

***School Pool for Excess Liability Limits Joint
Insurance Fund
(SPELL JIF)***

***THIRD PARTY
RELATIONSHIP MANAGEMENT
GUIDE
INCLUDING
CERTIFICATE OF INSURANCE
GUIDELINES***

Revised February 7, 2020

Acknowledgements

This guideline is the result of many years of work by many parties to provide guidance to public education administrators who are responsible for managing relationship risk with third parties on behalf of their school district.

The first iteration of this guideline was introduced in 1994. It has been periodically updated to reflect changes in the nature and scope of relationships as well as the constantly changing nature of risk in these relationships. Legal outcomes, outsourcing, environmental issues, terrorism along with the influence and rise of the internet have each contributed to change in the type and nature of relationships. This iteration seeks to capture the techniques needed and appropriate to manage the complexity of relationships schools have. At the same time the document must prove useful and practical without attempting to classify every relationship for every member. The result is a structured approach to helping each district define its third party risks and manage them to the best of their ability.

This is a guide to help member school districts help themselves. It is best used to categorize and define district relationships so that members can work out the most practical solutions possible relying upon the guide to frame the process for them, the third party, the district solicitor and property and casualty insurance broker.

We'd like to recognize the contributions of Risk Program Administrators, Louis J. Greco, Esquire, and Walter R. Bliss, Jr., Esquire for their various contributions to this iteration of the SPELL JIF Third Party Risk Management Guideline.

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I. GENERAL INTRODUCTION

Managing relationships between the District and all of the third parties with whom it interacts is a primary responsibility of district financial leadership. Every district officer is responsible for safeguarding limited resources and assets. Mistakes, oversights, errors and omissions made in managing risk with third parties result in asset loss that is avoidable. This guideline is provided to help district fiscal officers manage third party relationships to minimize the chances that avoidable losses occur through effective transfer of risk in agreements that are supported financially through insurance.

The basic process to manage third party risk is to:

- identify all third parties,
- evaluate risk in each relationship,
- write an agreement that properly allocates risk between the parties, and
- require the risk be financed by the third party through insurance.

This simple framework permits thoughtful consideration between the parties and allows for practical solutions.

Risk evaluation can be straightforward and clear with all parties agreeing and it is just as often gray requiring a collaborative discussion to achieve a clear allocation. A couple of simple thoughts may help. The first thought is that when you pay a third party to do something you cannot do yourself, they need to be responsible. The second thought is that you are in the education business and activities that do not directly serve that mission belong to third parties who must be responsible for their activities.

II. THIRD PARTY IDENTIFICATION – WHO ARE THEY?

The list below provides a broad description of the typical third party relationships of member school districts. It is representative but cannot reflect the unique circumstances of all member districts. It is provided to offer a beginning checklist for categorization and to stimulate members' to think through all of their third party relationships.

1. Private citizens, organizations or non-business groups using district facilities for purposes not related to the district's educational mission i.e., garden clubs, sports associations, local citizen groups, religious groups, etc.
2. Quasi related people and organizations using facilities for purposes indirectly related to district mission such as PTA, PTO, HSA, HSO, Booster Clubs, Education Foundations, individual employees and employee groups.
3. Structural contractors performing new construction, structural improvements, renovations to facilities, parking lot replacement, etc.
4. Asset maintenance contractors like painters, plumbers, landscapers, vehicle repairs, building maintenance, custodial services, etc.
5. Professional services i.e., solicitor, auditor, engineer, insurance brokers, specified medical practitioners, contracted employees of all categories, security services, etc.
6. Contracted school bus operators.
7. Contracted food service.
8. Technology service providers i.e., hardware and software vendors, cyber security services, all contractors listed above who install, service or otherwise provide devices that are controlled through the internet.

III. IDENTIFYING RISKS IN RELATIONSHIPS

Identifying risks in relationships between the district and third parties is best done within a framework where each relationship is evaluated in the context of the activity that will occur and the possible impact of the activity on district operations. Each instance in which an activity exposes the district to a risk of loss that risk must be identified, managed and financed.

To help frame this process begin by thinking of each relationship as a list of activities. Once listed, evaluate each activity on its possible impact on operations. The list will provide insight on the significance of financial risk in the relationship. Some risk will be obvious like the risk in a bussing contract where a clear and very significant risk of loss is associated with the possibility of an accident involving a bus full of students. Some risk will not be as obvious like the risk in a bussing contract of a sexual abuse, harassment or molestation committed by one student against another student while on the bus or by a driver or aide against a student. Other routine risk must be identified like the risk of a contract driver or an employed district aide being injured during bussing operations. The obvious and not so obvious risks have to be identified and managed.

The broader perspective above helps to define proper allocation of risk between the district and third party bus contractor. The relationship involves a bus contractor and their employees along with district employees and district students. The largest financial risk is in an automobile accident and clearly requires a need for a commercial automobile liability policy with very large limits that is the primary source of funds for managing a bussing accident. It is also clear that each party must have workers' compensation insurance to respond to their respective injured employees in that same accident. What isn't as clear is that both parties need general liability insurance that will respond to a sexual abuse, molestation or

harassment between students on the bus or committed by an adult against a student while on the bus. These same general liability policies must respond to other common risks in this relationship like leaving a child on the bus or dropping a child at the wrong stop. Risk evaluation informs you on how to craft contract responsibilities and how to finance risk through insurance by type and limits of insurance required.

This technique will inform the nature of the relationship that should be managed through a specific contract or through existing district constructs like a Use of Facilities Policy and Procedure.

IV. INDEMNIFICATION OF A PARTY BY ANOTHER PARTY

An important part of establishing financial responsibility in a relationship is in using an indemnification agreement that defines how parties to a contract agree to respond to a claim for damages that involves all parties to the contract. These vary in scope but basically define which party or parties are responsible for the cost of litigating and settling a claim involving their contract relationship. The agreements can be absolute where one party agrees to indemnify another party regardless of fault or liability or mutual where the parties agree to indemnify the other dependent upon liability or fault. The type and scope depends upon the risk in the relationship, which of the parties has control over the activities, and ultimately the specific facts of the claim. ***Indemnification agreements are specific contractual elements and must be approved by your District Solicitor.***

What does indemnity mean?

