

Member Profile: City of Morgan Hill

What do PLAN members need from municipal insurance? And what is PLAN doing to meet those needs?

The City of Morgan Hill reflects many of those needs. A PLAN member since 1988, Morgan Hill was incorporated in 1906. Morgan Hill has seen itself change from an agricultural center to a suburban residential community and has recently seen growth in its industrial/commercial development. This growth and change has created a community with all the modern complexities, including risk management and claims administration needs.



Chairman, Dilles described the common service challenges that PLAN and member cities encounter, “We have to face the risks presented by sewer, sidewalk, and police claims for each community. As an organization, we also need to assure adequate insurance for all of our membership. But with the high level of resources available, developed through a very conservative approach, PLAN has met many of its established goals and is well-positioned to meet these needs.”

The goals, objectives, and future plans are identified in the *Statement of Benefits and Program Highlights 2003-2004*, currently under development. The

Statement should be available later this summer. For more information, contact Marcus Beverly at 510/464-7969 or via e-mail at marcusb@abag.ca.gov.

Welcome Bruce Carey, new ABAG PLAN Staff

Bruce Carey is ABAG PLAN’s new Property Damage Specialist. Joining ABAG in February, he works with all member cities on a variety of claims, including sewer losses, first party claims, large losses, and subrogation files review. He was hired to address the growing expense of sewer claims.

Bruce comes to ABAG PLAN with more than 30 years experience in claims, both as an independent consulting adjuster and working for insurance companies. He is also licensed as a private investigator, bringing new skills to the ABAG PLAN team.

From 1992 to 2001, Bruce worked on storm losses — everything from floods and fires to hurricanes. He recalls, “working on claims in Alaska were the most interesting due to the sites’ remoteness and the need to be helicoptered in and out.” His experiences at ABAG PLAN have not been quite as whirlwind, but as Bruce commented, “It is different working for a public entity. It has been a nice change since the staff and the working environment are very pleasant and enjoyable.” Bruce lives in the Central Valley with his wife.



Coverage Corner

Q&A cont. from page 2

This last category of covered parties is often provided certificates of insurance and an endorsement naming them as an “additional insured” as evidence of their status, though all they need is the original contract with the member. These forms are available and members can issue them from the website.

Q. Are Member employees covered when traveling on business to meetings and conferences?



A. In general, yes. Key is whether or not the employee was “acting for or on behalf of” the member at the time of the “occurrence” that results in covered damages. Most cases are pretty clear cut, but there are some gray areas that may give rise to a coverage question under the MOC.

Questions occur when the employee diverges from the route to/from the meeting for personal reasons or extends a conference stay over a weekend to take in the tourist attractions. The employee may not be “acting for or on behalf of” the member during those times and, therefore, would not be a “Covered Party” if an accident were to occur. If the employee decides on the way from a meeting to diverge from the normal route back to the office to do some shopping, or visit the Grand Canyon on Saturday after the conference, they may not be considered a Covered Party during that time.

When renting a vehicle for business or at a conference, the employee’s status as a Covered Party wouldn’t change while using the vehicle. In addition, the employee’s personal auto insurance should pick up coverage during that weekend getaway. Check with your agent, but most auto policies will extend to your use of a rental vehicle.

Other coverage issues involve situations in which the employee might normally be considered as acting for the employer but does something that exceeds boundaries. For example, the employee attends a dinner sponsored by a vendor at the conference, drinks a bit too much, and makes some defamatory remarks about another guest or gets in a fight. Coverage for the employee for the resulting damage claims would be questionable.

The Liability MOC is currently being revised. The Board will meet to discuss proposed changes over the course of the year, with a new version effective July 1, 2004.

