



# Florida Workers Compensation Joint Underwriting Association, Inc.

P.O. Box 48957, Sarasota, FL 34230-5957

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VIA EMAIL

## BOARD OF GOVERNORS BULLETIN 07-24

**TO:** Florida Workers' Compensation Joint Underwriting Association, Inc. Board of Governors  
**FROM:** Laura S. Torrence, Executive Director  
**DATE:** June 27, 2007  
**RE:** **JUNE 29, 2007 BOARD OF GOVERNORS MEETING AGENDA**

Enclosed for your review is the agenda for the Board of Governors teleconference meeting scheduled for Friday, June 29, 2007 at 11:00 a.m. (Eastern Time). An operator will dial out to the following parties:

Ray Neff	941-388-0611
Pat Cannassa	407-919-3185
Dan Dannenhauer	239-939-1400
Rick Hodges	863-559-1557
Bob Milligan	850-413-5980
Elissa Pacheco	561-994-9888, Ext. 2114
Beth Vecchioli	850-224-1585
Tom Maida	850-513-3377
Jim Watford	850-413-5368

All other parties please contact Kathy Coyne at (941) 378-7408 to participate in the teleconference. Should you have any questions concerning the teleconference call, please do not hesitate to contact me.

Enclosure

c: Tom Maida, General Counsel  
Jim Watford, Florida Office of Insurance Regulation  
FWCJUA Interested Parties

**BOARD OF GOVERNORS:** Ray Neff, *Chair*; Patrick Cannassa; Dan Dannenhauer;  
Rick Hodges; Craig Johnson; Bob Milligan; Elissa Pacheco; Claude Revels; Beth Vecchioli

**AGENDA FOR THE MEETING OF THE BOARD OF GOVERNORS OF THE  
FLORIDA WORKERS' COMPENSATION JOINT UNDERWRITING ASSOCIATION, INC.  
TO BE HELD AT 11:00 A.M. ON FRIDAY, JUNE 29, 2007 VIA TELECONFERENCE**

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|--------------|--|----------------|
| <b>I.</b>    | CALL TO ORDER AND OPENING REMARKS  | Ray Neff       |
| <b>II.</b>   | ANTI-TRUST PREAMBLE (Attachment A)   | Tom Maida      |
| <b>III.</b>  | APPROVAL OF MINUTES (Attachment B) <ul style="list-style-type: none"><li>• Board Meeting</li><li>• Committee Meetings</li></ul>                                | Ray Neff       |
| <b>IV.</b>   | MARKET CONDUCT EXAM (Attachment C)   | Laura Torrence |
| <b>V.</b>    | LEGISLATIVE REPORT   | Tom Maida      |
| <b>VI.</b>   | SB 1894 & HB 7169 IMPLEMENTATION ISSUES  | Laura Torrence |
| <b>VII.</b>  | FILINGS WITH OIR <ul style="list-style-type: none"><li>• Seventh Amended Bylaws</li><li>• Forms Filings</li><li>• Operations Manual Revisions Filing</li></ul> | Laura Torrence |
| <b>VIII.</b> | GENERAL ANNOUNCEMENTS  |                |
| <b>IX.</b>   | ADJOURNMENT & CLOSING REMARKS  | Ray Neff       |

**ANTI-TRUST PREAMBLE**

We are here to discuss and act on matters relating to the business of the Florida Workers' Compensation Joint Underwriting Association (FWCJUA) and not to discuss or pursue the business interests of our individual funds or companies.

We should proceed with caution and alertness towards the requirements and prohibitions of federal and state anti-trust laws.

We should not engage in discussions – either at this meeting or in private conversations – of our individual fund's or companies' plans or contemplated activities. We should concern ourselves only with the business of the Florida Workers' Compensation Joint Underwriting Association as set forth in the agenda for this meeting.

Only FWCJUA market matters may be discussed at the meeting and each fund's or company's voluntary market plans cannot be discussed.

**APPROVAL OF MINUTES**

The Board shall consider approval of the attached June 12, 2007 Board meeting minutes

The Board members who serve on the respective committees shall consider approval of the attached committee meeting minutes as listed below.

1. Minutes of the April 26, 2007 Safety Committee meeting; and
2. Minutes of the June 11, 2007 Producer Appeals Committee meeting.

Attached for ease of reference are the committee appointments.

**DRAFT - MINUTES OF THE MEETING OF THE BOARD OF GOVERNORS OF THE  
FLORIDA WORKERS' COMPENSATION JOINT UNDERWRITING ASSOCIATION, INC.  
HELD ON JUNE 12, 2007 AT 8:30 A.M. IN SARASOTA AT THE FWCJUA OFFICE**

**PRESIDING:** Ray Neff, *Chair*

**BOARD MEMBERS:** Patrick Cannassa  
Dan Dannenhauer  
Rick Hodges  
Craig Johnson  
Bob Milligan, *participated by phone*  
Elissa Pacheco, *not present*  
Claude Revels, *not present*  
Beth Vecchioli

**EXECUTIVE DIRECTOR:** Laura Torrence

**GENERAL COUNSEL:** Tom Maida

**OFFICE OF INSURANCE  
REGULATION LIAISON:** Jim Watford

**STAFF PRESENT:** Marc Babin  
Michael Cleary  
Laura Lopez

**SERVICE PROVIDERS  
PRESENT:** Mike Buccina, *RSI*  
James Crumel, *NCCI*  
Jeffery Deaton, *Benfield Group*  
Arleen Desmond, *Travelers*  
Cliff English, *Benfield Group*  
Bill Fleischhacker, *Benfield Group*  
Bill Ferguson, *Thomas Howell Ferguson*  
Andy Gray, *Thomas Howell Ferguson*  
John McLaughlin, *Travelers*  
Jonathan Scharnberg, *Travelers*  
Keith Thurman, *Benfield Group*

**OTHERS PRESENT:** Daniel Kriss, *Axiom Re*

**I. CALL TO ORDER AND OPENING REMARKS:** The Chair called the meeting to order at 8:30 a.m. The roll was called and a quorum being established the meeting began.

**II. ANTITRUST PREAMBLE:** Prior to the consideration of any business, the Antitrust Preamble was presented by Maida, a copy of which is attached hereto as Exhibit "A".

**III. CORRECTION & APPROVAL OF MINUTES:** A correction of the minutes of the September 21, 2004 Board meeting was submitted for approval.

MOTION by Vecchioli, seconded by Dannenhauer, to accept the correction of the meeting minutes as presented. PASSED.

A correction of the minutes of the December 12, 2006 Annual Membership meeting was submitted for approval.

MOTION by Johnson, seconded by Cannassa, to accept the correction of the meeting minutes as presented. PASSED.

The minutes of the March 13, 2007 Board of Governors meeting were submitted for approval.

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MOTION by Hodges, seconded by Cannassa, to accept the meeting minutes as presented. PASSED

The minutes of the April 12, 2007 Board meeting were submitted for approval.

MOTION by Dannenhauer, seconded by Vecchioli, to accept the meeting minutes as presented. PASSED

Torrence then reported that the Board members who serve on the respective committees shall consider approval of the attached committee meeting minutes.

The minutes of the January 23, 2006 Executive Compensation Committee meeting were submitted for approval.

MOTION by Cannassa, seconded by Neff, to accept the meeting minutes as presented. PASSED

The minutes of the December 4, 2006 Executive Compensation Committee meeting were submitted for approval.

MOTION by Cannassa, seconded by Hodges, to accept the meeting minutes as presented. PASSED

The minutes of the March 27, 2007 Audit Committee meeting were submitted for approval.

MOTION by Johnson, seconded by Vecchioli, to accept the meeting minutes as presented. PASSED.

The minutes of the April 12, 2007 Reinsurance Committee meeting were submitted for approval.

MOTION by Cannassa, seconded by Vecchioli, to accept the meeting minutes as presented. PASSED.

The minutes of the April 26, 2007 Safety Committee meeting were submitted for approval; however, no action was taken on said minutes as there was only one Board member present that serves on the Safety Committee.

The minutes of the May 24, 2007 Investment Committee meeting were submitted for approval.

MOTION by Johnson, seconded by Neff, to accept the meeting minutes as presented. PASSED.

The minutes of the May 24, 2007 Producer Committee meeting were submitted for approval.

MOTION by Milligan, seconded by Dannenhauer, to accept the meeting minutes as presented. PASSED.

The minutes of the May 29, 2007 Rates & Forms Committee meeting were submitted for approval.

MOTION by Cannassa, seconded by Neff, to accept the meeting minutes as presented. PASSED.

The minutes of the May 30, 2007 Operations Committee were submitted for approval.

MOTION by Hodges, seconded by Cannassa, to accept the meeting minutes as presented. PASSED.

Torrence then reported that the minutes of the June 11, 2007 Producer Appeals Committee meeting were not yet available given the meeting concluded after 5:00 p.m. Thus, the minutes for this committee meeting will be submitted for approval at a later date.

**IV. ELECTION OF VICE CHAIR:** Neff referred to Attachment C and asked Maida to comment whether it is advisable, at this time, to fill the Vice Chair vacancy and thus, the corporate officer position of Vice President. Maida reported that it is not necessary at this time to fill the vacancy.

**V. MARKET CONDUCT EXAM:** Torrence reported that on Monday, June 11, 2007, she received a copy of the FWCJUA's 2006 Market Conduct Examination Draft Report covering the scope of January 1, 2003 through June 30, 2006, and there were no compliance issues raised in the report. She then referred the Board to the handout labeled "*Summary of Draft Findings & Recommendations of the Florida Market Conduct Examination for the FWCJUA*," noting that the exam was quite comprehensive and resulted in a favorable report on FWCJUA operations. She reminded the Board that the exam was an operational review and was conducted by OIR's contracted outside audit firm of Buttner Hammock & Company (BHC). She reviewed the summary with the Board noting that BHC reviewed four general areas of the FWCJUA's operations, those being (1) organizational structure and administration; (2) financial performance; (3) payments, allocations, recoveries and financial auditing; and (4) IT systems operations and administration, disaster preparedness. She indicated that there were only ten relatively minor recommendations and reviewed such with the Board. She then reported that the FWCJUA had thirty days to provide a written statement outlining any specific concerns with the draft report and indicated staff would prepare a draft response to OIR for the Board's review and approval. Accordingly, the Board agreed to meet via teleconference on Friday, June 29<sup>th</sup> at 11:00 a.m. to review the draft response and take up any additional items that are appropriately noticed.

**VI. LEGISLATIVE REPORT:** Maida reported that the Legislature enacted two bills related to the FWCJUA in the final week of session. Senate Bill 1894 (SB 1894) is the substitutive bill that mandates changes in the board appointment process, financial disclosure requirements and the disposition of FWCJUA funds on dissolution, which should enable the FWCJUA to achieve federal tax exempt status. In addition, SB 1894 subjects the FWCJUA to the Public Records Act and the Sunshine Law. He reported that SB 1894 was presented on June 4<sup>th</sup> to the Governor, who has 15 days from the date of receipt to act on the bill. House Bill 7169 (HB 7169) that was also enacted provides the FWCJUA with public records exemptions, which was necessary in order to ensure that records that should be confidential and protected from disclosure are indeed confidential and protected from disclosure (i.e., claims files until termination of litigation, employee medical records, etc.). He reported that the HB 7169 was presented on June 11<sup>th</sup> to the Governor, noting again that the Governor has 15 days from the date of receipt to act on the bill. He reported that he expects approval on both bills prior to the effective date of July 1, 2007.

