

# California Joint Powers Risk Management Authority

## Consolidated Claims Procedures

The Rules, Policies and Procedures related to liability claims are spread throughout our governing document. The purpose of this document is to place all the relevant information and requirements related to liability claims in a single document. Our Rules, Policies, and Procedures are outline within the *Joint Powers Authority Agreement of CJPRMA, CJPRMA Bylaws, CJPRMA Memorandum of Coverage, and the Mandatory Case Reporting Policy*. They are presented as follows:

The CJPRMA Joint Powers Authority Agreement, ARTICLE VII, Section A requires members *“to cooperate fully with the Authority in determining the cause of losses and in the settlement of claims, as defined in the Memorandum of Coverage”* and ARTICLE VII, Section E *‘to cooperate with and assist the Authority and any insurer, claims adjuster or legal counsel retained by the Authority, in all matters relating to this Agreement.’*<sup>i</sup>

The *Memorandum of Coverage* establishes the following duties related to claims and litigation.

### **SECTION VII - CONDITIONS**

#### **1) Covered party’s Duties in the Event of Occurrence, Claim or Suit**

*(a) 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; or regardless of reserve, any claim involving:*

- 1) one or more fatalities;*
- 2) loss of a limb;*
- 3) loss of use of any sensory organ;*
- 4) quadriplegia or paraplegia;*
- 5) third degree burns involving ten percent or more of the body;*
- 6) serious facial disfigurement;*
- 7) paralysis; or*
- 8) closed head injuries.*

*Written notice containing particulars sufficient to identify the covered party and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the covered party and of available witnesses, shall be given by or for the covered party to the Authority or any of its authorized agents as soon as possible.*

*(b) The covered party shall notify the Authority within 30 days upon receipt of lawsuit containing allegations involving employment practices liability. Where any lawsuit is reported after the 30 day period as required by this provision, all defense costs incurred prior to the date of late reporting will not constitute covered ultimate net loss eroding the self-insurance retention. The covered parties shall cooperate in an early review of employment practices liability claims or suits with counsel appointed by the Authority at the expense of the Authority.*

*(c) If claim is made or suit is brought against the covered party and such claim or suit falls within the description in paragraph (a) above, the covered party shall be obligated to forward to the Authority every demand, notice, summons or other process received by it or its representative.*

*(d) The covered party shall cooperate with the Authority and upon its request assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered party because of bodily injury, personal injury, property damage or public officials errors and omissions with respect to which coverage is afforded under this Agreement; and the covered party shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.*

*(e) The Authority shall be entitled to complete access to the covered party's claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations. The covered party shall be responsible to report on the progress of the litigation and any significant developments at least quarterly to the Authority, and to provide the Authority with simultaneous copies of all correspondence provided to the covered party by its defense attorneys and/or agents. <sup>ii</sup>*

The Mandatory Case Reporting Policy applies to Section VII (Conditions) of the Memorandum of Coverage and is applicable to all cases reportable to CJPRMA.

Pursuant to Section VII (Conditions) of the Memorandum of Coverage, the following rule is applicable to all cases reported to CJPRMA:

### **Mandatory Case Reporting Policy**

*The Authority shall be entitled to complete access to the covered party's claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations. The covered party shall be responsible to report the progress of the litigation and any significant developments at least quarterly (every 90 Days) to the Authority, and to provide the Authority with simultaneous copies of all correspondence provided to the covered party by its defense attorneys and/or its agents.*

*In addition, the CJPRMA Board of Directors has adopted the following mandatory case reporting standards:*

*1) Defense counsel is expected to provide a written analysis of liability and exposure in any reported claim no later than ninety days following receipt of the file from the member agency. CJPRMA understands that the liability picture may develop as discovery is ongoing, but this does not excuse the responsibility of providing an early, objective analysis of the file, subject to later developments. An early analysis not only permits the JPA member to set an accurate reserve level, but also permits the member entity to decide whether to actively litigate the case, try to settle the case, or limit discovery based upon the exposure.*

*2) The initial status report should provide, at a minimum, a brief synopsis of the facts giving rise to the lawsuit; the status of the pleadings, including any discussions of demurrers or motions to dismiss, or cross-complaints; a summary and analysis of plaintiff's injuries, damages and exposures in the case; an initial impression of liability; any requests for additional investigation; a brief outline of the discovery planned; and an evaluation of anticipated litigation costs. The report need not be lengthy, and typically might not exceed three to five pages, but must address the issues directly and in a straightforward manner so that the member entity and CJPRMA can set cost and loss reserves as necessary.*

*3) Defense counsel is responsible to report, in writing, the setting of a trial date, settlement conference date, hearing date on motion for summary judgement or similar dispositive motion in any litigated case, within one week of the date on which a court establishes such date. A copy of all mediation briefs and settlement conference statements shall be sent to CJPRMA prior to mediation. Mediation-Settlement Conference briefs should also be accompanied by a report with an evaluation of settlement value, Plaintiff's expected demand, and recommendation for settlement strategy.*

