United Food and Commercial Workers Unions and Participating Employers Health and Welfare Fund

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MINUTES OF THE MEETING OF THE BOARD OF TRUSTEES OF THE UFCW UNIONS AND PARTICIPATING EMPLOYERS HEALTH AND WELFARE FUND
OCTOBER 10, 2017
LANDOVER, MARYLAND

The following Trustees were present:

UNION TRUSTEES
M. Federici – Chairman
Y. Anwar
T. Hipkins
G. Murphy

EMPLOYER TRUSTEES
S. Loeffler – Secretary
J. Born
D. Gwin
S. Springer

Also present were:

M. Bramstaedt – The Segal Company
H. Burton – Morgan, Lewis & Bockius, LLP
D. Clutts – Associated Administrators, LLC
A. Hanson – Local 400
C. Heppner – The Segal Company
C. Hoffmann – Local 400
J. Ianniello – Associated Administrators, LLC
W. Jensen – Associated Administrators, LLC
S. Sanchez – Slevin & Hart, P.C.
W. Seehafer – SuperValu, Inc.
B. Slevin – Slevin & Hart, P.C
L. Walsh – Associated Administrators, LLC
M. Wilson – Local 400

I. CALL TO ORDER

A quorum being present, Chairman Federici called the meeting to order.

A. Appointments to Health and Welfare Board of Trustees

Mr. Jensen reported that Kroger appointed Mr. Steven Springer to the Board of Trustees, replacing Athar Bilgrami. The Trustees welcomed Mr. Springer to the Board.

II. FINANCIAL REPORT

A. PNC Bank

The PNC Summary of Activity report for the period January 1, 2017 to September 30, 2017 was pre-circulated. Such report indicated a beginning market value of $4,674,874, receipts of $31,546,244, disbursements of $30,044,291, and investment returns of $65,420, producing an ending market value of $6,282,247 as of September 30, 2017.

B. Auditor's Report

The Trustees welcomed Mr. Mark Buckberg and Mr. Albert Leech of Withum Smith & Brown to the meeting. Mr. Leech reported that Bond Beebe merged with Withum Smith & Brown effective August 31, 2017. However, the audit team and auditing services to the Fund will remain the same.

Mr. Buckberg presented a copy of the audited Financial Statements for the year ended 2016, reflecting an unmodified opinion. Net Assets Available for Benefits on December 31, 2015 were $7,890,309. Total additions for the year ended December 31, 2016 were $49,061,285. Total deductions were $48,777,891. The increase of Net Assets Available for Benefits was $283,394, producing Net Assets Available for Benefits of $8,173,703 on December 31, 2016. Mr. Buckberg reviewed the Notes to Financial Statements and the Schedule of Employer Contributions.

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to accept the Auditor's 2016 Audit report as presented.**

The Trustees thanked Mr. Buckberg and Mr. Leech for their report and they were excused from the meeting.

III. CONSULTANT'S REPORT

A. Heritage Rx

The Trustees welcomed Ms. Nancy Eid of Heritage Rx to the meeting via teleconference.

Ms. Eid compared Optum Rx's renewal proposal to Express Scripts' proposal for pharmacy benefit management services for the three year period August 1, 2017 to July 31, 2020. Three year projections for Optum Rx represented an 8.2% annual expense savings and Express Scripts' proposal represented a 10.6% annual expense savings. The bargaining parties recommended adoption of Express Scripts' proposal. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to select Express Scripts as the new pharmacy benefit manager effective February 1, 2018, contingent on the execution of an acceptable agreement with Express Scripts.**

Ms. Eid presented a proposed scope of work from Heritage Rx relating to assistance in the implementation of the transition to Express Scripts as the new pharmacy benefit manager. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to hire Heritage Rx to assist in the implementation of the transition to Express Scripts based on the terms of the proposed scope of work at a cost of $11,300.**

The Trustees thanked and excused Ms. Eid from the meeting.

B. <u>The Segal Company</u>

The Trustees welcomed Mr. Mitch Bramstaedt and Mr. Chris Heppner, of The Segal Company ("Segal") to the meeting.

