

EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)

**MINUTES OF THE BOARD OF DIRECTORS
MEETING OF NOVEMBER 5, 2018**

A regular meeting of the Board of Directors of ERMA was held on November 5, 2018, at the Bickmore office in Sacramento, CA.

BOARD MEMBERS PRESENT: Scott Ellerbrock, President, PERMA
John Gillison, Vice President, PARSAC (*left at 12:05 p.m.*)
Truc Dever, Treasurer, VCJPA
Stuart Schillinger, BCJPIA (*arrived at 10:31 a.m.*)
Robert Thompson, CalTIP
Sean Scully, CSJVRMA (*left at 12:40 p.m.*)
Don White, ERMAC
Brett Miller, MBASIA
Linda Cox, MPA
Artesia Dupree, Oakland Housing Authority
John Duckett, SCORE

BOARD MEMBERS ABSENT: Charlene Calica, Contra Costa County Housing Authority

ALTERNATE MEMBERS PRESENT: Shannon Esenwein, CSJVRMA
Nataline Jindoian, Contra Costa County Housing Authority
Joanne Rennie, PARSAC (*left at 12:05 p.m.*)

ALTERNATE MEMBERS ABSENT: Todd Cusimano, BCJPIA
George Fink, CalTIP
Jamie Goldstein, MBSIA
Tracy Robinson, MPA
Kerry Trost, PERMA
Drew Felder, Oakland Housing Authority
Roger Carroll, SCORE
Jamie Scott, VCJPA

OTHERS PRESENT: Jennifer Jobe, Executive Director
Kathy Maylin, Litigation Manager
Nancy Broadhurst, Finance Manager
Greg O'Dea, General Counsel
Chee Xiong, Bickmore
Julia Byrd, Bickmore
Molly McClure, Bickmore
Will Portello, Bickmore
Yahaira Martinez, Bickmore
Jaesa McCulligan, BCJPIA
Chrissy Mack, CalTIP/VCJPA
Michael Christian, Jackson Lewis

Geoffrey Sheldon, Liebert Cassidy Whitmore
Lesley Murphy, PFM (*telephonic participation for
Item 8.C*)
Allison Gregg, Sampson, Sampson & Patterson
(*telephonic participation for Item 8.A.*)

1. CALL TO ORDER

The November 5, 2018, Board of Directors meeting was called to order at 10:02 a.m. by President Scott Ellerbrock.

2. INTRODUCTIONS

A majority of the members were present, constituting a quorum.

3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

John Gillison moved to approve the agenda as amended. Seconded by Sean Scully. The motion passed unanimously.

4. PUBLIC COMMENTS

None

5. CONSENT CALENDAR

Truc Dever moved to approve the following items: A) Minutes of June 12, 2018, Board of Directors Meeting and Summary of Action Items; B) General Warrants from June 1, 2018, through September 30, 2018; C) Claims Payments from June 1, 2018, through September 30, 2018; D) Petty Cash Statements from June 1, 2018, through September 30, 2018; E) Treasurer's Report as of June 30, 2018; F) PFM Quarter Ended June 30, 2018 Review of Investment Portfolio; G) Conflict of Interest Code Biennial Notice to FPPC; H) Bylaws, As Amended Effective April 18, 2016; and I) EPL Excess Policy and Invoice. Seconded by John Gillison. The motion passed unanimously.

6. CLAIMS MATTERS

A. Closed Session Pursuant to Government Code Section 54956.95(a) to Discuss Claims

Pursuant to Government Code Section 54956.95(a), the Board recessed to closed session at 10:05 a.m. to discuss the following claims for the payment of employment practices liability incurred by the joint powers authority:

- De La Torre, Romano; Gutierrez, Apolonio; Peltier, Steven; Tisdale, Amber; Watkins, Gregory v. City of Adelanto

- Carter, Margaret; Riley, Anthony v. City of Barstow
- Buera, Michael v. City of Manteca
- Armstrong, Shanae v. City of Pleasant Hill
- Cardenas, Patricia v. City of Rancho Cucamonga

B. Report from Closed Session

The Board reconvened to Open Session at 10:41 a.m. Mr. Greg O’Dea, General Counsel, reported the Board met to discuss the claims listed. With respect to the Armstrong, Shanae v. City of Pleasant Hill matter, the Board voted unanimously to extend settlement authority to the Litigation Manager.

