

**EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)**

**MINUTES OF THE BOARD OF DIRECTORS  
MEETING OF APRIL 30, 2019**

A regular meeting of the Board of Directors of ERMA was held on April 30, 2019, at the York office in Sacramento, CA.

- BOARD MEMBERS PRESENT:** Scott Ellerbrock, President, PERMA  
John Gillison, Vice President, PARSAC  
Truc Dever, Treasurer, VCJPA  
Stuart Schillinger, BCJPIA  
Robert Thompson, CalTIP  
Sean Scully, CSJVRMA (*arrived during item 6.A*)  
Don White, ERMAC  
Brett Miller, MBASIA (*arrived during item 6.A*)  
Linda Cox, MPA  
John Duckett, SCORE
- BOARD MEMBERS ABSENT:** Charlene Calica, CCCHA  
Artesia Dupree, OHA
- ALTERNATE MEMBERS PRESENT:** Kin Ong, PARSAC  
Deneen Proctor, CSJVRMA (*arrived during item 6.A*)  
Nataline Jindoian, CCCHA
- ALTERNATE MEMBERS ABSENT:** Kerry Trost, PERMA  
Jamie Scott, VCJPA  
Todd Cusimano, BCJPIA  
George Fink, CalTIP  
Jamie Goldstein, MBASIA  
Tracy Robinson, MPA  
Drew Felder, OHA  
Roger Carroll, SCORE
- OTHERS PRESENT:** Jennifer Jobe, Executive Director  
Yahaira Martinez, Assistant Executive Director  
Nancy Broadhurst, Finance Manager  
Chee Xiong, Senior Accountant  
Greg O’Dea, General Counsel  
Kathy Maylin, Litigation Manager  
Mona Nicolae, Litigation Analyst  
Jaesa McCulligan, BCJPIA (*arrived during item 6.A*)  
Chrissy Mack, CalTIP/VCJPA  
Jeanette Workman, CSJVRMA  
Marcus Beverly, SCORE/ERMAC  
Derek Burkhalter, Bickmore Actuarial

Roger Duffield, in2vate  
Seth Cole, Alliant Insurance Services  
Cepideh Roufougar, Jackson Lewis  
Suzanne Solomon, Liebert Cassidy Whitmore

1. CALL TO ORDER

The April 30, 2019, Board of Directors meeting was called to order at 9:02 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 Truc Dever. The motion passed unanimously.**

4. PUBLIC COMMENTS

None

5. CONSENT CALENDAR

**Truc Dever moved to approve/accept the following items: A) Minutes of February 8, 2019, Board of Directors Meeting and Summary of Action Items; B) General Warrants from January 1, 2019, through April 15, 2019; C) Claims Payments from January 1, 2019, through, April 30, 2019; D) Petty Cash Statement from January 1, 2019, through April 15, 2019; seconded by Don White. The motion passed unanimously.**

6. PRESENTATIONS

A. in2vate Program Update

Roger Duffield, President of in2vate, presented an overview of the services provided by in2vate, which include online training, bulletins, and the employee protection line. He also presented an overview of new features and services that include expanded training content and trainings provided in Spanish.

7. FINANCIAL MATTERS

A. Actuarial Study and Rates for the 2019/20 Program Year

Derek Burkhalter, Bickmore Actuarial, presented the actuarial report, specifically noting two components: 1) review of the ultimate loss estimates as of June 30, 2019; and 2) forecasting analysis to determine the funding rates for the 2019/20 program year.

Mr. Burkhalter noted the following in his presentation:

- At the expected confidence level, ERMA is projected to have a surplus of \$14,130,000 as of June 30, 2019, and a surplus of \$8,188,000 at the 90% confidence level;
- The total estimated liability for outstanding claims is \$13,595,000 as of June 30, 2019;
- Actual incurred development was \$264,000 less than anticipated since the prior report, mainly due to favorable development in four of the most recent accident years; and
- The pooling rate required to collect at the 80% confidence level for the upcoming 2019/20 Program Year at the \$50,000 retention is 0.503; a 5.5% increase from the rate used in the 2018/19 Operating Budget.

