

EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)

MINUTES OF THE BOARD OF DIRECTORS MEETING OF November 6, 2023

A regular meeting of the Board of Directors of ERMA was held on November 6, 2023, at the Hilton Garden Inn, 20 Advantage Ct, Sacramento, CA.

BOARD MEMBERS PRESENT:

Jason Castleberry, BCJPIA
Bryan Whitemyer, Vice President, CSJVRMA
Charlene Calica, CCCHA
Jeremy Wittie, Treasurer, VCJPA
John Gillison, President, CIRA
Kevin Bryant, PLAN
Linda Cox, MPA
Muriel Howarth Terrell, SCORE
Paul Wood, MBASIA
Robert Thompson, CalTIP

BOARD MEMBERS ABSENT:

Beth Lyons, PERMA
Thoms Watson, ERMAC
Drew Felder, OHA

ALTERNATE MEMBERS PRESENT:

Yumi Augustus, PERMA
Amy Conley, CIRA
Becky Padron, CSJVRMA
Jamie Scott, VCJPA
Nataline Jindoian, CCCHA

ALTERNATE MEMBERS ABSENT:

Jon Maginot, BCJPIA
George Fink, CalTIP
George Rodericks, PLAN
Steve Adams, MBASIA
Sukari Beshears, MPA
Wendy Howard, SCORE

OTHERS PRESENT:

Rob Kramer, Executive Director
Yvette Flama, Board Secretary
Stacey Sullivan, Litigation Manager
Julia Byrd, Litigation Analyst
Chee Xiong, Finance Manager
Doug Alliston, Board Counsel
Will Portello, Sedgwick Litigation Director
Maria De Leon, VCJPA
Jaesa Cusimano, BCJPIA
Elizabeth Arce, Liebert Cassidy Whitmore
Shane Larsen, Jackson Lewis, P.C.
Danielle Davis, MPA
Max Leung, Sampson, Sampson, & Patterson LLP

Michelle Minnick, Alliant/SCORE
Tim Farley, Farley Consulting (Virtual)
Traci Maxey, iLearning Engines (Virtual)
Vlad Tsering, Sedgwick
Conor Boughey, MBASIA

1. CALL TO ORDER; INTRODUCTIONS

The November 6, 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)

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

3. PUBLIC COMMENTS

On November 2, 2023 at 7:05 AM, ERMA received a written public comment from Mr. Brad Anderson regarding a prior agenda and meeting. The comment was distributed to all attendees at the meeting. Doug Alliston, Board Council, stated that ERMA staff has addressed Mr. Anderson's concerns, and they should not pose any further issues.

4. CONSENT CALENDAR

President Gillison drew attention to the Consent Calendar and asked if there were any questions regarding any specific items listed on the calendar.

Linda Cox moved, seconded by Bryan Whitemyer, to approve the following Consent Calendar items: (A) Minutes of the June 5, 2023, Board of Directors Meeting, (B) Minutes of the May 16, 2023, Special Board Member Meeting, (C) Minutes of the May 3, 2023, Coverage Committee Meeting, (D) General Payments from May 1, 2023, through September 30, 2023, (E) Claims Payments from May 1, 2023, through September 30, 2023, (F) Treasurer's Report as of June 30, 2023, (G) PFM Quarterly Investment Report as of September 30, 2023, (H) EPL Excess Policies & Invoices, (I) Internal Financial Statements as of June 30, 2023, (J) Investigator Panel Update, and (K) Defense Panel Update. A vote was conducted, and the motion passed unanimously with no nays or abstentions.

5. ELECTION OF OFFICERS FOR PROGRAM YEARS 2023/24 AND 2024/25

Recommendations for the vacant position of Treasurer/Auditor, for program years 2023/24 and 2024/25, are as follows:

Bryan Whitemyer moved, seconded by John Gillison, to appoint Jeremy Wittie as Treasurer, to serve through June 30, 2025. A vote was conducted, and the motion passed unanimously with no nays or abstentions.

6. STAFFING UPDATES

Appointment of a Board Secretary effective November 6, 2023, are as follows:

Jason Castleberry moved, seconded by Nataline Jindoian, to appoint Yvette Flama as Board Secretary. A vote was conducted, and the motion passed unanimously with no nays or abstentions.

7. CLAIMS AUDIT

Mr. Tim Farley, from Farley Consulting Services, conducted a claims audit where he reviewed a sample of 40 employment liability claims incurred by ERMA. In his report, he provides specific observations and recommendations regarding those claims. Mr. Farley found that the program is being administered effectively, with only minor program deficiencies in the area of case reserve accuracy. To select the sample claims, Mr. Farley contacted the Administrator, who sent him a list of claims. The audit was conducted from June 19, 2023, through June 23, 2023. Upon completion of the audit, Mr. Farley held an exit conversation with Stacey Sullivan (Litigation Manager), Julia Byrd (Litigation Analyst), and Jennifer Jobe (former ERMA Executive Director). The Administrator submitted a detailed response on June 26, 2023, which was considered when preparing the final report. The last comprehensive audit of ERMA was conducted in June 2021.

