

BWC Board of Directors

**BOARD MEETING**

**Friday, August 28, 2009, 8:00 A.M.**

**William Green Building**

30 West Spring St. 2<sup>nd</sup> 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.

**MINUTES OF JULY 31, 2009**

Mr. Harris moved to approve the July 31, 2009, minutes. Mr. Haffey seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

**AGENDA**

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

## **ETHICS TRAINING**

David E. Freel, Executive Director, Ohio Ethics Commission, conducted training on Ohio ethics law. His presentation concluded at 10:00 am, thus fulfilling the Directors' statutory requirement of two hours of ethics training for the biennium. Copies of his materials are included in the minutes by reference.

## **FIDUCIARY RESPONSIBILITY**

F. Ron O'Keefe, Fiduciary Counsel, Workers' Compensation Board, conducted training on the fiduciary responsibilities of the Directors. His remarks were approximately thirty minutes. Ms. Falls asked that the minutes reflect Mr. O'Keefe's comments on the duty of care surrounding the decision-making process. The remarks follow:

### *"The Final Step In The Duty Of Care -- Document The Decision-Making Process*

*No discussion of the duty of care would be complete without the admonition to the Board that, no matter how complete and thorough the Board discussions may be, and how objective and loyal the conduct of each Board member is, there should be detailed minutes kept of each Board and Committee meeting. These minutes should reflect the length and intensity of the discussion of key issues before the Board or Committee, and also record with precision the actions of the Board or Committee with respect to the matters on which it takes action. The minutes should also document such matters as whether further follow up was requested from the Administrator or Staff."*

Ms. Falls asked how the Board should ensure the delivery of timely and accurate information. Mr. O'Keefe responded he has seen improvement in this area. He believes the Board is getting good information and encouraged Directors to continually improve the process.

Ms. Falls reported that Mr. O'Keefe would return in November to observe the Committee meetings.

## **COMMENTS BY CHAIR**

Mr. Lhota commented on the achievements of the Workers' Compensation Board over its first two years. For the first time there is a Funding Policy for the State Insurance Fund. Also, all directors attend all meetings of the Workers' Compensation Board and its committees. It is committees which undertake most of the work of the Board. Moreover, there is an annual self-assessment not required by HB100, but which complies with good governance policy. There is

also an evaluation of the Administrator for Governor Strickland. Finally, there are public forums in which stakeholder input is solicited. These achievements are the product of work by the Governor and his staff, BWC Administrator Marsha Ryan, and BWC staff as well. Issues are resolved at the Committee level, so Board meetings are very efficient.

## **COMMITTEE REPORTS**

### **GOVERNANCE COMMITTEE**

Ms. Falls reported that the Governance Committee had recommended approval of two sets of rules after a second reading. Ohio Administrative Code chapter 4123-9 is a set of rules on Bureau general policy and organization. They were streamlined into one rule mandating that BWC be organized along functional requirements.

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 41223-9 of the Administrative Code, BWC General Policy and General Organization Rules. The motion consents to the Administrator rescinding all twelve rules of Chapter 4123-9 and adopting new rule 4123-5-01 as presented at the Governance Committee. Mr. Price seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Ms. Falls reported that the Governance Committee had also recommended approval of vocational rehabilitation provider fee rules.

Mr. Pitts stated that he was concerned about the increase in the base hourly rate from \$70 to \$75 for vocational rehabilitation providers. The national rate is higher, so BWC should consider a later look for increases to encourage professionals in this area to work in Ohio and to enhance the rehabilitation of workers.

Mr. Smith asked the Administrator if she is concerned about the quantity and quality of providers. Ms. Ryan replied she was not concerned about the quantity or quality and feels there is a good geographic distribution. A national standard is an important criterion, but BWC must look at a number of issues in setting provider fees.

Ms. Falls moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to adopt Rule 4123-18-09 of the Administrative Code, the "Vocational Rehabilitation Provider Fee Schedule" rule. The motion consents the Administrator adopting Rule 4123-18-09 and enacting Appendix A to the Rule as presented at the Governance Committee. Mr. Pitts

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

Ms. Falls reported on the discussions held at the Governance Committee meeting. Robert Coury, Chief, Medical Services and Compliance, reported on the medical management process. The Workers' Compensation Board may need to restructure to commission an ad hoc medical committee, or a new medical management committee. This will be discussed more in September. Both models have positive attributes. Regardless of the choice, there is a consensus that medical management is "mission critical." Also on the calendar for September are more five-year rule reviews; and a first reading of committee charters. The charters will be referred to the committees for discussion in October and approval in November. Finally, in September, the Governance Committee will discuss the process for review of stakeholder letters to directors and director response.

