BWC Board of Directors

BOARD MEETING

Friday, May 28, 2010, 8:00 A.M.
William Green Building
30 West Spring St. 2nd Floor (Mezzanine)
Columbus, Ohio 43215

Members Present:	William Lhota, Chair James Harris, Vice Chair 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
Scribe:	Larry Rhodebeck, Staff Counsel

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.

OATH OF OFFICE
Mr. Lhota reported that Mr. Bryan, Ms. Falls, Mr. Harris, and he had each been reappointed to new terms of office, to expire 2013. Mr. Lhota had been sworn in at an earlier time by Governor Strickland. Mr. Lhota administered the oaths of office to Mr. Bryan, Ms. Falls, and Mr. Harris.

MINUTES OF APRIL 30, 2010
Mr. Bryan requested that page 2, paragraph 5, second sentence, be amended to read "Preceding the approval of the Administrator's proposal to reduce overall rates for private employers by 3.9% was a discussion of the rationale of the recommendation." On page 3, paragraph 4, the last sentence should read, "The proposal failed in committee for want of a motion."

Mr. Lhota requested that page 7, paragraph 2, the second sentence should read, "Ms. Ryan replied that she gave status reports to the insurance committees of both chambers." Also, the last two sentences should be deleted, and replaced with, "Ms. Ryan reported she had delivered the same information about the comprehensive study to the Workers' Compensation Council."

Ms. Falls requested that page 5, paragraph 3, first sentence, be changed to read, "Ms. Falls reported that the early part of the meeting was held to discuss personnel matters in executive session." She also requested that the paragraph 7, first sentence be changed to read, "Ms. Falls reported that the Governance Committee meeting received a report on the competitiveness task force." She also requested that from the fourth sentence to the end of the paragraph read, "The Governance Committee also discussed the role of the Workers' Compensation Board in the BWC risk oversight process. This included a discussion on a new rule of the Securities and Exchange Commission on disclosure of the Board's role in risk oversight. The rule is for publicly traded companies, and is not required for BWC, but reflects industry best practices."

Mr. Matesich moved to adopt the minutes as amended. Mr. Caldwell seconded and the minutes were approved by a roll call of eleven ayes and no nays.

AGENDA

Mr. Lhota added as an action item approval of the rule on the Coal Workers' Pneumoconiosis Fund; deleted approval of the rule on sponsorship certification requirements; added approval of the Internal Audit Division Charter; and added delegation of authority to Chairman to meet with the Governor regarding the Administrator's annual evaluation.

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

CHAIRMAN'S COMMENTS

Mr. Lhota reported that the committees of the Workers' Compensation Board on May 27 had a 96.4% attendance rate. Of 55 opportunities, only two directors were absent from a committee meeting.

Mr. Lhota recognized Mr. Pitts for his participation in the Competitive Task Force. He also congratulated Mr. Pitts for his recent recognition as an outstanding alumnus of The University of Akron School of Law.

ACTUARIAL COMMITTEE

Mr. Bryan reported that the Actuarial Committee approved a recommendation to the board for private employer base rates and had a long discussion on variability. Increases in rates are capped at 30%. The Actuarial Committee requested that for 2011 rates staff look at ways to minimize variability and yet be actuarially sound.

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 private employer rates Rules 4123-17-05 and 4123-17-06 of the Administrative Code, effective July 1, 2010. This motion consents to the Administrator amending private employer rates Rules 4123-17-05 and 4123-17-06 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 reported that the Actuarial Committee approved a recommendation that the board reduce the premium rates for the Marine Industry Fund. Many things are changing in that program.

Upon 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 4123-17-19 of the Administrative Code, "Employer Contribution to the Marine Industry Fund," effective July 1, 2010. This motion consents to the Administrator amending Rule 412-17-19 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 had approved a recommendation that the board approve the rule on rates for the Disabled Workers' Relief Fund (DWRF). Although the rates are not changed, BWC is required to file rate rules and the Workers' Compensation Board is required to approve them.

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 retain without change Rule 4123-176-29 of the Administrative Code, "Disabled Workers' Relief Fund; Employers' Assessments and Self-Insurers' Payments." This motion consents to the Administrator retaining without change Rule 4123-17-29 as presented at the Actuarial Committee. Mr. Pitts seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Bryan reported that the Actuarial Committee had approved a recommendation to amend the rule on sponsorship certification to make it apply irrespective of the policy year involved and other changes.

