

LARM Board of Directors Meeting Minutes

January 28, 2019 9:00 am CT

The agenda and supporting materials were emailed to the LARM Board of Directors, LARM members and LARM staff on January 23, 2019.

Board Vice-Chair Lane Danielzuk called the meeting of the League Association of Risk Management (LARM) Board of Directors meeting via phone conference to order at 9:00 am CT January 28, 2019 and announced that LARM is subject to the Open Meetings Act and that a memo stating this was posted in the meeting room at Gering. Danielzuk asked everyone to say the Pledge of Allegiance. After the pledge, the Board of Directors roll was taken.

For the roll call, the following members were present: Beth Bonderson, Hoskins; Lane Danielzuk, Gering; David Hunter, Auburn BPW; Shannon Stuchlik, NENEDD and Andrew Ward, Valentine and Absent: Kimberly Neiman, Pilger.

Staff members present by phone were: Michael Nolan, Elizabeth Becker, Randy Peters, Dave Bos, Paige Buffington, Tracy Juranek, Fred Wiebelhaus, and Diane Becker.

Guests present by phone: ex officio Lynn Rex, League of Nebraska Municipalities (LONM); Jo Leland, Imperial; David Domina, Domina Law; Tracy Burns; Jerry Pigsley, Woods and Aitken; Lyle Lutt, City of Norfolk; unidentified individual from the City of Norfolk; Doug Stack, City of North Platte; Lanette Doane, Ansley; Sandra Schendt, Nelson; Doug Schulz, Curtis; John Lindsay, O'Hara Lindsay & Associates; Don Wesley, O'Hara Lindsay & Associates; Randy Scott, O'Hara Lindsay & Associates and others not identified.

Danielzuk read the Nebraska Revised Statutes - § 84-1412 (2) which states, "It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings." Danielzuk said a public comment period of 15 minutes would be held to discuss items on the agenda. Danielzuk subsequently opened the public comment period.

Stack asked why the board action to the City of North Platte couldn't wait until a summary judgement was heard March 9 by the Lancaster District Court on a pending lawsuit. He said the City of North Platte paid the largest premium to LARM of \$1.5 million. He said this LARM board was not a valid board and that LARM is under a three-year contract with the City of North Platte with two years left on the contract. He encouraged people to read correspondence from Nebraska Department of Insurance and he referred to the contract between the City of North Platte and LARM that is not signed.

Doane said she was notified the agenda was being changed on 9:22 am on January 27, 2019 rather than 9:00 am- not 24 hours in advance. She also said there was not a quorum at the December 13 board meeting. She asked where the lobbying fee proposed in the meeting was in the year's budget.

Rex commented there isn't a quorum with a 15-member board and that the amended agenda was not sent out within 24 hours of the meeting.

Leland indicated that her questions had not been answered adequately. She said the proposed legislative bill was obviously designed by someone at LARM and did not think the lobbying costs should be paid to promote the bill.

Schulz questioned Nolan if he was proud of his leadership and if the board was proud of what they were doing.

Lane asked that more civility be displayed. Schulz had no more questions.

Schendt said there was not a LARM Board quorum and there should be nine members.

Doane asked if Bonderson was being appointed without a membership vote which was a violation of the interlocal agreement.

Danielzuk asked for motion to approve the minutes of the December 21, 2018 meeting.

Rex said the approval of Beth Bonderson to the LARM Board was unlawful at the December 21, 2018 meeting board.

Motion to approve B1- the December 21, 2018 LARM Board meeting minutes made by Danielzuk and seconded by Ward. Roll Call: Ayes: Bonderson, Danielzuk, Hunter, Stuchlik and Ward. Nays: none. Absent: Neiman. Motion carried.

C - No special presentations.

Danielzuk asked Domina to assist him with chairing the meeting.

Consideration of D1 - Consideration of LARM Board authorization to increase reserves by \$15,000 on City of North Platte claim LARN-7911 regarding an April 10, 2013 injury by a police officer who was struggling with a combative patient.

Nolan said the settlement amount exceeding \$200,000 must be approved by the Board.

