SCHOOLS EXCESS LIABILITY FUND
EXECUTIVE COMMITTEE MEETING
MINUTES

Time: Thursday, September 24, 2020, 1:00 P.M.

Webinar Meeting Location: Pursuant to Executive Order: N-35-20

Log-In Information: https://us02web.zoom.us/j/82215325612?pwd=VWpQRkNQemNGekN5VmxPeEJMNDV3dz09

MEMBERS

Peter Hardash, Chair	Southern California Community Colleges Representative
Renee Hendrick, Vice Chair	Area VI Representative
Toan Nguyen, Comptroller	Area VI Representative
Craig Schweikhard, Member-at-Large	Area V Representative

ALTERNATES

David Flores, Liability Claims & Coverage Committee Chair	Area II Representative
Nancy Anderson, Member Services & Communications Committee Chair	Area VI Representative
Tony Nahale, Workers' Compensation Claims & Coverage Committee Chair	Area VI Representative

GUESTS

Jim Marta	James Marta & Company LLP
Mark Priven	Bickmore Actuarial

STAFF

Dave George	Chief Executive Officer
Phil Brown	Chief Fiscal Officer
Lois Gormley	Director of Communications and Member Services
Jimmy Rowe	Director of Claims
Susan Casey	Executive Assistant

I. CALL TO ORDER

Executive Committee Chair Peter Hardash called the meeting to order at 1:18 p.m. Executive Assistant Susan Casey called the roll and confirmed the presence of a quorum.

II. AGENDA – September 24, 2020

A. Amendments/Adjustments

None.

B. Approval

Hendrick made a motion, seconded by Anderson, to adopt the agenda as proposed.

Vote: Hardash – yes
Hendrick – yes
Nguyen – yes
Schweikhard – yes
Flores – yes
Anderson – yes
Nahale – yes

Motion passed.

III. MINUTES –May 14, 2020

A. Amendments/Adjustments

None.

B. Approval

Schweikhard made a motion, seconded by Nahale, to approve the May 14 minutes as presented.

Vote: Hardash – yes
Hendrick – yes
Nguyen – yes
Schweikhard – yes
Flores – yes
Anderson – yes
Nahale – yes

Motion passed.

IV. PUBLIC COMMENTS

There were no members of the public who wished to address the Executive Committee.

V. CHIEF EXECUTIVE OFFICER'S REPORT

George drew attention to the draft strategic planning agenda in the meeting packet and welcomed feedback from committee members.

George reported that the staff has been working on compiling historic data on membership and reinsurance policies, and WillisRe has been assisting with this task.

George noted that the Board approved a new position to help handle AB218 claims, but that position has not yet been filled. He proposed using existing staff for the time being.

George advised that SELF has been undertaking activity related to class action lawsuits in California and nationally related to special education services. He said SELF can serve as an umbrella organization for some of the primary pools to help them identify resources to defend against these lawsuits. He noted that insurance coverage for these kinds of claims is varied and often quite limited.

Hardash mentioned that Stephan Birgel provided an update to ASCIP's Claims Committee and Executive Committee earlier that morning and reported that a judge in New York is leaning toward dismissing the lawsuit because it is overly broad and not fact-specific. He said Birgel advised districts not to accept any service at this time.

Hendrick reported that her district is litigating its fourth case where parents are pushing forward and seeking compensable time. She expressed concern about potential exposure for California school districts and SELF if the class action lawsuit moves forward.

Schweikhard stated that an email was sent to California school districts asking them to accept electronic service because of COVID, and his JPA communicated to its member districts that electronic service should not be accepted. Hendrick noted that some special education directors may already have agreed to accept these kinds of claims because normal channels are not always followed. She emphasized the importance of communicating and providing training at the field level to prevent these problems.

Flores asked if any other districts had been sued to reopen their schools. Hendrick remarked that her board sued the governor to reopen schools, and the schools in her district had now reopened.

George said SELF is working through CDE, CSBA and School Services to engage in a conversation with the Attorney General's office in regard to defending these class action lawsuits since the governor and CDE are also named defendants.