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 4123-17-61.1 of the Administrative Code, "Sponsorship Certification Requirements." The motion consents to the Administrator amending Rule 4123-16-61.1 as presented at the Actuarial Committee. Mr. Matesich seconded and the motion was approved by a roll call of eleven ayes and no nays.

Mr. Bryan stated there were discussions on several issues. The discussion on reserves was a major issue for the Actuarial Committee because reduction of the discount rate from 4.5% to 4.0% has led to an increase of $500 million in reserves. The entire background of the Deloitte Consulting reserve study is contained in five volumes, or can be obtained on a CD-ROM.

Mr. Bryan asked Mr. Matesich to lead the discussion of the next item. Mr. Matesich reported that the Actuarial Committee acted on the rule for the Coal Workers'

Pneumoconiosis Fund and waived second reading in order to approve it. The Actuarial Committee approved the rule in a vote of three directors in favor and two against to pass it on to the Workers' Compensation Board.

Mr. Lhota noted that under Roberts' Rules of Order, if Mr. Matesich moved to approve the Coal Workers Fund rule, then he would have to vote for it.

Upon the recommendation of the Actuarial Committee, Mr. Caldwell moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to retain without change Rule 4123-17-20 of the Administrative Code, "Employers' Contribution to the Coal Workers' Pneumoconiosis Fund." This motion consents to the Administrator retaining without change Rule 4123-17-20 as presented at the Actuarial Committee. Mr. Bryan seconded.

Mr. Lhota asked Mr. Harris to act as chair for further proceedings on the motion so that Mr. Lhota could engage in full discussion of the matter as a member director.

Mr. Hummel stated that there are two recommendations from Deloitte Consulting. One is to retain a moratorium on collection of premiums from old subscribers and retain the current premium rate. The other is to lower the rate by 20% and charge all subscribers. He opposed waiver of the second reading because he did not fully understand the recommendation.

Mr. Smith stated that the recommendation of Deloitte was also to review the program thoroughly and that he supported the waiver of the second reading and would vote yes.

Mr. Price reported that the rules require a second reading to understand the issues being presented. He did not understand them and believed there was no urgency to pass the motion today. He did not pursue some of his questions at yesterday's meeting because he thought there would be a second reading at the June Actuarial Committee meeting.

Mr. Caldwell reported he voted to waive the second reading and approve. Deloitte and BWC staff reported no additional information would be available.

Mr. Matesich stated Deloitte and BWC staff did not have enough information and he wanted more historical background on why older employers had not paid premiums since 1999. The issue was not fairly reviewed.

Mr. Bryan reported that Mr. Pitts, Mr. Caldwell and he had voted for approval; Mr. Matesich and Mr. Hummel voted against. He was for the motion because staff reported no additional information would be available by the June meeting.

Mr. Matesich added that the availability of information was not justification for the waiver of the second reading. The Board has a responsibility to investigate and question further.

Ms. Falls stated that from a governance perspective, the Actuarial Committee followed its guidelines. But she concurred with Mr. Matesich's remarks on the distinction, noting that it is the Board's responsibility to perform due diligence.

Mr. Hummel stated he needs to know more historic information and understand more clearly the reasoning of the Deloitte recommendation.

Ms. Ryan added the vote was on the limited issue of approving a rate for July 1. It is clear the Coal Workers' Fund needs a great deal of work to research why a moratorium was set in 1999. BWC does not have information on the full impact of national health care reform and would not have additional information for the June meeting. The recommendation is to keep the rate flat and move forward.

Mr. Price agreed that proper protocol was followed. There were two recommendations in place before the Actuarial Committee: one from Deloitte and one from the Administrator.

Mr. Lhota stated he will vote to return the matter to the Actuarial Committee. There was no compelling reason to act this month and he concurred with Mr. Price. He had raised the issue of payment to the Ohio Department of Natural Resources (ODNR) on the safety inspection fee, which will be $3.4 million per year. He didn't have a sense that Deloitte was aware of the transfers. Mr. Lhota had asked whether this information will impact Deloitte's recommendations. He further indicated that his questions on this matter remain unanswered, and that he would like to revisit these questions.