**John Gillison moved to accept and file the Actuarial Study for the 2019/20 Program Year; seconded by Linda Cox. The motion passed unanimously.**

B. Review and Approval of Administrative and Operating Budget for the 2019/20 Program Year

Nancy Broadhurst reviewed the Proposed 2019/20 Budget featuring funding at the 80% confidence level (CL), the same CL used in the 2018/19 Approved Budget. Ms. Broadhurst advised the 2019/20 Budget represents an overall increase of 9.3%, or \$662,559 over the 2018/19 Approved Budget. She noted two primary drivers to the overall increase; 6.6% increase in payroll and 5.5% increase in the funding rate, and reviewed various administration line items and member additions and withdrawals. One change of note is the 91% increase in the Customized Training/Workshops line item due to the additional 20 sessions to the overall training budget.

A question was posed regarding the continued use of the 2% discount rate, and Ms. Broadhurst advised she discussed the issue with Lesley Murphy, ERMA's investment manager, and they may recommend increasing the rate to 2.25% for the 2020/21 program year.

**Linda Cox moved to approve the 2019/20 Proposed Operating Budget at an 80% Confidence Level; seconded by Sean Scully. The motion passed unanimously.**

C. Review of Annual Retrospective Adjustment Calculation

Ms. Broadhurst reported that historically, ERMA considered the annual retrospective adjustment calculation each year at the April Board meeting, using the program year equity balances as of March 31<sup>st</sup> as these numbers include the actuary's revalued reserves. From 2004, through 2008, this timeframe was necessary in order for the Board to approve assessments prior to year-end so the additional contribution could be budgeted by the JPA's and cities. Although the turn-around time to produce the March 31<sup>st</sup> financials by the April Board meeting was difficult, the calculation continued to be produced for that meeting in subsequent years when assessments were no longer necessary.

Ms. Broadhurst advised more recently, with the change in the agenda packet being distributed two weeks prior to the meeting rather than one week prior, it has become difficult to produce the financial statements in time to perform the calculation. In May 2018, the Board discussed changes to the Financial Stability Plan to incorporate the Budget Control Provision, and the Plan was amended to change the Retrospective Adjustment Process section to note the process would be considered at the June Board meeting rather than in April. Staff agreed to continue to provide a preliminary indication of the results of the calculation at the April Board meeting.

Ms. Broadhurst reviewed the results of the preliminary calculation, which were included in the agenda for the Board's review. She advised the results reveal a net dividend in the amount of \$7.3 million could be available for release in June 2019, and will be presented to the Board for review and consideration at the next meeting.

8. LITIGATION MATTERS

A. Report from Kathy Maylin, Litigation Manager

Kathy Maylin, Litigation Manager, reported at the February meeting, the Board requested a timeline of the appeals process be provided in April. Included in the agenda was a timeline of the Appeals Process; both the current process and the proposed, which she reviewed with the Board.

Ms. Maylin reminded the Board of the importance of members' risk practices to focus on claim prevention through education and training. She stated recently, staff disseminated two legal alerts and requested they be forwarded to human resources staff and department heads at the agencies due to the importance of the information contained within each bulletin. Staff will be reaching out to the JPA managers in an effort to ensure the legal alerts and other important information reaches the appropriate people at the member agencies.

9. ADMINISTRATIVE MATTERS

A. ERMA 20<sup>th</sup> Annual Workshop

Jennifer Jobe, Executive Director, reported the proposed dates for the 2020 Annual Workshop are Thursday, February 6, and Friday, February 7. Staff solicited a proposal from the Dream Inn as well as Wine & Roses. The proposed 2020 rates for the Dream Inn are \$189/night plus tax, and \$194/night plus tax for Wine & Roses. Ms. Jobe requested feedback from the Board as to whether additional proposals should be solicited from alternate venues. Upon discussion, the Board agreed they wish to return to the Dream Inn for the 2020 Annual Workshop.

President Ellerbrock directed staff to execute a contract with the Dream Inn for the 2020 Annual Workshop.

B. Draft Resolution Establishing Meeting Dates for the 2019/20 Program Year

Ms. Jobe presented a Draft Resolution Establishing Proposed Meeting Dates for the 2019/20 program year as follows: Monday, November 4, 2020; Thursday and Friday, February 6 & 7, 2020 (Annual Workshop/Board Meeting); Tuesday, April 28, 2020; and Tuesday, June 9, 2020.

A discussion ensued regarding the start time of meetings and the Board concluded times will be determined at a later date and based upon agenda content. For meetings with a more robust agenda, the Board agreed a 9:00 a.m., start time is warranted, while a 10:00 a.m. start time will be more convenient for member travel schedules.

