



JUDICIAL COUNCIL OF CALIFORNIA

JUDICIAL BRANCH WORKERS'
COMPENSATION PROGRAM
ADVISORY COMMITTEE

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JUDICIAL BRANCH WORKERS' COMPENSATION PROGRAM ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

November 4, 2015

9 a.m. to 3:30 p.m.

Judicial Council of California - Sacramento

Advisory Body Members Present: **Ms. Tania Ugrin-Capobianco, Chair**, Court Executive Officer, Superior Court of California, County of El Dorado, **Ms. Heather Haymaker Capps**, HR Benefits & Disability Programs Manager Superior Court of California, County of Orange **Ms. Tammy L. Grimm**, Court Executive Officer, Superior Court of California, County of Imperial, **Ms. Cindia Martinez**, Assistant Court Executive Officer, Superior Court of California, County of Sonoma, **Ms. Collette M Bruggman**, Assistant Clerk/Administrator Court of Appeal, Third District, **Hon. Wynne S. Carvill**, Judge of the Superior Court of California, County of Alameda, **Ms. Michelle Hafner**, HR Director, Superior Court of California, County of Fresno, **Ms. Shannon Stone**, Human Resources Director, Superior Court of California, County of Contra Costa, **Mr. David H. Yamasaki**, Court Executive Officer Superior Court of California, County of Santa Clara, **Mr. T. Michael Yuen**, Court Executive Officer, Superior Court of California, County of San Francisco, **Ms. Christina M. Volkens**, Court Executive Officer, Superior Court of California, County of San Bernardino, **Ms. Jeanine Bean**, Director of Human Resources, Superior Court of California, County of Stanislaus,

Advisory Body Members Absent: **Mr. Brian Taylor**, Court Executive Officer, Superior Court of California, County of Solano, **Ms. Stephanie Cvitkovich**, Sr. Human Resources Analyst, Superior Court of California, County of San Diego

Others Present: Ms. Linda M. Cox Judicial Council, Ms. Lisa M. Bartlow Judicial Council, Bickmore Risk Services Consultants (Bickmore); Jacquelyn Miller, Angela Bernard, Greg Trout, Mike Harrington, Acclimation Insurance Management Services (AIMS), JBWCP Third Party Administrator, Patrick Fuleihan, Arlene Lisinski, Superior Court of California, County of Solano

OPEN MEETING

Call to Order and Roll Call

Ms. Tania Ugrin-Capobianco (Chair) called the meeting to order at 9:05 a.m. and took roll call.

Approval of Minutes

The advisory body reviewed the minutes of the April 10, 2015 meeting Judicial Branch Workers' Compensation Program Advisory Committee meeting. Ms. Michele Hafner wanted a correction made to page 8 that the committee previously recommended that we further research investment

options. A motion was made Ms. Hafner (Fresno) and seconded Mr. Yamasaki (Santa Clara) with one abstaining Hon. Wynne Carvill (Alameda) to approve the minutes. Motion passed.

PUBLIC WRITTEN COMMENTS

No public comments were received.

DISCUSSION AND POSSIBLE ACTION ITEMS

Orientation for New Members of the JBWCP Advisory Committee – Roles and Responsibilities of Committee Members

Ms. Linda Cox's Remarks

Ms. Linda Cox (Judicial Council) provided an overview and history of the JBWCP. She advised the members that currently all of the courts were members of the program with the exception of Los Angeles. She discussed the charge of the committee and their role to guide and provide direction to the Judicial Council. The committee's job is to provide options for the Judicial Council to make the final decision. It was also noted that the JBWCP will no longer report to the Executive & Planning Committee, and will now report to the Litigation Management Committee.

NO COMMITTEE ACTION

Program Overview and History of the JBWCP

Ms. Linda Cox's Remarks

Ms. Cox (Judicial Council) went over the relevant legislative mandates that applied to the JBWCP. There was discussion about options for reducing the deficit and the possibility of using investments to reduce the program's ongoing deficit and get the program fully funded.

QUESTIONS ASKED

Is it possible for the program to earn more interest on its assets to reduce court contributions or expedite the current gap to becoming fully funded?

The committee discussed the cash funding versus ultimate funding methodologies. The committee was advised that the methodologies would be reviewed in the coming year with an emphasis on fully funding and looking at the program's investment option choices.

Mr. Mike Harrington (Bickmore) mentioned that the program must look at current market conditions regarding investment options. There is a fiduciary responsibility to make low risk investments for the funds.

