



COVERAGE, CLAIMS & LITIGATION COMMITTEE
Meeting Agenda

Thursday, September 7, 2017
IRMA Office – 9:30 a.m.

- I. **CALL TO ORDER**
- II. **APPROVAL OF MINUTES**
 - ✓ **May 4, 2017** (pg. 1)
- III. **CLAIMS & LITIGATION REPORTS**
 - A. **Litigation Reports**
 - 1. **New Litigation Report – May 1 – August 31 2017** (pg. 5)
 - 2. **Closed Liability Claims Report – April – August, 2017** (pg. 6)
 - 3. **Litigation Management Report as of July 31, 2017** (pg. 10)
 - 4. **Attorney Performance Report** (pg. 12)
- IV. ✓ **PROPERTY APPRAISAL PROPOSAL – CONTRACT EXTENSION** (pg. 13)
- V. ✓ **2018 PRELIMINARY BUDGET** (pg. 15)
- VI. ✓ **REVISION TO EXPOSURE BASE** (pg. 16)
- VII. **POTENTIAL FOR SUPPLEMENTAL ASSESSMENT TO WITHDRAWN MEMBERS**
(pg. 19)
- VIII. ✓ **REVISED RESERVING PRACTICES – WITHDRAWN MEMBERS** (pg. 21)
- IX. **SPECIAL COUNSEL – ZONING CASES** (pg. 29)
- X. **LITIGATION SUCCESSES** (pg. 32)
- XI. **ADDITIONS TO AGENDA**
- XII. **EXECUTIVE SESSION**
 - **Review/Discussion – Executive Session Minutes of May 4, 2017** (Sent via separate email)
- XI. **CONFIRMATION OF NEXT MEETING**
 - Thursday, November 2, 2017
 - 9:30 a.m. - IRMA Office
- XII. **ADJOURNMENT**

To ensure a quorum, please contact Donna Sluis at donnas@irmarisk.org or (708) 236-6349, if you are not able to attend the meeting.

Copy to: Kathleen Gargano, IRMA Chair

✓ **Requires Vote**



COVERAGE, CLAIMS & LITIGATION COMMITTEE
Meeting Minutes

Thursday, May 4, 2017
IRMA Office – 9:30 a.m.

PRESENT: Julia Cedillo, Chair Patrick Brennan
 Sharon Peterson Greg Van Dahm
 Kate Croteau (Via phone) Kevin Wachtel
 Bryon Vana Barbara Maziarek

ALSO
PRESENT: Margo Ely Susan Garvey
 Donna Sluis Colleen Rhodes
 Dorothy Mucha

ABSENT: Doris Harmon-Warren Carol LeBeau

I. CALL TO ORDER

Chair Cedillo called the meeting to order at 9:30 a.m., roll was taken and a quorum declared.

II. APPROVAL OF MINUTES

Cedillo asked if anyone had any questions and/or comments on the minutes of February 19, 2017. Hearing none, a motion was made by Vana and seconded by Wachtel to approve the minutes of February 19, 2017. A voice vote was called and the motion carried.

III. CLAIMS & LITIGATION REPORTS

A. Litigation Reports

Cedillo moved to the New Litigation Report from February 1, 2017 – April 25, 2017. Cedillo asked if there were any questions on the litigated claims. Vana asked what the Alleged Civil Conspiracy was and Garvey commented she believes it was an employment case. Cedillo moved to the Closed Liability Claims Report from January, February and March 2017. Cedillo asked if there were any questions on these reports. Cedillo asked if there were any questions. Hearing none, the committee moved to the Litigation Management Report.

B. Defense Counsel Performance Survey Report

Cedillo commented that this was one of the items discussed previously and that is surveying the membership regarding their ideas and feedback on the performance by the attorneys that represent them on various claims. The feedback that they received is included in the packet. Cedillo questioned how often this was going to be done and Ely commented every month and that this report will be part of the agenda item.

C. Update on New Reports

Subrogation Information – Cedillo commented that there was a lot of discussion about the claim reports that have been provided to this committee in the past. We had a lot of discussion on subrogation information and how that information can be better presented to identify positive performance. A new claims handling process has been created where the subrogation file is immediately assigned to the subrogation desk. Previously these types of claims were not moved to subrogation or were not looked at for a long period of time. We anticipate the subrogation desk to get a lot more claims. We currently have a half subrogation position and as part of this new process, we are asking the Administration and Finance Committee to make that a full time position.

Workers' Compensation Information – Cedillo commented that staff has been working with Milliman on the predictive modeling project. To date, they have done some work in putting it together and utilizing more than 3 years of data. At the May 24 Administration and Finance Committee they will consider a proposal to continue doing the predictive modeling. Ely commented that this will be done on an annual basis. They will give us these reports and score every one of the claims that come in and we will then know if it's a jumper claim or an auto pay claim. If it's a jumper claim we immediately assign a nurse and an attorney involved and watch it more closely. Cedillo commented that included in the materials are some of the pretend reports that Milliman has put together. Cedillo started on page 4 which is the Executive Summary page. Cedillo questioned what the Auto-Pay and Jumper scores are and what it all means. Ely commented that Milliman is going to score claims at 3 days and again at 30 days. Each of the claims at 3 days will get a score and if it's a jumper score after 3 days we are on it. Auto-Pay are claims that adjusters will not have to touch. The committee went through all the reports provided by Milliman and there was much discussion on the reports. The reports will be provided to the committee quarterly. Milliman will be presenting at the June Board meeting.

IV. REVISED GOALS AND OBJECTIVES FOR CCLC

Cedillo mentioned that there were two (2) goals added numbers 4 and 5. Creating new claims reports including information from the predictive modeling project and work with the AFC and staff to evaluate potential new claims processing software. Wachtel asked what their involvement would be with the claims processing software. Garvey mentioned for you to review it and it will require a vote on the budget. Ely also commented that if we do go with new claims software it's going to be better reports. A motion was made by Maziarek and seconded by Vana to approve the Goals and Objectives as amended. The motion carried.

V. ZONING DEDUCTIBLE REVISION

Cedillo reported that IRMA implemented a \$25,000 deductible for zoning cases because those types of cases can be both volatile and political so having a \$25,000 deductible is a way of discouraging those types of zoning decisions. Since the zoning deductible was enacted, IRMA put into place optional higher deductibles. As the coverage document is now, the zoning deductible does not stack on top of a higher deductible that a member may choose. Staff recommended that the coverage document be amended to require that the zoning deductible is stacked on top of a member's chosen deductible. After much discussion, a motion was made by Brennan and seconded by Vana to approve the amended changes distributed to the committee. The motion carried.

VI. ARLINGTON HEIGHTS COVERAGE AMENDMENTS

Cedillo reported that the staff memo is to approve a coverage amendment providing a stated SIR \$2 million applicable for Arlington Heights from June 1, 2017 to May 1, 2018. At the December 14, 2016 Board meeting, the IRMA board approved their membership application. Arlington Heights communicated to IRMA that they intend to take membership before their board on May 15th. If approved there has to be an additional revision to clarify the coverage for Arlington Heights to carry them through the expiration date of their current coverage through HELP. HELP provides Arlington Heights excess reinsurance from \$2 - \$12 million and IRMA will be providing coverage up to the \$2 million. Because IRMA's current SIR is \$3 million an amendment is required to clarify that Arlington Heights initial coverage with IRMA is at \$2 million. A motion was made by Wachtel and seconded by Vana to approve the amendments to the IRMA coverage documents for Arlington Heights. The motion carried.

VII. REVISED EARLY INTERVENTION PROGRAM

Cedillo reported that there are updates by staff on the Early Intervention Program. There were 3 additional programs added: Critical Incident Management Program, Safety First Program and The Rapid Response Team. Garvey mentioned that last year an entire intervention policy was approved that was geared towards pre-litigation. The additional programs also involve early intervention so the early intervention policy has been expanded into an umbrella, which covers the pre-litigation and the other programs. Swahlstedt gave an overview to the committee of each of the programs that were added to the early intervention program. It was recommended to have a one page flyer for prime contact names and phone numbers.

VIII. LITIGATION SUCCESSES

Cedillo commented next is the memo on Litigation Successes. There is a nice write up on each of the cases. Ely commented that if there are any questions she is happy to answer them.

ADDITIONS TO AGENDA

None

X. EXECUTIVE SESSION

A motion was made by Wachtel and seconded by Peterson to move into Executive Session to discuss matters of: review of closed session minutes, Executive Director's Performance Review, and pending litigation pursuant to 5 ILCS 120/2(c)(21) and (11) respectively.

A roll call vote was called and the motion carried.

Back in regular session, a motion was made by Peterson and seconded by Maziarek to approve the Executive Session Minutes of February 9, 2017. A voice vote was called and the motion carried.

XI. CONFIRMATION OF NEXT MEETING

Cedillo reported that the next scheduled meeting of the CCLC would be Thursday, September 7, 2017 at 9:30 a.m. at the IRMA Office.

