

## EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)

### MINUTES OF THE BOARD OF DIRECTORS MEETING OF APRIL 25, 2023

A regular meeting of the Board of Directors of ERMA was held on April 25, 2023, at the Hilton Garden Inn, 20 Advantage Ct, Sacramento, CA.

#### **BOARD MEMBERS PRESENT:**

John Gillison, President, CIRA  
Bryan Whitemyer, Vice President, CSJVRMA  
Robert Thompson, CalTIP  
Charlene Calica, CCCHA  
Linda Le, ERMAC  
Paul Wood, MBASIA  
Jeremy Wittie, VCJPA

#### **BOARD MEMBERS ABSENT:**

Jon Maginot, BCJPIA  
Muriel Howarth Terrell, SCORE  
Linda Cox, MPA  
Drew Felder, OHA  
Kevin Bryant, PLAN  
Beth Lyons, PERMA

#### **ALTERNATE MEMBERS PRESENT:**

Kin Ong, CIRA  
George Fink, CalTIP  
Nataline Jindoian, CCCHA  
Sukari Beshears, MPA  
Yumi Augustus, PERMA  
Wendy Howard, SCORE

#### **ALTERNATE MEMBERS ABSENT:**

Heather Rowden, BCJPIA  
Becky Padron, CSJVRMA  
Steve Adams, MBASIA  
George Rodericks, PLAN  
Jamie Scott, VCJPA

#### **OTHERS PRESENT:**

Jennifer Jobe, Executive Director  
Danielle Davis, Board Secretary  
Stacey Sullivan, Litigation Manager  
Chee Xiong, Finance Manager  
Doug Alliston, Board Counsel  
Will Portello, Sedgwick  
Amy Northam, CIRA  
Chrissy Mack, CalTIP/VCJPA  
Jeanette Workman, CSJVRMA  
Jaesa Cusimano, BCJPIA  
Elizabeth Arce, Liebert Cassidy Whitmore  
Derek Burkhalter, Bickmore Actuarial  
Sean Rabé, Town of Loomis

Shane Larsen, Jackson Lewis, P.C.  
Shadi Jalali, Alliant Insurance Services, Inc.

1. CALL TO ORDER; INTRODUCTIONS

The April 25, 2023, 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)

President Gillison advised that due to unexpected delays in receiving supporting materials, agenda item 7.A., Sedgwick Agreement for Pool Administration Services, would no longer be considered at the present meeting. He noted a special meeting would be convened in May to review and discuss the proposed agreement, once prepared.

**Bryan Whitemyer moved, seconded by Jeremy Wittie, to approve the agenda as amended. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

3. PUBLIC COMMENTS

None.

4. CONSENT CALENDAR

Jennifer Jobe, Executive Director, drew attention to items D) Notice of Intent to Withdraw – City of Lindsay (CSJVRMA) and E) Notice of Intent to Withdraw – City of Laguna Hills (ERMAC), noting a withdrawal date of July 1, 2023, for both agencies.

**Bryan Whitemyer moved, seconded by Charlene Calica, to approve the following Consent Calendar items: A) Minutes of the March 28, 2023, Special Board of Directors Meeting; B) General Warrants from January 1, 2023, through March 31, 2023; C) Claims Payments from January 1, 2023, through March 31, 2023; D) Notice of Intent to Withdraw – City of Lindsay (CSJVRMA); E) Notice of Intent to Withdraw – City of Laguna Hills (ERMAC); F) ERMA Defense Panel – Updated April 2023; and G) Board Document Review Schedule. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

5. PRESENTATION

A. Draft Resolution 2022-9, Expressing Appreciation for the Honorable Service Provided to ERMA by Roger Carroll, Director of Finance, Town of Loomis (SCORE)

Ms. Jobe stated Resolution 2022-9, Expressing Appreciation for the Honorable Service Provided to ERMA by Roger Carroll, Director of Finance, Town of Loomis (SCORE), is being presented to memorialize appreciation for Mr. Carroll's many contributions to ERMA over his 12-year tenure as a member of the Board following his untimely passing a few weeks

prior. She advised Sean Rabé, Town Manager for the Town of Loomis, was in attendance for the consideration of the resolution.

