



CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

WEBEX EXECUTIVE COMMITTEE MEETING

Thursday June 18, 2020 2:00 P.M.

CJPRMA

3201 Doolan Road, Suite 285

Livermore, CA 94551

(925) 837-0667

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19, and the Governor's Executive Order N-29-20 issued on March 17, 2020 that allows attendance by members of the City Council, City staff, and the public to participate and conduct the meeting by teleconference, videoconference, or both.

MEETING LINK:

<https://cjrma.my.webex.com/cjrma.my/j.php?MTID=m0c93a2dae882f01dc602e8209a218959>

MEETING NUMBER: 126 096 6378

PASSWORD: u2sGXU8M2x9

JOIN BY PHONE: 1-510-338-9438

ACCESS CODE: 126 096 6378

MINUTES

I. CALL TO ORDER

- Vice President Rawe called the meeting to order at 2:02 P.M.

II. ROLL CALL

PRESENT

- | | |
|---------------------------------|-------------------------------------|
| 1) Jamie Cannon, <i>Chico</i> | 5) Gail Kiyomura, <i>Stockton</i> |
| 2) Amy Northam, <i>REMIF</i> | 6) Scott Mann, <i>Sunnyvale</i> |
| 3) David Rawe, <i>Roseville</i> | 7) Janet Hamilton, <i>Livermore</i> |
| 4) Roger Carroll, <i>SCORE</i> | |

NOT PRESENT – Richmond

OTHERS

- | | |
|---------------------------------------|-----------------------------------|
| 8) Byrne Conley, <i>Board Counsel</i> | 11) Lola Deem, <i>CJPRMA</i> |
| 9) Jas Sidhu, <i>Livermore</i> | 12) Marinda Griese, <i>CJPRMA</i> |
| 10) Tony Giles, <i>CJPRMA</i> | 13) Saima Kumar, <i>CJPRMA</i> |
| | 14) Marcia Hart, <i>CJPRMA</i> |

"This CJPRMA Executive Committee meeting was via teleconference, pursuant to California Government Code Section 54953 and Governor Newsom's Executive Order N-25-20. No Directors indicated that they could not clearly hear the proceedings, and no Directors indicated a belief that the other Directors on the teleconference were who they claimed to be."

III. ACTION ON CLOSED SESSION

IV. PRESENTATIONS

- None

V. THIS TIME IS RESERVED FOR MEMBERS OF THE PUBLIC TO ADDRESS THE EXECUTIVE COMMITTEE ON MATTERS OF EXECUTIVE COMMITTEE BUSINESS

VI. COMMUNICATIONS

1. Executive Committee Members
2. General Manager/Secretary
3. Next Scheduled Meetings: Board of Directors (08/20/20) CJPRMA/Remote
Executive Committee (09/17/20) Remote

VII. APPROVAL OF MINUTES

- The approval of the minutes was combined with the approval of the consent calendar.

VIII. CONSENT CALENDAR

1. **Status Update on General Manager's Goals & Objectives (I)**
2. **Business Calendar for 2020 (I)**

- A motion was made by Director Carroll to approve the minutes of the Executive Committee meetings held October 8, 2019 and January 16, 2020 and the consent calendar. The motion was seconded by Director Northam. A roll call vote was taken, Directors Cannon, Northam, Rawe, Carroll and Kiyomura approved the motion. Sunnyvale was not present at the time of voting and Richmond was absent. Motion passed.

IX. ACTION (A) AND INFORMATION (I) CALENDAR

3. **Approve Modifications to Liability Memorandum of Coverage Related to Duties of Covered Parties (A)**

Section VII (Conditions), Paragraph (1) (Covered party's Duties in the Event of Occurrence, Claim or Suit) includes the following requirements:

"The covered party shall notify the Authority within 30 days upon receipt of notice of a claim, or the setting of a reserve on any claim or suit including multiple claims or

suits arising out of one occurrence, such claim or reserve amounting to fifty percent or more of the retained limit; Title 42 USC 1983 cases in which a complaint has been served and the plaintiff is represented by legal counsel or with reserves of twenty-five percent or more of the retained limit; Information goes here.”

