



Board of Directors Retreat

December 10th, 2014
9:00 a.m. – 3:30 p.m.

Hilton Garden Inn – San Mateo
Orchid Conference Room
2000 Bridgepointe Circle
San Mateo, CA

1. Call to Order – Opening Remarks; Kevin Bryant, Chair

Chairman, Heather McLaughlin - called the meeting to order at 9:40am

2. Roll Call

Roll call was taken by Kevin Bryant – Chair. A quorum was present.

Presiding:

Kevin Bryant

Jurisdiction:

Town of Woodside

Board Members Present:

Laci Kolc

George Rodericks

Heather McLaughlin

Anne Cardwell

Kathleen Kane

Jesse Takahashi

Jill Lopez

Brian Dossey

Julie Carter

Ann Ritzma

LeeAnn McPhillips

Kathy Leroux

Yulia Carter

Robert Schultz

Marcia Raines

Emma Karlen

Renee Gurza

David Benoun

Jurisdiction:

City of American Canyon

City of Atherton

City of Benicia

City of Benicia

City of Burlingame

City of Campbell

City of Campbell

Town of Colma

City of Dublin

City of Foster City

City of Gilroy

Town of Hillsborough

Town of Los Altos Hills

Town of Los Gatos

City of Millbrae

City of Milpitas

City of Morgan Hill

City of Newark

Lorenzo Hines
Nick Pegueros
Rebecca Mendenhall
Michael Taylor
Scott Corey
Cindy Safe

City of Pacifica
Town of Portola Valley
City of San Carlos
City of Saratoga
City of Suisun City
Town of Woodside

ABAG Staff Present:

Kenneth Moy – ABAG Counsel
James Hill – ABAG PLAN Secretary
Jill Stallman – ABAG PLAN Claims Supervisor
Kim Chase – ABAG PLAN Admin
Gertruda Luermann – ABAG PLAN Risk Analyst

Others in Attendance:

Jean Savarese – ABAG PLAN Counsel
Seth Cole – Alliant Representative
Alex Davis – York Claims Supervisor
Robert Marshburn - R.J. Marshburn & Assoc.
Todd Master - Howard Rome Martin & Ridley
Gregg Thornton – Selman Breitman LLP

3. Public Comments

No members of the public were present and no comments were made.

4. Approval of Minutes

Approval of Minutes - June 25th, 2014 Board Meeting
A motion to approve the minutes was made and the minutes were approved.
/M/Ritzma/S/Taylor/C/Unanimous

5. Team Exercise; “Getting to Know Each Other” – Jim Hill/Kim Chase

Board members participated in a team exercise. Each was asked to complete a questionnaire and to identify every member city by their historical characteristics, notable landmarks or other trivial information.

6. PLAN Program Highlights – Claims Transition Update

Staff (J Hill) reviewed program highlights to date. Staff discussed some “emerging Challenges” which include invasion of privacy (drones); eucalyptus trees; civil unrest and militarization of police. Jim noted the change in social landscape given some of

the more recent events which have garnered media attention. These events will undoubtedly have a negative impact (increase) law enforcement liability claims.

J Stallman and Alex Davis provided the board an update on the Claims Transition noting the complexity of the task, the need for detailed planning and the high number of claim files and claim data transferred to York. One of the primary goals and objectives was to assure integrity of all financial and RMIS claims data transferred from iVOS to York's proprietary system (Claims Connect). Staff noted York and ABAG transition teams held weekly teleconferences and regular internal meetings. Additionally, staff organized monthly "Manager's Meetings" with York's operations group to provide feedback, identify problem areas and brainstorm solutions.

Staff will continue to work with PLAN members and York to assure member claim service standards are being maintained. PLAN members are invited, as always, to continue to provide feedback relating to their experiences with claim handling so we can address opportunities for improvement. York continues to build relationships with members and are gaining a greater understanding of the nuances and needs of each individual member.

Our ongoing goal is to ensure open communication/dialog with members and full transparency of the claims operations with continued focus on quality assurance.

7. "Cumis" Counsel Discussion – PLAN Claims Protocol

Ken Moy, General Counsel provided a proposal recommending establishing defined protocol for handling claims that are accepted for coverage under a Reservation of Rights.

Both the commercial insurance industry and the ABAG PLAN Programs encounter claims with the following characteristics: The claim seeks recovery of some damages that are within coverage and also seeks recovery of other damages that are not covered or are excluded from coverage; and/or are based on circumstances that are not covered or are excluded from coverage; and/or are based on cause(s) of action that are not covered or are excluded from coverage.

In certain situations, under a Reservation of Rights, PLAN members have raised concerns centered on a scenario where defense counsel for a claim subject to the reservation of rights could pursue a defense tactic or strategy that (a) negates ABAG's obligation to continue providing a defense of the claims or (b) increase the City's exposure to uncovered or excluded damages.

Due to the inherent conflicts which may arise, and to address the handling of the potential conflicts, PLAN prepared a staff report and presented to the Board for discussion.

ABAG PLAN staff and ABAG counsel will recommend to the Claims Committee, Executive Committee and PLAN Board of Directors the adoption of a proposed policy to address these situations should they arise.

