

**SCHOOLS EXCESS LIABILITY FUND  
BOARD OF DIRECTORS MEETING  
Friday, December 1, 2006 - 10:00 A.M.**

**SELF Office - 1531 "I" Street, Suite 300  
Sacramento, CA 95814**

**TELECONFERENCE LOCATION:  
San Francisco Marriott, Sierra Room D, 55 Fourth Street, San Francisco, CA**

**MINUTES**

**BOARD MEMBERS PRESENT**

Michael Gregoryk, Chair	Area I
Charlene Minnick, Vice Chair	Area VI
Nancy Anderson	Area VI
Wes Combes (via teleconference)	Area II
John Didion, Alternate (for Hardash)	SCC
John Falappino	Area IV
John Fogarty, Alternate (for Hartline)	Area VI
William Fong, Ex Officio	Department of Education
Eric Johnston (via teleconference)	Area VI
Sandra Lepley (via teleconference)	Area V
Eva Lueck (via teleconference)	Area VI
Scott Miller	NCC
Teresa Scott	NCC
Denise Smith	Area VI
Travis Steagall	Area V
Paul Tanguay	Area VI

**ALTERNATES PRESENT**

Herb Bartelt	Area VI
Doug Brinkley	NCC
Jan Keller	Area II
Michelle Schlack	CSU

**BOARD MEMBERS ABSENT**

Clifton Anderson	Area I
Peter Hardash	SCC
Larry Risinger	Area IV

**SELF STAFF**

John Wilson	Interim Executive Officer
Pat Moody	Chief Fiscal Officer
Steve Schempp	Workers' Compensation Claims Examiner
Lois Gormley (via teleconference)	Director of Communications

SELF CONSULTANTS

Susan Blankenburg

Keith Grand

Matthew Nethaway

Randy Rendig

Robin Stewart

Tina Treis (via teleconference)

Marsh Risk & Insurance Services

Marsh Risk & Insurance Services

Perry-Smith LLP

George Hills Co.

Kronick, Moskovitz, Tiedemann & Girard

Perry-Smith LLP

OTHERS PRESENT

Tom McCabe

Doug Ross

Schools Insurance Authority

Keenan & Associates

I. CALL TO ORDER

Gregoryk called the meeting to order at 8:30 a.m. and welcomed everyone.

II. INTRODUCTIONS

Participants took turns introducing themselves. Gregoryk asked Alternate John Didion to vote in place of Hardash and Alternate John Fogarty to vote in place of Hartline.

III. AGENDA - DECEMBER 1, 2006

A. AMENDMENTS/ADJUSTMENTS

Gregoryk suggested rearranging the "Time Certain" items to take the audit report first.

Wilson noted that SELF v. Westchester and the Cross claim should be added to the liability claims on the "Closed Session" agenda, and Items 13 through 17 should be deleted from the workers' compensation claims.

With respect to the "Time Certain" items, Wilson noted that Heather Renschler would not be present, so Gregoryk will provide an update on the search for an executive director, followed by Keith Grand's presentation.

Wilson proposed adding and Item XI.J, a discussion of access to the OELP program.

B. APPROVAL

Johnston made a motion, seconded by Tanguay, to adopt the agenda as amended.

Vote: Unanimous.

VII. TIME CERTAIN

C. 2005/2006 FINANCIAL AUDIT

Matt Nethaway, Perry-Smith LLP, drew attention to the bound financial statements and letters from Perry-Smith regarding the 2005/06 financial audit. He noted that the cover letter to the Board describes the audit process, explains the material weaknesses in internal controls that were identified by the auditors, and summarizes the adjustments resulting from the actuarial study and the audit.

Nethaway invited Tina Treis to discuss the auditors' opinion regarding SELF's internal controls and compliance with accounting standards.

Tina Treis noted the material weaknesses identified by the auditors have been discussed with the Finance Committee. She explained that a material weakness is a significant deficiency or combination of deficiencies that result in a likelihood of inaccuracies in the financial statements. She noted the first material weakness is due to the absence of a CFO and lack of accounting oversight before Moody came on board. Treis said the second material weakness pertains to the inability of the auditors to verify the amounts used to calculate the workers' compensation assessment. She stated that the third problem had to do with a claim from a past year that had not been submitted to the finite risk transfer program.