What is Indemnity? Indemnity is **compensation for damages or loss**, and in the legal sense, it may also refer to an exemption from liability for damages. The concept of indemnity is based on a contractual agreement made between two parties, in which one party agrees to pay for potential losses or damages caused by the other party.

[Indemnity - Investopedia - Sharper Insight. Smarter Investing.](http://www.investopedia.com/terms/i/indemnity.asp)
www.investopedia.com/terms/i/indemnity.asp

What does that indemnification clause mean in your contract?

Indemnification means that **in the event of a legal dispute/lawsuit regarding this contract by someone not a party to this contract who sues a party to this contract, the other party to the contract will pay their legal expenses.**

[What does indemnification mean? - FreeAdvice](http://ask-a-lawyer.freeadvice.com/law-questions/what-does-th...)
ask-a-lawyer.freeadvice.com/law-questions/what-does-th...

What does mutual indemnification mean?

A mutual indemnity clause (also known as a "cross indemnity" or "knock-for- knock" indemnity) is one where each party agrees to hold harmless the other party against certain losses for a breach of contract. This means **loss or damage sits where it falls**, regardless of who is at fault. They appear in a lot of Oil and Gas contracts.

[Should you use a mutual indemnity clause to manage your ...](http://www.linkedin.com/pulse/should-you-use-mutual-indemn...)
www.linkedin.com/pulse/should-you-use-mutual-indemn...

V. HOLD HARMLESS AGREEMENTS, RISK WAIVERS AND RISK ACKNOWLEDGEMENT FORMS

Hold harmless, risk waiver and acknowledgement agreements are similar to indemnification agreements but typically do not address any obligations to defend or finance risk. They are used to delineate risk between the parties without proscribing which party will ultimately be responsible for the cost of defending a claim or paying a claimant and award. They serve to provide the intent of the parties regarding risk without requiring advance commitments to finance defense and indemnity. They have value in mitigating risk of lawsuits and in the event of a lawsuit are used to frame the intent of the parties in the eyes of a mediator, judge or jury.

These are used in a host of activities where requiring insurance and indemnification are impractical and unacceptable to the community and organization. Some examples include the desire of employees to use space after work to organize a regular Yoga program that is employee organized, promoted and managed and involves no money or gain other than better health. It is not part of employment and it needs to be made clear to all participants that any injury sustained is not subject to workers' compensation coverage as the activity is not employment but instead voluntary and each volunteer must recognize and accept this by signing a participant acknowledgment/waiver form.

Other circumstances include fundraising events where sports are involved like students challenging teacher volleyball or basketball games. Whenever an event has blurry lines between directly serving the district educational mission and indirectly serving the district educational mission, a contract with formal requirement may be impossible to achieve and the next best position is to require a rational risk acknowledgment be signed by all participants.

VI. ADDITIONAL INSURED REQUIREMENT

A key element in any contract is the requirement to finance risk through insurance and to require that the party bearing the contract risk through an indemnification in the contract add the party being indemnified in the contract as Additional Insured in the correct policy or policies. It is also very important to word this requirement in the contract within as a distinct requirement after the indemnification and insurance requirements.

Assuming a bussing contract that requires the contractor to indemnify the involved school district against all the risks discussed previously in section III – Identifying Risks in Relationships. This means a general liability policy, an automobile liability policy and a workers’ compensation policy. Please note it may also mean a fourth policy to cover sexual abuse and molestation issues as one can never assume this risk to be covered under the general liability and automobile liability policies. The sample language would be as follows.

Contractor shall have the ABC School District named “Additional Insured on a Primary Non-Contributory Basis” by endorsement to all liability policies at full limits as specified in this contract and in compliance with the indemnification agreement specified in this contract. Evidence of the contractor meeting this contract obligation must be provided in a Certificate of Insurance specifically identifying the contract requirements and evidencing coverage at bid submission, and again at award. Following award the contractor must supply the district with an official copy of each impacted policy’s endorsement recognizing these contract requirements and providing formal policy level additional insured status per the indemnification agreement.

**Note:* Covering sexual abuse, molestation and harassment is a new requirement that must be included. It has generally been covered under general liability policies

but given the national issues with this risk in every organization of every kind, the coverage is being removed or restricted by much of the insurance community. You must be diligent in pursuing this and pursue a separate policy that responds to this risk if needed. Failure to attend to this will place the district and it's JIF in the position of being the sole source of financial remedy despite the potential for the claim to have no direct relationship to a district employee or operation.

VII. CERTIFICATES OF INSURANCE (COI)

General Discussion (COI)

Whether dealing with an insurance company or participating in a Joint Insurance Fund, Certificates of Insurance are a necessary and important fact of life. Certificate requests can arise under a variety of circumstances. However, Certificates are most frequently requested in one of the following:

1. Situations where the school district must provide a certificate to another organization.

Typical examples here involve leases of property or equipment (such as driver's education vehicles, photocopiers, mobile classrooms, etc.) or receipt of grant monies from a state or federal agency.

2. Situations where school districts request certificates from other organizations.

Examples here include use of school district ball fields or other facilities by local citizens groups or instances where districts have contracted for construction, school bus operations or other services from third parties.

Certificates can serve many purposes, the vast majority of which will fall into one of two categories. Certificates can either:

1. Simply show evidence that coverage exists, (i.e. workers compensation, general liability, auto liability, property, etc.) or
2. Extend coverage to a third party as pertains to certain actions or events.

Regardless of the role played by a Certificate, it is important to remember that each is a legal document which creates legal obligations either to the Districts or for the District. By extension, each of these applies equally to the SPELL and/or its owner groups (ACCASBO, BCIP & GCSSD).

