Segal Select Insurance

333 West 34th Street New York, NY 10001-2402
T 212.251.5000 www.segalsi.com

MEMORANDUM

To: Alicia Cochran
Account Executive

From: Angie Begazo
Matthew Jackson
Segal Select Insurance Services

Date: May 24, 2017

Re: **Industry and Local 338 Pension Fund and Industry & Local 338 Welfare Fund**
Policy No. MFL0014934
Fiduciary Liability Insurance

For this year's renewal of the fiduciary insurance, we requested proposals from Ullico/Markel, the current carrier, as well as Chubb, Great American, Hartford, and Travelers.

We received a quote from Ullico/Markel, which is presented in table format following this memo.

We received verbal communication from the remaining carriers advising us that they would not be providing quotes because they could not offer better premiums and/or coverages than the current carrier

Recommendation

Our recommendation is for renewal with Ullico/Markel based on continuity, enhanced scope of coverages and competitive premium.

In addition to the quotes, please review the attachments regarding:

- Recommendation Decision Variables
- Carrier Subjectivities
- Supplementary Material
- Glossary of Terms

Please advise us of the Trustees' decision at their earliest convenience, but not later than June 09, 2017. If we have not received contrary instructions from you, we will bind coverage with the recommended insurer to avoid a lapse in coverage.

If you should have any questions, please call.

cc: John Urbank/NY

Recommendation Decision Variables

❑ Financial Strength of the Carrier

Ullico/Markel is rated at least "A" by A.M. Best. Segal Select can recommend them.

Segal Select does not inspect the financial strength of the insurers. Instead, we rely on the financial strength ratings provided by A.M. Best and other recognized rating agencies.

❑ Scope of Coverage

Effective with this renewal, the Ullico/Markel form will include the following enhancement:

- First party coverage for benefit overpayments resulting from a miscalculation of benefits, subject to a $100,000 sublimit. No Claim is required to trigger this sublimited coverage, but rather a "reasonable effort" must have been made to recover the overpayment(s). If a formal Claim is made regarding the alleged overpayment(s), the sublimit does not apply, potentially providing full policy limits, and the Claim is adjusted based on the specific fact pattern of the Claim and the terms and conditions of the policy, as the carrier has historically reviewed these types of Claims.
- Miscellaneous regulatory penalty coverage for various regulatory fines and penalties are provided that would not already be covered by the policy and not uninsurable by law. This includes regulatory agencies including the DOL, IRS, or similar regulatory bodies.

❑ Limit of Liability

Ullico/Markel provided a proposal for a $10-million as expiring of which we can support.

❑ Premiums

For this year’s renewal, Ullico/Markel quoted a decrease in premium by $102.

❑ Carrier Quotations

Unless directed otherwise, our policy is to request competitive quotations from various carriers. In the current market, many carriers may elect not to provide a quotation for reasons such as the expiring premium (which we disclose) is too competitive, prior losses, prior quotation experience, industry affiliation, or the carrier’s evaluation of a plan’s financial condition.

❑ Timeliness of Quotations

Ullico/Markel provided a quotation within the time specified.

The premium quoted is effective through the policy’s anniversary date. Orders to bind coverage after the renewal date is subject to acceptance by the carrier, and policy terms and conditions may change.

❑ Continuity (See attached Glossary of Terms for an explanation.)

