



Capistrano Unified Education Association

May 19, 2009

Capistrano Unified School District Board of Trustees
33122 Valle Road
San Juan Capistrano, CA 92675

Dear Madam President:

At the May 11, 2009, CUSD School Board meeting, the Board voted to award the Insurance Broker Services for Excess Worker's Compensation to Keenan Associates instead of awarding the contract to Marsh USA, Inc., the first choice of the committee that was assigned to rank the proposals using standardized criteria.

Trustee Bryson brought forward information that Marsh USA, Inc. had been sued by the state of Connecticut, and that Marsh, as well as several other companies, had engaged in alleged bid rigging, price fixing and illegally steering business to favored insurers in exchange for millions of dollars in undisclosed kickbacks. She argued that CUSD should not do business with Marsh and her argument was so compelling that the other Trustees granted the contract to Keenan and Associates – the number two choice of the committee.

The purpose of this letter is to bring to your attention three issues regarding the Board's actions in this matter: 1) information regarding a similar lawsuit against Keenan and Associates; 2) the importance of using objective criteria in the evaluation of proposals for contracting services; and 3) the appearance of impropriety in the award of the bid to Keenan and Associates.

Keenan Lawsuit If the Trustees are going to use lawsuits that show serious allegations of misconduct as a criteria in selection, then the contract for Workman's Compensation Services *must immediately be withdrawn* from Keenan Associates as they, too, are being sued by the County Santa Clara, the San Francisco Unified School District, San Francisco Community College District, Tuolumne Joint Powers Authority, and behalf of the people of California.

This class action lawsuit filed back in 2004 was brought against Driver Alliant, Keenan and Associates, and Marsh and McLennan. The Plaintiffs, Santa Clara County, have alleged that Keenan, and the others named in the suit, have "used their positions of trust with their clients to obtain kick backs, improper fees, and benefits at the expense of their clients." Specifically to Keenan, the lawsuit addresses, "Keenan represents its Code of Ethics – that Keenan will be 'fair and truthful' in its relations to clients, and that Keenan

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will act as an 'exemplary citizen in the communities' it serves – are undermined by Keenan's acceptance of undisclosed contingent commissions and kickbacks in exchange for steering clients to favored insurers... In an effort to divert scrutiny of these practices, Keenan engages in a practice that it calls "Keenanizing" clients and potential clients by offering lavish trips and perks – ultimately at plaintiffs' and class members' own expense through higher premiums – for those who accept brokerage services from Keenan."

Companies such as Keenan, as stated in the lawsuit, "owe numerous fiduciary and other duties to plaintiffs, including the following:

- (a) The duty of loyalty and candor;
- (b) The duty of due care;
- (c) The duty of full and fair disclosure, including the duty to fully and fairly disclose the source, nature and amount of all compensation and profits they receive in connection with insurance purchased by plaintiffs and class members; and
- (d) The duty of good faith and fair dealing to provide impartial advice in connection with any insurance related products purchased by their clients or services rendered by defendants – including to find superior coverage at the lowest price."

The lawsuit goes on to say, "Defendants breach each of these duties by accepting contingent commissions, overrides and other kickbacks, and engaging in bid-rigging activities in exchange for steering plaintiffs and class members to purchase insurance from those insurers offering the kickbacks and seeking to minimize claim payments. Defendants are, in fact, paid at both ends of the transaction, in other words, defendants charge plaintiffs and class members a brokerage fee at the same time they accept compensation in the form of undisclosed commissions."

Most troubling is Keenan's response to this lawsuit. Not only do they not deny that they had received this referred compensation, but more importantly they plead that "No fiduciary relationship exists between an insurance broker and its client." Apparently, Keenan assumes no responsibility for transparency in their business dealings with their clients.

So significant was this lawsuit that it spurred Assemblyman Jose Solorio to author AB 2589 "after recent lawsuits involving public entities revealed that in some cases, unscrupulous healthcare insurance brokers contracted with certain providers based on large undisclosed commissions rather than contracting with a provider based on the best and most affordable coverage." The background of this bill that references broker abuses speaks to not only the New York lawsuit but the Santa Clara County lawsuit referenced above as well.

Objective criteria for evaluation of bids The second issue of concern is the fidelity to which CUSD maintains an objective bidding process. Companies that submit bids to CUSD, should be aware of what criteria they are going to be judged on and this criteria needs to be equally applied to all. In this instance, an additional criteria was brought up

by a Trustee during the meeting. Instead of referring all of the bids back to be evaluated on this new criteria, Trustees made a decision based on incomplete information.

According to the CUSD Board Policy 9271 (b) that speaks to the Code of Ethics for Trustees, each Board member shall:

Devote sufficient time, thought and study to proposed actions so as to be able to base decisions upon all available facts and vote in accordance with honest convictions, unswayed by partisan bias of any kind.

Appearance of impropriety in the award of the bid to Keenan And lastly, I want to draw the Board's attention that their actions on May 11, 2009, raises suspicions regarding the propriety of awarding the bid to Keenan and Associates. Each company in this process was given a set of criteria upon which to be evaluated. Each company was then graded by the committee on the fulfillment of this criteria. That a new criteria, unequally applied, was used as the *overriding* criteria for selection raises grave concerns, especially in the light of the fact that in October of 2008, the Committee to Reform CUSD received a political donation of \$1,000 from John Stephens, Senior Vice President, Property and Casualty, Keenan and Associates of San Clemente. The Committee to Reform CUSD actively campaigned for all seven trustees, and paid for various campaign flyers for four trustees in the November 2008 CUSD School Board election.

Even the *mere appearance* of potential conflict of interest between Keenan and Associates and the trustees does not bode well for the trustees's decision in this matter. As Trustee Winsten stated during the school board campaign on October 26, 2008, CUSD should, "Draft and adopt a more stringent Conflict of Interest Code that sets standards far greater than the sham standards set by state law, that ensures there are no more cozy hidden relationship involving sole source contracts for years and decades, between CUSD vendors and Administrators." CUEA agrees that Trustees must maintain very high standards in order to avoid conflicts of interest.

In light of the new information I have shared in the letter, and in light of the appearance of impropriety regarding the selection of Keenan and Associates, I ask the CUSD Board of Trustees to rescind the contract offer to Keenan and Associates for the Insurance Broker Services for Excess Worker's Compensation. Additionally, I suggest that to maintain an objective selection process, the board either revise the criteria to be used to evaluate insurance proposals for Workers Compensation and thus repeat the process anew, or accept the original committee's recommendation.

Thank you for your attention to this very important matter.

Sincerely,



Vicki Soderberg, President, CUEA

Attachments: copy of lawsuit; copy of legislation; copy of FPPC form