

**WORKERS' COMPENSATION
BOARD OF DIRECTORS
GOVERNANCE COMMITTEE**

**FRIDAY, NOVEMBER 16, 2007
BWC MANSFIELD SERVICE OFFICE
2nd Floor Training Room
240 Tappan Dr., North
MANSFIELD, OHIO 44906**

Members Present: Alison Falls, Chair
Bill Lhota
Robert Smith

Members Absent: None

CALL TO ORDER

Ms. Falls called the meeting to order at 9:05 A.M. and the roll call was taken.

MINUTES OF OCTOBER 24, 2007

Mr. Smith moved that the minutes of October 24, 2007 be approved. Mr. Lhota seconded and the minutes were approved by a unanimous vote.

NEW BUSINESS/ACTION ITEMS

REVIEW AND ADOPTION OF GOVERNANCE COMMITTEE CHARTER

Ms. Falls presented two issues for discussion regarding the Governance Committee Charter. The first issue was the role of the Governance Committee in the selection process for members and the chairs of the committees. The second issue was the size of the committees, and the impact of the Chair of the Board of Directors serving as an ex-officio voting member of a committee.

Ms. Falls moved that the Committee vote to recommend the minimum sizes of the respective Committees be as follows, with the Board Chair serving as an ex officio member of each Committee with voting rights as defined in the Committee Charters:

Governance Committee – Three (3) Members
Audit Committee – Three (3) Members

Investments Committee – Five (5) Members
Actuarial Committee – Five (5) Members

Mr. Smith seconded the motion, and the motion was approved by a unanimous vote.

A discussion commenced on the selection process for membership for all Committees. Under the Membership section of the Governance Committee Charter, a sentence was proposed to indicate the Governance Committee will make recommendations for all committee members to the Board Chair subject to approval by the Board. Mr. Lhota moved that the Governance Committee Charter be adopted with this proposed amendment. The motion was seconded by Mr. Smith, and the Governance Charter, as so amended, was adopted by the Committee by a unanimous vote.

REVIEW AND RECOMMENDATION TO ADOPT ACTUARIAL COMMITTEE CHARTER

A discussion commenced on the proposed Actuarial Committee Charter. After discussion, a proposed amendment to the Membership section of the Actuarial Committee Charter was made to read as follows:

The Committee shall be composed of a minimum of five (5) members, elected by the Board of Directors' of the Ohio Bureau of Workers' Compensation. One member shall be the appointed actuary member of the Board. The Governance Committee will recommend the Actuarial Committee Chair and members to the Board Chair for Board approval, and the Board, by majority vote, shall appoint four additional members of the Board to serve on the Actuarial Committee and may appoint additional members who are not Board members, as the Board determines necessary. Members of the Actuarial Committee serve at the pleasure of the Board and the Board, by majority vote, may remove any member except the member of the Committee who is the actuary member of the Board.

Each Committee member will be independent from management. The Board shall designate the Committee Chair and the Committee members based on the recommendations of the Governance Committee and the Board Chair. The Board Chair shall be an ex-officio member of the Committee.

The Chair of the Actuarial Committee will be responsible for the scheduling of all meetings of the Committee and providing the Committee with a written agenda for each meeting. The Committee will have a staff liaison designated to assist it in carrying out its duties.

Mr. Smith moved the Committee to recommend Board members, Mr. Phillip J. Fulton and Mr. James W. Harris, to serve on the Actuarial Committee. The motion was seconded by Mr. Lhota, and the motion passed by a unanimous vote.

After some discussion on the required size of a quorum of a six member committee being four members and not three, Mr. Smith moved to recommend adoption of the Actuarial Committee Charter, as amended above, to the Actuarial Committee. Mr. Lhota seconded the motion, and the motion passed by a unanimous vote.

REVIEW AND RECOMMENDATION TO ADOPT AUDIT COMMITTEE CHARTER

A review and brief discussion of the Audit Committee Charter commenced. Under the Membership section of the charter, the section was proposed to read as follows:

The Committee shall be composed of a minimum of three (3) members. One member shall be the member of the Bureau of Workers' Compensation Board of Directors who is the member serving in the appointed certified public accountant position. Based on the recommendations of the Governance Committee to the Board Chair, the Board, by majority vote, shall appoint two additional members to serve on the Audit Committee and may appoint additional members, either from the Board or someone not on the Board.