ABAG PLAN Corporation
P.O. Box 2050 Oakland, CA 94604-2050
website: <http://www.abag.ca.gov> email: info@abag.ca.gov

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Calendar

September 11, 2003
Loss Prevention Committee
10:30 a.m. to 1:30 p.m., ABAG

October 8, 2003
Board Of Directors
9:30 a.m. to 4:30 p.m., TBD

October 9, 2003
Executive Committee
8:30 a.m. to 11:30 a.m., TBD

November 19, 2003
Claims Committee
10:30 a.m. to 1:30 p.m., ABAG

December 3, 2003
Actuary & Underwriting Committee
10:30 a.m. to 1:30 p.m., ABAG

February 18, 2004
Finance Committee
10:30 a.m. to 1:30 p.m., ABAG

March 3, 2004
Loss Prevention Committee
10:30 a.m. to 1:30 p.m., ABAG

March 17, 2004
Actuary & Underwriting Committee
10:30 a.m. to 1:30 p.m., ABAG

April 14, 2004
Executive Committee
10:30 a.m. to 1:30 p.m., ABAG

May 19, 2004
Board Of Directors
11:30 a.m. to 4:00 p.m., TBD

Risk Matters

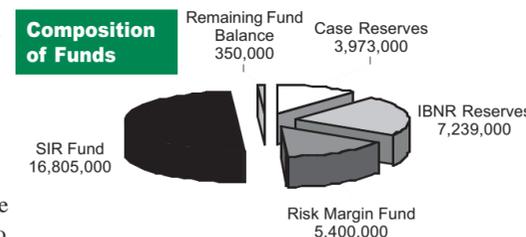


A Pooled Liability Assurance Network
Providing self-insured coverage to cities in the San Francisco Bay Area

Managing for Change - ABAG PLAN Corporation Board of Directors Meets to Set Priorities

The 17th Annual Board of Directors Meeting of ABAG PLAN Corporation was recently held to approve committee recommendations and discuss future activities. Eugene Leong, ABAG Executive Director and ABAG PLAN President, set the meeting’s tone with comments on the nature of change and the need to plan for it. “Traditional and unexpected changes - prevention strategies and long range planning are the cornerstones of providing insurance and risk management services,” he stated. Leong also predicted that

Composition of Funds



ABAG PLAN will need to “face and meet these new challenges, including current city budget constraints and the temptation to defer maintenance, which create increased number of claims in the long run.”

ANNOUNCEMENTS AND MILESTONES

Several pieces of good news for members were announced during the Board meeting. PLAN’s current Self-Insured Retention (SIR) Fund is \$16.8 million, far surpassing the goal of \$10 million by 2005 set in 2001. Early achievement is due to a Board of Directors’ decision to forego declaring dividends for the second year in a row and to allocate all of the money into the Fund. PLAN Liability Program funds are now more than \$33 million as shown above.

The pool will continue to offer \$10 million of liability coverage, taking advantage of the commercial market for

excess coverage over \$5 million. The recommended premiums will continue to be stable and comparable to 2002.

It was also announced that the PLAN Property Program funding has been reduced by four percent, since the market for property insurance has cooled off. Members increased their total insurable values by twelve percent, to over \$1.1 billion.

LOSS PREVENTION

The Board also approved programs to enhance member loss control activities for police, public works, and other high risk areas. These efforts include a comprehensive risk assessment, training, and on-going sewer loss prevention programs.

Risk Assessment

Each member will undergo a risk assessment over the next two years. The assessment will be conducted in several steps:

- Safety perception assessment
- Loss analysis and savings projections
- Risk assessment report
- Safety video library and reference material
- Follow up consultation and training

The no-charge safety video library will be available soon. Information about the library will be posted on the website at www.abag.ca.gov/plan/.

Training

The State of California budget crisis has impacted members because the budget of the Peace Officer Standards & Training (POST) Commission was cut initially and partial reimbursement to local law enforcement agencies eliminated for certain training programs. ABAG PLAN has

Managing for Change cont. on page 4

What's Inside

- 2 RISK MANAGEMENT— Large Losses
- 2 COVERAGE CORNER — Q and A
- 3 RISK MANAGEMENT— Swimming Pool
- 4 RISK BRIEFS — Volunteering

- 4 RISK BRIEFS — Police Chase Legislation
- 5 PEOPLE — Member Profile
- 5 PEOPLE — New ABAG PLAN Staff
- 6 COVERAGE CORNER— Q and A Cont.
- 6 CALENDAR — Committee Meetings

Risk Management

An analysis of recent efforts to minimize risk and prevent losses

Large Loss Impacts and Implications

With summer in full swing and community pools in use for kids' swim lessons, team practice, and lap swimming, recent news stories are a reminder of the potential for large losses. Recently a city was found responsible for a pool accident that occurred during a shared use time by two non-city programs. The jury awarded the claimant \$28 million. Insurance policies for the city and the programs will pay the award.

