

2-2

November 1, 2005

United States Dept. of Labor/EBSA
33 Whitehall Street
Suite 1200
New York, NY 10004

Attn: Jose Castillo

SUBJECT: Asbestos Workers Local 12 Benefit Funds
Litigation and Re-Allocation Analysis

Dear Mr. Castillo:

Reference the above subject document, copy of which is enclosed, I seek the assistance of your department to ascertain the provisions, remedies and measures contained therein, and offered by the trustees are legal, adequate, and customary to correct and protect the assets and rights of plan participants.

The proposed measures attempt to rectify serious and widespread mismanagement of the funds by its service providers and trustees over a period of many years.

I have serious concerns and doubts about many of the proposals. I feel available funds are targeted and biased, in some cases, to favor certain groups or categories of participants, when there is no such distinction made for participants, other than as a whole. I feel expenses to offset certain losses are borne inappropriately by participants. I address my concerns for your scrutiny here in no specific order or preference. I am enclosing personal information on my own account for your use, and ask you to protect its confidentiality to the best of your ability.

- The "Litigation & Re-Allocation Analysis" is the result of a limited seven-year investigation of a fund which is over thirty years old. Working from the year 1999 back to 1993, it corrects alleged misallocations of investment yield rates and previously posted interest amounts to participant accounts. It is noted that there are errors in every year investigated. My individual "participant account adjustment statement" (referred to on page 21 of the analysis) is attached as enclosure #1, and it reflects changes in my personal account end-of-year balances and posted investment yield interests every year of the investigation. During a statement review with the fund accountant and administrator (referred to on page 21 of the analysis) which took place on June 22, 2004, I stated that these yearly adjusted balances make it logical to assume the starting balance listed on my statement for January 1, 1993 "actual earnings" would also be changed had the investigation proceeded further. This makes this balance arbitrary and inaccurate. While not disagreeing with this, the accountant stated there would be no possibility of researching the fund previous to this time and this is the balance my adjustments would have to begin with. This is unfair to a thirty-year participant (in year 2000) like myself. My account adjustments between years 1993 and 1999 are a negative \$16,900. Had the investigation proceeded further, perhaps adjustments would have offset this negative figure to positive gains. Limiting the scope of the investigation is arbitrary and discriminatory.

November 1, 2005

Page 2

- Although the investigation, and its corrective adjustments, is limited to only seven years (1993 to 1999), expenses to the fund are applied proportionately to account balances. Long time participants, such as myself, pay a heavier share of the expenses, but receive only the same limited seven-year scope of the investigation. Would it not be more appropriate to apply expenses evenly for all participants with seven or more years of activity in the fund and a reduced proportionate amount to members involved a lesser time?
- My individual participant account adjustment statement (enclosure #1) shows my January 1, 1993 balance (after an adjustment to my end of year 1992 balance) as \$170,050.08. On this principal, the statement applied an "actual earnings" rate of yield of 7.88% to arrive at a corrected interest figure of \$14,799.35 for 1993. However, when the \$170,050.08 figure is actually multiplied by the 7.88% rate the interest amount should actually be \$13,399.94, \$1,400 less than the statement amount. The actual rate on the posted interest amount of \$14,799.35 would be 8.7%. I was told at my statement meeting of June 22, 2004, that this discrepancy is normal because interest is determined by the entire fund, not individual accounts. Past yearly statement, however, for my years 1997 and 1998 (enclosed here as examples in enclosure #2 and #3) reflect a much smaller percentage rate and interest dollar amount discrepancy; (\$45 in 1997 and \$40 in 1998 compared to the aforementioned \$1,400 difference in the "corrected" statement for year 1993). This discrepancy in 1993 does not provide confidence for me in both the accuracy of the statement and the fund investigation figures. I would be buoyed if accountants from your department review both the statement figures and the method the funds investment yield formula is computed, and that the investment yield is uniformly applied to all participant members.

I can find no record or statement for investment yield being applied to my account for the period of time January 1, 2001 to June 25, 2001. The last reflection of investment yield on my individual account statement (enclosure #1) is for year 2000, which was never previously applied until after the subject analysis meeting of April 26, 2004. Previous to the funds finances being turned over to New York Benefit Life Company, the annuity was an "annual investment yield based fund" and a statement similar to enclosure #2 and #3, rendered an accounting of this information to participants. Beginning June 26, 2001, the fund became a daily investment yield fund, with each day's activity available to participants on an Internet site. An example of my personal on-line statement is included here as enclosure #4, and notes an "opening balance" on June 26, 2001 of \$382,689.23. A letter dated June 25, 2001 from the fund administrator (enclosure #5) states in part, "your account will begin with your December 31, 2000 balance". At my "statement review meeting" of June 22, 2004 with the fund accountant, I asked why there was no posted yield for the January 1, 2001 to June 25, 2001 period of time. He informed me this investment yield was included in the on-line statement "opening balance". This would be contradictory of the fund letter (enclosure #5). No subsequent letter amending or correcting the funds June 25, 2001 letter was ever sent to participants. No Internet statement ever included a line item amount for this period of time. No partial yearly statement such as enclosure #2 and #3 was ever sent out for this period of time. Even if the fund letter of June 25, 2001 was in error as to the "opening balance" content, would the trustees or New York Benefit Life Company be so unprofessional as to cluster such a specific time period yield with contractor contributions, expense fees and market value changes into a "starting" figure? Aren't the participants due a better accounting of our yield balances than to be told, "...it's in there"?

④ The "Litigation & Re-Allocation Analysis", "Summary of Recoveries & Savings" on page 2, lists a line item titled "fiduciary (mismanagement) insurer". The worth of this item is \$516,500. My "participant account adjustment statement" (enclosure #1) shows I received no account adjustment from this insurance policy I helped pay for from my participant expenses. Though I and all participants suffered losses as a result of fund mismanagement, the more than one-half million dollars will be used only to reimburse the fund from losses revealed in accounts of retired participants or participants without sufficient account balance to reimburse the fund for their account deficiencies. Nowhere in the by-laws of the funds are there distinctions or allowances to shower proceeds to one while withholding to another. This remedy is biased and discriminatory, and employed to eliminate trustee hardship or embarrassment to seek re-imburement from participants through litigation or personal appeals.

• The "Litigation and Re-Allocation Analysis Sequence of Events - 2001" (page 4) notes the termination of the accounting firm Marcum & Kliegman due to "unsatisfactory performance". Trustees and the fund accountant have evaluated this firm's work as "inept" and "incapable of completing their assignment". These opinions are contrary to an article in Long Island Newsday on July 27, 2003 titled "Tracking Down Wrong Numbers", where the firm of Marcum & Kliegman is described as expert in the field of forensic accounting. I question the following with regard to their termination in this matter:

- ❖ Though it is required in schedule C, part II of the 5500 report, the trustees have never completed "Termination Information on Accountants and Enrolled Actuaries", or sent the required "Notice to Terminated Accountant" section to Marcum & Kliegman. Why?
- ❖ The trustees have never directly requested a refund of the approximately \$85,000 of fund assets paid to Marcum & Kliegman for their unsatisfactory services. Why?
- ❖ What instructions were given to Marcum & Kliegman in their "Letters of Appointment" from fund trustees when they were retained for service and how did they grossly violate them?
- ❖ Why have the trustees, administrator and fund attorney refused access to the report that was issued that resulted in the termination of longtime fund accounting firm Lawson/Holland?
- ❖ How is it possible for a reputable accounting firm such as Marcum & Kliegman to generate \$85,000 in bills for services without producing a single completed report of their findings or progress?

• In the Litigation and Re-Allocation Analysis Summary of Losses (page 1) there is mention of an IRS penalty applied to the Annuity Fund. Administration of this fund is the sole responsibility of the trustees and the service providers they choose to retain. With this in mind, I question the appropriateness of passing on this loss to the participant accounts. Reference the enclosed letter dated February 5, 1993 from the fund office, (enclosure #6), there is history of previous fund violations in the annuity fund loan program. In this particular case, there were fines passed on to the fund trustees from your department for the violations referred to in this communications. Many years later, however, trustees were re-imbursed for their personal monetary losses thru the general fund (dues) after a motion to do so by the then President, Robert Glaser, was passed.

United States Dept. of Labor/EBSA
November 1, 2005
Page 4

If this action is not illegal, it certainly undermines the purpose of penalties to trustees; to encourage them to be more stringent and responsible in following ERISA guidelines. If there are any forthcoming monetary penalties with regard to the alleged present mismanagement being considered, I hope your department will take whatever steps necessary to prevent a re-occurrence of participants and members having to bear this monetary burden of administration blunders, oversights and disregard, by either the trustees or the service providers that they are duty-bound to monitor.

The scope and magnitude of this investigation and the complexities involved with reconciling account balances over such a vast period of time have, I feel, overwhelmed most participants of these funds. We are for the most part, unfamiliar with the accounting principals and knowledge necessary to ascertain the accuracy and appropriateness of the actions taken and outlined in this re-allocation. The participants are the affected parties of this action, but we are not the responsible parties. Clearly it is thru the neglect and deceit of others that we now must seek your departments aid to scrutinize not only the areas I have questioned herein, but also any and all parts of this corrective process to insure our rights afforded under ERISA have been protected.

Thank you in advance for your diligence and concern.

Sincerely,

N4B L paper work

*EOX
Acct
Balance*

Year	Actual Earnings		Original Earnings Allocation		Account Adjustment	
	Rate	Earnings	Rate	Earnings	%	\$
1/1/1993	-	170,050.08	-	165,597.92	-	4,452.16
1993	<i>8.77</i> 7.88%	14,799.35	8.73%	14,435.10	-0.85%	364.25
1994	-3.81%	(8,051.78)	2.38%	4,512.49	-6.19%	(12,564.27)
1995	15.56%	35,415.43	12.20%	25,271.37	3.36%	10,144.06
1996	2.02%	5,765.46	12.90%	31,591.44	-10.88%	(25,825.98)
1997	8.18%	24,275.04	7.70%	22,015.50	0.48%	2,259.54
1998	8.30%	27,785.81	10.10%	32,199.66	-1.80%	(4,413.85)
1999	-0.63%	(2,245.89)	-3.00%	(10,920.52)	2.37%	8,674.63
2000	3.84%	18,282.05	0.00%	-	3.84%	18,282.05
Total Reallocation Adjustments						<u>\$1,372.59</u>
Allocation of Fidelity/Theft Proceeds						2,819.07
Allocation of Refunded Administrative Fees						1,681.82
Reimbursed Distribution From Insurance Provider						-
Net Addition/(Deduction) to Individual's Account Balance						<u><u>5,873.48</u></u>

\$ -165

*net a
adjust
net
appli*

ENC1 #1

ASBESTOS WORKERS LOCAL NO. 12 ANNUITY FUND
25-19 43rd Avenue - Long Island City, NY 11101
Telephone (718) 784-8883

Annuity Share Statement

IS #

Beneficiary:

Relationship: SPOUSE

The following contributions were reported to the fund office for hours worked during the year ending December 31, 1997.

The hours and contributions that were reported on your behalf are listed on this statement.

