

**BWC Board of Directors
Governance Committee**

Thursday, May 27, 2010

Level 2, Room 3 (Mezzanine)
30 West Spring St.
Columbus, OH 43215

Members Present: Alison Falls, Chair
William Lhota
Larry Price

Members Absent: None

Other Directors Present: Charles Bryan, David Caldwell, Kenneth Haffey, James Hummel, James Matesich, Thomas Pitts, and Robert Smith.

Counsel Present: F. Ronald O'Keefe, Fiduciary Counsel, Hahn, Loeser & Parks LLP (via telephone)
James Barnes, BWC General Counsel

Scribe: Michael J. Sourek, Staff Counsel

CALL TO ORDER

Ms. Falls called the meeting to order at 3:58 PM, and the roll call was taken. All members were present.

MINUTES OF APRIL 29, 2010

Ms. Falls asked for any changes to the minutes of April 29, 2010. With no changes, Mr. Price moved to approve the minutes of April 29, 2010, and Mr. Lhota seconded the motion. The motion passed with a 3-0 unanimous roll call vote.

REVIEW AND APPROVAL OF AGENDA

Ms. Falls, at Director Price's request, recommended that the third item on the agenda, Governance Guideline addition re: delegation of authority, be the first item discussed and the remainder of the agenda otherwise proceed in order. Mr. Price moved to approve the agenda, as amended by Ms. Falls' recommendation, and the motion was seconded by Mr. Lhota. The motion passed with a 3-0 unanimous roll call vote.

NEW BUSINESS

1. Governance Guideline addition re: delegation of authority

Ms. Falls indicated the Audit Committee, and the Board subsequently approved a delegation of authority to the Chairman of the Board of Directors and Chair of the Audit Committee to review and approve the terms of reinsurance coverage for the State

Insurance Fund. The language presented today would add a process for delegation of authority to the Governance Guidelines. Ann Shannon, Legal Counsel, and Donald Berno, Liaison for the Board of Directors drafted language for the Committee to review. Ms. Falls noted the issue was very timely as the Board of Directors may consider delegating authority for discussing the Administrator's evaluation with the Governor.

Mr. Lhota noted the question was one of mechanics; in the reinsurance issue, an additional motion was needed to create the delegation. Ms. Falls concurred, noting the key phrase in the language was "may be recommended through formal motion." The proposed language is specific to the task delegated, duties, and timeframes, and she emphasized there could be no open ended delegations. After the delegation of authority is approved, and the delegated activity is completed, there must be a report to the Board of Directors, thereby closing the loop. Mr. Caldwell asked if the delegation of authority would require a simple majority vote, and Ms. Shannon, at the request of Ms. Falls, answered in the affirmative. Ms. Falls said she did not want instances where it was not clear to whom the task was delegated, and any objections could be raised in the presentation to the Board of Directors. Ms. Falls thanked Ms. Shannon and Mr. Berno for their work.

Mr. Price moved that the Governance Committee of the Workers' Compensation Board of Directors approve the amendments to the Governance Guidelines regarding delegation of authority and refer the amended Governance Guidelines to the Board for review and approval. The motion was seconded by Mr. Lhota, and the motion passed with a 3-0 unanimous roll call vote.

Ms. Falls initiated a discussion regarding the Administrator's evaluation process. The Board of Directors would first meet with the Administrator in executive session and then in an open meeting regarding the final evaluation. Ms. Falls opened the floor to discussion of whether the Chairman of the Board of Directors should be delegated authority by the Board of Directors to meet with the Governor regarding the Administrator's evaluation. Mssrs. Caldwell, Haffey, Matesich and Smith were generally comfortable with a delegation of authority to the Chairman of the Board of Directors in this instance.

Ms. Falls said the Bureau's Chief Legal Officer, James Barnes, had opined this delegation of authority would be permissible. Mr. Price was uncomfortable with the delegation of authority in this instance because of the statute's wording: "[t]he Board shall meet with the Governor." His interpretation of the law and of the legislative intent was that all directors would meet with the Governor to provide insight, and a variety of thoughts, to the Administrator's performance. He indicated that he did not believe that all eleven directors had to be present at the Governor's meeting, but that directors likewise cannot be precluded from meeting with the Governor. That issue was Mr. Price's main disagreement; as many directors as are available should meet with the Governor.

Ms. Falls inquired why the meeting with the Governor was scheduled for June 10th. Mr. Lhota replied the Board of Directors was attempting to accommodate the Governor's schedule.