1. <u>Kroger Retiree Expenses</u>

Mr. Heppner reported on the Fund's Kroger retiree expenses through August 31, 2017 and noted that Kroger is continuing to pay run-out expenses relating to retiree claims.

2. <u>Reserves</u>

Mr. Heppner distributed and reviewed a "Fund Experience Report" dated September 30, 2017, regarding the reserve level as of September 30, 2017. As of that date, the

Fund had 2.93 months of reserves. The Trustees asked Segal to monitor the monthly reserves based on the new Shoppers Memorandum of Agreement.

3. Dental Request for Proposal ("RFP")

Mr. Bramstaedt presented the Dental Health Maintenance Organization ("DHMO") bid analysis, reflecting proposals effective January 1, 2018. The analysis included DHMO bids from CareFirst, CIGNA, Dentegra, Dominion, United Health Care, and Group Dental Service.

After discussion, the Trustees asked Segal to obtain bids for self-funded dental PPO arrangements and distribute an analysis of those bids to the Trustees by November 1, 2017. The Trustees agreed to schedule a teleconference in mid-November to discuss the revised dental provider proposals.

IV. ATTORNEYS REPORT

A. Transition of Kroger-employed Participants to the West Virginia Fund

Mr. Slevin reported on the upcoming termination of eligibility for the Fund's Kroger-employed participants and their beneficiaries, and the transition of those participants and dependents to coverage under the UFCW Local 400 and Employers Health & Welfare Fund. The Trustees discussed the administration of run-out claims relating to the transition. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to authorize a subcommittee of Trustees Federici, Hoffmann, Gwin, and Springer to make decisions related to the administration of the above-referenced transition.**

B. State Benchmark for Essential Benefits

Mr. Slevin reported on the State benchmark plan requirement. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to choose Utah as the State benchmark for essential benefits.**

C. Perkins Judgement

Mr. Slevin reported that the Fund received $38,000 from Perkins as a result of counsel's judgement collection efforts.

D. Fiduciary Requirements

Mr. Slevin reported on the U.S. Department of Labor's final fiduciary rule.

E. Halo Case

Mr. Slevin reported on the 2nd Circuit case of *Halo v. Yale Health Plan*.

F. Disability Claims Regulations

Mr. Slevin reported on the U.S. Department of Labor's final disability claims regulations. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to appoint a committee of Trustees Federici and Gwin to take any necessary actions to comply with the DOL's disability claim regulations.**

G. Express Scripts ("ESI") Audit

Mr. Slevin reported on the audit of ESI for the period ending 2006. . Mr. Slevin presented an amendment to the auditor's engagement letter. It was executed.

H. Anthem Amendment

Mr. Slevin presented an amendment to the Fund's agreement with Anthem. It was executed.

I. Beacon Health Options Contract Renewal

Mr. Slevin presented an amendment to the Fund's agreement with Beacon related to subcontractor liability and services. It was executed.

J. 5500 Reporting

Mr. Slevin reported on the Form 5500 and financial statements.

K. Provider Contract Amendments

Mr. Slevin reported on the pending amendments to the Fund's agreements with CareFirst, OptumRx and MetLife and the Trustees directed counsel to express to the providers the Trustees' displeasure with the providers' delay in finalizing the amendments.

L. Subrogation

Mr. Jensen reported $7,281.43 was recovered by Slevin & Hart for the subrogated claims for the first quarter 2017 and $9,424.90 for the second quarter 2017.

V. ADMINISTRATIVE MANAGER'S REPORT

A. First Quarter 2017 Report

Mr. Ianniello presented the Administrative Manager's report for the first quarter 2017, which had been pre-circulated. Such report indicated total income of $12,632,748, and total expenses of $11,970,589, producing a surplus of $602,159. Contributions were made on behalf of 5,621 Plan participants.

B. Second Quarter 2017 Report

Mr. Ianniello presented the Administrative Manager's report for the second quarter 2017, which had been pre-circulated. Such report indicated total income of $12,047,745, and total expenses of $12,534,370, producing a deficit of $486,625. Contributions were made on behalf of 5,582 Plan participants.

VI. INVOICES

The Trustees reviewed the list of invoices dated October 10, 2017. Mr. Jensen reported on additional invoices for litigation related expenses, not listed on the report.