XII. ADJOURNMENT

At 12:09, a motion was made by Wachtel and seconded by Peterson to adjourn the meeting. A voice vote was called and the motion carried.

Submitted by:

Accepted by:

Susan Garvey
Director of Legal Services

Julia Cedillo
Chair, Coverage, Claims & Litigation Committee

New Litigated Liability Claims
 May 1, 2017 - August 30, 2017

Received	Member	Attorney	Type	Description
5/1/2017	Bloomingtondale	Yambert	GLBI	Pltf inj on pedestrian bridge
5/9/2017	Westmont	Yambert	GLPD	3rd party complaint filed by builder; flooding issues
5/10/2017	Rolling Meadows	O'Reilly	GLPOL	Alleged age discrimination
5/10/2017	Woodridge	Best	GLLEA	Excessive force and Monell liability
5/10/2017	West Dundee	Hartigan	GLLEA	Warrantless Entry
5/17/2017	NIPSTA	Yambert	GLBI	Premises liability case; fell from roof
5/17/2017	Kenilworth	Yambert	GLBI	Premises liability; injured at member's garage
5/18/2017	Park Forest	Sotos	GLLEA	False arrest, false imprisonment, state law mal pros; indemnification
5/25/2017	Cary	Best	GLBI	Trip and fall on sidewalk
6/6/2017	East Hazel Crest	Hartigan	GLBI	Trip and fall on sidewalk
6/30/2017	Clarendon Hills	O'Reilly	GLBI	Trip and fall over curb transition to new driveway
7/26/2017	Hanover Park	Querrey	EI	Early Intervention - alleged ADA violations
7/26/2017	Oak Brook	Best	GLPOL	EEOC - Harassment / Age Discrimination
7/28/2017	Hanover Park	Best	GLLEA	False Arrest, Excessive Force, Conspiracy
7/27/2017	Tinley Park	Hartigan	GLLEA	Falsely reported incident as armed robbery; false testimony
7/28/2017	Hanover Park	Best	GLLEA	Pro Se plaintiff; alleged violation of civil rights; issued tickets while driving

Closed Litigated Claims - May 2017

Adjuster	Claim Number	Claimant	Event Date	Date Closed	Member	Claim Type	Description	Verdict/Outcor	Attorney Firm	Indemnity	Defense
Zarcone	164420-01	Tinley Sparks Inc	3/23/13	5/4/2017	Village of Tinley Park	GLPOL	Alleged violation of Civil Rights	Vol. Dismissal (Prior to Trial);	Querrey & Harrow	0	229,417
Nowak	166648-01	Brand, Mark	1/5/2015	5/22/2017	Village of Buffalo Grove	GLBI	Slip & Fall	Vol. Dismissal (Prior to Trial);	Chilton Yambert	1/0/1900	12/5/1930
Zarcone	166806-01	Alexander, Aquita	5/27/14	5/16/2017	Village of Homewood	GLBI	Injured during fall from bicycle.	Settled Prior to Trial;	Chilton Yambert	22,500	19,195
Nowak	167402-01	Cohen, Linda	4/23/15	5/11/2017	Village of Northbrook	GLBI	Trip & Fall	Settled Prior to Trial;	Hartigan & O'Connor;	60,000	16,392
Zarcone	169716-01	Love, Zachary	3/31/15	5/18/2017	Village of Addison	GLPOL	Violation of Fair Debt Collections Practices Act	Dismissed - MTD;	O'Reilly Law Offices	0	12,586
Zarcone	170260-01	Cegielski, John	5/16/16	5/23/2017	Village of Glencoe	GLPOL	Alleged age discrimination	Vol. Dismissal (Prior to Trial);	O'Reilly Law Offices	0	7,017
Zarcone	171485-01	Dehner, Valerie	1/1/16	5/30/2017	City of Rolling Meadows	GLPOL	Alleged discrimination based upon age	Settled Prior to Trial;	Member attorney handled	0	0

Closed Litigated Claims - June 2017

Adjuster	Claim Number	Claimant	Event Date	Date Closed	Member	Claim Type	Description	Verdict/Outcor	Attorney Firm	Indemnity	Defense
Zarcone	162344-01	Redmond, Ramonita	3/5/13	6/5/2017	Village of Hillside	ALBI	Accident while plowing.	Settled Prior to Trial;	Hartigan & O'Connor;	1,004,810	74,922
Zarcone	164740-01	Battista, Mark	12/12/13	6/14/2017	Village of Western Springs	GLPOL	Alleged Disability & Retaliation	Settled Prior to Trial;	Best Vanderlaan & Harrington;	216,200	113,025
Nowak	166704-01	Frankiewicz, Carl	2/1/15	6/5/2017	Village of Roselle	ALPD	Plow struck vehicle during U-Turn	Settled Prior to Trial;	Hartigan & O'Connor;	20,217	14,569
Nowak	166832-01	Radcliffe, Linda	2/20/15	6/27/2017	Village of Tinley Park	GLBI	Fell into open manhole.	Vol. Dismissal (Prior to Trial);	Chilton Yambert & Porter	0	9,055
Zarcone	166945-01	Stringer, Rico	3/11/15	6/29/2017	City of Lake Forest	GLPOL	Alleged employment discrimination	Settled Prior to Trial;	O'Reilly Law Offices	120,000	82,770
Nowak	169909-01	Ziembra, Karen	7/30/16	6/8/2017	Village of Riverside	GLBI	Stepped in a hole	Tendered;	Hartigan & O'Connor;	0	3,786
Nowak	170215-01	Voroslova, Janina	5/26/16	6/13/2017	Village of LaGrange	GLBI	Alleged fall in parking garage.	Settled Prior to Trial;	Hartigan & O'Connor;	1,500	5,557
Nowak	170928-01	Wilton, Jennifer	2/22/16	6/8/2017	Village of Clarendon Hills	GLBI	Trip and fall on sidewalk.	Vol. Dismissal (Prior to Trial);	Chilton Yambert & Porter	0	566

Closed Litigated Claims - July 2017

Adjuster	Claim Number	Claimant	Event Date	Date Closed	Member	Claim Type	Description	Verdict/Outcor	Attorney Firm	Indemnity	Defense
Zarcone	161202-02	O'Brien, Diane	8/14/12	7/26/2017	Village of Woodridge	ALPD	Squad rear ended motorcycle. 7177	Settled Prior to Trial;	Chilton Yambert & Porter	3,912	332

Zarcone	161267-01	Bank of Camden	12/7/10	7/11/2017	Village of West Dundee	GZ	Law suit/Violation of Ordinance	Settled Prior to Trial;	Querrey & Harrow	30,000	129,154
Zarcone	162251-01	First Merit Bank	9/13/08	7/10/2017	Village of Roselle	GLPD	Storm drainage system damaged property.	Not Guilty	O'Reilly Law Offices	0	216,524
Zarcone	171270-01	Greeley, John	9/14/16	7/17/2017	Village of Hazel Crest	GLPOL	Alleged age discrimination and	Vol. Dismissal (Prior to Trial);	O'Reilly Law Offices	0	5,859

Closed Litigated Claims by Firm

Best Vanderlaan									
Claim Number	Event Date	Date Opened	Date Closed	Member	Claim Type	Description	Verdict/Outcome	Indemnity	Defense
164740-01	12/12/2013	3/18/2014	6/14/2017	Village of Western Springs	GLPOL	discrimination and retaliation	Settled Prior to Trial	216,200	113,025

Chilton Yambert									
Claim Number	Event Date	Date Opened	Date Closed	Member	Claim Type	Description	Verdict/Outcome (Prior to Trial);	Indemnity	Defense
166648-01	1/5/2015	1/27/2015	5/22/2017	Village of Buffalo Grove	GLBI	Slip & Fall	Vol. Dismissal (Prior to Trial);	0	11,297
166806-01	5/27/2014	2/18/2015	5/16/2017	Village of Homewood	GLBI	Injured during fall from bicycle.	Settled Prior to Trial	22,500	19,195
166832-01	2/20/2015	2/824/2015	6/27/2017	Village of Tinley Park	GLBI	Fell into open manhole.	Vol. Dismissal (Prior to Trial);	0	9,055
170928-01	2/22/2016	1/20/2017	6/8/2017	Village of Clarendon Hills	GLBI	Trip and fall on sidewalk.	Vol. Dismissal (Prior to Trial);	0	566
161202-02	8/14/2012	8/15/2012	7/26/2017	Village of Woodridge	ALPD	Squad rear ended motorcycle. 7177	Settled Prior to Trial	3,912	332

