



MICHIGAN SELF-INSURERS' ASSOCIATION

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Gerald M. Marcinkoski
Executive Secretary

Board of Managers

Trinity Health
Susan Cyrulnik
Chairperson

Alticor, Inc.
Steve Ohman
1st Vice Chair

General Motors Corporation
Susan R. Azar
2nd Vice Chair

City of Grand Rapids
Sheila Mahan
Treasurer

Varnum Consulting, LLC
Libby Child

Wayne State University
Pamela Galloway

Ford Motor Company
Jonathan R. Parker

Little Caesar Enterprises, Inc.
C. Michael Healy

AT&T Michigan
Albert Calille

Consumers Energy Company
Doug Wright

Chrysler LLC
Neil D. Levins

DTE Energy
Douglas A. Green

FinCor Solutions
Janet Kransz

Marathon Oil Company
Barbara Parker

The Pepsi Bottling Group
David Sedlock

Sherriff-Goslin Company
William Ticknor

MINUTES OF BOARD OF MANAGERS' MEETING

January 11, 2008

Holiday Inn North Campus
Ann Arbor, Michigan

Reminder: Minutes are now only available via e-mail or on the website. If you wish to receive the Minutes via e-mail, please provide your name, company name, and e-mail address to Donna Rinke at drinke@laceyjones.com.

Present:

AZAR, S., General Motors Corporation
CALILLE, A., AT&T Michigan
CHILD, L., Varnum Consulting
CYRULNIK, S., Trinity Health
GALLOWAY, P., Wayne State University
GREEN, D., DTE Energy
HEALY, M. Little Caesar Enterprises, Inc.
KRANSZ, J., FinCor Solutions
MAHAN, S., City of Grand Rapids
OHMAN, S., Alticor, Inc.
PARKER, B., Marathon Oil Company
PARKER, J., Ford Motor Company
TICKNOR, B., Sherriff-Goslin Company
WRIGHT, D., Consumers Energy Company

Chairperson's Council:

BLOCK, W., Michigan Chamber of Commerce
SUSSER, D., Smith Haughey Rice & Roegge
ZURVALEC, D., Michigan Manufacturers Association

Not Present:

LEVINS, N., Chrysler LLC
SEDLOCK, D., The Pepsi Bottling Group

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The MSIA Board of Managers' meeting was called to order at 11:35 a.m., by Chairperson Susan Cyrulnik to discuss the following Agenda.

AGENDA

1. Minutes of Board of Managers' Prior Meeting
2. Treasurer's Report
3. Nominating Committee Report
4. Technology Committee Report
5. *Amicus Curiae* Committee Report
6. Funds Trustee's Report
7. Health Care Committee Report
8. Legislative Committee Report
9. Old Business
 - a. Funds Trustee Position
 - b. Qualifications Advisory Committee
 - c. Off-site storage
 - d. Other Old Business
10. New Business
 - a. Workers' Compensation Legislation
 - b. Magistrate Appointments
 - c. New Members
 - d. Other New Business

The Chairperson first addressed the **Minutes**. The Executive Secretary requested a review of the two preceding meetings' Board Minutes for approval. They were approved upon motion of Mr. Calille, seconded by Mr. Healy.

The **Treasurer's Report** was submitted by Ms. Mahan. She provided the Board with handouts with respect to the Board's present fiscal status. She reported that the MSIA's taxes were filed. The Treasurer's Report was passed upon motion of Mr. Healy, seconded by Mr. Ohman.

The **Nominating Committee Report** was submitted by Mr. Calille. He reported that he had spoken with Chrysler's representative on the Board of Managers regarding Chrysler's attendance. Mr. Calille furnished the Board with a handout which was a copy of correspondence between himself and Chrysler. Chrysler is to advise Mr. Calille by January 31, 2008 as to its intention on staying on the Board of Managers, becoming part of the Chairperson's Council, or other options. Mr. Calille also indicated that the Committee was considering replacements for Tecumseh Products on the MSIA Board of Managers. He has spoken with one company and the Board discussed other possible candidates. Further developments will be related at the next Board of Managers' meeting.

