

NORTHERN CALIFORNIA CITIES SELF INSURANCE FUND
MINUTES OF NCCSIF CLAIMS COMMITTEE SPECIAL MEETING
Thursday, June 18, 2015

MEMBERS PRESENT

Michelle Pellegrino, City of Dixon
Bruce Cline, City of Folsom
Paula Islas, City of Galt
Dalacie Blankenship, City of Jackson
Russell Hildebrand, City of Rocklin

MEMBERS ABSENT

Michael Daly, City of Jackson

OTHER MEMBERS PRESENT

Richard Crabtree, City of Red Bluff

GUESTS & CONSULTANTS

Marcus Beverly, Alliant Insurance Services	Dori Zumwalt, York Risk Services
Michael Simmons, Alliant Insurance Services	Jennifer Nogosek, York Risk Services
Raychelle Maranan, Alliant Insurance Services	Peter Urhausen, Gibbons & Conley

A. Call to Order

The Claims Committee was called to order at 2:03 p.m.

The above mentioned members of the claims committee were present constituting a quorum.

Richard Crabtree, City of Red Bluff, and Jennifer Nogosek, York Risk Services, were present via teleconference.

B. Public Comments

No public comments were made.

D. Coverage Denial Appeal: Nelson v. City of Red Bluff

The Committee discussed the denial of coverage for the claim, Nelson v. City of Red Bluff, which subsequently resulted in a lawsuit. Bruce Cline indicated the City of Red Bluff is disputing the denial of coverage that NCCSIF Legal Counsel, Byrne Conley, prepared on behalf of NCCSIF.

Mr. Cline reviewed all related documentation received to date pertaining to this matter which was included in the agenda for Committee's review. Richard Crabtree confirmed he is in receipt of all said documents.

Marcus Beverly provided a brief overview of the claim and correspondence with the parties involved during the review and conclusion of the coverage determination. The coverage position is based on the pollution exclusion, and since the denial is based on exclusion, the MOC does allow for use of the city's banking layer for defense cost associated with this claim/lawsuit up to \$50,000. Mr. Beverly indicated the City of Red Bluff was notified of the fact the city is allowed some element of coverage via the banking layer for defense cost.

Richard Crabtree was given the floor to state City of Red Bluff's perspective as to coverage. Mr. Crabtree articulated the city's position in regards to coverage and all actions taken by the city thus far to remedy the situation in response to the alleged complaints and lawsuit. It is an unfortunate circumstance the City is in as it seems the odor is subjective and reveals itself to one person. Mr. Crabtree indicated the city has some reasonable expectation being a member of NCCSIF that there would be some coverage.

Peter Urhausen was present on behalf of Byrne Conley. The complaint contains four causes of action: (1) negligence, (2) private nuisance, (3) public nuisance, and (4) inverse condemnation. The pollution exclusion applies to all four causes of action because offensive odors from the sewer line are pollutants under the definition, which includes smoke, vapor, soot, and fumes as outlined in Byrne Conley's coverage opinion. None of the exclusion exceptions apply to the allegations; therefore, there is no coverage for any of the allegations in the complaint.

The Committee discussed the inverse condemnation exclusion relative to the physical injury and not just property damage. It was discussed whether the inverse exclusion is negated by the allegation of physical discomfort.

Mr. Urhausen explained the pollution exclusion applies to odors which is what the claim is about. The city's response only addresses the inverse condemnation exception to the exclusion. The inverse condemnation applies to physical injury to tangible property and not physical bodily injury. The pollution exclusion is what excludes the entire claim. There is no physical injury to tangible property that has been alleged. The pollution exclusion excludes the entire matter.

The Committee had lengthy discussion on all facets of the inverse condemnation and whether the inverse exclusion language is applicable to this claim or not. The loss of use of property is not physical injury even if the inverse condemnation exclusion did not apply; the pollution exclusion applies to all aspects of the claim. It was noted there are six exceptions to the pollution exclusion, but none of those apply to the case.

Mr. Crabtree stated the pollution exclusion and inverse condemnation should be addressed separately. He indicated the City of Red Bluff believes there is coverage under the inverse condemnation which triggers an obligation to defend the entire claim.

Mr. Urhausen explained the inverse condemnation does not apply at all on this particular case. In coverage matters, there are often three or four exclusions that may apply but one may apply to whole claim while others address only parts of a claim. The cause of loss is the allegation that

there is a pollution event, whether sudden accidental or gradual, the MOC does not respond to inverse condemnation if there is no coverage to the pollution first.

The Committee discussed the general insurance law issue that was brought up by Richard Crabtree about duty to defend and duty to indemnify.

Mr. Urhausen explained the insurance law is a different matter and the point that was brought up about duty to defend and duty to indemnify is a straight application of the insurance law. The duty to defend is broader than the duty to indemnify, however; potential coverage must exist before the duty to defend can be triggered. As for this particular case, the defense is not triggered as there is no potential coverage. The pool is not subject to the strict rules that apply to the insurance industry.

Mr. Crabtree confirmed he has stated his case and has no further comments and/or questions, therefore, he disconnected from the call at 2:32 p.m.

E. Closed Session – The Claims Committee went into closed session in accordance with Government Code Section 54956.95 at 2:32 p.m. and discussed the following:

Liability

1. *Arp v. City of Rocklin*

And the deliberation for coverage appeal regarding *Nelson v. City of Red Bluff* as discussed under agenda item 4.D.

F. Report from Closed Session

At 2:38 p.m. the Committee came out of Closed Session and announcement was made that direction was provided to staff for the one claim referenced above.

The Committee also concluded deliberation on the coverage appeal regarding *Nelson v. City of Red Bluff*. For the record, the committee has declined coverage. It was duly noted the appeal process Red Bluff may exercise. The Committee's determination of coverage is appealable to the Board of Directors. If subsequently denied by the Board, there is an arbitration clause in the MOC.

G. Adjournment - The meeting was adjourned at 2:45 p.m.

Respectfully Submitted,


Michelle Pellegrino, Secretary
9/24/15
Date