

**INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY****MINUTES OF THE  
CLAIMS COMMITTEE MEETING  
MARCH 13, 2017  
9:30 A.M.**

A meeting of the Claims Committee was held on March 13, 2017, via web conference.

<b>Name</b>	<b>Member/Agency</b>	<b>Present</b>	<b>Absent</b>
Jill Buchholz	Redondo Beach	X	
Vicki Cross	Glendora		X
Yvette Abich Garcia (9:43)	Downey	X	
Sergio Ibarra	Bell	X	
Sara Nazir	Inglewood		X
Haydee Sainz	Lynwood	X	
Alison Stevens	Hawthorne	X	
Chu Thai	Monterey Park	X	

**Others in Attendance:**

RPA                      Beth Lyons  
                              Ashley O'Brian  
                              Tyler LaMantia (10:02)

Johnson Schachter & Lewis    Luther Lewis

Carl Warren & Company        John Beringer  
    Todd Johnson  
    Sean Rasmussen (9:42)

City of Glendora                Cecilia Todd (9:50)

**1. CALL TO ORDER**

Chair Jill Buchholz called the meeting to order at 9:35 a.m.

**2. ESTABLISHMENT OF QUORUM/INTRODUCTIONS**

Introductions took place and it was determined a quorum was present.

**3. PUBLIC COMMENTS**

There were no public comments.

#### 4. APPROVAL OF AGENDA AS POSTED OR AMENDED

*Motion was made by Jill Buchholz, seconded by Haydee Sainz, and unanimously carried to approve the agenda as presented.*

#### 5. CONSENT CALENDAR

*Motion was made by Chu Thai, seconded by Alison Stevens, and unanimously carried to approve the consent calendar as presented.*

#### 6. OPEN SESSION

##### A. Proposed 2017/18 Claims Committee Meeting Dates

*The Committee has traditionally met on the first Thursday of odd months. Staff was directed to identify meeting dates for 2017-18 that would fall on Wednesday and propose for the committee's review at the May meeting.*

##### B. Revisions to the Liability Memorandum of Coverage

The Authority's memoranda of coverage are reviewed on an annual basis. RPA and the Liability Program Manager completed a review of the Liability Memorandum of Coverage (MOC) in conjunction with ICRMA's Coverage Counsel.

Notable revisions include the following:

Section III, Defense and Settlement was updated to address situations where ICRMA has recommended settlement of a claim and the MEMBER does not consent to such settlement. The purpose is to allow the MEMBER to choose not to consent to a settlement that ICRMA has determined is in the best interest of ICRMA, while protecting ICRMA's interest by limiting its liability with respect to such claim consistent with the recommended settlement amount.

“ICRMA will not settle a claim without the MEMBER's consent; however, the MEMBER may not unreasonably withhold such consent. If the MEMBER withholds consent to any settlement that ICRMA recommends, then ICRMA's liability for the claim will not exceed the amount for which the claim could have been settled, plus claim expenses incurred up to the date of the MEMBER's refusal to consent. When total claim expenses and damages reach the amount for which the claim could have been settled, plus claim expenses incurred up to the date of the MEMBER's refusal to consent, ICRMA has no further liability for claim expenses or damages and has the right to withdraw its defense of the claim. The MEMBER agrees to accept the tender of the defense when ICRMA withdraws.”

The paragraphs below were added to address the apportionment of non-covered damages. The additional language is designed to ensure that that all necessary information is available to allow for a determination to be made regarding apportionment, and to allow for that determination to be made as early as possible so that settlement efforts are not compromised. It also expressly allows for determination of the issue under the “Dispute Resolution” provisions of the MOC.

“In the event ICRMA agrees to participate in the defense of a CLAIM, and that CLAIM alleges one or more categories of injury or damage which is not covered under this MEMORANDUM, the MEMBER shall fully cooperate with ICRMA in seeking to determine the reasonable settlement value of any uncovered injury or damage, and shall make that reasonable settlement value available for settlement purposes. In the event ICRMA and the MEMBER cannot agree on the reasonable settlement value of any uncovered injury or damage, then at the written request of either ICRMA or the MEMBER that issue shall be submitted to binding arbitration under the procedures prescribed under the ‘Arbitration Option’ provisions of Section VI.14, ‘Dispute Resolution.’”

“In the event the CLAIM does not settle but proceeds to verdict or judgment, the MEMBER shall fully cooperate with ICRMA in ascertaining what portion of the verdict or judgment is for uncovered injury or damage, including but not limited to agreeing to a special verdict form setting forth the amount of any verdict or judgment which is for uncovered injury or damage. The amount of any verdict or judgment which is for uncovered injury or damage shall be the sole responsibility of the MEMBER.”

The paragraph below was added to address issues that have arisen with delays in payment that have affected or could have affected settlements.

