

Washington Metropolitan Area Transit Authority  
**Board Action/Information Summary**

Action  Information

MEAD Number:  
201691

Resolution:  
 Yes  No

**TITLE:**

Claims Liability Fund

**PRESENTATION SUMMARY:**

This proposed action updates and consolidates five board resolutions regarding the Third Party Claims Reserve to provide direction regarding the use and administration of a comprehensive Claims Liability Fund. The action also provides clarity by defining previously undefined terms. The proposed action continues the limited indemnification for MetroAccess contractors, while providing flexibility to the CFO to insure that risk.

**PURPOSE:**

Staff requests Board approval to update and consolidate prior board resolutions regarding the Third Party Claims Reserve Fund into a comprehensive Claims Liability Fund. The proposed action will provide direction regarding the use and administration of the Claims Liability Fund. The proposed action also provides additional clarity by defining previously undefined terms and continues the limited indemnification for MetroAccess contractors, while providing flexibility to the CFO to insure that risk.

**DESCRIPTION:**

**Key Highlights:**

- Existing policy resolutions create a patchwork of eligible and ineligible uses of the Third Party Claims Reserve. The current policies include some expenses while excluding other expenses associated with the same case or claim.
- Without the proposed consolidations and updates, the full scope of WMATA's claims-related expenses will remain disconnected as multiple accounts (across multiple departments) must be used to address these costs.
- The proposed action clarifies the authorized uses of the renamed Claims Liability Fund, defines previously undefined terms, and consolidates all related expenses to one account for more accurate tracking and budgeting.
- The proposed action continues:
  - indemnification of MetroAccess operations contractors and delegates authority to the CFO to manage the insurance program associated with that indemnification
  - the Board's policy of funding anticipated yearly third party claim expenses plus a 20% contingency
  - the Board's policy on the use of a custody account for contingency funds while clarifying instruction on the administration of that account.

## **Background and History:**

Board Resolutions 84-54; 02-30; 07-24; and 11-47 each address, in whole or in part, the establishment and administration of WMATA's Third Party Claims Reserve Fund (TPC Reserve). The TPC Reserve is used to provide funding for certain approved claims and liabilities incurred by WMATA. These resolutions have created a patchwork of eligible and ineligible expenditures across the five separate Board actions. Since the establishment of the TPC Reserve, actuarial practices, the insurance industry, and WMATA's exposure to third party claims have matured, exposing gaps in the existing resolutions. The proposed action consolidates the existing Board resolutions, provides guidance by clearly defining previously undefined terms, and establishes guidance where existing policy documents have become outdated.

## **Discussion:**

In the context of ongoing litigation, Counsel undertook a review of the eligible uses of the TPC Reserve, given the complex set of facts, large outside counsel expenses, and the applicable insurance policies. In conducting this review, it became clear that the existing TPC Reserve policies authorize some of the anticipated expenses, but not others. Two examples of eligible and ineligible expenses include:

- Staff is authorized to use the TPC Reserve to pay for any judgment in favor of WMATA employees, but not for judgments in favor of non-employees.
- WMATA carries insurance for outside counsel fees, but cannot use the TPC Reserve to fund the self-insured retention.

The proposed action closes the gaps found in existing Board policies.

In addition, some third party claims are not authorized to be charged against the TPC Reserve. For example, expenses involving a claim arising in the context of a joint development lawsuit are not currently eligible, even though they constitute third party claims. The complex litigation referenced above, which involves both WMATA employees and non-employees, provides an even stronger example of the need for Board policy in this area to be updated and consolidated. Under the current policy direction, the litigation expenses are not eligible for payment from the TPC Reserve even though any judgment in favor of the WMATA employees class would be payable from the Fund. The proposed action resolves such issues and will provide a complete picture of all third party claims in one budget line, including authorizing the following charges:

- Expenses for defense of Employment Practices Liability Claims as well as liabilities incurred in this context;
- Expenses for defense of real-estate/joint development related matters as well as liabilities incurred in this context; and
- Continuing to indemnify MetroAccess contractors, but providing additional flexibility in how that risk is managed through insurance.

## **FUNDING IMPACT:**

There is no impact to the overall WMATA budget as this exercise realigns existing expenses

but does not create new expenses. The Claims Liability Fund is managed by the Office of Insurance in Risk Management.

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|----------------------------|--------------|
| Project Manager:           | David DeSoto |
| Project Department/Office: | RISK/INSR    |

**TIMELINE:**

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|---|---|
| <b>Previous Actions</b>                       | Board resolutions 84-54; 02-30; 07-24; and 11-47 each address, in whole or in part, the uses and administration of the Third Party Claims Reserve Fund. |
| <b>Anticipated actions after presentation</b> | No additional Board Actions are anticipated after this presentation.  |

**RECOMMENDATION:**

Recommend Board approval of the resolution to revise and consolidate the policy on use and administration of the Claims Liability Fund.

