

TO: Members of the Policy Council
FROM: Roberta Spencer
RE: Workers' Compensation Insurance and Contract with University at Albany
DATE: June 29, 2010

Summary: Workers' Compensation Insurance and Contract with University at Albany:

- The 2010 UAlbany annual contract renewal identified insurance requirement for Workers' Compensation, we were granted a waiver in 2010.
- 2011 proof of insurance will be mandatory for contract compliance
- PC Meeting minutes must reflect insurance decision: See ACTION ITEM near the bottom of this message.
- Application paperwork will include input from members of the Policy Council.
- Additionally, there is a related insurance recommendation for liability insurance.

An issue came up while renewing our 2010 annual contract with the University at Albany. The University at Albany's budget is under the State of New York's budget, consequently, our contract is reviewed and signed at the Office of the State Comptroller (OSC). We were advised through the University that an existing NYS rule that has been "on the book" for years but never enforced regarding "borrowed employees" being covered by Workers' Compensation Insurance, is being enforced. Workers' Compensation Insurance would cover an employee who is hurt on the job.

Our annual contract includes a Standard Contract Clause, State University of New York, Exhibit A:

Article 4: Workers' Compensation Benefits. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

Our paid staff, regardless of the location and employment mechanisms, works at the discretion and pleasure of the System Dynamics Society. The Society has retained the services of a lawyer, who advises, that as long as the Society directs staff work, we need to purchase Workers' Compensation Insurance. It seems the Society cannot have a contract with the University at Albany without this insurance coverage.

Recommendation is to purchase a policy immediately. Our Workers' Compensation policy can EXCLUDE unpaid officers and independent contractors. Rough estimates range from \$1000 per year for our office staff, and \$5000 per year if unsalaried executive officers are included. The lawyer has recommended that unpaid officers and independent contractors be excluded.

The System Dynamics Society is a not-for-profit that exists under the rules of the State of New York (and the Commonwealth of Massachusetts). For our policy to exclude unsalaried executive officers from this insurance, we must

1. have it in the minutes that the Society's Policy Council takes such action electing to exclude coverage for unsalaried executive officers, and
2. collect some information about each Policy Council member. (This is not personal financial information, but related to your workplace and ownership if any. More information will follow.)

Please find attached a motion that was drafted by Jeffrey L. Zimring, Attorney at Law.

ACTION ITEM: Please review the draft motion (pasted below) and send back any questions or comments as soon as possible so that we can get answers to all questions and so that this can be acted on at the Policy Council Meeting in Seoul.

We will be preparing our 2011 annual contract with the University at Albany in September of this year. From the information I have, this policy must be in place before we can submit our contract.

While going through this process with the attorney, he also advised that the Society carry liability insurance. We are looking into these options. Insurance issues were reviewed at the March 2003 Policy Council Meeting, the previous report is located at:

<http://www.systemdynamics.org/SDS%20PC%20Web/InsuranceIssues.pdf>

Thanks. Best, Roberta

Motion Regarding Workers' Compensation Insurance

WHEREAS, the System Dynamics Society, Inc. (the "Society") has a contract with the University at Albany (the "University") regarding the employment of the Society's staff and use of office space owned by the University; and

WHEREAS, the Society's contract with the University requires the Society to maintain an appropriate workers' compensation insurance policy for the employees of the Society (even though such employees are paid by the University pursuant to said contract); and

WHEREAS, the New York Worker's Compensation Law requires that full-time and part-time employees whose work is directed by and are subject to hiring and firing by the Society and its Policy Council are required to be covered by a workers' compensation insurance policy acceptable to the New York State Workers' Compensation Board; and

WHEREAS, the Workers' Compensation Law allows, but does not require, an employer to exempt volunteer members of a governing or policy board as well as independent contractors from coverage under a workers' compensation insurance policy.

AFTER DUE DELIBERATION by the Policy Council of the System Dynamics Society, Inc., at a meeting held by said Council on the 25th day of July, 2010, it is hereby

RESOLVED, that the Executive Director of the Society shall obtain a workers' compensation insurance policy acceptable to the New York Workers' Compensation Board for the benefit of the Society's staff at the Society's office on the campus of the University of Albany; and it is further

RESOLVED, that the Policy Council of the Society elects to exempt the current and future members of the Policy Council of the Society from coverage under such workers' compensation insurance policy; and it is further

RESOLVED, that independent contractors, as that term is understood with respect to the United States Internal Revenue Code, the New York Tax Law, and the New York Workers' Compensation Law shall not be included within the coverage of the aforementioned workers' compensation insurance policy unless the relationship between the Society and such independent contractors changes to the extent that such independent contractors cannot be considered an independent contractor; and it is further

RESOLVED, that the Executive Director of the Society shall collect any information necessary to identify individuals exempt from coverage under a workers' compensation insurance policy and to complete any required application for a workers' compensation insurance policy from the members of the Policy Council of the Society, the employees of the Society, and any independent contractors doing business with the Society; and it is further

RESOLVED, that the Executive Director of the Society shall, from time to time, update and amend as necessary the information provided to the Workers' Compensation Board and the insurance carrier providing the Society a workers' compensation insurance policy as members of the Policy Council of the Society are added and/or removed (whether because of the expiration of the member's term or for some other reason); and it is further

RESOLVED, that the Executive Director of the Society shall comply with all requirements of the Workers' Compensation Law and the Workers' Compensation Board regarding notice to covered employees, notices to the Society's workers' compensation insurance carrier, and any claims that may arise with respect to the workers' compensation employee policy.

Motion by:

Print: _____

Seconded by:

Print: _____