MINUTES

POLICE OFFICERS' & FIREFIGHTERS' RETIREMENT COMMITTEE MEETING

WEDNESDAY - JUNE 12, 2013 - 9:00 AM

PRESENT

Sgt. Leo Socorro – Chair
(Ret)Chief Linda Loizzo
Councilwoman Beth Spiegel
Mayor George Vallejo
Sgt. Mo Asim

ABSENT

ALSO PRESENT

Graystone – C.Mulfinger & S. Owens
Buck – Joe Griffin
Buck – Tim Bowen
Steven Gordon - Auditor
Sugarman & Susskind - Bob Sugarman
Darcee Siegel – City Attorney
Martin Lebowitz – Pension Administrator

DEPARTMENT REPRESENTATIVES

Bill Dresback – Retired Firefighter
Various Police Officers

The meeting was called to order at 9:18 a.m. by Sgt. Socorro and was followed by a roll call of Trustees.

I. GRAYSTONE CONSULTING – Q/E 3/31/2013

Charlie Mulfinger and Scott Owens presented the performance report, indicating a total portfolio market value on 3/31/2013 of $82,514,996 (including accrued income). This represents a net increase in value from the previous quarter of $4,482,004. **Please see attached Summary of Relevant Facts as of March 31, 2013.**

Charlie Mulfinger has recommended to the committee that we should have the account re-balanced to the investment policy range in the statement of investment policy.

Also, Charlie recommended that the dividends received from UBS Real Estate be reinvested back into the UBS Real Estate, currently the dividends are paid in cash and wire into the R&D account. Martin Lebowitz will request from UBS that the dividends be reinvested into the UBS Real Estate Fund.

<u>After discussion, motion by Trustee Spiegel, seconded by Trustee Vallejo to have the Real Estate Fund reinvest the dividends into the Real Estate Fund and to get into queue to invest up to 1 million more in the Real Estate Fund to hit our 5% holding target.</u>

<u>Motion carried unanimously</u>

Charlie Mulfinger stated that Garcia Hamilton has agreed to lower their fees by 40% until they have a higher return than the benchmark in the equity fund.

Charlie Mulfinger and Scott Owens handed out an Investment Consulting Education presentation of Asset Allocation Including Alternatives and discussed investment in hedge funds.

Bob Sugarman informed the board of the following legal concerns about investing in Hedge Funds:

- Legal issues since they are not registered with or governed by the SEC and US Law. They are governed by Cayman Islands law. Bob Sugarman cannot represent the committee in court in the Caymans if there is any litigation.
- Fees will much higher than our investment managers fees.
- Public Opinion – hedge funds require off-shore accounts to avoid federal unrelated business income tax.

After the presentation Charlie Mulfinger recommended to have 3 Hedge Fund Managers give a presentation to the board. The tentative date of their presentations is Friday July 19, 2013 at 9:00 a.m. This meeting would give each Investment Manager ½ hr. plus questions and answers to make their presentation.

The Board agreed to have the 3 hedge fund managers make their presentations along with the General Employees' Board on July 19, 2013.

II. <u>ATTORNEY'S REPORT</u>

Bob Sugarman informed the committee that Jayne Goldstein who worked for Shepherd, Finkelman, Miller & Shalh one of our monitoring security firms has left this firm and now is working for Pomerantz, Grossman, Hufford, Dahlstrom & Gross. Bob Sugarman asked the committee to approve Jayne Goldstein's new firm to monitor our accounts at no cost The committee agreed to have Bob Sugarman sign the monitoring agreement for Pomerantz, Grossman, Hufford, Dahlstrom & Gross.

Buck Consultants Law Suit – Bob Sugarman discussed the lawsuit that was in the newspaper about the City of Providence, RI in which the City filed a complaint against Buck Consultants seeking around $10 million in damages. We use Buck Consultants out of the Atlanta Office, which was not the office containing the actuaries for the City of Providence, RI.
Bob Sugarman reviewed the correspondence with Buck on this issue and raised the question as to whether this matter affected the trustees' confidence in Buck Consultants as being the actuary. The other issue was if Buck Consultants goes under from this pending lawsuit, how does that affect North Miami Beach Police & Fire Plan?

Bob Sugarman will send a letter to Buck Consultants requesting an increase in insurance policy from $2 million to $5 million on the limited amount. **Please see attached from Bob Sugarman on this issue.**

Legislative Update: **please see attached letter from Bob Sugarman with proposed changes to the law.**

Bob Sugarman discussed that the State has required us have a time during our meeting for public comments. The trustees decided to match the City's practice of allowing 3 minutes per person. All future agendas will have public comments as an item for each meeting.

Firefighters 9.5% Amended Language – See attached letter from Bob Sugarman's opinion in reference to the Firefighters 9.5% one-time increase. Also, a proposed Ordinance to codify the ongoing practice of how we calculate the one-time increase 9.5% and how the state premium tax revenues are allocated.

After discussion, motion by Trustee Asim, seconded by Trustee Loizzo, to recommend to the City Council proposed Ordinance to amend the Code concerning the 9.5% Firefighters one-time increase.

Motion carried

Bob Sugarman discussed if Buck Consultants was to calculate the cost of the minimum benefits received by the 14 retirees should cost approximately $7,500.00 according to his conversion with Buck.

After discussion, motion by Trustee Vallejo, seconded by Trustee Loizzo, to have Buck Consultants available to the City at the City's expense to have Buck Consultant calculation necessary to determine whether the 175 money amount that could be reallocated to the City and share that information with the Police & Fire Board.

Motion carried unanimously

IRS Determination Letter - Bob Sugarman informed the committee that we received a favorable Determination Letter from the IRS conditioned upon an ordinance amendment. Bob Sugarman will draft a new ordinance adhering to this letter.

Request for Fee Increase

Bob Sugarman has requested an increase in his attorney fees from $2,200 to $2,350 per month starting June 2013 and $2,500 per month for two years starting June 2014.

After discussion, motion by Trustee Vallejo, seconded by Trustee Asim, to approve the increase of attorney fees for Sugarman & Susskind from $2,200 to $2,350 per month starting June 2013 and to $2,500 per month for two years starting June 2014.

Motion carried unanimously.

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Pension Administrator Contract

After discussion, motion by Trustee Vallejo, seconded by Trustee Spiegel, to discuss the Pension Administrator's Contract at the next meeting.

