



The Board-CEO Relationship: Who's Holding the Keys to the Castle?

AGRiP Governance Conference 2020

Tami Tanoue, CIRSA Executive Director

Do you know where the keys are?

- Especially when there's been long-term relationship between the Board and a trusted Pool CEO, a process of entrustment and the accumulation of delegation occur over time
- A sense of "we've always done it this way" that is either invisible or hard to buck
- Informal rather than formal processes may prevail
- The CEO is generally around for much longer than any individual Board member, and is often the one who's relied on to be the "institutional memory"
- Board members have a whole other professional life to attend to in addition to Board service
- Technical aspects of operating a pool can be daunting and/or mind-numbing



Do you know where the keys are?

- Like the “boiling frog” fable, this process of delegation will not always be perceptible to those who experience it gradually
- The “shocks” that can cause the dangerous boiling water to be perceived suddenly include:
 - Transition from previous CEO to new CEO, other key positions
 - CIRSA: 3 key positions in the same year
 - Transition in Board member makeup
 - Crisis in the organization that lays issues bare



Do you know where the keys are?

- Purpose of this presentation is to help make sure:
 - Everyone knows where the keys to your “castle” are
 - Those keys are entrusted deliberately and to the right people
 - Where needed, those keys are put back where they should be, with or without a “shock” event
 - Things that need to be documented are, so that no one individual is the “institutional memory”
- A checklist accompanies this presentation; use it as a starting point to create your own checklist of the important “keys”



What ARE the keys, anyway?

- To start looking for the keys, all players must be committed to a culture of transparency!
 - A CEO whose approach is “the less you know the better” (or a Board whose approach is “the less we know the better”) is going to have a rough road!
- So let’s look at the various operations of the pool, what and where the keys are, and where they should be
 - Governance – the governing body; membership
 - Coverage documents; policies
 - Finance/underwriting/rating
 - The Board’s direct reports/other personnel/policies
 - Claims



The Governing Body

- You know what the LEGAL process for selecting governing body members is
 - Typically spelled out in the Pool's formation documents
- But is there an INFORMAL process?
 - If so, who's in charge of it?
 - Does the CEO have a hand in choosing or "encouraging" certain people to become Board members?
 - What are the "criteria"?
 - Are the keys to Board member selection in the right place??
 - *Should* the CEO be choosing his/her own boss?
 - Would the CEO's selection criteria serve the organization's needs...or the CEO's?



The Governing Body

- “Informal” selection processes tend to spring up for several reasons:
 - Pool formation documents may not contain much detail on selection process
 - The Board may not have given much thought to succession planning for itself
 - The CEO may have a distinct idea of the types of Board members he/she wants on the Board
 - The Board and/or the CEO may have had a bad experience with a “rogue” or “outlier” Board member



The Governing Body

- But keep in mind that Board member selection is the direct connection between the membership and the governing body
 - The “easiest” Board may not be the “best” Board
 - It’s great to have Board members that get along well together, but not at the expense of appropriate scrutiny, oversight, questions, and insistence on excellence
 - A Board whose membership is “closed” (or perceived that way) may not be properly reflective of the membership, or may develop credibility issues with the membership



The Governing Body

- So the Board needs to hang on to this key via its own succession planning
- The CIRSA IGA gives the Board (for vacancies that occur outside the general membership meeting time frame) or the members (at the GMM) the authority to decide who the Board's colleagues should be
 - Important to think about the qualities, mix of personalities, backgrounds, etc., that would serve the Board best;
 - Have a selection process in place for vacancies outside the GMM time frame
 - If the vacancy will occur in the GMM time frame, having a process in place will help keep the selection of your Board colleagues from being random
 - Input from staff is fine, but the Board should resist the urge to give this key away!
- What do your formation documents say about Board member selection?



The Governing Body

- Also think about the process of on-boarding new Board members
 - Has the Board adopted a governance policy?
 - A governance policy is not just for governance; it eases the process of on-boarding as well as succession planning
 - Is there a new Board member orientation?
 - Who does this – CEO/staff? Is there Board input on the orientation content? Should the Board chair take part?
 - New Board member handbook, or collection of Board policies, procedures, and forms on website?



The Governing Body

- The Board's meeting agenda and other meeting-related protocols:
 - Who's in charge of what items do or don't get on the agenda?
 - Is this delegated to the CEO/staff, or do Board members have input into/direct the inclusion of items for the Board to take up?
 - Agenda review process, perhaps by Chair? Draft agenda to whole Board?
 - Even if agenda prep is properly delegated to CEO, the Board should make it clear that it has granted that authority and can take it away
 - Is there an annual calendar of recurrent Board issues?
 - Other meeting-related protocols – time and place, number of meetings?



