

**RESOLUTION NO. 5-20**

**MUNICIPAL EXCESS LIABILITY RESIDUAL CLAIMS FUND**

**(hereinafter the "Fund" or the "RCF")**

**REVISING THE 2020 PLAN OF RISK MANAGEMENT**

**Plan of Risk Management**

**Definitions**

Commissioners mean: The Board of Fund Commissioners or the Executive Committee thereof as appropriate.

Member means: A Joint Insurance Fund that is a member of the RCF.

**Perils of Liability to be Insured Against:**

The RCF provides residual coverage for any claim which otherwise would be payable by a member for the following coverages and member fund years.

**Member Fund Coverages:**

- General Liability (including Police Professional Liability)
- Employee Benefits Liability
- Public Officials Liability
- Automobile Liability
- Workers' Compensation
- Property

**Member Fund Years:**

MEL -	1987 through 2015
B-MEL	1987 through 1990
Atlantic -	1987 through 2015
Bergen -	1985 through 2015
Burlco -	1991 through 2015
Camden -	1987 through 2015
Monmouth -	1988 through 2015
Morris -	1987 through 2015
NJUA -	1991 through 2015
Ocean -	1987 through 2015
PMM -	1987 through 2015
South Bergen -	1986 through 2015
Suburban Essex -	1992 through 2015
Trico -	1991 through 2015
Suburban Municipal	1994 through 2015
NJPHA JIF	1994 through 2015
Central Jersey JIF (Edison & Woodbridge)	Run-in claims incurred through 7/1/98
Brick Township	Run-in claims incurred through 1/1/99

The terms and conditions of these coverages insured by the RCF shall be the terms and conditions of these coverages provided by the member joint insurance funds in accordance with the coverage documents and plans of risk management of the member joint insurance funds.

### **Limits of Coverage:**

1.) The RCF's limits shall be equal to the per occurrence self-insured retention of the member joint insurance funds. The amount of any claim in excess of the member joint insurance fund's self-insured retention shall be the responsibility of the applicable excess insurer or reinsurer, the member joint insurance fund, or the member local unit as the case may be in accordance with the member joint insurance fund's coverage documents and plan of risk management.

2.) The RCF shall self-insure this limit except for run-in claims assumed from the Central Jersey JIF for Edison and Woodbridge and Ocean JIF for Brick Township.

### **Fund Retention:**

The RCF shall retain the entire risk except for run-in.

### **Reserves to be Established:**

1.) The general reserving philosophy is to set reserves based upon the probable total cost of the claim at the time of conclusion. Historically, on claims aged eighteen (18) months, the RCF would expect the claims servicing company to set reserves at 85% accuracy. The RCF also establishes reserves recommended by the Fund's actuary for claims that have been incurred but not yet reported so that the RCF has adequate reserves to pay all claims and allocated loss adjusted expense liability.

2.) Claim reserves are subject to regular review by the Fund's Executive Director/Administrator, Attorney, Commissioners and claims servicing company. Reserves on large or unusual claims are also subject to review by the claims departments of the commercial insurance companies or reinsurance companies providing primary or excess coverages to the member Funds. The Fund's actuary will conduct a complete actuarial reevaluation before establishing the budget, and assessments for the transfer of any member fund year to the RCF.

3.) The RCF may also establish an aggregate excess loss contingency fund consistent with NJAS 11:15-2.23 (f) 2.

### **Assessment Methodology:**

1.) In November of each year, the RCF shall prepare the budget for the upcoming fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations, the anticipated amounts and sources of assessments and other income to be received during the fiscal year, and the status of the self insurance or loss retention accounts.

2.) Non-claim expenses shall be allocated among fund years.

3.) In the event the budget for the upcoming fiscal year includes provision for the transfer residual risk by member joint insurance funds for member fund years not yet transferred:

a.) participation by a member joint insurance fund in such transfer shall be optional; and

b.) the budget for such transfer shall include provision to pay non-claim expenses associated with the transfer.

