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MONTANA STATE FUND
OPERATIONAL EXCELLENCE
February 4, 2022

The Montana State Fund (MSF) Operational Excellence Committee meeting was held February 4, 2022 in the Skyview Room of the Doubletree Hotel, Billings, Montana and via Zoom.

Committee Members Attending
Dexter Thiel, Sidney
Michael Marsh, Billings
Jan VanRiper, Missoula – via Zoom

Board Members Attending
John Maxness – via Zoom
Karen Fagg, Billings
Richard Miltenberger – via Zoom

MSF Staff Attending
Laurence Hubbard, President/CEO
Kevin Braun, General Counsel
Julie Jenkinson, Insurance Operations VP
Mark Burzynski, Corporate Support VP
Will Anderson, Interim Operations VP
Rick Duane, Human Resources VP
Verna Boucher, Spec Asst to Pres/CEO
Rene Martello, Controller
Darcie Dunlap, Internal Actuary
Al Parisian, Chief Information Officer
Matt Mandell, Interim Operations Support VP

Others Attending
Lauren Marsh, Midland Claims
Janet Marten, MRA
Casey Thiel, Thiel Bros. Roofing, Inc.
Cory Simons, Cory Simons Construction
Todd Wilson, MacArthur Co.
Sherry Daniels
Maureen Strong, Cory Simons Construction
K.C. Barnhardt, Quality Roofing

I. Meeting Preliminaries

A. Call to Order

Chair Thiel called the meeting to order at 9:02 pm. He notified the attendees that the meeting was being streamed and public input would also be welcomed. He clarified that the three Committee Members were himself, Jan VanRiper (joining via Zoom) and Michael Marsh. The Board Chair, Richard Miltenberger and Board Members Karen Fagg and John Maxness were also in attendance.

B. Approval of December 9, 2021 Minutes.

Chair Thiel called for a motion to adopt the December 9, 2021 minutes of the Operational Excellence Committee meeting.

Mr. Marsh made a motion to adopt the December 9, 2021 minutes. Ms. VanRiper seconded the motion. Chair Thiel called for the vote and the motion passed unanimously.

II. Small Business Discussion – Jan VanRiper

A. *Committee Introductions*

Chair Thiel invited Ms. VanRiper to share her concerns and lead the small business discussion. He noted that he viewed this as a fact gathering item and did not expect any conclusions at this meeting.

Ms. VanRiper said she has been interested for a while about the rating and dividend and other ways in which MSF makes a difference in what is paid by small employer groups versus large employer groups. She said the small groups have to pay more in premium and usually get less in dividends percentage wise and she is worried about the cumulative effect of that. She said she would like to get a sense of the whole picture of the difference between what larger groups and smaller groups are paying premium or receiving in terms of dividends. She added that she would like to get an understanding of the rational for those discrepancies. She said she wanted to know the where and why of this and clarified that she was not suggesting there was anything wrong with it, she just wanted to understand it.

President Hubbard clarified that dividends and rate making are two different, yet related, items. Ratemaking is done for businesses that MSF insures and rates are promulgated by the Board of Directors every spring in March and the consulting and internal actuary will provide a thorough review of the process at the next Board meeting. The rates set at that meeting are submitted to the Commissioner of Securities and Insurance (CSI) for approval by the actuary CSI hires to review the filed rates of every insurance carrier in Montana. He said the rates are reviewed to assure compliance with the law to not be excessive, inadequate or unfairly discriminatory. He said regardless of size they review the rates by classification, industry, size of the policyholder and whether or not they have experience rating. He noted that in the rate making meeting, the Board will be given information on MSF's five rating tiers. He said the workers' compensation system acknowledges that there are variances between individual policyholders which is exemplified by experience rating which is a form of rating to set the premium for any given policyholder at the appropriate level so it is fair and equitable. He added that the system also recognizes that it is not fair to subsidize one class of business or policyholder at the expense of another. He said when the rates are promulgated, some policyholders are more likely to have accidents than others based on their habits of work, management practices and ability to avoid high risk exposures. The rate tier model is based on the frequency of accidents that customers have based on their size and is designed to be predictive of the expected losses for that size of customer. More information on this will be presented at the March Board meeting and he offered that if Ms. VanRiper would prefer, MSF's Internal Actuary, Darcie Dunlap and Mark Burzynski, Chief Financial Officer, could provide some information that may explain it more clearly. He said ultimately, there are actuarial methodologies and principles that must be followed to derive the rates to meet the legal requirements.

