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MONTANA STATE FUND
SPECIAL BOARD OF DIRECTORS MEETING
November 10, 2017

The Montana State Fund (MSF) Board of Directors special meeting was held November 10, 2017 in Montana State Fund's Board Room at 855 Front Street, Helena, Montana 59601.

Directors Attending

Lance Zanto, Chair, Helena
Bruce Mihelish, Lolo (by telephone)
Jan VanRiper, Helena (by telephone)
Lynda Moss, Billings (by telephone)
Richard Miltenberger, Helena
Matt Mohr, Big Sky (by telephone)
Jack Owens, Missoula (by telephone)

State Fund Staff Attending

Laurence Hubbard, President/CEO
Verna Boucher, Special Asst to Pres/CEO
Kevin Braun, General Counsel
Al Parisian, CIO
Sam Heigh, Ops Support Vice President
Patti Grosfield, Internal Auditor
Rick Duane, HR Vice President
Julie Jenkinson, Ops Vice President
Mark Barry, Corporate Support VP
Greg Overturf, Asst. General Counsel
Tammy Lynn, Safety Service Director
Suzanna Nordahl, Underwriter

Others Attending

Bob Biskupiak, CSI
Kerri Emmons, IAIA
Bridger Mahlum, MT Chamber
Spook Stang, MCM
Brenda Miller, Liberty

I. Meeting Preliminaries

A. Call to Order

Chair Zanto called the meeting to order at 1:00 pm. He thanked those present for taking the time to attend and explained that this was an unplanned special Board meeting that just happened to fall on Veteran's Day. He asked attendees to observe a moment of silence to thank and show respect to all veterans for their service. He reminded attendees in the audience to provide their input and comments from the podium. He noted the attendance of Mr. Biskupiak from CSI and Mr. Stang from the Motor Carries of Montana and expressed appreciation to them and all attendees for being there.

II. Legislation – Laurence Hubbard, President/CEO

A. 2017 Special Session

President Hubbard noted that three board members were present: Laurence Hubbard as ex-officio, Chair Zanto and Richard Miltenberger. He added that five other Board members were participating via conference phone: Mr. Mihelish, Ms. VanRiper, Mr. Mohr, Mr. Owens, and Ms. Moss which equals a full complement of the Board. He also thanked all attendees for taking time during their holiday to attend this special meeting of the MSF Board of Directors. He clarified that this Board meeting was called due to Governor Bullock calling a special session of the legislature scheduled for the following week. The Governor's November 6 Proclamation to call the session outlined the items to address the Montana's current fiscal circumstances including the need to generate additional revenue and budget savings for the upcoming biennium.

Mr. Hubbard said one of the items in the Proclamation includes a provision that affects MSF, its Board members and the management team.

He said he would provide an outline of the Proclamation, the bill draft and explain the position he would recommend for MSF's Board and management with regard to the upcoming special session.

President Hubbard noted the State of Montana had an extremely active fire season in 2017 as well as a gap for anticipated tax revenues for commodities production and those factors combined have created a pretty significant financial need for Montana to address which compelled the Governor to call the special session. He pointed out item No. 8 of the November 6, 2017 Proclamation that said "Legislation authorizing a management fee on excess investment holdings of the Montana State Fund to offset state fire costs." The budget office notes that accompanied the Proclamation contained two revenue estimates that will impact MSF and its policyholders; the three percent management rate is projected to require a transfer of $14.6 million dollars in FY18 and $15.1 million in FY19 for a total of $29.7 million. The actual bill refers to a percentage which will drive the nominal dollars that will be required to be transferred.

He said LC008 was the draft legislation that was prepared by the Legislative Services Division (LSD) for presentation to the Montana legislature during the special session. The title of the bill was "An act providing for a 3% management rate on certain portfolios managed by the Board of Investments; providing fund transfers; excluding funds related to the coal severance tax; amending sections 39-71-2320, MCA; and providing an immediate effective date, an applicability date, and a termination date." The first section stated that for each calendar year, the Board of Investments (BOI) shall transfer to the general fund a three percent management rate on any BOI portfolio that a) has an average asset balance in excess of $1 billion and b) whose average asset balance contains sufficient funds to offset all liabilities as determined by the most recent actuarial study, including the independent actuarial report submitted to the legislature under 39-71-2363 (3). He explained that this statute is the portion of the Workers' Compensation Act that enables MSF; part two states that the three percent management rate applies to all average asset balances in excess of $1 billion. It states that BOI shall transfer the three percent management rate to the general fund on or before April 1 of the immediately following calendar year. He stated that section three, part three clarified that this does not apply to the coal severance trust fund. He said that section four stated that State Fund may not raise rates or reduce dividends to reduce real or estimated losses associated with the three percent management rate transfer.