Renewal Proposal

POLICY TERMS	Ullico/Markel (EXPIRING TERMS)	Ullico/Markel (RENEWAL PROPOSAL)
POLICY PERIOD	June 10, 2016-2017	June 10, 2017-2018
POLICY NUMBER	MFL0014934	MFL0014934
LIMIT OF LIABILITY	$10-million	$10-million
BASIC PREMIUM	$34,008	$33,906
RECOURSE PREMIUM	$175	$175
DEDUCTIBLE	$0	$0
COVERAGES/ ENDORSEMENTS (SEE ATTACHED SUPPLEMENTAL MATERIAL FOR MORE INFORMATION REGARDING COVERAGES AND ENDORSEMENTS)	502 (l) & (i) Coverages; 502(c) Coverage including PPA Penalties ($200,000); Administrative Errors & Omissions; Amend Benefits Due Exclusion (LaRue); COBRA Coverage; Conduct Exclusions -Final Adjudication; Defense Costs for Benefit Claims; Duty to Defend; Hammer/Settlement Clause Deleted; HIPAA Coverage (No Sublimit); IRC 4975 & 4976 Tax Coverage; Non-cancellable except for non-payment; Non-Fiduciary Defense Coverage ($2,000,000); Pending and Prior Litigation Exclusion (05/12/1998); Plan Sponsor or Settlor Coverage; Pollution Exclusion; PPA Penalties ($250,000); Pre-Claim Investigation Defense; Sec 203 Bipartisan Budget Act '13 ($250,000); Severability Coverage; Spousal/Domestic Partner Coverage; Surcharge/Equitable Relief (Affirmative); TRIA (War & Terrorism Coverage); Voluntary Settlement Program ($250,000).	502 (l) & (i) Coverages; 502(c) Coverage including PPA Penalties ($200,000); Administrative Errors & Omissions; Amend Benefits Due Exclusion (LaRue); COBRA Coverage; Conduct Exclusions -Final Adjudication; Defense Costs for Benefit Claims; Duty to Defend; Hammer/Settlement Clause Deleted; HIPAA Coverage (No Sublimit); IRC 4975 & 4976 Tax Coverage; Non-cancellable except for non-payment; Non-Fiduciary Defense Coverage ($2,000,000); Pending and Prior Litigation Exclusion (05/12/1998); Plan Sponsor or Settlor Coverage; Pollution Exclusion; PPA Penalties ($250,000); Pre-Claim Investigation Defense; Sec 203 Bipartisan Budget Act '13 ($250,000); Severability Coverage; Spousal/Domestic Partner Coverage; Surcharge/Equitable Relief (Affirmative); TRIA (War & Terrorism Coverage); Voluntary Settlement Program ($250,000); ***First Party Benefit Overpayments Coverage ($100,000);*** ***Misc. Regulatory Penalty Coverage ($250,000).***

Please note that this is not a bill for payment, and you should not make any remittance from this quote. A bill will be issued separately upon receipt of binding instructions.

Note: This policy summary is not a legal interpretation of coverage. Fiduciary Liability is a legal contract that Plan Counsel should review.

Please review the accuracy of the attached listing in determining the elimination of recourse. If there are any discrepancies, please contact us immediately to avoid any billing problems.

1. Bresten, Theresa M.
2. Dunker, Roberta
3. Palmer, Chris
4. Russell, Barry
5. Shaddock, Sandy
6. Smith, Mickey
7. Vavasour, Joellen

Carrier Subjectivities

This section summarizes the additional information each carrier will require in order to bind coverage. Please note, only the subjectivities of the carrier with whom coverage is placed will need to be addressed.

Ullico/Markel

- ❑ There are no subjectivities at this time.

Supplemental Material – Additional Information for Insureds

The following material is presented in an effort to provide a better understanding of the offered coverage. While all fiduciary liability policies follow a similar format, substantial differences exist between carriers. Fiduciary Liability insurance is a contract between the Insureds and the Insurer. Segal Select recommends Trustees familiarize themselves with the policy's basic coverage features, especially those that require action on your part, and that plan counsel review all fiduciary policies. Of course, as your broker, we are always available for your questions.

Notice of Claim

The policy language requires that the carrier be notified as soon as practicable if the insured becomes aware of an occurrence that could give rise to a claim. Within this context, it is important to note that the policy's definition of claim is broader than just a lawsuit filed against the plan or its trustees. For example, in certain instances even a letter making a demand might be a claim. If a claim, especially a lawsuit, is brought against the insured, the claim or suit must be forwarded to the carrier immediately. Failure to do so could jeopardize coverage under the policy. If a claim should occur, please forward all documents, via certified or overnight mail, or attached to an e-mail, to us for transmittal to the carrier. If you are using e-mail, please forward the e-mail to claims@segalsi.com. Please call us if you need assistance or have any questions with regard to giving notice to the carrier.

Notice must be in accordance with the policy's terms and conditions and must be sent to a designated address. Disclosure in an application does not meet these terms and conditions. All DOL audits or investigations should be treated as a claim and noticed to the insurance carrier as soon as the first written DOL communication is received.

Insured's Obligation to Notice the Insurer

In addition to an obligation to notice the insurer of any claim or circumstance as soon as practicable, the policy will, or may, obligate the Insured to provide notice to the insurer in other instances.