VI. INFORMATION/DISCUSSION ITEMS

A. Excess Workers' Compensation Program Actuarial Study 6/30/20

Mark Priven, Bickmore Actuarial, reviewed the results of his actuarial study of the Excess Workers' Compensation Program as of June 30. He said this annual report shows that the program is performing well, with liabilities, reserves, and IBNR decreasing substantially as claims are settled. He noted that administrative liability increased a bit, reflecting the change in allocations made a couple years ago. He pointed out that there is a small adjustment for the net present value of assessments that have not yet been collected.

Priven displayed a chart comparing liabilities, case reserves, and IBNR in the prior report versus the current report. He reviewed net present values of liabilities at various discount rates. He suggested that it might be prudent to revise the 2.75 percent discount rate downward if investment yields decline over the next few years. Nguyen stated that the Finance Committee will be addressing this point. He asked Priven to look at 1.5 and 2 percent rates in addition.

Hardash asked about the program's current level of funding. Chief Fiscal Officer Phil Brown replied that the program is currently funded at about a 90 percent confidence level. Hardash confirmed that lowering the discount rate would not affect the current assessment plan. Brown indicated there were two more years of assessment collection after the current year.

Nguyen advised that the Finance Committee reviews the status of the program and the payout pattern periodically.

Priven showed a graph depicting how open claims and case reserves have been declining as the program matures. He noted that in most cases, claim payments are less than or equal to case reserves. He reviewed incurred losses by claim year.

Hardash commended Director of Claims Jimmy Rowe for the program's good performance. He observed that it appears adequate funding is available to cover all claims until the program is completely closed.

Nguyen said the Finance Committee questioned why there is still IBNR, given the fact that all claims have probably been reported by now, and Priven responded that there is still a chance of late-reported claims or old claims that need to be reopened.

Nahale asked if SELF had considered selling of the tail of the program. Hardash responded that this option was investigated at the five-year point in the assessment plan, and it was still more cost-effective for SELF to continue managing the program. He acknowledged that there might be a point after a couple years where it might be worth exploring the market again.

Hardash thanked Priven for his report.

B. Excess Liability Program Actuarial Study 6/30/20

Priven presented the results of his actuarial analysis of the Excess Liability Program since last October. He said the good news is that, excluding AB218 claims, the experience of the program has been good and liabilities went down. However, he noted, AB218 claims have been driving overall increases in liabilities, with losses in the $4 million excess of $1 million layer going back as far as 1997-98, and also activity in the excess of $5 million layer.

Priven stated that ultimate losses and IBNR increased substantially, and he displayed charts showing overall projections and a breakout of liabilities, case reserves, and IBNR s attributed to AB218 claims.

Priven noted that a net present value discount rate of 1.75 percent was used in this report, and the Finance Committee asked him to present charts showing liabilities at 1 percent and 1.5 percent as well, reflecting the decrease in investment yields.

Hardash clarified that although this actuarial report is not being used for rate-setting, it would be helpful in the next report to differentiate the AB218 component of the funding from the regular excess liability program. He said this information would also be helpful in showing the disastrous impact of AB218 on California's public schools. Priven indicated that he would provide a separate analysis of AB218 claims. He indicated that AB218 liability represented about 15 percent of this year's rates, and that trend will probably not change much for the pricing of the next fiscal year.

Hardash asked if the actuarial analysis takes account of treble damages for AB218 claims. Priven replied that the analysis includes whatever SELF includes in case reserves for the claims that have already been reported. Hardash noted that SELF's coverage does not cover punitive damages or treble damages, but districts could potentially be liable on their own in the underlying layer for treble damages. He cautioned that future court rulings could determine whether SELF is subject to treble damages as well. Priven observed that to the extent treble damages increase settlement values, there could be an indirect inflationary impact on the cost of settling claims.

Nguyen suggested that when SELF bills underlying districts, it would be helpful to separate the charges to clearly show the portion attributable to AB218. He remarked that if underlying JPAs follow that same practice, it would facilitate collecting impact data for the Department of Finance. Hardash and other committee members expressed support for this idea.

