



Legislation Text

File #: 2024-0504, Version: 1

**Report to Carson Reclamation Authority**

Monday, June 03, 2024

Consent

**SUBJECT:**

**AUTHORIZE EXECUTIVE DIRECTOR TO APPROVE AND BIND COVERAGE ON A PUBLIC ENTITY LIABILITY POLICY FROM CHUBB COMPANIES USA, WRITTEN BY ACE AMERICAN INSURANCE COMPANY, PROCURED THROUGH MARSH USA, INC. IN AN AGGREGATE LIMIT OF NO MORE \$10,000,000 AND A PREMIUM AMOUNT NOT TO EXCEED \$180,490.00**

**I. SUMMARY**

This action authorizes the Executive Director to approve and bind a renewal of a ACE Municipal Advantage Public Entity Liability Policy on behalf of the Carson Reclamation Authority offered by Chubb Companies USA, underwritten by ACE American Insurance Company. As in previous years, the CRA's broker Marsh recommends placing such a policy instead of a standard Directors and Officers Liability (D&O) policy to ensure that the public officials are adequately covered for their D&O exposure — personal liability as well as Errors and Omissions exposure (E&O) and Employment Practices Liability (EPL) exposure.

This policy is a much broader D&O type coverage and tailored to CRA in its capacity as a quasi-governmental agency making development decisions on environmentally contaminated property and includes both E&O and EPL in one policy form.

This year's premium of \$180,490.00 is flat from last year, which is good news given the CRA's annual operating budget increased over the past year from \$5.2 million to \$5.8 million. Prior to last year, which only saw an increase of 0.1%, the CRA saw significant increases in quoted premium for the same coverage, from slightly less than \$80,000 in 2020 to \$130,040 in 2021 to \$180,351.00 in FY 2022/23, while maintaining the Self-Insured Retention (SIR) at \$250,000. This was due to ongoing significant changes in the public officials' liability market and the D&O markets overall. (SIR is similar to a deductible in personal insurance.) Part of the increase was also attributed to the claim activity by the CRA on the current policy due to the ongoing CAM-Carson, LLC litigation, which also reduced the number of other companies willing to provide quotes on the policy.

Increasing the SIR from \$250,000 to \$500,000 was considered in prior years as it would

reduce the premium by almost \$14,000, but it would require nearly 20 years of premiums at the higher SIR to pay for the difference in the event of the claim. The current claim due to the CAM-Carson, LLC has cost the insurer so far slightly more than \$700,000 in legal fees to Cozen O'Connor, which means that if the CRA had the higher SIR it would have paid most of the legal costs so far.

No insurers other than Chubb are able to write \$10 million limits. A few offered \$5 million in excess coverage, but the CRA would still need to procure the first \$5 million from, say, Chubb. Staff does not recommend reducing coverage, however, and the cost savings, if any, would be very modest especially weighed against the complexity of a tower of coverage for this policy.

## **II. RECOMMENDATION**

TAKE the following action:

AUTHORIZE the Executive Director to bind coverage under the ACE American Insurance Company Public Entity Liability Policy on behalf of the CRA, procured from Chubb Companies USA through Marsh USA, Inc., which has an aggregate limit of liability of no more than \$10,000,000 and a premium amount not to exceed \$180,490.00.

## **III. ALTERNATIVES**

TAKE another action deemed acceptable by the Authority Board.

## **IV. BACKGROUND**

Attached is a renewal proposal for coverage for a Public Entity Liability Policy (instead of standard D&O), Errors & Omissions (E&O), and Employment Practices Liability (EPL). This policy is a much broader D&O type coverage and tailored to CRA in its capacity as a quasi-governmental agency making development decisions on environmentally contaminated property and includes both E&O and EPL in one policy form.

This action would authorize the CRA Executive Director to approve and bind the renewal of the Public Entity Liability Policy on behalf of the Carson Reclamation Authority. This policy is broad and covers not just directors, and officers, but anyone employed or contracted to do work for CRA, if CRA indemnifies them. It is also retroactive and covers all the officials who have served on the CRA Board since its formation in early 2015.

The aggregate limit is shared for all D&O, E&O and EPL losses that occur within a policy period. Because CRA uses contractors there is third party EPL exposure; however, since the CRA does not have any employees of its own the EPL risk is lower.

This policy represents a very small increase over the quoted policy from last year. One challenge for the CRA over the past several years is that the Public Entity Liability

marketplace is limited due to the severity of these types of claims. Insurers were already hesitant to provide capacity in California because most carriers are in the red and have paid more in claims than they've collected in premiums for the past 5 years — and the greater Los Angeles area is particularly avoided as it is the single most litigious area in the entire U.S. according to market data provided by the largest insurers.

Chubb is the market leader and has been the CRA's insurer since the first year; Marsh still recommends the primary \$10 million based on pricing and terms. Marsh uses the thorough set of submission documents that the CRA put together, along with their market leverage to present CRA as a sought-after risk.

This policy significantly broadens coverage particularly in areas that impact insured persons. Allegations of fraud and misconduct are material and could be uninsurable without the negotiated changes.

- Full prior acts coverage
- Coverage for Public Officials, Directors and Officers liability, Errors and Omissions, and Employment Practices defense and indemnity
- Covers personal liability and provides broad entity protection
- Only includes one E&O exclusion: Incidental medical malpractice
- Insurer's duty to defend (panel council requirements)
- Broad policy form and significantly enhanced coverage via negotiated manuscripted endorsements

## **V. FISCAL IMPACT**

The quoted premium is \$180,490.00.

## **VI. EXHIBITS**

1. Chubb USA \$10 Million Executive Risk Renewal Pricing and Coverage Comparison (pgs. 4-5)

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