Staff recommended modifying the requirement to report Title 42 USC 1983 cases to be fifty percent or more of the retained limit. The modified language would read:

The covered party shall notify the Authority within 30 days upon receipt of notice of a claim, or the setting of a reserve on any claim or suit including multiple claims or suits arising out of one occurrence, such claim or reserve amounting to fifty percent or more of the retained limit; Title 42 USC 1983 cases in which a complaint has been served and the plaintiff is represented by legal counsel or with reserves of ~~twenty-five~~ fifty percent or more of the retained limit;

Most civil rights cases with no attorney do not develop into serious exposure for the pool. This would reduce one element of reporting responsibility for members. This would not change the requirement to report all Title 42 USC 1983 cases when plaintiff is represented by legal counsel. Staff does not anticipate any negative impact to the pool.

- A motion was made by Director Carroll to approve the modifications to the Memorandum of Coverage by revising the requirement to report Title 42 USC 1983 cases to be fifty percent or more of the retained limits and for the general manager to agendaize this item for the Board of Directors meeting in August. This motion was seconded by Director Kiyomura. A roll call vote was taken, Directors Cannon, Northam, Rawe, Carroll and Kiyomura approved the motion. Sunnyvale was not present at the time of voting and Richmond was absent. Motion passed.

4. Adopt a Resolution on the Interpretation of the Definition of Occurrence for Sexual Abuse and Molestation Claims (A)

In October 2019, Governor Newsom signed Assembly Bill 218, which became effective January 1, 2020.

AB 218 significantly changed the law related to childhood sexual abuse claims:

- Makes the statute of limitations for childhood sexual assault claims 22 years after reaching the age of majority (i.e., when claimant turns 40 years old) OR five years from when the victim discovers or reasonably should have discovered that psychological injury or illness occurred after the age of majority because of childhood sexual assault, whichever comes later (a certificate of merit is required for delayed discovery claims);
- Extends the limitations period for not just the molester, but extends it for others who had a duty to the victim and through a negligent or wrongful act was a “legal cause” of the molestation, or others who did not have a duty but committed an intentional act that was the legal cause (); and

- Extends the limitations period for ANY claim described above, regardless of the 40 years old/5 years from discovery limits, for three years from January 1, 2020, regardless of the victim's current age or date of discovery;
- Provides treble damages against anyone who covered up a childhood sexual assault, defined as "a concerted effort to hide evidence relating to childhood sexual assault."
- Finally, the Government Code is amended to delete the requirement of filing a government claim for any claim encompassed within the Bill (the assailant or other party who is a legal cause), repealing prior law that limited this to assaults after 1/1/2009.

The extended statute of limitations creates significant additional exposure to CJPRMA – exposure that the pool has not prepared for.

The CJPRMA Memorandum of Coverage for Program Year 2019/20 defines an "occurrence" to mean:

"(a) with respect to bodily injury or property damage: an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the covered party. Property damage that is loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the occurrence that caused it."

Staff recommended approval of a Board resolution to affirm the manner in which "occurrence" would be interpreted for all coverage years. This is important because we are unable to change coverage language for previous program years.

The proposed language for the resolution is as follows:

Effective January 1, 2020, California enacted legislation amending Code of Civil Procedure section 340.1 and Government Code section 905 regarding "childhood sexual assault" as well as wrongful, negligent, or intentional acts by others deemed to be the legal cause of such assaults. This is a declaration of the Board's intent with respect to dates of "Occurrence" under all Memoranda of Coverage issued by the Authority, past and present, relating to such claims. In accord with the MOC language, past and present, all claims by all claimants related to "childhood sexual assault" by an employee or volunteer of a Covered Party shall be treated as a single Occurrence arising during the Coverage Period when the first assault took place, and the Memorandum of Coverage, Retained Limit and Limit of Coverage for that Coverage Period shall be applicable, and no other. This includes claims of negligent hiring, retention, or supervision of the employee or volunteer. This declaration of intent addresses only the issue of date of Occurrence, and non-accumulation of limits, and does not address issues of scope of coverage or application of exclusions that may relate to a particular claim/claims.

