


WASHINGTON STATE TRANSIT INSURANCE POOL | RISK MANAGEMENT IN MOTION

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Minutes of the
WSTIP Board Meeting
June 28, 2019
SpringHill Suites ~ Kennewick

Board Members Present	
Geri Beardsley, Community Transit	Lynda Palmer (Warren), Large Member Rep, Spokane Transit
Emily Bergkamp, Intercity Transit	Paul Shinnars, Past President, Kitsap Transit
Danette Brannin, Secretary, Mason Transit Authority	Shonda Shipman, Vice-President, Whatcom Transportation Authority
Sara Crouch, Jefferson Transit	Wayne Thompson, Pullman Transit
Scott Deutsch, C-Tran	
Jenny George, Asotin County PTBA	Guests Present
Brandy Heston, Grant Transit Authority	Darla Brown, Columbia County Public Transportation
Tom Hingson, At-Large Member Rep, Everett Transit	Magan Waltari, Whatcom Transportation Authority
Staci Jordan, President, Island Transit	Brian White (broker), Alliant Insurance Services
Bill Kessler, Pierce Transit	
Jesse Kinney, Small Member Rep, Valley Transit	WSTIP Staff Present
Joe Macdonald, Skagit Transit	Cedric Adams, Claims Manager
Agustin Ortega, Medium Member Rep, Yakima Transit	Matthew Branson, Member Services Manager
Briana Malmquist, Valley Transit	Anna Broadhead, Board Relations
Dunyele Mason, Clallam Transit	Tracey Christianson, Executive Director
LeeAnn McNulty, Mason Transit Authority	Chris DeVoll, Transit Risk Specialist
Ken Mehin, Grays Harbor Transit	Rick Hughes, General Counsel
Laura Merry, C-Tran;	Laura Juell, Risk and Training Coordinator
Steve Mertens, Columbia County Public Transportation	Andrea Powell, Administrative Services Manager
Lowell Nee, Valley Transit	Christine Rouse, Application Support Specialist

Call to Order

President Jordan called the meeting to order at 9:00 am. She welcomed all participants as a sign in sheet was passed around the room. Jordan called for changes to the agenda, hearing none she asked for a motion to approve the agenda. **Mehin moved to approve the agenda. Macdonald seconded the motion and the motion passed.** Jordan reminded new Board members to complete *Behind the Curtain* quiz as one of the strategic plan goals is to have 75% of member representatives including alternates complete the series.

Discussion

Member Representative Meeting Report and Discussion

Ortega reported the medium group talked about the PRIMA conference and the benefits from going and encouraging everyone to attend and the possibility of changing the goal, discussed the actuarial presentation, property coverage, and the public officials liability coverage document. Also, discussed Open Public Meetings Act

(OPMA), Public Records Act (PRA), and Wage and Hour coverage topics and how if members want that coverage it should be covered separately and not shared amongst the Pool. Kinney reported the smalls too had talked about the PRIMA conference and overall timing and location of the conferences this year didn't work well for their group. We discussed the most missed questions from *Behind the Curtain*, enjoyed the actuarial presentation and the opportunity to ask questions, also discussed the OPMA/PRA and Wage and Hour coverage topics. As a group we felt that wages are not really a loss. Warren said the large group had two new Board members in attendance and spent some time with introductions, Brannin talked about the PRIMA conference and how she felt it was better than the AGRiP conference she had attended in the past, and the possibility of adding the APTA Risk Management Conference to Board development options, as well as seeing if we can get the agendas/topics for the conferences sooner. We discussed *Behind the Curtain*, the actuarial study, and how to incorporate loss prevention. We spent a lot of time discussing Wage and Hour as well as OPMA/PRA and didn't come to any great conclusions, and if its an opt-in program you may regret your selection down the road.

Annual Report, Risk Profiles, and Safety Star Awards

Branson said the Annual Report and Risk Profiles are in the envelopes distributed earlier today, please share them with your staff. As a reminder the Risk Profiles compare you to your similar sized agencies. Branson thanked Broadhead, and other staff who helped formulate the Annual Report and Risk Profiles. Jordan announced the 2018 Safety Star winners as Community Transit, Grant Transit Authority, and Columbia County Public Transportation. Branson reminded them the award will be presented at the Public Transportation Conference in August. Congratulations to these members.

