BWC Board of Directors

# BOARD MEETING

**Friday, February 26, 2010, 8:00 A.M.**
**William Green Building**
30 West Spring St. 2nd Floor (Mezzanine)
Columbus, Ohio 43215

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| Members Present: | William Lhota, Chair<br>James Harris, Vice Chair<br>David Caldwell<br>Alison Falls<br>Ken Haffey<br>James Hummel<br>Jim Matesich<br>Thomas Pitts<br>Larry Price<br>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 ten members were present and constituted a quorum.

**MINUTES OF JANUARY 22, 2010**

Mr. Lhota requested that the "Chairman's Comments" on page two reflect that the Workers' Compensation Board had had twenty-nine meetings to date, not twenty.

Mr. Hummel moved to approve the January 22, 2010, minutes as amended. Mr. Caldwell seconded and the motion was approved by a roll call vote of ten ayes and no nays.

**AGENDA**

Mr. Lhota added an action item to the Actuarial Committee report on the approval of an amendment to Ohio Administrative Code Rule 4123-17-73 regarding Group Retrospective Rating Loss Development Factors. He reserved the right to recess the meeting at an appropriate time, if needed.

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

**<u>CHAIRMAN'S COMMENTS</u>**
Mr. Lhota reported that the July meetings will be moved to July 28 for committees and July 29 for the full Workers' Compensation Board.

Mr. Lhota noted that the March issue of *Columbus C.E.O.* magazine has a cover article on Administrator Marsha Ryan and her changes at BWC. The article is well-deserved and a tribute to reforms which have occurred.

Mr. Lhota reported that there was excellent attendance by directors at the four committee meetings of February 25. Of forty-four opportunities for participation, there were forty-four in attendance, a participation rate of 100%. Mr. Lhota further stated that while the meetings of the Workers' Compensation Board may seem perfunctory, the committees exhibited lively debate in all sessions. As BWC staff can attest, the diversity of membership of the Workers' Compensation Board provides a variety of viewpoints.

**<u>COMMITTEE REPORTS OF FEBRUARY 25</u>**

**<u>ACTUARIAL COMMITTEE</u>**
Mr. Matesich, Vice Chair of the Actuarial Committee, reported that the committee met on February 25 with all committee members and all Workers' Compensation Board directors present. Terry Potts, Rates Supervisor, Actuarial Department, presented an amendment to Ohio Administrative Code Rule 4123-17-03 concerning experience modifier caps. The purpose was to amend paragraphs (G) and (H) of the rule to replace references to specific policy years with language regarding prior and previous years.

Upon the recommendation of the Actuarial Committee, Mr. Matesich moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend Rule 4123-17-03 of the Administrative Code, "Employer's Classification Rates," to amend the experience modifier caps in the rule. The motion consents to the Administrator amending Rule 4123-17-03 as presented at the Actuarial Committee. Mr. Caldwell seconded and the motion was approved by a unanimous roll call vote of ten ayes and no nays.

Mr. Matesich further reported that there was a first reading of the Drug-Free Safety Program and discounts. John Pedrick, Chief Actuarial Officer; Joy Bush, New Program Development Director; and Jan Lommele and Dave Heppen, Deloitte Consulting, LLP, made the presentation. There was a lively discussion regarding the discount for the program and its compatibility with other programs, but no vote.

Mr. Matesich also reported that there was presentation on Group Retrospective Rating Loss Development Factors by Ms. Bush, Mr. Heppen, and Mr. Lommele. The Actuarial Committee waived the second reading and voted on the following motion.

Upon the recommendation of the Actuarial Committee, Mr. Matesich moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator' recommendation to amend Rule 4123-17-73 of the Administrative Code, "Group Retrospective Rating Program," to adopt loss development factors in the rule. The motion consents to the Administrator amending Rule 4123-17-723 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.

Mr. Matesich further reported that Elizabeth Bravender, Actuarial Director, delivered the State of the Line Report. This is a comprehensive analysis comparing Ohio data with that provided by the National Council on Compensation Insurance (NCCI) on countrywide workers' compensation. Mr. Pedrick followed with a report on legislative activities and actuarial studies needed for pending legislation.