MO/YR	HOURS	CONTRACTOR	CONTRIBUTIONS
1/97	133.00		798.00
2/97	126.00		756.00
3/97	175.00		1050.00
4/97	105.00		630.00
5/97	140.00		840.00
6/97	168.00		1008.00
7/97	126.00		756.00
7/97	7.00		42.00
8/97	161.00		966.00
9/97	126.00		756.00
10/97	102.00		612.00
11/97	154.00		924.00
12/97	126.00		756.00
TOTALS:	1649.00		9894.00

Your accumulated share in the Asbestos Workers Local No. 12 Annuity Fund as of 12/31/1997 is stated below. Your interest earnings were based upon 7.700%.

1996 Year End Balance	286499.42
Contributions in 1997	+ 9894.00
Interest Earnings on 12/31/1996 Balance	+ 22015.50
Total as of 12/31/1997	318408.92

If there are any discrepancies on this statement, please contact me immediately.

Sincerely,

F. Market
Manager

ENCI #2

25-19 43rd Avenue - Long Island City, NY 11101
Telephone (718) 784-8883

annuity Share Statement

IS #

Beneficiary: Relationship: SPOUSE

The following contributions were reported to the fund office for hours worked during the year ending December 31, 1998.

The hours and contributions that were reported on your behalf are listed on this statement.

MO/YR	HOURS	CONTRACTOR	CONTRIBUTIONS
1/98	133.00		798.00
2/98	119.00		714.00
3/98	91.00		546.00
3/98	49.00		294.00
3/98	21.00		126.00
4	126.00		756.00
4	7.00		42.00
4/98	7.00		42.00
5/98	157.00		942.00
5/98	133.00		798.00
7/98	140.00		840.00
3/98	133.00		798.00
3/98	21.00		126.00
7/98	112.00		672.00
7/98	14.00		84.00
11/98	105.00		630.00
11/98	42.00		252.00
1/98	133.00		798.00
1/98	133.00		798.00
TOTALS:	1676.00		10056.00

Your accumulated share in the Asbestos Workers Local No. 12 Annuity Fund as of 12/31/1998 is stated below. Your interest earnings were based on 10.100%.

1997 Year End Balance	318408.92
Contributions in 1998	+ 10056.00
Interest Earnings on 12/31/1997 Balance	+ 32199.66
Total as of 12/31/1998	360664.58

Continued on next page ...

ENCL #3

Benefits Complete*

View My Account

Manage My Account

Financial Tools

Home
Help
Logout

Detailed Statement On-Line

The Asbestos Workers Local 12 Annuity Fund
as of January 11, 2002

Account Activity For All Funds

- Welcome
- Account Summary
- Investment Summary
- Personal Rate of Return
- Detailed Statement On-Line
- Statements by Mail
- Review Current Loan
- View E-Mail Subscriptions
- Activity History

Have this page E-Mailed to you on a scheduled basis, click below:



Date	Investment Activity	Cash Amount	Market Value
06/26/2001	Opening Balance		\$382,689.23
09/27/2001	Fees	-1,952.28	
10/19/2001	Anty Contr Cont.	2,864.40	
11/30/2001	Anty Contr Cont.	1,605.80	
	Change in Market Value		\$10,645.06
01/11/2002	Closing Balance		\$395,852.21



Please be aware that the activity detailed in any Detailed Statement On-Line request may not reflect the most recent contribution activity.

2001.11.08.11:52 15:20:56 01/13/2002

01/11/02

Local #12
ASBESTOS WORKERS EMPLOYEE BENEFIT FUNDS
New York City

Welfare
Pension
Vacation
Annuity
AJEF



Al Wassell
Fund Manager

June 25, 2001

Dear Annuity Plan Participant:

This letter is to inform you that effective June 27, 2001, your Asbestos Workers Local 12 annuity plan account is "live" with New York Life Benefit Services. In the next few days you will be receiving more detailed information directly from New York Life explaining how to establish your account and PIN number.

If you wish to access your account immediately you can call New York Life at 1-800-294-3575 or over the internet at www.bcomplete.com.

Your account will begin with your December 31, 2000 balance. You will be able to invest 70 percent of your money. The other 30 percent will be held in a separate "core" account. The "core" account money will be invested as follows, up to 30 percent in equities and the rest in bonds. The money you have contributed to your account in 2001 will be showing up as soon as the accountants and New York Life can reconcile the money.

Thank you for your patience and understanding.

Sincerely and Fraternaly Yours,

A handwritten signature in cursive script that reads "Al Wassell".

Al Wassell
Fund Manager

ENC 1 #5

LOCAL #12
ASBESTOS WORKERS EMPLOYEE BENEFIT FUNDS
New York City

Welfare
Pension
Vacation
Annuity



Jerome F. Market
Fund Manager

February 5, 1993

RE: LOCAL 12 ANNUITY FUND
PARTICIPANT LOANS

Dear Participant - Borrowers:

As a result of an audit, the United States Department of Labor (D.O.L.) has instituted a court challenge to our participant loan program in Federal District Court. It has sued the former and current Annuity Fund Trustees for allegedly breaching their fiduciary duty with regards to administering the loan program. Why has it instituted suit? The Department of Labor doesn't think that you were charged enough interest on your loan balance.

After the D.O.L. lost a comparable challenge in Florida in 1986 on the interest rate for first mortgages to Annuity Fund participants, it issued a regulation in October, 1989 requiring the interest rate charged on participant loans to be that charged by commercial lenders. It alleges our loans are below market rate.

The trustees believe that they do charge the proper rate of interest on participant loans. In addition to the annual five (5%) percent rate of interest, the borrower is assessed the value that the loan balance would have earned had it been invested.

If the D.O.L. prevails, the trustees face personal liability for all loans given to participants since June, 1986. Their potential liability is dangerously close to the insurance policy limits of one million dollars. The trustees face continuing, increased liability as the court case heads for trial and possible appeal.

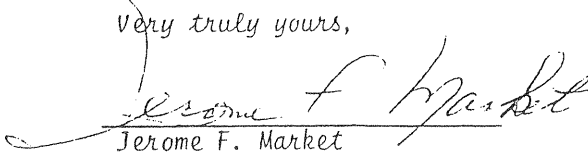
encl # 6

To protect the trustees, our counsel recommended and the trustees approved an adjustment to the loan rate periodically to a percent approved by the D.O.L. for all new and existing loans beginning January 1, 1993. The Department is currently endorsing the process utilized by the trustees which results in a rate of eight and one-quarter (8.25%) percent, which must be reviewed on a bi-annual basis. Loans granted after the future evaluation dates, will bear the interest applicable at that time. The loan rate will remain stable during its term. This arrangement was made without prejudice to the trustees defending themselves in the underlying action with the D.O.L.

The interest collected on your loan above and beyond the five (5%) percent rate previously charged by the Annuity Fund will be placed in an interest-bearing escrow account pending the outcome of the case. The escrow account will be allocated in accordance with any settlement or judgement rendered in the lawsuit.

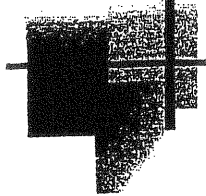
Thank you for your anticipated cooperation in this matter.

Very truly yours,


 Jerome F. Market
 Fund Administrator

cc: John Sore
 Robert Racich
 Carl Pereira
 John Solano
 George Grabner
 Larry Loperfido
 Frederick DeMartino
 Albert Wassell
 John Bokun
 William D. Petersen
 Thomas Viscovich
 Charles Zirkelbach
 William Fitzgerald
 Frederick Herr, Sr.
 Dennis Ippolito
 Colleran, O'hara & Mills
 Lane & Mittendorf

**ASBESTOS WORKERS LOCAL
12 FRINGE BENEFIT FUNDS**



Litigation and Re-Allocation Analysis

April 26, 2004



Table of Contents

■ Summary of losses	1
■ Summary of recoveries	2
■ Sequence of events	3-8
■ Analysis of findings	9-10
■ Interest allocation analysis	11-16
■ Allocation of monies recovered	17
■ Allocation of Annuity Fund recoveries	18
■ Participant notifications	19-20
■ What's next?	21

Summary of Losses

*Too much means
too little math.*

\$ Lost due to incorrect interest allocations (Annuity)	\$695,770
Fidelity claim for monies allegedly stolen (all funds)	654,594
IRS penalties (Annuity)	16,216
Health & Vacation benefits paid in error (Welfare)	18,843
Professional fees incurred for recovery (all funds)	<u>340,727</u>
Total	<u>\$1,726,150</u>



Summary of Recoveries and Savings

Fidelity(theft) insurer	\$626,459
Fiduciary(mismanagement) insurer	516,500
Other defendants'/participants' individual payments	<u>471,416</u>
Total cash received	1, 614,375
Estimated pension benefits saved	30,600
Estimated remaining receivables (in litigation/collection)	74,370
Estimated value of discounted professional services	<u>125,000</u>
Grand total	<u>\$1,844,345</u>

It should be noted that while the loss and recovery represent significant dollar amounts, in total they represent less than 2% of the Local 12 Funds' Assets.



Sequence of Events - 2000

- Trustees are preparing to convert the Annuity Fund to a "Self-Directed" investment plan.
- Differences in 1999 investment earnings between accountant and investment monitor reported to the Trustees.
- Trustees conducted search and hire Marcum & Kliegman ("M&K") to investigate differences in investment earnings.

Sequence of Events - 2001

- Terminate M&K due to unsatisfactory performance. *"Letter of appointment"*
- Hire Schultheis & Panettieri ("S&P") to do the following:
 - Determine cause of difference in reported investment earnings
 - Complete year 2000 audits (Due 11/15/01)
 - Reconcile participant accounts to assets transferred to New York Life ("NYL")

Sequence of Events – 2001 (Cont'd)

- Based on S&P's findings regarding the variance in investment earnings, the Trustees expanded investigation to include:
 - Analysis of all Annuity Fund loan and benefit disbursements for the years 1996-2000.
 - Effect of earnings misallocations on individual accounts.
- Based on S&P's findings on the Annuity Fund loan and benefit disbursements, the Trustees expanded the investigation to include analysis of all Funds' disbursements from 1992-2000.
- Notified insurance carriers of possible claims.



Sequence of Events - 2002

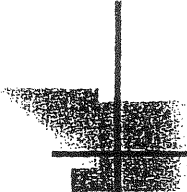
Based on the results of the investigations:

- Notified D.O.L. and U.S. Attorney's Office
- Filed claims with insurance carriers
 - Fidelity (monies allegedly stolen)
 - Fiduciary (alleged mismanagement by prior Fund Manager)
- Filed lawsuits against various parties
- Filed Proof of Loss and Settled Fidelity claim



Sequence of Events – 2003

- Received several settlements from individuals.
- Continued negotiations with Fiduciary carrier.
- Ongoing communication with DOL.



Sequence of Events - 2004

- Negotiated settlement with Fiduciary carrier.
- Negotiated settlements with various other parties.
- Analyzed options regarding allocation of all settlement proceeds.
- April 26, 2004 – Meet with membership.

Analysis of Findings

Reconciliation of NYL Transfer-

- Participant accounts exceeded available assets.

Annuity Fund Loan and Benefit Disbursements-

- Several loans/benefit disbursements were not properly reflected on individual account balances.
- There were several disbursements to unknown persons/providers.
- Checks were endorsed by persons other than the payee.

