

**CALIFORNIA AFFILIATED RISK MANAGEMENT AUTHORITIES
(CARMA)**

**MINUTES OF THE BOARD OF DIRECTORS
MEETING OF April 17, 2009**

A regular meeting of the Board of Directors of CARMA was held on April 17, 2009, at the offices of Alliant Insurance Services in Sacramento, California.

BOARD MEMBERS PRESENT: Geoff Grote, BCJPIA, President
John Stroh, VCJPA, Vice President
Jake O'Malley, MPA, Treasurer
Joanne Rennie, PARSAC (*exited at 10:55 a.m.*)

BOARD MEMBERS ABSENT: Joe Donabed, CSJVRMA
Kent Rice, MBASIA

ALTERNATE MEMBERS PRESENT: Linda Abid-Cummings, CSJVRMA
Robert Galvan, MBASIA (*joined at 10:15 a.m.*)

OTHERS PRESENT: Rob Kramer, Executive Director
Sandra Spiess, Board Secretary
Linzie Kramer, Bickmore Risk Services
Nancy Broadhurst, Bickmore Risk Services
Brian Kelley, Bickmore Risk Services
Jeanette Workman, Bickmore Risk Services
Adrienne Beatty, Bickmore Risk Services
Susan Adams, Alliant Insurance Services
Kim Carter, Alliant Insurance Services
Craig Farmer, Legal Counsel
Tim Farley, Farley Consulting Services (*joined at 11:45 a.m. and existed at 12:30 p.m.*)
Jack Joyce, Bay Actuarial Consultants (*exited at 12:30 p.m.*)
Malathy Subramanian, Best, Best & Krieger (*exited at 10:55 a.m.*)

1. CALL TO ORDER

The April 17, 2009, Board of Directors' meeting was called to order at 10:00 a.m. by President Geoff Grote.

2. **INTRODUCTIONS**

Those present introduced themselves.

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

President Geoff Grote requested that Agenda Item 8.F. Discussion of Future Administration Costs Assessed upon PARSAC's Termination of Membership be moved to immediately follow the Consent Calendar.

Jake O'Malley moved to approve the agenda as amended. Seconded by John Stroh. Motion passed unanimously.

4. **PUBLIC COMMENTS**

None.

5. **CONSENT CALENDAR**

Mr. John Stroh requested Item A be pulled for clarification. Mr. Stroh referenced Agenda Item 8.A. Report from the ERMA/CARMA Ad Hoc Exploratory Committee, and indicated the minutes currently read as though the discussions regarding the merger of the two organizations were closed for good. Mr. Stroh indicated the minutes should reflect that the Committee did not feel it would be prudent to proceed with further discussion on the possibility of a merger of ERMA and CARMA at the current time; however, the matter could be revisited at some point in the future.

John Stroh moved to approve/accept the following items: A) Minutes of the January 16, 2009, Board of Directors' Meeting; B) Warrant Listing of March 31, 2009; C) Treasurer's Report as of December 31, 2008; D) Review of Investment Performance for the Quarter Ended December 31, 2008; E) Internal Financial Statements for the Quarter Ended December 31, 2008; F) CAJPA Journal – Volume 23, No. 1 – Winter 2009. Seconded by Jake O'Malley. Motion passed unanimously.

6. **FINANCIAL MATTERS**

A. **Review of Actuarial Study Provided by Mr. Jack Joyce of Bay Actuarial Consultants**

Mr. Jack Joyce, Bay Actuarial Consultants, reviewed the major elements of the actuarial study with the Board. Mr. Joyce stated the summary included rates for the self-funded layer for the 2009/2010 program year and estimated liabilities at

June 30, 2009. Mr. Joyce clarified new language he is now required to use in his studies. The term “expected” has been replaced with “central estimate” and “confidence level” has been replaced with “probability level.”

Mr. Joyce explained there was a 4.6% overall reduction in rates with the departure of PARSAC; however, there is a 6% overall increase in rates from the prior program year. A discount factor of 4% interest on the expected cost of claims was utilized. The rate at the 80% probability level would be \$0.354.

