

# EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)

## MINUTES OF THE BOARD OF DIRECTORS MEETING OF APRIL 26, 2022

A regular meeting of the Board of Directors of ERMA was held on April 26, 2022, at the Embassy Suites Hotel in Sacramento, CA.

### BOARD MEMBERS PRESENT:

John Gillison, President, CIRA  
Stuart Schillinger, Vice President, BCJPIA  
Brett Miller, Treasurer, MBASIA  
Robert Thompson, CalTIP  
Charlene Calica, CCCHA  
Bryan Whitemyer, CSJVRMA  
Linda Cox, MPA (*arrived during Agenda Item 4.A*)  
Kevin Bryant, PLAN  
Roger Carroll, SCORE

### BOARD MEMBERS ABSENT:

Melissa Guerrero, ERMAC  
Beth Lyons, PERMA  
Drew Felder, OHA  
Jeremy Wittie, VCJPA

### ALTERNATE MEMBERS PRESENT:

Kin Ong, CIRA  
Heather Rowden, BCJPIA  
Yumi Augustus, PERMA  
Jamie Scott, VCJPA

### ALTERNATE MEMBERS ABSENT:

Steve Adams, MBASIA  
George Fink, CalTIP  
Nataline Jindoaian, CCCHA  
Reina Schwartz, MPA  
George Rodericks, PLAN  
Wendy Howard, SCORE  
Becky Ramirez, CSJVRMA

### OTHERS PRESENT:

Jennifer Jobe, Executive Director  
Danielle Davis, Board Secretary  
Stacey Sullivan, Litigation Manager  
Ligia Nicolae, Litigation Analyst  
Jim Elledge, Interim Finance Manager  
Chee Xiong, Senior Accountant  
Doug Alliston, Board Counsel  
Elizabeth Arce, Liebert Cassidy Whitmore  
Morin Jacob, Liebert Cassidy Whitmore (*Arrived during Agenda Item 8.A*)  
Michael Christian, Jackson Lewis  
Shane Larsen, Jackson Lewis  
Chrissy Mack, CalTIP/VCJPA  
Amy Northam, CIRA  
Jaesa Cusimano, Alliant/ERMAC  
Jon Paulsen, BCJPIA/PLAN (*arrived during Agenda Item 8.A*)  
Jeanette Workman, CSJVRMA

Seth Cole, Alliant  
Shadi Jalali, Alliant  
David Laredo, City of Pacific Grove  
Tori Hannah, City of Pacific Grove  
Cathy Madalone, City of Pacific Grove  
Thomas Smith, City of Antioch (*Arrived during  
Agenda Item 8.A*)  
Derek Burkhalter, Bickmore Actuarial

1. CALL TO ORDER/INTRODUCTIONS

The April 26, 2022, Board of Directors Meeting was called to order at 10:00 a.m. by President John Gillison.

2. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

**Jamie Scott moved, seconded by Rob Thompson, to approve the Agenda as posted. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

3. PUBLIC COMMENTS

None

4. CONSENT CALENDAR

**Kevin Bryant moved, seconded by Bryan Whitemyer, to approve the Consent Calendar as follows: A) Minutes of February 10, 2022, Board of Directors Meeting; B) General Warrants from January 1, 2022, through March 31, 2022; C) Claims Payments from January 1, 2022, through March 31, 2022; D) Defense Panel Update, Effective April 2022; and E) Board Document Review Schedule. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

5. FINANCIAL MATTERS

A. Actuarial Study and Rates for the 2022/23 Program Year

Derek Burkhalter, Bickmore Actuarial, presented the actuarial study, focusing on 1) a review of ultimate loss estimates of the ERMA program as of June 30, 2022, and 2) a forecast analysis to determine funding rates for the 2022/23 Program Year.

Mr. Burkhalter summarized the study as follows:

- ERMA's ultimate loss estimates for open Program Years decreased by \$2.3 million.
- The total estimated liability for outstanding claims is \$18,566,000 as of June 30, 2022.
- The 2022/23 loss rate projection at the 80% confidence level is \$6,611,000, a 5.5% increase due to greater liabilities and exposures that occurred during the 2021/22 Program Year due in part to the addition of new members.