OPMA & PRA / Wage & Hour Coverage Discussion

Christianson said staff asked for stronger and clearer exclusions in the Public Officials Liability Coverage Document regarding OPMA and PRA as we have never covered these claims in the past. Currently there is a strong exclusion in the proposed Public Officials Liability Coverage Document but that could be removed, or we could add endorsements. An endorsement is like mini coverage document to carve back coverage. Sample endorsements are included in the materials. The Board can limit the coverage, raise the deductible, say who chooses defense counsel, etcetera.

OPMA & PRA Coverage Discussion

Christianson opened the floor to Board members passing the microphone around the room asking for their thoughts about whether the Pool should cover OPMA and/or PRA claims. Several members felt OPMA and PRA are the law and therefore you should follow it so no coverage, a couple felt it should be an optional coverage you can opt into for a fee, some felt Members could use their Risk Management grant for training related to OPMA & PRA, and some liked the exclusion the way it was. Christianson said she would talk to Wick to see what the cost of offering opt-in coverage would be. **Macdonald moved for an up/down vote to reject OPMA & PRA coverage. Hingson seconded motion and the motion passed.** Therefore, the Board has rejected providing OPMA & PRA coverage in any form.

Wage & Hour Coverage Discussion

Christianson said in the past we not had any of these claims in the past. But we have one now, and we are providing defense coverage (post an appeal). The question is do you want to continue providing defense coverage for claims of this type or exclude coverage or limit coverage. Mason questioned employment practices vs. wage and hour claims. Christianson clarified wage and hour are allegations that you haven't paid your employees for work and wages are owed. Mason asked if there were prior losses in our loss history to figure

exposure, and Christianson said only this one. Christianson said the proposed endorsement provides defense and indemnity with a higher deductible, and language saying who chooses defense counsel.

Shinners felt this conversation was premature without first clarifying the language in the Public Officials Liability Coverage Document regarding allegations. Christianson said good point but for the purpose of this discussion lets assume it is clearly an exclusion, we can talk about what coverage do you want if any.

Shinners said when a member has a public officials liability claim (not just wage & hour), the member sends that to the Pool (the tender) and the Executive Director determines if the claim is covered. Christianson said right, the Pool has a right and duty to investigate any claim, and authority to settle any claim under \$250,000, which means we also have the right to not settle. When you have a lawsuit, the Pool reviews the allegations to determine coverage. Shinners asked what the POL coverage costs the Pool currently. Christianson said currently each member pays \$297 per employee as it exists right now. Shinners then asked what the increase would be to cover wage and hour claims. Christianson said she would have to work with Wick to determine the costs. White remarked that if even one claim/lawsuit was covered, this endorsement may reduce the costs. Christianson said it will limit the exposure, right now its wide open, so we would be closing the circle a little bit.

Shipman said with the present claim – it was tendered, Executive Director denied the claim, it came to the Executive Committee on appeal, she asked what would happen if we allowed this coverage using this endorsement. Christianson said there wouldn't have been an appeal and coverage would have been limited. Beardsley asked how the endorsement would work. Christianson explained that it is a mini-coverage document with unique deductibles, for example our Auto-Physical Damage reinsurance policy excludes transit but then there is an endorsement that adds transit, same with employee fidelity on the Crime policy.

Beardsley asked what happens if we don't decide today, and what does it look like if defense only instead of defense and indemnity. Hingson said the concern is sometimes the cost to defend is higher, and it may be cheaper to cap it at \$250,000 and settle rather than go through an expensive discovery process. Shipman said she liked the idea of limiting the amount, and clean up the allegation language, so that appeals would happen infrequently. Brannin said she doesn't want indemnity included because WSTIP should not pay fines or back pay, which limits what money can be used for to settle. Mason said it wouldn't be mutually exclusive, she likes the \$250,000 limit because the member still has skin in the game but she likes the concept of paying for the defense costs but not wage claims so don't include indemnity but doesn't see how to negotiate X costs for attorney fees and the rest is the members cost to pay. Christianson said defense is paying legal defense costs, the indemnity is the settlement piece. So, what you are saying is the Pool will pay the attorney fees but once we get to who writes the check it isn't the Pool. She explained it could be a double whammy, if you have to defend yourself (which can be difficult if you aren't used to managing attorneys), and then you get a settlement you have to pay. An example would be a settlement for \$250,000 if you have \$100,000 in defense costs and \$150,000 in indemnity. Christianson remarked that the staff chose \$250,000 because it is staff's authority level meaning it would not have to go to the Executive Committee for authority if indemnity is included.

