



APPROVED

**MINUTES OF THE CSURMA AORMA
COMMITTEE MEETING**

JUNE 30, 2014

TELECONFERENCE MEETING

10:00 AM

MEMBERS PRESENT

- Kurt Borsting, Associated Students, Inc., CSU Fullerton
- Dwayne Brummett, Associated Students, Cal Poly San Luis Obispo
- Melinda Coil, San Diego State University Research Foundation (*left at 11:07am*)
- Guy Dalpe, Cesar Chaves Student Center, San Francisco State University
- Leslie Davis, University Union Operation of CSUS, Inc., Sacramento State University
- Robert de Wit, Forty-Niner Shops, Inc., CSU Long Beach
- Keith Kompsi, Fresno Association, Inc., CSU Fresno
- Haleh Minakary, The Cal Poly Pomona Foundation, Inc., Cal Poly Pomona
- Frank Mumford, CSU Fullerton Auxiliary Services Corporation, CSU Fullerton (*joined at 10:30am*)
- Brian Nowlin, CSULB Foundation, CSU Long Beach
- Patricia Worley, Associated Students Inc., Sacramento State University
- Gigi Kiama, University Corporation, CSU Monterey Bay

STAFF, GUESTS AND CONSULTANTS

- Daniel Howell, Alliant Insurance Services, Inc. (*joined at 10:07am*)
- Mimi Long, Alliant Insurance Services, Inc.
- William Hsu, CSU Office of General Counsel
- Mauri McGuire, Carl Warren and Co.
- Tevea Him, Alliant Insurance Services, Inc.

A. CALL TO ORDER

The meeting was called to order by the Chair, Dwayne Brummett at 10:01 AM.

B. APPROVAL OF THE AGENDA

A motion was made to approve the June 30, 2014 agenda.

- MOTION:** Keith Kompsi
- SECOND:** Haleh Minakary

NAME	AYE	ABSTAIN	NAY	ABSENT
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Dwayne Brummett	X			
Melinda Coil	X			
Guy Dalpe	X			
Leslie Davis	X			
Robert de Wit	X			
Gigi Kiama	X			
Keith Kompsi	X			
Haleh Minakary	X			
Frank Mumford				X
Brian Nowlin	X			
AORMA Committee Alternates				
Vote Only When Committee Members are Absent				
Kurt Borsting - Alternate	X			
Pat Worley - Alternate				

MOTION CARRIED

C. PUBLIC COMMENTS

There were no public comments.

D CONSENT CALENDAR

D1. Approval of Minutes – May 8, 2014

A motion was made to approve the minutes of the May 8, 2014 meeting.

MOTION: Leslie Davis

SECOND: Haleh Minakary

NAME	AYE	ABSTAIN	NAY	ABSENT
Dwayne Brummett	X			
Melinda Coil	X			
Guy Dalpe	X			
Leslie Davis	X			
Robert de Wit	X			
Gigi Kiama		X		
Keith Kompsi	X			
Haleh Minakary	X			
Frank Mumford				X
Brian Nowlin	X			
AORMA Committee Alternates				
Vote Only When Committee Members are Absent				

Kurt Borsting - Alternate	X			
Pat Worley - Alternate				

MOTION CARRIED

E. GENERAL ADMINISTRATION

E1. Actuarial Proposal for Additional Scope of Services for FY 15/16 Liability Program

Mimi Long explained that the Programs Committee is working on finalizing a revised liability program member allocation formula for FY 15/16. The new calculation requires that two extra actuarial services be completed by Aon, the CSURMA actuary. The additional work will involve providing (1) four separate costs for AORMA’s auto liability, EPL, premises liability, and “all other” exposures, and (2) experience modification factors for each member.

Currently, AORMA pays \$3,500 for its liability program actuarial report. The cost of the FY 15/16 report would increase to \$9,500. This is an additional \$6,000 for the first year and an additional \$1,500 for all subsequent years so that the annual cost will be \$5,000 in subsequent years.

A motion was made to approve the actuarial proposal for additional scope of services for the FY 15/16 liability program.