- 4.) The budget shall be reviewed by an actuary who shall comment on its adequacy and shall recommend changes, as appropriate, by November 15th.
- 5.) Not later than December 31st of each year, the Commissioners shall adopt, by majority vote, the budget for the Fund's operation for the coming fiscal year.
- 6.) A copy of the Fund's proposed budget, as changed to reflect the actuary report, shall be sent to each participating joint insurance fund at least two (2) weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a hearing has been held giving all participating member joint insurance funds the opportunity to present comments or objections.
- 7.) Any time during the year, the RCF may investigate the feasibility of assuming the residual risk of additional member fund years. Participation in such transfers shall be optional on the part of each member joint insurance fund, and shall require the-RCF to amend its budget and secure an amended indemnity and trust agreement from each member joint insurance fund which wishes to transfer the residual risk for additional member fund years.
- 8.) An adopted budget may be amended by majority vote of Commissioners after giving the participating joint insurance funds two (2) weeks advance written notice, and conducting a hearing on the proposed amendment.
- 9.) A copy of the adopted budget and any amendment shall be filed within thirty (30) days of its adoption with the governing body of each participating joint insurance fund, the Commissioner of Banking and Insurance, and the Commissioner of the Department of Community Affairs.
- 10.) That portion of the non-claim budget which relates to residual risk already transferred to the Fund shall be charged to the member funds based on their share of each such fund year.
- 11.) That portion of the budget related to the transferring residual risk not yet transferred shall be charged to the members pro rata, based on the actuarial evaluation of the ultimate cost, including IBNR of the claims to be transferred.
- 12.) Any other budget item shall be charged to the members, based on the value of the service provided.
- 13.) The total amount of each member's annual assessment shall be certified by majority vote of the Commissioners to the governing body of each participating member at least one (1) month prior to the beginning of the next fiscal year.
- 14.) The annual assessment shall be paid to the RCF in installments, to be determined by the Commissioners which shall conform with N.J.A.C. 11:15-2.15(a).
- 15.) In the event the final budget passed in December necessitates changes in the annual assessment, the second installment shall be adjusted to reflect this difference.
- 16.) The Treasurer shall deposit each member's assessment into the appropriate accounts, including the administrative account and the claim or loss retention trust fund account by fund year in which the member participates.
- 17.) The Commissioners shall, by majority vote, levy additional assessments wherever needed, or so ordered by the Commissioner of Banking and Insurance to supplement the Fund's claim, loss retention or administrative accounts to assure the payment of the Fund's obligations.

- a.) All supplemental assessments shall be charged to the participating joint insurance fund by applicable fund year, and shall be apportioned by that year's premium.
- b.) All joint insurance funds shall be given ninety (90) days advance written notice of the Fund's intention to charge an additional assessment, and the Fund shall conduct a hearing before adopting the supplemental assessment.
- c.) After the end of the year before the Fund has finalized its year end accounting, the Fund's Commissioners shall levy an additional supplementary assessment so that the Fund's statutory surplus for all fund years combined is no less than 12.5 percent of unpaid claims including IBNR.

18.) The RCF shall submit to the Commissioner of Banking and Insurance and the Commissioner of Community Affairs a report of the causes of the Fund's insufficiency, the assessments necessary to replenish it, and the steps taken to prevent a reoccurrence of such circumstances.

### **Procedures Governing Loss Adjustment and Legal Fees:**

- 1.) Each member shall maintain in full force and effect a contract with a qualified adjusting service company to adjust the member's residual claims. The claims adjuster service so engaged shall be designated as a claims adjusting service company of the RCF.
- 2.) All claims shall be reported to the claims adjusting service in accordance with the procedures established by the member joint insurance fund.
- 3.) Each member joint insurance fund shall engage a qualified Fund attorney to coordinate the legal defense of the member's residual claims. The individual or firm so engaged shall be designated as a deputy fund attorney of the Fund.
- 4.) With the advice of deputy Fund attorneys, each member joint insurance fund shall recommend, by resolution, a defense panel for that member joint insurance fund's residual claims. The defense panels shall be reviewed by the Fund attorney, who shall make a recommendation to Commissioners to establish the RCF's approved defense panel.

### **Coverage to be Purchased from a Commercial Insurer, if any:**

None.

### **Reinsurance to be Purchased, if any, and the Amount of Premium therefore:**

None.

### **Procedures for the Closure of Fund Years:**

- 1.) Since it is the purpose of the RCF to serve as the mechanism to permit member Funds to close Fund years, the Residual Claims Fund will only close Fund years upon a determination that the residual risk has been extinguished to a higher level of certitude. Specifically, the RCF will only close a Fund year if:
  - a.) a portfolio transfer of residual risk has been effected; or
  - b.) upon the later of the tolling of the statute of limitations for all potential claims incurred during the Fund Year or the closure of all potential claims incurred or 21 years since the end of the latest member Fund year included in the Residual Fund year.
- 2.) A Fund year may only be closed by resolution adopted after a public hearing.

