

**MINUTES OF THE
ACCEL BOARD OF DIRECTORS MEETING
ONTARIO, CA
THURSDAY, OCTOBER 11, 2001**

MEMBERS PRESENT:

Tom Vance, City of Anaheim
Mary Sue Baker, City of Monterey
Ben Bankard, City of Modesto
Loron Cox, City of Ontario
Karen Thesing, City of Mountain View
Charlotte Dunn, City of Visalia (By Conference Call)
Sandra Blanch, City of Palo Alto
Brad Landreth, City of Santa Barbara
Erwin Young, City of Santa Cruz
Tom Phillips, City of Santa Monica

MEMBERS ABSENT

Patrick Flaherty, City of Bakersfield

GUESTS AND CONSULTANTS

Craig Schweikhard, Carl Warren & Company
Patricia Keefer, Carl Warren & Company
Bob Heitzman, City of Ontario
Leo Heyenrath, Heyenrath & Associates
Joan Anderson, Brown & Armstrong (By Conference Call)
Dan Howell, Driver Risk Services
Mike Simmons, Driver Risk Services
Janelle Tsujiuchi, Driver Risk Services

A. CALL TO ORDER

The meeting was called to order by Chair Tom Vance at 10:05 a.m.

Tom Vance asked for introductions since there were numerous guests present.

B. CONSENT CALENDAR

B1. Approval of Minutes – June 21 & 22, 2001 Board of Directors Meeting

A motion was made to approve the June 21 & 22 Board of Directors Meeting Minutes as presented.

MOTION: Mary Sue Baker **SECOND:** Sandra Blanch **MOTION CARRIED**

C. REPORTS

C2. Claims Committee's

It was announced that Patricia Keefer will be taking on Robert Powers' role with ACCEL.

Mary Sue Baker indicated that all items were in Closed Session.

A motion was made to convene to Closed Session pursuant to Government Code § 54956.95 to discuss pending agenda items.

MOTION: Brad Landreth **SECOND:** Loron Cox **MOTION CARRIED**

The Executive Committee reconvened from Closed Session at 11:05 a.m. Mary Sue Baker announced that the watch list was reviewed and direction was given to the Claims Administrator.

A motion was made to request that the Board of Directors accept an emergency agenda item adding an agenda item as respects a claim that requires a coverage opinion immediately because it impacts the City's defense strategy.

MOTION: Brad Landreth **SECOND:** Sandra Blanch **MOTION CARRIED**

E6. (Added Item) City of Santa Barbara Request for Coverage Opinion as Respects Casmalia Landfill Claim

Brad Landreth provided history of the claim suit. The City of Santa Barbara and Redevelopment Agency of Santa Barbara were involved in the litigation as a result of being a potentially responsible party as respects refuse deposited into the landfill. The event most likely took place after July 1, 1986, when the City became a member of ACCEL. The City has been giving loss notice to their respective insurers, including ACCEL. The City requested that each insurer provide a written statement on coverage.

Mary Sue Baker asked that the Claims Committee be given the opportunity to review this claim.

Direction was given to the Claims Committee to have the Committee work with the City to obtain the necessary information to analyze the claim, and the Committee will update the Board of Directors at the upcoming December meeting as to whether there needs to be a coverage opinion, and if so, whether such opinion should be generated by the Claims Committee or outside counsel.

C3. Liability Claims Audit

Leo Heyenrath presented the ACCEL claims audit. Leo reported that Palo Alto had been deferred because they were not prepared for the audit and that he will visit the City at a later date. Leo will also review the Loss Stratification Report provided by Driver for cross-reference.

Leo followed up with Carl Warren & Company to make sure that they are appropriately closing all of the claims that are no longer active. Mainly, these are incident reports with no exposure. He found that some of the claims administrators are not familiar with the current reporting guidelines. He will be sending information to each of the cities' claims administrators. It was suggested that Leo send copies on any correspondence to each City. Leo also indicated that he was recommending significant review of the claims value. This was a result of discussions with the City Attorney at Santa Monica. Leo is going to work with Tom Phillips on a letter for the Santa Monica City Attorney's Office.