Motion carried unanimously.

III. APPROVAL OF MINUTES –3/4/2013.

Motion by Trustee Vallejo seconded by Trustee Loizzo to approve minutes of 3/4/2013

Motion carried unanimously

IV. APPROVAL OF INVOICES

Motion by Trustee Vallejo, seconded by Trustee Loizzo, to approve payment of the following invoices except for Garcia Hamilton Equity in the amount of $18,951.97 . Also, request Garcia Hamilton to reduce their fees 40% for the March 31, 2013 invoice,

Motion carried unanimously.

INVOICES:

Garcia Hamilton – Equity Quarterly Management Fees	$18,951.97
Garcia Hamilton – Fixed Quarterly Management Fees	17,143.18
Morgan Stanley Smith Barney – Quarterly Consulting Fees	6,875.00
HGK – Quarterly Management Fees	17,470.22
GW Capital – Quarterly Management Fees	87928.09
MDT – Quarterly Management Fees	9,212.90
Renaissance – Quarterly Management Fees	6,649.34
Thornburg - Quarterly Management Fees	6,846.73
Buck Consultants – Actuary Fees	14,564.00
Sugarman & Susskind – Legal Fees	6,600.00
Salem Trust Company – Custodial Fees	9,877.38
	$123,118.81

The next scheduled meeting is for July 19, 2013. Meeting was adjourned at 1:56 p.m.

Martin Lebowitz, Pension Administrator

SUMMARY OF RELEVANT FACTS
City of North Miami Beach Police & Fire Retirement Plan
As of March 31, 2013

Distribution of Assets:		
Equity		
- Large Cap. Value	$17,305,484	
- Large Cap. Growth	$16,390,102	
- Small Cap. Value	$4,964,086	
- Mid Cap Growth	$4,606,270	
- International Value	$4,259,889	
- International Growth	$4,155,252	
Total Equity		$51,681,084
Fixed Income		$27,503,981
Core Private Real Estate		$3,203,588
Cash (R&D & Residuals)		$126,343
Total Portfolio		$82,514,996

Distribution by Percentages:	Policy	Current
Equity Breakdown		
- Large Cap. Value	20.00%	20.97%
- Large Cap. Growth	20.00%	19.86%
- Small Cap. Value	5.00%	6.02%
- Mid Cap Growth	5.00%	5.58%
- International Value	5.00%	5.16%
- International Growth	5.00%	5.04%
Total Equity	60.00%	62.63%
Fixed Income	35.00%	33.33%
Core Private Real Estate	5.00%	3.88%
Cash	0.00%	0.15%
Total Portfolio	100.00%	100.00%

Other Important Facts:

Total Portfolio	$82,514,996
Total Gain or (Loss) (Gross-of-Fees)	$4,571,964
Total Gain or (Loss) (Net-of-Fees)	$4,482,004
Total Fees	($89,960)

HGK (Large Cap Value)			**Garcia Hamilton (Large Cap Growth)**	
Total Assets	100.00%	$17,305,484	100.00%	$16,390,102
Equity	98.96%	$17,125,689	97.55%	$15,989,233
Cash	1.04%	$179,795	2.45%	$400,870
Fees		($15,786)		($18,363)
Gain or (Loss) - Gross		$1,691,072		$1,215,805
Gain or (Loss) - Net		$1,675,285		$1,197,442

GW Capital (Small Cap Value)			**MDT (Mid Cap Growth)**	
Total Assets	100.00%	$4,964,086	100.00%	$4,606,270
Equity	94.79%	$4,705,413	98.82%	$4,551,983
Cash	5.21%	$258,673	1.18%	$54,287
Fees		($7,939)		($8,257)
Gain or (Loss) - Gross		$644,226		$478,093
Gain or (Loss) - Net		$636,287		$469,836

Thornburg (Int'l Value)			**Renaissance (Int'l Growth)**	
Total Assets	100.00%	$4,259,889	100.00%	$4,155,252
Equity	95.06%	$4,049,618	97.44%	$4,048,768
Cash	4.94%	$210,271	2.56%	$106,484
Fees		($6,575)		($6,465)
Gain or (Loss) - Gross		$105,857		$190,653
Gain or (Loss) - Net		$99,282		$184,188

Garcia Hamilton (Fixed Income)		
Total Assets	100.00%	$27,503,981
Fixed Income	99.67%	$27,414,484
Cash	0.33%	$89,497
Fees		($17,027)
Gain or (Loss) - Gross		$194,037
Gain or (Loss) - Net		$177,009

Receipts & Disbursements Acc't	
Total Assets	$126,343
Cash	$126,343
Gain or (Loss) - Gross	$14

UBS (Core Private Real Estate)		
Total Assets	100.00%	$3,203,588
Private Real Estate	100.00%	$3,203,588
Fees		($9,547)
Gain or (Loss) - Gross		$52,208
Gain or (Loss) - Net		$42,661

The prices, quotes or statistics contained herein have been obtained from sources believed reliable, however, the accuracy cannot be guaranteed. Past performance is not a guarantee of future results.

Breakdown of Returns
City of North Miami Beach Police & Fire Retirement Plan
As of March 31, 2013

