



MICHIGAN SELF-INSURERS' ASSOCIATION

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Gerald M. Marcinkoski
Executive Secretary

Board of Managers

General Motors Corporation
Susan R. Azar
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Ford Motor Company
Jonathan R. Parker
1st Vice Chair

Consumers Energy Company
Doug Wright
2nd Vice Chair

Little Caesar Enterprises, Inc.
C. Michael Healy
Treasurer

City of Grand Rapids
Mari Beth Jelks

Amway
Lorraine K. Climer

Compatico
Libby Child

Wayne State University
Pamela Galloway

AT&T Michigan
Albert Calille

DTE Energy
Douglas A. Green

FinCor Solutions
Janet Kransz

Marathon Oil Company
Barbara Parker

Trinity Health
Teresa Fisk

Sherriff-Goslin Company
William Ticknor

Wayne County Airport Authority
Leigh Stepaniak

Kelly Services, Inc.
Lesley Zielinski

MINUTES OF BOARD OF MANAGERS' MEETING

February 13, 2009
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 Marianne Melton at mmelton@laceyjones.com

Present:

AZAR, S., General Motors Corporation
CALILLE, A., AT&T Michigan
CLIMER, L., Amway – by phone
GALLOWAY, P., Wayne State University
GREEN, D., DTE Energy
HEALY, M. Little Caesar Enterprises, Inc.
JELKS, M. City of Grand Rapids
KRANSZ, J., FinCor Solutions
PARKER, B., Marathon Oil Company
PARKER, J., Ford Motor Company
STEPANIAK, L., Wayne County Airport Authority
ZIELINSKI, L., Kelly Services, Inc.

Chairperson's Council:

SUSSER, D., Smith Haughey Rice & Roegge

Not Present:

BLOCK, W., Michigan Chamber of Commerce
CHILD, L., Compatico
CYRULNIK, S., Trinity Health
TICKNOR, B., Sherriff-Goslin Company
VENET, K., Chrysler LLC
WRIGHT, D., Consumers Energy Company

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The meeting was called to order at 11:43 a.m. to discuss the following Agenda:

AGENDA

1. Minutes of Board of Managers' Prior Meeting
2. Treasurer's Report
3. Nominating Committee Report
4. 2009 Spring Conference Committee Report
5. Membership Committee Report
6. Funds Trustees' Report
7. Technology Committee Report
8. *Amicus Curiae* Committee Report
9. Health Care Committee Report
10. Legislative Committee Report
11. Old Business
 - a. Pending appointments to the Board of Magistrates
 - b. Status of RICO case
 - c. Other old business
12. New Business
 - a. National Council of Self-Insurers' Conference
 - b. Statutory Change to MCL 418.845 Out State Injuries
 - c. S.B. No. 60 regarding Qualifications Advisory Committee
 - d. Other New Business

The **Minutes** from the Board of Managers prior meeting were unanimously approved upon motion of Ms. Zielinski, seconded by Ms. Parker.

The **Treasurer's Report** was submitted by Mr. Healy. He provided the Board with a handout with respect to MSIA's finances. Mr. Healy advised that in general the MSIA is in excellent financial condition. Mr. Healy advised that the taxes for MSIA have been filed and the 1099's issued. Mr. Healy described the renewal of one certificate of deposit. He suggested the Board might consider taking money from the certificate of deposit if needed for the Spring Conference. Ms. Kransz advised that money was still arriving with respect to the Spring Conference. Ms. Susser inquired whether the MSIA Board would be a sponsor in the amount of \$500.00 for the Sixty Summit "Workability in Michigan" program and the Board agreed. Mr. Calille moved that the Treasurers' report be accepted with Ms. Parker seconding, and the Treasurers report was unanimously approved by the Board.

The **Nominating Committee Report** was submitted by Mr. Calille. He advised that Trinity Health expressed a desire to retain its seat on the Board of Managers. Trinity Health was still in the process of deciding who would be their representative on the Board. Given Trinity Health's interest in remaining on the Board, consideration of other possible candidates for that seat was tabled. Mr. Calille said that otherwise there remains one position open on the Board of Managers. The Board was advised that Ms. Child was in the process of discussing filling that vacancy with a candidate from western Michigan. The

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Board then discussed Michigan Manufacturers Association's [MMA]'s ongoing involvement with the Board, in light of Mr. Zurvalec's retirement from MMA. The Executive Secretary reported that he had spoken with Michael Johnston of MMA. He indicated that for the time being he would act as the MMA's liaison and he expressed the desire of MMA to continue its relationship with MSIA. The Board in this context also discussed the project of the "Workers' Compensation 101" booklets jointly produced by the MSIA and MMA, as had been done in the past. The primary purpose of the booklet is to educate legislators and other public officials on workers' compensation issues. The MSIA Board agreed to fund the printing of the booklets, (covering such costs as ink, paper, etc), as long as MMA does the printing. MSIA is assuming the printing will total approximately 750 copies and that the total cost would be approximately \$1,000.00. The booklet would indicate its joint sponsorship of MSIA and MMA.

