

EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)

**MINUTES OF THE BOARD OF DIRECTORS MEETING
OF JUNE 9, 2020**

A regular meeting of the Board of Directors of ERMA was held on June 9, 2020, all portions of this meeting were conducted via Webex in accordance with Government Code Section 54953(b). The meeting was conducted under Governor Gavin Newsom's Executive Order N-25-20 wherein public noticing of teleconference locations for each meeting participant is suspended.

BOARD MEMBERS PRESENT: John Gillison, President, PARSAC
Truc Dever, Vice President, VCJPA
Stuart Schillinger, Treasurer, BCJPIA
Scott Ellerbrock, PERMA
Robert Thompson, CalTIP
Sean Scully, CSJVRMA
Don White, ERMAC
Linda Cox, MPA
John Duckett, SCORE
Charlene Calica, CCCHA
Artesia Dupree, OHA (*Joined at 10:05 a.m.*)

BOARD MEMBERS ABSENT: Brett Miller, MBASIA

ALTERNATE MEMBERS PRESENT: Kin Ong, PARSAC
Jamie Scott, VCJPA
Heather Rowden, BCJPIA
Deneen Proctor, CSJVRMA
Mellissa Guerrero, ERMAC
Jamie Goldstein, MBASIA
Nataline Jindoian, CCCHA

ALTERNATE MEMBERS ABSENT: Yumi Augustus, PERMA
George Fink, CalTIP
Reina Schwartz, MPA
Drew Felder, OHA
Roger Carroll, SCORE

OTHERS PRESENT: Jennifer Jobe, Executive Director
Mona Hedin, Analyst/Training Coordinator
Kathy Maylin, Litigation Manager
Ligia Nicolae, Litigation Analyst
Alana Theiss, Finance Manager
Chee Xiong, Senior Accountant
Doug Alliston, General Counsel
Jared Bryan, Jackson Lewis
Geoff Sheldon, Liebert Cassidy Whitmore
Liz Arce, Liebert Cassidy Whitmore
Seth Cole, Alliant
Jaesa McCulligan, BCJPIA
Chrissy Mack, CalTIP/VCJPA
Jeanette Workman, CSJVRMA
Marcus Beverly, ERMAC/SCORE
Conor Boughey, MBASIA

Joseph Costamagna, PLAN

1. CALL TO ORDER; ROLL CALL

The June 9, 2020, Board of Directors Meeting was called to order at 10:01 a.m., by President John Gillison. Roll call was conducted, and it was determined a quorum was present.

2. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

Scott Ellerbrock moved to approve the Agenda as posted. Seconded by Charlene Calica. Roll call was conducted with affirmative votes by Truc Dever, Stuart Schillinger, Scott Ellerbrock, Robert Thompson, Sean Scully, Don White, Jamie Goldstein, Linda Cox, John Duckett, Charlene Calica, Artesia Dupree and John Gillison, with no nays or abstentions. The motion passed unanimously.

3. PUBLIC COMMENTS

None

4. CONSENT CALENDAR

Jennifer Jobe, Executive Director, noted item H.- Draft Resolution No. 2020-2, Establishing Meeting Dates for the 2020/21 Program Year is typically presented as a separate item, however has been included in the Consent Calendar for this meeting. She advised in an effort to avoid conflicts with the League of California Cities City Managers' Conference, ERMA's 21st Annual Workshop is proposed to be held one week later than the prior year.

Ms. Jobe further noted Item I. - 2020/21 Goals and Objectives Update was inadvertently omitted from the agenda packet and would be distributed after the meeting under separate cover.

Truc Dever moved to approve the Consent Calendar as follows: A) Minutes of April 28, 2020 Meeting of the Board of Directors and Summary of Action Items; B) General Warrants from April 1, 2020, through April 30, 2020; C) Claims Payments from April 1, 2020, through April 30, 2020; D) Treasurer's Report as of March 31, 2020; E) Internal Financial Statements as of March 31, 2020; F) Notice of Intent to Withdraw: City of Stanton (PERMA); Town of Fort Jones (SCORE); G) PFM: Quarterly Investment Report as of March 31, 2020; H) Draft Resolution No. 2020-2 Establishing Meeting Dates for the 2020/21 Program Year; and I) 2020/21 Goals and Objectives Update. Seconded by Artesia Dupree. Roll call was conducted with affirmative votes by Truc Dever, Stuart Schillinger, Scott Ellerbrock, Robert Thompson, Sean Scully, Don White, Jamie Goldstein, Linda Cox, John Duckett, Charlene Calica, Artesia Dupree and John Gillison, with no nays or abstentions. The motion passed unanimously.