Mr. Harris commended the Workers' Compensation Board for its spirited and diverse discussion.

In a roll call vote, five votes for the motion: Mr. Harris, Mr. Bryan, Mr. Caldwell, Mr. Pitts, and Mr. Smith. Six voted against the motion: Mr. Lhota, Ms. Falls, Mr. Haffey, Mr. Hummel, Mr. Matesich, and Mr. Price. Mr. Harris ruled that the motion failed.

Mr. Lhota moved to send the rule back to the Actuarial Committee. Mr. Price seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Lhota resumed the chair for the remainder of the meeting.

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

AUDIT COMMITTEE

Mr. Haffey reported Tracy Valentino, Chief, Fiscal & Planning, presented a second reading on the administrative budget. By striking duplicated items, the budget was reduced from $284.7 million to $284 million, which is approximately $44 million less than the fiscal year 2011 appropriation.

Mr. Haffey moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation for the Fiscal Year 2011 annual administrative budget, as recommended by the Audit Committee. This motion consents to a Fiscal Year 2011 budget of $284 million dollars for the operation of the BWC and Bureau of Workers' Compensation Board of Directors. Mr. Smith seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Haffey reported that James Barnes, General Counsel, and Ken Cain, Staff Counsel, presented rules on confidential personal information. The rules derived from a 2008 incident in which employees of other agencies disclosed confidential information. The statute was effective April 7, 2009, and requires rules on access. The requirement to log all access is cumbersome. Mr. Cain reviewed details of the rules. "Confidential personal information" is defined as non-public records.

Confidential records are also covered by the BWC Public Records Grid. Mr. Harris had inquired why the number of reported employees of an employer was a confidential record. Under the provisions of Ohio Revised Code § 4123.26, every employer must make an annual report of the number of its employees and such report is confidential. For the foreseeable future, logging in will be manual, but system changes will require modification.

Mr. Haffey reported that Caren Murdock, Chief of Internal Audit, provided an executive report on the Internal Audit Division Charter. A charter is required by the Institute of Internal Audit and covers five topics: authority, professional standards, accountability, independence, and responsibility. The Actuarial Committee waived a second reading.

Mr. Haffey moved that the Workers' Compensation Board of Directors approve the Audit Committee recommendation to approve the Internal Audit Division Charter as presented here today. The approval will fulfill the requirements of the Institute of Internal Auditors International Professional Practices Framework and will be documented as such in the meeting minutes. Mr. Matesich seconded and motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Haffey reported that the Audit Committee received its monthly report on current projects. The fiscal year 2011 audit plan is completed and will be presented in June. The quarterly executive summary will be made in July because of the full agenda for June. The pending projects include the temporary disability payment process, DWRF rates, manual rate adjustments for employers, the premium audit process, investment personal trade policy compliance, and the Public Employer Risk Reduction Program. There was also a report on the external audit by Schneider Downs. An executive session covered a litigation update and the external audit.

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

INVESTMENT COMMITTEE

Mr. Smith reported that the portfolio value is was $18.96 billion on May 27, 2010 and allocated at 69.5% to bonds, 28.7% to stocks, and 1.8% to cash. In the fiscal year-to-date, through April, the portfolio had a total return of 14.0% which is an increase in investment income of $2.4 billion. In May, equities declined by 8.1%, and bonds were flat. Mercer Consulting gave a presentation on capital markets and the quarterly performance of the portfolio. Bruce Dunn, Chief Investment Officer, reported on the SIF investment transition, which was completed at the end of May. This is the first time in one year that there has been no SIF investment in transition. Mercer also reported on their data base and the use of active and passive managers. Mr. Dunn also reported on his recommendation on which asset classes are more appropriate for active versus passive management. There were no votes. In June, the Investment Committee will discuss the use of minority and emerging managers. The Workers' Compensation Board should strive for high standards and a level playing field.

Mr. Price stated that the Mercer presentation on active versus passive management was excellent. The report by Mr. Dunn was exceptional and clear on where investment policy may go.

Mr. Caldwell also stated that the reports were good. However, he is not yet comfortable with the proposal to invest in private equities.

Ms. Falls stated that as the Workers' Compensation Board progresses towards alternative classes and active management, there will be significant issues, including governance, oversight and resources. She appreciates the assurance from the Committee Chair that the Board will have sufficient time to discuss these and other issues as we consider moving some of the portfolio from passive to active management.