Maida then proceeded to explain the succession of the Board as of July 1, 2007. He reported that the consumer advocate will automatically remain on the Board and taking into consideration the current FWCJUA statute and the enacted FWCJUA legislation together with the "Hold Over" doctrine of Chapter 617, he believes the three seats appointed by the Financial Services Commission (FSC), may continue to serve until the FSC appoints replacements. He believes that the member appointed by the largest property and casualty insurance agent's association in Florida shall also remain on the Board until the FSC appoints a new member from a list of five nominees. He then explained that under the current law two domestic insurers and two foreign insurers sit on the Board in a corporate capacity, however, under the new law individuals will sit on the Board, not corporations and for that reason, the "Hold Over" doctrine would not apply to those members. Therefore, based on his research, Maida stated that only five members of the Board shall be held over until the FSC appoints their replacements. He then explained that he intends to communicate and confirm his findings with OIR as well as the FSC.

**VII. IMPLEMENTATION ISSUES RELATED TO SB 1894 & HB 7169:** Torrence reported that the Board shall consider implementation issues related to SB 1894 and HB 7169 becoming law. The significant provisions of the enacted legislation which immediately impact the day-to-day governance and operations of the FWCJUA relate to the Board Appointment Process, the Public Records Act and Sunshine Law, the Ethics Requirements and, to a lesser degree, the Procurement of Goods and Services.

She reported that the FWCJUA's Articles of Incorporation, Bylaws and Operations Manual are the three component parts of the FWCJUA's Plan of Operation. To implement the SB 1894 and HB 7169, was determined that the Bylaws and the Operations Manual need to be revised. She indicated that Seventh Amended Bylaws were included in the supplemental agenda material for the Board's consideration during this topic. She further indicated that the Operations Manual revisions, to include form revisions, have been included for Board consideration in the Rates & Forms Committee Report of the meeting agenda.

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With regard to the Seventh Amended Bylaws, Torrence indicated that it is important for the Board to recognize that the Bylaws must be amended, adopted by the Board, and then approved by OIR, in order to begin the Board selection and appointment process. At this time, the preparatory stages of the appointment process are underway. Watford and counsel are working together to identify the list of the top 20 foreign and top 20 domestic writers of workers' compensation insurance in Florida who may be able to participate in the nomination portion of the appointment process. Further, specifics related to how the appointment process might be conducted have been included for the Board's consideration in the Seventh Amended Bylaws. She noted that there is not a tremendous amount of guidance in the law nor is there any case law precedents on how we are suppose to view the overall appointment process, so we are trying to interpret the legislation in a reasonable fashion. Torrence then asked Maida to review the draft Seventh Amended Bylaws with the Board.

Maida summarized the substantive changes in the Seventh Amended Bylaws. Considerable discussion ensued regarding the definition of "Insurer Nominee" and it was determined that the definition should not restrict the types of individuals that could serve on behalf of the insurers. It was agreed that any guidance regarding possible qualifications for an "Insurer Nominee" be provided in the FWCJUA's communications with the 20 Domestic and Foreign Insurers.

MOTION by Vecchioli, seconded by Hodges, not to restrict the definition of "Insurer Nominee" in the Bylaws.

The Board then discussed the nomination process in further detail. Concern was expressed that the bylaws, as drafted, did not permit the Domestic insurer nominees to be named to the lists of both "domestic" seats, nor were the Foreign insurer nominees permitted to appear on the lists of both "foreign" seats. The Board felt this was also too restrictive and asked that the nominees for each insurer seat be presented to the Commission as nominated by the respective insurers, recognizing that the possibility of an overlap exists but such would precisely reflect the sentiment of the top 20 domestic insurers as well as the top 20 foreign insurers.

MOTION by Hodges, seconded by Johnson, to submit the names of the Insurer Nominees as nominated from the top 20 Domestic Insurers and the top 20 Foreign Insurers, and thus, requiring the deletion of the last sentence of D.2. on page 4 as well as the last sentence of E.2. on page 6 of the Seventh Amended Bylaws. PASSED.

Maida continued to summarize the revisions to the bylaws. He noted that Section 6, Board of Governors, H. identified the restrictions for Board membership and was lifted verbatim from the new law. He also noted that a provision for emergency meetings of the Board with notice being given "in an appropriate and effective manner under the circumstances" had been included in Section 9, Meetings to be consistent with the Sunshine Law. Watford suggested that OIR also be given specific notice of an emergency meeting, and the Board agreed. Maida further noted that in Section 9 he memorialized the Board's current process of recessing and reconvening a meeting in the event a quorum is not present. Maida then noted under Section 11, Code of Conduct, he repeated sections of the Florida Statutes relating to standards of conduct. He referred to Section 12 and noted that he included the procurement requirements under the new law. He then reported that he had added language to Section 16, Indemnification, to include members of a technical advisory group and cleaned up Section 26, Assessments, to include the rating tiers. Finally, he explained that the proposed effective date of the Seventh Amended Bylaws will be the date approved by OIR.

MOTION by Johnson, seconded by Dannenhauer, to direct staff and General Counsel to redraft the Seventh Amended Bylaws, in accordance with the previous motions as well as discussions and file with OIR for approval as soon as practicable. PASSED.

Torrence then reported that the FWCJUA's current "Code of Business Conduct and Ethics" and "Statement of Policy Regarding Potential Conflicts of Interest" are being reviewed and will be redrafted for Board consideration as warranted when appropriate. She advised that when the enacted legislation becomes law, members of the Board of Governors, officers and senior managers will be subject to the provisions of the state Code of Ethics for Public Officers and Employees.



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With regard to the disclosure of financial interests, Torrence reported that Board members, officers and senior managers will be required to file the attached financial disclosure form with the Commission on Ethics and with the Office on Insurance Regulation no later than July 1 of each year. She then mentioned that a subject person must file a final statement (Commission on Ethics Form 1F) within 60 days after leaving office or employment and a new employee (senior manager or officer) or appointee must file Form 1 within 30 days after the date of appointment or the beginning of employment. She explained that the 2007 legislation does not address financial disclosure by board members in office and senior managers employed as of the effective date of the act, but in an abundance of caution, it might be preferable for Board members, senior managers, and officers who become subject to the financial disclosure requirements by virtue of the new law to consider filing the financial disclosure form by July 31, 2007 (30 days after the effective date of the new law), but certainly no later than June 30, 2008.

With regard to the Public Records Act, Torrence explained that the FWCJUA must readdress its document management and retention procedures immediately. She indicated that staff and counsel were reviewing the public record requirements and would be formalizing an internal plan for compliance. She noted that many more records are required to be maintained for longer periods of time, so physical storage was an issue.

Torrence then reported that preparations have also begun to ensure that the association is positioned to effectively apply to the IRS for a determination of eligibility as a tax exempt entity by January 1, 2008. The Rates & Forms Committee is recommending in its report that the Board consider securing a loss reserve analysis as of 6/30/2007 from Milliman. Further, given time is of the essence and staff was unable to schedule an Audit Committee meeting prior to the Board meeting, the Board shall consider engaging an auditor to audit the FWCJUA's financial statements on a statutory basis for the period ending June 30, 2007. The Board shall further consider engaging a tax expert to file the private letter with the IRS requesting a federal income tax exemption as well as to prepare the tax return for the period ending June 30, 2007.

Torrence advised that she received pricing from both Thomas Howell Ferguson (THF) and Johnson Lambert & Company (JLC) regarding the required extraordinary audit and tax services. She summarized THF's and JLC's qualifications and overall cost estimates. Torrence then recommended the engagement of THF for the required services, given THF's lower overall cost estimate and its familiarity with both the FWCJUA itself as well as the FWCJUA's quest for a federal income tax exemption.

MOTION by Dannenhauer, seconded by Johnson, to engage THF to file the private letter request for tax exempt status and to perform the financial audit and prepare the tax return for the period ending June 30, 2007. PASSED.

In closing, Torrence made the Board aware that counsel recently provided staff with a first draft "Code of Ethics/Public Records/Open Meetings Compliance Manual." She indicated that it was a work in progress, but should assist staff in preparing for July 1<sup>st</sup>. Also, when finalized, the Manual should prove to be a valuable orientation tool for the new Board.

**VIII. OPERATIONS COMMITTEE REPORT:**

Reorganization Issues: Torrence reported that the Board shall consider staff recommendations at the direction of the Operations Committee related to IT equipment and infrastructure that will need to be acquired to facilitate the implementation of the enacted legislation if it becomes law. She explained that at its May 30<sup>th</sup> meeting, the Operations Committee recognized that the current 2007 Business Plan & Forecast did not contemplate the reorganization and implementation resultant from the passage of Senate Bill 1894 and House Bill 7169. Accordingly, business priorities will shift and out-of budget expenses will be incurred. Out-of-budget considerations include increased expenses for legal, audit, tax and actuarial services; increased IT/system expenses for physical storage, document management, disaster recovery and audio recording of meetings to include consulting services; increased expenses associated with staffing to include travel and training; and increased expenses associated with board members to include travel and training.

Torrence then explained that on May 30<sup>th</sup> the Committee recognized that the four primary IT areas that need to be addressed to facilitate implementation of SB 1894 are physical storage, document management,

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disaster recovery and audio recording for meetings. The Committee also acknowledged that other areas of the FWCJUA's operations will be affected as we implement the new law and as we realize the business processes that are more deeply affected or need to be recreated such as underwriting workflows and mail delivery. She further explained that becoming subject to the Public Records Act was identified as the cost driver for the FWCJUA in the IT areas. She then summarized for the Board the storage issues and suggested that staff be given approval to purchase iSCSI SAN unit from Dell with an approximate cost of \$47,000 to provide increased capacity for storage, which is estimated to last up to two years before reaching full capacity.

MOTION by Cannassa, seconded by Dannenhauer, to authorize staff to purchase iSCSI SAN unit from Dell with an approximate cost of \$47,000. PASSED.

Discussion then ensued regarding the document management issues and Torrence advised the Board that she has already spent \$15,000 for a new scanning workstation and then asked the Board to sanction that purchase and give staff further authorization to buy archiving software and consulting expertise from the ISYNERGY vendor, iDatix, to ensure that the FWCJUA creates the proper and efficient process changes needed for a total approximate cost of \$31,000.

MOTION by Hodges, seconded by Cannassa, to confirm the \$15,000 purchase for the new scanning workstation; and to authorize an additional \$16,000 to purchase archiving software and consulting services from iDatix for a total approximate cost of \$31,000. PASSED.

Torrence then ran through the disaster recovery issues and requested that the Board consider remote hosting with Sungard due to the volume of data and new processes. She advised the Board that the FWCJUA has a contract already in place with Agility for a mobile recovery unit and necessary hardware but suggested that a remote hosting process also be considered that provides servers completely offsite in a secure facility which will allow the FWCJUA to operate virtually from anywhere in case the main facility was no longer operational. She pointed out that this would make the FWCJUA dependant on internet connections for normal operations and explained that the FWCJUA already has an offsite server hosted by ThePlanet in Texas that replicates our website database but would no longer need the remote server at ThePlanet if Sungard was contracted. She indicated that Sungard offers this remote hosting service with local hardware at an approximate cost of \$25,000 plus shipping to Atlanta and \$2,800 monthly (36 month term). She explained that staff would need to fly to Atlanta and take a look at the facilities before final negotiations, as this would be a major commitment on how the FWJCUA structures its network. Considerable discussion ensued and it was agreed to purchase the remote hosting with Sungard.

MOTION by Hodges, seconded by Johnson, to purchase the remote hosting with Sungard with local hardware at an approximate cost of \$25,000, plus shipping to Atlanta and \$2,800 monthly for a three year term. Further, to continue the contract with Agility for the mobile recovery unit at a cost of \$345 monthly. PASSED.

Discussion then led to audio recordings of meetings, especially for exempt portions of meetings and the Board agreed to postpone action on the purchase of audio recording equipment given Torrence reported action on this item was not imperative at this meeting.