HGK Large Cap. Value	Your Returns Gross-of-Fees	Your Returns Net-of-Fees	Russ 1000 Value	PSN Money Mgrs	S&P 500
Quarter	10.72	10.62	12.31	11.78	10.61
Fiscal YTD	11.80	11.58	14.03	12.62	10.19
1 year	15.03	14.58	18.76	16.38	13.96
3 year	11.53	11.09	12.74	12.88	12.67
Since 3/31/2009	18.93	18.50	21.80	21.29	20.98
Garcia Hamilton & Associates* Large Cap. Growth			Russ 1000 Growth	PSN Money Mgrs	
Quarter	8.01	7.89	9.54	9.55	
Fiscal YTD	6.20	5.95	8.09	9.23	
1 year	6.55	6.05	10.08	10.79	
3 year	11.69	11.15	13.06	12.33	
5 year	5.93		7.30	6.58	
Since 9/30/2006	6.05		6.58	6.25	
GW Capital Small Cap. Value			Russ 2000 Value	PSN Money Mgrs	
Quarter	14.91	14.72	11.63	11.52	
Fiscal YTD	21.55	21.14	15.23	14.77	
1 year	27.52	26.62	18.09	15.72	
3 year	15.58	14.76	12.11	14.67	
Since 2/28/2009	28.24	27.39	25.56	NA	
MDT Advisers Mid Cap. Growth			Russ Mid Growth	PSN Money Mgrs	
Quarter	11.58	11.38	11.52	11.41	
Fiscal YTD	13.54	13.11	13.40	13.21	
1 year	16.21	15.31	12.77	13.86	
3 year	21.17	20.24	14.24	13.40	
Since 5/31/2009	26.04	25.11	20.18	NA	
Thornburg International Value			MSCI AC Wrld x US		
Quarter	2.55	2.39	3.17		
Fiscal YTD	9.95	9.62	9.22		
1 year	6.71	6.04	8.38		
3 year	5.86	5.20	4.41		
Since 9/30/2009	6.89	6.25	5.33		
Renaissance International Growth			MSCI AC Wrld x US		
Quarter	4.81	4.64	3.17		
Fiscal YTD	8.74	8.40	9.22		
1 year	3.77	3.11	8.38		
3 year	4.92	4.26	4.41		
Since 5/31/2009	9.49	8.83	9.57		
Garcia Hamilton & Associates* Fixed Income			BC Int. Gov/Credit	BC Int. Aggregate	90-Day T-Bill
Quarter	0.71	0.65	0.26	0.15	0.02
Fiscal YTD	1.79	1.66	0.61	0.33	0.04
1 year	7.01	6.75	3.53	3.03	0.08
3 year	6.39	6.12	4.75	4.64	0.09
5 year	7.06		4.61	4.94	0.25
Since 9/30/2006	7.40		5.31	5.44	1.12
UBS Trumbull Property Fund Core Private Real Estate			NCREIF	ODCE	
Quarter	1.65	1.35	2.57	2.68	
Fiscal YTD	3.62	3.01	5.18	5.09	
Since 7/31/2012	6.24	5.60	7.64	8.00	

TOTAL RETURN Time-Weighted Return (TWR)			Policy Index	Composite Index
Quarter	5.79	5.67	6.00	6.10
Fiscal YTD	7.10	6.86	7.19	7.29
1 year	9.75	9.28	9.93	9.87
3 year	9.67	9.21	9.26	9.36
5 year	5.59	5.16	5.81	5.26
Since 9/30/2006	5.39	4.98	5.59	5.12
Dollar-Weighted Net (IRR)			**Actuarial Rate**	**CPI + 4**
Quarter		5.75	1.88	1.48
Fiscal YTD		6.88	3.75	2.48
1 year		9.35	7.50	5.55
3 year		9.32	7.50	6.18
5 year		5.46	7.50	5.67
Since 9/30/2006		5.20	7.50	6.11

Policy Index Composition

- 20% Russ 1000 Value / 20% Russ 1000 Growth / 5% Russ 2000 Value / 5% Russ Mid Growth / 10% MSCI AC Wd x US (net) / 35% BC Int G/C / 5% NCREIF for periods since 6/30/2012
- 20% Russ 1000 Value / 20% Russ 1000 Growth / 5% Russ 2000 Value / 5% Russ Mid Growth / 10% MSCI AC Wd x US (net) / 40% BC Int G/C for periods from 9/30/2009 to 6/30/2012
- 20% Russ 1000 Value / 20% Russ 1000 Growth / 5% Russ 2000 Value / 5% Russ 2000 Growth / 5% MSCI EAFE (net) / 5% MSCI AC Wd x US (net) / 40% BC Int G/C for periods from 5/31/2009 to 9/30/2009
- 20% Russ 1000 Value / 20% Russ 1000 Growth / 5% Russ 2000 Value / 5% Russ 2000 Growth / 10% MSCI EAFE (net) / 40% BC Int G/C for periods from 2/28/2009 to 5/31/2009
- 12.5% Russ 1000 Value / 27.5% Russ 1000 Growth / 5% Russ Mid Value / 5% Russ 2000 Growth / 10% MSCI EAFE (net) / 20% BC Int G/C / 20% BC Agg for periods prior to 2/28/2009

* Davis Hamilton Jackson originally managed the assets for the plan in a balanced (equity & fixed) account. In October 2008 (at the consultant's recommendation), the equity assets were transferred to a new account and the fixed income assets were retained in the original account. The returns listed above for large growth equity and fixed income are the returns achieved in those asset classes since 9/30/2006, however, the 1 year and since inception returns differ from those shown in the report detail. The detailed report for large cap growth only shows performance since 10/31/2008 when the equity securities were transferred to the second account. The fixed income detailed report shows performance back to 9/30/2006; however, the 1 year and since inception returns shown on that report include the equity returns along with the fixed income returns. The index shown on the fixed income detailed report has been adjusted to correspond with the combination of both equity and fixed income returns for the longer-term time periods.

COMPLIANCE CHECKLIST

City of North Miami Beach Police & Fire Retirement Plan

As of March 31, 2013

GUIDELINES

Equity Portfolio

	In Compliance
Listed on recognized exchange	Yes
Single issue not to exceed 10% at market value for each equity in each separately managed portfolio	Yes
Total equity portfolio < 62.5% & > 57.5% of total fund - at market	No (62.63%)
Single issue not to exceed 5% at market value for the total portfolio	Yes
Foreign equities < 25% of total portfolio at market	Yes
No scrutinized companies (Sudan/Iran) held per Protecting Florida's Investments Act requirement	Yes

HGK

Large Capitalization Value Equity Portfolio

	3 years	Since Inception
Market Value < 22.5% & > 17.5% of total fund	Yes	
Performance (Inception 3/31/2009)		
Rank in the Top 50% of manager universe	No	No
Return > Russell 1000 Value	No	No

Garcia Hamilton & Associates

Large Capitalization Growth Equity Portfolio

	3 years	Since Inception
Market Value < 22.5% & > 17.5% of total fund	Yes	
Performance (Inception 9/30/2006)		
Rank in the Top 50% of manager universe	No	No
Return > Russell 1000 Growth	No	No

GW Capital

Small Capitalization Value Equity Portfolio

	3 years	Since Inception
Market Value < 7.5% & > 2.5%of total fund	Yes	
Performance (Inception 2/28/2009)		
Rank in the Top 50% of manager universe	Yes	Yes
Return > Russell 2000 Value	Yes	Yes