Treis said SELF has implemented new systems and processes to correct these issues. Moody noted that SELF will prepare a written response to the management letter.

Gregoryk asked if Perry-Smith was satisfied with the progress made since the new CFO was hired. Treis responded that the auditors have worked closely with the staff, and Moody has been very diligent in cleaning up old problems and tightening controls.

Falappino noted there are three general types of deficiencies: control, design, and operational. He asked if SELF's material weaknesses were operational in nature. Treis confirmed that the deficiencies were

operational.

Treis reviewed highlights of the unqualified opinion and the audited financial statements. She discussed assets and liabilities, revenues and expenditures, the investment portfolio, and the accounting treatment of the reinsurance deposits and the workers' compensation assessment.

Board members asked questions about the valuation of SELF's investments. Treis explained the relationship between interest rates and the fair value of investments. She said when interest rates are rising, the fair value of investments falls, and vice versa. Gregoryk pointed out that this unrealized loss will eventually become a realized gain when the investment is sold.

Falappino pointed out that SELF's net assets increased, and the audit report presents a positive picture of SELF's financial status.

Gregoryk said SELF will be mailing the audit to its members the following week.

Board members thanked Treis and Nethaway for their report.

#### B. UPDATE ON EXECUTIVE DIRECTOR SEARCH

Gregoryk reported that the Executive Committee met with Heather Renschler on November 30, reviewed the chief executive officer candidates, and narrowed the selections down to five people. He said he was very impressed with the high caliber of the applicants this time. Gregoryk noted that 47 people applied and 4 withdrew. He added that Ms. Renschler will be informing and thanking the unsuccessful candidates.

Gregoryk advised that the Executive Committee will be interviewing the five candidates on January 4 and 5 in Los Angeles and a special meeting will be called on January 19 for the Board to interview the top two or three candidates and make a selection.

#### A. MOC COMPARISON REPORT

Keith Grand, Marsh Risk & Insurance Services, provided a handout comparing SELF's memorandum of coverage with MOC's of other JPA's. He noted the Board asked Marsh to look at the definition of "occurrence" and how it applies to various claim scenarios.

Grand noted that all MOC's use similar language to define "occurrence," which includes a "continuous or repeated exposure to conditions." He pointed out that the limits of liability in the MOC's are described in terms of the maximum amount paid for one occurrence, so the problem is determining what constitutes a single occurrence. He said this makes an important difference in determining retention levels for members.

Grand used four scenarios to illustrate how "occurrences" are defined in claims: those involving a single perpetrator, one victim, and multiple incidents within the same coverage period; a single perpetrator and victim, but incidents over multiple coverage periods; a single perpetrator and multiple victims in a single coverage period; and a single perpetrator and multiple victims within multiple coverage periods. He noted that recent California court decisions have interpreted all of these scenarios as a single occurrence.

Gregoryk thanked Grand for his clear and concise presentation. He asked for clarification of how different coverage periods are handled. Board members noted the MOC language says coverage is limited to incidents "within the coverage period." Grand said this is an issue that needs to be clarified.

Miller commented that the reservation of rights letter is a major problem for member districts, including the community colleges. He noted SELF has been criticized for not following form. He emphasized the importance of resolving this issue.

Didion observed that all the MOC forms are virtually identical in their language, so the issue of following form is a matter of interpretation.

Falappino noted some of the other MOC's have a disclaimer that says, "All damages arising out of continuous and repeated exposure to substantially the same general conditions shall be considered as one occurrence." He recommended adding this language to SELF's MOC.

Lepley pointed out that SELF's definition of "occurrence" includes "continuous and repeated exposure to conditions."

Grand drew attention to the highlighted Nor Cal language, "even though the loss occurrence may span multiple memorandum periods." He noted the wording at the beginning, "during the coverage period to which this memorandum applies," seems inconsistent.

Stewart advised that the commercial insurance industry uses the term “stacking” to refer to combining multiple years’ policy limits for a single occurrence, and many policies have anti-stacking provisions. She said the NorCal memorandum is ambiguous in this respect.

