

Metrorail Safety Commission  
April 24, 2018

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**Agenda Item # 5 – Action**

**Review and Approval of MSC Insurance Program**

**Background**                      Commissioners will be briefed on a recommended insurance program based on the current Organization Structure status of the MSC together with other underwriting requirements along with a recommended schedule to place the different types of insurance in place.

**Issues**                              None.

**Staff Recommendation**      Receive briefing from staff, and approve the various recommended MSC Insurance policies and placement schedule.

**Metrorail Safety Commission  
Organizational Management Documents**

**MSC Insurance Program Components  
Overview**

**From**

**Foy Insurance Group**



The Right Coverage Today for What Tomorrow Brings

**Via**



**CliftonLarsonAllen**

**Draft**

**April 24, 2018**

## BACKGROUND

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**Foy Insurance Group** has been working with **CliftonLarsonAllen, LLP** to identify, market, and secure commercial property and casualty insurance on behalf of the newly formed **Metrorail Safety Commission**. We conducted a review of the MSC's primary responsibilities and its organization structure, identified its current risk profile to determine the various types of insurance required in relation to immediate risk exposure. This report briefly outlines the various components of the MSC's Insurance program.

Since the MSC is a new organization and is currently engaged in setting up its various functions we identified the optimum schedule to implement the different insurance coverages. We then conducted focused initial marketing and placement efforts on securing and the coverages that the MSC would need to initiate at this time recognizing that additional coverages would be initiated at a later date or be part of other actions the MSC will be taking. Such instances and items are duly noted in this report.

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## INSURANCE PROGRAM ELEMENTS

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The MSC is an independent public entity established under federal statutes and has a regulatory responsibility to oversee the safety of the Washington Metropolitan Area Transit Authority's Metrorail operations. Based on this overall responsibility and the MSC's leadership structure and the typical work activities of its staff the following types of insurance coverages are recommended for the MSC.

### Types of Insurance Policy

1. **Public Official's Liability (including Excess Public Officials Management Liability )**
2. **Professional Errors and Omissions**
3. **Workers Compensation/Employers' Liability**
4. **Commercial Package Policy - (Including)**
  - a. **General Liability**
  - b. **Business Personal Property**
  - c. **Inland Marine Coverage**
5. **Excess/Umbrella Coverage**
6. **Commercial Auto Insurance**

## **Policy Placement Schedule**

Based on the status of the MSC together with other underwriting requirements we recommend the following schedule to place the different types of insurance in place.

Given that the MSC's Board of Directors (a.k.a. Commissioners) are currently in place and will soon be certified as the State Safety Oversight agency for Metrorail we recommend the Public Official's Liability insurance be placed immediately. Additionally, the MSC is scheduled to hire its Chief Executive Officer very shortly and has plans to hire additional staff members. We recommend that the Professional Errors and Omissions and Workers Compensation/Employers' Liability insurances be placed in place at the earliest and prior to having employees. The underwriting of the Errors and Omissions policy requires that a Commercial Package Policy be in place. As such this policy should also be placed in time the E& O policy becomes effective.

An Excess Umbrella policy provides for instances where limits of certain other policies may be inadequate. Given that the MSC is yet to begin its inspection, investigation and other related regulatory work activities the MSC can decide on the appropriate plan for this policy at later date. It is recommended that this matter be fully considered at a time that the MSC finalizes its standard operating procedures and all organization policies.

Commercial Auto Insurance will be part of the Commercial Package Policy noted above. The policy elements may be reexamined and revised as needed once the MSC secures more vehicles (either through purchase or lease) and has more employees fully engaged in their work activities.

## **Staff Recommended Insurance Policy Program and Schedule:**

- 1. Public Official's Liability - Immediate**
  - a. Excess Public Officials Management Liability - Immediate**
- 2. Professional Errors and Omissions - Immediate**
- 3. Workers Compensation/Employers' Liability - Immediate**
- 4. Commercial Package Policy - May 2018**
- 5. Excess/Umbrella Coverage - TBD**
- 6. Commercial Auto Insurance - TBD (as part of vehicle purchase)**

## Brief Description of Policy

### 1. Public Officials Liability and Employment Practices - (POL)

- **Public Officials Liability** - Provides coverage for MSC's present or future duly elected, appointed or employed officials, directors, officers, or members of commissions for an actual or alleged act, error, omission, misstatement, misleading statement or breach of duty, including any Personal Injury, if committed in the performance of his or her duties.
- **Employment Practices Liability (EPLI)** – Provides coverage for an “insured loss” that MSC et al becomes legally obligated to pay as a result of a claim for an Employment Practices Wrongful Act or Third Party Wrongful Act when alleged by any of MSC's past or present employees or any applicant for employment with the MSC, and in connection with that person's actual or proposed employment relationship.