**Truc Dever moved to approve the Draft Resolution Establishing Meeting Dates for the 2019/20 Program Year, as amended to remove the meeting start times; seconded by Linda Cox. The motion passed unanimously.**

C. Proposed Amendments to Bylaws

Greg O’Dea, Board Counsel, stated at the February 2019 Annual Workshop, the Board was presented with a summary of proposed changes to the Bylaws. He advised the proposed changes are to Article III: Definitions and Article XIV: Billings. The changes require Members to satisfy all costs arising under the Retained Limit, such as defense fees; investigation fees; expert costs; vendor costs and related costs to ensure that ERMA’s partners and vendors are compensated by Members for the cost incurred within the Retained Limit.

**Linda Cox moved to approve the Bylaws, as amended, effective April 30, 2019; seconded by Don White. The motion passed unanimously.**

D. Proposed Amendments to 2019/20 Memorandum of Coverage

Mr. O’Dea reported proposed changes to the Memorandum of Coverage (MOC) for the 2019/20 program year were presented to the Board at the February Board meeting. He reviewed the changes to Section VII – Conditions, Item 7, stating the changes would reduce the time to appeal a coverage decision from 60 days to 30 calendar days in order to promote a prompt resolution of coverage dispute and for consistency with the 30 day period for appeal of other staff decisions. The proposed changes would also reduce the time period between the Board’s decision and a request for arbitration from 90 days to 30 days in order to promote a prompt resolution of the coverage dispute.

A discussion ensued regarding the timelines and the Board agreed to making the proposed changes to the MOC with the addition of language providing the Program Administrator the discretion to extend the deadline to appeal by an additional 30 days.

**John Duckett moved to approve the Memorandum of Coverage as presented with the addition of language providing the Program Administrator the discretion to extend the deadline to appeal by an additional 30 days; seconded by Linda Cox. The motion passed unanimously.**

E. Proposed Amendments to 2019/20 Master Program Document

Mr. O’Dea reported the proposed changes to the Master Program Document (MPD) for the 2019/20 program year were presented to the Board at the February Board meeting. He reviewed the changes to the document as follow:

- Article II: Coverage, Section 5. Retained Limits – this change would require members to satisfy all costs arising under the Retained Limit, such as defense fees; investigation fees; expert costs; vendor costs; and related costs to ensure that ERMA’s partners and vendors are compensated by Members for the cost incurred within the Retained Limit.
- Article IV: Administration, Section 5. Litigation Manager – this change would increase the Litigation Manager’s settlement authority to \$100,000 per claimant, not per claim.
- Article VI: Claims Administration, Section E. Disputes Regarding Management of a Claim – this change establishes 30 calendar days of a Member’s appeal of staff decision.
- Article V: Participation, Section 2, Payment of Premiums and Other Charges – this change establishes that failure to pay defense and related costs included but not limited to attorney’s fees, investigation costs, expert costs, vendor costs and other related costs incurred within the Member’s SIR, may result in expulsion from ERMA.
- Article V: Participation, Section D. Termination of Participation – this change establishes nonpayment or habitual late payment of defense and related costs as a reason for termination of future participation.

- Article VI: Claims Administration, Section E. Disputes Regarding Management of a Claim – this change provides the alternative that the appeal may be heard at the next Board or Executive Committee meeting.

**John Duckett moved to approve the Master Program Document, as amended, effective July 1, 2019; seconded by Truc Dever. The motion passed unanimously.**

F. Approval of Assignment, Assumption and First Amendment to July 1, 2018 Agreement for Administrative, Litigation Management and Financial Services

Ms. Jobe reported Bickmore has served as ERMA's program administrator since the 1990/00 program year. On May 1, 2014, Bickmore was acquired by York Risk Services (York). Effective December 1, 2018, as part of a company-wide rebranding initiative, Bickmore was rebranded to York. The name change requires an amendment to the existing agreement between ERMA and Bickmore to ensure Bickmore's contractual obligations are properly assigned to York.

Ms. Jobe advised Mr. O'Dea reviewed the Amendment and made substantial changes in the best interests of ERMA. York has reviewed and approved the changes, which were incorporated into the Agreement enclosed in the agenda.

