

EL DORADO COUNTY BOARD OF SUPERVISORS

AGENDA ITEM TRANSMITTAL

Meeting of December 5, 2006

AGENDA TITLE: CSAC EIA General Liability II Program Revised Memorandum of Understanding (MOU)

DEPARTMENT: Human Resources

DEPT SIGNOFF:

CAO USE ONLY: C

CONTACT: Laura S. Gill

DATE: 11/7/2006

PHONE: 5592

Geoffrey 11/17/06

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:

Human Resources is recommending that the Board direct the Chief Administrative Officer, or designee, to sign the General Liability II - Memorandum of Understanding with CSAC EIA. A copy of the contract is on file with the clerk of the Board.

The redlined version of this MOU is presented first, followed by the "clean" version. The accompanying exhibits remain the same.

CAO RECOMMENDATIONS: *Recommend approval. Laura S. Gill 11/27/06*

Financial impact? () Yes (X) No

Funding Source: () Gen Fund () Other

BUDGET SUMMARY:

Other:

CAO Office Use Only:

Total Est. Cost _____

4/5's Vote Required () Yes (~~1~~) No

Funding

Change in Policy () Yes (~~1~~) No

New Personnel () Yes (~~1~~) No

Budgeted _____

New Funding _____

Savings _____

Other _____

Total Funding _____

Change in Net County Cost _____

CONCURRENCES:

Risk Management Yes

County Counsel CS

Other _____

*Explain

BOARD ACTIONS:

Vote: Unanimous _____ Or

Ayes:

Noes:

Abstentions:

Absent:

I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors

Date: _____

Attest: Cindy Keck, Board of Supervisors Clerk

By: _____

County of El Dorado
Chief Administrative Office
Interdepartmental Memorandum

DATE: November 7, 2006
TO: Board of Supervisors
FROM: Laura S. Gill, Chief Administrative Officer
SUBJECT: Amendment to the CSAC EIA General Liability II
Program - Memorandum of Understanding (MOU)

Recommendation: Human Resources is recommending that the Board direct the Chief Administrative Officer, or designee, to sign the General Liability II - Memorandum of Understanding with CSAC EIA.

Reason for Recommendation: The CSAC EIA was recently restructured in order to incorporate public entities (school districts, cities, public agencies, etc.) into its membership. This new MOU revised language to include the new public entities, along with other minor grammatical and non-substantive changes.

Fiscal Impact: There is no fiscal impact relating to the MOU amendment.

Action to be Taken Following Approval: Following the Board's approval, the CAO, or designee, will sign the MOU and forward to CSAC EIA.


Contract #: _____

CONTRACT ROUTING SHEET

Date Prepared: 10-27-6

Need Date: 11/10/6

PROCESSING DEPARTMENT:

Department: Human Resources
Dept. Contact: Sherril Jodar
Phone #: 5597
Department: Human Resources
Authorization: 


CONTRACTOR:

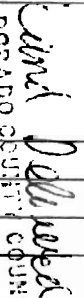
Name: CSAC EIA
Address: _____
Phone: 5597

CONTRACTING DEPARTMENT: Human Resources

Service Requested: Review and approval of MOU amendments to the GL II Program
Contract Term: _____ Contract/Amendment Value: _____
Compliance with Human Resources requirements? Yes: NA No: _____
Compliance verified by: _____

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: _____ Date: 11/1/06 By: 
Approved: _____ Disapproved: _____ Date: _____ By: _____

2006 OCT 27 PM 1:44
EL DORADO COUNTY COUNSEL


ASSIGNMENT

10/27/06
ATTORNEY MIKE C
DEPT INDEX NO. 024104
DA
BY

PLEASE FORWARD TO Sherril Jodar at RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: Yes Disapproved: _____ Date: 10-27-6 By: S. Jodar
Approved: _____ Disapproved: _____ Date: _____ By: _____

NOV 01 2006


OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____



October 16, 2006

ACTION REQUIRED BY DECEMBER 31, 2006

To: Members, General Liability II Program
From: Gina Dean, Chief Operating Officer 
Subject: Amendment to GLII Program MOU

At its meeting on October 5, 2006, the GLII Committee approved amendments to the GLII Program Memorandum of Understanding (MOU). These amendments were primarily a result of the EIA restructure to incorporate the public entity membership, but also to clean up the document and create uniformity with other EIA documents. The amendments to the MOU were circulated to all members of the Program for review and comment prior to the GLII Committee's action. As a result, minor grammatical and non-substantive changes were made in the final version approved by the Committee. For your reference, the MOU amendments in redline and strikeout text are posted on the EIA's website at www.csac-eia.org.