Beardsley asked why the \$10,000 deductible. Christianson said she chose a number it could go higher or drop to \$5,000, and you can also add conditions. Beardsley asked about sharing the cost dollar per dollar to a cap. Christianson said you could do that as well, what would be fair, keep in mind that one claim built into our loss history is not like starting new coverage.

Shipman moved to amend Public Official Liability Coverage Document Endorsement 2 to provide defense

only up to \$250,000 with a \$25,000 deductible. Merry seconded the motion.

Discussion: Beardsley – if WSTIP is covering defense, if you walk into a settlement is WSTIP at the table? Christianson said no but would manage the process unless the member didn't want that. We would work with the Member to make sure they get approval for the settlement. Mason asked if it's the Pool's defense counsel or the Members defense counsel. Christianson said if they do a reservation of rights the insured can select the defense counsel and has the right to manage defense counsel, we are the bank paying the bills. When Community Transit asked us to manage the claim, as with any other claim we have been involved and helping to manage the process, but in the insurance world we would just pay the bills.

Heston – liked the idea of keeping indemnity in there and being able to settle before you have huge defense costs to limit the total exposure, and is okay with increased deductible.

Macdonald – we've heard our rates are going to continue to go up, and he would need to know what it is going to cost otherwise reject the coverage.

McNulty – favors motion as presented.

Mertens – he is hung up on this his general thought is that wages should have been paid potentially but he also understands that we want to be able to defend the Member.

Malmquist – feels the same way.

Merry – liked the motion as presented. Even if you have done nothing wrong you have to spend the time and money to defend yourself, you can be doing everything right and still pay a lot of money and spend a lot of time to defend.

Deutsch – having an employee file a claim against employer, partial indemnity but if the wages are owed by the agency, then defense costs, even if we think we've done everything right.

Hingson – felt this should not be covered, but if we decide to then he is in favor of the \$250,000 cap, and likes the idea of leveraging the cap to make it dollar per dollar, but WSTIP's exposure is capped, he is willing to be flexible on how he money is used.

Warren – initial thought was just defense and agrees wages are wages but if we can settle it, defense is expensive and have a cap and \$25,000 deductible.

Shinners – is not comfortable voting on this until the Public Officials Liability Coverage Document language is more refined because it could lead to stacking of coverage where the member could have an allegation, if we are able to restrict similar to terms of defense for allegations, then he would think this is similar to the pre-litigation fund which limits to \$5,000 but this would be a larger amount to give Member discretion on how to use it, if you think of indemnity in terms of settlement but that is contingent on cost.

Shipman – initially had voted wage and hour clams are not covered, this is a compromise, fines and penalties are already an exclusion carving away from it situations that need more interpretation.

Jordan – agreed with Shinnars that the underlying language needs to be cleaned up, but is in favor of increasing the deductible, allowing the Pool to negotiate the settlement and get it done without incurring extra defense costs.

Hughes – If you take a voice vote you can request a head count.

Brannin – doesn't like to settle things when we are right, she wants to fight but its not always realistic, she was in favor of raising the deductible, and limiting exposure to \$250,000, how the money is spent doesn't matter if we can keep the attorney costs down, and agreed more work to do on this topic.

Kinney – by in large he feels wage and hour stuff is operational either you paid or you didn't. His perspective from the Pool however is a settlement is a settlement what we are paying for doesn't matter, the fact we made the claim go away the cap of \$250,000 whether spent on defense or settlement as long as the claim goes away in the best interest of the members, he liked the higher deductible and is on board with dollar for dollar.

Ortega – agreed with Hingson wage and hour claims should not be covered. If we are going to cover then cap the losses and raise the deductible.