Mr. Matesich indicated the report of the Actuarial Committee was concluded.

**AUDIT COMMITTEE**

Mr. Haffey reported that there was a first reading of one action item, amendment to Ohio Administrative Code Rule 4123-17-02, the business successorship rule. The discussion was led by Michael Glass, Director, Underwriting and Premium Audit, and Tom Sico, Assistant General Counsel. BWC has concerns about the use of asset sales agreements to avoid employer liability and experience rating.

Caren Murdock, Chief of Internal Audit, provided a status update on current projects. Five projects have been completed and nine projects are in process. Of the nine projects in process, six are projected to be completed and discussed at the June Audit Committee meeting. The Office of Budget and Management (OBM) Office of Internal Audit is currently conducting the BWC Data Warehouse audit. The Internal Audit charter has been revised to reflect recent changes to the Institute of Internal Auditor's International Professional Practices Framework. The risk assessment process for the FY 2011 annual audit plan has begun.

Mr. Haffey further reported that he, Tracy Valentino, Chief, Fiscal & Planning, and Barb Ingram, Director of Accounting, are discussing the forthcoming external audit with Joe Patrick of Schneider Downs. The external audit will begin in April.

Joe Bell, Chief Audit Executive, OBM Office of Internal Audit, reported on the OBM annual internal audit process, specifically related to IT. He also reviewed ongoing projects. The OBM Office of Internal Audit is focusing on control environment and process changes. A risk map was shared with status of various audits.

The Audit Committee also conducted an executive session with staff from OBM Internal Audit to review IT audits.

Mr. Haffey indicated the report of the Audit Committee was concluded.

**INVESTMENT COMMITTEE**

Mr. Smith reported a correction to the January 22 minutes, page 5. A report regarding the BWC funds custodian is not a statutory requirement, but a good practice.

Mr. Smith further reported that the portfolio asset allocation of the State Insurance Fund at the end of January, 2010 was similar to the Investment Policy goals, with 69% in fixed income investments, 30% in equities, and 1% in cash. For the fiscal year-to-date ending January 31, 2010, the total portfolio return of the BWC portfolio has been 9%, with returns in January and February, 2010 being flat.

Mercer Consulting reviewed the fourth quarter CY 2009 portfolio performance. Our investments are passively managed and there were very minor tracking errors to our benchmarks.

Mercer also presented the asset-liability study for the Marine Industry and the Public Workers' Relief Funds. The initial results indicate both funds have adequate assets, and we could maintain our current asset allocation.

Mr. Smith indicated that Sam Thomas, Professor of Economics, Case Western Reserve University, presented an educational session on the economy. He confirmed that the recovery has begun, but continued stimulus is needed to create jobs.

Mr. Smith then moved that the Workers' Compensation Board of Directors adopt the recommendation of the Investment Committee to approve the investment managers for the Stated Investment Asset Class Mandates for the Coal Workers' Pneumoconiosis Fund, as follows:

- For the passively managed U.S. Aggregate Fixed Income Mandate, approve State Street Global Advisors ("State Street") as manager for this mandate under a commingled fund structure, representing a targeted thirty-nine percent (39%) of total invested assets; and

- For the passively managed U.S. TIPS Fixed Income Mandate, approve State Street as manager for this mandate under a commingled fund structure, representing a targeted forty percent (40%) of total invested assets; and

- For the passively managed U.S. Equities Mandate, approve State Street as manager for this mandate under a commingled fund structure, representing a targeted thirteen percent (13%) of total invested assets; and

- For the passively managed Non-U.S. International Equities Mandate, approve BlackRock Institutional Trust Company ("BlackRock") as manager of this mandate under a commingled fund structure, representing a targeted seven percent (7%) of total invested assets.

