BWC BOARD OF DIRECTORS

BOARD MEETING

Thursday, June 16, 2011, 8:00 a.m.
William Green Building
30 West Spring St. 2nd Floor (Mezzanine)
Columbus, Ohio 43215

MEMBERS PRESENT:	Nicholas Zuk, Chair David Caldwell Chan Cochran Peggy Griffith Ken Haffey David Johnson Steve Lehecka Jim Matesich Mark Palmer Robert Smith Dewey Stokes
Members Absent:	None
Counsel Present:	Janyce Katz, Assistant Attorney General Ann Shannon, Legal Counsel
Staff present:	Steve Buehrer, Administrator Ray Mazzotta, Chief Operations Officer Tracy Valentino, Chief Fiscal & Planning Officer Don Berno, Board Liaison
Scribe:	Larry Rhodebeck, Staff Counsel

CALL TO ORDER

Mr. Zuk called the meeting to order at 8:00 a.m. and the roll call was taken.

MINUTES OF JUNE 15, 2011

The minutes of June 15, 2011 were approved by a unanimous voice vote.

AGENDA

Mr. Zuk removed two items from the agenda: The Governance Committee report on the fiscal year 2012 education plan and the executive session for the Board self-assessment. The amended agenda was approved by a unanimous voice vote.

COMMITTEE REPORTS

Mr. Zuk complimented all committee chairs for the conduct of their meetings. There was 100% attendance. Most of the business of the Workers' Compensation Board is conducted by the committees and Mr. Zuk invited as many questions as needed from new members until they fully understand the matters under discussion.

ACTUARIAL COMMITTEE

Mr. Lehecka reported that the Actuarial Committee met on June 15 with all members present. All Board Members who are not committee members were also present and participated in the discussion to approve rate recommendations and program changes.

Upon the recommendation of the Actuarial Committee, Mr. Lehecka moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend Rule 4123-17-36 of the Administrative Code, "Administrative Cost Contribution." The motion consents to the Administrator Amending the rule as presented at the Actuarial Committee. Mr. Matesich seconded and the motion passed by unanimous voice vote of eleven ayes and no nays.

Upon the recommendation of the Actuarial Committee, Mr. Lehecka moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to retain without change Rule 4123-17-37 of the Administrative Code, "Employer Contribution to the Safety and Hygiene Fund." The motion consents to the Administrator retaining without change the rule as presented at the Actuarial Committee. Ms. Griffith seconded and the motion was approved by a unanimous voice vote of eleven ayes and no nays.

Upon the recommendation of the Actuarial Committee, Mr. Lehecka moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend Rule 4123-17-32 of the Administrative Code, "Self Insured Employer Assessment Based upon Paid Compensation." The motion consents to the Administrator amending the rule as presented at the Actuarial Committee. Mr. Caldwell seconded and the motion was approved by a unanimous voice vote of eleven ayes and no nays.

Upon the recommendation of the Actuarial Committee, Mr. Lehecka moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend Appendix C of Rule 4123-17-74 of the Administrative Code, "Deadline Dates and Compatibility Information for Employer Programs." The motion consents to the Administrator amending Rule 4123-17-74 as presented at the Actuarial Committee. Mr. Johnson seconded and the motion was approved by a unanimous voice vote of eleven ayes and no nays.

Upon the recommendation of the Actuarial Committee, Mr. Lehecka moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to amend Rule 4123-17-33.1 of the Administrative Code, "Public Employer Taxing District Credibility Table Used for Experience Rating," and to amend Rule 4123-17-64.2 of the Administrative Code, "Public Employer Taxing District Group Rating Break Even Factor." The motion consents to the Administrator amending the rules as presented at the Actuarial Committee. The motion further consents that the Actuarial Committee waived the second reading of these rules. Mr. Caldwell seconded and the motion was approved by a unanimous voice vote of eleven ayes and no nays.

Mr. Lehecka reported that Bill Van Dyke, Deloitte Consulting, LLC, led a discussion of the actuarial reserve estimate for June 30, 2011. The key concept of the report was that there has been a slight decrease in the estimate of paid compensation over the estimate of June 30, 2010.