4) *Defense counsel is responsible to report, in writing, all settlement demands or offers within one week of the time the offer is made or the demand is received. Informal settlement discussions should also be reported to CJPRMA. Defense counsel should give consideration to the timing of settlement discussion as it relates to the value of the case and the authority level required to be prepared for settlement. CJPRMA should be notified as early as possible of upcoming opportunities to settle so that the Board of Directors or Executive Committee has time to consider the settlement prior to the conduct of the settlement process.*

5) *Defense counsel is responsible to report, in writing, on the substance of all depositions taken in the case. This need not be a multi-page deposition summary, but must, at a minimum, include a concise report of major events occurring at the deposition, and an evaluation of the effect of the deposition testimony on the case. Report should also include witness impression and an evaluation of the witnesses' credibility.*

6) *Finally, no later than sixty days before the date set for trial in any case, defense counsel is responsible to report, in writing, on (1) an assessment of liability in the case, (2) the adverse potential exposure if liability is found, (3) a concise summary of injuries sustained and/or claims, (4) an assessment of any other factors (such as local jury tendencies, appearance of important witnesses, etc.) that may affect the liability analysis or exposure assessment, and (5) an opinion on the settlement value of the case.*

7) *All status reports from defense counsel must be copied to the CJPRMA Board member whose entity is involved in the claim.*

*This policy is designed to protect the member entity and CJPRMA, so that they can make informed litigation decisions on reported cases. Past experience has shown that defense counsel retained by the member entities of CJPRMA are high-caliber, hardworking attorneys who have done very well for their clients, and CJPRMA is grateful for their efforts. Defense counsel are cautioned, however, that case reporting is given a high priority by CJPRMA and its members, and is a major consideration in evaluating counsel's performance.<sup>iii</sup>*

Please send all documents to:

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY  
3201 Doolan Road, Suite 285  
Livermore, CA 94551  
(925) 837-0667  
(925) 290-1543 Fax

Article IX of the CJPRMA BYLAWS create the following procedures for settlement:

## **ARTICLE IX**

### **SETTLEMENT OF CLAIMS**

*“All claims settlement recommendations shall be presented by the General Manager/Secretary, or his designee, to, and be approved by, the Board prior to final settlement, except that the Executive Committee shall have the authority to approve settlements in an amount not to exceed \$500,000 of the Authority's funds.*

*In accordance with the Memorandum of Coverage, the Authority may assume control of and defend or settle any claim determined to have a reasonable probability of resulting in an ultimate net loss in excess of the member entity's retained limit. “*

The **CJPRMA BYLAWS** also create the following procedure for CJPRMA to take control of a case.

The procedure for assuming control of a claim shall be as follows:

- 1. The General Manager/Secretary may submit the issue of assuming control of a claim directly to the Board of Directors, for decision, by presenting a written recommendation to that effect.*
- 2. The General Manager and the covered party will have the right to submit written materials and present oral arguments to the Board, subject to reasonable time constraints.*
- 3. The Board may determine to assume control of a claim by a majority vote of the entire Board.*
- 4. The affected Board member (i.e. whose member entity is the defendant in the claim) shall be disqualified from the final discussion and vote on this issue. <sup>iv</sup>*

This Compilation of CJPRMA Rules, Policy and Procedures should be provided to all defense counsel and Third Party Claims Administrators assigned to claims/litigation involving our organization. These Rules, Policies and Procedures will be used as part of the Model Audit Guidelines to insure that all litigation management is equal to or greater than industry standards.

## **Claim Audit Standards:**

The auditor performing the annual claims audit for CJPRMA will utilize the following claims standards. These results will be presented to the Board of Directors for review and comment.

### **Claims Standards**

Set by CJPRMA JPA Agreement, MOC, Bylaws and Mandatory Case Reporting Policy

Subject to Annual Claim Audit

#### **I. Initial Case Reporting**

- i. Covered Party shall notify the Authority within 30 days of upon receipt of notice of a claim
  1. *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.*
    - a. *Standard: Reported (Yes or No) Timely (Days Delinquent)*
  2. *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*
    - a. *Standard: Reported (Yes or No) Timely (Days Delinquent)*
  3. Regardless of reserve, any claim involving:
    - a. 1) one or more fatalities;
    - b. 2) loss of a limb;
    - c. 3) loss of use of any sensory organ;
    - d. 4) quadriplegia or paraplegia;
    - e. 5) third degree burns involving ten percent or more of the body;
    - f. 6) serious facial disfigurement;
    - g. 7) paralysis; or
    - h. 8) closed head injuries.
    - i. *Standard: Reported (Yes or No) Timely (Days Delinquent)*
  4. *The covered party shall notify the Authority within 30 days upon receipt of lawsuit containing allegations involving employment practices liability.*
    - a. *Where any lawsuit is reported after the 30 day period as required by this provision, all defense costs incurred prior to the date of late reporting will not constitute covered ultimate net loss eroding the self-insurance retention.*