Buffington said that reserves for this patient would need to be raised to \$336,915.55. The injured worker continues to work and needed an additional surgery and will have permanent impairment.

Motion to approve D1 by Ward and seconded by Bonderson to increase reserves by \$15,000 on City of North Platte claim LARN-7911. Roll Call: Ayes: Bonderson, Danielzuk, Hunter, Stuchlik and Ward. Nays: none. Absent: Neiman. Motion carried.

Consideration of D2 - the LARM Board approval and support of Legislative Bill 573 to amend Section 44-4306 of Revised Statutes of Nebraska; to change provisions relating to risk management pool agreements; and to repeal the original section.

Domina suggested that the board invite Lindsay to summarize LB 573.

Lindsay said that LB 573 does three things: 1. It clarifies calculations of reserves and what is required for an intergovernmental risk management pool. 2. It establishes and clarifies the

manner of electing boards of intergovernmental risk management pools. It authorizes the Secretary of State to exercise supervision of such elections. 3. It provides that assets of the risk management pool should not be used for any agreement for branding/co-branding/etc. for an agreement that would last more than a year and would require that such agreements be on a commercially reasonable basis.

Lindsay said the bill was introduced to the Legislature.

Domina suggested that the potential expenditure of the lobbyist would also be considered in the conversation.

Lindsay said his lobbying firm has been in business for 40 years and said the fee is within the range of fees for contested legislation ranging from \$20,000 to \$100,000 per year.

Domina told Schulz that he cannot comment outside the public comment period.

Rex said that when she saw the bill was introduced on Tuesday, January 22, she contacted Senator Brewer. She said that Senator Brewer told her he was lied to by those who had given him the bill and that he would pull the bill. She said Brewer was then convinced not to pull the bill. Brewer told Rex he would not support the bill. He did not tell Rex but he did tell Schulz that (inaudible) indicated to him that Mike Nolan gave him the bill. Rex asked when the lobbying firm was retained by LARM and if Domina had helped write the bill. She wanted to know if Domina, Pigsley and Bruckner were aware of the bill. She said that assuming that LARM Board was not a lawful board but if it was, did they give approval to present the bill to the Legislature.

Lindsay said he talked with Senator Brewer at length about the bill and did not lie to him in any way whatsoever. The firm had talked with Senator Brewer to get a transfer of the sponsorship of the bill to Senator Hansen.

Domina said the comments must be addressed to the chair so that he can recognize the speakers. Comments must be brief and must not include the accusation of lying.

Rex said that the Senator Brewer said Wednesday morning and Friday morning that he was lied to or he wouldn't have introduced the bill.

Domina said this is why heresy evidence is not received in court.

Lindsay said this was a standard arrangement between LARM and his firm.

Domina stated he represents the individual members of the LARM board. He declined to answer questions per client privilege.

Consideration of D2 - the LARM Board approval and support of Legislative Bill 573 to amend Section 44-4306 of Revised Statutes of Nebraska; to change provisions relating to risk management pool agreements; and to repeal the original section.

Moved by Danielzuk to approved D-2 to approve and support Legislative Bill 573 to amend Section 44-4306 of Revised Statutes of Nebraska; to change provisions relating to risk management pool agreements; and to repeal the original section. Seconded by Ward. Roll Call:

Ayes: Bonderson, Danielzuk, Hunter, Stuchlik and Ward. Nays: none. Absent: Neiman. Motion carried.

Consideration of D-3 professional services agreement between LARM and O'Hara Lindsay & Associates for lobbying services related to seeking enactment of Legislative Bill 573 in the amount of forty-eight thousand dollars (\$48,000.00), payable in four equal installments of ten thousand (\$10,000.00) per month January through April, 2019, and a final payment of eight thousand (\$8,000.00) due May, 2019, upon presentation of statement from consultant.

Domina asked if Lindsay if the agreement was a standard agreement.

Lindsay said yes.

Domina asked if the installment agreement was in a manner of how fees are usually charged.

Lindsay said yes.

Domina asked if the unpaid balance was without interest and if it had to be paid if the bill didn't pass.