INVESTMENT COMMITTEE

Mr. Smith reported the Investment Committee met on June 15 with all committee and board members present. There was one action item. The BWC portfolio stands at $21.065 billion as of June 15, of which 67.2% is in fixed income securities, 31.5% in equities, and 1.3% in cash. All allocations are within the investment guidelines. As of May 31, the portfolio had returned 13.6% for the fiscal year, an increase of $2.6 billion. There has been a decline in market value of bonds and stocks this month through June 14 of 1.7%, a decrease of $366 million.

Mr. Smith moved that the Workers' Compensation Board of Directors (Board) accept the recommendation of the Investment Committee to renew the current investment management agreement with State Street Bank and Trust Company (State Street), which would allow State Street to continue as the commingled passive intermediate duration fixed income index manager for both the Public Work-Relief Employees' Fund and the Marine Industry Fund for an additional two-year term commencing July 1, 2011, and ending June 30, 2013, and that the existing investment management agreement with State Street be amended to allow the Bureau of Workers' Compensation (BWC) the option to extend the term of the contract for additional two-year terms beyond June 30, 2013, without limit at the discretion of BWC, with the specific approval of the Board for each additional two-year term extension. Mr. Caldwell seconded and the motion was approved by a unanimous voice vote of eleven ayes and no nays.

Mr. Smith reported that most of the time of the Investment Committee was spent on the real estate investment proposal. R. V. Kuhns & Associates, Inc. provided additional context to the proposal to invest up to 6% of the portfolio in real estate. Mr. Smith expected more discussion at the July meeting.

Treasurer of State Josh Mandel wrote a letter to Attorney General Mike DeWine requesting that he investigate custodial banks when they conducted foreign currency exchanges. Foreign investments by BWC are currently managed by BlackRock, so the investigation will not involve the current custodian. However, there were investments prior to 2006 managed by these banks which might be investigated.

Mr. Zuk thanked Mr. Palmer and Mr. Smith for their patience in answering questions from other directors of the Workers' Compensation Board. Mr. Smith responded that the candor of the directors is both obvious and welcome.

AUDIT COMMITTEE

Mr. Haffey reported that the Audit Committee met on June 15 and had one action item, approval of the fiscal year 2012 Internal Audit Plan. Keith Elliott, Interim Chief of Internal Audit, reviewed criteria for doing an audit plan and the scoring of risk factors. Mr. Elliott also reviewed other auditing entities and their relationship with BWC Internal Audit. These are Schneider Downs & Co., Inc., the external auditor, and the Office of Budget and Management (OBM), Office of Internal Audit. He also reviewed the five types of projects or reviews: operational audits, internal control reviews, financial audits, consulting engagements, and special investigations.

Upon the recommendation of the Audit Committee, Mr. Haffey moved that the Bureau of Workers' Compensation Board of Directors approve the fiscal year 2012 Internal Audit Plan. Mr. Caldwell seconded and the motion was approved by a unanimous voice vote of eleven ayes and no nays.

Mr. Haffey reported that the Audit Committee then reviewed the nineteen areas in which audits will be conducted during the fiscal year. These include five in investment processes, electronic funds transfer, court settlements, and bankruptcy claims. There was also a discussion on OBM and the five audits which affect BWC. The open discussion acknowledged the projects in fieldwork phase, final phase, and completed. The July meeting will review the Quarterly Executive Summary and the completed projects.

Tracy Valentino Chief, Fiscal & Planning Division, updated the Committee on the external audit by Schneider Downs. Schneider Downs is in the fifth year of a five-year contract with the Auditor of State. Schneider Downs entered the WGB in May for interim work, which they will complete next week. In July, BWC Fiscal & Planning will close the books. Schneider Downs will return in August to commence work on the audit. The target for completion is during the last week of

September and the deadline for submission to the Auditor of State is September 30.

Mr. Zuk complemented Mr. Haffey and BWC staff for their presentations at the committee meeting.