7. COVERAGE MATTERS

A. Discussion Regarding the City of Adelanto’s (PERMA) Termination of Participation as a Member of ERMA

Ms. Jennifer Jobe, Executive Director, reported staff conducts an annual analysis of target ratio calculations based upon each member’s loss history. As a result of the City of Adelanto’s (PERMA) loss history for the 2015/16 Program Year, as of June 30, 2017, the City significantly exceeded the maximums allowed for the three parameters tracked by ERMA; claim severity, claim frequency and loss ratio. In cases such as this, risk assessments are recommended in order to identify the cause of a member’s poor loss history and provide assistance to improve overall performance. She further stated Ms. Kathy Maylin, Litigation Manager, was directed to conduct a risk assessment for the City and provide a report to the Board at the June 2018 meeting.

Ms. Jobe provided an overview of the timeline of events related to the City’s risk assessment noting on May 1, 2018, a letter was sent to Adelanto City Attorney, Ruben Duran, regarding the Board’s approval of an SIR increase to \$250,000, effective July 1, 2018, and notice of the Board’s review of the City’s continued ERMA participation at their November 5, 2018, meeting.

In response to a question, Ms. Jobe advised the Board has the option to rescind its notice of termination to the City prior to June 30, 2019.

Upon discussion, the Board agreed a letter of termination from ERMA effective July 1, 2019, should be sent to the City. The Board also agreed another SIR increase, from \$250,000 to \$500,000, should be instituted; therefore, staff was directed to agendize the matter for a future Board meeting.

Don White moved to approve the issuance of a notice of termination of participation in ERMA be issued to the City of Adelanto, effective July 1, 2019; seconded by Truc Dever. The motion passed unanimously.

8. FINANCIAL MATTERS

A. Draft Audited Financial Statements for the Fiscal Year Ended June 30, 2018

Ms. Allison Gregg, Sampson, Sampson & Patterson, LLP, was in attendance telephonically to review the draft audited financial statements for the Fiscal Year ended June 30, 2018. Ms. Gregg reviewed the audit parameters, and the program and financial highlights from the 2017/18 Program Year. She briefly discussed the changes in revenues, expenses, assets, and liabilities, noting total revenues increased 7.8% over the prior year; and expenses increased by 14.4% due to the increase in claims expense and an increase in the utilization of Capital Contribution Funds. Ms. Gregg also noted assets decreased 2.4%, and liabilities increased 6%.

Ms. Gregg reviewed the Statement of Net Position, presented in comparison format for the current and prior year. The deposit premium was \$6.8 million, which was an increase of 7.8% over the prior year. This was due to payroll increases of 5.4%, the pooling rate increase of 1.5%, and new members added during the 2017/18 Program Year.

Ms. Gregg noted there were no deficiencies in ERMA's internal controls.

Truc Dever moved to accept and file the ERMA Audited Financial Statements for the Fiscal Year Ended June 30, 2018; seconded by Brett Miller. The motion passed unanimously.

B. Financial Status Report for the Fiscal Year Ended June 30, 2018

Ms. Nancy Broadhurst, Finance Manager, stated typically the Internal Financial Statements are placed on the Consent Calendar for Board approval. However, annually, at the November Board meeting, the Internal Financial Statements and the JPA Performance Report as of the recent year-end are reviewed with the Board.

Ms. Broadhurst reviewed highlights of the Income Statement, which is more detailed than that of the audit. Ms. Broadhurst noted the Retained Earnings from the prior years are \$11.8 million, and the Retained Earnings from the Capital Fund is a designated fund currently at \$763,107.

Ms. Broadhurst discussed the JPA Performance Report, a detailed historical report which has been presented since the inception of the ERMA program. She noted the report shows the Balance Sheet and Statement of Operations for each open Program Year with a breakdown of assessments and dividends that have been levied for each Program Year. Ms. Broadhurst stated the report is continuously updated and is an excellent resource, and offered to send the full report showing all Program Years to Board members upon request.

Sean Scully moved to approve the Internal Financial Statements for the Fiscal Year Ended June 30, 2018, and JPA Performance Report, as of June 30, 2018; seconded by Artesia Dupree. The motion passed unanimously.

C. Discussion Regarding the California Asset Management Program (CAMP) as an Alternative to the Local Agency Investment Fund (LAIF)

Ms. Broadhurst reported at the June 2018 Board meeting, staff presented an alternative to the Local Agency Investment Fund (LAIF) account through the California Asset Management Program (CAMP). She advised ERMA currently keeps a high balance in LAIF in order to have access to liquid cash to pay settlements rather than moving funds the PFM investment portfolio. At the time, staff was asked to bring back the item for further discussion to the next Board meeting with additional information: 1) A list of participating agencies, 2) the average or typical deposit amounts, and 3) amount of assets in the Pool.

