

BWC Board of Directors

**BOARD MEETING**

**Friday, April 30, 2010, 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

Member Absent: None

Counsel Present: John Williams, Assistant Attorney General

**CALL TO ORDER**

Mr. Lhota called the meeting to order at 8:00 a.m. and the roll call was taken. Mr. Lhota reported that all eleven members were present and constituted a quorum.

**MINUTES OF MARCH 26, 2010**

Mr. Smith requested that his comments on page 3, paragraph 3, include: "Mr. Smith also expressed concerns on alternative recommendations, when the role of the Workers' Compensation Board is to provide advice and consent." Ms. Falls requested that a portion of her report on the Governance Committee on page 7 be corrected to read: "The meeting is now scheduled for April 24, but Ms. Falls requested that Mr. Berno schedule another date for the Workers' Compensation Board." Also, on page 3, paragraph 3, she requested her opening remark be corrected to read: "Ms. Falls requested that BWC staff provide the Workers' Compensation Board with options, for example, 'what-if' scenarios which show rates if group rates held flat . . . ."

Mr. Lhota requested that the "Agenda" section correct "Auditing" to "Audit." Also, his statement in "Chairman's Comments" on page 2 should include ". . . that he had recently testified in House of Representatives Insurance committee *indicating* the philosophical diversity of the Workers' Compensation Board is one of its strengths." Finally, on page 8, paragraph 2, the opening sentence should be corrected to read, "During February, the

market value of the portfolio increased by \$74 million and that along with interest and dividend income . . .”

Mr. Smith moved to approve the March 26, 2010, minutes as amended. Mr. Caldwell seconded and the amended minutes were approved by a roll call vote of eleven ayes and no nays.

### **AGENDA**

Mr. Lhota announced that a public forum on Managed Care Organizations (MCOs) would follow the regular meeting, beginning at 10:00 a.m.

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

### **CHAIRMAN’S COMMENTS**

Mr. Lhota commended the directors for their discussions at the committee meetings held on April 29. He reported that there was excellent attendance by directors at the five committee meetings. Of fifty-five opportunities for participation, there were forty-nine in attendance, a participation rate of 89%. For the first quarter, there were 132 opportunities and 131 in attendance, a rate of 99.2%.

### **COMMITTEE REPORTS OF APRIL 25**

#### **ACTUARIAL COMMITTEE**

Mr. Bryan reported that there were five action items, of which four were approved by the Actuarial Committee. Preceding the approval of Administrator’s proposal to reduce overall rates for private employers was a discussion of the rationale of the recommendation. The employers not in group rating will receive an overall reduction of 8.4%; employers in group will receive an increase of 5.5%. BWC is continuing the work begun in 2009 in raising the discount under the credibility table. For the 2010 policy year, the average break even factor will be 1.275. BWC also presented individual manual classification rates.

Upon recommendation of the Actuarial Committee, Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator’s recommendation to fix private employer rates beginning July 1, 2010, to achieve an overall Three Point Nine percent (3.9%) decrease in the total collectible premium rate from the previous year. This motion also consents to the Administrator preparing private employer rate rules to present to the Board consistent with this overall rate recommendation 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 the Actuarial Committee recommended approval of new rates for public employer state agencies. These rates differ from those of private employers they are calculated in a pay-as-you go system. Upon the recommendation of the Actuarial Committee, Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator’s recommendation to fix State Agency Rates beginning July 1, 2010, to achieve an overall Four Point Three Three percent

(4.33%) decrease in the total collectible premium rate from the previous year. This motion also consents to the Administrator amending Rule 4123-17-35, "Public Employer State Agency Contribution to the State Insurance Fund," consistent with this overall rate recommendation 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 was another rule amendment to prohibit employers under the large deductible program from receiving an additional discount under the Drug-Free Safety Program. Upon the recommendation of the Actuarial Committee, Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend Rule 4123-17-72 of the Administrative Code, "Deductible Rule." The motion consents to the Administrator amending Rule 4123-17-72 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.

The fourth action item was in approving new classifications prescribed by the National Council on Compensation Insurance (NCCI), which BWC is obligated to implement under statute and by tradition. Upon the recommendation of the Actuarial Committee, Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend Rule 4123-17-04 of the Administrative Code, "Classification of Occupations or Industries," to adopt new NCCI classifications. The motion consents to the Administrator amending Rule 4123-17-04 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 reported the final action matter was a proposal from the Service Association of Ohio to delay a deadline in an Administrative Code rule on group retrospective rating. The proposal failed for want of a motion.