Hartigan & O'Connor									
Claim Number	Event Date	Date Opened	Date Closed	Member	Claim Type	Description	Verdict/Outcome	Indemnity	Defense
167402-01	4/23/2015	6/3/2015	5/11/2017	Village of Northbrook	GLBI	Trip & Fall	Settled Prior to Trial;	60,000	16,392
162344-01	3/5/2013	3/12/2013	6/5/2017	Village of Hillside	ALBI	Accident with snow plow	Settled Prior to Trial;	1,004,810	74,922
166704-01	2/1/2015	2/4/2015	6/5/2017	Village of Roselle	ALPD	Plow struck vehicle during U-Turn	Settled Prior to Trial;	20,217	14,569

169909-01	7/30/2016	8/2/2016	6/8/2017	Village of Riverside	GLBI	Stepped in a hole	Tendered;	0	3,786
170215-01	5/26/2016	9/21/2016	6/13/2017	Village of LaGrange	GLBI	Alleged fall in parking garage.	Settled Prior to Trial;	1,500	5,557
O'Reilly Law Offices									
Claim Number	Event Date	Date Opened	Date Closed	Member	Claim Type	Description	Verdict/Outcome	Indemnity	Defense
169716-01	3/31/2015	7/7/2016	5/18/2017	Village of Addison	GLPOL	Violation of Fair Debt Collections Practices Act	Dismissed - MTD;	0	12,586
170260-01	5/16/2016	9/3/2016	5/23/2017	Village of Glencoe	GLPOL	Alleged age discrimination	Vol. Dismissal (Prior to Trial);	0	7,017
166945-01	3/11/2015	3/16/2015	6/29/2017	City of Lake Forest	GLPOL	Alleged employment discrimination	Settled Prior to Trial;	120,000	82,770
162251-01	9/13/2008	2/28/2013	7/10/2017	Village of Roselle	GLPD	Storm drainage system damaged property.	Not Guilty	0	216,524
171270-01	9/14/2016	3/24/2017	7/17/2017	Village of Hazel Crest	GLPOL	Alleged age discrimination and retaliation	Vol. Dismissal (Prior to Trial);	0	5,859
Querrey & Harrow									
Claim Number	Event Date	Date Opened	Date Closed	Member	Claim Type	Description	Verdict/Outcome	Indemnity	Defense
164420-01	3/23/13	2/12/2014	5/4/2017	Village of Tinley Park	GLPOL	Alleged violation of Civil Rights	Vol. Dismissal (Prior to Trial);	0	229,417
161267-01	12/7/10	8/24/2012	7/11/2017	Village of West Dundee	GZ	Lawsuit/Violation of Ordinance	Settled Prior to Trial;	30,000	129,154

LITIGATION MANAGEMENT REPORT

07/31/17

Liability

	Best Vanderlaan			Chilton, Yambert, Porter			Hartigan			O'Reilly		
	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD
ADJUSTER:												
Brown			\$0.00			\$0.00			\$0.00			\$0.00
Mucha			0.00			0.00			0.00			0.00
Garvey			0.00			0.00			0.00			0.00
Heard			0.00			0.00			0.00			0.00
Klimczak			0.00			0.00			0.00			0.00
Kajtsa			0.00			0.00			0.00			0.00
Marks-Cutler			0.00			551.40			0.00			0.00
Metzger			0.00			0.00			0.00			0.00
Nowak	3	186.00	7,791.40	13	1,047.50	79,138.13	9	3,183.02	78,854.17	8	34,476.32	34,476.32
Styles			0.00			0.00			0.00			0.00
Swahlstedt			0.00			0.00			0.00			0.00
Zarcone	23	29,186.33	171,039.97	17		65,636.70	17	54,910.94	230,892.58	12	35,325.41	173,157.33
TOTAL	26	\$29,372.33	\$178,831.37	30	\$1,047.50	\$145,326.23	26	\$58,093.96	\$309,746.75	20	\$35,325.41	\$207,633.65

	Querrey & Harrow			Sotos			Laner Munchin			Langhenry, Gillen, et al		
	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD
ADJUSTER:												
Brown			\$0.00			\$0.00			\$0.00			\$0.00
Mucha			0.00			0.00			0.00			0.00
Garvey			0.00			0.00			0.00			0.00
Heard			0.00			0.00			0.00			0.00
Klimczak			0.00			0.00			0.00			0.00
Kajtsa			0.00			0.00			0.00			0.00
Marks-Cutler			0.00			0.00			0.00			0.00
Metzger			0.00			0.00			0.00			0.00
Nowak	3	883.50	24,197.30	1		480.50	1		0.00			0.00
Styles			0.00			0.00			0.00			0.00
Swahlstedt			0.00			0.00			0.00			0.00
Zarcone	13	23,343.50	314,541.27	7	26,454.35	286,614.46	1		4,573.50	1	4,077.50	34,183.11
TOTAL	16	\$24,227.00	\$338,738.57	8	\$26,454.35	\$287,094.96	2	\$0.00	\$4,573.50	1	\$4,077.50	\$34,183.11

Workers' Comp

	Rusin, Maciorowski			Power & Cronin			Bryce Downey			In House		
	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD
ADJUSTER:												
Brown			\$0.00			\$0.00			\$0.00			\$0.00
Mucha	9	8,459.70	19,591.80	8		15,471.77	4	2,422.00	10,533.08	36		0.00
Garvey			0.00			0.00			0.00			0.00
Heard	20	7,310.80	41,301.95	16		31,724.5	4	2,597.91	22,311.14	39		0.00
Klimczak	20	4,476.20	46,004.20	31		39,718.25	15	2,442.60	25,023.92	26		0.00
Kajtsa	2		0.00			0.00			0.00			0.00
Marks-Cutler			0.00			0.00			0.00			0.00
Metzger			0.00			0.00			0.00			0.00
Nowak			0.00			0.00			0.00			0.00
Styles	1		7,443.10	2		1,716.00			283.50	2		0.00
Swahlistedt			0.00			0.00			108.00			0.00
Zarcone			992.00			28.80			0.00			0.00
TOTAL	52	\$20,246.70	\$115,333.05	57	\$0.00	\$88,659.32	23	\$7,462.51	\$58,259.64	103	\$0.00	\$0.00

Special Counsel

	Greg Rode			Swanson			Rosenthal, Murphey			TOTALS		
	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD	# of Open Cases	\$ Paid Month	\$ Paid YTD
ADJUSTER:												
Brown			\$0.00			\$0.00			\$0.00			\$0.00
Mucha			922.80			0.00			0.00	57	\$10,881.70	\$46,519.45
Garvey			0.00			0.00			0.00	0	\$0.00	\$0.00
Heard	2	10,555.80	23,730.60			0.00			0.00	81	\$20,464.51	\$119,068.19
Klimczak	8	100.80	30,544.18			0.00			0.00	100	\$7,019.60	\$141,290.55
Kajtsa			0.00			0.00			0.00	2	\$0.00	\$0.00
Marks-Cutler			0.00			0.00			0.00	0	\$0.00	\$551.40
Metzger			0.00			0.00			0.00	0	\$0.00	\$0.00
Nowak			0.00			0.00			0.00	38	\$5,300.02	\$224,937.82
Styles			0.00			0.00			0.00	5	\$0.00	\$9,442.60
Swahlistedt			0.00			0.00			0.00	0	\$0.00	\$108.00
Zarcone			0.00	2	3,515.00	10,343.00			0.00	93	\$176,813.03	\$1,292,002.72
TOTAL	10	\$10,656.60	\$55,197.58	2	\$3,515.00	\$10,343.00	0	\$0.00	\$0.00	376	\$220,478.86	\$1,833,920.73



MEMORANDUM

TO: Coverage, Claims, & Litigation Committee

FROM: Susan Garvey, Legal Director
Keena Marks-Cutler, Supervisor of Liability Claims Operations

DATE: August 30, 2017

RE: Defense Counsel Performance Survey Report

Purpose: The purpose of this memorandum is to report to the CCLC regarding staff's efforts to monitor attorney performance through contact with members.

Background/Discussion: In order to ensure that members are properly represented by counsel and to identify potential problems with representation as early in the litigation process as possible, we contact members with active litigation to inquire as to attorney performance. Since the last CCLC, we discussed attorney performance with 15 members and the following information was obtained related to attorney performance:

- O'Reilly Law Office:
 - Feedback: Molly is very thorough and keeps everyone in the loop. The member trusts the firm.
- Best, Vanderlaan & Harrington:
 - Feedback: Allie Burnett is wonderful, thorough and keeps her word. Both Allie and Laura are incredible. The firm keeps members well-informed.
- Querrey & Harrow:
 - Feedback: Keeps members informed and very responsive. Up front with the member regarding the adverse liability picture and pointed out the member's faults. Areas of opportunity: a member advised that the firm is over zealous and the member did not agree with the firm's liability assessment of the case.
- Hartigan & O'Connor:
 - Feedback: Timely email responses. Counsel asks the right questions and seems proactive. Mike Hartigan takes charge and the interactions have been good.
- Chilton, Yambert & Porter:
 - Feedback: Jon is very thorough and keeps members in the loop. Counsel provides good explanations and responds quickly. Jon reached a great settlement on a case with high exposure. Rebecca does a good job and she the member was pleased to see that she included the defendant in all communications so he felt informed and included as well.

