

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

**MINUTES OF THE BOARD OF DIRECTORS
MEETING OF JUNE 11, 2020**

A regular meeting of the Board of Directors was held on June 11, 2020, via videoconference.

MEMBERS PRESENT: Marc Zafferano, President, San Bruno
Kathleen Kane, Vice President, Burlingame
Maria Ojeda, American Canyon (*Arrived during Agenda Item 4*)
George Rodericks, Atherton
Alan Shear, Benicia
Will Fuentes, Campbell
Pak Lin, Colma
Julie Carter, Dublin
Brenda Olwin, East Palo Alto
Maria Saguisag-Sid, Foster City (Alternate)
Lisa Lopez, Half Moon Bay
Jan Cooke, Hillsborough (Alternate)
Robert Schultz, Los Gatos
Angela Louis, Millbrae
Walter Rossman, Milpitas (*Arrived during Agenda Item 4*)
Donald Larkin, Morgan Hill
Lenka Hovorka, Newark
Lorenzo Hines, Pacifica (*Left during Agenda Item 6.B*)
Joe Chinn, Ross
Rebecca Mendenhall, San Carlos
Mary Furey, Saratoga
Leah Lockhart, South San Francisco
Kevin Bryant, Woodside

MEMBERS ABSENT: Kristina Alfaro, Cupertino
Sarina Revillar, Los Altos Hills
Jeremy Dennis, Portola Valley
Scott Corey, Suisun City
Greg Chanis, Tiburon

OTHERS PRESENT:

Jon Paulsen, General Manager
Katie Sullivan, Assistant General Manager
Ritesh Sharma, Finance Manager
Terrie Norris, Risk Control Manager
Susan DeNardo, Litigation Manager
Joe Costamagna, Contractual Risk Transfer Manager
Sulaiman Arsala, Sedgwick
Miguel Baes, Sedgwick
James Simmons, Sedgwick
Becky Richard, Bickmore Actuarial (*Left after Agenda Item 8.A*)
Greg Rubens, Board Counsel
Byrne Conley, Coverage Counsel
Seth Cole, Alliant Insurance Services
Lesley Murphy, PFM Asset Management (*Left after Agenda Item 6.A*)
Cindy Safe, Woodside
Katie Uthman, Woodside
Renuka Dhadwal, Foster City

1. CALL TO ORDER

The June 11, 2020, Board of Directors meeting was called to order at 9:32 a.m. by President Marc Zafferano.

2. INTRODUCTIONS

Those present introduced themselves.

3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

The agenda was approved as posted.

4. PUBLIC COMMENTS

None.

5. CONSENT CALENDAR

Kevin Bryant moved to approve the following items: A) Minutes from the December 5, 2019, Board of Directors meeting; B) Minutes from the February 20, 2020,

Strategic Planning Session; C) Minutes from the February 21, 2020, Strategic Planning Session; D) Minutes from the April 10, 2020, Special Board of Directors Meeting; E) 2019/20 Risk Control Program Update; F) 2020/21 Risk Control Program; G) Resolution No. 2020-02: Board and Committee Meeting Schedule 2020/21; H) Claims Handling Guidelines; I) Investment Policy; J) ERMA JPA Agreement; K) Alliant Services Agreement; L) Sedgwick Program Administration Extension Agreement; M) Sedgwick Claims Administration Extension Agreement; N) PLAN JPA 2020/21 Property Program Memorandum of Coverage. Rebecca Mendenhall seconded the motion. A roll call vote was taken and the motion passed unanimously by Maria Ojeda, George Rodericks, Alan Shear, Kathleen Kane, Will Fuentes, Pak Lin, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Robert Schultz, Angela Louis, Walter Rossmann, Donald Larkin, Lenka Hovorka, Lorenzo Hines, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Leah Lockhart, and Kevin Bryant.

6. FINANCIAL MATTERS

A. Update on Excess Renewal Options

Seth Cole, Senior Vice President at Alliant Insurance Services (Alliant), was present to provide an update on PLAN JPA's reinsurance and excess insurance programs.

