

**CALIFORNIA AFFILIATED RISK MANAGEMENT AUTHORITIES
(CARMA)**

**DRAFT MINUTES OF THE BOARD OF DIRECTORS'
MEETING OF JANUARY 14, 2011**

A regular meeting of the Board of Directors of CARMA was held on January 14, 2011, at the Bodega Bay Lodge & Spa, Bodega Bay, California.

BOARD MEMBERS PRESENT: Geoff Grote, BCJPIA, President
John Stroh, VCJPA
Jake O'Malley, MPA, Treasurer
Robert Galvan, MBASIA

BOARD MEMBERS ABSENT: Linda Abid-Cummings, CSJVRMA

ALTERNATE MEMBERS PRESENT: Dave Hodgkins, BCJPIA
Robert Ewing, MPA

OTHERS PRESENT: Karen Thesing, Executive Director
Sandra Spiess, Board Secretary
Nancy Broadhurst, Accounting Manager
Linzie Kramer, Litigation Manager
Craig Farmer, Legal Counsel
Rob Kramer, Bickmore Risk Services
Michael Groff, Bickmore Risk Services
Jeanette Workman, Bickmore Risk Services
Brian Kelley, Bickmore Risk Services
Adrienne Beatty, Bickmore Risk Services
Ramona Buchanan, Bickmore Risk Services
Mike Simmons, Alliant Insurance Services
Carlos Oblites, PFM

1. CALL TO ORDER

The January 14, 2011, Board of Directors' meeting was called to order at 9:01 a.m. by President Geoff Grote.

2. INTRODUCTIONS

Those in attendance introduced themselves. President Grote, on behalf of the Board of Directors, expressed appreciation to and recognized Ms. Sandra Spiess for a job well done as Board Secretary to the CARMA Board of Directors.

3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

John Stroh moved to approve the amended agenda that was sent out to the Board of Directors. Seconded by Jake O'Malley. Motion passed unanimously.

4. PUBLIC COMMENTS

None.

5. CONSENT CALENDAR

John Stroh moved to approve/accept the following items: A) November 2, 2010, Special Board Meeting; B) Minutes of the September 10, 2010, Board Meeting; C) Warrant Listings for September 1, 2010, through December 31, 2010; D) Treasurer's Report at September 30, 2010; E) Internal Financial Statements for the Quarter Ended September 30, 2010; F) Farley Consulting Services Contract; and G) Memo on SB 719 – "The Police Pursuit Bill" by Michael Groff. Seconded by Jake O'Malley. Motion passed unanimously.

6. ANNUAL WORKSHOP RECAP

A. Establishment of Goals and Objectives

Ms. Karen Thesing, Executive Director, reviewed items of interest discussed during the Workshop held the previous day with the Board and confirmed the goals and objectives established by the Board. Ms. Thesing noted that this is an opportunity for the Board of Directors to make amendments as needed, and/or adopt the Goals and Objectives for 2011/2012:

The Goals and Objectives for 2011/2012 are as follows:

Marketing of excess and reinsurance coverage:

- More aggressive marketing with new inverse/condemnation terms and limits.
- Quota sharing above the \$3 million pooling level.

Marketing

- Continue outreach to CARMA members.
- Emphasis on claims reporting and litigation management.

Experience Modification Factors

- Evaluate the application of an ex-mod to the \$3 million pool limit, which would be phased in over a three-year time period.

Retrospective Adjustment Policy

- Evaluate the method of the calculations and member allocation.
- Determine the definition of “member equity.”

John Stroh moved to adopt the 2011/2012 Goals and Objectives as presented. Seconded by Jake O’Malley. Motion passed unanimously.

7. FINANCIAL MATTERS

A. Retrospective Adjustment Policy / Return of Equity

Ms. Thesing reported that a proposed Retrospective Adjustment Policy was presented and discussed at the January 13, 2011, CARMA Board of Directors’ workshop with the Board’s consensus that further work be completed on the Retrospective Adjustment Policy, and no further Board action will be required at this time on the proposed policy.