Budgeted Expense Considerations:

*Operations Manual Redesign:* Torrence reported that the Board shall consider an Operations Committee recommendation related to the Operations Manual redesign project. She advised that at its May 30<sup>th</sup> meeting, the Operations Committee received staff's report that it had experimented with several applications for editing and output related to redesigning the format of the Operations Manual as required by the 2007 business plan. She explained that the primary purpose of staff's review was to simplify the ongoing maintenance of the Manual, thereby, permitting enhanced staff redundancy related to the drafting and revision process. She indicated that Word and Publisher were tested, and it was determined that leaving the document in the current application, Adobe InDesign, would be the most efficient tool in maintaining the Manual. InDesign is the industry standard application for creating and revising large documents like the Operations Manual. Another important consideration was the ability for simultaneous editing of the same

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document while providing for complete editorial control which the Adobe product, InCopy, adequately addresses. She further explained that the final "format" of the Manual can be modified as needed, but staff believes the best tool for maintaining and creating the PDF document is still utilizing the Adobe products. She then noted that given the existing budget for staff training and the Manual redesign project, no further budget considerations are required if we continue with the Adobe products.

MOTION by Cannassa, seconded by Vecchioli, to continue to maintain the Operations Manual within Adobe InDesign recognizing that upgraded versions of the appropriate Adobe products and an additional license will be purchased within the current constraints of the 2007 forecast. PASSED.

Disaster Recovery Matters:

*Disaster Recovery & Emergency Preparedness Plan:* Torrence reported that at its May 30<sup>th</sup> meeting, the Operations Committee confirmed modifications to the Disaster Recovery & Emergency Preparedness Plan (DR&EP Plan). She explained that the Plan was modified to: move the distribution list to the Appendix section as Appendix A and re-label the remaining appendices, reflect staffing adjustments, and clarify or specify procedures. She then advised that the Revised May 2007 version of the FWCJUA DR&EP Plan had been distributed in accordance with the Plan document and explained that no Board action was required on this item.

*Disaster Recovery Analysis & Planning:* Torrence then advised the Board that the Operations Committee was recommending that no action be taken at this time to select a vendor to perform an outside disaster recovery analysis of IT Systems. She explained that on May 30<sup>th</sup> the Operations Committee considered three quotes for an internal IT System analysis, but it was the consensus of the Committee to delay any action until after implementation of the new law given that it might be prudent to expand the scope of the analysis to incorporate features related to the new law. Further, the Committee agreed this issue was better left for the new Board to consider. Discussion followed and the Board agreed to postpone action regarding the engagement of a firm to perform an outside disaster recovery analysis of the FWCJUA's IT Systems until after the implementation of the new law.

**IX. PRODUCER COMMITTEE REPORT:** Dannenhauer reported that at its May 24<sup>th</sup> meeting, the Producer Committee recognized a problem with the recently implemented Agency Producer Agreement in that it was cumbersome to add or delete a Designated Producer or CSR to the Agreement. Currently, when an Agency finds it necessary to add or delete a Designated Producer or CSR from the original approved Agreement, it must complete an entirely new Agreement. Rather than complete a whole new Agency Producer Agreement, the Committee determined that the FWCJUA should develop a form to allow an Agency principal to simply add or delete a Designated Producer or CSR from the authorized Agency Producer Agreement. The Committee also agreed that there should be no charge associated for a change in a CSR or for the deletion of a Designated Producer; however, there should be a \$100 fee for the addition of a new Designated Producer, regardless of the remaining length of the Agreement. Given the Agency would have the discretion of entering into a new Agreement or modifying its current Agreement, the Committee felt the fee was reasonable as it is consistent with the fee charged per Designated Producer at the inception of the two-year Agreement.

At its meeting the Committee also reviewed a copy of a proposed Agency Producer Agreement Addendum to Exhibit A, which would not be used to replace the original Exhibit, but simply to add and/or delete information from the original Agreement. It was suggested that the effective date of the Addendum would be the date accepted by the FWCJUA. Further, the Committee reviewed the Operations Manual revisions that staff had identified that would be appropriate to implement the form if such a change procedure were deemed appropriate. The Committee recognized during its discussions that the Rates & Forms Committee would need to consider the form and the Operations Manual revisions if the Producer Committee determined that the Agency Producer Agreement change procedures should be recommended to the Board for consideration. Thus, the Committee resolved to recommend that the Board adopt the change procedures for the Agency Producer Agreement to permit the Agency's principal to add or delete a Designated Producer or Customer Service Representative from the original Agreement. It also recommended that the Rates & Forms Committee consider the proposed Agency Producer Agreement Addendum to Exhibit A form and associated Operations Manual revisions for recommendation to the Board as the vehicles to implement the

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proposed change procedures to the Agency Producer Agreement as soon as practicable. Thus, if the Board determines that the recommended change procedures are appropriate, then it shall consider the vehicles to implement the Agency Producer Agreement change procedures as a part of the Rates & Forms Committee Report.

MOTION by Vecchioli, seconded by Dannenhauer, to adopt the Producer Committee recommendation that the FWCJUA implement change procedures for the Agency Producer Agreement to permit the Agency's principal to add or delete a Designated Producer or Customer Service Representative from the original Agreement as soon as practicable. PASSED.

Dannenhauer reported that the Producer Committee also considered several staff proposals to ensure that applicants are given the opportunity to make informed decisions with regard to selecting how they want to pay premiums to the FWCJUA if coverage is afforded. He indicated that staff was concerned that some applicants were not being told about the FWCJUA's optional payroll service with premium withholding program and thus, was proposing the introduction of a new form and several Operations Manual revisions. Given only one payroll service currently participates in the program, Dannenhauer explained that the Committee was concerned with the perception of marketing for the payroll service, possibly to the detriment of the authorized agencies and designated producers. He advised, therefore, that the Committee asked staff to prepare an update on the optional payroll service with premium withholding program (i.e., number of policies, number of audits performed, uncollectibles, etc.) for Board consideration after the implementation of the new law, to determine whether the program continues to be beneficial to the FWCJUA and should continue as a program. He then noted that the Committee tabled further consideration of staff's proposals until such time as the Board could reconsider the program sometime following the implementation of the new law.

**X. SAFETY COMMITTEE REPORT:** Torrence reported that the Board shall consider three Safety Committee recommendations resultant from the 2007 Cause, Frequency and Severity Analysis. She commented that the 2007 Business Plan states that the FWCJUA will "*Promote Loss Prevention And Safety In The Work Place Of Our Policyholders*" and requires that we conduct causes of loss analyses and modify the safety program as warranted to satisfy any deficiencies given our book of business. She indicated that staff and Travelers personnel completed the loss analysis as part of the FWCJUA's annual operations review and presented the findings to the Safety Committee at its April 26, 2007 meeting. The Committee concluded that the FWCJUA – Travelers Loss Control and Safety Program successfully satisfies the FWCJUA Safety Policy. Torrence then summarized the Safety Committee recommendations, noting that the third recommendation required an Operations Manual revision which would be covered during the Rates & Forms Committee report.

MOTION by Dannenhauer, seconded by Vecchioli, to adopt the three Safety Committee recommendations presented in the agenda to further promote loss prevention and safety through additional resources available at the Travelers Risk Control website ([www.riskcontrol.com](http://www.riskcontrol.com)) to be implemented as soon as practicable. PASSED.

**XI. RATES & FORMS COMMITTEE REPORT:**

Review of Rates, Rating Plans & Policy Forms and Associated Matters to include Application Forms:

*Policy Information Page & Extension of Information Page – Schedules:* Torrence reported that the Board shall consider a Rates & Forms Committee recommendation to authorize staff to file the FWCJUA's Policy Information Page (commonly referred to as the "Declarations" Page), and the Extension of Information Page – Schedules as well as the Policy Change Document with OIR, pursuant to OIR's direction, as soon as practicable giving staff the authority to amend the forms as may be directed by OIR during the filing process. She explained that OIR recently discovered it had no record of issuing prior approval to the FWCJUA for the use of the Policy Information Page and Extension of Information Page – Schedules being used by Travelers on behalf of the FWCJUA. Therefore, OIR had requested that the FWCJUA file for approval as soon as possible the form components of the FWCJUA's Information Page and Extension of Information Page – Schedules, in accordance with section 627.410, Florida Statutes. She advised that during the Committee meeting, Jim Watford asked that the Policy Change Endorsement also be filed with OIR. Thus, the

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Committee agreed that the three forms should be filed as soon as practicable with OIR and that staff should be given the authority to amend the forms as may be directed by OIR during the filing process.

MOTION by Hodges, seconded by Cannassa, to authorize staff to file the FWCJUA's current Policy Information Page and Extension of Information Page – Schedules as well as the Policy Change Document with OIR as soon as practicable giving staff the authority to amend the forms as may be directed by OIR during the filing process. PASSED.

*Revisions to Supplemental Application Forms with Notary Florida Notary Requirement:* Torrence reported that the Board shall consider a Rates & Forms Committee recommendation that specified FWCJUA supplemental application forms be amended to remove the indicator that the notary to witness and authenticate an employer's authorized signer's signature should be a Florida state notary. She explained that in practice, the FWCJUA already permits the forms to be notarized by notaries that are not Florida notaries. Thus, the form amendments being considered are strictly housekeeping in nature and will reflect the current practice of the FWCJUA.

MOTION by Dannenhauer, seconded by Cannassa, to adopt the changes to the attached supplemental application forms to reflect the FWCJUA's current practice of permitting notaries, other than Florida notaries, to notarize an employer's authorized signer's signature with such form amendments becoming effective as soon as practicable. PASSED.

*Revisions to Forms to Implement Senate Bill 1894:* Torrence reported that the Board shall consider a Rates & Forms Committee recommendation that staff be authorized to file revisions to the ACORD 133 FL and the Assessable Policy Notice Endorsement to implement changes associated with Senate Bill 1894. She referred to the attachments and summarized the proposed revisions to the two forms. She then stated that if approved by the Board, the revised forms shall be formatted for insertion into the Operations Manual and filed with OIR for approval.

MOTION by Dannenhauer, seconded by Cannassa, to authorize staff to file the proposed revisions to the ACORD 133 FL (2007/07) and the Assessable Policy Notice Endorsement (FWCJUA 04 01) to implement Senate Bill 1894, if it becomes law. PASSED.

Forms Associated with Agency Authorization Process: Torrence reported that at its May 29<sup>th</sup> meeting, the Rates & Forms Committee considered a recommendation that the attached proposed Agency Producer Agreement Addendum to Exhibit A form be adopted as the vehicle to implement the May 24<sup>th</sup> Producer Committee recommendation to the Board regarding change procedures for the Agency Producer Agreement as well as the associated Operations Manual revisions. She explained that the proposed Addendum to Exhibit A of the Agency Producer Agreement was created to permit the Agency principal to add or delete a Designated Producer or Customer Service Representative (CSR), from the original Agreement authorized by the FWCJUA, rather than complete a whole new Agency Producer Agreement. She explained that the proposed Addendum to Exhibit A is not meant to replace the original Exhibit A, but simply to add and/or delete information from the original Agreement. The effective date of the Addendum will be the date accepted by the FWCJUA. If adopted, the new form and associated Operations Manual revisions shall be formatted for insertion into the Operations Manual and filed for approval with OIR.

MOTION by Dannenhauer, seconded by Hodges, to implement the May 24<sup>th</sup> Producer Committee recommended change procedures for the Agency Producer Agreement to permit the Agency's principal to add or delete a Designated Producer or Customer Service Representative from the original Agreement by adopting the proposed Agency Producer Agreement Addendum to Exhibit A form and the associated Operations Manual revisions as soon as practicable. PASSED.

Operations Manual Revisions: Torrence summarized the proposed Operations Manual revisions to implement SB 1894, if it becomes law; one of the previously discussed Safety Committee recommendations; the previously discussed Producer Committee recommendation; and several "housekeeping" items, to include an amendment to the FWCJUA Supplemental Employee Leasing Application that appears in the manual.

