

Amended Board of Control Meeting Minutes

April 9, 2018

9:05 A.M.

Members in attendance: Administrator DeOrio
Finance Director Brown
Director of Law Fox

Patrick DeOrio: Okay it looks like we are recording. I'd like to call the Board of Control to order. It is Monday, April 9, 2018 at 9:05AM. We are in the old conference room of the Administrative Offices due to construction on the portico. We will call the attendance: Tim Fox.

Tim Fox: Here.

Patrick DeOrio: Laura Brown.

Laura Brown: Here.

Patrick DeOrio: Here. Mayor Held is unable to be with us this morning. Normally we hold the Board of Control in the evening right before the city Council Meetings but tonight the city Council Meeting is at Walsh College, it starts early so it did not make it practical that we could do a Board of Control there as well so hence it this time. We have one item on the agenda.

1st Item: Authorizing the Mayor of the City of North Canton, through the Board of Control, to enter into a contract(s) for the City's General Insurance per Ord. No. 94-17.

So Justine emailed you a packet of materials. We were all there at the opening as well. The Insurance Consultant from Huntington Insurance, Pat Corcoran has written a summary of the coverages an analysis and then a recommendation for that. So, I think I open it up to discussion. I have some things to say, do you want me to go first?

Tim Fox: Please.

Patrick DeOrio: Okay, I should disclose that previously in a different life; I was in the insurance business for 20 years. Property, casualty and commercial insurances and the like so I do have a background in this and have an understanding of it, I think perhaps maybe more than my predecessor that was in here. Although this bid process started before I became the Administrator it is concluding while I am the Administrator. And looking through the coverages that we had, it was clear in my mind that one of the concerns that I had was the type of insurance policy that we were on. Basically in the industry there's an occurrence based form or a claims made based form and then there is a twist on the claims made base form. Which, by being a member of our current Pool, should we ever decide to leave them, and there is an open claim that coverage would not be available for that open claim should we leave them. In my mind it doesn't present

to the city an optimal of solution. I think it inhibits the competitive bidding process, in my mind. Just in this process here there were a number of vendors who chose not to bid because they that felt that the city like so many other cities would not be able to leave and would have had to purchase tail coverage which would have put the premium so high that the city probably wouldn't have left so they don't even bother to quote. So I think if we were able to get into what is a more standardized insurance policy, insurance coverages, I think down the road it will provide more opportunities for vendors to compete.

Mr. Corcoran looked at the coverages provided from Bid #3 &4 I guess that we're identifying them as Wichert Ins., Travelers and Selective. And then also the Option #2 is Whitaker – Myers, the Ohio Plan. So I'm just going to read for the record from his correspondence to us dated April 4th.

I've attached a spreadsheet that outlines the price points of each quote. I then dove into the quotes and pointed out any significant differences or item that sets them apart.

Quote #1: To summarize, the PEP Pool is the current insurance provider and has been for the past three years. Their pricing has remained stable for the past three years and they are a known entity to the City of North Canton. The one down side to their program is it is written on a claims-made basis and has restrictions if you leave the plan. For example, if the City of North Canton leaves the Pool, it assumes all open claims. Currently, there is one claim that may be settled sometime is 2019 with estimated settlement between \$25,000 and \$50,000. You are also required to purchase Tail Coverage estimated at \$78,000 "Tail Coverage" is an extended reporting period endorsement, offered by insurance carriers, which allows an insured the option to extend coverage after the cancellation or termination of a claims- made policy.

Quote #2: Provided by Whitacre – Myers Agency, The Ohio Plan is a member-driven alternative property and liability insurance program focused on providing affordable and comprehensive coverage to its members. They can help eliminate the burden put on the City of North Canton by the PEP Pool as they offer prior acts coverage. They also provide an Ex-Gracia fund to their members to help settle past claims, if the city commits to a three year membership. This plan has excellent pricing and several options to leave the Pool. Coverage is written on an occurrence basis.

