

BWC Board of Directors

**BOARD MEETING**

**Friday, November 22, 2010, 9:30 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  
James Barnes, BWC Chief Counsel

Staff present: Marsha Ryan, Administrator  
Tracy Valentino, Chief Fiscal & Planning Officer

Scribe: Larry Rhodebeck, Staff Counsel

**CALL TO ORDER**

Mr. Lhota called the meeting to order at 9:30 a.m. and the roll call was taken. Mr. Lhota reported that eleven members were present and constituted a quorum.

**MINUTES OF OCTOBER 22, 2010**

Ms. Falls moved to approve the minutes of October 22, 2010. Mr. Caldwell seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

## **AGENDA**

Mr. Lhota reserved the right to call a break at any appropriate time in the meeting. The Workers' Compensation Board will go into executive session after the Administrator's Report to discuss personnel issues. After the executive session, the Workers' Compensation Board will reconvene to memorialize any action taken and adjourn. There will also be a recess before the executive session.

Mr. Haffey moved to approve the agenda as amended. Mr. Hummel seconded and the amended agenda was approved by a roll call vote of eleven ayes and no nays.

## **CHAIRMAN'S COMMENTS**

Mr. Lhota reported that five committee meetings were held on November 18 and 19 and there was 96% attendance by directors at the meetings.

## **COMMITTEE REPORTS**

### **ACTUARIAL COMMITTEE**

Mr. Bryan reported that the Actuarial Committee met and approved two action items. Rates for public employer taxing districts were approved for the policy year beginning January 1, 2011. The overall rate is decreased by 5.5%. Nevertheless, different classifications have rates ranging from a decrease of 19% to an increase of 36%. The great variation is because of losses. The overall pure premium rate is \$1.38 per \$100 and \$1.58 with assessments. The Actuarial Committee had a discussion on capping. The classification with the 36% increase led to a request from the Actuarial Committee for an explanation of capping when BWC has a policy of capping increases at 30%. The Actuarial Committee was satisfied with the explanation.

Upon the recommendation of the Actuarial Committee, Mr. Bryan moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation relating to the Public Employer Rate rules, beginning January 1, 2011. The motion consents to the Administrator amending Rules 4123-17-33 and 4123-17-34 of the Administrative Code as presented at the Actuarial Committee. Mr. Caldwell seconded and the motion was approved by roll call vote of eleven ayes and no nays.

Mr. Bryan also reported that the Actuarial Committee had a discussion of its charter, which was equivalent to those of the other committees. Mr. Bryan moved that the Workers' Compensation Board of Directors approve the amended charter of the Actuarial Committee as recommended by the Actuarial Committee. Mr.

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

Mr. Bryan reported that there were no first readings of any proposals. The Actuarial Committee held a discussion on the quarterly reserve update led by Deloitte Consulting LLP for the reserve level as of June 30, 2011. The current estimate uses data from June 30, 2010. The reserve was updated with data from September 30, 2010. The result was very close to the estimate in the prior analysis. The nominal BWC liability is \$32.7 billion. However, the reserve is set at \$20 billion, which includes a 4% discount that assumes investment returns. The Actuarial Committee also had an education session on experience rating. BWC is moving to adopt the industry standard of a split experience rating. Split experience rating puts more emphasis on frequency. John Pedrick, Chief Actuarial Officer, conducted the session and will hold another in December. The new plan will be effective July 1, 2011. The rate stability study is to be presented at the January meeting.

### **AUDIT COMMITTEE**

Mr. Haffey reported the Audit Committee had one action item. Don Berno, Board Liaison, and Ann Shannon, Legal Counsel, conducted a second reading of the revised charter. Mr. Haffey moved that the Workers' Compensation Board of Directors approve the amended Charter of the Audit Committee as recommended by the Audit Committee. Mr. Smith seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Haffey reported that the Audit Committee had a presentation on the 2010 audit by Joe Patrick, audit partner for Schneider Downs. The completed report reflects eight months of work and is comprised of four documents. The audit was presented to the Auditor of State on September 30, and released to the public on November 17. Schneider Downs issued a clean opinion which is the highest standard. The second document is the "yellow book," an annual filing by government entities and other organizations. There was one comment concerning an acquisition by a Managed Care Organization (MCO). The third is the management letter with nine comments. The fourth is the statement of audit standards. BWC has not changed its accounting standards; the standards are appropriate; there was management cooperation; there were no disagreements with management; there were representations by management; and there was no additional outside auditors.

Ms. Valentino gave a report discussing the nine comments of the management letter on internal controls. These comments concerned duplicate claims, timeliness of employer refunds, policy cancellation requests, manual journal entries, MCO contracts, payment care policy, and BWC cell phone procurement

and management. In three to four months, there will be an update on resolution of the comments. None of the comments was major.