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MOTION by Cannassa, seconded by Hodges, to authorize staff to file with OIR for approval, as soon as practicable, the Rates & Forms Committee's twelve proposed Operations Manual revisions to implement SB 1894, if it becomes law; the previously discussed April 26<sup>th</sup> Safety Committee recommendation; the previously discussed May 24<sup>th</sup> Producer Committee recommendation regarding Agency Producer Agreement change procedures; and several "housekeeping" items. Further, to authorize staff to file with OIR for approval, as soon as practicable, the presented modification to the FWCJUA Supplemental Employee Leasing Application. PASSED.

Actuarial Study of Loss Reserves as of 6/30/07: Torrence advised that the Rates & Forms Committee resolved on May 29<sup>th</sup> to recommend that the Board authorize a 2007 out-of-budget expense of \$20,000 for Milliman to perform a loss reserve analysis as of 6/30/2007 to assist in positioning the FWCJUA to receive a favorable ruling related to its application for a federal tax exemption by January 1, 2008 if Senate Bill 1894 becomes law; and if so, to authorize staff to negotiate a delay in filing the Second Quarter Statement with OIR of no later than September 15, 2007.

Torrence reported that Senate Bill 1894 requires the FWCJUA to apply to the IRS for a determination of its eligibility as a tax-exempt entity by January 1, 2008 and explained that Thomas Howell Ferguson has advised that in order to effectively apply for the tax exemption the FWCJUA will need to have, among other things, a loss reserve analysis as of 6/30/2007. She also explained that Milliman would target mid-August to get the preliminary findings related to the mid-year reserve analysis to the FWCJUA for consideration; thus, the Committee agreed that staff should be authorized to negotiate a delay in filing the Second Quarter Statement with OIR of no later than September 15<sup>th</sup> in lieu of August 15<sup>th</sup> to incorporate the loss reserve analysis as of 6/30/2007.

MOTION by Johnson, seconded by Cannassa, to authorize a 2007 out-of-budget expense of \$20,000 for Milliman to perform a loss reserve analysis as of 6/30/2007 to assist in positioning the FWCJUA to receive a favorable ruling related to its application for a federal tax exemption by January 1, 2008 if Senate Bill 1894 becomes law; and to authorize staff to negotiate a delay in filing the Second Quarter Statement with OIR of no later than September 15, 2007. PASSED.

Program to Eliminate the Subplan D Deficit as of 12/31/06: Torrence handed out a proposed draft letter to OIR regarding the program to eliminate the Subplan D deficit as of 12/31/2006. She then advised that at its May 29<sup>th</sup> meeting, the Rates & Forms Committee resolved to recommend that the Board authorize staff to finalize this proposed draft letter to OIR outlining the program to eliminate the FWCJUA's 2006 Subplan D deficit utilizing May actuals within the Subplan D cash flow model and to submit the deficit elimination program to OIR no later than June 28, 2007. Torrence then reported that the FWCJUA had recognized a \$48,794,092 surplus in 2006; and that given the surplus position, the FWCJUA was not statutorily required pursuant to section 627.311(5)(g), Florida Statutes, to submit a deficit elimination plan to the Office of Insurance Regulation ("OIR"); however, she noted that the Board had previously agreed to update its plan to eliminate the Subplan D deficit and submit said updated plan to OIR.

MOTION by Cannassa, seconded by Hodges, to authorize staff to finalize the proposed draft letter to OIR outlining the program to eliminate the FWCJUA's 2006 Subplan D deficit utilizing May actuals and to submit the deficit elimination program to OIR no later than June 28, 2007. PASSED.

Return of Premium Dividend: Torrence advised that on May 29<sup>th</sup> the Rates & Forms Committee considered whether to recommend that the Board declare a return of premium dividend for the 2001, 2002 and 2003 policy years. She reported that the Committee's deliberations focused on whether it was appropriate to release any surplus through a dividend declaration prior to identifying and defining the impact of the enactment of Senate Bill 1894 and House Bill 7169, which will substantially affect the governance and operations of the association. She explained that the Committee recognized that the most significant downside to delaying a dividend declaration beyond 6/30/2007 is that the FWCJUA would no longer qualify for a federal tax recovery of up to approximately 35% of the dividend declaration if the enacted legislation becomes law; however, the Committee felt such a delay was warranted as it would be premature for this Board to declare a dividend given there are still too many unknowns related to the enacted legislation. She

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explained that the Committee agreed this issue was better left for the new Board to consider. Therefore, she advised that it was the consensus of the Committee that no action be taken on the declaration of a return of premium dividend at this time. The Board concurred with the Committee's consensus that it was not advisable to declare a return of premium dividend given the current circumstances related to the enacted legislation.

**XII. INVESTMENT COMMITTEE REPORT:**

Review of Investment Policy: Torrence reported that at its May 24<sup>th</sup> meeting, the Investment Committee met and conducted its annual review of the FWCJUA's portfolio and cash flow situation with staff and Jeff Greenert of Evergreen Investment Management Company. Greenert discussed Evergreen's Investment Outlook with the Committee summarizing the FWCJUA's portfolio composition and performance through first quarter 2007. She further reported that given the state of the investment marketplace as well as the FWCJUA's portfolio performance and anticipated cash needs, the Investment Committee did not believe there was a need for any modifications to the FWCJUA's Investment Policy or its current investments at this time. She also reported that there had been no deviations to the Investment Policy since the policy was last reviewed by the Board in June 2006 and noted that the FWCJUA's portfolio is in compliance with both the Investment Policy and the Diversification Requirements of section 625.305, Florida Statutes. She then advised the Board that no action was required on this item given the absence of any Investment Committee recommendations related to the FWCJUA's Investment Policy or its current investments.

Review of Policies and Guidelines for the Investment of Assets and Associated Matters: Torrence advised that at its May 24<sup>th</sup> meeting, the Investment Committee agreed to recommend the outlined modifications to the FWCJUA's current Cash Management Policy as reflected in the agenda materials. Further, she advised that the Committee believed that for cash management purposes, a Loss Payout Pattern Report should be developed to reflect data specific to each of the individual subplans and tiers utilizing the 2006 year-end reserve analysis so that the FWCJUA can better match investment maturities with loss liabilities. She indicated that Milliman would charge \$1,200 for the creation of a Loss Payout Pattern Report that reflects data specific to each of the individual subplans and tiers. She also reported that this report would be updated annually by Milliman following its year-end reserve analysis of the FWCJUA at no additional cost.

MOTION by Johnson, seconded by Cannassa, to adopt the specified revisions to the Cash Management Policy and authorize a 2007 out-of-budget expense of \$1,200 for the creation of a Loss Payout Pattern Report by Milliman to be utilized for cash management purposes. PASSED.

Investment Manager's Performance/Selection: Torrence reported that the Investment Committee, at its May 24<sup>th</sup> meeting, considered the performance of the investment manager, Evergreen Investment Management Company (formerly SouthTrust Asset Management) who has been the FWCJUA's investment manager since August 1995. She explained that the Committee recognized that staff's review of the current investment management marketplace suggested that the FWCJUA should continue to take advantage of its current fee structure for as long as possible given the performance of our portfolio, especially since staff did not identify another investment management opportunity where proposed fees did not exceed our current fee structure by at least 35%. Thus, with the current environment, outstanding overall performance and extremely competitive fee structure, the Committee agreed to recommend an ongoing relationship with the current investment manager to the Board at this time.

MOTION by Dannenhauer, seconded by Hodges, to continue with the FWCJUA's investment manager relationship as recommended by the Investment Committee. PASSED.

**XIII. AUDIT COMMITTEE REPORT:**

2006 Financial Audit: Torrence reported that the 2006 Statutory Financial Audit performed by THF was received and accepted by the Audit Committee on March 27<sup>th</sup> and filed with OIR on March 30<sup>th</sup>. The FWCJUA received an unqualified opinion with no material weaknesses. Additionally, THF made no recommendations to management with regards to the internal controls, accounting practices or procedures. Andy Gray concurred and indicated that the audit went very smoothly.

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Audit Committee Charter Procedures Checklist: Torrence reported that the Audit Committee met on March 27<sup>th</sup> and reviewed its first and second quarter responsibilities for the financial reporting period ending December 31, 2007 as prescribed by the Audit Committee Charter Procedures Checklist. She then referred to the attachment noting that it identified the Committee's first and second quarter responsibilities which were discussed and satisfied at the meeting.

**XIV. PRODUCER APPEALS COMMITTEE REPORT:** Dannenhauer provided the Board with a summary of the appeals hearing held on June 11, 2007, and reported that the Committee had agreed to rescind the revocations issued by the Executive Director for both the Agency and its Designated Producer.

**XV. REPORT ON OPERATIONS:**

2007 Business Plan Status Report: Torrence referred to Report on Operations – 1 and noted that the second quarter status of the FWCJUA's key activities and objectives had been substantively covered during the various Committee reports and asked if there were any questions. There were no questions.

Operations Analysis: Torrence referred the Board to Report of Operations – 2 and noted that as of May 31, 2007, the FWCJUA has 2,581 policies "IN-FORCE" with a corresponding written premium of \$23,712,812.

Loss Summary Report: Torrence reported that there are currently 20 claims of \$400,000 or greater with a total incurred of \$26.6M and noted that three of the claims listed on the report have been settled.

Collections Report: Torrence referred the Board to Report of Operations – 4 and Buccina, with RSI reported that there were no significant changes from the 1<sup>st</sup> quarter report.

**XVI. FINANCIAL REPORT:**

Comparative Statutory Financial Statements: Lopez reported that the cumulative surplus as of March 31, 2007 was \$50.0M. She further reported that Subplan D's deficit was \$4.9M with "prior A, B & C" recognizing a \$39.6M surplus and the three rating tiers recognizing a combined surplus of \$14.5M. She reported that written premiums for 2007 were 49% less than written premiums in 2006 suggesting continued depopulation. Losses paid in 2007 are similar to the 2006 year with net losses coming in less as a result of the lower loss ratios being used to book reserves. The overall net income for 2007 before taxes was \$748K with an estimated federal income tax incurred of \$156K.

Budget Variance: In referring to Financial Report – 2, Lopez reported that as of March 31<sup>st</sup>, Net Earned Premium was 22% less than projected. She noted that operating expenses were 58% less than projected, as a result of a drop in the number of bad debts being written-off; a boost in reinsurance recoverables; and lower servicing carrier fees, as written premium is only 70% of projected. She then reported that bank charges were over budget and explained that the increased charges were offset by an increase in interest earned. She reported that in February the FWCJUA moved to a new type of interest earning cash account with SunTrust that does not offset bank fees based upon compensating balances in other accounts. She then reported that the interest rate being earned on the FWCJUA's new cash account is 5.3% and noted that the additional \$2,900 in bank fees is offset by the approximate \$90,000 in additional interest earnings so far this year.

Cash Flow Analysis: Lopez referred the Board to Financial Report – 3, and reviewed the Actual Cash Flow Analysis for the Subplans as well as the Tiers. There were no questions.

Investment Portfolio: Lopez in referring to Financial Report – 4, noted that as of March 31<sup>st</sup> the current portfolio return was 4.74%, up from 4.37% in December and up from 4.13% in June of 2006. She noted that the portfolio return is beginning to improve as interest rates are increasing and maturities have been reinvested at higher interest rates. She reminded the Board that the FWCJUA portfolio is a buy and hold strategy, however, with maturities during 2007, the overall return has increased by 37 basis points in the first three months of 2007.

**XVII. GENERAL ANNOUNCEMENTS:** Torrence reminded the Board that its next meeting will be held via teleconference on Friday, June 29<sup>th</sup> at 11:00 a.m.



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**XVIII. ADJOURNMENT AND CLOSING REMARKS:** There being no further business, the meeting was adjourned at 12:02 p.m.