Ms. Falls requested a discussion on when to schedule committee meetings during months when there are no public forums. Mr. Lhota responded that when there is no forum, committee times can be changed. Ms. Falls requested that directors submit their suggestions on schedules to Don Berno for circulation.

### **ACTUARIAL COMMITTEE**

Mr. Bryan reported that the Actuarial Committee had a discussion of the first reading on January 1, 2010, rates for Public Employer Taxing Districts (PECs). The BWC is recommending a 17% decrease, although there is a baseline recommendation that it could be a decrease as high as 19.8%. There were other discussions regarding the break-even factors, the retrospective program, and other proposals by BWC staff and Oliver Wyman Consulting.

There was a waiver of the first reading on the PEC annuity table to reflect the change of the discount rate from 5% to 4.5%. The table is used for individual case reserves and MIRA 2, but not lump-sum settlements.

Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to amend Rule 4123-17-60 of the Administrative Code, Annuity Factors. The motion consents to the Administrator amending the rule as presented at the Actuarial Committee. Mr. Matesich 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 had approved a change of deadlines for group retrospective rating from the last Friday in September to December 31, 2009, but only for the 2010 policy year.

Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to amend Rule 4123-17-73 of the Administrative Code, Group Retrospective Rating, to change the application deadline for Public Employer Group Retrospective Rating. 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 eleven ayes and no nays.

Mr. Bryan also reported that the application for PEC group experience rating was amended. Sponsors had requested an extension of the deadline for notice to members and filing of group rosters.

Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations to amend Rule 4123-17-62 of the Administrative Code, "Application for Group Experience Rating." 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 eleven ayes and no nays.

Mr. Bryan also reported that there were other discussions concerning the reserve audit by Oliver Wyman Consulting. He encouraged reading of the entire supporting study because of the notable downward development in claims costs of 15% since 2002. While better to have accuracy at the beginning of a loss period, a downward trend is preferable to an upward one. The discussion on MIRA 2 was tabled until September. Regarding Comprehensive Rate Reform, Mr. Pedrick reported rules on homogeneity will be discussed in September and could affect policies beginning July 1, 2010. Finally, there has been a new hire in the Actuarial Division and the total of credentialed actuaries is now three.

## **AUDIT COMMITTEE**

Mr. Haffey reported that the Audit Committee received reports from Caren Murdock, Director, Internal Audit. The Audit Division made its first annual report on staffing, projects, and accomplishments. For example, of 156 comments in audits finished during the fiscal year, 97% received acceptance by BWC management and 94% were validated. Fiscal year 2009 was discussed for completion and open items. There was a discussion of staff certification and credentials, goals for 2010 fiscal year, and financial goals of Tracy Valentino, Chief, Fiscal and Planning. This involved a discussion of assumptions and projections of the financial goals. There was also a discussion of accrual accounting and Generally Accepted Accounting Principles (GAAP) led by Barb Ingram, Director of Accounting. Robert Coury, Chief, Medical Management and Compliance, and Matt Gill, Director of Training, had a presentation and summary

on BWC ethics training. Finally, there was an executive session in which James Barnes, Chief Legal Officer, reported on litigation.

### **INVESTMENT COMMITTEE**

Mr. Smith reported that the Investment Committee took no action at its meeting. The investment portfolio as of August 26 was valued at \$18.1 billion, whereas it was \$17.2 billion at the end of fiscal year 2009. Net assets rose to an estimated \$3.3 billion, including a net month to date positive return through August 26 of 1.9% for stock and bond investments, a \$343 billion increase. Mr. Smith reported that Bruce Dunn, Chief Investment Officer, submitted an asset allocation report on transition to the new investment policy. Second quarter results by Mercer Investment Consulting, Inc., show valuation of the portfolio at \$17.2 billion, which reflected a fiscal year 2009 negative return of 1.1%. Nevertheless, the BWC performance exceeded the BWC policy benchmarks. Mr. Smith also reported that Mr. Dunn submitted the goals of the Investment Division for fiscal year 2010, including potentially adding cash management and assisting in reviewing with Mercer potential asset allocation changes for the specialty funds. Mr. Haffey added that the various investment buckets of each of the trust funds were explained in tables submitted and discussed by Mr. Dunn. Mr. Smith commended Ms. Falls for suggestions to with Mr. Dunn on these presentations.