Leo reported various issues at the City of Ontario's adjuster, Ward. He is following up directly with Ward management. He indicated two significant claims from 88/89 and 91/92 appeared on this year's loss run for the first time even though they have been closed for a long time. Tom Vance noted that Leo's practice here is to verify the accuracy of the loss run because it is used in the retro calculations. Leo believes that the Ontario files may be destroyed. Tom inquired as to whether their Records Retention Policy was applicable. Carl Warren's Records Retention Policy is seven (7) years. Leo is going to be following up on this information with the City and Ward. Loron Cox indicated that is following up internally as well.

Ben Bankard indicated that he has been informed that the City of Modesto's Risk Management Department liability claim files are not complete. The City Attorney provides written reports on some reports claims but verbal on others. Tom Vance suggested that after Ben discusses this with the Modesto City Attorney, Tom would like ACCEL to follow up as it has in the past to require formal written report from the Modesto City Attorney Department.

Leo Heyenrath indicated that with the City of Anaheim, there seems to be a problem with the way claims data is sorted; multiple claims on the same occurrence.

Direction was given to staff to write a letter to each City, indicating that the Board has adopted the report and requests a written response to the auditor's findings at the December meeting so that it can be included in the agenda packet.

A motion was made to direct the Program Administrator to issue a letter requesting a written response from each of the members, to provide response to the auditor's report, which the Board has adopted.

MOTION: Brad Landreth **SECOND:** Erwin Young

Upon further discussion, the motion was amended to have a Policy and Procedure developed for ACCEL that every year, there will be a written response to the audit from each member.

MOTION CARRIED

Leo Heyenrath will communicate ACCEL's claim reporting requirements to each of the members. Tom Phillips asked about reporting requirements for legal reports. Leo indicated that ACCEL does have reporting requirements on reportable claims. Direction was given to the Claims Committee to consider the claims reporting requirements on non-reportable claims, and bring a response back at the December meeting.

A motion was made to accept and file the claims audit.

MOTION: Mary Sue Baker **SECOND:** Tom Phillips **MOTION CARRIED**

At 12:10 p.m., the meeting was adjourned for lunch.

The meeting was reconvened at 12:45 p.m.

C1a. Resolution No. 01-04, Recognizing the Contribution of Karen Thesing

A motion was made to adopt the resolution as presented.

MOTION: Mary Sue Baker **SECOND:** Ben Bankard **MOTION CARRIED**

Tom Vance asked Patricia Keefer to describe her role at Carl Warren & Company with the ACCEL account. Patty is taking Bob Powers' role with ACCEL. When Bob left in July, Patty became the Branch Manager. She has been with Carl Warren & Company for many years, working with numerous public entities. Brad Landreth commented that Bob had brought significant experience in the intricacies of litigation and multi-form litigation. Patty discussed her experience with managing litigation.

C3. Financial and Treasurers' Report

Tom Phillips reviewed the documents in the agenda packet.

A motion was made to approve the disbursements.

MOTION: Erwin Young **SECOND:** Sandra Blanch **MOTION CARRIED**

C3b. Report of Investments

Tom Phillips reviewed the Investment Reports included in the agenda packet. It was noted that some of the federal coupons had come due and therefore the list of investments is shorter.

C3c. Estimated Interest Earnings Report

The Estimated Interest Earnings Reports were included separately with the agenda packet. Mike Simmons reviewed the history of the revisions to the changes and the restatement of the Estimated Interest Earnings Reports. Staff is requesting that the Board approve the recalculations. Mike reported that the source of the error included freezing some of the cells. Mike, Scott Manzer and Janelle Tsujiuchi have spent several hours reviewing the forms making sure that everything is accurate. The auditor has reviewed the June 30, 2001 audit report and it ties to the financial audit.

The March 1 Report has been done.

Mary Sue Baker asked if there was a March 31, 2001 report. Mike indicated that would be provided at the December meeting and has been calculated, but the accountant had not yet sent it to the Program Administrator.

A motion was made to receive and file the September 30, 2000, December 31, 2000 and June 30, 2001 reports.