MOTION by Vecchioli, seconded by Johnson, to adjourn. PASSED

Respectfully submitted,

Ray Neff, *Chair*

**DRAFT - MINUTES OF THE MEETING OF THE SAFETY COMMITTEE OF THE  
FLORIDA WORKERS' COMPENSATION JOINT UNDERWRITING ASSOCIATION, INC.  
HELD ON APRIL 26, 2007 AT 10:00 A.M. VIA TELECONFERENCE**

**PRESIDING:** Elissa Pacheco, *Chair*

**COMMITTEE MEMBERS:** Pat Cannassa  
Claude Revels, *not present*

**EXECUTIVE DIRECTOR:** Laura Torrence, *not present*

**GENERAL COUNSEL:** Tom Maida, *not present*  
Wes Strickland, *alternate for Tom Maida*

**OFFICE OF INSURANCE  
REGULATION LIAISON:** Jim Watford, *not present*

**STAFF PRESENT:** Michael Cleary

**SERVICE PROVIDERS PRESENT:** Arleen Desmond, *Travelers*  
John McLaughlin, *Travelers*  
Jonathan Scharnberg, *Travelers*

**OTHERS PRESENT:** Michelle Alvarez, *Colodny, Fass, Talenfeld, Karlinsky, Abate*

**I. CALL TO ORDER AND OPENING REMARKS:** The Chair called the meeting to order at 10:00 a.m. The roll was called and a quorum being established the meeting began.

**II. ANTITRUST PREAMBLE:** Prior to the consideration of any business, the Antitrust Preamble was read by Strickland, a copy of which is attached hereto as Exhibit "A".

**III. APPROVAL OF MINUTES:** The minutes from the Safety Committee meeting held April 28, 2006, were submitted for approval.

MOTION by Cannassa, seconded by Pacheco to approve the minutes, as presented. PASSED.

**IV. CAUSE, FREQUENCY AND SEVERITY ANALYSIS:** Cleary reported that the 2007 Business Plan states that the FWCJUA will "*Promote Loss Prevention And Safety In The Work Place Of Our Policyholders*" and requires that we conduct causes of loss analyses and modify the safety program as warranted to satisfy any deficiencies given our book of business. He stated that staff and Travelers personnel completed the loss analysis as part of Travelers annual operations review. The review concluded that the FWCJUA/Travelers Loss Control and Safety Program satisfy the FWCJUA Safety Policy.

Cleary then referred to Exhibit I and commented that the data from an historical perspective, demonstrates that the causes of both frequency and severity and the type of injuries have remained constant over the years and track with the types of businesses being written by the FWCJUA – small contractors, new in business and companies with poor loss/safety performance. Given this consistency and type of employer, it is apparent that the key to improvement is to continue to promote loss prevention and safety. He indicated that the depopulation trend, which started with the introduction of the tier rating plan in 2004, has continued through 2006. The number of policies in-force during 2006 decreased to 3,950, compared to 5,246 for policy year 2005 and 5,950 for policy year 2004. The number of engineering surveys conducted by Travelers decreased significantly as well to 577 during calendar year 2006, compared to 902 surveys in 2005 and 750 surveys in 2004. He explained that the focus has been

surveying the construction trades (67% of all surveys completed were on construction risks) and this effort will continue through 2007 – 2008. He further mentioned that the FWCJUA has “gone small” – minimum premium policies are now 37.9% of the business up from 36.2% in 2005 and 31.5% in 2004. These are primarily generated from the 69.1% of the overall business being in the construction trades. He noted that there are two positive signs – we are writing at least some policies that subscribe to a drug free workplace and 4% of our policyholders receive the safety credit, which is up from 2.7% in 2005. He then reported that the classes of business in the high Hazard / A.M. Best Classifications (e.g., 66% of the policies are in the high hazard classes and 71% of the premium with 56% of the premium residing in the construction classes) remained constant from 2005 to 2006 and will continue to trigger increased LC&E activity and more frequent communications with the FWCJUA and Travelers Underwriting.

Cleary then referred to the claim inventory and noted that well over 60% of all claims for this period were lost time claims yet the average size of the claims have remained at or below the prior years average. It is encouraging to note that out of the 8,816 claims incurred since the inception of the FWCJUA, only 280 were open on December 31, 2006 and of those, only 21 remain open from 1994 through 2003. He reported that since inception, the FWCJUA continues to face a severity rather than a frequency problem as indicated in the exhibit. As a result, staffs loss prevention efforts and claims handling efforts continue to be directed toward addressing those problems. The principal causes of the Severity problem are: 1) falling from roofs, second and third floors; 2) being struck by falling objects; and 3) motor vehicle accidents. He then referred to the Frequency analysis and reported that the frequency data, as with severity, reflects the construction and related trades that comprise the FWCJUA's book of business. He explained that the principal causes of the Frequency problem are: 1) strain from lifting; 2) falling; and 3) being struck from falling objects. He then reported that a substantial number, and most of the severe claims, have resulted from the construction or related trades. He commented that the percentage of serious injuries to the total number of claims in 2006 remained fairly constant to 2005 year – 365 claims of which 29 were serious injuries compared to 2005 with 528 claims and 41 serious injuries.

Cleary reported that the data reflects the following: 1) the percentages of minimum premium and construction related claims are fairly consistent as are the percentage of claimants that are represented. 2006 showed an increase in the number of claimants that are classified as illegal aliens; 2) the types of injuries are consistent from year to year and reflect the composition of the business – construction trades that fall and are struck by falling objects; and 3) we settle and close these claims faster than prior to the 2003 reforms. The data further suggests that over the years and especially since the implementation of the claim reforms in 2003, the FWCJUA/Travelers Team has been quite successful in dealing with the severity issues. The most significant reasons are: 1) the FWCJUA's philosophy of closing claims as soon as it is practical to obtain a settlement that is beneficial to the FWCJUA policyholders and fair to the claimant; 2) the fact that the Travelers' adjusting team has been together essentially since 1995 with the large loss (serious injury) adjusters having over 20 years experience each and Litigation Manager being the same since 1995 and actively involved has allowed the claim handling practices to remain consistent and for statutory changes to be implemented rapidly and consistently; and the FWCJUA – Travelers Team immediately recognized the significance of the 2003 reforms and pursued their application aggressively. Finally, Cleary reported that the composition of the book of business has remained relatively consistent over the past several years which allows for a consistent approach to claims handling.

Discussion then turned to the team's recommendations with Cleary noting that the study produced no recommendations that would significantly alter the revised Loss Control Standards of Performance or modify the Loss Control and Safety programs currently being utilized. However, recommendations were made that should increase the awareness of the importance of safety in the workplace. He referred to Attachment C and requested that the Committee considered staffs recommendations, as follows:

1. Promote loss prevention and safety through resources available at the Travelers Risk Control website ([www.riskcontrol.com](http://www.riskcontrol.com)). In order to encourage the use of the Risk Control website, we recommend mailing a letter to all FWCJUA policyholders outlining the various resources available at no additional cost. This letter would be accompanied by a sample of the Risk Control

NewsBrief, which policy holders can subscribe to receive electronically on a monthly basis, again at no additional cost.

2. In addition, Cleary recommends mailing reminders of various Risk Control on-line resources along with the Employer's Affidavit reminders. Currently, FWCJUA insureds receive quarterly reminders to submit the Employer's Affidavit and Quarterly Tax forms. The safety reminder would be mailed with this letter but as a separate attachment. An example of what could be highlighted through the quarterly mailing is the 2007 Safety Webinar Series. This new series is an opportunity for policy holders to hear from industry experts on a variety of Risk Control topics without leaving their business locations. There is no cost to participate. Another example of safety related programs and incentives to promote through the quarterly reminders are the Florida - Employer Safety Premium Credit Program, and the Drug Free Workplace Credit.
3. In 2006, Cleary reported that it was recommended that notices be included on premium bills that address the most severe and frequent causes of accidents. Although we thought this would be an effective tool to promote and educate policyholders on safety issues, employees or potential claimants would not necessarily be the ones reviewing this information. In addition, the space available to include safety information in the premium bill is very limited. Therefore, it is now recommended that we discontinue the safety notices on premium billings and concentrate on the awareness and education approaches described above, which will require a minor Operations Manual revision be considered by the Rates & Forms Committee for recommendation to the Board.

Discussion ensued regarding the number of surveys conducted and Pacheco asked what the number or percentage of surveys were conducted as result of a claims being reported compared to the number conducted as result of the risk meeting the mandatory loss prevention survey eligibility requirements? Cleary responded that he did not have the numbers available, but would get the Committee that information, if desired. Pacheco then asked if staff and/or Travelers felt that the numbers varied from one to another. Basically, she wanted to know if we should do more of a preventative type of loss control. She indicated that she did not like to see the percentages go down, even a little bit, and suggested we reach out and touch more risks to get more policyholders on the safety band wagon? Therefore, should we add more risks to the parameters to conduct a mandatory loss prevention survey? Cleary responded that the recommendations as presented in Attachment C will help to promote loss prevention and safety much more frequently, every quarter, than before. He indicated that the recommendation includes mailing safety materials, on a quarterly basis, to every policyholder insured with the FWCJUA. Pacheco then suggested staff include in the annual analysis a snapshot of risks with claims frequency and severity by premium level, not just by class code. She suggested we look at it from a premium level stand point. Staff and Travelers agreed to include an additional chart that combines those elements in next year's analysis. Cannassa then pointed out that Travelers had conducted a total of 902 surveys in '05 and 577 in '06, which is a difference of approximately 325. The difference between the numbers of claims in '05 to '06 is approximately 166, so half of the drop in surveys came from the drop in claims. Therefore, it's not a lack of surveys being conducted, but that the FWCJUA is seeing improvement.

MOTION by Cannassa, seconded by Pacheco to recommend that the Board of Governors adopt the three recommendations to be implemented as soon as practicable. PASSED.

**V. GENERAL ANNOUNCEMENTS:** There were no general announcements.

**VI. ADJOURNMENT AND CLOSING REMARKS:** There being no further business, the meeting was adjourned at 10:30 a.m.

Respectfully submitted,

Elisa Pacheco, *Chair*

**DRAFT - MINUTES OF THE MEETING OF THE PRODUCER APPEALS COMMITTEE OF THE  
FLORIDA WORKERS' COMPENSATION JOINT UNDERWRITING ASSOCIATION, INC.  
HELD ON JUNE 11, 2007 AT 3:00 P.M. IN SARASOTA AT THE FWCJUA'S OFFICE**

**PRESIDING:** Dan Dannenhauer, *Chair*

**PRESENT:** Ray Neff  
Beth Vecchioli

**EXECUTIVE DIRECTOR:** Laura Torrence

**GENERAL COUNSEL:** Tom Maida

**STAFF PRESENT:** Michael Cleary  
Lisa Robertson

**OTHERS PRESENT:** Vicky Zelen, *Zelen Risk Solutions, Inc.*  
Holly Howe, *Zelen Risk Solutions, Inc.*

**I. CALL TO ORDER AND OPENING REMARKS:** The Chair called the meeting to order at 3:00 p.m. The roll was called and a quorum being established the meeting began.

**II. ANTITRUST PREAMBLE:** Prior to the consideration of any business, the Antitrust Preamble was read by Maida, a copy of which is attached hereto as Exhibit "A".

MOTION by Dannenhauer, seconded by Vecchioli, to accept the meeting minutes as presented.

**III. VICKY ZELEN & ZELEN RISK SOLUTIONS, INC.:** Before the Committee began its consideration of Ms. Zelen's and her Agency's appeal, Maida summarized the duties of the Producer Appeals Committee and its responsibility to hear and decide appeals by Agencies and Designated Producers regarding disciplinary action taken on behalf of the FWCJUA. He explained that the Committee has the responsibility to sustain, reverse or modify the action taken by the Executive Director with regards to both Zelen and Zelen Risk Solutions, Inc.

