

CALL IN: 855-201-9213

PASSCODE: 5797667

AGENDA

JPA: MBASIA Coverage and Claims Committee Teleconference Meeting

LEGEND:
A – Action may be taken
I – Information

DATES/TIMES: Thursday, July 12, 2012 at 3:00 PM

PRIMARY LOCATION: Alliant Insurance Services, Inc.
100 Pine Street
11th Floor
San Francisco, Ca 94111
(415) 403-1411

1 – Included
2 – Handout
3 – Separate
4 – Verbal

LOCATIONS VIA TELEPHONE:

- City of Capitola – 420 Capitola Ave., Capitola, CA 95010 (831) 475-7300
- City of Gonzales – 147 Fourth Street, Gonzales, CA 93926 (831) 675-5000
- City of Hollister – 375 Fifth Street, Hollister, CA 95023 (831) 636-4300
- City of King City – 212 So. Vanderhust Ave, King city, CA 93930 (831) 385-3281

In accordance with the requirements of the Brown Act, notice of this meeting must be posted in publicly accessible places, 72 hours in advance of the meeting, in each of the member agencies involved.

Per Government Code section 54954.2, persons requesting disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, are requested to contact Alliant Insurance Services at (415) 403-1411, 24 hours in advance of the meeting. Access to some buildings may require routine provision of identification to building security. However, MBASIA does not require any member of the public to register his or her name, or to provide other information, as a condition to attendance at any public meeting and will not inquire of building security concerning information so provided. See Government Code section 54953.3.

PAGE 4 A. CALL TO ORDER

4 B. CONSENT CALENDAR (A)

1-2 1) Approval of Minutes – May 22, 2012 Coverage and Claims Committee Meeting

Members will review these minutes and may take action to approve or amend.

4 C. PUBLIC COMMENTS (I)

The public is invited at this point to address the Board on issues of interest to them.

1 D. COVERAGE AND CLAIMS COMMITTEE (A)

3-6 1. Appeal Process for Denied Claims Due to Late Reporting
Committee Members will review the Policy & Procedure and may take action or give direction.

E. CORRESPONDENCE / INFORMATION (I)
None

4 F. GENERAL RISK MANAGEMENT ISSUES (I)
Subjects that of interest to members: please bring 15 copies of any materials.

ADJOURNMENT

Member Cities

Capitola
Del Rey Oaks
Gonzales
Greenfield
Hollister
King City
Marina
Sand City
Scotts Valley
Soledad

Item No. B.1

Coverage & Claims Committee

May 22, 2012

**MINUTES OF THE
MBASIA COVERAGE & CLAIMS COMMITTEE MEETING
TUESDAY, May 22, 2012 AT 10:15 AM
PRIMARY TELECONFERENCE LOCATION:
SAN FRANCISCO, CA**

MEMBERS PRESENT

Jaime Goldstein, City of Capitola
Robert Galvan, City of Hollister
Rene Mendez, City of Gonzales
Michael Powers, City of King City

MEMBERS ABSENT

GUESTS & CONSULTANTS

Conor Boughey, Alliant Insurance Services, Inc.
Michael Simmons, Alliant Insurance Services, Inc.
Monica Sandbergen, Alliant Insurance Services, Inc.
Daniel Dawson, City of Del Rey Oaks (*left call at 10:20 a.m.*)
Ken Maiolini, Risk Management Services
Vince Hurley, Law Offices of Vincent Hurley

A. CALL TO ORDER

President, Rene Mendez called the meeting to order at 10:20 a.m.

B. CONSENT CALENDAR

B1. Approval of Minutes – January 20, 2012 Coverage and Claims Committee Meeting

A motion was made to approve the minutes.

MOTION: Robert Galvan **SECOND:** Rene Mendez **MOTION CARRIED**

C. PUBLIC COMMENTS

There were no public comments.

D. COVERAGE AND CLAIMS COMMITTEE

D1. The MBASIA Board of Directors entered into Closed Session pursuant to Government Section Code 54956.95

A motion was made to enter into closed session at 10:21 a.m. pursuant to Government Section Code 54956.95.

MOTION: Robert Galvan **SECOND:** Jaime Goldstein **MOTION CARRIED**

A motion was made to come out of closed session at 11:15 AM.