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

MEDICAL SERVICES & SAFETY COMMITTEE

Mr. Harris reported that the Medical Services & Safety Committee met and took two actions.

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 4123-17-68 of the Administrative Code, “Group Experience and Group Retrospective Safety Program Requirements.” The motion consents to the Administrator amending Rule 4123-17-68 as presented at the Medical Services and Safety Committee. Mr. Pitts seconded the motion.

Mr. Hummel stated that he supported the motion. There was a change between the first and second reading which mandates that sponsor keep records of employers and employer participation in safety training. The amendment does not impose consequences on employers who do not complete training. Mr. Hummel requested that the issue of training and consequences in this rule be reexamined at a later time. Mr. Harris also reported that Abe Al-Tarawneh, Superintendent of Safety & Hygiene, and his staff had presented the rule.

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

Mr. Harris reported that Ron Suttles, Management Analyst Supervisor, Employer Services, and Kathy Arnett, Management Analyst Supervisor, provided a report on changes to the $15,000 medical only program.

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 4123-17-59 of the Administrative Code, “Fifteen Thousand Dollar Medical-Only Program.” The motion consents to the

Administrator amending Rule 4123-17-59 as presented at the Medical Services and Safety Committee. Mr. Hummel seconded the motion.

Mr. Pitts stated that he favors adoption. The Deloitte Study recommends examination of whether the program is needed.

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

Mr. Harris further reported that the Medical Services and Safety Committee continued a discussion on the pharmacy benefits program with Dr. Robert Balchick, Medical Director; Johnnie Hanna, Pharmacy Program Director; and Christine Sampson, Pharmacy Program Operations Manager. Mr. Harris believed the presentation was very informative and there are good things on the horizon for the pharmacy program. Mr. Al-Tarawneh and Michael Rea, Industrial Safety Administrator, provided a report on investigation of fatalities. There was a follow-up report on the MCO public forums. Mr. Harris asked the directors to contact Don Berno, Board Liaison, or Robert Coury, Chief, Medical Services and Compliance, with comments or questions.

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

<u>GOVERNANCE</u>

Ms. Falls reported that the Governance Committee had a discussion of a modification to its Governance Guidelines regarding delegation of authority to individual directors. The guidelines provide room for judgment and need to specify tasks and time-frames. They will require report after action is taken. Ms. Falls thanked Ann Shannon, Legal Counsel, and Mr. Berno for their work on this project. If approved, the revisions will be inserted into the Governance Guidelines under the section entitled " Board Governance- General."

Ms. Falls moved that the Workers' Compensation Board of Directors approve the amendments to the Governance Guidelines regarding Delegation of Authority, as recommended by the Governance Committee. Mr. Haffey seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Ms. Falls reported that the fiscal year 2010 Workers' Compensation Board and Committees' self-assessment process continued with the evaluation form being presented and a discussion on the changes. The form contains a summary of Workers' Compensation Board of Directors duties. Ron O'Keefe, Fiduciary Counsel, provided a memorandum on the self-assessment. The forms are to be submitted electronically directly to Mr. O'Keefe by June 7.

Ms. Falls moved that the Workers' Compensation Board of Directors adopt the recommendation of the Governance Committee and approve the Board Self-Assessment Process and Form. Mr. Smith seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Ms. Falls further reported that the Securities and Exchange Commission rule on a board's role in the oversight process. She thanked Mr. Lhota and Mr. Haffey for their reports on their experience as members of private boards. She noted that each Committee of the Board will be asked to review its own role in risk oversight and to integrate that into the respective committee charters. Ms. Falls referred the issue to the Audit Committee to tie-together the responsibilities of the Workers' Compensation Board on oversight.

In June, the Governance Committee will review the structure of standing committees. Some have three members, others have five. The consensus is that five members on each committee make the most sense. She requested Board feedback on committee constituency and requested volunteers to fill out committees.

Mr. Lhota deferred further reporting on the delegation of authority to meet with the Governor regarding the Administrator's evaluation until after the executive session. The executive session will be called to discuss personnel matters.

