Office of Superintendent of Schools
Board Meeting of November 19, 2003

November 13, 2003

Office of Human Resources
Marjorie H. Adler, Chief Personnel Officer

**SUBJECT: EXCESS LIABILITY INSURANCE PROGRAM**

**COMMITTEE: LEGISLATIVE RELATIONS, PUBLIC RELATIONS AND PERSONNEL SERVICES**

**SPHERE DRAKE/ODYSSEY RE**

Beginning in July, 1991, the School Board approved a significant change in the structure of its excess liability insurance program which initially provided general liability and automobile liability coverages for claims involving bodily injury, property damage, personal injury, and discrimination. Professional Liability/Errors and Omissions coverage was added to this program, effective July 1, 1995. The coverage is in excess of the Board's self insured retention of $100,000 per person/$200,000 per claim, which also corresponds to the limited sovereign immunity limitations for Florida Tort claims, pursuant to the provisions of Section 768.28, Florida Statutes. The self-insured retention for Professional Liability/Errors and Omissions coverage is $200,000 per claim.

This re-structured program took into consideration the following factors in considering whether to effectuate such a program, rather than continuing the previous traditional excess coverage approach, or not purchasing liability coverage at all:

- The need to maintain insurance coverage to satisfy outside parties such as lessors, federal government requirements, and parties with whom the Board is contracted involving educational programs, and financial institutions regarding certificates of participation (COPs)

- The potential to avoid some risk of claim relief acts by being able to settle claims for more than the limitations imposed by Section 768.28, Florida Statutes ($100,000 per claimant/$200,000 per occurrence)

- The cost effectiveness of paying significantly reduced premiums by retaining additional risk, resulting in net savings

REPLACEMENT
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As part of the financial due diligence completed for the initial program which was in effect from July 1, 1991 through September 30, 1999, the Board authorized that the insurer, Sphere Drake, PLC, (Sphere) be reimbursed for claim payments made by them up to specific limits. Sphere entered into a contract with a reinsurance carrier, Mutual Indemnity Insurance Company (Mutual) for purposes of this contract, and the Board since that time has provided an irrevocable letter of credit (LOC) to collateralize the amount of money which is at risk from claims incurred during the policy years of July 1, 1991 through September 30, 1999. In 1999, Sphere's name changed to Odyssey Reinsurance Company (Odyssey RE).

Effective October 1, 1999, the Board authorized a change in insurers for the same structured program, which did not require the continuation of the LOC requirement. However, because there are open claims which apply against those policy periods, the Board's requirement to collateralize the outstanding claims values continues. Additionally, due to the "occurrence" nature of the contract, the Board is exposed for additional claims which could be brought against it within the policy periods.

The previous reinsurance company, Mutual is financially impaired and is currently in receivership. The insurer, Sphere, which is in run off and not writing new business, has contracted with a company, Riverstone, to resolve outstanding claims. Currently the Board has an outstanding LOC in the amount of $3 million issued by SunTrust, in favor of the Bank of Butterfield, to collateralize the outstanding claims. At this time staff and the Board's consultant, Siver Insurance Consultants, Inc (Siver), feel that it would be in the best interest of the Board to re-negotiate the contract with Riverstone to release the previous reinsurer, Mutual, and contract directly with Riverstone, including a new LOC for that collateralization.

For the policy periods of July 1, 1991 through September 30, 1999, there are currently 45 claims which are open and being handled by Gallagher Bassett Services, Inc. Legal defense on these claims are being handled by the Board Attorney's Office, and contracted outside defense counsel. Based upon the most current information available, the Board's exposure for payments on all known claims, in excess of the self-insured retentions, is $100,000, pursuant to the terms of the insurance contracts. As stated previously, because the insurance contracts were written on an occurrence basis, it is possible that new claims could still be brought against the Board with occurrence dates between July 1, 1991 and September 30, 1999, however, as time goes on, the risk of this becomes less.