President Hubbard said the dividend side is similar; however, not the same. Dividends are a retrospective look at the experience of a company and based on that, the Board of Directors can determine that MSF is adequately capitalized for future claims payments and then declare a dividend. He added that in declaring a dividend, the Board must use actuaries to project or predict what the likely losses will be and set aside adequate reserves and capital above and beyond the reserves to guard against adverse court decisions, unanticipated medical inflation and other contingencies. The dividend program is designed to assure that MSF does not keep too much of the policyholder's capital or premium that was paid and resulted in investment income. He said if the economy or markets are down, invested income decreases and the MSF dividends would not be declarable based on the need for adequate reserves.

President Hubbard said dividends and the policyholders that receive them are also based on the actuarial principles which analyze the amount of premium paid and expected injures. He said for a policyholder that pays premium of $1,000 the likelihood that they will have no claims in ten years is very high, which sets their loss ratio at almost zero or very low. He said for a large employer with 100 employees accidents are expected to likely happen and to get a zero loss ratio at that level means the employer is clearly doing something well. The actuaries project that the larger customer with a low or zero loss ratio has better overall health and profitability than a small one that might have an accident that would wipe out the premium income that MSF has collected over the years. That is taken into account by the actuaries when they review and propose the rates.

Ms. VanRiper thanked President Hubbard and said she knew this was a big topic and noted that she was looking forward to the rate setting meeting. She said she has been through many, many rate setting and dividend meetings and understands that process. She said her interest is in reviewing the cumulative picture of all of the ways that small employers pay a higher rate or do not receive an advantage or get less in dividends and then the rational for it.

President Hubbard said he did not agree with the premise that small employers pay a higher rate. He said a roofer that has three employees pays the same rate as one that has 50 employees; however, what they do not get is the same percentage of return in dividend as the large employer. He said he agreed more conversation is necessary.

Ms. VanRiper clarified that she was not suggesting that they are unfairly treated, she just wants to understand the cumulative effect of the ways they are paying differently and the rational for that.

Chair Thiel asked what form Ms. VanRiper would like to receive the information in.

President Hubbard said staff has been developing a response to the information requested and is trying to illustrate graphically the premium size and premium tier and layering that to show the impact over time of manual rates on an account and then adding experience rating, schedule rating and volume discount to illustrate how the premium changes with those variations.

Ms. VanRiper mentioned the construction industry reduction credit as one of the items to gather cumulatively to see what the effect is. She said in the health care industry there are many different approaches to rating, such as community rating or individualized rating. In the community rating model, you do not take into consideration individual ages or health conditions – everyone pays the same and pools the risk. She said there are now regulations and laws that establish the level at which the carrier can set individualized ratings. She said she believes MSF's approach is more similar to the individual rating approach although it could be a combination. She said she is interested in the rational between treating them differently once it is figured out how all of these things work. She clarified this is not by way of criticism, it is by way of understanding.

President Hubbard said that does help. He said workers' compensation insurance is different than health insurance because the benefits that are provided are determined by the legislature, not free market benefit decisions. MSF cannot choose whether or not to pay a benefit at a maximum and every workers compensation insurance company must pay the same medical benefits level. He said he believes workers' compensation benefits are highly regulated compared to health care. He added that MSF does have community rating such as the group safety programs or the Motor Carriers Association group program. In the groups the experience is pooled and if results are better than the actuary expects, they get a return different from the dividend that may be declared that year. The individualized workers' compensation rates are set based on the industry and the employer's own experience, which is predictable based on the size of the employer. He said the rules workers' compensation insurance companies play by are all determined by the National Council on Compensation Insurance (NCCI).

Ms. VanRiper stressed that her interest lies in the differences of treatment between the size of accounts.

President Hubbard said it boils down to the law of large numbers which means the more data available in a particular pool, the more predictable the experience will be going forward. He added that credibility of the data also matters and insurers need a means to test the predictive creditability of random data – the more available data, the more confidence there can be that the rates are set correctly. Less data means more room for judgmental error.

Ms. VanRiper said in community rating everyone pays the same amount and they are insured for whatever the line is. The risk is spread by everyone paying in a certain amount to cover the risk. With all of the different mechanisms, MSF moves away from that concept. She said she wants to understand why it is so necessary to do it that way in workers' compensation. She asked when all of the programs are put together, how much of that effect is hitting the small employers? She said she understands the general concepts; however, she wants to understand why it is rational and justified to do it this way in workers' compensation. She said there are a lot of small employers out there. She said she is not looking at changing the rating system, she just wants to be clear about how we are doing it and why.