B. California Asset Management Program Portfolio Review

Mr. Carlos Oblites, Public Financial Management (PFM), reviewed CARMA’s investment performance for a two-year period ending December 31, 2010, and provided a detailed review of the current market conditions. Mr. Oblites reported that the yield for the 12-month period ended December 31, 2010, was substantially higher than LAIF and CARMA’s established benchmark. For the past quarter, CARMA had a negative return of .04%; however, for the past year, the portfolio earned 2.43%, well over the benchmarked returns.

Mr. Oblites advised that the portfolio’s holdings are diversified by maturity, comply with California Code and CARMA’s investment policy, continues to accrue earnings at a rate of 1.22% (yield to maturity) per year, and has generated solid returns. Mr. Oblites discussed factors that have contributed to the recent yield increases and reported that future indicators are that the rates will remain the same due to these contributing factors.

Going forward, the First Quarter 2011 Investment Strategy for CARMA will include seeking to effectively manage the duration of CARMA’s portfolio, and possibly increase the portfolio’s allocation to the Treasury sector to enhance liquidity and credit quality.

A question was posed on the impact European countries are having on the market.

Mr. Oblites discussed the impact Greece, Ireland, and Portugal are having on the international market and currency, and noted that it is expected Germany may go bankrupt as well.

Appreciation was expressed to Mr. Oblites for today's presentation.

8. ADMINISTRATIVE MATTERS

A. Appointment of Board Secretary

Ms. Thesing reminded the Board that last year, it was announced that Ms. Spiess has been promoted within Bickmore Risk Services (BRS) in the Consulting Division, and Ms. Spiess would be leaving her position with CARMA. Ms. Thesing advised that over the past six months, staff has been working with Ms. Ramona Buchanan, Bickmore Risk Services, on the transition, and is requesting that the Board of Directors approve Ms. Buchanan as the CARMA Board Secretary, replacing Ms. Spiess in this capacity.

Jake O'Malley moved to approve Ms. Ramona Buchanan, Bickmore Risk Services, as the CARMA Board Secretary effective January 14, 2011. Seconded by John Stroh. Motion passed unanimously.

On behalf of the Board of Directors, President Grote officially welcomed Ms. Buchanan aboard as the CARMA Board Secretary.

B. Reaffirmation of the Conflict of Interest Code

Ms. Thesing indicated that every two even-numbered years, and as required by law, staff presents CARMA's Conflict of Interest Code to the Board of Directors for review. Ms. Thesing noted that the Conflict of Interest Code delineates the positions that are required to submit a Form 700, Statement of Economic Interests, as well as the respective disclosures for each filer.

Ms. Thesing reported that staff has reviewed the current CARMA Conflict of Interest Code and that there are no changes being recommended to the code and as such is recommending the Board of Directors' re-affirm the Conflict of Interest Code for 2011 and 2012, as presented.

John Stroh moved to reaffirm the Conflict of Interest Policy for the 2011 and 2012 calendar years as presented. Seconded by Robert Galvan. Motion passed unanimously.

C. Bay Actuarial Consultants Letter of Engagement for Actuarial Services

Ms. Thesing reported that Bay Actuarial Consultants, in particular Mr. Jack Joyce, has been providing actuarial services to CARMA since 2002. Ms. Thesing noted that

since the contract will soon expire, this item has been included on the agenda for the Board of Directors to determine if it would like to continue with Bay Actuarial Consultants or to proceed with a Request for Proposal (RFP) for actuarial services.

Staff has been working with Mr. Joyce related to contractual cost, and Mr. Joyce has indicated for 2011/2012 that Bay Actuarial Consultants will charge a flat fee of \$6,724, and limit future annual fee increases to no more than 2% per year through the 2015 fiscal year.

The question was posed how competitive the fees being proposed are as compared to other providers. Ms. Thesing advised that based upon the volume of work, Bay Actuarial Consultants' fees are in the same ballpark as other providers.

Ms. Thesing further reported that for the 2011/2012 fiscal year, it is being requested that the actuary review future loss funding rates per \$100 of payroll for \$1 million x \$4 million in addition to the other layers. Mr. Michael Simmons, MBASIA, requested that the actuary include \$1 million x \$5 million in the study, as well as comment on the 50% quota sharing ratio.