The purpose of this document is to provide a set of general guidelines to school district business officials on the major types of Certificates and the procedures to be followed when requesting them through the Joint Insurance Fund or from third parties. These guidelines are advisory (not mandatory) and are meant to be broad in nature. Modifications of the suggested coverages and limits shown may be permitted on a case by case basis as dictated by local board policy.

Please note the following as being common to any area involving a Certificate of Insurance:

1. No work or services should be performed by outside parties nor should any facilities be used by outsiders unless proper Certificates of Insurance are on file with the School Business Administrator/Board Secretary.

Should questions arise as to the adequacy of the limits shown here, please contact your local Risk Management Consultant or the Fund Administrator/Executive Director's office at (856) 446-9100.

Obtaining a district certificate of insurance (COI)

School Districts are frequently involved in contractual relationships which require that they provide evidence of insurance to private contractors or other governmental units. Typically, these requirements are contained in lease and/or purchase agreements for property or relate to the district's receipt of grant monies from the state or federal government. Requests for certificates such as these are a routine matter.

To make this process as easy as possible, SPELL JIF created an online request process that any member district employee can access and use with the permission of the School Business Administrator. Once an employee is authorized all they

need do is go to www.spelljif.com and login as a member. Once logged in there is a right side panel showing user permissions. The user will see a permission label on the right side of the page that reads, "**Certificate of Insurance**". Click on this and follow the prompt screens.

Other points which you should note when requesting certificates are the following;

1. Include the full name and mailing address of the party requesting the certificate as well as the date by which the certificate is needed;
2. Where an "additional insured" endorsement is required, a clear description of the item or activity being covered should be included. Additionally, the contract number or, in the case of a grant, the grant number should be shown so as to pinpoint exactly what items are being covered.
3. When loss payee status is requested (which means that a leasing company or other entity will be paid for any property loss rather than the District) the exact value of the property as indicated on the contract should be shown.

In order to avoid errors and to keep from unnecessarily extending coverage, it is essential that the information entered throughout the request process be accurate and complete.

The online process auto distributes copies of Certificates of Insurance to the requester, School Business Administrator and Certificate holder if so desired and a permanent copy of the certificate is available online at all times.

Third party certificate of insurance recommendations (COI)

Good risk management requires that districts and the Fund transfer as much risk as is practical in the course of their day-to-day operations. Standard methods for doing this include:

- a) Contract provisions requiring that sellers of services "assume the risk" associated with their products,
- b) Evidence of insurance (in the form of Certificates of Insurance) with appropriate limits of coverage; and
- c) "Additional Insured" endorsements naming the individual district as additional insured.

The intent of each of the above arrangements is to place the contractor and/or their respective insurance companies in the place of the district and the Fund should a claim(s) arise as a result of the contractor's actions, services or products. Following are general guidelines and limits of coverage for six different situations in which the SPELL districts are likely to request certificates of insurance. Also included are various suggested coverages and limits. These should be adhered to when requesting certificates from providers.

Remember again, the limits shown are minimums and the general rule of thumb when requesting certificates and "additional insured" status is to ask for as much coverage as may possibly exist so as to better insulate your district and the Fund from any liability.

GROUP 1

Private citizens, organizations or non-business groups using the facilities of the school district, (i.e., garden clubs, sports associations/groups, local citizen groups, etc.)¹

MINIMUM REQUIREMENTS

I. General Liability

- a. Commercial General Liability with a \$500,000 Combined Single Limit of Liability for Bodily Injury and Property Damage, including Blanket Contractual, Premises and Products Liability and must provide coverage for Sexual abuse and molestation.
- b. Private Coverage to be Primary and Non-Contributory.
- c. School District named as "Additional Insured"; and
- d. Executed Indemnity and Hold Harmless Agreement
- e. Sports Associations must show evidence that their General Liability Policy will respond to injuries sustained by athletic participants, and/or show a Certificate of Insurance evidencing an Athletic Participants Medical Payments Policy.

¹The SPELL and its owner JIFs (ACCASBO, BCIP & GCSSD) support efforts to promote alcohol and substance abuse awareness. With this in mind, the JIF discourages the presence or distribution of alcoholic beverages on any JIF member property or off-campus event.

GROUP 2

Structural Contractors

MINIMUM REQUIREMENTS

I. General Liability:

- a. Commercial General Liability with a \$5,000,000 Combined Single Limit of Liability per occurrence per project for Bodily Injury and Property Damage including Blanket Contractual Liability, Products Liability, Completed Operations and all Broad Form Comprehensive General Liability enhancements and must provide coverage for sexual abuse and molestation.
- b. Contractor's insurance to be Primary and Non-Contributory.
- c. 30 day notice of intent to cancel, non-renew, or make material change in coverage.
- d. School District to be named as "Additional Insured."
- e. Executed Indemnity and Hold Harmless Agreement or substantially similar provisions should be included in the bid specifications and contract.

II. Automobile Liability:

- a. \$2,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
- b. Coverage to include "Owned, Non-Owned, and Hired" automobiles.
- c. All other requirements the same as provided under "General Liability (b through e)" above.

III. Workers Compensation:

- a. Certificate of Insurance indicating "statutory" limits.
- b. 30 day notice of intent to cancel, non-renew, or make material change in coverage.

IV. Builder's Risk Insurance/Installation Floater/Environmental Liability:

The SPELL JIF Coverage Document provides significant coverage for builders risk and installation floaters and each member district **must** consult indirectly through their RMC or directly with the JIF Administrator in advance to determine how best to approach this in the RFP requirements. Members **must** also evaluate Environmental Liability in advance of an RFP.

GROUP 3

Asset Maintenance Contractors

MINIMUM REQUIREMENTS

I. General Liability²:

- a. Commercial General Liability with a \$2,000,000 Combined Single Limit of Liability per occurrence per project for Bodily Injury and Property Damage including Blanket Contractual Liability, Products Liability, Completed Operations and all Broad Form Comprehensive General Liability enhancements and must provide coverage for sexual abuse and molestation.
- b. Contractor's insurance to be Primary and Non-Contributory.
- c. 30 day notice of intent to cancel, non-renew, or make material change in coverage.
- d. School District to be named as "Additional Insured."
- e. Executed Indemnity and Hold Harmless Agreement or substantially similar provisions should be included in the bid specifications and contract.

