

**MINUTES OF THE
ACCEL BOARD OF DIRECTORS MEETING
ORANGE, CA
THURSDAY, DECEMBER 6, 2001
FRIDAY, DECEMBER 7, 2001**

MEMBERS PRESENT:

Tom Vance, City of Anaheim
Patrick Flaherty, City of Bakersfield
Mary Sue Baker, City of Monterey
Ben Bankard, City of Modesto
Loron Cox, City of Ontario
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

Charlotte Dunn, City of Visalia

GUESTS AND CONSULTANTS

Craig Schweikhard, Carl Warren & Company
Dan Spradlin, Woodruff, Spradin & Smart
Beverly Jensen, City of Mountain View
Jim Patricola, City of Burbank
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 Secretary, Sandra Blanch at 10:35 a.m.

Tom Vance arrived at 10:36 a.m.

Tom Vance asked attendees to introduce themselves. Beverly Jensen discussed that she is attending as a guest, not voting member. She works in the Risk Management Department of the City of Mountain View, which is currently recruiting for a replacement for Karen Thesing. Also in attendance was Dan Spradlin who with Craig Schweikhard will present at the meeting.

Item No. C2b – Public Entity Immunities

Tom Vance invited Dan Spradlin and Craig Schweikhard to make a presentation regarding sovereign immunity in the Tort Claims Act. Key points discussed included:

- ◆ Potential conflict of interest between public entity and employees suggests need for separate counsel; for example, was the employee in the course and scope? Or, because punitive damages are not necessarily reimbursed by the public entity, could the public entity's defense be managed in such a way as to create an unreimbursed punitive damages award against the employee while protecting the public entity?
- ◆ Custom and Practice – There was discussion about public agencies establishing a custom or practice of settling claims including punitive damages on behalf of employees and how future claimants and employees are treated.
- ◆ Another conflict could occur if a police officer has an interest against the settlement because the record of settlements could hamper officer's future ability to seek other employment or promotions.
- ◆ Design Changes, which are not memorialized at the time the design change is approved, do not get the design immunity and design changes approved after the actual construction do not get design immunity.

The presentation ended at 11:45 a.m. Tom Vance thanked both Craig and Dan for an excellent presentation.

Tom Vance asked that the Board amend the agenda to include the addition of a resolution honoring Karen Thesing.

A motion was made to add the resolution to the agenda.

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

The item was added as Item A-1, Resolution No. 01-07, Honoring the Contributions of Karen Thesing. President Tom Vance read the resolution to the Board.

A motion was made to adopt Resolution No. 01-07 as presented to the Board.

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

B1. Strategic Planning Session

A motion was made that ACCEL update its actuarial study by March 15, 2002, using December 31, 2001 data, evaluating a \$500,000 xs \$500,000 layer, a \$9,000,000 xs \$1,000,000 layer, \$4,000,000 xs \$1,000,000 layer and a \$5,000,000 xs \$5,000,000 layer, and authorize the Program Administrators to contract with an actuary for a cost not-to-exceed \$13,000.

MOTION: Brad Landreth

SECOND: Erwin Young

It was requested that staff describe and deliver data requirements to the members by December 31, 2001 so that the Member data can be delivered by February 1, 2002 so staff can be on top of the data requirements.

MOTION CARRIED

The consultant was directed to develop by February 15, 2002 a short whitepaper to describe the issues related to prospective versus retrospective rating plans for consideration. After the \$500,000 vs \$500,000 pool is developed, a future issue will be equity versus non-equity, and this should be discussed as a bullet in the whitepaper.

B2. ACCEL Function Under Insured Program

The Board of Directors discussed the need for ACCEL to meet regularly. There was general discussion about reducing meetings and allowing other alternatives to in-person meetings. Some key points of discussion were:

- ◆ There is a general preference to maintain the current number of meetings (5).
- ◆ The Program Administrator should continue to get the draft agendas out at least three weeks in advance so that Board members can contact staff or the President if they feel the meeting is a candidate for cancellation or a teleconference meeting.
- ◆ ACCEL had always endeavored to have a teleconference option available at the meeting sites, and if there is a cost for the teleconference, the members using that option will pay the cost of the teleconference.
- ◆ There was support for formalizing the education piece of the meetings and trying to establish different speaking topics on some of the agendas where appropriate.

