



SUMMARY MINUTES
BOARD OF DIRECTORS – Planning Meeting
October 8, 2003 – 9:30 a.m.
Regional Room, Dublin City Hall
100 Civic Plaza, Dublin, CA

Board Members and Alternates Present

Heather McLaughlin
Larry Anderson
Gretchen Conner
Carol Augustine
Sandy Salerno
Christi Chapelle
LeeAnn McPhillips
Debra Ryan
Phil Rose
Sarah Joiner
Orry Korb, Vice-Chairman
Jack Dilles, Chairman
Barbara Lathrop
Jesse Baloca
Jim Steele
Alex McIntyre

Jurisdictions

Benicia
Burlingame
Campbell
Cupertino
East Palo Alto
Foster City
Gilroy
Half Moon Bay
Los Altos
Los Altos Hills
Los Gatos
Morgan Hill
Newark
Saratoga
South San Francisco
Tiburon

Other Members Present

Leslie Carpentiers
Carole Perry
Karen Tremain

Belvedere
Dublin
Foster City

Members Absent

Elizabeth Wessman-McGee
Sharon Barker
Ed San Diego
Diane McGrath
Sandy Abe
Julie Carter

American Canyon
Atherton
Belvedere
Colma
Cupertino
Dublin

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Kathy Leroux

Hillsborough

Members Absent (cont'd)

Maureen Cassingham

Los Altos Hills

Greg Sam

Millbrae

Emma Karlen

Milpitas

Cecilia Quick

Pacifica

Angela Howard

Portola Valley

Gary Broad

Ross

Jim O'Leary

San Bruno

Jeff Maltbie

San Carlos

Steve Baker

Suisun

Susan George

Woodside

Staff Present – ABAG PLAN Corporation

Marcus Beverly, Risk Manager

Henry Gardner, Deputy Executive Director

Kenneth Moy, Legal Counsel

Angela Salsbury, Claims Manager

Vina Maharaj, Administrative Assistant, Recording Secretary

WELCOME AND INTRODUCTIONS

Marcus Beverly welcomed everyone to the 18th Annual Board of Directors' meeting.

Vice-Chairman Jack Dilles called the meeting to order 9:55 a.m. with introductions. A quorum of 16 members and alternates was present

PUBLIC COMMENTS

There were no public comments.

APPROVAL OF MINUTES OF MAY 28, 2003 BOARD OF DIRECTORS MEETING

Marcus Beverly presented a minor revision to the May 28, 2003 Draft Minutes on page 5, item 8A third paragraph, related to "swap of the investment review".

Motion was made by McLaughlin/S/Anderson/C to approve the May 28, 2003 Board of Directors' meeting minutes as presented.

OVERVIEW OF 5-YEAR PLANNING OBJECTIVES

Beverly presented the Board members with an overview of planning meeting goals, one of which is to review the ABAG PLAN Mission Statement. The PLAN's mission is to benefit the citizens of each Member Entity by establishing a stable, cost-effective self-insurance, risk sharing and risk management program for each Member Entity. Beverly reviewed the 9 goals identified from past meetings and our progress in meeting them. He then gave an overview of the PLAN's strategic planning over the last few years and into the future.



Beverly said that in 2000-01, the focus of ABAG PLAN was primarily on Administrative and Internal Procedures which included outsourcing personnel/equipment, instituting claims procedures, implementing a new software program called Risk Master and revamping the ABAG PLAN website.

In 2001-02, the focus was on Funding Procedures, where a Funding Policy was instituted, ABAG PLAN stopped paying dividends to increase the SIR Funds and made a change in actuaries.

In 2003-04 the focus has been on Governing Documents and Procedures, which includes reviewing the Memorandum of Coverage and ABAG PLAN Bylaws. The focus is also on reviewing committees, committee roles and developing a Claim Policy.

In 2004-05, the plan is to focus on Underwriting and Risk Control Standards. Beverly said that our ongoing risk management assessments will result in risk management standards for PLAN members and he will have an update at the next Board of Directors' meeting.

Beyond 2005 the focus will be on long-term funding of the PLAN, repeating the review process, and improving the effectiveness of risk management programs through a more tailored and proactive approach for each member.

GOVERNING DOCUMENT REVIEW AND COVERAGE ISSUES

Beverly said that the goals for document review were memorializing the current practices and understanding, agreeing on future characteristics and practices of the pool and having a clear idea of what members want to achieve.