Alternative JPA Options

At the May 14, 2020, Executive Committee meeting, PLAN staff and PLAN's insurance broker presented two potential alternatives to private reinsurance and excess liability insurance: Excess Insurance Authority (EIA) and California Affiliated Risk Management Authorities (CARMA). Neither JPA had completed their renewal processes for the 2020/21 program year at that time and the Executive Committee recommended a special Executive Committee meeting to review options in advance of the full Board of Directors' meeting on June 11, 2020.

Excess Insurance Authority (EIA, now branding as PRISM)

For their General Liability 2 excess program, EIA has provided an estimated annual contribution range of \$3,500,000 to \$4,000,000 for \$20,000,000 of coverage over a PLAN \$5,000,000 SIR. For comparison the expiring excess liability insurance premiums for PLAN are \$1,450,000 to obtain \$25,000,000 of coverage in excess of \$5,000,000. PLAN's current renewal target premium for the 2020/21 program year for the entire reinsurance and excess insurance layer of \$27,500,000 in excess of \$2,500,000 is \$3,600,000.

From a purely financial standpoint, EIA is not a viable alternative for PLAN's liability program this year.

California Affiliated Risk Management Authorities (CARMA)

CARMA is an excess liability insurance JPA comprised of 5 risk and insurance JPA's. The total membership includes 104 California cities and 35 vector control districts. Member JPA's have the option to elect a \$1,000,000 or \$2,000,000 per occurrence SIR with CARMA's pooled layer from \$1,000,000 (or \$2,000,000) to \$5,000,000 then reinsurance to \$14,000,000 and excess liability insurance up to a total of \$54,000,000.

CARMA's initial indication to PLAN indicated potential savings of \$800,000 to \$1,000,000 for PLAN members. However, the addition of PLAN into this pricing model would result in a corresponding increase of \$1,500,000 to CARMA members. While there are potential strategic advantages to both groups, resolution of these financial issues cannot be completed prior to the end of this fiscal year and will require further discussion. The Executive Committee recommended that staff consider further review of this option for inclusion at the next PLAN strategic planning meeting

Retention Layer Buyout (RLB)

Alliant presented an RLB option to staff and the Executive Committee at the June 3, 2020, Special Executive Committee meeting. This program is intended to provide an alternative funding mechanism to the self-funding of PLAN's liability self-insured retention.

In summary, PLAN would pay a group of reinsurers and excess insurers approximately \$6,800,000 instead of the self-insured budgeted funding of \$6,400,000 to transfer the pooled liability risk up to \$9,900,000 aggregate. This transfer would be to PLAN's benefit should pooled losses exceed \$6,800,000 in the coming program year, but to the group's detriment if losses are below \$6,800,000.

Staff reviewed that past 10-15 years of loss history and was not able to identify a liability program year with losses exceeding \$6,800,000. PLAN's actuary was consulted and indicated that this is essentially a variation of paying additional contribution to effectively fund this program year at the 85-90% confidence level (instead of 60%) without the benefit of retaining the 'savings' if losses are below \$6,800,000.

Additionally, Mr. Cole informed the Board underwriters are overwhelmed and taking longer than usual to provide information due to market changes in social inflation, wildfires, earthquakes, protests, and civil unrest.

Mr. Cole indicated cyber continues to be an emerging risk for public entities. A brief discussion ensued and the general consensus was to go with higher limits for cyber coverage.