President Hubbard read the proposed amendment to section two of the bill: "39-71-2320. Property of state fund – investment required – exception. ~~All~~ Except for the management rate transfer under [section 1], all premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. ~~The~~ Except for the management rate transfer, the money collected by the state fund for claims for injuries occurring on or after July 1, 1990, many not be used for any other purpose and may not be transferred by the legislature to other funds or used for other program. However, state fund money must be invested by the board of investment provided for in 2-15-1808, and subject to the investment agreement with the board of investments, the earnings on investments are the sole property of the state fund as provided in this section."

He said the remaining sections of the proposed bill address the codification date and the effective date, which is upon passage and approval, and the applicability date for calendar years 2017 and

2018 and the three percent management rate to be payable on or before April 1, 2018, and April 1, 2019, respectively. The exception terminates on June 30, 2019

He said this bill, in effect, is a two year tax or management rate on MSF assets in excess of $1 billion. MSF's last quarterly financial report indicated estimated total assets held by MSF are approximately $1.6 billion. He noted that 39-71-2313 created MSF as a non-profit independent corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage. He noted that no other purpose in the establishment of MSF is mentioned in state law. He said that 39-71-2311 MCA states that rates must be adequate to assure adequate funding of MSF operations including costs of administration, benefits and adequate reserves. It continues that unnecessary surplus may be refunded by a declaration of a dividend which has been done since 1999.

MCA 39-71-2315 incorporates powers of the MSF Board of Directors; specifically the Board is vested with full power, authority and jurisdiction for management and control of State Fund. MCA 39-71-2316 includes providing workers' compensation and employers' liability insurance to Montana businesses. It also provides for dividends when there is an excess over liabilities and that every policy issued by MSF must provide a restriction on the use and transfer of money transferred by State Fund as provided in 39-71-2320. He stated that current statute regarding MSF assets clearly states that all MSF assets after July 1, 1990 are the sole property of the State Fund and must be used exclusively for the operations and obligations of the State Fund and may not be used for any other purpose. MCA 39-71-2322 states monies that come into the State Fund must be held in trust for the purpose for which the money was collected.

President Hubbard said he felt it was important to discuss who these monies belong to despite the clear definitions of the statutes he had just shared. He noted that clearly the legislature has the power to change laws prospectively; however, he said his opinion is that the laws governing MSF's assets are very clear and that MSF assets are held in trust for the purpose of providing workers' compensation insurance, and only workers' compensation insurance. They are not collected to offset fire costs or any other governmental function. He said he believed MSF management and the Board have a fiduciary obligation to preserve the assets held by MSF or any other entity on our behalf, such as BOI, in furtherance of this statutory trust. He said it was management's view that the money held in trust is not public money, but is policyholder money, with an express mechanism for returning excess equity to policyholders. Montana law and that of other jurisdictions supports the proposition that money held in trust cannot be appropriated by the legislature for any other purpose.

He sought to clarify why this special Board meeting was necessary and explained that LC008 would become effective upon passage and approval which means it would have force of law upon signature by the Governor and upon enrollment. The provisions of section, one subsection two instruct the BOI to transfer three percent of MSF assets for any amount over a billion dollars on or before April 1, 2018. That language creates an immediate and eminent responsibility and authority of BOI to transfer MSF assets held in trust. It is due to the language that allows immediate action for transference of the assets, that MSF Board and management must seek to assure that the assets are not transferred. He also noted that though the legislature can change the law, the changes would only affect premiums, money and assets after passage of the law. In other words, the estimated $1.6 billion of current MSF assets, cannot be transferred by the legislature as they are already held in trust. He said, as President/CEO of MSF, he has an independent obligation to hold his fiduciary responsibility, under current law, to preserve and protect the assets of MSF. In addition, he said he believed the Board of Directors has such a duty to act in the best interest of MSF and its policyholders. Due to the emergent nature of the special session in the following week and the likelihood that legislation may be passed that will adversely impact the assets of MSF, he requested that the Board provide a resolution supporting management's taking every action necessary to fill the mandate of protecting Montana State Fund assets held in public trust.

Chair Zanto asked Kevin Braun, MSF's General Counsel, if the Board needed a motion to begin the discussion on President Hubbard's request.