II. Automobile Liability:

- a. \$2,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
- b. Coverage to include "Owned, Non-Owned, and Hired" automobiles.
- c. All other requirements the same as provided under "General Liability (b through e)" above.

III. Workers Compensation:

- a. Certificate of Insurance indicating "statutory" limits.
- b. 30 day notice of intent to cancel, non-renew, or make material change in coverage.

²In those cases where a member district contracts for vehicle maintenance or repairs, Garage Liability @ \$1,000,000 **AND** Garage Keepers Legal Liability (GKLL) @ \$150,000 should also be maintained.

GROUP 4

Professional Services

MINIMUM REQUIREMENTS

I. Professional Liability (other than medical malpractice – see below)

- a. \$1,000,000 Errors & Omissions Insurance
- b. 30 days notice of intent to cancel, non-renew or make material change in coverage.
- c. Executed Indemnity and Hold Harmless Agreement or similar provision should be included in the Service Contract.
- d. "Additional Insured" Agreement is not required.
- e. General Liability with combined single limits of liability of \$1,000,000 per occurrence and per contract including coverage for sexual abuse and molestation.
- f. Automobile liability with a combined single limit of Liability of \$1,000,000 each accident.
- g. Workers' compensation insurance covering all employees and owners for statutory limits in New Jersey with a \$1,000,000 employer's liability limit.

II. Medical Malpractice (physicians, dentists, psychologists, athletic trainers, audiologists, speech pathologists and every profession where the work involves a medicinal involvement with a student or employee)

- a. \$1,000,000 Medical Malpractice Insurance
- b. 30 day notice of intent to cancel, non-renew or make material change in coverage.
- c. Executed Indemnity and Hold Harmless Agreement or similar provision should be included in the service contract.
- d. Additional Insured Agreement is not required.
- e. General Liability with combined single limits of liability of \$1,000,000 per occurrence and per contract including coverage for sexual abuse and molestation.
- f. Automobile liability with a combined single limit of Liability of \$1,000,000 each accident.
- g. Workers' compensation insurance covering all employees and owners for statutory limits in New Jersey with a \$1,000,000 employer's liability limit.

GROUP 5

Contracted school bus operators.

MINIMUM REQUIREMENTS

I. General Liability:

- a. Commercial General Liability with a \$2,000,000 Combined Single Limit of Liability per occurrence per project for Bodily Injury and Property Damage including Blanket Contractual Liability, Products Liability, Completed Operations and all Broad Form Comprehensive General Liability enhancements and must provide coverage for sexual abuse and molestation.
- b. Contractor's insurance to be Primary and Non-Contributory.
- c. 30 day notice of intent to cancel, non-renew, or make material change in coverage.
- d. School District to be named as "Additional Insured."
- e. Executed Indemnity and Hold Harmless Agreement or substantially similar provisions should be included in the bid specifications and contract.

II. Automobile Liability:

- a. \$10,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
- b. All other requirements the same as provided under "General Liability" above.

III. Workers Compensation:

- a. Certificate of Insurance indicating "statutory" limits.
- b. 30 day notice of intent to cancel, non-renew or make material changes in coverage.

GROUP 6

Contracted food service.

MINIMUM REQUIREMENTS

I. General Liability:

- a. Commercial General Liability with a \$2,000,000 Combined Single Limit of Liability per occurrence per project for Bodily Injury and Property Damage including Blanket Contractual Liability, Products Liability, Completed Operations and all Broad Form Comprehensive General Liability enhancements and must provide coverage for sexual abuse and molestation.
- b. Contractor's insurance to be Primary and Non-Contributory.
- c. 30 day notice of intent to cancel, non-renew, or make material change in coverage.
- d. School District to be named as "Additional Insured."
- e. Executed Indemnity and Hold Harmless Agreement or substantially similar provisions should be included in the bid specifications or contract.

II. Automobile Liability:

- a. \$1,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
- b. All other requirements the same as provided under "General Liability" above.

III. Workers Compensation:

- a. Certificate of Insurance indicating "statutory" limits.
- b. 30 day notice of intent to cancel, non-renew or make material changes in coverage.

IV. Property Insurance:

- a. All property owned and controlled by the food service contractor no matter where located that services the contract including food for all perils including spoilage and in transit.

GROUP 7

Technology services.

MINIMUM REQUIREMENTS

I. General Liability:

- a. Commercial General Liability with a \$1,000,000 Combined Single Limit of Liability per occurrence per project for Bodily Injury and Property Damage including Blanket Contractual Liability, Products Liability, Completed Operations and all Broad Form Comprehensive General Liability enhancements and must provide coverage for sexual abuse and molestation.
- b. Contractor's insurance to be Primary and Non-Contributory.
- c. 30 day notice of intent to cancel, non-renew, or make material change in coverage.
- d. School District to be named as "Additional Insured."
- e. Executed Indemnity and Hold Harmless Agreement or substantially similar provisions should be included in the bid specifications or contract.

II. Automobile Liability:

- a. \$1,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
- b. All other requirements the same as provided under "General Liability" above.

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III. Workers Compensation:

- a. Certificate of Insurance indicating "statutory" limits.
- b. 30 day notice of intent to cancel, non-renew or make material changes in coverage.

IV. Cyber Liability Insurance:

- a. Cyber liability insurance with a minimum limit of \$1,000,000 per contract. Must provide financing for public relations, forensic services, legal breach services, credit monitoring and defense and indemnity for third party breaches following the loss of protected information from the providers hardware, software and/or services.