The meeting was adjourned for the day at 5:20 p.m.

The ACCEL Board of Directors reconvened at 8:30 a.m. on Friday, December 7, 2001 to finish the Long-Range Planning Session.

Day two opened with Mike Simmons reviewing the strengths and weaknesses table.

B5. ACCEL Insured Program Advocacy Role of the Board

Discussion on the topic included the following:

- ◆ The dual role of staff related to claims: Should Carl Warren & Company be involved in reporting claims with AIG in advocating item?

- ◆ Staff will make the Claims Committee Chair and President aware when there is a conflict of interest.
- ◆ TPA Role. Carl Warren asked for approval to move ahead when a possible conflict is discovered.
- ◆ What if the Third Party Administrator is not successful in advocating successfully? Broker will advocate; broker will time track.
- ◆ TPA will advocate. TPA bills ACCEL for cost.
- ◆ Building a Chinese Wall – Carl Warren and Driver will appropriately note when are potential conflicts and keep personnel apart.
- ◆ Carl Warren is to approach Claims Committee Chair and President when time is of the essence Chair President when time is of the essence and bring important matters to the Board at future meetings.

2. Frequency of Litigation Reports

- ◆ Craig needs to get those reports; Craig will send a letter that the late reports or failure to report may jeopardize coverage.
- ◆ Craig is charged with the responsibility to get them from the members.
- ◆ Reportable claims are sometimes not getting reserved appropriately at member Risk Management Departments sometimes because attorneys are not providing updates (these are the \$25,000 plus claims). Claims Auditor's letter to get out to the members.
- ◆ TPA to be assertive but not aggressive.
- ◆ A Member that knows it is having an issue with reportable claims is to get support from ACCEL.
- ◆ Claims Auditor is to identify problems.

B3. How Do We Resolve Inherent Conflicts of Interest?

It was discussed that potential conflicts will always exist. We need to keep aware of them.

B4. Member Marketing

It was agreed that the ACCEL Board of Directors would table the item of ACCEL membership marketing for the March 2002 meeting,

4. Coverage Issues/Definitions/Conflicts of Coverage Terms

- ◆ It is a fact, and we will deal with it when it comes up.
- ◆ Daniel Howell will write up a coverage trigger issue and “other insurance” clause for the March 2002 meeting, also describing how coverage counts toward the limits.
- ◆ September 2002 – A subcommittee will be established for potential revitalization of the MOC effective July 7, 2003 and to reevaluate the form.

B5. Impacts of Advocacy, Costs and Political Issues

Tom Phillips described ACCEL’s early conflicts with its member, Santa Monica, and how those were resolved.

- Staff to contact Bill Statler about getting on the February CFOA agenda.

The Board of Directors adjourned from Strategic Planning at 10:45 a.m.

The regular meeting of the Board of Directors resumed at this point with Item B. Consent Calendar.

B. CONSENT CALENDAR

B1. Approval of Minutes – October 11, 2001 Board of Directors Meeting

A motion was made to approve the minutes as presented.

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

C. REPORTS

C1. President's

Tom Vance reported since Karen Thesing has left the City of Mountain View, the ACCEL Vice President position is open. Tom Phillips indicated an interest in running for Vice President. Ben Bankard nominated Tom Phillips for Vice President of the ACCEL Board of Directors.

A motion was made to close nominations.

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

Although there is no prohibition from holding the role of Treasurer and Vice President, Tom Phillips tendered his resignation.

Ben Bankard nominated Patrick Flaherty to serve as Treasurer.

A motion was made that nominations be closed.

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

Tom Vance discussed that a key benefit of Pat Flaherty participation is that his proximity to Scott Manzer who serves at the Accounting Consultant in Bakersfield.

Tom Vance called for a vote on the nominations.

THE NOMINEES WERE ELECTED

MOTION CARRIED UNANIMOUSLY BY ACCLAMATION

Mary Sue Baker requested that the Board provide strong support for the role of Treasurer as Patrick Flaherty learns the structure.