All Funds Cash Disbursement Analysis-

- There were several checks issued to or endorsed by an unknown persons/providers.



Analysis of Findings (Cont'd)

Interest Allocation Analysis-

- Interest posted to individual participant accounts was inconsistent with actual allocable earnings.

Other Findings-

- The Annuity Fund was assessed IRS penalties for failure to remit withholding taxes in a timely manner.
- Health and Vacation benefits were paid to ineligible persons.
- Unearned pension credits were granted.

Interest Allocation Analysis

YEAR	ALLOCABLE INCOME		EARNINGS POSTED TO ACCOUNTS		(OVER)/UNDER ALLOCATION	
	%	\$	%	\$	%	\$
1990	7.62%	2,385,000	8.54%	2,700,000	-0.92%	(315,000)
1991	9.39%	3,196,000	9.60%	3,100,000	-0.21%	96,000
1992	9.12%	3,296,000	9.83%	3,500,000	-0.71%	(204,000)
1993	7.88%	3,000,000	8.73%	2,926,000	-0.85%	74,000
1994 *	-3.81%	(1,503,000)	2.38%	842,000	-6.19%	(2,345,000)
1995	15.56%	6,005,000	12.20%	4,285,000	3.36%	1,720,000
1996	2.02%	874,000	12.90%	4,790,000	-10.88%	(3,916,000)
1997	8.18%	3,521,000	7.70%	3,193,000	0.48%	328,000
1998	8.30%	3,781,000	10.10%	4,382,000	-1.80%	(601,000)
1999	-0.63%	(302,000)	-3.00%	(1,468,000)	2.37%	1,166,000
2000	3.84%	1,872,000	0.00%	-	3.84%	1,872,000

1.9%

2001 - 1/1 to 6/26

Date NVBI



Effects of incorrect interest allocation

1. At December 31, 1999 participant account balances exceeded net assets available for distribution.
2. Many individuals' accounts are **overstated**, and others are **understated**.
3. Several participants have retired and liquidated their accounts receiving more benefits than they would have been entitled to had the interest been allocated based on actual allocable income.

Individual Account Interest Reallocation: Example #1

ASSUME ACCOUNT BALANCE 1/1/1993		100,000							
NO ADDITIONS/WITHDRAWALS 1993-2000									
YEAR	ACCOUNT BALANCE BASED ON ACTUAL EARNINGS			ACCOUNT BALANCE BASED ON ALLOCATED EARNINGS			(OVER)/UNDER ALLOCATION		
	RATE	EARNINGS	A/C VALUE	RATE	EARNINGS	A/C VALUE	%	\$	
<i>EOY 92 STOP</i>									
1/1/1993		\$ 2,687	\$ 102,687		\$ -	\$ 100,000		\$ 2,68	
1993	7.88%	8,092	110,779	8.73%	8,730	108,730	-0.85%	(62	
1994	-3.81%	(4,221)	106,558	2.38%	2,588	111,318	-6.19%	(6,80	
1995	15.56%	16,580	123,139	12.20%	13,581	124,899	3.36%	3,00	
1996	2.02%	2,487	125,626	12.90%	16,112	141,010	-10.88%	(13,62	
1997	8.18%	10,276	135,902	7.70%	10,858	151,868	0.48%	(58	
1998	8.30%	11,280	147,182	10.10%	15,339	167,207	-1.80%	(4,05	
1999	-0.63%	(927)	146,255	-3.00%	(5,016)	162,191	2.37%	4,08	
2000	3.84%	5,616	151,871	0.00%	-	162,191	3.84%	5,61	
TOTAL								(10,31	

Action required: Reduce current account balance by \$10,319.

Individual Account Interest Reallocation: Example #2

ASSUME JOINED IN 1997								
CONTRIBUTED \$5,000 PER YEAR 1997-2000								
YEAR	ACCOUNT BALANCE BASED ON ACTUAL EARNINGS			ACCOUNT BALANCE BASED ON ALLOCATED EARNINGS			(OVER)/UNDER ALLOCATION	
	RATE	EARNINGS	A/C VALUE	RATE	EARNINGS	A/C VALUE	%	\$
1/1/1993		\$ -	\$ -		\$ -	\$ -		\$ -
1993	7.88%	-	-	8.73%	-	-	-0.85%	-
1994	-3.81%	-	-	2.38%	-	-	-6.19%	-
1995	15.56%	-	-	12.20%	-	-	3.36%	-
1996	2.02%	-	-	12.90%	-	-	-10.88%	-
1997	8.18%	-	5,000	7.70%	-	5,000	0.48%	-
1998	8.30%	415	10,415	10.10%	505	10,505	-1.80%	(90)
1999	-0.63%	(66)	15,349	-3.00%	(315)	15,190	2.37%	250
2000	3.84%	589	20,939	0.00%	-	20,190	3.84%	589
TOTAL								749

Action required: Increase current account balance by \$ 749.

Individual Account Interest Reallocation: Example #3

ACCOUNT BALANCE BASED ON ACTUAL EARNINGS			ACCOUNT BALANCE BASED ON ALLOCATED EARNINGS			(OVER)/UNDER ALLOCATION		
YEAR	RATE	EARNINGS	A/C VALUE	RATE	EARNINGS	A/C VALUE	%	\$
ASSUME BALANCE AT 1/1/93			25,000					
CONTRIBUTED \$5,000 PER YEAR 1993-1997								
TERMINATED 1/1/98 AND WITHDREW ACCOUNT								
1/1/1993		\$ 672	\$ 25,672		\$ -	\$ 25,000		\$ 672
1993	7.88%	2,023	32,695	8.73%	2,183	32,183	-0.85%	(160)
1994	-3.81%	(1,246)	36,449	2.38%	766	37,948	-6.19%	(2,012)
1995	15.56%	5,671	47,121	12.20%	4,630	47,578	3.36%	1,042
1996	2.02%	952	53,072	12.90%	6,138	58,716	-10.88%	(5,186)
1997	8.18%	4,341	62,414	7.70%	4,521	68,237	0.48%	(180)
1998	8.30%	-	-	10.10%	-	-	-1.80%	-
1999	-0.63%	-	-	-3.00%	-	-	2.37%	-
2000	3.84%	-	-	0.00%	-	-	3.84%	-
TOTAL								(5,823)

Action required: Collect \$5,823 from fiduciary insurance policy.

Individual Account Interest Reallocation: Example #4

ASSUME BALANCE AT 1/1/93		10,000							
CONTRIBUTED \$5,000 PER YEAR 1993-2000									
TOOK LOAN 1995, DID NOT PAY BACK		16,500							
YEAR	ACCOUNT BALANCE BASED ON ACTUAL EARNINGS			ACCOUNT BALANCE BASED ON - ALLOCATED EARNINGS			(OVER)/UNDER ALLOCATION		
	RATE	EARNINGS	A/C VALUE	RATE	EARNINGS	A/C VALUE	%	\$	
1/1/1993		269	10,269		-	10,000		269	
1993	7.88%	809	16,078	8.73%	873	15,873	-0.85%	(64)	
1994	-3.81%	(613)	20,465	2.38%	378	21,251	-6.19%	(990)	
1995	15.56%	3,184	12,150	12.20%	2,593	12,343	3.36%	592	
1996	2.02%	245	17,395	12.90%	1,592	18,936	-10.88%	(1,347)	
1997	8.18%	1,423	23,818	7.70%	1,458	25,394	0.48%	(35)	
1998	8.30%	1,977	30,795	10.10%	2,565	32,958	-1.80%	(588)	
1999	-0.63%	(194)	35,601	-3.00%	(991)	36,968	2.37%	797	
2000	3.84%	1,367	41,968	0.00%	-	41,968	3.84%	1,367	
TOTAL								0	

Action required: None.

ALLOCATION TO EACH FUND OF MONIES RECOVERED

	<u>Total</u>	<u>Annuity</u>	<u>Pension</u>	<u>Welfare</u>	<u>Training</u>
Reimburse 95% fidelity claim	621,864	383,404	48,511	180,815	9,134
Reimburse IRS penalty	16,216	16,216	-	-	-
Reimburse administrative fees	255,727	215,628	11,743	23,164	5,192
Reimburse annuity accounts	695,770	695,770	-	-	-
Subtotal	1,589,577	1,311,018	60,254	203,979	14,326
Benefit reserve	24,798	20,452	939	3,182	225
Grand total	<u>1,614,375</u>	<u>1,331,470</u>	<u>61,193</u>	<u>207,161</u>	<u>14,551</u>

ALLOCATION OF ANNUITY FUND RECOVERIES

Allocate fidelity/(alleged theft) proceeds \$383,404

(Based on average balance 1995-2000)

Allocate reimbursed administrative fees 231,844

(Based on average balance 2001-2003)

Reallocate interest from 1993-2003 695,770

Total \$1,311,018

PARTICIPANT NOTIFICATIONS

EXAMPLE 1

MEMBER NAME						
MEMBER SOCIAL						
ACCOUNT BALANCE 12/31/00 \$434,000						
YEAR	ACTUAL EARNINGS		ORIGINAL EARNINGS ALLOCATION		ACCOUNT ADJUSTMENT	
	RATE	EARNINGS	RATE	EARNINGS	%	\$
1/1/1993		6,085		-		6,085
1993	7.88%	20,267	8.73%	19,768	-0.85%	499
1994	-3.81%	(10,884)	2.38%	6,099	-6.19%	(16,983)
1995	15.56%	46,797	12.20%	33,394	3.36%	13,403
1996	2.02%	7,467	12.90%	40,916	-10.88%	(33,449)
1997	8.18%	31,247	7.70%	28,339	0.48%	2,908
1998	8.30%	35,473	10.10%	41,110	-1.80%	(5,637)
1999	-0.63%	(2,788)	-3.00%	(13,558)	2.37%	10,770
2000	3.84%	22,083	0.00%	-	3.84%	22,083
TOTAL REALLOCATION ADJUSTMENTS						(321)
ALLOCATION OF FIDELITY/THEFT PROCEEDS						4,609
ALLOCATION OF REFUNDED ADMINISTRATIVE FEES						3,026
REIMBURSED DISTRIBUTION FROM INSURANCE PROVIDER						-
NET ADDITION TO INDIVIDUAL'S ACCOUNT BALANCE						7,314

PARTICIPANT NOTIFICATIONS

EXAMPLE 2

MEMBER NAME						
MEMBER SOCIAL						
ACCOUNT BALANCE 12/31/2000 \$105,000						
YEAR	ACTUAL EARNINGS		ORIGINAL EARNINGS ALLOCATION		ACCOUNT ADJUSTMENT	
	<u>RATE</u>	<u>EARNINGS</u>	<u>RATE</u>	<u>EARNINGS</u>	<u>%</u>	<u>\$</u>
1/1/1993		2,791		-		2,791
1993	7.88%	9,113	8.73%	8,889	-0.85%	224
1994	-3.81%	(4,896)	2.38%	2,744	-6.19%	(7,640)
1995	15.56%	22,429	12.20%	16,005	3.36%	6,424
1996	2.02%	3,682	12.90%	20,177	-10.88%	(16,495)
1997	8.18%	10,723	7.70%	9,726	0.48%	997
1998	8.30%	12,099	10.10%	14,022	-1.80%	(1,923)
1999	-0.63%	(951)	-3.00%	(4,623)	2.37%	3,672
2000	3.84%	7,529	0.00%	-	3.84%	7,529
TOTAL REALLOCATION ADJUSTMENTS						(4,421)
ALLOCATION OF FIDELITY/THEFT PROCEEDS						1,296
ALLOCATION OF REFUNDED ADMINISTRATIVE FEES						736
REIMBURSED DISTRIBUTION FROM INSURANCE PROVIDER						-
NET REDUCTION OF INDIVIDUAL'S ACCOUNT BALANCE						(2,389)



WHAT'S NEXT?