Ms. Lesley Murphy, PFM Asset Management, provided an overview on CAMP stating it is a JPA established in 1989 to provide California public agencies with professional investment services at a reasonable cost. She advised some of the cash reserve portfolio benefits include same-day liquidity; competitive yield; interest paid monthly; unlimited transactions via wire, ACH, or check. Ms. Murphy directed the Board to the Listing of Shareholders with account balances in excess of \$200,000 as of September 30, 2018, provided in her presentation included in the agenda. She noted only public agencies in California are permitted to invest in CAMP.

Ms. Murphy provided a comparison of CAMP and LAIF noting CAMP is S&P rated AAAM, whereas LAIF is not. Additionally, as of September 30, 2018, CAMP has a weighted average maturity of 31 days and pays interest monthly, whereas LAIF has a weighted average maturity of 193 days and pays interest on a quarterly basis. She reported since the economy is in a current rising rate environment, CAMP will be more competitive and deliver higher yields than LAIF.

Further, Ms. Murphy stated there is no account size; no transaction minimums or maximums; and the average account deposit is \$26.6 million. She stated the total fund net assets in the cash reserve portfolio as of September 30, 2018, are \$3,594,299,355.

A discussion ensued regarding the fund balances that should be kept in each account, and the Board agreed to transfer 50% of ERMA's funds from LAIF into CAMP, and the amount maintained in CAMP at any given point should never exceed 50% of ERMA's liquid funds. Ms. Broadhurst advised she will work closely with Ms. Truc Dever, Treasurer, to determine the exact amount of funds that should be kept in each account.

Lastly, a question arose regarding whether LAIF and CAMP guarantees of principal funds and staff advised detailed information would be brought back at a future meeting.

Artesia Dupree moved to approve placing 50% of ERMA's LAIF funds into CAMP, with the caveat that CAMP funds not exceed 50% of ERMA's liquid funds at any given time; seconded by Linda Cox. The motion passed unanimously.

9. ADMINISTRATIVE MATTERS

A. Review of 19th Annual Workshop Agenda

Ms. Jobe reported the 19th Annual Workshop will be held February 7-8, 2019, at Wine & Roses in Lodi, California. She advised the Workshop was moved to a new location due to construction occurring at last year's venue, the Dream Inn in Santa Cruz, during the time the Workshop is to be held in 2019.

The Board reviewed a draft of the 19th Annual Workshop and Board meeting agenda. Upon review, the Board agreed under the section titled PLANNING AND PROJECTED OVERVIEW FOR 2019/20 AND BEYOND, Item 3.A., Financial, should be moved after Item 3.D., Training, as discussing financials last would allow that section to flow better since the preceding items affect the financials. Ms. Jobe stated staff would make the change and continue to work with President Ellerbrock to finalize the meeting agenda.

B. Revisions to the Master Program Document for the Pooled Employment Practices Liability Program

Ms. Jobe reported in a review of ERMA's Master Program Document (MPD), the following necessary amendments were noted:

- Page 19: Language was added to Article V, Participation, Section B.2.(b) – Payments of Premiums and Other Charges, “*A Member may be billed an additional amount because of Assessments to bring a Program Year into a state of actuarial soundness, or amounts due for other items.*”
- Page 19: Section B.2.(e) of Article V, Participation is deleted.

Ms. Jobe advised further changes to the MPD will be brought forth at the Annual Workshop; however, staff clarified language with regard to billings to match current practice.

Linda Cox moved to approve the revisions as presented to the Master Program Document for the Pooled Employment Practices Liability Program, effective November 5, 2018; seconded by Truc Dever. The motion passed unanimously.

At 11:43 a.m. the Board recessed for a break and reconvened at 12:03 p.m.