Mr. Bryan further reported that there were first readings on private employer base rates, which include a 30% cap on rate increases. The rates continue the practice from 2009 of not capping the amount of a decrease. The Actuarial Committee received a presentation by Deloitte Consulting LLP on the Marine Industry Fund and the Disabled Workers' Relief Funds, and a BWC report on sponsor certification rules.

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

### **AUDIT COMMITTEE**

Tracy Valentino, Chief, Fiscal & Planning, presented a second reading on the proposal to lower the discount rate from 4.5% to 4.0%. At the meeting, Director Matesich asked about the need for stability in the discount rate. Mr. Haffey reported that in 1996, the discount rate was 7% and BWC undertook gradual reduction to the current recommendation. This gradual change minimized the impact on employers. Going forward, BWC predicts little change.

Mr. Haffey moved that the Bureau of Workers' Compensation Board of Directors approve the recommendation of the Audit Committee to concur with the Administrator's

recommendation to adopt a 4.0% reserve discount rate and modify the discount rate policy accordingly. This rate will be utilized by BWC's external actuarial consultant, Deloitte Consulting LLP, and BWC's external audit firm, Schneider Downs & Co., Inc., for purposes of the reserve for compensation and compensation adjustment expenses as of June 30, 2010. Mr. Smith seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Haffey stated that Mercer Investment Consulting, Inc., and Bruce Dunn, Chief Investment Officer, support the Administrator's recommendation to adopt the 4% reserve discount rate.

Mr. Haffey moved that the Bureau of Workers' Compensation Board of Directors approve the recommendation of the Audit Committee to revise the net asset policy to reflect the recommendations of a funding ratio range of 1.15 to 1.35 and a net leverage ratio range of 3.0 to 7.0. Mr. Matesich seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Haffey next reported that Ms. Valentino conducted a first reading of the FY 2011 budget. BWC proposes a budget of \$284.7 million, which is less than the amount appropriated by the General Assembly. The proposed payroll does not reflect the cost savings days which will be taken in fiscal year 2011. There is a \$5 million item to fund replacement of the medical bill payment system. The budget proposal is \$35 million less than the fiscal year 2010 budget.

Caren Murdock, Chief of Internal Audit, provided an executive report on the Internal Audit risk assessment project. With respect to current projects and timeliness, BWC is on schedule.

Mr. Haffey reported that the Audit Committee heard a presentation from Mike Carey, President, Ohio Coal Association; Sean Logan, Director, Ohio Department of Natural Resources (ODNR); and Babe Erdos, United Mine Workers requesting a transfer of funds from the Coal Workers' Pneumoconiosis Fund to ODNR for mine safety. Mr. Logan reported that because of reduction in the General Revenue Fund, the mine inspection fund will not function after September 2010. Mr. Haffey provided a summary of comments from the Audit Committee's forty-five minute discussion concerning this request. The Workers' Compensation Board has a fiduciary responsibility to protect the Coal Workers' Fund. The funds are for injured miners, widows, and orphans. The transfer could set a precedent for other one-time requests for transfer. The transfer requires use of funds set aside for future benefit expense. The transfer shifts costs from businesses to injured workers. This is the second request of ODNR for a one-time transfer. The Directors expressed reluctance to support the request until an actuarial analysis of the fund is completed in May or June.

Mr. Bryan commented that when BWC needs to transfer, then BWC should build the amount into the rates. The requested action implies these transfers need to be built into future rates.

Ms. Ryan reported that she anticipates language authorizing the transfer will be placed in some other bill. She will testify if she is asked. She also anticipated we would need a rule to implement the transfer.

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

## **GOVERNANCE**

Ms. Falls reported that the early part of the meeting was held in executive session. After adjourning from executive session, the Governance Committee reviewed a process memorandum concerning the Administrator's annual evaluation in public session.

Ms. Falls moved that the Bureau of Workers' Compensation Board of Directors approve the recommendation of the Governance Committee of the evaluation form dated April 13, 2010, and the process as outlined in the memorandum dated April 15, 2010 from Fiduciary Counsel to complete the Administrator's Annual Review. Mr. Price seconded the motion.

Ms. Falls stated for the record that in the vote, only qualified directors will be able to vote on a matter on evaluation of the Administrator.

The motion was approved by a roll call vote of ten ayes and no nays. Mr. Pitts abstained from voting.