The Chair is designated by the Board, based on the recommendation of the Board Chair and the Governance Committee. The Board Chair shall be an ex officio voting member of the Committee, if not already a member of the Committee.

Members of the Audit Committee serve at the pleasure of the Board and the Board, by a majority vote, may remove any member except the member of the Committee who is the certified public accountant member of the Board.

Mr. Lhota requested that a vote to recommend adoption of the Audit Committee Charter be withheld until after a discussion of the *Caremark* decision, and Ms. Falls agreed to proceed without a vote at this time.

REVIEW AND RECOMMENDATION TO ADOPT INVESTMENT COMMITTEE CHARTER

A review and brief discussion of the Investment Committee Charter commenced. Under the Membership section of the charter, the section was proposed to read as follows:

The Investment Committee must consist of at least five (5) members. Two of the members shall be the members of the Board who serve as the investment and securities experts on the Board. Based on the recommendations of the Governance Committee, the Board, by majority vote, shall appoint two additional members to serve on the Investment Committee and may appoint additional members, either from the Board or someone not on the Board. Each additional non-Board member appointed must have at least one of the following qualifications: a) experience managing another state's pension funds or workers' compensation funds; or b) expertise that the Board determines is needed to make investment decisions. The Board Chair shall be an ex officio voting member of the Committee, if not already a member of the Committee.

The Investment Committee Chair is designated by the Board, based on the recommendations of the Board Chair and the Governance Committee.

Members of the Investment Committee serve at the pleasure of the Board and the Board, by majority vote, may remove any member except the members of the Committee who are investment and securities members of the Board.

Mr. Smith moved to recommend adoption of the Investment Committee Charter, as amended above, to the Board Chairman. Mr. Lhota seconded the motion, and the motion passed by a unanimous vote.

F. RONALD O'KEEFE, FIDUCIARY COUNSEL AND THE CAREMARK DECISION

F. Ronald O'Keefe then made a presentation regarding a November 8, 2007 memorandum provided to the Board of Directors. Mr. O'Keefe's memorandum was distributed to all the Committee Chairs for distribution to the Board members prior to the November 14, 2007 Actuarial Committee meeting. Prior to discussion on the contents of the memorandum, Mr. Lhota moved that Committee waive attorney-client privilege to the contents of that memorandum, so that further discussion may proceed. Ms. Falls seconded the motion, and the motion passed by unanimous vote.

Mr. O'Keefe spoke to the committee on fiduciary responsibilities of the Board members. Mr. O'Keefe indicated that the workers' compensation fund is akin to a trust, and the Board members are trustees of that trust, and employers and employees of this state serve as beneficiaries of the trust. Mr. O'Keefe noted that a high standard of skill and care is required in making judgments by the Board members.

Mr. O'Keefe indicated that the workers' compensation fund is not a private corporation, so how the laws of Delaware and Ohio transfer into this public entity is not clear. For example, Board members are typically liable to shareholders in private corporations, and how the liability transfers for the Board members here is not clear. The Administrator has statutorily appointed duties, but the Board members have oversight of those duties.

Mr. O'Keefe reminded the Governance Committee that there is a duty of loyalty owed by the members. Mr. O'Keefe noted that many of the Board members represent a particular constituency of the population, and certainly those members may voice the views of their constituency in Board discussions. However when voting, the Board members must vote for what is in the best interest of the employers, employees and the workers' compensation fund. Those interests must be kept paramount in the voting process. Mr. O'Keefe reminded the Governance Committee that being an advocate for your constituency is not sufficient to carrying out this duty of loyalty, and a Board member must step aside from his advocacy when voting.

Mr. O'Keefe advised the Governance Committee that there is a duty of care also required by the Board members. He recommended prudence in reviewing information needed to carry out its charged duties. Mr. O'Keefe noted it is important for the Committee to examine and discuss what documents need to be reviewed in order to complete a given task.

Mr. Fulton and Mr. Barnes participated in discussion regarding fiduciary responsibilities following Mr. O'Keefe's presentation.