During the audit, an analysis of the Case Reserves was conducted. Mr. Farley, who conducted the audit, found that the reserving policy followed by the company was logical and was applicable during all prior audits. A separate reserve category, known as "SIR" (ERMA member's self-insured retention), is established. Costs related to each claim are extracted from this category, up to the member's specific SIR. Mr. Farley recommended that two claims be considered for reserve adjustment. All the claims were documented, and the performance of the Administrator remained consistent. ERMA has a unique investigation process, and the Administrator uses expert attorneys to review and analyze claims. Overall, Mr. Farley found no significant issues with the Administrators claim management. Mr. Farley presented his findings to the Board virtually via Zoom. Mr. Rob Kramer noted a response from the Litigation Management team to the findings of the audit.

Jamie Scott moved, seconded by Paul Wood, to accept and file the Employment Practices Liability Claims Audit Report. A vote was conducted, and the motion passed unanimously with no nays or abstentions.

8. FINANCIAL MATTERS

A. Draft Audited Financial Statements for the Fiscal Year Ended June 30, 2023

During the meeting, Mr. Rob Kramer introduced the financial audit report for the year ending on June 30, 2023. The report was prepared by Sampson, Sampson, and Patterson, LLP. Mr. Max Leung from the same firm presented the findings of the audit to the Board. Mr. Leung stated that the financial statements have been prepared and maintained in compliance with the Government Auditing Standards, issued by the Comptroller General of the United States, and the State Controller's Minimum Audit Requirements for California Special Districts.

Mr. Leung presented the Management Discussion and Analysis, the Basic Financial Statements, which included the Statement of Net Position, Statement of Revenues, Expenses, and Changes in Net Position, Statement of Cash Flows, and Notes to the Financial Statements. Finally, Mr. Leung presented the findings from the audit that were sent to the Board in the Auditor's Letter to the Governing Board.

Amy Conley moved, seconded by Bryan Whitemyer, to accept and file the ERMA Audited Financial Statements for the Fiscal Year Ended June 30, 2023. A vote was conducted, and the motion passed unanimously with no nays or abstentions.

9. TRAINING AND LOSS PREVENTION MATTERS

A. Ad Hoc Training Committee Update

Mr. Rob Kramer informed the Board about the Ad Hoc Training Committee meeting held on October 4, 2023. The committee consisted of John Gillison, Bryan Whitemyer, and Lind Cox, along with our partners from iLearning Engines. During the meeting, the committee discussed the possibility of providing police liability training to ERMA members. They also focused on the Personnel Policies and Procedures Survey, which was launched in 2017 to review all the members' policies and procedures. A survey was conducted, and all members were asked to provide their policies, which were then reviewed by attorney firms Liebert Cassidy Whitmore and Jackson Lewis. Now, the ERMA staff is preparing for another resurvey of members as per the Board's direction, six years later.

During the meeting, the Committee discussed the best approach to resurvey members for the 2023/24 program year. The ERMA staff has been working together with iLearning Engines to review and modify the survey. The Committee reviewed the survey presented by the ERMA staff and discussed the areas they wanted to see changed from the last survey conducted in 2017. Mr. Kramer informed the Board that the survey was now ready to be disseminated to Members. The ERMA staff will now focus on educating members and finding the correct HR contact for each member to complete the survey.

ERMA staff strategically planned to launch the survey in December of 2023 so members will

have an opportunity to participate. ERMA staff will provide an update to the Board at the Annual Workshop on February 1, 2024. At the Annual Workshop, ERMA staff will seek direction and feedback from the Board on how they want to proceed in the process. Potentially, looking for additional resources to aid members who need the policy review but may need assistance in collaborating with the attorney firms.

Mr. Rob Kramer started using the ERMA Training Bulletins which were distributed every week. However, ERMA staff found that the frequency and content of the bulletins were not effective. So, ERMA staff requested the Committee to consider allowing them to adjust the frequency and content of the bulletins. The Committee agreed to the change and provided feedback on areas that needed improvement. ERMA staff took the feedback into consideration and made the necessary changes.

