



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

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

DaimlerChrysler Corporation
Neil D. Levins

DTE Energy
Randall Rutkofske

General Motors Corporation
Susan R. Azar

MHA Service Corporation
Janet Kransz

Marathon Oil Company
Barbara Parker

The Pepsi Bottling Group
Amy Tyrala

Tecumseh Products
Randall Krichbaum

Sherriff-Goslin Company
William Ticknor

MINUTES OF BOARD OF MANAGERS' MEETING

January 12, 2007

Holiday Inn North Campus
Ann Arbor, Michigan

Present:

AZAR, S., General Motors Corporation
CALILLE, A., AT&T Michigan
CHILD, L., Varnum Consulting
HEALY, M. Little Caesar Enterprises, Inc.
KRANSZ, J., MHA Service Corporation
KRICHBAUM, R., Tecumseh Products
MAHAN, S., City of Grand Rapids
TYRALA, A., The Pepsi Bottling Company
OHMAN, S., Alticor, Inc.
PARKER, B., Marathon Oil Company
PARKER, J., Ford Motor Company
TICKNOR, B., Sherriff-Goslin Company
WRIGHT, D., Consumers Energy Company

Not Present:

BLOCK, W., (Chairperson's Council) Chamber of Commerce
CYRULNIK, S., Trinity Health
GALLOWAY, P., Wayne State University
LEVINS, N., DaimlerChrysler Corporation
RUTKOFKSKE, R., DTE Energy

Chairperson's Council:

SUSSER, D., Smith Haughey Rice & Roegge
ZURVALEC, D., Michigan Manufacturers Association

The MSIA Board meeting was called to order at 11:40 a.m. by 1st Vice Chair Steve Ohman who conducted the meeting in the absence of Chairperson Susan Cyrulnik. The following Agenda was discussed:

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AGENDA

1. Minutes of Board of Managers' Prior Meeting.
2. Treasurer's Report.
3. Nominating Committee Report.
 - a. Attendance letter.
 - b. Other business.
4. Technology Committee Report.
5. Amicus Curiae Report.
 - a. *Stokes v DaimlerChrysler Corporation.*
 - b. *Bowman v R.L. Coolsaet Construction Company/Second Injury Fund.*
6. Funds Trustees Report.
7. Health Care Committee Report.
8. 2007 Spring Conference Report.
9. Old Business.
 - a. Mileage Questionnaire.
 - b. *Smith v Parkland Inn/Second Injury Fund.*
 - c. David Campbell's Vocational Rehabilitation Task Force.
 - d. QAC Conflict of Interest?
 - e. Other Old Business.
10. New Business.
 - a. Board of Magistrate Appointments.
 - b. WCRI Advisory Committee Report.
 - c. New Members.
 - d. Other New Business.

The **Minutes** of the prior Board were approved upon motion of Ms. Tyrala seconded by Mr. Healy.

The **Treasurer's Report** was submitted by Ms. Mahan who reported a cash balance of \$80,021.32 on the budget information distributed. Ms Mahan indicated 1099's were for the first time issued to vendors. The number of members of MSIA remains consistent in the area of 235-240 members.

The **Nominating Committee Report** was submitted by Mr. Calille. The letter setting forth the new attendance policy for the Board of Mangers has been mailed to the Board of Managers. Mr. Ticknor expressed his disagreement with the attendance requirement. Ms. Child also inquired into the motivation for the requirement. The Board tempered concerns pointing out that the Nominating Committee, who will review the attendance requirement, has discretion to recommend a change in companies on the Board of Managers if the attendance policy has not been fully complied with. A member of the Board questioned why there is presently no 2nd Vice Chair.

The **Technology Committee Report** was submitted by Ms. Child. Ms. Amy Tyrala is to join Ms. Child and Mr. Jonathan Parker on the Technology Committee. Ms. Child reported that the MSIA website will be posting job openings and resumes. Mr. Dana, the webmaster, will send information in this regard to all

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members in April or May of 2007. Ms. Child also recommended, with the Board's agreement, that the website implement a Yahoo group instead of a blog. Mr. Dana will pursue that. Finally, Ms. Child said the Spring Conference information with hotel rates, exhibitor information, and the like, will be posted on the website soon.