Byrne Conley, Board Counsel provided an analysis to discuss with the Executive Committee.

- A motion was made by Director Cannon to approve a Board resolution to affirm the manner in which “occurrence” will be interpreted for all coverage years and have the general manager take the resolution to the Board of Directors meeting in August for ratification. Director Carroll seconded the motion. A roll call vote was taken, Directors Cannon, Northam, Rawe, Carroll and Kiyomura voted to approve the motion. Sunnysvale was not present at the time of voting and Richmond was absent. Motion passed.

5. Property Program Coverage for Losses due to Coronavirus (I)

Possible losses that CJPRMA Property Program members might suffer from the coronavirus pandemic 2020 are business interruption losses and tax revenue interruption losses. This type of losses are due to governmental orders closing business’s at the state and county levels. It is unlikely that there would be coverage for either type of loss since loss would trigger from direct physical loss or damage.

There is, however, an endorsement for Communicable Disease Coverage that includes coverage for business interruption losses when facilities are ordered to close by an authorized government agency.

Alliant Insurance Services has decided to not provide any coverage opinions related to coronavirus and has left decisions on coverage to the insurance carriers. Insurance industry news has been filled with stories of insureds filing suit to get coverage for business interruption and carriers filing suit to prevent coverage. It will likely be years until all litigation around this coverage has been resolved.

This item was presented for the Executive Committee for a better understanding of the coverage and discuss possible approaches by CJPRMA. Byrne Conley, Board Counsel provided a memo that analyzed the coverage under the CJPRMA property program.

- This was an information only item. No action was taken.

6. Consider Exclusion in Liability Memorandum of Coverage for Communicable Disease (I)

The CJPRMA Memorandum of Coverage (MOC) does not exclude coverage for communicable diseases. However, the MOC does contain a sublimit for fungal pathogens:

Fungal Pathogens Sublimit/Aggregate Limit A sublimit applies to any loss, cost or expense directly or indirectly arising out of or related to exposure to “fungal pathogens,” whether or not there is another cause of loss that may have contributed concurrently or in any sequence to the loss. The sublimit will be \$10,000,000 per occurrence, subject also to a \$5,000,000 annual aggregate collectively in Pool D only, for all covered parties. The designated general aggregate limit of \$5,000,000 is the most the Authority will pay from Pool D because of such claims for all covered parties, combined, in any program year. “Fungal pathogens” as used herein, shall mean any fungus or mycota or any byproduct or type of infestation produced by such fungus or mycota, including, but not limited to, mold, mildew, mycotoxins, spores, bacterial pathogens, or

any biogenic aerosols.

Board Counsel has opined that coverage for coronavirus losses would be covered under this sublimit as a biogenic aerosol.

In response to the coronavirus pandemic, it is anticipated that most insurance companies will start to exclude communicable disease as a cause of loss, and that will include insurers in the public entity reinsurance market. In fact, most of the reinsurers that have provided quotes for this year's liability renewal have included exclusions for communicable disease. Munich Re, is CJPRMA's first layer of reinsurance, and they will be providing \$10 million in limits. Aon has convinced them to not exclude communicable disease for the 2020/21 program year. However, Munich Re has already stated that it will be excluded effective July 1, 2021. The MOC will need to be modified to reflect that change for program year 2021/22. Also, the Board of Directors will need to decide whether to include the coverage in CJPRMA's retained layer (up to \$5 million) even if there is no reinsurance coverage for the losses. The Board will also need to determine *whether to exclude coverage for communicable disease for program year 2020/21*.

- This was an information item only. No action was taken.