B. Consideration of the Proposed 2020/21 Operating Budget

Ritesh Sharma, PLAN JPA Finance Manager, was in attendance to present the Draft Operating Budget for the 2020/21 Program Year. He discussed while majority of the funding model is similar to that PLAN has approved in the past, the discount factor has been lowered from 3.0% to 2.0% due to current state of the investment market. Funding rates were compiled by PLAN's actuary. Pages two and three detail the Budget program as follows:

- For the Liability program, member contributions are presented at the 60% confidence level (CL) with a 2% discount factor. PLAN's self-insured retention (SIR) is up to \$2.5 million above each individual member's SIR. Reinsurance of \$2.5 million is purchased above the pool's SIR and excess coverage is purchased from \$5 million to \$30 million. These coverage layers are same as the prior year.
- For the Property program, member contributions are presented at the 70% CL with a 2% discount factor. The coverage is pooled from members SIR up to \$225,000 and excess coverage is purchased to \$1 Billion. The CL funding and coverages are similar to prior year.

Mr. Sharma indicated budgeted contribution were projected to increase from \$13 million to \$15.9 million; an increase of 23% over the prior year. Contributing factors include an increase in estimated payroll of 3.8%, an increase in loss rates, and an increase in reinsurance and excess premiums for both the Liability and Property programs.

In regard to cyber coverage, Mr. Sharma reported 33% of the cost is split evenly between all members, while the remaining cost is divided out by losses and paid claims per member. It was recommended that each member pay a minimum of \$1,000 in contributions for cyber coverage, and the remaining amount be divided up by member based off of payroll.

Additionally, Mr. Sharma discussed the Grant Fund Program and if the membership had any desire to change how it was funded. The Board agree they were open to ideas; however, requested the topic be brought forward at a future meeting.

Kevin Bryant moved to approve the 2020/21 Operating Budget, with no change to the Grant Fund Program and the purchase of \$3 million limits in cyber, with contributions allocated based off member payroll with \$1,000 minimum contribution. Kathleen Kane seconded the motion. A roll call vote was taken and the motion passed by majority vote by Maria Ojeda, George Rodericks, Alan Shear, Kathleen Kane, Will Fuentes, Pak Lin,

Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Angela Louis, Walter Rossmann, Donald Larkin, Lenka Hovorka, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Leah Lockhart, and Kevin Bryant. Robert Schultz and Lorenzo Hines were not present during voting.

7. ADMINISTRATIVE MATTERS

A. Consideration of 2020/21 General Liability Memorandum of Coverage

It is best practice for the Board to review the pool's Memorandum of Coverage (MOC) annually to ensure it is up to date on language and provide any necessary clarifications to coverages. Jon Paulsen, General Manager, was present to discuss the following:

Sexual Abuse and Molestation (SAM) Coverage

The nationwide increase of Sexual Abuse and Molestation (SAM) claims coupled with the wider availability of standalone SAM liability insurance policies had prompted staff to clarify how the Liability MOC is addressing claims of this nature. In conjunction with Board Counsel and Coverage Counsel, staff is proposing several language additions to the MOC. Among these changes:

- Clarification added that regardless of the number of alleged acts/locations, all instances of sexual abuse by the same alleged perpetrator will be treated as a single occurrence.
- A definition of "sexual abuse" was added to the Definitions section, including a clarification that no coverage will be provided for the alleged perpetrator.
- To clarify the limits and extent of coverage, language was added to state the coverage in effect at the time the abuse **first takes place shall be the only coverage to apply**.

Disease Exclusion

PLAN's liability reinsurer and excess insurers have all added communicable disease exclusions to their policies for the coming 2020/21 program year. Mr. Paulsen indicated it does not necessitate that PLAN make a corresponding change to the PLAN Liability MOC. In broad terms, the PLAN Board has four options for consideration in response to this coverage change.

1. Leave the current PLAN Liability MOC language in place. This option would result in defense and indemnity for disease related claims in the PLAN pooled layer (up

to \$2,500,000 per). Claim values in excess of \$2,500,000 would not be covered and be the member's responsibility.

2. Add an exclusion for communicable disease to the PLAN Liability MOC to follow the coverage restrictions above the PLAN pooled layer.
3. Restrict coverage for communicable disease related claims under the PLAN Liability MOC to defense costs only.
4. Restrict coverage for communicable disease related claims under the PLAN Liability MOC to a specified sublimit of coverage (e.g. coverage up to \$1,000,000 per).