Ms. Falls reported that the remainder of the Governance Committee meeting was devoted to a report on the competitiveness task force. Administrator Ryan and Chairman Lhota have appointed Mr. Mazzotta and Mr. Pitts, respectively, as their designees to the task force. The Governance Committee discussed the testimony of Ms. Ryan and Mr. Lhota and Mr. Smith before the April meeting of the task force. The Governance Committee discussed the role of Workers' Compensation Board in BWC risk management process. This included a discussion on a new rule of the Securities and Exchange Commission on proxy statements. The rule is for public traded companies, and is not required for BWC, but reflects industry best practices.

Ms. Falls indicated the report of the Governance Committee was concluded.

## **INVESTMENT COMMITTEE**

Mr. Smith reported that the estimated and unaudited portfolio value is \$19.3 billion as of April 28, 2010 and allocated at 67.6% to bonds, 30.8% to stocks, and 1.6% to cash. In the fiscal year-to-date, through March, the portfolio had a total return of 11.6%, which represents investment income of about \$2 billion. The portfolio in April through April 28 had a positive return of 1.5%, with the market value of bonds and stocks increasing by \$281 million from March 31. There is a new Investment Division report on asset allocation variance to target asset allocation for each fund by asset class. The Investment Committee held another educational session on the differences between active and passive management and how to evaluate active manager performance. In May, Bruce Dunn, Chief Investment Officer, will recommend which existing investment classes are best suited to active management for the State Insurance Fund.

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

#### **MEDICAL SERVICES & SAFETY COMMITTEE**

Mr. Harris reported that the Medical Services & Safety Committee approved the hospital out-patient fee schedule. The only change is in the effective date. The reported was delivered by Freddie Johnson, Director of Managed Care Services, and Anne Casto, Consultant, Medical Services.

Upon the recommendation of the Medical Services and Safety Committee, Mr. Harris moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to rescind current Rule 4123-6-37.2 and adopt new Rule 4123-6-37.2 of the Administrative Code, "Payment of Hospital Outpatient Services." The motion consents to the Administrator rescinding and adopting new Rule 4123-6-37.2 as presented at the Medical Services and Safety Committee. Mr. Hummel seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Harris also reported that the Medical Services & Safety Committee voted on a change to the scheduled loss payment rules. These followed reports from Tina Kilmeyer, Chief, Customer Service, and Kim Robinson, Director of Policy.

Upon the recommendation of the Medical Services and Safety Committee, Mr. Harris moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend Rule 4123-3-15 of the Administrative Code, "Claim Procedures Subsequent to Allowance," and Rule 4123-3-37, "Lump Sum Advancements," to establish scheduled loss payment rules. The motion consents to the Administrator amending Rules 4123-3-15 and 4123-3-37 as presented at the Medical Services and Safety Committee. Mr. Pitts seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Harris also reported that Abe Al-Tarawneh, Superintendent of Safety & Hygiene; Michelle Francisco, Safety Council Program Manager; and Robin Watson, Industrial Safety Consultant Specialist, reported on group experience and group retrospective rating safety program requirements. There was a report on the \$15,000 medical-only program by Tom Prunte, Director of Employer Management Services, and Kathy Arnett, Management Analyst Supervisor. Among discussion items was a report on the MCO vocational rehabilitation referral program by Bob Coury, Chief, Medical Services and Compliance, and Mr. Johnson. The final discussion item was a pharmacy program overview by Dr. Robert Balchick, Medical Director; Johnnie Hanna, Pharmacy Program Director; and Christine Sampson, Pharmacy Program Operations Manager.

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

#### **QUARTERLY REPORT ON HB100 COMPREHENSIVE REPORT RECOMMENDATIONS**

Jim Fograscher, Project Manager and Interim Director, Self-Insured Department, delivered the quarterly report on the HB100 Comprehensive Review Study. It has been

one year since BWC received the report from Deloitte Consulting. This report to the Workers' Compensation Board covers all 146 recommendations from Deloitte. Highlights since the January report: New data has been received from self-insuring employers on case reserves. The core statewide rate level recommendation was implemented. One hundred recommendations were addressed during the quarter. In the second quarter, BWC will take up MCO recommendations. The chart on page 2 shows the stages of implementation of the recommended changes. Page 3 begins a review of each of the 146 recommendations. The handicap reimbursement program is not terminated; however, other recommendations regarding the handicap program will require legislation. Another highlight with respect to the self-insured recommendations is that there is a workgroup preparing proposals on securitization which will be done by autumn. With respect to the state-wide rate level, all six recommendations have been put into place. A new feature is a chart at end of the report showing progress of implementation.