MOTION: Rene Mendez **SECOND:** Michael Powers **MOTION CARRIED**

The Claims Committee Chair reported that direction was given to the Claims Administrator and legal counsel regarding the agedized claims.

E. Correspondence/Information

None

F. General Risk Management Issues

None

ADJOURNMENT

The meeting was adjourned at 11:17 AM.

Item No. D.1
Coverage and Claims Committee
July 12, 2012

APPEAL PROCESS FOR DENIED CLAIMS FOR LATE REPORTING

ISSUE: At the June Board of Directors Meeting, the Board gave direction to the Coverage and Claims Committee to review and propose a Policy and Procedure (P&P) for the Appeal of Late Reported Claims which would be drafted by Alliant.

RECOMMENDATION: MBASIA’s Coverage and Claims Committee should review the proposed P&P and make amendments or propose the current draft to the Board of Directors for adoption.

FINANCIAL IMPACT: No direct financial impact is expected. The precise future impact of the P&P cannot be determined at this time, but we have shown the following examples of how the policy will impact claims:

Example if a Claim is Reporting 3 months late			
Ultimate Net Loss:	\$ 500,000	\$ 100,000	\$ 2,000,000
Retention	\$ 10,000	\$ 10,000	\$ 10,000
Penalty	10%	10%	10%
Member Recovery	\$ 441,000	\$ 81,000	\$ 1,791,000

Example if a Claim is Reporting 9 months late			
Ultimate Net Loss:	\$ 500,000	\$ 100,000	\$ 2,000,000
Retention	\$ 10,000	\$ 10,000	\$ 10,000
Penalty	35%	35%	35%
Member Recovery	\$ 318,500	\$ 58,500	\$ 1,293,500

Example if a Claim is Reporting 18 months late			
Ultimate Net Loss:	\$ 500,000	\$ 100,000	\$ 2,000,000
Retention	\$ 10,000	\$ 10,000	\$ 10,000
Penalty	50%	50%	50%
Member Recovery	\$ 245,000	\$ 45,000	\$ 995,000

BACKGROUND: The following sections have been taken from the Memorandum of Coverage:

SECTION VII - CONDITIONS

1. The **covered party's** duties in the event of **occurrence**, claim, or suit reasonably likely to involve the **Authority** are as follows. These provisions are conditions precedent to coverage afforded under this MOC. The **covered party's** failure to comply with any of these provisions shall void coverage herein.
 - (a) The **covered party** shall notify the **Authority** within 30 days upon receipt of notice of a claim reasonably likely to exceed fifty percent of the **retained limit** or any **occurrence** involving:
 - (i) One or more fatalities;
 - (ii) Loss of limb or amputation;
 - (iii) Loss of use of any sensory organ;
 - (iv) Spinal cord injuries (quadriplegia or paraplegia);
 - (v) Third degree burns involving 10% or more of the body;
 - (vi) Serious facial disfigurement;
 - (vii) Paralysis;
 - (viii) Closed head injuries;
 - (ix) Serious loss of use of any body functions;
 - (x) Long-term hospitalization; or
 - (xi) Title 42 U.S.C. §1983 claims or other claims involving civil rights violations.

Written notice containing particulars sufficient to identify the **covered party** and also reasonably obtainable information with respect to the time, place, and circumstances of the **occurrence**, and the names and addresses of the **covered party** and of available witnesses shall be given to the **Authority** or any of its agents as soon as possible after notice of the claim is given to the **Authority**, if such information is not available prior to giving notice to the **Authority**.

- (b) If claim is made or suit is brought against the **covered party**, the **covered party** shall be obligated to promptly forward to the **Authority's** designated claims adjuster every demand, notice, summons, or process received by it or its representative.
- (c) The **covered party** shall cooperate with the **Authority** and upon its request assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **covered party** because of **bodily injury, personal injury, property damage, public officials errors and omissions, or sudden and accidental pollution** with respect to which coverage is afforded under this MOC; and the **covered party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **covered party** shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense toward the settlement of any claim for which the **Authority** has accepted responsibility and has so notified the **covered party**.
- (d) Any payments made, or arrangements to make payments, or expenses incurred by the **covered party** in relation to the claim, prior to giving notice of the claim to

the **Authority**, shall be the sole responsibility of the **covered party**, and the **Authority** shall have no obligation to pay said costs or to reimburse the **covered party** therefore.