Lindsay said the fee was without interest and the fee would have to be paid even if the bill did not pass per Nebraska law.

Nolan stated that he had not had any direct conversation with Senator Brewer about the bill.

Rex stated that Senator Brewer did not tell Rex that Nolan had given him the bill but Schulz asked Senator Brewer (who Rex said is Schulz's good friend) where he got the bill and Brewer told Schulz Nolan gave him the bill. Rex asked if Lindsay had already been paid.

Domina asked the LARM staff if payments had been made to lobbying staff and Nolan said the lobbying firm is paid on a monthly basis and has been ongoing for several months although he didn't have that amount at the time.

Lindsay said his firm has been paid on a continuing basis to monitor legislation. Consulting was done but not lobbying for LARM. They were involved in preparation of the bill. Prep work happens on a regular basis. It is registered when the lobbying would start.

Bonderson asked if the payment would exceed the total of \$48,000.

Lindsay said that was correct- it would not exceed \$48,000.

Moved by Ward to approve D-3 professional services agreement between LARM and O'Hara Lindsay & Associates for lobbying services related to seeking enactment of Legislative Bill 573 in the amount of forty-eight thousand dollars (\$48,000.00), payable in four equal installments of ten thousand (\$10,000.00) per month January through April, 2019, and a final payment of eight thousand (\$8,000.00) due May, 2019, upon presentation of statement from consultant. Seconded by Stuchlik.

Rex said the board should be aware that LARM staff has been working to get the bill in.

Roll Call: Ayes: Bonderson, Danielzuk, Hunter, Stuchlik and Ward. Nays: None. Absent: Neiman. Motion carried.

Consideration of D-4 LARM Board authorization of Executive Director to sign and communicate the draft January 28, 2019 letter to the city attorney of North Platte concerning two alternatives offered by LARM for managing North Platte's excessive worker's compensation claim.

Nolan said they are giving the City of North Platte prior advance of two alternatives as advised by the Nebraska Department of Insurance. He said since 2017 the City of North Platte's workers' compensation claims have been 38-40% of all LARM's workers' compensation claims. He said the action is about protecting LARM's retention, this is a legitimate effort to protect the fiduciary responsibility of LARM and complies with what the Department of Insurance has asked.

Domina said that in the public comment period there were conflicting comments that stated that there was no signed contract and that there was a commitment to a three-year contract. He asked if there was a contract in place between LARM and the City of North Platte. Nolan said yes and, when asked by Domina if it could be terminated by advance notice Nolan said yes. Domina asked if the Department of Insurance had been notified of the options and Nolan said yes.

Nolan said he included correspondence between him and the Department of Insurance for the Board and members to refer to.

Domina asked if reinsurance was an issue. Nolan said it was the most sensitive issue.

Domina asked what the stop loss amount is or what is paid by LARM before reinsurance.

Buffington said the amount was \$750,000 per claim paid by LARM before reinsurance pays the claim.

Nolan asked what fraction of total claims were paid to North Platte.

Buffington said the percentage November 2017 to date paid to the City of North Platte was 38%-39% of total claims. Buffington did not know what percentage of contributions the City of North Platte paid of all LARM contributions. Workers' Compensation payment paid by the City of North Platte was \$1.8 million of a total \$3 million paid to all LARM members for workers' compensation claims.

Rex said she wanted to underscore that the City of North Platte has responded with LARM by paying its workers' compensation contribution. She said the City of North Platte has a year and half to two years on its contract and that LARM should honor the contract along with loss control. She said City of North Platte Jim Hawks had a great meeting with Bos, Wiebelhaus and Chris Cadwell with York and were instituting some recommendations from LARM. North Platte has high workers' compensation claims and are working on loss control elements. Rex said that LARM is benefitting from the City of North Platte property tax side. Nolan noted that Rex had meant property coverage and Domina agreed.

Moved by Ward to approve D-4 LARM Board authorization of Executive Director to sign and communicate the draft January 28, 2019 letter to the city attorney of North Platte concerning two alternatives offered by LARM for managing North Platte's excessive worker's compensation claim. Seconded by Danielzuk.