Mr. Joyce indicated additional scenarios were included in this year’s study, including rates for a \$2 million excess of \$2 million and excess Employment Practices Liability coverage (EPL) rates. Mr. Joyce indicated the limited amount of EPL data would suggest a rate of \$0.326 per \$100 of payroll for the \$3 million excess of \$1 million layer. Mr. Joyce indicated there is a commercial insurance carrier providing this coverage for \$0.066 per \$100 of payroll. Based on the difference of these two rates, Mr. Joyce would suggest CARMA charge a rate of \$0.15.

Mr. Joyce then reviewed the second part of the study, the estimate of CARMA’s Ultimate Loss and Loss Adjustment Expense for prior years. Mr. Joyce indicated the projected liability of \$15.9 million (undiscounted) and \$14.0 million (discounted) is \$3 million lower than last year’s projection of the June 30, 2008, liability.

Mr. Joyce pointed out the bulk of the liability is in Incurred but Not Reported (IBNR) with \$4.37 of IBNR liability for every \$1 of case reserves this year versus last year’s ratio of \$1.60 of IBNR to \$1 of case reserves. The large increase is due to a large reduction in the case reserves with the settlement of several large claims.

The Board discussed the discount rate utilized and the appropriateness of using 4% given the state of the economy. It was noted that in regards to the stability of the CARMA portfolio and the runoff timeframe of liability claims, 4% was appropriate.

John Stroh moved to accept and file the Actuarial Study as presented by Mr. Jack Joyce, Bay Actuarial Consultants. Seconded by Jake O’Malley. Motion passed unanimously.

B. Consideration of the Proposed Annual Budget for the 2009/2010 Program Year

Ms. Nancy Broadhurst indicated multiple budget scenarios were developed for the 2009/2010 program year; however with confirmation of the termination of PARSAC’s membership, the Board should focus on the budget scenarios that exclude PARSAC. Ms. Broadhurst indicated staff is recommending funding at the 80% confidence level for losses at \$3 million excess of \$1 million.

Ms. Broadhurst confirmed that reinsurance and excess rates are based on this year’s information, as the rates for 2009/2010 are expected to be flat.

The Board discussed the possibility of incorporating EPL coverage into the budget at this time. The consensus was that adding this line of coverage was not realistic at the present time; however, the opportunity should be reevaluated at some point in the future, possibly in conjunction with a return of equity to members.

Jake O'Malley moved to approve the annual operating budget as presented omitting PARSAC and utilizing the 80% confidence level. Motion seconded by Robert Galvan. Motion passed unanimously.

C. Review of Draft Policy for Minimum Contribution

Mr. Rob Kramer explained that the Board reviewed draft Resolution No. 3-2008/2009 at the January 16, 2009, meeting and at that time, the Board requested two revisions to the policy for clarification. The first revision clarified that the contribution of a new entity would be equal to at least the same contribution paid by the smallest existing member of the JPA and subject to ratification by the Board. The second revision modified the term "city" to say "city or a special district" to include all types of entities that may join a member JPA.

Mr. Kramer indicated those changes have been made and the resolution is now presented to the Board for final approval.

John Stroh moved to approve Resolution No. 3-2008/2009 Establishing a Minimum Contribution Calculation Policy, as presented. Motion seconded by Robert Galvan. Motion passed unanimously.

7. **COVERAGE MATTERS**

A. Review of the 2009/2010 CARMA Memorandum of Coverage

Mr. Craig Farmer stated he is not recommending any changes to the CARMA Memorandum of Coverage (MOC) at this time.

Mr. Farmer indicated a recent California Supreme Court case has determined that provisions in an arbitration clause will allow parties the right to appeal from an arbitrator's award containing an error at law. Mr. Farmer stated this could be relevant to the arbitration clause included in CARMA's MOC.

B. Structured Medicare, Medicaid, and SCHIP Extension Act of 2007

Mr. Rob Kramer stated that new legislation, effective July 1, 2009, requires that all liability, no-fault, and workers' compensation insurers, self insurers, and self-insured groups determine whether any individual claimants are entitled to Medicare benefits thus ensuring that Medicare will always be a "secondary payer" if a primary payer exists.