Recommendation: This is provided for the Committee's information.

SG/ds

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MEMORANDUM

TO: Coverage, Claims & Litigation Committee

FROM: Dan LeTourneau, Director of Risk Management Services

DATE: August 21, 2017

RE: Property Appraisal Proposal – Contract Extension

Action Requested: Approve the five-year property appraisal contract extension offer included in the current Marshall & Stevens offer at current contract terms for 2018-2022.

Background/Discussion:

During discussions with several prospective property appraisal service providers, it has been confirmed that all new service providers would need to re-appraise the current IRMA member property schedule in order to support the current member/IRMA appraised values. This complete re-appraisal process would result in considerable cost to the membership in higher appraisal costs, while the current contract provides for a phone audit of 15 members per year as part of a re-appraisal process at a much lower overall cost.

The current property appraiser, Marshall & Stevens, provides a wealth of detailed reports using Microsoft Excel, which is the preferred format of commercial excess property insurance companies. They are familiar with IRMA members and their facilities, and continue to control costs which have been an overall average annual cost of \$19,038 from 2013-2017. The contract extension will include a phone audit of 15 members per year to ensure accurate appraisal information on an ongoing basis. Considering the current revenue challenges being experienced by our membership, approving the contract extension offer with our current provider at the proposed contract terms is the most cost effective option.

The 2018-2022 contract pricing is outlined below:

- Phone Only Audit of 15 members per year at **\$4,500** with no annual increase (current contract \$9,500 was phone audit with onsite visit), therefore, this is a **decrease of \$5,000, or 53%**
- Portfolio Update (all buildings & lifts/pumps) at **\$5,000** with no annual increase (current contract \$4,850 or 3% increase), **increase of \$150**
- New Buildings, Lift & Pump Stations:
 1. **\$325** for each new major building - \$500,000 or greater (current \$320 or 1.6% increase), **increase of \$5**
 2. **\$100** for each new minor building or remodeled building (current \$99 or 1% increase), **increase of \$1**
 3. **\$35** for each new lift & pump station (current \$36 or 3% reduction), **decrease of \$1**

Only the above “New Buildings, Lift & Pump Stations” rates increase 2% each year. The Phone Audit and Portfolio Update pricing remains the same throughout the five-year contract term.

Since the number of new buildings, lift & Pump Stations appraised varies per year, we expect the contract to cost approximately \$15,000 annually, which is a savings of \$4,000 over the current contract five-year average appraisal costs, or a 21% overall reduction, mainly due to reduction in the cost of the new phone audits.

Recommendation: Approve the proposed five-year contract extension option from current property appraiser Marshall & Stevens for 2018-2022.

DLT/II

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MEMORANDUM

TO: Coverage Claims and Litigation Committee

FROM: Susan Garvey, Director of Legal Services

DATE: August 28, 2017

RE: CCL Committee Preliminary Budget

Action Requested: Approve the Committee's preliminary budget for 2018.

Background/Discussion: In accordance with the IRMA Budget Policy and the Standing Committees' Statements of Responsibility, each standing committee reviews and approves its portion of the budget. The Administration and Finance Committee and the Executive Board then review the detailed operating budget in total.

The Coverage Claims and Litigation Committee is responsible for four categories, the specific detail of which is provided in the attached Budget Report:

Contractual Services – 3rd Party Claims Administration: Gallagher Bassett continues to administer a 1986 workers' compensation wage differential claim. Annual cost is expected to be \$600.

Contractual Services – Claims Audit: The independent claims audit was completed in 2016. There is no budget needed for this category for 2018.

Contractual Services – Insurance Brokerage Consultant Services: in 2014, the agreement with JLT Towers Re was extended for 5 years effective November 1, 2014 through October 31, 2019. The fee for the fourth year, November 1, 2017 through October 31, 2018 is \$102,000. The agreement provides for a 5% annual performance bonus, if earned. The budget item for Insurance Brokerage & Risk Management Services for 2018 is increased by \$5,100 to \$107,100 to accommodate for the 5% bonus on \$102,000.

Staff is recommending the 5% bonus for JLT Re. JLT Re has exceeded or met all goals with regard to the coverage renewal. JLT Re did extensive work in researching and developing the cyber liability coverage that was instituted in 2017. Additionally, JLT Re has expended significant efforts in assisting members in pursuing individual non-program related policies and placing optional coverage for members.

Contractual Services – Property Appraisal Services: The budget item for Property Appraisal Services for 2018 is decreased to \$15,000 from the \$22,000 in the 2017 budget. The renewal and extension of the Property Appraisal Contract is provided under separate memo.

Commercial Insurance Services: We are still awaiting some final figures from our reinsurers for the 2018 Excess/Reinsurance Coverage Renewal. This budget item will be sent to the Committee under separate cover before the September 7, 2017 Committee meeting.

Recommendation: Approve the Committee's 2018 preliminary budget as presented.

SG/ds



MEMORANDUM

TO: Training and Education Committee
Coverage Claims and Litigation Committee
Member Relations Committee
Administration and Finance Committee
Executive Board

FROM: Margo Ely, Executive Director
Dan LeTourneau, Director of Risk Management
Rita Boserup, Finance Director
Susan Garvey, Legal Director

DATE: August 30, 2017

RE: Revenue vs. Expenditures – Exposure Base

ACTION REQUESTED: Concur with staff’s recommendation to appoint an Ad Hoc Committee to draft an amended ByLaw to provide a new definition of expenditure/expense in order to switch from revenue base to expenditures/expenses as the “denominator” in the IRMA contribution formula.

BACKGROUND: Currently, the IRMA member financial process starts with the revenue base worksheet. Each member fills out a worksheet reporting their audited revenues based on criteria in the Bylaws. The worksheet is reviewed, any adjustments made, and an agreed upon number is determined for each member. These revenue base numbers are used in determining the annual contribution paid by each member.

The process to determine each member’s annual contribution uses an average of the last five years of revenue bases and 5 years of member losses. The losses use a sliding scale that limits the impact on a member’s contribution for unusually large claims.

Historical Studies of the Revenue Base:

IRMA has used a revenue exposure base since its inception in 1979, but not without issue. Over the past thirty plus years, IRMA has considered whether to rely on an alternative exposure base multiple times. Each time, however, the membership has chosen the status quo. It is undisputed that revenue is closely correlated with risk; we have multiple actuarial studies that support this conclusion. While the IRMA membership has chosen to remain with the revenue base, the studies over the years have resulted in several deductions to the revenue calculation in the Bylaws. Ultimately, each study came back to the same conclusion that revenue correlated well with member risk and was easily and accurately verifiable via each member’s financial audit.

The Insurance Marketplace:

Along with the results of the studies, there are other pertinent factors that have supported the continued use of revenue base exposure throughout the history of IRMA. For example, IRMA has historically had a growth strategy of limited, selective growth without an active marketing program. During this time, IRMA’s pricing was always well below any commercial insurance program and the experience modifier was not even applied until after a new member had three years of IRMA specific claim experience. There were also cyclical “hard” insurance markets where commercial insurance was either not readily available at all to municipal entities or was available at a very high cost. Public entities were the first to feel such “hard” markets as

commercial insurers did not understand nor value the municipal risk. Members joined IRMA with little competition from commercial insurance.

Times have changed. We are in the longest “soft” insurance market cycle in history, represented by low premium costs and extensive capacity for new business, including public entities. Commercial insurers have abundant capacity to write new business and can “buy” the business at a premium rate below expected losses with the ability to increase future premiums at will.

Challenges in Member Recruitment and Retention:

The Board has directed staff to recruit members in a more assertive fashion than in IRMA’s history. Changing insurance programs is a project that rarely makes the top 10 list of priorities for any municipality for several reasons. First, insurance matters are usually outside of the comfort zone of staff and elected officials. Second, insurance is not a “core” government function and as long as there are no problems or impetus for the project, it tends to be passed over. Third, insurance matters/claims are primarily confidential and difficult to discuss at a public meeting.

With the expiration of the HELP contract in May of 2018, we have an excellent opportunity for growth. HELP is a high level excess pool consisting of 13 municipalities. The pool provides GL coverage above a self-insured retention of \$2 million. Arlington Heights, our most recent new member, is a member of the HELP pool. The expiration of the current 10 year HELP contract is a challenge for continued HELP membership since the statutory provision requiring only 120 days notice to withdraw from an intergovernmental risk pool is now in place. This situation presents IRMA with the reality that members of the HELP pool are likely to “shop” the marketplace. We are eager to be considered.