**Roger Carroll moved, seconded by Jamie Scott, to accept and file the actuarial study, as presented. A vote was conducted, and the motion passed unanimously with no nays or**

**abstentions.**

**B. Review of Annual Retrospective Adjustment Calculation**

Jim Elledge, Interim Finance Manager, reviewed the updated preliminary retrospective adjustment calculation (calculation) originally presented to the Board for discussion at the April 1<sup>st</sup> Workshop. Mr. Elledge reported the calculation indicated a net position available for distribution of \$5.2 million as of December 31, 2021, an increase from the initial estimation of \$2.1 million due to favorable loss development in the 2018/19 and 2019/20 Program Years.

Discussion ensued regarding historical dividend release practices, curing deficit years by utilizing surplus funds, and utilizing a portion of available funds to increase the balance in the Capital Contribution Fund (CCF) to expand ERMA's training program with respect to public safety as well as initiatives to promote amending policy and procedures.

Mr. Elledge concluded his report by reminding the Board of previous discussions regarding the conduction of a net position stress test, noting the largest stressors to ERMA's financial position are loss development and investment returns. He stated that given the current market, ERMA is likely to continue to observe unrealized losses in its portfolio until securities have matured and can be reinvested in higher-yielding securities. Mr. Elledge advised that surplus can be utilized to cure deficit years and provide stability during market fluctuations.

Following some discussion, the Board directed staff to apply available dividends to cure deficit years and add approximately \$150,000 to the CCF, after which one-half of the remaining amount should be released to members in the form of a dividend.

**No action was taken on this item.**

**C. Review of Preliminary Administrative and Operating Budget for the 2022/23 Program Year**

Chee Xiong, Senior Accountant, provided an overview of ERMA's preliminary budget for the 2022/23 Program Year.

Ms. Xiong advised that consistent with the approved budget for the 2021/22 Program Year, the preliminary budget was drafted at the 80% confidence level with a 1.5% discount rate, applying a three-tiered experience modification (ex-mod) factor to each underlying member's contribution utilizing payroll from the 2021 fiscal year.

Ms. Xiong continued by noting total contributions of \$10.3 million for the 2022/23 Program year, a 3.2% increase over the prior year. She then provided a summary of contribution totals within the four main expense categories comprising ERMA's budget:

- \$8.7 million for Funding for Losses, a 3.2% increase from the prior year attributed to the 1.2% increase in the Actuarial funding rate and 2% increase in overall payroll
- \$354,146 for Excess Insurance, a 1.7% increase from the prior year due to the aforementioned payroll increase
- \$168,600 for Loss Prevention and Training, an 8% increase from the prior year based on consistent increases in requests for two-hour training sessions (as compared to less-costly one-hour training sessions)

- Approximately \$1 million for Administrative Expenses, a 3.3% increase resulting from contractual increases in program administration, expenditures for in-person meetings and the annual workshop, and the biennial claims audit conducted by Farley Consulting

Mr. Elledge expanded on Ms. Xiong's summary, noting staff's expectations for a flat rate renewal with ERMA's excess carrier, RSUI. Ms. Jobe added total payroll for ERMA members is nearing \$2 billion, and staff is reviewing multiple prospective members for the 2022/23 Program Year that could contribute upwards of an additional \$70 million.

Mr. Elledge concluded by stating the final budget would be presented for Board approval at the June 6<sup>th</sup> meeting.