- You will receive a participant account adjustment statement within the next week.
- You will have until June 1, 2004 to review the statement and contact the Fund Office in writing with any questions and, if necessary, schedule a meeting with the Accountant.
- After there has been a reasonable time for all questions to be reviewed, adjustments will be made to individuals' account balances.

1 2004/2/1
10 2004/5/1

NY B/L paperwork

*EOY
Acct
Balance*

Year	Actual Earnings		Original Earnings Allocation		Account Adjustment	
	Rate	Earnings	Rate	Earnings	%	\$
1/1/1993	-	170,050.08	-	165,597.92	-	4,452.16
1993	<i>8.77</i> 7.88%	14,799.35	8.73%	14,435.10	-0.85%	364.25
1994	-3.81%	(8,051.78)	2.38%	4,512.49	-6.19%	(12,564.27)
1995	15.56%	35,415.43	12.20%	25,271.37	3.36%	10,144.06
1996	2.02%	5,765.46	12.90%	31,591.44	-10.88%	(25,825.98)
1997	8.18%	24,275.04	7.70%	22,015.50	0.48%	2,259.54
1998	8.30%	27,785.81	10.10%	32,199.66	-1.80%	(4,413.85)
1999	-0.63%	(2,245.89)	-3.00%	(10,920.52)	2.37%	8,674.63
2000	3.84%	18,282.05	0.00%	-	3.84%	18,282.05
Total Reallocation Adjustments						\$1,372.59
Allocation of Fidelity/Theft Proceeds						2,819.07
Allocation of Refunded Administrative Fees						1,681.82
Reimbursed Distribution From Insurance Provider						-
Net Addition/(Deduction) to Individual's Account Balance						<u><u>5,873.48</u></u>

1690

*not an
adjuster
needs to
be
applied*

ENCI #1

2-3

Witness Questionnaire
Witness: **Jonathan Kay**
EEO Complaint of Mr. Jose Castillo Case No. 06-02-023

Please respond to the following request for information relative to this formal complaint of discrimination, using the enclosed affidavit form. Number and initial each page and initial any corrections made to any items in your affidavit. Prepare your response in narrative form to best relate what led to this complaint. As you describe circumstances and facts in a time sensitive chronology, give specific and detailed information so that someone who is not familiar with the situation can understand what it is you are trying to explain/demonstrate. In other words, your affidavit should paint a picture for the person who will make the decision relative to the issue raised in this complaint.

Please provide your response to the following:

1. Please state for the record your name, EEO activity (if any), position, and location within the Department of Labor.

Answer: Jonathan Kay, years of age, Regional Director of the New York Regional Office of the U.S. Department of Labor's Employee Benefits Security Administration. I have not engaged in any EEO activity.

2. Please describe your role/responsibilities in the selection process for the position of Investigator (Pension), Series/Grade GS-1801-13, advertised under Vacancy Announcement Number NY-MS-06-23.

Answer: I was the selecting official. Prior to making the selections at issue, I

- a. contacted the Office of the Assistant Secretary for Administration and Management to draft the vacancy announcements;
- b. reviewed the draft vacancy announcements;
- c. approved the final vacancy announcements;
- d. received and reviewed certificate of eligibles;
- e. had the interviews scheduled for each of the ten candidates on the merit staffing certificate;
- f. drafted the questions to be asked during the interviews (the questions asked during each interview were identical);
- g. asked a portion of the questions posed during the interviews;
- h. consulted with then Associate Regional Director Jeffrey Gaynor (ARD Gaynor) and then Group Supervisor Thomas Licetti (GS Licetti) regarding their impressions of each candidate immediately after each interview;
- i. discussed with ARD Gaynor and GS Licetti the relative strengths and weaknesses of each candidate at the conclusion of all interviews; and

- j. served as the selecting official that selected three individuals to fill the vacancies.
3. At the time of the selection for the position in question, were you aware of any EEO complaints or past opposition to activities prohibited under the EEO regulations (e.g. allegations of discrimination) made by Mr. Castillo? If yes, please describe how and when you became aware.

Answer: I became aware that Mr. Castillo filed an age discrimination complaint in or about early 2005 relating to his non-selection for one of two GS-13 Senior Investigator vacancies under vacancy announcement OASAM NY 04-042A. I was notified that such a complaint had been filed by the investigator of Mr. Castillo's claim. Mr. Castillo's age discrimination complaint was dismissed as being without merit by EEOC Administrative Judge Kevin J. Berry by Decision and Order dated October 3, 2006. (Jose Castillo Decision, Exh. 1.) This Order was adopted by Annabelle T. Lockhart, Director, Civil Rights Center, on October 20, 2006. (Exh. 2).

In or about the fall of 2005, I was told by then Associate Regional Director Jeffrey Gaynor that Mr. Castillo had filed a complaint that he was given a "Meets" rating on two elements in his performance appraisal for the period ending September 30, 2005 because he had previously filed the aforementioned mentioned age discrimination complaint that was subsequently dismissed. Mr. Gaynor, who was Mr. Castillo's rating official, said that an EEO investigator had contacted him about the ratings on Mr. Castillo's two elements.

Contrary to the statement in the EO Specialist's cover letter forwarding this questionnaire to me, I was never contacted by any EEO investigator regarding Mr. Castillo's ratings. Nor was I given an opportunity to submit an affidavit in response to Mr. Castillo's claim that the ratings on two elements in his performance appraisal for the period ending September 30, 2005 were "downgraded" to "meets."

4. Please state the name of the selected candidates for the position of Investigator (Pension), Series/Grade GS-1801-13, advertised under Vacancy Announcement Number NY-MS-06-23. To your knowledge, had the selected candidates participated in prior EEO activity? Please discuss in detail.

Answer: The three candidates that were selected were:

-Walter Blonski
-Carmela Pagano
-Mathew Sullivan

Exhibit	F2
Page	15 of 25 Pages

JK

I was aware that in or about early 2005 both Mr. Blonski and Ms. Pagano, along with Mr. Castillo, had filed age discrimination complaints based on their non-selection in or about 2004 for a senior investigator, GS-13, position under announcement OASAM NY 04-042A.

Mr. Blonski's and Ms. Pagano's complaints were dismissed as being without merit by decision of Annabelle T. Lockhart, Director, Civil Rights Center, on August 25, 2006. (Carmela Pagano and Walter Blonski Decision, Exh. 3).

I was not aware of any prior EEO activity by Mr. Sullivan.

5. The record on this complaint suggests that you served as the Selecting Official for this position (i.e. you signed the certificate of eligibles). Please explain in detail why Mr. Castillo was not selected for the position of Investigator (Pension), Series/Grade GS-1801-13, advertised under Vacancy Announcement Number NY-MS-06-23. Your response here must be sufficiently specific to permit the Complainant to mount an evidentiary challenge to any of the explanations offered by the agency for its actions. If you did not make the selection decision, please explain why you signed the certificate. Also, indicate who made the selection and why this person was tasked with making this decision.

Answer: The following steps were taken in determining which three of the ten applicants were most qualified. Please note that initially, using a preliminary chart, I (with the assistance of my managers then Associate Regional Jeffrey Gaynor and then Group Supervisor Thomas Licetti) narrowed the pool to four finalists. Then I further compared the qualifications of the four finalists, and selected Walter Blonski, Carmela Pagano and Matthew Sullivan.

- a) Structured interviews of all ten candidates listed on the certificate of eligibles. (See certificate of eligibles, Exh. 4).
- I prepared a list of 12 questions to be asked each candidate during the interviews which were designed to evaluate each candidate's qualifications for the senior investigator position. (See list of questions, Exh. 5).
 - Each candidate was given a structured interview conducted by me, Jeff Gaynor, and Tom Licetti. Each interview took approximately 1 hour. Each candidate was asked the same 12 questions in the same order by the same manager. Mr. Licetti asked the first four questions, Mr. Gaynor the next four and I asked the last four.
 - Immediately after each interview, the managers discussed among themselves each candidate's interview performance. Because the managers knew each candidate already, the three managers also preliminarily discussed: 1) each candidate's general quality of work, 2) each candidate's general writing and speaking ability, and 3) each candidate's general suitability for being a senior investigator.
- b) At no time was the age of the candidates, or the fact that they may have

previously filed EEO complaints mentioned during the managers' discussions. Nor were age or previous EEO activity factors at any time in the selection process.

- c) Three managers (Kay, Gaynor and Licetti) discussed among themselves what specific performance indicators they wanted to consider in making the decision about which three of the ten candidates to promote. The following performance indicators were identified:
- 1) Prior year (2004) performance appraisal ratings;
 - 2) The ratio of closed civil cases with results to total closed civil cases;
 - 3) The average number of days expended on each closed investigation;
 - 4) OASAM's ranking of the candidates;
 - 5) The results (indictments/convictions) obtained in criminal cases; and
 - 6) The results (cases opened, cases closed, dollars recovered, litigation referrals) obtained in civil cases.
- d) Tom Licetti then reviewed the work performed by the candidates since October 1999 and prepared a chart of each candidate's performance statistics for the above factors. (See chart, Exh. 6).
- e) Jeff Gaynor then prepared a preliminary chart listing the agreed upon criteria and weighting them so that we could compare all the candidates. Mr. Gaynor also quantified how well each candidate did on the interview, in his view, and included this in his chart.

- However, although the interview performance factor was included in the preliminary chart, the three managers (Kay, Gaynor, and Licetti) later decided to take out the interview factor because we felt that it was not an accurate indicator of performance, and discarded further consideration of it.

-The ten candidates on Mr. Gaynor's chart ranked as follows, after discarding the points assigned for the interview:

- 1) Matt Sullivan—34 points
- 2) Darlene Alex – 30 points
- 3) Carmela Pagano – 29 points
- 4) Carol Herzog – 29 points
- 5) Naomi Griffenkranz – 28 points
- 6) Walter Blonski -- 27 points
- 7) Jose Castillo – 25 points
- 8) Amy Losito – 24 points
- 9) Dorothea Harrell – 23 points
- 10) Irma Alvarez -- 22 points

Exhibit	<u>F2</u>
Page	<u>17</u> of <u>25</u> Pages

JK

(See chart, Exh.7).

f) When I reviewed Mr. Gaynor's preliminary chart, I noticed that it did not have any factor which recognized a candidate's accomplishments on criminal cases, which, as manager of the office I felt was an important indicator of success at this higher level position. Criminal cases are the often the most difficult investigations to conduct. They require advanced skill and knowledge by an investigator and are referred to the Department of Justice where they go into the criminal courts. The NY EBSA office spends between 15-20% of its total investigative time on criminal cases. Among the candidates, it was clear that Mr. Blonski had distinguished himself in criminal investigations by concluding eight cases with indictments and/or convictions, whereas the other candidates had only one or no criminal cases with results. Therefore, the three of us agreed that Mr. Blonski's score on the chart should be boosted several points in recognition of his excellent performance on this indicator.