GROUP 8

Individual Service Providers Refusing To Provide Workers' Compensation Insurance

The JIF does not recommend that members retain, use or contract with anyone who refuses to purchase workers' compensation insurance for themselves. There is only one rationale for not acquiring workers' compensation insurance and it is to avoid the expense as every employer including single employee businesses can buy workers' compensation in New Jersey. In fact all employers in the State of New Jersey are required to have workers' compensation insurance with very few exceptions.

It is also true that New Jersey Workers' Compensation law can hold a contracting organization responsible for the injuries of a contractor when the contractor has failed to provide workers' compensation insurance. This applies specifically to a contractor who has failed to provide for employees. We believe that the few persons who are permitted in NJ law to opt out of buying coverage for themselves would have a very difficult time convincing a workers' compensation Judge to grant them coverage under the contracting organization's coverage, but at the same time know how a very serious injury can sway this decision and prefer to avoid the risk.

*The SPELL JIF recognizes this position is exceptionally difficult to attain and offers a modified position in order to reduce risk and continue to use people who refuse to acquire their own workers' compensation insurance policy. Please see Section XI for further information.

Basic Insurance Requirements

- a. Executed Indemnity and Hold Harmless Agreement or similar provision should be included in the service contract.
- b. General Liability with combined single limits of liability of \$500,000 per occurrence and per contract including coverage for sexual abuse and molestation.
- c. Automobile liability with a combined single limit of Liability of \$300,000 combined single limit each accident.
- d. Workers' compensation insurance covering all employees and owners for statutory limits in New Jersey with a \$1,000,000 employer's liability limit.

VIII. HOW TO READ A CERTIFICATE OF INSURANCE (COI)

In order to manage certificates of insurance every person who is tasked with managing certificates at each member district has to know how to read the certificates of insurance they receive or send and understand what they are reading or they risk having certificates of insurance that are useless as risk management instruments.

Below is a blank certificate of insurance in the form the SPELL JIF uses to send certificates out on member's behalf. On the pages that follow we'll break this into three sections (top, middle and lower) to explain what each section is. Once you are armed with how to read these and understand them, you will be far better equipped to manage them.

Example of a Certificate of Insurance Form

ACORD TM		CERTIFICATE OF LIABILITY INSURANCE				Date (MM/DD/YY)	
PRODUCER		856-446-9133		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
		INSURERS AFFORDING COVERAGE					
INSURED		INSURER A:					
		INSURER B:					
		INSURER C:					
		INSURER D:					
Attention:		INSURER E:					
COVERAGES							
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
	GENERAL LIABILITY				EACH OCCURRENCE		
	COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)		
	CLAIMS MADE				MED EXP (Any one person)		
	OCCURRENCE				PERSONAL & ADV INJURY		
					GENERAL AGGREGATE		
	GENERAL AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COM/OP AGG		
	POLICY						
	PROJECT						
	LOC						
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT		
	ANY AUTO				(Each Accident)		
	ALL OWNED AUTOS				BODILY INJURY		
	SCHEDULED AUTOS				(Per Person)		
	HIRED AUTOS				BODILY INJURY		
	NON-OWNED AUTOS				(Per Accident)		
					PROPERTY DAMAGE		
					(Per Accident)		
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STAT. LIMITS - OTHER ____		Statutory
					E.L. EACH ACCIDENT		
					E.L. DISEASE - EACH EMPLOYEE		
					E.L. DISEASE - POLICY LIMIT		
	PROPERTY						
	OTHER						
DESCRIPTION OF OPERATION / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISION							
CERTIFICATE HOLDER		ADDITIONAL INSURED: _____ INSURED LETTER: _____		CANCELLATION			
				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.			
				AUTHORIZED REPRESENTATIVE			

ACORD 26-3 (7/87)

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ACCA680

fdh/schools/coi/JIF Certificate of Insurance Blank Form.xls

Certificate of Insurance - Top Section

Reading a Certificate of Insurance Top Section or Who?

ACORD ™		CERTIFICATE OF LIABILITY INSURANCE		Date (MM/DD/YYYY) Date created.	
PRODUCER 856-445-9133 This is the insurance agency that placed the insurance for the insured.		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED This is the company or person who is insured and from whom you seek evidence of insurance. Attention:		INSURERS AFFORDING COVERAGE			
		INSURER A: Name of Insurance Company that corresponds to			
		INSURER B: the letter shown to the left of the type of			
		INSURER C: insurance below.			
		INSURER D:			
		INSURER E:			
COVERAGES THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INSURANCE TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY				EACH OCCURRENCE
	COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)
	CLAIMS MADE				MED EXP (Any one person)
	OCCURRENCE				PERSONAL & ADV INJURY
	GENERAL AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE
	POLICY				PRODUCTS - COMPI/OP AGG
	PROJECT				
	LOC				

Certificate of Insurance – Difference between Evidence for one Day and Evidence for the Policy Period

Reading a Certificate of Insurance Is it really protection?

ACORD ™		CERTIFICATE OF LIABILITY INSURANCE		Date (MM/DD/YYYY)	
PRODUCER 856-445-9133		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			



THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

Only an Endorsement to an Actual Policy naming the District as an Additional Insured contractually extends an Insurance Policy.

Reading a Certificate of Insurance Middle Section or What Coverages?

COVERAGES

COVERAGES	
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.	
INSR LTR	POLICY NUMBER
GENERAL LIABILITY	
COMMERCIAL GENERAL LIABILITY	
CLAIMS MADE	
OCCURRENCE	
GENERAL AGGREGATE LIMIT APPLIES PER:	
POLICY	
PROJECT	
LOC	
AUTOMOBILE LIABILITY	
ANY AUTO	
ALL OWNED AUTOS	
SCHEDULED AUTOS	
HIRE AUTOS	
NON-OWNED AUTOS	
WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY	
PROPERTY	
OTHER	

COVERAGES			
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.			
INSR LTR	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)
GENERAL LIABILITY			
COMMERCIAL GENERAL LIABILITY			
CLAIMS MADE			
OCCURRENCE			
GENERAL AGGREGATE LIMIT APPLIES PER:			
POLICY			
PROJECT			
LOC			
AUTOMOBILE LIABILITY			
ANY AUTO			
ALL OWNED AUTOS			
SCHEDULED AUTOS			
HIRE AUTOS			
NON-OWNED AUTOS			
WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY			
PROPERTY			
OTHER			

DESCRIPTION OF OPERATION / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISION

Description of the service, activity, event or property being insured. This should accurately describe the relationship.