Mr. Braun said the proper way to begin the discussion would be to put a motion on the floor then all dialogue will be included in the request for action.

Ms. Van Riper asked, before the motion was made, for clarifications on two technical questions. She noted the draft language speaks to anything above $1 billion as long as there is money to cover all liabilities and asked how the determination that MSF would have enough reserves to pay all its obligations would be determined. Particularly since there is no way to crunch the numbers and come up with the amount that will be needed to fund all future claims. She noted that the reserve level is a judgement call and that is why the Board convenes and reviews information to assist in determining what is most prudent to have on hand. She said she did not understand how that provision would be effectuated. She said the second technical question was that she did not understand how the language that the Board could not raise rates or reduce dividends to make up for the three percent management fee could be imposed. She said that to have that extra money and replace it would have to come from somewhere.

President Hubbard said MSF management and the Board was not consulted on the drafting of the language at all. He said currently, the MSF Board has approved, as of the most recent loss and loss adjustment expense (LAE) reserve report, approximately $938 million of loss and LAE reserve. Willis Towers Watson, the consulting actuary, presented a range of possible ultimate liabilities from the central estimate of approximately $900 million up to $1 billion. All of which would be a reasonable range in the actuaries' opinion for ultimate liabilities as of that report. To her point that MSF incurs additional accidents every year that it is in business so those liabilities would expect to exceed a billion dollars at some point in time, he said he agreed that the language is problematic in terms of how it would function over the next two years. It could mean a problem with regard to reserves themselves and ultimate liabilities which could impact actual loss reserves.

He said the second question about not being able to raise rates is definitely an impairment of the obligation of the Board of Directors to manage MSF as no more or less than self-supporting which is language still in current law. It also invades the purview and responsibility of the Board and the Commissioner of Securities and Insurance (CSI) to ensure that rates are not inadequate, excessive or unfairly discriminatory, which is also problematic.

Ms. VanRiper thanked Mr. Hubbard for the response and added that she felt there was no real means of determining if that directive were enforced or how it could even be followed.

Mr. Hubbard said he agreed with Ms. VanRiper.

Chair Zanto made a motion that the Board authorize the President/CEO to take all legal means necessary to prevent the transfer or impairment of MSF assets held in trust pursuant to 39-71-2320, MCA and related laws otherwise preventing the transfer or use of said assets for other than the operations and lawful obligations of the State Fund. Mr. Mihelish seconded the motion. Chair Zanto called for discussion.

Chair Zanto began the discussion by noting that it was not lost on any of the Board members that MSF has been a topic of the legislature for years. Lately, with MSF's financial position and given the state of the current budget, they are looking at MSF to help out. He said he fully understands where we are at from the State Fund's position. He said his concern is that the Board will preempt MSF with the legislature by saying MSF will take legal action if this legislation passes. He was concerned this would be an affront to them and he said he felt unsure how the Board could address that issue. He said the outcome of this bill is truly unknown; however, as Mr. Hubbard pointed out, not only does the President, but also the Board, has a fiduciary responsibility to our policyholders. He noted that the Board received an email from Representative Greg Hertz speaking to that specifically. He noted that the Board and management have heard from policyholders and it is a big concern for many, thus it is important to recognize that responsibility; however, he said he was concerned that if the Board and management come out of the gate with legal action before knowing exactly what is going on, MSF will preempt itself.

President Hubbard noted that he encouraged dialogue and concerns; however, said there is specific bill language which currently is the only thing that can determine the best course of action for MSF. He said the bill could easily morph as the session proceeds and become entirely different than what is currently drafted. He said he agreed that the Chair made an important point; no one wants to level any kind of threats; this is just stating and acknowledging the fiduciary obligation under current law to assure that the assets are not transferred. He added that there are probably other solutions and opportunities to engage in productive discussions with the legislative body and the Governor's office to find an alternative that would not require the Board of Directors and management to take further action of any kind. He said those options have yet to be discussed or explored and he encouraged the Board and management to keep an open mind. He said this meeting might be for naught which would be just fine.

Mr. Mihelish added that MSF is not out on an island as there is another significant party involved which is CSI. He said the Commissioner has an obligation to protect policyholders and insurance carriers as well. CSI also has an obligation to see that insurance law is kept right. He said he believed MSF has a partner in CSI to carry this message forward. He said he did not think marching in with bayonets would be helpful and perhaps a softer approach with the legislature would be more effective. He asked if a better approach could be some education with the help of MSF's new regulator.