### **AMENDMENT TO REPORT OF GOVERNANCE COMMITTEE**

Ms. Falls reported that the meeting of the Governance Committee also included a first reading of rules on workshops and factories. The executive summary and matrix of rule changes run to forty-two pages, for a total of 152 changes. The second reading will be in September. Because of work of BWC staff, professionals, and stakeholders, a consensus was reached and there were no objections to the rule changes.

### **FISCAL YEAR 2010 AGENCY OBJECTIVES**

Ray Mazzotta, Chief Operating Officer, reported on Fiscal Year 2010 Agency Objectives. He reported that the objectives were derived from Ms. Ryan's performance agreement. There are twenty-five objectives, grouped under four major headings: make Ohio's workers' compensation system more competitive; maintain the highest level of quality care for injured workers; reinforce the BWC brand of operational excellence through efficiency, improved customer service, and expanded capabilities and skills; and develop and implement strategies to improve financial and operational soundness and stability.

Mr. Mazzotta highlighted several of the objectives. In making the system more competitive, the group rating program now has a new product. Deloitte Consulting recommendations will be evaluated and implemented. BWC has many investment goals, however, they are combined in strengthening returns and controls through the new Investment Policy Statement. Cooperation with other state agencies is manifested through a project coordinated by John Sledd, Manager of Employer Compliance, on payroll reporting. A second involves Ann Shannon, Legal Counsel, who participates on the Attorney General's task force on independent contractors.

With respect to injured worker care, BWC will continue to develop and execute quality, cost-effective design and appropriate fee schedules. BWC will establish a quality pool of medical and vocational providers to ensure access to care. BWC will implement a comprehensive, integrated model for service delivery. The goal is reduction of lost time. BWC will implement a new process for the Workers' Compensation Board to increase focus on medical issues. BWC will partner with The Ohio State University College of Public Health on issue specific research projects surrounding delivery of medical services.. BWC will redesign the Drug-Free Workplace (DFWP) to a more relevant and contemporary design under the direction of the Safety and Hygiene Division. Then it will be taken to the Actuarial Division for proper pricing.

With respect to reinforcement of the BWC brand of operational excellence, BWC will undertake a correspondence audit. This is a complete review of what is sent out, why, and how. BWC will optimize its electronic interaction with customers. Workers' Compensation University will move on-line and more BWC services will move to the web. BWC will continue agency-wide process and mapping and quality improvement processes like Kaizen. So far, 150 core processes have been mapped. In processing the application for employer coverage, a Kaizen project viewed 178 steps and reduced them significantly. BWC will develop and maintain a highly skilled, professional work force in a demanding environment. This will include bringing more work into the agency and away from outside contractors. BWC will develop customer and industry profiles to better understand service needs and resources. This will enable better response to complaints. BWC will review the medical billing system to eliminate duplication.

Mr. Mazzotta further reported with respect to improvement of financial and operational soundness and stability, BWC will continue to develop the Enterprise Report to measure BWC against key industry metrics. Mr. Barnes has undertaken an agency- wide assessment of risk to financial and legal exposures. This involves establishing liaisons between the Legal Division and the business units. BWC will execute an internal audit plan for fiscal year 2010, including consulting services. Finally, BWC will work with the self-insuring community to improve participation

and Self-Insuring Employers Guaranty Fund requirements. BWC conducted a stakeholders meeting on August 24 to improve the management of the Guaranty Fund and prevent disruptions.

Mr. Haffey asked how often BWC would progress reports to the Board. Mr. Mazzotta replied it would be mostly through committee meetings. It should be possible to do an annual or semi-annual overview. Mr. Haffey suggested that it be done semi-annually. Ms. Ryan announced that the October meeting would include review of goals as an agenda item.

Mr. Pitts commended Ms. Ryan, Mr. Mazzotta, and staff for their ambitious goals, especially those relating to medical management. He was also heartened to learn about bringing more functions of BWC back into BWC. The practice of out-sourcing began in the 1980s and, in his opinion, should be reversed.