- By doing so, Mr. Blonski moved into the top four ranked candidates, surpassing Ms. Griffenkranz.

g) Notwithstanding that her score placed her in the top four on the preliminary chart, we eliminated Ms. Herzog from further consideration as she had just joined the NY Office in October 2004, approximately 16 months before, and we felt that her short duration with the office did not warrant her being promoted.

h) The above steps permitted us to identify four persons who were all finalists for the three positions: (listed alphabetically)

- Darlene Alex (age)
- Walter Blonski (age)
- Carmelo Pagano (age)
- Matthew Sullivan (age)

i) In reviewing the above four finalists, I used the following four indicators to rank them:

- 1) Ratio of closed civil cases with results to total closed civil cases;
- 2) Performance appraisal ratings for the past two years (See chart, Exh.8);
- 3) Productivity on criminal cases; and
- 4) Experience as a team leader.

j) The fourth element above (Experience as a team leader) was not previously considered, but now that I, with the other two manager's assistance, had narrowed the more qualified persons from 10 to 4, I felt that this was a

critical indicator to consider because much of the senior investigator's work involved working as the leader of a team. Performance as a team leader is one of the senior investigator's critical elements in their performance plan.

- k) I prepared the following matrix including each finalist's accomplishments in the four indicators in i), above,1 which resulted in the following rankings:

- Matthew Sullivan 8 points
- Darlene Alex 7 points
- Walter Blonski 7 points
- Carmela Pagano 7 points

Name	Case Ratio	P. A. Ratings	Crim'l. Cases	Team Leader	Total Points
Alex	1	6	0	0	7
Blonski	2	4	1	0	7
Pagano	1	5	0	1	7
Sullivan	3	5	0	0	8

- l) Since three candidates had a total point score of 7 on the above four indicators, I had to break the tie, and I decided to eliminate Ms. Alex based upon my observations of her work, having reviewed her work product many times, and observed her performance at meetings, that she was more dependent on her supervisor for direction than the other candidates. Using these steps to determine the best three qualified applicants out of the pool of ten, I selected the following persons:

- Walter Blonski
- Carmela Pagano and
- Matthew Sullivan.

6. If you made the selection, please explain with specificity why Carmela Pagano, Matthew Sullivan, and Walter Blonski were considered better qualified than the Complainant.

1. In considering these four factors, I assigned one point for each Effective rating, two points for each Highly Effective rating and three points for each Exemplary rating. In addition, I assigned one, two or three points to each candidate based on the percentage of closed civil cases with results to total closed civil cases. (ratios above 90% were given 3 points, between 70 and 89%, two points and less than 70%, one point.)1 Finally, I decided to give one point to each candidate with significant criminal case results and one point to each candidate with significant experience as a team leader.

Exhibit	F2
Page	19 of 25 Pages

Answer: These three individuals scored higher on the criteria that my colleagues and I used to evaluate the candidates. See details provided in answer 5, above.

7. Complainant asserts that his overall performance since working as an investigator is inferior compared to Matthew Sullivan and his experience is not even close to his. Please respond in detail to this assertion.

Answer: Presumably, complaint alleged that his performance was superior, not inferior, to that of Sullivan. As explained in detail in the answer to question 5, above, my colleagues and I reviewed the overall performance of all ten candidates before making any selections and for the reasons already described, concluded that Mr. Sullivan's overall performance was superior to Mr. Castillo's. In addition, notwithstanding the fact that Mr. Sullivan began his career as an investigator with the New York office in August, 2001, two years after Mr. Castillo, Mr. Sullivan closed more cases (48 vs. 43) and closed more with results (44 vs. 35) than Mr. Castillo. (See chart, Exh. 6.) Moreover, as stated in the answer to question 5, Mr. Sullivan had greater success in detecting violations, the investigator's primary function, as evidenced by his 91.67% ratio as compared with Mr. Castillo's 81.40% ratio. (See chart, Exh. 6.) Further, Mr. Sullivan's writing and speaking skills are superior to those of Mr. Castillo. Finally, in the three years prior to the selections at issue, Mr. Sullivan and Mr. Castillo both received the same overall performance appraisal ratings: two "Highly Effective" ratings and one "Exemplary" rating.

8. Please provide the names of the staff members who participated in the evaluation of Mr. Castillo for the position of Investigator (Pension), Series/Grade GS-1801-13, advertised under Vacancy Announcement Number NY-MS-06-23.

Answer: Jeffrey Gaynor and Thomas Licetti.

9. Have you served as the Selecting Official for other vacancies in the past two years? If so, please provide the names of the people selected, the relevant positions, and indicate their age and whether you are aware of any EEO activity on the part of each candidate.

Answer: In the past two years I have selected to following people to fill vacancies:

1. Jeffrey Gaynor, age , Deputy Regional Director, GS-15
2. Thomas Licetti, age , Associate Regional Director, GS-14
3. Peter Jacobello, age , Group Supervisor, GS-14
4. Angelo Gaglias, age , Criminal Coordinator, GS-14
5. Robert Goldberg, age , Group Supervisor, GS-14
6. Nichelle Langone, age , Group Supervisor, GS-14
7. Walter Blonski, age , Senior Investigator, GS-13

8. Carmela Pagano, age , Senior Investigator
9. Donald Delaney, age , Investigator, GS-9
10. Jeffrey Singer, age , Investigator, GS-9
11. David English, age , Investigator, GS-9
12. Racque Reinstein, age , Investigator, GS-9
13. Tamar Miller, age , Investigator, GS-9
14. Yvonne Lunde, age , Investigator, GS-9
15. Deborah Dittrick, age , Investigator, GS-9
16. Mark Seidel, age , Investigator, GS-9
17. Anthony Tang, age , Investigator, GS-9

The only individuals that I knew had participated in EEO activity prior to their selection were Mr. Blonski and Ms. Pagano (## 7 and 8, above).

10. Complainant stated that you informed him he was not selected because his investigation of Local 12 Benefit Funds was not satisfactory. Please respond in detail to the Complainant's allegation, and indicate if this reflects how/why the decision was made for the position at issue in this complaint. Please submit any documentary evidence available to support your response.

Answer: Mr. Castillo was not selected for the reasons stated in the answer to question 5, above. When Mr. Castillo asked me why he was not selected for the senior investigator position under announcement Number NY-MS-06-23, I said that one reason was his performance on the Local 12 Benefit Funds cases. I clearly indicated that this was only one of the reasons for his non-selection. I do not recall whether I provided him with other reasons. In my view, Mr. Castillo's performance in the five Local 12 cases was slow, the evidence not properly developed and he did not demonstrate sufficient objectivity.

His performance on the case was slow because he has been working on these cases longer than any of his matters without resolving the issues. Despite opening three of these matters in February 2002, Castillo is still reviewing documents and other evidence to evaluate whether or not there are violations. Thus, the case has not been resolved administratively. Nor has it been forwarded to counsel's office for litigation. None of Mr. Castillo's other cases have been under investigation for as long without resolution or referral to our counsel. (See list of Mr. Castillo's open cases attached hereto as Exh.8.)

The evidence in these cases has not been properly developed because he has not obtained the investigative subject's position with respect to why they disagree with the violations. This is a very important aspect of every investigation because it enables the investigator to gather evidence on the defenses the investigative subject may have. It is my view that Mr. Castillo has prematurely reached conclusions that violations have occurred without gathering sufficient evidence. Specifically, he has not determined whether the investigative subject has a valid

explanation for accounting charges that seem excessive and for whether investment earnings were deposited in the Local 12 Benefit Funds' accounts.

In my view Castillo did not demonstrate sufficient objectivity because he relied on partial descriptions of events to conclude that violations had occurred when, in fact, an investigator is obligated to gather all pertinent facts before reaching a conclusion. He has substituted his perceptions of what occurred for fact finding.

Furthermore, my national office has complained to me about the delay in developing this case and resolving the issues. Consequently, my national office has taken an unprecedented interest in the development of this case and seeks frequent briefings on the status of the cases. One of the participants in the Local 12 Benefit Funds has frequently complained to elected officials, myself and my superiors in Washington, D.C. that the investigation is taking too long as he believes that the people responsible for the Funds' operations have committed violations.

11. Please response to Complainant's allegation that his investigation of Local 12 Benefits Fund cases has been "undermined."

Answer: These cases have not been undermined in any way. I and the other managers have been closely monitoring this case because of the attention the case is receiving from my national office. As a manager, I routinely take steps to provide guidance to effectively develop cases. In these matters, I found it necessary to assign the Deputy Regional Director to provide additional supervision of Mr. Castillo's development of the issues. Mr. Castillo and management had differences of opinion on how to handle this case. For example, I directed that more evidence be gathered to support Mr. Castillo's perceptions that the Funds had paid excessive accounting fees. Moreover, Mr. Castillo has concluded that investment earnings were not deposited into the Benefit Funds' accounts when, in fact, he needs to explore what references to "offsets" against earnings actually mean.

12. Explain your role in the supervision of Complainant's work on this project.

Answer: There are five Local 12 cases. Three were opened in February 2002. The others were opened in September and November 2003. These cases were supervised by Jonathan Brown until he retired in August 2005. Thereafter, they were supervised by Robert Goldberg in his capacity as acting group supervisor.

I became the regional director in August 2005, and am in charge of the entire office including 32 investigators. In May 2005, in my capacity as acting regional director, I reviewed and signed the letter advising the Benefit Funds' officials of our Agency's findings.

Since then I have monitored the progress of the case, including reviewing the responses to our May 2005 letter; had discussions with Mr. Castillo, Mr. Goldberg and Mr. Gaynor on the significance of these responses and further investigative steps; and discussed the matter with my national office. However, day to day supervision of Mr. Castillo on the Local 12 cases has been done by Mr. Goldberg.

13. Please provide any other relevant information that you wish to add.

Answer: Please note that in the previous EEO case which Mr. Castillo uses as the basis for his retaliation claim there were five complainants, Alex, Blonski, Castillo, Griffenkranz and Pagano. In the selections currently in question, I selected two of the five (Blonski and Pagano). Therefore, to claim that I was retaliating against EEO complainants has no merit.

14. Have you received any assistance in preparing this statement and/or has your statement been reviewed by anyone other than an attorney from the Office of the Solicitor or a private legal representative? If yes, please provide the name, title and contact information of/for the individual(s).

Answer: No.

Exhibit	<u>F2</u>
Page	<u>23</u> of <u>25</u> Pages

JK
212

Affidavit of: Jonathan Kay

I have reviewed this statement, which consists of 12 pages, and hereby solemnly X swear ___ affirm that it is true and complete to the best of my knowledge and belief. I understand that the information I have given will not be held confidential, will become a permanent part of the record of investigation, and may be shown to any necessary party.