Tina Kielmeyer, Chief of Customer Service, and Tom Prunte, Director of Employer Management Services, presented a report on the Disabled Workers' Relief Fund (DWRF), temporary total disability (TTD), and employer compliance. In future months, Caren Murdock, Chief of Internal Audit, will present internal audits concerning these activities. There followed an open discussion with Ms. Murdock. There are four projects in the planning phase, including compliance and performance monitoring, employer refunds, and Professional Employer Organizations (PEOs). The January meeting will have a presentation to the Workers' Compensation Board on PEOs. There are three audits in field work on DWRF, electronic signatures, and TTD.

### **INVESTMENT COMMITTEE**

Mr. Smith reported that the Investment Committee met on November 18 and approved one action item. Mr. Smith moved that the Workers' Compensation Board of Directors approve the amended charter of the Investment Committee as recommended by the Investment Committee. Mr. Caldwell seconded and the motion was approved by a roll call vote of eleven ayes and no nays.

Mr. Smith reported that as of November 17, the BWC portfolio consisted of \$20 billion in invested assets, consisting of 68.6% in bonds, 30.8% in equities, and 0.6% in cash. The portfolio returns for the first four months of fiscal year 2011 ended October 2010 was 7.6%. November month-to-date performance through November 17 was negative 1.6%.

Mr. Smith also reported that the Investment Committee received the Annual Brokerage Activity Summary Report from Lee Damsel, Director of Investments. Equity trading for fiscal year 2010 totaled \$5.4 billion of market value at a transaction cost of 0.8¢ per share. Mr. Smith exclaimed this was the lowest transaction cost per share he had ever heard of. BWC traded \$34.8 billion in market value of fixed income assets over fiscal year 2010. The fees are wrapped-up in the trade costs. The Investment Committee had an education session on the Long Credit strategy by Mercer Investment Consulting, Inc. that focused on active investment management. Bruce Dunn, Chief Investment Officer reviewed the calendar and timelines on education, actions, and Requests for Proposals (RFP). The February 2011 board meeting will have a presentation by a senior economist from the Cleveland Federal Reserve Bank.

## **MEDICAL SERVICES AND SAFETY COMMITTEE**

Mr. Harris reported that the Medical Services and Safety Committee conducted a second reading on the committee charter, conducted by Mr. Berno and Ms. Shannon. Mr. Harris moved that the Workers' Compensation Board of Directors approve the amended charter of the Medical Services and Safety Committee as recommended by 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 further reported that the Medical Services and Safety Committee held two first readings. The rates in the Ambulatory Surgical Center Fee rule, effective April 1, 2011, are derived from Medicare rates. The changes will result in increases of \$66,700 in fees. The Outpatient Hospital Fee Schedule rule was reviewed by Freddie Johnson, Director, Managed Care Services, and Anne Casto, Casto Consulting. These rates are also derived from Medicare and will result in savings of \$11 million.

Tina Kielmeyer delivered a report on Medicare Reporting, claims severity, and the District Service Office business plan. In the first quarter, the number of employers receiving consulting services increased by 8%. Education and training class attendance increased by 21%. Safety Grants awarded increased by 675%.

Eric Davis of the IBEW/Warren Electrical Joint Apprenticeship Training Facility joined Carol Morrison of the Division of Safety and Hygiene to give a presentation on the award of a grant of \$112,580 for wind turbine safety training.

## **GOVERNANCE COMMITTEE**

Ms. Falls reported that the Governance Committee had two action items, approval of the committee charter and the governance guidelines. Ms. Falls moved that the Workers' Compensation Board of Directors approve the amended charter of the Governance Committee as recommended by 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 there was a second reading of the Governance Guidelines. She thanked Mr. Berno and Ms. Shannon and Fiduciary Counsel Ron O'Keefe for their assistance. The Governance Guidelines were first approved in February 2008. There was significant discussion and input from all directors during this annual review. The document has grown from eleven pages to twenty pages and is now a finely honed, balanced, and thorough document. The appendices have grown from two to thirteen, for a one-stop look at rules of operations, fiduciary responsibility, ethics laws, and counsel opinions.

Ms. Falls moved that the Workers' Compensation Board of Directors approve the amended Governance Guidelines, as recommended by the Governance Committee. Mr. Pitts seconded the motion.

Mr. Pitts commended Ms. Falls for her extensive work in developing and maintaining the Governance Guidelines. It is one of the most important documents developed by the Workers' Compensation Board for transparency and accountability. Mr. Price also commended Ms. Falls for her tenacity, skills, and foresight in making the guidelines. Mr. Lhota also thanked Ms. Falls for her leadership on the guidelines and the charters. Having served on major public and private boards, Mr. Lhota said these guidelines qualify for "best in class".

