

**MINUTES OF THE CALLED MEETING OF THE  
JEFFERSON COUNTY BOARD OF SCHOOL COMMISSIONERS  
APRIL 2, 2018 – 8:00 P.M.  
PATRIOT ACADEMY**

**CALL TO ORDER**

Chairman Jim Vines called the meeting to order and then asked everyone to stand for a moment of silence. Board members present Chairman Jim Vines, Vice Chairman Bill Jarnigan, Dusty Cox, Maurice Solomon, Anne Marie Potts, Randall Bradley and Denise Fair. Sherry Finchum, Interim Director of Schools and Secretary to the Board, was also present.

**PLEDGE OF ALLEGIANCE**

Chairman Vines led the audience in the Pledge of Allegiance.

**BUSINESS ITEMS**

1. Director of Schools Appointment

Prior to the called meeting, interviews were conducted for the position of Director of Schools beginning at 5:00 p.m. at the Patriot Academy. The three (3) finalists interviewed were Mark Garrett, Dr. Shane Johnston and Dr. Michael Steele. Interviews lasted one (1) hour for each candidate.

At the end of the interview process and tabulation, Wayne Qualls announced the new Director of Schools as Dr. Shane Johnston who received four (4) number one (1) votes. The tabulation was as follows:

Dr. Shane Johnston – four (4) number one (1) votes, one (1) number two (2) votes and two (2) number three (3) votes

Dr. Michael Steele – one (1) number one (1) vote, six (6) number two (2) votes and zero (0) number three (3) votes

Mr. Mark Garrett – two (2) number one (1) votes, zero (0) number two (2) votes and five (5) number three (3) votes

Board member Solomon made the motion to appoint Dr. Shane Johnston as the new Director of Schools. Vice Chairman Jarnigan seconded the motion.

**Director of Schools Appointment – continued**

Board member Potts thanked Wayne Qualls for conducting the search and also thanked the audience for their attendance.

The motion passed 6-1 to appoint Dr. Johnston as the new Director of Schools. Board members Vines, Cox, Solomon, Potts, Jarnigan and Fair voted for the motion. Board member Bradley voted against the motion.

2. Resolution – Building 8

Sherry Finchum, Interim Director of Schools, presented a resolution regarding the collapsed roof of Building 8 at Jefferson County High School. The resolution was for the school board to join in prosecution of a lawsuit in the name of Jefferson County Schools and Travelers Indemnity Company vs. Cate Roofing Insurance.


The board took no action on the resolution.

**ADJOURN**

With no further business, the meeting adjourned at 8:20 p.m.

  
\_\_\_\_\_  
Jim Vines, Chairman

  
\_\_\_\_\_  
Sherry Finchum, Interim Director of Schools  
& Secretary to the Board

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Date

# Joint Prosecution and Allocation Agreement

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1. **Parties:** This Joint Prosecution and Allocation Agreement (the “Agreement”) is entered into by and between the following:

- a. **TENNESSEE RISK MANAGEMENT (“INSURED”);**
- b. **THE TRAVELERS INDEMNITY COMPANY (“TRAVELERS”).**

INSURED and TRAVELERS are collectively referred to as the “Parties”.

2. **Recitals:**

- a. On or about July 7, 2013, INSURED sustained a loss in which the roof of the vocational building for the Jefferson County High School collapsed after a rain event (the “Incident”); and,
- b. INSURED made certain claims upon TRAVELERS for coverage under policy number KTK-CMB-122D828-1-13 (the “Policy”) for the losses INSURED sustained as a result of the Incident; and,
- c. TRAVELERS made payments to or on behalf of INSURED for the covered losses INSURED sustained as a result of the Incident, and the Parties agree that \$1,128,228.06 of those payments may be legally recoverable (“Recoverable Covered Losses”) from parties who bear responsibility for the Incident (“Responsible Parties”); and,
- d. As a result of the Incident, INSURED incurred a deductible loss in the amount of \$500 which may be legally recoverable from the Responsible Parties (“Recoverable Uninsured Losses”); and
- e. TRAVELERS and INSURED find it to their mutual advantage to jointly prosecute their respective claims for the Recoverable Covered Losses and Recoverable Uninsured Losses (collectively, “Total Recoverable Losses”) and to allocate any recovery obtained from the Responsible Parties, whether through settlement, trial court judgment, criminal restitution order, or any other means (“Recovery”), as set forth below.

3. **Consideration:**

## Joint Prosecution and Allocation Agreement

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Now, therefore, in consideration of the mutual promises contained herein, including advancement by TRAVELERS of certain costs, and the allocation of any Recovery in the manner described below, the Parties hereby agree to jointly and cooperatively prosecute their respective claims under the terms set forth below.

#### 4 **Agreement to Prosecute:**

- a. **Joint Retention of Counsel:** The Parties agree to jointly retain the services of G. Andrew Rowlett and Howell & Fisher, PLLC (“Joint Counsel”) to represent their interests, and to prosecute liability claims against the Responsible Parties, as outlined herein (“Prosecution Suit”). The Parties understand that they are each entitled to be represented by independent counsel to pursue their separate interests in this matter. Nevertheless, the Parties expressly agree to pursue their claims in accordance with this Agreement, and expressly waive all conflicts of interest necessary for the maintenance of the Prosecution Suit.
- b. **Disclaimer of Parties:** With regard to the maintenance of the Prosecution Suit and as to all matters related to this Agreement, the Parties make no representations, guarantees or warranties regarding the justiciability of the Prosecution Suit, the liability of the Responsible Parties, or the potential for obtaining a Recovery in the Prosecution Suit. The Parties expressly understand that a final resolution of the Prosecution Suit may result in no Recovery.
- c. **Prosecution of Claims:** The Parties agree that the Prosecution Suit will be brought against the Responsible Parties in the name of INSURED, and will include the interests of INSURED in any Recoverable Uninsured Losses, as well as the subrogated interests of TRAVELERS in any Recoverable Covered Losses. The Prosecution Suit includes the lawsuit filed pursuant to this Agreement, and the maintenance of that suit through settlement or judgment rendered by the presiding trial court. The Prosecution Suit does not include any appeal that may be prosecuted by any party in response to a judgment following a trial on the merits of the Prosecution Suit.