- b. *The covered parties shall cooperate in an early review of employment practices liability claims or suits with counsel appointed by the Authority at the expense of the Authority.*
  - i. Standard: Reported (Yes or No) Timely (Days Delinquent)

## II. Cooperation with CJPRMA

a. All case will be reviewed for compliance with following:

- i. *The covered party shall be obligated to forward to the Authority every demand, notice, summons or other process received by it or its representative.*
  - 1. Standards: CJPRMA receive all documents (Yes or No)
- ii. *The covered party shall cooperate with the Authority and upon its request assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered party because of bodily injury, personal injury, property damage or public officials errors and omissions with respect to which coverage is afforded under this Agreement*
  - 1. Standards: CJPRMA receive cooperation (Yes or No)
- iii. *Complete access to the covered party's claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations.*
  - 1. Standards: CJPRMA receive all documents (Yes or No)
- iv. *Report on the progress of the litigation and any significant developments at least quarterly (every 90 days) to the Authority, and to provide the Authority with simultaneous copies of all correspondence provided to the covered party by its defense attorneys and/or agents.*
  - 1. Standards: CJPRMA receive all reports (Yes or No) - Timely (Days Delinquent).
- v. *Defense counsel is expected to provide a written analysis of liability and exposure in any reported claim no later than ninety days following receipt of the file from the member agency.*
  - 1. *The initial status report should provide, at a minimum, a brief synopsis of the facts giving rise to the lawsuit; the status of the pleadings, including any discussions of demurrers or motions to dismiss, or cross-complaints; a summary and analysis of plaintiff's injuries, damages and exposures in the case; an initial*

*impression of liability; any requests for additional investigation; a brief outline of the discovery planned; and an evaluation of anticipated litigation costs.*

2. *Standards: CJPRMA receive all reports (Yes or No) - Timely (Days Delinquent).*

vi. *Defense counsel is responsible to report, in writing, the setting of a trial date, settlement conference date, hearing date on motion for summary judgement or similar dispositive motion in any litigated case, within one week of the date on which a court establishes such date.*

1. *Standards: CJPRMA receive all reports (Yes or No) - Timely (Days Delinquent).*

vii. *Defense counsel is responsible to report, in writing, all settlement demands or offers within one week of the time the offer is made or the demand is received. Informal settlement discussions should also be reported to CJPRMA. Defense counsel should give consideration to the timing of settlement discussion as it relates to the value of the case and the authority level required to be prepared for settlement. CJPRMA should be notified as early as possible of upcoming opportunities to settle so that the Board of Directors or Executive Committee has time to consider the settlement prior to the conduct of the settlement process.*

1. *Standards: CJPRMA receive all reports = (Yes or No) - Timely (Days Delinquent).*

viii. *Defense counsel is responsible to report, in writing, on the substance of all depositions taken in the case. This need not be a multi-page deposition summary, but must, at a minimum, include a concise report of major events occurring at the deposition, and an evaluation of the effect of the deposition testimony on the case. Report should also include witness impression and an evaluation of the witnesses' credibility.*

1. *Standards: CJPRMA receive all reports = (Yes or No)*

ix. *Sixty days before the date set for trial in any case, defense counsel is responsible to report, in writing, on (1) an assessment of liability in the case, (2) the adverse potential exposure if liability is found, (3) a concise summary of injuries sustained and/or claims, (4) an assessment of any other factors (such as local jury tendencies, appearance of important witnesses, etc.) that may affect the liability*

*analysis or exposure assessment, and (5) an opinion on the settlement value of the case.*

1. *Standards: CJPRMA receive all reports = (Yes or No) - Timely (Days Delinquent).*
- x. *All status reports from defense counsel must be copied to the CJPRMA Board member whose entity is involved in the claim.*
1. *Standards: Board member copied (Yes or No)*

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<sup>i</sup> JPA Agreement Adopted: 09/19/89, Re-formatted 2/13/98 and 05/21/2009 – Page 9 (section A and E)

<sup>ii</sup> Memorandum of Coverage Effective: 07/01/2015, SECTION VII – CONDITIONS, page 23-24

<sup>iii</sup> Mandatory Case Reporting Policy – Page 1-2 (with suggested amendments highlighted in Pink)

<sup>iv</sup> Bylaws Amended: 06/16/94 , 09/19/94 , 09/20/99, 11/21/02, 04/17/06, 05/08/08, 12/11/08, 06/17/10 – page 14