Enclosed is a clean version of the amended MOU along with two signature pages, for execution by the members. From the EIA's standpoint, the designated representative to the EIA has authority to sign the amended MOU on behalf of the member. However, you may have internal procedures which require approval by your governing board even though the amendments approved by the GLII Committee are non-controversial in nature.

Members must execute the amended MOU by December 31, 2006. Failure to execute the amended MOU by December 31st will be tantamount to sending notice of withdrawal effective October 1, 2007. This notice of withdrawal may be rescinded by executing the MOU Amendment before the October 1, 2007 renewal.

Upon execution of the amended MOU, please return one of the signed original signature pages to our office. Please let us know if you have any questions or need additional assistance.

Enclosures

EXECUTIVE COMMITTEE:

Peggy Scroggins President Colusa County	Marcia Chadbourne Vice President Sonoma County	Ron Harvey Contra Costa County	Kimberly Kerr Humboldt County	Kristin McMenomey Mendocino County	James Brown Merced County	Van Maddox Sierra County	David L. Dolenar Stanislaus County	Connie Conway Tulare County
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Adopted: December 11, 1990
Effective: February 15, 1991
Amended: March 11, 2004
Amended: _____

MEMORANDUM OF UNDERSTANDING

LIABILITY PROGRAM II

This Memorandum of Understanding is entered into by and between the CSAC-EIA (hereinafter referred to as the "Authority") and the participating counties members of the Liability Program II (hereinafter referred to as "GLII"), consisting of counties and other public entities (hereinafter "Public Entity") who are signatories to this Memorandum.

1. JOINT POWERS AGREEMENT. Except as otherwise provided herein, all terms used herein shall be as defined in Article 1 of the Joint Powers Agreement Creating the Excess Insurance Authority (hereinafter referred to as "Agreement"). Provisions of any applicable coverage agreement and all other provisions of the Agreement not in conflict with this Memorandum shall be applicable.

2. There is hereby created a "Mega Fund" (hereinafter referred to as the "Fund"), consisting of contributions from the participating counties in the Fund to the Authority for the purpose of establishing a second Excess Liability Program (hereinafter referred to as "Program II"). Said Fund shall be used exclusively for the payment of claims made against the participating counties in the Fund for excess liability claims in accordance with the terms and conditions of the excess insurance policy (hereinafter referred to as the "coverage document").

Certificates of coverage will be issued by the Authority evidencing membership in the Fund.

32. PROGRAM COMMITTEE. There is hereby established a GLII Program II Liability Committee (hereinafter referred to as "GLII Committee" or "Committee") and, except as otherwise provided herein, said Committee shall have full authority to determine all matters affecting the participating counties members.

4. The GLII Committee shall consist of all Program-GLII member counties of the Authority, with the committee member being that person designated as the county's Board member for the Authority. In the event a county Committee member is not present at a meeting of the Committee, the County's Alternate Board member may serve as the county's alternate on the Committee. In addition to Program-GLII member counties, one member of the Committee shall be a CPEIA-Public Entity member and shall be appointed by the CPEIA Board of Directors and the EIA-Executive Committee. The CPEIA-Public Entity designated representative shall serve for a one-year term.

~~_____ 5. The GLII Committee shall meet on the call of the Chair of the Committee as provided in Article 12 of the Agreement and Article VI of the Bylaws of the Authority (hereinafter referred to as the "Bylaws").~~

~~_____ 6. A majority of the members of the Committee shall constitute a quorum for the transaction of business. Except as otherwise provided herein, all actions of the Committee shall require the affirmative vote of a majority of the members present at a meeting duly held at which a quorum is present. If a quorum is initially present at a meeting, the committee may continue to transact business notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken is approved by at least a majority of the number required to constitute a quorum.~~

~~_____ Notwithstanding the above, any action taken on fiscal matters affecting the Fund as described herein, shall require a majority vote of the participating counties in the Fund. A majority of the members of the GLII Committee shall constitute a quorum for the transaction of business. Except as otherwise provided herein, all actions of the GLII Committee shall require the affirmative vote of a majority of the members of the Committee. Any meeting of the GLII Committee shall be subject to the applicable provisions of Government Code § 54950 et seq., commonly known as the "Brown Act."~~

~~**73. PREMIUMS.** The participating members, in accordance with the provisions of Article 14 of the Agreement, shall be assessed an annual premium for the purpose of funding the GLII Program. Annual premium contributions Contributions to the Fund, including administrative costs associated with the Program, shall be as established by the counties participating in the Fund GLII Committee upon consultation with the underwriters.~~

~~**84. MEMBER SELF-INSURED RETENTIONS.** The self-insured retention amounts of those counties the members participating in Program II shall be as established by the counties participating in Program II, upon consultation with the underwriters and subject to approval by the GLII Committee.~~

