

**Minutes
Special Meeting of the Board of Directors
Louisiana Insurance Guaranty Association**

May 21, 2015

The special meeting of the Board of Directors was held on May 21, 2015, at the Louisiana Insurance Guaranty Association, located at 2142 Quail Run, Baton Rouge, Louisiana 70808. The meeting was publicly noticed in accordance with the Open Meetings Law.

Members present constituting a quorum:

Michael T. Gray (Chairman)
Markham R. McKnight (Treasurer)
William D. Hughs, III
Kristin Wall
Denis Husers
Bill Gourgues

The Gray Insurance Company
Appointee of the Commissioner of Insurance
Appointee of the Speaker of the House
Louisiana Workers' Compensation Corporation
Appointee of the Commissioner of Insurance
State Farm Insurance Companies

Others Present:

Caroline Brock
John Wells
Gerry Coryell
Stephanie Laborde
Andrew DeGraw
Ted Griggs
Jim Poche
Mark Billeau
Thomas Clark, Jr.
Lacey Anderson
Keri Dupont

Rep. of Insurance Commissioner, Department of Insurance
Executive Director, LIGA
Claims Manager, LIGA
LIGA General Counsel, Milling Benson Woodward, LLP
Reporter, *The Surplus Lines Reporter*
Reporter, *The Advocate*
Managing Director-Investments, Wells Fargo Advisors, LLC
VP of Governmental Relations, LUBA Workers Comp
Adams and Reese
Administrative Assistant, LIGA
Administrative Assistant, Milling Benson Woodward, LLP

Members Absent:

Wayne T. Roussel (Secretary)
Keith D. Thompson
J.E. Brignac, Jr.

Appointee of the President of the Senate
Liberty Mutual Insurance Companies
Imperial Fire and Casualty Insurance Company

Call to Order by the Chairman of LIGA Board of Directors

The meeting was called to order by Chairman Gray at 9:00 a.m.

Quorum

Mr. Gray advised a quorum was present.

Report of Finance Committee and Consideration of Proposed Funding Policy and Treatment of Surplus

Mr. McKnight asked Mr. Wells and Ms. Laborde to brief the Board on the current issues previously discussed in the Finance Committee meeting.

Mr. Wells stated that twelve to fifteen years ago LIGA had a surplus which was transferred to the Department of Insurance. In 2004, the Legislature changed the statute to remove LIGA's authority to transfer funds to the state.

Mr. Wells explained that there had previously been two ways to depopulate any LIGA surplus, the first being to refund the collected assessments back to the member companies, and the second was that if those member companies had utilized the tax credits offered to them, then the money should be remitted to the Department of Insurance to be transferred to the General Fund.

Mr. Wells stated that the second way was deleted in 2004 by the Legislature and is no longer an option.

Mr. Wells stated that in 2009, LIGA saw its reserves dropping and its assets increasing. The Board made a decision to refund the members \$77 million. As a result of the refund, the member companies lost \$77 million in tax credits, so the state was the ultimate beneficiary of that refund.

Mr. Wells explained that reserves continued to decline as LIGA became more experienced with claims handling. LIGA is now in a position where there is an \$85-90 million surplus after deducting what will be paid in current, existing claims. The Finance Committee started discussing what LIGA's needs were and what to do with such surplus or deficit over a year ago, but no final decision has been made.

Mr. Wells stated that two weeks ago the Division of Administration called and requested a meeting with him and Ms. Laborde. In that meeting, the Division asked for LIGA's current surplus, and explained that the State needed the surplus for the 2015-2016 budget and to fill a hold in the 2014 budget.

Mr. Wells stated that the Finance Committee met to consider the Division's request.

Mr. McKnight stated that the Finance Committee reviewed the numbers and determined LIGA currently has an \$85-90 million cash surplus relative to existing claims. Mr. McKnight stated that the State of Louisiana has requested \$74 million from LIGA, and that the Committee feels comfortable with the cash that would be left on hand after a transfer in that amount.