FOLLOW UP

Ms. Cox (Judicial Council) requested the Judicial Council's Finance office to further research the program's fund investments, provide feedback on the legal ability of the program to invest and guidance on how the program might maximize the return on

investment of funds that would benefit the program as a whole.

No COMMITTEE ACTION

Life Cycle of a Workers' Compensation Claim

Ms. Jacquelyn Miller's and Mr. Greg Trout's Remarks

Ms. Jacquelyn Miller (Bickmore) provided information on the timeline for resolving a typical Indemnity workers' compensation claim and discussed circumstances which may lead to a delay in claim resolution. Mr. Greg Trout (Bickmore) discussed the workers' compensation reform under former Governor Schwarzenegger as well as the more recent reform resulting from Senate Bill 863 and their impact on the industry. Changes to the workers' compensation process were discussed, including the Independent Medical Review (IMR) process and the establishment of the Medical Provider Network for the program

Current, 39 courts participate in the MPN, which allows for greater medical control resulting in reduced costs, improved quality of care and improved medical reporting. There is a need for increased locations within the network..

Discussion regarding Claims Closures

In relationship to the information provided regarding the length of time it takes to resolve a claim, a discussion was undertaken regarding formalizing a claim settlement process that will benefit the program, the members and the injured workers. The following obstacles were identified which delay claim resolution and closure:

- Each of the participant courts' has a different approach to the settlement process. There is a lack of uniformity as well as an inconsistency in settlement considerations.
- With 294 open Future Medical claims, many of which have not involved medical care in more than a year.
 - Consideration should be made for administrative closure as provided for in the Service Guidelines.

There remain unresolved claims that more than 10 years old. The current third party administrator (TPA), Acclamation Insurance Management Services (AIMS) has recently completed their first year of service for the program, and has focused their efforts on closing these long standing claims. The program members lack a consistent understanding of the workers' compensation process, and their involvement in case resolution. It was noted that more members are becoming involved in their claims which has helped to reduce the open inventory.

QUESTIONS ASKED

If a claim is administratively closed, can it be re-opened?

The claim can be re-opened if there is a future medical award and the need for care relates to the specific injury.

What is the benefit to closing claims?

There is a financial impact to the program by closing claims as it reduces the program's outstanding liabilities which in turn directly impacts the funding of the program..

FOLLOW UP

Mr. David Yamasaki (Santa Clara) noted that the information regarding the life cycle of a claim was very helpful and should be shared with the other courts, with the goal of closing claims as soon as possible. This information will be shared through internal sources and future training sessions.

Discussion regarding Medical Provider Networks

The committee discussed the current workers' compensation Independent Medical Review (IMR) process. Thirty-nine courts participate in the Medical Provider Network (MPN).

And pointed out the need to find locations with more medical providers to add to the MPN so that more courts will come under the MPN

NO COMMITTEE ACTION

Discussion regarding Benchmarking

QUESTIONS ASKED

Does Bickmore/AIMS have any information on the average cost of a claim? Are there any benchmarks available to help the courts control costs?

Ms. Hafner (Fresno) inquired if there were specific benchmarks the program or individual members can be measured against.

Mr. Patrick Fuleihan (AIMS) remarked that the average cost of a claim is available by member and can be provided by AIMS. It was noted Mr. Harrington (Bickmore) stated that some courts may not have enough claims to support a true comparison as claims activity can vary by court size, with some larger courts having more claims than smaller courts.

Ms. Miller (Bickmore) indicated that working with the JCC and AIMS staff, they have been gathering data regarding frequency and severity for specific courts and this can be expanded to all members at a later date. Ms. Capps (Orange) stated that her court has a safety program and they have been looking at data, this should help with their evaluation.

Additionally, as best practices are identified, they can be shared with all members at a later date.

Mr. Trout (Bickmore) stated that data migration (cleansing and recoding as part of the data migration) from CorVel to AIMS is still in process; once the data is finalized, courts can utilize it to make comparisons with each other for benchmarking purposes.

Does Bickmore/AIMS have information on some larger cities/counties and practices that may have led to cost reductions?

FOLLOW UP

Bickmore will gather data. Ms. Ugrin-Capobianco (Chair) suggested that the program look at comparisons and best practices and replicate them wherever possible statewide. Ms. Christine Volkers (San Bernardino) mentioned that CEOs would like to see information to learn from one another.