Segal Select Insurance Services Scope of Services and Compensation

Segal Select Insurance Services provides insurance brokerage services. For these services, Segal Select is primarily compensated through commissions paid by the insurance carriers. Annually, we disclose to each client, in writing, the amount of commissions we received during the prior year for that client. For a more detailed description of Segal Select's scope of services and its compensation arrangements, please visit http://www.segalsi.com and then click on the section entitled "Services and Compensation."

Segal Select's Core Insurance Products

Segal Select's core insurance products include fiduciary liability insurance, ERISA fidelity bonds, employment practice liability insurance, and cyber liability insurance. Each of these insurance policies offers specific protections to benefit plans, their trustees, and employees. At the end of this memo we have attached a summary of these four products for your review. If you are interested in any of these products, or are unsure which of these products are currently being purchased, please give us a call.

Glossary of Terms – The statements below are not legal definitions. In all instances, the definitions contained within the policy will control coverage.

502 (l) & (i) Coverages

Section 502(l) of ERISA provides that the Secretary of Labor shall assess a civil penalty against a fiduciary equal to 20% of any damage award resulting from a breach of fiduciary duty. Section 502(i) of ERISA provides that the Secretary of Labor may assess a civil penalty, not to exceed five percent of the amount involved in each such transaction, against a party-in-interest in the case of a prohibited transaction.

502(c) Coverage including PPA Penalties

Section 502(c) of ERISA provides for the assessment of penalties for various administrative failures. This coverage also encompasses penalties imposed for violation of the Pension Protection Act of 2006.

Administrative Errors & Omissions

Basic coverage for negligent administrative acts, which is defined to mean giving advice to participants and beneficiaries with respect to a Trust or Plan, interpreting a Trust or Plan, and handling the records, effecting enrollment, and termination or cancellation of participants under a Trust or Plan.

Amend Benefits Due Exclusion (LaRue)

Amends the policy to clarify that coverage will apply for an otherwise covered "investment loss" should the courts rule it was a "benefits due". (See the Supreme Court LaRue decision as an example of how this may apply.)

COBRA Coverage

Amends policy to add and clarify the scope of COBRA coverage provided.

Conduct Exclusions - Final Adjudication

Excludes claims based upon deliberately fraudulent acts or omissions or willful violations of any statute or regulations, or the gaining of any personal profit to which the insured was not entitled to, but will not apply unless a final adjudication establishes such acts.

Duty to Defend

Duty to defend, which is usually associated with the carrier's right to appoint defense counsel or, more typically, for the Insured to select defense counsel from a pre-approved list of "panel counsel", means that as long as any one pleading or allegation is a covered matter, the carrier must defend all the pleadings or allegations. This does not mean, however, that the carrier will be obligated to pay the settlement or judgment of an uncovered matter. "Duty to defend" applies only to the defense costs.

Enforcement Agency Interview Coverage

Defense coverage should an Insured be interviewed by an Enforcement Unit (except the DOL or PBGC) in connection with the individual's capacity as a fiduciary of the covered Fund or that Fund's business activities.

First Party Benefit Overpayments Coverage

Coverage is provided for benefit overpayments based on miscalculations, subject to a sublimit, that cannot be paid out of trust assets or recovered from beneficiaries after a "reasonable effort" has been made to recover them, even if a formal Claim has not been made against an Insured. If a formal Claim against an Insured has been made regarding the alleged overpayment(s), full policy limits may be available, subject to the specific fact pattern of the claim and the other terms and conditions of the policy.

Hammer/Settlement Clause Deleted

Removes clause from policy so that if the Insured rejects a proposed settlement, the carrier cannot cap or limit its exposure to the amount of the initial proposed settlement.

HIPAA Coverage (No Sublimit)

Amends policy to include coverage for allegations of a violation of HIPAA. Coverage is also extended to include the fines and penalties that can be imposed by HIPAA.

IRC 4975 & 4976 Tax Coverage

Section 4975 of the IRS Tax Code provides for the assessment of tax penalties, equal to 15 percent of the amount involved, or if the prohibited transaction is not corrected within the taxable period, 100 percent of the amount involved, on prohibited transactions between the plans and disqualified persons. Section 4976 of the IRS Tax Code provides for the assessment of tax penalties for a disqualified benefit, as that term is defined, provided by an employer-maintained welfare benefit fund - the penalty can be equal to 100 percent of such disqualified benefit.

