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**SETTLEMENT AGREEMENT**

This agreement is entered into by and between CASE, California Attorneys, Administrative Law Judges and Hearing Officers in State Employment and the State Compensation Insurance Fund ("SCIF") and is a binding settlement of the parties' dispute over SCIF's and its liability insurers' use of non-state civil service attorneys to represent and defend the interests of SCIF, its employees, managers, officers, directors, and policyholders as well as the interests of SCIF's liability insurers in various matters.

**RECITALS**

CASE is an employee organization that represents attorneys and other legal professionals employed by the State of California. As a state employee organization, CASE is authorized to challenge a state agency's use of non-state attorneys as not complying with the constitutional and statutory restrictions on the contracting-out of state civil service work.

SCIF is a public enterprise fund of the State of California and was created by the legislature to provide workers' compensation insurance to California employers. By statute the State of California shall not be financially liable for SCIF and SCIF shall be administered by a Board of Directors that is vested with full power, authority and jurisdiction over SCIF as fully and completely as the governing body of a private insurer.

SCIF has secured a number of liability insurance policies providing for the defense and indemnification of SCIF and its personnel against economic losses arising from SCIF's business operations. Pursuant to those liability insurance policies, the insurers and State Fund have the right to appoint or designate legal counsel to defend SCIF in response to covered claims as well as claims which liability insurers have reserved their rights to decline coverage or have denied coverage.

SCIF has identified several liability insurance policies that permit the insurer and SCIF to appoint or designate legal counsel to represent and defend SCIF and its personnel in any covered claim. SCIF has also provided CASE with copies of those insurance policies. The insurance policies are with various insurance providers and cover: employment practices liability, automobile liability, general liability, errors and omissions, directors and officers and general property. The policies vary in amount of coverage and include in some instances varying deductibles which must be exhausted by SCIF.

SCIF's established practice is to tender claims to the respective liability insurers for defense and indemnification pursuant to the terms and conditions of the insurance policies. The insurer and/or SCIF then appoints or designates private legal counsel to represent SCIF, its personnel and/or the insurer in the particular matter whenever the insurer and/or SCIF deems it necessary or desirable including those circumstances

wherein SCIF is obligated to exhaust a deductible provision. In some instances the insurer has in good faith disputed or denied coverage for claims tendered by SCIF.<sup>1</sup>

CASE considers the appointment of private legal counsel to represent SCIF and its personnel in such matters to be impermissible contracting-out of state civil services work when the use of outside legal counsel is not otherwise justified pursuant to Government Code section 19130. CASE has filed various challenges with the California State Personnel Board to the appointment of private legal counsel to represent SCIF in matters related to various liability insurance policies wherein CASE alleges that the appointment of such legal counsel does not meet the constitutional and statutory requirements for permissible contracting-out.

SCIF disputes CASE's contentions that the appointment of outside legal counsel pursuant to its liability insurance policies or to defend claims or cases wherein insurance coverage is disputed or denied, is impermissible contracting-out of civil service work.

The parties now desire to resolve their dispute in order to avoid the cost, time and uncertainty associated with litigating this matter.

#### AGREEMENT

In consideration of the mutual obligations and promises identified below and assumed by each of the parties, it is hereby agreed by and between the parties as follows:

1. CASE acknowledges that pursuant to the liability insurance policies referenced above, the respective insurers and/or SCIF have the right to select legal counsel to defend SCIF in connection with claims that SCIF and its personnel tender to the insurer for coverage pursuant to the respective insurance policies including those circumstances wherein SCIF is obligated to exhaust a deductible provision.
2. CASE agrees not to file any objections with the State Personnel Board or any other legal or administrative body, challenging the appointment of outside legal counsel to represent and defend SCIF and its personnel in claims or cases where the legal defense is provided consistent with SCIF's current practice pursuant to the terms and conditions of its insurance policies or reasonable extension or renewal of such policies and with respect to matters in which SCIF currently utilizes outside counsel for claims or cases wherein insurance coverage is in good faith disputed or denied.

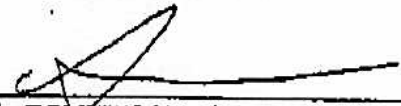
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<sup>1</sup> State Fund is currently providing representation with outside legal counsel at the request of three staff counsel employees in matters for which insurance coverage has been denied. Those matters include allegations of criminal misconduct, violations of the State Bar's rules for professional responsibility and malicious prosecution. This agreement will not affect outside legal representation currently provided to said staff counsel or in any way limit the rights of State Fund and its employees to obtain independent legal counsel to defend allegations of misconduct arising out of and in the course of said employees' employment with State Fund.


3. SCIF agrees to make reasonable efforts, consistent with its business objectives and operational needs, to reduce its reliance on outside legal counsel and to develop the expertise to retain as much legal work as possible within its own in-house legal department.
4. SCIF shall upgrade thirty (33) attorney positions in its legal department to the classification of Senior Staff Counsel III (Specialist). The 33 positions shall be in addition to the current number of existing Senior Staff Counsel III (Specialist) positions within SCIF's legal department's 2001 budget year. The upgraded positions shall be included in the budget year 2002 (1/1/02-12/31/02) and be made in accordance with all appropriate classification requirements. SCIF shall then continue to fund the upgrades from year to year and retain those positions within its legal department. SCIF shall make all efforts to fill the 33 upgraded positions as soon as possible and to fully staff all positions. In addition, SCIF will continue to fund and fill all 2001 budgeted Specialist positions. If SCIF is unable to obtain, fund or staff the 2001 budgeted Specialist positions or the additional 33 upgraded positions as provided herein, CASE shall be released from all obligations arising under this agreement.
5. This agreement shall be for a term of five years and shall renew automatically every five years thereafter, except as provided herein. At the end of each five-year period, CASE may request to meet with SCIF to review and discuss its use of outside legal counsel. Upon such a request from CASE, SCIF shall meet and shall disclose to CASE all liability insurance policies (exclusive of proprietary financial information) then in effect which include provisions permitting the appointment of outside legal counsel to defend SCIF, its personnel and the interests of its policyholders. SCIF shall also identify all cases where outside legal counsel was appointed to represent SCIF, its personnel and the interests of its policyholders during the preceding five-year period. If it appears that the appointment of outside legal counsel to represent and defend SCIF has not remained consistent with the current practices, CASE may object to the renewal of this agreement and said agreement shall not be automatically renewed.
6. Upon execution of this agreement, SCIF and CASE shall dismiss their respective Petitions for Writ of Mandate filed in connection with the State Personnel Board's decision disapproving the use of outside legal counsel in *Gonzales v. SCIF*, (SF County Sup. Ct. Cases 321255 and 321472). CASE shall also withdraw and dismiss its contracting-out challenge to the use of outside legal counsel in *Cook v. SCIF* (SPB File 01-004(B)).

**FOR CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT (CASE)**

DATED: 11/8/01

  
GARY MESSING  
Carroll, Burdick & McDonough

DATED: 11/13/2001

  
RICHARD TULLIS  
President, CASE

**FOR STATE COMPENSATION INSURANCE FUND (SCIF)**


DATED: October 30, 2001

  
GEORGE CRONIN  
Labor Relations Specialist

DATED: October 30, 2001

  
ROBERT W. DANERI  
Assistant Chief Counsel

DATED: Oct. 30, 2001

  
CHARLES W. SAVAGES  
Assistant Chief Counsel