The **2009 Spring Conference Report** was submitted by Mr. Parker. He indicated that the committee had met that morning. The theme of the Spring Conference will be "Tools for Tough Times." The Board reviewed the brochure for the conference. A number of booths had already been procured by vendors, but there was still spaces remaining. The Board discussed in detail confusion relating to the wine tour, an event held in conjunction with the conference. The Board resolved that Mr. Michael Brenton, who had overseen the wine tour for the preceding years, would do so again this year. In the course of discussing the wine excursion, the Board considered how to handle the wine excursion in the future. Ms. Kransz suggested the possibility that MSIA might charge a fee to advertise a wine excursion conducted by an attorney firm or vendor if the excursion is not offered free of charge to conference attendees. On the other hand, if the attorney firm or vendor pays for the entire event then there might be no charge to advertise it because a free event would be a benefit to attendees. The Board also discussed how other events, such as running the golf tournament, are rotated over the years rather than remain with one particular vendor or attorney firm every year. The Board authorized the Executive Secretary to communicate with Mr. Brenton and apologize for any confusion over this year's wine excursion. The Board left open how the wine excursion would be conducted and overseen for 2010. Mr. Healy then discussed paying Ms. Pretzer a \$700.00 flat fee along with free accommodations, to help with the MSIA Conference as she has done in the past and the Board approved. Ms. Climer, Ms. Azar, Ms. Zielinski and Ms. Kransz discussed and suggested the possibility of offering scholarships at the 2009 Fall Conference.

The **Membership Committee Report** was submitted by Mr. Healy. He indicated that the Committee was finalizing the delegation of responsibilities within the committee. The Committee will have a follow up meeting on June 12, 2009 to discuss a membership drive. Ms. Stepaniak has done an excellent job of updating the membership list and identifying new prospects for the MSIA. Ms. Stepaniak will provide Ms. Child and Ms. Pretzer with lists of members in relationship to the conference. Ms. Azar suggested the Board consider keeping a list of companies and persons to whom to mail Spring Conference brochures. The Membership Committee also resolved that the Conference Chair is the person to oversee each respective conference with respect to expenses and the like.

The **Funds Trustees Report** was submitted by Ms. Azar. She indicated at the Funds Trustees meeting it was noted that payments were down slightly. At the next Funds Trustee meeting, the amount of the next rate increase will be resolved. The Funds Trustees also discussed problems with Fund personnel having expressed some reluctance to complete Form 105B's.

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The **Technology Committee Report** was submitted by Mr. Parker. He indicated he will be cleaning up links on the website. Vendors can register online for the spring conference. Mr. Parker also indicated that attendee registration will be available online by the latter part of March.

The **Amicus Curiae Committee Report** was submitted by Mr. Calille and the Executive Secretary. Mr. Calille indicated there were no recent requests for *amicus curiae* help. The Executive Secretary reported on the oral argument in *Petersen v Magna Corporation* at the Supreme Court. The issue to be resolved in *Petersen* is whether employers can be required to pay plaintiff's counsel's fees on unpaid medical expenses. A decision from the Supreme Court is expected anytime from now until July 31, 2009 when the Supreme Court's present term ends.

The **Health Care Committee Report** was submitted by Ms. Azar. She indicated that there had been two meetings recently, one general meeting and one sub-committee meeting. Labor representatives on the committee expressed concern regarding access to medical care for work injuries due to what they consider minimal amounts for treatment provided on the fee schedule. Another issue has been freestanding surgical centers. Ms. Azar reported that the meetings were poorly attended with little accomplished. There remain vacancies on the Committee.

The **Legislative Committee Report** was tabled given the absence of Ms. Block.