Quotes #3 & 4 provided by Wichert Insurance are Selective and Travelers. Both are standard insurance programs written on an occurrence basis. Both plans have excellent coverage at a fair price.

I will focus on the Travelers quote for the simple fact that all coverage is written by one carrier and the pricing is superior. Travelers have inspected the facilities at North Canton and are comfortable with the risk. Annual premium for their program is \$119,926.00. There is a downside of leaving the Pool for a standard carrier. You will need to purchase Tail Coverage for \$78,000 and will be responsible for the outstanding claim.

In conclusion: If the number one objective is to purchase writ- insurance written on an occurrence basis and have all coverages applicable or better than currently written, we cannot overlook The Ohio Plan submitted by Whitaker Myers. The policy is written on an occurrence basis and provides prior acts coverage, which eliminates the need to buy the Tail Coverage from the PEP Pool. The program has an established ex gratia fund to help settle unpaid claims presented by the PEP Pool, we can leave anytime. As the fiduciary for the City of North Canton, the final decision is yours to make. Please accept this as my formal recommendation.'

Please look at Quote No. 2, from Whitaker Myers, The Ohio Plan has an annual cost bid at \$109,651.00, with three options. Option 1: with Prior Acts Coverage, Public Officials, retro date 1/1/2003. So, that would change the total bid to \$112,312.00. Option No.2 is with Prior Acts on all lines of coverage, with a retro date of April 15, 2015. If we chose that option, it would increase it to a total of \$113,578.00.00. Option No.3, and this would be one that I would recommend, with Prior Acts, Public Officials, retro date to 1/1/2003, and all other lines retro to April 15th of 2015, the cost would be \$116,471.00.

In my mind, the difference in premium between Option 3 and Option 2 is less than \$3,000.00, what you would be picking, the Public Officials retro liability all the way back to 2003. And that's a good option for us to have in that so many of us are new here and we don't know what all happened prior to our coming here. So, that would, I think, provide some peace of mind. Leaving the Public Entities Pool can be a very difficult and expensive thing to do if not done properly. PEP's Intergovernmental Agreement provides that if a member leaves, the member becomes responsible for all open liability claims, as well as any future claims that would be made against the entity for the time period that the entity belonged to the Pool. Not knowing what kind of exit plans the City of North Canton might need, we've provided some options for them to consider. In the proposal there are Options1, Options 2, and Options 3. Suffice it to say, we would fall in line with what I had mentioned earlier, Option No. 3, which would be the Public Officials retro date to 1/1/ 2003, and all other lines to April 15, 2015. These included a list of The Ohio Plan members that are throughout Ohio. There's a partial list, you know, listing some of the ones that are in Stark County. Also included is an Annual Report, along with the different coverage forms. So, having said all that, is there any more dialogue? I feel very strongly about getting the City onto an occurrence based form that is with, the Ohio Fair Plan. With the Prior Acts Coverage that they offer, it gets us to a point where we eliminate the risk from the Tail Coverage, having to pick that up and the additional financial risk to that, and puts us on a course of that when this comes up for renewal the next time, I think that we would have more bidders.

Laura Brown: More options.

Patrick DeOrio: I did spend a lot of time with the Travelers Group. I took them around to view all the buildings so I concur with the conclusion that they are very comfortable with it. We filled out a lot of supplemental questionnaires from our department heads. We gave them, I think, a real good understanding of the risk. I think that's why they put

together a pretty good number. But to go that option and pick up Tail Coverage from the PEP, and they did provide a quote for that, it's about \$78,000.00. In my mind, if we look at The Ohio Fair Plan, we can get the occurrence based coverage, we can obviate the problem with the \$78,000.00 because we would be picking up Prior Acts Coverage, and that would put us on a path towards normalization. I should say that, a number of years ago when I was here on the City Council, and I chaired the Finance Committee, and I reviewed the insurances back then, we were not in the PEP. We were on an occurrence based form. So, somehow we got off track on that, but.