**No action was taken on this item.**

## 6. ADMINISTRATIVE MATTERS

### A. Review and Approval of Goals and Objectives Established at the 2022 Annual Workshop

Jennifer Jobe, Executive Director, reviewed the following goals and objectives for the 2022/23 Program Year, as presented at the April 1<sup>st</sup> Workshop:

1. Internal Marketing Initiative
  - Develop a marketing strategy targeting non-participatory underlying members
2. Personnel Policies and Procedures Updates
  - Develop a program providing reimbursement of legal costs associated with personnel policies and rules updates
  - Update ERMA-recommended policies/rules
3. Review of ERMA financial position
  - Identify and conduct a net position stress test
4. Develop a targeted Police Department training program, with emphasis upon:
  - Prevention of harassment, discrimination, and retaliation training
  - Complaint and claims handling procedures training
    1. Introductory and Remedial

**Bryan Whitemyer moved, seconded by Jamie Scott, to adopt the goals and objectives established at the April 1, 2022, Annual Workshop. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

### B. Draft Resolution 2022-1, Establishing Meeting Dates for the 2022/23 Fiscal Year

Ms. Jobe presented proposed meeting dates for the 2022/23 Fiscal Year. She confirmed staff's intention to resume in-person meetings beginning November 2022 and stated staff is working to secure pricing proposals for the February 2022 Annual Workshop, to be reviewed in Agenda Item 6.C.

**Brett Miller moved, seconded by Charlene Calica, to approve Resolution No. 2022-1, Establishing Meeting Dates for the 2022/23 Fiscal Year. A vote was conducted, and the**

**motion passed unanimously with no nays or abstentions.**

C. ERMA's 23<sup>rd</sup> Annual Workshop

Ms. Jobe stated ERMA has held the Annual Workshop at the Dream Inn in Santa Cruz, CA, in the most recent years. In an effort to secure optimal pricing and location accessibility to meeting attendees, Ms. Jobe reviewed alternative venue options to host ERMA's 23<sup>rd</sup> Annual Workshop.

After consideration of venue options, the Board directed staff to solicit proposals from venues located in the Napa Valley region, deferring to staff's discretion regarding final venue selection.

**No action was taken on this item.**

D. Draft Resolution 2022-2, Establishing Criteria for Adding and Removing Defense Counsel to the Panel of Approved Attorney Firms

Stacey Sullivan, Litigation Manager, directed the Board's attention to Resolution 2021-1, Establishing Criteria for Adding and Removing Defense Counsel to the Panel of Approved Attorney Firms, which requires that firms who wish to be considered for ERMA's panel "must not represent employees as plaintiffs in employment practices liability matters". Ms. Sullivan noted staff's concerns regarding the restrictiveness of this language as it excludes firms that represent plaintiffs – even only occasionally, as is typical with many defense firms – in employment practices liability (EPL) matters against private employers.

Ms. Sullivan advised staff and Doug Alliston, Board Counsel, worked collaboratively to develop a proposed revision to clarify firms will only be excluded from participation on ERMA's panel if said firms represent plaintiffs in EPL matters against public employers within the State of California. Those who represent plaintiffs in EPL matters against private employers are to be considered for participation.

Both Ms. Sullivan and Mr. Alliston maintained that the revision would expand the pool of eligible, high-quality defense panel firms as well as avoid any potential conflicts of interest.

**Brett Miller moved, seconded by Yumi Augustus, to approve Resolution No. 2022-2, Establishing Criteria for Adding and Removing Defense Counsel to the Panel of Approved Attorney Firms, effective April 26, 2022. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

E. Draft Resolution 2022-3, Requiring Coverage Appeals Involving Discussion of Facts and Legal Opinions Covered by the Attorney-Client and Work Product Privilege to be Held in Closed Session

Mr. Alliston advised the Board that appeals of denials of coverage have historically been presented during open sessions; however, concerns have been raised regarding the discussion of confidential facts accessible to the public for ongoing litigated matters.

Mr. Alliston noted two statutory provisions in the Brown Act that permit the Board to convene

in closed session: (1) to confer with, or receive advice from, its legal counsel regarding pending litigation, and (2) to discuss a claim for the payment of liability losses incurred by the Joint Powers Authority (JPA) or a member.

Mr. Alliston indicated the present Resolution would permit representatives from appealing member agencies to address the Board in a closed session. Once the appealing member is dismissed, discussions between ERMA's legal counsel and the Board regarding the merits of a coverage appeal may resume. He concluded by noting the Resolution directly addresses concerns of potentially privileged facts, documents, and opinions being unintentionally disseminated to outside parties.