NO COMMITTEE ACTION

Discussion regarding AIMS

QUESTION ASKED

How can the JBWCP measure AIMS' contribution moving forward?

Ms. Cox (Judicial Council) discussed the annual Bickmore audit of AIMS and that they scored 87 percent overall on their first audit. She mentioned the third party administrator court survey was recently sent out to the CEOs for completion and that any court issues they have can be raised with Judicial Council staff, Bickmore or AIMS directly for resolution.

Ms. Lisa Bartlow (Judicial Council) mentioned that a small number of responses had been received thus far on the court survey. She also advised the members that she, Bickmore and AIMS began weekly phone calls prior to the transition from CorVel and these calls continue to occur weekly where they discuss claims and performance issues.

Mr. Yamasaki (Santa Clara) mentioned that the TPA survey was helpful and that routine problems should be handled to acceptable standards along with all other claims made by the members. .

FOLLOW UP

Ms. Cox (Judicial Council) stated that she planned to share a copy of the AIMS contract and client instructions with the JBWCP Advisory Committee members.

NO COMMITTEE ACTION

Settlement Authority Guidelines

Ms. Ugrin-Capobianco's Remarks

Ms. Ugrin-Capobianco (Chair) advised the Committee in order to refine the claim settlement process the Committee would need to make decisions on settlement guidelines, and whether or not to utilize an ad hoc group or the entire committee to develop recommendations for the Judicial Council to consider.

QUESTIONS ASKED

Should the JBWCP have one uniform settlement authority policy for all the courts?

Mr. Trout (Bickmore) mentioned that Bickmore has provided samples of how others/pooled programs handle their settlements. All of them have a settlement authority policy in place. Bickmore has worked with many pools: 80 are other public entity pools in California, with 30 other pools, of which 15 are administratively managed by Bickmore. Each Board has fiduciary responsibility on behalf of all members to authorize settlements fairly and promptly. In some instances, the Board may have delegated the settlement authority to Executive Committees.

Mr. Fuleihan (AIMS) discussed settlement authority and settlement types which mostly involve permanent disability awards. There was discussion about the difference between Compromise & Release and Stipulation with Request for Award settlements. Ms. Miller (Bickmore) advised the Committee that it is necessary for defense attorneys to come to court for Mandatory Settlement Conferences (MSC) with settlement authority. In these cases, there may be a short time between notice of the MSC and the actual court date. Developing a uniform settlement authority process will aid in assuring appropriate settlement authority is provided to the attorneys prior to the court appearance.

It was stated that the program currently has a \$75,000. threshold and the rest goes back into the pool with a cost to every court. Mr. Trout (Bickmore) clarified that the JBWCP is a pooled program that is currently funded at \$51 million dollars. There is a share of the cost to manage the program that is allocated to the individual courts. The claim costs have an impact on every court. For example, a large claim over \$300,000. has a financial impact on all of the court costs.

It was further clarified the \$75,000 threshold applies to the amount per claim considered in each member's allocation.

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Is it a requirement for courts to be in the pool?

It is not a requirement, but a court would have to have some other type of coverage like that provided by California's State Compensation Insurance Fund (SCIF) or go back into the respective county's program. Should a member leave the program, there could be a financial impact to the remaining members.

Will a formalized, centralized settlement policy process assist courts where there are overlapping workers' compensation and civil claim issues that may cloud their judgment on recommended settlements?

Ms. Miller (Bickmore) mentioned that settlement policies should have an appeal process outlined that may involve one or more levels.. Ms. Volkens (San Bernardino) was concerned that AIMS was not financially involved in the decision and that the court needs to be involved and know all the facts.

Can a court settle a \$300,000 claim under the current policy?

Currently the courts can settle claims up to the applicable Excess Insurance level, which is now at \$2 million dollars; any amount above that threshold would be covered by the excess insurance.

Additional questions were raised concerning settlement authority policies and settlements related to injuries:

- What are the challenges of not having a settlement authority policy, and what are the cost/benefits of not having one?
- What have been challenges regarding settlements during the past year?
- What benefits have been recognized?
- Is there an estimate on how much these challenges have cost the program?
- How much do injuries cost, e.g. carpal tunnel, repetitive stress injuries, etc?
- What is the average value of a settlement and what amounts have been settled in the past?
- Is it possible to obtain reports that provide information on old money (already spent) versus new money that would go towards settlement?