5. FINANCIAL MATTERS

A. Review of Annual Retrospective Adjustment Calculation

Alana Theiss, Finance Manager, presented the annual retrospective calculation to the Board.

Ms. Theiss reviewed the Retrospective Adjustment Calculation policy and confirmed the final

calculation meets the criteria in which the net position prior to the release of dividends and program years greater than five years old must show a surplus at the 90% Confidence Level (CL).

Ms. Theiss stated the amount available to declare as a dividend is \$1,762,125, which reflects a 1% reduction from the preliminary calculation presented in April.

Ms. Theiss noted the Board's prior approval of a dividend release up to 67% of the total amount available was discussed at the April meeting, and confirmed the Annual Retrospective Calculation of \$1,180,624.

Artesia Dupree moved to approve a dividend release in the amount of \$1,180,624 drawn proportionately from open Program Years 2012/13, 2013/14 and 2014/15. Seconded by Linda Cox. Roll call was conducted with affirmative votes by Truc Dever, Stuart Schillinger, Scott Ellerbrock, Robert Thompson, Sean Scully, Don White, Jamie Goldstein, Linda Cox, John Duckett, Charlene Calica, Artesia Dupree and John Gillison, with no nays or abstentions. The motion passed unanimously.

B. Review of Preliminary Administrative and Operating Budget for the 2020/21 Program Year

Ms. Theiss reviewed the following budget considerations approved by the Board at the April 9 meeting:

- Approval of the continuation of pooled funding at an 80% CL and 2% discount;
- Dividends considered in concert with the budget and prevailing circumstances; and
- Members will be provided the option to have the dividend applied against their annual contribution invoice, or released via a cash disbursement.

Ms. Theiss stated the preliminary budget included all 28 members of PLAN including the optional excess coverage. As ultimately, three of the 28 members elected to apply for participation in ERMA, she confirmed the budget was modified to remove the non-participatory Agencies. Ms. Theiss explained the removal of the non-participatory agencies resulted in an increase in member contributions, as costs are allocated across fewer members.

Ms. Theiss completed the review of the budget, advising the Board of an overall 18% increase from the prior year, due to increased loss rates, covered payroll and service provider contracts.

Linda Cox moved to approve the proposed Administrative and Operating Budget for the 2020/21 Program Year. Seconded by Artesia Dupree. Roll call was conducted with affirmative votes by Truc Dever, Stuart Schillinger, Scott Ellerbrock, Robert Thompson, Sean Scully, Don White, Jamie Goldstein, Linda Cox, John Duckett, Charlene Calica, Artesia Dupree and John Gillison, with no nays or abstentions. The motion passed unanimously.

6. ADMINISTRATIVE MATTERS

A. Proposed Amendments to the 2020/21 Memorandum of Coverage

Doug Alliston, Board Counsel, reviewed the following proposed amendments to the Memorandum of Coverage (MOC) with the Board:

- Ultimate Net Loss – A proposed definition was presented to include damages and defense costs;
- Claim – Simplified language was proposed to include, “Oral or written notice to the Covered Party that an Employee alleges a Wrongful Employment Practice;”
- Notice of Claim – Removal of the requirement that a “written demand” must be received by a Covered Party;
- Occurrence – Multiple amendments were proposed to clarify the definition; and
- Litigation Manager – Amendment to allow the Litigation Manager “...*discretion to accept as timely any claim reported after 30 days except for any of the following: notice from the U.S. Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing or any other state or federal Government agency to which an Employee has made a claim; a Government claim; or a civil lawsuit.*”

B. Proposed Amendments to the 2020/21 Master Program Document

Mr. Alliston reviewed the proposed amendments to the Master Program Document (MPD). He stated the MPD language should be revised to align with the language pertaining to the Litigation Manager’s discretion of claims, as proposed in the MOC amendments discussed in the previous agenda item.