**Jamie Scott moved, seconded by Brett Miller, to approve Resolution No. 2022-3, Requiring Coverage Appeals Involving Discussion of Facts and Legal Opinions Covered by the Attorney-Client and Work Product Privilege to be Held in Closed Session, effective April 26, 2022. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

F. Excess Coverage Marketing Update for the 2022/23 Program Year

Seth Cole, Alliant Insurance Services (Alliant), provided a brief update regarding the Excess Coverage Market for the upcoming Program Year. He noted ERMA's excess carrier, RSUI, is in the process of preparing renewal rates. As illustrated during review of the preliminary operating budget, Mr. Cole confirmed expectations for a flat rate renewal barring any unexpected losses.

Ms. Jobe then solicited feedback from the Board regarding interest in increased excess policy aggregate limits, particularly in response to ERMA's growth over recent years. Following discussion, direction was provided to staff and Alliant to obtain quotes for increased aggregate limits for Board consideration at the June 6<sup>th</sup> meeting.

**No action was taken on this item.**

7. MEMBERSHIP MATTERS

A. Update Regarding the City of California City's (CIRA) Performance Improvement Plan

Ms. Jobe reminded the Board that at the November 2021 meeting, the Board approved the issuance of a formal notice of termination of participation to the City of California City effective June 30, 2022, in accordance with ERMA's six-month notice requirement. The City was also placed on a Performance Improvement Plan (Plan) to include targeted training and regular meetings with staff to assist with implementing best practices.

Ms. Jobe provided an update on the City's progress, stating the City is still actively recruiting for multiple department head positions. However, City Council has appointed Doug Dunford as City Manager. She noted Mr. Dunford served most recently as the City Manager of another

underlying ERMA member, the City of Gustine (CSJVRMA). Mr. Dunford has employed the assistance of Greg Greeson, former City Manager of Wheatland (CIRA), on an interim basis. Both will assume office effective May 2<sup>nd</sup>.

Ms. Jobe further noted staff continues to observe an influx of increasingly complex claims from the City. As a result, staff has proposed an expansion to the existing Plan to maintain ERMA membership, including:

- A substantive increase to the self-insured retention (SIR), which is currently \$50,000; and
- A requirement to employ a professional and credentialed Human Resources Director.

Ms. Jobe stated that both Mr. Greeson and Mr. Dunford support this expansion and plan to attend the June 6<sup>th</sup> meeting.

The Board directed staff to continue to administer the existing Plan and present an expanded Plan at the June 6<sup>th</sup> meeting for review and consideration.

**No action was taken on this item.**

8. COVERAGE MATTERS

A. City of Pacific Grove (PARSAC) Appeal of Denial of Coverage

Ms. Sullivan summarized details regarding the City of Pacific Grove's appeal of denial of coverage based upon untimely reporting.

Ms. Sullivan concluded her report by stating she did not believe the untimely report of the claim would result in financial or other prejudice to ERMA.

**Roger Carroll moved, seconded by Brett Miller, to grant the City of Pacific Grove's appeal of denial of coverage with a 25% increase to the SIR from \$50,000 to \$62,500. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

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 11:50 a.m. to discuss the following claim:

- Rodriguez/Prieto v. City of Antioch

B. Report from Closed Session

The Board reconvened to Open Session at 12:52 p.m. Mr. Alliston advised no reportable action was taken in Closed Session.

10. TRAINING/LOSS PREVENTION MATTERS

A. Update regarding the Training Program for the 2021/22 Program Year

Danielle Davis, Board Secretary, updated the Board regarding live and online training efforts for the 2021/22 Program Year. She provided a summary of updated figures as of the present meeting, as follows:

- Twenty-five live trainings have been presented and/or scheduled, 17 of which are mandated harassment and discrimination trainings.
- Staff projects the number of registered attendees for live trainings to surpass 1,000 by the end of the 2021/22 Program Year, the highest in ERMA history (primarily attributed to the increase in webinar trainings offered).
- ERMA members continue to utilize ERMANet for online training resources, with a record 9,519 total user logins in Quarter 1 and 2,330 training modules assigned in Quarter 4.