~~**5. COST ALLOCATION.** The method of allocating contributions to the Fund GLII Program shall be calculated according to those rates as established by the underwriter. Future allocations may be changed by the participating counties in the Fund determined by the GLII Committee upon consultation with underwriters.~~

~~**6. FUNDING FOR CLAIMS.** At the GLII Committee's discretion, based on market conditions, exposures, and/or loss history, self-insured layers or aggregated retentions may be established for the GLII Program for any policy period or combination of policy periods. If self-insured and/or aggregated retention layers are established, such will be funded by contributions from the members participating in the self-insured and/or~~

aggregated retention layers, as determined by the Committee. Funding for these layers shall be used exclusively for the payment of claims made against the participating members, including expenses, in accordance with the terms and conditions of the applicable Memorandum of Coverage.

Any self-insured and/or aggregated retention layers shall be fully funded by the participating members, and may, at the discretion of the GLII Committee, be discounted for anticipated and/or earned investment earnings. Should such not be fully funded for any reason, pro-rata assessments may be made to the participating members pursuant to the provisions of Article 14.b.3. of the Agreement to ensure a 100% funding level.

~~11. Any interest accruing on the contributions by the participating counties to the Fund shall inure to the benefit of the participating counties in accordance with their percentage of contribution to the Fund. Each participating county shall determine the manner in which its proportionate share of interest shall be utilized, if a dividend is declared, whether returned to the county at the end of each coverage year or as a credit on future contributions to the Fund.~~

7. DIVIDENDS. Notwithstanding Article 22.b. of the Agreement, if self-insured and/or aggregated retention layers are established and it is determined that funds remain after the payment of all claims, a dividend may be declared by the GLII Committee. If a dividend is declared, the dividend shall be payable to the members participating in the layer, during the period in which there are excess funds, based on each member's share of contributions to the applicable layer, regardless of whether the member is a participating member in the GLII Program at the time the dividend is declared.

8. MEMORANDUM OF COVERAGE. A Memorandum of Coverage will be issued by the Authority evidencing membership in the GLII Program and setting forth terms and conditions of coverage.

9. CLAIMS ADMINISTRATION. Each participating member is required to comply with the Authority's Underwriting and Claims Administration Standards (including Addendum B—Liability Claims Administration Guidelines) as amended from time to time, and which are attached hereto as Exhibit A and incorporated herein.

~~1410. APPLICATION TO THE PROGRAM. Any county wishing to make All applications to join the GLII Program II and become a participating county may become a participating county upon the will be evaluated by and subject to approval by the GLII Committee and approval of the underwriter.~~

~~15. Any county entity which makes application to become a participating county member of the GLII Program and who is not already a participating county~~

member in the Authority must also be approved by ~~the participating counties~~ in accordance with the provisions of Article ~~20~~19 of the Agreement.

~~16.~~ 16. New participating ~~counties~~members may be added to the GLII Program II during the term of the coverage period on a pro-rata basis. Notwithstanding late entry into the ~~Fund~~Program, the new ~~county~~member may be assessed additional sums pursuant to paragraph 96 herein, based upon all claims against the ~~Fund~~ during the entire coverage period.

4711. WITHDRAWAL AND/OR CANCELLATION FROM THE PROGRAM. Withdrawal and/or cancellation of a member ~~county~~ from the GLII Program II shall be in accordance with the ~~withdrawal~~ provisions of Article 20 or 21 of the Agreement, except that any interest or other dividend to which the ~~withdrawing county~~member is otherwise entitled shall be payable to the ~~withdrawing county~~member in accordance with paragraphs 42 and 436 herein.

12. LATE PAYMENTS. Notwithstanding any other provision to the contrary regarding late payment of invoices or cancellation from a program, at the discretion of the Executive Committee, any member that fails to pay an invoice when due may be given a ten (10) day written notice of cancellation.

4813. RESOLUTION OF DISPUTES. Any question or dispute with respect to the rights and obligations of the parties to this ~~m~~Memorandum regarding coverage shall be determined by a ~~majority vote of the Committee~~ in accordance with the Article 31 of the Agreement, and may also be subject to approval of the underwriter.

~~19.~~ Annual Authority administration costs associated with Program II shall be as determined by the committee.

~~20.~~ The Authority is designated as the custodian of contributions to the Fund. The Authority shall be responsible for the investment of contributions to the Fund and shall provide each participating county with an accounting reflecting the expenditures of the contributions to the Fund.

~~21.~~ Except as otherwise provided herein, the coverage document is controlling with respect to the actions of the participating counties under this Memorandum.