#### Excess Public Officials Management Liability

Provides higher limits of insurance by sitting in “excess” over the primary Public Officials Liability coverage.

### 2. Professional Errors and Omissions - (E+O)

Professional liability Insurance commonly known as “Professional Errors & Omissions” or (E&O), is a type of coverage that protects insureds against claims that a professional service they provided caused a client to suffer financial harm because of mistakes they made (errors) or because the insured failed to perform some specified service (omissions). MSC's potential liability lies within the oversight and inspection of the Metro Rail System.

### 3. Workers' Compensation and Employers' Liability

Mandatory insurance which covers MSC's statutory liabilities under workers' compensation laws and liability arising out of employees' work-related injuries that do not fall under the workers compensation statutes.

### 4. Commercial Package Policy (CPP)

A CPP will provide the MSC with coverage for bodily injury and property damage claims as well as coverage for its owned property.

### 5. Excess / Umbrella Coverage

CPP, Commercial Auto, and “Employers Liability” policies generally provide \$1M limits. Optional Umbrella coverage can sit over these policies and provide additional limits.

## 6. Commercial Auto Insurance

Specific auto coverage is not required until the MSC owns or leases vehicles. We will however add Hired and Non-Owned Auto coverage to the Commercial Package policy.

## MARKETING

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### Approach

With the assistance of our specialty lines broker partner, ARC Excess & Surplus of New England, we reached out to 31 insurance carriers for Public Officials Liability and Professional Errors and Omissions coverage including major markets; Chubb/Ace, AIG, CNA, Philadelphia Insurance, Liberty Mutual/Iron Shore, and multiple London markets - working through syndicates at Lloyds.

#### **Included in our base criteria for carrier selection were:**

- Ability to quote the lines of coverage needed
- A plus or better rated carrier (s)
- Specialization in the line (s) of insurance proposed:
  - Broad coverages
  - Claims management
  - Client resources including loss control assistance
  - Availability of limits
  - Expertise of the underwriters in understanding the complexities of the quasi-governmental aspects.

### Marketing Results

**Public Officials and Employment Practices Liability** - Of the 31 carriers contacted, only three carriers; Professional Government Underwriters - (Indian Harbor Insurance), AIG, and Chubb provided terms:

- **Chubb** – We deemed as inferior to Professional Government Underwriters, (PGU)
- **AIG** - Ruled out as their coverage includes a “transit authority” exclusion that they, unlike PGU, would not remove.
- **Professional Government Underwriters** - Provided the broadest coverage and both \$1M and \$3M options. ***(Proposed)***

**Excess Public Officials Liability** – To date, only Landmark American Insurance Co. provided terms. ***(Proposed)***

**Professional Errors and Omissions** - Of the 31 carriers contacted, only Hiscox Insurance opted to quote. ***(Proposed)***

**Workers’ Compensation and Employers’ Liability** - Foy marketed this coverage but CliftonLarsonAllen, LLP found it available and at a lower cost by placing it through MSC’s PEO. ***(Proposed)***

# 1. PUBLIC OFFICIALS AND EMPLOYMENT PRACTICES LIABILITY

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## Recommendation

We recommend placing MSC's Public Officials Liability & Employment Practices with **Professional Government Underwriters** - (Indian Harbor Insurance Company) at a limit of **\$3,000,000**.

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### Option 1: \$3,000,000 Limit

**Carrier:** Indian Harbor Insurance Company (Member of the XL Catlin Group)

**Rating:** AM Best A XV

**Premium:** \$12,271 (Plus \$245 policy fee and \$250.32 D.C. SL Tax)

<b>Coverages:</b>	<b>Limits:</b>	<b>Retention:</b> (per claim)
Public Officials Management	\$3,000,000	\$5,000
Employment Practices	\$3,000,000	\$10,000
Policy Aggregate - All claims	\$3,000,000	
Non-monetary Cov. - Defense Only	\$50,000	\$5,000
"    (Aggregate)	\$100,000	
Crisis Management	\$25,000	\$5,000

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### Option 2: \$1,000,000 Limit

**Carrier:** Indian Harbor Insurance Company (Member of the XL Catlin Group)

**Rating:** AM Best A XV

**Premium:** \$7,330 (Plus \$245 policy fee and \$151.50 D.C. SL Tax)

<b>Coverages:</b>	<b>Limits:</b>	<b>Retention:</b> (per claim)
Public Officials Management	\$1,000,000	\$5,000
Employment Practices	\$1,000,000	\$10,000
Policy Aggregate - All claims	\$1,000,000	
Non-monetary Cov. - Defense Only	\$50,000	\$5,000
"    (Aggregate)	\$100,000	
Crisis Management	\$25,000	\$5,000



## 1. A EXCESS PUBLIC OFFICIALS LIABILITY

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### Recommendation

We recommend that the MSC Board approve the placement of Excess Public Officials with Landmark Insurance which will provide a total limit of \$5,000,000.