Mr. Miltenberger asked Bob Biskupiak, Deputy Insurance Commissioner, CSI to speak to the Commissioner's position on this issue, if one had been developed.

Mr. Biskupiak said the mission of the Commissioner, Matt Rosendale, is to protect consumers through an advocacy role and primarily through statutory obligations on how to regulate insurance companies to protect the consumers. He said CSI's position is that they will not support any effort of the legislature or the Governor's office to take any assets, surplus or operational funds. He said the assets of the MSF are the property of MSF and more importantly the property of the policyholders. He reiterated that CSI's role is protecting consumers; therefore, they would oppose any efforts to take funds from the policyholders of Montana.

Chair Zanto called for more questions of Mr. Biskupiak. There were none, though he warned Mr. Biskupiak there could be more.

Mr. Miltenberger said he seconded Mr. Mihelish's comments and said that by involving the regulator, the discussion can moved onto a different plain because it highlights the role of protecting the consumers. Through that aspect it can protect the consumer's money and policyholder equity as well as the consumer's protection by virtue of having that policyholder equity, both of which would be impaired by this potential legislation. He said he fully supports partnering with CSI in this endeavor.

President Hubbard added that he agreed the regulator can take a position that acknowledges the bill as drafted is infirm. Standing up and registering that in the legislative arena is appropriate; however, the Commissioner has no authority to override the legislature's will to pass legislation nor the Governor's will to sign it. He said all that can be done throughout a special session is to testify for or against a particular bill and though he welcomes the Commissioner's voice in the process on this bill, the bill may still pass which will put MSF Board and management in the same place. He said MSF is sometimes challenged to take some very difficult positions and this is one of them. He added that this is the second most difficult position he has ever asked the Board to adopt, the first was with regard to an internal operation that affected MSF employees. He said this decision will affect MSF current customers; however, it will also affect customers that insure with MSF in the future. He said if the Board does not take the action needed to protect the assets now, that door to MSF's assets will be opened and it will never close. Ultimately, it is incumbent upon everyone to understand who the assets of MSF do belong to. He noted that there is some very real confusion regarding that question and there are varying points of opinion on this issue which continues to cloud the definitive statement on who the assets belong to. If that decision were made, one way or the other, it would definitely be helpful. For now, the Board has the right to rely upon its legal counsel, its management and staff's expertise in terms of defining the facts. MSF staff believes that this money belongs to policyholders and is not public money and he said he felt the Board had the right to rely upon that. He said he would prefer to not have to address this issue in any kind of threatening manner. He said that is the least of what he wants to do; however, he said he does need to have the Board's support and authority to do whatever is necessary to preserve those assets.

Chair Zanto said he thought it was important for MSF to work with the legislature to come up with a solution that would work. He said his intention is to work with management and the legislature throughout this special session to develop a solution that could possibly work; however, as written now, this is not the right solution.

Mr. Mihelish asked about fall back or compromise positions if this process gets that far. He added that the Governor is looking for some money and that is why he is going to the biggest pot first to assist in paying for the overages from the fires. He said we are all in this together, we are all Montanans, we are all part of this economy, and he asked if there was a way MSF could approach this with the tack that we can help you find other ways find the money besides this approach. He asked if approaches like premium taxes and/or assuming the Old Fund liability options were off the table.

President Hubbard said he believed there are many solutions that could be approached. He said he would not countenance any administration going into any tax payer's bank account and sweeping it. He said the most common way to approach general revenue issues is through the taxation authority in the general powers of state government; however, there is not currently a political will to do that. That would provide that all taxpayers would contribute to the solution of government. He noted that the fires are not State Fund fires, they were not caused by MSF policyholders and it is not their responsibility to solve. He said he understands that the legislature does have the authority and ability to impose premium taxes on MSF and clarified that MSF does not currently pay premium tax due to MSF being the guaranteed market and being required to insure all comers. MSF is also a non-profit organization so any cost reductions that MSF experiences can be passed on to MSF rate payers. The legislature could change that going forward and there is a draft in this special session to tax health care insurers that are currently not paying premium taxes. He said short of opening the checkbook and writing checks, he did not see a solution that would address the immediate need; however, there are long-term solutions, even for Old Fund liabilities; MSF would just need a dance partner.

Ms. VanRiper asked what the solutions for the Old Fund liabilities would be that could address the shortfall?