All the above recommended approvals being based upon the presentation for the Passive Index Management RFP Process prepared by the BWC Investment Division dated February 25, 2010, and also the Memorandum prepared by Mercer Investment Consultants dated February 16, 2010, and upon such terms as are outlined in the responses of both State Street and BlackRock 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 the investment managers for the Stated Investment Asset Class Mandates for the Disabled Workers' Relief Fund (DWRF), as follows:

- For the passively managed U.S. Aggregate Fixed Income Mandate, approve State Street Global Advisors ("State Street") as manager for this mandate under a commingled fund structure, representing a targeted thirty-four percent (34%) of total invested assets; and
- For the passively managed U.S. TIPS Fixed Income Mandate, approve State Street as manager for this mandate under a commingled fund structure, representing a targeted thirty-five percent (35%) of total invested assets; and
- For the passively managed U.S. Equities Mandate, approve State Street as manager for this mandate under a commingled fund structure, representing a targeted twenty percent (20%) of total invested assets; and
- For the passively managed Non-U.S. International Equities Mandate, approve BlackRock Institutional Trust Company ("BlackRock") as manager of this mandate under a commingled fund structure, representing a targeted ten percent (10%) of total invested assets.

All the above recommended approvals being based upon the presentation for the Passive Index Management RFP Process prepared by the BWC Investment Division dated February 25, 2010, and also the Memorandum prepared by Mercer Investment Consultants dated February 16, 2010, and upon such terms as are outlined in the responses of both State Street and BlackRock to the Request for Proposals issued July 2, 2009, and such other terms as are favorable to the Bureau. Mr. Caldwell seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Mr. Pitts remarked that the presentation by Professor Thomas was very valuable because it described not only the state of the economy, but how he had arrived at his conclusions.

Mr. Smith indicated the report of the Investment Committee was concluded.

**MEDICAL SERVICES AND SAFETY COMMITTEE**

Mr. Harris reported there was a first reading on three action items. Abe Al-Tarawneh, Superintendent of Safety and Hygiene, and Tina Kielmeyer, Chief of Customer Services, led a discussion on the Drug-Free Safety Program (DFSP) and amendment of Ohio Administrative Code Rule 4123-17-58. A discussion on claims reactivation and Ohio Administrative Code Rule 4123-3-15 was led by Kim Robinson, Director of Policy. BWC proposes to increase the time for considering a claim inactive from thirteen to twenty-four months. Ms. Robinson and Ms. Kielmeyer also led a discussion on amendment of Ohio Administrative Code Rule 4123-3-37 on payment of scheduled loss awards and lump-sum advancements. The change will be to pay the scheduled loss in full at the time of the award and to eliminate reference to permanent partial (scheduled loss) awards, which will be moved to Rule 4123-3-15.

The committee had a report from Freddie Johnson, Director of Managed Care Services, on the MCO Voc Rehab Referral Report. Staff is still analyzing data and discussing findings.

Mr. Harris thanked Mr. Bryan for fifteen minutes of additional time from the Actuarial Committee in order to permit additional discussion of the DFSP.

Mr. Harris indicated the report of the Medical Services and Safety Committee was concluded.

**MONTHLY ENTERPRISE REPORT**

Ms. Valentino provided the January Enterprise Report. January is the first month of the next six-month's reporting period. Premium and assessment income was $138 million, net of the provision for uncollectible accounts receivable. The $15 million reduction in the provision for uncollectible receivables recorded in December increased revenues for that month. These receipts decreased by 15% over 2009, caused by the reduction in rates for private employers and a decrease in reported payroll. The premium rate reductions for all employers are 12% for private employers, 17% for public employer taxing districts, and 3.75% for state agencies. The benefit and compensation adjustment expense was $173 million and, along with other expenses, resulted in $179 in operating expense. January expenses were lower than December because of decreases in medical payments, settlements, and percent permanent partial awards.

BWC transferred $213,000 in cash to the Deputy Inspector General and $926,000 to the Ohio Department of Natural Resources (ODNR). The market value of the investment portfolio decreased by $54 million in January. Interest and dividend income of $52 million, offset by realized and unrealized gains and losses, resulted in net investment losses of $3 million after investment expenses. The $54 million portfolio market value decrease was caused by $53.7 million in net unrealized losses and $300,000 in net realized losses. The cash and cash equivalents balance was $839 million, including $736 million to pay an investment trade payment to be settled in February. BWC collected $110 million in premiums and assessments in January. This is $24 million less than January 2009 because of rate and payroll reductions.