**Truc Dever moved to approve the Assignment, Assumption and First Amendment of Agreement for Administrative, Litigation Management, and Financial Services; seconded by John Duckett. The motion passed unanimously.**

G. Proposed Amendments to Resolution Establishing Criteria for Approval of Investigators

Ms. Maylin reviewed the proposed Amendments to Resolution 2017-8, Establishing Criteria for Approval of Investigators stating the proposed changes would permit members to retain investigators with higher billing rates than established ERMA rates, upon approval by the Litigation Manager. Members would pay the differential directly to the investigator, but such payments would not erode the member's SIR. She advised the resolution enclosed in the agenda would be updated to Resolution No. 2018-3 upon approval.

**Linda Cox moved to approve Resolution No. 2018-3 Establishing Criteria for Approval of Investigators; seconded by John Duckett. The motion passed unanimously.**

H. Approval of Resolution 2018-4 Establishing Target Performance Standards

Ms. Maylin reviewed the proposed changes to Resolution 2011-1, Establishing Target Performance Standards and Assistance Program stating the changes would require members identified via a target performance analysis to complete specific training on council relations regarding the scope and limits of public official authority as deemed appropriate by the Litigation Manager. She further noted other changes included updating citation references to

the Master Program Document, and updating the Resolution number to 2018-4.

**Sean Scully moved to approve Resolution No. 2018-4 Establishing Target Performance Standards and Assistance Program; seconded by Nataline Jindoian. The motion passed unanimously.**

I. Approval of Resolution 2018-5 Establishing Approval for Payments to Vendors

Ms. Maylin directed the Board to the draft Resolution 2018-5 included in the agenda. She stated in an effort to ensure ongoing collaborative relationships with ERMA's vendor partners, it has become necessary to provide the Board with the discretion to remit payment for incurred services, including defense fees; investigation fees; expert costs; and related costs in the event a member fails to remit payment for such from within their retained limit.

**John Duckett moved to approve Resolution No. 2018-5 Establishing Approval for Payments to Vendors; seconded by Truc Dever. The motion passed unanimously.**

J. AGRiP Governance & Leadership Conference Report

Ms. Jobe reported she and Artesia Dupree attended the AGRiP Fall Governance & Leadership Conference that took place in St. Louis, MO in March 2019. She advised Ms. Dupree was not able to attend the Board meeting due to unforeseen circumstances and will provide a report at the June Board meeting.

K. Excess Coverage Marketing Update for the 2019/20 Program Year

Seth Cole, Alliant, presented an update on the excess coverage marketing efforts. He advised RSUI offered a flat rate renewal at the expiring terms and conditions of \$2 million in limits each claim per member with a \$4 million per member aggregate and \$10 million policy aggregate excess of ERMA's retained limit of \$1 million.

10. MEMBERSHIP MATTERS

A. Update Regarding City of Adelanto (PERMA) Performance Improvement Plan

Ms. Jobe reported that following the January 10, 2019, Notice of Appeal from the City of Adelanto regarding ERMA's Termination of Membership, effective June 30, 2019, the Board placed the City on a Performance Improvement Plan (PIP). The goal was to provide the City with the opportunity to remain a member of ERMA.

Ms. Jobe stated staff will continue to work with the City and will provide a recommendation at the June Board meeting.

The Board expressed concern with the City's continued participation, and requested that feedback be communicated to the City.



11. TRAINING/LOSS PREVENTION MATTERS

A. Update Regarding the Training Program for the 2018/19 Program Year

Yahaira Martinez, Assistant Executive Director, provided the Board with an update on the current training program. She noted with the implementation of SB 1343 in 2019, staff received numerous requests from members requesting trainings in an effort to comply with the new requirements. In response, the Board approved an additional 20 trainings for the 2018/19 program year, for a total of 67, at the February meeting.

Ms. Martinez reported to-date, 50 trainings have taken place or are scheduled for a future date, and of those, 38 are harassment-related trainings that comply with the new requirements. She advised SB 1343 training is now available to the membership online via ERMANet.

B. Review of Training Program for 2019/20 Program Year

Ms. Jobe reported on an annual basis, ERMA conducts 47 live, regional and individual trainings throughout the State. Ms. Jobe stated that of the 47 allocated trainings, 25 are conducted by Bickmore under the pool administration contract and 22 are conducted by ERMA's attorney partner firms, Jackson Lewis, and Liebert Cassidy Whitmore (LCW), or another approved vendor.