Mr. Hubbard said there is no immediate solution that could address this shortfall; however, there is a $32 million actuarial estimate which is paid at the rate of approximately $8 million per year directly from the State General Fund. Those funds are paid to MSF to administer the Old Fund liabilities for the injured workers and cover costs of doing so; any strategy or plan that would assist the state going forward could remove those liabilities from the general fund liabilities; however, that would not be an immediate solution either, it would be long term.

Ms. VanRiper commented that based on her review of the situation to date, she felt that Board must give management the authority to address the immediate application because she believed this legislation is probably unconstitutional due to current existing statute language that requires MSF to hold the monies paid in by employers in trust. She added that there is also a provision in the statute that requires MSF to enter into a contract with employers regarding the use of the premiums paid to MSF and if this bill passes as written it would create a retroactive impairment of the contract which she said she believed was unconstitutional. She said she supported granting MSF management the authority to take action as necessary against this unconstitutional action. She said she believed this was "horrendous policy" because it proposes to take from employers that pay into MSF and give the money to others. She added that passage of the bill may not be unconstitutional going forward if the changes to the statute were passed; however, the Board's position should be that this is very bad public policy. She said if the bill should pass, the statute that outlines the contract MSF has with policyholders to use the funds only for the intended purpose will have to be updated notifying policyholders that going forward three percent of the reserves over $1 billion dollars will be charged on the investment income and transferred to the general fund. She said she would be the first to say "I wish we could find some money, because I don't like the cuts that are looming and they haven't even taken place."

Chair Zanto thanked Ms. VanRiper and called for additional questions or comments from the Board members.

Ms. Moss said from her perspective, whatever path the Board takes will be a dangerous position. She said it would be more beneficial to think of a way to go in with a legislative language compromise of some sort to assist in addressing this shortfall. She said that due to strong investment returns, the Board was able to declare an historically high dividend and she agreed with Mr. Mihelish that if MSF approaches this proposed legislation with "bayonets" attached, she is fearful that MSF could face even more consequences in the future. She wondered how the Board could temper the direction given to management that would still give them the power to be effective, be a force and represent the Board and MSF's assets; however, also be a proactive partner with the Governor's office and with the legislature. She said she thought that would be a good beginning particularly because special legislatives session are very unpredictable. She said she wanted to share that she is comfortable going forward with a very forceful position but also knowing that there is a different path. She said the Board does have a constitutional obligation to the policyholders as well as a statute.

President Hubbard thanked Ms. Moss for the excellent observations and comments. He clarified that there was no "bayonet slinging" going on from the Board or management. He said the position he is recommending is really a "shield" to ensure the assets of MSF are preserved and protected so there is no irreparable harm caused. He said nothing precludes an engaging proactive discussion if people will invite MSF to have that dialogue. He said management takes the spirit of intent of being solution oriented.

Ms. Moss added that the Board has to address monetary levels based on actuarial soundness and the proposed three percent seemed rather arbitrary and not very defensible.

Chair Zanto informed the Board that Representative Greg Hertz was watching the live streaming and wanted to comment on the proceedings.

Representative Hertz said he wanted to thank the Board for meeting. He pointed out that the legislature will be meeting in a special session and clarified that all that can be discussed is what is in the call of the special session. Right now the only thing in front of legislators is basically this proposal to tax MSF's reserve in excess of $1 billion. He said he believed that is what the Board would need to focus on in this meeting. He said it is great to look at other solutions and options but at this point in time, we cannot discuss those other solutions and options at the legislature. He said the Economic Affairs Interim Committee (EAIC) met yesterday and they were discussing some solutions going forward too; however, at this point, he really encouraged the board to make a strong backing and support President Hubbard and basically send the message that this particular legislation is illegal and unconstitutional and it does not serve the policyholders of MSF, which he is one of.

Mr. Miltenberger asked Rep. Hertz for clarification on his point about discussion at the special session being limited to the scope of the call because he had read of other potential options that may be proposed.

President Hubbard repeated the question for Rep. Hertz and asked if the legislature was limited to the scope of the call and when and if it could be changed.

Rep. Hertz said apparently, the legislature is bound by the scope of the call. He said that morning the Republicans garnered 76 signatures to expand that scope of the call and one of those expansion items was premium tax on Pacific Source and the Montana Co-op to equate them with Blue Cross Blue Shield on health insurance. There is no other expansion call with regard to MSF. The only way the legislature could expand it when they meet is to have someone make a motion on the House Floor to expand the session even further and to get those votes, they would need 76 of the 100 legislators in favor of such a motion.

