OCTA

November 25, 2024
Orange County Transportation Authority
Board of Directors Meeting

Item 26 – Excess Liability Insurance Renewal

SUPPLEMENTAL INFORMATION

OCTA

MEMO

November 21, 2024

To: Members of the Board of Directors

From: Darrell E. Johnson, Chief Executive Officer

Subject: **Excess Liability Insurance Renewal Policy**

The Finance and Administration Committee (F&A) met on October 23, 2024, and November 13, 2024, to discuss the Orange County Transportation Authority (OCTA) Excess Liability program. OCTA is fully self-insured for all operational exposures, a practice OCTA has followed since December 2020, when the OCTA Board of Directors (Board) determined to discontinue Excess Liability coverage based on market-driven increases to premium pricing.

Staff recommendation to F&A is to re-enter the Excess Liability insurance market to obtain a primary layer of Excess Liability insurance. This will begin the transition away from being fully self-insured to protect OCTA's financial resources from significant losses. Below are additional details supporting this recommendation.

Background on Excess Liability Insurance

OCTA maintained Excess Liability insurance continuously until December 2020, when market conditions led to a significant increase in premium costs. Excess Liability insurance provides coverage for actions, including negligence, by OCTA employees and the Board, that result in bodily injury or property damage to third parties. Such coverage applies across all OCTA operations, including bus service, bus bases, open spaces, Express Lanes (EL), the new OCTA headquarters (where OCTA assumes new liability exposures as a landlord), and the forthcoming OC Streetcar.

The decision to discontinue Excess Liability coverage in December 2020 was based on the sharp rise in market pricing relative to what OCTA had paid in 2018 and earlier for coverage. However, given the financial exposure OCTA faces as a fully self-insured agency, reconsidering this decision is prudent.

Benefits of Excess Liability Insurance Coverage

The proposed Excess Liability insurance would be applicable on an occurrence basis. This means a single occurrence resulting in multiple claims or claimants would be covered under the policy with only one self-insured retention (SIR) applied. Separate, unrelated loss events would be considered a new occurrence, and the SIR would again be applied. This structure is beneficial for OCTA, given the inherent risks of transporting approximately 120,000 passengers daily throughout Orange County and with 107,721 daily trips on the Express Lanes (as reported for September, 2024 with 59,312 daily trips on the 91 Express Lanes and 48,409 daily trips on the 405 Express Lanes). For each singular occurrence where a handful or more individuals were harmed, and exposure is potentially in the tens of millions of dollars, OCTA would only be financially responsible up to its SIR. Whereas under a fully self-insured approach, OCTA would be responsible for all coverage for each and every occurrence, regardless of the number of claims made for the full dollar amount of all claims.

Efforts to Re-Enter the Excess Liability Insurance Market

Over the past year, Marsh USA, OCTA's insurance broker, has actively marketed OCTA to the Excess Liability market. When presenting OCTA to the market, Marsh provided information on OCTA's risk tolerance for a high SIR and invited insurers to quote excess coverage with an SIR ranging from $5 million up to $15 million. Twenty-three insurers were approached with seven declining to quote, nine expressing interest pending the establishment of a firm primary structure, and seven providing quotes for at least one layer of coverage. Below is a summary of their efforts:

1. Insurers that Declined:
    - A total of seven insurers declined. Arch, Munich, Core, Navigators declined due to appetite for new transit business. Euclid, Old Republic, and Berkley Custom declined due to transit exposure, regional concerns, or current business focus.

2. Insurers that Expressed Interest:
    - Nine insurers expressed interest in providing excess coverage, pending a firm primary structure: Aurenity, AWAC, Axis, CAN, Bowhead, GA Custom, Lexington, Upland, and Westchester.

3. Quotes Received:
    - Primary Excess Layer:
        - Safety National: $5 million coverage in excess of $10 million SIR for $944,094.

        - Berkley: $3 million coverage in excess of $10 million SIR for $750,000.
        - Berkley also proposed a $3 million primary layer in excess of $15 million SIR for $650,000.
        - Chubb: $3 million coverage in excess of $15 million SIR for $495,000.

    - Second Excess Layer on top of Primary Layer:
        - Berkley: $5 million coverage in excess of $15 million for $944,000.
        - Hiscox/Map: $5 million coverage in excess of $15 million for $750,000.

    - Third Excess Layer on top of Primary and Secondary Layer:
        - Convex/Aesir: $10 million coverage above $20 million SIR and primary layers for $1,300,000.

OCTA’s excess liability insurance carriers prior to OCTA dropping coverage in 2020 included Berkeley, Lexington and Princeton. Berkely provided quotes for both the primary excess and second excess layers. Lexington expressed interest in quoting above a firm primary layer, and Princeton did not provide quotes as their appetite for public entity and transportation has changed.

After reviewing the proposals, and assessing the best combination of SIR, coverage and premium cost, Marsh and staff concluded that the lead excess layer offered by Safety National is the most compelling option for OCTA’s re-entry into the excess liability market.

Recommendation

While the excess liability market pricing has increased significantly since 2018, resulting in OCTA dropping its coverage, our counterparts in the transportation industry have not abandoned their excess coverage. We believe it is in OCTA’s best interest to re-enter the excess market now and move away from the financial risks associated with remaining fully self-insured.

Securing this initial excess layer of coverage now allows OCTA to re-establish a presence in the market, build relationships, and credibility as a good risk with insurers, enabling OCTA to add to this coverage in the future. If you have any questions, please contact Maggie McJilton, Executive Director, People and Community Engagement, at (714) 560-5824.

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