

EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)

**MINUTES OF THE BOARD OF DIRECTORS
MEETING OF NOVEMBER 6, 2017**

A regular meeting of the Board of Directors of ERMA was held on November 6, 2017, at the Bickmore office in Sacramento, CA.

- BOARD MEMBERS PRESENT:** Scott Ellerbrock, President, PERMA
John Gillison, Treasurer, PARSAC
Stuart Schillinger, BCJPIA
Robert Thompson, CalTIP
Charlene Calica, Housing Authority of Contra Costa
(arrived at 10:10 a.m.)
Jamie Goldstein, MBSIA
(arrived at 10:02a.m.)
Linda Cox, MPA
Artesia Dupree, Oakland Housing Authority
John Duckett, SCORE
Truc Dever, VCJPA
- BOARD MEMBERS ABSENT:** Dave Elias, Vice President, CSJVRMA
Don White, ERMAC
- ALTERNATE MEMBERS PRESENT:** David Glasser, BCJPIA
Sean Scully, CSJVRMA
Joanne Rennie, PARSAC
- ALTERNATE MEMBERS ABSENT:** Joseph Villarreal, Housing Authority of Contra Costa
Brett Miller, MBSIA
Tracy Robinson, MPA
Kerry Trost, PERMA
Roger Carroll, SCORE
Jamie Scott, VCJPA
- OTHERS PRESENT:** Jennifer Jobe, Executive Director
Kathy Maylin, Litigation Manager
Nancy Broadhurst, Finance Manager
Kristina Johnson, Board Secretary
Greg O’Dea, General Counsel
Mike Simmons, Alliant Insurance Services
Chee Xiong, Bickmore
Lance Gerber, Bickmore
Will Portello, Bickmore
Rob Kramer, BCJPIA
Jaesa McCulligan, BCJPIA
Micheon Balmer, CalTIP
Jeanette Workman, CSJVRMA
Chrissy Mack, CSJVRMA
Cepideh Roufougar, Jackson Lewis

Geoffrey Sheldon, Liebert Cassidy Whitmore
Jiaqi Liu, Sampson, Sampson & Patterson
Marcus Beverly, SCORE/ERMAC

1. CALL TO ORDER

The November 6, 2017, Board of Directors meeting was called to order at 10:00 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 posted. Seconded by Truc Dever. The motion passed unanimously.

4. PUBLIC COMMENTS

None

5. CONSENT CALENDAR

John Gillison moved to approve the following items: A) Minutes of June 12, 2017, Board of Directors Meeting and Summary of Action Items; B) General Warrants from June 1, 2017, through October 31, 2017; C) Claims Payments from June 1, 2017, through October 31, 2017; D) Petty Cash Statements from June 1, 2017, through October 31, 2017; E) Treasurer's Report as of June 30, 2017, and September 30, 2017; F) PFM fourth Quarter 2017 Review of Investment Portfolio; G) Conflict of Interest Code Biennial Notice to FPPC; and H) EPL Excess Policy and Invoice. Seconded by Truc Dever. The motion passed unanimously.

6. FINANCIAL MATTERS

A. Draft Audited Financial Statements for the Fiscal Year Ended June 30, 2017

Ms. Jiaqi Liu, Sampson, Sampson & Patterson, LLP, was in attendance to review the draft audited financial statements for the Fiscal Year ended June 30, 2017. Ms. Liu reviewed the audit parameters, and the program and financial highlights from the 2016/17 Program Year. Ms. Liu briefly discussed the changes in revenues, expenses, assets, and liabilities, noting total revenues increased 2.5% over the prior year; and total operating expenses decreased by 30%. Ms. Liu noted assets decreased less than 1%; and total liabilities increased 5.8% or \$650,000.

Ms. Liu also reviewed the Statement of Net Position, presented in comparison format for the current and prior year. The deposit premium was \$6.3 million, which was an increase of 13%

over the prior year. This was due to payroll increases of 14.7%, the pooling rate increase of 4.6%, and new members added during the 2016/17 Program Year.

Ms. Liu noted total investments were about the same as 2016 at \$24.8 million. The main difference from 2016 was U.S. Treasury Notes decreased from \$10 million to \$5.6 million; Federal Agency Securities increased from \$2.2 million to \$4.4 million; and Asset Backed Securities increased from \$1.2 million to \$2.9 million. She noted Commercial Paper is a new investment for 2017 at \$1 million. Current asset investments of approximately \$4.8 million will mature within the next twelve months; and non-current assets of \$20.6 million will mature from the thirteenth month up to five years.