Mr. Mihelish said he agreed with all of the points of law that President Hubbard shared and said he thought LC008 is just bad legislation, is wrong, is unconstitutional and all of the above; however, he asked President Hubbard if the bill somehow passes, what his next move would be?

President Hubbard said he had to be direct and honest with the Board and his next move would be to file for a temporary restraining order on the legislation to prevent the assets from being transferred. That would require engaging counsel to file an action. He said he felt there was no other alternative.

Mr. Mihelish said that position is what is causing himself and Ms. Moss's concern. He said they do not favor going to war with the Governor on this; however, maybe there is no other solution. Sometimes you have to take a stand and he said he would have to decide that himself.

President Hubbard said he does not like to use terms like "war" when speaking about civil dialogue and politics. This is about policy issues and the intent is not to engage in conflict; unfortunately, MSF has legal obligations as an independent entity holding these monies in trust which requires doing what is necessary. All within the civil justice and the emphasis is on civil; however, if the bill passed and the Governor signed the bill, he said hoped that MSF could engage in discussions with the Governor to freeze any action on behalf of BOI to make a transfer so that there could be dialogue and discussion to avoid anything subsequent. He said as human beings, we all have the power to behave civilly or not and as long as someone wants to work with us to try and find an acceptable, legal and constitutional resolution, we would always be open to that.

Chair Zanto asked Mr. Braun if the Board could use this venue today to notify the public that there would be another special Board meeting during this process due to the changes that could occur to the proposed bill as it moves forward. He said he believed the Board would still have the responsibility to address the ultimate outcome, notwithstanding giving management the authority at this meeting to move forward.

Mr. Braun said the use of this meeting to notice up another public meeting would not be very effective due to the fact that the meeting might or might not occur. If the meeting is needed, he recommended giving specific ample notice which would allow the public to participate.

Ms. VanRiper asked for clarification on what basis the proposed three percent fee would be unconstitutional going forward, not retrospectively.

Mr. Braun said the basis for this being unconstitutional is that current MSF assets are protected by virtue of the MSF contract. He said anything going forward would only attach to new monies if the law changed and the accounts would have to be segregated.

Ms. VanRiper said she believed the Board should give President Hubbard and management the authority to make the argument that application of this retroactively or immediately is unconstitutional and if it does go into law, MSF has no other choice but to file a lawsuit about it. She said if this goes into law, state government has an obligation to take the money without MSF filing an action.

President Hubbard confirmed that she was correct on that assertion.

Ms. VanRiper said the Board should take the position that this is really bad policy and if the legislature wants to go forward with this bill, MSF will need to make it very clear in the contract that three percent is going to be taken from their money and given to the General Fund.

Ms. Van Riper proposed an amendment that said the State Fund leadership be given authority to take the position and, if necessary, ultimately file a lawsuit on the grounds that applying three percent as this legislation is proposing to retroactive money is unconstitutional and that going forward, the Fund's position is that it is very bad public policy and if the legislature chooses to effectuate the three percent going forward, it must also write into the legislation that notification must be included in the policies that go to the employers.

President Hubbard said he believed he understood the substance of her motion; however he encouraged not necessarily codifying prospective contract language in this particular motion. He said he thought that could be reserved for future presentations to the Board after it did actually occur. He asked for clarification that he understood correctly that she was suggesting that MSF's legislative efforts point out the public policy infirmities with this action going forward.

Ms. Van Riper clarified that she believed there is a current statute that requires MSF to include language in the policy that none of the premium or investment income would go anywhere outside of MSF and she believed that would also need to be addressed immediately after this legislation passed.

President Hubbard said the language does remain in the statute and would have to be removed by law as well. He noted that irrespective of that particular statutory provision, MSF's policy of insurance, which is the contract of insurance, since the early 90s has contained language that expressly incorporates all of the provisions of the workers' compensation act, including the trust language as it exists today.

Mr. Mihelish asked that the motion be read again. He said he thought the original motion was broad enough to include Ms. VanRiper's thought but wanted to be sure.

President Hubbard said he too thought the original motion was broad enough to cover the items included in Ms. VanRiper's amendment. He read the proposed motion by Chair Zanto: "I move the Board authorize the President/CEO to take all legal means necessary to prevent the transfer or impairment of MSF assets held in trust pursuant to 39-71-2320, MCA and related laws otherwise preventing the transfer or use of said assets for other than the operations and lawful obligations of the state fund." He said the amendment would include a provision that MSF's management advise the legislature that on a prospective basis, it would be poor public policy to impose a three percent management rate on future assets that are acquired by MSF. And ultimately, MSF would make whatever policy language contract revisions were necessary to effectuate that law change.