10. LEGAL UPDATE

A. Update from Geoff Sheldon, Liebert Cassidy Whitmore

Mr. Geoff Sheldon, Liebert Cassidy Whitmore, provided the Board with an overview of the new bills approved by Governor Jerry Brown related to workplace harassment, gender discrimination, and retaliation claims inspired by the #MeToo and #TimesUp movements as follow:

- SB 1300 (Amendments to the California Fair Employment and Housing Act, FEHA)
- SB 820 (Settlements of Sexual Harassment Claims)
- AB 3109 (Confidentiality Clauses in Settlement Agreements)
- SB 1343 (Sexual Harassment Training Expanded)
- SB 224 (Expansion of Definition of Sexual Harassment)
- AB 1619 (Increased Statute of Limitations for Sexual Assault)

The Bills, which take effect on January 1, 2019, will greatly impact the litigation of FEHA claims, employer-employee agreements and will expand the requirements for employer training. Mr. Sheldon concluded his presentation by stating the changes to the Bills are not retroactive and should not affect existing litigation.

11. LITIGATION MANAGEMENT

A. Report from Kathy Maylin, Litigation Manager

Ms. Kathy Maylin, Litigation Manager, provided an update on claims activity and litigation management issues noting that over the last two years there has been a 22% increase in claims, while the percentage in litigated claims has dropped from 54% to 29%. Ms. Maylin believes this is due to more members reporting incidents in a timely manner as doing so provides the opportunity for defense counsel and staff to become involved and assist the member in keeping incidents from becoming litigated.

Ms. Maylin advised members should focus on training employees to assist in changing the workplace environment and in return reducing the amount of incidents before they happen. She encourages members to incorporate trainings, not mandated by law, as mandatory trainings within the member agencies as she believes these will help improve the work environments. Ms. Maylin recommended two trainings she believes every agency should make mandatory as follows:

- Management 101 for new and existing managers. She noted several new managers come into their role with no understanding of what it means to be an effective manager. She noted this training is already offered through ERMA.
- City Council training that provides an overview of the scope of Council duties and responsibilities along with the consequences of stepping outside of those duties. Ms. Maylin noted staff will be looking into including this training online in the suite of ERMA trainings.

12. TRAINING/LOSS PREVENTION MATTERS

A. Ad Hoc Training Committee Update

At the Annual Workshop held in February 2018, staff was directed to work with the Ad Hoc Committee to implement a second phase of the policy review initiative. The secondary phase includes the development of high-level management training, as well as introductory supervisor and leadership training.

Ms. Jobe reported the Ad Hoc Committee, comprised of President Scott Ellerbrock, Vice President John Gillison, and Board Members Stuart Schillinger and Linda Cox, and staff outlined objectives to achieve the development of the two identified training programs. Some of the tasks the Committee is currently working on are outlining the training costs for the high and introductory level management trainings, establishing a library of best practices policies as recommended by attorney partners, and identifying the availability of funds for “high priority” members based upon the results of the policy review surveys. Ms. Jobe stated while some members did not have many issues with their policies, there were other members who had old or bad policies in place and will require more assistance. Lastly, she stated the Committee also discussed the possibility of utilizing funds from the Capital Contribution Fund to cover the cost of management and city council trainings for members recommended for a risk assessment, and to require the agency to complete the trainings.

B. 2018 Target Risk Appraisal Recommendations

Ms. Broadhurst reported that annually staff reviews member’s loss performance to aid in determining which members will be recommended for a risk assessment. She noted staff analyzes each Program Year individually to determine frequency, severity, and loss ratio for each member and in aggregate by using payroll, premium, number of claims, and ERMA total incurred data. ERMA’s ratios are then compared to each individual ERMA member. If a member’s ratio exceeds two times ERMA’s ratio in any of the three categories, they are listed for the Litigation Manager’s comments and reviewed for a possible risk assessment.

Ms. Broadhurst stated that once the target ratio calculation summary is completed, it is sent to Ms. Maylin to review and provide comments. Ms. Maylin determines which entities warrant an assessment and provides a report to the Board accordingly.

Ms. Maylin explained her rationale for recommending assessments and noted she will conduct an assessment for the Oakland Housing Authority and provide a report at the June 2019 meeting.

Artesia Dupree moved to approve the Litigation Manager, Kathy Maylin, to conduct a risk assessment for the Oakland Housing Authority; seconded by John Duckett. The motion passed unanimously.

13. CLOSING COMMENTS

A. Board

None

B. Staff

Ms. Jobe advised there are two agencies that have made application to ERMA and the Underwriting Committee will be meeting on November 15th to review the applications. She advised staff will be scheduling a special Board meeting in early December for this purpose, and will also add the City of Adelanto SIR increase as an item to that agenda.

14. ADJOURNMENT

The November 5, 2018, ERMA Board of Directors meeting adjourned at 1:02 p.m. by general consent.



Jennifer Jobe, Executive Director