Ms. Nancy Broadhurst, Bickmore Risk Services, noted that in addition to the 60%, 70%, 75%, 80%, and 90% probability levels, the actuarial report will also include the 85% probably level as well.

John Stroh moved to: 1) approve the proposal from Bay Actuarial Consultants for 2011 through 2015, as presented; 2) to include as part of the study an analysis of the \$1 million x \$4 million and \$1 million x \$5 million loss funding rates and include a comment on the 50% quota sharing ratio; and 4) in addition to the 60%, 70%, 75%, 80%, and 90% probability levels, discuss rates at the 85% probability level as part of the actuarial study. Seconded by Jake O'Malley. Motion passed unanimously.

D. Updated CARMA Website

Ms. Thesing reported that over the past several months, staff has been working with the Bickmore Risk Services' IT Department to review the existing CARMA website, analyze the features that are utilized the most, and to determine a manner in which to enhance the current features of the website so it is more user-friendly and attractive to current and potential members. As such, Ms. Thesing advised an updated website is being unveiled to the Board of Directors that is now "live" on the Internet.

Ms. Buchanan, Bickmore Risk Services, provided an overview of the website updates, including the addition of a member application for the purpose of marketing, and a litigation page under the members-only section for current members. Ms. Buchanan concluded by advising should the Board have any comments or suggestions to email her at rbuchanan@brsrisk.com.

A question was posed on the login requirements for the members-only. Ms. Spiess noted that under the old website platform, all members shared a common login

password, but with the enhanced website, each member will have his/her own username and password. This new feature is at no additional cost to CARMA or its members. Each member is encouraged to go the Members-Only page on the CARMA website at www.carmajpa.org and register for a username and password.

A further question was posed on the purpose and content of the new litigation section. Ms. Thesing advised that access to this new section is for members available through the members-only section, and that no litigation cases will be included, but rather training materials, power point presentations, white papers, manuals, etc. will be on that page.

E. Medicare Set-Aside (MSA) Update

As an update to the Board of Directors, Mr. Michael Groff, Bickmore Risk Services, reported that the BRS litigation team has been diligently keeping apprised of changes to the mandatory Medicare reporting requirements and the protection of Medicare's interest as a secondary payer. Mr. Groff advised that this process has always been in place on the workers' compensation side and on the liability side the consideration of payments for conditional liens at settlement has been in place as well. However, protecting Medicare's interests for potential future medical payments within the general liability arena remain an uncharted territory; thus, this is a complicated new federal law that staff continues to monitor.

Mr. Groff discussed the two major aspects to the Medicare Set-Aside protection issue (i.e. conditional liens: payments already made by Medicare, and future medicals: payments that may be made by Medicare in the future) and noted that Medicare is monitoring this closely to ensure its protection. Mr. Groff advised that Medicare has now extended the date for mandatory reporting to January 2012, relating back to cases settling after October 1, 2011.

Ms. Adrienne Beatty, BCJPIA, clarified that this is for settlements, judgments, and awards (TPOCs) for liability claims only; reporting of settlements, judgments, and awards for workers' compensation claims settling on or after October 1, 2010, as well as reporting of Ongoing Reporting of Medicals (ORMs) for both workers' compensation and liability claims, began January 1, 2011. Ms. Beatty further discussed the effort to provide training on the difference between Medicare-eligible claimants and claimants who are currently Medicare beneficiaries and how this relates to the reporting/query process.

Mr. Groff added that CARMA is a Registered Reporting Entity (RRE) and emphasized the importance of monitoring and reporting obligations. Failure to report will fall back on CARMA, as the RRE, and financial penalties apply for non or late reporting. Mr. Groff then discussed a court decision on a Longshoreman case, and noted the benefit of the decision as a tool for resolving cases involving Medicare-eligible claimants.

Mr. Linzie Kramer, Litigation Manager, advised this is the third time Medicare has postponed some element of the mandatory reporting dates. Mr. Kramer continued by

advising that he and Mr. Groff have been drafting various settlement agreements for Medicare-eligible or beneficiary claimants and that this bank of information is available to the underlying CARMA pool members. Mr. Kramer concluded by advising that the litigation management team has worked very carefully with the Third Party Administrators to assist them in this process, and staff will continue to do so as necessary.