MDT Advisers

Mid Capitalization Growth Equity Portfolio

	3 years	Since Inception
Market Value < 7.5% & > 2.5%of total fund	Yes	
Performance (Inception 5/31/2009)		
Rank in the Top 50% of manager universe	Yes	Yes
Return > Russell Mid Growth	Yes	Yes

OBJECTIVES

Total Portfolio

	3 years	Since Inception
Exceed Target Index	Yes	No
Exceed actuarial assumption (7.5%) *	Yes	No
Exceed CPI + 4% *	Yes	No

** Measured using Net Dollar-Weighted Rate of Return*

Thornburg

International Value Equity Portfolio

	3 years	Since Inception
Market Value < 7.5% & > 2.5%of total fund	Yes	
Performance (Inception 9/30/2009)		
Return > MSCI All Country World ex US	Yes	Yes

Renaissance Investment Management

International Growth Equity Portfolio

	3 years	Since Inception
Market Value < 7.5% & > 2.5%of total fund	Yes	
Performance (Inception 5/31/2009)		
Return > MSCI All Country World ex US	Yes	No

Garcia Hamilton & Associates

Fixed Income Portfolio

	3 years	Since Inception
Market Value < 37.5% & > 32.5% of total fund	Yes	
Performance (Inception 9/30/2006)		
Return > Barclays Cap Interm. Gov't/Credit	Yes	Yes
U.S. Government / Agency or U.S. Corporations	Yes	
Bonds rated "A" or better	Yes	
Single corporate issuer not exceed 10% of bond portfolio (except U.S. Government/Agency)	Yes	

UBS Trumbull Property Fund

Core Private Real Estate

	3 years	Since Inception
Market Value < 10% & > 0%of total fund	Yes	
Performance (Inception 7/31/2012)		
Performance > NCREIF Ppty Index	N/A	No
Performance > NCREIF ODCE	N/A	No

SUGARMAN & SUSSKIND
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

Robert A. Sugarman♦
Howard S. Susskind
Kenneth R. Harrison, Sr.
D. Marcus Braswell, Jr.
Pedro A. Herrera
Noah Scott Warman
Ivelisse Berio LeBeau

♦Board Certified Labor
& Employment Lawyer

100 Miracle Mile
Suite 300
Coral Gables, Florida 33134
(305) 529-2801
Broward (954) 327-2878
Toll Free 1-800-329-2122
Facsimile (305) 447-8115

June 20, 2013

Joseph Griffin
Buck Consultants, A Xerox Company
200 Galleria Parkway, NW, Suite 1900
Atlanta, GA 30339

Re: City of North Miami Beach Police & Firefighters' Retirement Plan
In re: City of Providence Lawsuit

Dear Joe:

The trustees of our mutual client, City of North Miami Beach Police & Firefighters' Retirement Plan, met at their regular quarterly meeting on June 5th.

We reported to the trustees the information on the City of Providence's lawsuit against Buck, the information that you promptly advised us concerning Buck's and Xerox's insurance coverage, the public SEC filings concerning Xerox's assets at year end, and the terms of Buck's contract with the Retirement Plan.

The trustees expressed various concerns.

1. The trustees were disappointed that they had to learn about the Providence suit from the press rather than from you. They view Buck as having an ongoing obligation to report to the trustees any situations that call into question Buck's competence or financial viability. They propose that our contract with Buck be amended to require Buck to promptly disclose to the trustees the filing of any legal or administrative action, including complaints to the ABCD, concerning Buck's professional performance.

2. If Providence's claim is even partially successful, Buck's one million dollars of insurance will exhausted. To determine whether Buck can satisfy any claims that the Retirement Plan may have in the future, we ask that Buck send us its financial statements each quarter and that the Retirement Plan's contract with your firm be amended accordingly.

3. In light of these concerns, the trustees feel that the two million dollar liability limitation in your firm's current contract is inappropriate. We propose that the liability limit be deleted from the contract.

Joe, these concerns and proposals are in no way a reflection upon the fine and devoted service that you have provided to the Board.

The Retirement Plan proposes that its contract with Buck be amended in the three ways proposed above. If the contract cannot be so amended, the trustees may consider seeking proposals from other actuarial firms.

If Buck is agreeable to these proposals, please let me know and we'll prepare a new contract.

Please let us have your reply by July 12th so we can report your response to the trustees when they next meet a week later.

Yours truly,

Robert A. Sugarman

ROBERT A. SUGARMAN
Board Certified Labor & Employment Lawyer

RAS/jd

cc: Board of Trustees

SUGARMAN & SUSSKIND
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Facsimile (305) 447-8115

MEMORANDUM

TO: North Miami Beach Police and Fire Retirement Plan

FROM: Sugarman & Susskind, P.A.

DATE: June 11, 2013

RE: Addendum - Buck Consultants' Lawsuit

Buck Consultants furnished two insurance certificates which show 1) that Buck Consultants is covered by a $1,000,000 "errors and omissions" (i.e., malpractice) insurance policy and 2) that Xerox Corporation as a whole is covered by a $10,000,000 aggregate insurance policy. The Xerox policy does not, however, cover actuarial malpractice.

It is important to remember that these insurance policies are not limited to activities related to providing services to your retirement plan. These are insurance policies that cover Buck Consultants and Xerox for services rendered to all of their clients.

As such, these insurance plans do not provide much protection to your retirement plan. A successful malpractice lawsuit by a third party against Buck Consultants for $2,000,000 would leave no insurance to cover potential claims by your plan. Although that is not much protection, Buck Consultants has still satisfied its obligation to provide insurance as required in the actuarial services agreement.

Although the insurance policies do not provide much peace of mind, it is also important to remember that Buck Consultants is wholly owned by the Xerox Corporation. Xerox is number 131 on the 2013 Fortune 500 list. In its most recent annual report, Xerox reported total assets (cash, inventory, property, etc.) of over $30 billion and total liabilities of $18 billion. Xerox also reported roughly $1.25 billion in cash and cash equivalents at the end of the 2012 year. Even though Buck Consultants may not be covered by reassuring insurance policies, it is wholly owned by a corporation that can easily satisfy liabilities like those it might face in the City of Providence lawsuit.