The Governing Body

- Retreat opportunities are important for expansive discussion of “big picture” issues
 - Does your Board hold an annual retreat?
 - Who creates the retreat agenda?
 - Good mix of Board-chosen, staff-chosen, and consultant (e.g. actuary, finance, broker) topics can be ideal
 - As can a good mix of “educational” versus strategic planning and direction-setting topics
 - Facilitator or no facilitator?
 - Don’t allow staff to “hijack” into “show and tell” or “death by Powerpoint” topics only



The Governing Body

- Speaking of content... What about your documents?
- Pools get/generate huge, voluminous, ponderous reports and documents throughout the year.
- Does the Board know what it gets/should get? Did the Board give away this key?
 - “Don’t send us the entire proposed budget. All we need is the first page.”
 - “Don’t send us the actuarial report. Just give us the executive summary.”
 - “Don’t even bother sending us the executive summary. Just give us a verbal report at the meeting.”
 - “Oh, there’s more to the claims audit report than the executive summary in the packet?”



The Governing Body

- When paper Board agenda packets required the extermination of entire forests, saving paper by providing only the “executive summary” might have made sense
- Today, it’s nothing to provide a 200 or 300 page packet for download!
- The Board should be asking for the complete report, the complete budget, etc. – or they should be provided as a matter of course
 - Those who don’t want to read the whole thing don’t have to – there’s no pop quiz at the end!
 - But those who want to do their due diligence need to be able to do so – and everyone should be encouraged to do so



Coverage Documents and Other Policies

- Who's in charge of adopting/amending the various documents that govern your operations?
 - Coverage documents – “insurance policies” or equivalent
 - Are criteria in place for when the Board vs. staff approves a coverage change?
 - What is the timing of rolling out coverage changes?
 - When is the coverage document made available to members each year?
 - Are there periodic reviews to make sure that the coverage document is up-to-date and understandable?



Coverage Documents and Other Policies

- Critical policies, such as purchasing/contracting policies, personnel policies, compensation plan
 - Who's in charge of adopting/amending personnel policies, other critical policies?
 - Do the CEO or department heads have the authority to create regulations supplemental to personnel policies
 - Is there an understood "line" between what should be in policy and what is OK as a supplemental regulation/informal practice?
 - Are there any informal practices the Board doesn't know about that actually should be articulated in policy?
 - CIRSA example – the "unwritten" benefit
 - Are there any policies in place that are actually ignored?
 - CIRSA example: the ignored benefit restriction



Finance/Underwriting/Rating

- At CIRSA, rate-setting is a highly technical process, but ultimately a Board responsibility
- How are rates set in your organization?
 - Does staff explain adequately the full context of rating as well as its pieces/parts? Especially important if rating doesn't take place all at once.
 - What is the rating formula? Are there discretionary versus nondiscretionary pieces?
 - What do the actuarial reports say about the adequacy of our reserves, and projections for premiums/contributions for the coming year?
 - Do we "recap" for the Board the projections used to set rates versus how the rates actually shook out for the year?
 - Although it could be argued that the monthly financials tell that tale, there may be other and better methods to depict



Sample - Net Position Snapshot by Year

Year	Fund	Net Position
1999	Loss Fund	\$52,027
1997- Closed	Loss Fund	\$39,942
2001	Loss Fund	\$3
2003	Loss Fund	\$361,070
2004	Loss Fund	\$1,354,299
2006	Loss Fund	\$2,672,450
2007 – Closed	Loss Fund	\$10,360
2008	Loss Fund	\$2,493,869
2009	Loss Fund	\$2,242,905
2011	Loss Fund	\$175,879
2012	Loss Fund	\$1,722,489



Sample – Net Position Snapshot by Year

Year	Fund	Net Position
2013	Loss Fund	\$1,573,411
2014	Loss Fund	\$2,015,838
2015	Loss Fund	\$378,075
2016	Loss Fund	(\$36,537)
2017	Loss Fund	(\$1,440,058)
2018	Loss Fund	\$590,288
All	Operating Fund	\$5,197,331
All	Excess Fund	(\$1,075,823)
All	Reserve Fund	\$8,805,001
Total		\$27,132,819



Finance/Underwriting/Rating

- What excess/reinsurance arrangements are in place, and what will be in place in the coming year?
- Do we do full disclosure on who the Pool's brokers are?
 - What are the fee arrangements, and how much is each broker charging? Are there other partner TPAs?
 - Is there a written agreement in place with each?
 - How are brokers and other partners selected? Is there a periodic RFP?
- And other TPAs – what are the commissions/fee arrangements and how much is each paid?
 - Is there accountability for ensuring that commissions are in line with what is appropriate for the industry?



Finance/Underwriting/Rating

- Is the annual administrative budget organized in a fashion understandable to the Board?
- Is there a budget-to-actual comparison that the Board receives?
- What is the process for amending the budget for unanticipated expenditures?
 - As long as the “bottom line” of expenditures is OK, the CEO has authority to shift \$ between different accounts/line items without a budget amendment?
 - Or is the CEO’s authority more restrictive? Or what does the Board want it to be?
 - Is there a purchasing/contracting procedure in place?
 - Are there limits on contracting authority and are they observed?
 - Any Board vs. CEO approval requirements?