Mr. Marsh suggested that it would be valuable to both him and Ms. VanRiper if staff prepared a simplified presentation that covers how much premium was collected and how much payment of claims were over a specified period of time for the 85 percent of Montana businesses that have fewer than 50 employees. He said this could illustrate the true impact over the course of time to offer the correct determination that it was fair or unfair.

President Hubbard noted that was expressed in terms of a loss ratio, which is a benchmark on whether or not a company is losing money or making money. He said staff will work to develop the requested presentation. He said 77 percent of MSF's accounts are small and there are methodologies that could be utilized to pull the segment requested.

Mr. Marsh mentioned that he had questioned the dividend table at a previous meeting and asked for further discussion. He said the dividend is retrospective, not prospective, and is not related to safety or claims, it is related to investment income. He asked why the same percent could not be applied to every policyholder based on the investment income from the year before?

President Hubbard said he would argue against a flat rate for everybody because the incentive to maintain workplace safety is reinforced by the dividend program. He said it has been the policy of previous Boards of Directors to keep a safety message out there with MSF's customers to encourage reduced losses. He said dividends work very effectively to reinforce the safety message. He said if it is the same percent for everybody, a $100,000 policy will get more money on three percent. He added that the Board could decide to take that approach if they chose.

Mr. Marsh said his community experience is that customers are not getting the reinforced safety message regarding dividends and perhaps a better job needs to be done to get that message out there. He said his question about the dividend process was whether it is too complicated and his assertion is that if it is too complicated then it needs to be simplified.

Ms. VanRiper said the dividend discussion goes to the heart of her second question, which is what is the rational for all these differences?

President Hubbard said there could be one rate for every single customer it insures and one rate for every industry, unfortunately someone with an office will pay a higher rate than they currently pay today and roofers will pay less than they do today. He said not all roofing companies exercise safety practices and those that do not should not be rewarded for ignoring that component. He said that is the challenge for the entire industry when setting rates.

President Hubbard recommended a white paper with some exhibits and follow up discussion with Ms. VanRiper and the Committee to go over the questions she has asked.

Mr. Marsh said his question about one rating for dividends and Ms. VanRiper's questions about all the rate variance approaches begs whether it has ever been considered to have experience rating for all policies, leaving aside how expensive it would be or difficult it would be to administer.

President Hubbard said that was not within MSF's control, it is an NCCI rule filed in Montana with CSI and that threshold is than an account can develop an experience rating factor at $2,500 in premium or more and that is not voluntary. He said before MSF was regulated in 2016, MSF had a $5,000 threshold and moved it down before regulation. All carriers must utilize that threshold and MSF does not have the flexibility to go below that.

Mr. Marsh said were MSF to lobby them and change that, would there be any community benefit by moving to experience rating which puts the safety factor right in the face of people who think different regardless of the policy premium size?

President Hubbard said that approach would unfairly apply more of the burden elsewhere because the program is wired into the system and whatever the net difference is between average and experienced rating would be built back into loss costs.

Mr. Marsh said he understood and his real concern is that the customers do not necessarily understand how their safety record can help their premium to drop in the future and asked if there is a better way for MSF to get the safety message out there more strongly.

After the Committee returned from a brief break, Chair Theil called for any public comment; there was none.

III. Committee Chair's Items of Discussion

A. *Premium Audit Discussion and*

B. *Communication and Education of MSF Policyholders*

Chair Thiel noted that the Committee invited various attendees to address the Committee and asked them to speak from the podium for recording clarity.

The first speaker was Casey Barnhart owner of Quality Roofing in Bozeman, Montana and also representing the Montana Roofing Contractors Association. He said the association was began in 1989 by 13 contractors that were looking to for ways to improve the construction industry in Montana at that time. He said the association members attended a meeting in 1990 to address two key issues; splitting a code to keep workers employed in the shop during bad weather days, and to address premium levels for roofers who work on flat roof versus pitched. At that time the option to use class code 8227 was offered to address the shop work versus roof work. That worked effectively for 20 years; however, five or six years ago, during an audit he was informed that code could no longer be used. That code could only be used if they were in the shop all day and he added that is highly unfair. He reported that finding to Chair Thiel who reported that he was told the same thing during his audit this year. He said the most disappointing part of it is they were never informed that they could no longer use that class code, that information just showed up at the audit and they felt like they were fined. He said he would like to know why they cannot divide the code as it says it is divisible and perhaps there needs to be a better explanation on what is divisible and what it not. He said it is a burden when that much has to be paid and it is less incentive to bring those employees back into the shop and have them work when you know it can be done cheaper elsewhere.