SUGARMAN & SUSSKIND
PROFESSIONAL ASSOCIATION
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♦Board Certified Labor
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Facsimile (305) 447-8115

MEMORANDUM

TO: North Miami Beach Police and Fire Fighter Retirement Plan

FROM: Sugarman & Susskind, P.A.

DATE: June 10, 2013

RE: Buck Consultants' Lawsuit

On February 26, 2013, the City of Providence, RI filed a complaint against Buck Consultants in U.S. District Court alleging breach of contract, breach of fiduciary duty, negligence, negligent misrepresentation, and a violation of Rhode Island False Claims Act. The total damages sought are around $10 million. The dispute arose when the City of Providence asked Buck Consultants, as its retirement plan actuary, to calculate the savings that could be gained from implementing a COLA freeze over a ten year period. For reasons that are unclear and are certainly in dispute, Buck Consultants made its calculations based on the wrong date for suspending COLAs and for the wrong year. The City of Providence acted in reliance on Buck Consultants' calculations, which it claims resulted in a $700,000 loss in savings, or $10 million when amortized over a twenty-eight year period. Whatever the merits of this case, $10 million is the rough amount that the City of Providence is seeking through litigation.

According to SEC filings, Buck Consultants, along with its parent company, Affiliated Computer Services (ACS), were acquired by Xerox Corporation on February 5, 2010, in a cash-and-stock transaction valued at approximately $6.5 billion. At the time, the "Buck" trade name had a listed value of $10 million. Buck Consultants is now part of Xerox's "Services Segment" that, according to SEC filings, raised $11.5 billion in revenue and $1.1 billion in profit in 2012. While there is an abundance of publicly available information on the financial health of Xerox as a whole, there is little public information showing the total assets, net worth, or general financial health of Buck Consultants standing alone. Buck Consultants files its own Form ADV with the SEC, required by its role as an investment consultant, but those documents do not provide any insight into Buck Consultants' independent financial health. The best course of action would be to ask Buck Consultants directly, as a gesture of good faith, for its most recently audited financial statements or its most recent cash balance statement.

In terms of Buck Consultants' continued competence to serve, it is important to note that the malfeasance alleged in the complaint, if true, is attributable to certain individual consultants and actuaries providing services to the City of Providence plan. The complaint does not clearly allege a systemic problem with the operations of the company as a whole; rather, it alleges very specific miscalculations made by actuaries working out of an office in the Northeast. While it is difficult to assess Buck Consultants' resilience in the face of a $10 million lawsuit without more information about their current financial condition, federal court records show that Buck Consultants have defended lawsuits in the past for claims ranging between $10 and $40 million. To put it another way, Buck Consultants has weathered other storms.

The agreement between Buck Consultants and the North Miami Beach Police and Fire Fighter Retirement Plan contains language that limits Buck Consultants' liability. The agreement provides that Buck Consultants' "liability hereunder shall be limited to the extent of its negligence or willful acts or omissions giving rise to the applicable claim." The agreement also limits Buck Consultants' liability in those cases where the Plan provided Buck Consultants with inaccurate or incomplete information on which to base its actuarial analysis. Liability is also limited to "direct losses" suffered by the retirement plan, not to exceed $2,000,000. The agreement disclaims liability for "indirect, incidental, exemplary, special, punitive, or consequential damages."

The agreement requires that Buck Consultants carry two types of insurance: public liability insurance, in the amount of $1,000,000; and professional liability insurance, in the amount of $1,000,000. The agreement provides that certificates of its insurance coverage should be provided to the Plan. If those are not in the Plan's records, then the Plan should ask Buck Consultants to furnish certificates of insurance that show the applicable amount of coverage.

Our concern is this: if the City of Providence's suit goes to trial and the court returns a verdict for the plaintiff in the amount of $10 million, there is a risk that such a verdict could exhaust Buck Consultants' liability insurance and threaten their viability as a company. If Buck Consultants' liability insurance is exhausted by the City of Providence's claims, then this Retirement Plan will face more risk by continuing to deal with Buck Consultants. It is in the Retirement Plan's interest to request from Buck Consultants evidence of their financial ability to compensate your Retirement Plan for any financial liability that they may have to you, including, but not limited to, their most recent audited financial statement, their most recent cash balance statements, and certificates of insurance.

SUGARMAN & SUSSKIND
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

Robert A. Sugarman♦
Howard S. Susskind
Kenneth R. Harrison, Sr.
D. Marcus Braswell, Jr.
Pedro A. Herrera
Noah Scott Warman
Ivelisse Berio LeBeau

♦Board Certified Labor
& Employment Lawyer

100 Miracle Mile
Suite 300
Coral Gables, Florida 33134
(305) 529-2801
Broward (954) 327-2878
Toll Free 1-800-329-2122
Facsimile (305) 447-8115

MEMORANDUM

TO: Firm Clients

FROM: Sugarman & Susskind, P.A.

DATE: May 20, 2013

RE: Legislative Update

On May 1, 2013, the Florida legislature passed Senate Bill 534, which creates new reporting requirements for local government defined benefit retirement plans, and Senate Bill 50, which creates new requirements for public meetings. The bills are being prepared for enrollment and will soon be sent to the Governor for action. If the Governor does not veto these bills, the changes pertaining to reporting requirements will take effect on July 1, 2013, while the changes to public meetings will take effect October 1, 2013.

SB 534 first removes the requirement that plan actuarial reports include a disclosure of the present value of the plan's accrued vested, nonvested, and total benefits. The bill then provides that the state shall not be liable for any obligations arising out of any current or future shortfall in local government retirement plans.

In lieu of reporting present value in regular actuarial reports, SB 534 requires the submission of new reports under new standards with the goal of standardizing various actuarial assumptions and methodologies. Within 60 days after the plan receives a certified actuarial report submitted after the close of the plan year ending on or after June 30, 2014, and thereafter every year an actuarial valuation is done, the plan must prepare and electronically submit reports containing the following information:

- Annual financial reports in compliance with requirements found in Government Accounting Standards Board (GASB) Statement No. 67 and Statement No. 68. These reports must use the RP-2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by scale AA;
- Annual financial reports similar to those prescribed above, but which use an assumed rate of return and assumed discount rate 2% less than a plan's assumed rate of return;
- The number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits as determined in the plan's latest valuation.
- The recommended contribution to the plan based on the latest plan valuation stated as an annual dollar value and a percentage of valuation payroll.