2214. AMENDMENT. This Memorandum may be amended by a majority vote of the GLII Committee and signature on the Memorandum by the ~~member's from each county~~ designated representative who shall have authority to execute this Memorandum. Should a member of the GLII Program fail to execute any amendment to this Memorandum within

the time provided by the GLII Committee, the member will be deemed to have withdrawn as of the end of the policy period.

2315. COMPLETE AGREEMENT. Except as otherwise provided herein, this Memorandum constitutes the full and complete agreement of the members.

2416. SEVERABILITY. Should any provision of this Memorandum be judicially determined to be void or unenforceable, such determination shall not affect any remaining provision.

2517. EFFECTIVE DATE. This Memorandum shall become effective on the effective date of coverage for the member county and upon approval by the GLII Committee; and the signing of this agreement by the member and the General Manager/Secretary/Treasurer of the Authority of any amendment, whichever is later.

2618. EXECUTION IN COUNTERPARTS. This Memorandum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

In witness whereof, the undersigned have executed this Memorandum as of the date set forth below.

Dated: _____
CSAC Excess Insurance Authority

Dated: _____
County Member Entity: _____



Adopted: December 11, 1990
Effective: February 15, 1991
Amended: March 11, 2004
Amended: October 5, 2006

MEMORANDUM OF UNDERSTANDING LIABILITY PROGRAM II

This Memorandum of Understanding is entered into by and between the CSAC-EIA (hereinafter referred to as the "Authority") and the participating members of the Liability Program II (hereinafter referred to as "GLII"), consisting of counties and other public entities (hereinafter "Public Entity") who are signatories to this Memorandum.

1. **JOINT POWERS AGREEMENT.** Except as otherwise provided herein, all terms used herein shall be as defined in Article 1 of the Joint Powers Agreement Creating the Excess Insurance Authority (hereinafter referred to as "Agreement"). Provisions of any applicable coverage agreement and all other provisions of the Agreement not in conflict with this Memorandum shall be applicable.

2. **PROGRAM COMMITTEE.**

A. There is hereby established a GLII Program Committee (hereinafter referred to as "GLII Committee" or "Committee") and, except as otherwise provided herein, said Committee shall have full authority to determine all matters affecting the participating members.

B. The GLII Committee shall consist of all GLII member counties of the Authority, with the committee member being that person designated as the county's Board member for the Authority. In the event a county Committee member is not present at a meeting of the Committee, the County's Alternate Board member may serve as the county's alternate on the Committee. In addition to GLII member counties, one member of the Committee shall be a Public Entity member appointed by the Executive Committee. The Public Entity designated representative shall serve for a one-year term.

C. The GLII Committee shall meet on the call of the Chair of the Committee as provided in Article 12 of the Agreement and Article VI of the Bylaws of the Authority (hereinafter referred to as the "Bylaws").

D. A majority of the members of the GLII Committee shall constitute a quorum for the transaction of business. Except as otherwise provided herein, all actions of the GLII Committee shall require the affirmative vote of a majority of the members of the Committee. Any meeting of the GLII Committee shall be subject to the applicable provisions of Government Code § 54950 et seq., commonly known as the "Brown Act."

3. **PREMIUMS.** The participating members, in accordance with the provisions of Article 14 of the Agreement, shall be assessed an annual premium for the purpose of funding the GLII Program. Annual premium contributions, including Program administrative costs plus the Authority's general expense allocated to the Program by the Board for the next policy period, shall be as established by the GLII Committee upon consultation with the underwriters.

4. **MEMBER SELF-INSURED RETENTIONS.** The self-insured retention amounts of the members shall be established upon consultation with the underwriters and subject to approval by the GLII Committee.

5. **COST ALLOCATION.** The method of allocating contributions to the GLII Program shall be determined by the GLII Committee upon consultation with underwriters.

6. **FUNDING FOR CLAIMS.**

A. At the GLII Committee's discretion, based on market conditions, exposures, and/or loss history, self-insured layers or aggregated retentions may be established for the GLII Program for any policy period or combination of policy periods. If self-insured and/or aggregated retention layers are established, such will be funded by contributions from the members participating in the self-insured and/or aggregated retention layers, as determined by the Committee. Funding for these layers shall be used exclusively for the payment of claims made against the participating members, including expenses, in accordance with the terms and conditions of the applicable Memorandum of Coverage.

B. Any self-insured and/or aggregated retention layers shall be fully funded by the participating members, and may, at the discretion of the GLII Committee, be discounted for anticipated and/or earned investment earnings. Should such not be fully funded for any reason, pro-rata assessments may be made to the participating members pursuant to the provisions of Article 14.b.3. of the Agreement to ensure a 100% funding level.

