Utah Risk Management Agency

MINUTES

BOARD MEETING

April 14, 2022, 12:00-2:00 p.m.
The Oaks at Spanish Fork Event Center
2300 East Powerhouse Rd., Spanish Fork, UT 84660

Members Present: Seth Perrins, Chairman (Spanish Fork); Shane Pace, Vice Chair (Farmington); Derek Oyler (Brigham); Paul Bittmenn (Cedar); Brant Hanson (Centerville); David Dobbins (Draper); Adam Bowler (Enterprise); Joe Decker & Kent Burggraaf (Kanab); Alex Jensen (Layton); Cory Branch (Mapleton); Mark Johnson (Ogden); Jamie Davidson (Orem); Gary Whatcott (South Jordan); Duane Huffman (West Bountiful); Wayne Pyle (West Valley)

URMMA Staff Present: David Petersen; Jason Davis; Jordan Rapp; Elizabeth Christensen; Ann Nielsen

Others Present: Libby Lowther (Lowther & Assoc.); Kery Oldroyd, Gary Ogden, Matt Campasano & Robert Oldroyd (Moreton & Company)

1. **LUNCH**

2. **WELCOME** – Seth Perrins, Chairman

MINUTES

Mr. Perrins called the meeting to order at 12:15 p.m. He welcomed Derek Oyler, the new city manager for Brigham City, and Kent Burggraaf, the Kanab city attorney and interim city manager. Mr. Perrins congratulated Mr. Decker on his new position as director of Hurricane Valley Fire District. Mr. Perrins requested everyone introduce themselves, which they did.

3. **MOTION -** Approval of Minutes December 9, 2021 Board Meeting

MINUTES

Mr. Perrins asked for a motion regarding the minutes from December 2021 Board Meeting.

Motion – Mr. Pace motioned that the minutes from the December 9, 2021 Board meeting be approved, seconded by Mr. Hanson. Mr. Perrins called for a vote. Voting was unanimously affirmative.

4. CONSENT AGENDA

4.1. QUARTERLY FINANCIAL REPORT

4.2. FRAUD RISK ASSESSMENT

4.3. BYLAWS UPDATE

MINUTES

Mr. Perrins asked for a motion on the consent agenda.

Motion - Mr. Decker motioned to approve the consent agenda, seconded by Mr. Davidson. Mr. Perrins asked if there were any questions. There were none. Mr. Perrins called for a vote. Voting was unanimously affirmative.

Mr. Perrins thanked staff for the efforts to update the Bylaws and the other governing documents and said the association documents are now up to date.

5. SCHEDULED ITEMS

5.1. DISCUSSION/APPROVAL – Insurance Update

MINUTES

Mr. Ogden presented the insurance market update, saying the market has been under duress. For example, he said in 2019 the top fifty tort cases totaled $390 million in losses. The top fifty cases for 2021 totaled over $2 billion in losses. He said this is because of "nuclear verdicts" and "social inflation" with courts awarding judgments which have not been seen in the past. He said excess insurers are starting to pay more than ever before, sometimes up to policy limits. He said in 2021 URMA had 24 total losses on property and auto liability claims, which totaled about $440K (with another one today). He said from 2019-2021 the total losses incurred for those two lines is $2.3 million, which is up quite a bit from historical claims. He said Utah inflation is at 10 percent. He said Moreton is increasing statement values 6% on real property and 4% on contents, which is what the market is requiring. He said URMA currently has a $200 million earthquake policy, $125 million flood, with a $25K deductible with FM Global. This year renewal rates are expected to be between 6-8%. Four cities have $10K deductible. He said they hope to be able to keep those policies in place for this year.

Mr. Ogden said they are estimating a 7% increase to URMA's auto program with WCF, but do not have finalized quotes yet. He said the market average increase is at about 10%. Moreton is expecting increases in off-duty auto at 7%, parked auto at 5%.

Mr. Ogden continued, regarding reinsurance with Chubb, populations are up about 2.5%, and Moreton is expecting a 6% rate increase that will absorb the population increase, with *deductibles and the JPP staying the same. He reminded that there is no aggregate for sexual abuse and molestation claims, and said they expect a $10K award check to be presented to URMA at the summer conference.*

Mr. Ogden said the cyber market is changing very quickly and they are not sure what cyber will look like in July. He said they have information from The Council, which estimates an increase from the fourth quarter of 2020 to the fourth quarter of 2021 at 34%. He said insurers are requiring multi-factor authentication (MFA), which is 98% effective in preventing ransomware. He said there is a huge increase in cyber attacks from eastern bloc countries, with 47% of all attacks occurring on municipalities. He said nine of URMA cities have implemented MFA, and if a city has not implemented MFA yet, but is working on it, to let them know. Moreton's marketing plan for cyber is to get as much coverage as they can, for every city, and he requested that the applications be returned to them. He said they are optimistic that they will be able to find coverage.