The Department of Management Services is expected to prescribe a format for submitting these reports at a later date, but plan service providers should consider reviewing the new GASB guidelines to be prepared for the new reports.

SB 534 also states that a local government plan that posts actuarial data on a website must also post other financial disclosures on that website, including: the new GASB reports, the plan's most recent actuarial valuation, a side-by-side comparison of the plan's assumed rate of return compared to the actual rate of return for the previous five years, and the percentages of cash, equity, bond, and alternative investments in the plan portfolio. If the plan does not have a website, the bill does not require that a website be created. However, municipalities will also have a duty to post the new GASB reports, as well as information about plan funding ratios, on their websites in the same manner that municipalities are required to post their tentative budgets online.

SB 50 is very simple: it requires that public boards or commissions, which includes local government retirement plans, give members of the public a reasonable opportunity to be heard on propositions before the board or commission. This can be easily accomplished by designating a specific period of time for public comment on regular meeting agendas. Many agendas for city commission meetings will provide three to five minutes for public comment. A similar allotment of time will be sufficient for retirement plan board meetings.

Plan of action:

- Plan service providers should familiarize themselves with the new reporting requirements and plan for the preparation of new reports in the years to come.
- Trustees should speak with their actuaries and administrators about the potential costs associated with generating new reports.
- If plans already post plan information on websites, they should make sure that the new information described above is also posted on such websites. If the plan does not have a website, then there is no need to create one.
- Municipalities must also post plan financial data, described above, on their websites in the same manner in which they must post tentative budgets. Local government plans should be ready to supply this information to plan sponsors in order to comply.
- Meeting agendas should be changed to allow time for public comment if they do not already do so.

Note that SB 458 / HB 1399, which would have substantially changed provisions governing the use of excise tax revenues for police and firefighter pension plans, did not pass.

Please feel free to contact our office should you have any questions with regard to the new laws and reporting requirements.

Bob Sugarman, Kenneth Harrison & Pedro Herrera

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(305) 529-2801
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Toll Free 1-800-329-2122
Facsimile (305) 447-8115

June 6, 2013

Darcee Siegel, City Attorney
City of North Miami Beach
17011 N.E. 19th Avenue
North Miami Beach, FL 33162-3194

Board of Trustees
City of North Miami Beach Police & Firefighters Retirement Plan
c/o Martin Lebowitz, Plan Administrator
17011 N.E. 19th Avenue
North Miami Beach, FL 33162-3194

Re: Follow-up on Opinion in re 9.5% - 2001 Increase

Dear Trustees, Darcee and Marty:

This is a follow-up to the attached opinion letter that I sent to you on Monday. It is based upon a telephone conference that I had this morning with the Buck actuaries Tim and Joe, Marty and Bill Dresback.

The bottom line is: **if** there are no legal impediments to reducing the benefits of the 14 retires FFs now receiving benefits (who range in age from Bill's 68 to a few in their late 80s), there **may** be an additional $175K that can be used to reduce the city's annual contribution to the FFs' pension plan.

I say "may" because the method of calculating the cost of the minimum benefits under the Naples letter to a group of firefighters who've all been long retired and whose pensions have long been funded is unknown. The Naples letter is not specific and applies to an open plan with active and retired members. The actuaries and I do not know the methodology that should be used to apply the principles of the Naples letter to our FFs' plan. As this is primarily an actuarial problem, Tim & Joe said that they'll call the state to try to get some guidance.

I say "if there are no legal impediments" because our FFs' pension plan has a long history of several changes and *may* have vested benefits in the retirees that cannot be taken away now. After talking with Bill, who knows the history of this because he was there and involved before Marty was hired and before I was your counsel (previously I assisted the City Attorney's office with complex pension issues):

- There was a lawsuit around 1990 by the PBA police union against the city that dealt with the use of the Chapter 185 premium tax rebates that resulted in a settlement or judgment that (1) prescribed how the money would be used and (2) may have been applied also to the use of the Chapter 175 premium tax rebates received by the FFs' pension plan. We'd need to research the terms of that settlement or court order and any agreement to apply it to the FFs.

- In 1999 there was a 2% annual COLA increase to each retiree's pension.

- This 2% COLA was replaced by the supplemental benefit plan (the "share plan") in about 2006. At that time, Bill obtained the written consent of each retired FF to repealing the 2% COLA and replacing it with the share plan. If the share plan payments are to be reduced to the current retirees (which is what will happen if $175K more of the state money is used to reduce the city's contribution), then we'd have to research whether the retirees' giving up their 2% COLA was consideration (the price) for their getting the share plan instead. If they traded their 2% COLA for the share plan, did the share plan become a contractual right that cannot be changed since the retirees gave up a COLA benefit to get annual share payments instead?

- In 2001, the 9.5% one-time increase was given on the condition that we continue to receive enough state money to reduce the city's contribution by $155K and also pay for this benefit, which we have been able to do. To what extent is this benefit affected by the Naples letter and can it legally be repealed or reduced?

The above events are based upon Bill's recollection and have not been researched or confirmed in city or pension board records.

Also, if the 2006/2009 share plan and the 2001 9.5% increase are repealed or reduced to provide money to reduce the city's contribution, will the plan run the risk of now or soon becoming "fully funded" so as to stop receiving all state 175 money?

The actuaries reported that the cost of calculating the cost of the minimum benefits received by the 14 retirees should be about $7500.

We can expect, based upon my experience with other plans and with our FF retirees, that any attempts to reduce retirees' benefits will be fought and probably litigated by the retirees.

Whether pursuing this further is worth the approximately $175K to be gained and is worth reducing the benefits paid to the FF retirees is a business judgment beyond both the purview of the trustees and my role as your lawyer. All we can do is provide the City with the information that we have in our files, access to our actuaries, and my initial analysis of the legal issues involved (to which the analysis of the city attorney and the city's pension lawyer should be added.)

The ordinance that you'll be considering next week was meant to codify existing practice but gave rise to the discussions in today's phone conference and my two letters to you. If you intend to continue the existing practice until and unless that City makes a change to the FF retirees' benefits, I suggest that you approved the proposed ordinance.