- (e) As to any claim for which the **Authority** has accepted responsibility and has so notified the **covered party**, if the **covered party's** refusal to change its position prevents settlement of the claim for a reasonable amount, defined as the amount the **Authority** is willing to pay and the claimant is willing to accept, and increases the **covered party's** potential liability for **damages** and continued **defense costs**, the **covered party** shall pay or shall reimburse the **Authority** for those **defense costs** incurred after the claim could have been settled, and for any **damages** awarded or settlement agreed upon in excess of the amount for which the claim could have been previously settled.

9. Arbitration

The Coverage and Claims Committee shall make the initial determination whether to deny coverage on all or part of a claim, or to reserve the **Authority's** right to deny coverage on all or part of a claim if a loss subsequently exceeds the retained limit.

A decision by the Coverage and Claims Committee to deny coverage can be appealed to the Board of Directors. Notice of such appeal shall be submitted in writing within thirty (30) calendar days of the date of the Coverage and Claims Committees written notice of decision.

The appeal than be considered by the Board of Directors at the next regular or special meeting following receipt of the written appeal; lithe appeal is received too late for inclusion in the agenda packet, it can be postponed to the next following Board meeting. The Coverage and Claims Committee and the **covered party** will have the right to submit written materials and present oral argument to the Board; subject to reasonable time constraints.

Within sixty (60) days following any denial of coverage by the Board, the Member or **covered party** may request, in writing, that the **Authority** initiate a declaratory relief action in Superior Court for a determination of the coverage matter. The declaratory relief action shall he initiated in Santa Cruz County, California, unless the **Authority** and **covered party** agree on a different venue.

Any determination by the Executive Committee, and by the Board of Directors if the matter is appealed to the Board of Directors, whether a **covered party** has breached the Conditions concerning notice of a claim, and any determination whether the **Authority** has been prejudiced by that breach, so that this coverage does not apply, comes within the sole discretion of the Board of Directors, Such determinations shall be conclusive, final and binding and shall not be the subject of any further review, whether by declaratory relief action or otherwise.

ADMINISTRATIVE POLICY AND PROCEDURE

SUBJECT: APPEAL PROCESS FOR DENIED CLAIMS DUE TO LATE REPORTING

Policy Statement:

Failure to report claims that are potentially covered within thirty (30) days to MBASIA voids the coverage provided for that claim under the LIABILITY PROGRAM MEMORANDUM OF COVERAGE (MOC) Section VII. CONDITIONS.

Prompt reporting of claims allows Members access to qualified claims handling and allows MBASIA to take actions which can minimize litigation and control the overall cost of the claim. Late reporting of claims inhibits the ability of MBASIA to positively impact the outcome of a claim.

Members have the right within the MOC to appeal a denial of coverage in writing within thirty (30) calendar days of the date of the Coverage and Claims Committee written notice of decision. The Board of Directors then considers the appeal at their next regular meeting. The following procedure presents suggested penalties for an appeal of denied claims due to late reporting.

Procedure:

If, in the opinion of the Board of Directors, there is justification to appeal a denial of a claim for late reporting and it is determined that MBASIA was not unduly prejudiced by the late reporting, then any agreement for partial payment of a late reported claim will be limited by the following:

MBASIA agrees that:

- a) If notice is given to MBASIA six (6) months after the date on which it should have been given, the **Ultimate net loss** reimbursement to the Member shall be reduced by thirty-five percent (35%);
- b) If notice is given to MBASIA between six (6) and twelve (12) months after the date on which it should have been given, the **Ultimate net loss** reimbursement to the Member shall be reduced by thirty-five percent (35%);
- c) If notice is given to MBASIA between twelve (12) and twenty-four (24) months after the date on which it should have been given, the **Ultimate net loss** reimbursement to the Member shall be reduced by fifty percent (50%); and
- d) If notice is given to MBASIA more than twenty-four (24) months after the date on which it should have been given, any and all **Ultimate net loss** reimbursement that would have been owed to the Member if notice had been timely given to the MBASIA, shall be deemed waived, and no indemnification shall be paid.