“As part of any settlement of a CLAIM, the MEMBER shall immediately pay any remaining portion of the RETAINED LIMIT which is necessary to complete the settlement. ICRMA shall have no obligation to fund any portion of a settlement until the MEMBER’s RETAINED LIMIT is exhausted.”

The following exclusion was added as Exclusion 21 to expressly address claims arising out of decisions to license or otherwise permit marijuana businesses to operate. Such claims would already not be covered as land use planning decisions; this eliminates any question in that regard.

“Any CLAIM arising out of any decision by the MEMBER, or any officer or employee of the MEMBER to license or otherwise permit a business to grow, cultivate, sell, distribute or otherwise market marijuana or engage in any business involving marijuana.”

The following language was added to what would now be Exclusion 41 for claims arising out of CYBER LIABILITY:

“However, this exclusion shall not apply to an offense covered under the definition of PERSONAL INJURY, if the offense otherwise would be covered if the data or information had been disclosed or transmitted by other than electronic means, when the offense allegedly arises out of disclosure or transmittal of data or information.”

The MOC covers defamation and discrimination under PERSONAL INJURY coverage, but the MOC excludes coverage for CYBER LIABILITY, which includes “disclosure, or transmission of electronic data of any kind.” It is believed that the intent of the exclusion for CYBER LIABILITY is not to cover liability for breach of computer security which results in disclosure of private information; that is not defamation or discrimination. It is believed that the intent is still to cover defamation and discrimination, even if an electronic communication is involved, but the language of the exclusion leaves uncertainty in that regard. The added language clarifies the believed intent.

The following replaces “Brain and neurological injuries” as one of the descriptions of the type of claims that require notification to ICRMA to provide clarification: “. . . any OCCURRENCE involving . . . h. Suspected or diagnosed substantive brain trauma resulting in cognitive disability and/or neurological injury associated with depreciated sensory consequence.”

The following language was added to clarify what is required regarding claim reporting: “Notice to ICRMA of a CLAIM set forth above must be in a separate writing and clearly identified as a notice under this provision of the MEMORANDUM.”

*Motion was made by Yvette Garcia, seconded by Alison Stevens, and unanimously carried to recommend the Board approve the revisions to the Liability Memorandum of Coverage as presented.*

#### C. Revisions to the Workers’ Compensation Memorandum of Coverage

RPA and the Workers’ Compensation Program Manager completed a review of the Workers’ Compensation Program Memorandum of Coverage (MOC) in conjunction with ICRMA’s Coverage Counsel. One change of note is that the language under “Settlement” was changed to clarify that claims with total incurred amounts in excess of the Covered Member’s Retained Limit cannot be settled without the *prior* written consent of ICRMA. The following language is also added to specify the consequence if such prior approval is not obtained: “If a claim is settled without the prior written consent of the Authority, the Authority may, but is not obligated to, approve the settlement; if the Authority elects not to do so, the Authority shall not be obligated to pay any portion of the settlement.”

This is consistent with the intent of the provision and is designed to avoid the settlement of the specified claims without ICRMA’s consent.

*Motion was made by Yvette Garcia, seconded by Haydee Sainz, and carried to recommend the Board approve the revisions to the Workers' Compensation Memorandum of Coverage as presented. Alison Stevens abstained.*

#### D. Updated Liability Defense Panel

An updated liability defense panel list was included in the packet for Committee review. Several attorneys were highlighted for possible removal because it appears they are not being used or are only being used by former and/or departing members. The following revisions were discussed during the meeting: Tony Sain was inadvertently highlighted for removal and should remain on the list; attorney Lawrence "Chip" Anderson's name will be corrected; and Louis Marino was highlighted for removal. The areas of specialty were not displayed on the list. The Liability Program Manager continues to meet with attorneys to better define and identify specialty areas. This information will be added to the report, once it has been further developed, for presentation to the members. *No action taken.*

### 7. CLOSED SESSION

The Committee convened in closed session at 10:27 a.m.

### 8. REPORT FROM CLOSED SESSION

The Committee convened in open session at 11:08 a.m. and reported the following:

- Xin Zhu Mo v. Alhambra/Monterey Park  
*The Committee authorized a settlement of \$15,000.*
- Thai et al. v. Alhambra/Monterey Park
  - *In the case of plaintiff Ji Cui Ping, the Committee rejected the requested settlement amount.*
  - *In the case of plaintiff Shao Na Liu, the Committee granted authority to issue a CCP 998 in the amount of \$100,000.*
  - *In the case of Lu's Dumpling House, no action was taken.*
- Fu Xiang Li v. Alhambra/Monterey Park  
*The Committee authorized a settlement of \$240,000.*
- Sequoia Insurance v. Alhambra/Monterey Park  
*The Committee approved the requested settlement amount of \$61,409.48 and 75% of any future benefits paid.*

### 9. CLOSING COMMENTS

There were no closing comments.

### 10. ADJOURNMENT

The meeting was adjourned by general consensus at 11:10 a.m.