MOTION: Brad Landreth **SECOND:** Loron Cox **MOTION CARRIED**

C3d. Budget

The Board of Directors received the handout of the final June 30, 2001 Budget Report. Included in the agenda packet was this year's first quarter budget. Brad Landreth inquired about financial audit and meeting room/meals. These amounts were exceeded in the budget. Brad asked that Program Administrator look into whether there was an annual cap on the contract with the budget with the auditor, because, if so, it had been exceeded. It was noted that ACCEL adopts the budget on the bottom line basis, and it was not exceeded.

C3e. 200/2001 Final Payroll Audit

Tom Phillips described that this represented the audit that generated additional premium and return premiums. The net additional amount due is \$111,165.

Brad Landreth asked whether its was appropriate to charge audit premiums based on the \$.60 rate when the excess premium is less than the amount budget. It was discussed that there was prior action at other meetings to establish the \$.60 rate and that it would be auditable.

C3f. Financial Statement Ending June 30, 2001

Brad Landreth asked whether Scott Manzer has Fidelity coverage. The Program Administrator reported that Scott Manzer was endorsed on the F&D Bond as a Consultant.

It was determined that this was a non-issue at this time.

C3g. Approval of 2000/2001 Financial Audit

Tom Phillips described the issues that delayed the production of the Financial Audit that was handed out at the today's meeting.

Mary Sue Baker asked that staff explain the issue raised in the management letter. Mike Simmons and Tom Phillips reported that there appeared to be a combination of communication issues during the process of the audit.

The Board of Directors took a few minutes to review the Management Letter so that meaningful discussion could take place.

Joan Anderson attended by conference call at 2:00 p.m. Joan indicated that the letter included the audit and was not a Management Letter. Joan found no reportable conditions. Tom Phillips asked whether Brown & Armstrong could issue a management letter that states they found no reportable conditions. He led discussion about the difficulties in the audit process. Joan indicated that Scott had been through the learning curve and that Brown & Armstrong would like to remain on the account. Tom asked that Joan reconsider the language in the "non-management" letter.

A motion was made to receive and file the Independent Auditors Report with financial statements at June 30, 2000.

MOTION: Tom Phillips **SECOND:** Sandra Blanch **MOTION CARRIED**

A motion was made to receive and file Items C3d, e and f.

MOTION: Mary Sue Baker **SECOND:** Sandra Blanch **MOTION CARRIED**

C4. Executive Committee Report

C4a. Committee Assignments

Tom Vance reported on the Committee assignments made by the Executive Committee at a properly noticed meeting:

- The Underwriting Committee shall consist of Karen Thesing, Tom Phillips and Tom Vance.
- The Claims Committee shall consist of Erwin Young, Brad Landreth and Tom Phillips.
- The Finance Committee shall consist of Tom Phillips, Sandra Blanch and Patrick Flaherty.
- The following Chairs were announced: Treasurer, Chair of the Finance Committee; Vice President, Chair of the Underwriting Committee and the Claims Committee will select a chair.

C5. Program Administrators Report

C5a. Resolution 01-05 – Changing the Official Address of the Authority by Amending the ACCEL Bylaws

A motion was made to adopt Resolution No. 01-05 as presented.

MOTION: Mary Sue Baker **SECOND:** Erwin Young **MOTION CARRIED**

C5b. ACCEL Insured Program – Advocacy Role of Board

Now that ACCEL is a fully insured JPA, the role of Carl Warren could change because Carl Warren could be seen as an advocate on behalf of the members in obtaining coverage from the excess insurer, versus a self-insured role of Carl Warren being a conservator of the pool's assets.

Tom Vance indicated that in his opinion, one of the benefits of participating in ACCEL is that JPA staff support the members in disputes with insurers, but not to the extent of hiring outside counsel. His vision was that Carl Warren and Driver filled that role, along with the Board.

The discussion considered the role of advocacy by the JPA for coverages as opposed to responsibility for coverage provided by the JPA. Tom Vance also raised the issue about whether ACCEL would in some cases not agree with the member about their approach to excess insurance and could choose not to participate in a member's request for coverage. There was general consensus that ACCEL should support the advocacy through the Program Administrator and Claims Administrator without incurring additional legal cost.