Jonathan Kay (Signature of Affiant) 11/17/06 (Date)

Signed before/received by me at (Street and City) 200 Constitution Ave. NW. Washington DC
on this 18th day of November, 2006 20210

Rodney Sautter
(Signature of Investigator/Witness)

Exhibit: <u>F2</u>	Page <u>12</u> of <u>12</u> Pages
Page <u>24</u> of <u>25</u> Pages	Initials <u>JK</u>

2-4

April 3, 2006

TO: JOSE CASTILLO – DEPT. OF LABOR/EBSA .

FAX #1-212-607-8681

FROM:

OF PAGES: 10

Dear Mr. Castillo:

Please see attached. Thank you.

Sincerely,

Henry F. Schroeder

4


April 3, 2006

United States Dept. of Labor/EBSA
33 Whitehall Street
Suite 1200
New York, NY 10004

Attn: Jose Castillo

SUBJECT: April 13th Meeting at EBSA

Dear Mr. Castillo:

Reference the above subject and our previous e-mail, enclosed please find copies of my January 14th and February 4th (enclosure #1) correspondence to Regional Director Jonathan Kay.

You will note that I have expressed concerns about the professionalism and performance of the ongoing investigation into Local 12 Benefit Funds conducted by your office and yourself. Director Kay's recent correspondence to Senator Schumer dated February 14, 2006 duplicates in substance his predecessor, Director F. Clisham's August 2001 letter to me explaining EBSA policy of non-disclosure. While I understand the concept of this policy, I hope you can understand my fear that this five-year expanse of time may seriously jeopardize, if it hasn't already, any legal recourse I may enjoy under statute of limitations regulations as they pertain to fraud.

Director Kay has no information he is willing to share with a United States Senator, he certainly has no intention of sharing any with me at the proposed meeting at your office. I stand by my February 4th letter to the Director, which also asks questions not, in my opinion, restricted by the investigation, but pertaining to ERISA obligations that the fund must create corrected filings to replace alleged fraudulent reports. If this were the case it would indicate that reports have been, in fact, rejected pursuant to Title 29, Sec. 1024. Certainly the participants are not expected to rely on compromised filings for their information concerning the years of the alleged fraud investigation, 1993-1999.

I have not received the courtesy of a reply to either my January 14th or February 4th letter to Director Kay. With this in mind, I believe the purpose of any meeting would be political in nature; an opportunity for the Director to promote the illusion that proper protocol, impartiality, and open mindedness exists as the investigation continues. I do not believe this is, in fact, the case.

On December 17, 2005, I telephoned four employee trustee members of my funds at their residences. Trustee member Nick Grgas, president of Local 12, in response to my complaint that trustees were failing to "inform and educate" participants of ongoing fund developments including negotiations with the DOL investigation, said "...they're (EBSA) nitpicking at insignificant and minute points that have no relevance to anything meaningful". I responded that in light of the alleged failures of the benefit funds over past years I had "...no problem with the DOL insisting that all the t's are crossed and the i's dotted". At this point, Mr. Grgas further stated "...when the agent is speaking at the meetings, his supervisor is behind him shaking his head negatively, with his eyes looking skyward in an exasperated fashion." I did not ask specifically the name of the supervisor nor did Mr. Grgas volunteer it. He did tell me that this individual was approached after this meeting and asked could "...intervene favorably in the funds behalf." This same supervisor said "...there's nothing I can do. I'm the agent-in-charge." Though the conversation with Mr. Grgas is paraphrased here, I would swear under oath to its accuracy in substance.

Mr. Jose Castillo

April 3, 2006

Page 2

What are the people involved with this investigation in your office thinking? Don't you have a staff meeting to prepare subject matter before discussions with trustees and providers of the funds? What message of discord is being sent inadvertently, or even more sinister, intentionally, to fund administration? "Here's something you good 'ole boys should look into, or create/destroy a paper trail about... we won't look into it now, but here's a little heads up!" I have enclosed a letter from Ms. Sharon Watson, Director of Participant Assistance, EBSA (enclosure #2) in which she states "...resolution of EBSA investigations varies... depending upon... level of cooperation obtained from the parties involved." What "level of cooperation" does your offices' obvious display of disunity and lack of resolve inspire with the administration of these funds? The impression I received from Mr. Grgas was "... they can't even agree amongst themselves what's important... why should we worry about it... if we ignore them, they'll go away."

Sometime ago I had a private conversation with then employee trustee member, Robert Glaser, where I discussed what I felt were inaccuracies and omissions in 5500 report filings. His response to me was "...do you think any one actually reads those things!" If he had said "... actually cares about those things" perhaps he would have been more prophetic with regard to the New York Regional Office.

Mr. Castillo, in the past you mentioned you may want to interview me relative to fund issues and I would make myself available to you for that purpose, but for reasons expressed herein, I must decline a general meeting with your regional office. I, however, would be interested in such a meeting with any EBSA office or division in Washington D.C. that I have had a previous contact with and would personally bear the expense of travel or lost compensation from my employment as a result of such an accommodation.

Please feel free to distribute this correspondence in any manner you deem appropriate.

Sincerely,

Cc: Ms. Sharon Watson
Mr. James Denman
OIG/DOL

January 14, 2006

Jonathan Kay -- Regional Director DOL/EBSA
33 Whitehall Street, Suite 1200
New York, NY 10004

SUBJECT: Asbestos Workers Local 12 Benefit Funds

Dear Director Kay:

Reference the above subject and enclosed copy of correspondence from your predecessor, Mr. F. Clisham, dated August 1, 2001, I request your personal scrutiny and review of the conduct and efficiency of the agent in charge, Mr. Jose Castillo. Following the instructions I received from Mr. Clisham, I have bombarded Mr. Castillo with pertinent documentation, too numerous to list here, for his investigation, verification, and recommendation for criminal examination and possible prosecution to the U.S. Attorney's office. It is my opinion this agent has ignored blatant criminal activity, (as alleged in the civil suit brought by the trustees - U.S.D.C.E.D.N.Y. CV02-2916) and delayed or stonewalled the normal progression of this investigation for the purpose of allowing any rights or recourse of which participants may be entitled, to expire under statute of limitations provisions.

Let Mr. Castillo deny, if he is able, any of my following contentions:

- ❖ The amount of funds pilfered in this elaborate "scheme to defraud" cannot be determine because the duration of fraud exceeds records available to examine it completely.
- ❖ Principals allegedly involved in the scheme include two former union officers, a former trustee, an accounting firm, relatives of the fund manager, and corporations and individuals who "laundered" payments.
- ❖ The firm, Shultheis & Panettieri, described as "independent auditors", had in fact a paid relationship with the fund that predated the discovery of fraud.
- ❖ Trustees terminated the first "independent auditor" examining fund mis-conduct - the respected firm of Marcum & Kliegman. Though it is required in schedule C, part II of the 5500 report, S&P and the trustees have never completed "Termination Information on Accountants and Enrolled Actuaries", or sent the required "Notice to Terminated Accountant" section to Marcum & Kliegman. Why?
- ❖ Notification of Enforcements, listed on DOL and other web sites, mention embezzlements much less complex and involving vastly inferior monetary amounts compared to this matter, constantly being forwarded by regional offices of the ESBA to U.S. attorneys for investigation and possible prosecution. Why does this matter deserve less scrutiny?
- ❖ Fund disbursement checks require two signatures. The trustee/union officer whose signature appeared on improper disbursements was never charged with civil or criminal liability. Was he even interviewed by the New York Regional Office?

Page 2

January 14, 2006

Jonathan Kay – DOL/EBSA

- ❖ A sitting trustee/union officer was receiving inappropriate payments from the fund during the ongoing scheme to defraud which may have compromised his objectivity or even his duty to oversee the work of service providers.
- ❖ The re-allocation of benefit funds to individual participant accounts allows for recovery of insurance proceeds to be applied to only certain fund participants, which may include former trustees, but not all fund participants.

Much to my regret and shame, I have been far too patient in an effort to comply with what I perceived to be the “instructed path” to bring justice to myself and family in these matters. I should have been, in hindsight, the “squeaking wheel”. Some trustees of my funds, who are also union officers, boast that these matters are about to close and will never be criminally examined; in my opinion, exactly what they hoped for. It also appears, I fear, exactly what the agent in charge of your investigation hoped and strived for, and if this is true, his motives should be examined.

A complete examination by competent prosecutors from the U.S. Attorney’s Office, with the power to grant immunity from prosecution in exchange for information, is the only reliable course of action to follow in order to prosecute or exonerate all related parties in this complex and intricate matter.

Sincerely,

Cc: Senator Charles Schumer
Congressman Steve Israel
Secretary Elaine L. Chao
Asst. Secretary Alan Lebowitz
Asst. Secretary Bradford Campbell

February 4, 2006

Jonathan Kay – Regional Director DOL/EBSA
33 Whitehall Street – Suite 1200
New York, NY 10004

SUBJECT: Asbestos Workers Local 12 Benefit Funds

Dear Director Kay:

Reference the above subject, my correspondence dated January 14, 2006 and our recent telephone conversations, enclosed and attached please find a memorandum dated April 5, 2004 (encl. #1). In my January 14th letter I requested your “personal scrutiny and review” of the efforts of your agent, Jose Castillo, and any others connected with the subject matter who are in your charge. Since my initial correspondence with your predecessor, Mr. Clisham on June 20, 2001, I have sent no less than a dozen correspondence to your department, many containing pages of relevant enclosures. I have also had, since my first telephone conversation with Mr. Castillo on August 7, 2001, over sixty telephone conversations or messages with this agent supplying fact and information relative to this investigation. In our initial telephone conversation of January 23rd, you told me you had “...just received my January 14th letter” which I faxed on the 17th, and that this was the “... first time this issue had crossed your desk”, and you would need “... time to review the matter”. However, with all the correspondence and contacts I have made to choose from, our telephone conversation of January 26th seemed to center on the attached memorandum and the fact that “... there is 1.7 million dollars (I stated 1.6 million) restored to your fund”. I received the distinct impression you thought I and all participants should be very satisfied with this restoration. I received the impression that you, along with Agent Castillo, are very eager to put the “case closed” stamp on this issue. The trustees of my fund tell me the issue will soon be “a done deal”. I never mentioned this memo to you or sent it to your office. You didn’t find it in any document I asked you to review in my January 14th letter. Who brought it to your attention between the 23rd of January when this issue “... first crossed your desk”, and our 26th of January telephone conversation? I did not realize it was the director’s obligation to make a settlement more palatable to a fund participant. Did you review any letter or document I sent to Mr. Castillo? As I offered to during our 26th of January conversation, if Mr. Castillo has already shredded my letters, I will be happy to send copies. Since it is this memo only that interests you, let’s examine it closely.

- ❖ **“The trustees, ...have conducted a thorough investigation”.** Did this investigation involve infringement as detailed in Title 29, Sec. 1105 (A)? Who knew what, and when did they know it? Longtime fund accountant and civil litigation defendant “Lawson Holland” was terminated in December of 2000. When was your department first notified of possible illegal activity? Did the trustees ever request a criminal investigation through the U.S. Attorney? If so, may I have a copy of that dated request? Why was fund administrator Market allowed to retire rather than termination? Was this allowance part of an agreement in return for Market’s promise not to implicate present or past employee trustees? Why should I as a participant be confident in an investigation conducted “in house” rather than by the U.S. Attorney, with the power to grant immunity from prosecution in return for testimony?

