



# MICHIGAN SELF-INSURERS' ASSOCIATION

---

600 SOUTH ADAMS ROAD, SUITE 300 • BIRMINGHAM, MI 48009-6827 • (248) 433-1414 • FAX (248) 433-1241  
www.michselfinsurers.org

**Gerald M. Marcinkoski**  
Executive Secretary

**Board of Managers**

**Varnum Consulting, LLC**  
Libby Child  
Chairperson

**Trinity Health**  
Susan Cyrulnik  
1<sup>st</sup> Vice Chair

**Wayne State University**  
Pamela Galloway  
2<sup>nd</sup> Vice Chair

**City of Grand Rapids**  
Sheila Mahan  
Treasurer

**Ford Motor Company**  
Jonathan R. Parker

**Little Caesar Enterprises, Inc.**  
C. Michael Healy

**ThyssenKrupp Budd Company**  
James Commet

**SBC**  
Albert Calille

**Consumers Energy Company**  
Doug Wright

**DaimlerChrysler Corporation**  
Neil D. Levins

**DTE Energy**  
Randall Rutkofske

**General Motors Corporation**  
Susan R. Azar

**Michigan Health & Hospital  
Association**  
Janet Kransz

**Alticor, Inc.**  
Steve Ohman

**Marathon Oil Company**  
Barbara Parker

## MINUTES OF BOARD OF MANAGERS' MEETING

September 23, 2005  
Fox Hills Country Club  
Plymouth, Michigan

### Present:

AZAR, S., General Motors Corporation  
CALILLE, A., SBC  
COMMET, J., ThyssenKrupp Budd Company  
CYRULNIK, S., Trinity Health  
GALLOWAY, P., Wayne State University  
HEALY, M., Little Caesar Enterprises, Inc.  
KRANSZ, J., Michigan Health & Hospital Association  
LEVINS, N., DaimlerChrysler Corporation  
OHMAN, S., Alticor, Inc.  
PARKER, B., Marathon Oil  
PARKER, J., Ford Motor Company  
WRIGHT, D., Consumers Energy Company

### Not Present:

CHILD, L., Varnum Consulting  
MAHAN, S., City of Grand Rapids

### Guests:

ZURVALEC, D., Michigan Manufacturer's Association  
MAHARAJ, AMY, Pepsi Bottling Company  
KRICHBAUM, RANDY, Tecumseh Products

The meeting was called to order at 11:10 a.m. by Second Vice Chair Pamela Galloway and later chaired by First Vice Chair Susan Cyrulnik. The following agenda was discussed:

### AGENDA

1. Minutes of Board of Managers' Prior Meeting
2. Treasurer's Report
3. Nominating Committee Report
  - a. Candidates for Board of Managers
  - b. Representative for current Board Members

## MICHIGAN SELF-INSURERS' ASSOCIATION

Page 2

November 17, 2005

4. Technology Committee Report
5. Funds Trustees Report
6. Editorial Committee Report
7. Amicus Curiae Report
8. Health Care Committee Report
9. 2005 Fall Conference Report
10. Old Business
  - a. List of Group Self-Insureds
  - b. Workers' Compensation Mainframe crash
  - c. Proposed fines on employers
  - d. Workers' Compensation proposed legislation
11. New Business
  - a. MSIA Insurance
  - b. Medicare set aside committee
  - c. Applicants for Board of Magistrates
12. Other New Business

The **Minutes** of the previous board meeting were approved upon motion of Mr. Healy, seconded by Mr. Ohman.

The **Treasurer's Report** was distributed to the Board Members given Ms. Mahan's absence. Questions were raised as to whether or not there was an outstanding bill from Grand Traverse in relationship to the Spring Conference of 2005. The Board decided to table the Treasurers Report pending further discussion upon motion of Mr. Calille seconded by Ms. Parker.