Torrence summarized the report found in the agenda materials explaining that she revoked Ms. Zelen's and her Agency's privilege to submit applications to the FWCJUA for her and her Agency's failure to comply with the FWCJUA guidelines; failure to use reasonable care to furnish information to the FWCJUA which is accurate in all respects, and for providing misinformation in connection with the Applications for Coverage she submitted for Cole Builders, Inc. and Lev-Con General Contractors, Inc. After being told repeatedly by FWCJUA representatives of the FWCJUA's interpretation of the definition of "Employer", under section 440.02(16)(a), Florida Statutes and NCCI's Basic Manual Rule 3, 5.(b), which OIR confirmed did not violate any Florida rule or statute, Zelen deliberately provided inaccurate information and/or misrepresented information on Applications for Coverage for both Lev-Con General Contractors, Inc. and Cole Builders, Inc. to avoid or reduce the amount of premiums due for FWCJUA coverage.

Zelen distributed some general information regarding her and her agency. She indicated that she has worked in the insurance industry for twenty years and has had her own agency for the past four years. She also indicated that she uses her insurance experience and knowledge to educate general contractors in insurance, as part of their CE credits to continue their general contractor's license and understands the importance of coverage for all contractors and subcontractors. She explained that in her class, she demonstrates how an uncovered subcontractor can impact a general contractor's premium. She further noted that she explains employee leasing arrangements to contractors and how employees insured through this type of an arrangement may not necessarily be covered with the leasing company. She also instructs general contractors, in an effort to protect themselves, to purchase workers compensation coverage with the FWCJUA to cover potentially any uninsured exposures, either from an uninsured subcontractor or from an unreported employee, under a leasing arrangement.

**Minutes of the Meeting of the Producer Appeals Committee of the  
Florida Workers' Compensation Joint Underwriting Association, Inc.  
Held On June 11, 2007 at 3:00 p.m. in Sarasota at the FWCJUA's Office**

Zelen then stated that she and her agency did not purposely provide misinformation with regards to Cole Builders and/or Lev-Con General Contractors. She explained her and her agency's actions with regards to these two applicants and suggested that she was just trying to help her clients obtain coverage through the FWCJUA for their respective exposures.

After considerable deliberation, several Committee members were not convinced that the agent and the agency intentionally misrepresented information on the applications for Cole Builders and Lev-Con General Contractors.

MOTION by Vecchioli, seconded by Neff, to rescind both the revocation issued to Vicky Zelen and the revocation issued to Zelen Risk Solutions. PASSED, with one opposed.

**IV. GENERAL ANNOUNCEMENTS:** There were no general announcements.

**V. ADJOURNMENT AND CLOSING REMARKS:** There being no further business, the meeting was adjourned at 5:05 p.m.

MOTION by Neff, seconded by Vecchioli, to adjourn the meeting. PASSED.

Respectfully submitted,

Dan Dannenhauer, *Chair*

# **FWCJUA COMMITTEES & MEMBERS**

(As of June 6, 2007)

## **AUDIT COMMITTEE**

**Chair:** Neff  
Johnson  
Vecchioli

## **EXECUTIVE COMPENSATION COMMITTEE**

**Chair:** Neff  
Cannassa  
Hodges

## **INVESTMENT COMMITTEE**

**Chair:** Neff  
Johnson  
Revels

## **MAP COMMITTEE**

**Chair:** Milligan  
Dannenhauer  
Neff

## **OPERATIONS COMMITTEE**

**Chair:** Cannassa  
Hodges  
Neff

## **PRODUCER COMMITTEE**

**Chair:** Pacheco  
Dannenhauer  
Milligan

## **PRODUCER APPEALS COMMITTEE**

**Chair:** Dannenhauer  
Neff  
Vecchioli

## **RATES & FORMS COMMITTEE**

**Chair:** Neff  
Cannassa  
Pacheco

## **REINSURANCE COMMITTEE**

**Chair:** Vecchioli  
Cannassa  
Revels

## **SAFETY COMMITTEE**

**Chair:** Pacheco  
Cannassa  
Revels

# FWCJUA COMMITTEES & MEMBERS

(As of June 6, 2007)

## **CANNASSA (CNA)**

Operations (**Chair**)  
Executive Compensation  
Rates & Forms  
Reinsurance  
Safety

## **DANNENHAUER (FAIA)**

Producer Appeals (**Chair**)  
MAP  
Producer

## **HODGES (Summit Holdings)**

Operations  
Executive Compensation

## **JOHNSON (FCCI Mutual)**

Audit  
Investment

## **MILLIGAN (Consumer Advocate)**

MAP (**Chair**)  
Producer

## **NEFF (FSC Appointment)**

Audit (**Chair**)  
Executive Compensation (**Chair**)  
Investment (**Chair**)  
Rates & Forms (**Chair**)  
MAP  
Operations  
Producer Appeals

## **PACHECO (AIIS)**

Producer (**Chair**)  
Safety (**Chair**)  
Rates & Forms

## **REVELS (FSC Appointment)**

Investment  
Reinsurance  
Safety

## **VECCHIOLI (FSC Appointment)**

Reinsurance (**Chair**)  
Audit  
Producer Appeals



**MARKET CONDUCT EXAM**

The Board shall consider whether to submit the attached draft response to the FWCJUA's 2006 Market Conduct Examination Draft Report.

On June 11, 2007, the FWCJUA received a copy of its 2006 Market Conduct Examination Draft Report covering the scope of January 2003 through June 2006. Pursuant to the provisions of Section 624.319(1), Florida Statutes, and Rule 69N-121.066, Florida Administrative Code, the FWCJUA may request an informal conference prior to the filing of the report by the Office of Insurance Regulation. The request must be made in writing within thirty (30) days of receipt of this notice. Should the FWCJUA elect this option, a written statement outlining the specific concerns and documentation supporting your position must accompany the request. If no response is received within thirty (30) days, this report will be filed as a finalized report and made a public document.

At its June 12, 2007 meeting, the Board received the attached handout prepared by staff labeled "*Summary of Draft Findings & Recommendations of the Florida Market Conduct Examination for the FWCJUA*," and it was noted that there were no compliance issues raised in the report. The Board was informed that the exam was quite comprehensive and resulted in a favorable report on FWCJUA operations. The Board was reminded that the exam was an operational review and was conducted by OIR's contracted outside audit firm of Buttner Hammock & Company (BHC). BHC reviewed four general areas of the FWCJUA's operations, those being (1) organizational structure and administration; (2) financial performance; (3) payments, allocations, recoveries and financial auditing; and (4) IT systems operations and administration, disaster preparedness. There were only ten relatively minor recommendations and such were reviewed with the Board. Given staff had just received the comprehensive report the day prior to the meeting, staff asked for additional time to prepare its draft response for Board consideration, and the Board agreed to revisit the matter at this June 29<sup>th</sup> teleconference meeting.

**The Board shall determine whether to authorize staff to submit the proposed response to the 2006 Market Conduct Examination Draft Report.**



# Florida Workers Compensation Joint Underwriting Association, Inc.

P.O. Box 48957, Sarasota, FL 34230-5957

• Tel (941) 378-7400 • Fax (941) 378-7405 • www.fwcjua.com

June 29, 2007

*Via E-mail and U.S. Mail*

Mr. James E. Nesmith, CIC  
Management Review Specialist  
Office of Insurance Regulation  
Market Investigations  
200 East Gaines Street  
Tallahassee, FL 32399-4210

**Re: Florida Market Conduct Examination for the FWCJUA**  
**Scope of Examination: January 1, 2003 through June 2006**  
**Line of Business: Workers' Compensation**

Dear Mr. Nesmith:

On June 11, 2007, you provided me with an e-mail copy of the FWCJUA's 2006 Market Conduct Examination Draft Report covering the scope of January 2003 through June 2006. Your transmittal letter indicated that pursuant to the provisions of Section 624.319(1), Florida Statutes, and Rule 69N-121.066, Florida Administrative Code, the FWCJUA may request an informal conference prior to the filing of the report by the Office of Insurance Regulation. The request must be made in writing within thirty (30) days of receipt of this notice. You further indicated that should the FWCJUA elect this option, a written statement outlining the specific concerns and documentation supporting our position must accompany the request. If no response is received within thirty (30) days, the draft report will be filed as a finalized report and made a public document.

At this time, I am providing you with the FWCJUA's comments on the draft report. The FWCJUA acknowledges that the exam was quite comprehensive and resulted in a favorable report on FWCJUA operations. There were only ten relatively minor recommendations and such will be incorporated into FWCJUA operations as appropriate. As you will note below, we have suggested minor editorial corrections and clarifications to ensure the accuracy of the report with our suggested revisions appearing in **red print** with **yellow highlight** for ease of reference.

**Page 3, amend 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> paragraphs as follows:**

From the FWCJUA's inception through July 2003, there were three rating plans established for various classifications of risks and all employers holding FWCJUA policies were assigned to one of these three rating **supplans subplans**, either A, B, or C, with subplan C insureds receiving an assessable policy.

Effective July 26, 2003, legislation was adopted that resulted in significant changes to the FWCJUA's rating structures. A new subplan D was established to provide coverage for small employers (15 or fewer employees) and charitable organizations. The rates prescribed for these policies were 25% above the voluntary market **rates premiums** for these small employers and 10% above the voluntary market **rates premiums** for charitable organizations. Those capped rates generated a substantial deficit with the only means of elimination of the deficit being to levy an assessment on subplan D policyholders.

Effective, July 1, 2004, the Florida Legislature addressed the growing subplan D deficit by enacting legislation to replace the subplan rating system discussed in the previous paragraph with a three-tier rating plan based on the insured's premium or loss experience. The rates were statutorily capped **in two of the three rating tiers** and the surcharges over the **rates premiums** in the voluntary market were increased and provisions were made to ensure actuarially sound rates **in all three rating tiers** by January 2007. Should funding for the tier plans be insufficient, an assessment could be levied against all workers' compensation insureds in the State of Florida to fund the FWCJUA's cash flow deficits, or funds from the State of Florida, Workers' Compensation Administration Trust Fund (WCATF) may be

**BOARD OF GOVERNORS:** Ray Neff, *Chair*; Patrick Cannassa; Dan Dannenhauer;  
Rick Hodges; Craig Johnson; Bob Milligan; Elissa Pacheco; Claude Revels; Beth Vecchioli

transferred to the FWCJUA upon the request of the DFS by the FWCJUA's Board of Governors (Board) and the approval of the Legislative Budget Commission (LBC).

**Page 4, amend 1<sup>st</sup> and 2<sup>nd</sup> paragraphs as follows:**

The Board utilizes committees to monitor the operations of the FWCJUA. The committees of the Board include the following:

- Audit Committee
- Executive Compensation Committee
- Investment Committee
- Operations Committee
- Market Assistance Plan (MAP) Committee
- Producer Appeals Committee
- Rates & Forms Committee
- Reinsurance Committee
- Safety Committee
- **Producer Committee**

Board Committee members are appointed **annually** by the Board Chairman and Board Committees meet periodically as the need arises. The FWCJUA has consistently employed 18 individuals during the scope period of the examination. Employee turnover during the scope period has included an Accountant, an Executive Assistant, and several Underwriters or Customer Service Specialists.