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**Carrier:** Landmark American Insurance Co.

**Rating:** AM Best A+ XIII

**Premium:** \$15,000 (Plus \$245 policy fee and \$305.00 D.C. SL Tax)

**Coverages:**

**Limits:**

Public Officials Excess

**\$2,000,000\*** (In excess of \$3,000,000)

*\* \$2M Excess predicated on selection of - Option 1 - \$3,000,000 Primary Limit*

## 2. PROFESSIONAL ERRORS AND OMISSIONS LIABILITY

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### Recommendation

We recommend that the MSC Board approve the placement of Professional Errors and Omissions Liability with Hiscox Insurance.

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**Carrier:** Hiscox - 100% Lloyds syndicate paper

**Rating:** Rated A by A.M. Financial Size Category Class XV

**Premium:** \$24,994 (Plus \$100 fee and 2% D.C. S/L Tax \$501.88)

**Coverages:** (Claims made and reported)      **Limits:**      **Retention:** (per claim)

Professional Liability (PL) Aggregate Limit      \$1,000,000      \$25,000

Each Claim Limit      \$1,000,000

### 3. WORKERS' COMPENSATION AND EMPLOYERS LIABILITY

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#### Recommendation

This coverage will be provided by a PEO that the MSC will be selecting to deliver/administer its other administrative services and benefits. What follows is a sample quote for the coverage.

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#### Option 1: Workers' Comp. - Statutory Limits \$1,000,000 Employers Liability

**Carrier:** The Hartford

**Rating:** A+ Superior XV \$2BN

**Premium:** \$7,210

<b>Coverages:</b>	<b>Limits:</b>	<b>Retention:</b> (per claim)
Workers' Compensation	Statutory limits	none
Employment Liability:		
Bodily Injury by Accident (Each accident)	\$1,000,000	none
Bodily Injury by Disease (Policy limit)	\$1,000,000	none
Bodily Injury by Disease (Each employee)	\$1,000,000	none

### 4. COMMERCIAL POLICY PACKAGE

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#### Recommendation

CPP is an integral part of MSC's insurance program so we have heavily marketed this coverage. Two insurance carriers have expressed an interest in providing terms so we expect to be able to present one or two options to the Board within the next 7 to 10 days. Once placed we can bind the Professional Errors and Omission coverage as well.

### 5. UMBRELLA COVERAGE

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#### Recommendation

Once the CPP and Employers Liability insurance have been secured we will be looking for Umbrella options and will present to the Board

### 6. COMMERCIAL AUTO INSURANCE

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#### Recommendation

CPP will include basic automobile insurance for automobiles use for official work. Additional/specific coverage is not required until the MSC owns or leases vehicles.

## PREMIUM SUMMARY

### Coverage

### Premium (Including taxes and fees)

1. Public Officials Liability 7 Employment Practices (option 1)	\$12,766.32
2. Excess Public Officials Liability	\$15,550.00
3. Professional Errors And Omissions	\$25,595.88
4. Workers' Compensation and Employers Liability	\$ 7,210.00
<b>Total – All lines proposed</b>	<b>\$73,888.52</b>

## ADDENDUM

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### General Underwriting Information

- The purpose of the Metrorail Safety Commission (MSC) is to oversee safety (SSO) for the transit system in metro MD, DC and Virginia as required under Federal Transportation Safety Administration guidelines. <https://www.congress.gov/bill/115th-congress/senate-joint-resolution/22>
- By law, the MSC is empowered to conduct, or cause to be conducted, inspections, investigations, examinations, and testing of WMATA personnel and contractors, property, equipment, facilities, rolling stock, and operations of the WMATA Rail System, including, without limitation, electronic information and databases.
- To accomplish its goal, the MSC will hire a Chief Executive Officer who shall be the chief administrative officer of the Commission and who shall have expertise in transportation safety and one or more industry-recognized transportation safety certifications. In addition, the Commission will employ, under the direction of the chief executive officer, such other technical, legal, clerical, and other employees on a regular, part-time, or as-needed basis as it determines. Currently the MSC estimates a staff of 13.
- The MSC will operate as per and under the rules and regulations as established by the Federal Transportation Safety Administration State Safety Oversight; 49 CFR part 674. <https://www.gpo.gov/fdsys/pkg/FR-2016-03-16/pdf/2016-05489.pdf>
- The MSC Board Will consist of 6 Members\_with 2 members appointed or reappointed (including to fill an unexpired term) by each of the three compact Signatories listed above. Each Signatory shall also appoint or reappoint (including to fill an unexpired term) one Alternate Member pursuant to the Signatory's.
- Officers and Employees - The Board shall elect a Chairman, Vice Chairman, Secretary, and Treasurer from among its Members, each for a 2-year term and shall prescribe their powers and duties.