The **Nominating Committee Report** was submitted by Mr. Calille. He advised that the Committee had reviewed candidates for vacancies on the Board of Managers and interviews have taken place. Mr. Calille said the following people were interviewed: Amy Maharaj of Pepsi Bottling Company who appeared at the Board meeting to introduce herself and sit in; Randy Krichbaum of Tecumseh Products, who also attended the Board meeting, introduced himself and sat in; and William Ticknor of Sherrif Goslin, a roofing company. The nominating committee will make recommendations of companies to fill the vacancies at the next board meeting. The Board also instructed the Executive Secretary to write to DTE Energy to obtain some definitive word as to whether or not their company wishes to remain on the Board.

The **Technology Committee Report** was tabled, given the absence of Ms. Child.

The **Funds Trustees' Report** was similarly tabled in light of Ms. Child's absence. However, the Board did discuss two matters in relationship to the Funds. First, Mark Hogle, a Funds Trustee, has reportedly left his employment at the Accident Fund Insurance Company of America. His status as a Funds Trustee is unclear. The Board also discussed the impact on the funds of the Supreme Court case *Bailey v Oakwood Hospital/Second Injury Fund*. *Bailey* requires reimbursement from the funds under the vocationally handicapped provision without regard to the notice requirement. The board discussed the possibility of the increase in assessments should dormant requests for reimbursement begin to happen.

## MICHIGAN SELF-INSURERS' ASSOCIATION

Page 3

November 17, 2005

The **Editorial Committee Report** had been chaired by Ms. Thomas of Consumers Energy who has since retired from that company. The Board at its next board meeting will select a new chair for the Editorial Committee.

The **Amicus Curiae Report** was submitted by Mr. Calille and the Executive Secretary. Mr. Calille indicated that there were no recent requests for amicus curiae help. The Executive Secretary described recent action at the Michigan Supreme Court level with respect to applications for leave to appeal that are pending there. The first case is *Donoho v Walmart Stores Inc.* This is a case where the MSIA filed an amicus curiae brief. This case raises the issue of whether attorney fees can be assessed on the employer for non payment of medical bills under §315 of the Act. The Supreme Court has ordered an oral argument to determine whether the employer's application for leave to appeal should be granted or whether the Supreme Court might take some preemptory action.

Similarly in *Paige v City of Sterling Heights*, the Supreme Court ordered an oral argument to determine whether it should grant leave or take preemptory action. This is a case where the MSIA also filed an amicus curiae brief. The issues in this case are whether the Supreme Court's decision in *Robinson v City of Detroit*, 462 Mich 439 (2000) should be understood to have overruled *Hagerman v Gencorp Automotive* 457 Mich 720 (1998). The issue in *Hagerman* – and in *Paige* – is the correct interpretation of “the proximate cause” standard in death cases. A second issue in *Paige* is whether one of the deceased's children should be considered a dependent.

A third case pending before the Supreme Court where the MSIA will be filing an amicus curiae brief is *Harris v DaimlerChrysler Corporation*. This is a case where the MSIA will be urging the Supreme Court to grant leave where the employer was precluded from offering a defense under §222.

The **Health Care Committee Report** was submitted by Ms. Azar. She provided a handout summarizing the June Health Care Advisory Committee meeting. The most important and contentious issue was whether to approve an increase in the medical fee schedule's relative value unit conversion factor. Ms. Azar reported that medical providers have established a coalition requesting an increase in the factor to 3%. Mr. Levins explained he favored no increase beyond 1.5%, which is the amount of the present conversion factor. The Board discussed the reality that utilization in Michigan is higher than elsewhere and the Board's sense is that the present economic climate is not one within which to increase health care costs. The Board favored staying with the 1.5% factor and opposing the 3% factor. Upon motion of Mr. Calille, seconded by Mr. Commet, the board so resolved.

The **2005 Fall Conference Report** was submitted by Ms. Galloway. She reported that the brochures for the conference had been mailed out in the last week of August. Thirty-three vendors have signed up for the Fall Conference. Everything is in place and running smoothly. The Board decided that the Board of Manager's meeting will occur at 4:00 p.m. on October 25, 2005, a Tuesday, at the St. John's Conference Center. The theme of the conference is “Extreme Makeover”. The Hilton Hotel and Marriott Hotel is near the St. John's Conference Center and provides shuttles to the conference site.