President Gillison expressed his sincere condolences to Mr. Carroll's friends, colleagues, and loved ones, and commended Mr. Carroll's valued participation on the ERMA Board and his significant role in the continued success of the authority.

**Bryan Whitemyer moved, seconded by John Gillison, to approve Resolution 2022-9, Expressing Appreciation for the Honorable Service Provided to ERMA by Roger Carroll, Director of Finance, Town of Loomis (SCORE). A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

Following the adoption of the resolution, a signed and framed copy was presented to Mr. Rabé, who accepted on behalf of the town.

## 6. FINANCIAL MATTERS

### A. Actuarial Study and Rates for the 2023/24 Program Year

Derek Burkhalter, Bickmore Actuarial, presented the actuarial study for the 2022/23 program year, focusing on 1) a review of ultimate loss estimates of the ERMA program as of June 30, 2023, and 2) a forecast analysis to determine funding rates for the 2023/24 program year.

Mr. Burkhalter summarized the study as follows:

- ERMA experienced favorable loss development overall for the 2022/23 program year, with actual incurred losses (\$4.2M) lower than expected (\$5.8M).
- ERMA's ultimate loss estimates for open program years decreased by \$2.6M for the 2023/24 program year (from \$79M to \$76.4M), primarily due to favorable development in the 2020/21 and 2021/22 program years.
- The total estimated liability for outstanding claims is \$18.7M as of June 30, 2023, compared to \$18.5M for the prior year.
- The 2023/24 loss rate projection at the 80% confidence level is \$6.7M compared to \$6.6M, remaining relatively stable.

**Wendy Howard moved, seconded by Jeremy Wittie, 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

Chee Xiong, Finance Manager, reviewed the preliminary retrospective adjustment calculation (calculation). Ms. Xiong reported the calculation indicated a net position available for distribution of \$5.2M as of December 31, 2022, at the 90% confidence level (CL)

due to overall favorable loss development in previous program years, as Mr. Burkhalter noted in his presentation.

Ms. Xiong stated the calculation will be updated with March 31, 2023, financial information and will be presented to the Board for formal consideration at the June 5<sup>th</sup> meeting. In response to Board inquiry, Ms. Xiong advised staff will likely recommend the release of dividends, with the final amount to be determined following incorporation of the March 31<sup>st</sup> financials.

Discussion ensued regarding historical dividend release practices, and it was noted the Board typically approves the return of approximately half of the eligible amount to the members while reserving the remaining half for future years. A consensus formed to continue this practice unless otherwise decided at the June meeting.

C. Review of Preliminary Administrative and Operating Budget for the 2023/24 Program Year

Ms. Xiong provided an overview of ERMA's preliminary budget for the 2023/24 program year.

Ms. Xiong advised that consistent with the approved budget for the 2022/23 program year, the preliminary budget was drafted at the 80% CL with a 1.5% discount rate, applying a three-tiered experience modification (ex-mod) factor to each underlying member's contribution utilizing 2022 calendar year payroll. She noted the draft budget reflected the addition of five new members, the withdrawal of three members, and a reduction in self-insured retention (SIR) for one member.

Ms. Xiong continued by noting total contributions of \$11.1M for the 2023/24 program year, a 3.6% increase over the prior year. She then provided a summary of contribution totals within the four main expense categories comprising ERMA's budget:

- \$8.9M for Funding for Losses, a small 0.4% increase from the prior year based upon the actuarial funding rate and 8.4% increase in overall payroll
- \$608k for Excess Insurance, a 1.7% increase from the prior year due to the aforementioned payroll increase
- \$168k for Loss Prevention and Training, consistent with the previous year
- \$1.3M for Administrative Expenses, a 24.6% increase resulting from proposed contractual increases in program administration costs as well as costs for a Capital Adequacy Study, to be conducted by Bickmore Actuarial

A question was raised regarding the allocation for Loss Prevention and Training expenses, to which Ms. Jobe noted staff has observed an increase in the number of in-person trainings requested with the relaxing of COVID-19 restrictions, with a small handful of agencies opting to host trainings virtually. Consequently, staff would not be recommending a reduction to this budget item. Ms. Jobe also advised this fund includes support for up to two Board Members and Alternates to attend the Association of Governmental Risk Pools (AGRiP)

Annual Governance Conference, noting the Board's enduring practice to provide support for continuing education opportunities for fellow members.