MEDICAL SERVICES AND SAFETY COMMITTEE

Mr. Matesich reported that the Medical Services and Safety Committee met on June 15 and had two action items. The first was approval of changes to the fee bill rule which limit payment on bills submitted within one year of date service is rendered. Self-insuring employers are authorized to negotiate with a provider for a different time period. The rule sets forth the three situations in which the two-year statute of limitations still controls: Medicare and Medicaid; instances of error by BWC or the Managed Care Organization (MCO); and bills submitted to other third-party payers which are denied. Paragraph D of the rule sets forth an additional one-year limitation for bills requesting additional payments.

Upon the recommendation of the Medical Services and Safety Committee, Mr. Matesich moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to rescind the current Rule 4123-3-23 and adopt new Rule 4123-3-23 of the Administrative Code, "Limitations on the Filing of Fee Bills." The motion consents to the Administrator rescinding the current rule and adopting new Rule 4123-3-23 as presented at the Medical Services and Safety Committee. Mr. Stokes seconded and the motion was approved by a unanimous voice vote of eleven ayes and no nays.

Mr. Matesich further reported that in May the Medical Services and Safety Committee and the Workers' Compensation Board approved a formulary rule. During the approval process, concerns were raised about injured worker access to new prescription medications which were not on the formulary. So BWC staff revised the rule to accommodate those rare instances when a non-formulary drug would be deemed necessary by the attending physician. The non-formulary drugs must be either new drug entities recently approved by the Federal Drug Administration (FDA) or existing drugs that have received a new indication by the FDA. The clinical documentation submitted to BWC must demonstrate the existence of a unique condition for which the non-formulary product is the only reasonable therapeutic option for treatment. The drugs may be reimbursed for up to 180 days while the formulary approval process is conducted.

Upon the recommendation of the Medical Services and Safety Committee, Mr. Matesich moved that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation to revise Rule 4123-6-21.3 of the Administrative Code, "Outpatient Medication Formulary." The motion consents to the Administrator revising Rule 4123-6-21.3 as presented at the Medical Services and Safety Committee. The motion further states that the Medical Services and Safety Committee waived the second reading of this rule. Mr. Caldwell seconded and the motion was approved by a unanimous voice vote of eleven ayes and no nays.

Mr. Matesich thanked Johnnie Hanna, Pharmacy Program Director, and his staff for their additional attention to this issue.

Mr. Matesich further reported that Mr. Hanna and Freddie Johnson, Interim Chief Medical Services and Compliance, gave a report on the Medical Services Division. There was an overall change to the Committee calendar to change reports from bi-monthly from the three divisions it oversees, to rotating quarterly reports from each division.

Mr. Caldwell thanked the Administrator and staff for doing what it need not do in revising the formulary rule to accommodate 180 days of payment for non-formulary drugs needed by injured workers. Mr. Zuk complemented Mr. Caldwell for his persistence in keeping this issue alive.

GOVERNANCE COMMITTEE

Mr. Palmer reported that the Governance Committee met on June 15 and had a presentation by Don Berno, Board Liaison, on the Board education program for fiscal year 2012.

Mr. Palmer moved that the Board of Directors approve the Governance Committee's recommended fiscal year 2012 Education Plan for the BWC Board of Directors as presented on June 17, 2010. Mr. Cochran seconded and the motion was approved by a unanimous voice vote of eleven ayes and no nays.

The Governance Committee also went into executive session to discuss personnel matters.

ADMINISTRATOR'S REPORT

Mr. Zuk moved the Administrator's report in order to accommodate a previously scheduled speaking engagement.

Mr. Buehrer welcomed the new directors. BWC has a simple mission, but after 100 years has many layers of complexity to achieve it.

Mr. Buehrer reported that in the last three weeks he has made additional steps to focus on accident frequency, severity, and the long tails of claims. BWC formed work teams to review problems and narrow the issues. Five working teams have been formed with a June 30 report deadline. BWC will bring in the stakeholders for their comments as well.

In the last weeks, Mr. Buehrer reported he had spoken to The Ohio Society of CPAs, the Ohio Self-Insurers Employers Association executive board, and the AFL-CIO. This afternoon, he will speak to the Ohio Association for Justice. He attended a convention on small-business in Cincinnati on June 14, which had a BWC focus session. On the same day, he visited the Hamilton and Dayton District Service Offices. On June 20, he will visit the Canton, Cleveland, and Youngstown Service Offices. Some service office visits involve all-hands meetings, but all visits involve visiting the individual pods of BWC staff.