7. **DIVIDENDS.** Notwithstanding Article 22.b. of the Agreement, if self-insured and/or aggregated retention layers are established and it is determined that funds remain after the payment of all claims, a dividend may be declared by the GLII Committee. If a dividend is declared, the dividend shall be payable to the members participating in the layer, during the period in which there are excess funds, based on each member's share of contributions to the applicable layer, regardless of whether the member is a participating member in the GLII Program at the time the dividend is declared.

8. MEMORANDUM OF COVERAGE. A Memorandum of Coverage will be issued by the Authority evidencing membership in the GLII Program and setting forth terms and conditions of coverage.

9. CLAIMS ADMINISTRATION. Each participating member is required to comply with the Authority's Underwriting and Claims Administration Standards (including Addendum B - Liability Claims Administration Guidelines) as amended from time to time, and which are attached hereto as Exhibit A and incorporated herein.

10. APPLICATION TO THE PROGRAM.

A. All applications to join the GLII Program will be evaluated by and subject to approval by the GLII Committee and the underwriter.

B Any entity which makes application to become a participating member of the GLII Program who is not already a participating member in the Authority must also be approved in accordance with the provisions of Article 19 of the Agreement.

C New participating members may be added to the GLII Program during the term of the coverage period on a pro-rata basis. Notwithstanding late entry into the Program, the new member may be assessed additional sums pursuant to paragraph 6 herein, based upon all claims against the fund during the entire coverage period.

11. WITHDRAWAL AND/OR CANCELLATION FROM THE PROGRAM. Withdrawal and/or cancellation of a member from the GLII Program shall be in accordance with the provisions of Article 20 or 21 of the Agreement, except that any interest or other dividend to which the withdrawing member is otherwise entitled shall be payable to the withdrawing member in accordance with paragraph 7 herein.

12. LATE PAYMENTS. Notwithstanding any other provision to the contrary regarding late payment of invoices or cancellation from a program, at the discretion of the Executive Committee, any member that fails to pay an invoice when due may be given a ten (10) day written notice of cancellation.

13. RESOLUTION OF DISPUTES. Any question or dispute with respect to the rights and obligations of the parties to this Memorandum regarding coverage shall be determined in accordance with the Article 31 of the Agreement, and may also be subject to approval of the underwriter.

14. **AMENDMENT.** This Memorandum may be amended by a majority vote of the GLII Committee and signature on the Memorandum by the member's designated representative who shall have authority to execute this Memorandum. Should a member of the GLII Program fail to execute any amendment to this Memorandum within the time provided by the GLII Committee, the member will be deemed to have withdrawn as of the end of the policy period.

15. **COMPLETE AGREEMENT.** Except as otherwise provided herein, this Memorandum constitutes the full and complete agreement of the members.

16. **SEVERABILITY.** Should any provision of this Memorandum be judicially determined to be void or unenforceable, such determination shall not affect any remaining provision.

17. **EFFECTIVE DATE.** This Memorandum shall become effective on the effective date of coverage for the member and upon approval by the GLII Committee of any amendment, whichever is later.

18. **EXECUTION IN COUNTERPARTS.** This Memorandum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

In witness whereof, the undersigned have executed this Memorandum as of the date set forth below.

Dated: _____
CSAC Excess Insurance Authority

Dated: _____
Member Entity: _____



EXHIBIT A

Adopted: December 6, 1985
Amended: January 23, 1987
Amended: October 6, 1995
Amended: October 1, 1999
Amended: October 3, 2003
Amended: October 1, 2004

CSAC EXCESS INSURANCE AUTHORITY

UNDERWRITING AND CLAIMS ADMINISTRATION STANDARDS

I. GENERAL

- A. Each Member shall appoint an official or employee of the Member to be responsible for the risk management function and to serve as a liaison between the Member and the Authority for all matters relating to risk management.
- B. Each Member shall maintain a loss prevention program and shall consider and act upon all recommendations of the Authority concerning the reduction of unsafe conditions.
- C. Each Member shall maintain records of claims in each category of insurance covered by a program of the Authority and shall provide copies of such records to the Authority as directed by the Executive, Underwriting or Claims Review Committees.

Such records shall provide the following information by fiscal year: number of claims (open and closed); amounts paid, amounts reserved and total incurred. Allocated expenses shall be included. If losses are capped, the excess amount shall be indicated.

II. EXCESS WORKERS' COMPENSATION PROGRAM

- A. The Member shall be responsible for the investigation, settlement, defense and appeal of any claim made, suit brought or proceeding instituted against the Member.
 - 1. The Member shall use only qualified personnel to administer its workers' compensation claims. At least one person in the claims office (whether in-house or outside administrator) shall be certified by the State of California as a qualified administrator of self-insured workers' compensation plans.
 - 2. Qualified defense counsel experienced in workers' compensation law and practice shall handle litigated claims. Members are

encouraged to utilize attorneys who have the designation "Certified Workers' Compensation Specialist, the State Bar of California, Board of Legal Specialization".