Mr. Rob Kramer explained that under this legislation CARMA becomes a Responsible Reporting Entity (RRE) and as such, the Board will need to select a Reporting Agent (RA) who will be responsible for transmitting the required data to CMS. The identity of the RA will need to be disclosed upon registration of CARMA as a RRE with CMS. Mr. Linzie Kramer indicated the selection of the RA is very important as the entity selected will be responsible for transmitting the data to CMS without error. There are stiff penalties that will be imposed in the amount of \$1,000 per claimant, per day for failure to report. CMS is anticipating \$1.1 billion in revenues from penalties due to non-reporting of RREs.

Mr. Rob Kramer indicated that BRS has established an internal “MSA Task Force” to research this issue thoroughly to ensure each of our self-insured groups has the correct information and meets the established timeline for registration and reporting.

Mr. Rob Kramer indicated another issue at hand was whether CARMA wished to become a reimbursement versus excess program. This type of arrangement could possibly preclude CARMA from the accountability of becoming a RRE for purposes of reporting to CMS.

The question was posed as to whether the governing documents could be revised prior to July 1, 2009, to eliminate CARMA’s requirement of reporting to the CMS. It was noted changes could be made to the governing documents prior to July 1, 2009, however; it did not appear that this change would eliminate CARMA’s responsibility in reporting to CMS. The Board then discussed the possible hardship that may be placed on the underlying members in regards to liquidity and payment of the claims.

Mr. Rob Kramer indicated one other issue related to this discussion was the manner in which loss and claims information is handled between the underlying member and CARMA. Mr. Kramer explained that claims are not fully accounted for in the claims information system for the underlying member and this causes a problem when the loss information is provided to the actuary. Mr. Kramer indicated the best scenario is to have the TPA adjust losses up to the full exposure and not cap the loss at \$1 million.

After further discussion, the Board directed staff and Board Legal Counsel to develop a policy to determine how the TPA’s should carry the claim loss exposures in their systems. The Board then returned to the question of changing the structure of the CARMA program. It was determined that further research needed to be completed to determine if transitioning CARMA from an excess program to a reimbursement program would be a practical decision.

John Stroh moved to designate CARMA’s Group Administrator as the authorized representative of the group for purposes of registering with the Centers for Medicare and Medicaid Services (CMS) for mandatory Medicare reporting. Motion seconded by Jake O’Malley. Motion passed unanimously.

C. Discussion Regarding CARMA as a Reimbursement Versus Excess Program

This item was discussed in conjunction with Agenda Item 7.B.

D. Report by Board Legal Counsel, Mr. Craig Farmer

Mr. Farmer indicated he is reporting directly to Chairperson Geoff Grote on the Ross Valley and Mill Valley claims. Mr. Farmer indicated that Colony Excess Insurance Company (Colony) is recognizing these cases as two separate events. Mr. Farmer also confirmed that Colony has exclusion for any types of losses that have a sub-limit applicable. The CARMA reinsurance coverage layer through American Reinsurance has a \$2.5 million loss limit for weather-related claims. There is also a \$2.5 million aggregate limit on weather-related claims. This could leave a \$2.5 million gap in coverage for the underlying members if these are determined to be weather-related damages. Mr. Farmer indicated the reinsurance carrier has not provided a written coverage opinion at this point.

Mr. Farmer next reported that there are differing opinions in regards to the Skoumbus and Katzman claims. Mr. Farmer indicated he has been seeking a coverage position from MPA's former excess coverage carrier, CJPRMA, in regards to these long-term property damage events. Mr. Farmer indicated he has not yet received a coverage position from CJPRMA.

Mr. Jake O'Malley inquired as to the correct forum for discussion of differing opinions in regards to coverage matters. Mr. O'Malley indicated that MPA does not agree with CARMA's opinion that these claims should be covered under CJPRMA. It was suggested that Mr. O'Malley and MPA's Legal Counsel meet with CARMA staff and Mr. Farmer to resolve the issue of coverage for this case.