Mr. Paulsen informed the Board Old Republic had added the following Disease Exclusion to their policy under Article 4 General Exclusion #13:

"13. All loss, cost or expense arising out "bodily injury", "property damage", or "personal and advertising injury" arising out of the actual or alleged transmission of a communicable disease or virus or caused by or resulting from a communicable disease or virus.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;*
- b. Test for a communicable disease;*
- c. Failure to prevent the spread of the disease; or*
- d. Failure to report the disease to authorities."*

A brief discussion ensued around the current impact of the COVID-19 pandemic and difficulties in determining and quantifying exposure. The Board agreed to not address a disease exclusion for this year.

Deadly Weapon Response Program

Staff also conferred with Coverage Counsel regarding a third-party claim for a deadly weapon event where the individual was not physically injured. PLAN JPA participates in the Alliant Deadly Weapon Response Program which provides additional coverages above the MOC. Staff and Coverage Counsel determined there it is not necessary to update the MOC language in regard to this aspect.

Staff reviewed the proposed changes with the Executive Committee at their meeting on May 14, 2020.

Language on page 142 needed to be clarified to reflect the “intent of the Board” in regard to occurrences.

George Rodericks moved to approve the 2020/21 General Liability Memorandum of Coverage. Leah Lockhart seconded the motion. A roll call vote was taken and the motion passed unanimously by Maria Ojeda, George Rodericks, Alan Shear, Kathleen Kane, Will Fuentes, Pak Lin, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Robert Schultz, Angela Louis, Walter Rossmann, Donald Larkin, Lenka Hovorka, Lorenzo Hines, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Leah Lockhart, and Kevin Bryant.

8. ELECTIONS

A. Review Candidates to Fill PLAN JPA Committees and Officer Positions

Annually, the Board of Directors approves the candidates for PLAN JPA’s committees. Each committee must consist of no less than three members of the Board of Directors. The Executive Committee consists of nine designated members. Each committee shall designate a member to serve as chair of their committee. Currently, there is only one vacancy that needs to be filled on the Executive Committee. DeAnna Hilbrants left her position with the City of Millbrae as of February 21, 2020.

Additionally, the Board Members must appoint their Officers for the next program year. Current Officers are as follows:

- **President:** Marc Zafferano
- **Vice-President:** Kathleen Kane
- **Treasurer:** Pak Lin

All current officers expressed willingness to continue in their respective positions.

On April 10, 2020, the Board of Directors approved the resolution to join ERMA JPA. With this new membership, ERMA requires PLAN JPA appoint a Board Representative and an Alternate for ERMA. ERMA will not accept PLAN’s General Manager as either appointee; however, the General Manager will attend each of the ERMA meetings.

Brenda Olwin moved to approve the following:

- ***Election of Marc Zafferano as PLAN JPA President***
- ***Election of Kathleen Kane as PLAN JPA Vice President***
- ***Election of Pak Lin as PLAN JPA Treasurer***
- ***Election of Donald Larkin, Morgan Hill, to the Executive Committee***
- ***Election of Lisa Lopez, Half Moon Bay, to the Risk Management Committee***
- ***Election of Kevin Bryant, Woodside, as ERMA Board Representative***
- ***Election of George Rodericks, Atherton, as ERMA Alternate Board Representative***

Rebecca Mendenhall seconded the motion. A roll call vote was taken and the motion passed unanimously by Maria Ojeda, George Rodericks, Alan Shear, Kathleen Kane, Will Fuentes, Pak Lin, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Robert Schultz, Angela Louis, Walter Rossmann, Donald Larkin, Lenka Hovorka, Lorenzo Hines, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Leah Lockhart, and Kevin Bryant.