Misc. Regulatory Penalty Coverage

Coverage for various regulatory fines and penalties are provided that would not already be covered by the policy and not uninsurable by law. This includes regulatory agencies including the DOL, IRS, or similar regulatory bodies.

Non-cancellable except for non-payment

Carrier cannot cancel the policy for any reason other than non-payment of premium.

Pending and Prior Litigation Exclusion

The pending and prior litigation exclusion restricts coverage for claims that are a result of any current or past lawsuits. Full coverage is provided for claims not previously litigated or reported.

Plan Sponsor or Settlor Coverage

Clarifies the scope of coverage provided for allegations involving settlor type actions, such as creating or terminating an ERISA benefit plan, or changes in the scope of coverages or cost to the participant of an ERISA benefit plan.

Pollution Exclusion

The pollution exclusion excludes claims arising from pollution or contamination of any kind.

PPACA Coverage

Coverage is provided for civil fines and penalties imposed pursuant to the Patient Protection and Affordable Care Act (PPACA).

Pre-Claim Investigation Defense

Coverage for "pre-claim" defense costs at the commencement of a DOL investigation. Typically, coverage during a DOL investigation is not provided until after a clear focus of the investigation is identified or breaches of fiduciary duty allegations are actually alleged.

Sec 203 Bipartisan Budget Act '13

Section 203 of the Bipartisan Budget Act of 2013 limits access to the Social Security Administration's (SSA) Death Master File (DMF). Funds need to become certified under the law and agree to maintain information obtained under certain safeguards. The Department of Commerce will review eligibility of applicants, examine the safeguards and conduct audits of certified entities to ensure compliance. Penalties can be assigned if there are findings during the audit.

Severability Coverage

The severability clause allows coverage to apply separately to each insured under the policy.

Spousal/Domestic Partner Coverage

Amends the policy to include coverage for an insured's spouse or domestic partner should they be named as a defendant in an otherwise covered claim.

Surcharge/Equitable Relief (Affirmative)

Coverage is provided for appropriate equitable relief (including but not limited to a surcharge) to redress violations for Section 502(a)(3) of ERISA which provides that a civil action may be brought by a participant, beneficiary, or fiduciary to enjoin any act or practice which violates ERISA.

TRIA (War & Terrorism Coverage)

Coverage is provided for losses arising out of an act of Terrorism. This is defined in the Terrorism Risk Insurance Act. Initially enacted in 2002 as a temporary federal program, it has been extended several times, most recently in 2015 and it is now set to expire in 2020. The Treasury Department administers the program. For details of this act and how it might affect coverage, please see The National Association of Insurance Commissioners (NAIC) at http://www.naic.org/cipr_topics/topic_tria.htm, and the Department of Treasury at https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx.

Voluntary Settlement Program

Additional coverage for fees, sanctions, and penalties assessed by the IRS or DOL pursuant to a voluntary settlement or compliance program, such as the IRS EPCRS or DOL Delinquent Filer Program. These losses typically cannot be paid from plan assets.