Mr. Mihelish seconded the amendment.

Mr. Miltenberger asked if legislation were passed to impose the standard 2.75 percent premium tax on MSF, as is currently accessed on other carriers, would that result in approximately $8 million per year from MSF?

President Hubbard said it is a function of net premium and based on current premium levels, it would be approximately $3-4 million per year in premium tax.

Mr. Miltenberger asked Mr. Braun if there is anything he could think of that would prohibit MSF from making an advanced premium tax payment to the state. He asked if the amount is $4 million and the "ask" is $30 million over two years, which would be four times the amount of premium tax per year. He clarified that he was not asking the MSF Board to support the legislature imposing a premium tax on MSF, because that actually means the policyholder pays the premium tax and he did not want to offer up solutions like that. He said he was curious to see, as the legislature looks at alternatives, if there is anything that would prohibit us from making an advanced premium tax payment of roughly 15 million, two years in a row which would then create a credit for MSF until the tax requirement amount caught up with the pre-payment?

Mr. Braun said if MSF was to direct a payment to the State of Montana out of existing assets to pay premium tax in advance, it might run contrary to the prohibition against expending of current assets for any other purposes than those that are prescribed in law which are inclusive of the payment of claims and the administrative expenses of MSF. He said he would need to do the legal analysis to determine if that could be done legally.

Mr. Miltenberger said from his perspective, he thinks it is very justifiable that MSF does not pay a premium tax. MSF is the only workers' compensation insurer in the state that must take all comers. Other insurance carriers regularly turn down employers for coverage. He said he is an owner of a business that has been turned down by other companies, not for claim reasons but simply because they do not like the line of business. He said it is important that MSF remain the guaranteed market; however, the precedence of having the State reach in to our policyholder reserves and "grab" $30 million under the auspices of a management fee, which is clearly a taking of the assets that belong to the policyholders. He said his concern is that this will just be the first one, the $30 million will be followed by the next bad fire season and then there will be a deficit for the schools and it is all about the kids and before you know it, MSF will be the New Old Fund in ten years because the state has grabbed the money because it appears so available to someone who is not studying the matter. He said he believed we just do not want that precedent though he understands where others are seeing the value in imposing a premium tax. He said he was trying to find a way that allows MSF to approach the legislature with a solution that does not contain a motion that threatens a lawsuit if the bill is passed. He said he fears that taking that strong position will set MSF up badly for the next regular session of the legislature and this would make political enemies of people that MSF needs for their political capital and cooperation. He said going into 2019, what is happening today and next week ought to be exhibit A, held up by MSF before the legislature and say this is why we need to take the piggy bank outside of your reach. This is why MSF needs to become some sort of a different organization that is not simply a creature of the State of Montana. If this legislation is going to be passed, MSF and the Board need to figure out some sort of way to develop a solution to their funding requirements and yet avoid this “taking” of assets. He said his concern is that by going there with a threat of a lawsuit, it could appear highhanded.

Chair Zanto called for a vote on Ms. VanRiper’s amendment. The amendment passed unanimously. The Chair called for public comments on the main motion.

Mr. Barry “Spook” Stang, Executive Vice President of the Motor Carriers of Montana (MCM), he said he is also a former state legislator and he served in the late 80s up until the 2000s. He said he was there when most of the discussion regarding the Old Fund and New Fund and now to proceed on that occurred so he does understand the background, history and politics of the situation MSF is now in. He said MSF management should have the ability to do whatever is necessary to protect the premium dollars of his members. He cautioned the Board that the approach to threaten the legislature and the Governor is a risky one and it is best not to rub that in their faces. He recommended management approaching the Governor’s office and explaining the positon the Board is taking on necessary legal action if this legislation proposal succeeds. He said the rate payers and the people who pay the premiums, feel this is not the State’s money, they feel it is their money. They pay in the premiums to buy insurance or make necessary investments that reduce the cost of the insurance for his members. It is also not the legislature’s money. He said he agreed with President Hubbard that this is not MSF’s problem to balance this budget. He said it is the State’s problem, his problem and every taxpayer in Montana’s problem and a better solution would be to return to the payroll tax for two years on both employers and employees and raise the necessary monies and move on. He said he and his members very much want MSF and the Board to do everything they can to assure that their premiums dollars and the investments from the premium dollars go to insure our employees and reduce our premiums.

Mr. Mohr asked that the motion be read again.