Mr. Lhota introduced discussion regarding the responsibilities of the Board members to have mechanisms in place at BWC to detect fraud. Mr. Lhota noted that the Inspector General works under confidentiality until their investigation is completed. Mr. Lhota expressed concerns about the Board members' responsibility for the detection of wrongdoing if they are not aware of a matter under investigation by the Inspector General.

Administrator Ryan and Mr. Barnes provided discussions of the measures of fraud detection that are in place at BWC at the present time. Mr. O'Keefe presented a high level discussion of the *Caremark* decision. At the request of the Committee, Mr. O'Keefe will review this case in his presentation to the Board of Directors. Based on Mr. O'Keefe's comments on this case, Mr. Lhota noted the importance of the Board members receiving and reviewing information provided by BWC. He further recommended addressing this issue in the charters of the committees.

Mr. Lhota then moved to recommend adoption of the Audit Committee Charter, as amended above, to the Board. Mr. Smith seconded the motion, and the motion passed by a unanimous vote.

OVERVIEW OF RULE MAKING PROCESS

Mr. Barnes presented an overview of the rulemaking process to the Governance Committee. Mr. Barnes indicated the process was a time intensive task, and there were four hundred ninety-three (493) rules that were subject to review every five years. One hundred forty-nine (149) of these rules are due for review in 2008. Mr. Barnes also noted that seventy-five (75) Violation of Specific Safety requirement rules are past due for review, but the delay is, in part, due to interplay between federal and state law. With the exception of the rate making rules, which appear to fall within the scope of the Actuarial Committee, many of the rules would not fall into one particular committee's expertise.

A discussion between the Governance Committee members, Mr. Barnes, Administrator Ryan, and Mr. Fulton followed Mr. Barnes presentation. The focus of the discussion involved the content of the rules, the importance of the rules, how rules impact policy decision making of the agency, and how the rule making review should be allocated to the committees and the Board. A recommendation was made to have the Audit Committee responsible for all rules except those which involve rate making, which would be the Actuarial Committee's responsibility.

ADMINISTRATOR RYAN

Administrator Ryan presented the issue of receiving public input into Board meetings. Administrator Ryan noted that the majority of the agency's information from the public currently comes from complaints and stakeholder input. Ms. Ryan presented a proposal allowing a venue where the public may speak to the Board. Such a forum would provide a valuable

communication opportunity for both the Board and BWC staff. Ms. Ryan recommended the establishment of a forum to be held quarterly. The meeting would address one or two topics of interest to stakeholders, an opportunity to provide comments and/or register to speak would be given, and invitations to speak would be made by BWC to some stakeholders with an interest in the topic.

Mr. Lhota moved to adopt Administrator Ryan's proposal as submitted to the Governance Committee. The Motion was seconded by Mr. Smith, and the Motion passed by unanimous vote.

Following Administrator Ryan's presentation, the Governance Committee discussed the issue of dealing with constituents on an individual basis. Mr. Lhota moved to amend the Governance Committee's Charter to include a paragraph indicating "the Board Liaison will be responsible for all communication, handling of responses and public record requests and records retention of the Board." The motion was seconded by Mr. Smith, and the motion passed by unanimous vote.

USE OF RESOLUTIONS

Assistant Attorney General John Williams provided information regarding the use of Resolutions at BWC Board of Director meetings. Mr. Williams noted that the use of formal resolutions was not legally required. He further noted that the Board may use motions, but recommended that the Board memorialize its actions through the minutes of the meetings.

Following this discussion, Mr. Lhota moved that the Governance Committee recommend to the Board that it dispense with its practice of preparing written resolutions, and rely on the minutes to formally memorialize all motions that are passed. The motion was seconded by Mr. Smith, and the motion passed by a unanimous vote.

CALENDAR

Ms. Falls inquired if there were any pressing matters requiring a meeting in December, and none were noted. Ms. Falls noted that the Governance Committee Guidelines were a priority for the Governance Committee, and this will be targeted for the agenda in January. In addition, the goal is to have input on the Administrator's performance and follow-up with the Board of Directors in March, so that recommendations could be presented to Governor Strickland by May.

ADJOURNMENT

Ms. Falls adjourned the meeting at 11:54 A.M.

Prepared by: Michael J. Sourek, Staff Counsel
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November 16, 2007