Ms. Jobe concluded discussion by stating the details of the proposed agreement for Administrative Services will be reviewed at greater length during the May special meeting, but noted the 24.6% increase was primarily driven by the increasing volume and complexity of ERMA claims.

7. ADMINISTRATIVE MATTERS

B. Joint Proposal from Liebert Cassidy Whitmore and Jackson Lewis for a Successor Memorandum of Understanding

Ms. Jobe stated ERMA has maintained a strategic partnership with attorney firms Liebert Cassidy Whitmore (LCW) and Jackson Lewis, P.C. (JL) since inception of the program. As the current Memorandum of Understanding (MOU) expires June 30, 2023, she stated staff worked with the firms to develop a three-year renewal agreement, summarizing the key changes as follows:

- Incremental increases to hourly rates for partners, of-counsel, associates, and paralegal employees
- Flat-rate fee of \$500 applied to all trainings requiring travel in excess of 90 minutes to and from the primary office of the assigned trainer

Ms. Jobe noted the proposed rates also apply to billable defense costs for members of the approved defense panel.

Discussion arose regarding the absence of a termination clause, and it was noted the unique relationship among the three participating parties has not historically necessitated such a clause; however, the proposed MOU does not preclude the option to discontinue the partnership should the pricing or scope of services no longer meet ERMA's needs.

**Sukari Beshears moved, seconded by Charlene Calica, to approve the Joint Proposal from Liebert Cassidy Whitmore and Jackson Lewis for a Successor Memorandum of Understanding, effective July 1, 2023. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

C. Excess Coverage and Marketing Update for the 2023/24 Program Year

Seth Cole, Alliant Insurance Services (Alliant), provided the Board with an update regarding the excess coverage renewal for the 2023/24 program year. He confirmed ERMA's incumbent excess carriers, RSUI and Ascot, have reviewed ERMA's loss history and are proposing a flat-rate renewal for the coming year. He recommended the Board consider the proposal as soon as possible in order to successfully secure the low rate.

In response to Mr. Cole's suggestion, the Board directed staff to bind coverage and provide the renewal binder to the Board at the June meeting.

D. Discussion Regarding Issuance of Request for Proposal for Financial Audit Services

Ms. Jobe explained that although ERMA's existing three-year agreement with Sampson, Sampson & Patterson, LLP (Sampson) for financial audit services does not expire until the conclusion of the June 30, 2024, audit, staff was advised of the recent departure of ERMA's designated audit partner, Bill Patterson, at the end of the 2022 calendar year. In Mr. Patterson's absence, Ms. Jobe advised audit partner Allison Gregg has been designated to conduct audits for the ERMA program in 2023 and 2024.

Ms. Jobe explained that in light of this noteworthy change, the Board may either carry out the remainder of the agreement with Sampson or direct staff to issue a Request for Proposals (RFP). She noted given Sampson's competitive pricing and a paucity of industry-knowledgeable vendors providing financial audit services, staff recommended fulfillment of the current agreement through the end of the June 30, 2024, term. With no objections raised, the Board concurred with staff's recommendation.

E. ERMA 24<sup>th</sup> Annual Workshop

Danielle Davis, Board Secretary, reminded the Board the most recent ERMA Annual Workshop was held at the Napa Valley Marriott in Napa, CA. In an effort to secure optimal pricing and location accessibility to meeting attendees, Ms. Davis presented pricing for multiple venue options to host ERMA's 24<sup>th</sup> Annual Workshop in 2024. She also advised an offer was recently received from the Napa Valley Marriott to host consecutive workshops for 2024 and 2025 at a discounted rate.