Under **Old Business**, the Board was provided with the announcements of the Governor's recent appointments to the Board of Magistrates. The Governor on January 30, 2009 reappointed the following magistrates for terms extending to January 26, 2013: Magistrate Michael Harris, Magistrate Timothy McAree, Magistrate Thomas Moher, Magistrate Melody Paige, Magistrate Paul Purcell, Magistrate Jay Quist, and Magistrate Joy Turner. On February 6, 2009, the Governor also appointed the following two people to fill vacancies created by the prior departure of two magistrates. Magistrate Michael Mason was appointed for a term expiring January 26, 2013. He succeeds John Rabaut who had resigned to accept a social security judge position. The Governor also appointed Magistrate David Kurtz for a term expiring January 26, 2013. He succeeds Andrew Sloss who similarly resigned to accept a social security judge position. The Board then briefly discussed the status of the RICO case: *Brown v Cassens Transport Company*. The Board was advised that the Sixth Circuit Court of Appeals declined to reconsider its decision, but the matter was stayed to allow time for the employer to consider appeal to the United States Supreme Court. Separately, Ms. Susser mentioned that there was a federal bill that raised the specter of federal interference with state's workers' compensation systems.

Under **New Business**, the Board was provided with a handout of the program for the upcoming National Council of Self Insurers in May. The Chair asked whether, in addition to the Executive Secretary, she might attend this year's NCSI Conference. Ms. Susser indicated that there was precedent that, in addition to the Executive Secretary, the Chairperson could go at MSIA's expense to the National Conference. Ms. Azar suggested that the Tennessee Self Insured Association (which she also chairs) might pay half with MSIA only needing to pay the other half. Upon motion of Mr. Green, seconded by Ms. Climer, the Board unanimously approved Ms. Azar's attendance at the National Conference.

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The Board next discussed the statutory change to outstate injuries in MCL 418.845. Designed to counteract the ruling in *Karaczewski v Farbman Stein & Co.*, the legislature changed § 845 to say that Michigan's jurisdiction extends to injuries occurring outside the state of Michigan where the employee is employed under a contract of hire made in Michigan or the employee is a resident of Michigan at the time of injury. Under the prior reading of the statute, the claimant had to meet both requirements.

The Board then noted the introduction of Senate Bill 60 on January 27, 2009 in the State Senate. This bill would amend the Act to, amongst other things, provide for advise and consent by the senate of gubernatorial appointments to the Qualifications Advisory Committee.

Under **Other New Business**, the Board discussed the release by the Workers' Compensation Appellate Commission of the en banc opinion in *Slais v State of Michigan, Department of Police*, 2009 ACO #10. In this case the Workers' Compensation Appellate Commission overruled the decisions below and prior case law in reaching its particular conclusion on procedures in vocational rehabilitation proceedings under MCL 418.319. These are the traditional-type vocational rehabilitation proceedings, not vocational testimony relating to *Stokes/Sington*. The Appellate Commission had to decide whether due process of law required that there be an evidentiary hearing at one of the two lower levels of proceedings in traditional § 319 vocational rehabilitation disputes. The Appellate Commission unanimously held that the hearing before the magistrate must be a hearing with a state provided court reporter and a hearing that allows the parties to present evidence on the record. And, this hearing is one where the "magistrate is starting over with the evidence," rather than merely reviewing the ruling and documentation submitted to the Director or his designee, Mr. Campbell. The Director's (or Mr. Campbell's) proceeding is not to be on the record. The initial level was likened to a mediation, whereas the proceeding before the magistrate was likened to a trial.

The Board also discussed *Frahm v Workforce Alternatives, Inc.*, 2009 ACO #14. This is a case where the claimant redeemed with the defendant for a nominal sum assuming that the particular defendant was not his true employer at the time of the injury. The plaintiff then timely requested a redemption review when he learned otherwise. The Director set the redemption aside but the employer appealed the Director's ruling to the Workers' Compensation Appellate Commission. The Appellate Commission said the Director's decision did not readily disclose a factual basis for his determination. The Commission noted the plaintiff did not appeal at the redemption hearing and it did not appear that the evidence with respect to the question of who is the employing entity had ever been made part of any record. Consequently, the Commission remanded for the Director to set forth his basis for setting aside the redemption.

The Board noted the recent Sunday Free Press article with respect to Mr. Stokes, whose claim against Chrysler culminated in the decision *Stokes v Chrysler LLC*. The article included quotations from different attorneys and stakeholders including the MSIA's Executive Secretary.

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The Board then recognized two new members, Kapnick Insurance Group and Qualified Staffing Services who were both approved upon Motion of Mr. Green seconded by Ms. Stepaniak.

The Board then adjourned at 4:26 p.m.

Respectfully submitted,

Gerald M. Marcinkoski

Gerald M. Marcinkoski
Executive Secretary