Mr. Jeremy Wittie asked about the new police-focused training program and how many members have shown interest in it. Mr. Kramer responded that the program was launched on the ERMA website just a week ago. ERMA staff is now sharing the information with the Board members and staff to educate the members about this new offering. Mr. Wittie further asked if ERMA had made any provisions for members who did not participate in the survey. Currently, there are no such provisions in place. However, the Board may consider requiring it during the Annual Workshop scheduled for February 1, 2024. Mr. John Gillison added that the resurvey in the program year would indicate whether members took advantage of the process and resources provided by ERMA to update their policies.

B. iLearning Engines Presentation – Personnel Policy & Procedure Survey

Traci Maxey, a representative from iLearning Engines, presented an updated survey to the Board. The revised survey includes more current Employment Practice Litigation topics, is comprised of 31 questions grouped by category, and features new capabilities. One such capability is that any member representative with administrative rights can now access and complete the survey, as opposed to it being assigned to an individual user.

During the presentation, Mrs. Maxey addressed a question from a member of the Board regarding data capture at a higher level. She assured the Board that the new system has built-in aggregation capability, and there are also triggers to responses that provide key insights into issues such as missing policies or training compliance. This will enable ERMA and the Board to see at an aggregate level where some underlying issues are.

During the discussion, Mrs. Maxey mentioned that the Ad Hoc Training Committee had identified eight "hot topic" policies that they considered crucial to focus on. These policies include new questions such as whether a member participated in the 2017 survey, whether they are compliant with AB1825/SB1323, whether they adopted the new policies in 2017 after going through the process, and so on. Mr. John Gillison added that these eight policies were selected because they are the ones that cause the most claims for ERMA.

C. Training Update

Concerning training compliance, the ERMA Memorandum of Coverage (MOC), Section VII, Conditions, Article 1 (F), requires that all covered parties within ERMA must provide proof of compliance with training, as outlined in California Government Code §12950.1. These trainings consist of:

- 1-hour SB 1343-compliant training for non-supervisory employees
- 2-hour AB 1825-compliant training for supervisory employees

During the board meeting, Mr. Rob Kramer informed everyone that the ERMA staff had updated the Board and all JPA member representatives regarding the pool members who have met the required 90% threshold. Mrs. Amy Conley asked if a pool has achieved the 90% threshold, but an individual member is not compliant, would the member still incur the SIR penalty? Mr. Rob Kramer clarified that the SIR penalty would still apply as compliance is necessary at the individual level.

D. 2023 Target Risk Appraisal Recommendations

As per Resolution 2011-1, ERMA Staff conducts an annual review of member loss performance. We analyze the loss ratio, frequency, and severity rate of our members and compare them to the targets set forth in the Resolution. If any member exceeds two of the targets, we subject them to further evaluation, including a comprehensive risk appraisal.

During our most recent review, Ms. Stacey Sullivan presented the target ratio calculations for the last five completed program years. She identified members who may need training and support based on the results. The City of Barstow and the City of Eastvale were among the members who needed to go through the risk appraisal process.

The City of Barstow was selected for further evaluation due to concerning claims that are currently under investigation. Ms. Sullivan engaged with Mr. Gerry Preciado to work with the senior-level management and elected officials in the city.

On the other hand, the City of Eastvale had six claims in just one year. Ms. Sullivan suggested that they may need additional training that could benefit the city. Three employees have alleged harassment, and other claims have shown that harassment training is beneficial.

Amy Conley moved, seconded by Muriel Terrell, to allow the two members to undergo a risk assessment or be subject to further evaluation. A vote was conducted, and the motion passed unanimously with no nays or abstentions.

10. MEMBERSHIP MATTERS

A. Update Regarding Members with Participation Conditions

According to the ERMA Underwriting Guidelines, Mr. Kramer has reported that membership approval is subject to the review of a formal submission of required documents by the Underwriting Committee. To help agencies meet their participation requirements and provide support to those who need it, staff sent a reminder to six agencies approaching their compliance deadline of July 1, 2023. Staff also requested a progress report from each agency, including details such as their timeline for completion, legal counsel used, and any other relevant information.

Mr. Kramer has reported that out of the seven agencies that were contacted, only four have completed the necessary member requirements. Three members have formally requested an extension by providing written correspondence to the Board. Based on the recommendations of the ERMA staff, the Board has been advised to officially approve the members who have already completed the requirements and grant an extension to those members who require more time.

Bryan Whitemyer moved, seconded by Linda Cox, to formally approve those members who have completed their conditional requirements and provide an extension to those requesting more time. A vote was conducted, and the motion passed unanimously with no nays or abstentions.

