

Financial Affairs
Edward Marquez, Chief Financial Officer

SUBJECT: EXCESS LIABILITY INSURANCE PROGRAM

COMMITTEE: BUSINESS AND FINANCIAL SERVICES

At the Board meeting of November 19, 2003, the Board authorized staff to enter into negotiations with United Educators Insurance, through Arthur J. Gallagher & Co., to seek renewal terms and conditions for its excess liability insurance program, effective July 1, 2004, with specific recommendations for coverage terms and premiums to be brought back to the Board at a future Board meeting. The current policy period for this coverage is October 1, 1999 through June 30, 2004. Additionally, the Board agreed to make contractual changes to the terms and conditions applicable to the excess liability insurance program, which was in place effective July 1, 1991 through September 30, 1999, subject to agreements of all parties, which would allow for certain obligations to be released for outstanding claims which occurred during that time frame. There are outstanding claims which the Board's third party claims administrator, Gallagher-Bassett Services, Inc., is still handling for both policy periods.

Final renewal terms of the Board's existing excess liability insurance program have been negotiated, which is authorized by State Board Rule Chapter 6A —1.012, which provides authorization for a district school board when purchasing insurance, entering into risk management programs, or contracting with third party administrators, to make such acquisitions through the bid process, or by direct negotiations and contract. Additionally, negotiations have been finalized with the parties of the previous excess liability insurance arrangement, to finalize the terms of the collateralization of outstanding claims incurred during the policy's existence.

RENEWAL TERMS OF EXCESS LIABILITY INSURANCE PROGRAM

United Educators Insurance (UE), a risk retention group, provides excess insurance coverage to more than 1,100 member universities, independent schools, public school districts, public school pools, and related organizations throughout the United States. As education's own insurance company, the resources available through UE are vast. The company's mission includes:

- » meeting the specific liability insurance needs of educational clients;
- » pricing coverage predictably and rationally based upon educational losses, avoiding the high risk exposure of commercial insurance;

- » identifying emerging liability issues and assisting administrators to create sound policies and practices to manage risk and reduce loss;
- » handling claims fairly, quickly, and proactively to support the effective resolution of disputes, and
- » partnering with institutions and brokers who manage risk and control losses.

As was reported to the Board in Agenda Item Replacement H-10, Board Meeting of November 19, 2004, staff feels that the current structure of the program, and the current relationship with UE are critical to the success of the District's liability insurance program. Based upon an analysis which was completed comparing the actual costs of the current program, including insurance premiums and claim costs, versus the cost of having continued the more traditional insurance approach, which was in place prior to July 1, 1991, it is estimated that the Board has saved more than \$6 million over the past 12 years. The current annual premium of \$490,000 has been the same since the current program began with UE's predecessor, Landmark American Insurance Company/School College and University Underwriters Ltd. (SCULLL), which was restructured, with all operations moving onshore and consolidated within its sister company United National Educators Risk Retention Group (UE), which assumed the risk effective July 1, 2001.

The terms of the recommended Excess Casualty insurance program are as follows:

INSURER	United National Educators Risk Retention Group (UE), A. M. Best A VII
LINES OF COVERAGE	General Liability, Automobile Liability, and School Leaders' Errors and Omissions Liability
FORM	Occurrence except, Claims Made School Leaders' Errors and Omissions Liability
RETROACTIVE DATE	August 1, 1984
POLICY PERIOD	From 12:01 am, July 1, 2004 to July 1, 2009, subject to annual re-rate at July 1, 2005, 2006, 2007, and 2008
POLICY WORDING	As per expiring policy

PRIMARY LIMITS OF LIABILITY GENERAL/AUTO/PROFESSIONAL	\$500,000 per occurrence/\$3,250,000 annual aggregate
EXCESS PROFESSIONAL LIABILITY	\$500,000 excess of primary \$500,000 per wrongful act, subject to an annual aggregate of \$2,500,000
SELF INSURED RETENTION	\$100,000 per claim/\$200,000 any one occurrence applicable for General Liability/Automobile Liability - \$200,000 per wrongful act for School Leaders' Errors and Omissions 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 individual policy year
ANNUAL PREMIUM	\$497,786 for July 1, 2004 to July 1, 2005, and subject to annual re-rate for remaining policy periods
SURPLUS ALLOCATION	\$24,500 for July 1, 2004 to July 1, 2005 based upon 5% of \$490,000 (expiring premium)
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, subject to a legally binding "side agreement". Following that, additional premium requirements would be as follows: Claim Payment for next \$500,000 – additional premium of ½ annual premium Claim Payment for next \$500,000 – additional premium of a full annual premium

PREVIOUS EXCESS PROGRAM – SPHERE DRAKE/ODYSSEY RE

As was communicated to the Board in Agenda Item Replacement H-10, Board meeting of November 19, 2003, the insurance carriers which provided coverage from July 1, 1991 through September 30, 1999, Sphere Drake/Odyssey Re and Mutual Indemnity as the reinsurer, are both financially impaired. The previous reinsurance company, Mutual Indemnity (Mutual) is currently in receivership. The primary Insurer, Sphere Drake, PLC, (Sphere), which changed its name to Odyssey RE in 1999, is in run off and not writing new business. They have entered into a contract with a company by the name of Riverstone to resolve outstanding claims. Miami-Dade County Schools currently has 37 open claims, representing a total of \$1,503,474 of open reserves, including one death claim.