3. The Member shall use the Authority's Workers' Compensation Claims Administration Guidelines (Addendum A) and shall advise its claims administrator that these guidelines are utilized in the Authority's workers' compensation claims audits.
- B. The Member shall provide the Authority written notice of any potential excess workers' compensation claims in accordance with the requirements of the Authority's bylaws. Updates on such claims shall be provided as requested by the Authority and/or the Authority's excess carrier.
- C. A claims administration audit utilizing the Authority's Workers' Compensation Claims Administration Guidelines (Addendum A) shall be performed once every two (2) years. In addition, an audit will be performed within twelve (12) months of any of the following events:
1. There is an unusual fluctuation in the Member's claim experience or number of large claims or
 2. There is a change of workers' compensation claims administration firms or
 3. The Member is a new member of the Excess Insurance Authority.

The claims audit shall be performed by a firm selected by the Authority. Recommendations made in the claims audit shall be addressed by the Member and a written response outlining a program for corrective action shall be provided to the Authority within sixty (60) days of receipt of the audit.

- D. The Member shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. Based upon the actuarial recommendations, the Member should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.

III. EXCESS LIABILITY PROGRAMS

- A. The Member shall be responsible for the investigation, settlement, defense and appeal of any claim made, suit brought or proceeding instituted against the Member.
1. The Member shall use only qualified personnel to administer its liability claims.

2. Qualified defense counsel experienced in tort liability law shall handle litigated claims. Members are encouraged to utilize defense counsel experienced in the subject at issue in the litigation.
 3. The Member shall use the Liability Claims Administration Guidelines (Addendum B) and shall advise its claims administrator that these guidelines be utilized in the Authority's liability claims audits.
- B. The Member shall provide the Authority written notice of any potential excess liability claim in accordance with the requirements of the Authority's Bylaws. Updates on such claims shall be provided as requested by the Authority and/or the Authority's excess carrier.
- C. A claims administration audit utilizing the Authority's Liability Claims Administration Guidelines (Addendum B) shall be performed once every three (3) years. In addition, an audit will be performed within twelve (12) months of any of the following events:
1. There is an unusual fluctuation in the Member's claims experience or number of large claims or
 2. There is a change of liability claims administration firms or
 3. The Member is a new member of the Excess Insurance Authority.

The claims audit shall be performed by a firm selected by the Authority. Recommendations made in the claims audit shall be addressed by the Member and a written response outlining a program for corrective action shall be provided to the Authority within sixty (60) days of receipt of the audit.

- D. The Member shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. Based upon the actuarial recommendations, the Member should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.

IV. PROPERTY PROGRAMS

- A. The Member shall maintain appropriate records including a complete list of insured locations and schedule of values pertaining to all real property. Copies of such records shall be provided to the Authority or its brokers as requested by the Executive or Property Committees.
- B. Each Member shall perform a real property replacement valuation for all locations over one million dollars. Valuations shall be equivalent to the Marshall Swift system and shall be performed at least once every five (5)

years. New members shall have an appraisal or valuation performed within one year from entry into the Program.

V. MEDICAL MALPRACTICE PROGRAM

- A. The Member, if a member of Medical Malpractice Program I (hereinafter Program I), or Mid Mal Program; or the third party administrator for Medical Malpractice Program II (hereinafter Program II); shall be responsible for the investigation, settlement, defense and appeal of any claim made, suit brought or proceeding instituted against the Member.
1. The Member (Program I and Mid Mal Program) or third party administrator (Program II) shall use only qualified personnel to administer its health facility claims.
 2. Qualified defense counsel experienced in health facility law shall handle litigated claims.
 3. The Member (Program I and Mid Mal Program) or third party administrator (Program II) shall use the "Claims Reporting And Handling Guidelines" in the CSAC Excess Insurance Authority Medical Malpractice Excess Insurance Program Operating And Guidelines Manual (hereinafter OPERATING AND GUIDELINES MANUAL), and shall advise its claims administrator that these claims handling guidelines are utilized in the Authority's medical malpractice claims audits.
- B. The Member (Program I and Mid Mal Program) or third party administrator (Program II) shall provide the Authority and its excess carrier written notice of any potential excess claim or "major incident" in accordance with the requirements of the Authority and of the excess carrier as stated in the OPERATING AND GUIDELINES MANUAL. Updates on such claims or major incidents shall be provided as requested by the Authority and/or the Authority's excess carrier.
- C. A claims administration audit utilizing the Authority's Claims Reporting and Handling Guidelines in the OPERATING AND GUIDELINES MANUAL shall be performed once every three (3) years. In addition, an audit will be performed within twelve (12) months of any of the following events:
1. There is an unusual fluctuation in the Member's claims experience or number of large claims or
 2. There is a change of health facility claims administration firms or
 3. The Member is a new member of the Excess Insurance Authority or