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The **Technology Committee Report** was submitted by Ms. Child. She indicated that the e-mail addresses of some members of the MSIA are presently incorrect, as exemplified by the fact that the e-mails are being returned to the MSIA. She encouraged the MSIA membership to ensure that the MSIA has their correct e-mail address presently. Ms. Child also reported that the postings on the website for the MSIA Spring Conference have begun. She indicated that she needed biographies and pictures for the newest MSIA Board members which should be sent to Mr. Dana or to Ms. Child for posting on the website. She urged the MSIA membership to remember that the Minutes of the MSIA Board of Managers' meetings are no longer being sent via hard copy. Instead the Minutes are posted on the MSIA website beginning in January 2008.

The **Amicus Curiae Committee Report** was submitted by Mr. Calille and the Executive Secretary. The Board was advised that the Michigan Supreme Court had released an order in *Simpson v Borbolla Construction/Fluor Constructors International, Inc.* This was the case where the Court of Appeals limited the *Rakestraw* rule to cases where the preexisting condition is non-work related. Following oral argument and briefing, including an *amicus curiae* brief from the MSIA, the Supreme Court issued an order in *Simpson*. The order says that the Court of Appeals' decision is vacated insofar as it limits *Rakestraw*. The Supreme Court let stand the result in the case on the strength of the decision of the Workers' Compensation Appellate Commission, which had applied *Rakestraw* and held the last employer pathologically aggravated a prior work-related condition. The Board was also advised that the Supreme Court still has pending before it Chrysler's Application for Leave to Appeal in *Stokes v Chrysler LLC*. The case was orally argued on October 4, 2007. The points orally argued related to the respective parties' burdens of proof under *Sington v DaimlerChrysler Corporation*. Finally, the Board was advised that the MSIA has filed an *amicus curiae* brief in *Robertson v DaimlerChrysler Corporation*. This case is pending before the Supreme Court on Chrysler's Application for Leave to Appeal. This is the mental disability case that was returned to the Supreme Court after being on remand subsequent to the Supreme Court's initial ruling in this case years ago. The issue in the case is whether the Workers' Compensation Appellate Commission and the Court of Appeals correctly applied the *Robertson's* mental disability standard in granting Mr. Robertson benefits.

The **Funds Trustees' Report** was submitted by Ms. Child. She reported that the Funds Trustees had met on December 17, 2007. The Funds' finances are in order. Payments are current to the Funds. Ms. Child reported that Rose Houk of the Attorney General's office, who provided counsel to the Funds Trustees, announced that she would be retiring in the near future. Ms. Child reported that the future meetings for the Funds trustees in 2008 were: February 4, April 7, June 2, August 4, October 6, and December 8. The April 7, 2008 Trustee Meeting will be Ms. Child's last as her term is due to expire. The MSIA is seeking to place a person from the MSIA Board on the Funds Trustees since one of the MSIA Board of Managers has traditionally occupied one of those seats.

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The **Health Care Advisory Committee Report** was submitted by Ms. Azar. She provided the Board with a handout describing mediation statistics for 104-B (Medical Provider) forms. She also advised that Sheila Wilkinson of the Health Care Advisory Committee is retiring. She relayed that there has been much discussion at the Committee with respect to evidence-based medicine. Some of the Committee believe that Michigan should adopt evidence-based medicine as a tool to pay medical bills. Ms. Cyrulnik related that California did so and experienced an improvement in their system. Ms. Azar related that there is an implant sub-committee that is due to meet. She also indicated that there had been requests for the need to improve and update prosthetic codes.

The **Legislative Committee Report** was submitted by Ms. Block and Mr. Zurvalec. Ms. Block indicated that there does not appear to be much going on legislatively and the Legislature had been out of session since mid December. Currently there were merely non-controversial cleanups of legislation occurring. Ms. Block and Mr. Zurvalec discussed possible ballot proposals, such as one for universal/comprehensive health care and right to work.