Grand clarified that the NorCal language was the version under consideration for 2007. Gregoryk asked Doug Ross if that language had been approved, and Ross responded that he did not know. He added that in general, the changes recommended to the boards were adopted.

Combes confirmed that the new language had been approved by NorCal.

Tanguay commented that in the past, the interpretation of the MOC language has been driven by a desire to minimize underlying financial exposure. She noted that defining claims as a single occurrence will erode the underlying layer more quickly, the underlying exposure is more limited, and claims are paid more quickly. She said the problem is that reinsurers and carriers will require either multiple SIR’s for multiple policy limits or one SIR for a single policy limit. Tanguay added that reinsurers tend to favor single policy limits, as reflected in the litigation about 9/11 claims.

Tanguay noted that based on experience with molestation cases in the school environment, the right thing to do is go with one occurrence and move exposures up to the excess layer more quickly. She said the Catholic archdioceses are litigating primarily over the definition of “occurrence.” In terms of establishing a policy for SELF, Tanguay recommended thinking first about where the exposure for the reinsurers should be, at the high catastrophic end, and then managing exposure below that level as a pool, with multiple occurrences on a victim-by-victim basis.

Miller said Tanguay makes a good point, but that approach will be difficult to sell to member districts because of the implications for the underlying layers.

Miller agreed with Falappino that SELF should insert clarifying language like that in some of the other MOC’s.

Steagall emphasized the need to make a definite decision on this issue for the sake of SELF’s members.

Wilson noted that because of SELF’s pooling and using a finite risk

approach for coverage up to \$15 million or \$20 million, SELF would also benefit from a single-occurrence definition. He suggested that SELF might want to consider offering coverage beyond the \$50 million currently available.

Didion observed that expanding coverage limits has been a discussion topic at the retreat for a number of years. He recommended meeting with the major underlying JPA's, looking at sample cases, and attempting to reach consensus on how the claims should be treated. He noted this could lead to development of common language and a common approach.

Gregoryk proposed that SELF meet with the JPA's to develop an agreed-upon definition and approach before the strategic planning session in February. He recommended contacting all member JPA's and inviting their participation.

A Board member requested more information on the potential economic implications. Gregoryk asked Marsh to confer with SELF's actuary to develop an analysis of the economic impacts of the single-occurrence definition.

Steagall noted some members are likely to withdraw from SELF on December 31 because this issue has not been resolved. Board members talked about the notification deadline and the reinstatement process.

Didion asked if SELF's reinsurers had taken a position on this issue. Grand said SELF's finite risk program is strictly following form, reinsuring the MOC, and it gives SELF authority to settle claims. He noted all excess carriers use a definition of "occurrence" that includes "continuous or repeated exposure" to the same general conditions.

Grand recommended that SELF obtain legal counsel regarding applicable case law on this issue. Stewart said she would research this point and report back.

Combes stated that all of his member districts were directed to execute a resolution to withdraw from SELF before December 31. He said the board will meet on December 21 to decide whether the resolutions will be submitted. He noted a decision at this meeting could make a big difference in the outcome.

Combes commented that based on his review of the MOC, SELF is already following form. He recommended making this clear and adopting

the single-occurrence interpretation.

Minnick asked whether this issue was the only reason for Nor Cal's potential withdrawal. Combes responded that the other reason was financial, and those issues had been resolved in the audit.

Gregoryk recommended taking action to clarify SELF's interpretation of the MOC language. He noted the Board has the authority to interpret the MOC.

Stewart said she felt comfortable that SELF's position was consistent with existing California case law. Gregoryk noted the language must be very clear and unambiguous.

Lepley noted SELF's Board and staff have been working very hard to make SELF as helpful to members as possible. She expressed support for quelling unfounded negative rumors as quickly as possible and moving forward.

Tanguay asked if the staff had evaluated the fiscal impacts of applying the retention in different ways. Wilson said that analysis had not been performed.

Gregoryk recalled that in handling one claim from San Diego involving multiple coverage periods, SELF and the member district agreed to define the event as two occurrences because the claim extended over two coverage periods.