As staff has pursued conversations with potential members, the Revenue Base has been a constant obstacle to discussions. This challenge is also present for member retention; the Revenue Base was given as a primary factor in the decision of the Village of Buffalo Grove to withdraw from IRMA. Municipal entities are consistently looking to increase revenues and the correlation with risk is difficult to quantify from a layman’s perspective. It is extremely difficult to market a program that is perceived to “penalize” a municipality for increasing revenues, by an increase in insurance costs. For all of these reasons, staff recommends that we change from Revenue Base to Expenditures.

The Switch From Revenues to Expenditures:

Our actuaries have opined that expenditures are sufficiently correlated with risk and are an appropriate replacement for revenue as the exposure base in the contribution formula. Expenditures/expenses correlate well with risk and are commonly an indicator of increased activities and assets associated with risk. The majority of a municipality’s expenditures is personnel costs; the majority of IRMA loss fund costs are in worker’s compensation claims. In the long run, revenue and spending for a non-profit organization are about equal. IRMA’s actuary, Milliman, has not run a correlation analysis between expenditures/expenses and revenue because we need to define “expenditures/expenses” first. This project will be focused on defining “expenditure/expense” as closely to our current definition of “revenue” as possible in order to maintain as much consistency among member contributions as possible.

With regard to member stability in contributions, which is certainly a priority, our actuaries have also opined that they expect expenditures/expenses to be closely aligned with revenues. However, without seeing the final expenditures/expenses by member, Milliman cannot estimate the actual impact on member contributions due to a change in exposure base. Milliman states that the actuarial expectation, consistent with the bell curve, is that this type of revision can have an impact on 20% of the membership with 10% on the positive side and 10% on the negative side. However, to the extent that the analysis results in significant changes to certain member contributions, there are options such as blending or possibly a 5 year phasing that can mitigate the impact.

The migration from revenues to expenditures/expenses requires thoughtful consideration to an appropriate “Expenditure/Expense” definition. Without a consistent definition and understanding of what “expenditure” is, we cannot run an analysis. It is for this reason that staff recommends the creation of a Ad Hoc Committee with the direction to draft the Definition of Expenditures/Expenses, with appropriate deductions, to be presented no later than the first Administration and Finance Committee meeting in 2018. The goal is to be ready with a contribution model that relies on expenditures/expenses for the 2019 fiscal year.

What Does it Mean to You?

The decision to move away from a revenue base contribution formula should be based on considerations common to all pool members, the forward thinking goals of the organization and the importance of maintaining stability in the financial structure for all members. This decision should not be based on a certain member’s contribution in a given year. In order for staff to present a specific analysis of the impact to individual members for this transition, the Ad Hoc Committee project must be finished so that we have a definition of Expenditure/Expense and a list of potential deductions. An important direction for the Ad Hoc Committee is to develop definitions, deductions, and a transition plan that avoids large swings in member contributions. With this direction, the Ad Hoc Committee will provide a stable and equitable definition and implementation plan for all IRMA members. Moving to an expenditure/expense based formula does not change the overall annual contribution that IRMA needs to operate.

RECOMMENDATION: Concur with Staff’s recommendation to base contributions on expenditures/expenses rather than revenues, and form an Ad Hoc Committee to draft the definitions and deductions.



MEMORANDUM

TO: Coverage, Claims and Litigation Committee
Administration and Finance Committee

FROM: Margo Ely, Executive Director

DATE: August 30, 2017

RE: Potential for Supplemental Assessment to 4 Withdrawn Members

PURPOSE: The purpose of this memorandum is to advise the IRMA membership of a possible future supplemental assessment to 4 withdrawn members attributable to a recent settlement arising from a 2006 case.

BACKGROUND/DISCUSSION: As a result of a recent settlement, it is likely that we will be required to issue a supplemental assessment to 4 withdrawn members.

The Case:

On September 18, 2006, two paramedics who worked for the Village of Carpentersville responded to a 911 call regarding a 4 month old baby who was not acting normal. The paramedics responded and after assessment, concluded the baby did not need to be transported. A few hours later, they were called again because the baby was not breathing. Ultimately, the baby suffered from sepsis and has severe, permanent and disabling injuries that require extensive medical treatment and 24/7 care. After 10 years of litigation, the case recently settled for \$3,000,000.

The Financial Issue:

Every year, our actuary, Milliman, projects how much money the pool will need for all claims that will be incurred in that year. This money goes into that year's loss fund for the payment of claims. As claims are received and develop each year, we adjust each year's balance from our "reserves" to assure sufficient money is available to pay the claims in that year. So, for example, if a certain claim year has \$1,000,000 in reserves but there is a development in a case from the year that results in an increase in reserves from \$1,000,000 to \$2,000,000, then we transfer the \$1,000,000 from the pool's member reserve fund. We limit this "transfer" of reserves to/from only members who were IRMA members participating in that claim year.

In the year 2006, IRMA had a self insured retention of \$5,000,000. The Lopez case was a 2006 claim and was reserved at \$500,000 for settlement value from 2008 until 2017. This was not a sufficient reserve. It was the last open liability claim in the 2006 claim year, so Milliman had recommended the 2006 reserve balance be reduced accordingly each year, in prior years, as the remaining 2006 open claims were closed. As of 2017, claim year 2006 only had \$900,000 left in reserves. As such, we transferred money from the members reserve fund from the 2006 members' specific accounts in order to pay the settlement.

In 2006, IRMA had 78 members, 14 of which are no longer IRMA members. Of the 14 withdrawn 2006 members, 4 do not have sufficient reserves with IRMA to contribute their portion toward this settlement. The exact number of this "deficit" will be determined after our 2018 audit. At this point, here are the potential supplemental assessments: Country Club Hills (\$37,000), Highland Park (\$17,000), Palatine (\$268,000), and South Elgin Fire (\$1,000).

The IRMA Bylaws:

Sections 3.06 and 3.07 of the IRMA Bylaws, specifically address Supplemental Assessments (attached). Section 3.06 provides, in relevant part, that supplemental assessments may be required “when the Annual Contributions for any fiscal year are insufficient to cover Loss Fund payments for claims and lawsuits for that year.” For purposes of calculating the assessment, Section 3.03 provides “The Supplemental Assessments for each fiscal year shall be calculated based on each Member’s Initial Contribution for that fiscal year, without inclusion of any Member Experience Modifier calculations or payments made to the Members’ Reserve Account.” Finally, the bylaw explicitly provides that withdrawn members remain liable for Supplemental Assessments.

The Fix Moving Forward:

This situation raises at least two issues for consideration moving forward. The first issue is assuring sufficient money is maintained in every claim year to avoid supplemental assessments. It should be noted that this has not previously occurred, so this circumstance is “an outlier.” Of relevance, we transfer excess or negative reserve balances for each claim year into/from the members reserve fund after a claim year becomes 5 years old, which has the potential to deplete available money in the claim year as claims develop. Therefore, we have implemented a more rigorous review of the remaining open claims in a year that is 5+ years old to make sure that reserves are accurate to keep sufficient funds in that year to cover the open claims.

The second issue relates to our Reserve Policy and its application to withdrawn members. In this case, Carpentersville withdrew from IRMA in 2007 and, as such, this 2006 case was never calculated in Carpentersville’s experience modifier, since the 2007 contribution used losses from 2003-2005. This second issue is further explained, and remedied, in a separate agenda item titled “Recommended Revision to Reserve Policy for Withdrawn Members.”

RECOMMENDATION: This memorandum is provided for information only.

ME/ds



MEMORANDUM

TO: Administration and Finance Committee
Coverage, Claims & Litigation Committee
Membership Relations Committee
Executive Board

FROM: Margo Ely, Executive Director

DATE: August 30, 2017

RE: Revision to Reserve Fund Policy

ACTION REQUESTED: Concur with staff's recommendation to revise the Reserve Fund Policy in order to assure that claim costs are recouped from withdrawn members in the same manner as it is through the experience modifier for current members.

BACKGROUND: The IRMA Bylaws provide that a member who withdraws from IRMA can receive a refund of any remaining Reserve Funds in accordance with the Reserve Fund Policy and Procedure if it provides IRMA 9 months advance notice. The current Reserve Fund Policy and Procedure (attached) provides that members who provide this required notice will receive a refund in percentages of its reserve fund over a period of 5 years starting with the second full fiscal year after the member's departure. Ultimately, after the 5 years, IRMA keeps 25% of the member's final contribution until all claims are closed for all years that the municipality was a member of IRMA.

DISCUSSION: The financial structure of IRMA reflects a balance of the benefits of sharing risk through pooling, as well as individual member accountability through the experience modifier. As an intergovernmental pool specializing in municipal needs, our contribution formula has been revised over the years in order to provide stable, smooth contributions for our members and to protect them from "spikes" attributed to periodic high losses. The sliding scale, applied to the incurred losses used in calculating the experience modifier, provides this protective function. (See attached sliding scale). In addition, the experience modifier considers losses blended over a 5 year rolling period.