- a.) All members must be given at least one (1) month notice prior to the public hearing.
  - b.) The resolution shall provide for the maintenance of all records in accordance with the requirements of the Commissioner of Banking and Insurance, Commissioner of the Department of Community Affairs, and all other regulations and statutes then in effect.
  - c.) The resolution shall provide for written notice to the Department of Banking and Insurance and the Department of Community Affairs at least two (2) months before the resolution becomes effective.
- 3.)
    - a.) Each year, the Commissioners will determine if a dividend is appropriate and will make application to the Department of Banking and Insurance as appropriate. Further, in the event an open Fund year incurs a deficit, the Commissioners will consider an inter-year transfer from the closed Fund year account to offset the deficit. In either case, the dividend or inter-Fund year transfer will be calculated on a member by member basis.
    - b.) The dividend of any member that is no longer a member of the Fund shall be held in escrow until the tolling of the statute of limitations for all potential claims incurred during the membership period. A former member may apply to the Commissioners for a return of that member's remaining share of the closed Fund year account when five (5) years have passed since the last Fund year in which the member participated has been closed. The Commissioners will decide on the former member's request after evaluating the likelihood of any additional assessments in consultation with the Fund Actuary.
  - 4.) The Fund will retain all records in accordance with the Fund's record retention program.

**Assumptions and Methodology used for the calculation of appropriate reserves requirements to be established and administered in accordance with sound actuarial principles.**

- 1.) The general approach in estimating the loss reserves of the RCF is to project ultimate losses for each member Fund year using paid and incurred loss data. Two traditional actuarial methodologies are used: the paid loss development method and the incurred loss development method. From the two different indications resulting from these methods the Fund Actuary chooses a "select" estimate of ultimate losses. Subtraction of the paid losses from the select ultimate losses yields that loss reserve liability or funding requirement.
- 2.) The following is an overview of the two actuarial methods used to project the ultimate losses.
  - a.) Paid Loss Development Method - This method uses historical accident year paid loss patterns to project ultimate losses for each accident year. Because this method does not use case reserve data, estimates from it are not affected by changes in case reserving practices. However, the results of this method are sensitive to changes in the rate of which claims are settled and losses are paid, and may underestimate ultimate losses if provisions are not included for very large open claims.
  - b.) Case Incurred Loss Development Method - This method is similar to the paid loss development method except it uses historical case incurred loss patterns (paid plus case outstanding reserves) to estimate ultimate losses. Because the data used includes case reserve estimates, the results from this method may be affected by changes in case reserve adequacy.

**The maximum amount a certifying and approving officer may approve pursuant to N.J.A.C. 11:15-2.22.**

1.) \$10,000. Any claim in excess of \$10,000 must be reviewed by the Executive Director/Administrator and approved by the Commissioners, Executive Committee of the member joint insurance fund or designated township of official for the townships of Edison, Woodbridge and Brick. In advance of each meeting of the RCF, the Executive Director/Administrator shall prepare a report of the claims approved by the member joint insurance fund.

2.) In addition to the approval required under the 1.) above, any claim other than Public Officials and Employment Practices Liability in excess of \$50,000 must also be reviewed by the RCF's Executive Director/Administrator, and approved by the RCF Commissioners or any claim in excess of \$100,000 for the townships of Edison, Woodbridge and Brick. The RCF Commissioners have established a claims subcommittee comprised of at least three of its members to exercise this power. This subcommittee may meet telephonically when required.

3. Public Officials and Employment Practices Liability: Any claim in excess of \$10,000 must be approved by the Fund Attorney and Executive Director/Administrator. All such approvals shall be reported to the claims sub-committee at their next meeting.

4. With the advance approval of the Fund Attorney or the Executive Director/Administrator, the certifying and approving officer may also pay hospital bills if waiting until after the next regularly scheduled FUND meeting would result in the loss of a discount on such bills. When the certifying and approving officer utilizes this authority, a report shall be made to the Commissioners at their next meeting.

**ADOPTED: January 6, 2020**