Truc Dever moved to approve the amendments to the 2020/21 Memorandum of Coverage and 2020/21 Master Program Document, as presented. Seconded by Scott Ellerbrock. Roll call was conducted with affirmative votes by Truc Dever, Stuart Schillinger, Scott Ellerbrock, Robert Thompson, Sean Scully, Don White, Jamie Goldstein, Linda Cox, John Duckett, Charlene Calica, Artesia Dupree and John Gillison, with no nays or abstentions. The motion passed unanimously.

C. Draft Resolution No. 2020-3, Establishing a Litigation Management Program

Kathy Maylin, Litigation Manager, reviewed the following proposed changes to Resolution No. 2020-3, Establishing a Litigation Management Program:

- Defense counsel must certify upon claim assignment that the law firm has not previously provided advice and counsel to the member regarding the facts and circumstances of the particular claim;
- Defense counsel must inform claimants’ attorneys that a provision of W9 forms completed by claimant and the attorney is a settlement term requirement;
- A joint defense agreement between defendants must first be approved by the Litigation Manager;
- A “reminder” guideline that defense counsel may not bill for non-ERMA covered services, such as the administrative disciplinary process related to claimants or subjects of investigations; and

- A revision of the threshold monetary trigger for the Litigation Manager to conduct an “exit analysis” with the covered member and defense counsel.

Ms. Maylin noted the proposed changes provide assurances of the Litigation Manager’s involvement at inception of the claim, as well as streamline the billing process.

Linda Cox moved to approve Draft Resolution No. 2020-3, Establishing a Litigation Management Program. Seconded by Artesia Dupree. Roll call was conducted with affirmative votes by Truc Dever, Stuart Schillinger, Scott Ellerbrock, Robert Thompson, Sean Scully, Don White, Jamie Goldstein, Linda Cox, John Duckett, Charlene Calica, Artesia Dupree and John Gillison, with no nays or abstentions. The motion passed unanimously.

7. COVERGAGE MATTERS

A. Discussion and Action Regarding Excess Coverage for the 2020/21 Program Year

Seth Cole, Alliant, presented a renewal proposal for ERMA’s optional Excess Employment Practices Liability Program. He advised Royal Specialty Underwriting, Inc. (RSUI) proposed a flat rate renewal at expiring terms with limits of \$2M per claim, per member, \$4M per member aggregate and a \$10M policy aggregate. Mr. Cole noted the premium reflects a 5.3% increase, commensurate with an increase in total covered payroll. He concluded by stating RSUI’s final renewal terms will be effective July 1, 2020.

Artesia Dupree moved to authorize staff to bind excess coverage with RSUI for the 2020/21 Program Year, as presented. Seconded by Brett Miller. Roll call was conducted with affirmative votes by Truc Dever, Stuart Schillinger, Scott Ellerbrock, Robert Thompson, Sean Scully, Don White, Jamie Goldstein, Linda Cox, John Duckett, Charlene Calica, Artesia Dupree and John Gillison, with no nays or abstentions. The motion passed unanimously.

8. MEMBERSHIP MATTERS

A. Review of Prospective New Member Applications – Pooled Liability Assurances Network (PLAN and Underlying Member Entities)

Ms. Jobe advised the Board the Pooled Liability Assurances Network (PLAN) applied for participation in ERMA. She noted of their 28 member agencies, three applied for participation in ERMA as underlying members for the 2020/21 program year, but believes additional agencies will apply in future years.

Ms. Jobe stated the Underwriting Committee reviewed the application and supporting information for PLAN JPA and the three underlying members.

City of American Canyon

Ms. Jobe stated the City of American Canyon (City) applied for participation and requested a \$50,000 SIR. The City reported payroll of \$7.2M for the 2019 calendar year and has seventy-

one full-time and fifteen part-time employees. The City reported three losses within the previous seven fiscal years, all of which are closed.

Ms. Jobe noted the City has written personnel policies and procedures in place and is currently conducting a comprehensive review and update of these policies with plans for Legal Counsel review upon completion.

The City currently participates in Liebert Cassidy Whitmore's (LCW) Consortium and actively engages LCW to assist in the defense of claims and state-mandated training.

The Town of Atherton

Ms. Jobe advised the Town of Atherton (Town) applied for participation and requested a \$100,000 SIR. The Town reported payroll of \$4.8M for the 2019 calendar year and has thirty-five full-time and ten part-time employees. The Town reported one loss within the previous seven fiscal years.

