



**ITEM ID:** 2024-214-0

**TRANSMITTAL DATE:** June 21, 2024

**MEETING DATE:** June 28, 2024

**TO:** Board of Directors

**FROM:** Don O. Del Rio, General Counsel

**SUBJECT:** Annual Renewal of Insurance Program for 2024-25 Fiscal Year

**Issue**

The Authority requires insurance to effectively manage its operating and other major risks and ensure its continued economic viability in the event of a catastrophic event. Authorization is required to renew the listed insurance policies for Fiscal Year 2024-25.

At the present time staff seeks approval to renew the coverages identified below:

- Operating General Liability ("OGL");
- Terrorism Liability;
- Employment Practices Liability ("EPLI");
- Pollution Legal Liability;
- Property;
- Boiler and Machinery;
- Terrorism Property (including active shooter coverage);
- Auto Fleet Insurance;
- Errors and Omissions;
- Crime;
- Cyber Security and Privacy; and
- Workers' Compensation.

All current insurance policies expire June 30, 2024. Our longtime broker, Marsh, Inc., is providing brokerage services for the insurance renewal procurement and they are supported by Price Forbes in London. The costs quoted in this presentation reflect net premium to be paid by the Authority and include estimated fees and taxes, as applicable.

**Recommendation**

Executive Committee recommended (5-0) that the Board authorize the Chief Executive Officer to purchase insurance for the 2024-2025 insurance year for total premium cost not to exceed \$18,015,732 as indicated below.

### **Strategic Commitment**

This report aligns with the Strategic Business Plan commitment of:

- **Modernizing Business Practices:** Continue to work collaboratively with our Insurance Brokers to obtain the most comprehensive insurance coverage available in the most cost-effective manner to ensure the continued viability of the Authority as a leading transportation provider.

### **Discussion**

Insurance is a contractual arrangement whereby the Authority transfers certain risks to insurers, thereby protecting its assets from destruction or its monetary resources from depletion. By doing this, the Authority is able to ensure its continued viability in the event of specified loss events.

It is recommended that the Authority purchase the following:

1. Liability related coverages for a total cost of \$9,100,216, including:
  - a. OGL insurance with annual liability limits of \$347.5 million dollars (with an approximate \$5M Self-Insured Retention);
  - b. Terrorism coverage of \$50 million (with a \$4M Self-Insured Retention);
  - c. Employment Practices Liability with limit of \$5 million; and
  - d. Pollution Legal Liability with limit of \$25 million.
2. Property related coverages for a total not-to-exceed cost of \$7,575,248, including:
  - a. Property insurance with limits of \$100 million dollars for an estimated premium not to exceed \$7,390,420. The property coverage has yet to be finalized and thus we seek authority to expend up to the aforementioned amount to secure \$100 million of coverage for the Authority's property on the best available terms and conditions;
  - b. Terrorism property coverage of \$10 million including active shooter coverage;
  - c. Boiler and machinery equipment breakdown coverage of \$25 million.
3. Automobile fleet coverage for an estimated premium of \$629,704 with Liberty Mutual. Premium charges are subject to adjustment based on an audit of the composition of the fleet during the policy term.
4. Workers' Compensation Insurance coverage for an estimated premium of \$612,515, subject to adjustment based on an audit of the actual payroll and workforce composition during the policy term.
5. Miscellaneous Insurance including Public Officials Errors and Omissions, Crime Insurance and Cyber Security and Privacy coverage for an aggregate total cost of \$98,052.

### ***Liability and Related Insurance Policies***

The OGL insurance program ensures that the Authority will have the financial resources to

continue operations in the event of a catastrophic incident causing injuries to passengers or third parties and/or damage to their property. The Authority also must comply with the terms of various contracts which require it to insure its operations against loss in OGL, property and automobile liability exposures.

This year the Authority's Risk Manager made in-person presentations and addressed approximately two dozen underwriters representing the major U.S. and international insurance markets which write insurance for the rail industry.

The Authority's presentations emphasized ways it continues its commitment to safety. The theme of this year's presentation was similar to that of recent years -- that Metrolink is an industry leader in terms of safety technology and culture, particularly being one of four railroads to fully implement and certify interoperable PTC throughout our system with all railroads with which we share rights of way and the incorporation of crash energy management cars into our operations and additional safety initiatives.

A combination of continued insured casualty losses in terms of both frequency and severity, has caused reinsurance costs for syndicates to increase markedly and this caused insurance carriers to reduce capacity or leave the casualty market completely and has also increased premiums. Social inflation is a recurring refrain among insurers, as they see more frequent extreme verdicts and increased litigation costs driving their financial performance.

In summary, we have worked all available global insurers as thoroughly as possible and were able to construct a tower with coverage of \$347.5 million, approximately \$20 million in excess of the Federal passenger liability cap, at a premium of \$9,100,216 for the OGL insurance program, very nearly that of last year.

#### A. Related Liability Policies

The Terrorism Stand Alone policy continues to be a very stable component of the liability program. This was quoted by Lloyds at \$263,109, an approximate 11% increase relative to the expiring premium despite concerns of global unrest.

The Employment Practices Liability (EPLI) quote was received from the incumbent carrier Beazley, at \$301,286. This matches last year's premium despite the Authority's location in California, a market with increased exposure in this line of coverage.

Pollution Legal Liability has been sourced through Ironshore Specialty Insurance Company is priced at \$91,044, very nearly that of last year's cost. This policy continues to reflect an increased deductible for any potential loss associated with the Authority's aging underground storage tanks.