Mr. McKnight stated that the member companies have been given tax credits, which was confirmed by Ms. Brock. Ms. Brock also stated that the Department of Insurance's position with regard to the tax credits is that, if those funds were returned to the member companies, they would have to report and amend their tax returns to reflect such activity.

Mr. McKnight then asked Ms. Laborde what LIGA's legal ability was to give the money to the State of Louisiana and what would be the proper way to do so.

Ms. Laborde opined that LIGA was legally incapable of doing what the State has requested and that it could be a breach of the Board's fiduciary obligation and beyond the powers and duties of the Board to refund the money to the State after the 2004 amendment.

Ms. Laborde stated that the Commissioner of Insurance's office agreed to sponsor an amendment to one of its Bills, which passed the House Insurance Committee yesterday, to give LIGA the authority to disperse any surplus to the State. Ms. Laborde stated that this is a one-time only authorization for the current fiscal year and that it is enabling legislation, not mandatory legislation. Ms. Laborde explained that it gives LIGA authority but the decision is ultimately LIGA's. Ms. Laborde stated that she inserted a reaffirmation of legislative intent into the amendment confirming that LIGA's money is not State money and that this would be a one-time transfer of funds.

Ms. Laborde explained that if this Bill passes all steps in the legislative process with the language intact, it would be her opinion that LIGA would have the authorization to transfer funds to the State this year. Ms. Laborde reaffirmed that without this Bill she feels LIGA is not authorized to transfer funds to the State.

Ms. Wall asked Ms. Laborde if it would be lawful for LIGA to transfer the funds without the passage of the Bill. Ms. Laborde stated that, without the current Bill as amended, she did not feel LIGA has the legal authority to transfer funds to the State. Ms. Wall asked Ms. Laborde if it was her legal opinion that, if the Bill passes as amended, it would be lawful and would the Board be fulfilling its fiduciary duties. Ms. Laborde stated that, if the Bill passes, the transfer to the state would be within the power and duties of the board, but that the board would have to make a separate decision to whether it was the proper policy to do so.

Ms. Wall asked, if the Bill passes, and the Board agrees to transfer the funds to the State, will the Board have been acting as prudent fiduciaries. Ms. Laborde stated that it is her legal opinion that if the Finance Committee's deliberations and this Board's deliberations are grounded in sound fiscal considerations and a balance of LIGA's competing interests, then the Board will likely be found to have acted reasonably and as a prudent administrator.

Ms. Wall asked Ms. Laborde if it was her opinion, assuming the Board goes through very thorough deliberations, that LIGA will have met its fiduciary obligations. Ms. Laborde stated that, in her many years at LIGA, it has been her experience that the Board takes its responsibilities very seriously and are good stewards of LIGA's operations. Ms. Laborde stated that she has every expectation that the decisions reached by the Board will be in accordance with that long-standing standard of due deliberation and prudent management.

Mr. Wells stated that LIGA has claimants to protect, policy holders to protect, the insurance industry which pays assessments, and the State that reimburses the member insurance companies. Mr. Wells stated that LIGA should consider all of those interests.

Mr. Gourgues asked if the previous Bond issue was an alternative way to raise money versus assessments. Mr. Wells stated that the insolvencies involved in the Bond issue were too large for the assessment capacity to handle so LIGA went to the bond market and in return the State increased the assessment capacity for the duration until those bonds were paid, at which time the assessment authority went down.

Mr. McKnight stated that it was the recommendation of the Finance Committee to fund the \$74 million transfer if there was a legal way to do so.

Ms. Laborde suggested that the Motion contain contingent authority to make the transfer if either her current opinion changed or the law changed and that the Committee and Ms. Laborde were of the opinion that there was a legal way to do so.

Ms. Wall asked that Ms. Laborde clarify that, if the Bill passes in its current form, if the Board does the due diligence on behalf of the three stakeholders mentioned by the CEO and the General Counsel, that is the claimants, the insureds, and the general public, and if LIGA's General Counsel says it meets the Board's fiduciary responsibility, LIGA will comply to the fullest extent of the law, to which Ms. Laborde agreed.