The **Amicus Curiae Report** was submitted by Mr. Calille and the Executive Secretary. Mr. Calille reported that an *amicus curiae* brief has been filed by MSIA in *Stokes v DaimlerChrysler Corporation* with the brief also endorsed by the Michigan Manufacturer's Association and the Chamber of Commerce. MSIA is funding the \$2,000.00 for the composition and filing of such brief. The Executive Secretary reported that MSIA had prepared and was about to file its *amicus curiae* brief in *Bowman v R.L. Coolsaet Construction Company/Second Injury Fund* when the Supreme Court issued an order in that case. The Supreme Court's order, which was entered quickly after the appeal in the case was taken by the employer and the Second Injury Fund, reversed the Court of Appeals' adoption of the traveling employee doctrine in Michigan. The Supreme Court remanded the case to the Court of Appeals for consideration without reference to a traveling employee doctrine. *Bowman* was a case where the Court of Appeals adopted the traveling employee doctrine which holds that employees traveling in relation to their work are fully covered by the workers' compensation act, unless the employee was engaged in a personal deviation or social or recreational activity.

The **Funds Trustees Report** was submitted by Ms. Child. She reported that *Bowman* had been discussed by the Funds Trustees. She reported that Mr. Richard Zapala of the Accident Fund Insurance Company of America has assumed his position as one of the three funds trustees. Ms. Child explained that the last funds trustees meeting occurred in December and that 90% of the assessments have been collected. She reported that the 2% assessment figure remains in effect. Ms. Child did not see anything worrisome on the horizon with respect to the funds.

The **Health Care Committee Report** was submitted by Ms. Azar. Ms. Azar reported that the Health Care Services Committee recently met. A sub-committee met on evidence-based medicine with a goal of setting guidelines. Ms. Azar also reported that in the pharmaceutical sub-committee wholesale rates were discussed. She reported that the pharmaceutical sub-committee apparently will not disband. Ms. Azar indicated she would email medical data that had been distributed regarding 2006 statistics relating to medical reimbursement filings.

The **2007 Spring Conference Committee Report** was submitted by Mr. Ohman. He reported that the Spring Conference Committee had met for the second time. The theme of the 2007 Spring Conference will be "Superheroes" of the workers' compensation world. The Conference will begin on Wednesday, May 30, 2007 with a mock trial where the participants will all be "superwomen" from the workers' compensation world. There will be a reception from 6:00 – 8:00 p.m. on Wednesday evening with a disc jockey in the Trillium at the Grand Traverse Resort.

The keynote speaker for the conference will be Richard Pimentel, who had been an enormously popular keynote speaker previously. Mr. Ohman reported that there is a film to be released soon relating to Mr. Pimentel's life and there is some possibility that there will be a private screening of the film in conjunction with the MSIA Spring Conference.

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The Conference will also have seven break-out sessions with subjects likely to include making medical distinctions between aging and non-aging conditions; medicare set-aside problems; ergonomics; and, news from the Workers' Compensation Agency. Thursday's program will include Mr. Walter Noeske and the "legion of doom", along with the usual golf scramble. A wine country excursion from the Grand Traverse to the nearby Old Mission Peninsula and its wineries is also being planned. Friday's program will include an address from Director Jack Nolish and the Executive Secretary, and will conclude with a "game show" relating to information generated over the three days of the conference. CEU credits will be available. Brochures with respect to the Conference will be mailed mid-march 2007. Everyone is encouraged to check the MSIA website for conference news.