Ms. Jobe advised following the implementation of expanded training requirements, staff requested approval of an additional 20 trainings, which have been added to the 2019/20 Operating Budget, as previously discussed.

Ms. Jobe advised following review and discussion amongst staff, LCW and Jackson Lewis, the following proposed slate of training workshop topics were presented for the Board's review and consideration:

1. **Prevention of Workplace Harassment, Discrimination and Retaliation:** This practical workshop, designed for all levels of agency employees, provides guidance on managing day-to-day interactions to prevent unlawful discriminatory harassment and retaliation. This training meets the requirements of AB 1825 and AB 2053.
2. **Prevention of Workplace Harassment, Discrimination, and Retaliation:** This one-hour workshop is designed for non-supervisory employees to prevent unlawful discriminatory harassment and retaliation. This training meets the requirements of SB 1343.
3. **They Posted What? Where Social Media, Employer Interests and the First Amendment Intersect:** This workshop provides an overview of the law in this area in an effort to help participants understand the Constitutional boundaries at play, and where the government's interest as the employer intersects with a public employee's First Amendment rights.

4. **Human Resources Academy I:** This workshop provides an introduction and overview of basic human resource program areas including the basics of public sector employment, recruitment & selection, classification & compensation, personnel file management, public record keeping, and key state and federal laws pertaining to wage and hour, labor relations, and compliance programs. This session is designed for individuals with less than five years of public sector HR experience.
5. **Workplace Bullying: A Growing Concern:** This workshop defines bullying and distinguishes it from simple rudeness, and helps to identify strategies for recognizing when it occurs, including when a supervisor is bullying subordinates (versus merely supervising). The workshop will also provide pragmatic advice for holding bullies accountable for their conduct and for assisting "targets" of bullying in reporting and responding to bullying conduct.
6. **Managing the Marginal Employee:** This workshop is designed to train supervisors and managers on how to manage the employee who does the "bare minimum" and/or "pushes the envelope."
7. **Technology and Employee Privacy:** This workshop explores the wide range of issues arising from the interplay between technology and privacy in the workplace. It guides managers through the patchwork of federal and state laws and court decisions that govern these issues. It also identifies ways to respond to inappropriate employee use of social networking media, as well as when employers can use this same media in hiring, investigations and discipline.

Ms. Jobe noted the full slate of trainings will be available to the membership. A solicitation email will be distributed to the membership in order to schedule trainings for member agencies interested in serving as host sites. Staff will provide a calendar of scheduled training dates to the membership by July 1.

**Truc Dever moved to approve the proposed Training Program for the 2019/20 program year; seconded by Linda Cox. The motion passed unanimously.**

12. **COVERAGE MATTERS**

A. **City of Reedley Appeal of Coverage Denial**

Ms. Maylin reported the City of Reedley untimely reported both a complaint of sexual harassment and later a complaint of retaliation, resulting from the claimant's harassment complaint. She advised the initial complaint occurred in October 2018, an IA investigation was conducted; then the second complaint occurred in November 2018, and the City conducted an investigation. Further, the employee resigned from her position in December 2018, prior to receipt of the investigation results on the retaliation claim. The City first notified ERMA of the claims on January 17, 2019 shortly after being advised to do so by the City Attorney. In accordance with the MPD, the Litigation Manager has the discretion to determine whether a claim has been filed untimely with ERMA.

Ms. Maylin reviewed the context and procedural status of the claim and determined that

should the claim be accepted, the late reporting of the claim may cause financial or other prejudice to the authority.

Upon review and discussion regarding the City's circumstances that prevented them from timely reporting the matter to ERMA, the Board agreed with Ms. Maylin's coverage denial.

**Sean Scully moved to affirm denial of coverage for the Ontiveros v. City of Reedley claim; seconded by Don White. The motion passed unanimously.**

13. 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 11:25 a.m. to discuss the following claims:

- Bernardino v. City of Porterville
- Orellas v. City of Piedmont

B. Report from Closed Session

The Board reconvened to open session at 11:31 a.m. The Board met to discuss the claims listed above. Mr. O'Dea advised no reportable action was taken in closed session.

14. CLOSING COMMENTS

A. Board of Directors

None

B. Staff

None

15. ADJOURNMENT

The April 30, 2019, ERMA Board of Directors meeting adjourned at 11:33 a.m. by general consent.

  
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Jennifer Jobe, Executive Director