He said his second point was with regard to the Department of Labor and Industry (DOLI). He said he knew this was not workers' compensation, it is DOLI; however, he feels it is all interrelated. He said the growing number of independent contractors in Montana is a concern and he sees it as a huge loss to MSF as they increase. He said he is not opposed to individuals going out on their own as long as he is working on his own; however, he said in the real world there are a lot of independent contractors that have employees that are then also listed as independents. They are skating that fine line between being a boss and defining an independent contractor. He said he was not sure where to go with this. The association has spoken to DOLI and it seems that everybody throws up their hands.

Mr. Barnhardt provided some documentation on an unscientific survey he had completed regarding independent contractors in and outside, yet working in Montana. He asked if the State only audits companies with employees and ones that are registered without employees, do they get audited in any way?

President Hubbard responded that MSF is only one insurer in Montana, there are other workers' compensation insurers. He said the regulatory enforcement is not done by MSF, that is done by DOLI. MSF does do payroll audits of its customers. He said if someone is an independent contractor, they will likely not have a policy with MSF as they are not buying a workers' compensation insurance policy. He said DOLI is responsible for assuring that all the independent contractors are working according to the rules as they are the ones who grant the independent contract exemptions through an established process. He said he agreed with Mr. Barnhardt that this is one of the most complicated issues in workers' compensation and asked General Counsel, Kevin Braun to weigh in on this issue.

Mr. Braun explained that the independent contractor program has clearly evolved. The certification was originally based on the AB test rather than an independent business. Eventually the process was established to require a more intensive review and required supporting documentation and tax returns. That has been the program since 2005 and though it has worked fairly well, there are abuses. DOLI simply does not have field staff to investigate every one of the construction jobs to assure the independent contractors are properly certified. He added that there are penalties in the statute and timely reporting of those abusive situations to DOLI does assist in getting those grievances known; however, DOLI does not have the manpower to effectively enforce it. He said to address the abuses, DOLI must do a good job in issuing the certificates and the community has to police itself in timely reporting of the abuses they observe.

President Hubbard then offered a response to the audit surprisesd that Mr. Barnhardt expressed concern over. He said it concerns him that customers feel there is not adequate communication regarding possible audit issues.

Ms. Jenkinson noted that Chad Nason, MSF Premium auditor had reviewed Mr. Barnhardt's audit and was prepared to address his questions at a high level.

Chair Thiel asked Mr. Barnhardt if he had received any further communication regarding the class code change.

Mr. Barnhardt said he was told the code was not divisible and that it must be all day in the shop or no time in the shop.

Mr. Marsh asked Mr. Nason to also address whether there is an audit appeal process as well.

Mr. Nason introduced himself and noted he has been an auditor at MSF for five years. He shared that Code 8227 for the permanent yard is discussed quite regularly on audits with construction operations due to the very point that Mr. Barnhardt was expressing. He said there are rules and guidelines that are set by NCCI and those are used during the audit process. He said there was a change in the coding for 8227 that predates his experience at MSF that specifically addressed the divisibility for this classification code which is for all construction operations, not just roofing.

He said the wording says that if working on a project for any part of a day and returning to the shop, that time is not divisible. Code 8227 for the current year is only applicable for an entire day/shift in the yard. Any type of divisibility in that day cannot be applied using that code.

President Hubbard asked if Mr. Nason knew anything about the rational for why that rule changed?

Mr. Nason said he did not know as the change predated his experience at MSF. He added that he could not speak to the fairness of the lack of application, that was not a component of his job when conducting an audit.

President Hubbard noted that in the past there were many codes that were divisible; however, NCCI was having issues with their data reporting and records were not well kept so they eliminated that for many of the codes.

Ms. Jenkinson added that many codes that have been reversed from divisibility were done due to abuse of the code by less reputable employers.

Mr. Barnhardt said he understood that but this also allows an opportunity to cheat more by claiming no time on the roof.

Chair Thiel asked to move on to the next commentator with public input.

Casey Thiel, principal owner of Thiel Brothers Roofing in Sidney, Montana addressed the Committee next. He continued on the division-of-class-code-topic and noted that elimination of the division of the class codes makes it difficult for their employees. On cold mornings the employees work in the shop and as the day warms they are sent to do service work or new construction. He said the tasks they complete in the shop vary and the employees are not professionals at the tasks; however, it keeps them working. He said Thiel Brothers Roofing did not find out that the class code was not divisible until this year and they would have loved to have it communicated to them at more than just an audit.