Priven displayed a chart showing liabilities at different net present values. He said that as requested by the Finance Committee, future actuarial reports will provide different values. He reviewed losses, payments, case reserves, and IBNR by claim year and by year reserves were set or claims were paid.

Nguyen observed that claims liability would have gone down by about $13 million if not for AB218 claims. Priven confirmed that understanding.

Hardash noted that the last chart raises the question of what is considered excess in the current claims environment. He said it might be advisable to discuss moving to a $7.5 million or $10 million attachment point for underlying JPAs.

Hardash thanked Priven for his report.

C. MOC review status

George provided an update on the staff's review of the memorandum of coverage (MOC), a project underway since last fall. He noted that an ad hoc committee has been meeting since last November with representatives from WillisRe, attorney Byrne Conley, and Segale Consulting to identify potential revisions to SELF's MOC. He said a redlined draft will be presented to the Board in October, the staff will seek input from members in early 2021, and a final version will come to the Board for approval.

George referred to the written summary in the meeting packet. He indicated that there are three key proposed revisions with coverage consequences that the Board will need to discuss and decide: 1) going to a claims-made basis for sexual abuse and molestation (SAM) cases and keeping occurrence-based coverage for all other claims; 2) a specific exclusion for COVID-related and communicable disease claims; and 3) clarification that cyber liability claims are excluded from SELF's general liability excess coverage. He said other changes involve minor language refinements.

Hardash expressed his appreciation to the members of the ad hoc committee and the consultants for their work.

D. Executive Committee member discussion

Hardash announced that he was retiring effective October 1. Committee members congratulated him and wished him well.

Hendrick noted that aside from Hardash's position, there are two other vacant positions on the Executive Committee. She advised that the guidelines require that committee members be voting members of the Board, not alternates. She said there will be several new alternates approved at the next Board meeting, but there are only two current Board members with enough experience to join the Executive Committee. Hendrick noted that with Hardash's absence, the past chair position could be filled by another at-large member.

After some discussion, the committee proposed selecting Schweikhard as Vice Chair, Flores as Secretary, and Steven Salvati as member at large. It was agreed to leave the past chair position open until a new member at large is appointed. Committee members recommended finding an alternate to represent the Southern California Community Colleges.

E. AB218 Funding Plan

Brown introduced Jim Marta, James Marta & Company, who has agreed to assist SELF in developing the AB218 assessment policies and procedures. He said the staff has been meeting with Marta and Byrne Conley to review the governing documents and identify issues with respect to individual members' equity in the liability program. He noted the Board adopted an equity policy in 2010 that provides for offsetting equity from deficit years with surplus equity from positive years. Brown advised that this policy was not in effect prior to 2010, so different rules would apply to members from 1986 through 2010.

Brown indicated that the most conservative approach to the assessment would be to use the rules that were in place before the 2010 policy change and to calculate each members' equity for each program year. He noted that John Falappino and Bev Wilkinson started to develop a year-by-year equity analysis during their interim tenures, and the staff then used their methodology to complete this task. He said Marta has reviewed the process and made some suggestions for further refinements to the assessment plan.

Brown referred to the equity analysis and policy year financial statements as of June 30, 2019. He indicated that the analysis takes into account all expenses, rate rebates, and credits for each policy year, with the goal of arriving at a reconstituted cash balance for each year that can be used to more appropriately allocate investment income. He drew attention to the detailed spreadsheet covering the 35 years since SELF's inception, including revenues, adjustments, claims expenses, net position, cash balance, and investment allocation. Brown noted that when the investment allocation is applied, it results in a new net position that can be compared against the actuarial funding levels for each year.

Marta noted that revenues and expenses are attributed to each policy year, and the cash in each year, based on when claims were paid, was multiplied and compounded to reflect interest on investment income.

Nahale asked if AB218 claims were included in the reserves, and Brown replied that AB218 claims were not included because AB218 did not take effect until January 1, 2020, and the analysis covers the years through June 30, 2019.