Tanguay said she was familiar with a number of claims involving these issues that had a fiscal impact on SELF. Blankenburg agreed, and cited underlying correspondence about SELF's interpretation costing underlying pools millions of dollars.

Stewart recommended applying the definition prospectively, not retrospectively. Board members expressed support for this approach. Gregoryk added that the language should be introduced to clear up any confusion and to make sure members know these kinds of claims will be handled as single occurrences.

Wilson observed that the appeal process is available to any member disputing SELF's interpretation.

Anderson asked if SELF was certain all the underlying JPA's were

treating these claims as single occurrences. Gregoryk responded that some underlying JPA's and single-district members may have different interpretations. Anderson recommended clarifying whether SELF was making its own interpretation or following form of the underlying layers and allowing those members to make the decisions.

Gregoryk clarified that the issue was following form. He explained there was no way for SELF to follow form for the 300 or so different policies for JPA's and single members. Wilson pointed out that SELF offers a uniform rate, and following form would require changing the structure to offer individual rates, which would make the program far more complex.

Didion recommended clarifying that this interpretation will be applied to all open claims from this date forward.

With respect to following form, Gregoryk observed that the majority of underlying members have the same interpretation of a single occurrence as SELF. He clarified that SELF will be following this intent rather than following form.

Grand noted the explanatory language should describe how the interpretation will be applied to claims over multiple coverage periods.

Stewart drew attention to the Nor Cal MOC language, and Board members expressed support for adopting that language.

Gregoryk requested that Stewart draft appropriate language reflecting this intent. He noted this item will be addressed as part of a later agenda item.

Board members thanked Grand for his report.

#### VIII. CLOSED SESSION (Out of Order)

At 9:45 a.m., Tanguay made a motion, seconded by Minnick, to adjourn to closed session for the purpose of discussing pending claims.

Vote: Unanimous.

##### A. LIABILITY CLAIMS

1. Deutsch v. Berkeley Unified School District
2. Barry v. Newhall Unified
3. SELF v. Westchester
4. Cross

- B. **WORKERS' COMPENSATION CLAIMS**
1. CCCSIG v. SELF
  2. Garden Grove School District v. SELF
  3. Pedroza v. CSU
  4. Sanders v. Compton Unified
  5. Bibeau v. Oakland Unified
  6. Arroyo v. Riverside
  7. Butterworth v. Fullerton Joint Union
  8. DeCuir v. Alhambra Unified
  9. King v. Riverside Unified
  10. Thomas v. Huntington Beach City Elementary/W. Orange County Self Funded WC
  11. Tookian v. Compton Unified
  12. Watson v. Paramount Unified/BLP

At the conclusion of the closed session at 11:54 a.m., a motion was made and seconded to resume the open session.

Vote: Unanimous.

IV. MINUTES

A. **BOARD OF DIRECTORS MEETING - NOVEMBER 3, 2006**

Scott noted that in the discussion of the financial audit, references to "reportable deficiencies" should be changed to "material weaknesses."

A motion was made and seconded to approve the November 3 minutes as amended.

Vote: Unanimous.

V. CONSENT CALENDAR

None.

VI. PUBLIC COMMENTS

None.

X. ACTION ITEMS (Out of Order)

A. APPROVE/CONSIDER AMENDMENT TO MOC

Stewart recommended that the SELF Board declare its intent from December 1, 2006 forward, that the SELF memorandum of coverage (MOC) follow the form of its member agencies and underlying pools with respect to number of occurrences, and hence the number of underlying retained limits that apply in sexual molestation cases brought against participants in the SELF excess liability program. She noted this includes the Board's intent that in cases involving alleged misconduct that continues through more than one one-year coverage period, only one limit will apply.

Stewart requested clarification as to whether this statement of intent should apply to all open claims that have not been concluded by settlement or judgment as of December 1, 2006, or all claims with an occurrence of December 1, 2006 forward. She advised it would be safer to use an occurrence date, but welcomed input from Board members and staff.

Didion noted that if the interpretation does not apply to open claims, it does not address the issue at hand. Other Board members agreed that the interpretation should apply to open claims as of December 1.

