stand at \$1.572 billion. For the year to date, the decline has been 4%. The Investment Committee discussed a revised asset allocation and approved three transition managers to accomplish the change.

Mr. Smith moved that the Workers' Compensation Board of Directors accept the recommendation of the Investment Committee to approve Barclay's Global Investors, Russell Investments, and State Street Global Markets as the Bureau's pool of transition managers from which the Bureau may secure transition management services in satisfaction of the Bureau's Statement of Investment Policy and Guidelines, for the reasons set forth in the Transition Management RFP Report prepared by the BWC Investment Division dated May 28, 2009, and upon such terms as are outlined in their responses to the Request for Proposals issued February 19, 2009, and such other terms as are favorable to the Bureau. Mr. Hummel seconded and the motion was approved by unanimous roll call vote of eleven ayes and no nays.

Mr. Smith moved that the Workers' Compensation Board of Directors accept the recommendation of the Investment Committee to authorize the Administrator to issue a Request for Proposals ("RFP") for investment managers for the passive indexed investment asset classes within the State Insurance Fund, the Disabled Workers' Fund, and the Coal Workers Pneumoconiosis Fund, and to follow the anticipated timeline for

issuance of the RFP, evaluation of responses, and approval of the managers that is set forth in the presentation prepared by the BWC Investment Division dated May 28, 2009. Ms. Falls seconded and the motion was approved by unanimous roll call vote of eleven ayes and no nays.

Mr. Smith moved that the Workers' Compensation Board of Directors accept the recommendation of the Investment Committee to implement the described Priority One transition for the State Insurance Fund and to direct the Administrator to proceed to hire a transition manager to implement the Priority One under what is termed the 21st Century Transition Strategy, beginning in July 2009, as outlined in the materials prepared by the BWC Investment division dated May 28, 2009, and for the reasons set forth in the memoranda prepared by the BWC Chief Investment Officer and Mercer Investment Consulting, Inc. Ms. Falls seconded and the motion was approved by a unanimous roll call vote of eleven ayes and no nays.

Mr. Smith moved that the Workers' Compensation Board of Directors accept the recommendation of the Investment Committee to amend Section VI.A of the BWC Statement of Investment Policy and Guidelines ("IPS") to modify the indexed long duration fixed income performance benchmark applicable to the State Insurance Fund, as reflected in the red-lined version of the IPS and so incorporated by reference into the minutes of the Board meeting, for the reasons set forth in the memorandum of the BWC Chief Investment Officer dated May 21, 2009, and as supported by the memorandum of Mercer Investment Consulting dated May 27, 2009. Mr. Pitts seconded and the motion was approved by unanimous roll call vote of eleven ayes and no nays.

Mr. Smith moved that the Workers' Compensation Board of Directors accept the recommendation of the Investment Committee to adopt an asset allocation implementation strategy for the State Insurance Fund that would permit redemption of all cash interest income earned from the BWC fixed income managers at the end of each month, beginning in May 2009, and reinvestment of such cash interest income into equities, until such time that the equity transitions are sufficiently funded to the target asset allocations, for the reasons set forth in the memoranda prepared by the BWC Chief Investment Officer and Mercer Investment Consulting Inc. Mr. Caldwell seconded and the motion was approved by a unanimous roll call vote of eleven ayes and no nays.

Mr. Smith reported that the Investment Committee meeting also included the quarterly review of investment performance by Mercer Consulting.

Mr. Haffey departed the meeting at 8:45 am.

MONTHLY ENTERPRISE REPORT

Ms. Valentino provided the monthly enterprise report. April was a relatively quiet month. Premium and assessment income was \$173 million, with net revenue of \$151 million after adjustments. Benefits and compensation adjustment expenses were \$206 million with total operating expenses of \$214 million. Net investment income was \$84 million after investment expenses. The premium payments from Public Employer Taxing

Districts contributed receipts of \$89 million, although collections were \$19 million less than projected. The projection was based on assuming employers would be making an early payment, however, the discount was so small, few took advantage of it.

Mr. Harris asked how BWC calculates the discount. Ms. Valentino replied that the earlier the payment, the larger discount.

Claims payments in April were \$187 million. April had three bi-weekly payments, which increased payments by \$25 million over normal months. Eighty million was transferred from operating cash to the large-cap equity mandate. The BWC operating revenue for fiscal year to-date is \$1.8 billion, a decrease of \$32 million over the same period for fiscal year 2008. The decrease is due to an increase in the provision for uncollectible accounts receivable. The benefit and compensation adjustment expenses have decreased by \$659 million in fiscal year 2009 primarily due to a decrease in the change in reserves. Fiscal YTD premium collections are \$165 million less than the prior fiscal year, but are on target with collections. BWC moved the due date for the second 50/50 installment from May 1 to June 1. Public Employer Taxing Districts have until May 15 to report payroll. Currently 175 such employers have lapsed.

