

**NEW MEXICO PUBLIC SCHOOLS INSURANCE AUTHORITY
EMERGENCY BOARD OF DIRECTORS MEETING MINUTES**

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Thursday, June 13, 2019

1. CALL TO ORDER

Mr. Chris Parrino, Vice-President, called the NMPSIA Emergency Board Meeting to order at 9:00 a.m. on Thursday, June 13, 2019.

2. ROLL CALL

Ms. Pamela Vigil, called roll.

Present:

Chris Parrino, Vice-President
Alfred Park, Secretary
Tim Crone (*arrived after roll-call*)
Pauline Jaramillo (*via conference call*)
David Martinez Jr. (*via conference call*)
Trish Ruiz (*via conference call*)
Dave Willden (*via conference call*)
Ricky Williams

Absent:

Mary Parr-Sanchez, President

Staff Members Present:

Ernestine Chavez, Executive Director
Richard Valerio, Deputy Director
Patrick Sandoval, Chief Financial Officer (*via conference call*)
Pamela Vigil, Program Coordinator (*via conference call*)

Audience:

Dave Poms, Poms & Associates
Julie Garcia, Poms & Associates
Henry Narvaez, Narvaez Law Firm

3. INTRODUCTION OF GUESTS

There were no guests.

4. CITIZENS TO ADDRESS THE BOARD (five- minute time limit)

There were no citizens to address the Board.

5. APPROVAL OF THE AGENDA (Action Item)

Mr. Parrino asked if there were any changes to the agenda.

Ms. Ernestine Chavez, Executive Director, NMPSIA stated that there were no changes to the agenda.

Ms. Chavez stated that there will be a date and location change for the next Board meeting, addressed at the end of the agenda.

A motion was made to approve the agenda as presented.

MOTION: P. Jaramillo

SECONDED: T. Ruiz

Mr. Narvaez stated that before the meeting continues, there should be a statement made stating that this is an Emergency Board Meeting, pursuant to section 10-15-1, which provides that an emergency meeting can be called if there are unforeseen circumstances that if not addressed immediately by NMPSIA, would likely result in damage or substantial financial loss to this public body. Mr. Narvaez stated that pursuant to this statute, NMPSIA intends to report this Emergency Board Meeting and any action taken to the Attorney General.

VOTE: Vote carried unanimously.

Mr. Narvaez requested a statement from NMPSIA Administration as to when this agenda for the Emergency Board Meeting was posted on the NMPSIA website.

Ms. Chavez stated that the agenda was posted on the NMPSIA website within the 72-hour required period for the emergency meeting.

6. Request to Renew Property/Liability, Equipment Breakdown, Crime and Workers' Compensation Excess Coverages (Action Item)

Mr. Dave Poms, Poms & Associates, stated that Mr. Richard Valerio, Deputy Director, NMPSIA, emailed NMPSIA Board Members a summary and proposed motion for 2019-2020 Excess Insurance Coverages. Mr. Poms thanked the Board for attending the Emergency Board Meeting. He stated that it is important to review the Property/Liability, Equipment Breakdown, Crime and Workers' Compensation Excess Coverages to bind coverages.

Mr. Poms reported that there are fifteen thousand certificates of insurance that have to be issued prior to July 1, 2019. He stated that many of the insurance companies listed on the summary have to receive binding orders. Mr. Poms went on to report that Poms & Associates then receives policy numbers before certificates of insurance are issued. Mr. Poms stated that all of the re-insurance has to be placed in the next two weeks. He stated it was critical to have this meeting and not wait until the end of the month.

Mr. Poms reviewed the Property Policy. He reported that the Self-Insured-Retention (SIR) will remain as expiring at \$1,000,000 per occurrence for most perils except hail, which will increase to one of the options stated on the summary. Mr. Poms stated that, unfortunately, due to hailstorms in the state and throughout the country, hail deductibles are increasing across the board for almost all public entities that are situated in hail prone areas. He stated that the specific property limit will remain at \$750,000,000 per occurrence subject to various sub-limits. Two major sub-limits, Earthquake and Flood will remain at an annual aggregate limit of \$100,000,000; \$50,000,000 for Flood Zone A, V and all 100-year flood zones. For the perils of earthquake and flood, there is a \$1,000,000 per unit of insurance deductible. Mr. Poms stated that these are the primary limits on the Property Policy.