The experience modifier part of the contribution formula provides individual accountability to members by charging members a portion of their claim costs as part of their contribution to the pool. As such, members with lower losses, when compared with the pool as a whole, receive a credit to their contribution and those lower performing members with higher losses are charged a debit and pay a higher contribution cost. This is how individual members pay for a portion of their own losses. However, this methodology for individual accountability is not accounted for when a member withdraws from IRMA. As such, the withdrawn member is not contributing toward their losses once they have left IRMA. Of particular significance, with IRMA's occurrence based coverage, we could continue to receive claims from withdrawn members for occurrences that occurred while they were members of IRMA for up to two years after the withdrawal date, which is the statute of limitations for federal cases. In addition, the costs of the open claims that the withdrawn member leaves with the pool should be calculated into the experience modifier and collected from the withdrawn member's reserve fund.

Staff recommends revision to the Reserve Fund Policy and Procedure in order to recoup the experience modifier costs for five years after a member withdraws from IRMA. This change appropriately charges withdrawn members for the claims that stay with the pool and is consistent with our methodology for all current members. This change also assures that the withdrawn member is not receiving a windfall as a result of the pool inappropriately subsidizing their claims. The attached revision to the Reserve Fund Policy and Procedure provides for this experience modifier charge for the first five years following a member's withdraw and thereafter, the refund of the reserve will proceed as it currently provides. No credit or refund will be given for reduced losses during this same period.

This revision to the Reserve Fund policy should be applicable immediately. The IRMA Bylaws make clear that the reserve fund policy can be amended . (Section 3.08 – Members Reserve attached).

RECOMMENDATION: Approve the revisions to the policy.

ME/ds
Attachments

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**IRMA
MEMBERS' RESERVE FUND
POLICY AND PROCEDURE**

I. INTRODUCTION

The purpose of the Members' Reserve is to provide immediate temporary cash in the event of large claims that exceed the Loss Fund and to assure the payment of Supplemental Assessments by Members.

The Members' Reserve also serves as the first source for payment of Supplemental Assessments. Contributions to the Members' Reserve will apply to each member's losses only for those Program Years in which they are Members, and any Members' Reserve surplus for any Program Year will be allocated only to those who were Members during such year.

Several capitalized terms are used in this Policy document but are not defined. Such terms will have the same meanings as they do in IRMA's Contract and ~~By-Laws~~Bylaws, as may be amended from time to time (the "~~By-Laws~~Bylaws").

II. MINIMUM/MAXIMUM LEVELS OF FUNDING

Based on independent actuarial recommendations, the Members' Reserve shall have minimum and maximum levels of funding established annually by the Board in conjunction with IRMA's budget. The recommended minimum level, for the Fund as a whole, shall be equal to the amount of two general and automobile liability coverage self-insured retentions. The recommended maximum level shall be equal to 20% of the total liabilities of IRMA (excluding Member balances), plus 20% of the next year's uncollected contributions, plus the Members' Reserve amounts attributed to withdrawn or expelled Members, existing on the last day of the fiscal year of IRMA immediately preceding the date such level is established, as based on IRMA's audited financial statements for such date. However, in establishing the minimum and maximum levels of funding of the Members' Reserve, the Board shall give consideration to extenuating circumstances, which may provide the need to maintain other minimum or maximum levels on a temporary basis. Any adjusted, temporary levels will be reviewed no less often than annually. Each Member shall maintain a minimum balance in the Members' Reserve equal to 25% of its current Program Year's Initial Contribution, effective after the Member has made its total original payment to the Members' Reserve.

III. NEW MEMBERS

Upon joining IRMA, a Member shall be required to separately pay to the Members' Reserve an amount equal to ~~50~~25% of its first full year's Initial Contribution. This Members' Reserve payment shall be payable by a Member at the same time as the initial contribution or in three, four or five equal annual installments as selected by the Member, commencing on January 1 of the year following the year in which it becomes a Member. Except as otherwise provided below, a Member shall participate in IRMA for the same number of years as the number selected by the Member for payment of the member's reserve. However, should a Member elect to withdraw from IRMA as provided in Section 4.05 (B) of the IRMA Contract and Bylaws prior to the completion of the Members' Reserve payment, the outstanding balance of the Members' Reserve payment shall be due and payable at the time of notice of withdrawal.

IV. EXISTING MEMBERS

In addition to the funds paid to the Members' Reserve by new Members, funds currently in the Members' Reserve, which were paid by existing Members, will be governed by this Policy.

V. SEPARATE ACCOUNTS

A separate Member's Reserve account for each Member shall be maintained on IRMA's books and records and shall reflect such Member's payment to the Members' Reserve, accrued investment income, transfers to/from individual Program years (as described below), and Excess Surplus Fund. Members will receive annual statements that display all activity in their individual accounts. However, the Members shall not be entitled to the use of any funds in their accounts unless and until they are distributed in accordance with this Policy. Until any such distribution, such funds shall remain a restricted asset of the Member and may not be pledged, assigned or otherwise encumbered by any Member.

VI. TRANSFER OF FUNDS FROM/TO INDIVIDUAL YEARS

The funds allocated for each Program Year will earn investment income based on the funds remaining from time to time for that year. The investment income earned for each Program Year will be credited to an Amounts Due Members account established for that year covering all of the Members during such year. Annually, when the actuary prepares the Reserve Adequacy Report, entries will be made to adjust the Loss Funds for individual Program Years to the appropriate levels, with offsetting entries made to Amounts Due Members. For each Program Year that is five (5) years old or less, no transfer of funds will be made between the Amounts Due Members account and the Members' Reserve. Instead, such funds will remain in the Amounts Due Members account during that five (5) year period and continue to accrue interest. For all Program Years more than five (5) years old, (i) any positive balance in the Amounts Due Member accounts for such years will be transferred to Members' Reserve, and (ii) any negative balances in the Amounts Due Member accounts for such years will be replenished from Members' Reserve funds. ~~However, 50% of the 2003 Amounts due Members will be transferred to Members' Reserve in 2006 and 50% of the 2004 Amounts due Members will be transferred to Members' Reserve in 2007.~~

Commented [BR1]: No longer relevant

The Members' Reserve funds for each Program Year will be allocated to each Member based on its respective percentage of the Initial Contributions (without inclusion of the Member Experience Modifier, payments to the Members' Reserve, or other payments) for that year and the calculation of the Member's contribution to the loss fund for that year less the Member's expected payments for claims from the loss fund for that year. As a result, a Member's contribution to the Members' Reserve will be used to cover only its portion of losses for those Program Years in which it was a Member. Also, any surplus in the Members' Reserve for any Program Year will be allocated only to Members during that year. The amounts transferred to/from individual Program years for each Member will be tracked to assure that the maximum Supplemental Assessment for each Member for that year is not exceeded.

VII. CREDITS AND ASSESSMENTS

In conjunction with IRMA's annual budget, the level of the Members' Reserve will be reviewed by the Board. The amount of funds in the Members' Reserve in excess of the

maximum level may be credited to each Member's Excess Surplus Fund in the form of an interest income credit, in the same ratio as each such Member's funds in the Members' Reserve bears to all of the funds in the Members' Reserve. This ratio will be determined as of the last day of IRMA's fiscal year immediately preceding the date that the budget is approved.

The Excess Surplus Fund may be used by the Member to offset its Initial Contributions for future years, to pay for allocated costs of settlement or jury award for counts not covered by IRMA, to use its Excess Surplus Fund balance to offset Supplemental Assessments, or to request a check from IRMA at quarterly intervals. All remaining credits will be available in future years to offset contributions and earn investment income. In no event will any money from the Member's Excess Surplus Fund be transferred back to individual years to replenish negative balances in the Amounts Due Members without the authorization of the Member.

When the Total Members' Reserve Fund balance decreases to the minimum level of funding, no funds will be transferred to any individual Program Years. If the cash for any Program Year is less than that year's Loss Fund, an Amounts Due From Members will be declared. However, no Supplemental Assessments will be issued for such year until the cash for the year falls to \$50,000.

VIII. **FORMER MEMBERS**

Any Member that provides notice of withdrawal nine months or more in advance of the end of IRMA's fiscal year and any member that has been expelled from IRMA in accordance with Section 4.03 of the IRMA Contract and Bylaws shall have an amount equal to their annual experience modifier debit ~~in~~ withdrawn from its Member's Reserve Fund for the first ~~five~~ six years following withdraw/expulsion from IRMA. The experience modifier shall be calculated using the same method as used for active members, except that the number of loss years in the calculation will decrease from the initial 5 years of losses down to a single year as time progresses. Prorations or equalizing factors may be applied to this calculation.