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

MONTHLY ENTERPRISE REPORT

Ms. Valentino provided the Enterprise Report for May. On April 1, BWC entered into a contract of reinsurance for $6 million in premiums. Ceded premiums are accrued each month in the amount of $0.5 million. Premium income in April included reductions of almost $12 million for discounts earned by employers participating in the premium discount program. Benefit payments issued in April included three bi-weekly cycles. A $347 million increase in the fair market value of the investment portfolio in April along with interest and dividend income of $54 million for the month, resulted in net investment income of $400 million for the month after investment expenses of $0.7 million. The increase in the fair value of the portfolio is comprised of $344 million in net unrealized gains and $3 million in net realized gains. Cash and cash equivalents include $372 million in money market holdings in the outside investment manager accounts. These funds are committed to covering a $275 million net investment trade payable for transactions that will settle the following month. Premium and assessment receipts of $87 million were collected in April. Receipts in April 2010 are just $2 million lower than collections during the same period last year, reflecting timing differences in the payment of premiums. BWC has contracted with a pharmacy rebate administrator to pursue rebates available from drug manufacturers based on utilization of and payment for their products. The pharmacy rebate administrator is paid ten percent of the rebates collected. In April, before payment of the pharmacy rebate administrator's fee, BWC received $1.3 million for rebates collected during the first quarter of 2010.

BWC total net assets have increased by $2.1 billion for the fiscal year-to-date 2010, resulting in net assets of $4.6 billion at April 30, 2010, compared to $1.5 billion at April 30, 2009. BWC premium and assessment income for fiscal year-to-date 2010 is $1.7 billion, compared to $1.9 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 DWRF and the Self-Insuring Employers' Guaranty Fund (SIEGF).

Mr. Hummel asked if the reduction is due to less payroll or fewer employers. Ms. Valentino replied that there was a 5% reduction in payroll, or $4 billion, and fewer employers as well, so it’s a combination of both.

Ms. Valentino further reported that benefit and compensation adjustment expenses increased by $80 million for fiscal year-to-date 2010. Reserves for compensation and compensation adjustment expense for DWRF and SIEGF have increased by $59 million in 2010. This increase has been partially off-set by lower payments for benefits and compensation adjustment expense. Declines in private employer payroll and decreases in premium rates have contributed to premium collections being $258 million less than prior fiscal year-to-date collections.

The approximately 20,200 employers participating in the 50/50 payment program will be paying $146 million in premiums by June 1, 2010 to maintain active coverage. This is down from the almost 20,700 employers that participated last year that owed $176 million for the second installment. As of May 7, 12,000 private employers with estimated premiums of $7.6 million remained in a lapse status for failing to report payroll for the July to December 2009 policy period. Last year at this time, coverage remained in a lapsed status for 14,000 private employer accounts with estimated premiums of $12.7 million for failure to report payroll for the July to December 2008 policy period. Public employer taxing districts had until May 15 to report payroll and pay at least 45% of the premium due for the 2009 policy year. As of May 7, 74% of public employer taxing districts had filed their report compared to 65% at this same time last year.

Mr. Harris asked what conclusion BWC draws from comparison of compliance of different classes of employers. Ms. Valentino replied that public employer taxing districts have incentives to pay earlier. Ms. Ryan added that this is one effect of the enhanced compliance program initiated in 2008.

Ms. Valentino further reported that BWC Administrative Cost Fund (ACF) expenses are approximately $23.6 million (9%) less than budgeted and approximately 7% less than last fiscal year. Decreases in payroll, including Customer Service, Infrastructure and Technology, Special Investigations, Medical, and Communications are due to decrease in staff as a result of hiring controls implemented by the Office of Budget and Management, a July payroll period not requiring health care premium payments, and employee use of cost savings days. Through April, BWC staff have taken over 167,000 (92%) of the available 182,000 hours for a savings of approximately $5 million. The BWC current fiscal year 2010 budget is approximately $40.6 million (12%) less than appropriated by the General Assembly. In addition to the May public employer taxing district and 50/50 payments, BWC will post adjustments to reserves at the end of May using the 4% discount rate, so the information to Schneider Downs will require fewer adjustments.

Mr. Haffey commented that this was a change from when the Workers' Compensation Board began and is an improvement. Ms. Valentino replied that was true in part. When BWC closes books on June 30, there will be a large audit adjustment following the Deloitte reserve report.

