

COVERAGE & GOVERNANCE COMMITTEE MEETING
April 23, 2018 at 1:00 P.M.
MPA Office, 1911 San Miguel Drive, Suite 200, Walnut Creek

MINUTES

Attendees:

Tracy Robinson, *Board President, City of Lafayette*
Sukari Beshears, *City of Brentwood*
Kristen Cunningham, *City of El Cerrito*
Mike Chandler, *City of Martinez*
Lynn Tracy Nerland, *City of San Pablo*
Megan Stephenson, *City of Walnut Creek*
Linda Cox, *Chief Administrative Officer**
Erwin Chang, *Liability Claims Manager**
Barbara Esquivel, *Workers' Compensation Claims Manager**
Victoria Thomas, *Administrative Services Supervisor/Board Clerk**
Karisa Bohon, *Administrative Assistant**

(*Non-voting attendee)

All members present will be recorded in the minutes.

I. Board President, Tracy Robinson called the meeting to order at 1:05pm

II. INTRODUCTIONS

Introductions were conducted.

III. APPROVAL OF THE AGENDA AS POSTED

Motion made by Mike Chandler to approve the Agenda as posted. Seconded by Lynn Tracy Nerland. Unanimous vote of all members present and represented herein. (6-0).

IV. TIME RESERVED FOR MEMBER OF THE PUBLIC

No members of the public were in attendance.

V. APPROVAL OF THE CONSENT CALENDAR

Nerland asked that the Minutes be pulled due to a grammatical correction on page 3 and requested an amendment.

Motion made by Lynn Tracy Nerland to approve the Consent Calendar as amended. Seconded by Tracy Robinson. Approved by unanimous vote of all members present and represented herein. (6-0).

VI. ACTION ITEM

1. Renewal of the General Liability Memorandum of Coverage (MOC) for Fiscal Year 2018-19

Staff and Coverage Counsel reviewed all current MOCs for General Liability, Workers' Compensation and the Vehicle Physical Damage Program. Staff reported that there were necessary changes to the General Liability MOC.

Chang explained the proposed changes to the General Liability MOC:

- Update the year to 2018-2019 period
- Title change to General & Auto Liability
- Section II – Definitions, page 4, paragraph 18 reads ‘...misleading statement or any act or omission...’ change to ‘...misleading statement or any error or omission...’
- Nerland questioned changing the word from act to error as a lawsuit could occur over an act. Explaining that an act could create liability and felt the word error seemed too narrow. Adding that it needs to be determined that there’s negligence before coverage as a lot can happen before it becomes an error.
Chandler suggested the verbiage be changed to ‘... any actual or alleged misstatement or misleading statement of any actual or alleged error or omission...’ This change will be made in three areas within paragraph 18.
- Chandler requested a typo be corrected in Section VII – Exclusions, page 7, paragraph 10 where it reads ‘out-patient, in patent’ and change to ‘out-patient, in-patient’
- Section VII – Exclusions, page 7, paragraph 14 – Staff proposed removing ‘Notwithstanding what is stated in the applicable declarations, the “*limit of coverage*” for claims described in this exception will be subject to a per “*occurrence*” and/or annual aggregate sublimit of \$250,000 per member.’
and remove
‘...However, where a claim for nuisance is alleged with a claim for inverse condemnation, the “*limit of coverage*” for a claim for nuisance will be subject to a per “*occurrence*” and/or aggregate sublimit of \$500,000 per member. Such sublimit shall be in addition to the sublimit of \$250,000 for inverse condemnation liability arising from accidentally caused “*property damage*” if both inverse condemnation and nuisance are alleged’.

Chang explained that the verbiage is a practicality that is not applied. Adding that when there is a landslide/inverse case there are other causes of loss that will trigger coverage and the only time that inverse is ever going to be specifically defined is when it is at the end of the lawsuit. MPA does not define what part of the lawsuit is inverse and what part is not. Removing the exception to the exclusion will give Members more coverage.

Nerland asked if Staff researched historical claims. Chang replied that Staff could not find any past claims that were specific to inverse, but researched water damage claims. Chang added that in his time at MPA they haven’t had any instances where a sub-limit was applied.

There were no other proposed changes to the MOC.

Chang referred to his Staff Report, page 2 wherein the MOC speaks about Pollutants. Chang informed the Committee that CARMA changed their policy to exclude mold and changed the definition of pollutants which removed 'mold, fungal or pathogens'; therefore, mold is not considered in the pollutants and is not covered.

MPA's policy does have coverage for mold up to \$100,000. Nerland reminded the Committee that there has been a couple of mold claims in the past. To ensure a city did not go over the \$100,000 coverage, the Board requested that MPA respond quickly and thoroughly on any water/sewer damage claim so that mold would not be a factor.

Chandler asked Staff to create an instructional sheet on steps to take on starting repair work should MPA be closed. It was also mentioned that payments for repairs must not be paid by the city directly as the costs need to be included in the claim.