Ms. Falls believed Mr. Price made a valid point with regard to having the Governor hear all viewpoints; some directors have made their opinions in writing whereas some would prefer to do so verbally. She noted this discussion was for a motion to recommend a delegation of authority. Mr. Barnes expanded upon his prior opinion regarding delegating authority to meet with the Governor regarding the Administrator's performance. He noted that the Board of Directors was an entity and that the Board could determine whether to meet as a whole or to designate one or more members to meet, with the Governor, as long as the one or more members were delegated such authority by the Board, through majority vote. It is important that the Board members attending the meeting understand that they are representing the entire Board at the performance evaluation meeting. Ms. Falls added that Mr. Barnes had also previously advised that if any Board member wished to attend the Administrator's performance evaluation meeting with the Governor, then that Board member should be permitted to attend. Ms. Falls appreciated and respected Mr. Price's insight into the issue and recognized the Board of Directors had to be cognizant of the issue moving forward; however, the Administrator's evaluation is a sensitive process and should reach a speedy conclusion.

Mr. Lhota asked that the minutes reflect that although Director Pitts was present at the meeting, he did not participate in this discussion regarding the Administrator's assessment.

Ms. Falls made a motion to recommend to the Board of Directors to delegate authority to Mr. Lhota to meet with the Governor concerning the Administrator's evaluation. Mr. Lhota as a point of order noted the motion was premature for consideration at this meeting and should be deferred until after the Administrator's evaluation is concluded. The motion was subsequently withdrawn by Ms. Falls.

2. Board and Committee self-assessment process and form

Ms. Falls noted the Governance Committee was provided with a draft of the Board of Directors and Committee self-assessment. F. Ronald O'Keefe, Fiduciary Counsel for the Board of Directors, Mr. Berno, and Ms. Falls had met to reduce redundancies in last year's self-assessment, reorder questions so that Committee and Board questions were asked separately, and consider consolidation.

Mr. Berno and Mr. O'Keefe presented the changes to the self-assessment, noting consolidation of redundant questions reduced the total number of questions from 14 to 11. The following changes were noted:

- Question 1 had the term "investment portfolio" changed to "investment policy" and additional categories of "litigation status" and "risk management" were added;
- Questions 2 and 7 were combined by changing the word "information" in Question 2 to "pre-meeting materials;"
- Questions 8 and 10 were duplicative and combined, removing Question 10; and
- Question 9 was renumbered as Question 5 to improve the form's flow; wording "works well," a general phrase, was replaced with terminology that reflects whether the committees were performing the duties assigned to them within their charter.

Mr. Lhota inquired why the signature at the end of the form was optional. Mr. O'Keefe noted this was done in the past but raises a philosophical question. A director had the prerogative of being anonymous. He knew the specific directors' responses whether the form was signed or not because he knew where the response came from. Mr. O'Keefe added his responsibilities include collecting and compiling responses from all eleven directors. A tally of each category and average is computed. Additionally all comments are compiled into a summary without any redundancy if more than one director made the same comment. Ms. Falls noted after the Board of Directors meets in executive session, the Board of Directors decides what action steps to take. Mr. O'Keefe confirmed once the Board of Directors approves the self-assessment, the summary becomes a public record.

Mr. Smith noted many of the questions dealt with management preparation, preparation materials, and what happens during Board of Directors meetings. Mr. Smith proposed an additional question of "how are we doing?" Ms. Falls believed Mr. Smith raised an excellent issue, and she had discussed this issue with Mr. O'Keefe. Mr. O'Keefe noted a general question like this could potentially pose legal liability to the Board of Directors. He recommended an average of all the questions as a gauge of how the Board of Directors was doing. Mr. Smith was looking at the self-assessment as a critique of the Board of Directors' performance, and reiterated he would like to see a question that indicated whether the Board of Directors was performing its job. Mr. O'Keefe noted Revised Code Chapter 4121 listed the responsibilities of the Board. That could be a measure included in the questions. Ms. Falls indicated Ms. Shannon had prepared a synopsis of the statute that indicated the Board of Directors' responsibilities. Mr. O'Keefe did not oppose a question, in concept, on how the Board of Directors believed they were fulfilling their statutory requirements; the statute or Ms. Shannon's memorandum could be provided as an addendum to the self-assessment. Mr. Pitts suggested a question rating the overall performance of the Board of Directors on a scale of 1-5 with space for commentary. Mr. Caldwell agreed that a question about how the Board itself was doing was important. He suggested eliminating Question 2. Mr. O'Keefe inquired what legend should be attached to the self-assessment. The Administrator's evaluation and the Board of Directors self-assessment used different scales. Ms. Falls recommended the same scale used for the Administrator's evaluation should be used for the self assessment.