He said another issue he had was why it took five months to get a refund from MSF on an issue that involved wages that were reported by their office manager for work that was completed in North Dakota and was not reportable on their payroll for Montana.

He said his last issue was the fairness in premiums. He said they see a lot of corruption in the process and thought it may be a better process that for every position in a company the same rate be applied to all.

Corey, Simmons owner of a small residential roofing company in Billings, addressed the Committee. He said initially, he was a registered independent contractor and later changed that to an employer. He said he struggles due to astronomical rates. He said he would like to figure out how Wyoming and North Dakota can offer so much lower rates than what are offered in Montana. He asked if there were any possible deviations for the construction industry with the NCCI rules and guidelines. He said he believed MSF would like to see everyone covered, as would he, for the safety of his workforce and his customers.

Mr. Marsh addressed his question and noted that costs in those other states are so much lower because those are both monopolistic states and there is no competitive market and the benefits covered in those states are much lower. He added that he is often asked by his customers why the benefits are so different while working in Montana one day and North Dakota the next and he asked President Hubbard to address that question.

Chair Theil asked Mr. Marsh to hold that question for later so they could gather the information from the attendees first.

Mr. Simmons said that made more sense to him and that kind of information is not told to the public or the policyholder and it helped a lot. He also expressed frustration with the class code divisibility and indicated he wished they could get costs down. He asked if MSF had the ability or flexibility to deviate off NCCI's set rates at all?

President Hubbard said there are limits to what MSF can do. He said a carrier with enough credible data could deviate from NCCI but that must be filed with the CSI and the carrier must have evidence that the deviation is defensible.

Mr. Simmons also asked how much investigation MSF does on small policies that claim one level of payroll or a different class code to pay less premium for the time period they are operating, and if there were field auditors that could address that.

Ms. Jenkinson noted that it is not illegal to operate for a short time period and then cancel a policy. She said if that behavior were repeated year after year, MSF would conduct an audit and do a review to determine if the policyholder is not paying the adequate level of premium or operating in an inappropriate manner.

President Hubbard said MSF does have an investigation unit that looks into abuses in premium fraud, claim fraud and provider fraud. If MSF gets a tip that something is amiss that unit investigate and if there is something wrong going on it is referred to the Attorney General's office for prosecution.

Mr. Marsh offered input that it could be helpful for MSF to partner with DOLI to have two dedicated employees to do the field work that two different departments are currently doing independently.

Chair Thiel called on the next attendee.

Sherry Daniels, a retired broker/agent for PayneWest Insurance, addressed the Committee. She said she began specializing in workers' compensation 27 years ago at Liberty Northwest. She said they entered Montana to compete with the State of Montana and there were virtually no other options in Montana coverage. She said when she began brokering workers' compensation in Montana against the State, she too found a lot of the issues that earlier speakers had spoken about such as audit issues, wrong class codes, uninformed employers regarding codes and how rates were promulgated. She said her goal was to make Montana a better place for employers to do business and she said firmly believed that the competition that came to Montana at that time really made a difference. She said during that time period she went from a competitor of MSF to having them be one of her carriers of choice over the years because they made so many good advances with what they were doing.

She said for small employers, the 77 percent under $5,000 in premium, she represented over ten active workers' compensation carriers and there are not a lot of carriers that compete for that small business. She said the small business that Ms. VanRiper is talking about are really in the situation where there needs to be something competitive to offer them and at this point, the way MSF is handling it is the best option for them.

Ms. Daniels also addressed what dividends mean to larger employers. She said when a contractor goes to purchase materials, they can get them at better price than she could going to her local hardware store. She said the same thing happens with insurance, and the dividend program that MSF offers does attract those larger high-quality employers. Without the dividend program and the pricing adjustments, MSF would experience adverse selection because the cream-of-the-crop employers would go with the private carriers and MSF would have all of the bad policyholders. She added if there were no competition in the state, setting the same rate for every business could work but because there is competition in the state, MSF would lose the cream-of-the-crop employers to the other carriers.

She also said there are differences between clients, large employers and small employers, and there are employers out there who heavily invest in their employees and in safety and there are employers out there that think they have no control over that. She said the way the system is set up with experience mod, with scheduled rating and all the different factors, those are set up to reward the people who do have the control.