Ms. Davis also advised staff launched ERMA's annual Training Compliance Survey on January 1<sup>st</sup>, which requests each underlying member agency to self-report its compliance with mandated training. She stated staff will continue to utilize the weekly training bulletin and website to encourage completion of the survey by June 30<sup>th</sup>, soliciting assistance from primary JPA Administrators as needed.

Ms. Davis concluded by stating that while the majority of trainings in the 2021/22 Program year were conducted via webinar, staff is expecting the number of requests for in-person trainings to increase as statewide COVID-19 restrictions relax.

**No action was taken on this item.**

A. Review of Training Program for the 2022/23 Program Year

Ms. Jobe stated staff collaborated with strategic partner firms Jackson Lewis and Liebert Cassidy Whitmore to develop the following training topics for the 2022/23 Program Year:

1. **Harassment, Discrimination, and Retaliation Prevention for Supervisors:** This two-hour training meets the requirement for AB 1825.
2. **Harassment, Discrimination, and Retaliation Prevention for Non-Supervisors:** This one-hour training meets the requirement for SB 1343.
3. **First Amendment Issues in a Politically Charged World:** The latest developments in First Amendment will be explored with the use of case studies to explore navigating free speech issues.
4. **Legally Compliant Strategies to Promote Workforce Diversity:** This training will provide the following essential building blocks for designing lawful workforce diversity plans: an overview of the legal parameters for diversity hiring; key legal principles that help you design diversity strategies that are lawful and merit-based; and a framework for developing specific strategies tailored to the needs of a particular agency.



5. **Best Practices for Supervisors of Public Safety Employees - How to Avoid or Defend Workplace Claims and How to Create and Maintain the Ideal Work Environment:** This training addresses unique public safety employee issues with harassment, discrimination, and retaliation as well as leave and disability rights. It also addresses special due process obligations and potentially applicable bill of rights.
6. **Understanding and Preventing Implicit Bias and Promoting Diversity and Inclusion in the Workplace:** This training will focus on avoiding implicit bias and promoting diversity, equality, and inclusion in the workplace.
7. **Implicit Bias in the Public Safety Workplace:** This training will explore unconscious bias in public safety departments and how it impacts the work environment and work relationships with colleagues and staff. This training will also cover how to recognize bias and offer guidance and strategies for addressing it.
8. **Best Practices for Elected Officials - Workplace Law and Understanding the Role of Elected Officials Related to Individual Employees:** This training is designed specifically for elected officials and high-level managers working directly with elected officials. This training will review the workplace law parameters related to elected officials and their interactions with City or Agency employees. It will include practical guidance for elected officials and those that work with them to help avoid workplace claims and create a better working environment.
9. **Iron Fists and Kid Gloves: Preventing and Addressing Retaliation in the Workplace:** This training discusses the legal aspects of potential retaliation claims under federal and state law including recent changes to whistleblower claims and will include a practical discussion on what constitutes “protected activity” and an “adverse action.”
10. **The Disability Interactive Process: Is Enough Ever Enough?** This training is designed to provide guidance on managing the interactive process including how long the interactive process must continue. Topics covered will include what is a reasonable accommodation, information the employer may request during the interactive process, and common pitfalls for employers to avoid.

Ms. Jobe confirmed staff will issue an announcement to underlying members to begin scheduling trainings for the 2022/23 Program Year, following approval of the proposed slate of trainings.

**Brett Miller moved, seconded by Yumi Augustus, to approve the proposed slate of training topics for the 2022/23 Program Year. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

11. **CLOSING COMMENTS**

A. **Board of Directors**

None

B. **Staff**

None

12. ADJOURNMENT

The April 26, 2022, ERMA Board of Directors Meeting adjourned at 12:53 p.m. by general consent.

A handwritten signature in black ink that reads "Danielle Davis". The signature is written in a cursive style with a horizontal line above the first few letters.

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Danielle Davis, Board Secretary