After consideration of venue options, the Board directed staff to pursue a multi-year agreement with the Napa Valley Marriott, though deferred to staff's discretion regarding final venue selection.

F. Draft Resolution 2022-8, Establishing Meeting Dates for the 2023/24 Program Year

Ms. Jobe requested feedback regarding the proposed meeting dates for the 2023/24 fiscal year, noting a return to fully in-person regularly scheduled meetings. Receiving no alternative recommendations, she advised staff would circulate calendar invitations for the meeting dates following the meeting, upon Board approval.

**Linda Cox moved, seconded by Bryan Whitemyer, to approve Resolution No. 2022-8, Establishing Meeting Dates for the 2023/24 Fiscal Year. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

8. MEMBERSHIP MATTERS

A. Review of Prospective Member Application – City of Norco (PERMA)

Ms. Jobe reported an application was received from the City of Norco, an underlying member of the Public Entity Risk Management Authority (PERMA), for participation in ERMA at a \$100k SIR, effective July 1, 2023. Ms. Jobe summarized the application details as follows:

- The city reports payroll of \$9.1M for the 2022 calendar year and has 79 full-time employees and 47 part-time employees.
- The city is in the process of updating written personnel policies and procedures, which were last reviewed by legal counsel and approved by City Council in 1991.
- The city is working toward compliance with AB 1825 and SB 1343 training requirements by conducting both in-house training as well as online training via Vector Solutions, a third-party provider (formerly known as Target Solutions).

The city provided an attestation of no known losses in the most recent seven completed fiscal years.

Ms. Jobe noted the Underwriting Committee extended approval of the city's participation in ERMA at their March 30<sup>th</sup> meeting, with the condition the city's personnel policies and procedures are reviewed and updated by legal counsel with public sector employment law expertise and formally approved by City Council no later than July 1, 2025.

**John Gillison moved, seconded by Bryan Whitemyer, to approve the City of Norco (PERMA) at a \$100,000 SIR, effective July 1, 2023, with the condition the city's personnel policies and procedures are updated, reviewed by legal counsel with expertise in public sector employment law, and approved by City Council no later than July 1, 2025. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

B. Request for Reduction of Self-Insured Retention - City of San Pablo (MPA)

Ms. Jobe stated the City of San Pablo, an underlying member of MPA, provided a request to staff for a reduction in SIR from \$100k to \$50k effective July 1, 2023. Ms. Jobe explained per the ERMA Master Program Document (MPD), the Board must approve all requests to lower retained limits.

She noted the city is one of the founding members of ERMA, incurring only six claims over the duration of their membership. She also advised the city was originally approved for participation with a \$50k SIR, which the city requested to increase during the 2008/09 program year. In combination with the city's low claim count and extensive tenure, Ms. Jobe stated staff supported the city's request to reduce the SIR.

**Sukari Beshears moved, seconded by Linda Le, to approve the request to reduce the City of San Pablo's (MPA) self-insured retention from \$100,000 to \$50,000, effective July 1, 2023. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

C. Update Regarding Members with Participation Conditions

Ms. Davis reminded the Board that seven agencies, upon admission to the program in the 2020/21 program year, were approved for participation in ERMA with the condition the agencies' personnel policies and procedures are updated, reviewed by legal counsel with public sector employment law expertise, and approved by the agencies' respective governing bodies by July 1, 2023. She noted that since the initial progress report provided at the November 2022 meeting, six agencies have provided detailed project timelines and are on track to complete the updates by the deadline. One agency, the City of Lindsay, has provided notice of withdrawal from ERMA effective July 1<sup>st</sup>, as previously noted.

Ms. Davis concluded her update by stating staff would continue to monitor progress and engage JPA administrators to conduct follow up as needed.