She noted that rates in Montana have reduced dramatically because there is more safety investment going on within businesses. She said she believed the roofing rate when she began was 100 percent and at that time she could not compete with MSF because they were writing workers' compensation at a lower rate than private carriers were willing to write it at. She said due to competition, agents have been brought into the system to work hand-in-hand with employers and she felt she was an advisor and counselor to her clients.

Ms. Daniels noted that one of the most frustrating things for employers and agents is the class codes and the audits. She had asked a lot of the questions that had been asked by other attendees as they did not make sense. She said as she began to learn it she realized NCCI's goal when it began this actuarial process of having one class code for one type of business – if you were a restaurant business there was one code, roofing business got one code and what NCCI learned is that there are standard exceptions such as clerical people. She said the 8227 code was a great option for her contractor clients. It required verifiable records and it made a big difference for those employers to go from a 50 percent rate to a 10 percent rate and it was also a big attraction for abuse on that and employers need to be educated on proper record keeping. She said what was observed was that the use of the 8227 code rate increased because of the temptation of abuse.

There were much higher claims in that code than were justifiable and that was why NCCI tightened up usage of that code.

She added that one of her goals in her career was to never have one of her clients experience an audit surprise and she would apprise her clients of the code changes and any other issues to be aware of. She said she agreed that there could be better communication from MSF with the policyholders and the agents. She said education for agents and policyholders is vital.

She added that other states' coverages are lower than Montana; however, viewed as a whole, Montana has to determine what kind of businesses it wants to attract and how does it want its residents and workers treated. She said the Montana benefits are based on statute which is nothing that MSF controls and they can be changed and Montana could either become a more attractive or less attractive place to work. She said there can either be state specific laws that address the coverage differently or there could be a Federal program and she said her review does not support a Federal program.

Chair Thiel asked if the industry had to go to NCCI committee to get the code changed, why did NCCI change it with absolutely no input from the industry in Montana?

President Hubbard explained that the NCCI Classification Review (CR) Committee has a presence in Montana with representatives from Montana that hear any issues or review requests on the codes used in Montana. He said there have been times when a Montana specific request to use a different class code has been accepted and adopted. He added that the divisibility issue of this particular class code may not be under the jurisdiction of the CR Committee because that is a rule that NCCI files with each state. He said further research on that issue would need to be completed to see if that were possible.

Chair Thiel said President Hubbard said some things that he extremely disagreed with. One was that he really resents the idea that NCCI is making decisions for Montana because his company buys its material from a national manufacturer, and they are one of the biggest in the nation. They could not deal with his company from their headquarters in Pennsylvania because the construction ethics practices and honesty in the East Coast are majorly different than Montana. To deal with the differences in the ethics in those two areas, the manufacturer began a company in Denver. He said the idea that Montana roofers will be lumped in with people in the East is not fair because what you alluded to is that the roofers in Montana are going to be dishonest.

Ms. Jenkinson said she did not mean to imply that. She said she heard him and they could talk about that off-line.

He said that is what we are talking about is taking the lowest common denominator, the worst possible contractor, and we are devising all of our methods for that. He added that as a State Fund what we should be doing is promoting the best people possible. We should be doing everything we can to assist them, not drag them to the lowest common denominator.

President Hubbard said he disagreed as MSF is required by law to follow the NCCI rules – it is not a choice. The Board cannot say throw the NCCI manual out the window and we are going to do it differently.

Chair Thiel said he was well aware of that but asked if MSF could assist the roofing industry with repealing this thing to make it more fair.

President Hubbard sought clarification on what that would look like for MSF.

Chair Thiel said MSF should go to the CR Committee meeting.

President Hubbard said this was an uncomfortable position because Mr. Thiel was the Chair of the committee that represents the entire State Fund and this is very much Chair Thiel's industry issue. He said he could not say that MSF as a company should support any given argument by the roofing industry or any other industry without knowing what the argument is going to be. He added that MSF is open to working with the association to establish the issues addressed today such as working to increase audit communications more effectively. He said any industry specific action, MSF must remain the insurance company player at the table so the issue must make sense for many industries.

