

Personnel Management and Services  
Nelson E. Diaz, Deputy Superintendent

**SUBJECT: REQUEST FOR AUTHORIZATION TO PURCHASE GENERAL/AUTO  
LIABILITY AND PROFESSIONAL LIABILITY INSURANCE COVERAGES**

Pursuant to authorization provided for in State Board Rule 6A-1.012(11), the Board authorized staff to enter into negotiations for a replacement excess liability insurance program to become effective October, 1, 1999, following the extension of the present program which the Board authorized at its meeting of June 23, 1999, Agenda Item Replacement E-18.

Negotiations have proven successful and staff is satisfied with the recommended replacement program. As in the past, the School Board, School Board members individually and collectively, the Superintendent of Schools, and staff will continue to be covered by this comprehensive liability insurance program. The structure of the program will continue to take advantage of the best attributes of self-insurance and insurance coverage which has saved the Board in excess of \$3 million in premium payments since its inception in 1991. It also continues to provide the Board Attorney's Office maximum flexibility to handle the defense of claims and recommend settlements where warranted, while continuing to rely on the limited sovereign immunity provided by Section 768.28, Florida Statutes.

Landmark American Insurance Company has agreed to endorse the policy to cover all unknown prior acts dating back to August 1, 1984. This is crucial when changing carriers for this type of coverage so that no previously unknown and unreported claim is denied by the carrier. As is now the case, the Board would continue to pay its own legal defense costs.

In addition to common forms of liability such as bodily injury, property damage, and professional liability, the recommended program will provide coverage for liabilities associated with Employment Practices Liability and sexual misconduct, including student on student claims, as was recently brought forth before the United States Supreme Court.

The terms of the recommended casualty excess insurance program are as follows:

Named Assured                    ▶            The School Board of Miami-Dade County, Florida

- Policy Period ▶ From 12:01 am, October 1, 1999 to July 1, 2004, subject to re-rate at July 1, 2001, 2002, and 2003
- Retroactive Date ▶ August 1, 1984
- Insurer ▶ Landmark American Insurance Co. (A.M. Best A VIII)
- Reinsurer ▶ School, College and University Underwriters Ltd. (SCULL)
- Policy Wording ▶ As per expiring policy, inclusive of recent updates as recommended by the Board's insurance consultant, Siver Insurance Consultants, Inc.
- Primary Limits of Liability ▶ \$500,000 per occurrence/\$3,250,000 annual aggregate  
General/Auto/Professional (Increased to \$5,687,500, for the period of October 1, 1999 to July 1, 2001)
- Excess Prof. Liability ▶ \$500,000 excess of primary \$500,000 per wrongful act, subject to an annual aggregate of \$2,500,000 (Increased to \$4,375,000 for the period of October 1, 1999 to July 1, 2001)
- Self Insured Retention ▶ \$100,000/ per claim/200,000 any one occurrence for General/Auto Liability and \$200,000 per wrongful act for Professional Liability
- Additional Retained Limit ▶ As per expiring policy, the Board agrees to reimburse the carrier for claim payments made within the additional retained limit, not to exceed excess claim payments of \$1,750,000 any full policy year (Increased to \$3,062,500 for the period of October 1, 1999 to July 1, 2001)
- Premium ▶ Annual 12 month premium is \$490,000 (same as expiring), with initial 21 month policy period to be paid in two installments of \$367,500 (pro-rata 9-month premium due on October 1, 1999, then annual premium of \$490,000 for July 1, 2000 to July 1, 2001, subject to annual re-rates for policy years 2001 - 2002, 2002 - 2003, and 2003 - 2004)

Policy Reinstatements ▶ For purposes of this program, the Board agrees to reimburse the insurance company "dollar for dollar" for losses paid within the limit of liability for any policy year up to \$1,750,000 (increased to \$3,062,500 for the period of October 1, 1999 to July 1, 2001), subject to a legally binding "side agreement". Following that additional premium requirements would be as follows reflecting both the initial 21-month policy period, and subsequent three annual policy periods:

Initial (21-month policy period) ▶ Claim payment for next \$875,000 - no additional premium  
▶ Claim payment for the next \$875,000 - additional premium of ½ of annual premium (\$428,750) due  
▶ Claim payment for the next \$875,000 - additional premium of full annual premium (\$857,500) due