Ms. Falls summarized the changes to the self-assessment as: the wording and consolidation as presented by Mssrs. Berno and O'Keefe, adding a legend on a scale of 1-5, and an additional question rating the overall performance of the Board of Directors. Ms. Falls moved that the Governance Committee of the Board of Directors recommend that the Board of Directors approve the Board Self-Assessment Process and Form, as so modified. Mr. Price seconded the motion, and the motion passed with a 3-0 unanimous roll call vote.

Ms. Falls noted Mr. O'Keefe would be distributing a memorandum to the Board of Directors on May 28. The timeline is that the self-assessment would have to be completed by Monday, June 7th. Mr. O'Keefe would compile the data and complete the summary between June 8th and 10th. On June 11th, Mr. O'Keefe's report would be distributed to the directors, and the self-assessment would be reviewed in executive session at the June 18th Board meeting. There would be an opportunity to discuss the self-assessment, as well as the vote, in the open portion of the meeting. Ms. Falls encouraged commentary on action steps from last year, and what action steps should be

included this year. Mr. Haffey inquired to the method of delivery, and Ms. Falls noted the document would be distributed in Microsoft Word format. The information will include a memorandum from Mr. O'Keefe with the revised self-assessment form.

3. Discussion of new SEC rule re: risk management

Ms. Falls noted a rule by the Securities and Exchange Commission (SEC) was passed earlier this year setting requirements for all public companies to follow regarding risk oversight. Risk oversight requires examining all forms of risk including general liability, regulatory, business, data loss, technology failure, director and officer liability, cash risk, climate change risk, intellectual property, property and casualty liability, and other forms. She questioned what the rule meant to the Bureau and how the Bureau should execute the new rule. She noted some boards have a risk management committee, and she specifically asked for input from Mssrs. Haffey and Lhota.

Director Price left the meeting at approximately 4:50 PM

Mr. Haffey indicated the rule went into effect at the end of December, 2009 for all proxies filed after February, 2010. In his private practice, he was included in ramping up the new proxy filings for public companies. He had forwarded materials on strategic risk management to Administrator Ryan. He believed the area was new for the Board of Directors, especially for the Audit Committee in the risk management process. The Audit Committee has done a good job to date in evaluating risk through heat maps, what generates an audit and when more time is given to audits when more risk is at stake. His private firm was presently sifting its way through the new process, and the firm will receive comments from the SEC in one to two months.

Mr. Lhota concurred generally with Mr. Haffey. At the Board of Directors for Huntington Bank, Mr. Lhota noted the Risk Management Committee was renamed the Risk Oversight Committee because the committee did not manage risk; managing risk was management's job. The Risk Oversight Committee needed to know the risks that the organization was taking and making sure the organization was addressing them. While the Board of Directors and the Bureau were not public companies subject to the new SEC rule, he was not opposed to addressing the new rule as a matter of best practices.

Ms. Falls asked if a separate committee should be formed to address risk oversight. Administrator Ryan responded the Board of Directors had a risk oversight function already, and the risk oversight is dispersed throughout all the committees. As an example, while the Medical Services and Safety Committee has many operational tasks, a lot of financial issues are also addressed. She added, from an operational standpoint, it would take significant additional thought to go beyond what the Bureau's Internal Audit department already does. She noted that while most risks are financial in nature, the BP oil spill illustrates how an operational risk can be far greater than any financial risk contemplated.

Mr. Matesich asked for clarification from Mr. Lhota as to what Huntington's Risk Oversight Committee does. Mr. Lhota replied that four years ago, the committee was the Audit Committee; the change to the Risk Oversight Committee was merely a title change so there was no misunderstanding of the role of the committee.

Ms. Falls said the topic would require more thought, but a discussion of committee charters will be in the fall, and the topic may be revisited then. Each committee appears to have some risk oversight functions. The question is whether a sixth committee, though she personally disliked the idea, may be warranted to handle this function. She agreed the Audit Committee has been doing an excellent job of challenging the Board of Directors. Mr. Haffey offered materials to the Board of Directors on the topic, and he concurred that this important topic should be added to the fall calendar. Ms. Falls indicated she would discuss further with Mr. O’Keefe on the Governance Guidelines as they pertain to the risk oversight issue.