Whether the FFs' pension plan should or will be changed in order to reduce both the City's contribution to that plan and the retirees' benefits is a City decision and not one that can be made by our Retirement Committee). I am sure that the City will make its decision in light of the Naples letter, what we hear from the actuaries and the state, my two letters, and most importantly, the desires of the City's officials and the good advice of the City attorney.

I sent you this letter so you'll know the latest on what we heard. From here on, it's a city decision (of course we'll offer whatever assistance we can) as to whether to proceed further on this issue.

Yours truly,

Robert A. Sugarman

ROBERT A. SUGARMAN
Board Certified Labor & Employment Lawyer

RAS/jd

From: Robert Sugarman
To: Jessica De la Torre
Subject: FW: FOLLOWUP TO OPINION: NMB Firefighters 9.5% 2001 increase
Date: Wednesday, June 05, 2013 6:00:51 PM

From: Robert Sugarman
Sent: Wednesday, June 05, 2013 6:00 PM
To: 'Lebowitz, Martin'; 'Siegel, Darcee'
Cc: Jessica De la Torre; Pedro Herrera
Subject: FOLLOWUP TO OPINION: NMB Firefighters 9.5% 2001 increase

Marty – please forward this to all trustees, the actuaries and FF Liaison Dresback.

Dear Trustees, Darcee and Marty,

This is a followup to the below opinion letter that I sent to you on Monday. It is based upon a telephone conference that I had this morning with the Buck actuaries Tim and Joe, Marty and Bill Dresback.

The bottom line is: **if** there are no legal impediments to reducing the benefits of the 14 retires FFs now receiving benefits (who range in age from Bill's 68 to a few in their late 80s), there **may** be an additional $175K that can be used to reduce the city's annual contribution to the FFs' pension plan.

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I say "if there are no legal impediments" because our FFs' pension plan has a long history of several changes and *may* have vested benefits in the retirees that cannot be taken away now. After talking with Bill, who knows the history of this because he was there and involved before Marty was hired and before I was your counsel (previously I assisted the City Attorney's office with complex pension issues):

- There was a lawsuit around 1990 by the PBA police union against the city that dealt with the use of the Chapter 185 premium tax rebates that resulted in a settlement or judgment that (1) prescribed how the money would be used and (2) may have been applied also to the use of the Chapter 175 premium tax rebates received by the FFs' pension plan. We'd need to research the terms of that settlement or court order and any agreement to apply it to the FFs.
- In 1999 there was a 2% annual COLA increase to each retiree's pension.
- This 2% COLA was replaced by the supplemental benefit plan (the "share plan") in about 2006. At that time, Bill obtained the written consent of each retired FF to repealing the 2% COLA and replacing it with the share plan. If the share plan payments are to be reduced to the current retirees (which is what will happen if $175K more of the state money is used to reduce the city's contribution), then we'd have to research whether the retirees' giving up their 2% COLA was consideration (the price) for their getting the share plan instead. If they traded their 2% COLA for the share plan, did the share plan become a contractual right that cannot be changed since the retirees gave up a COLA benefit to get annual share payments instead?
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Whether pursuing this further is worth the approximately $175K to be gained and is worth reducing the benefits paid to the FF retirees is a business judgment beyond both the purview of the trustees and my role as your lawyer. All we can do is provide the City with the information that we have in our files, access to our actuaries, and my initial analysis of the legal issues involved (to which the analysis of the city attorney and the city's pension lawyer should be added.)

The ordinance that you'll be considering next week was meant to codify existing practice but gave rise to the discussions in today's phone conference and my two letters to you. If you intend to continue the existing practice until and unless that City makes a change to the FF retirees' benefits, I suggest that you approved the proposed ordinance.

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I sent you this letter so you'll know the latest on what we heard. From here on, it's a city decision (of course we'll offer whatever assistance we can) as to whether to proceed further on this issue.

Bob Sugarman
SUGARMAN & SUSSKIND
100 MIRACLE MILE, SUITE 300
CORAL GABLES, FLORIDA 33134
(305)529-2801 – Main
(954)327-2878 – Broward
(305)447-8115 – Fax
Email: sugarman@sugarmansusskind.com

From: Robert Sugarman
Sent: Monday, June 03, 2013 1:20 PM
To: 'Lebowitz, Martin'; 'Siegel, Darcee'
Cc: Jessica De la Torre; Pedro Herrera
Subject: OPINION: NMB Firefighters 9.5% 2001 increase

Marty – please forward this to all trustees and FF Liaison Dresback.

Dear Darcee and Marty,

Marty forwarded to me Trustee Vallejo's email below concerning the use of the additional premium tax revenues. The Mayor is correct that the new DMS interpretation of chapter 175 may permit the use of additional premium tax revenues to offset city contributions.

At last month's fire and police trustees' school in Tallahassee, Trish Shoemaker, who administers the fire and police pension plan for the DMS-DOR (Department of Management Services, Division of Retirement) (Trish will be retiring at the end of this month) announced that the state will apply the principles in the "Naples letter" to all plans without the need for each city to obtain its own letter.

Keith Brinkman, her supervisor, announced those principles: the premium tax revenues that exceeded the amount received in 1999 (known as "additional premium tax revenues" or "APTR") can be used to pay for the minimum benefits mandated by Chapter 175 (meaning the cost of providing those benefits as compared to providing no benefits.) The previous 1999-2012 interpretation was that those APTRs could only be used to pay for benefits in excess of those that existed in March 1999 (meaning the cost of providing extra benefits compared to providing those that existed in 1999).

This will permit the APTRs <u>and</u> the "frozen amount" (the amount received in 1999), to be applied to reduce city contributions if: (1) the frozen amount is not enough money to pay for the state minimums, and (2) there are no contractual or ordinance provisions that otherwise direct how the APTRs will be used.

So in order to evaluate whether the City can take advantage of the new DMS interpretation to put all or part of the APTRs into the plan to reduce city contributions, we need to know

(1) whether the frozen amount pays for the state minimums at present,

(2) if not, how much are the APTRs and how much of the APTRs would be needed to pay for the state minimums,

(3) whether there are any pension provisions

directing how the APTR is used and

(4) whether the pension plan can be changed.