Concerning page 6, Mr. Harris asked why BWC did not address twelve of the items. Mr. Fograscher replied that other items had been given higher priority.

Mr. Smith asked when BWC delivered information on the report to the General Assembly. Ms. Ryan replied that she gave status reports to both house insurance committees. The preference of the House of Representative Insurance Committee would be to include changes in omnibus legislation but there has been no action to date. Also, a report was requested by the Workers' Compensation Council. That report is pending the Council resolving other issues.

### **MONTHLY ENTERPRISE REPORT**

Ms. Valentino provided the Enterprise Report for April. BWC net assets increased by \$297 million in March resulting in net assets of \$4.3 billion as of March 31, 2010, compared to \$4.0 billion as of February 28, 2010. Premium and assessment income was \$174 million. Net of \$8 million for uncollectible account receivable and \$8 million in penalty and interest income, operating revenues were \$174 million in March. Benefits and compensation adjustment expense of \$195 million, along with other expenses of \$8 million, resulted in operating expenses of \$203 million. Benefit payments issued in March increased by almost \$25 million. Settlement payments increased by \$8 million as field offices worked to address backlogs. Medical payments increased by \$12 million.

The investment portfolio increased by \$262 million in fair value during March, along with interest and dividend income of \$65 million for the month, resulted in net investment income of \$326 million for the month after investment expenses. Premium and assessment receipts of \$163 million were collected in March, \$40 million higher than collections for the same period last year due to timing differences in the payment of premiums. Cash and cash equivalents include \$475 million money market holdings in outside investment manager accounts committed to covering a \$432 million net investment trade payable for settlement in April. Principal and interest payments of \$17.9 million were made on the William Green Building bonds. The bonds mature in 2014 and have a remaining principal balance of \$62.9 million.

Ms. Falls asked if BWC was close to eliminating the settlement backlog. Ms. Kielmeyer replied that there was significant progress in the backlog. The new process required training. There has been a major push since January and BWC should be current in one month. BWC is within 93% of that goal.

Ms. Valentino further reported BWC net assets increased \$1.8 billion for fiscal year-to-date 2010 resulting in net assets of \$4.3 billion at March 31, 2010, compared to \$1.5 billion for March 31, 2009. The projected net asset total had been \$3 billion. BWC premium and assessment income for fiscal year-to-date 2010 is \$1.6 billion compared to \$1.7 billion for the same period last year. Decreases in premium rates for private and state agency employers effective July 1, 2009, and January 1, 2010 for public employer taxing districts are off-set by increased unbilled receivables for DWRP and the Self-Insuring Employers Guaranty Fund. Benefit and compensation adjustment expenses increased by \$72 million for fiscal year-to-date 2010. Reserves for compensation and compensation adjustments for DWRP and SIEGF have increased by \$53 million in 2010. While settlements and medical payments have decreased by over \$67 million, there have been increases in temporary total and PTD costs of approximately \$10 million.

Net investment income for fiscal year-to-date 2010 totaled almost \$2 billion, comprised of \$532 million in net realized losses and \$1.992 billion in net unrealized gains, along with \$538 million of interest and dividend income and \$5 million in investment expenses. This included \$2 billion in completed corporate actions and settlements. Private employer payroll and premium rate decreases have contributed to premium collections being \$256 million less than prior fiscal year-to-date collections.

Approximately 20,200 employers participated in the 50/50 payment program, and will be paying \$146 million in premiums by June 1, 2010 to maintain active coverage. Last year, almost 20,700 employers participated with \$176 million owed for the second installment. As of April 9, 17,300 private employer accounts with estimated premiums of \$13.5 million remained in a lapse status for failing to report payroll for the period July to December 2009 policy period. This compares to 26,100 accounts initially billed for estimated premiums on March 13, 2010. Accounts that have failed to report payroll were certified to the Ohio Attorney General on April 19. Mr. Matesich commented that these reductions should be out-of-business or cancelled accounts.

Mr. Hummel asked how much of the decrease in premium collections is due to reduced payroll, and how much is a decrease in the number of employers. Ms. Valentino stated she did not have that information now, but would research it.