Williams – same - cap losses and raise deductible.

Mehin – if we choose to cover he is okay with \$250,000 and a \$10,000 deductible.

Thompson – likes keeping the indemnity option.

Kessler – agreed with the motion, he doesn't want to see something in the local newspaper, supports motion for defense only.

Beardsley – asked if the word indemnity could be changed to settlement. She is ok with the deductible and the cap.

Bergkamp – suggested keeping the flexibility for defense and settlement and increasing the deductibles, she is interested in exploring rates and thinks more discussion needs to be had.

George – agreed with everyone.

Crouch – agreed with Brannin, but also with Mason regarding cost analysis, this is an emerging risk, she likes leaving the indemnity, the cap of \$250,000 and higher deductible.

Mason – asked what happens if the cap is \$250,000 and you get a settlement for \$450,000. Christianson said she can't spend WSTIP's money above \$250,000 so the Member would have to pay the difference, there is nothing precluding you from settling at a higher value. Mason was unsure of the difference between indemnity and settlement but if its in the best interest to settle. She can live with the \$250,000 cap is curious about the dollar per dollar, but is not in favor of the motion as presented and if we are uncomfortable with the coverage document she would vote against and support postponing until the next quarter.

Hughes said if someone were to amend the motion and the amendment fails you would still need to vote on the original motion. Christianson said she heard movement towards changing the word indemnity to settlement.

Kinney asked the differences between settlement and indemnity. Hughes said indemnity protects the Member more as it could include judgments and is an insurance word to differentiate between defense costs. Beardsley felt settlement is more consistent.

Jordan called for a vote on the current motion on the floor. ***Shipman moved to amend Public Official Liability Coverage Document Endorsement 2 to provide defense only up to \$250,000 with a \$25,000 deductible. Merry seconded the motion. The motion failed.***

Macdonald moved to table this discussion until the September meeting to have more time to discuss the options related to Public Officials Coverage Document Endorsement 2. Mason seconded the motion.

Discussion: Macdonald asked if moving this discussion to September affects staff. Christianson said we were hoping to get it approved in September, but it will need to be completed by December for the January 1 renewal. ***Shipman moved to amend the motion to send the Public Officials Coverage Document Endorsement 2 to the Executive Committee for discussion in July and August to give staff clear direction on what to bring back in September. Brannin seconded the amendment. Discussion:*** Macdonald agreed. Jordan called for a vote on the amendment. ***The amendment passed.*** Jordan called for a vote on the motion. ***The motion passed*** (with a round of applause).

Public Officials Liability Coverage Document

Christianson said we will continue to work on the coverage document, but please share with your general counsels and staff about the proposed changes. Please give feedback to Christianson or Beardsley.

Pierce Transit Collision Avoidance Warning System

Branson gave an update on the Pierce Transit Collision Avoidance Warning System project which is back on track. Christianson and Branson are going to Virginia to see the testing on the closed course at VTTI. They fielded questions from the Board regarding the project.

The Board took a short break at 10:35 am and resumed the meeting at 10:52 am.

Financial Reports

March 2019 Treasurers Report, Statement of Revenues & Expenses, Statement of Net Position and Thurston County Investment Portfolio, Claim Liability Report, and Comparative Statement of Revenues & Expenses, and Comparative Statement of Net Position

Powell said the financials from the previous quarter are included in the packet and asked for questions. Shinnars suggested not including year-to-date. Mason thought perhaps they should stay for now.

Staff Reports

Executive Staff Report

Christianson said staff had a nice visit from Andrew Halsall, from Government Entities Mutual, Inc. (GEM), he wanted to make sure new staff knew who and what GEM is, and we talked about the renewal. Powell stated that she had poached Karey Thornton from the Claims department to be the new Accounting and Payroll Specialist and had made an offer to Brandy Rhodes from the Town of Rainier to fill the Administrative Assistant position, she will begin July 16. Auditors are onsite now and to date we have received 13 public records requests for 2019. DeVoll reported he is out and about doing Best Practices and Vanpool Best Practices site visits, he is a bit delayed due to snowmageddon earlier in the year. Providing training to members regarding Mobility Device

Securement, Reasonable Suspicion, and a training for Accident Review Committees, what is preventable versus non-preventable accidents following the National Safety Council (NSC) guidelines. If you are interested in hosting a training, please let DeVoll or Juell know. Juell said she has been busy scheduling visits for DeVoll and scheduling training classes, the trainer's showcase was well attended.