Brown noted that 1992-93 was the last year in which premium rebates were allocated, and there were rate credits applied in later years.

Hardash thanked the staff and consultants for their work and noted that the analysis looks very thorough.

Marta pointed out that the end results are tied to the audit and the actuarial reports. He said the intent was to produce an analysis with clearly documented assumptions.

Brown noted that policy years with negative net position, years with significant claim reserves and deficits, and fairness in overall assessment allocation between current and former members were all factors taken into account in determining the per-year assessment amounts. He said the next step was a pro-rata calculation, as required by the JPA agreement and bylaws, and then the approved relativity factors were applied.

Brown indicated that the Board approved collection of a $46.6 million assessment in February, and the most recent actuarial report projects $46.7 million in liabilities. He said the assessment was narrowed down to four years that had a negative net position, and years with AB218 claims and/or reserves. He advised that the assessment covers 1996-97, 1999-2000, 2006-07, and 2016-17. Brown observed that narrowing the assessment to those four years will simplify the management and administration of the assessment.

Brown pointed out that this is only the first year of the three-year AB218 window, so another assessment to collect additional funds is possible as more claims come in for other negative equity years.

Brown advised that the Finance Committee approved the AB218 funding plan at its meeting earlier that day. He said SELF will collect the assessments over a three-year period, and invoices are targeted to go out in November. He added that SELF will offer a 3 percent discount for a one-time up-front payment of all the liabilities.

Hendrick remarked that it would be easier for her organization to make a one-time payment this year rather than paying over the next few years when funding will be more constrained. For this reason, she said, giving members this option would be helpful.

Brown displayed a chart showing per-ADA amounts for each member class during the four target years, as well as a series of calculations illustrating the impacts to particular members. He noted that the estimates SELF provided to members for budgeting purposes last spring were conservative, and the actual assessment amounts will be a bit lower.

Brown advised that some pools have already indicated that they plan to pay the entire assessment amount up front for their underlying members. He said many JPAs already pass SELF's premium payments on their invoices to members as a separate line item. He added that SELF will work closely with its JPA partners to develop co-branded communications to individual members.

George commented that when SELF receives questions about funding for AB218, they usually come from member districts that do not have a pool managing their communications. He remarked that there is an advantage to districts when primary pools assist their members with understanding this effort.

Hardash thanked Marta for his assistance. George expressed his appreciation to Marta for using his company's resources to focus the effort and advise SELF on implementation.

VII. CLOSED SESSION

Anderson made a motion, seconded by Hendrick, to adjourn to closed session for the purpose of discussing potential and existing litigation.

Vote: Hardash – yes
Hendrick – yes
Nguyen – yes
Schweikhard – yes
Flores – yes
Anderson – yes
Nahale – yes

Motion passed. The committee adjourned to closed session at 3:10 p.m.

A. Discussion of existing litigation regarding case name Doe vs. Covina-Valley USD.
B. Discussion of significant exposure to litigation pursuant to Government Code sections 54956.9(d)(2) and (3): 1 potential case.

At the conclusion of the closed session, Flores made a motion, seconded by Schweikhard, to resume the open meeting.

Vote: Hardash – yes
Hendrick – yes
Nguyen – yes
Schweikhard – yes

Flores – yes
Anderson – yes
Nahale – yes

Motion passed. The open meeting was resumed at 3:22 p.m.

Hardash reported that the committee discussed the closed session agenda items with the staff but took no action.

VIII. FUTURE MEETINGS

The committee reviewed the schedule of upcoming meetings.

Hendrick thanked Hardash for his leadership and his service to SELF. Hardash said he enjoyed his 31+ years with SELF, and he expressed his appreciation to his fellow Board members and the staff for their support. He added that he would be present at the strategic planning session.

IX. ADJOURNMENT

There being no further business, Flores made a motion, seconded by Schweikhard, that the meeting be adjourned.

Vote: Hardash – yes
Hendrick – yes
Nguyen – yes
Schweikhard – yes
Flores – yes
Anderson – yes
Nahale – yes

Motion passed. The meeting was adjourned at 3:22 p.m.