The grand total for liability and related coverages is \$9,100,216. This is nearly flat compared to last year's expense. A comprehensive table of proposed liability related coverages, insurers and quotations is attached as Attachment A.

#### ***Property and Related Insurance***

Property insurance indemnifies the Authority for loss due to significant damage to or destruction of the Authority's assets from covered perils. For property insurance coverage, the

Risk Manager and our primary insurance broker, Marsh, have been exploring all available renewal options in both domestic and foreign property markets. The Authority faces the same opportunities and challenges with the renewal of its property insurance as with its OGL policies. The hardening market was again a significant obstacle to cost effective renewal for our property tower. Across the board, insureds are seeing premium rate increases, typically ranging from 20-40%. The industry wide market conditions were aggravated by the Authority's recent loss history with the San Clemente (Cypress Shores) earth movement claim.

Also driving premium cost is the Authority's Schedule of Values (SOV), the listing of the Authority's insured assets and properties, which currently stands at \$2.459 billion, up from \$2.251 billion last year due almost exclusively because of inflation.

Unfortunately, the property insurance market continues to remain extremely unsettled. Insurers have been hit by unusually heavy losses in other industries and markets in recent years causing substantial increases in premiums across all industries in order to ensure insurers' economic viability. In addition, there exists a lack of insurer capacity that has contributed to rate increases for the last few years.

Because of these market conditions, our broker has not yet finalized quotes to complete the property coverage part of the insurance program as of the writing of this report. That said, it is critical that we have replacement insurance in place when the existing policies expire on June 30. As such, we seek authority to expend up to \$7,390,420 on the property coverage with limits of \$100 million on the most favorable terms and conditions to the Authority as are available in the market.

Additional property coverage includes Stand Alone Terrorism Property coverage of \$10 million per occurrence, quoted by Hiscox at \$90,163.84, up approximately 11% year over year. This policy includes active shooter and malicious attack coverage. Lastly, Boiler and Machinery coverage is quoted by Travelers Indemnity at \$94,664.

The total cost of FY2024- 25 renewal of the Authority's Property Program shall not exceed \$7,575,248, compared with \$6,860,809 for the expiring policy year, an approximate 10% increase to last year's cost.

### ***Fleet Automobile Insurance***

The Automobile Fleet is proposed to remain with Liberty Mutual, who has quoted \$762,273 and is the only carrier offering coverage. This is a significant increase of approximately 49% compared to the expiring premium due to:

- Auto liability continues to be an unprofitable line of business for the majority of insurers despite several quarters of rate increases.
- Insurers are concerned with the potential for large losses due to nuclear verdicts associated with large fleets, and fleets with historical severe loss experience.
- Third Party operators of Metrolink vehicles.

Liberty Mutual is excluding coverage for hi-rail vehicles while on the tracks due to derailment concerns. Coverage remains for road use. The deductible has been increased from 5K to 10K for Heavy Units and from 1K to 5K for medium units. Charges are subject to adjustment based on an audit of the composition of the fleet during the policy term.

## ***Workers' Compensation Insurance***

In order to comply with applicable California law and the terms of its contracts, the Authority maintains workers' compensation insurance. The Authority continues to have limited options with its workers' compensation placement, primarily as a result of the class code associated with its right of way and customer engagement workers. Many carriers will not write policies which include coverage for class code 7133.

The Authority received a quote from Liberty Mutual, \$637,705, approximately a 19% increase from last year's premium. This increase is generally due to continued medical costs inflation, a slight increase in claims the past few years and an increase in payroll by 8.3%.

The workers' compensation premium quoted is an estimate based on our current payroll and workforce composition. The carrier will complete an audit of the actual payroll and the workforce composition and adjust the premium charges to reflect any changes.

## ***Miscellaneous Additional Insurance***

Public Officials E&O coverage with ACE has been quoted at \$61,867, nearly flat compared to the expiring policy premium. Crime Insurance through Hanover is quoted at \$7,667 a decrease of 33% to the expiring premium.

In the event of a data breach, Cyber Security and Privacy risk insurance pays for the notification and monitoring for impacted customers, 3rd party liability, fines and penalties, hiring of outside computer experts, and outside PR firms. The Authority is exposed through the mobile ticketing app, the operation of its ticket vending machines as well as possession of customer information through the call center and employees' personal information. The proposed policy provides notification and monitoring for up to \$1,000,000 for individuals and a \$1,000,000 limit for 3rd party liability. The premium cost for this coverage is \$28,518, a decrease of 22% to the expiring premium. Given the continuing threats in this area, a basic level of cyber security and first party coverage is advised.

## **Budget Impact**

Sufficient funding is included for this level of premiums in the proposed FY25 budget, which is contingent upon Board approval on June 28, 2024.

## **Next Steps**

The Authority will purchase insurance consistent with the Board's direction. The Board may elect to reduce limits for any of the various, except that OGL must be maintained with limits of not less than \$275 million per the Operating Contract with Amtrak and certain other agreements. The Board may also eliminate any of the other coverages not required by law or contract (such as Property, Workers' Compensation, Auto and Pollution Liability).

Prepared by: Raymond Barrera, Senior Counsel and Risk Manager

Approved by: Don Del Rio, General Counsel

**Attachment(s)**

[Exhibit A - Annual Renewal of Insurance Program for 2024-25 Fiscal Year  
Presentation - Insurance Renewal FY25](#)