E. Report from Alliant Insurance Services on the Status of the Excess Insurance Renewal for CARMA

Ms. Susan Adams, Alliant Insurance Services, indicated she is currently marketing CARMA to a large market and to CSAC-EIA. Ms. Adams confirmed that CSAC-EIA will not have their rates available until early June. Preliminary indications are leaning towards a flat renewal for CARMA.

The Board indicated that cost is not the only factor in selecting excess and reinsurance carriers. The Board also considers the quickness of payments by the carrier and the ability of CARMA to maintain control of the claim extremely important. The Board also expressed concern to the selection of any carrier related to AIG and the problems surrounding that company.

8. ADMINISTRATIVE MATTERS

A. CARMA Staffing Plan

Mr. Rob Kramer indicated that as Ms. Kim Santin, the transitioning Assistant Executive Director for CARMA has left her position at BRS, he would be continuing in the role as Executive Director for the group. Mr. Kramer indicated CARMA member, Bay Cities Joint Powers Insurance Authority of which he has been appointed Executive Director, has raised concerns as the conflict of Mr. Kramer serving as the Executive Director for both groups.

Mr. Kramer indicated he was in the process of developing a long-term formal staffing proposal for presentation to the Board at the June 2009 meeting. Mr. Kramer indicated that he will stay on to make the transition to the new Executive Director comfortable for the Board and anticipates this transition will take six months to a year. The Board requested that Mr. Kramer keep the Board apprised throughout the development of the staffing plan.

B. Consideration of the Liability Claims Audit Prepared by Farley Consulting Services

Mr. Tim Farley, Farley Consulting Services, reviewed the executive summary section of the claims audit with the Board. Mr. Tim Farley indicated this year he performed the expanded claims audit for each underlying CARMA member; however, in two years, when he once again completes the expanded audit, he will be adjusting his fees down accordingly to account for the withdrawal of PARSAC.

Mr. Farley indicated the TPA's were doing a good job with documentation and file maintenance. Mr. Farley noted that a recommendation he made in his report last year to track retention deterioration so that it is easily identifiable when viewing the claim file has been implemented in the BRS CRM system.

Robert Galvan moved to accept and file the Liability Claims Audit as presented. Motion seconded by John Stroh. Motion passed unanimously.

C. Consideration of Draft Contract for Brokerage Services Provided by Alliant Insurance Services

Mr. Farmer indicated the contract is very transparent in that it illustrates any fees the broker may receive. Mr. Farmer did pose the question as to whether the contract should commence at July 1, 2009, at \$65,000 or should the swing clause be implemented to account for the withdrawal of PARSAC. Ms. Adams indicated Alliant has performed a large amount of work in the marketing of CARMA in the last couple of years that have not been accounted for in the contract and the loss of one member will not dramatically reduce the amount of work necessary to market CARMA going forward.

Mr. Farmer indicated that the word “defend” should be added to the first paragraph under Section XI for consistency in the Hold Harmless and Indemnity language. Mr. Rob Kramer indicated staff and Mr. Farmer recommend approval of the contract once this change has been made.

Jake O’Malley moved to approve the contract with Alliant Insurance Services as presented. Robert Galvan seconded. Motion passed unanimously.

D. Consideration of Sampson and Sampson Letter of Engagement for Services

The Board discussed the proposal as submitted by Sampson & Sampson and discussed the need to change independent financial auditors at this time. The Board consensus was that they were happy with the services provided by Sampson & Sampson and there was no need to change auditors at this time.

John Stroh moved to approve the proposal submitted by Sampson & Sampson for independent audit and accounting services for the years ending June 30, 2009, through June 30, 2001, as presented. Robert Galvan seconded. Motion passed unanimously.

E. JPA Appreciation Letters

Mr. Rob Kramer explained that the Board members spend a great deal of time supporting CARMA and tending to CARMA business and as such, there should be a mechanism in place to recognize the efforts of the Board members to the organizations which they represent. Mr. Kramer confirmed that the letters will be sent to those persons designated by the Board member and will detail the contribution the Board member has made to the success of CARMA.

The Board consensus was that this would be a good process for recognizing the efforts of Board members.