Laura Brown: Obviously, from just a straight number perspective, although that Option 3 with retro to 2003, is a little more expensive than the lower bid, but when you factor in that Tail Coverage, far and away, you know, less expensive. And frankly we don't have that tail coverage budgeted for this year. I did budget in some additional dollars, knowing that we were looking at bidding insurance, in case prices rose in the market, but- but not to that extent.

Janie Geis: I have a question; I'm not sure how that works.

Patrick DeOrio: Identify yourself-

Janie Geis: I'm Janie Geis with Wichert Insurance. I'm not sure if this group needs clarification from your current broker. The PEP coverage will, in fact, pick up your open claims versus the Tail Coverage that The Ohio Plan is offering, I don't believe they're gonna pick up the open claims that are open.

Speaker 1: The \$ 78,000.00 should pick up the open claim.

Janie Geis: And if you're expecting that-

Speaker 1: I don't wanna conflict with what Pat said.... I believe that was incorrect.

Janie Geis: Yeah. It's our understanding that the Tail Coverage is actually going to pay, like a second insurance policy would pay for that open claim. But then, they're gonna-versus the Ohio Plan Tail Coverage; they are only going to be there for the unknown claims, claims that are not open prior.

Patrick DeOrio: Prior acts, you mean?

Janie Geis: Right.

Speaker 2: The Ohio Plan also offers a reciprocity upon, which what they've done is that they will provide 10 % of the premium, over a three-year period of time, as- that they'll pay that for expenses and claims. In this case, that \$115,000.00, multiply that by three, and 10 percent of that, so you're looking at about \$32,000.00 that The Ohio Plan would provide the City, at no cost to them, to pay to settle the claim and for any claims expenses that they would have. That's outside of the tail coverage itself.

Janie Geis: And then, it will become- should you go with that option, it will become- it's not gonna relieve you of the full- being able to get other bids or- it's going to be difficult because you're going to have a gap in coverage from 2012 into- is it '12?

Speaker 2: No, 2015.

Janie Geis: It's kind of technical, but it does not totally release you, for instance, buying the true tail coverage from PEP. You'll never have to worry about it again, you can move on.

Tom Wichert: My name is Tom Wichert, Wichert Insurance. I'm dealing with an ear infection, I cannot hear myself. So, if I'm too loud or too quiet. I worked with the City from about 1982 through 2000, in these programs, before the passage of our Community Bill 2744; actually ORC 2744 is what allows these Pools to form. In my opinion, the City was duped three years ago. In this bidding process that you got yourself into in the 2000s, bidding insurance and going through this process, what you're doing now, and getting into the PEP Pool, which is, by far, the most foreign concept. It is way beyond just claims made and occurrence. And, of course, the City bought the program in the same process that you're doing. And all due respect, ORC 2744 requires ... it's .081 ... requires the City, in joining a Public Entity Pool, to have two meetings, separated by a week, with all the recommendations for savings. And Mr. Grimes signed to join the PEP Pool, signed a statement that said there were two meetings. I doubt there were. And I'm not saying there's anything wrong with that because Mr. Beglin from The Ohio Plan or from the PEP Pool, that's their practice. So, in order to join The Ohio Plan, which is another joint self-insurance Pool, would also require those ... in my opinion, would require those two readings, separated by a week, before you would go from one Pool to another Pool. And, of course, there might also be argument in order leave the PEP Pool. You may have to do that, but that's stretching it too far probably. Our concern about the PEP Pool ... and I would strongly recommend that you stay with the PEP Pool before going to The Ohio Plan because now we're going from the frying pan into the fire, in the sense that what we're really concerned about, in our world, is the older claims that are now starting to come up. Counselor, you went to the University of Cincinnati, you- you know about The Innocence Project; okay? The Innocence Project is now bringing forth claims, and we're now starting to track the claims that American Risk Pooling, but the PEP Pool is now starting to just get going. We've already had a couple ourselves that have been in the excess of several million dollars. And we're now starting to see- specifically, I could go through and I could start name- naming the claims, but you can do that too. Miami Township, down in the Cincinnati area, are gonna have to pay claims that you, in other words, members of the PEP Pool will have to be paying those claims that are coming up. Now, when we go to The Ohio Plan, we go to a time period ... and, again, when we look at the financial statements in there and all due respect to Mr. Corcoran, we look at the financial statements, you'll see that the balance sheet for The Ohio Plan is only \$5 million, \$5.8 million. Not one of us at this table would ever buy insurance from a company that only had that much balance. And then, when we go back to those years under the