The review focused on the Bylaws, including Committee Roles, and suggested revisions to the Memorandum of Coverage (MOC), based in part on a gap analysis between the excess policy and the MOC.

(a) Bylaws

Beverly and Ken Moy provided an explanation of the proposed changes to the Bylaws, based on Ken's memo and revisions contained in the agenda packet. Some highlights of those changes are noted below:

Ralph M. Brown Act

The proposed amendments delete provisions which authorized meetings violating the Brown Act. Place of meetings: Regular meetings of the Board of Directors may be held at any place within the 9 counties representative of ABAG PLAN members. Sections of the Bylaws affected are VII.6, 9(d) and (e).

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Committees

The proposed amendments to Section VIII.3 are proposed in order to explicitly state the powers of the Executive Committee. The changes proposed for Section VIII.4 articulate the role played by the Claims Committee. The changes proposed for Section VIII.6 would delete a reference to Program Committees which is outdated.

Premium Setting

Original premium setting methodology included provisions for Supplemental Risk Premiums, Risk Premium Adjustments, etc. The evolution of the PLAN Program in areas such as more sophisticated actuarial analysis, better loss data and current reserve levels make such provisions obsolete. Sections of the Bylaws affected are VII.1(b)(v), (vii).

Substantive Changes

The proposed amendments would change the name of the Actuarial/Underwriting Committee to the Actuarial Committee and document the Actuarial Committee's practice of evaluating third party risk transfer mechanisms. The responsibility for admission, withdrawal or expulsion of members would be transferred to the renamed Loss Control Committee.

The Loss Control Committee would be renamed the Underwriting and Risk Control Committee and would meet twice a year.

The Finance Committee meets once a year and can be included as a standing committee or reconstituted annually as an ad hoc committee. The members agreed that the Finance Committee should be added to a subsequent revision of the Bylaws.

Discussion: Beverly said he envisioned meetings would take place as follows:

Board and Risk Control Committee will meet twice a year. All other committees would regularly meet once a year and hold special meetings as needed for such things as claims authority or other needs of staff or the members.

A reminder was made to have Joe Chan send the investment report to the Finance Committee within 30 days after the close of a quarter.

There was a question about the deletion on page 2 of the Bylaws Under Article V, the sentence that reads "Withdrawn or expelled members may receive....." Ken Moy explained that this was a concept language which was inserted in the text of this version of the bylaws that was never finalized as an ideal language for the bylaws.

Ken Moy provided a detailed explanation of language in the Risk Coverage Agreement, a contract between ABAG and its governance and new member jurisdictions which states the circumstances under which a member may be admitted, withdrawn or expelled.

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Motion was made by Salerno/S/Anderson/C to adopt the amendments to the Bylaws as specified under Item A of the staff memo, dated September 29, 2003.

(b) **Claim Policy**

Beverly referred members to his memo in the agenda packet describing the background of the Claim Policy, an analysis and a recommendation to approve the draft Claim Policy.

Objective

Beverly said that the objective of the Claims Committee was to provide policy guidelines to staff of ABAG assigned to the ABAG PLAN program so that ABAG is able to professionally manage all claims submitted by members, provide experienced legal counsel to defend covered claims and resolve coverage or settlement disputes in a fair and cost-effective manner. Some of the provisions of the Policy include:

Claims Management

Risk Manager – Marcus Beverly

Claims Manager – Angela Salsbury

Level of Authority – Beverly \$100,000, Salsbury \$50,000

A Claims Examiner is designated for each member, and a Claims Liaison is designated by each member to serve as a contact and to assist in tailoring the claims management program to the member's needs. A commitment is made to training both members and staff and conducting an audit at least every two years.

Defense Counsel List

The Claims Committee maintains a defense counsel list of highly qualified attorneys. Beverly referred members to the Draft Claim Policy, section 3.2.

Coverage Determination

Beverly said that there is a process laid out to handle coverage determinations. The Risk Manager works with Coverage Counsel who provides a more formal, legal response.

Regarding the Appeal process, Beverly said it needs to be spelled out beyond what is in the MOC. Jack Dillies pointed out that there seemed to be a lot of layers for the appeal process. He suggested that the 5 levels be cut down to 3. He also commented that it would be helpful to put a timeline within which a case could be appealed.

Beverly reminded the members not to try to second-guess coverage or damages by handling the claim themselves. He reiterated how important it was for members to report the claims and let the claims staff handle the claim rather than handling it themselves in an attempt to save Administrative fees. He explained various risks associated with this.