Chair Thiel said there are huge problems everywhere in his industry and said he thought that the practices that the industry and MSF get put in could clean that up. He said he did not see how rules and practices that encourage dishonesty help MSF. He clarified that this is such a competitive market that the good companies that are not independent are going to start finding ways to cheat the system as well. He said overall, it is going to be bad for the industry and he sees MSF as one of the single most powerful forces in the economy in Montana and MSF should actually be encouraging and pushing contractors through that. He said in the end we sit at this table and can have a very sterile conversation but the people sitting out there, that is their life. You are actually threatening their wellbeing because every day these people are cheating and you cannot stop them, when the market gets tough and jobs get hard to come by, it gets competitive and the end you are going to have to do what you have to do. What you are going to do is put the owners of these companies in the position to determine if they work hard for my company or do I follow the rules that are killing me.

President Hubbard said he believes legislation is a very important key to addressing what Chair Thiel suggests exists. He noted that if DOLI cannot get the funding to hire enough investigators to audit businesses and shut down those violating the rules, then legislation will not matter. He said MSF, DOLI and roofers are working within the resources that are available to them but it is a challenge. He agreed that if there are laws or regulations or rules that actually incentivize bad behavior, we should definitely address that and get rid of that.

Chair Thiel said that is what he sees. He clarified that he is concerned that we are working off some flawed ideals that do not take this to the result that we would like to see it reach.

President Hubbard said he is not advocating for flawed ideals. He said what can be done is a letter to NCCI from the roofer association asking NCCI to reconsider the divisibility of that class code. He said NCCI will make the decision to allow or not and if allowed it could result in tighter reporting restrictions. He said MSF would support it with the proper protection for the insurance carrier.

Chair Thiel said he disagrees with the record keeping restrictions increasing.

Jake Martin with Empire Roofing spoke and he reported that their record keeping is very good and separates out the appropriate codes to determine the correct level of payroll that must be reported.

Mr. Marsh said he thought perhaps NCCI would be more responsive to allowing the division of the class code to companies that could show they were sophisticated enough to submit their records electronically with geo-coding that tracks actual work location of the employees.

Chair Thiel clarified that what he is asking of MSF is to help the industry as much as they can to assure they can be competitive while doing things correctly.

Mr. Braun reported that Nick Mazanec had reported back to him that as far as the CR Committee addressing the division of the class code, there is an administrative rule that allows the CR Committee to promulgate rules to map a process in order for that to occur. He continued with the response to the question of why a company would choose to stay legit. He said there are two reasons; one you avail yourself of exclusive remedy which means someone who gets hurt on your job will not be able to sue you directly except for very limited circumstances. Second, as an independent contractor, the injured person can come after you as much as they want. If you are using illegitimate operators below you to sub out, there is something called 405 liability – the liability claims from the illegitimate operation will rise to you and hit you in your policy.

Mr. Marsh commented that for those that are not going to do the right thing, that will never change. MSF should help make important changes when they can and do it because in Montana doing the right thing is just what you do. He added that his experience has indicated that communication to the agencies and agents is not always as far reaching as it needs to be. He suggested increased webinars or other trainings and outreach to improve that communication channel.

President Hubbard asked Ms. Jenkinson to describe the communication channels that are employed now to keep the communication channels effective.

Ms. Jenkinson said MSF takes great care in creating brochures and information pieces that keep people informed of the key changes.

Will Anderson added that there is a regular volume of change that occurs with classifications on an annual basis. The discussion today has focused around the roofing industry, but there are potential impacts to any one of MSF's 24,000 policyholders. The communication type depends on the impact of the change, such as premium-bearing changes that are more critical and important to MSF's customers. He said in those cases written correspondence is sent and we encourage customers to work with us internally. When changes occur there is an education process for staff first; MSF's customer service specialist and the underwriters and account managers so they can educate the policyholders as well.

Chair Thiel called for additional input from Board members.

Ms. VanRiper thanked the participants for their input.

Mr. Miltenberger thanked Chair Thiel for taking the meeting on the road and holding it in Billings.

Mr. Maxness echoed Mr. Miltenberger's sentiments that it was a great forum for this meeting.

Ms. Fagg said a lot of the questions posed today affect more than just the industry represented today and they apply to a lot of business and industries all across Montana. She said further reflection of how the questions are addressed should take a broader approach in the responses.

Chair Thiel called for additional public comment; there was none.

IV. Management Process – Michael March

Mr. Marsh said we are faced for the first time in decades with choosing a new leader for MSF. He said he thought the Board's need is to understand at a fairly deep level what happens inside the machine so that when the Board begins interviewing the candidates, they can ask sufficient questions to know that they are getting the most appropriate candidate. He said the reason for his list of items, besides his own curiosity, is to get a baseline of where do we stand, what do we do and how do we do it? He said he believed the hiring of a new CEO is one of the most important issues for workers' compensation in the State of Montana.