Gregoryk said it was not the Board's intent to limit the language just to sexual molestation claims. Board members concurred that the policy should apply to any claims.

Blankenburg noted the reference to "following form" implies SELF will be following the exact wording of its underlying members' MOC's. Gregoryk said that was not the Board's intent. He noted the intent was to deal with the single occurrence issue and bring uniformity to the language for all the pools.

Board members recommended deleting the term "following form" and the reference to underlying MOC's. They agreed that SELF should be defining its own interpretation instead.

Gregoryk asked Stewart to revise the language, and he proposed coming back to this item later.

B. APPROVE CREATION OF AD HOC ELECTION COMMITTEE

Gregoryk asked three Board members or alternates to volunteer to serve

on the Election Committee. Keller, Schlack, and Fogarty volunteered.

A motion was made and seconded to approve the Ad Hoc Election Committee with those three members.

Vote: Unanimous.

C. APPROVE 2005/2006 FINANCIAL AUDIT

Scott reported that the Finance Committee held a special meeting on November 30 to review and approve the final audit report. She recommended approval.

Scott made a motion, seconded by Tanguay, to approve the 2005/2006 financial audit.

Vote: Unanimous.

IX. COMMITTEE REPORTS/ACTION

A. EXECUTIVE COMMITTEE

None.

B. FINANCE COMMITTEE

None.

C. LIABILITY CLAIMS AND COVERAGE COMMITTEE

1. Agenda - November 9, 2006
2. Committee Report - November 9, 2006

Johnston reported that the committee reviewed cases, provided direction to staff, and requested additional information on some items, but no action was taken.

3. Recommendations to the Board
  - a. None

D. WORKERS' COMPENSATION CLAIMS AND COVERAGE COMMITTEE

1. Agenda - November 16, 2006
2. Committee Report - November 16, 2006

Combes reported that the committee reviewed and made recommendations on pending claims and discussed E&O insurance coverage for SELF's contracted claims auditors. He noted the auditors provided their own insurance in the past, but with the increased volume of claims, the committee felt SELF should provide the coverage. He said no action was taken, but this item will be coming to the Board.

3. Recommendations to the Board
  - a. None.

E. MEMBER SERVICES AND COMMUNICATIONS COMMITTEE

1. Agenda - November 30, 2006
2. Committee Report - November 30, 2006

Anderson reported that the Member Services and Communications Committee discussed SELF's recent PR campaign and recommended that the staff continue these efforts, but on a slightly reduced scale. The committee proposed reducing the frequency of ads from weekly to monthly.

Anderson said the committee proposes continuing annual JPA meetings, but changing name from "JPA Managers Meeting" to "Members Forum." She noted the committee wants to work with the Workers' Compensation Claims and Coverage Committee to develop a joint training program for members and third-party administrators to explain and discuss reporting requirements.

Anderson said the committee envisions holding a session next spring focusing on claims handling issues. She suggested inviting some attorneys and Don Moore as guest speakers.

3. Recommendations to the Board
  - a. None.

XI. INFORMATION/DISCUSSION ITEMS

A. GSRMA LETTER - RESPONSE TO BOARD DECISION

Wilson drew attention to the letter in the meeting packet. He noted it would be helpful to establish a process to involve Board members in formulating a rapid response to communications like this.

Gregoryk and Steagall volunteered to work with Miller and Wilson to develop a response.

B. QUARTERLY INVESTMENT REPORT

Gregoryk noted the quarterly investment report was provided for informational purposes.

C. NOTICE OF WITHDRAWAL - OAK GROVE UNION SCHOOL DISTRICT (RESIG)

D. NOTICE OF WITHDRAWAL - WOODLAND STAR CHARTER SCHOOL (RESIG)

E. NOTICE OF WITHDRAWAL - ROSELAND CHARTER SCHOOL (RESIG)

F. NOTICE OF WITHDRAWAL - NEWARK UNIFIED SCHOOL DISTRICT

Wilson said Items C, D, E, and F were the only withdrawals received so far. He noted three of the notices were from RESIG, a member that missed the deadline last year.