Mr. Poms stated that a lot of the reinsurance carriers had to be replaced because of the market and also NMPSIA's loss history. He stated that the recommendation is to renew with APIP Program. He reported that it remains the largest single property placement in the world. The lead carrier is Lexington Insurance Company and there are more than two dozen companies which participate in the program. Mr. Poms reported that Total Insurable Values (TIV) increased by 6.8% or \$711,870,294 due to the most recent property appraisals performed by Duff and Phelps. He stated that this will affect the premium because there are larger exposures.

Mr. Poms reported that Cyber Insurance coverage is included with a limit of liability of \$25,000,000 Annual Aggregate for all NMPSIA Members. He stated that the higher educational institutions will have a \$5,000,000 limit each, whereas all remaining members will have a \$2,000,000 limit. He stated that total Crime limits will remain at \$2,250,000.

Mr. Poms reported that Terrorism coverage is provided by the APIP program. He stated that each member limit is \$600,000,000 subject to a NMPSIA annual aggregate limit of \$1,400,000,000. He stated that this stand-alone coverage offered to NMPSIA members is extremely important to maintain. Mr. Poms stated that expiring premiums for Property and Crime Insurance are \$22,651,301.

Mr. Poms reported that between 2012 and 2017, the property insurance market was in a relatively "soft" cycle with record amounts of capacity entering the market in search of financial return. He stated that while members with significant or attritional losses saw increases to better match premium to losses, there was not a widespread trend in the market to push rate increases overall. Rate changes, up or down, were selectively made based on the characteristics of the risk. Mr. Poms went on to report that late in 2017, the market started to firm due to an increase in catastrophic losses primarily originating from Hurricanes Harvey, Irma and Maria (HIM). Most every insured experienced rate increases in 2018, and now moving into 2019, coupled with the real wildfire risk that has become apparent, the aforementioned catastrophes have effectively changed the market with carriers now pushing meaningful rate increases across the board, and significantly for insureds that have had losses, or appear to be in a position to have such losses. He explained that this correction, while unwelcome, is somewhat predictable as overall the commercial insurance industry has not been profitable in any of the last three years. He stated that exacerbating the trend, two of the largest writers of commercial property, AIG and FM Global are re-underwriting their entire books of business with a keen eye towards shedding risk. Mr. Poms stated that few underwriters are aggressively pursuing new business in the current environment. Consequently, for the 2019-2020 renewal period, insureds will see rate increases over expiring. For those insureds that have either experienced significant shock losses, or persistent attritional loss activity, rates will increase significantly higher than average in a so called "right sizing" of rates, in most cases, to remain below that which can be achieved in the open market for similar coverage. NMPSIA's continued poor hail loss experience across the country and in New Mexico is affecting not only the placement of carriers, but rates.

Mr. Poms stated that a combination of Lexington, Lloyds and U.S. domestic underwriters will continue to provide coverage for the first \$25,000,000 of the program. Excess limits up to \$1,000,000,000 will be placed with London, Bermudian, European, and U.S. domestic markets, all A.M. Best Rated f at least A-VII. Mr. Poms stated that staff is still negotiating with carriers to complete the entire placement.

Mr. Poms stated that the main peril that has caused significant loss is hail. He stated that this is the most significant issue that the property market has had to deal with in this renewal.

Mr. Poms reviewed OPTION 1. He stated that this option includes a cosmetic exclusion. Mr. Poms stated that basically what the cosmetic exclusion does is that if there is a hail loss and there is no damage that penetrates structure of the roof and affects only the appearance, then there would not be replacement cost coverage. He stated that this exclusion has been around for about the last two years. Mr. Poms stated that Mr. Narvaez researched this and has brought information with respect to case law surrounding this issue. He stated that needless to say, cases are difficult because the insured will state that hailstorm caused significant damage and the insurance will state that it is just cosmetic. Mr. Poms stated that a rainstorm could then occur causing further damage resulting in water damage claims.

Mr. Narvaez reported that this is a relatively new insurance provision developed by ISO, which is the provider of standard provisions for insurance policies in this country and probably other countries. He stated that this new provision is an attempt by the insurance industry to

try to avoid replacing every roof that is damaged by hail or other storms. He stated that the language provides that if it only cosmetic damage that does not affect the structural integrity of the roof, there will be no coverage for such cosmetic damage. Mr. Narvaez stated that because this is a relatively new provision there are not many cases dealing with this provision. However, some judges have already considered this issue and the issue becomes "what is cosmetic damage". If the roof looks bad, the issue before the judge or jury, is if it is structurally damaged. This is turning into a battle of experts in the courts.

Mr. Park asked how Mr. Narvaez thinks New Mexico courts will interpret this.