Ms. Liu 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, 2017. Seconded by John Gillison. The motion passed unanimously.

B. Financial Status Report for the Fiscal Year Ended June 30, 2017

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, documents are presented for the purpose of demonstrating consistency with the Audited Financial Statements Report.

Ms. Broadhurst reviewed highlights on the Income Statement, which is more detailed than that of the audit. Ms. Broadhurst noted the Retained Earnings from the prior years is \$13.7 million and the Retained Earnings from the Capital Fund is a designated fund currently at \$862,656. Ms. Broadhurst noted there was \$150,000 revenue in the Capital Fund Contribution and noted \$15,000 was expended for the year. Once the Program Year closes, the \$15,000 will be applied to the designated equity fund and decrease it by that amount.

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 that 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.

The Board discussed creating a policy to provide clear guidance to staff regarding budget controls and monitoring. Staff will draft a policy for presentation at the February 2018 Board meeting.

Linda Cox moved to approve the Internal Financial Statements for The Fiscal Year Ended June 30, 2017, and JPA Performance Report, as of June 30, 2017. Seconded by Marcus Beverly. The motion passed unanimously.

7. ADMINISTRATIVE MATTERS

A. Appointment of Kristina Johnson as Board Secretary

Ms. Jennifer Jobe, Executive Director, introduced Ms. Kristina Johnson, and stated Ms. Johnson has been with Bickmore for four years, working on various accounts. Ms. Jobe recommended the Board appoint Ms. Johnson as ERMA's Board Secretary, effective November 6, 2017.

Truc Dever moved to appoint Ms. Kristina Johnson as ERMA Board Secretary, effective November 6, 2017. Seconded by Artesia Dupree. The motion passed unanimously.

B. Review of 18th Annual Workshop Agenda

President, Scott Ellerbrock, advised the 18th Annual Workshop will be held February 8-9, 2018, at the Dream Inn in Santa Cruz, California. He solicited the Board for recommended additions or changes to the proposed Agenda.

Ms. Jobe advised staff will continue to work with President Ellerbrock to finalize the 18th Annual Workshop and Board of Directors Meeting Agenda.

C. Presentation Regarding the Updated ERMA Website

Ms. Jobe advised the Board provided authorization of funds to develop a new website at a previous meeting. Ms. Johnson provided an overview of the new website.

Discussion ensued regarding what information should be public and what information should be contained within the member portal; requiring a user login. Ms. Jobe stated that before the website is launched, the Board will need to determine which documents will reside on the public website and which documents will be contained within the member portal; requiring a user login.

D. Bickmore Agreement for Administrative, Litigation Management and Financial Services Discussion – Expiring June 30, 2018

President Ellerbrock stated Bickmore's five-year contract for Administrative, Litigation Management and Financial Services will expire on June 30, 2018. Ms. Jobe noted staff seeks direction from the Board. Mr. Gillison and President Ellerbrock stated they will work with staff to review a five-year renewal agreement to present at the February 2018 Board meeting.

Mr. Rob Kramer, Bickmore, reported that typically upon renewal, Bickmore will prepare a proposal that includes time expended. Bickmore will review the proposal with one or more members of the Board in advance of the next meeting. Mr. Kramer noted this is a standard process for a majority of the renewal contracts.

E. Alliant Insurance Brokerage and Consulting Agreement Discussion – Expiring June 30, 2018

Mr. Ellerbrock stated the current agreement with Alliant Insurance Services for Brokerage and Consulting will expire June 30, 2018. Ms. Jobe noted the existing contract contains the option to extend for an additional year. The Board directed Mr. Ellerbrock to work with staff to negotiate a three-year renewal contract with Alliant Insurance Services.

F. Sampson, Sampson & Patterson LLP, Financial Audit Contract Discussion – Expiring June 30, 2018

Ms. Jobe noted the contract with Sampson, Sampson & Patterson LLP expired with the conclusion of the presentation of the Audited Financial Statements.

The Board directed staff to work with President Ellerbrock to solicit a three-year renewal contract with Sampson, Sampson & Patterson for presentation at the February 2018 Board meeting.

G. Farley Consulting Services, LLC Agreement for Claims Audit Services

Ms. Jobe stated the Board provided direction at the June 2017 meeting to renew a multi-year contract with Farley Consulting Services. Ms. Jobe noted the proposed contract presented for approval by the Board is for the period of July 1, 2018, through June 30, 2023.

John Gillison moved to approve the contract with Farley Consulting Services, LLC, for claims audit services for the period of July 1, 2018, through June 30, 2023. Seconded by Marcus Beverly. The motion passed unanimously.