MOTION: Guy Dalpe
SECOND: Leslie Davis

NAME	AYE	ABSTAIN	NAY	ABSENT
Dwayne Brummett	X			
Melinda Coil	X			
Guy Dalpe	X			
Leslie Davis	X			
Robert de Wit	X			
Gigi Kiama	X			
Keith Kompsi	X			
Haleh Minakary	X			
Frank Mumford				X
Brian Nowlin	X			
AORMA Committee Alternates				
Vote Only When Committee Members are Absent				
Kurt Borsting - Alternate	X			
Pat Worley - Alternate				

MOTION CARRIED

E2 AORMA Liability Program Memorandum of Coverage Revisions

Non-Employment Harassment

The committee reviewed the following language which Staff has proposed should be added to the **Limitations upon CSURMA AORMA's Liability** section within the MOC:

“Bodily injury or personal injury damages resulting from non-employment harassment will be deemed to have occurred at the time of the last non-employment harassment and all such bodily injury or personal injury will be deemed to be a single occurrence whether committed by the same perpetrator or two or more perpetrators acting in concert and without regard to the number of (1) incidents of non-employment harassment taking place thereafter, (2) victims of non-employment harassment, or (3) locations where the non-employment harassment took place. Only the Memorandum of Coverage in effect during which such non-employment harassment last occurred will apply to such single occurrence of non-employment harassment. Coverage does not apply to any covered party who is found by a court of law to have committed a criminal act of non-employment harassment.”

The committee reviewed the following definition of Non-Employment Harassment which Staff has proposed should be added to the **Definitions** section of the MOC:

***Non-employment harassment** means actual or alleged unwelcome or offensive;*

- a. Physical conduct, including sexual molestation; or*
- b. Verbal or written conduct or conduct using visual images, including such conduct by electronic means,*

*against anyone other than a present or former employee of, or an applicant for employment with, the **Member** and shall include any actual or alleged breach of duty by a **covered party** causing, contributing or leading to such **non-employment harassment**.*

Mimi explained that Genesis, the reinsurer, will be adding the Non-Employment Harassment endorsement to its reinsurance agreement and that it's important that the coverage wording within the MOC and the reinsurance agreement be concurrent in order to avoid gaps in coverages.

The non-employment harassment MOC changes do three things:

1. It establishes the “occurrence” date for the non-employment harassment as the date of the last contact. It is important that the MOC establishes an occurrence date as the offenses can often occur over more than one policy period.

2. It establishes that all actions by the same perpetrator or multiple perpetrators working together will be deemed to be one occurrence; therefore, only one \$350,000 self-insured retention applies. This benefits AORMA as only one \$350,000 self-insured retention will apply to the occurrence as opposed to each action by the perpetrator(s) being considered separate occurrences and therefore resulting in multiple SIR's being paid from the AORMA pooled layer.
3. It establishes that all actions by the same perpetrator or multiple perpetrators working together will be deemed to be one occurrence. This limits the coverage available for the actions of the perpetrator(s) to one limit. Because CSURMA AORMA has a liability program with total limits of \$200MM, this is not a concern.

A question was asked if this coverage amendment would change the actuary's projection of AORMA's ultimate limited losses. Because AORMA does not have a history of claims involving multiple perpetrators or multiple incidents occurring over a long period of time, Daniel Howell did not think this change would change the actuary's projection. But, he did state that this question would be asked of the actuary.

Daniel explained that if multiple lawsuits were filed due to several molestations committed by the same perpetrator, each of those suits would be defended separately as a completely separate claim; however, AORMA would only be on the hook for one self-insured retention of \$350,000 not \$350,000 for each lawsuit.

Coverage for Unmanned Aerial Vehicles (UAV)

The committee reviewed the following amendatory language which Staff has proposed should be added to the Aircraft Exclusion within the MOC in order to add back coverage for unmanned aerial vehicles:

*To any liability for **damages** arising out of the ownership, maintenance, loading or unloading, use or operation of any aircraft capable of flight, airfields, runways, hangers, buildings or other property in connection with aviation activities. This exclusion does not apply to static aircraft, or to an **unmanned aerial vehicle**. ~~property damage to (1) property owned by the Member, or (2) aircraft in the care, custody, or control of the Member, including aircraft over which the Member is exercising physical control.~~*

The committee reviewed the following language which Staff has proposed should be added to the definitions section of the MOC:

***Unmanned Aerial Vehicle** means any vehicle without a human pilot aboard capable of flight principally in the air that is designed for the transport of equipment and weighing no more than 100 lbs. maximum take-off weight for the purpose of aerial surveillance.*

Mimi noted that Staff has asked the excess carriers to remove the wording, "... for the purpose of aerial surveillance" from the definition of UAV. Some carriers have agreed; however, some have proposed that the drones can be used only for "educational or research" purposes. A question was asked about use of UAVs for commercial purposes. Daniel stated that the FAA considers commercial use of drones to be illegal. Therefore, the use of drones in a fund raising venture would not be a covered activity. Another concern is use by law enforcement which would not be considered an education or research activity.

Willy Hsu suggested surveying members to see if they are using drones and for what purpose. Daniel stated that an AORMA bulletin would be sent out once the wording is finalized which explains the coverage limitations.

Exclusion of Cyber Liability

The committee reviewed the following language which Staff has proposed should be added to the Exclusions Section of the MOC:

Cyber Liability

"Damages, or loss, costs or expenses because of bodily injury, personal injury, property damage or errors and omissions arising directly or indirectly out of:

- 1. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or*
- 2. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.*

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, costs or expenses incurred by any covered party or others arising out of that which is described in Paragraphs 1 and 2 above."

Mimi Long explained that this exclusion is for clarification only. The CSURMA AORMA Liability Program does not provide cyber liability coverage. CSURMA AORMA has a cyber-liability coverage program. Daniel states that the coverage for FY 14/15 was enhanced to include 2,000,000 notified individuals which would result in an approximately policy aggregate of \$15,000,000.

Medical Malpractice

The committee reviewed the following amendatory language which Staff has proposed should be deleted from the Exclusions Section of the MOC:

*“Liability arising out of the operation of any hospital, clinic, or health care facility, owned or operated by any **Member** including individuals providing professional medical services (Professional Medical Services include anyone engaged in the practice of medicine and whose operations are not exempted elsewhere in this exclusion). This includes, but is not limited to:*

- 1. The rendering or failure to render:
 - a. Medical, surgical, dental, x-ray or nursing services or treatment, or the furnishing of food or beverages in connection therewith;*
 - b. Any service or treatment related to physical or mental health or of a professional nature; or*
 - c. Any cosmetic or tonsorial service or treatment.**
- 2. The furnishing of or dispensing of drugs or medical, dental or surgical supplies or appliances.*
- ~~*3. Experiments performed on human beings, clinical trials and/or medical trials.*~~

This exclusion does not apply to any liability arising out of:

- 1. Ambulance operations, occupational physical examinations, student nursing programs, other student medical training programs, infirmaries, non-clinic nursing services or services of the **Member’s employees** who are nurses, paramedics, emergency medical technicians, speech therapists, speech pathologists, nutritionists, psychologists, audiologists, or physical therapists;*
- 2. **Unfair employment practices** liability;*
- 3. First Aid to any person;*
- 4. Any medical services clinic that does not perform invasive surgery of any kind; or*
- 5. Operations performed by coroners.”*

Mimi explained that Genesis added the exclusion for “experiments performed on human beings, clinical trials and/or medical trials” at the inception of the reinsurance arrangement. Staff was able to add back the exceptions 1 through 5 above; however, effective July 1, 2014, Staff is

requesting that Genesis remove the “experiments performed on human beings, clinical trials and/or medical trials” wording completely. Genesis has not agreed to this exclusion yet.

Exclusion of Fines and Penalties, et al.

The committee reviewed the following language which Staff has proposed should be added to the definition of Damages:

“Damages shall not include fines, penalties, sanctions, taxes or fees assessed against any covered party.”

Daniel stated that penalties, sanctions, taxes or fees assessed against a member are not covered under commercial liability policies as they are not considered third party tort liability. Punitive damages are not insurable under California law, though coverage can be purchase in off shore insurance markets. A question was asked if coverage is available under a separate insurance policy for fines and penalties. Daniel stated that coverage for fines and penalties is sometimes offered for specific exposures like PCI fines coverage under Cyber Liability Insurance or pollution liability fines for clean up of sudden and accidental pollutant leaks.