Mr. Bryan asked if $4.6 billion in net assets are needed if the change in the discount rate leads to an increase in liabilities of $500 million. Ms. Valentino replied that the net asset balance of that size was needed.

Ms. Ryan thanked the Workers' Compensation Board for consenting to booking adjustments earlier because it saves on explaining the adjustments to the General Assembly.

Ms. Valentino drew the attention of the Workers' Compensation Board to the individual fund balances set forth on page 13. Page 14 reports the Funding Ratio, 1.28, and the Net Leverage Ratio, 4.05; both are within guidelines and both will change with the lowering of the discount rate, but still be within the guidelines.

Mr. Smith requested footnotes in the May Enterprise Report on every change affected by the discount rate. Ms. Valentino replied that would be possible.

Mr. Haffey asked if Ms. Valentino knew of anything that would affect the ACF. Ms. Valentino replied she did not, and expected to finish the fiscal year 9 to 10% below the budget.

Mr. Lhota asked the directors to review the Legislative Report for updates since the last meeting.

ADMINISTRATOR BRIEFING

Ms. Ryan delivered her monthly report. The Competitiveness Task Force met on May 27 and received a report from Ann Nelson of the Employers' Insurance Company of Nevada. Employers' was spun off from the former monopolistic state insurance fund.

Mr. Pitts reported that he was representing Mr. Lhota and the Workers' Compensation Board at the meeting of the Competitiveness Task Force. Ray Mazzotta, Chief Operating Officer, served as Ms. Ryan's representative. Mr. Pitts stated that Ms. Nelson described the Nevada situation in the early 1990s as the Nevada Fund had an unfunded liability of $2 billion, when the state government budget was less than $1 billion. The Nevada Fund had 1,000 employees, but was managing a program only 20% the size of Ohio. Reforms were tried, and in 1995 it was decided to privatize the Nevada Fund. Little explanation was given, but according to the governor, workers' compensation was not deemed a core competency of Nevada government. The period 1995 to 1999 was a transition period and most of Ms. Nelson's presentation was on the hurdles. Nevada is now open to 240 carriers, although six companies dominate. Until recently, AIG was the largest carrier. As for the constitutional issue, the trust fund is deemed to still exist, but is unfunded. According to Ms. Nelson, before privatization employers hated the workers' compensation system. She was asked about employers fleeing the state, but inasmuch as the largest industry is gaming, they did not. There were anecdotal stories about employers who did not enter. There were many questions on group rating structure. The normal group discount is 7%, but some employers qualify for as high as 20%. The next meeting of the Competitiveness Task Force is June 17.

Mr. Mazzotta further reported that one reason for change was premium rates. An Oregon study showed Nevada was in the upper one-third among states. Now the rates are in the middle third, which is comparable to Ohio. There is no state entity. Employers unable to find a carrier enter an assigned risk pool which has rates 12% higher than standard markets. The six largest companies have one-half of the market. In the late 1990s, the $2 billion deficit was eliminated by shifting the burden to reinsurance. That would be difficult today. Employers' Insurance Company is still highly staffed.

Mr. Bryan asked about reports on the distribution costs and applicability of the federal income tax. Mr. Mazzotta replied there was little discussion on these, but assumed the costs were standard. The insurance company now uses independent agents to sell coverage.

Mr. Haffey asked what the financial oversight of the companies is. Mr. Mazzotta reported that it has shifted to the Nevada Department of Insurance. One company is a consortium of construction companies. Nevada has experienced no insurance company failure in ten years.

Mr. Hummel asked what the reports from injured workers were. Mr. Pitts replied that Nevada reduced benefits in the 1990s. In 1999, they were restored and there were increases. This was the quid pro quo for labor acquiescing to the change. Claims have reduced in frequency and increased in severity, which follows Ohio trends. The costs are driven by injuries to older workers, pharmacy costs, and durable medical goods. Adjudicating is similar to the Ohio Industrial Commission, with few changes.

Mr. Matesich asked what the assessment for the Nevada Industrial Commission is. Mr. Pitts replied he heard no report.

Mr. Lhota asked how Nevada dealt with the constitutional issue. Mr. Pitts reported that 2 ½ pages of the enabling statute dealt with the constitutional issues. The overall answer was to deplete the fund, but keep it in existence.