Jonathan Kay
February 4, 2006
Page 2

- ❖ **“In summary, the Trustees negotiated settlements....”** The 1.6 million dollars restoration to the fund addresses impropriety back to 1993, not before. It does nothing to address losses I may have suffered since 1971. If the “scheme to defraud” occurred during this period of time, I lost both principal and compound interest over two decades.
- ❖ **“closing papers in the lawsuit contain a confidentiality agreement...request that you abide by. ...each of the defendants has settled...without an admission of guilt”.** These agreements, in my opinion, were orchestrated and designed to protect the defendants from criminal liability in return for the defendants silence relating to any matters involving past or present employee trustee members, who may have civil or criminal culpability themselves in these matters.
- ❖ **“...a Settlement and Mutual Release Agreement with the fiduciary liability insurer”.** This involves an over one-half million dollar insurance proceed that I helped pay for, but will not be applied to my individual account (see my letter dated November 1, 2005). It will, however, apply to others and may include past trustees who fit, or rather, have tailored the measurement to omit their obligation for fund re-imbursements to individual account yield overpayments.
- ❖ **“...as detailed to the trustees by their independent certified public accountants”.** The accountants referred to, Schultheis & Panettieri, are not independent and have had a paid relationship with the fund trustees predating this investigation. They were actively involved in audits and had open access to fund documents. The only true independent auditor was the Marcum & Kliegman firm who were terminated prior to May 2001 (see my July 19, 2005 letter).
- ❖ **“...concessions in professional fees...attorneys and accountants...in excess of \$125,000.00”.** Does this concession indicate a previous overcharge by these firms for work never performed, malpractice or malfeasance? Why would a new “independent accountant” need to extend a financial consideration to a “new” client? Was this consideration on the part of the fund attorney part of an agreement to excuse their firm’s failure to verify the credentials of former fund accountant Robert Weinstein of “Lawson Holland” who “held himself out as a C.P.A....that he never held such a license”, as detailed in the funds civil suit, Para. 15? Did the trustees have to sign a “covenant not to sue” the parties that extended this “consideration”?
- ❖ **“The funds new accountant has suggested several reforms”.** Do part of the aforementioned reforms include 5500 report declarations, prepared by Schultheis & Panettieri accountants, for the year 2000 annuity and welfare funds where they answered the questions in schedule H, part IV, F, “if the fund suffered a loss... that was caused by fraud or dishonesty”, and the reply given was “no”? These reports were prepared between July and October 2001 and investigations even at that time revealed several gross irregularities (encl. #2 attached – Para. titled “Fund Year 2000 5500 Report Declarations”). Do part of the aforementioned reforms include “creative accounting procedures”? Reference my encl. #2 (letter to the trustees dated April, 29, 2002 Para. Titled “Year 2000 5500 Report Expenses”). It is my understanding that annual 5500 reports reflect expenses incurred and/or paid during that calendar year.

Jonathan Kay
February 4, 2006
Page 3

The answer received from the fund manager to my question and attached as encl. #3, was \$40,000 (accrued) of the year 2000 expense was performed in 2001, as part of an investigation that did not yet exist in the year 2000, nor was the Schultheis & Panettieri firm assigned as fund accountant or investigation auditor during the year 2000! If it is proper to pay for services in one year and bill them to another, there must exist invoices, work sheets and accounting charges for all years of this investigation dating back to year 1993. What are the "accrued amounts" for the other years of the investigation? Were new 5500 reports prepared for all these years? Will these charges be billed as expenses to participants active during these years, but who have since retired and have withdrawn their accounts? Could you arrange to have copies of the newly prepared 5500 reports for all effected funds sent to me since I am entitled to them under ERISA law?

Mr. Kay, let me be frank. I could go on and on. I have my own documents dating back to August 1998 when I met with fund trustees at an executive board meeting and told them the financial reports published by the fund office contained errors. Our telephone conversation of January 26th indicated to me that you are no more interested in this matter now than the trustees were then. I will no longer initiate contact with your office, but will attempt to engage officials in Washington D.C. Your entire staff, including Agent Castillo are now free to shred any correspondence of mine they have not done so already, or send them to my fund office or trustees, whichever gives them greater pleasure.

Thank you again for your concern.

Sincerely,

Cc: Asst. Secretary Alan Lebowitz
Asst. Secretary Bradford Campbell
OIG/DOL

U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

MAR 23 2006

Dear Mr. :

Thank you for your inquiries to the Secretary of Labor, the Employee Benefits Security Administration (EBSA) Deputy Assistant Secretary for Program Operations and to the Deputy Assistant Secretary for Policy recommending an investigation of possible criminal activity regarding the management of the Asbestos Workers Local 12 Benefit Funds. You also expressed concerns regarding the status of a Department review of the matter. Your letter was referred to this office for response. EBSA is the agency within the Department that administers the Employee Retirement Income Security Act of 1974 (ERISA).

EBSA is aware of the concerns raised in your inquiry. As you know, our EBSA New York Regional Office is reviewing the Funds, including your concerns. The Regional Office's review remains in an ongoing status. We appreciate your regular contacts with the Regional Office regarding your concerns and hope that you will continue to provide information to the Regional Office as needed. However, please be aware that in order to preserve the integrity of investigations, it is EBSA policy not to disclose substantive information regarding its investigation activities until public action is taken or an investigation is closed.

The timing for resolution of EBSA investigations varies considerably depending upon a number of factors, including the complexities of the individual case and the level of cooperation obtained from the parties involved. Representatives of our Office of Enforcement have advised that they have discussed your concerns with you and with the New York Regional Office Director. You may be assured that the Department's review is being expedited to the extent possible and full consideration is being given to any and all actions appropriate to resolving the matter.

Working for America's Workforce

Again, your assistance and cooperation are appreciated.

Sincerely,


Sharon S. Watson
Director of Participant Assistance

2-5

Castillo, Jose - EBSA

From: Kay, Jonathan - EBSA
Sent: Friday, April 07, 2006 3:21 PM
To: Castillo, Jose - EBSA
Subject: RE: Local 12 Funds

Jose:

I will get back to you on this.

-----Original Message-----

From: Castillo, Jose - EBSA
Sent: Friday, April 07, 2006 9:42 AM
To: Kay, Jonathan - EBSA
Subject: Local 12 Funds

Jonathan,

I forwarded to you the response of Mr. [redacted] regarding the proposed meeting with him. On his response, he stated sending me a letter.

I received a faxed copy of the letter. A copy of the letter and all its attachment is on your desk.

I reviewed his letter and a I have a problem of what he is saying, to say it mildly.

I told you on the afternoon of March 31, 2006, I thought I accidentally saw Bob Goldberg rolling his eyes up, expressing disapproval or disagreement of my statements when [redacted] was rebutting the statements of trustees' counsels on certain issues. This was on the November 7, 2005 settlement meeting.

The letter of Mr. [redacted] verified that I was not imagining things after all.

After the meeting, Bob Goldberg and counsel had talk at the conference room with the door closed and without me or Bob Trujillo present.

Before the meeting, Bob stated to both Bob Trujillo and me that at this meeting, we will NOT engage in a discussion of the issues because if we do the meeting will last all day and no progress made. We ended up engaging in all the minute details of the issues

After the second settlement meeting On January 9, 2006, Bob Goldberg told me to that with the exception of a couple of issues against the trustees, all the Schulthies & Panettieri issues should be eliminated. He made this statement without reviewing the evidence I gathered during the course of my investigation for the last two years including the statements of S & P auditors and trustees and the Plan Administrator. At this point, the only documents he reviewed are the VC letter and the binder dated October 21, 2005 made by James Heinzman of S & P.

During up to this time frame, just about all his statements every time we discuss Local 12 Funds were making an alibi on behalf of S & P or on behalf of the plan administrator. It seems that he is on the opposite side of the settlement scenario.

On January 9, 2006 settlement conference, I did all the talking in support of our VC letter. In one instance, when I strongly disagreed with the statement of James Heinzman of S & P, he made a statement disagreeing with me and basically agreeing to the statement of James Heinzman. During the meeting, the BA had also a meeting on the other half of the conference room. They all heard what happened. I did all the talking and Bob Goldberg was silent, except to disagree with me in one instance.

Now, I know the reason why, this Participant Schroeder wrote to the national office, to his congressman, to his senator and to the OIG. He thinks that this settlement meetings

are a charade and our agency is not really serious.

I am asking you to exclude Bob Goldberg as my supervisor on the Local 12 Funds. I do not see any purpose of him being my supervisor on this cases. As he admitted to me on January 9, 2006, he does not have any experience dealing the S & P issues. His exclusion should be done immediately.

As you remember, you, Brown and myself were engaged in the settlement negotiations with Local 91 Funds and Local 2682 Funds before it was referred to RSOL. Jonathan Brown, as my supervisor, did not engaged in the kind of behavior.

Sincerely

Jose Castillo

OIG11

From: Kay, Jonathan - EBSA
Sent: Friday, April 07, 2006 3:21 PM
To: Castillo, Jose - EBSA
Subject: RE: Local 12 Funds

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OIG11

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Sincerely

Jose Castillo

2-6

Castillo, Jose - EBSA

From: Gaynor, Jeffrey - EBSA
Sent: Tuesday, April 11, 2006 3:01 PM
To: Castillo, Jose - EBSA
Cc: Gaynor, Jeffrey - EBSA; Kay, Jonathan - EBSA; Goldberg, Robert - EBSA; Langone, Nichelle - EBSA
Subject: RE: Local 12 Asbestos Workers' Funds et all

Jose:

I've spoken with your current Supervisor and understand the scope of your involvement with 1175. It has also been brought to my attention that you are working on some additional Local 12 issues. That is all good...

However, I don't fully understand what you mean by "the issues that are not related in some way to the additional issues I am working on now will get priority". So these issues would be the original issues in the V/C letter, right??? And you will give them priority, that is a good thing...

What is not good is your inference to the fact that you are being confronted with a form of unnecessary distraction. I certainly hope that you are not referring to the task at hand, because if that is the case, we have a problem.

I suggest you do as you indicated in your first sentence and comply with my memo the best you can.

Jeff

-----Original Message-----

From: Castillo, Jose - EBSA
Sent: Tuesday, April 11, 2006 2:41 PM
To: Gaynor, Jeffrey - EBSA
Subject: RE: Local 12 Asbestos Workers' Funds et all

Jeff,

I understand what you want to do. I will try to comply to your memo the best I can.

But remember:

Other things are priority.

1) Local 1175 Funds is one.

2) Second, the additional issues on Local 12 Funds that I am working on now is another.

The additional issues are closely related to the whole Local 12 funds cases. In fact, they are not only related but actually part of the issues.

This case had been around for quite some time. We need to complete it. The additional issues I am working on now will put to a fruitful conclusion on these Local 12 Funds.

issues that are not related in some way to the additional issues I am working on now . get priority.

But for now,

I need to do what I need to do. I do not need any form of unnecessary distraction.

Jose .