4. Committees with Three Members Pros and Cons (e.g., Governance and Medical Services and Safety Committees)

Ms. Falls said this topic was ripe for discussion because next month the Board of Directors would be reviewing committee memberships. She desired to gauge the director perceptions of some committees having three members and others with five members. Ms. Falls personally indicated she was okay with the current situation, but wanted Mr. Barnes to discuss open meeting laws as they pertained to a committee size.

Mr. Barnes stated open meetings are governed under Revised Code Section 121.22. The goal of the law is to have transparency and requires public bodies and commissions to conduct official business in an open forum. The Board and both qualify as public entities under the statute. A meeting under the law is defined as a “pre-arranged gathering of members of the public body to discuss and conduct public business.” In a three member committee, only two members are required to form a quorum. For the Board of Directors, six members would constitute a quorum.

Ms. Falls proposed the situation of Mr. Lhota, Mr. Price and herself discussing the issue of whether the Governance Committee should have three or five members, and whether that constituted a meeting under the law. Mr. Barnes replied the question centers on whether official business is being conducted during the gathering of Committee members. The discussion would have to be examined from the perspective of how it relates to the Bureau carrying out its responsibilities or the Board of Directors’ oversight. Mr. Matesich indicated a situation where he may approach another director on the Actuarial Committee for lunch, presuming that committee had three members, to discuss the group retrospective rating program. Mr. Barnes replied that such lunch would constitute a meeting as it involves Bureau and Board business. However, he posed the situation of a happenstance meeting between the same two directors. There was nothing wrong with directors having lunch together, but if a business topic is discussed, then the directors risk crossing the statutory line because they constitute a quorum. The Board members should also consider that although they are not discussing official business, there could be a misperception that they are engaging in such discussion. Mr. Lhota asked what number of members would be needed for a five member committee to conduct a meeting, and Mr. Barnes replied three members would be required.

Mr. Smith noted another reason that a five member committee may be preferred over three members is that, in a three member committee, two out of eleven directors could stop something from happening. With five members, more members would vote in

committee. Ms. Falls noted, even if something were to fail in committee, a director could move that the Chairman of the Board of Directors take the issue out of committee. Under current law, committees have no authority to take any action right now; all issues are presented to the Board of Directors. Mr. Matesich believed a five member committee would take pressure off a three member committee. He added that the directors generally sit in almost all committee meetings, regardless of whether the director is a member of the committee or not. He was concerned that two members could constitute a meeting. Ms Falls noted five member committees and five committees total with only eleven directors would be a very difficult task. Mr. Lhota was very sensitive to Bureau matters, and the directors had good attendance at all committee meetings. From a conservative viewpoint, he preferred all committees be five members to avoid any perception issue. He did not believe there would be much added burden to the directors since all directors already attend most committee meetings. Mr. Caldwell noted he made conscious efforts to attend all committee meetings, and this attendance did not occur without personal struggle and adjustment. He noted he did have to miss two committee meetings last month, but he did attempt to get to them. Mr. Caldwell was hesitant to commit to being on more committees in light of the fact he may be a member and not be able to attend. Mr. Hummel believed a five member committee would give more viewpoints. Mr. Smith concurred, that only two members are needed to have a meeting on a three member committee.

Mr. Barnes said perception should be considered, but not be the overriding factor, in the discussion. There are other reasons that influence the number of members that should be on a committee. However, perception is always going to be an issue. Any time two directors are in public together, the perception may be there.

Ms. Falls noted the Medical Services and Safety Committee, unlike the Governance Committee, spends a considerable amount of time discussing various operational issues of the Bureau. When Ms. Falls posed whether five member committees for all five committees is preferred, Mr. Lhota and Mr. Smith were in support. Mr. Hummel noted that the Chairman of the Board of Directors was an *ex officio* member of all committees in which he is not appointed, and minutes from the committees in which the Chairman was an *ex officio* member did not reflect this fact. Ms. Falls noted the issue would be corrected.

5. Committee Calendar

Ms. Falls noted next month's agenda would focus on membership recommendations to the Chairman of the Board of Directors. She encouraged all directors present who wanted to change their assignments or join an additional committee, in anticipation of increasing all committees to five members, to notify her in the next week. Other agenda topics included developing an education plan for the Board of Directors and discussing the Administrator's objectives for the 2011 fiscal year.

ADJOURNMENT

Mr. Lhota moved to adjourn the meeting at 5:19 PM, seconded by Ms. Falls. The meeting adjourned with a 2-0 roll call vote, with Mr. Price not present.