

## **Risk Pools and Texas School Districts**

Risk Pools have been providing schools and colleges in Texas with focused, adequate protection for many years, but recent failures to pay claims requires a closer investigation before risking public funds.

In 2015 the Illinois' Worker's Compensation School Insurance Trust (WCSIT, a risk pool) had a deficit of \$6.2 million according to the Insurance Department. Close to 200 districts are "on the hook" for about \$9 million. (Chicago Tribune, May 1, 2014) In Kentucky a school board trust had a \$50-60 million deficit, with some districts responsible for up to \$1 million. (Richmond Register, Jan 14, 2013)

Texas has seen at least three risk pools go defunct in the past, leaving public entities with assessments, outstanding claims and premiums that were paid in advance. In 2017, TAPS filed bankruptcy, leaving claims unpaid and requiring member assessments. That bankruptcy has not yet been settled.

Because of the devastating hurricane, hail and tornados, Texas risk pools have had to dramatically increase pricing and deductibles. Some face eminent bankruptcy. One pool is advising districts that claims will be paid 1) when new premium is received, 2) over three years or 3) if the district would take out a loan on which the pool would make the payments (will they?). That same pool is 1) requesting contractors to take out loans on which the pool would make the payments, 2) being sued by districts for failure to pay claims, 3) withholding re-insurer funds for payment of claims. Other pools are also facing law suits.

The minimum capital requirement to form an insurance company in Texas is \$2,500,000 of paid-in-surplus and \$2,500,000 in capital stock. Few Texas risk pools comply with that requirement. While some pools show a reserve for incurred claims that have not yet been reported, few show a reserve for future claims. Claims should be paid from funds already collected.

*Insurance Law and Regulation 7th ed:* "The first virtue of any insurance company is solvency....No matter how attractive the terms and price of a policy, it is worthless if the insurer is not around to pay losses when they occur. In fact, from this perspective low premiums are not a virtue at all. The less an insurer charges for coverage, the less likely it is that the insurer will be able to pay claims when losses occur."

### **Risk Pool Managers Bear NO RISK**

Risk pools are nothing more than mutual insurance companies; at one time public entities were not allowed to purchase from mutual companies. If a risk pool is profitable, the members get the advantage of reduced rates. But if the pool is unprofitable, the MEMBER DISTRICTS may be faced with assessments (additional contributions) regardless of what they tell you. No insurance company or stock stands behind these pools except reinsurance above high retentions (deductibles). The managers and the agents bear no risk – only the members.

The reinsurance structure and insurance company solvency is also important to ascertain. Too high of Hail claim retention forced TAPS into bankruptcy.

### **Many Formed to Circumvent the Bid Laws (44.031)**

Additionally, some risk pools are using interlocal agreements in an effort to "beat" the bid laws. There is a lot of work and some risk for a school to prepare an RFP for insurance. Entities try to avoid it, and they can do so by participating in an Interlocal Agreement. Interlocals were designed to take advantage of group purchasing, but the advantages of group purchasing are diminished when purchasing insurance. Sure, the coverage may be better designed for the members of the group, but the price is not necessarily lower. Every district should have a bidding procedure in place.

### **No Oversight**

Interlocal risk pools are not subject to oversight by Texas Department of Insurance or any other state department, and are not required to submit financial reports. Hence, some risk pools provide no financial data to its members, its owners, even though the funds belong to the members. Who would invest in a company without seeing financials? There is no A.M. Best rating, no S & P rating. Risk pools are not subject to the Texas Insurance

Guaranty Fund (\$300,000). The funds at risk belong to the taxpayers of the State of Texas. We currently are doing nothing to protect those funds.

### No Professional Liability insurance

Local independent agents typically purchase their Professional Liability (Errors & Omissions) insurance through the Independent Insurance Agents of Texas. The insurer for that program does not provide coverage if the insurance companies that the agents represent become insolvent and have an A.M. Best rating lower than B+. This includes non-rated insurance companies and risk pools.

### How can a superintendent or school board, as fiduciaries of taxpayer funds, jeopardize a district's assets by participating in a risk pool, when they have no idea as to the pool's financial ability to pay losses?

Short of oversight, the State of Texas needs to at least require that audited financial statements with reinsurance information be provided to their members, before TAPS happens again.

### Texas School Risk Pools

Risk Pool Name	Known As	Member Equity	Audit Year	Notes
Texas Association of School Boards Risk Management Fund	TASB	\$203,523,084	2019	From \$255,301,326 for 2014
Deep East Texas Self Insurance Fund	DETSIF	\$27,350,658	2019	Small decline from 2017
Texas Political Subdivisions Joint Self-Insurance Funds	TPS	\$6,411,637 \$1,447,505	2019 2019	PC Pool WC Pool
Property Casualty Alliance of Texas	PCAT	\$6,074,701 <b>Does not provide Financials</b>	<b>2015</b>	\$16,091,399 for 2010 \$3,000,000 verbal for 2018
Worker's Compensation Solutions	WCS	\$3,479,167 <b>Does not provide Financials</b>	<b>2016</b>	WC Pool
Public Educators Association of Texas	PEAT	\$83,438	<b>2018</b>	PC Pool
<b>Texas Association of Public Schools Property &amp; Liability Fund</b>	<b>TAPS</b>	<b>-\$1,892,293</b>	<b>2016</b>	<b>Bankrupt Sept 2017</b>
Creative Risk Funding (cannot find a web site)	School Comp	<b>Does not provide Financials</b>		Pool Call Assessment in Past
Claims Administrative Services	CAS	<b>Does not provide Financials</b>		Assessment for Shared Claims
Coastal Property Alliance of Texas	CPAT	<b>Does not provide Financials</b>		Shared Limits
Regional Pool Alliance (cannot find a web site)	Alliance	<b>Does not provide Financials</b>		Shared Limits
West Texas Rural Counties Assn Risk Pool (insures coastal schools in same pool as above)	West Texas Counties	<b>Does not provide Financials</b>		Non renewing schools in 2018
Texas Schools Property & Casualty Coop > Texas Rural Education Assn	TREA (TSPCC)	<b>Does not provide Financials#</b>	<b>2008</b>	Assessment 2014 – 15%. Claims are paid in installments. Suits