Large losses don't just occur with swimming pools. For example, a recent verdict in a private case awarded \$8,000,000 to a bicyclist. A truck took a prohibited shortcut and hit a tree limb that fell on the cyclist. As a result, the truck driver and his employer were found liable. The Large Excess Liability Losses chart on page 3 shows some west coast municipal large losses over the past 15 years. While not a complete listing of all large municipal losses,

the chart shows a variety of cases and the monetary awards.

"We here in the Bay Area also face a number of physical concerns that could cumulatively create a large loss," according to Marcus Beverly, ABAG PLAN Director. "These risks include earthquakes, landslides, and fires, all of which have happened on a smaller scale in the not-so-distant past," Beverly added. These examples identify yet again that risk managers have no control over when and where incidents will occur.

What does all of this mean for ABAG PLAN pool participants and what can be done to prepare for this type of loss? ABAG PLAN members have historically not faced large losses, but past results are not an accurate indicator of future activity.



Large Loss cont. on page 3

Coverage Corner Q & A

Q. Does the PLAN coverage include JPAs and other agencies or districts formed by a member?

A. There are three ways to be "covered" under the PLAN Liability Memorandum of Coverage (MOC): either be listed on the MOC, be "employed" by the member, or have a contract that requires the member to provide coverage.

Each member is listed in their Declarations to the MOC, and most members also have a list of any "commission, agency, district, authority, board or similar entity the governing board of which is exclusively comprised of elected or appointed officials, employees or volunteers" of the member listed on the MOC as well.

JPAs that are not comprised solely of PLAN members can not be listed on the MOC and are not covered under this provision. The member's portion of liability for participation in the JPA can be covered via contract, as described below. However, please get PLAN involved in the drafting of any such agreement to ensure the provided coverage represents an equitable apportionment of any JPA liability amongst the members and that the PLAN MOC does not contain any exclusions that may bar coverage.

"Employees" are defined as "any person who was or is now an elected or appointed official, employee or volunteer of the Entity, whether or not compensated, while acting for or on behalf of the Entity (including while acting on outside boards at the direction of the Entity)."

Lastly, other Covered Parties include "Any person, organization, trust or estate to whom or to which the Entity is obligated by virtue of a written contract to provide coverage such as is afforded by this Memorandum, but only with respect to:

- Operations performed by or on behalf of the Entity, or
- Facilities owned or used by the Entity."



Marcus Beverly, Risk Manager

Q&A cont. on page 6

Risk Management

An analysis of recent efforts to minimize risk and prevent losses

Large Excess Liability Losses

Large Loss cont. from page 3

Prevention strategies and long range planning are key. Last year, excess liability coverage limits were increased to \$10 million per incident to accommodate worst case scenarios. The loss prevention programs continue to examine, evaluate, and develop new methods of handling various risks. Additional information about risk management programs are described in the Board of Directors' Meeting article on the first page or on the website at www.abag.ca.gov/plan/.

Date of Loss	Amount Incurred	Description
12/3/86	\$17,050,000	Dangerous Condition - Roadway
1/19/88	\$7,000,000	Police Liability - Shooting
1/29/89	\$9,400,000+	Police Misconduct - Sexual Battery of Minor
1/21/91	\$16,526,762	Dangerous Condition - Road Striping
4/29/91	\$3,900,000	Police Liability - Rodney King
12/16/91	\$9,862,947	Police Liability - Auto
3/1/95	\$10,123,441	Flood Damage
2/6/96	\$7,591,362	Bus vs Pedestrian
8/2/96	\$7,498,780	Police Liability - Auto
2/26/97	\$14,650,000	Roadway Design
9/21/98	\$9,304,113	School Liability
9/21/98	\$29,000,000	Water Tank Flood
2000	\$9,000,000+	Police Misconduct - Oakland
7/6/03	\$28,000,000	Mixed Use - Swimming Pool