occurrence form, and by far The Ohio Plan form is superior in coverage. And when I say that, the Brady violations, the DNA, it's all those, back in those years of the late '80s to early '90s, and The Ohio Plan had no re-insurance at all. So, again, we expect the City of North Canton stature, that had its, at least in those years when you were bidding on a regular basis, and unfortunately nobody bids anymore, but that's okay, you were with Houston Casualty for the last ten years. But when you go back to in the early 2000s, after you all left us, a number of years with Reliance Insurance Company where there's no coverage for things there. So, we were getting a little confused in the Public Officials coverages; that are referring to the law enforcement coverage. So, what we're concerned about, at this point- and, again, I could be proven wrong, I don't think I'm wrong, the \$78,000.00 for the PEP is basically getting you patched up from 2012, I'm sorry, from 2015, '15, '16, '17, I believe they're gonna pick that claim up. We do this every day and we've been moving people from the PEP Pool on a more regular basis now. And so, we've been...and we cannot put the form together to pick up the open claim. You have gotta realize, and it might seem a lot on this, that The Ohio Plan and the PEP Pool are vicious, vicious competitors. To a point that a Pool is gonna go ahead and fund ... a member driven Pool is going to go ahead and help you join from this Pool to that Pool. And that's the thing. We have stayed out of actually, back in the years when Mike Sumser was here and I worked with Mike for so many years, we watched the formation of these Pools. And, again, we would rather go with Travelers and Selective, a Houston Casualty, or quite frankly stay with PEP. I would strongly say, stay with PEP because now you have at least the strength of all the other members because the PEP Pool is gonna charge whatever needs charged when those claims come due. I would think you'd wanna be a part of the Pool because the last thing you wanna be is in a Pool that has no re-insurance back in the later '80s and into the '90s. We worked with the Auditor's Office back in 2005. All those rules that came out were promulgated by the work we did with the Auditor's Office to try to disclose this stuff and again, the auditor previous to that required you to look into the background of all the re-insurers. Again, a \$5 million surplus. And if you look at The Ohio Plan financial statements and you look at their common stock portfolio, the City could not invest in common stock. I don't want to be critical of Mr. Corcoran because he's an insurance guy; he's not a public entity guy.

Speaker 1: With all due respect to Mr. Wichert, a number of the things that he said are not correct. First of all, The Ohio Plan has been fully re-insured since its inception in 1988. The surplus that he sees, from The Ohio Plan's standpoint, says it is fully re-insured. The Ohio Plan, over the past few years, has taken a very, very minor portion of the losses. It purposely ... the Board has kept ... we- granted, they could've made that surplus a lot more, it's a member driven Pool. The reason why it's a member driven ... and- and the member ... the Board of Directors themselves sees no requirement to keep a huge amount of members' money tied up for something that they really and truly don't need to have. And that's why, purposely, that surplus that you see there, that's carried on The Ohio Plan, that you can see where it's actually, over the past several years, has remained in that \$5 to \$26 million, to \$7 million range. The Board of it- the Board of Directors itself has purposely given back, and reduced rates, and given back, annual credits back to its members because it doesn't need to have that money sitting out there. It's not like an insurance company that has to have a huge surplus out there. The-