Tom Phillips described his current situation with AIG as respects an employment class action case that the City was successful in defending. The issue resolved around whether the agreement to dismiss the case was a “settlement” which would avoid coverage with AIG. The City of Santa Monica and Driver believe that AIG should pay under the current situation because the “settlement” is not of the kind that was anticipated, intended in the drafting of the clause by AIG. Tom believed that the advocacy role of Carl Warren and Driver was an important service to ACCEL members.

This item will be discussed further at the Long-Range Planning meeting.

D. UNFINISHED BUSINESS

D1. ACCEL CAJPA Accreditation Status

Mike Simmons reported that everything is complete for Accreditation except that we are missing original signed JPA Agreement for some of the members.

D2. ACCEL Strategic Planning Draft Agenda

Staff will add the advocacy role item. It was noted that the dates in the agenda packet are incorrect. It should be December 6th and 7th. It was agreed that the Strategic Planning will start on December 6th.

Tom Vance asked that his Item E2 on today’s agenda “Meeting Attendance” be moved to the Long-Range Planning Session.

Brad Landreth requested that an item be added in the organizational section called “ACCEL Function under Insured Program.”

It was agreed that the Strategic Planning Session will be on Thursday, and the regular meeting will be on Friday. Tom Vance requested that Board members not plan on leaving early on Friday since the full day meeting will take place. It was agreed that the Thursday meeting will start at 10:30 a.m., and the Friday meeting will start at 8:30 a.m.

E1. Documentation of Estimated Interest Earnings Report

Earlier at today’s meeting, the Committee reviewed the corrected reports. Staff had put documentation in the agenda to describe what operating instructions are currently in place, and staff had a question for the Board as to whether the Board wanted to look at developing a database instead of an Excel spreadsheet. Mike Simmons expressed his preference to remain in a spreadsheet format due to flexibility issues. At the last meeting, the Committee asked the Program Administrator to look into whether the Board of Directors directed the Finance Committee to review this issue after finding the errors in the last calculations.

Brad Landreth asked staff how they would prevent the errors recurring if we remained on a spreadsheet. Mike Simmons indicated that really staff needed to do more auditing of the spreadsheet. Brad indicated that he would be satisfied as long as staff assured the Board that they were going to audit regularly to prevent errors.

Mary Sue Baker asked how staff could keep assuring no errors when there is a possibility of future changes in staff. It was agreed that a Finance Committee review would not be necessary at this time to determine whether programming would be appropriate. Rather, staff should “shoulder” the responsibility to review the calculations twice a year.

E2. ACCEL Meeting Attendance

This item was moved to the Long-Range Planning Session agenda.

E3. Closed Session Letter (Draft)

Based on discussion at the last ACCEL meeting, a draft letter was included in today’s agenda packet.

This letter would be produced annually with the idea that the letter could be passed along to various people such as Finance Directors, City Managers, City Attorneys and TPAs.

Erwin Young pointed that paragraph one cited legal sections that applied to cities but not necessarily to JPAs. Erwin suggested that the letter be reviewed by legal counsel.

The Program Administrator was directed to take the letter to legal counsel for redrafting of paragraph one, sign the letter and that the letter be issued annually and upon orientation for new members.

E4. 2002 Proposed Calendar of Meetings

The Program Administrator prepared a calendar based on the current number of meetings. Erwin Young asked whether we are meeting too many times a year. It was noted that the March meeting was not in conjunction with PARMA. A question was asked whether we really needed all meetings to be two-day meetings. It was indicated that these are just “proposed” dates to block on the calendar. It was agreed that members would block these dates on the schedule and possible changes would be taken at the Long-Range Planning Session.

E5. Next Two Scheduled Meetings

The Committee next meets in December, the 6th and 7th, 2001 in Anaheim, California followed by a Friday, March 1, 2002 meeting in San Francisco.

F. CORRESPONDENCE/INFORMATION

There was general discussion on the information items.

G. PUBLIC COMMENTS

Tom Vance handed out two items for public comments. (Charlotte Dunn left the meeting at 3:54 p.m.) Tom described cases of design immunity that have crossed his desk recently in the court reports.

At 4:00 p.m., a motion was made to adjourn the meeting.

MOTION: Mary Sue Baker **SECOND:** Brad Landreth **MOTION CARRIED**