**Page 12, amend the 1<sup>st</sup> paragraphs of both the 1<sup>st</sup> and 2<sup>nd</sup> bullet points as follows:**

- Increase / Decrease Adjustments (IAJ / DAJ) – These entries are necessary when adjustments / transfers are made to the cash accounts in order for the entry to appear on the bank reconciliation module in the Microsoft Great Plains Dynamics (GPD) accounting software. Journal entries adjust the general ledger balance, however, the entries will not appear **when** in the bank reconciliation module. In order for the adjustment / transfer to appear on the bank reconciliation module, an IAJ / DAJ must be entered.
- Loss Portfolio Transfers (LPT) – The FWCJUA entered into an LPT with a reinsurer covering accident years 1994 – 1999. Travelers prepares the bordereau report for all applicable claims activity processed in Travelers' systems, sends the original report to the reinsurer requesting reimbursement, and sends a copy of the report to the FWCJUA along with the monthly report. Once the reinsurer reimburses Travelers, Travelers sends an email to the FWCJUA advising of the reimbursement so that the FWCJUA can record the amount recovered in the LPT reimbursement account. For any activity received from other run-off service providers, the FWCJUA submits **to** the reinsurer a quarterly billing.

**Page 20, amend last paragraph as follows:**

Payroll changes including name and address changes and changes in withholding amounts are approved by the Controller, and employee salary increases are approved by the employee's Supervisor and by the **Controller Executive Director**, who both must sign an authorization form to be maintained in the employee's personnel file. Paychex calls the Controller each Tuesday morning before payroll processing, and the Controller gives Paychex the correct bi-weekly payroll information. The Controller informed BHC that because the FWCJUA office is relatively small, relaying the information to Paychex by telephone rather than e-mail or other method is preferred.

**Page 21, amend 2<sup>nd</sup> full paragraph as follows:**

Employee personnel files are maintained in a locked area in the Controller's office and in the electronic document management system (EDMS). The personnel files are located in an area of the EDMS that is password protected, with access only available to the Controller, **the Executive Assistant** and the Executive **Assistant Director**.

**Page 33, amend 2<sup>nd</sup> paragraph of General and Administrative Expense Allocation Procedures as follows:**

The FWCJUA's general and administrative (G&A) expenses are paid out of the Operating Account and expensed in the general ledger accounts. However, these expenses must be allocated back to the individual subplans/tiers. The **FWCJUA FWCJUA** utilizes the number of applications bound and the number of applications rejected during the month as its allocation base. The FWCJUA calculates a percentage for the total bound applications by subplan/tier, and applies that percentage to the total G&A expenses to calculate the amount of G&A expenses allocable to each.

**Page 39, amend last paragraph as follows:**

The Controller informed BHC that the **Program Systems** Manager receives through a secure online file transfer link, the electronic detailed data supporting the Monthly Settlement Reports prepared by Travelers, and notifies the Controller when the data is received. When the Controller receives the Monthly Settlement Reports from Travelers, she gives the report to the Senior Accountant, who loads the electronic data into the FLARE<sup>3</sup> system, which summarizes premiums, losses, loss adjustment expenses, and other data. The Senior Accountant then prepares journal entries and enters the summary data into an Excel spreadsheet to verify the totals are correct on the Monthly Settlement Reports from Travelers. The Controller reviews the work of the Senior Accountant, and informed BHC that there has only been one instance in the last nine years (the tenure of the Controller at the FWCJUA) in which the totals did not agree between the Monthly Settlement Reports and the FWCJUA's summary spreadsheet of Travelers' detailed data.

**Page 40, amend 2<sup>nd</sup> and 5<sup>th</sup> full paragraph as follows:**

The Operations Manager informed BHC that the FWCJUA is able to review through the **FLARE<sup>3</sup> Travelers' CARMA** system certain expenses allocated by Travelers, including attorney fees, surveillance expenses, and managed care expenses. The Operations Manager stated that the FWCJUA's independent financial auditors annually test the detail of the FWCJUA claims expenses recorded by Travelers.

The FWCJUA business serviced by Travelers is subject to periodic claim reviews at Travelers' office by a review team comprised of the FWCJUA's Operations Manager, the FWCJUA's consulting litigation manager, Travelers' Claims Manager for FWCJUA claims, Travelers' case managers, and any other experts needed. During the scope period of this examination, these claims audits were conducted twice each year, except during 2004, when the audits were conducted every quarter. The files selected for review generally include all cases with total incurred costs over \$50,000, any cases open for over 110 weeks, and any unusual cases. **(For consistency, suggest a change in the font size for this paragraph)**

**Page 48, amend the 4<sup>th</sup> bullet point as follows:**

- For loss of power, the FWCJUA utilizes a generator that is capable of maintaining operations for up to 72 hours on one tank of fuel. BHC discussed the operation of the generator with the Systems Manager, who informed BHC that the generator starts automatically upon power interruption, and can operate 100% of FWCJUA's operations at 30% capacity of the generator. During fieldwork at the FWCJUA's office, BHC observed two occasions of power loss, and in both instances, the generator restored power within a few seconds. The Systems Manager informed BHC that he tests the system once a week, by **manually automatically** powering up the system with no load and **viewing a display at the generator which notes noting** whether the test was successful. If a test is unsuccessful, the Systems Manager would contact the vendor.

Please contact me should you require anything further regarding the FWCJUA's comments on the draft report. It is our hope that an informal conference will not be deemed necessary to incorporate our comments into the report; however, if an informal conference is required, please schedule such.

Sincerely,

Laura S. Torrence  
Executive Director

c: FWCJUA Board of Governors  
Tom Maida, General Counsel

## **SUMMARY OF DRAFT FINDINGS & RECOMMENDATIONS OF THE FLORIDA MARKET CONDUCT EXAMINATION FOR THE FWCJUA**

The scope period of the examination is January 1, 2003 through June 30, 2006. This examination was performed in accordance with standards established by the American Institute of Certified Public Accountants (AICPA).

### **Part A – Organizational Structure and Administration**

- Procedure 1 – Review the Plan of Operation
- Procedure 2 – Review the Management and Organization Structure
- Procedure 3 – Review the Board of Directors' Fiduciary Responsibilities
- Procedure 4 – Review the Process Control Procedures
- Procedure 5 – Review Vendor Contract Administration
- Procedure 6 – Review Money and Asset Management
- Procedure 7 – Review Risk Management and Insurance
- Procedure 8 – Review Assessment Practices
- Procedure 9 – Review Record Storage and Retrieval Procedures

### **Part B – Financial Performance**

- Procedure 10 – Review Financial Performance
- Procedure 11 – Review General Operating and Administrative Expenses
- Procedure 12 – Review Travel Expenses
- Procedure 13 – Review Payroll Expenses
- Procedure 14 – Review Contracts and Agreements

### **Part C – Payments, Allocations, Recoveries, and Financial Auditing**

- Procedure 15 – Review Expense Allocation Procedures
- Procedure 16 – Review Subrogation and Other Recovery Procedures
- Procedure 17 – Review Audits Conducted by Independent Accountants

### **Part D – IT Systems Operations and Administration, Disaster Preparedness**

- Procedure 18 – Review Separation of Responsibilities for Systems Operations
- Procedure 19 – Review Batch Process Updates
- Procedure 20 – Review IT Resources and Staffing
- Procedure 21 – Review Adequacy of Technology Implementation
- Procedure 22 – Review Disaster Preparedness

## **Part A – Organizational Structure and Administration**

**Procedure 1: Review and assess the plan of operation for the FWCJUA. Comment on the completeness of the plan and its compliance with the requirements of Florida Statutes and the consistency of operations with approved plans.**

**Findings:** Based upon the review and discussions with the Executive Director, BHC believes the FWCJUA's Plan of Operation is adequate for administering the duties and responsibilities of the FWCJUA and is in compliance with the requirements of Florida Statutes §§ 627.311(5), 627.312 and 627.313. BHC believes the operations of the FWCJUA are materially consistent with the approved Plan of Operation, and the Plan of Operation appears complete.

**Procedure 2: Review the management and organizational structure of the FWCJUA, including staffing levels, qualifications of personnel, segregation of duties, and conflicts of interest. Comment on the effectiveness of the management and organizational structure of the FWCJUA.**

**Findings:** Based upon the review, BHC believes the staffing level of the FWCJUA is adequate. FWCJUA staff and management are qualified to perform their duties, and the duties of personnel are adequately segregated. BHC noted no conflicts of interest. BHC believes the FWCJUA's management and organizational structure is functional and enables the FWCJUA to execute its duties as provided by Florida Statute § 627.311(5).

**Procedure 3: Conduct a review of the activities of the FWCJUA's Board of Governors and other Board Committees for 2003, 2004, 2005, and through June 30, 2006 to assess whether the Board and the Board Committees are fulfilling their fiduciary responsibilities.**

**Findings:** Based upon the review, BHC believes the Board is functioning in accordance with the governing documents and is exercising its fiduciary responsibilities appropriately. The Board members are monitoring and overseeing the FWCJUA's operations in a professional manner and appear to be timely updated on changing events.

**Procedure 4: Review the FWCJUA's documented and undocumented process control procedures, including segregation of duties and conflicts of interest. Assess adequacy of documented operating processes and procedures to ensure continuity of operations in the event of management or staffing changes.**

**Findings:** Based upon the procedures performed, BHC believes the documented process control procedures described in the FWCJUA's Accounting Policy and Procedures are adequate for the operations of the FWCJUA, and the duties of FWCJUA personnel are adequately segregated.

### **Anti-Fraud Plan**

**Findings:** Based upon BHC's review of the Anti-Fraud Plan, BHC believes the documented procedures described in the FWCJUA's Anti-Fraud Plan are adequate for the operations of the FWCJUA.

### **Code of Business Conduct and Ethics**

**Findings:** Based upon BHC's review of the Code of Business Conduct and Ethics, BHC believes the documented procedures described in the FWCJUA's Code of Business Conduct and Ethics are adequate for the operations of the FWCJUA.

### **Document Scanning Procedures**

**Findings:** Based upon BHC's review of the Document Scanning Procedures, BHC believes the documented procedures described in the FWCJUA's Document Scanning Procedures are adequate for the operations of the FWCJUA.

### **Underwriting Principles & Procedures Guide**

**Findings:** Based upon BHC's review of the Underwriting Principles & Procedures Guide, BHC believes the documented procedures described in the FWCJUA's Underwriting Principles & Procedures Guide are adequate for the operations of the FWCJUA.

## Claims Handling Procedures

**Findings:** Based upon the procedures performed, BHC believes the documented procedures described in the FWCJUA's Claims Handling Procedures are adequate for the operations of the FWCJUA.

## Reporting Requirements

**Findings:** Based upon BHC's review of the Reporting Requirements, BHC believes the documented procedures described in the FWCJUA's Reporting Requirements are adequate for the operations of the FWCJUA.

## Escheating Procedures

**Findings:** Based upon BHC's review of Travelers' documented escheating procedures and reports of unclaimed property, BHC believes that Travelers is reporting and submitting the FWCJUA eligible escheated items to the Bureau.

## Payroll Procedures

**Findings:** Based upon the procedures performed, BHC believes the undocumented procedures for payroll processing are adequate for the operations of the FWCJUA, given the size of the FWCJUA. However, BHC believes segregation of duties in the review of payroll processing could be enhanced by a periodic review of the payroll reports by the Executive Director.

**Recommendation:** *Payroll is a significant expense of the FWCJUA. BHC recommends that the Executive Director review the payroll reports and journal entries periodically, to serve as an independent review of the monitoring by the Controller, thus enhancing segregation of duties.*

**Recommendation:** *BHC recommends that the FWCJUA prepare formal documentation of the FWCJUA Payroll Procedures. BHC considers documentation of Payroll Procedures to be good business practice, since payroll is a vital segment of operations.*

## Succession Plan

**Recommendation:** *FWCJUA should consider the need to develop a formal documented Succession Plan. A documented plan can minimize business interruption, should a key employee become unwilling or unable to perform his or her duties, and should clearly define the specific individuals inside or outside of the organization that are qualified to take over the duties of key employees on a temporary or permanent basis.*

**Procedure 5: Review the FWCJUA's vendor contract administration. Review the documented and undocumented procedures and the method used for selection and procurement of contractual services and review the documented and undocumented procedures for contract management. Comment on the effectiveness of documented procedures and controls over the management and monitoring of vendor services.**

**Findings:** Based upon the procedures performed, BHC believes the Board Committees and the Board appear to be effectively monitoring the use of RFPs for contractual services. BHC did not note any instances of self-dealing or conflicts of interest and believes the process selection and procurement of contractual services is adequate for the purposes of the FWCJUA.