On Motion made and seconded, with Trustee Born abstaining, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED that the invoices shown on the list dated October 10, 2017 and the additional litigation expenses are approved for payment.**

The Trustees discussed the possibility of submitting certain litigation-related expenses to the Fund's fiduciary insurance carrier for reimbursement. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

RESOLVED to authorize a committee of Trustees Federici and Gwin to decide whether to pursue a claim with the fiduciary liability carrier.

VII. OTHER FUND BUSINESS

A. Shoppers Memorandum of Agreement

Mr. Ianniello reviewed the Memorandum of Agreement ("MOA") dated August 25, 2017 between Shoppers Food and Pharmacy and UFCW Local 400 and UFCW Local 27, noting the 8% increase in Maintenance of Benefits rates in August 2017 and again in March 2018, the changes relating to the reserve requirement, Shoppers' obligation to make a one-time lump sum payment of $315,000 to the Fund and the direction to change of the Fund's pharmacy benefits manager to Express Scripts. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

RESOLVED to approve the MOA between Shoppers and UFCW Locals 400 and UFCW Local 27.

B. Dependent Spousal Audit

Mr. Ianniello outlined the spousal audit process to be conducted by Associated, as approved by the Trustees. He said that the first letter of the dependent spousal audit was mailed October 1, 2017 to 599 plan participants. Associated will utilize several mail and phone solicitations to obtain responses. He said that Associated would provide a status update at the next Board of Trustees meeting.

C. Kroger Retiree Termination Process

Mr. Ianniello advised that coverage for Kroger retirees terminated as of June 30, 2017. Retired participants have until December 31, 2017 to file a claim.

D. Kroger Transition to West Virginia Fund

Mr. Ianniello discussed the process of transitioning the Kroger Richmond Tidewater and Kroger Roanoke groups from the Fund to the UFCW Local 400 and Employers Health and Welfare Fund.

E. <u>CareFirst PPO Contract Renewal</u>

Mr. Ianniello reported that CareFirst's best and final offer for the PPO contract renewal is due by the end of 2017.

F. <u>Pre-Tax Employer Deductions</u>

Mr. Jensen reported that the Fund was asked by Shoppers to review the Plan's dependent enrollment and eligibility requirements in the context of the participating employers' obligations to comply with the Internal Revenue Code rules relating to pre-tax payroll deductions relating to health care. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to appoint a subcommittee of Trustees Born and Hipkins to approve any changes to the Fund's eligibility and enrollment rules necessary to enable participating employees' payroll deductions relating to Fund coverage to be treated as pre-tax deductions.**

G. <u>Participant Appeals</u>

Mr. Ianniello noted that the appeals committee had forwarded three appeals for consideration by the full Board of Trustees. The appeals were pre-circulated. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to approve the three appeals, E17/173-7433, E17/165-1328, and M17/151-8045.**

H. <u>Kaiser Medicare Plan Proposed Renewal</u>

Mr. Ianniello presented the 2018 Kaiser Permanente proposed Medicare Plan renewal premium rates. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to approve the Kaiser Permanente Medicare Plan renewal premium rates as presented, effective January 1, 2018.**

I. Cheiron – Engagement Letter for 2016 and 2017

Mr. Ianniello reviewed Cheiron's engagement letter for 2016 and 2017. The proposal requests a fee of $18,600 per year and $9,600 per year respectively. The service fulfills the ASC-965 reporting requirements. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to approve Cheiron's proposal for 2016 services at a fee of $18,300 and 2017 services at a fee of $9,600.**

J. Beacon Renewal

Mr. Ianniello presented Beacon's proposed renewal with no increase in fees for 2018. After discussion,

On Motion made and seconded, the Trustees voted unanimous approval of the following resolution:

> **RESOLVED to approve Beacon's renewal with no increase in fees for 2018.**

VIII. NEXT MEETING DATES AND LOCATIONS

December 6, 2017 - 9:30 a.m. – Landover, Maryland

IX. ADJOURNMENT

There being no further business to come before the Trustees, the meeting was adjourned.

Respectfully Submitted,

Steve Loeffler – Secretary

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