9. GENERAL MANAGER'S REPORT

A. Report from PLAN JPA's General Manager

Mr. Paulsen provided an update to the Board of Directors on the following:

Equity Calculation for Withdrawn Members

Effective July 1, 2015, the City of Gilroy (City) elected to withdraw from ABAG PLAN. The terms of the withdrawal agreement provide for the use of a Loss Allocation Formula to determine if the City is eligible for an equity distribution or assessment based on the claims development in years in which the City was a participant in the ABAG PLAN liability program. For the fiscal years 2014/15 through 2017/18, the calculations resulted in equity distributions to the City. The calculation has been performed for 2018/19 and resulted in a preliminary calculated final equity distribution of \$757,522.

Effective January 1, 2020, California passed AB218 essentially removing the statute of limitations on sexual abuse and molestation claims. Staff is expecting significant claims activity for municipalities that have historically run parks and recreations activities, aquatic centers, and other youth 'interactive' programs. PLAN JPA has already been notified of its first AB218 claim for a different member.

The Executive Committee directed Jon Paulsen, General Manager, and Greg Rubens, Board Counsel, to open dialogue with the City of Gilroy in an attempt to identify a mutually agreeable solution. A few options presented involving PLAN JPA holding their funds for

a certain period of time, paying the City partial and holding the difference, or paying in full and seeking repayment if any AB218 claims came through for the year the City participated. Mr. Paulsen reminded it is difficult to quantify the level of exposure at this time but that it could be reasonable to pay a partial amount at this time.

Brenda Olwin moved to approve PLAN JPA staff to negotiate with the City, allowing payment of equity distribution to the City up to 50% with the remaining amount paid over the next three years. Pak Lin seconded the motion. A roll call vote was taken and the motion passed unanimously by Maria Ojeda, George Rodericks, Alan Shear, Kathleen Kane, Will Fuentes, Pak Lin, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Robert Schultz, Angela Louis, Walter Rossmann, Donald Larkin, Lenka Hovorka, Lorenzo Hines, Joe Chinn, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Leah Lockhart, and Kevin Bryant.

CAJPA Tort Liability Analysis

The California Association of Joint Powers Authorities (CAJPA) Board of Directors has commissioned a statewide study of tort liability claims to identify trends to assist with driving legislative change. The study involves collecting data from a selection of California public agencies and will be conducted in two phases. Phase 1 involves collecting high level claims information from participating organizations. Phase 2 will involve collecting more detailed information regarding certain claims, parameters determined after analyzing the Phase 1 data.

CAJPA has requested that PLAN participate by providing (anonymized) loss data as well as assist with funding (\$5,000 to \$15,000) to help with the overall project cost of \$395,000. The PLAN data provided to CAJPA will be sanitized and aggregated with other like entities. As CAJPA is not a public entity, any data provided is not subject to public records act requests and CAJPA is seeking guidance from a public records attorney prior to releasing findings.

The Board of Directors agreed to not participate or send money for the CAJPA Tort Liability Analysis.

Update to PLAN JPA Payroll Collection

Historically, PLAN JPA has collected payroll data from member cities, on a fiscal year “July to June” basis, annually. Payroll data is used for several items including compiling budgets and payroll reporting requirements to the excess coverage providers.

Staff recommended that payroll collection be updated to quarterly collection based on State of California EDD DE 9 forms already required in the State. This would increase reporting accuracy and assist in meeting an ERMA JPA payroll requirement for detail on a calendar year “January to December” basis.

Mr. Paulsen advised staff would request payroll for the full 2019/20 fiscal year at one time. Moving forward, payroll will be requested at the end of each quarter.

Certificates of Insurance

PLAN members frequently enter into agreements with external parties that require the PLAN member to issue liability certificates of coverage. These certificates confirm that 1) the PLAN member carries the type and amount of coverage required by the contract; and 2) that the other party is named as an Additional Covered Party to the liability coverage. Currently, this certificate process is managed within Sedgwick's Litigation Management department.

