



MICHIGAN SELF-INSURERS' ASSOCIATION

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Trinity Health
Teresa Fisk

Sheriff-Goslin Company
William Ticknor

Wayne County Airport Authority
Leigh Stepaniak

Kelly Services, Inc.
Lesley Zielinski

Meijer
Sherri Miller

MINUTES OF BOARD OF MANAGERS' MEETING

March 12, 2010
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 LLC
CLIMER, L., Amway
FISK, T. (by Charlene Merrick), Trinity Health
GALLOWAY, P., Wayne State University
GREEN, D., DTE Energy
KRANSZ, J., FinCor Solutions (by phone)
MILLER, S., Meijer
PARKER, B., Marathon Oil Company
PARKER, J., Ford Motor Company
STEPANIAK, L., Wayne County Airport Authority
ZIELINSKI, L., Kelly Services, Inc.
WRIGHT, D., Consumers Energy Company
OHMAN, S., Spectrum Health (by phone), special guest

Chairperson's Council:

BLOCK, W., Michigan Chamber of Commerce
CHILD, L., Qualifications Advisory Committee
SPIKE, J., Michigan Manufacturer's Association
SUSSER, D., Smith Haughey Rice & Roegge

Not Present:

CALILLE, A., AT&T Michigan
HEALY, M., Ilitch Holdings, Inc.
JELKS, M., City of Grand Rapids
LEVINS, N., Chrysler Group LLC
TICKNOR, B., Sheriff-Goslin Company

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The Chairperson called the meeting to order at 11:37 a.m. to discuss the following Agenda:

AGENDA

1. Address from Funds Personnel
2. Minutes of Board of Managers' Prior Board Meeting
3. Treasurer's Report
4. Membership Committee Report
5. Nominating Committee Report
6. Funds Trustees' Report
7. *Amicus Curiae* Committee Report
8. Technology Committee Report
 - a. Facebook Page
9. Health Care Committee Report
10. Legislative Committee Report
11. 2010 Spring Conference Committee Report
12. Old Business
 - a. Conflict of Interest Statements/Whistle Blower's forms
 - b. Waiver and Release form
 - c. Scholarship
 - d. IME Doctor Administrative Rule
 - e. Other old business
13. New Business
 - a. The Self-Insurer's Security Fund
 - b. State Budget and Mr. Welch's project
 - c. Report on National Workers' Compensation Conference in AZ
 - d. Other new business

Prior to discussing this Agenda, Mr. Rick Smith of the state funds first addressed the Board with respect to the status of the Self Insured Security Fund (SISF). Mr. Smith explained the need to stabilize the SISF.

Mr. Smith explained that the 3% annual increase to sustain the funds had worked in the past. However, with present bankruptcies most especially that of Delphi, he projected a possible "worst case scenario" where the SISF would be required to pay out annually approximately twenty million dollars. He projected that the SISF would be depleted in 6 - 7 months under such a scenario.

[Subsequent to the MSIA Board Meeting, it is MSIA's understanding that these figures were revisited and a significant revision appears to be in the offing; MSIA will keep everyone apprised].

Mr. Smith described for the Board different means for addressing the present problem. Beyond the obvious legislative fix of increasing the amount of annual assessments, he discussed non-legislative fixes such as third party buyout which are apparently used in other states.

The Board thanked Mr. Smith for his presentation. [The Board's discussion of SISF concerns is found below under New Business.]

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The Board then unanimously approved the **Minutes** of the last Board meeting.

The **Treasurer's Report** was furnished to the Board members by means of a handout. The report was approved by motion of Ms. Zielinski, seconded by Ms. Miller.

The **Membership Committee Report** was provided by Ms. Child and Ms. Stepaniak. There were no new membership applications.

The **Nominating Committee Report** was tabled due to Mr. Calille's absence. The Board reiterated the need to fill the vacant spot on the Board at the upcoming Fall Conference.

The **Funds Trustees Report** was provided by Mr. Green. He reported that the funds trustees had met but much of the substantive discussion had occurred in a closed session that could not be disclosed. Mr. Green said that the next Fund Trustees meeting was scheduled for April 26, 2010.

The **Amicus Curiae Report** was provided by the Executive Secretary. He indicated that the Federal District Court in Michigan had issued a decision in a RICO case: *Jackson v Sedgwick Claims Management Services, Inc./Coca Cola Enterprises, Inc./Dr. Drouillard*. In the decision, the Federal District Court Judge rejected all of the RICO arguments made by plaintiff and dismissed the case in a methodical 69 page opinion.

On a less positive note, the Michigan Supreme Court denied the application for leave to appeal in *Trammel v Consumers Energy*, a case where MSIA had filed an *amicus curiae* brief. *Trammel* is a case where the Workers' Compensation Appellate Commission held in an *en banc* opinion that implants are not to be considered when evaluating a claimant's limb for specific loss purposes. A motion for reconsideration has been filed in *Trammel* at the Michigan Supreme Court and presently pends.

The **Technology Committee Report** was provided by Ms. Child. She indicated she had received a suggestion that MSIA create a facebook page. After explaining that there is a method to remove negative postings, Ms. Child recommended that MSIA have one accessible via the "linked-in" section of the web site. She recommended that MSIA pursue this on a trial basis. Ms. Climer mentioned the need for a "contact us" link on the website. Ms. Zielinski indicated the desire for electronic versions of MSIA's brochure which could include reference to the facebook page. Mr. Dana is working on this.

