

**Minutes of Meeting and Agenda (Revised) of
Claims Committee of
Nevada Public Agency Insurance Pool
Date: July 20, 2015
Time: 10:00 A.M.
Place: Nevada Public Agency Insurance Pool
201 S. Roop Street, Conference Room, 2nd Floor
Carson City, NV 89701**

1. Roll

Members Present: Cash Minor, Josh Foli, Gerry Eick, Roger Mancebo, Steve West

Others Present: Wayne Carlson, Donna Squires, Diane Evans, Jack Angaran, Augustus Claus, Bob Sweetin, Ann Wiswell

2. Public Comment

Chair Minor opened public comment and hearing none, closed the public comment period.

3. For Possible Action: Approval of Minutes of Meeting of POOL Claims Committee March 3, 2014

On motion and second to approve the minutes, the motion carried.

4. For Possible Action: Consideration of Appeal from Michael Winters of Coverage Determination by Nevada Public Agency Insurance Pool in the Matter of Defense Coverage

Chair Minor opened this item and invited Augustus Claus, attorney for Michael Winters, to proceed with his presentation. Mr. Claus indicated that he would address the law, the facts and equity in his arguments. He noted that he disagrees that POOL is not an insurer, thus the laws applicable to insurance companies should apply to POOL. He further indicated that the POOL Form provides for defense and that there is a statutory duty to defend in that the POOL was a substitute for the official attorney because the official attorney could tender the claim to the POOL and that Mr. Winters did this via email. He also stated that he thought POOL could be liable for bad faith. He provided arguments for each assertion.

Jack Angaran, coverage attorney for POOL, then provided arguments for the POOL's position, countering the assertions made by Mr. Claus. He noted that POOL is not an insurer, but a self-funded interlocal cooperation agreement agency. Its coverage form is approved by the members, thus not a contract of adhesion. He further stated that providing defense is discretionary, through a careful consideration of the case and the coverage form. He noted that the official attorney for Virgin Valley Water District is tasked under NRS Chapter 41 to provide a defense under certain circumstances and may tender that defense to an insurer; however, no such tender was made by the official attorney. He said that there was no official attorney determination or tender to the POOL even after being requested.

Mr. Claus provided rebuttal arguments.

Mr. Angaran provided rebuttal arguments.

5. **For Possible Action: Closed Session pursuant to NRS 241.015 (2)(b)(2) to Receive Information from the Attorney Employed or Retained by the Public Body Regarding Potential or Existing Litigation Involving a Matter over which the Public Body has Supervision, Control, Jurisdiction or Advisory Power and to Deliberate toward a Decision on the Matter, or Both.**

Chair Minor requested a motion for a closed session. On motion and second to close the session, the session was closed. Following discussion, on motion and second to adjourn the closed session, the motion carried.

6. **For Possible Action: Decision Regarding Appeal from Michael Winters of Coverage Determination by Nevada Public Agency Insurance Pool in the Matter of Defense Coverage**

Chair Minor called the meeting back to order. He asked whether any committee member had further questions. Hearing none, he asked for a motion. On motion and second to deny the appeal and uphold the contract language, the motion.

Chair Minor then was asked to permit another motion. On motion and second, given the question of equity in this matter despite the contractual facts and circumstances, the Claims Committee recommends management seek a compromise to the reimbursement sought by Mr. Winters, the motion carried.

7. **Recess until 1:30 p.m.**

Chair Minor recessed the meeting at 12:40 p.m.

8. **For Possible Action: Consideration of Appeal from City of Mesquite of Coverage Determination by Nevada Public Agency Insurance Pool in the Matter of Coverage for the Smaelie vs. City of Mesquite Case**

Chair Minor called the meeting to order at 1:30 p.m. and invited Mr. Sweetin to present. Mr. Sweetin provided arguments that there were two aspects of the Smaelie case: 1) tortious interference and 2) contractual breach of the labor agreement. He noted that the issue "arising out of" a contract does not apply to tortious interference and that the two claims must be treated separately and should have been as a defense strategy. Thus, POOL owes a defense for tortious interference, although he would concede not for breach of contract.

Jack Angaran then explained that breach of contract also includes failure to perform contractual obligations, which was one of the allegations against the city involving tortious interference. All of the allegations arise out of the labor agreement contractual relationship, thus are specifically excluded.

Mr. Sweetin was invited to give rebuttal and reiterated his arguments adding that the labor agreement did not specifically contain a provision about tortious interference since NRS 288 covers that, thus POOL should provide a defense for tortious interference since it does not arise out of the contract.

9. **For Possible Action: Closed Session pursuant to NRS 241.015 (2)(b)(2) to Receive Information from the Attorney Employed or Retained by the Public Body Regarding Potential or Existing Litigation Involving a Matter over which the Public Body has Supervision, Control, Jurisdiction or Advisory Power and to Deliberate toward a Decision on the Matter, or Both.**

Chair Minor called for a motion to enter into closed session. On motion and second to go into a closed session, the motion carried. Following discussion, on motion and second to adjourn the closed session, the session adjourned.

10. For Possible Action: Decision Regarding Appeal from City of Mesquite of Coverage Determination by Nevada Public Agency Insurance Pool in the Matter of Coverage for the Smaelie vs. City of Mesquite Case

Chair Minor called the meeting back to order and asked for questions or a motion. On motion and second to deny the appeal from the City of Mesquite, the motion carried.

11. Public Comment

Chair Minor opened public comment and hearing none, closed the public comment period.

12. For Possible Action: Adjournment

On motion and second to adjourn, the meeting adjourned at 2:15 p.m.

The Agenda was posted at the following locations and on www.notice.nv.gov:

**N.P.A.I.P.
201 S. Roop
Carson City, NV 89701**

**Carson City Courthouse
885 E. Musser Street
Carson City, NV 89701**

**Eureka County Courthouse
10 S. Main Street
Eureka, NV 89316**

**Churchill County Courthouse
155 North Taylor Street
Fallon, NV 89406**