In an effort to increase the expediency of the process for members, staff had discussions with PLAN's insurance broker, Alliant, on their ability manage the process and to issue the certificates on behalf of PLAN. Member requests would still be submitted via email or web portal as before, but the request package would be routed to an Alliant representative for processing and issuance. PLAN staff will be copied on all communications between Alliant and PLAN members. Alliant has committed that most certificates will be issued within 48 hours, with a 72-hour maximum. Rush requests will also be accommodated, as necessary. It is expected that a single source of issuance will reduce member administration effort and streamline the issuance process. In terms of cost, Alliant will not charge the JPA for this service.

Staff has confirmed Alliant will handle all of the certificate renewals for the 2020/21 program year.

10. RISK CONTROL MATTERS

A. Update on Sewer Summit 2020

The DKF proposal for the 2020 Sewer Summit cost range for PLAN JPA is \$22,860-\$29,000. The low end of the proposed range is a 27% increase over the low end of the 2019 cost range. PLAN JPA had experienced 100 sewer related claims in the last five years with an average cost of the sewer related claims was \$6,830. The pool has also experienced 76 stormwater related claims with an average cost of \$52,094.

Based on this information, and the conversations of the Board during their December Board of Directors meeting, the General Manager signed the 2020 Sewer & Stormwater Summit agreement on March 10, 2020. However, on April 21, 2020, staff reached out to David Patzer, DKF, inquiring about alternative plans in the case of infectious disease outbreak preventing the October 14th Sewer and Stormwater Summit. On May 7, 2020, Terrie Norris, PLAN JPA Risk Control Manager, met with Mr. Patzer and Mr. Cole to discuss the risks of holding the 2020 Summit in person at the Oakland Hilton as planned, and the alternative of holding a virtual conference. As a result of those discussions the following decisions were made:

1. The conference will be provided in a virtual environment available via computer, smart phone, tablet and iPad.
2. The sessions will be recorded for future use by attendees.
3. Members of sponsor organizations, PLAN JJPA and CSRMA, will be able to attend at no charge.
4. A special Agency registration package will be offered for those Agencies whose employees need to maintain education credits.
5. Registration cost for non-sponsoring individuals will be reduced to acknowledge our reduce cost due to the elimination of the food and hotel costs.
6. Links to sponsor organizations will be posted on the virtual conference website.
7. Networking opportunities for attendees will be made available via chat rooms.
8. Attendees will also be able to interact with vendors through chat rooms.
9. Vendors will be provided an opportunity to post videos depicting their services.
10. Vendors will pay a fee to participate to cover the added cost that result from hosting their access points.

Ms. Norris explained due to the anticipation of a reduced cost from the virtual format and the reduction of registration costs for agencies who are not members of PLAN JPA or CSRMA, DKF developed a new proposal reflecting the adjusted costs and revenue distribution. In the new proposal, PLAN JPA's contribution decreases from \$16,800 to \$12,000. Depending on the final cost after the summit, there is a possibility of an additional cost up to \$4,800. Prior cost to PLAN JPA ranged from \$22,860 to \$29,860.

Brenda Olwin moved to approve the proposed changes to the 2020 Sewer and Stormwater Summit. Kevin Bryant seconded the motion. A roll call vote was taken and the motion passed by majority vote by Maria Ojeda, George Rodericks, Alan Shear, Kathleen Kane, Will Fuentes, Pak Lin, Julie Carter, Brenda Olwin, Maria Saguisag-Sid, Lisa Lopez, Jan Cooke, Angela Louis, Walter Rossmann, Donald Larkin, Lenka Hovorka, Lorenzo Hines, Marc Zafferano, Rebecca Mendenhall, Mary Furey, Leah Lockhart, and Kevin Bryant. Robert Schultz and Joe Chinn were not present during voting.

11. CLOSING COMMENTS

A. Board of Directors

None.

B. Staff

None.

12. ADJOURNMENT

The Regular Meeting of the PLAN JPA Board of Directors was adjourned at 12:36 p.m.

A handwritten signature in black ink that reads "Katie Sullivan". The signature is written in a cursive style with a large, looping initial "K".

Katie Sullivan, Assistant Board Secretary