Mr. Ogden said 13 cities participate in the workers compensation program and dividends paid in 2021 were $155K. They spoke with Matt Lyons, the new CEO of WCF, and WCF is expecting to pay an 8% dividend, regardless of members' losses for 2021. He said the lowest EMOD is .70 and the highest is 1.4, and they are expecting renewals to stay flat. Mr. Ogden asked for questions.

Mr. Davidson asked if cyber was sent to bid. Mr. Ogden said every year they send out submissions and receive some responses with formal quotes. He said the problem is getting $250 million earthquake in Utah, and most other carriers will not touch the earthquake limit and the flood limit. He said they talked to Gen Re and Swiss Re. He said the cyber market is really tough. One company, One Beacon, used to write cyber but sent notice that they are discontinuing their entire cyber program due to losses. Carriers generally are not writing cyber for municipalities. Mr. Pace asked if it would get worse to the point that URMA would not be able to get coverage. Mr. Ogden said 12 years ago cyber coverage did not exist, so it is hard to predict as there is not statistical data. Mr. Pace asked if the rate increases could price URMA out of the market, and Mr. Ogden said they do not know.

Mr. Ogden said they expected police liability would be the problem this year, but the reinsurer is not reacting to the national climate, rather waiting to see how cases currently in the courts turn out. Mr. Perrins asked if the excess insurer is sensitive to local circumstances. Mr. Ogden said yes, and Mr. Oldroyd said Utah is low tier and has not been in the news much, which is favorable.

5.2. DISCUSSION – Individual Employee Concealed Carry Coverage

MINUTES

Mr. Petersen said Senate Bill 115 was passed in the 2022 general session, which gave amendments and direction on current law, that employers, including cities, could not restrict an *employee's right to carry firearms while working, which brings up a question of liability. He said cities and URMA should make clear in their policies that the municipality and URMA will not defend an employee involved in an incident with the employee's use of a firearm while on-duty when not in the scope of the employee's work. He said cities should have a policy or notification document that makes employees aware that the city will not represent an employee in that situation.*

Mr. Petersen said further, that URMA sent one city policy to a law firm for review of the policy, and whether it contradicts the new amendment that "except as specifically provided by state law, a local government entity may not prohibit an individual from owning, possessing, purchasing or selling, transferring, transporting or keeping an firearm at the individual's place of residence, property, business, or in any vehicle lawfully in the individual's possession or lawfully under the individual's control," and the law firm found concerns with the city policy. The law firm said it would be difficult to defend a policy that said an employee could not store a firearm at their desk or in a city vehicle.

Mr. Petersen asked if cities wanted URMA to work with a law firm to come up with a model policy that conforms to the law and provides protection to cities and publish that for cities to adopt.

Mr. Perrins said the reviewed policy was Spanish Fork's policy and he was confident in the policy before the review. He asked if any cities had policies that had been updated since the legislation. Mr. Davidson responded that his city had avoiding addressing it because of the contention involved. Mr. Huffman said that even prior to the legislation, he understood that cities were limited in addressing concealed carry, and that he has employees who carry guns and have historically. He asked if there were any claims that have resulted from employee carry, any national data, and if it was necessary to address the issue based on history. Mr. Petersen said he was not aware of claims, but he is seeing an increase in member cities who have employees notifying the city that they are carrying concealed at work, and he suspects the number of employees carrying concealed has increased with the publicity of the issue.

Mr. Petersen suggested to manage the situation, be clear that if an incident occurs, the city and URMA will not represent the employee for their personal decision to carry. If a person is injured, the city and URMA will likely get named in a lawsuit, and URMA will represent the city for the vicarious liability claim that will be asserted but will not defend the employee.

Mr. Pace said accidents have occurred, and said he experience in which another employee's firearm came out of the holster and bounced down five stairs and landed at his feet, and luckily the safety was on. He said employees need to know they are on their own when it comes to any lawsuit.