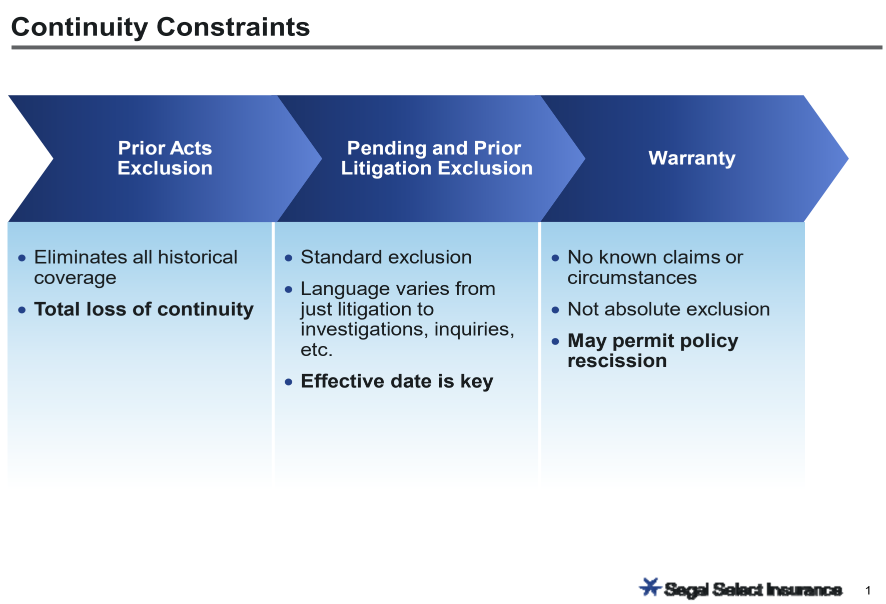
Continuity of Coverage

Continuity is a concept addressing the scope of coverage provided by a renewal policy from the incumbent carrier or a new policy from a new carrier. It is an important concept because fiduciary liability policies are claims made in format. The policy in force when a claim is made will determine whether coverage is or is not provided. When renewing coverage with the incumbent or moving coverage to a new carrier, the insured should determine whether the renewal (or new) policy will provide at least the same scope of coverage as the old policy. In particular, a new carrier may wish to limit coverage in some fashion.

The introduction of any new exclusion or other coverage constraint will impair continuity. For example, introducing a prior acts exclusion would essentially eliminate all continuity. Less severe but also of concern would be resetting (bringing forward to the current renewal date) the effective date of the pending and prior litigation exclusion, a standard exclusion found in most claims made policies. Less obvious but also of significant concern would be a warranty requirement of “No Known Claims or Circumstances.” This warranty requirement might be accomplished by a specific policy provision, via the application, or by a separate warranty letter.

To maintain continuity, determine that no new policy exclusions exist. In particular:

- No prior acts exclusion should be imposed by a new or renewal carrier. **Loss of prior acts coverage is an extremely serious loss of coverage and should always be explained or challenged.**
- The Pending and Prior Litigation Exclusion effective date should be the date fiduciary liability coverage was first purchased as long as coverage has been continuously maintained (this will vary by carrier, and by case). If new or higher limits of liability are purchased, a new Pending and Prior Litigation Exclusion may be attached but only for that increased limit of liability.



- The warranty of “no known claims or circumstances” should only be answered in the first fiduciary application completed as long as coverage has been continuously maintained. New warranties are generally required for the purchase of new or higher limits of liability, and applicable only to those increased limits of liability. New warranties may or may not be required by a new replacement carrier.

CORE PRODUCTS

Segal Select Insurance

Segal Select Insurance has a long history in obtaining insurance policies that offer broad coverage and competitive premiums. We focus on four main products:

Fiduciary Liability Insurance

ERISA allows for the purchase of fiduciary liability insurance to cover both the plan and its fiduciaries for lawsuits alleging a breach of fiduciary duty.

Cyber Liability Insurance (CLI)

If personal information is not properly protected, mandatory reporting requirements may apply. CLI provides limits of liability that can help pay the cost of notification, coverage for other associated costs and liability insurance protection should a lawsuit occur.

Fidelity Bonds

ERISA requires that every fiduciary of an employee benefit plan and every person who handles plan funds be bonded. These bonds cover the plan from loss of assets due to fraud or dishonesty.

Employment Practice Liability Insurance (EPLI)

Numerous federal and state laws address and identify illegal employment practices, such as discrimination. EPLI is designed to cover the defense, settlement and judgment costs.

Multiemployer Focus

Segal Select brokers over 1,200 Taft-Hartley plans—more than any other retail broker in the multiemployer field. We have been offering brokerage services since ERISA was enacted in 1975 and we are continuously involved in evolving the scope of coverage afforded by these insurance policies.

Our Services

- Policy review, analysis and comparisons
- Market strategy and proposed coverage specifications
- Coverage negotiations, including underwriting meetings
- Invoicing, premium collection and remittance to insurer
- Claims processing and follow-up
- Benchmarking for premium and limit of liability analysis

WHY SEGAL SELECT INSURANCE?

- **Extensive experience.**
- **Excellent client service.**
- **Unparalleled expertise.**
- **Comprehensive services.**
- **Client education and advocacy.**

To learn more about Segal Select Insurance Services, visit our website at www.segalsi.com or call Diane R. McNally, Senior Vice President, Senior Consultant and Principal, at 212.251.5146.