A. Provide Summary and Detail of Existing Program/Staff Goals by:
He said he would like to see how MSF employees are incentivized to do the right thing.

1. Underwriting Services
2. Premium Audit Services
3. Customer Service / Call Center
4. Producer Management and Relations
5. Claims Service

B. Inspection of DOI Complaint Log 2017 – 2021

- He said he would like to look at the DOI complaint log to be able to address any concerns later down the road should the complaint numbers rise.

C. Non-Policy/Claims Against MSF Report, Litigated and Non-Litigated (open)

- He asked if there are any non-policy claims that are to or against MSF that may be liabilities.

D. Policy/Claims Litigation Report - Litigated versus Represented

- He said he would be interested to see where MSF stands with how many claims are litigated and how are they resolved.

E. Average Cost Per Claim Report and Action Plan

- He asked to see an average-cost-per-claim report and action plan. He said he is looking for a report that indicates where MSF is today and what the action plan is going forward.

F. Workers' compensation claims made by MSF employees 2017 – 2021 - Update for WFH

- He asked to see the report on the claims costs for MSF employees to determine if that is a significant liability.

G. Claims Procedure Manual, Staff and Delegation of Authority Docs for All Workers' Compensation Claims and MSF Employee Claims

- He asked to see the levels of delegation of authority to determine while interviewing the CEO candidates what their comfort level is and what their experience is. We will need to determine if the new person has even done that or do they have no concept of what claims are. He wants to know where we stand and how do those claims processes work.

H. Producer / Agency Management Metrics

- He would like to see agency management metrics because he and his daughter are licensed producers in Montana, and he said he hears varying things about how certain agents are handled by MSF versus others and another was cancelled. He said it would be interesting to find out how the metrics are taken and looked at. He said it would be nice to understand that so when they begin speaking with the new person, if they have no experience dealing with agents, we will have good questions to ask.

I. Claims Management Metrics and Improvement Management In Place

- He asked what MSF is doing to incentivize people to do settlements, to do management of reserves and to determine what improvement process do we have to get some structure around that to ask the next people is this what you want.

J. Examiner Claim Activity Reporting (anonymized)

- He asked for a report on the number of claims each examiner has per person to have that many staff.

President Hubbard clarified that case loads are targeted from 120 to 130. He said when he arrived the caseloads were over 380 per examiner. He said there was no claim management whatsoever and it took years to reduce the case load and develop adequate claim management.

Ms. Jenkinson thanked Mr. Marsh for the explanation of his requests so that staff can gather the information so that it is useful to him and the other Board members. She noted there is a report that is produced each year for the Board that will soon be completed that may answer a lot of these information requests.

President Hubbard clarified that staff have been working on a response to Mr. Marsh's request based on what they believed he was asking for. His clarification today helps and at the next Committee meeting that report will be available.

Chair Thiel said that was his goal as well - to present it at the next meeting.

Ms. VanRiper added that a report had been asked for and presented in the past but the Board has failed to monitor it and she suggested assigning that to this Committee. She said she disagreed with Mr. Marsh's suggestion that this information would be useful in interviewing candidates for the CEO position and she said he felt this information was way into the weeds to be useful for that. She also noted that all of the reports MSF produces must be open to public inspection and a lot of this information from private carriers is not open to the public and she cautioned to be mindful of that and not request reports that put us at a competitive disadvantage given that situation.

Mr. Marsh addressed the competitive disadvantage concern and said the things he is asking for do not get anywhere close to that. He said he did not ask for the rating algorithm, he just wants to know some generalities. He said he agreed that the Committee should house and monitor this report going forward as it gives the Board some metrics that it looks at consistently and staff know what they will be looking for in the future much more broadly than we have in the past. This gives us more detail to develop meaningful conversations with the CEO if they have concerns that arise from information reflected in the reports. He said he was not suggesting that the Board members get too far into the weeds when utilizing the reports to develop questions for the CEO candidates.

Chair Theil reported that President Hubbard cautioned them to tread lightly on the question development for the CEO candidates as Ms. Jenkinson is a candidate and that discussion should be off lined.

V. Public Comment

Chair Thiel called for public comment. There was none.

The meeting adjourned at 12:05 p.m. The next scheduled Board meeting will be held on Friday, March 12, 2021 at Montana State Fund, 855 Front Street, Helena, Montana in the first floor Board Room.

Respectfully submitted,

Verna Boucher
Special Assistant to the President/CEO