The proposed policy will contain the following features which were discussed by the members of the Board:

- The policy applies to all claims accepted for defense under a reservation of rights, except when the reservation of rights is solely for punitive or exemplary damages.
- Neither the Member nor ABAG is entitled to retain independent counsel.
- The Member and ABAG will exercise joint control of the defense unless there is an actual, not theoretical conflict of interest
- An actual conflict of interest exists if(a) defense counsel must choose from two or more defense tactics and (b) the success or failure of one of them will wither deprive the City of its right to a defense under the MOC or increases the City's exposure to uncovered or excluded damages.
- An actual conflict of interest also exists if the Member and ABAG disagree on settlement of the claim and the Member asserts that accepting or rejecting the proposed will either deprive the City of its right to a defense under the MOC or increases the City's exposure to uncovered or excluded damages.
- In the event of an actual conflict, the Member and ABAG will each identify its preferred tactic or settlement and explain the reasoning for its preference in a memorandum.
- The memoranda will be presented the Claims Committee of the ABAG PLAN Corporation in a closed session at which the Member will be present and not recused, provided that if the Member has a representative on the Claims Committee that representative may not participate in any vote taken in that closed session.
- If the conflict of interest arises out of a defense tactic, the presentation to the Claims Committee is for information only, provided that the Claims Committee may base recommendations for changes in the policy on information provided in the memoranda and the outcome of the litigation.
- If the conflict of interest arises out of a proposed settlement, the Claims Committee has the right to decide on that portion of the settlement that will be paid by the ABAG PLAN Program.

**8. Legal Roundtable; Todd Master, Gregg Thornton
Legal Roundtable Discussion — Part I; Todd Master (Howard Rome Martin & Ridley)**

Todd Master began this discussion by saying that the public participation process is an integral part of how municipal agencies are governed. Cities and Towns often partner with members of the public and volunteer groups to obtain their unique insight and input on a variety of different areas, including the planning process (visioning).

The discussion began with commentary from member agency (Woodside) to shape the background of the situation. The public participation process is utilized by all PLAN member agencies. In this situation, it was used by the member agency for their Safe Routes to School Program. This program is linked to various funding sources and is viewed as a component of the Town's future planning scenario.

Todd shared his thoughts from a legal perspective and there was ensuing dialog on the subject from the Board.

Legal Roundtable Discussion — Part II; Gregg Thornton (Selman Breitman)

The recent appellate court decision (City of Pasadena v Superior Court – 2nd District Court of Appeals) which affirmed the trial court denial of a motion for summary judgment filed by the City of Pasadena was discussed. The case is related to a claim for property damage to adjacent private property resulting from a tree fallen by a windstorm. The ruling has turned several heads in the world of municipal claims given the far reaching implications. The case is still being litigated and PLAN will continue to monitor closely.

Gregg noted that the court concluded a tree could be deemed a work of improvement which provides a basis for an inverse condemnation claim if the tree is part of a street beautification plan or urban forestry program, implemented and installed by a deliberate act of the city. The ruling also held that even if a city has an exemplary tree maintenance program, there could still be strict liability faced by the jurisdiction.

The panelist and members discussed the following:

- How can PLAN members be held liable for acts of nature” and “non-negligent actions”?
- How does this ruling impact the typical immunities and defenses under the Government Tort Act?
- How can PLAN address this risk” from an Urban Forest Best Practices standpoint

Gregg shared thoughts with member agencies from a legal perspective. The discussion included feedback from PLAN member agencies and dialog on potential impact to our Urban Forest best practice program. Gregg gave his observations and perspectives on the ruling and noted that PLAN will continue to aggressively defend these cases under prevailing statutes (ordinances) and immunities.

9. Team Exercise; “Getting to Know Each Other” – Results

The 29 question exercise was scored and the winners were selected. First place went to Anne Cardwell from Benicia. Second place was awarded to Kathy Leroux from of Hillsborough. Anne and Kathy received gift cards courtesy of PLAN.

10. Additional Insured Workshop

Robert Marshburn, Consultant conducted an informational presentation focused on the new ISO Additional Insured Endorsements and the challenges they present in contractual risk transfer. The new endorsements have been designed to significantly limit Additional Insured coverage provided by most insurers. The new Additional Insured endorsements contain specific limitations and restrict insurance coverage provided for Additional Insureds.

The presentation provided ABAG PLAN members with an update on the significant changes to the new Additional Insured forms. Bob illustrated how PLAN members can revise their contracts and indemnity agreements to achieve the optimal means of contractual risk transfer. Bob informed members that all of the new ISO Additional Insured Endorsements contain provisions limiting and restricting the Insurance coverage for you as the Additional Insured to only the requirements in the written contract (or agreement) between the parties.

The Contract must explicitly require (1) the limits and (2) extent of coverage or there is no coverage. Even if your Contractor's Insurance contains broader coverage or higher limits of liability than your contract requires, they will not apply in your behalf unless you revise your contract. The discussion focused on reviewing the significant changes in the new Additional Insured forms; proposed contract revisions in order to trigger the desired coverage; understanding the new/revised Additional Insured forms as compared to the older ones and identifying what Additional Insured Endorsements to utilize in certain situations. In addition, Bob reviewed the Indemnity changes in the California Civil Code Statutes and their impact on requirements and coverage.

Bob closed his discussion by stressing this information is for PLAN members only and asked them to not share since it is proprietary. Jim noted that Robert Marshburn will be holding a more detailed workshop on this topic for PLAN members in the upcoming weeks.

11. Closing remarks/announcements

No closing remarks, nor announcements

12. Adjourned at 3:37pm by Kevin Bryant

Respectfully Submitted,



Jim Hill
Risk Management Officer
PLAN Corporation7