Following a through review, Siver is recommending that the following actions be taken with regard to the financial structure of the excess liability insurance program in question:

1. Sphere Drake/Odyssey Re and Mutual Indemnity agree to a cancellation of the Mutual Indemnity reinsurance agreement on the Board's program with Sphere Drake, thus releasing Mutual Indemnity from any future liability;

2. Sphere Drake/Odyssey Re release the $3 million LOC representing collateral now being held by them as security for Mutual Indemnity's reinsurance obligation with respect to the Board's program with Sphere Drake;

3. Mutual Indemnity and the School Board agree to mutually release each other from any prior obligations or agreements, including the obligation to provide security or collateral (letters of credit), in connection with the Board's program with Sphere Drake/Odyssey Re;

4. Sphere Drake/Odyssey Re and the School Board enter into a contract which caps the aggregate liability for all Sphere Drake/Odyssey Re policies at $1,000,000;

5. School Board agrees to reimburse Sphere Drake/Odyssey Re for any amounts paid by Sphere Drake/Odyssey Re for which reimbursement would have been due from Mutual Indemnity under the Board's Sphere Drake program, not to exceed the aggregate amount of $1,000,000; and

6. The School Board collateralizes the amount due to Sphere Drake/Odyssey Re under the new agreement with an initial LOC in the amount of $1,000,000.

Once these transactions are completed, the claims will continue to be tracked so that the letter of credit can be reduced and eventually canceled.

**UNITED EDUCATORS**

The current program, which was authorized by the Board effective July 1, 1999 through June 30, 2004, was insured with Landmark American Insurance Company, with 100% reinsurance through School College and University Underwriters, Ltd. (SCUUL). Effective July 1, 2001, the SCUUL organization was restructured with all operations being moved to the sister company of SCUUL, United Educators Risk Retention Group (UE).

United Educators Insurance 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 exposures of commercial insurance;
- identifying emerging liability issues and assisting administrators to create sound policies and practices to manage risk and reduce losses;
- 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.

Risk Management resources for UE insureds include publications such as *Reason & Risk, UE News, Employment Action, Safety Dispatch, From the Gym to the Jury, and Public School News.* These resources have allowed the Office of Risk and Benefits Management to distribute timely information and provide support on issues which help in reducing claims and saving district dollars.

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 costs 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 conservatively more than $6 million over the past 12 years.

Pursuant to the provisions of State Board of Education Rule 6A-1.012(11), a district school board when purchasing insurance, entering risk management programs, or contracting with third party administrators, may make such acquisitions through the bid process or by direct negotiations and contract. Staff is recommending that authority be provided to the Superintendent to enter into negotiations with the Board's current liability insurance carrier, United Educators, through Arthur J. Gallagher & Co., for renewal terms and conditions of its excess liability insurance program, effective July 1, 2004. Specific recommendations for such renewal will be brought back to the Board at a future Board meeting.

Letters of recommendation from Siver Insurance Consultants, Inc., regarding the re-structuring of the collateral of the previous program, negotiating a successor program, as well as program savings from 1991 to 2003, are being sent under separate cover as back-up to this item. Additionally, this item has been discussed and reviewed by the Chief Financial Officer and Treasurer, which works with the Office of Risk and Benefits Management closely in these areas.

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

1. agree to the following contractual terms and conditions, subject to Sphere Drake/Odyssey Re and Mutual Indemnity's agreement to cancel Mutual Indemnity's reinsurance agreement on the Board's liability insurance program with Sphere Drake/Odyssey Re, which was in effect July 1, 1991 through September 30, 1999, thus releasing Mutual Indemnity from any future liability:

a. agree to release Mutual Indemnity from any prior obligation or agreements, including the obligation to provide security or collateral, in connection with the Board's liability insurance program with Sphere Drake/Odyssey Re, which was in effect from July 1, 1991, through September 30, 1999, subject to Mutual Indemnity's agreement to release the Board from the same;

b. accept Sphere Drake/Odyssey's offer to release the $3 million letter of credit representing collateral being held by them as security for Mutual Indemnity's reinsurance obligations with respect to the Board's liability insurance program, which was in effect from July 1, 1991 through September 30, 1999;

c. enter into a contract with Sphere Drake/Odyssey Re which caps the aggregate liability for all Sphere Drake/Odyssey Re policies which were in effect from July 1, 1991 through September 30, 1999 at $1,000,000;

d. agree to reimburse Sphere Drake/Odyssey Re for any amounts paid by Sphere Drake/Odyssey Re for which reimbursement would have been due from Mutual Indemnity under the Board's liability insurance program with Sphere Drake/Odyssey Re which was in effect from July 1, 1991 through September 30, 1999, not to exceed the aggregate amount of $1000,000, with funds to be taken from the general liability, automobile liability, or errors and omissions claims reserve funds;

e. agree to collateralize the amount due to Sphere Drake/Odyssey Re under the new agreement with an initial Letter of Credit in the amount of $1,000,000, with the annual fee based upon .5% of the letter of credit limit, or $5,000 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 Sphere Drake/Odyssey Re are at risk for claims incurred; and

2. authorize the Superintendent 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.

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