Mr. Perrins asked if there was any objection to expend resources to have attorneys work on a model policy. Mr. Oyler remarked that their city attorney is an independent contractor of the city and asked if the policy needed to extend beyond the employee base. Mr. Petersen said he could address that issue. Mr. Hanson said to be successful in a lawsuit, there does need to be *the policy in place, that the city does not represent the employee. He said he hoped that his employees would have some proficiency to carry concealed. Mr. Perrins said he was concerned that this legislative change coincided with the change that there was no training required to carry concealed. Mr. Burggraff said that if you allow your employees to train with the police department, you are moving toward vicarious liability because, not only does the city know that the employee is carrying, but the city is training them to use it in the right circumstances, which could be argued as an endorsement of concealed carry.*

Mr. Huffman asked, in the situation of a public works employee who in the course of shutting off someone's water, was threatened and used a city vehicle to run over the person, the difference between the city vehicle and use of a firearm. Mr. Petersen responded that the city has authorized the use of the city vehicle. Mr. Perrins said URMA would move forward with the direction to work with attorneys to craft a model policy.

5.3. DISCUSSION/ACTION ITEM – In House Attorney

MINUTES

Mr. Petersen said that in reviewing the budget he has reviewed the costs for outside counsel and that URMA has the opportunity to save money by hiring an in-house attorney. He said the average billable rate is $271 per hour, ranging from $175-$440 per hour, and the average rate for a paralegal is $134 per hour. He said settlement costs are the highest cost in our budget, at 30%, and legal is second, at 24%. He asked if the board would consider employing an in-house attorney to handle claims and litigation, legal risk consultations, and subrogation. This gives the city the option to use the in-house attorney at a significantly lower rate than external counsel. He said it is appropriate to hire external counsel for specialized claims such as employment law, or a use of force claim. He said this would leverage the URMA office space, clerical support, information technology and so forth. He estimated that the cost would be $212K per year for salary and benefit costs. He said if that attorney works on a claim that goes into the repayment program, the cost would be $102 per hour and would reduce the cost to the city.

Mr. Perrins asked for questions and comments. Mrs. Lowther said one of the advantages is that a city could contest claims that it would not normally be cost effective to contest, which would have the result of discouraging nuisance claims.

Mr. Hanson asked about the repayment with the in-house counsel. Mr. Petersen said it would be the same as using outside counsel but repaying at a lower rate. Mr. Perrins said if no one used the attorney, then all the members would share the cost. Mr. Huffman asked what the break-even point would be, how many hours over the course of the year. Mr. Rapp responded that just over 1000 hours would be break-even. Mr. Burggraaf commented that if the staff is not well versed in legal matters, the attorney would spend a significant amount of time in clerical work and asked if it had been considered to include a paralegal into the cost. Mr. Petersen said we would gauge the volume and then consider a paralegal. Mr. Branch asked what the limit would be for the attorney, if they become too busy. Mr. Petersen responded that the option for outside attorneys would *continue to be available. Mr. Bittmenn asked about the cost of fronting the money to hire an in-house attorney versus paying an attorney when costs are incurred, and how that would affect the contribution rate. Mr. Petersen said it would not affect contributions but would affect the budget the first year, until we determine the offset of volume of claims handled in-house. Mr. Pace said he would be very interested in using an in-house attorney to handle a number of claims. Mr. Perrins said he only has had one or two claims in recent history that required a specialized attorney.*

Mr. Petersen clarified, that if URMA fronted the money from reserves to supplement the budget for an in-house attorney, and 21% of claims were handled by the in-house attorney, that would break-even. He said it is hard to find attorneys right now and is concerned about being able to recruit the right litigation attorney. He said if we cannot find the right person, there is no expenditure. Mr. Perrins confirmed that this attorney would not replace a city attorney. Mr. Petersen said an in-house litigation attorney could also review claims and give recommendations without incurring costs to a city.

Mr. Jensen said he thinks the in-house attorney is a good idea, and that it does not take away from the current options, that an in-house attorney would have to have a relationship with the city attorneys. He remarked that most city attorneys are not litigators, and it would be good to have the litigation view. He also said that he is comfortable with Mr. Petersen managing an in-house attorney. Mr. Pace said he has three attorneys on his city council and the one litigator has a very different approach than the other two. Mr. Petersen said he is willing to take as much feedback as possible to get the right person.

Mr. Bittmenn asked if the attorney would spend more time on litigation and less time on consulting. Mr. Petersen said he would continue to do most of the risk consulting so the attorney could focus on litigation, because litigation is a large expense. Mr. Petersen said from his experience, he believes the attorney will be very busy and handle more than the 21% of claims necessary to break even, and in the future, it may be cost effective to hire an additional attorney. Mr. Pace suggested that the decision was connected to the budget and should be addressed there.