Ms. Falls asked how long after payment default before BWC lapses a coverage. Ms. Valentino replied that it would be three days after failure to pay. The May financial reports will show completion of the PETD and 50/50 program.

Mr. Price observed that the budget is \$28 million less than that appropriated by the General Assembly. He asked if the 4% budget cut by Governor Strickland affects BWC. Ms. Valentino replied that BWC generally participates in budget cuts. However, the specific ones ordered in 2009 are not applicable to BWC. Hiring freezes and equipment purchase controls do apply, which has led to \$50 million less spending than the budget.

Mr. Price asked if executive orders specify BWC. Ms. Valentino replied Executive Orders can apply to GRF agencies, non-GRF agencies, or all agencies. When an executive order states it applies to "all agencies", then BWC complies.

Mr. Price asked what happens to funds if not spent. Ms. Valentino replied that the funds are part of the ACF allocation and will be leveraged into the assessment process for the next year.

Mr. Lhota observed that there is a \$22 million positive difference in the 2010 budget and what the legislature appropriated for the BWC. This amount is not available to help the state GRF budget since this money will not be collected by the BWC through rates.

Mr. Harris asked what the drivers in reduced public employer payments were. Ms. Valentino replied she was not able to report now on all of them. However, there are wide-spread reports of lower tax collections for all local governments.

ADMINISTRATOR REPORT

Ms. Ryan thanked the Workers' Compensation Board for the work it has done to complete group rating reform. There will be other measures in rate-making to approve at the June meetings.

The Bureau of Workers' Compensation budget is in the Senate Committee and there will be testimony on June 2. The Insurance, Commerce, and Labor Committee will be accepting amendments prior to the hearing. BWC will have better information on the amendments at the June Board meeting.

The Legal Division, including James Barnes, Chief Legal Counsel, and Tom Woodruff, Director, Self-Insured Department, are working this week on the Chrysler and General Motors reorganizations. BWC is making efforts to ensure the self-insured workers' compensation liability is covered. When the reorganizations occur, BWC will take steps to ensure there is adequate security. The Ohio Attorney General has engaged the law firm of Baker and Hostetler to assist in the bankruptcy cases.

On May 20, BWC was led by Tom Croyle, Chief Information Officer, in a fitness walk. Three hundred forty-three BWC employees participated, the largest amount of any agency.

Ms. Ryan reported on delivery of medical services. Robert Coury, Chief, Medical Services and Compliance, and his staff are looking at improvement. BWC is working with The Ohio State University Hospitals. Also, the medical director for the State of Washington Department of Industry visited BWC to report on service delivery. The Workers' Compensation Board public forum on medical services prompted the look at delivery. Ms. Ryan proposed for consideration by the Board a Workers' Compensation Board committee on delivery of medical care.

Mr. Pitts reported that he had visited the State of Washington to examine its system. Delivery issues were also part of the recent University of Akron workers' compensation seminar. It was held in Las Vegas and attended by about fifty-five Ohio attorneys. The visit to Washington involved meeting with the department medical director to discuss treatment and use of prescription medication. Doctor Wickheiser of the University of Washington, College of Public Health will be coming to Ohio State to establish a workers' compensation research center.

Mr. Smith suggested establishing a special committee to evaluate the Administrator's proposal regarding health care delivery. Mr. Lhota assigned the issue to the Governance Committee and asked Ms. Falls, Chair of the Governance Committee to take the lead.

Mr. Price requested a memorandum from BWC on the effect of the bankruptcy cases of General Motors and Chrysler.

CALENDAR

Mr. Lhota asked if there were any conflicts on the proposed 2010 calendar. Mr. Matesich suggested moving the October meeting to October 21 and 22 because the

proposed dates are five weeks after the September meeting and three weeks before the November meetings. Mr. Berno reported that the only issue was the October 11 holiday, which could delay distribution of the financial reports to the Workers' Compensation Board.

EXECUTIVE SESSION

Mr. Harris moved to enter executive session pursuant to Ohio Revised Code §121.22(G)(1) for the purpose of discussing the evaluation of Administrator Ryan. Mr. Matesich seconded and the motion was approved by unanimous roll call vote of ten ayes and no nays.

Mr. Lhota reported that the only business after the executive session will be adjournment.

ADJOURNMENT FROM EXECUTIVE SESSION

Upon motion of Ms. Falls, second by Mr. Caldwell, the Board adjourned from Executive Session by a roll call vote of 8-0.

ADJOURNMENT

Upon motion of Mr. Hummel, second by Mr. Harris, the Board voted 8-0 to adjourn the meeting at 11:10 am.

Prepared by: Larry Rhodebeck, Staff Counsel

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June 4, 2009