Wilson reported that one of the largest districts in Southern California had contacted SELF and requested to have its resolution returned.

Anderson recommended contacting the members that submitted withdrawals to find out the reasons for their decision. Board members expressed support for this suggestion.

G. KEENAN & ASSOCIATES CORRESPONDENCE

Gregoryk requested two or three volunteers to work with Stewart, Treis, and Moody to draft a response to the Keenan letter. He noted the letter contains a number of inaccuracies that should be corrected.

Falappino, Scott, and Lepley volunteered to help. Blankenburg offered her services as well. Gregoryk asked Falappino to chair the group.

Gregoryk said he asked Stewart to send a letter acknowledging receipt of the Keenan letters and advising that SELF's Board will be responding.

H. VENDOR EVALUATIONS POSTED ONLINE

Gregoryk encouraged Board members and alternates to respond to the online vendor evaluations.

I. ERRORS AND OMISSIONS COVERAGE - CONTRACT CLAIMS AUDITORS

Gregoryk noted this topic was discussed earlier and will come to the Board for action at a future meeting.

J. ACCESS TO OELP PROGRAM

Wilson drew attention to a letter from Bill Tucker, OSS JPA's, asking if members would have access to the OELP program for coverage in excess of \$20 million if they purchased coverage elsewhere. He recalled that in the past, SELF's policy has been to limit the OELP program to members of the general liability program. Gregoryk confirmed that this was still SELF's policy. Wilson said he would respond accordingly.

Steagall asked if this was a written policy. Gregoryk stated that this has been SELF's practice, and he asked Stewart to find out whether this was articulated in the JPA agreement.

XII. EXECUTIVE DIRECTOR'S REPORT

Wilson expressed his appreciation to Board members for their assistance with his presentations to JPA's in their areas.

Wilson thanked and commended Moody for her extraordinary efforts in working to resolve the audit issues.

XIII. CHAIR'S REPORT

Gregoryk commented that he appreciated the involvement of the Board and the hard work of the staff.

Stewart recommended clarifying that no reportable action was taken during the earlier Closed Session. Gregoryk stated that the Board provided instructions to representatives during the Closed Session, but no reportable actions were taken.

X. ACTION ITEMS (Continued)

A. APPROVE/CONSIDER AMENDMENT TO MOC

Stewart read revised language articulating the Board's intent that the SELF excess liability memorandum of coverage will treat as a single occurrence cases that involve an alleged act or series or related wrongful acts by a single wrongdoer, even if there are multiple claimants.

Combes made a motion, seconded by Lepley, to approve the language proposed.

Vote: Unanimous.

Gregoryk requested that the staff notify SELF members by email the following Monday.

XIV. AGENDA ITEMS/NEXT MEETING

Didion suggested that the Executive Committee and staff work to develop a carefully structured agenda for the strategic planning session so that participants can focus on actually resolving some important issues.

Gregoryk asked Board members and alternate s to email the staff with suggestions for the February meeting agenda.

Wilson reminded Board members of the special meeting on January 19 to interview the top executive director candidates.

January 4-5, 2007  
Executive Committee  
Los Angeles, CA

January 18, 2007  
Finance Committee  
SELF Office

January 19, 2007  
Board of Directors  
SELF Office

February 7-9, 2006  
Strategic Planning Session  
Seascape, Aptos

February 16, 2007 - 10:00 a.m.  
Finance Committee  
SELF Office

March 2, 2007 - 8:30 a.m.  
Board of Directors  
SELF Office

April 6, 2007 - 10:00 a.m.  
Executive Committee  
SELF Office

May 4, 2007 - 10:00 a.m.  
Executive Committee  
SELF Office

May 31, 2007 - 10:00 a.m.  
Finance Committee  
SELF Office

June 1, 2007 - 10:00 a.m.  
Executive Committee  
SELF Office

June 22, 2007 - 8:30 a.m.  
Board of Directors  
SELF Office

VIII. ADJOURNMENT

There being no further business, Johnston made a motion, seconded by Minnick, that the meeting be adjourned. The motion was carried unanimously and the meeting was adjourned at 12:55 p.m.