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

### **MONTHLY ENTERPRISE REPORT**

Tracy Valentino, Chief of Fiscal and Planning, reviewed the November *Enterprise Report*.

BWC net assets increased by \$152 million in October on a combined basis, resulting in net assets of \$5.1 billion at October 31, 2010, compared to \$4.9 billion at September 30, 2010. Premium and assessment income net of the provision for uncollectible accounts receivable and ceded reinsurance premiums resulted in operating revenues of \$163 million in October. Operating revenues in September included reductions of \$9 million for safety council participation credits granted to over 2,800 employers. Eligible employers participating in BWC's Safety Council program earned a 2% premium discount. Benefits and compensation adjustment expenses of \$193 million along with other expenses of \$12 million resulted in operating expenses of \$205 million.

Lower benefit payments issued in October are a result of an additional bi-weekly benefit payment occurring in September. The increase in payments for compensation adjustment expenses and other expenses are the result of an additional payroll cycle in October.

There was a \$144 million increase in the fair value of the investment portfolio in October. On October 31, 2010, cash and cash equivalents included \$122 million in money market holdings in the outside investment manager accounts compared to \$997 million at October 31, 2009, to cover net investment trade payables for transactions that settle in the following month. Premium and assessment receipts of \$30 million were collected in October compared to \$26 million in October 2009.

BWC total net assets have increased by \$1.3 billion for fiscal year-to-date 2011, resulting in net assets of \$5.1 billion at October 31, 2010, compared to \$3.7 billion at October 31, 2009. BWC's premium and assessment income for fiscal year-to-date 2011 is \$651 million, compared to \$731 million for fiscal year-to-date 2010 and reflecting decreased premium rates. Benefit and compensation adjustment expenses increased by \$25 million for fiscal year-to-date 2011 compared to prior fiscal year-to-date expenses.

The BWC net investment income for fiscal year-to-date 2011 totaled \$1,456 million, comprised primarily of \$1,068 million in net unrealized gains and \$166 million in net realized gains, along with \$224 million of interest and dividend income, net of \$2.4 million in investment expenses.

Ms. Falls reported that at the November 18 meeting of the Investment Committee, Chief Investment Officer Bruce Dunn reflected on the volatility in the markets. The gains that are reflected in BWC assets since the close of the last year cannot be taken for granted. What the market gives, the market can taketh away.

Ms. Valentino further reported that approximately 19,300 employers participating in the 50/50 payment program will be paying \$132.5 million in premiums by December 1, 2010, to maintain active coverage. These numbers are down from the 22,000 employers that participated last collection cycle that owed \$146 million for the second installment. As of November 9, 12,700 private employer accounts with estimated premium of \$7 million remained in a lapsed status for failing to report payroll for the January through June 2010 policy period. This compares to 12,000 accounts with estimated premium of \$7.6 million that remained lapsed as of May 7 for failing to report payroll for the July through December 2009 policy period. BWC continues to work on these accounts with the Office of the Attorney General.

In the Statement of Operations—Combining Schedule, the net assets for the seven BWC funds are \$5 million.

The ACF analysis covers the budget approved by the Workers' Compensation Board and the Ohio General Assembly. BWC Administrative Cost Fund expenses for fiscal year to date October 2010 are approximately 6.8% less than budgeted and approximately 9.5% more than last fiscal year. This is primarily driven by timing issues. Posting three payroll cycles in October 2010 resulted in an increase in payroll compared to last fiscal year to date. In fiscal year 2010, this additional payroll cycle did not occur until November. Additionally, BWC staff continued to use fewer cost savings days in fiscal year 2011 than in fiscal year 2010. Through October 2010 journal entries BWC staff have taken 70,000 (40%) of the available 176,000 hours for a savings of approximately \$1.9 million. As of October 2009, staff had used 47% of the hours available for a savings of \$2.6 million. Fiscal year

2011 usage is expected to increase during November and December due to the holidays. Also, there are fewer employees at BWC this fiscal year.

Mr. Matesich asked what part of the 9.5% is timing versus other issues. Ms. Valentino replied that most is in the third October payroll, the cost savings days, and faster payment of invoices in the fiscal year.

Ms. Valentino reported that the Funding Ratio and the Net Leverage Ratio are both within the guidelines. For the remaining tables of the report, BWC is adding comments to this month's report.