## MICHIGAN SELF-INSURERS' ASSOCIATION

Page 4

November 17, 2005

Under **Old Business**, the Executive Secretary procured a list of the self insured groups in Michigan with their names and addresses. Recent developments relating to the crash of the Workers' Compensation Agency's mainframe were summarized in a handout to the Board.

The Board next discussed the Proposed Fine to be instituted on employers via an amendment to MCL 418.801 as had been discussed at Director Plawecki's last Workers' Compensation Advisory Committee. The proposed amendment would impose fines for not filing a Form 701 (Notice of Compensation Payments) in a timely fashion with the Agency. The fines would be \$100.00 per week for each week or part of a week beginning on the 15<sup>th</sup> day after compensation is paid, changed or stopped. The maximum late fee would not exceed \$2,500.00. The failure to file a report of an injury (Form 100) with the Agency within 15 days would similarly result in fines.

The Board unanimously opposed fines. Amongst the reasons offered were that for Forms 100, for example, it is often not possible for the employer to know whether medical complaints lodged by the employee are complaints of a work related nature within 15 days. Adoption of such a rule would lead to employers filing forms for virtually any medical complaint to avoid potential fines.

At this juncture in the meeting, the Board, led by Mr. Zurvalec on this point, discussed the recent removal of Craig Petersen as acting director of the Workers' Compensation Agency. The Board expressed their shock and dismay with the removal of Mr. Petersen who served many years as an effective, efficient, non-partisan administrator of the system.

Under **New Business**, the Board discussed its insurance policy and whether it requires coverage for D & O's (Directors and Officers). Mr. Healy will review MSIA's insurance policy in depth and report at the next board meeting.

Within the handouts to the Board members was a legislative proposal that would allow for medical evaluations to be conducted by nurses. It is unclear whether this proposal has significant backing.

The Board then discussed the Medicare set aside committee, a bi-partisan ad hoc committee arranged by a plaintiff's counsel to address the problem with Medicare set asides and obtaining approval for such from CMS. A number of board members, including the Executive Secretary, were in attendance at that ad hoc meeting. The ad hoc group's suggestion had been that an attorney be hired to consider a class action lawsuit or some similar action against the federal government challenging the operation of the Medicare set aside program. The MSIA Board of Managers, following discussion, expressed a desire to work more on the legislative front not the judicial front in this regard. Also, certain board members expressed disapproval with the attorney earmarked to be hired by the ad hoc committee. The Board therefore resolved to continue work on the legislative front and defer any judicially related action to the UWC and Eric Oxfeld's efforts there.

The Board was then provided with a list of applicants for the Board of Magistrates. Detailed discussion with respect to the candidates was deferred until after the Qualifications Advisory Committee produced

## MICHIGAN SELF-INSURERS' ASSOCIATION

Page 5

November 17, 2005

their "Approved" list since the only persons that can be appointed to become Magistrate are those who make the approved list.

Other New Business included discussion from Mr. Zurvalec as to the MSIA's position on elimination of the Funds. Mr. Calille had chaired a previous committee to study the funds and recounted some of that report. Mr. Calille explained that there are essentially two types of funds: (1) funds that spread the cost incurred by an employer throughout all employers in the state; and (2) funds that supplement workers' compensation benefits, such as the Dual Employment Fund and the Compensation Supplement Funds. The Board advised Mr. Zurvalec that its position was that articulated in Mr. Calille's prior report which was a suggestion to eliminate the former type of funds and a suggestion that the later type of funds be retained.

The Board then noted new applications for membership from Brinks and Associates, Abacus Rehabilitation Group, Hylant Group and Lawrence Cianciosi, who were approved upon payment of membership fees.

The meeting adjourned at 1:30.

Respectfully submitted,

*Gerald M. Marcinkoski*

Gerald M. Marcinkoski  
Executive Secretary