BHC believes the documented procedures described in the FWCJUA's Operations Manual, 5<sup>th</sup> Amended Bylaws, and Audit Committee Charter for monitoring the work of vendors are sufficient, and controls over the management and monitoring of vendor services appear to be adequate. BHC believes the Board and Board Committees are effectively monitoring the performance of outside vendors in accordance with the FWCJUA's governing documents.

**Procedure 6: Money and Asset Management: Review and evaluate the FWCJUA's documented and undocumented procedures for investing funds and managing assets, including as appropriate, compliance with any statutory or regulatory guidelines.**

**Findings:** Based upon the procedures performed, BHC believes the FWCJUA's investment of funds and management of assets is adequate and is in compliance with the documented Investment Policy, Florida Statutes, and Plan of Operation.

BHC noted that amounts paid by the FWCJUA to its Investment Custodian / Investment Manager were in accordance with the Custody Services Agreement. BHC believes the Controller is adequately monitoring the compliance of the investment activity with the Investment Policy, and that the Board and Investment Committee are adequately monitoring the investment of assets and the performance of the Investment Manager.

**Procedure 7: Risk Management and Insurance: Assess the FWCJUA's adequacy of insurance coverages, benefits plans, bonds or other risk management programs.**

**Findings:** Based on BHC's review of the FWCJUA's insurance coverages, benefits plans, fidelity bonds, and other risk management programs, BHC believes these programs are adequate to support the operations of the FWCJUA.

**Procedure 8: Review and evaluate the FWCJUA's assessment practices to ensure compliance with Florida Statutes.**

**Findings:** Based upon BHC's discussion with the Executive Director, reviews of the 2002 through 2006 Florida Statutes, the Plan of Operation, minutes from Board Meetings during 2003 through June 2006, and supporting documentation for WCATF transfers, BHC believes the FWCJUA's assessment policies and procedures are in compliance with the applicable governing documents. In addition, BHC noted that the Board's discussions of alternatives to eliminate deficits were consistent with the language contained in the Florida Statutes regarding alternatives available to eliminate deficits.

**Procedure 9: Review the FWCJUA's documented and undocumented procedures for records storage and retrieval, including contracts with record storage facilities and determine if procedures for records retention and record destruction are in substantial compliance**

**Findings:** Based upon BHC's review of the documented procedures for records storage, retrieval, retention, and destruction, and discussions with the Executive Director, Controller, and Systems Manager regarding the EDMS, BHC believes the FWCJUA's procedures for records storage, retrieval, retention, and destruction are adequate. BHC believes the length of time for the retention of the specific types and subcategories of records appears reasonable, and the Records Management and Retention Policy appears to be comprehensive and complete.

**Recommendation:** BHC recommends that prior to the Board's approval of the draft of the FWCJUA's Records Management and Retention Policy, FWCJUA's management should update the policy for the following areas:

- The Electronic Document Management System.
- The draft policy includes emphasis on off-site storage (i.e. references to document storage vendors who will shred FWCJUA documents, preservation of off-site storage facilities, procedures for packaging, bundling, and labeling hard copy records). The FWCJUA does not currently use off-site storage, and emphasizes electronic storage. The FWCJUA may choose to include provisions for off-site storage, as the need may arise. Currently, there is no document storage vendor.
- The destruction of the FWCJUA documents should be expanded to address the individual(s) responsible for shredding documents.

While there may still be a need for the storage of some hard copy records, the Records Management and Retention Policy should reflect the FWCJUA's efforts to move toward a paperless environment.

## **PART B – FINANCIAL PERFORMANCE**

**Procedure 10: Review the FWCJUA's financial performance for 2003, 2004, 2005, and through June 30, 2006, and compare that performance to prior years and budget amounts. Note any unusual variances or inefficiencies.**

**Findings:** Based upon the procedures performed, BHC believes the financial performance of the FWCJUA is consistent with BHC's understanding of the operations of the FWCJUA, and the FWCJUA is properly monitoring, analyzing and reporting significant variances. The FWCJUA's explanations for significant variances in balance sheet and income statement line items appear reasonable and consistent with BHC's understanding of the operations of the FWCJUA.



**Procedure 11: Review the FWCJUA's general operating and administrative expenses for 2003, 2004, 2005, and through June 30, 2006.**

**Findings:** Based upon the procedures performed, BHC believes the FWCJUA's operating and general and administrative expenses during 2003 through June 2006 are reasonable and consistent with our understanding of the operations of the FWCJUA. BHC did not note any unexplained variances, inefficiencies, questionable expenditures, or inefficient uses of cash.

**Procedure 12: Review the FWCJUA's travel expenses for 2003, 2004, 2005, and through June 30, 2006.**

**Findings:** Based upon the procedures performed, BHC believes that the FWCJUA travel expenses incurred during 2003, 2004, 2005, and through June 30, 2006 were reasonable and were reimbursed in accordance with the FWCJUA's Travel and Expense Reimbursement Procedures. BHC noted that proper approvals were obtained prior to reimbursement, all reimbursable expenses were for a clear business purpose, no personal expenses were included on the expense reports, and original receipts were included, where applicable.

**Procedure 13: Review the FWCJUA's payroll expenses for 2003, 2004, 2005, and through June 30, 2006.**

**Findings:** Based upon the procedures performed, BHC believes that management, the Executive Compensation Committee, and the Board are providing adequate oversight of the salaries of FWCJUA personnel.

**Procedure 14: Review all FWCJUA contracts and agreements that were effective during the years 2003, 2004, 2005, and through June 30, 2006. Select a sample of payments to vendors under contracts and agreements and determine if payments were made in accordance with contract provisions.**

**Findings:** Based upon the procedures performed, BHC believes the payments made by the FWCJUA to vendors for contracted services were made in accordance with the provision of the contracts

**Recommendation:** *The FWCJUA should consider obtaining a written contract with outside attorneys for litigation management services. Having signed written contracts for all services performed by outside parties is considered good business practice, and a written agreement will better equip the FWCJUA and its Board to establish oversight and the monitoring of performance under contracts.*

**PART C – Payments, Allocations, Recoveries, & Financial Auditing**

**Procedure 15: Review the FWCJUA's documented and undocumented procedures and the method used for expense allocation, including policyholder claims losses, loss adjustment expenses, and unallocated expenses including administrative expenses, noting the accuracy and consistency of charging expenses to the appropriate categories and the accuracy of allocations in compliance with the documented and undocumented procedures. Comment on discrepancies between external reports to Receivers and internal guaranty association reports and documentation.**

**Findings:** Based upon the procedures performed, BHC believes the method used for the allocation of loss adjustment expenses, unallocated expenses, and administrative expenses are in compliance with the FWCJUA's documented and undocumented procedures. BHC considers the claims reviews performed on Travelers for FWCJUA business to be adequate and performed at an appropriate frequency

Since the FWCJUA is a joint underwriting association, not a guaranty association, the elements of Part C – Procedure 15 regarding discrepancies between external reports to Receivers and internal guaranty association reports and documentation are not applicable to the FWCJUA.

**Recommendation:** *The FWCJUA should consider requiring Travelers to engage an independent auditor to perform a SAS 70 audit and provide the Board with a copy of the audit report.*

**Procedure 16: Review FWCJUA's documented and undocumented procedures for reporting and collecting subrogation or other types of recoveries.**

**Findings:** Based upon the procedures performed, BHC believes the FWCJUA's documented procedures for reporting and collecting subrogation or other types of recovery is adequate for the operations of the FWCJUA.

**Procedure 17: Review audits conducted by independent accountants and evaluate the scope of the audits, the results of the audits, and note any deficiencies in the auditing process, including the qualifications of the auditors and the scope or frequency of the audits.**

**Findings:** Based upon BHC's review, BHC believes the 2005 audit of the FWCJUA was sufficient in scope, and BHC did not note any deficiencies in the auditing process. BHC further believes the audit was performed by qualified personnel and at an appropriate frequency.

#### **PART D – IT Systems Operations and Administration, Disaster Preparedness**

**Procedure 18: IT/Operations – Separation of Responsibilities – With respect to systems operations, particularly cash disbursement processes, review IT responsibilities, and evaluate process controls including segregation of duties.**

**Findings:** *None*

**Procedure 19: Claims File Input/Output Controls – Review batch update processes, such as updates from Third Party Administrators (TPAs) or Uniform Data Standard (UDS) updates, if applicable, for appropriate controls and verification of processes. Similarly, review data extract processes and quality assurance procedures. Document and evaluate controls and quality assurance measures applied to any routine batch updates to the claims system. Beyond claims systems, determine if batch updates occur to any other system. If so, similarly evaluate controls.**

**Findings:** Based upon BHC's review, BHC believes the controls and quality assurance procedures in place at the FWCJUA, including controls and quality assurance procedures applied to batch processing to the check processing system, are adequate to support the operations of the FWCJUA.

**Procedure 20: Assessment of IT Resources/Staffing – Through interviews and discussion with management and key staff members, assess the adequacy of IT resources. Determine if the current IT staffing level satisfactorily supports the FWCJUA's operations.**

**Findings:** Based upon the procedures performed, BHC believes the IT resources including the current IT staffing level in place at the FWCJUA satisfactorily support the operations of the FWCJUA.

**Procedure 21: Assessment of Adequacy of Technology Implementation – Through observations, interviews, and discussions, assess the adequacy of technology implementation to maximize operational efficiency and cost savings.**

**Findings:** Based on BHC's analysis, it appears that current IT resources including hardware, software, Internet access and IT support are adequate for the operations of the FWCJUA. Based upon the procedures performed, BHC believes the FWCJUA's implementation of technology is adequate to support the operations of the FWCJUA, and current IT resources are in place to maximize operational efficiency and cost savings.

**Procedure 22: Disaster Preparedness – Review and assess continuity of operations plans. Among other items, address the adequacy of IT preparedness, including file backup and recovery capability, off-site file storage, and systems recovery plans.**

**Findings:** Based on the procedures performed, BHC believes that the continuity of operations plans at the FWCJUA is adequate for the operations of the FWCJUA. During the performance of BHC's procedures, BHC noted that IT preparedness, file backup and recovery procedures, and system recovery plans are adequate.

***Recommendation:*** *BHC recommends that the nightly backup be taken off-site daily, either to the bank vault or to the home of a Manager, the latter which was disclosed as an option in the DRP. The current practice of taking the back-up tape to the bank vault twice a week leaves FWCJUA exposed to a potential data loss of more than one day in the event of a sudden disaster, other than an approaching hurricane, for which the FWCJUA has planned for daily off-site data transport. Although the secondary backup may be removed at a moment's notice if a sudden disaster occurs during normal business hours, an after-hours sudden disaster could result in a potential loss of data for more than one day.*

**Recommendation:** BHC recommends that the results of the monthly testing of data backup procedures by randomly restoring files should be documented to ensure that the process occurs at a specified time each month, different types of files are tested, and the results are available for review, by Management, the Operations Committee, or the Board.

**Recommendation:** BHC recommends that the results of the systems recovery process and post- test evaluations should be documented to ensure that the results are available for verification that the periodic testing is occurring at appropriate intervals and that results are appropriately communicated. BHC recommends that testing should occur at least once per year.

**Recommendation:** BHC recommends that the FWCJUA execute its intention to review Travelers' Disaster Recovery Plan on an annual basis.