Motion made by Mike Chandler to approve the General Liability Memorandum of Coverage with amendments and move forward to the Board of Directors for consideration and approval. Seconded by Sukari Beshears. Unanimous vote of all members present and represented herein (6-0).

2. Renewal of the Vehicle Physical Damage Program Memorandum of Coverage (MOC) for Fiscal Year 2018-19

Staff and Coverage Counsel reviewed all current MOCs for General Liability, Workers' Compensation and the Vehicle Physical Damage Program. Staff reported that there were necessary changes to the Vehicle Physical Damage Program MOC.

Chang explained the proposed changes to the Vehicle Physical Damage Program MOC:

- Update the year to 2018-2019 period
- Adding introductory paragraph
- Removing Declarations to a separate document
- Section I - Words and Phrases with Special Meaning changed to Definitions
- Section I, A, B & C - Verbiage was changed to make the document flow easier
- Section I, C, 1. and 2. - The word Covered was added and placed in front of 'Member'
- Section I, C, 3. - Verbiage was changed to read 'Vehicles newly acquired by the Covered Member will be considered covered vehicles for the first 30 days they are in your possession. After 30 days, newly acquired vehicles will only be covered vehicles if you notify us, and the effective date for such coverage will be the date you notify us.'

Nerland asked Staff to send reminders to member cities to notify MPA within 30 days if they get a new vehicle, and include on the reminder "Please forward to your Police and Public Works Departments". Staff suggested sending out quarterly reminders. Robinson said to bring the topic to the Board for discussion and determination on how often reminders should go out.

Chandler asked Staff to create an instructional sheet on steps to take when a city gets a new vehicle or property, and asked to have instructional sheet begin with "Notify MPA when..."

Nerland suggested to include the value of the vehicle on the instruction sheet as the Program covers up to \$250,000 per vehicle. Also, include that vehicle rentals are not covered in the Vehicle Program.

- Section II – Coverage Agreements verbiage was added ‘...covered vehicles occurring during the coverage period and reported within 90 days of the loss, except as excluded herein. All vehicles must be scheduled prior to loss or have been acquired fewer than 30 days prior to the loss, in order for coverage under the Memorandum to apply.’
- Section II – A& B were removed
- Section III – Deductible - Added clarifying language
- Section IV – Exclusions - Added clarifying language
 - Added Exclusion subparagraph E for loss caused by your failure to protect the vehicle. This stipulation was moved from Section VIII Conditions to Section IV Exclusions
 - Added Exclusion subparagraph F language to exclude terrorism
Nerland said the definition on terrorism was too broad. After a long discussion on crime versus terrorism and catastrophic terrorism versus not, Stephenson reminded the Committee that any terrorism would be covered under Federal Emergency Management Agency (FEMA).
Nerland suggested to not include the exclusion.
Cox suggested that both topics: newly acquired vehicles and/or property and excluding terrorism or not, be brought to the Board for further discussion.
Chang said he would talk to Coverage Counsel to clarify the civil disobedience definition and put that as an exception to the exclusion or completely remove it. He will present options to the Board after discussing with Coverage Counsel. Options will be: clean up language on the word terrorism, provide options to either remove completely or modify the definition of terrorism, and to clarify civil disobedience.
Robinson agreed that there should be more discussion by the Board on these topics and asked that Staff to bring back to the Board for further discussion.
- Section V, D, 5 – Limit of Liability - Added clarifying language to be consistent with current practices
- Section VII – Conditions: Added clarifying language
- Section VII, A, 1 – Moved statement of the limitations of failure to protect vehicle to Section IV Exclusions
- Section VII, A, 3 – Removed requirements for Examination under Oath
- Section VII, B – Removed deduction for retention of damaged property and clarifying the value threshold for newly acquired vehicles. The reason for the removal of the deduction is that Staff recently discovered a communication from a past CAO to the Board explaining MPA’s practice, which contradicted the MOC. Staff would like to bring the MOC into agreement with practices.
Staff suggested to change the verbiage on Item 3 to ‘Within 90 days of the loss, provide such information as we may reasonably require. Upon our request exhibit the damaged property.’
- Section VII, C – Added clarifying language
Chandler suggested changing the verbiage to ‘...during the policy year for one or more newly acquired vehicles cumulatively valued in excess of \$250,000.
- Section VII, D – Added clarifying language for disputes

There were no other proposed changes to the MOC.

Staff will make recommended changes to both the General Liability and Vehicle Physical Damage Program MOCs and have Coverage Counsel review. Once reviewed, Staff will email Members a draft of each MOC for early review and will present at the Board meeting for more review and consideration.

Motion made by Lynn Tracy Nerland to approve the Vehicle Physical Damage Program Memorandum of Coverage with amendments and move forward to the Board of Directors for consideration and approval. Seconded by Tracy Robinson. Unanimous vote of all members present and represented herein (6-0).

VII. MEMBERS COMMENTS - None

VIII. ADJOURNMENT – Meeting was adjourned at 2:36pm