our surplus for The Ohio Plan is actually in the re-insurers themselves. And the host of re-insurers who carry it are all A, A-plus rated, are huge big insurance companies. Those are actually the companies that back the plan itself. As far as 2744 is concerned, if you actually read the language in there, it requires an entity who is actually putting together a Pool to have those meetings. It does not require a member of an entity to join an existing Pool to have those meetings. So, from that standpoint ... and you can get that. I would encourage you to read the language in it. What it says is that if you are going ahead and making up a Pool, you have to have those meetings. If you're simply joining an existing one, there is no requirement for that.

Tom Wichert: That's not what Pat says in there. There was a form that requires you to sign something that said you had two meetings. Again, why the City was duped previous...

Patrick DeOrio: I was looking to see if I could find clarity in regards to the Tail Coverage and...

Janie Geis: That would be our biggest (inaudible).

Tom Wichert: That \$78,000.00, and that's why, at this point, we can't find a true insurance product to pick up when you've got open claims because, again, it's hard to know what that open claim is worth. If you had a big one, and we've helped some cities out with- with multiple, six-figure balances that it got to the point where I think your auditor is like, whoa, I wanna be out of post-loss. And it's not the occurrence versus claims made, it's the fact that you're on the hook for later claims. When you look at the balance sheet of the PEP Pool, they have not collected the dollars for the claims that are to be paid yet. While both of these Pools have done a good job of keeping the premiums level, at the expense of others, again I'm not sure whether the PEP offered a three-year rate guarantee. Normally, they lower their rate and offer the three-year rate guarantee at the same time, charging you two times. Again, our recommendation would be pay the \$78,000.00, lick your wound, that the savings from the last three years that you had at the bid three years ago. Lick your wounds and buy either the Travelers or Selective, either one. If he recommended the Travelers, that's fine. They're both...

Patrick DeOrio: When I read his letter, he's saying what we understand it to be, that means, just for example, if the City of North Canton leaves the Pool, it assumes all open claims. That's true; we would, if we just left the Pool. And he's saying that currently there is one claim that is open, it's a bodily injury claim, and two-year window puts it to 2019. PEP has reserved somewhere between \$25,000.00 and \$50,000.00 for loss runs on that.

Tom Wichert: But the payment of that \$78,000.00 should fund that claim or others that come from that time period. And that's the cleanest way. I mean, again, I read that endorsement.

Janie Geis: Because like if you're a prior member of PEP in 2012.

Tom Wichert: You're in ... you're really close to that, the old numbering.

Janie Geis: Right.

Tom Wichert: And I guess that would be a question that they need to answer correctly.

Tim Fox: When does our policy-

Patrick DeOrio: April 15th.

Speaker 1: The option you have, The Ohio Plan, provides you with Prior Acts Coverage for what you need. And going forward, it provides an occurrence based policy for everything across the board for you. It helps you pay your claims that are currently outstanding, and will pick up any claims you would have had from the time period when you've ... actually, for your public officials, it goes back to the retro date of 2003, which is what you need for that. It also provides the Prior Acts Coverage of the claims and that Tail Coverage, or Nose Coverage in our case, for all those three-year period that you were with the Public Entity Pool.

Tom Wichert: But, Counselor, I'd be more than happy to share all the litigation that was back in the '80s. The program that's ... The Ohio Plan is being run by a group called Highland right now. Fine group of people, fine operation. Back in those early years, people did go to jail, people got pale green shirts. Very well documented in the court docket. So, that in the '80s and '90s, where the Innocence Project cases are, which are the ones that we're looking at are from the '80s and '90s, and will become due to both of these Pools, potentially, coming up. But the ones we're following down there in Gillespie, the one in Miami Township is set for trial two years from now. So, they haven't even started discovery on a case that goes from 1988, right after the passage of the Pooling legislation, into the 2003, 2004 time period, with multiple triggers of exculpatory evidence being withheld. And that's why we say, whoops, this is the asbestos that was in the old days, for regular companies, is now hitting home. And, of course, specifically we have had the open case in Barberton where we've seen the Levy in the Levy Firm come at us in ... which Levy and Levy is you know who I'm talking about. I only said that because you were in Cincinnati back in 2006.