5.4. DISCUSSION – URMA Wage Study Update

MINUTES

Mr. Perrins presented the wage study and methodology that was suggested by the board and how a team of city HR staff calculated the study by comparing URMA staff positions to similar city positions. Mr. Pace said he appreciated this approach to compensate URMA staff similarly to city employees. Mr. Perrins said the wage study is part of the budget and would be addressed there.

5.5. DISCUSSION - FY2023 Proposed Budget

MINUTES

Mr. Petersen presented the budget and pointed out proposed adjustments to employee salary and benefits, and the removal of the rebranding account, and the increased costs in some goods and services, travel, and professional services. He said AON is no longer willing to do our actuarial study and the cost will increase to $7,500. Mr. Petersen said in the past URMA has paid the primary layer of cyber insurance, and he has added $150K anticipating a large increase but is uncertain if this will be adequate. There is an increase in attorney costs of $38K which has been the historical annual increase. He said Budget 1 does not include employing an in-house litigation attorney and Budget 2 does include that cost, but Mr. Petersen did not reduce the amount budgeted for attorneys' fees which could be offset by the in-house attorney. Mr. Johnson said the reduction would not likely be realized in the first year and he was correct to not make the adjustment. He recommended leaving the amount for attorneys' fees until the effects were apparent. Mr. Hanson also recommended not reducing the amount for attorneys' fees.

Mr. Petersen remarked that looking at the historical claims and settlement budget, there has been a five-year cycle, which is attributed to the time it takes to get through extended litigation, and the past year was costly. The last spike was 2017, and the previous spike was 2012. He said analyzing the data would allow us to predict these expenses going forward and to plan for them.

Mr. Huffman asked if Mr. Perrins was ready to take a motion. Mr. Perrins asked for questions.

5.6. PUBLIC HEARING - FY2023 Proposed Budget

MINUTES

Mr. Perrins asked for motion to go to public hearing. Motion by Mr. Johnson and second by Mr. Huffman to go to public hearing. Voting was unanimous to go into public hearing.

Mr. Perrins announced the public hearing and asked for comments. There were none. Mr. Perrins asked for motion to go out of public hearing.

Motion by Mr. Bowler, seconded by Mr. Johnson to go out of public hearing.

5.7. RESOLUTION NO. B0422-5.7 – Adoption of FY2023 Proposed Budget

MINUTES

Mr. Perrins addressed the resolution to adopt the FY2023 proposed budget, which includes the salary study, with Budget 1 that does not include an in-house attorney position and Budget 2, which does include the in-house attorney position.

Motion was made by Mr. Bittmen to approve the FY2023 Proposed Budget 2, seconded by Mr. Johnson. Mr. Perrins asked for questions on the motion. Mr. Pace asked if there should be an adjustment to reduce attorney costs. Mr. Perrins suggested that it was okay as presented. Mr. Pace withdrew his question. Mr. Whatcott asked when the salary study was completed. Mr. Petersen replied that it was in January and represents an increase of 6%, but inflation has reached 8.5 %. Mr. Whatcott said he did not want to get behind. Mr. Perrins suggested a move forward, and if cities have a greater increase, the budget can be adjusted in the future.

Mr. Perrins asked for a vote to approve the FY2023 Proposed Budget 2. Voting was unanimously affirmative.

6. OTHER ITEMS

6.1. DATES for upcoming meetings:

- Risk Management Roundtable - May 12, 2022
- Summer Conference – August 3-5, 2022
  Newpark Resort, 1456 Newpark Blvd., Park City, UT
- Board Meeting – August 5, 2022
- Golf Tournament – September 9, 2022 – Lakeside Golf Course
  1201 North 1100 West, West Bountiful, UT

MINUTES

Mr. Davis reviewed the calendar and summer conference. Mr. Perrins said the agenda for summer conference includes topics of interest to city staff and suggested that members review the agenda and invite staff to attend specific blocks. Mr. Davis said Thursday morning block is cyber security, directed toward IT employees, and the afternoon is directed to police officers and departments.

7. ADJOURN

MINUTES

Mr. Perrins asked any other items for discussion. He thanked those who attended and presented and asked for a motion to adjourn. Motion by Mr. Bowler, seconded by Mr. Pace to adjourn. Meeting was adjourned.

APPROVED THIS 5th day of AUGUST, 2022,

Utah Risk Management Agency

Seth Perrins, Chairman of the Board

ATTEST:

Ann Nielsen, Secretary