### **MONTHLY ENTERPRISE REPORT**

Ms. Valentino first solicited feedback from the walk-through of the June 30 close-out of the books and the flow of information and the completion of the external audit. Mr. Haffey replied that it was excellent and provided a great overview that a non-accountant would need. She will continue the discussion during the September Audit Committee meeting.

Ms. Valentino then delivered the August Enterprise Report. Premium and assessment income was \$183 million, net of a \$15 million reduction for uncollectible accounts receivable and resulting in operating revenues of \$168 million. Benefits and compensation adjustment expenses were \$199 million. The investment portfolio increased by \$463 million in July. This is comprised of \$130 million in net realized losses and \$593 million in unrealized gains. The realized losses were encountered in transition of investments. The cash and cash equivalents increased to \$1.6 billion because of the transition. Operating revenues for the fiscal year to-date decreased by \$23 million because of new, lower premium rates effective July 1, 2009. Benefit and compensation adjustment expenses decreased \$34 million for the fiscal year-to-date due to a decrease in the reserves for compensation and compensation adjustment expenses. Net investment income for the fiscal year-to-date totaled \$532 million. Premium collections are \$12 million less than projected and \$14 million less than the prior fiscal year-to-date because of slower payments and rate reductions. Net assets increased by \$495 million, to a net total of \$3 billion.

With respect to the Administrative Cost Fund, Ms. Valentino reported that BWC has identified additional reductions and the fiscal year 2010 budget has been reduced to \$299 million. For any area there are budget underruns, BWC will move

the funds to other areas. BWC payroll is the chief driver of the budget. BWC has 2,300 fulltime equivalents positions. Savings are created by hiring controls dictated by the Department of Administrative Services and cost savings days. Legal fees for cases handled through the Office of the Attorney General were encumbered earlier than in 2008, so the fees look higher. Funding ratios and net leverage are within the guidelines approved by the Workers' Compensation Board. They are the result of increases in the value of the portfolio.

Mr. Smith asked if aggregate reported employer payroll for June 2009 was available. Ms. Valentino responded it would not be available until close of the reporting period on August 31.

### **ADMINISTRATOR BRIEFING**

Ms. Ryan reported that the month of July had been a busy month. BWC finished setting of agency objectives, which were reported by Mr. Mazzotta. The Kaizen of the application for coverage was conducted. It is an engaging story of improvement, involving BWC at all levels. The process originally had 178 steps, including some which involved waiting for the next processing step.

Self-insuring employers met with BWC to discuss collateral requirements. The meeting looked at Deloitte Study recommendations in detail. BWC has solicited ideas from the self-insured community and BWC will be able report more in September.

BWC began working with Deloitte Consulting as the new actuarial consultant.

Tom Prunte has begun work as the Director of Employer Services. He is a graduate of The Ohio State University and the Capital University School of Law. He has experience in risk management at Nationwide Insurance and Adena Health.

Repairs have begun on the front of the William Green Building to stop an underground water leak and to repair doors. They will be completed in October. Ms. Falls asked if these repairs costs are in the budget. Ms. Ryan replied these repairs and elevator repairs are in the budget.

For September, the Marine Insurance Fund has been moved to Claims. On September 14, BWC will conduct a Longshore Boot Camp with the general counsel of the Long Shore Association.

The General Assembly will reconvene on September 15 and committee meetings will begin. The Workers' Compensation Council will meet September 23 and Ms. Ryan will report on rate reform and review of the Deloitte Study implementation.

On August 26, the Ohio Supreme Court rejected the BWC motion for reconsideration in the *Valley Roofing* case. BWC had transferred the experience rating from one employer to another. The Supreme Court found there was an abuse of discretion because PNC Bank was an intermediary owner of the assets. Ms. Ryan reported that most experience transfers do not invoke an intermediary. BWC will look at other processes and review statutes and rules to ensure that there is a real transfer of ownership and not just name change of the employer.

### **EXECUTIVE SESSION**

There was no executive session.

### **ADJOURNMENT**

Mr. Harris moved to adjourn the meeting. Mr. Haffey seconded and Mr. Lhota adjourned the meeting at 12:05 pm 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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September 2, 2009