## Joint Prosecution and Allocation Agreement

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- d. **Control of Litigation:** TRAVELERS shall retain the exclusive right to develop and plan the substantive litigation strategy in the Prosecution Suit, and to enter into, on behalf of the Parties hereto, any settlement it deems appropriate and advisable under the circumstances for all or any part of the Total Recoverable Losses.

5. **Allocation of Costs and Recovery:**

- a. **Allocation of Costs:** During the maintenance of the Prosecution Suit, TRAVELERS shall be responsible for and shall advance all mutually beneficial costs associated with the Prosecution Suit, including but not limited to the following costs: Joint Counsel's attorney's fees, investigation, expert witnesses and consultants (whether internal or external to TRAVELERS), approved testing, evidence storage, models, exhibits, court fees, reporting, transcription, and services provided by specialized employees of TRAVELERS ("Prosecution Costs"). Prosecution Costs do not include the following types of costs:
1. Parties' travel expenses (transportation, lodging, meals, etc.);
  2. Salaries, staff, and other such overhead expenditures;
  3. Individual attorney's fees (these shall be borne by the party incurring same, and neither party shall be obligated to reimburse any of such costs);
  4. Appeal of a judgment entered in favor of the Defendants in the Prosecution Suit or which results in a recovery of less than the Total Recoverable Losses.
- b. **Allocation of Recovery upon Final Resolution:** The Parties agree that if the final resolution of the Prosecution Suit includes any Recovery, the Recovery will be allocated as follows.
1. TRAVELERS shall be reimbursed for the Prosecution Costs from the first dollar of the Gross Recovery of any amount received in the Prosecution Suit. For purposes of this Agreement, the term "Gross Recovery" shall mean the total Recovery realized in the Prosecution Suit, if any, before deduction for Prosecution Costs. The term "Net

## Joint Prosecution and Allocation Agreement

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Recovery” shall mean the sum remaining after the Prosecution Costs have been deducted from the Gross Recovery.

2. Joint Counsel shall be entitled to a contingency fee of 28% of the Net Recovery if the matter is resolved before trial, or 33% of the Net Recovery if the matter is resolved after trial has begun.
3. The Parties will share in the remaining Net Recovery on a pro-rata basis in accordance with the proportionate ratio of the legally recoverable damages sustained by each party. At the time of this Agreement, TRAVELERS has paid to or on behalf of INSURED Recoverable Covered Losses in the amount of \$1,128,228.06, and INSURED has incurred Recoverable Uninsured Losses in the amount of \$500. Based on those amounts, TRAVELERS would be entitled to 1% of the Net Recovery, and INSURED would be entitled to 99% of the Net Recovery. If, upon final resolution, the Parties agree that the Recovery reflects an increase or decrease in the amount of Recoverable Covered Losses and/or Recoverable Uninsured Losses that would impact the pro-rata percentages, then the percentages will be adjusted accordingly.
- c. **Waiver of Right of Priority:** In allocating Prosecution Costs and Recovery under this Agreement, the Parties expressly waive all rights and entitlement to a priority of the right of recovery, whether such right extends by way of the Policy or otherwise.

### 6. **General Provisions and Conditions:**

- a. **Confidentiality:** The Parties agree that any and all confidential information exchanged in connection with the Prosecution Suit shall be designated “Confidential Joint Prosecution Information,” and that neither Party shall disclose such information to third parties without the express written consent of the other Party.
- b. **Binding Effect and Assignment:** This Agreement shall be binding upon the officers, directors, principals, agents, representatives, heirs, employees, affiliates and assigns of each

## Joint Prosecution and Allocation Agreement

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Party, but in no event may this Agreement be assigned to any party without the express written consent of all Parties hereto.

- c. **Integration:** To the extent this Agreement is inconsistent with any other verbal or written agreement between the Parties, this Agreement supersedes such other agreement. Should any term, condition or provision of this Agreement be held to be invalid, the remainder of the Agreement shall remain in full force and effect.
  
- d. **Participation of Parties:** The Parties acknowledge that they have each had the opportunity to review the Agreement and to seek the advice of independent attorneys (not associated with counsel designated in the Agreement) with regard to their respective rights and interests, including those related to the waiver of any conflict of interest that exists or that may arise between the Parties at any time during the Prosecution Suit with respect to the amount of damages legally recoverable against the Responsible Parties. The language of this Agreement shall not be presumptively construed against any Party hereto.
  
- f. **Applicable Law:** The Parties agree that the law of the State of Tennessee applies to an interpretation of this Agreement. In the event a dispute arises with regard to the enforcement of this Agreement, the parties agree to select an arbiter licensed, approved and/or competent to resolve the dispute under Tennessee law. Any such arbitration shall be held in Tennessee under the Commercial Arbitration Rules of the American Arbitration Association.
  
- g. **Execution in Counterparts:** This Agreement may be executed in counterparts. A copy of the original of this Agreement shall have the same force as the original.

TRAVELERS and INSURED have signified their assent to this Agreement as of \_\_\_\_\_

(“Effective Date”) by executing this Agreement where indicated below.

INSURED FULL NAME

UNDERWRITING ENTITY FULL NAME

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

## Joint Prosecution and Allocation Agreement

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Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_