

Business Operations
Ofelia San Pedro, Deputy Superintendent

**SUBJECT: REQUEST FOR AUTHORIZATION TO EXECUTE A GENERAL
RELEASE WITH ARTHUR J. GALLAGHER & COMPANY**

COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENTAL RELATIONS

As a result of the investigation originally undertaken by Mr. Elliott Spitzer, Attorney General, State of New York, of the insurance industry's practices, the Attorney General for the State of Illinois caused an investigation to be made of Arthur J. Gallagher & Co. (Gallagher), and its subsidiaries and affiliates, except for Gallagher Bassett Services, Inc. (GB), relating to its practices in the purchasing, renewal, placement or servicing of insurance for its clients.

Gallagher entered into an agreement known as the Assurance of Voluntary Compliance (AVC) with the Illinois Division of Insurance and the Illinois Attorney General to resolve issues related to their receipt of contingent commissions. Under the terms of that agreement, Gallagher established a fund in which clients can participate to have a portion of those commissions returned to clients. The district would be entitled to \$56,167.48 under this agreement.

The payment of contingency fees has been a standard and accepted insurance industry practice for over 40 years. All of the major brokers have engaged in the practice. Although the practice can be abused, as was found by the Spitzer investigations, the practice is not illegal and many brokers have continued the practice of receiving contingency fees.

In many instances, the payment of contingency fees can be a positive for a client. In the case where the insurance markets and capacity is limited, such as Florida catastrophe-prone windstorm coverage purchased by the Board, a good relationship between the broker and the insurer is crucial to the placement. Because virtually every acceptable market which would write property insurance on the Board's program has been used to complete the property program, and there remains holes on the top layer, there was no opportunity to steer the business to a favored insurer through the use of contingency fees. As such, staff is certain that the district has not been harmed in any manner as a result of Gallagher receiving contingent commissions. We are simply a beneficiary due to the fact that Gallagher settled a class action in the State of Illinois where the company is domiciled, and M-DCPS is a client.

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Staff has worked with the Board's insurance consulting firm of Siver Insurance Consultants, Inc., as well as the Board Attorney's Office and the Special Counsel to the Superintendent to review the available options. Siver recommended that the release which was approved by the Illinois Division of Insurance, be amended to exclude GB so that it comports with the provisions of the AVC. An agreement has been reached with the General Counsel of Gallagher to exclude GB, which has been reviewed and approved by Siver and the Board Attorney's Office. Therefore, staff is recommending that the Board agree to enter into settlement agreements with Gallagher and receive \$56,167.48.

The Attorney General of the State of Florida is also conducting an investigation of the conduct of Arthur J. Gallagher & Co. Florida's Attorney General may or may not seek funds from Gallagher. However, any action taken by Florida's Attorney General would be after the December 31, 2005, deadline for participation in the AVC negotiated by Illinois' Attorney General. Therefore, staff recommends not waiting for the conclusion of the investigation by Florida's Attorney General.

RECOMMENDED: That The School Board of Miami-Dade County, Florida authorize the Superintendent of Schools to execute general releases with Arthur J. Gallagher & Co., excluding Gallagher Bassett Services, Inc., pursuant to the terms of the Assurance of Voluntary Compliance (AVC) as approved by the Illinois Division of Insurance and the Illinois Attorney General in return for receiving \$56,167.48 in commissions previously paid to Gallagher.

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