The **Health Care Committee Report** was submitted by Ms. Azar. She indicated that there had been no recent meeting of the Health Care Committee.

The **Legislative Committee Report** was presented by Ms. Spike and Ms. Block. Ms. Spike indicated that a bill has been introduced into the legislature allowing illegal aliens to obtain unemployment compensation benefits. Ms. Block expressed doubt that the bill would pass. Ms. Block explained that there has been discussion of employment policies in Lansing as they relate to "gun free sites." The National Rifle Association is apparently seeking laws to stop prohibition of guns in certain areas, such as

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in the trunks of cars and in parking lots. Ms. Spike indicated that many employers expressed concern with resisting the bill as it relates to workplace parking lots and areas. Beyond these concerns, both Ms. Block and Ms. Spike indicated that Lansing was preoccupied with work on the status budget.

The **2010 Spring Conference Committee Report** was provided by Mr. Parker. He reported that earlier in the morning the Spring Conference Committee had met. He reviewed what had been discussed there. The Conference will take place in a revised format beginning on June 2nd through June 4th, 2010. On June 2nd, there will be the golf scramble, a mock trial, and the cocktail reception under the white plaza tent. There will also be dinner stations and a performance by the Williamsburg Dinner Theatre Wednesday evening. Thursday will include morning remarks from Mr. Tim Skubick, a longtime political observer from Lansing, lectures on generational diversity, medical marijuana, and the interplay between ADA, FMLA, and workers' compensation. On the evening of Thursday, June 3rd, there will be the Chairperson's Reception and dinner under the yellow tent at the Pavilion. On Friday, June 4th, the morning session will begin with workers' compensation agency updates from Director Nolish, Chair of the Board of Magistrates, Christopher Ambrose and Chair of the Workers' Compensation Appellate Commission, Murray Gorchow, and Dennis Morrill of the Funds. Afterwards there will be a presentation by the 20/20 Inter Vision Foundation. The morning session will then conclude with the MSIA legal update provided by the Executive Secretary just before the presentation of prizes at 11:30 a.m. Registration fees have increased somewhat as a result of the increase in meals provided by MSIA as well as the expanded program.

Under **Old Business**, the Board was provided the conflict of interest statements and whistleblower statements that had been discussed at prior Board Meetings. Many Board members completed the statements and returned them to the Executive Secretary by the end of the session. Board members were also provided waiver and release forms to review and discuss at the next Board meeting. The Board again discussed the scholarships to be extended to college students. Mr. Ticknor is still scheduled to meet with the scholarship candidates from Olivet College, who is excited about participating in the program. The Executive Secretary then discussed the upcoming proposed administrative rule changes relating to IME doctors. The Board authorized the Executive Secretary to send a letter outlining MSIA's position to the persons involved in reviewing the proposed administrative rule change. The Board recognized that, although the rule change only applied to insurance companies, there would be a run-off effect on self insured to the extent that self insurers might use the same IME clinic as insurance carriers. There was no **Other Old Business**.

Under **New Business**, the Board discussed the status of the SISF, in light of recent meetings regarding the SISF with the state, as well as in light of Mr. Smith's earlier remarks. Some members of the Board questioned how closely the state had kept watch on SISF's status through the years. Questions were also raised as to whether former self insurers (who are now insured) might be reached to help resolve the present state of affairs. And, Board members were uncertain that the state was adequately accounting for coordination of benefits and other offsets when presenting their figures. Finally, the Board wanted clarification about the "bond" solution whereby the state would secure a bond to cover some or all of SISF's excess liabilities. The Board believed that ongoing discussions regarding the SISF are necessary to find a solution.

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The Board then discussed the status of the state's budget and Mr. Welch's current project. In general, the Board believed that it is necessary that the Qualifications Advisory Committee take a stronger role in accountability of Magistrates and Workers' Compensation Appellate Commissioners. It appeared to the Board that the work of Mr. Welch's litigation group had been completed. And, regarding Mr. Welch's finance group, the Board noted how resolution of the SISF problem, with its possible heavy financial impact on Michigan employers, needed to be resolved first before any discussion of the Workers' Compensation Agency's budget issues. Finally, the Executive Secretary reported on events that occurred at the National Workers' Compensation Conference in Arizona. The Board was provided with copies and discussed recent amendments to the ADA. A national speaker there suggested the ADA is fast becoming the "everyone with disabilities act" in light of the relative ease in finding ADA under the most recent amendments. The Board also discussed the high profile Michigan's RICO cases held at the national conference. The national conference lecture did occur just prior to release of the *Jackson* opinion, discussed earlier. Finally the Board discussed Pennsylvania's interesting approach to the mental injury – physical injury dichotomy, in light of how in some instances Pennsylvania law has paralleled Michigan law. In Pennsylvania, because mental disability cases are more difficult to pursue, claimants have begun characterizing mental stress or mental disabilities as biological or physical injuries.

There being no other new business, the meeting was adjourned upon motion of Ms. Parker, seconded by Ms. Stepaniak at 4:39 p.m.

Respectfully submitted,

Gerald M. Marcinkoski

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Executive Secretary