Mr. Harris asked if the payments to the Inspector General and ODNR were one-time payments. Ms. Valentino replied they were one of several per year for their budgets. For example, the total payment to ODNR for the mine safety program is budgeted for $3.6 million.

Ms. Valentino continued that net assets for the fiscal year to date increased to $1.4 billion over January 2009. Operating revenues were $1.2 billion for fiscal 2010 year to date, whereas they were $1.3 billion for the same period last year. The rate decline was offset somewhat by increased unbilled receivables for DWRF and self-insured assessments. BWC adjusted accruals in December, but did not modify projections.

Benefit and compensation adjustment expenses increased by $44 million. The reserves for compensation and compensation adjustment expenses for DWRF and the Self-Insuring Employers Guaranty Fund increased by $41 million. There were increased TTD and PTD costs of $9 million. Net investment income for fiscal year to date 2010 totaled $1.5 billion, comprised of $596 in net realized losses and $1.7 billion in net unrealized gains, along with $428 million in interest and dividend income. For fiscal year-to-date 2010, premium collections are $127 million less than projected. Through February 11, approximately 128,000 or 51% of private employers have filed payroll reports for the July to December 2009 policy period, compared to 45% for the same period last year. While new claim filings continue to trend downward, the average cost per claim has increased. BWC is analyzing factors causing the increase in severity.

Administrative Cost Fund (ACF) expenses are approximately $19 million less than budgeted, and are 9% less than the same time last year. This is due to decreased payroll, hiring controls, and use of cost savings days. BWC employees have used 150,000 hours, or 81% of those available, for a savings of $4.5 million.

Ms. Falls asked which BWC funds provided the payments to ODNR and the Inspector General. Ms. Valentino replied that the payment to ODNR was from the Coal Workers Fund; the payment to the Inspector General was from the Administrative Cost Fund.

Ms. Valentino further reported that BWC is continuing delays in purchases, which will keep BWC under budget. The fiscal year 2010 budget is approximately $39 million (12%) less than appropriated by the General Assembly.

Regarding cash flow, there was $110 million in premium and assessment receipts for January; in January 2009, in was $134 million. The $1 billion cash balance includes cash for an investment transfer.

Mr. Haffey asked if the last day to pay premiums is February 26. Ms. Valentino replied that employers will be able to pay on-line through February 28. The BWC Call Center will be open on February 27.

The combined funds schedule shows net assets of $3.9 billion. Both the Funding Ratio of the State Insurance Fund, 1.24, and the Net Leverage Ratio, 4.73, are within the guidelines. The Audit Committee and the Board will discuss the discount rate, financial metrics and possible revisions at the March meeting.

Mr. Price asked if there were any other factors not described in the Enterprise Report that would have an impact on BWC finances, given the report by Professor Thomas. Ms. Valentino replied that she also found the presentation valuable. Concerning the inquiry, Ms. Valentino stated that she was surprised by the faster payment of premiums by employers during this reporting period. That is an example of something unexpected that BWC sees from time to time. The Fiscal and Planning Division relies on reports from Bruce Dunn, Chief Investment Officer, and his staff for insights. Mr. Price thanked Ms. Falls for requesting more detail in the Enterprise Report and Administrator Ryan for providing it.

**ADMINISTRATOR BRIEFING**

With respect to the magazine article in *Columbus C.E.O.*, Ms. Ryan thanked her team at BWC, including senior staff and all BWC employees.

It is a difficult time at BWC because of public discussion of the Competition Study and other developments. The first Competition Study Committee meeting was held February 17. Attending on behalf of the Workers' Compensation Board and BWC were Mr. Lhota, Mr. Pitts, Ray Mazzotta, Chief Operating Officer, and herself. The committee has representatives from four private insurers. The meeting had a presentation by NCCI on services it provides to other states and comments on the transition of Nevada and West Virginia to private insurance. Senator Tim Grendell commented at this committee meeting that he is not expecting legislation this year, but will continue robust discussion and extension of the committee deadline as needed. Accordingly, the Senate voted on February 24 to extend the committee deadline to December 2010 and to grant the President of the Senate power to appoint additional members, which may be more insurers. The next meeting is March 18. BWC is expected to present reports on its governance and insurance practices.