7. Consider Exclusion in Liability Memorandum of Coverage for Power Generation (I)

The CJPRMA Memorandum of Coverage (MOC) does not exclude coverage for power generation or power transmission lines. Considering the exposure to wildfire losses and other losses from these risks, a CJPRMA member has suggested exploring the possibility of excluding such losses. CJPRMA has not had a bad history of liability losses related to power generation, but there have been losses. This item is for discussion with the Executive Committee and is a follow-up to a conversation as a risk management issue at the January 2020 Executive Committee meeting. Future discussion with or proposals to the Board of Directors will depend on the outcome of this discussion.

- This was an information item only. No action was taken.

8. Recommend Approval of a Board Policy on the Treatment of Flat Fee Costs for Third Party Administrators (A)

The CJPRMA Memorandum of Coverage (MOC) defines ultimate net loss to include defense costs, and defense costs are defined to include "adjusting expenses of a third party claims administrator which are specifically identifiable with a claim subject to this coverage."

Many CJPRMA use third-party administrators (TPAs) to investigate and adjust their liability claims. When the contracts are on a time and expense basis, it is easy for the TPA and the member to track to adjusting expenses associated with a specific claim. However, when a contract is on a flat fee basis, it is more difficult to know how much money was spent adjusting the claim.

In 2018, a TPA working for a CJPRMA member approached CJPRMA with a recommendation to informally address the issue of flat fee contracts. For members with flat fee contracts, the TPA would track the hours spent on a specific claim, and CJPRMA would allow an agreed upon hourly rate be used to determine the cost of the adjusting expenses. The general manager at the time agreed to this informally. Board Counsel has recommended that this practice be formalized via Board policy.

The draft policy proposes to use \$100 per hour as the agreed upon hourly rate.

- A motion was made by Director Cannon and seconded by Director Northam to approve a Board policy on the treatment of flat fees costs for third-party administrators and take this policy forward to the Board of Directors for review and approval at the August 20, 2020, Board of Directors meeting. A roll call vote was taken Directors Cannon, Northam, Rawe, Carroll, Kiyomura and Mann approved the motion. Richmond was absent. Motion passed.

9. Succession Planning for the Finance Officer Position (I)

CJPRMA's finance officer has stated that she is likely to retire in September 2021. The finance officer is a mission-critical position for CJPRMA, and it is important for the pool to do all it can to recruit and hire a high-quality candidate to fill the position when the current finance officer retires.

When the previous general manager retired, the Board of Directors approved the hiring of an assistant general manager to allow for succession planning by having the general manager and assistant general manager spend some months working together. This facilitated a smooth transition.

The general manager suggested following a similar model for the recruitment of a new finance officer. CJPRMA has an existing position of finance analyst that could be used as the classification for succession planning purposes. The goal would be to have a finance analyst hired by March 2021 to allow for six months of time for the finance officer and finance analyst to transition the job responsibilities.

- This was an information item only. No action was taken.

10. Approval of Salary Adjustment for the General Manager (A)

Article IV of the CJPRMA By-Laws describes the powers of the Executive Committee, and among those powers is "personnel matters concerning salary, benefits and working conditions of staff."

The general manager was appointed to the position on December 4, 2018. The Executive Committee met in closed session on January 16, 2020 to conduct the performance appraisal of the general manager. The Executive Committee delegated authority to the President of the Board of Directors, Kim Greer, to deliver the performance appraisal to the general manager and

negotiate a salary adjustment. The negotiated adjustment is a five percent increase retroactive to December 4, 2019. The general manager's annual salary would increase from \$172,000 to \$180,600, an increase of \$8,600 per year. The total annual fiscal impact including CalPERS contributions and payroll tax \$9,945.

- A motion was made by Director Cannon and seconded by Director Carroll to approve the salary increase for the general manager from \$172,000 to \$180,600. A roll call vote was taken, Directors Cannon, Northam, Rawe, Carroll, Kiyomura and Mann voted to approve the motion. Richmond was absent. Motion passed.

11. Risk Management Issues (I)

There were no risk management issues agendized for this meeting.

XI. ADJOURNMENT

- Vice President Rawe adjourned the meeting at 4:15 P.M.