LIMITS

If an event, the description box should include the date(s).

If leased equipment/vehicle(s), the description box should include the lease number, description of leased equipment and the total value of the leased equipment

If New Jersey School Development Authority, the description box should include the project number, total project value and a brief description of the project.

Certificate of Insurance – Bottom Section

Reading the Bottom of a Certificate of Insurance (Required of a Third Party for the Benefit of the District)

CERTIFICATE HOLDER	ADDITIONAL INSURED: _____ INSURED LETTER: _____	CANCELLATION
This is where your District's name and address should appear and be 100% correct.		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
		AUTHORIZED REPRESENTATIVE This must be signed.

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If you have required that the District be named Additional Insured, the box on the left will be checked with an Insurer letter entered in the box to the right. You need to check that this is checked and the Insurer letter corresponds to the coverage you required you be named additional insured in.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

These are required of all contract vendors, people and organizations using district facilities. These should also be a formal part of every lead agency agreement where another organization under a lead agency relationship is securing goods and/or services on behalf of the district.

Certificate of Insurance – Bottom Section

Reading the Bottom of a Certificate of Insurance
(Required of the District by a Third Party)

<p>CERTIFICATE HOLDER</p> <p>ADDITIONAL INSURED _____ INSURED LETTER _____</p> <p>This is where the Third Party's name and address should appear and be 100% correct.</p> <p><small>ACORD 25-3 (1/87)</small></p>	<p>CANCELLATION</p> <p><small>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.</small></p> <p>AUTHORIZED REPRESENTATIVE</p> <p>This must be signed.</p> <p><small>Copyright ACORD CORPORATION 1988</small></p>
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If you are required to name the Third Party Additional Insured, the box on the left will be checked with an Insurer letter entered in the box to the right. You need to check that this is checked and the Insurer letter corresponds to the coverage you are required to name the Third Party additional insured in.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

These are required of districts by other districts where you are using their facilities, leasing companies, banks, municipalities where you are using their property or assets and private landowners whose assets you use.

IX. USE OF FACILITIES – SCHOOL PERSONNEL

Districts have inquired about the liability associated with school employees using school facilities and equipment for personal use before or after their work day. Some districts have employees who meet after school and use school facilities for exercise classes, recreational activities, etc.

In order to better protect your district and the JIF from the liability of a loss due to an injury incurred during one of these activities, the JIF recommends districts implement the following:

1. Never allow individuals or organized groups to use your facilities without permission. Use of school facilities by employees should be a part of your Use of School Facilities policy and regulations.
2. Since employees will generally not have a certificate of insurance for these activities, every employee who uses school facilities for personal use, should be required to sign a document acknowledging the use is personal and not an employment and consider adding a waiver of liability and covenant not to bring suit.

It has been suggested that all new employees sign such a document when they are first employed so that they are aware of this throughout their employment.

Various samples are included in this guideline but any form approved by a District must first have formal approval by the district's Solicitor.

You should consider reviewing this matter with your superintendent and/or Board before implementing.

X. BEWARE THE AIA CONTRACT – WAIVER OF SUBROGATION

The AIA Standard Form of Contract was written by architects to define relationships between the many parties associated with construction projects. It is the form of contract all architects use as the base contract form for writing a contract. It can be modified. All parties to the contract can suggest alteration but the party with the most clout at the bargaining table is the project owner. Please know that you can and should alter this base contract.

The contract has many different sections with risk management spread out in more than just the insurance section. Examining the insurance section alone will not provide a full picture of risk and due to other clauses in other sections will not define how insurance will really work in the event of loss. A thorough examination of all sections is required to fully understand duties and risk but an acute examination to discover and root out all clauses related to **the requirement for the Owner to *waive subrogation rights* no matter how or where stated must be eliminated..**

To understand the reasons for this consider a roof replacement project. You pay someone to replace your roof and take all safety precautions necessary to ensure the roof is closed up during weather so that no flooding occurs. Rain comes; the roof is exposed and floods your administration building resulting in a \$400,000.00 loss. You report it to the JIF and we get it fixed at our cost. The JIF subrogates against the contractor to recover the costs and they deny liability because you signed an AIA contract form that waived your (by extension your JIF's) right to seek a subrogation recovery.

Please refer to the following information to guide you in managing the AIA relationships.

AIA Relationship Management - Examining the AIA Documents

General Perspective and Concerns

School districts that are contemplating construction projects must first contemplate and make changes to the various AIA Standard Forms of Agreement (contracts) that will be presented to them throughout the process. These documents are written and periodically rewritten by the American Institute of Architects on behalf of the membership. They are written to protect the profession and are used by architects in all construction contracts. There are elements of the forms used for public work that place public body “Owners” at unreasonable risk of financial loss. We strongly recommend each Standard Form of Agreement be thoroughly reviewed by the District and its Solicitor before acceptance as final agreements to be used in contracting for architectural, design and management services, before any RFP contracts are released for bid purposes and before any final contracts are signed with selected contractors.

Below is a list of language in clauses that place unreasonable risk on Owners.

- Waiver of Subrogation
- Waiver of Consequential Damages
- Dispute Resolution
- Insurance Requirements

Below is a list of AIA forms that must be thoroughly reviewed each and every project by districts and their solicitors.