Under **Old Business**, the Board again noted the need to replace Ms. Child on the Funds Trustees when she departs in April. The Board also discussed the Qualifications Advisory Committee. There appeared to be technically four vacancies on the QAC insofar as terms expired in December and those persons have not yet formally been notified of their reappointments. Ms. Child, a member of the QAC, reported that she had requested reappointment and is under the impression that those requests remain pending. Ms. Azar provided a handout with respect to off-site storage. The MSIA has a need to store materials in a central location for conferences and to preserve historical documents. Ms. Azar reported that she was successful in securing a unit in Novi. Finally, the Board was asked to review a roster of Board members for circulation strictly amongst the Board of Managers. Any additions, corrections, or deletions should be communicated to the Executive Secretary immediately so that by the next meeting the final roster list can be provided.

Under **New Business**, the Board discussed recently introduced bills. First discussed was Senate Bill 997. This bill was introduced in the Senate on December 12, 2007. It relates to aliens. It would add a sentence to MCL 418.361(1) which says that aliens working without employment authorization or using false documents would not be considered "commission of a crime" so as to suspend the aliens' weekly workers' compensation benefits. The other bill is House Bill 4401. It also was introduced on December 12, 2007 and received in the Senate on January 9, 2008. There, it was referred to the Senate Commerce and Tourism Committee. This bill would amend MCL 418.405 to say that members of a fully-paid fire department who have worked two years or more and have "respiratory tract, bladder, skin, brain, kidney, blood, and lymphatic cancers" are considered to have had personal injuries. The Board expressed concern in particular about another addition to MCL 418.405 in subsection 3 where these cancers, as well as respiratory and heart disease, would be considered to arise out of employment "in the absence of affirmative evidence of non-work-related causation or specific incidents that establish a cause

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independent of the employment and not merely evidence of a preexisting condition or an abstract medical opinion that employment was not the cause of the disease or condition.”

The Board also discussed a recent amendment to the Medicare Secondary Payer Statute adopted by Congress and signed into law on December 29, 2007. This amendment, which is not to go into effect until (apparently) July 1, 2009, requires self-insureds and workers' compensation insurers to determine whether individuals who file claims are entitled to Medicare benefits. If the people are entitled, then the insurer or self-insured must provide Medicare with the person's identify and other information at the risk of a \$1,000-per-day penalty for non-compliance. The Board was also advised that the HR2549 continues to pend in the federal Legislature. This is the bill that would significantly and favorably alter the Medicare Secondary Payer Act to make redemptions easier and streamline the CMS approval process.

The Board next discussed the two vacancies on the Board of Magistrates and potential replacements.

The Board then discussed the upcoming Spring Conference with Mr. Ohman, the chair of the conference, reporting. The theme of the conference will be “Dancing with the Comp Stars.” The keynote speaker will be Captain Al Haynes with the “Story of Flight 232”. The conference will emphasize the necessity of teamwork. The conference will include a mock trial, perhaps a mock deposition, and a disc jockey in the Trillium Wednesday night. The keynote speech will be delivered Thursday after which there will be five to six breakout sessions. A “Workers' Compensation 101” will occur at the time of the golf tournament. The golf tournament will take place on the Wolverine Golf Course this year. There will also be another wine tour of the local wineries, a successful outing last year. The Chairperson's Reception Thursday night may include the persons running for Justice on the Michigan Supreme Court. There will be a disc jockey at the Trillium Restaurant that night as well. On Friday, Director Jack Nolish, Chair of the Board of Magistrates Murray Gorchow, and Chairperson of the Workers' Compensation Appellate Commission Martha Glaser, along with Bruno Czyrka of the Agency, are due to speak. The Executive Secretary will also provide a legal update. The Conference will conclude with the “Jeopardy” game and awards for exhibitors.

Under **Other Old Business**, Mr. Healy relayed that he had been approached to support legislation changing the Michigan Workers' Compensation Act as it relates to professional athletes. Specifically, the proposed change would relate to altering MCL 418.360 in terms of when the professional athlete's average weekly wage would be calculated, as well as receipt of weekly workers' compensation benefits during the off season. Mr. Healy and the Board resolved that once the bill is presented in the Legislature, the MSIA would be in a better position to review and comment upon it.

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The meeting adjourned at 4:26 p.m.

Respectfully submitted,

Gerald M. Marcinkoski

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Executive Secretary