Tim Fox: Yeah. He was my criminal law professor.

Tom Wichert: Okay. (Laughs).

Speaker 1: You're looking at claims that would've happened for something that would've happened clear back then, you're gonna take care of it now; right?

Tom Wichert: Under the current policy that was (inaudible).

Speaker 1: Current policy that was in place at the time-

Tom Wichert: Right, exactly.

Speaker 1: So that it would go back to the City's policy itself that was in place at that particular point and in time.

Tom Wichert: And what we don't know is how many Ohio Plans, The Ohio Plan's formed in 1987. And you don't know how many of those claims might come out of The Ohio Plan. And we don't know how many, and the Ohio Plan (inaudible).

Speaker 1: And the Ohio Plan (inaudible, crosstalk), at that particular time to take care of those.

Tom Wichert: Those are the failed re-insurers. Those are the failed municipal re-insurers. We have ... that's the kind of stuff that's well documented in the court.

Speaker 1: I would disagree with you on that.

Tom Wichert: We're following enough of these, and Counselor knows how long these can take, and again, this is why we're asking ... we're suggesting our client get out of-

Speaker 1: The City is the City itself is not in jeopardy for those claims at this point and won't be in the future because they have insurance coverage in place to take care of anything that would've affected them.

Tom Wichert: Well-

Speaker 1: Ongoing, you have the re-insurers that (crosstalk).

Tom Wichert: You're exactly correct, but the city's, the re-insurers on The Ohio. This is what I-

Speaker 1: Which have nothing to do with what we're doing now?

Janie Geis: No. We're talking about-

Speaker 1: We are talking about re-insurance carriers.

Tom Wichert: We're talking about, can either of these Pools, meaning both PEP or Ohio Plan, handle the claims that are gonna come from the past with a ... back in the years when the City was here ... we're not talking about the City's claims, although the City could have some, but we're not talking about the City. We're talking about the Pool.

Speaker 1: Well, I think that the Ohio Plan has itself in a very good position for that.

Laura Brown: It seems to me that we have some competing information. So, as the voting members of this Board, we can either go with the recommendation of our

consultant, or we can table this and try to review this info- competing information and make a decision at a later time.

Patrick DeOrio: Mr. Law Director?

Tim Fox: Personally, I'd like what's been raised this morning to ... let us discuss that a little bit more. Perhaps we could come back Thursday or Friday once again and get any questions we have answered at that time.

Patrick DeOrio: Okay. I think that's fair. I think there's some good points raised. So, I would recommend that we table this until our next meeting, and try to schedule a meeting on Thursday. I don't want to do it on Friday, just from the standpoint if we make a decision, we want to be able to have coverage bound into effect and I don't want to do that at the 11th hour. So, let's do it for Thursday.

Patrick DeOrio: There's a motion on the floor to table this to the next meeting-

Laura Brown: Yes.

Patrick DeOrio: Member Brown. Is there a second?

Tim Fox: I second.

Patrick DeOrio: Second by Mr. Fox. All those in favor, signify by saying aye. Aye. Opposed or abstain, same sign. Motion passes. Being this is all the business before the Board. May I have a motion to adjourn?

Tim Fox: Motion.

Patrick DeOrio: Is there a second?

Laura Brown: Second.

Patrick DeOrio: Moved and seconded. All those in favor of adjourning, signify by saying aye. Aye. This meeting is adjourned. It is 9:37A.M.



Patrick A. DeOrio
Director of Administration