H. Resolution 2017-2, Regarding an Underwriting Policy and Related Processes

Ms. Jobe stated ERMA recently underwent the re-accreditation process with the California Association of Joint Powers Authorities (CAJPA). In order for ERMA to become re-accredited with excellence, CAJPA requires the implementation of a formal underwriting policy and related processes.

John Gillison moved to approve Resolution 2017-2, Regarding an Underwriting Policy and Related Processes. Seconded by Artesia Dupree. The motion passed unanimously.

I. Resolution 2017-3, Regarding Electronic Data Security and Retention Requirements

Ms. Jobe advised the Board of CAJPA's re-accreditation requirement that all vendor contracts provide for an electronic data security policy. Ms. Jobe noted all existing contracts have been amended to reflect ERMA's policy.

Linda Cox moved to approve Resolution 2017-3, Regarding Electronic Data Security and Retention Requirements. Seconded by Truc Dever. The motion passed unanimously.

J. Resolution 2017-4, Amending Resolution 1-99 Establishing a Policy for Reimbursement of Travel Expenses

Ms. Jobe stated the resolution for the reimbursement of travel funds was out of date and required a review and update.

The Board discussed including a list of non-allowable expenses to the policy and requested a revised draft be presented at the February 2018 Board meeting.

8. TRAINING/LOSS PREVENTION MATTERS

A. Training Update

Ms. Jobe provided a mid-year update with respect to ERMA trainings. Ms. Jobe noted there are a total of 47 live trainings budgeted for ERMA members. She stated to-date, 30 of the 47 trainings are scheduled and staff continues to work with the members to schedule the remaining trainings.

B. Policy Review Survey Update

Ms. Jobe advised 88% of ERMA's members complied with the Board's request for mandatory completion of the policy review survey.

Ms. Jobe advised *in2vate* has been an excellent partner in the development, implementation and completion of the survey process. It was noted Jackson Lewis and Liebert Cassidy Whitmore (LCW) are also partners in this endeavor, working with the members directly to comply with the 45-day time period in which ERMA committed to providing initial contact to conduct a review of the survey.

Ms. Jobe reported one of the most interesting items which came from the data to-date, is that 64% of respondents to the survey have not completed a review of their policies within the last three years, if at all.

Mr. Geoff Sheldon, LCW, reported they have approximately 140 members for whom they are conducting assessments and the end result will be a recommended action memo. He stated more than half of these memos have been completed. LCW has found many of the policies they have reviewed require revision, and noted they are providing recommendations regarding training of staff to accompany the recommended changes to the existing policies.

Ms. Cepideh Roufougar, Jackson Lewis, stated they have noted a range of members who have not reviewed their personnel policies in quite some time. Ms. Roufougar commented that members are asking about "next steps" in the policy review process and whether they will be provided financial support with updating policies.

Ms. Roufougar noted the policies that require the greatest updates are harassment policies in order to account for changes made to the Fair Employment and Housing Act in April 2016, Family and Medical Leave Act policies, pregnancy and disability leave policies, and the new

parental leave law, effective January 1, 2018. She also noted many agencies still have “use it or lose it” policies for unrepresented employees, which is in violation of California Labor Code.

Ms. Kathy Maylin, Litigation Manager, stated members expressed satisfaction with the survey tool as well as the opportunity to identify their agency’s deficiencies.

The Board requested staff make an additional effort to contact the 12% of members who have not completed the survey.

The Board requested the Ad Hoc Training Committee convene prior to the February 2018 Board meeting to discuss the potential implementation of punitive measures for those members who do not complete the survey, as well as “next steps” relative to policy updates.

C. 2017 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 reviewed the target ratio calculation summary with the Board, noting an additional column was added to note members who have undergone previous assessments.

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 six assessments prior to June 30, 2018.

Discussion ensued regarding multiple assessments incurred by a single member. Ms. Maylin advised that additional action is a decision to be made by the Board upon presentation of the final assessments at the June 2018 Board meeting.

9. COVERAGE MATTERS

A. Self-Insured Retention Analysis & Review Update

At the February 2017 Annual Workshop, the Board established as a goal & objective, a self-insured retention (SIR) analysis of all existing members. Ms. Jobe explained that when a new member joins ERMA they are presented with a range of SIRs they may request based upon their payroll. Current members may request to change their SIR in subsequent Program Years; however any SIR decrease must be approved by the Board.

Ms. Jobe reviewed the process staff considered to analyze member's SIRs. Using 2016 payroll, staff compared each individual member's SIR to the recommended SIR per the underwriting guidelines. Staff then recorded for each member, the parameters which were exceeded for each year in the target ratio analysis, noting the identified member's recommended risk assessments.