The subject of fraud was raised in Wednesday committee meetings. Fraud has no clear committee assignment. Nevertheless, BWC will prepare a presentation for a report in the near future. Although fraud has had little publicity in recent years, investigation is an important function of BWC. Mr. Buehrer stated he would take an opposite view because he believed publicizing convictions has a deterrent effect. Fraud by injured workers is considered the typical form, but fraud can also be committed by providers. Recently, BWC participated in raids on "pill mills" in Portsmouth, Ohio, and the suspension from the practice of medicine of Dr. James Lundeen. Employers can also commit fraud. Recently, BWC filed an injunction action against an employer who had not paid workers' compensation premiums in several years. This was the first time anyone with personal knowledge could remember bringing an injunction action against an employer.

JUNE ENTERPRISE REPORT

Ms. Valentino delivered the *Enterprise Report* for June 2011. BWC reports financial results using accrual accounting in accordance with rules of the Government Accounting Standards Board (GASB). BWC's net assets increased by almost $100 million in May resulting in net assets of $5.9 billion at May 31, 2011 compared to $5.8 billion at April 30, 2011. This is calculated simply by subtracting total liabilities from total assets. Premium and assessment income net of the provision for uncollectible accounts receivable and ceded reinsurance premiums resulted in operating revenues of $120 million in May. The accrual of ceded reinsurance premiums is netted against earned premiums in the Statement of Operations. Reinsurance began in 2010 to insure against catastrophic losses and terrorist attacks. Benefits and compensation adjustment expenses of $145 million along with other expenses of $13 million resulted in operating expenses of $158 million in May.

May expenses are impacted by adjustments resulting from Deloitte's comprehensive annual actuarial analysis using data as of March 31, 2011. The $48 million dollar decrease is a result of lower than expected payments through the third quarter of fiscal year 2011, driven by lower medical payments and fewer lump sum settlements. The increase in net benefit payments is primarily due to medical payments increasing by $3 million, from $64 million in April to $67 million in May. May payments for compensation adjustment expenses and other expenses have both increased primarily as the result of an additional payroll period. MCO administrative payments include $5 million in quarterly performance payments made in May. This consists mostly of BWC administrative expenses, consisting principally of salaries.

A $53 million increase in the fair value of the investment portfolio in May along with interest and dividend income of $83 million for the month, resulted in net investment income of $135 million for the month after investment expenses. The increase in the fair value of the portfolio is comprised of $11 million in net realized gains and $42 million in net unrealized gains. Cash and cash equivalents include $135 million in money market holdings in the outside investment manager accounts. These funds are committed to covering a $70 million net investment trade payable for transactions that will settle in June.

Premium and assessment receipts of $280 million were collected in May compared to $290 million in May 2010. This decrease is primarily due to timing differences in payments made by public employer taxing districts for annual premiums and retrospective rating plan billings and by private employers for the second 50/50 installment. BWC collects premiums at two times per year in January and February and in July and August. Each collection is for the prior six months, which differs from private insurance. Public employer taxing districts pay in May and September for the prior calendar year. The first payment of 45% of 2010 premiums is due May 15; the second is due September. Public employer state agencies pay premiums biweekly.

BWC’s total net assets have increased by $2.0 billion for fiscal year-to-date 2011 resulting in net assets of $5.9 billion at May 31, 2011 compared to $3.8 billion at May 31, 2010. BWC’s premium and assessment income for fiscal year-to-date 2011 is $1.7 billion compared to $2.0 billion for fiscal year-to-date 2010, reflecting decreased premium rates for private and state agency employers effective July 1, 2010 and January 1, 2010 and 2011 for public employer taxing districts. Benefit and compensation adjustment expenses decreased by $450 million for fiscal year-to-date 2011 compared to prior fiscal year-to-date expenses.

The decrease in reserve changes are primarily a result of the change in the discount rate from 4.5% to 4.0% and changes in actuarial assumptions made in fiscal year 2010 for compensation and compensation adjustment expense. Private insurance usually does not discount its liabilities but BWC may in following GASB rules. BWC adopted the discount rate and was approved by the Workers' Compensation Board. As the discount rate increases, liabilities decrease and, concurrently, as the discount rate decreases, the liabilities increase.