Mr. Narvaez stated depending on which New Mexico Court District is involved, the likely result will be if it looks bad, then it is structural. He stated he thinks a lot of judges and jury will feel this way.

Mr. Parrino stated that he is very concerned about the possibility that it is first determined to be cosmetic and then a storm hits and proves that there is significant structural damage resulting in a high claim.

Mr. Park stated that he has two concerns. 1) Will this anger and upset members? 2) What is the cost savings if OPTION 1 is chosen? He went on to state that his other question would be is the cost worth the aggravation?

Mr. Narvaez stated that he anticipates without a question litigation. He deferred to Mr. Poms regarding the cost.

Mr. Poms stated that the other negative part of this is that it excludes pre-existing damage from pitched roofs for replacement costs coverage but includes replacement cost for pitched roofs for future claims. Mr. Poms stated that there are cases now. He explained Jal had a significant hailstorm claim and all of their roofs were replaced. A few months later another hailstorm occurred and caused cosmetic damage. He stated that Jal stated that they did not want to go through replacing the roofs again and decided to just leave the roofs with the cosmetic damage that occurred with the second hailstorm. Mr. Poms stated that in this particular situation, since they had pre-existing damage and if another hailstorm occurs, they will have to determine when the damage took place. He stated there are many issues. Mr. Poms stated that not only is there a cosmetic exclusion in OPTION 1, but there is an increase to the hail deductible to \$1,000,000 first building and \$350,000 (there is an option for a slight reduction in premium to increase it to \$500,000) each additional building capped at \$5,000,000 per occurrence and annual aggregate. Mr. Poms stated that based on history, a \$5,000,000 hail claim could occur every year. Mr. Poms stated that the premium for that is \$23,623,347 (+3.849%) (rate of .09188 per \$100 of Total Insured Values). The rate decreases from the expiring .095. The premiums include Property, Automobile Physical Damage, Cyber Liability, Crime and Limited Pollution coverages. This option is effectively a 2.95% decrease taking into consideration the total insured value increase.

Mr. Poms reviewed OPTION 2 in detail. He stated that OPTION 2 will keep the coverage as it is currently with no cosmetic exclusions. Mr. Poms stated that the hail deductible will increase from \$1,000,000 per occurrence to \$1,500,000 per occurrence. The premium will

be \$24,873,347 (+9.368) (rate of .09676 per \$100 of Total Insured Values. The premiums include Property, Automobile Physical Damage, Cyber Liability, Crime and Limited Pollution coverages. He explained that this option is effectively a 2.95% decrease taking into consideration the total insured value increase. Mr. Poms stated that this is a really good option and all of the cosmetic exclusion issues will be avoided, which could cause a lot of problems.

Mr. Parrino stated that Mr. Tim Crone arrived at the Emergency Board Meeting. He requested that the minutes reflect he is present.

Mr. Parrino stated that we would be doing our members a real disservice if we do not cover the cosmetic issues that could occur.

Mr. Willden stated that the RAC spent a considerable amount of time discussing the pros and cons of OPTION 1 and OPTION 2. He stated that the recommendation of the RAC is to select OPTION 2 and allow staff and Mr. Poms the remainder of the month to negotiate the best deal they can get.

A motion was made to selection OPTION 2.

MOTION: A. Park

SECONDED: D. Williams

VOTE: Vote carried unanimously.

Mr. Willden stated that he did not intend to cut off the discussion, he just wanted to alert the Board that the RAC spent a lot of time discussing this item.

Ms. Chavez stated that staff was concerned with the statute and we wanted to make sure that statute didn't indicate that there will be no more than \$1,000,000 paid per occurrence. She stated that Mr. Narvaez has provided a legal opinion to give the Board assurance that by having a \$1,500,000 per occurrence out of pocket cost, it will not go against statute.

Mr. Narvaez stated that during discussions with the Memorandum of Coverage Committee (MOC committee), regarding the coverages that Mr. Poms is able to locate on the market, a question was raised by Mr. Valerio as to whether there was a statute that there could not be more than \$1,000,000 in an Self Insured Retention (SIR) or deductible. He stated that he reviewed statute 22-29-7. Mr. Narvaez stated that this statute has nothing to do with deductibles. He stated the statute provides that if a school district uses or allows another party to use the school facilities, then there will be no more than \$1,000,000 paid for any occurrence arising out of that use by private persons using that facility. Mr. Narvaez stated that statute 22-29-7 does not deal with deductibles whatsoever.