Thereafter, any such former member shall have an amount equal to 25% of their final year's Initial Contribution remain in its Member's Reserve until all years for which it was a Member have been closed. On the date the Member leaves IRMA, the Member's Excess Surplus Fund will be transferred into the former Member's Reserve Fund and will be distributed in accordance with this policy. If they are not in default of any payments or obligations to IRMA, they shall receive a refund of the balance in excess of 25% of their final year's Initial Contribution of their Members' Reserve account (including investment earnings thereon) after the first six years of deductions based on annual experience modifier debit. Thereafter, over a five (5)-year period. This ~~any~~ refund shall be payable to the Member as follows:

- 1) Ten percent (10%) at the end of the seventh ~~second~~ full fiscal year of IRMA after the Member's departure from IRMA.
- 2) Twenty percent (20%) at the end of the eighth ~~third~~ full fiscal year of IRMA after the Member's departure from IRMA.
- 3) Thirty percent (30%) at the end of the ninth ~~fourth~~ full fiscal year of IRMA after the

Member's departure from IRMA.

- 4) The balance (less the 25% mentioned above) at the end of the ~~tenth~~^{fifth} full fiscal year of IRMA after the Member's departure from IRMA.

On an annual basis after the audited financial statements have been issued, each former Member's Reserve Fund shall be reviewed to assure the appropriate balance of 25% of the final year's initial contribution is in the account. Any money in excess of the required amount shall be refunded. The withdrawing or expelled Member shall remain fully liable for any Supplemental Assessments attributable to the years of its membership in IRMA. If a former Member is in default of any of its obligations to IRMA, IRMA shall have the right to apply funds from the Members' Reserve account of such Member to satisfy the obligations. When all Program years in which the former Member had membership in IRMA have been closed as prescribed by the ~~By-Laws~~^{Bylaws}, the former Member will receive the remaining balance of its Members' Reserve account.

Approved 7/27/94
Revised 5/31/00
Approved revision 6/25/03
Approved revision 12/13/06
Approved revision 6/27/07
Approved revision 6/24/09
Approved revision 3/31/10
Approved revision 10/27/10
Approved revision 10/31/12
Approved revision 10/30/13
Approved revision 10/29/14

**INTERGOVERNMENTAL RISK MANAGEMENT AGENCY
CONTRACT AND BYLAWS**

COLUMN A	COLUMN B
Amount of Self-Insured Retention for General & Automobile Liability	Maximum Supplemental Assessment Multiplier
\$2,000,000 or less	1.0
\$2,000,001 to \$3,000,000	1.3
\$3,000,001 to \$4,000,000	1.4
\$4,000,001 to \$5,000,000	1.5
\$5,000,001 to \$6,000,000	1.6

If the amount of the Self-Insured Retention for general and automobile liability for any fiscal year shall equal \$6,000,001 or more, then the Board shall establish a Supplemental Assessment Multiplier which, based on an independent actuarial audit, shall be sufficient to support that level of Self-Insured Retention. Supplemental Assessments shall be payable by MEMBERS to IRMA upon at least forty-five (45) days prior notice; provided that if the Supplemental Assessment being assessed any MEMBER to pay claims and lawsuits for any fiscal year exceeds the amount of such MEMBER's Initial Contribution for that year, then at least one hundred eighty (180) days prior notice shall be required.

- (B) **Former Members.** MEMBERS who have been expelled or have withdrawn from IRMA shall remain liable subsequent to their expulsion or withdrawal for Supplemental Assessments required for those years that they were MEMBERS.

Section 3.07 – Limited Annual Supplemental Assessment Liability to IRMA

The maximum liability of a MEMBER to IRMA for Supplemental Assessments for any fiscal year of IRMA shall not exceed the maximum Supplemental Assessment capability for that year as determined in accordance with the preceding section.

Section 3.08 – Members' Reserve

- (A) **Establishment and Purpose.** An account shall be established by the Board of Directors, known as the Members' Reserve Account, to pay unexpected large claims that exceeded a Program Year's initial expected loss fund projections; to serve as a first source of payment of supplemental assessments; and to provide a mechanism to distribute any excess funds to the Members.
- (B) **Members' Reserve Policy and Procedure.** A Policy and Procedure shall be adopted by the Board to implement this Contract and Bylaws and each Member shall be required

**INTERGOVERNMENTAL RISK MANAGEMENT AGENCY
CONTRACT AND BYLAWS**

to pay into this account as determined by the Policy and Procedure as amended from time-to-time.

Section 3.09 – Audit and Records

- (A) **Financial Statements of Members.** Each MEMBER shall annually submit to IRMA its:
- (i) financial statements, which have been audited by an independent Certified Public Accountant, and
 - (ii) other documents required by IRMA to determine the amount or rate of the pool contributions.
- In the event that the audited financial statements contain a qualified opinion or no opinion, the IRMA staff will determine if the statements can serve as a basis for the Revenue Base calculation and forward their recommendation to the Administration & Finance Committee for approval. If the IRMA staff determines that such statements will not serve as a basis for the Revenue Base calculation, then the MEMBER will be considered to have failed to provide IRMA with the required financial statements and the Revenue Base will be determined using the method below. Such required financial statements shall be submitted to IRMA promptly upon their preparation. The determination of a MEMBER's Initial Contribution and Revenue Base for a particular fiscal year shall be based upon such MEMBER's revenues reported in its most recent annual financial statements as of the date of that determination. The financial statements for any given year may not be used more than once for purposes of making such determination except that the failure of a MEMBER to provide IRMA with the information required under this section by the date established by IRMA shall result in IRMA increasing the prior fiscal year's Revenue Base of the MEMBER by twenty-five percent (25%) for purposes of determining the MEMBER's next fiscal year's Revenue Base. IRMA will provide the MEMBER with written notification of this decision and the MEMBER will have the right to appeal any such decision in accordance with the procedures in Section 4.04 hereof.

If a MEMBER is delinquent in submitting its audited financial statements for a second consecutive year, but has submitted to IRMA audited financial statements for the prior fiscal year that was subject to the above 25% surcharge, then the prior year's Revenue Base shall be recalculated based on such submitted audited financial statements for the sole purpose of calculating the current year's Revenue Base, provided that such audited



MEMORANDUM

TO: Coverage, Claims & Litigation Committee

FROM: Margo Ely, Executive Director
Susan Garvey, Director of Legal Services

DATE: August 29, 2017

RE: Assignment of Special Counsel for Zoning Cases

PURPOSE: The purpose of this memo is to advise the Committee that the Executive Director has appointed a special counsel to defend members in zoning cases, as needed.

BACKGROUND: Section 2.06 of the IRMA Bylaws outlines the powers and obligations of the Executive Director and subsection (ix) provides: "Selecting and assigning counsel to all lawsuits, subject to the provisions of this Contract and Bylaws and the policies of IRMA." There are times that special counsel has been retained based on the needs of the defense of the case and in the best interests of the pool and the defendants named in the case. In order to explicitly provide for that occurrence, revisions to Section 6.06 of the IRMA Claims Manual were approved in 2016. The revised section 6.06 is attached.

Section 6.06 of the IRMA Claims Manual, Selection Guidelines for IRMA Counsel now provides in pertinent part:

"In addition to the selection of Approved Panel Counsel, the Executive Director shall have the responsibility and authority to appoint Special Counsel in certain litigated cases where there is a need for an attorney that is not one of the Approved Panel Counsel. The appointment of Special Counsel shall be reported to the committee at the next regularly scheduled committee meeting. In these circumstances, the qualification of the attorney based on the specific case shall be the primary consideration. Each such Special counsel shall comply with the IRMA Litigation Guidelines."

Except in very limited circumstances, IRMA follow the Bylaw provision regarding assignment of counsel, providing members with IRMA panel counsel for defense of zoning matters. Those limited circumstances have involved considerations of the needs of the defense of the specific case which is the basis for the previous change to Section 6.06.

DISCUSSION: IRMA has accepted the defense of 17 zoning cases in the past 10 years. More recently, there have been two cases in which IRMA has determined that because of the nature of a case and the strict zoning principles involved, it was in the best interest of the member to appoint the member's counsel to represent the member in the lawsuit.

Additionally, IRMA has recently assigned John Murphey of Rosenthal Murphey Coblentz & Donahue as special counsel in two zoning matters. John Murphey has been practicing in the areas of municipal law, including zoning and land use issues, for over 40 years. He serves as

corporate counsel to over a dozen Illinois municipalities, school districts and community college districts and has handled numerous cases involving fair housing, due process and zoning and land use matters. Mr. Murphey clearly has the experience and knowledge to serve as special counsel for IRMA members in zoning and land use matters. Mr. Murphey has agreed to accept the IRMA rates and comply with the litigation and billing guidelines. Staff's intent is to use Mr. Murphey in future cases when it is determined that specialized counsel is appropriate for zoning and land use matters.

RECOMMENDATION: This is provided for the Committee's information.

ME:SG/ds

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SECTION VI

SECTION 6.06

SELECTION GUIDELINES FOR IRMA COUNSEL

I. SELECTION OF IRMA APPROVED PANEL COUNSEL

The Executive Director shall have responsibility for the evaluation, selection, assignment and dismissal of Approved Panel Counsel.