- The Board shall appoint and fix the compensation and benefits of a chief executive officer who shall be the chief administrative officer of the Commission and who shall have expertise in transportation safety and one or more industry-recognized transportation safety certifications. In addition, the Commission may employ, under the direction of the chief executive officer, such other technical, legal, clerical, and other employees on a regular, part-time, or as-needed basis as it determines

### Limited Liability and Indemnification

- Public Law 115-54 115<sup>th</sup> Congress – “ Article 5” H

<https://www.congress.gov/115/plaws/publ54/PLAW-115publ54.pdf>

1. The Commission and its members, alternate members, officers, agents, employees, or representatives shall not be liable for suit or action or for any judgment or decree for damages, loss, or injury resulting from action taken within the scope of their employment or duties under this MSC Compact, nor required in any case arising or any appeal taken under this MSC Compact to give a supersedeas bond or security for damages. Nothing in this paragraph shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The Commission shall be liable for its contracts and for its torts and those of its members, alternate members, officers, agents, employees, and representatives committed in the conduct of any proprietary function, in accordance with the law of the applicable Signatory, including, without limitation, rules on conflict of laws but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contract or tort for which the Commission shall be liable, as herein provided, shall be by suit against the Commission. Nothing contained in this MSC Compact shall be construed as a waiver by the District of Columbia, the Commonwealth of Virginia, or the State of Maryland of any immunity from suit.

## **References:**

**Public Law 115-54 115<sup>th</sup> Congress -**

<https://www.congress.gov/bill/115th-congress/house-joint-resolution/76?q=%7B%22search%22%3A%5B%22washington+metrorail+safety+commission%22%5D%7D&r=1>

**District of Columbia - "Washington Metrorail Safety Commission Establishment Act of 2016"**

<http://lims.dccouncil.us/Legislation/B21-0828?FromSearchResults=true>

**Maryland** [http://mgaleg.maryland.gov/2017RS/chapters\\_noln/Ch\\_3\\_hb0119E.pdf](http://mgaleg.maryland.gov/2017RS/chapters_noln/Ch_3_hb0119E.pdf)

**Virginia -** <https://law.lis.virginia.gov/compacts/washington-metrorail-safety-commission-interstate-compact/>

**Federal Transit Administration**

<https://www.transit.dot.gov/state-safety-oversight>

<https://www.transit.dot.gov/regulations-and-guidance/safety/fta-safety-oversight-washington-metropolitan-area-transit-authority>

**MSC Bylaws**

## **Account Team – Foy Insurance**

**Michael W. Sawyer – CIC**

Insurance, marketing, and business development professional with over 30 years of experience in commercial insurance. Currently, Mike oversees insurance offices in Scarborough, Maine and Burlington, Massachusetts for Axial-Foy Insurance and Foy Insurance Group.

**Rob Holt – CPCU, ARM**

Mr. Holt is a risk management and insurance professional with over 25 years of experience in the areas of commercial insurance, risk consulting, loss control, claims management, and safety.

His insurance brokerage clientele has included everything from small to midsize businesses, national non-profits, professionals, large destination resorts, transportation companies, and international manufacturers.

As a Risk Management Consultant his specialty was in working with

“Fortune 50”, multi-national corporations on risk management and loss control programs, claims management, and world-wide insurance coverage placement and broker “rfp’s”.

### **ARC Excess and Surplus, LLC**

ARC insures many municipalities and quasi-governmental risks and is; the 6th largest wholesale broker as ranked by “Business Insurance”, a top five producer with all major Management & Professional Liability Insurance carriers, and the largest privately owned specialty broker of management and professional liability in the United States.

ARC is local to the D.C. area – Included in its 8 locations are Owings Mills, MD, Philadelphia, New Jersey, and its home office in New York.