Finance/Underwriting/Rating

- Do you know what's charged to the administrative budget versus what is charged to a loss fund or to a claim file?
 - Especially pertinent with claims against the Pool
- Is the Board aware of pooling industry "benchmarking" guidelines?
 - For measuring the financial health/strength of the Pool?
 - For administrative expenses?
 - Are you provided with the information you need in order to know where the Pool stands from a benchmarking standpoint?
 - Is your Pool participating in AGRiP's Financial Benchmarking Initiative?



The Board's Direct Reports/Other Personnel/Policies

- Who are the Board's direct reports, anyway?
 - Typically the CEO, possibly the General Counsel, others?
 - If the Board has delegated any appointment authority, it needs to know what it's delegated and whether it wants to keep it that way
 - CIRSA General Counsel example
 - Is there an employment agreement in place for the CEO and any other direct reports, and is it updated annually?
 - Do the Board and the CEO both insist on doing CEO performance evaluations at least annually?
 - Are goals set and reviewed at least annually?
 - Never opt to "waive" an evaluation or take it less than seriously!



The Board's Direct Reports/Other Personnel/Policies

- Who adopts/amends the personnel policies – the Board or the CEO?
- Either way, are critical policies, practices, and documents in place?
 - Hiring practices, nepotism, conflicts of interest?
 - Performance evaluations?
 - FLSA-compliant overtime requirements?
 - Workplace conduct/harassment/discrimination/ bullying?
 - Recourse processes?
 - Job descriptions?
- How are salaries set?
 - Is the Board involved in establishing a compensation plan with ranges by position, and parameters for annual increases?



Claims

- Managing claims is the lifeblood of the pool!
 - Is the process of how claims are managed – including authority levels of the various players – transparent to the Board?
 - What does the CIRSA IGA say about Board involvement in claims decisions at some authority level? Does it call for Claims Committee made up of Board members?
 - Common practice among many pools, but CIRSA's IGA does not require Board or Claims Committee involvement
 - And there may be other key operations where some pools have Board committees and others do not – e.g. underwriting
 - What committees do you have?



Claims

- CIRSA's approach has been that claims decisions are primarily legal and technical in nature – not susceptible to “decision by committee” or non-technical, non-legal considerations
 - Whatever approach you have may be susceptible to change (subject to any restrictions in your formation documents)
 - But you can't change until/unless you know what the world of possibilities is!
 - Whatever the Board's involvement level, does it get a regular report on large or significant claims being experienced by members?
 - At CIRSA Board check-in: Oops! We had done away with the “large claims” report (by Board request) some years ago. Now resurrecting.
 - Is there a regular report on claims against the Pool itself?



Claims

- With or without a Claims Committee, is there a “recourse” process for members to follow when a claim decision (coverage, settlement, etc.) is in dispute?
 - Is outside coverage counsel involved in any uncertain or novel question of coverage?
 - Do you know whether your coverage documents call for “insured’s consent to settle” or give settlement authority to the Pool?
- Is a process in place to ensure best practices in place for claim handling, and to ensure that reserves are set/reviewed/revised appropriately?
- Do you have an understanding of claims adjusting practices, and their place in the Pool’s overall financial condition? See <https://www.cirsa.org/news/what-is-the-cirsa-claim-adjusters-role-in-the-management-of-liability-claims/>
- Is an independent claims audit performed annually?



Conclusion

- There's nothing wrong with a relationship of mutual trust between the Board and the CEO/staff – indeed, it's highly desired
- Nor is there anything wrong with delegating functions
- But what may seem OK with a long-time CEO may not be suitable for with a new CEO
 - And in any event, the level of accountability, transparency, and adherence to sound controls that the Board expects shouldn't depend on who's in the position at any given moment



Conclusion

- Board members tend to “come and go” more frequently than CEOs – so where the “keys to the castle” are may never be visible to Board members
 - The process of entrustment/delegation needs to be deliberate, documented, transparent, and accountable
 - And not all functions should be entrusted/delegated
 - “Institutional memory” must be more than the memory of the CEO or any other single person in the organization
- Look for ways to uncover the “keys” before you’re the frog in boiling water!



Conclusion

- See attached checklist of “key” transparency issues – adapt to your own needs
- Identify other areas where you see a lack of transparency or documentation, or would like to see greater accountability
- Keep on top of industry-wide pooling standards
 - AGRiP Recognition is a method for member pools to conduct a *comprehensive* self-assessment of internal operational procedures
 - Learn more here:
https://higherlogicdownload.s3.amazonaws.com/AGRIP/613d38fc-c2ec-4e1a-b31f-03fa706321aa/UploadedImages/2019_AdvisoryStandardsOnly.pdf
 - See the Advisory standards here:
https://higherlogicdownload.s3.amazonaws.com/AGRIP/613d38fc-c2ec-4e1a-b31f-03fa706321aa/UploadedImages/2019_AdvisoryStandardsOnly.pdf
 - Use AGRiP resources to educate new Board members on pooling basics:
<https://events.rdmobile.com/Sessions/Details/962023>

