701 E. Carson Street

Legislation Text

File #: 2022-490, **Version:** 1

Report to Carson Reclamation Authority

Monday, June 06, 2022

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 $171,333.45

I. SUMMARY

This action authorizes the Executive Director to approve and bind a renewal of a 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 ACRA'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.

As in the case of last year, due to ongoing significant changes in the public officials liability market and the D&O markets overall, the CRA is seeing a significant increase in quoted premium for the same coverage, from slightly less than $80,000 in 2020 to $130,040 in 2021 to $171,333.45 this year, while maintaining the Self Insured Retention (SIR) at $250,000. The SIR is similar to the deductible in personal insurance. Part of the increase is 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.

The brokers at Marsh have reported that they are seeing similar increases for their D&O clients - from 30% to 100% -- even for policies that do not have a claim history. Inquiries with other carriers have not yielded better results.

One option would be to increase the SIR from $250,000 to $500,000, which would reduce the premium by about $13,000, 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 $500,000 in legal fees to Cozen O'Connor, which means that if the CRA had the higher SIR we would have paid nearly all the legal costs so far.

There were a number of markets that declined coverage but one company, Kinsale, provided quotes at $1,000,000 and $2,000,000 in coverage. The premium for their $2,000,000 policy would still be $137,797.45. Staff does not recommend reducing coverage, however, even though it would not affect the existing claim made with Chubb under the current 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 $171,333.45.

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 of 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.

One challenge for the CRA 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 $171,333.45.

VI. EXHIBITS

1. Chubb USA $10 Million Executive Risk Renewal Proposal (pgs. 4-5)

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