4. The Medical Malpractice Committee requests an audit.

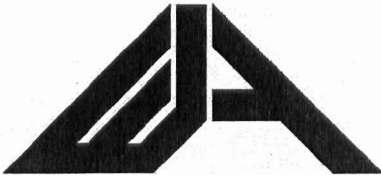
The claims audit shall be performed by a firm selected by the Authority. Recommendations made in the claims audit shall be addressed by the Member and a written response outlining a program for corrective action shall be provided to the Authority within sixty (60) days of receipt of the audit.

- D. If a Member of Program I or the Mid Mal Program, the Member shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. Based upon the actuarial recommendations, the Member should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.
- E. The Member shall have an effective risk management program in accordance with the "Risk Management Guidelines" as states in the OPERATING AND GUIDELINES MANUAL.

VI. SANCTIONS

- A. The Authority shall provide the Member written notification of the Member's failure to meet any of the above-mentioned standards or of other concerns, which affect or could affect the Authority.
- B. The Member shall provide a written response outlining a program for corrective action within sixty (60) days of receipt of the Authority's notification.
- C. After approval by the Executive Committee of the Member's corrective program, the Member shall implement the approved program within ninety (90) days. The Member may request an additional sixty (60) days from the Executive Committee. Further requests for extensions shall be referred to the Board of Directors.
- D. Failure to comply with subsections B or C may result in cancellation of the Member from the affected Authority insurance program in accordance with the provisions in the Joint Powers Agreement.
- E. Notwithstanding any other provision herein, any Member may be canceled pursuant to the provision of the Joint Powers Agreement.

ADDENDUM TO EXHIBIT A



Adopted: December 6, 1985
Amended: January 23, 1987
Amended: October 6, 1995
Amended: October 1, 1999

ADDENDUM B LIABILITY CLAIMS ADMINISTRATION GUIDELINES

The following Guidelines have been adopted by the CSAC Excess Insurance Authority in accordance with Article 18(b) of the March 1993 Amended Joint Powers Agreement Creating the CSAC Excess Insurance Authority.

I. CLAIMS INVESTIGATION

- A. Factual investigation should be completed within forty-five (45) days of county's knowledge of claim, including statements from participants and witnesses. (Answer questions who, what, where, when and why).
- B. Develop liability issues, including immunities, comparative negligence, joint tort feasons and joint and several liability. Transfer of risk is an important aspect of any claims investigation.
- C. Begin to develop information on damages:
 - 1. Property damage
 - 2. Nature and extent of injuries
 - 3. Medical costs
 - 4. Lost wages
 - 5. Dependency
 - 6. Other damages
- D. Obtain and review contracts that may be in effect relating to specific accidents, to determine whether there is any sharing or complete transfer of the risk.
 - 1. Hold-harmless indemnity agreements
 - 2. Additional insured requirements.
- E. Obtain defective products and/or other evidence, and hold it if at all possible, or at least locate where it is being held. Obtain product information for the file. Early preservation of evidence is imperative for a proper defense.
- F. Utilize experts appropriately on cases. Consideration should be given to structured settlements and Voluntary Settlement Conferences. EIA has a

resource manual with the names, addresses, etc. on various experts that can be retained to investigate and testify on behalf of the member counties.

- G. The EIA maintains membership in the Index Bureau.
 - 1. Report all bodily injury claims to the Index Bureau
 - 2. Follow up on Index Bureau information by sending the Inquiry Form to insurance companies reporting other injuries to the claimant. Do not hesitate to call and discuss the losses with other adjusters.

Instruction manuals, reporting forms, inquiry forms and envelopes may be obtained from the EIA.

- H. Arrange appraisals for damaged property. Do not rely on the appraisal obtained by the plaintiffs' own carriers. In some instances they may not utilize the local A.C.V. and the "computerized" appraisal figure can be inflated.

II. EXCESS REPORTING REQUIREMENTS

A. First Report

Timely report to the Excess Insurance Authority those losses with potential or existing exposure. Utilize the First Report Potential Excess Liability Claims form currently in use.

- 1. The Excess Liability Programs' reporting criteria are those criterion established and adopted by the Board and/or the Liability II committee.

B. Update Reports

The EIA should be provided copies of periodic reports in order to be kept apprised of the developments of the case. On litigated cases, defense counsel should also include the EIA on their mailing lists for copies of correspondence, reports, evaluations, interrogatory summaries, deposition summaries and medical summaries. Actual deposition transcripts, interrogatories, their answers and interim billings are not required.