The first 2 questions should be sent to the actuary for an answer. *Marty, in order to meet the Mayor's request to have the information we need to discuss this next week, I suggest that you send these questions to the actuary now and share his response with all of us as soon as it is received.*

I can answer the third question. The intent of the proposed ordinance is to codify the practice of many years to use the first $155,242 [1] of all state receipts to reduce city contributions, then to use any remaining to fund the 9.5% increase, and then if any remains to fund a one-time supplemental benefit (a "13th check.") The proposed ordinance is needed to conform the code to current and past practice. The code, as currently written, differs from the past and current practice. The code, as currently written, states that the 9.5% increase is payable only if the FFs' portion of the plan is "fully funded." However, once the FFs' portion of the plan becomes "fully funded", *all state money stops.* [2] This works against both the FF retirees' and the City's interests. The City would lose and thus have to replace the $155,242 that is used to reduce the City's contributions. The retirees would lose any chance for the 9.5% increase and any supplemental payment (since these both are paid only if state money is received and then only after the first $155K is used to reduce city contributions.)

So to use more of the 175 money to reduce the City contributions, the City would have to change the current pension plan. This raises the 4th question: can it be changed given that all FFs are now retirees?

The 4th question raises two concerns:

1. generally, the law in Florida is that a retiree's pension benefits cannot be reduced once the retiree has retired.
2. the 9.5% benefit increase took effect in 2001 and the supplemental benefit in 2009. The 2009 supplemental benefit was "in lieu of cost of living adjustments" previously provided.

So, were these benefits (the 9.5% in 2001 and the supplemental benefit in 2009) added *after* retirees retired (the answer may be different for different retirees depending upon their retirement date) and were they adopted in lieu of other benefits that were in effect when each retiree retired?

> *Marty, in order to answer this, we need a chronology of the FFs' plan and how it changed starting when the earliest of the current FF retirees retired. For each change, we need to know who of the current retirees was retired at the time of the change. If a retiree is dead but a survivor annuity is being paid, we need the answer for the deceased retiree.*

The actuary's answers to the first 2 questions above will let us know how much money we're talking about here. It will tell us whether there is any APTR that is not used for minimum benefits. If there is APTR that can be used to reduce the City contribution under the state's new interpretation, the City can decide whether it wishes to change the pension ordinance or whether its right to do so is limited by any rights that the retirees may have to all or part of the current benefits.

[1] For purposes of this letter, I'm assuming that $155,242 is the "frozen amojnt" that was received in 1999. Should I be in error, then please substitute the correct amount once we learn it from the actuary. I did not verify the amount so I could quickly respond to the Mayor's most apt questions.

2 (Section 175.371(2) states: If some participants in a pension plan

created pursuant to this chapter elect to transfer to another state retirement system and other participants elect to remain in the existing plan created pursuant to this chapter, the plan created pursuant to this chapter shall continue to receive state premium tax moneys until fully funded. If the plan is fully funded at a particular valuation date and not fully funded at a later valuation date, the plan shall resume receipt of state premium tax moneys until the plan is once again fully funded.)

Bob Sugarman
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100 MIRACLE MILE, SUITE 300
CORAL GABLES, FLORIDA 33134
(305)529-2801 – Main
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(305)447-8115 – Fax
Email: sugarman@sugarmansusskind.com

From: Lebowitz, Martin [mailto:Martin.Lebowitz@citynmb.com]
Sent: Monday, June 03, 2013 7:39 AM
To: Robert Sugarman
Cc: Jessica De la Torre
Subject: FW: NMB Firefighters 9.5% 2001 increase

Please see the Mayor's comment.

Marty

From: Vallejo, George
Sent: Saturday, June 01, 2013 6:49 PM
To: Lebowitz, Martin; Siegel, Darcee; Weisblum, Roslyn
Subject: Re: NMB Firefighters 9.5% 2001 increase

Marty, Darcee, Roz...

I believe that with the new DMS interpretations we could possibly use the "excess" premium money from 175 to offset the city contributions versus paying out as extra benefits. Before I vote on something like this, I would like to know from our attorneys and DMS if this is correct. Please obtain the necessary information so that we can discuss on June 12. I also ask that this information be shared with the Board Members however possible in compliance with the Sunshine Law. Thank you.

Regards,

George Vallejo
Mayor

North Miami Beach

On May 29, 2013, at 7:47 AM, "Lebowitz, Martin" <Martin.Lebowitz@citynmb.com> wrote:

Please see below and attached.

Marty

From: Robert Sugarman [mailto:sugarman@sugarmansusskind.com]
Sent: Tuesday, May 28, 2013 6:19 PM
To: Siegel, Darcee; Lebowitz, Martin
Cc: Jessica De la Torre
Subject: NMB Firefighters 9.5% 2001 increase

Dear Darcee and Marty

At the last trustees' meeting, we were asked to revise the firefighters' portion of the pension code to reflect the way in which the state money has been allocated.

As we understand the allocation:

- the first $155,242 each year is used to reduce the City's contributions
- next any money remaining from the annual premium tax revene is used to fund the 2001 9.5% benefit increase
- if any money remains after those two items are funded, a supplemental benefit is paid
- if not enough money remains after the City credit of $155,242 is applied, then the 9.5% benefit increase is reduced to the amount that can be funded that year from the money that remains

Attached are our proposed revisions.

Your comments will be appreciated as the trustees will consider this at their June 12th meeting.

Marty, please forward this explanation to all trustees, the actuary and Bill

Dresback for their comments.

Thanks,

Bob Sugarman

<Normal Retirement Benefits Ordinance Amendment (2).doc>

PLEASE NOTE: The City of North Miami Beach is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure. All e-mail sent and received is captured by our servers and kept as public record.

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[1] For purposes of this letter, I'm assuming that $155,242 is the "frozen amojnt" that was received in 1999. Should I be in error, then please substitute the correct amount once we learn it from the actuary. I did not verify the amount so I could quickly respond to the Mayor's most apt questions.

[2] (Section 175.371(2) states: If some participants in a pension plan created pursuant to this chapter elect to transfer to another state retirement system and other participants elect to remain in the existing plan created pursuant to this chapter, the plan created pursuant to this chapter shall continue to receive state premium tax moneys until fully funded. If the plan is fully funded at a particular valuation date and not fully funded at a later valuation date, the plan shall resume receipt of state premium tax moneys until the plan is once again fully funded.)