Kessler asked if there were plans for WSTIP to assist members with putting together the Public Transportation Safety Plans (PTSP). DeVoll said there is a lot of national activity on this topic currently and the Federal Transit Administration (FTA) is hosting four conferences regarding this topic. Beardsley asked how many agencies had started their safety plan (a handful of hands raised). Macdonald said he would be attending a workshop the FTA is hosting in San Francisco August 20-21. Branson said the guidelines will help you create a plan that is unique to your organization.

Branson reported 10 of the Partnering in Prevention presentations had been completed with an additional five already scheduled. Christianson signed the contract with Department of Licensing (DOL) regarding Driver Record Monitoring earlier in the week, we still need to work on the compliance pieces for audit purposes, and the AGRiP advisory standards recognition application has been resubmitted. Powell added that emails for 2020 exposure collection and deductible selections were sent out with a DocuSign component, so you won't have to verify the data twice. Crouch asked what the cost savings would be for selecting a higher deductible. Christianson said to let staff know and we would ask Wick to help us determine what the number would be.

Adams reported on recent open and closed claims activity, the claims coordinators conference, and collecting \$137,000 in subrogation for the prior month. He is also looking for a Claims Specialist, information about how to apply will be posted on the WSTIP website soon or send him their contact information.

General Counsel's Report

Hughes said his report is included in the materials. The bulk of his time he is preparing for and attending various meetings, reviewing contracts/policies, and training.

Broker's Report

White gave an update on the state of the insurance market.

Action Items

Minutes – March 29, 2019

Crouch moved to approve the minutes from March 29, 2019. Macdonald seconded the motion and the motion passed.

2018 Year-End Actuarial Study

Christianson said Wick had presented the 2018 Year-End Actuarial Study at the Executive Committee meeting the prior day, and staff are requesting you accept the study. ***Ortega moved to accept the 2018 Year-End Actuarial Study. Mehin seconded the motion and the motion passed.***

Governance Policy – Member Corrective Action and Termination

Hingson moved to adopt the Member Corrective Action and Termination Policy. Ortega seconded the motion and the motion passed.

Property & Cyber Liability Coverage Renewal

White said this is a follow-on to yesterday's presentation and asked for a motion to authorize the Executive Director to renew and bind coverage effective July 1, 2019. **Brannin moved to authorize the Executive Director to renew and bind Property and Cyber Liability Coverage effective July 1, 2019. Kinney seconded the motion and the motion passed.**

Auto Physical Damage Coverage Renewal

White reminded everyone this coverage is for the busses and other vehicles on the road or in the yard and asked for a motion to authorize the Executive Director to renew and bind coverage effective July 1, 2019. **Warren moved to authorize the Executive Director to renew and bind Auto Physical Damage Coverage effective July 1, 2019. Shipman seconded the motion and the motion passed.**

2019-2020 Property Coverage Document

Christianson said there were changes to this policy which were discussed at the Work Session in March, the Executive Committee has reviewed this document and have recommended adoption. **Ortega moved to adopt the 2019-2020 Property Coverage Document. Shipman seconded the motion and the motion passed.**

Technology Grant Application: Kitsap Transit

Branson said the Executive Committee reviewed Kitsap Transit's Technology Grant Application and recommended approval of funding of \$64,907. **Mehin moved to approve Kitsap Transit's Technology Grant Application in the amount of \$64,907. Macdonald seconded the motion and the motion passed (round of applause).** Macdonald said the presentation was great

Member Updates and Guest Feedback

Members did a quick update on what was happening at their agencies, guests gave feedback and Jordan thanked everyone for attending and sharing opinions and sticking to their guns and thanked the Board Development Committee for the fun Jeopardy game.

Adjournment

Crouch moved to adjourn the meeting at 11:44 am. George seconded the motion and it passed.

Submitted this 27th day of September 2019

Approved: 
Danette Brannin, Secretary