- AIA Document B101™-2017 – Standard Form of Agreement Between Owner and Architect
- AIA Document A101™-2017 – Standard Form of Agreement Between Owner and Contractor
- AIA Document A201™-2017 – General Conditions of the Contract for Construction
- AIA Document A103™-2017 – “Exhibit A” Insurance and Bonds

Considerations and recommendations on hiring an Architect

Districts usually pursue construction projects in one of two ways. Some districts annually appoint an “Architect of Record” to manage each and every construction project in process and/or anticipated, or they conduct an RFP to hire an architect on an as needed basis in advance of each new project. Regardless of the method, each district must evaluate the contract they are considering in advance, which is likely provided by an architect and is the AIA Document B101™-2017 - Standard Form of Agreement Between Owner and Architect.

We recommend the following amendments to AIA Document B101™-2017 - Standard Form of Agreement Between Owner and Architect.

1. Delete Section 8.1.2 in its entirety. This section involves a waiver of subrogation that is unreasonable.
2. Delete Section 8.1.3 in its entirety. This section involves a waiver of consequential damages that is unreasonable.
3. Delete the language in Section 8.2.2 outlining Mediation and dispute resolution procedures with the language below.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1.2. To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201- 2017, General Conditions of the Contract for Construction. The Owner or the Architect as appropriate shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

New language for § 8.2.2. –

"The Owner and Architect shall endeavor to resolve claims, disputes, and other matters in question between them by mediation. The Mediator shall be appointed jointly by the parties and the fees of the Mediator shall be evenly split between the parties. If the parties are unable to reach agreement on the selection of a Mediator, the parties shall then make joint application to the Assignment Judge of the county where the Owner's principal place of business is for the appointment of a Mediator by the court."

"For any dispute not resolved by mediation, the final method of binding dispute resolution shall be by binding arbitration with a single arbitrator designated in the same manner provided for appointment of a Mediator in paragraph 8.2.2."

Considerations and recommendations in managing the bid process.

The typical process is a preliminary architectural rendering and estimate used for a bond referendum campaign. This is followed by the referendum passing which triggers final plans and bid specifications and recommended contracts. ***It is essential at this point that you do the following.***

1. Make certain you receive the following draft Agreements.
 - a. AIA Document A101™ -2017 – Standard Form of Agreement Between Owner and Contractor
 - i. Delete the language in Article 6, Dispute Resolution and replace it with the following:

"The Owner and Contractor shall endeavor to resolve claims, disputes, and other matters in question between them by mediation. The Mediator shall be appointed jointly by the parties and the fees of the Mediator shall be evenly split between the parties. If the parties are unable to reach agreement on the selection of a Mediator, the parties shall then make joint application to the Assignment Judge of the county where the Owner's principal place of business is for the appointment of a Mediator by the court."

"For any dispute not resolved by mediation, the final method of binding dispute resolution shall be by binding arbitration with a single arbitrator designated in the same manner provided for appointment of a Mediator in the preceding paragraph."
 - b. AIA Document A201™ -2017 – General Conditions of the Contract for Construction
 - i. The General Conditions are contained in a separate document which may or may not be submitted to you for review by the Architect.

- ii. If you don't have them request them immediately and do nothing more until you have them.
- iii. Changes Need Are;
 - 1. Section 6.1.1 of the General Conditions covers the Owner's right to engage as many separate contractors on the job site as it chooses. The language also obligates the Owner to conform to all of the separate contracts to these General Conditions and has a comment at the end that this obligation shall include subrogation waivers.
 - 2. *First change: at the end of Section 6.1.1 delete the words, "and waiver of subrogation."*
 - 3. *Second change: Section 9.10.4 provides that "The making of final payment shall constitute a waiver of Claims by the Owner..." Delete Section 9.10.4 in its entirety.*
 - 4. *Third change: Section 11.3.1 provides for waiver of subrogation. Delete Section 11.3.1 in its entirety.*
 - 5. *Fourth change: Section 11.3.2 provides waiver of claims for damages to Owner property adjacent to the work site. Delete Section 11.3.2 in its entirety.*
 - 6. *Fifth change: Section 11.4 provides that Owner waives all claims for loss of use of its property. Delete Section 11.4 in its entirety.*
 - 7. *Sixth change: Section 15.1.7 provides for the Owner to waive all claims for consequential damages. Delete Section 15.1.7 in its entirety.*

c. AIA Document A103 TM-2017 – "Exhibit A" Insurance and Bonds

- 2. Send all contracts, this review and the AIA Power Point (attached) to your Solicitor for review.
- 3. Send the Exhibit A Bonds and Insurance requirements to your RMC for review and completion.

**Please see the AIA Presentation provided by Louis J. Greco, Esquire at the SPELL JIF Joint Retreat September 27, 2019, which is attached as an appendix and posted on spelljif.com.*

Pollution Insurance Considerations

Every project must be evaluated for the risk of a pollution event. This can be as clear as an asbestos removal project or as murky as a roof or flooring replacement where the possibility of disturbing materials with asbestos is possible. It can include risk associated with fuel spills from vehicles travelling on the site and fueling stations left on site, to inadvertent releases of

pollutants in tanks and vessels buried and hiding underground that are not known to the district. The risk must be evaluated.

SPELL JIF has been group purchasing a pollution policy since 1996 following the inclusion of the absolute pollution exclusion in general liability policy forms. These policies have grown restrictive over the years and it is standard that they include an Exclusion for Asbestos & Lead in the policy form that would preclude cleanup costs for having to abate asbestos and lead. The best one can expect is an exclusion give-back for third-party claims for bodily injury and property damage, as well as associated legal expenses, arising from exposure to asbestos and lead. This will only provide third party claim response and will not provide any money for the cleanup nor will it provide any coverage for any contractor.

Your evaluation should determine known pollution and possible pollution hazards in the project. Whether known or possible, you should consider three actions.

1. Include a project-specific Contractor's Pollution Liability policy with a sufficient limit to cover evaluated exposure to Exhibit A Bonds and Insurance requirements requiring the District be named additional insured.
2. Delete Sections 10.3.3 and 10.3.6. The District must not absorb this liability on behalf of the contractors/s.
3. Delete Section 4.3 as it limits the amount of money available as an "Allowance for Unforeseen Conditions." If used this section makes pollution issues a prefunded amount paid by the District.

