



**COVERAGE, CLAIMS & LITIGATION COMMITTEE**  
**Meeting Minutes**

**Thursday, May 5, 2016**  
**IRMA Office – 9:30 a.m.**

**PRESENT:** Julia Cedillo, Chair  
Carol LeBeau  
Kate Andris (via phone)  
Bryon Vana  
Art Malinowski  
Sharon Peterson  
Kevin Wachtel  
Barbara Maziarek

**ALSO PRESENT:** Margo Ely  
Mary Henzler  
Margie Zarcone  
Susan Garvey  
Keena Marks  
David Mekarski, Olympia Fields

**ABSENT:** Dennis Bubenik  
Katy Rush

**I. CALL TO ORDER**

Chair Cedillo called the meeting to order, roll was taken and a quorum declared.

A motion was made by Malinowski and seconded by Wachtel to approve Kate Andris joining the meeting via teleconference as she was qualified to do so. A voice vote was called and the motion carried.

**II. APPROVAL OF MINUTES - February 4, 2016**

A motion was made by Vana and seconded by Malinowski to approve the Coverage, Claims & Litigation Committee Meeting Minutes of February 4, 2016. A voice vote was called and the motion carried.

**III. REVISED CCL COMMITTEE ROSTER**

Cedillo reported that the committee roster has been updated to reflect Kate Andris' move from Oak Brook to Hanover Park. The roster now shows Kate's current information including her phone number at Hanover Park.

**IV. CLAIMS & LITIGATION REPORTS**

- A. Claims Operational Report
- B. Litigation Reports
  - 1. New Liability Claims Report
  - 2. Closed Liability Claims Report
  - 3. Litigation Management Report

Cedillo asked if anyone had any questions or comments on the Claims Operational Report. Garvey asked the group whether they found this report helpful. Garvey noted that there might be something else that would give the committee a little bit more information. Wachtel stated he would like to see something that would help the committee identify overall trends and causation for those trends; whether it is in this report or a narrative report. Cedillo noted that perhaps bullets at the bottom of the report could identify the trends.

Ely noted that staff has been looking at this and whether it may be better as a bar chart. This is just a snapshot of a quarter and Ely stated that she didn't know how useful a quarter comparison year-by-year really is. After a brief discussion, Garvey stated that staff would work on creating a different type of report that outlines causation and shows a 12 month rolling total and bring it back to the Committee.

Cedillo stated that the next report was the New Liability Claims Report. Vana asked about the claim that describes, "Chief's orders allegedly violated civil rights." Ely explained that this case is pretty complicated and is evolving from an employment termination. We have both a litigated ADA case and an arbitration case in this case. The Chief is doing an investigation into misconduct now and had asked for police officer personal phone records and the union went into court and said that was a privacy violation.

Cedillo asked if anyone had any questions on any of the closed litigated claims or the Litigation Management Report. Hearing none, Cedillo moved to the next Agenda item.

#### **V. OLYMPIA FIELDS REQUEST FOR INTEREST FREE PAYMENT PLAN**

Cedillo welcomed David Merkarski, Village Administrator of the Village of Olympia Fields who had asked to be present at the meeting.

Cedillo stated that staff put together a memo on this item. Olympia Fields is requesting a three year payment plan to reimburse IRMA for the payment of a settled verdict in favor of the plaintiff in the case. The IRMA Bylaws do allow for the reimbursement for delayed payment, but with an interest rate identified as the investment rate in the current budget document. That rate is currently at 5%. Olympia Fields is requesting a payment plan with no interest and have cited a couple of reasons. The first reason would be the impact on their finances. They would be able to absorb the first year's payment in their budget, but looking out to the other two it would be a problem for their reserve policy. Another reason cited by Olympia Fields is that the decision of not having a court reporter, which was a decision made by counsel and IRMA, resulted in an inability to file an appeal, which Olympia Fields feels may have been successful. Also in the packet, there is a note that at least the defense counsel feels that a successful appeal is unlikely.

Cedillo noted that this item is for discussion and decision by the committee.

Mekarski asked to address the committee to present the position of the Mayor, Board of Trustees and the Village Attorney. First and foremost, Mekarski stated he wanted to publically thank IRMA for their professionalism above and beyond any level of measurement. Mekarski explained that this is a case they have been fighting for 3-4 years. We had excellent legal representation provided by IRMA. This was a records clerk in the police department that essentially was suspected of embezzling about \$38,000. She was an at will employee. We hired an auditing firm to do a forensic audit and spent about three months establishing strong probable cause that she was the only individual that could have embezzled the dollar amounts.