Mr. Smith remarked that given the additional time to report and the prospect of additional members creates concerns that the Competition Committee may have difficulty in making recommendations in a timely manner.

Ms. Ryan added that she and Maria Smith, Chief of Communications, are working to communicate activities of the committee to BWC staff.

Ms. Ryan further reported that the Workers' Compensation Council did not meet this week as originally scheduled. She has received a report that the executive director terminated all of her staff last week. No further details are known.

BWC has formed a self-insurance work group with the Ohio Manufacturer's Association (OMA), the Ohio Self-Insurers Association (OSIA), and Ohio Chamber of Commerce to implement recommendations from the HB100 Study of Deloitte Consulting regarding risk determination, securitization, and management of claims of bankrupt employers. In January, the Bankrupt Claims Unit of the Self-Insured Department was moved to Operations for general claims management. The next step is identification of high-risk employers; identifying the minimum financial information required to fund the risk; and evaluating credit risk exposure for particular industries, which BWC does not currently do. The work group will explore whether to use tools from Dun & Bradstreet and Moody's to evaluate risk. The HB100 Study recognized there is a data deficiency on reserves. While BWC has statutory authority to obtain reserve information, self-insurers were first asked in December to provide it. Some employers have resisted because of confidentiality concerns, however, BWC has support from the OSIA and OMA to educate employers. In another sixty days, BWC will have a securitization model to share with all self-insuring employers. The goal is present a program to the Workers' Compensation Board by summer with a new model which will strengthen the program..

Ms. Falls asked for explanation on the nature of security and how it is distinguished from that required in banking. Ms. Ryan replied that for self-insurers there is a need for proper collateralization. In prior years, it was spotty, but it should be risk-based. BWC has completed securitization requirements of General Motors and Chrysler Motors through a letter of credit and a surety bond, respectively. She thanked James Barnes, Chief Legal

Officer, Tom Prunte, Director of Employer Management Services, and their staffs for completion of this task.

Ms. Ryan further reported on provider fee schedules. The Workers' Compensation Board recently approved changes to the schedules. Based upon comments from the Ohio Hospital Association and Catholic Healthcare Partners, BWC will extend the effective date to January 2011 to enable hospitals to adjust billing methods.

Mr. Pedrick and the Actuarial Department are meeting with stakeholders and third-party administrators (TPAs) to explain split-experience plans. The meetings will continue, and BWC will update the Workers' Compensation Board.

There were a high number of worker fatalities in January. These include a trooper with the Ohio Highway Patrol, a director of a homeless shelter, an operator of heavy machinery, and a fuel oil deliveryman.

The Ohio Safety Congress will be March 30 through April 1 at the Ohio Convention Center. This is the largest in the Midwest and BWC is predicting attendance in excess of 5,000. The Congress is free and open to employers, workers, and their representatives. This year, there are expanded course offerings with continuing education credit for many disciplines. During the first week of enrollment, more than seven hundred registered. Don Berno, Board Liaison, reported that he has registered all members of the Workers' Compensation Board. Ms. Ryan added that there would be over two hundred vendors.

Mr. Smith inquired whether dismissal of the Workers' Compensation Council staff requires BWC to assume responsibly to review legislation. Ms. Ryan responded that she doubted it because of the statutory requirement on the Workers' Compensation Council. The Workers' Compensation Council is modeled after the Ohio Retirement Study Council.

**EXECUTIVE SESSION**

There was no executive session.

**CHAIRMAN’S COMMENTS**

Mr. Lhota reported that the first forum of 2010, regarding Managed Care Organizations (MCOs), would take place at 10 a.m., after adjournment of the Workers' Compensation Board meeting. He requested that George Smith, Executive Director of the Ohio MCO League, gather his presenters for the forum.

**ADJOURNMENT**

Mr. Smith moved to adjourn the meeting. Mr. Haffey seconded and Mr. Lhota adjourned the meeting at 9:15 a.m. 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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March 5, 2010