Roll Call: Ayes: Bonderson, Danielzuk, Hunter, Stuchlik and Ward. Nays: None. Absent: Neiman. Motion carried.

Domina discussed the timing of the agenda item D-5 notification - Consideration of action concerning expansion of Executive Committee delegated responsibilities to include a) matters in litigation involving LARM non-claims related matters; b) matters related to member-specific claims or membership issues requiring interaction with the Nebraska Department of Insurance; c) matters related to member-specific claims or membership issues requiring interaction with reinsurance carriers; d) matters related to action supported or opposed by a LARM Board decision concerning proposed legislation before the Nebraska Legislature.

Nolan said the board was notified of the amended agenda on Saturday January 26, 2019. Stuchlik said he had received it at 7:26 pm January 26, 2019. Nolan said Becker had sent it to the members on 9:23 am January 27. Nolan said there was no legal requirement that the members receive the amended agenda within 24 hours of the meeting- only the board.

Domina asked Nolan if he was satisfied he had met the requirement.

Nolan said "yes."

Domina asked board members individually if they had received the amendment to the agenda on Saturday evening and they all responded that they had.

Rex said she had received notice of the additional item for the agenda on Saturday January 26 at 7:26 pm. She said the official notice and amended agenda was sent out 9:20 am Sunday which was the problem.

Nolan said he believed that the notice was complied with by sending out the email to the board but whether it was complied with or not was up to the board and that another phone meeting could be set up and it could be addressed then. He said this agenda addition was an effort to comply with the open meetings act as far as the delegated authority of the executive committee.

Domina asked Rex to draw the distinction that she thinks is appropriate between the timing of the Saturday evening 7:26 pm notification to the board and the 9:20 am notification on Sunday morning that she called official.

Rex said the difference would be giving somebody a "heads-up" saying the following will be added to the agenda and the official notice which by law has to include the entire agenda.

Domina recommended that the item be tabled.

Ward made the motion to table the item. Stuchlik seconded the motion. Roll Call: Ayes: Bonderson, Danielzuk, Hunter, Stuchlik, and Ward. Nays: none. Absent: Neiman. Motion carried.

Danielzuk resumed chairing the meeting.

Danielzuk noted the correspondence on E-1 Administrative Reports between LARM Executive Director Michael Nolan and Matthew Holman, General Counsel of Nebraska Department of Insurance concerning City of North Platte workers' compensation claims, including the following:

- October 5, 2018 letter from Matthew Holman to Mike Nolan
- October 8, 2018 letter from Michael Nolan to Matthew Holman
- January 8, 2019 letter from Michael Nolan to Matthew Holman
- January 11, 2019 letter from Matthew Holman to Michael Nolan
- January 22, 2019 letter from Michael Nolan to Matthew Holman

Hunter made the motion to accept the report. Ward seconded the motion. Roll Call: Ayes: Bonderson, Danielzuk, Hunter, Stuchlik, and Ward. Nays: none. Absent: Neiman. Motion carried.

Danielzuk noted E-2 Administrative Reports - the Independent Auditor's Report done by Thomas, Kunc & Black, LLP of LARM's financial statements on a statutory basis from September 30, 2018 and 2017, and the related statutory statements of income, changes in surplus, and cash flows for the years then ended.

Bonderson made the motion to accept the report. Stuchlik seconded the motion. Roll Call: Ayes: Bonderson, Danielzuk, Hunter, Stuchlik, and Ward. Nays: none. Absent: Neiman. Motion carried.

Danielzuk noted E-3 Administrative Reports of the email dated January 23, 2019 from LARM Board Member Kim Neiman to LARM Board Members

Bonderson made the motion to accept the report. Ward seconded the motion. Roll Call: Ayes: Bonderson, Danielzuk, Hunter, Stuchlik, and Ward. Nays: none. Absent: Neiman. Motion carried.

Moved to adjourn by Stuchlik, Seconded by Ward. Roll Call: Ayes: Bonderson, Danielzuk, Neiman, Stuchlik, and Ward. Nays: none. Absent: Neiman. Motion carried. Meeting adjourned at 10:14 a.m.