On reserving and payment changes utilize the Reserve and Payment Update form currently in use.

C. Closure Reports

When a case that has been reported to the EIA is settled, dismissed or closed in any other fashion, provide the EIA with the closing documents and a completed Closure Information form currently in use.

III. TORT CLAIM REQUIREMENTS/GOVERNMENT CODE

- A. All notices (pertaining to claim insufficiency, returning late claims, claims rejections, etc.) shall be timely done in accordance with the relevant Governmental Code provisions.
- B. Appropriate Dismissal Motions should be made for failure to meet the applicable Code of Civil Procedure statutes for timely serving, conducting discovery or bringing a complaint to trial.

IV. DOCUMENTATION

- A. Accurate reserves shall be established based on facts known, within thirty (30) days of receipt of the investigative report. Legal and adjusting expenses shall be included. The following formula is recommended in establishing and updating the reserves for each file:

- 1. $(\text{Maximum Value} \times \text{County's \% of Liability}) + \text{Expense Factor} = \text{Reserve}.$

Maximum value is the potential total amount a plaintiff could expect to receive, either through settlement or verdict, if he/she was completely free of negligence. Maximum value should include any potential award of plaintiff's attorney fees, such as in cases involving Federal Civil Rights.

Percentage of liability is determined by various factors that are discovered during an investigation. Reserves should be adjusted accordingly, as facts are developed, to properly reflect the exposure. These factors include but are not limited to:

- a. The extent of plaintiff's liability
- b. The number of co-defendants and their percentage of liability
- c. The ability of the co-defendants to respond financially to any settlement or verdict.
- d. On cases occurring after June 3, 1986, Proposition 51 allows defendants to limit their liability on non-economic damages to their percentage of fault.

2. The reserve shall be set at the full exposure after applying the above formula, even if it exceeds the member County's Self-Insured Retention.
- B. The file shall contain reports necessary to document the decisions made, including all demands, offers of settlement and settlement authority.
1. A complete "typed" captioned report to the file shall be placed in each file for:
 - a. Bodily Injury claims reserved above 25% of the S.I.R.
 - b. Property Damage claims reserved above 25% of the S.I.R.
 - c. All claims that meet the EIA's excess reporting requirements regardless of reserves.

Member counties and/or claims administrators may follow stricter guidelines.

The captioned report should include the following topical headings and subsequent entries:

1. Date of report
 2. County name
 3. S.I.R level
 4. Claimant(s) Information
 5. Date of Loss
 6. Claim Number (if used)
 7. Facts of accident or occurrence
 8. Witness/Participant Statement
 9. Suggested reserves (see IV. A) Do they reflect exposure?
 10. Assessment of liability
 11. Review of damages/injuries, including medical costs, lost wages, dependency and other damages
 12. Index Bureau reporting
 13. Addressing of coverage questions
 14. Excess potential
 15. Structured Settlement possibilities
 16. Voluntary Settlement Conference potential
 17. Subrogation potential
 18. Governmental Code compliance and immunities
 19. Identify future course of action
 20. State next diary date
 21. If litigated, identify counsel on both sides.
- C. Photos, diagrams, estimates, statements, plans, contracts, medical, law enforcement and coroner's reports (where applicable) shall be in the claims file in a timely fashion.

V. CASE SETTLEMENT FACTORS

- A. The settlement should be reasonable in light of damages, injuries and liability.
- B. Settlements should be effected in a timely manner, with consideration given to structures and/or voluntary settlement conferences.
- C. Contributions from joint tort feasons should be considered.
- D. Settlement evaluation and authority shall be documented. On cases exceeding the S.I.R., prior written authority must be obtained from the EIA.
- E. Proper releases and dismissals shall be secured.

VI. LITIGATED FILES

- A. Defense plan shall be in the file.
- B. Defense attorney evaluation shall be completed and in the file within sixty (60) days of assignment.
- C. The defense attorney should make proper follow-up requests for investigation.
- D. Defense costs shall be controlled by the County and depositions and other defense expenses approved by the County.
- E. There should be timely recommendations from defense firms regarding settlements and trial preparation.
- F. Results and total expenses shall be documented.

VII. SUMMARY

The file should be completely documented. Audits conducted by the EIA Auditor not only utilize industry standards, but also these Guidelines.

The California Unfair Claims Settlement Practices Regulations went into effect on January 15, 1993. These regulations apply to the Insurance Industry as a whole. Public Agencies (including J.P.A.'s) are not governed by these regulations. Many Counties utilize outside claims administrators that must comply with these regulations in their private insurance industry work, and have already had their adjusters certified.