Mr. Narvaez stated that it would be good if Mr. Poms could state on the record the reasons why it was important to have these decisions made today by the Board.

Mr. Poms stated the main reason why this meeting is being held is because staff needs Board approval to bind coverages, receive policy numbers and firm up the re-insurance. He stated

that the second reason is to receive the policy numbers then issue over fifteen thousand certificates of insurance prior to July 1, 2019.

Mr. Poms stated that the second coverage to review is the liability coverage. He stated that there is a frequency issue on the sexual molestation claims as well as very large severe claims discussed in Executive Session. He stated that this was an extremely difficult line of coverage to negotiate and there were a number of insurance companies that have to be on the risk insurance now. Mr. Poms reported that the specific SIR of \$1,000,000 will remain as expiring. He stated that combined lines Aggregate Attachment Point will increase from \$33,500,000 to \$36,750,000, with an aggregate limit of \$3,000,000. The aggregate includes losses for all Liability, Property and Workers' Compensation coverages. Mr. Poms stated that regarding the Primary Liability Policy, staff is recommending renewing all with the following carrier: "Great American Insurance Company". He stated that they will provide \$4,000,000 excess of \$1,000,000 per member for General and Automobile Liability and Errors and Omissions; \$12,000,000 Annual Aggregate per member for General Liability and \$8,000,000 Annual Aggregate Per Member for Errors and Omissions; \$15,000,000 annual aggregate for Sexual Abuse and Molestation. The next layer of Excess policies that will follow form will be written on a quota-share basis with "Pennsylvania Manufactures Association Insurance Company", "Hudson Insurance Company", "Markel Global Reinsurance Company" and "Certain Underwriters at Lloyds for the limit of \$15,000,000 excess of \$5,000,000 Per Member and in the Pool Aggregate. The next layer of Excess Policies that will follow-form will be "Certain Underwriters at Lloyds with a limit of \$10,000,000 excess of \$20,000,000 Per Member and in the Pool Aggregate. Allocated Loss Adjustment Expenses (ALAE) are included with the limits are not in excess of.

Mr. Poms reported that Genesis will no longer be a carrier for NMPSIA. He stated that they were a partner with NMPSIA for over twenty years. Mr. Poms reported that Genesis is the carrier that has primarily been hit by the Espanola sexual claims and they have decided not to renew.

Mr. Poms reported that premiums for the liability program will increase from \$13,604,840 to \$14,993,058 (+10.2038%). This is an effective premium increase of 5.67% taking into the exposure increases.

Mr. Poms reported that all coverages are provided on "Per Occurrence" trigger basis not on "Claims –Made."

Mr. Narvaez stated that he strongly agrees with the recommendations outlined by Mr. Poms.

Ms. Chavez stated NMPSIA has agreed to increases in the coverages because of the severity of the cases that are coming up.

Ms. Chavez stated that her question is that the Board already made a motion to approve.

Mr. Narvaez stated it would be prudent to take a vote on each section.

Ms. Chavez stated that the agenda item is not listed in manner to have motions made on each section.

Ms. Chavez stated that her question is that as far as the premiums that have been passed on to the schools, NMPSIA has already given the schools their premium increases for FY20. She asked if the Board was looking at absorbing the increases through NMPSIA's fund for FY20, and then NMPSIA will assess whatever premiums are needed in FY21.

Mr. Parrino stated that we will go ahead and complete this entire discussion and be sure and specify OPTION 2.

Mr. Poms reported that exposures increased 4.53%, 1.529% 8.259% and 3.951% respectively. This includes adding New Mexico Highlands University to the Risk Program. All the Liability reinsurers will reinsure NMPSIA's Liability Memorandum of Coverage (MOC).

Mr. Poms recommends renewing the self-insured Ltd. Criminal Defense coverage. Losses do not apply toward the liability aggregate. The Ltd. Criminal Defense Coverage will be renewed as a stand-alone program. Mr. Poms stated that staff is recommending the following limits as outlined below:

A) Sexual abuse or Molestation: A limit of \$30,000,000 for each and all criminal proceedings brought against the covered person. Mr. Poms indicated he would be able to secure an additional \$5 million in coverage.

B) Corporal Punishment: A limit of \$5,000 when all charges are misdemeanors, or \$15,000 when one or more felony charges are brought against the covered person;

C) Assault or Battery: A limit of \$5,000 when all charges are misdemeanors, or \$15,000 when one or more felony charges are brought against the covered person. Based on favorable loss experience, we are requesting this coverage be renewed for another year.