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Orry Korb of the Town of Los Gatos suggested that the risk manager and/or legal counsel make the initial claims determination. Thereafter if the member is dissatisfied with the initial determination, then they can go through the appeal process.

Motion was made by Salerno/S/LeAnn/C to adopt the Draft Claims Policy as presented, with the exception of Item 3.3 which was to be revised further.

(c) **Memorandum of Coverage**

Beverly provided the members with the objectives for the Memorandum of Coverage review, which was to address new risks and coverage changes, align language with understanding and practice, solicit member input, and inform members of coverage nuances and gap analysis of excess coverage. He provided the members with a copy of Special Excess Liability Policy for public entities.

Beverly provided a step-by-step comparison of definitions and coverage between the two documents, the Memorandum of Coverage and the Excess Liability Policy (XS). The following is a summary of the major topics covered:

- Additional covered entities are included in the MOC declarations
- XS Declarations includes ABAG PLAN Corporation and each members as a named insured on the policy
- MOC Limit \$5 Million per loss
- XS Limit \$5 million per occurrence, wrongful act, employee benefit wrongful act
- XS Aggregate Limits - \$5 million for products/Operations, E&O, Employee Benefit Liability
- Definition of Dam is broader in the Excess
- XS Dam Exclusion is broader than MOC
- XS Definition of Bodily Injury includes emotional distress
- XS Definition of Personal Injury Offense is in some respects broader and includes Advertising Injury, Wrongful Eviction, and assault and battery
- MOC Definition of Personal Injury Offense includes violation of civil rights
- Pollutants – XS definition is broader but also includes a Sudden & Accidental exception to the Pollution Exclusion.
- Employee Practices Liability – covered by the XS, excluded by the MOC.
- Employee Benefits Liability – covered by XS, not specifically addressed in MOC.
- Land Subsidence – excluded in XS
- Binding Arbitration provision in XS, none in MOC.

Additional discussion took place regarding a process for resolving disputes, defense provisions, and how the MOC will be interpreted. Ken Moy laid out the process by which a special committee of Board members will review these issues and provide direction to staff to prepare a revised MOC for the Executive Committee and Board to consider at their next meetings.

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MANAGEMENT OF RETAINED FUNDS

Beverly reviewed the PLAN's current financial condition, Funding Policy, and financial benchmark performance.

Balance Sheet Comparison '02 to '03

- Cash and cash equivalent dropped by almost \$6 million dollars as funds were moved from LAIF into higher-return investments.
- The total assets of the Pool increased by \$2.3 million to \$40 million dollars.
- The Claims Reserves dropped from \$15,862,532 to \$11,629,914, largely due to better than expected loss development as estimated by our new actuary.
- Retained Earning increased by \$6.5 million to over \$28 million.

Income Statement Comparison '03 – '04 (projected)

- The liability program funding dropped slightly, even though XS coverage was higher.
- The property program funding also dropped slightly
- Interest income is expected to be flat or slightly lower
- Contract services projected to be 50% lower

What is the adequate amount of retained funds?

Beverly provided members with Washington State Review Criteria, which was adopted by the State of Washington Joint Property and Liability Advisory Board in May, 1998.

Refer to Beverly's PowerPoint presentation for more detailed information on the benchmarks and target ratios. The following is a summary of current PLAN ratios as presented:

- Total Fund to SIR – currently 5:1
- Yearly Deposit to Total Fund: .16:1
- Loss Reserves to Total Fund: .44:1
- SIR Fund to SIR: 3.9:1

WOTS ANALYSIS

Beverly asked members to provide him with a feedback on the program's weaknesses, opportunities, threats and strengths.

- Jesse Baloca of the City of Saratoga remarked that the claims were handled efficiently by the Claims staff.
- Carol Augustine of the City of Cupertino requested that she be provided with more information on the "project manager" issue.
- Sarah Joiner of the City of Los Altos Hills said she and the city's board representative were interested in an opportunity for safety training.

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- Gretchen Conner of the City of Campbell suggested if training money is not being utilized, maybe there is an opportunity to do some transition incorporation.
- Beverly mentioned that he was hoping to put together an orientation program for members which would provide a guide, procedure manuals and answer many of members' questions, for e.g. What the PLAN does, what the members' responsibilities are and their coverage, etc.

ADJOURNMENT

The meeting adjourned at 4:05 p.m.

Respectfully Submitted,

Marcus Beverly
Risk Manager & Secretary
ABAG PLAN Corporation

/vm