Five members were identified for SIR increases using the prescribed methodology. Ms. Jobe requested feedback from the Board regarding the methodology in order for staff to present a policy for discussion at the February 2018 Board meeting. The Board noted their desire to incorporate the term "quantifiable" into the policy, and noted that the full scope of the analysis be encapsulated in the policy.

At 12:07 p.m. the Board recessed for a break and reconvened at 12:33 p.m.

B. Amendment to Endorsement #1 of the Memorandum of Coverage for Program Years 2013/14 through 2017/18

Ms. Jobe reported the City of Pleasanton is a participating member of ERMA through the Bay Cities Joint Powers Insurance Authority (BCJPIA). A Joint Exercise of Powers Agreement established on August 1, 2000, between the Cities of Livermore and Pleasanton creating the Livermore Pleasanton Fire Department (LPFD), provides that the City of Pleasanton assumes responsibility for personnel-related claims and lawsuits as LPFD employees are City of Pleasanton employees. ERMA collected only 50% of contributions from the City of Pleasanton for Program Years 2013/14 through 2017/18 due to an error.

An agreement was reached between BCJPIA, ERMA and the Cities of Pleasanton and Livermore, to invoice the City of Pleasanton for the under-collected amounts for Program Years 2013/14 through 2017/18. The City of Pleasanton has received the invoice for the under-collected amount and has remitted payment accordingly. Following such, it was determined LPFD should be named as a covered party in ERMA's Memorandum of Coverage under the City of Pleasanton.

Truc Dever moved to approve the revision to Endorsement #1 of the Memorandum of Coverage for Program Years 2013/14 through 2017/18, adding the Livermore Pleasanton Fire Department under the City of Pleasanton as a covered party. Seconded by Jamie Goldstein. The motion passed unanimously.

C. City of Menlo Park's Appeal of Denial of Coverage and Late Reporting Penalty

Ms. Maylin reported the City of Menlo Park received an Equal Employment Opportunity Commission (EEOC) claim dated July 25, 2017. In accordance with ERMA's Memorandum of Coverage, the claim was denied as the claim was not submitted within the required 30-day reporting period.

The City of Menlo Park submitted a letter of appeal, detailing the reasons the City was late in reporting the claim. Ms. Maylin advised she has worked extensively with the City of Menlo

Park's Human Resource Manager and she has always complied with ERMA's guidelines and is extremely proactive and engaged.

Discussions ensued regarding how often the Board receives coverage appeals and whether the appeals are granted. Mr. Ellerbrock stated ERMA includes a penalty structure in the Memorandum of Coverage so members are aware of the potential penalties, should they not report a claim in a timely manner.

Jamie Goldstein moved to grant the City of Menlo Park's coverage appeal of Heng v. City of Menlo Park claim with a late reporting penalty of \$37,500. Seconded by John Gillison. The motion passed unanimously.

10. LITIGATION MANAGEMENT

A. Report from Kathy Maylin, Litigation Manager

Ms. Maylin provided an update regarding general litigation and member support issues. She stated there is a concerning trend of agencies failing to investigate claims of harassment, discrimination, retaliation, and misconduct. Ms. Maylin also noted that agencies have conducted investigations but no remedial action is taken and the work environment is not changed. Ms. Maylin concluded by noting that deficiencies in handling investigations can result in additional litigated claims.

Ms. Maylin recommend members be closely guided and encouraged to evaluate when and if an investigation is appropriate and to err on the side of investigating promptly.

11. 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 1:05 p.m. to discuss the following claims for the payment of employment practices liability incurred by the joint powers authority:

- Perez v. Shafter
- Anderson v. Rialto
- Salehi v. West Hollywood
- Hobb v. Banning
- Conner v. San Gabriel Valley MVCD

B. Report from Closed Session

The Board reconvened to Open Session at 1:47 p.m. Mr. O'Dea reported the Board met to discuss the claims listed. With respect to both Perez v. Shafter, and Anderson v. Rialto, no action was taken. With respect to Salehi v. West Hollywood, and Hobb v. Banning, the Board voted unanimously to extend settlement authority to the Litigation Manager. With

respect to Conner v. San Gabriel Valley MVCD the majority of the Board voted to extend settlement authority to the Litigation Manager with one member who abstained from the vote.

12. CLOSING COMMENTS

A. Board

None

B. Staff

None

13. ADJOURNMENT

The November 6, 2017, ERMA Board of Directors meeting adjourned at 1:49 p.m. by general consent.



Kristina Johnson, Board Secretary