Daniel stated that the MOC does not specifically exclude taxes, fines and penalties; however, there has been this language in the coverage documents for the excess liability program in the past. In addition, the coverage was interpreted not to cover or defend an IRS action against a member in the past.

Domestic Hired Automobile Physical Damage Endorsement

The committee reviewed the following amendatory language which Staff has proposed should be included in Domestic Hired Automobile Physical Damage endorsement:

“CSURMA AORMA will not pay for loss to any expensive, exotic or ~~and~~ antique automobiles; 15- passenger vans; ~~vehicles that have an open cargo bed;~~ semi-trailer trucks; motorcycles, mopeds, or ~~and~~ motorbikes. ~~limousines; and recreational vehicles.~~ An Antique automobile is defined as any vehicle over twenty (20) years old or any vehicle that has not been manufactured for ten (10) years or more. ~~Excluded are:~~ Examples of excluded expensive or exotic automobiles include but are not limited to those manufactured by Aston Martin, Bentley, Bricklin, Daimler, DeLorean, Excalibur, Ferrari, Jensen, Lamborghini, Lotus, Maeserati, Porsche and Rolls Royce. However, selected models of BMW, Mercedes-Benz, Cadillac and Lincoln are covered.”

Mimi explained that the AORMA Liability Program includes physical damage to hired autos, subject to a \$1,000 deductible and the terms of the endorsement. In most cases, the AORMA contract with Enterprise Rent-A-Car provides automatic physical damage coverage to hired vehicles; however, this endorsement was added to fill in those gaps in coverage when the collision damage waiver is not offered with the auto rental. Occasionally, an AORMA member

will rent a limousine or recreational vehicle. Enterprise will not provide physical damage coverage for these vehicles. In response, these two types of vehicles have been removed for the excluded auto section. Mimi stated that the wording on Page 29 of the agenda rather than on Page 55 will be utilized in the MOC.

A motion was made to (1) approve the proposed revisions to the AORMA liability memorandum of coverage, (2) to grant authority to Staff to negotiate the UAV definition with the excess carriers and finalize the UAV definition wording within the MOC, and (3) to adopt the revised wording within the Domestic Hired Automobile Physical Damage endorsement as noted on Page 29.

MOTION: Keith Kompsi

SECOND: Leslie Davis

NAME	AYE	ABSTAIN	NAY	ABSENT
Dwayne Brummett	X			
Melinda Coil	X			
Guy Dalpe	X			
Leslie Davis	X			
Robert de Wit	X			
Gigi Kiama	X			
Keith Kompsi	X			
Haleh Minakary	X			
Frank Mumford	X			
Brian Nowlin	X			
AORMA Committee Alternates Vote Only When Committee Members are Absent				
Kurt Borsting - Alternate				
Pat Worley - Alternate				

MOTION CARRIED

F. CLOSED SESSION

A motion was made to enter closed session.

MOTION: Brian Nowlin

SECOND: Robert de Wit

NAME	AYE	ABSTAIN	NAY	ABSENT
Dwayne Brummett	X			
Melinda Coil	X			
Guy Dalpe	X			
Leslie Davis	X			

Robert de Wit	X			
Gigi Kiama	X			
Keith Kompsi	X			
Haleh Minakary	X			
Frank Mumford	X			
Brian Nowlin	X			
AORMA Committee Alternates Vote Only When Committee Members are Absent				
Kurt Borsting - Alternate				
Pat Worley - Alternate				

MOTION CARRIED

The AORMA Chair reported that action was taken on two items in closed session.

G. ADJOURNMENT

A motion was made to adjourn the meeting at 11:25 AM.

MOTION: Brian Nowlin

SECOND: Gigi Kiama

NAME	AYE	ABSTAIN	NAY	ABSENT
Dwayne Brummett	X			
Melinda Coil				X
Guy Dalpe	X			
Leslie Davis	X			
Robert de Wit	X			
Gigi Kiama	X			
Keith Kompsi	X			
Haleh Minakary	X			
Frank Mumford	X			
Brian Nowlin	X			
AORMA Committee Alternates Vote Only When Committee Members are Absent				
Kurt Borsting - Alternate	X			
Pat Worley - Alternate				

MOTION CARRIED