COMMITTEE ACTION

In order to address the questions above, Mr. Yamasaki (Santa Clara) motioned to create a subcommittee that will evaluate the settlement threshold on pending workers' compensation claims and make recommendations to the Judicial Council on the governance and process. Ms. Tammy Grimm (Imperial) seconded the motion. No one opposed. No one abstained. The volunteers for the subcommittee will be Ms. Grimm (Imperial), with members to include Ms. Shannon Stone (Contra Costa), Ms. Capps (Orange), Ms. Jeanine Bean (Stanislaus), Ms. Martinez (Sonoma), Ms. Volkens (San Bernardino) , and Mr. T. Michael Yuen (San Francisco). Further discussion/clarification of the motion determined that the entire committee would participate in the settlement authority discussions and that there was not a need for a subcommittee. Ms. Grimm (Imperial) will still take the lead.

FOLLOW UP

Ms. Cindia Martinez (Sonoma) is requesting a policy be drafted that defines limits on settlement authorities so that one court cannot approve a settlement that affects others. Ms. Cox (Judicial Council) stated that the Committee had previously discussed settlement options when the program was with CorVel; the process stalled when the program transitioned to AIMS.

With the establishment of committee review of settlement authority options, further research will be performed on how the JBWCP Advisory Committee will interact within the new reporting structure to the Litigation Management Committee, which currently has a \$100,000 settlement threshold, primarily because they review liability claims.

In response to the injury-related questions raised by the Committee, AIMS will develop statistics regarding claim settlement over the last two years. The committee members advised that these discussions should be confidential and discussed in closed session.

Ms. Cox (Judicial Council) will set a meeting after the holidays.

Program Funding

Mr. Harrington (Bickmore) discussed the jargon and terminology for the actuarial methodology:

- Losses;
- Ultimate losses;
- Reserves;
- Liabilities-trial courts and judiciary;
- Loss development-judiciary;
- Projected paid loss, allocated loss adjustment expense (ALAE);
- Costs to allocate-all entities;
- Loss allocation; and
- Expense methodology.

The program has \$82 million in program liabilities and \$51 million in assets. Therefore program is not fully funded, but it has adequate funds to cover all projected short term cash flow scenarios. The JBWCP is not subject to Governmental Accounting Standards Board (GASB) regulations and is not required to book the \$82 million in program liabilities on the financial reports.

The program can be prospectively funded on a cash flow or ultimate cost funding basis. Under cash flow model the program has premiums to cover claims payments that will occur during a given year. Under ultimate cost funding model, the program has premiums to cover the ultimate cost of claims occurring in any given fiscal year.

The JBWCP was also able to secure commercial excess insurance for the state judiciary at the same rate as the trial courts.

Discussion Regarding Program Funding

There was discussion about the benefits of fully funding the program's outstanding claims liabilities. Some of the considerations for fully funding are the premium impact, methodology and timing. Ms. Ugrin-Capobianco (Chair) raised the issue as to whether or not the group wanted to discuss fully funding the program as a group or through an ad hoc committee.

- Ms. Capps(Orange) stated that she would like to fully fund the program, however, Orange court is currently a donor court and in the future they will have a multi-million dollar deficit.
- Hon. Carvill(Alameda) stated that the Alameda court is also a donor court currently. Once they have the stability, then they will be able to make a plan to move forward.
- Ms. Cox (Judicial Council) stated that she could bring the Judicial Council Finance office into JBWCP discussions if needed.
- Ms. Hafner (Fresno) stated that she was interested in making the changes incrementally, but she was not sure how this would occur.
- Mr. Trout (Bickmore) stated that once a plan is determined, it will take a couple of years to implement. There are some immediate things that can be looked at right now for deficit reduction such as looking at a higher rate of return on the program's investments, closing out claims, moving current claims forward, and focusing on loss prevention and safety.

QUESTIONS ASKED

Are there other alternatives for covering the program's workers' compensation claims?

Mr. Trout (Bickmore) stated that there would be a tail claim issue and most companies would not agree to take any tail claims. As a result it could require two third party claim administrators. One would handle new claims and another would administer tail claims to closure. If, for example, the courts utilized SCIF to administer their claims, they would not have any control over them. Other considerations would be moving from a self-funding pooling arrangement to an insured arrangement. If, for example, the courts utilized SCIF to administer their claims, the courts would have no control over the claims as this is an insured program.

FOLLOW UP

The committee wants to meet as a group to make decisions and Bickmore will assemble more information on the options. Ms. Hafner (Fresno) requested specific settlement data from AIMS so members can review prior to the next meeting.