9. TRAINING/LOSS PREVENTION MATTERS

A. Update Regarding the Training Program for the 2022/23 Program Year

Ms. Davis provided an update regarding live and online training efforts for the 2022/23 program year, noting the following highlights:

- Twenty-four trainings have been completed or are confirmed for future dates, 22 of which are AB 1825- and SB 1343-compliant trainings.
- Of the 24 total trainings, 16 are scheduled in-person as opposed to virtual webinar, in contrast to recent COVID-era program years.
- Thirteen member agencies have submitted requests for reimbursement under the Training and Risk Management Program for eligible loss-control activities such as employment training and HR-related certification.

Ms. Davis also reported as of April 25<sup>th</sup>, 35% of ERMA agencies provided a response to the training compliance survey, which was distributed to members in January and requests agencies to report compliance with mandated training. Of those agencies who responded, 96% indicated they were in substantial compliance with training mandates, pursuant to Resolution No. 2021-5, Requiring Members to Provide Proof of Compliance with Training Mandated by State Law. Ms. Jobe added substantial compliance, defined as at least 90% of employees, is required for extension of coverage in the event of a claim.

Ms. Davis noted staff would continue to market the training program, resources, and the training compliance survey via the weekly training bulletin.



B. Review of the Training Program for the 2023/24 Program Year

Ms. Jobe stated staff collaborated with the JL and LCW firms to develop the following proposed slate of training topics for the 2023/24 program year:

1. **Harassment, Discrimination, and Retaliation Prevention:** These trainings are compliant with SB 1343/AB 1825.
2. **Best Practices for Navigating Public Safety Workplace Complaints:** This training will explore everything from intake of the complaint through retaining the investigator and will cover aspects of the Peace Officer's (POBR) and Firefighter's Bill of Rights (FBOR) that may impact how the investigation is conducted.
3. **Defining the Elected Official's Role with Respect to Individual Employees:** This training discusses several legal reasons why the role of elected officials, with regard to individual employees, have such substantial limitations and includes practical approaches for dealing with individual employees.
4. **First Amendment Issues in a Politically Charged World:** This training will explore an employee's right of expression, both inside and outside of the workplace including on social media, as well an employer's ability to address and/or restrict such speech.
5. **Successful Management of Disabilities in the Workplace:** This presentation will take a closer look into the process that employers are legally required to follow to evaluate common accommodations that are sought by employees such as extended leave, light duty, and telecommuting and flexible work schedules.
6. **Whistle Blown – Practical Considerations for Handling Whistleblower Complaints:** This training will review the anti-retaliation laws a public employer needs to know and the conduct these laws protect and will highlight the challenges employers face when defending against whistleblower claims in litigation, and best practices for managing whistleblower complaints and minimizing liability exposure.
7. **They Posted What?!? Social Media, Employer Liability, and the First Amendment:** This training first analyzes the law in this area from an advisory perspective, to help attendees understand the constitutional boundaries and components of the ability to regulate employee social media usage, and also address the risks in employees' use of their personal devices in conducting official business.
8. **Implementing and Managing Remote Work Employees:** This training will go over basic facts regarding mandatory legal requirements for having employees continue to work remotely, effectively managing and disciplining remote workers, potentially compelling remote workers back into the office, and importantly dealing with potential frustrations from employees who are required to perform full time in person work.

Ms. Jobe noted staff will distribute an announcement to member agencies soliciting training requests for the coming program year following formal adoption of the training program.

**Linda Cox moved, seconded by Jeremy Wittie, to approve the proposed slate of training workshop topics for the 2023/24 Program Year. A vote was conducted, and the motion passed unanimously with no nays or abstentions.**

10. 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 11:20 a.m. to discuss the following claims:

- Coronado vs. Atwater (CSJVRMA)
- Morquecho v. Menifee (CIRA) (coverage appeal)

The Board reconvened to Open Session at 11:31 a.m. Doug Alliston, Board Counsel, advised no reportable action was taken in Closed Session.

11. CLOSING COMMENTS

A. Board of Directors

None.

B. Staff

None.

12. ADJOURNMENT

The April 25, 2023, ERMA Board of Directors Meeting adjourned at 11:32 a.m. by general consent.



---

Danielle Davis, Board Secretary