This is a critical process that must be considered at project conception and made part of the earliest discussions in district with your architect and solicitor. It must be a part of the Bid Package and you must be prepared to negotiate the optimum methodology of managing the risk with the contractor/s you select. If you haven't addressed it in your Bid Specifications, you will have a significant disadvantage in trying to negotiate it in after award. Pollution is not easily insured and always limited within insurance. It is always expensive and without a careful thoughtful approach could easily end up derailing a project and causing significant financial problems for every party involved.

XI. CONSULTANT/PROVIDER REFUSING TO OWN A WORKERS' COMPENSATION POLICY

New Jersey law requires that corporations must carry workers' compensation on all employees including the officers of the company. An LLC member can opt out of coverage but only if all members opt out. A sole proprietor or a partner in a partnership can opt out of coverage. While individual members, partners or proprietors can opt out they must carry the coverage for any employees that they may have.

It is clear that every person is required to own a workers' compensation policy unless an individual or organization has qualified as a self-insurer as defined in New Jersey law or is permitted to Opt Out of coverage per the rules above. The official Opt Out FORM PP-1B is attached. If a contractor has advised he or she has opted out obtain a copy of this completed form for your records.

The risk is that if such a person is injured while performing services for the district, the person may sue the District for workers' compensation benefits under New Jersey law or sue the district for civil liability if negligence is possibly involved. To prevent being responsible in workers compensation, we will depend upon you having a copy of the signed opt out form on file and a signed, dated waiver as shown below.

The SPELL JIF recommends that independent individuals not be permitted to provide services unless they have proof of workers' compensation in force and proof of all other insurances required in the SPELL JIF Third Party Risk Management Guide for the category of business services they provide. Permitting service providers to avoid the cost of workers compensation insurance exposes the district and the JIF to risk that is unacceptable.

Should a member district choose to ignore this risk and use a vendor without workers' compensation we recommend that only be done when the vendor fits in one of the narrow categories permitting a person to opt out of coverage and only if the district and its solicitor have reviewed and edited the draft waiver provided herein and require the person to sign the modified waiver and provide a copy of the State opt out form that the person signed.

NEW JERSEY
NOTICE OF ELECTION - PROPRIETORS AND PARTNERS
WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

The New Jersey Workers' Compensation Law was amended effective April 13, 2000. The amendment permits election by a self-employed person or partners of any partnership including partners of a limited liability partnership and members of a limited liability company actively performing services on behalf of the business to be deemed employees for the purpose of receipt of benefits and the payment of premiums. This election does not affect the insurance obligations for employees other than the self-employed person, partners or members.

The election must be made at the time the policy is purchased or renewed and must be effective at the inception date of the policy. It is important to note that the election cannot be rescinded during the policy period and that in the case of any partnership including a limited liability partnership or limited liability company, **ALL** of the partners or **ALL** of the members must elect the coverage. You will be required to pay a premium based on the remuneration and duties of the self-employed person or each partner or each member.

The insurer or insurance producer shall not be liable in an action for damages on account of the failure of a business, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for a self-employed person, limited liability partner, limited liability company member or partner, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act of commission or omission.

Whether electing or rejecting coverage, it will be necessary to complete all of the information requested below. This completed form must then be returned to the insurer/producer. A copy of this Notice and proof of mailing should be retained for your records. If you received this form in relation to a renewal of insurance, and fail to execute and return it to the insurer/producer, coverage will continue as per the expiring policy.

NAME OF BUSINESS _____			Always complete this section
COVERAGE IS ELECTED _____ COVERAGE IS REJECTED _____ <div style="display: inline-block; vertical-align: middle; text-align: center;"> BUSINESS IS A CORPORATION OR OTHER FORM OF ORGANIZATION _____ </div>			

Name(s) of Proprietor or ALL Partners (please print)	Estimated Annual Wage	Duties	Complete this section only when coverage is elected
1. _____	_____	_____	
2. _____	_____	_____	
3. _____	_____	_____	
4. _____	_____	_____	
5. _____	_____	_____	
6. _____	_____	_____	

Signature: _____	Date: _____	Always complete this section
Proprietor or a Partner		

Singular Service Provider/Consultant
Refusing to Own a Workers' Compensation Policy
Waiver and Indemnification Agreement

I, (type in full name of individual and organization name, if any), recognize that I don't own a Workers' Compensation Policy and am not a qualified self-insurer for the purposes of providing workers' compensation benefits in the State of New Jersey. I further warrant that I have elected not to provide myself workers' compensation benefits as is permissible in NJ law and have attached a signed dated copy of my opt out election. I agree in advance that I am not an employee of the (type in the full name of the District), herein after referred to as "District", and waive any and all rights to workers' compensation benefits due an employee of the District following a traumatic injury or occupational illness.

I agree to provide all other insurances the District has required me to have. I agree to hold the District harmless for any and all accidents and causes of actions that result in an injury to my person or a claim against me personally and/or against my trade or company name for all actions of any kind when the proximate cause of the claim is my negligence. I further agree, to cooperate with the District and its insurance carriers in all other claims where negligence is uncertain.

Signed this day of , 20 . By: _____
(Underline with name of individual and organization name, if any)

XII. SAMPLE AGREEMENTS

To help members craft waivers, acknowledgements, indemnity and hold harmless agreements, SPELL JIF provides Risk Transfer Sample Agreements as a tab in the member's only section of the website.

www.spelljif.com – member login see Sample Agreements

They are Word documents permitting download by members for use in crafting agreements locally. They are provided as a starting point for the member to use in crafting agreements for managing risks associated with third party relationships. SPELL JIF is an insurance and risk management organization providing solid advice and guidance to members on managing risk to conserve limited resources but it is not a source of legal advice on district management. Legal advice must come from each member district's appointed Solicitor who is expert on legally managing a public school district.

All final contract requirements and risk management instruments such as waivers, releases, acknowledgements, indemnification and hold harmless agreements must flow through your solicitor.