Mr. Gourgues asked what the Board has done to determine financially if this is the right thing to do for LIGA, and asked if there was any guidance in determining what the Board should do.

Mr. Wells stated that he has consulted other Guaranty Funds and the policies vary.

Mr. McKnight made a Motion that, pursuant to the LIGA Board's fiduciary responsibility to protect the fiscal integrity of LIGA, balanced with LIGA's obligations to claimants, insureds, and the general public, and subject to legislative passage of legal transfer authority, he moves to authorize the transfer of \$74 million from LIGA's excess assets to the state general fund, reserving the right to have another Board Meeting to review this issue prior to transfer if the current LIGA amendment to S.B. No. 216 is changed in any way before final passage. The Motion was seconded by Mr. Hughs.

Mr. Wells stated that, historically over the 44 years of LIGA, LIGA pays out \$21 million per year and LIGA collects \$7 million per year from insolvencies, thus, a net payment of \$14 million per year. Mr. Wells stated that, if things stayed the same, he feels that LIGA will not need to assess member companies in the foreseeable future.

Ms. Wall stated that LIGA has a fiduciary obligation to three groups, and asked for an explanation of proper fiduciary due diligence owed to LIGA's stakeholders.

Ms. Laborde stated that the Board had previously discussed claimants and reserves. Ms. Laborde stated that the obligation to the insured derives from the obligation to claimants. The obligation to the general public is to create a stable, reliable, and affordable climate for the insurance industry to operate, and for public to purchase insurance.

Ms. Wall asked if it was Ms. Laborde's opinion that the Board has fulfilled its fiduciary obligations. Ms. Laborde stated that this discussion in concert with the Finance Committee's discussion, along with the many years of discussion on this subject has fulfilled that obligation.

Ms. Laborde stated that the Board has two options on how to proceed: the Board can follow the suggestion of Mr. McKnight to authorize the transfer if certain conditions are met; or to say this is the direction we are heading, this is where we'd like to go, but we'd want to see what passes or need additional information and we'll meet again.

Mr. Gray asked if the Department of Insurance cared one way or the other. Ms. Brock stated that she felt the Commissioner would go along with the current Motion and not want another meeting.

Mr. McKnight stated his intent was to conclude the matter today.

Mr. Hughs stated that if anything were to come up, the Board could always have another meeting.

Mr. McKnight said that he feels that the Finance Committee met its obligations.

Mr. McKnight read the Motion again stating that, pursuant to the LIGA Board's fiduciary responsibility to protect the fiscal integrity of LIGA, balanced with LIGA's obligations to claimants, insureds, and the general public, and subject to legislative passage of legal transfer authority, I move to authorize the transfer of \$74 million from LIGA's excess assets to the state general fund, reserving the right to have another Board Meeting to review this issue prior to transfer if the current LIGA amendment to S.B. No. 216 is changed in any way before final passage, which was seconded by Mr. Hughs. A Vote was called for, there were no objections, and the Motion passed.

Old Business

Mr. Wells clarified meeting dates and the agreement to combine the previously scheduled meetings in November and December to September 1, 2015.

New Business

Nothing to report.

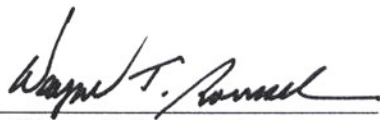
Adjournment

A motion was made by Mr. Hughs and seconded by Mr. Husers to adjourn the meeting. Objections were called for. There being none, a vote was taken and the motion carried.

The meeting was adjourned at 10:19 a.m.

APPROVED:

These minutes were presented and approved at a meeting of the Board of Directors of the Louisiana Insurance Guaranty Association, held June 25, 2015.


Wayne T. Roussel, Secretary
Michael T. Gray, Chairman

These Minutes were written by Keri Dupont, Administrative Assistant, Milling Benson Woodward, LLP, from notes taken during the Board meeting. Changes and additions to the Minutes were made by Lacey Anderson, Administrative Assistant, LIGA, from a recording on the FTS Reporter and notes during the Board Meeting.