Mekarski stated that, nonetheless, John O'Reilly and his firm did a stellar job. In fact, we won the case on Summary Judgment by the judge. The suit alleged that the employee was fired not for embezzling, but fired in retaliation for filing a workers' compensation claim three years earlier. There was no rational nexus in any of the testimony for retaliation, with the exception of the Deputy Chief who basically perjured himself on the

stand, not a single corroborated that statement. John O'Reilly prevailed in every aspect of this case. We were all prepared for a major victory. Ultimately, the jury made an arbitrary and capricious decision. We strongly believe -- the Mayor, the Board of Trustees, but most of all our Village Attorney -- that we easily would have won this case on appeal. We were not able to do that because it was a unilateral decision not to have a court reporter, so it was impossible for us to file a real substantive appeal.

In response, Ely stated that while the Village Attorney does have this opinion, he wasn't present at the trial. John O'Reilly, the defense counsel, has very clearly stated that there were no appealable issues in this case. The Village's position is that there wasn't sufficient evidence to find in favor of the plaintiff. On appeal, it would have to be shown that the jury made the decision without any evidence that supported the decision. The Deputy Chief's testimony and the plaintiff's testimony was sufficient for this jury to render this verdict. Ely stated that the lesson learned here, which is true anytime you are considering termination of a long term employee that doesn't have a disciplinary record, is that you should do a severance agreement.

Ely noted that in the one previous circumstance where a member requested a payment plan, the CCLC approved the plan in May and the member made the full payment in July, so they never had to make payments. So the decision by the CCLC in that previous request was that they had to pay interest.

Ely stated that under the policy there isn't any action required by the CCLC or even the Board, if a member asks for a payment plan. From a process standpoint, we are asking the CCLC if there should be an exception to the policy and bylaws for purposes of interest. If you vote, yes, then this will go to the Executive Board and then to the full Board for decision.

Cedillo asked for comments from the committee. Vana stated that he was sensitive to Olympia Fields, but didn't feel any reason to make a change to the policy. Maziarek stated she agreed with that statement. Malinowski stated that he worries about other situations where there is interest being assessed. For instance, if someone wanted the interest waived on their annual contribution, we would probably come to the same conclusion. Malinowski stated that he was sensitive to this situation; however, we need to be as consistent as possible in what we do in practice and obviously that we follow policy and bylaws.

Andris asked what the interest rate was the last time we approved a payment plan. Ely stated that the interest rate is variable and it goes with whatever we have projected for the current budget year. The current budget year has a 5% interest for our investments. Wachtel stated that the interest rate has never gone over 7%.

Cedillo stated that in the discussion she is hearing that we should point to our bylaws and the policy that is in place and uphold the policy and not recommend a deviation from the policy.

A motion was made by Malinowski and seconded by Vana to deny the request for an interest free payment plan for Olympia Fields. A voice vote was called and the motion carried.

Mekarski thanked the committee for their consideration.

**VI. CLAIMS AUDIT UPDATE**

Cedillo reminded the committee that the last time they met they looked at a proposed timeline for this process. The timeline called for a final report on June 1st. That would allow for us to review a draft report today if we had it. However, the field work has not yet taken place, but is scheduled for May 9th. This committee doesn't meet again until September. Staff is recommending that we continue the due date of the final audit report to September 1, 2016. This will allow the Committee an opportunity to review the draft report and provide comments and questions before the final report is prepared for presentation to the committee at its September 15th meeting.

Cedillo asked what might be a good process if there are questions or concerns in reviewing the draft report. What would be the best way to get the feedback to staff -- by email to Garvey? Garvey agreed that the committee could send comments back to her and we can look at those and either respond or talk to the auditor about that question. Ely stated that another option would be to schedule a special meeting of the CCLC for this particular topic. The other option is to appoint a point person on the committee that would be the one providing feedback to the staff. Cedillo said she would be fine with being the point person. Malinowski said they would only be opposed if we need to have a special meeting. Garvey stated that if we did, that meeting would be scheduled.

A motion was made by Malinowski and seconded by Peterson to continue the due date of the final claims audit to September 1, 2016. A voice vote was called and the motion carried.

**VII. AD HOC COMMITTEE ON MUTUAL AID ORGANIZATIONS UPDATE**

Cedillo noted that the committee has talked about this quite a bit over the past several months. Following this committee's discussion on the recommended outcomes from the Ad Hoc Committee, this went to the Executive Board. The Executive Board discussed that this was a lot of information and it would be great to get this sent out to the Village Managers so they have this information and can recognize within their own organizations opportunities for inserting this type of language to have meaningful change for the mutual aid organizations and task forces that their entity participates in. The Executive Board asked staff to provide a directional memo for the managers and department heads of each IRMA member. Cedillo asked if there was a timeline for when this would be sent out. Garvey stated that we would like to get it to the Board of Directors in June and then get it out from there to the managers and department heads.

