



ABAG PLAN CORPORATION
Executive Committee
Special Meeting
Summary of Minutes

Thursday, August 7, 2008
101 8th Street
Oakland, CA 94607
Conference Room B

Presiding

Emma Karlen, Chairman

Jurisdiction

Milpitas

Committee Members Present

Laura Allen
Shawn Mason
Jack Dilles
Cecilia Quick
Herb Lester

Colma
San Mateo
Morgan Hill
Pacifica
Suisun City

Representatives:

Mike Harrington, Bickmore Risk Services
Peter Urhausen, Pacifica Attorney

Staff Present – ABAG PLAN Corporation

Henry Gardner, President
Marcus Beverly, Risk Manager
Ken Moy, Legal Counsel
Gertruda Luermann, Risk Management Analyst
Carol Taylor, Recording Secretary

1. Call to Order:

Meeting called to order by Emma Karlen at 9:00 a.m.

2. Public Comments:

None

3. Approval of Minutes, Regular Meeting May 15, 2008

Minutes were approved as presented: /M/Mason/S/Quick/C/approved

- Herb Lester arrived 9:10 a.m.

4. Dispute Resolution

Marcus Beverly provided an overview of the staff report and PLAN's current process for resolving coverage disputes, as outlined in the Claim Policy. The decision in the Pacifica litigation calls into question whether any weight would be given to the Board's decision. Staff has considered various alternatives and presented an option to grant the Board the final say on coverage decisions, subject to limited appeal via a procedure outlined in Civil Code section 1094.5. Beverly asked the committee to also consider expanding application of this procedure to other issues such as premium and loss allocation.

Ken Moy provided an overview of the writs of administrative mandamus under Civil Code Section 1094.5. He addressed questions from Shawn Mason regarding whether the procedure is available to a non-profit like PLAN. Traditionally, the procedure is available to governmental decisions. Moy stated case law makes it available to nongovernmental entities such as universities and trade unions.

PLAN would be breaking new ground in attempting to make it available to municipal risk pools. However, a municipal risk pool can fit within the precedents set by universities and trade unions: a self contained system in which the participants are in the best position to decide how the enterprise is run. In addition, the fact that municipal risk pools are explicitly authorized by statute to serve a public purpose makes them more akin to a governmental entity.

The committee members and staff discussed the issues at length, with Cecilia Quick stating she does not support the 1094.5 procedure. She advocated for maintaining an independent review of coverage through the court or arbitration. Mason also questioned whether or not giving the group the power to make the decision was the best option, stating in most contracts you would not give the other party the power to resolve disputes. The question is whether or not the uncertainty over how a court will treat the inverse exclusion, and the financial risk that poses to the members, is great enough to give up some individual control.

The group agreed the focus should be on the risk and coverage language and not on who makes the decision. Beverly stated the Board did address the issue by approving a revised inverse exclusion in the July 1, 2008, Memorandum of Coverage (MOC). However, drafting an exclusion, especially in an untested area like inverse, is inherently subject to a degree of risk in how a judge will interpret it.

There are also possible "tail" claims based on inverse that would fall under earlier MOCs, such as the Half Moon Bay claim. Moy stated that in his opinion, the exposure for this "tail" can be eliminated by agreement of the members only if each of them effectively waives the 'right' to have inverse exclusion resolved in the same manner as the Pacifica decision. Moy suggested that as part of the due diligence necessary before such a waiver can be sought or given, the PLAN survey the membership for such tail claims.

After further discussion the members agreed the goal is to remove as much uncertainty as possible regarding the application of the inverse exclusion, especially for the tail claims. Several ideas were considered. Moy agreed to provide a memorandum on the inverse exclusion and inverse tail claims for further discussion.

Staff was given direction to

- 1) Draft memorandum on the inverse exclusion and the inverse tail issue
- 2) Draft a survey to identify potential inverse tail claims.
- 3) Prepare members to make a decision at the Board meeting on October 22, 2008.

Members agreed to meet again on September 10.

5. Loss Allocation Formula

Marcus Beverly and Mike Harrington made a PowerPoint presentation summarizing an actuarial study by Bickmore Risk Services analyzing a number of methods for allocating losses among the members. The results are used for determining a member's share of net assets.

The presentation provided an overview of the PLAN's finances, including how money flows into and out of the pool, how much of each premium dollar has been paid in losses, and how much is expected to be left in net assets. Seven options for allocating paid losses were presented, with pro-rating by premium used as a starting point. Other options introduced a pooled retention to allocate a portion of the pooled loss to the member before sharing with the group by premium. The results were compared for stability using a variety of factors, including the standard deviation, spread, and degree of risk sharing.

The committee members reviewed and discussed the presentation material and a chart comparing the projected amount of each member's net assets per premium dollar for each option. Discussion included the pros and cons of using the pro-rata by premium method and whether that method must be used exclusively. Staff explained that while the government code allows use of the method, and therefore it's a safe choice, it is not mandated. The main benefit of using one of the other options is it will produce more stable results over time. In addition, making the allocation more loss sensitive by introducing the pooled retention supports the general risk management principle of discouraging frequency through retention while transferring larger losses.

After further review and discussion the members were asked their preference. Four members preferred option number five, the credibility loss cap. Two members, Cecilia Quick and Jack Dilles, preferred option seven but stated they could also support option five. Members agreed to move options three, five and seven to the full Board. Members and staff also discussed and agreed to revisions in the presentation, including eliminating the most volatile options, providing a glossary of terms, and sending an advance copy of the material before presentation.

Members approved a recommendation for option five, with two votes for option seven and presentation of options three, five and seven to the full Board.
/M/Karlen/S/Mason/C/approved

6. Benchmarking and Coverage Review

The report from ARMTECH benchmarking the PLAN against other pools was provided to the members and discussed briefly in the context of the loss sharing formula. However, due to time spent discussing the previous agenda items the review was tabled for the next meeting.

7. Other Business

None

8. Adjournment

Emma Karlen adjourned the meeting at 12:35 p.m.

Respectfully Submitted,



Marcus Beverly
Risk Manager and Secretary