Declines in settlements of $34 million have contributed to lower net benefit payments for fiscal year-to-date 2011. BWC's net investment income for fiscal year-to-date 2011 totaled $2,591 million comprised primarily of $1,690 million in net unrealized gains. Declines in private employer and public employer taxing district premium rates have contributed to premium collections being $89 million less than prior fiscal year-to-date collections.

The second 50/50 program installment was due June 1, 2011. Coverage lapsed for almost 3,000 employers who failed to make this payment in a timely manner. These employers owed approximately $15 million and represent approximately 14% of the employers participating in the 50/50 program. This percentage has remained stable each of the last five reporting periods. Accounts remaining unpaid will be certified to the Attorney General for collection on June 27th. Coverage was lapsed March 1, 2011 for almost 38,000 private employers that failed to report payroll and pay premium by the February 28th due date. As of June 10th, coverage remained in a lapsed status for 7,451 private employers who owe an estimated $3.5 million in premiums.

Public employer taxing districts had until May 15th to report payroll and pay at least 45% of the premium due for the 2010 policy year. A total of 180 PEC policies were lapsed for not reporting and making timely payments. This compares to 179 policies that were lapsed last year. As of June 15, this was reduced to 68. BWC uses personal contacts to obtained payment, and then certifies the rest.

Mr. Matesich asked if there are cross matches with other state agencies when investigating fraud. Ms. Valentino replied that BWC Special Investigations cross-matches with the Ohio Department of Taxation and the Ohio Department of Jobs and Family Services.

Mr. Zuk asked what happens if public employers default. Ms. Valentino replied the debt is certified to the Attorney General. Also, BWC has contacted county commissioners, township trustees, and school boards. BWC tries to work closely with public employer because we clearly do not want default.

Ms. Valentino further reported that the bar graph on the bottom of page 4 is the historic track of net assets over the previous twelve months. BWC marks to market.

Mr. Haffey added that the concept of net assets is simple in subtracting liabilities from total assets. However, the assets are not cash in hand. This will be covered more deeply in education sessions. When the markets dropped in 2008, it created great concern.

Ms. Valentino reported that the Statement of Operations on page 5 is simply the income statement. On page 6 is the break-down per seven funds maintained by

BWC. The largest is the State Insurance Fund with 250,000 employers. The ACF is for operating expense. The Disabled Workers' Relief Fund (DWRF) provides cost of living adjustments to PTD benefits. The Coal Workers Fund pays for black lung sufferers. BWC has 35 subscribing employers. The Marine Industry fund covers workers employed on or near navigable waters. Both the black lung fund and Marine Fund are federal compensation programs. The Self-Insuring Employers' Guaranty Fund covers workers' compensation claims of bankrupt employers.

BWC Administrative Cost Fund expenses through fiscal year to date (FYTD) May 2011 are approximately $11 million (4.5%) less than budgeted and 2.4% less than last fiscal year to date. Decreases in payroll through FYTD May 2011 are a result of decreases in staffing due to retirements and hiring controls. As of May 2011, there were approximately 200 less full time equivalent positions compared to the same time last year. Payroll changes within the Fiscal and Planning and Information Technology divisions are the result of Office Services and Facilities departments moving between divisions. Through May 2011 journal entries, BWC staff has taken the majority of the available 168,000 hours of cost savings days for a savings of approximately $5 million.

The timing of the receipt of invoices for payment in fiscal year 2011 contributed to actual expenditures being less than the amount budgeted. The annual invoice for various state agency fees was paid a month earlier in fiscal year 2011, which caused Inter Agency Payments to exceed the FYTD 2011 budget and FYTD 2010 expenses. Excess postage available from the previous fiscal year resulted in a significant reduction in the amount of postage purchased in fiscal year 2011. This caused communication expenses to be less than budgeted FYTD. Special Counsel expenditures were greater for FYTD 2011 than FYTD 2010 due to timing of invoice payments and additional contract hours for Special Counsel services. Changes to the Safety Grant Program in fiscal year 2010 caused a reduction in activity for that fiscal year. The cancellation of fiscal year 2011 IT infrastructure projects resulted in FYTD actual equipment costs being less than budgeted.