Renew the self-insured Ltd. IDEA coverage. Losses do not apply toward the liability aggregate.

Mr. Poms stated that staff would like the Board to provide authority to the Executive Director to continue to oversee negotiations Poms during the month of June. The premiums stated here should be the maximum amounts charged. In addition, there might be other options from insurers/reinsurers. Any negotiations with Poms and any acceptance by the Executive Director would only yield better terms or lower premiums than stated above. Staff would like the authority to be granted to the Executive Director to bind coverage with the existing reinsurers and/or another.

Mr. Poms reported that on the Workers' Compensation side the Specific SIR of \$1,000,000 will remain as expiring. There is no aggregate coverage. He stated that limits are Statutory with a \$2,000,000 Limit for Employers Liability. The exposure base (payroll increased by 3.951%. He stated that the premium decreased slightly from \$591,288 to \$586,844. Charter schools are billed an additional premium when they join NMPSIA. Premium is auditable

based on payroll audits. Aircraft coverage applies to Southwest Aeronautical. He stated that the recommendation is to renew with Safety National.

Mr. Poms reviewed the Equipment Breakdown Voluntary Program. He stated that the deductible remains at \$2,500. The limit per breakdown of \$200,000,000 each accident will remain as expiring subject to sub-limits. He reported that the premium based on property values which increased by 6.8%. The premiums will increase from, \$289,170 to \$316,958. This is the maximum premium and include all members if they join the voluntary program. Effectively a 2.809% increase. Mr. Poms stated the recommendation is to renew with Liberty Mutual Insurance Company.

Mr. Poms stated that he stands for questions.

Mr. Parrino asked if we should rescind the previous vote.

Mr. Narvaez stated that we should not do anything with the previous vote, and if the agenda indeed lists this item as one item, he recommends the agenda be followed. He stated that he believes this can be easily done by having Mr. Willden speak for the RAC, which he believes has a recommendation to adopt the recommendations set forth by Mr. Poms.

Mr. E. Chavez asked if the action taken so far should be retracted or amended, because there was already action taken.

Mr. Narvaez stated that we should retract what we have done to clean up the record.

Mr. Al Park made a motion to withdraw his prior motion.

MOTION: A. Park

SECONDED: R. Williams

VOTE: Vote carried unanimously

Mr. Park made a motion to adopt the Summary of the 2019-2020 Excess Insurance presented by Mr. Poms, exercising OPTION 2, with respect to the cosmetic exclusion. Staff should also be granted the authority to continue to negotiate with Poms & Associates during the month of June. The motion also includes increasing the sexual molestation liability per occurrence from \$30,000,000 to \$35,000,000.

MOTION: A. Park

SECONDED: T. Ruiz

VOTE: Vote carried unanimously

7. NEXT MEETING DATE AND LOCATION

Ms. Chavez stated that staff wanted to secure a date that was good for everyone. She stated it seemed that Thursday, June 27, 2019 will work for most Board members. She stated that there is a call-in number that will be provided for folks to call in if they cannot make the trip. She stated that agenda items that were going to be presented at Board meeting that was cancelled will be on the agenda with the addition of the approval of General Counsel Award.

Ms. Chavez stated that a new agenda will be posted within the next few days and staff will make sure that everything is provided and posted in a timely manner.

Mr. Parrino asked if the meeting will be at CES.

Ms. Chavez stated that the meeting will be at the Poms & Associates location.

Ms. E. Chavez stated that the location and date will be on the agenda.

Mr. Narvaez stated that it would be appropriate to note that the reason why this Emergency was unforeseen so that we can report to the Attorney General.

Mr. Parrino noted that the reason that this meeting was unforeseen was because the agenda was not properly posted on time, but there were matters that had to be addressed urgently, so staff followed the correct statute to hold this Emergency meeting so that we could meet our obligations.

Mr. Park stated that he wanted to make a clarification. The staff from NMPSIA did provide adequate timely notice for the meeting to their website administrator. It was the website administrator that experienced technical issues and confirmed that the notice was on the website when in fact it was not. This was a failure of the third-party administrator and not the staff or Board of NMPSIA.

Mr. Parrino thanked Mr. Park for this clarification.

Mr. Parrino thanked everyone for attending the Emergency Board Meeting and taking the time to attend in person and via conference call.

8. ADJOURNMENT (Action Item)


A motion was made to adjourn the NMPSIA Board Meeting at 9:39 a.m.

MOTION: A. Park

SECONDED: T. Ruiz

VOTE: Vote carried unanimously

APPROVED:


Mary Parr-Sanchez, President