Annual (12-month policy period) ▶ Claim payment for next \$500,000 - no additional premium  
▶ Claim payment for the next \$500,000 - additional premium of ½ of annual premium (\$245,000) due  
▶ Claim payment for the next \$500,000 - additional premium of full annual premium (\$490,000) due

Because there are a number of open pending claims which will continue to be the present carrier's (Odyssey Re's) responsibility, the Board will continue to be required to collateralize the reinsurance agreement between Odyssey Re (London), LTD. and Mutual Indemnity Insurance through the issuance of an irrevocable letter of credit as it has done in the past. Following negotiations, Odyssey Re has agreed to keep the amount of the letter of credit at the current \$3 million limit to cover claims incurred during policy years 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98, 1998-99, and July 1, 1999 through September 30, 1999. Suntrust, on behalf of the Board, will issue the letter of credit to The Bank of N. T. Butterfield & Son LTD. The fee for the issuance of this letter of credit is .5% of the letter of credit limit (\$3 million), or \$15,000 annually.

As claims years are closed out, and claims are settled, the cumulative obligation of the letter of credit should reduce and will be reviewed annually with Odyssey Re.

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida:

1. authorize purchase of its General/Auto/Professional Liability Errors and Omissions coverage with Landmark American Insurance Company (A.M. Best VIII), and reinsured by School, College and University Underwriters Ltd. (SCUUL), through Arthur J. Gallagher & Co., Miami, Florida, subject to a \$100,000 per person/\$200,000 per occurrence self-insured retention for general/auto liability, and a \$200,000 per claim/wrongful act deductible for professional liability, with limits of liability for an initial 21-month policy period, effective October 1, 1999 through June 30, 2001 of \$500,000/\$5,687,500 21-month aggregate for general/auto/professional liability, \$500,000 per claim/wrongful act/\$4,375,000 21-month aggregate excess professional liability, at an estimated 21-month premium of \$857,500, payable in two payments, with an initial premium due for coverage October 1, 1999 to July 1, 2000 of \$367,500, and the second premium due for coverage of July 1, 2000 to July 1, 2001 of \$490,000, for paid losses under \$3,062,500, with additional premium of \$428,750 once losses reach \$3,937,500, with an additional premium of \$857,500 once losses reach \$4,812,500 during the initial 21-month policy period;
  
2. authorize renewal of its General/Auto/Professional Liability Errors and Omissions coverage with Landmark American Insurance Co. (A.M. Best A VIII) and reinsured by School College and University Underwriters Ltd. (SCUUL), through Arthur J. Gallagher & Co., Miami, Florida, for three additional one-year renewals commencing annually on July 1, 2001, July 1, 2002, and July 1, 2003, subject to all annual policy terms, conditions, reimbursements, and provisions contained herein, with annual premiums of \$490,000 for paid losses under \$1,750,000, with additional premiums of \$245,000 once losses reach \$2,250,000, and \$490,000 once losses reach \$2,750,000, during any annual policy period;

3. authorize reimbursement of School College and University Ltd. (SCUUL), by the Superintendent for payments made for the first \$3,062,500 (initial 21-month policy period of October 1, 1999 – July 1, 2001) and \$1,750,000 for subsequent 12-month policy renewals, with funds to be taken from either the general liability or auto liability claims reserve fund, as a result of claims which occur during any policy year, effective October 1, 1999 through June 30, 2004, with renewals of July 1, 2001, 2002, and 2003 subject to no change in terms, conditions and premiums, with the Board collateralizing such payments through the issuance of a legally binding "side agreement" wherein the Board agrees to reimburse SCUUL for claims payments as stipulated herein; and
  
4. authorize reimbursement of Mutual Indemnity, LTD., by the Superintendent, for claims payments made to Odyssey Re (London), Ltd., paid by Odyssey Re (London), Ltd., with funds to be taken from either the general liability or auto liability claims reserve fund, with the Board collateralizing such payments through the issuance of an irrevocable letter of credit in an amount not to exceed \$3 million for claims incurred during the following policy years of 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98, 1998-99, and July 1, 1999 through September 30, 1999, with the annual fee based upon .5% of the letter of credit limit, or \$15,000 annually, with the amount of the letter of credit to be reviewed on an annual basis as long as there are pending incurred claims during any policy period for which Mutual Indemnity Ltd. and Odyssey Re, Ltd. are at risk for claims incurred.

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