C1b. Appointment of New Committee Members

Ben Bankard expressed interest serving on the Claims Committee. The ACCEL Executive Committee appointed Ben Bankard to serve on the Claims Committee.

Tom Phillips indicated that he had no desire to leave the Underwriting, Finance and Claims Committees on which he serves.

C2. Claims Committee Report

A motion was made to move into Closed Session pursuant to Government Code Section 54956.95.

MOTION: Brad Landreth

SECOND: Ben Bankard

MOTION CARRIED

The Board of Directors moved into Closed Session at 10:52 a.m.

The Board of Directors came out of Closed Session at 11:48 a.m.

Claims Committee Chair Mary Sue Baker reported that the claims were reviewed and no action was taken.

Mary Sue Baker inquired as to the status of the Palo Alto claim audit. Sandra Blanch was not aware whether Leo Heyenrath had been in contact with the City. It was agreed that Sandra would follow up.

C3. Financials and Treasurer's Report

Tom Phillips reported on this time since he was the Treasurer when the item was prepared.

Tom Phillips reported that with respect to the financial audit, the CPA indicates that they cannot do a separate management letter that indicates "no reportable conditions." Rather, this was included in the GASAS letter. Secondly, as respects the final paragraph of the letter describing the difficulties in communication during the audit, the auditor indicated they could not issue a separate letter, but that they would pull that paragraph and issue an SAS letter.

It was noted on Item C3a2., on page 13 of the agenda, that the check to Michael Simmons in the amount of \$177 was for meeting expenses and not related to the Brassinga matter. The amount will not be reimbursed by the City of Mountain View.

As respects C3c2., Michael Simmons indicated that the September 30, 2001 Estimated Earnings Report (EIER) was not yet available because staff had been working with the finance consultant to finish it, but it was not yet completed and accurate. Mary Sue Baker asked whether a 60-day deadline was appropriate on obtaining the year end report after each June 30th. Mike indicated it would be feasible, but that dependent on the financial audit. It was noted that the 60-day completion expectation was based on the fact that the financial audit had to be completed before the June 30th EIER could be done. Tom Vance commented that on page 42 and 43, he would appreciate that the comparative columns should be for the year prior, not the same year. It was suggested that addressing these kinds of issues be appropriate during Patrick Flaherty's Treasurer orientation. Also at the orientation, it was suggested that they discuss whether the balance sheet ought to include a comparison the same way the Profit and Loss Statement does.

A motion was made to modify the expenditures and accept and file the remaining financial statements.

MOTION: Mary Sue Baker **SECOND:** Pat Flaherty **MOTION CARRIED**

C4. Program Administrator's Report

Mike Simmons reported that the hotel for PARMA was sold out, but that the hotel may have some availability in February due to people canceling.

C5. Underwriting Committee Report

None.

D. OLD BUSINESS

D1. CAJPA Accreditation

Mike Simmons reported that now that ACCEL has completed a Long-Range Planning Session, ACCEL was now in full compliance with the requirements of CAJPA for Accreditation.

D2. Resolution No. 01-06, Adopting a Policy & Procedure for Investment and Accounting Procedure Safeguards

A motion was made to adopt Resolution No. 01-06 as presented.

MOTION: Erwin Young **SECOND:** Tom Vance **MOTION CARRIED**

E. NEW BUSINESS

E1. Next Two Meetings Schedule

Tom Vance asked whether the Board would consider moving the March 2002 meeting. Erwin Young raised the possibility that whether actuarial study would be done on time.

A motion was made that the March 1, 2002 meeting to be changed to March 8, 2002.

The motion was amended to hold the meeting on Thursday, March 7, 2002 in San Francisco at the Driver office.

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

F. CORRESPONDENCE/INFORMATION

Tom Vance encouraged that the Committee review the interesting items included.

G. PUBLIC COMMENTS

None.

At 12:15 p.m., there was a motion to adjourn the meeting.

MOTION: Sandra Blanch

SECOND: Pat Flaherty

MOTION CARRIED