The use of cost savings days, identification of additional costs savings, and cancellation of projects resulted in a $22 million reduction in the fiscal year 2011 budget. BWC's current fiscal year 2011 budget is approximately $66 million (20%) less than appropriated by the General Assembly. BWC goes through the same budget process as other agencies. BWC requested 13% less for fiscal years 2012 and 2013, so more savings are possible.

The bar graph on page 8 tracks actual administrative spending trends for the current and past three fiscal years. Decreases have been possible through hiring controls, retirements, cost savings days, conservation in infrastructure replacement, and prudence in use of personal service contracts.

Page 10 top spreadsheet sets forth administrative expense items to be paid from the State Insurance Fund. The bottom chart shows transfers to other agencies: the Ohio Department of Natural Resources receives payments for its Mine Safety Fund and the Strip Mining Administrative Fund. The Ohio Inspector General receives funds for the Deputy IG assigned to investigate the Industrial Commission and BWC. The page 11 statement of Cash Flows includes a bar chart showing premium and assessment receipts for each of the twelve months and showing the greater receipts for August and February from payments of premiums.

Pages 12 and 13 contain the Statement of Net Assets for BWC and for the seven funds. BWC is required to account for each fund. The undiscounted reserves for compensation and compensation adjustment expense are set forth at the bottom of page 13. If BWC did not discount, it would have a net liability deficit of $7 billion.

For the financial performance metrics, the Funding Ratio of 1.34 is within the policy guidelines of 1.15 to 1.35. The Net Leverage Ratio is 3.32 and within the guidelines of 3.0 to 7.0. The policy requires discussion when the ratios approach their limits. BWC was able to reduce premiums by 4% for the 2011 policy year because of good ratios.

Mr. Smith asked should the guidelines be expressed as limits "greater than" or "less than" specific limits. Ms. Valentino replied that in 2010 the discussion was what the limits should be. The discussion in July over financial statements will be over whether ratios should be changed.

Mr. Palmer stated that it appears that BWC will soon exceed the net leverage ratio and asked what triggers the discussion. Ms. Valentino replied that BWC management staff will discuss the ratio and make a recommendation.

Mr. Zuk commented that the recent performance of the markets seems not to exceed ratios. Mr. Haffey added that his discussion with BWC occurs between meetings, so as not to be surprised with changes.

Mr. Stokes asked if the deficit measured at $7 billion, then how BWC ensures the investment policy closes the gap. Ms. Valentino replied that she concurred that portfolio must be managed to cover liabilities. However, this problem must be resolved in the long-term. Mr. Lehecka added that this is the risk that must be managed.

Mr. Smith added that the two metrics keep the Workers' Compensation Board on goal.

Mr. Stokes stated that as a layman, he must be sure that there are sufficient assets to pay liabilities. Mr. Zuk added that this is understandable on a small scale.

Ms. Valentino further reported that pages 15 to 18 provide other operational metrics.
Mr. Haffey stated that the Workers' Compensation Board asked about return-to-work rates and severity in May and asked when the Workers' Compensation Board can get a report. Ms. Valentino replied that this is the purpose of the five work groups mentioned by Mr. Buehrer in his report. BWC is looking at how these factors impact cost and how to address them.

Mr. Smith asked how much stakeholder feedback has been received. Ray Mazzotta, Chief Operations Officer, reported that BWC has met with MCOs recently and will meet again this afternoon. Some of this data has not been seen by the MCOs. BWC is committed to a report to the Workers' Compensation Board in September. There will be no magic bullet. For example, PTD benefits form only one component of expense from the State Insurance Fund.

Ms. Valentino and Mr. Haffey stated they would take any questions from directors on the *Enterprise Report*.

Mr. Zuk stated that the *Enterprise Report* is one of the most helpful reports he has received from BWC.

ADJOURNMENT

Mr. Zuk reported the next meeting will be held July 28 and 29, 2011. With no further comments from the Workers' Compensation Board, Mr. Smith moved to adjourn, Mr. Palmer seconded, and Mr. Zuk adjourned after a voice vote of eleven ayes and no nays.

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