Garvey also noted that if a member wants, she or Ely could come out and discuss this at their mutual aid organization or task force meetings. It was decided that this should be noted in the directional memo as well.

**VIII. ADDITIONS TO AGENDA**

Cedillo noted that a memo on Litigation Successes had been distributed as an informational item. Ely stated that these are cases that we won since the last CCLC meeting.

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Cedillo stated that she has a question from a member of the committee. When information is shared with the committee on confidential items such as the case we will

be discussing in Executive Session, does the Attorney Client Privilege exist to protect the dissemination of this information. Does it maintain its confidentiality? And whether or not the way we distribute this information to be discussed in Executive Session is an issue in terms of how they are distributed. Is it secure?

Garvey commented that there are two aspects to this. Number one, it would be protected as a part of an Executive Session. So anything we discussed as pending litigation would be protected as part of Executive Session. The attorney/client privilege is a little bit trickier. Garvey reported that she had been to a seminar a few weeks ago where they talked about attorney/client privilege being eroded a little bit. The attorney/client privilege from our perspective is really what is called the insured/insurer privilege. So when we are discussing risk management or loss control or strategies for defending a member, that is all included in the insured/insurer privilege. With the CCLC being a part of our claim strategies, we have an argument that the insured/insurer privilege is there. Garvey stated that she didn't want to say that we are 100% protected, but that along with the Executive Session part of it, we are protected as we can be.

Ely commented that having gone to a lot of closed sessions at different municipalities over the past few years, she knows that there are a lot of different practices. There are several municipalities who hand out the closed session material in the closed session and then take it back. Ely noted that in her twenty years working in municipalities, she always handed out closed session material prior to the closed session so there was an opportunity to review it and have a meaningful discussion in the closed session, and never encountered a problem with the attorney/client Privilege.

In regards to the IT security question, Ely stated that it is something that is broader than even the Executive Session discussions. Ely stated that we have encountered this question from two members, who asked us to provide assurances of security through our email system since our workers' compensation emails have a lot of confidential medical information provided in them. We have discussed this with Sikich, they have talked about emails being sent encrypted, sent with a password where you can't open it without a password. We are continuing to review this with Sikich and whether something needs to be done on IRMA's end or the member's end.

Ely stated that if this committee has concerns, we could certainly change our transmittal method for confidential closed session items. We could mail them out in envelopes marked "confidential." It was determined that that wouldn't work because it depends on who opens the mail in the municipality. Many times it is a secretary or mail clerk.

Wachtel reported that they use "Send this File" for approximately \$30.00 for the year that is password protected. You upload it to a website and send the password to those people you want to have access. Wachtel also reported that they are also clients of Sikich and for audit purposes, they have a secure web portal, where you have to have a login for both ends of that transaction. Or it could be like IMRF that has a secure message center where you have to log in.

Ely stated that we meet again for our quarterly meeting with Sikich in July to see what their recommendations are. Ely stated that the problem as she foresees it from the operational level is that claims coordinators get emails everyday on workers' compensation cases. The concern is that they won't read them because there is a password. If we started sending all of those secure with passwords, Ely stated that she didn't know whether we would stay as diligent in our oversight of the workers' compensation cases as we currently do.

Garvey recommended that the committee doesn't go back to their municipalities and discuss the cases that we have discussed in Executive Session. Because if you are ever asked a question of did you talk to anyone about this case, now essentially the insured/insurer privilege is gone because you are talking to people who don't need to know that information.

Ely stated that we can look into "Send this File" or walk the closed session documents into the meeting. Ely noted that staff would look into this and decide what method to use.

**IX. EXECUTIVE SESSION**

A motion was made by Malinowski and seconded by Wachtel to move into Executive session to discuss matters of: review of closed session minutes, pending litigation and personnel pursuant to 5 ILCS 120/2(c)(21), (11) and (1) respectively.

A roll call vote was called and the motion carried.

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A motion was made by Wachtel and seconded by Malinowski to approve the Coverage, Claims & Litigation Executive Session Minutes of February 4, 2016. A voice vote was called and the motion carried.

**XI. CONFIRMATION OF NEXT MEETING**

Cedillo stated that the next CCLC meeting was scheduled for Thursday, September 15, 2016 at 9:30 a.m. at the IRMA office.

**XII. ADJOURNMENT**

A motion was made by Wachtel and seconded by Vana to adjourn the meeting. A voice vote was called and the motion carried.

Submitted by:

Accepted by:

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Susan Garvey  
Director of Legal Services

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Julia Cedillo  
Chair, Coverage, Claims & Litigation  
Committee