Under **Old Business**, Ms. Mahan discussed the mileage questionnaire that had been distributed previously. The purpose of the questionnaire is to determine which companies on the Board of Managers are paying for mileage to Board of Managers meetings and conferences. Information gathered from the questionnaires will be provided to the Executive Committee and will be addressed at the next board meeting. The Board also again discussed the implications of *Smith v Parkland Inn/Second Injury Fund*. This is a case from the Board of Magistrates where the Michigan Property and Guaranty Association [MPGA] was granted reimbursement from the Second Injury Fund. The Fund's concern is that if the MPGA obtains reimbursement from the Fund, the amount of assessments levied against self-insured employers will increase. The Board resolved that it would monitor the case but, to the extent that an *amicus curiae* brief may have been sought to support the Fund's position, the Board did not believe that at this stage in the proceeding the board will file an *amicus curiae* brief.

The Board continued its review of Mr. David Campbell's vocational task force's activities, specifically, his committee's work on proposing administrative rules relating to vocational rehabilitation. The Board reiterated the policy previously voiced with respect to these rules as expressed in the minutes of the December 8, 2006 Board of Managers Meeting on page four. The Board is of the opinion that administrative rules should make clear at the outset that they are designed to address only vocational rehabilitation under section 418.319 and are not applicable to vocational assessments for disability purposes under MCL 418.301(4). The administration has given public assurances that this bright line between use of vocational experts for disability/301(4)/*Sington* assessments would be kept independent and separate from considerations relating to vocational experts used for traditional section 319 vocational rehabilitation. The Board expressed its continuing belief that any blurring of the lines between the two only adds to confusion both in terms of the Agency's channeling of cases and as it relates to employers' use of vocational experts.

Still under Old Business, the Board was advised by the Executive Secretary that its letter inquiring into a possible conflict of interest of a member of the Qualifications Advisory Committee had been sent to the Chair of the QAC, with a copy to Attorney General Michael Cox and the Senate Majority Leader. To date, the MSIA has not received a response from the Chair of the QAC relating to this possible conflict of interest.

Under **New Business**, the Board reviewed the persons approved by the Qualifications Advisory Committee who are candidates for the Board of Magistrates. The Board then discussed the WCRI Advisory Committee Report. This is a report compiled by an out of state study group that evaluates different states' workers' compensation systems. The preliminary information provided the MSIA Board indicated that three major points the study makes are: Michigan's maximum weekly workers'

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compensation rate (90% of the State Average Weekly Wage) is less than other comparable states who set the rate at 100%; Michigan's calculation of average weekly wage with reference to the employee's "after tax" average weekly wage differs from the other states' calculation of average weekly wage insofar as the other states use a pre-tax average weekly wage amount; and, a number of states with comparable workers' compensation systems require a hearing before voluntarily paid weekly workers' compensation benefits can be terminated after the voluntary payments have been made for a particular duration. Some members of the Board expressed concern that the study might be used to suggest a change in Michigan's voluntary pay system and be used as an effort to seek an increase in Michigan's weekly workers' compensation rates. Mr. Wright pointed out that only 14 states were evaluated and of those only 3-4 of them were wage loss states with comparable systems. An evaluation of more than 14 states would have provided a better sampling. Other board members questioned whether the study took into account the duration of weekly benefits, given that many Michigan workers' compensation recipients receive weekly benefits for their entire life, as opposed to other states. Finally, many on the Board expressed the idea that Michigan's statute allowing employers to terminate voluntary payment of weekly workers' compensation benefits without prior state approval is one reason why there is a shorter duration of temporary total disability payments in Michigan as compared to other states. The Board has formed a sub-committee with regard to the WCRI report consisting of Ms. Azar as the chair, Mr. Parker, and Mr. Wright. The Board noted that there is a presentation on February 2, 2006 by the study group who prepared the WCRI. Board members were encouraged to attend.

Under **New Members** the Board welcomed RTW, Incorporated of Grand Rapids who was accepted as a member pending the receipt of dues.

The meeting adjourned at 4:17 p.m.

Respectfully submitted

Gerald M. Marcinkoski

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Executive Secretary