

**POOLED LIABILITY ASSURANCE NETWORK  
JOINT POWERS AUTHORITY  
(PLAN JPA)**

**MINUTES OF THE CLAIMS COMMITTEE  
MEETING OF JUNE 27, 2019**

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A regular meeting of the Claims Committee was held on June 27, 2019, via teleconference.

**MEMBERS PRESENT:** Kathleen Kane, Chair, Burlingame  
Brenda Olwin, East Palo Alto  
John Mullins, Hillsborough  
Marc Zafferano, San Bruno (*Arrived during Agenda Item 6.A, left during Agenda Item 7.C*)  
Rebecca Mendenhall, San Carlos  
Scott Corey, Suisun City

**MEMBERS ABSENT:** Robert Schultz, Los Gatos

**OTHERS PRESENT:** Jon Paulsen, General Manager  
Will Portello, Litigation Manager  
Katie Sullivan, Assistant Board Secretary  
Jeff Rogers, York (*Left during Agenda Item 7.B*)  
Greg Rubens, Board Counsel (*Arrived during Agenda Item 6.A*)  
Terrie Norris, Risk Control Manager (*Arrived during Agenda Item 7.A*)

**1. CALL TO ORDER**

The June 27, 2019, Claims Committee meeting was called to order at 1:35 p.m. by Chairperson, Kathleen Kane.

**2. INTRODUCTIONS**

Introductions were made and it was determined there was a quorum present.

**3. APPROVAL OF THE AGENDA AS POSTED (OR AMENDED)**

*The agenda was approved as posted.*

**4. PUBLIC COMMENTS**

None.

**5. CONSENT CALENDAR**

*Brenda Olwin moved to approve the following items: A) Minutes from the April 25, 2019, Claims Committee Meeting. Scott Corey seconded the motion. A roll call vote was taken and the motion passed unanimously by Kathleen Kane, Brenda Olwin, John Mullins, Marc Zafferano, and Scott Corey. Rebecca Mendenhall abstained from voting.*

**6. CLOSED SESSION**

A. The Committee convened to closed session, pursuant to Government Code section 54956.95(a) at 1:38 p.m. to discuss the following claims:

- Patton v. City of Morgan Hill
- Donnelly v. Town of Los Altos Hills

B. Pursuant to Government Code Section 54957.1, the Committee reconvened to open session at 1:57 p.m. The following actions were taken under closed session:

*No reportable action was taken during closed session.*

**7. CLAIMS MATTERS**

**A. Consideration of the PLAN JPA Litigation Management Guidelines**

Previously, while constituted as Association of Bay Area Governments (ABAG), the liability program was to have implemented Litigation Management Guidelines to ensure consistency and control over litigated claims. In accordance with best practices, staff prepared and presented those guidelines to ensure proper oversight of panel counsel.

Will Portello, Litigation Manager, was present to discuss the Litigation Management Guidelines with the Committee. He stated the purpose of the guidelines is to ensure competency, avoid conflicts of interest, and properly manage litigation while controlling legal costs and expenses. Mr. Portello reviewed a few of the requirements, as summarized below:

- 1) Approved Panel Counsel must certify they have no ethical or legal conflicts that would disqualify them from representing members.
- 2) Counsel must keep the Member, Third Party Administrator's (TPA) Supervising Claims Program Manager, Claims Adjuster, and Litigation Manager assigned to the claim all up to date on the status of the matter.
- 3) A case analysis and litigation budget is required within sixty (60) days of retention of each case.
- 4) Status reports are required every sixty (60) days from submission of the Initial Case Analysis and describing only new developments since the previous report.
- 5) Approved Panel Counsel is required to obtain prior approval from Supervising Claims Manager, Litigation Manager, and Member before making any settlement offer.

After a brief discussion, Mr. Portello agreed to reach out to those currently listed on the defense panel for feedback regarding the Litigation Management Guidelines and updated information, including rates, as the Committee expressed interest in setting a maximum rate for defense counsel. The Committee asked staff to resend the survey to members to obtain more quantitative and qualitative feedback.

Section 1.A, paragraph 1 states defense counsel is to "refrain from initiating any adverse action against PLAN members." The Committee requested language be added to clarify that defense counsel should refrain from participating in adverse action as well.

*Rebecca Mendenhall moved to approve the amendment to Section 1.A, Paragraph 1 to clarify language and to have Mr. Portello reach out to the current defense panel for feedback on the Litigation Management Guidelines. Kathleen Kane seconded the motion. The motion passed unanimously by Kathleen Kane, Brenda Olwin, John Mullins, Rebecca Mendenhall, Marc Zafferano, and Scott Corey.*

## **B. Consideration of the PLAN JPA Claims Handling Guidelines**

The Claims Handling Guidelines were implemented when York first began acting as Third Party Administrator (TPA) to the self-staffed Association of Bay Area Governments (ABAG) Liability Program. The Claims Handling Guidelines have been revised and updated with claims handling instructions for members' use with respect to their claims and communications.

Mr. Portello reviewed the updates to the Claims Handling Guidelines, noting the addition of information for the TPA to clarify lines of communication and steps for the reporting of excess claims.

After a brief discussion around Section I, Paragraph 1 in regards to the second sentence stating York has a \$25,000 discretionary “payment” authority, the Committee agreed the sentence is ambiguous and requested it be removed as it is not necessary. Staff agreed to make the necessary changes and to place the amended Claims Handling Guidelines on the Consent Calendar for the next meeting for approval.

***Kathleen Kane moved to remove the second sentence of Section I, Paragraph 1 of the Claims Handlings Guidelines. John Mullins seconded the motion. The motion passed unanimously by Kathleen Kane, Brenda Olwin, John Mullins, Rebecca Mendenhall, Marc Zafferano, and Scott Corey.***

It was requested to add language regarding the reasoning being the Claims Handling Guidelines and to list a point of contact for any concerns that may arise during the process. The Committee agreed to have the Claims Handling Guidelines, once amended, be listed under the Consent Calendar for approval.

### **C. Consideration of Revisions to PLAN JPA’s Claim Policy**

The Association of Bay Area Government’s (ABAG) Claim Policy was originally implemented in 2004. ABAG historically staffed claims with employees internally until York began management of the process. However, the Claims Policy did not reflect the role of York Risk Services Group at the Third Party Administrator (TPA).

Mr. Portello informed the Committee the Claim Policy has been updated to reflect the use of a TPA, as well as it now delineates settlement authority related to PLAN’s Litigation Manager and the Claims Committee and sets forth the procedure for resolution of coverage disputes within the Liability Program. The Committee also requested staff to poll the members on who their “claims liaison” would be as Section 3.1: Claims Management indicates having a primary point of contact in writing.

Mr. Portello clarified that the yearly report that summarizes open and closed losses greater than Member retentions referenced in Section 5: Reporting of the Claims Policy will be included and review in a future meeting held during the fall.

The Claims Committee reviewed the policy and indicated it will go to the Board of Directors for formal approval.

**8. CLOSING COMMENTS**

**A. Claims Committee**

Kathleen Kane thanked staff for all their hard work.

**B. Staff**

Mr. Portello thanked the Claims Committee for their time and assistance in updating documents.

Terrie Norris, Risk Control Manager, inquired if the Committee members had additional suggestions for regional workshops and to contact her directly with their thoughts and ideas.

**9. ADJOURNMENT**

The Meeting of the PLAN JPA Claims Committee was adjourned at 2:52 p.m.



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Katie Sullivan, Assistant Board Secretary