Sources: Private Insurance Company, Closed West Coast Municipal Cases, and other sources

Swimming Pool Risk Management Resource

Model policies and procedures for swimming pool safety will be developed as part of the risk assessment. Some on-line resources include:

<http://www.ppoa.org/> • <http://www.aquaweb.org/> • <http://www.lifesaving.org>
and other publications at: <http://www.aquaticsafetygroup.com/publications.html>

One article in particular focuses on the aquatic risk management "process" via the following seven steps:

- 1) Identifying Goals and Objectives
- 2) Organizing an Assessment Team
- 3) Identifying and Measuring Risks
- 4) Providing Effective Warnings
- 5) Training Staff
- 6) Record Keeping
- 7) Conducting Performance and Safety Audits

The full article is located at <http://www.iparks.org> and contains much more detail.

Risk Briefs

Summary of risk management events and trends

Managing for Change cont. from page 1

worked to counter some of the impact by paying tuition for specific courses during the months no reimbursements were being made. The funding has now been restored with the passage of the budget. The other aspects of the police risk management program - mobile training and in-camera matching grants - will continue.

Multi-Tasked Sewer Loss Prevention Program

Sewer loss prevention activities are on-going as part of the effort to reduce the impact of sewer claims. Sewer claims have increased 30 percent over the past four years as compared with the first 13 years of PLAN's existence. The multi-tasked approach includes a model ordinance, main-

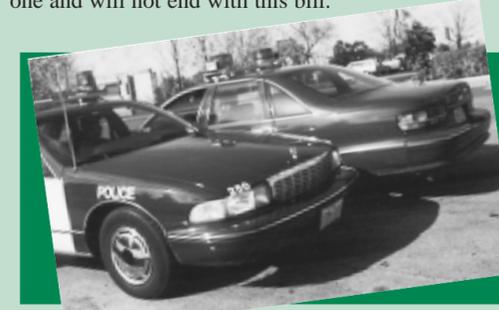
tenance procedures, revised claim procedures, training, public outreach, and a sewer relief device grant program. Sewer public education brochures have been developed and are currently being distributed.

Model ordinances are being implemented and they are demonstrating that they are effective in reducing sewer claims. The Town of Belvedere passed an ordinance in 1994 that required installing backflow devices and no sewer losses have occurred since then. ABAG PLAN recently hired Property Damage Specialist Bruce Carey to focus on sewer losses. His profile is located on page 5.

Bill Looks to Change Police Chase Procedure

Senate Bill 219, Gloria Romero, D-Los Angeles, requires government agencies to add further conditions to the immunity that is conferred on law enforcement agencies in vehicular pursuits. The bill narrows the current broad immunity for public agencies when a suspect fleeing a police vehicular pursuit causes injury to a third party. The bill requires that the public agency adopt a policy and the pursuing officer fully comply with it during the police pursuit.

Concerns about this bill include increasing litigation and liability and that the bill demands hyper-technical compliance with every detail of the policy without the flexibility needed for emergency situations. At the July 17th meeting, SB 219 was opposed by the ABAG Legislation and Governmental Organization Committee and the decision was supported by the ABAG Executive Board. The police chase issue is a complex one and will not end with this bill.



Volunteering Shouldn't Be Risky

Volunteers provide an invaluable range of services to cities, everything from a summer reading club coordinator to traffic volume counter, or senior center aide. Both the city and volunteer gain from the experience and run risks, such as an accident on the job. What happens after an accident is up to the city.

There are several options for the city regarding this issue. The city can cover volunteers under the city's Workers' Compensation Insurance, giving volunteers protection and benefits in case of injury while employed by the city. In order to establish such protections for the city and the volunteer, a program must be established, beginning with a city council resolution and including timesheets. If coverage is not included, then volunteers have the ability to sue the city for damages.

Resources

A draft resolution is available from Marcus Beverly, who can be reached at 510/464-7969 or via e-mail at marcusb@abag.ca.gov.

The City of Gilroy has established a Volunteer Service Program and Handbook, which details the roles and responsibilities of the volunteer, including procedures for timecards and accidents. Gilroy's Volunteer Service Program coordinator, Sandra Sammut, can be reached at 408/846-6572.