F. Discussion of Future Administration Costs Assessed upon PARSAC’s Termination of Membership

Mr. Rob Kramer indicated that PARSAC has provided timely notice of intent to withdraw from CARMA as of July 1, 2009. The issue before the Board at the present time is a consideration of the appropriate amount of ongoing administration expenses to charge PARSAC for years in which the JPA participated in CARMA. Mr. Kramer explained that PARSAC will still continue to receive the benefit of services such as the prior program year claims audit, litigation management, and financial reporting.

Mr. Craig Farmer, Board Legal Counsel, spoke to the authority of the CARMA governing documents permitting the charge of administration expenses to members terminating membership in CARMA. Mr. Farmer confirmed that the governing documents do permit CARMA to charge members terminating membership for ongoing administrative expenses applicable to program years in which the entity participated.

Mr. Farmer confirmed that PARSAC would not be charged for expenses incurred during program years that PARSAC did not participate. Mr. Farmer explained the real question at hand is the proper calculation of expenses that should be charged to PARSAC.

Mr. Farmer stated it is appropriate that administrative costs would decline as claims are resolved and program years are closed. This was the basis for the initial letter sent to PARSAC outlining the historical procedure of charging past members 80% off their administration costs in year one, 60% in year two, 40% in year three, and 20% in year four.

Ms. Joanne Rennie confirmed that PARSAC will be terminating membership in CARMA as of July 1, 2009. Ms. Rennie indicated the need to reduce overall costs was the deciding factor for PARSAC's termination of membership. Ms. Rennie expressed great respect for CARMA and the Board of Directors and indicated a desire to continue the business relationship of the two groups. Ms. Rennie indicated that PARSAC felt a one-time nominal charge for administration fees would be appropriate, as litigation management expenses have already been paid through prior contribution payments.

Ms. Malathy Subramanian, PARSAC Legal Counsel, indicated that while PARSAC does wish to resolve this issue amicably, the group does not feel that the proposed administration expense charges are realistic given that expenses for claims litigation management services are paid through each program year's contribution. Ms. Subramanian reiterated that a one-time nominal charge for administration fees would be an appropriate solution in this matter.

Mr. Rob Kramer explained that the largest expense going forward are litigation management costs. Claims can continue to be reported for program years in which PARSAC participated for up to three years from the date of occurrence. There is also a significant "tail" on liability claims and the need to manage those claims can continue for years into the future. Mr. Rob Kramer indicated that administrative costs are not included in calculation of the rates and therefore not pre-paid.

The Board discussed the concept of administrative costs as a global matter and not just based on the wording included in the governing documents. PARSAC will continue to benefit from claims audits, litigation management reports, and financial reporting prepared by CARMA, and from a standpoint of an equitable sharing of these expenses, PARSAC should be willing to pay for the benefit of these services.

After further discussion the Board indicated a willingness to entertain a proposal as to how expenses should be paid by PARSAC. The Board directed staff and CARMA Board Legal Counsel to work with Ms. Rennie and PARSAC Legal Counsel to prepare a proposal for submission to the Board at the June 2009, Board meeting, as to what expenses are applicable to PARSAC, what the cost of those expenses will be, and how those expenses will be paid by PARSAC.

9. **CLAIMS MATTERS**

A. **Closed Session Pursuant to Government Code Section 54956.95(a) to Discuss Claims**

Mr. Linzie Kramer reported that there was no need for a closed session.

B. **Report from Closed Session**

None.

10. **CLOSING COMMENTS**

A. **Board**

None.

B. **Staff**

Mr. Rob Kramer indicated that he would like to work with Chairperson Grote to adjust the BRS fees as a result of PARSAC's withdrawals. Mr. Kramer confirmed that while the BRS contract contains an escalation clause for increased fees for additional members, it does not contain a de-escalation clause for fees for members leaving CARMA. Mr. Kramer stated it would be equitable for BRS to adjust the contract fees to account for the reduction in members.

11. **ADJOURNMENT**

The April 17, 2009, Board of Directors' meeting adjourned at 2:00 p.m. by general consensus of the Board.

Sandra Spiess
Sandra Spiess, Board Secretary