The process for selecting Approved Panel Counsel shall be monitored by the Coverage, Claims & Litigation Committee and shall include the following general guidelines:

- The Executive Director shall report the need to add additional counsel to the Coverage, Claims & Litigation Committee.
- If there is a need to add additional counsel, a report of several prospective law firms will be developed by the Executive Director. The Executive Director will evaluate proposals, conduct interviews as needed, and report the final decision to the committee.

Every two years, the Executive Director and Coverage, Claims & Litigation Committee will evaluate the Approved Panel Counsel. If, in the opinion of the Executive Director, a particular defense firm(s) is not in compliance with established standards, the Executive Director shall have the option of either removing the firm from the approved list or placing this firm on a "watch list" which would be a probationary measure allowing the Executive Director to monitor performance on a periodic basis. Whether or not the firm remains or is removed from the Approved Panel Counsel list depends on future compliance with remedial steps recommended by the Executive Director. The Executive Director shall have the overall, primary responsibility to monitor the costs and performance of the claims unit and defense counsel, and the overall responsibility for the coordination of all claims and claims litigation. As the overall policy administrator of IRMA, the Executive Director shall attempt to resolve all disputes between the member, claims unit and defense counsel so as to assure the orderly implementation of the policy and guidelines outlined herein, consistent with the Bylaws and policies of IRMA.

In addition to the selection of Approved Panel Counsel, the Executive Director shall have the responsibility and authority to appoint Special Counsel in certain litigated cases where there is a need for an attorney that is not one of the Approved Panel Counsel. The appointment of Special Counsel shall be reported to the committee at the next regularly scheduled committee meeting. In these circumstances, the qualification of the attorney based on the specific case shall be the primary consideration. Each such Special counsel shall comply with the IRMA Litigation Guidelines.



MEMORANDUM

TO: Coverage, Claims and Litigation Committee

FROM: Margo Ely, Executive Director

DATE: April 28, 2017

RE: Litigation Successes

Purpose: The purpose of this memorandum is to highlight recent litigation successes.

IRMA Files Amicus Brief Supporting City's Decision to Terminate Officer

The decision to terminate an employee is undertaken after careful consideration. When the employee has due process rights in a collective bargaining agreement, it frequently provides for the right of arbitration. In a recent case, the City of Crystal Lake terminated a police officer after 13 instances of discipline over his 12 years of employment. The final infraction occurred when the officer failed to properly investigate a drunk driver who was involved in an accident in the middle of the night, and released the driver back on the road. The driver was stopped in a neighboring community 8 minutes later with a blood alcohol concentration of .205 – more than two and a half times the legal limit. After being advised of this information, the officer denied any wrongdoing and took no responsibility for his conduct.

The Chief of Police believed that he could no longer trust the officer to keep citizens safe based on his poor performance, lack of judgment and decision-making abilities. After the arbitration hearing, the arbitrator found that the officer had indeed failed to conduct a proper investigation and agreed that a "significant penalty" was warranted, but reduced the termination to a 60 day suspension and a last chance order. The City appealed to the arbitrator's decision.

An appeal of an arbitration decision requires that the City show that the order was contrary to public policy. In this case, IRMA filed an amicus "friend of the court" brief highlighting the public policy of protecting municipalities from liabilities and unnecessary costs to the taxpayers. The case is before the Illinois Appellate Court for the 2nd District and a decision is expected in the next year. Here is a link to our [amicus brief](#).

Defense Counsel Obtains Dismissal of Labor Complaint

It is not uncommon for IRMA members to deal with union grievances. The process is outlined in the collective bargaining agreements and, most of the time, issues resolve. Those issues that don't resolve may proceed to arbitration. Similarly, employee grievances may be appropriately filed with the Illinois Labor Relations Board. Recently, an employee who was unsatisfied with this "administrative" process filed a lawsuit against one of our members. We won a motion to dismiss and the case was thrown out of court.

In this case, the Plaintiff alleged that when the seniority list was posted, he was not given proper senior benefits based upon his total years of service. He asserted that placement on the seniority list affects an employee's benefits and earnings and he alleged that the failure to grant

him the proper seniority constituted a violation of his rights. As a result, the Plaintiff filed a three Count Complaint in the Circuit Court of Cook County for an Injunction, Breach of Union's Duty of Fair Representation, and Civil Conspiracy. Defense counsel promptly filed a motion to dismiss the matter with prejudice, premised upon the basis that claims arising from and based upon alleged unfair labor practices can only be pursued through the exclusive jurisdiction of the Illinois Labor Relations Board.

After hearing oral arguments on the motion to dismiss, the Judge agreed that the Court did not have subject matter jurisdiction over the claims asserted in the Complaint, because those claims were subject to the remedies provided under the Labor Act. As a result, the Judge dismissed the Complaint in its entirety with prejudice. Therefore, the Plaintiff is barred from bringing an action on the same claim in the future, and that's a good outcome!

Federal Court Throws out Resident's Complaints of New Development

Many residents fight commercial development near their homes. Zoning law is fairly complex, but one thing is clear – a board's approval of a zoning change is not a federal case. In a recent case, the judge followed the well-established law on this topic and dismissed the federal case filed by a resident who claimed that a retail center devalued his property, prevented him from selling his home, caused him to suffer from chronic sleep deprivation, forced him to withdraw from Harvard University, etc.

Even though the Plaintiff alleged violations of his constitutional rights, conspiracies among elected officials and developers and racketeering, the court concluded that the case did not satisfy the "special ripeness doctrine," which requires property owners to exhaust available state remedies before filing a federal case. In this instance, despite creative pleadings, the case was really a takings claim, which belongs in local and state proceedings, not federal court. Quoting another similar case, "Since federal courts are not boards of zoning appeals, it follows that litigants who neglect or disdain their state remedies are out of federal court, period."

Appellate Court upholds Board Decision to Terminate Battalion Chief

Employment issues are challenging and most managers contemplate termination decisions with great attention, focus and deliberation. The majority of our public safety employees are legally entitled to "due process" – notice and an opportunity to be heard – before their employment is terminated. This "process" can be provided either through a grievance and arbitration hearing or at a hearing before a Board of Fire and Police Commission which is comprised of local residents. Recently, the Illinois Appellate Court for the 2nd District affirmed a Board's decision to terminate a Battalion Chief after 18 years of employment.

The primary charge was that the Battalion Chief refused to sign a 15-page Performance Improvement Plan, which outlined several areas in need of improvement, including a lack of organizational and leadership as well as personal appearance and hygiene. The Board concluded that the Battalion Chief's refusal to sign the PIP, after a full and fair opportunity to understand the consequence of his refusal, constituted insubordination. After a lengthy hearing, the Board agreed that termination was the appropriate decision.

The most important "hearing" in these cases is always at the Board level, since the judicial review is very deferential. It is the Board members who hear the testimony, observe the witnesses and make determinations of credibility. As the Appellate Court explained, "we will not

disturb the decision unless we are able to conclude that all reasonable and unbiased persons, acting within the limits prescribed by the law and drawing all inferences in support of the finding, would agree that the finding is erroneous, and that the opposite conclusion is clearly evident.” With respect to the Plaintiff’s claim that termination was unreasonable and too severe, the Appellate Court stated, “With respect to judicial review of an administrative decision involving discipline of public employees, it is well settled that a reviewing court cannot substitute its judgment for that of an administrative agency if the charges are not arbitrary or unreasonable, the evidence sustains the charges and the decision of the agency is related to the requirements of service.”

ME/ds

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IRMA's 4th Annual Education Summit NIU—Naperville

FACING THE CHALLENGES TOGETHER: LESSONS LEARNED

At IRMA, our main objective is to make sure that each member is equipped with the knowledge, training and tools to prevent losses from occurring and to mitigate costs when they do.

Although we are sharing our risk within the pool we rarely have the opportunity to discuss the challenges we face and the lessons we learn.

This year, we are going back to basics with workshop-style break-out sessions focused on sharing our lessons learned and plan for the future.

Not only will Delegates, Alternates and City Managers benefit from this workshop, all upper management including Department Heads and Supervisors, will find solutions to risk management issues within your organization.

By the end, you should gain further insight and understanding on:

8:00 a.m.—9:00 a.m.

> IRMA SERVICES

9:15 a.m.—10:30 a.m.

> ZONING ISSUES
> FITNESS FOR DUTY

10:45 a.m.—12:00 p.m.

> IRMA FINANCIAL EQUATIONS
> POLICE EXPOSURES
> IMPACT OF CAREER ENDING INJURIES



▶ OCTOBER 16, 2017

▶ REGISTRATION
7:30 AM—8:00 AM

▶ PROGRAM
8:00 AM—12:00 PM

▶ NO COST

NIU—NAPERVILLE
1120 E Diehl Rd.,
Naperville, IL

12:00PM—2PM

BOARD MEETING
LUNCHEON

REGISTER NOW

When registering, please select only one morning and one late morning concurrent session



IRMA

The Risk Management Solution for Local Government