Ms. Jobe confirmed the Town has written personnel policies and procedures in place that have been updated in the most recent five years and are regularly reviewed by Legal Counsel. The Town is compliant with all state-mandated training.

Ms. Jobe stated the Town currently is insured under a policy with RSUI and if approved for participation in ERMA, staff will provide an indication for "nose coverage" for the transition from the commercial claims-made policy to ERMA's occurrence-based MOC.

Town of Woodside

The Town of Woodside (Town) applied for participation and requested a \$50,000 SIR. The Town reported payroll of \$2.2M for the 2019 calendar year and has nineteen full-time and twenty-four part-time employees. The Town reported no incurred losses within the previous seven fiscal years and issued a Statement of No Known Losses.

Ms. Jobe confirmed the Town has written personnel policies and procedures in place and is in the process of updating their policies as it has been a number of years since a thorough review was conducted. Ms. Jobe noted the Town advised upon completion of the updates to the policies and procedures, a thorough review will be conducted by Legal Counsel. The Town is compliant with state-mandated training requirements.

Ms. Jobe concluded by stating reviews were conducted with each applying agency regarding anticipated furloughs and layoffs in the coming 24 months. She noted that due to COVID-19 and the current economic climate, staff and the Underwriting Committee believed these discussions to be prudent to aid in determining potential exposures.

Truc Dever moved to approve the Pooled Liability Assurances Network and underlying members – City of American Canyon at a \$50,000 SIR, Town of Atherton at a \$100,000 SIR and Town of Woodside at a \$50,000 SIR, effective July 1, 2020. Seconded by Scott Ellerbrock. Roll call was conducted with affirmative votes by Truc Dever, Stuart Schillinger, Scott Ellerbrock, Robert Thompson, Sean Scully, Don White, Jamie Goldstein, Linda Cox, John Duckett, Charlene Calica, Artesia Dupree and John Gillison, with no nays or abstentions. The motion passed unanimously.

B. Review of Prospective New Member Application – City of Beaumont (ERMAC)

Ms. Jobe stated the City of Beaumont (City) had previously applied for participation in ERMA for the 2016/17 Program Year and was denied based upon the Committee's concerns of the City's future sustainability following then-pending legal judgements, as well as potential future EPL exposures.

Ms. Jobe noted the City re-applied for participation and has requested a \$500,000 SIR. The City reported payroll of \$13.8M for the 2019 calendar year and has one hundred sixty-three full time and fourteen part-time employees. The City reported two losses in the previous seven fiscal years, both of which are closed.

The City has written personnel policies and procedures in place that are regularly reviewed by legal counsel and is in full compliance with state-mandated training requirements.

Ms. Jobe stated the Committee reviewed the City's application and requested the City agree to the following express conditions for participation in ERMA:

- All employment matters are to be managed by a pre-identified member of ERMA's defense panel;
- Any EPL claims are to be defended by an approved member of ERMA's defense panel; and
- The ERMA Litigation Manager shall have discretion, direction and guidance on a case-by-case basis of employment matters.

She advised the City provided a formal letter acknowledging the conditions required by the Committee.

Don White moved to approve the City of Beaumont (ERMAC) at a \$500,000 SIR effective July 1, 2020, with the express conditions that: 1) All employment matters are to be managed by a pre-identified member of ERMA's defense panel; 2) Any EPL claims are to be defended by an approved member of ERMA's defense panel; and 3) The ERMA Litigation Manager shall have discretion, direction and guidance on a case-by-case basis. Seconded by Artesia Dupree. Roll call was conducted with affirmative votes by Stuart Schillinger, Scott Ellerbrock, Robert Thompson, Sean Scully, Don White, Jamie Goldstein, Linda Cox, John Duckett, Charlene Calica, Artesia Dupree and John Gillison, with no nays and one abstention from Truc Dever. The motion passed.

9. 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 11:37 a.m. to discuss the following claim:

- Borja/Moore/Cordero v. City of Adelanto

B. Report from Closed Session

The Board reconvened to Open Session at 11:42 a.m. The Board met to discuss the claims listed above. Mr. Alliston advised no reportable action was taken in Closed Session.

10. CLOSING COMMENTS

A. Board of Directors

None

B. Staff

None

11. ADJOURNMENT

The June 9, 2020, ERMA Board of Directors meeting adjourned at 11:46 a.m. by general consent.

Mona Hedin

Mona Hedin, Board Secretary