Mr. Bryan asked if BWC pays fees to the Attorney General for collection. Ms. Valentino replied there were fees. Some fees are passed on to the employers, others are charged to the amount collected.

Ms. Valentino reported that charts on page 5 were revised to include fiscal year 2006 and fiscal year 2010 operating revenues and expenses. New charts on page 7 show actual net investment income for FYTD 2006 through FYTD 2009 and also projected net investment income for fiscal year 2010. BWC Administrative Cost Fund expenses are approximately \$20.8 million (9%) less than the budget and approximately 6% less than last fiscal year.

Mr. Price asked about the operating transfers to other agencies. Ms. Valentino replied the transfers to ODNR, Workers' Compensation Council, and Ohio Inspector General are not in the budget, but the transfers pay for services to BWC. All are statutorily mandated. If BWC collects more ACF assessments from employers than are needed, the budget process constructs a credit in the next year's budget.

Ms. Valentino reported that BWC has a memorandum of understanding with ODNR, whereby BWC receives a quarterly report on expenses and transfers funds as needed. Limits on the transfers require that the assets in the Coals Workers' Fund exceed liabilities by two times. If the ratio falls below two, there is a requirement for an actuarial study of claims. If the ratio falls below 1.5, transfers are suspended. Transfers are also to not exceed 70% of interest and dividend collections for the year. ODNR has been directed to investigate other sources of revenue by FY 2013. There is a new note on page 13 to reflect undiscounted reserves. Ratios are within the policy guidelines, 1.26 for the funding ratio and 4.34 for the net leverage ratio. The chart in May will reflect the voted changes to the policy by the Workers' Compensation Board.

### **ADMINISTRATOR BRIEFING**

Ms. Ryan delivered her monthly report.

The Competitiveness Task Force will next meet on May 27. Mr. Pitts will represent Chairman Lhota and Mr. Mazzotta will serve as her representative. The discussion will be on constitutional changes that may be needed. Materials from testimony of the last meeting have been distributed to the Workers' Compensation Board.

There is no schedule of future meetings for the Workers' Compensation Council. There has also been no news on settlement with the three terminated workers. BWC obtained budget information for FY 2011 for the Workers' Compensation Council. Ms. Valentino stated that it was a flat request. The Council subcommittee on operations has not met.

Mr. Hummel asked if the Workers' Compensation Council staff has been replaced. Ms. Ryan reported that she was not aware of any replacement. A retired staff member of the Legislative Service Commission has been working part-time.

Mr. Haffey asked if BWC is the only funding source for the Workers' Compensation Council and Ms. Ryan replied that it was.

On April 19, the Workers' Compensation Board of Directors Nominating Committee met and Ms. Ryan reported that the incumbent directors were re-nominated with other candidates added to the recommended list. Candace Jones, attorney of the Department of Development, reported that the council had trouble finding three other candidates for the actuary seat because of the respect within the profession for Mr. Bryan. There were many positive comments on the other three directors. Andy Doehrl of Ohio Chamber/ OMA asked for information on expenses, and the report included the director attendance record and collegiality.

The General Assembly is in recess until May. Ms. Ryan predicted it will only be in session four or five days before the summer recess. The General Assembly will reconvene in autumn and pick-up business.

The Safety and Hygiene Division entered into an agreement, by Mr. Al-Tarawneh, with the National Institute of Occupational Safety and Health for exchange of data. Dr. Balchick is on the Ohio Prescription Drug Abuse Task Force. BWC has much data on pharmaceutical usage and an interest in the issue.

JPMorgan Chase has been reappointed as custodian of BWC funds by the Treasurer of State. Ms. Ryan stated she was pleased because of the strong relationship between BWC and Chase and the continuity provided by the contract.

The NCCI produced an article on the application of national health care law to workers' compensation, which has been distributed to the directors. Ms. Ryan stated she will speak at the May 11 meeting of the Ohio Chamber of Commerce.

#### **EXECUTIVE SESSION**

There was no executive session.

#### **CHAIRMAN'S COMMENTS**

Mr. Lhota requested that members of the MCO League assemble for the public forum at 10 a.m.

#### **ADJOURNMENT**

Mr. Smith moved to adjourn the meeting. Mr. Haffey seconded and Mr. Lhota adjourned the meeting at 9:29 a.m. after the motion was approved by a roll call vote of ten ayes and no nays.

Prepared by: Larry Rhodebeck, Staff Counsel  
H:\Word\ldr\WCB 0410.doc  
May 5, 2010