F. Genex Contract Fees for 2011/2012 Program Year

Mr. Groff reported that Bickmore Risk Services (BRS) and its clients have partnered with Genex Services, Inc. to provide assistance on Medicare queries and reporting, and to assist BRS in determining an amount to be allocated for future medical expenses.

Mr. Linzie Kramer provided an overview on the processes involved in selecting Genex, and negotiating the amount that would be charged to each of the BRS clients with individual contracts with Genex. Mr. Kramer advised that the negotiated amount on behalf of the BRS clients is \$150,000 total for hardware and software, to be paid the first of April 2011. Genex agreed, as part of their services, to off-set Medicare Set-Aside (MSA) referrals against the negotiated total. Mr. Kramer continued to report that recently the negotiated amount has been reduced from \$150,000 to \$80,000, with two months remaining to continue negotiations with Genex.

Mr. Kramer further reported that internal meetings were held for the purpose of providing the BRS clients and administrators the amount required for their respective budgets. Mr. Kramer noted this delay in reporting dates has had an impact on the work to be performed by Genex as well. As such, Genex has agreed, for budgeting purposes, to extend the BRS clients' fees to a two-year payment, thus the recommended \$13,000 can now be cut to one-half per year for the next two years.

Mr. Kramer concluded by advising that between January and March 2011, BRS will continue to use the services of Genex, and will also continue its negotiations with Genex on the allocated fees.

G. Duties of the Litigation Manager Regarding Coverage Letters

Ms. Thesing reminded the Board of Directors that this item as it relates to the litigation management duties was presented at the April 2010 meeting for discussion and was centered on the issue of staff presenting an early notice to members of a potential coverage concern; however, this would not be construed as a replacement of the formal coverage opinions. Ms. Thesing continued that discussion was further held on the timing on which the notice would be sent to the member, should CARMA engage in such an early notice.

Mr. Groff discussed the litigation team's protocol that is followed when reviewing claims reported to CARMA. The litigation managers have in the past identified potential underlying coverage issues on these claims and submitted the claim and

potential issues to legal counsel for a formal coverage opinion.

Mr. Groff noted there are members that have recognized potential underlying coverage issues, and have requested from the litigation managers an early notification or coverage alert and understanding that CARMA believes that there may be some underlying coverage issues. The purpose of this would be for the member to understand CARMA's position, or to budget the necessary costs related to the claim within their retained limit.

Mr. Groff continued by advising that the litigation managers are seeking direction from the Board as to whether the Board would like to expand the duties of the litigation managers to identify potential coverage issues, and to seek clarification on at what point in the process to send legal counsel a request for a coverage opinion?

Mr. Linzie Kramer noted that the past practice has been to point out a potential underlying coverage issue to a member JPA when requested, and if the member does not agree with this position, then the need arises for a coverage opinion. Further, Mr. Kramer noted that it has been requested that each CARMA JPA retain its own legal counsel for opinions on coverage. Additionally, Mr. Kramer advised that although he and Mr. Groff are well-versed in coverage, coverage opinions are not issued through the litigation managers, but rather through the CARMA legal counsel or the member's own coverage counsel at their retained limit.

Mr. Craig Farmer, legal counsel, advised that the intent of the early notification would be to advise the member of an uncertainty related to coverage.

President Grote recapped the issues for the Board's discussion: (1) as a timing issue, when the red flag is to be raised so that all parties will be aware of the potential underlying coverage issue(s); and (2) structurally, who would be the appropriate party to provide the notification to the member? Discussion ensued on the emphasis of an early notification to the underlying members. Suggestions included: (1) a hybrid structure, whereby the litigation managers and CARMA's legal counsel simultaneously develop and memorialize a formal approach, thus strengthening the process already in place; (2) BRS facilitate or "bridge" communications in writing to the JPA members; and (3) determine the limit of coverage and communicate with the member, and then if a formal coverage opinion is required, the member would have the responsibility to request said opinion.

Mr. Kramer affirmed that the procedure could include documenting the conversation, and sending to the member what the litigation managers perceive as a potential coverage problem with a request that the underlying member respond; however, if the member has a difference of opinion, the matter would eventually go to legal counsel and the CARMA Board of Directors, if necessary.