B. Review of Prospective Member Application – City of Burlingame (PLAN JPA)

Mr. Kramer reported an application was received from the City of Burlingame, an underlying member of the Pooled Liability Assurances Network (PLAN) JPA, for participation in ERMA at \$50,00 self-insured retention (SIR), effective January 1, 2024. He advised the Underwriting Committee met on October 11, 2023 and reviewed the city's seven-year loss history and provided an overview of the application as follows:

- The City reports payroll of approximately \$26,883,468.00 for the 2022 calendar year and has 217 full-time employees and 140 part-time employees.
- The City fairly recently had its written personnel policies and procedures reviewed with a few noted exceptions.
- The City is compliant with AB 1825 and SB 1343 training requirements.

Mr. Kramer noted the Committee's conditional recommendation that the city's personnel policies and procedures are reviewed and updated by legal counsel with public sector employment law expertise and formally approved by the district's governing board no later than July 1, 2025. Additionally, the Committee recommends the city join at \$100,000 SIR.

Kevin Bryant moved, seconded by Jason Castleberry, to recommend the Board approve the City of Burlingame (PLAN) at a \$100,000 SIR, effective January 1, 2024, 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 governing council no later than July 1, 2025. A vote was conducted, and the motion passed unanimously with no nays or abstentions.

C. Review of Prospective Member Application – City of Milpitas (PLAN JPA)

Mr. Kramer reported an application was received from the City of Milpitas, an underlying member of the Pooled Liability Assurances Network (PLAN) JPA, for participation in ERMA at \$100,000 self-insured retention (SIR), effective January 1, 2024. He advised the Underwriting Committee met on October 11, 2023, and reviewed the city's seven-year loss history and provided an overview of the application as follows:

- The City reports payroll of approximately \$63,120,648.00 for the 2022 calendar year and has 402 full-time employees and 316 part-time employees.
- The City recently had its written personnel policies and procedures reviewed.
- The City is compliant with AB 1825 and SB 1343 training requirements.

Mr. Kramer noted the Committee's recommendation the city join at \$100,000 SIR effective January 1, 2024.

Charlene Calica moved, seconded by Beth Lyons, to recommend the Board formally approve the City of Milpitas (PLAN) at a \$100,000 SIR, effective January 1, 2024. A vote was conducted, and the motion passed unanimously with no nays or abstentions.

11. ADMINISTRATIVE MATTERS

A. 2023/24 Goals and Objectives Updates

Mr. Rob Kramer shared that the next board meeting will take place at the Annual Workshop in Napa, CA. At the 2023 workshop, the Board had identified strategic initiatives which were discussed. Mr. Kramer updated the Board on the actions taken by ERMA staff in promoting resources and providing online and live training. He also informed the Board of the survey's progress. Mr. Kramer noted that ERMA's equity has increased from \$13 million to \$16 million, indicating that the program is healthy and in good shape. Moreover, the Board is scheduled to receive an equity review from the actuary service provider, Bickmore at the annual workshop in February.

B. Review of the 24th Annual Workshop Agenda

The Board of Directors conducts a strategic planning workshop every February in conjunction with a Board meeting. As per Resolution No. 2021-1, Meeting Dates for the 2023/24 Fiscal Year, the 24th Annual Workshop is scheduled for February 1, 2024, alongside a Board meeting on February 2nd. To provide accommodations to attendees and serve as the workshop and meeting venue, the staff has identified and secured the Napa Valley Marriott Hotel & Spa in Napa, CA. The annual workshop is an excellent opportunity to present an overview of ERMA's training program, financial position, and claims from the previous year. It also allows for strategic planning and goal setting for upcoming program years.

Mr. Kramer reviewed the agenda presented by ERMA staff. Mr. John Gillison asked if there were any specific items the Board would like in addition to what was presented. All members of the Board agreed with what was presented.

C. Provision of Independent Claims Auditing Services

During the meeting, Mr. Rob Kramer informed the Board that the report presented by Tim Farley from Farley Consulting was the final report as per the contract. Mr. Kramer also reported that Mr. Farley has been providing claims auditing services since the inception of ERMA. As the contract was up for renewal, the ERMA staff requested direction from the Board. During the discussion, the Board searched for other vendor options, but Mr. Kramer advised them that the selections were limited. President Gillison directed the staff to compile a draft request for proposal (RFP) and present it to the board for review in their next meeting in February.

12. 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 10:55 a.m. to discuss the following claims:

- Carlos v. City of Perris (PERMA)
- Hernandez v. City of Barstow (PERMA)
- Dominguez v. Adelanto (CSJVRMA)

The Board reconvened to Open Session at 11:35 p.m. Doug Alliston, Board Counsel, advised no reportable action was taken in Closed Session.

13. CLOSING COMMENTS

A. Board of Directors

None

B. Staff

None.

14. ADJOURNMENT

The November 6, 2023, ERMA Board of Directors Meeting adjourned at 11:45 a.m. by general consent.

Yvette Flama

Yvette Flama, Board Secretary