Ms. Ryan further reported on legislation. SB181 covers several coal mining issues, including the transfer from the Coal Workers' Fund to ODNR. It has passed the House of Representatives. SB238 prohibits workers' compensation benefits for ~~illegal aliens~~undocumented workers. It passed the Senate on May 27. ~~A bill~~HB 495 on unnecessary boards, including the Workers' Compensation Council, which it defunds, was introduced in the House and is expected to pass next week. The House Insurance committee has scheduled a hearing on HB259, which concerns investment authority. It may be scheduled for substitute language, not passage. John Pedrick, Chief Actuary, testified on HB246, the rebuttable presumption on first-responders and occupational disease claims.

Mr. Harris asked if there were any new provisions in SB181 on BWC. Ms. Ryan replied there were no new ones.

Mr. Haffey referred to the legislative update distributed to the Directors. He asked what does a check mark in the House legislation mean regarding the Workers' Compensation

Board. Ms. Ryan replied a check mark means the Workers' Compensation ~~Council~~ Board is not a defunded board.

Mr. Caldwell asked if SB 238 has any chance of passage. Ms. Ryan replied that it had much media attention and testimony, but was up to the chair of the House of Representatives Insurance Committee to act.

Finally, Ms. Ryan reported that the General Assembly will recess in three weeks for summer.

Ms. Ryan next reported on capital projects. The contractors have finished construction of new revolving doors and water abatement. The elevator reconstruction is nearly complete. This is a huge accomplishment for Tom Croyle, Chief of IT, and his staff. The next project will be replacement of the chillers. The Request for Proposal will be issued in July or August for permits and work will run through the next year.

Cost reductions have been accomplished through reduction of square footage in Dayton, Hamilton, Lima, and Toledo. Other offices being examined for space reduction in the near future will include Garfield Heights, Portsmouth, Youngstown, and Mansfield. Savings will amount to $500,000.

CHAIRMAN'S COMMENTS

The next meetings are June 17 and 18. The deadline for submitting material to the printer is June 4.

The Workers' Compensation Board will have a twenty minutes recess and reconvene in executive session at 10:20 a.m. to discuss Administrator Ryan's performance review. After coming out of executive session, the action item will be approval of the second agenda item of the Governance Committee.

Mr. Pitts announced that he will retire at the executive session. He would also not be eligible to vote on the remaining items of the public session.

EXECUTIVE SESSION

Mr. Lhota moved to enter executive session pursuant to Ohio Revised Code §121.22 to discuss personnel matters. Ms. Falls seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Return to Open Meeting

Executive Session concluded at 12:12 pm. Director Pitts was not in attendance. Mr. Lhota asked Ms. Falls to lead the discussion on delegation of authority for the Chair to meet with the Governor concerning the Administrator's evaluation.

Ms. Falls moved that the workers' compensation board of directors delegate authority to chairman William Lhota to meet with the Governor of Ohio regarding the administrator's performance as required by Ohio revised code section 4121.12(f)(15), to be performed as soon as possible within the governor's schedule. Furthermore, Chairman Lhota shall provide an explanation and account of the meeting with the Governor to the full board of directors at its next board meeting. Mr. Caldwell seconded the motion.

Ms. Falls stated she was comfortable with the delegation of authority because the process has provided fiduciary counsel oversight for all qualified directors input, and the Directors can agree or disagree with the delegation. Responding to a request from Ms. Falls, James Barnes, BWC General Counsel, opined the statute requires the Governor to entertain the thoughts and concerns of the Board regarding the Administrator's performance. Director Smith noted unlike most boards, the BWC Board does not have hire/fire authority, so the duty is to report to the Governor if the Administrator is not doing a good job. Mr. Barnes also pointed out there is precedence for the Board to delegate Board responsibilities to individual Directors. Director Caldwell noted the motion is very precise in the duty delegated and reporting the completion of the meeting at the next subsequent Board meeting. The motion passed 9-1 (Mr. Price voting no, and Mr. Pitts not voting because he is a non-qualified Director for this issue.)

Mr. Price stated that he did not believe it was appropriate for an individual Director to share the Board's opinion of the Administrator's performance.

ADJOURNMENT

Mr. Smith moved to adjourn the meeting. Mr. Caldwell seconded and Mr. Lhota adjourned the meeting at 12:27 pm after the motion was approved by a roll call vote of ten ayes and no nays.

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June 3, 2010