Ms. Cox (Judicial Council) will prepare an agenda for discussion as to the direction the Committee wants to take and what information will be needed by staff. Bickmore will prepare a white paper with deficit reduction options; the Committee will determine what additional information is needed after the white paper is developed.

NO COMMITTEE ACTION

Additional Discussion Items

- Ms. Cox (Judicial Council) stated that there is \$400,000 set aside for ergonomic equipment that was taken out of the fund by the Judicial Council years ago. Further research on the availability of this money will need to be done by Ms.

Cox (Judicial Council). Mr. Trout (Bickmore) mentioned that many risk pools designate money for ergonomic related services which members apply for it. There was some discussion about ergonomic assessments that were provided under a workers' compensation claim as opposed to being provided by the court. It was determined it would be helpful to have standards established regarding the cost and purchasing of equipment such as chairs, staplers, etc.

FOLLOW UP

The committee wants to meet as a group to make decisions and Bickmore will assemble more information on the options. Ms. Hafner (Fresno) requested that AIMS develop informational reports so members can have an opportunity to review the data prior to the next meeting.

Ms. Cox (Judicial Council) stated that there is \$400,000 set aside for ergonomic equipment that was earmarked in the fund by the Judicial Council years ago. Further research on the availability of this money will need to be done by Ms. Cox (Judicial Council). Mr. Trout (Bickmore) mentioned that many risk pools designate money for ergonomic related services which members apply for it. There was some discussion about ergonomic assessments that were provided under a workers' compensation claim as opposed to being provided by the court. It was determined it would be helpful to have standards established regarding the cost and purchasing of equipment such as chairs, staplers, etc.

Ms. Cox (Judicial Council) will prepare an agenda for discussion as to the direction the committee wants to take and what information will be needed by staff. Bickmore will prepare a white paper with deficit reduction options; the committee will determine what additional information is needed after the white paper is developed.

The committee will also develop an annual agenda. Information will be sent out to members and another meeting will be scheduled for planning efforts.

NO COMMITTEE ACTION

Consideration for Renewal of JBWCP Service Contracts

Ms. Cox (Judicial Council) stated that the Program Administrator would normally make contract decisions, however, with an advisory body in place, The Committee should be informed of major contract issues or changes. These contracts impact the program and the committee role is to advise. However, Ms. Cox (Judicial Council) and Ms. Ugrin-Capobianco (Chair) also indicated that the roles and responsibilities of the newly formed JBWCP Advisory Committee are being researched.

The AIMS and Bickmore contracts are up for annual renewal. Ms. Cox (Judicial Council) (Judicial Council) advised that the original proposed staffing model had to be adjusted. The new staffing model increases the number of AIMS supervisors one to two, and eliminates the AIMS Claims Manager position. AIMS will keep the Program Manager position. This staffing model will help meet the needs of our dedicated account. The JBWCP has nine Claims Examiners, two administrative support staff and one medical-only Claims Examiner person. The new staffing model adds one clerical person to support the Claims Examiners. This results in a 3.2 percent contract adjustment for the life of the contract.

It was also recommended to get the AIMS contracts on a fiscal year cycle. During the annual March meeting, the committee can make additional recommendations to the contract if needed.

COMMITTEE ACTION

Ms. Grimm motioned to approve the staffing changes and place the contract on a fiscal year cycle. Ms. Bean seconded the motion. No one opposed. No one abstained.

FOLLOW UP

Judge Carvill commented that this is an operational issue, and asked whether the committee should weigh in on this task. Ms. Cox (Judicial Council) stated that further research will be done on how this committee interacts with the Litigation Management Committee and the decisions that need to be made.

Ms. Cox (Judicial Council) discussed the Bickmore contract increase, which includes a three percent increase per option term. The contract has been amended and executed.

COMMITTEE ACTION

Ms. Grimm (Imperial) motioned to approve the Bickmore amendment. Ms. Capps (Orange) seconded the motion. No one opposed. No one abstained.

Development of the Annual Agenda and Discussion on Frequency of Meetings

FOLLOW UP

Ms. Cox (Judicial Council) will send out information to the committee on dates for future meetings. The next face-to-face meeting will be held in March.

NO COMMITTEE ACTION

ADJOURNMENT

There being no further business, the meeting was adjourned at 3 p.m.

Approved by the advisory body on enter date.