President Hubbard said he would state it as accurately as he could; however, there is a record of it and the exact wordage would be provided to Board members as quickly as possible. He said the motion made by Chair Zanto and amended stated, “I move the board authorize the President/CEO to take all legal means necessary to prevent the transfer or impairment of MSF assets held in trust pursuant to 39-71-2320, MCA and related laws otherwise preventing the transfer or use of said assets for other than the operations and lawful obligations of the State Fund. In addition the amendment, approved by the Board includes that MSF recognizes and will work with the legislature on a prospective basis to try to find a solution recognizing that if a premium tax or this bill goes forward, it is prospective in nature and that MSF should ensure that its policyholders understand the implications if current law changes.

Board member Lynda Moss left the meeting.

Chair Zanto thanked Mr. Stang for his comments. He added that he thought it was important to note that the Board and MSF realized that taking the hard line that if the bill passes there would be a lawsuit is not a good decision; however, the Board supports President Hubbard and management and will do everything they can to protect policyholder equity. He said the Board will work with the legislature through this process to develop a solution that will work.

Ms. VanRiper clarified that the amendment also contained language that the Board should take the position that the prospective three percent management fee was bad public policy and not just illegal.

Chair Zanto called for public comment on the motion. There was none. He called for further discussion from the Board on the motion and there was none. Chair Zanto called for the vote on the motion as represented and the motion passed unanimously.

Chair Zanto told President Hubbard that based on conversations they had had, this discussion, was by no means casting a doubt or a trust issue with President Hubbard and what he presented to the Board. He said President Hubbard has the Boards' trust. This was a constructive discussion to ensure that the Board did not "put a hole in the ship before they needed to". He said President Hubbard's ability to bring this discussion to the Board and help the Board understand the legal side of things is helpful and he thanked President Hubbard for that.

Chair Zanto told the Board that Rep. Hertz sent an email asking that Board members be available and appear before legislators during committee meetings to support MSF and to be ready to answer questions. He said understanding that the Board members are not all able to attend this special session, he asked the Board how they wanted to address that? He said, as the Chair, he recognized that it was his responsibility to be there and he was prepared to do so. He asked if Board members had any comments or discussion regarding that request.

Mr. Miltenberger volunteered to attend and testify on behalf of the Board as his time would allow.

Chair Zanto called for comments from other Board members.

Mr. Mohr said he was unable to attend the special session and that he fully supports Chair Zanto and Mr. Miltenberger representing the Board at the special session of the legislature. He said he believed they had a very rational point of view and both understand that the Board believes that this is an incorrect taking of our funds.

Mr. Miltenberger agreed with Mr. Mohr.

Ms. VanRiper said she would travel to the special session if she is able; however, her time is pretty limited and she was not sure she would be able to. She said if Board members wanted her to be there, she would make that happen.

Mr. Braun noted that if Board members would be attending hearings and taking positions, either in favor of or in opposition to legislation, MSF would have to get them registered as lobbyists. He said if the Board members attended as citizens stating clearly that they are there on their own behalf, the lobbyist registration would not be necessary.

Chair Zanto said if Board members can and plan to attend they should contact Mr. Braun prior to attending.

Mr. Mihelish asked if Ethan Heverly, Government and Community Relations Director, MSF, would be attending the session with Mr. Braun. When assured he would be, Mr. Mihelish said he believed MSF had plenty of representation.

III. Old Business/New Business

Chair Zanto called for old or new business. There was none.

IV. Public Comment

Chair Zanto called for public comment.

Chair Zanto thanked Mr. Biskupiak for attending this Board meeting.

Mr. Biskupiak said he wanted to expand on his earlier comments about the responsibility of CSI. He said they protect consumers and that can come in different forms such as protecting against increased rates that are unfair or unjust. He said their goal is to have a thriving marketplace so that consumers have options. He said they also protect consumers by regulating companies, and the financial viability of carriers is critically important to CSI. In Title 33 and Title 39, there is specific language that speaks about risk based capital levels, and though those are benchmarks, in code it outlines that it is desirable to have surplus and excess of these standards. That is another way CSI protects consumers and promoting a thriving marketplace is also a means they use to do that.

Chair Zanto called for further public comment. Seeing none, he called for further comment from the Board. There was none.

The meeting was adjourned at 2:25 p.m. The next regularly scheduled Board meeting will be held on Friday, December 15, 2017 at Montana State Fund, 855 Front Street, Helena, Montana.

Respectfully submitted,

Verna Boucher
Special Assistant to the President/CEO