After further discussion, President Grote summarized the Board's direction that as early on in the process as possible, the litigation managers send a written communication to the member notating any potential underlying coverage issues that have been raised. It was the Board's consensus that this satisfies the issues that have

been raised. No further action was taken on this matter at this time.

9. COVERAGE MATTERS

A. Transfer of Risk Draft Policy for Issuing Excess Certificates of Coverage

Ms. Thesing reported that this was first discussed by the Board of Directors in September 2010, when the Board was provided with the 2005 policy. Ms. Thesing advised that the 2005 policy is contradictory—first it states that the underlying member should issue only a certificate evidencing coverage, then it continues to read that the member could also issue a certificate for an additional covered party under the CARMA Memorandum of Coverage (MOC).

Ms. Thesing reported this has been brought back for the Board to affirm if the CARMA Certificates of Coverage are to be issued for an Additional Covered Party, then the litigation managers should be involved in the review of the contract and issuance of said certificate. Ms. Thesing concluded by advising a revised policy further modifying the current policy has been included in the agenda for the Board's review.

Mr. Groff discussed the review process used by the litigation managers to ensure when a third party contracts with another party that sufficient coverage is provided, and that the certificate of coverage matches that which is required in the contract or agreement. Mr. Groff noted that more recently, due to the economy, underlying contractors are increasing their limit requirements up to between \$2 million to \$5 million, which has resulted in an increase of requests for CARMA to issue certificates of coverage.

Mr. Groff advised that the litigation managers/staff are requesting that the existing policy be revised to reflect if underlying members request evidence of coverage, a review is conducted on the contract or agreement and further, it is proposed that language be added to the certificate to strengthen that not only the coverage meets that of the CARMA MOC, but also meets the coverage of the member as well.

Mr. Kramer emphasized the importance of when a certificate is issued at the CARMA level to ensure a "backwards" risk transference is not unintentionally accepted and bound by CARMA. Mr. Kramer noted that this is an area whereby CARMA and its litigation managers continue to be diligent.

Mr. Groff lightly touched on late and last-minute requests for certificates and noted that the administrative staff and the litigation managers do their best to ensure the certificates are issued as timely as possible. Mr. Groff continued by advising that if there ever were to be an impasse between the CARMA Administrator and/or Litigation Manager, the issue would be brought before the Board of Directors. As such, language has also been included in the proposed revised Procedures to address this issue.

President Grote reviewed the proposed changes to the Procedures for Issuance of

Certificates of Coverage as noted on the draft contained in the agenda.

Jake O'Malley moved that the Board of Directors approves the revised Procedures for Issuance of Certificates of Coverage to state the underlying member shall submit for review and approval to the Litigation Manager the written agreement or contract as well as the Request for Coverage when an Additional Covered Party is requested from CARMA. All requests shall be submitted prior to the issuance of the Certificate; and (2) the Board approves the addition of the recommended language noted in the staff report to the CARMA Certificate. Seconded by John Stroh. Motion passed unanimously.

10. COMMERCIAL MARKETING MATTERS

A. Commercial Marketing Strategy

Ms. Thesing reported that the Commercial Marketing Strategy was presented and discussed at the January 13, 2011, CARMA Board of Directors' workshop with direction provided to staff as part of the Goal and Objectives, and as such no further Board action will be required at this time.

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 convened to closed session at 10:49 a.m. to discuss the following claims for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers authority:

Affholter, et al. v. City of Merced, et al. (CSJVRMA)
Huerta v. Redwood City (BCJPIA)
Katzman v. Clayton (MPA)

B. Report from Closed Session

The Board reconvened to open session at 11:39 a.m., and it was noted the following action was taken in closed session: The Board provided direction to legal counsel on the claims and to communicate a report.

12. CLOSING COMMENTS

A. Board
None.

B. Staff
None.

13. **ADJOURNMENT**

The January 14, 2011, Board of Directors' meeting adjourned at 11:40 a.m. by general consensus of the Board.

Ramona Buchanan

Ramona Buchanan, Board Secretary