### **SESSION WITH GOVERNOR TED STRICKLAND**

Governor Strickland made an unexpected appearance and thanked Ms. Ryan and the Workers' Compensation Board for a job very well done. He was proud of their accomplishments. Their consummate professionalism and commitment have brought BWC again to great respect. The people of Ohio should be thankful. The Workers' Compensation Board and Ms. Ryan completed everything they were asked to do to achieve best practices. Marsha Ryan was once described to Governor Strickland as a salmon swimming upstream. She brought the agency to the place it needs to be. He thanked the Workers' Compensation Board and Ms. Ryan for their willingness to work together. He also thanked Mr. Lhota and the Governor's staff. The highest priority was treating injured workers with the highest respect. BWC is a big deal, but is not well understood, and touches many. The Workers' Compensation Board and Ms. Ryan achieved the two highest priorities that injured workers are protected and the assets of the State Insurance Fund are protected. Governor Strickland wished everyone a happy Thanksgiving.

Mr. Lhota stated that three and one-half years ago Governor Strickland had selected the Workers' Compensation Board. The intent was to create a fiduciary board to run a state agency. There is no other state agency like that. George Washington fought the American Revolution for eight years. At the end, he gave credit to the officers and troops, and then resigned. Otherwise the United States may have been a monarchy. Mr. Lhota would stack up the Workers' Compensation Board standards against any public company. Mr. Lhota thanked BWC staff for their contributions. The session concluded with a photo opportunity.

### **CONTINUATION OF THE ENTERPRISE REPORT**

Mr. Hummel noted that BWC still continues to collect assessments to fund the Workers' Compensation Council. Ms. Valentino replied that as long as the Workers' Compensation Council is authorized, BWC will collect and hold the assessments until there is a request to pay over for operations. If the Workers' Compensation Council is abolished, then BWC will request that the funds be

retained and applied to lower future employer contributions to the Administrative Cost Fund.

Mr. Pitts complimented the addition of the notes on page 15 that capture the highlights of the data. Ms. Valentino added that this is the first attempt of BWC to enhance explanation of the tables of the *Enterprise Report*.

Ms. Valentino answered two questions raised in November 18 committee meetings. The first concerned short-term borrowing from the BWC cash manager. Ms. Valentino reported that BWC had no authority to borrow. The second concerned the procurement cards issued to some BWC employees. The cards have a \$2,500 limit. However, any expenditure over \$1,000 requires prior approval. The vast majority of managers spend amounts far below the \$2,500 limit. Also, the \$1,000 limit is state policy.

### **ADMINISTRATOR'S BRIEFING**

Ms. Ryan stated that the directors had received a Legislative Report from Greg Paul outlining election results and changes in the General Assembly. It is more concise than similar reports from other sources.

The November 18 meeting of the Competitive Workers' Compensation Task Force was cancelled. Senator Tim Grendell reported that it would defer to Governor-elect Kasich on changes to be made in workers' compensation.

The budget is completed and was submitted on time. The new administration will assemble a completed budget and the General Assembly will begin hearings in March.

The Combined Charitable Campaign exceeded its goals even though times are difficult and BWC employees have had a pay freeze.

An article from *Smart Business* magazine has been distributed on Mr. Lhota and his selection to the Junior Achievement Central Ohio Business Hall of Fame.

Ms. Ryan congratulated Marybeth and David Caldwell on their recent marriage. Ms. Ryan wished everyone a happy Thanksgiving.

### **CHAIRMAN'S COMMENTS**

Mr. Lhota reported that the next meetings will be on December 15 and 16. This is a short time-frame and the books will need to be distributed on December 9.

Mr. Lhota announced that the Workers' Compensation Board would recess for five minutes and reconvene at 10:45 a.m. in executive session. The only matter of business after the executive session will be report on actions taken and adjournment.

Mr. Haffey moved that the Workers' Compensation Board enter executive session pursuant to Ohio Revised Code § 121.22(G)(1) to conduct a discussion on personnel matters. Mr. Caldwell seconded and the motion to enter executive session was approved by a roll call vote of eleven ayes and no nays.

Mr. Lhota recessed the meeting at 10:40 a.m.

### **ADJOURNMENT**

Mr. Lhota adjourned the executive session and called to order the open portion of the meeting. Mr. Haffey had left the meeting.

Ms. Falls moved that the BWC Board of Directors accept, with great reluctance, the resignation of Marsha Ryan as Administrator effective January 9, 2011. Mr. Harris seconded and the motion was approved by a roll call vote of ten ayes and no nays.

Mr. Lhota asked the staff prepare a resolution recognizing the Administrator's efforts and present a framed copy to the Administrator.

Mr. Lhota asked if there was any other business. Hearing none, and upon motion by Mr. Hummel and second by Mr. Matesich, the Directors voted 10-0 to adjourn at 11:25 a.m. and Mr. Lhota adjourned the meeting.

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November 23, 2010