As part of the financial due diligence completed for this program, the Board authorized that the insurer, Sphere, be reimbursed for claim payments made by them up to specific limits. Sphere entered into a contract with a reinsurance carrier, Mutual, for purposes of this contract, and the Board was responsible for providing an irrevocable letter of credit (LOC) to collateralize the amount of money which would be at risk from claims incurred during the policy years of July 1, 1991 through September 30, 1999.

The Board was informed in November, 2003 that the Board's consultant, Siver Insurance Consultants, Inc. was hopeful that negotiations would prove successful to streamline the process of these policy years, resulting in a School Board contract directly with the primary insurer, Sphere/Odyssey RE, and eliminating the reinsurance agreement between Sphere/Odyssey RE and their reinsurer, Mutual. Unfortunately, attorneys representing Riverstone, on behalf of Sphere/Odyssey, were concerned that restructuring the program would prove difficult because of the fact that the carrier is in run off. They requested that the policy be commuted or terminated.

After consulting with the Board's consultant, staff could not recommend to the Board that the program be terminated, as a result of the claims which are still open that were incurred during the policy period. The Board's broker, Arthur J. Gallagher entered into negotiations on behalf of the Board and was successful in obtaining concessions to lower the current limit of the LOC from \$3,000,000 to \$2,250,000, effective July 1, 2004. Staff is recommending that the Board authorize this, and negotiations will continue throughout the next year to make further modifications to this program.

Letters of recommendation from Siver Insurance Consultants, Inc. regarding the renewal of the current program with United Educators, as well as recommending the continuance of the collateralization of the previous liability program's outstanding claims through the issuance of a Letter of Credit (LOC), is being sent under separate cover as back-up to this item.

RECOMMENDED:

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

1. authorize renewal of its General / Automobile / Professional Liability Errors and Omissions coverage with United Educators Risk Retention Group (A. M. Best A VII), through Arthur J. Gallagher & Co., subject to a \$100,000 per person / \$200,000 per occurrence self-insured retention for General / Automobile liability, and a \$200,000 per claim / wrongful act deductible for professional liability, with limits of liability of \$500,000 per occurrence / \$3,250,000 annual aggregate for General / Automobile liability, and a \$2,500,000 annual aggregate for Professional Liability Errors and Omissions coverage, for five one-year terms, effective July 1, 2004 to July 1, 2009, subject to no change in terms, conditions, and premiums, as well as cancellation provisions and annual re-rate, with an annual premium for July 1, 2004 to July 1, 2005 of \$497,786 for paid losses under \$1,750,000, with additional premiums due of \$248,893, once losses reach \$2,250,000, and \$497,786, once losses reach \$2,750,000;
2. authorize payment of a surplus allocation charge, pursuant to the terms of the Board's subscriber's agreement with United Educators Risk Retention Group, effective July 1, 2004, in an amount of \$24,500, representing 5% of the 2003-2004 premium of \$490,000;
3. authorize reimbursement to United Educators Risk Retention Group by the Superintendent for payments made for the first \$1,750,000, with funds to be taken from either the general liability or automobile liability claims reserve fund, as a result of claims which occur during any policy year, effective July 1, 2004 to July 1, 2009, subject to renewal provisions of the five one-year terms, with the Board collateralizing such payments through the issuance of a legally binding "side agreement" wherein the Board agrees to reimburse United Educators Risk Retention Group for claim payments as stipulated herein: and

4. authorize reimbursement of Mutual Indemnity Ltd, by the Superintendent, for claim payments made to Odyssey Re (London) Ltd., paid by Odyssey Re (London) Ltd., with funds to be taken from either the General Liability or Automobile Liability claims reserve fund, for claims incurred from July 1, 1991 through September 30, 1999, with the Board collateralizing such payments through the issuance of an irrevocable letter of credit in an amount not to exceed \$2,250,000, with the annual fee for such letter of credit based upon .5% of the letter of credit limit, or \$11,250, plus any issuance fee, if any, annually, with the amount of the letter of credit to be reviewed annually as long as there are pending incurred claims during any policy period for which Mutual Indemnity Ltd. and Odyssey Re, Ltd., or their successors or agents are at risk for claims incurred; and
5. authorize the Superintendent to continue negotiations with Riverstone, Mutual Indemnity, Ltd., and any other parties involved, regarding claim payments for claims incurred from July 1, 1991 through September 30, 1999, in order to negotiate a plan which would alleviate in the future the need for the Board to continue to collateralize such claim payments through the issuance of a letter of credit.

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