**PRESENTED AND ADOPTED: January 28, 2016**

**SUBJECT: CLAIMS LIABILITY FUND**

**2016-01**

**RESOLUTION  
OF THE  
BOARD OF DIRECTORS  
OF THE  
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

WHEREAS, The Board of Directors established a Third Party Claims Reserve (TPC Reserve) in Resolution 84-54 and amended its policies regarding the TPC Reserve in Resolutions 2002-30, 2007-24 and 2011-47; and

WHEREAS, It is appropriate to review, consolidate, and update those policies; and

WHEREAS, The Washington Metropolitan Area Transit Authority (WMATA) is exposed to claims for Personal Injury, Property Damage, Economic Loss, and Workers' Compensation and maintains the TPC Reserve to ensure funding is available to pay these claims timely; and

WHEREAS, Personal Injury claims means injury to the body, mind or emotions of a person, including death, and including consequential damages resulting from the Personal Injury; and

WHEREAS, Property Damage claims means physical injury to tangible property, including all reasonable resulting loss of use of that property; and

WHEREAS, Workers' Compensation claims means claims brought against WMATA under the applicable Workers' Compensation Law of each state or territory or jurisdiction and Federal Workers' Compensation Laws and Acts; and

WHEREAS, Economic Loss means financial loss that results not directly from Property Damage or Personal Injury but rather from professional, fiduciary, employment or other actions and are liquidated as a demand for payment; and

WHEREAS, WMATA has previously agreed to a limited indemnity of WMATA's paratransit vendors to assume certain losses arising from the operation of MetroAccess Services, as outlined in WMATA's contracts with those vendors and Resolution 2011-47; and

WHEREAS, Collectively, Personal Injury claims; Property Damage claims; Workers' Compensation claims; Economic Loss claims (including, but not limited to, losses covered under Employment Practices Liability/Directors' and Officers' Insurance policies); certain

**Motioned by Mr. Evans, seconded by Mrs. Hudgins**

**Ayes: 8 – Mr. Downey, Mr. Goldman, Mrs. Hudgins, Mr. Evans, Mr. Costa, Mr. Corcoran, Ms. Harley and Mr. Price**

contractually assumed losses arising from MetroAccess Services; all other claim types, with the exception of damage to WMATA-owned real and personal property; and assumed losses as approved by the Board of Directors, are hereinafter called "Authorized Claims"; and

WHEREAS, WMATA incurs certain expenses in the investigation, review, defense, and prosecution of Authorized Claims, including repair or replacement of damaged property; investigation and defense/prosecution costs; outside counsel fees and expenses; subrogation and other cases where WMATA is seeking recovery of its losses; and expert fees (collectively, "Claims Handling Expenses"); and

WHEREAS, The most current aspects of the multiple TPC Reserve resolutions cause the TPC Reserve to function on a pay-as-you-go basis and establish that an additional 20% of actuarially forecasted claims payouts will serve as an expense contingency for any fiscal year and will be maintained in the fund balance at the beginning of the fiscal year; and

WHEREAS, The Board of Directors desires to provide clear guidance to staff regarding the use of the TPC Reserve; now, therefore be it

*RESOLVED*, That the language of Resolutions 84-54, 2002-30, 2007-24 and 2011-47 covering the TPC Reserve is rescinded and replaced by this Resolution, which establishes a Claims Liability Fund; and be it further

*RESOLVED*, That the Claims Liability Fund is authorized to be used as a source of funding for the payment of Authorized Claims as these types of claims are defined in this Resolution; and be it further

*RESOLVED*, That the Claims Liability Fund is authorized for the payment of Claims Handling Expenses whether incurred as part of the defense, prosecution, or tender to an insurance provider of an Authorized Claim; and be it further

*RESOLVED*, That any judgment entered against WMATA or settlement entered to resolve an Authorized Claim, including non-personnel expenses associated with equitable relief rather than monetary damages, is authorized for payment out of the Claims Liability Fund; and be it further

*RESOLVED*, That costs and expenses of any kind associated with the resolution of claims arising in the context of a procurement shall not be paid from the Claims Liability Fund; and be it further

*RESOLVED*, That WMATA shall continue to assume responsibility for automobile liability claims resulting from MetroAccess Services provided by the paratransit contractors, their subcontractors including taxicab subcontractors, their employees and agents pursuant to

the contracts with its paratransit providers but excluding liability involving intentional torts, criminal offenses, and workers' compensation; and be it further

*RESOLVED*, That WMATA shall procure Automobile Liability insurance to cover MetroAccess Services liabilities assumed in this Resolution and shall pay claims within any self-insured retention out of the Claims Liability Fund. Such insurance to be purchased in amounts and types determined by the Chief Financial Officer; and be it further

*RESOLVED*, That the expense budget for the Claims Liability Fund shall be established based on the most recent available yearly actuarial forecast as determined by a WMATA contracted actuary; and be it further

*RESOLVED*, That 20% of actuarially forecasted claims payouts will serve as an expense contingency shall be planned in the beginning fund balance each fiscal year for the Claims Liability Fund and increases/decreases to the current and future year budgeted claims expenses shall result in increases/decreases to the contingency to maintain the 20% target and the funding for such change shall come through the budget process; and be it further

*RESOLVED*, That WMATA shall maintain the current bank custodial account, originally established as a fully funded reserve to hold the 20% expense contingency and, if utilized as a funding source to pay expenses which exceed the budget, shall be timely replenished to meet the next budget cycle's 20% contingency; and be it further

*RESOLVED*, That this Resolution shall be effective 30 days after its passage by the Board of Directors in accordance with § 8(b) of the WMATA Compact.

Reviewed as to form and legal sufficiency,



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Mark R. Pohl  
Acting General Counsel

WMATA File Structure No.:  
22.10. Third-Party Claims