-----Original Message-----

From: Gaynor, Jeffrey - EBSA
Sent: Tuesday, April 11, 2006 2:13 PM
To: Castillo, Jose - EBSA
Cc: Gaynor, Jeffrey - EBSA; Kay, Jonathan - EBSA; Goldberg, Robert - EBSA; Langone, Nichelle - EBSA
Subject: RE: Local 12 Asbestos Workers' Funds et all

Jose:

I was asked to review the status of subject cases by the Regional Director and while I appreciate your suggestion, I want you to comply with my memo as expeditiously as possible.

This case has been around for quite some time and we want to bring it, sooner rather than later, to a fruitful conclusion.

I will speak with your current Supervisor to insure there are no problems.

Jeff

-----Original Message-----

From: Castillo, Jose - EBSA
Sent: Tuesday, April 11, 2006 1:44 PM
To: Gaynor, Jeffrey - EBSA
Subject: RE: Local 12 Asbestos Workers' Funds et all

Jeff,

May I ask you who asked you to review the present status?

As far as I know, Bob Goldberg is making some sort of a determination.

My suggestion is you should ask Bob first what kind of determinations he made as far as he is concern.

His determinations may not be the same as mine and the way he view the additional statements and so-called documents that the trustees submitted may not be the same as mine

Anyway, I will provide you with a written analysis as I go along with the process.

Just a reminder,

I am also fully engaged at the moment with RSOL on Local 1175 Funds issues. RSOL is currently working on a settlement process with counsel/trustees.

I am also fully engaged in the process of investigating the additional issues that surfaced after the VC letter was issued on Local 12 Funds.

Jose

-----Original Message-----

From: Gaynor, Jeffrey - EBSA
Sent: Tuesday, April 11, 2006 1:18 PM

To: Castillo, Jose - EBSA
Gaynor, Jeffrey - EBSA; Kay, Jonathan - EBSA; Goldberg, Robert - EBSA
Subject: Local 12 Asbestos Workers' Funds et all

Jose:

I have been asked to review the present status of subject cases.

The NYRO issued a V/C letter dated May 3, 2005 to these funds, wherein we cited eleven (11) different problems that were uncovered during the course of our investigation.

I realize that there have been several meetings and requests made for additional supporting documentation subsequent to the issuance of this V/C letter that have clarified / modified some of the eleven (11) items noted therein.

Consequently, what I want you to do is to give me a written analysis of the current status of each of the eleven (11) items noted in the aforementioned V/C letter. Please include whatever documentation you have obtained to support NYRO's position taken in each instance.

For example, item #1 in the V/C letter stated that there was "Improper Payment to the Union for Collection Services of the Business Manager".

I want to know the current status of this charge. Is it still in play?

If it is still in play, I want to see what evidence you have to support this charge?

Also, I want to see any information and/or documentation that was submitted to the NYRO by the Local 12 Trustees or their representatives (accountants, lawyers, etc) in an effort to mitigate and/or explain this charge.

Our position on this charge has been changed based on subsequent information and/or documentation received, I want a full explanation of this change.

Please prepare this information by the numbers. Don't wait until you have completed all eleven (11) before giving them to me for review. Give them to me as they are completed, before going on to the next item.

If you have any questions, please see me.

Thanks,

Jeff

2-7

Castillo, Jose - EBSA

From: Gaynor, Jeffrey - EBSA
Sent: Friday, April 14, 2006 10:19 AM
To: Castillo, Jose - EBSA
Cc: Goldberg, Robert - EBSA; Kay, Jonathan - EBSA; Gaynor, Jeffrey - EBSA
Subject: FW: [REDACTED]

Jose:

Please schedule Mr. [REDACTED]'s interview for Friday, 04/21/2006.

Please get together with Bob Goldberg and prepare a list of interview questions for Mr. [REDACTED] my review by COB on Tuesday, 04/18/2006.

Please review the case files and assemble copies of any/all letters/memos that you received from Mr. [REDACTED] in chronological order for my review, also by COB on Tuesday, 04/18/2006.

If you have any questions, please see me.

Jeff

-----Original Message-----

From: Castillo, Jose - EBSA
Sent: Friday, April 14, 2006 7:31 AM
To: [REDACTED]
Cc: Gaynor, Jeffrey - EBSA
Subject: [REDACTED]

Mr. [REDACTED],

Thanks for your call. This is to verify that you want to be interviewed by us. Specifically you want to see Mr. Gaynor and me. You also would like to do it sometimes next week.

Jose Castillo
212-607-8650

2-8

Castillo, Jose - EBSA

From: Kay, Jonathan - EBSA
Sent: Friday, May 12, 2006 5:19 PM
To: Castillo, Jose - EBSA
Cc: Goldberg, Robert - EBSA
Subject: FW: Local 12 Annuity Fund

Attachments: Local 12talk.doc



Local 12talk.doc (48 KB)

Thank you.

-----Original Message-----

From: Castillo, Jose - EBSA
Sent: Friday, May 12, 2006 5:17 PM
To: Kay, Jonathan - EBSA; Gaynor, Jeffrey - EBSA; Langone, Nichelle - EBSA
Cc: Denman, Jim - EBSA; Castillo, Jose - EBSA
Subject: Local 12 Annuity Fund

Attached is a summary of findings I have gathered so far in response to the complaint of [redacted] concerning the Annuity Fund only. I paid close attention to the four items of concern listed on Jim Denman's email dated March 17, 2006 which was finally forwarded to me on April 28, 2006 by him (Denman). Key information/data/documents I gathered were [redacted] provided by New York Benefit Life. The participant has a legitimate serious complaint.

Bob Goldberg is well aware of the violations listed on this summary.

The rest of his complaints would be addressed after we completed that review of the rest of the documents and the interview of the Plan Administrator.

[Handwritten signature] 8

Local 12 Asbestos Workers Annuity Fund

Summary

Prior to Jun 26, 2001, the Fund was an annual investment yield based fund. The allocation of the Fund's investment yield or earnings to the individual participant's account is done every April of the following year. This process was done by the Plan Administrator/Trustees after the completion of the annual financial audit. The Fund's assets were held in a "core fund" controlled by the trustees. There are about 650 participants to the Fund.

In August 2000, New York Benefit Life became the financial custodian/record keeper of the Fund.

New York Benefit Life stated that when it took over as custodian/record keeper of the Fund in August of 2000, no individual account balances were provided. It was not until December of 2000 that individual account balances were provided by the plan administrator.

On November 2000, the Plan Administrator retired and was replaced by the current administrator (Al Wassell). The fund's independent auditor was fired sometimes in this same time frame and replaced by the current auditor (Schultheis & Panettieri).

Schultheis and Panettieri completed the financial audit of the Fund for the plan year 2000 in August 2001. The audits disclosed that the Fund's investment yield was \$1,872,000 for plan year 2000.

S & P also conducted a special project called Annuity Fund Interest Allocation Analysis completed in September 28, 2001.

The special project disclosed that from 1990 to 1999 the allocations of the Fund's annual investment yields were done incorrectly. At December 31, 1999, participant account balances record wise did not agreed with actual dollar balances available for distribution.

Beginning on June 26, 2001, the Fund became **self-directed** daily investment yield fund with each daily activity available to the participants on-line.

On February 2002, EBSA opened the investigations.

On May 15, 2002, Trustees filed civil complaint in the U.S. District Court for the Eastern District of New York against the former plan administrator and former fund auditor alleging fraud and misappropriation.

On November 22, 2002, a settlement was reached with the fidelity insurer CNA. The Funds received \$626,458.53 (documented).

Sometimes in September 2003, Funds received fiduciary settlement and individual settlements from former PA and former auditor totaling *\$980,500.00 according to the Funds' counsel, Collieran, O'Hara and Mills on a letter to EBSA dated 9/17, 2003 (undocumented).

It appears that a total of \$1,605,253.68 is showing as the balance as of August, 2004 of a special bank account established for the settlement money.

August 30, 2004, the PA allocated \$1,314,688.87 into the participants' Annuity accounts. This amount represents the Annuity Fund share of the total settlement monies.

On May 3, 2005 a VC letter was issued citing numerous alleged fiduciary violations including violations involving accounting billings by S & P that are undocumented.

Issue no. 7 of the VC letter alleged that S & P billed the Annuity Fund for special project charges invoiced as Int. Reallo 93-00 without a corresponding hard copy of the project. During the course of the investigation, S & P did not provide the investigators with the hard copy of this special project and did not disclose its existence. The Plan Administrator and Trustees were shown these invoices, did not recognize it and can not relate it to a specific special project. As you know, S & P auditors performed several special projects for the Funds and provided investigators with hard copy documents of it.

In October 21, 2005, in response to the VC letter, S & P produced a thick binder signed by James Heinzman and addressed to the Regional Director. Included in this binder is a copy of the special project named Litigation and Re-Allocation Analysis dated April 26, 2004. Page 11 of this project shows the amounts of the correct investment earnings of the Fund from 1990 to 1999 (Allocable Income) as corrected by S & P auditors. Also, on page 11 are the incorrect amounts (Earnings Posted to Accounts) allocated by the former Plan Administrator from 1990 to 1999.

**Page 11 also shows that in 2000, the Fund had an investment yield of \$1,872,000 but the amount was not allocated to the participants' accounts, in clear violation of the plan document.

*** The \$1,872,000 investment earning was determined by S & P auditors after the completion of the 2000 audit in August of 2001.

In November 01, 2005, participant _____ mailed compliant letter to EBSA citing numerous issued including the correctness of this Litigation and Re-Allocation Analysis. He also provided us with the copy of this special project dated April 26, 2004.

Included on his compliant package is the Individualized Participant Account Allocation (enclosure # 1). This spreadsheet shows the correct investment earnings (Actual Earnings) of the Fund as it relates to his own account from 1993 to 1999 plus his individual 2000 investment earnings (\$18,282.05). This amount represent his own share of the 2000 investment earnings of the Fund totaling \$1,872,000 as reflected on page 11 of the Litigation and Re-Allocation Analysis.

Also, the spreadsheet shows the incorrect investment earnings (Original Earnings Allocation) from 1990 to 1999 allocated by the former plan administrator. The bottom figure of enclosure # 1 shows that Mr. _____ is supposed to receive \$5,873.48 into his account as his share of the settlement payments.

The enclosure # 1 spreadsheet (Individualized Participant Account Allocation) statements were prepared by S & P auditors for all the over 600 participants

On February 3, 2006, _____ provided the investigator with copy of his individual Annuity Fund statement. It shows that on August 30, 2004 \$5,873.48 was put into to his account.

On February 24, 2006, New York Benefit Life provided the investigator data showing that on August 30, 2004, \$1,314,688.87 was deposited to the participants' accounts. Review of the data shows that \$5,873.48 was put into _____'s account.

In April 28, 2006 meeting with _____, he stated that he received \$5,873.48 allocation out of the \$18,282.05 earnings he is entitled to for the year 2000.

Violations:

Failure to allocation \$1,872,000 in investment earnings for the year 2000 to the participants' accounts. The plan/trust document dictates that investment earnings have to be allocated to participants' account annually.

In August 30, 2004, \$1,314,688.87 was finally put into the accounts. It appears that the **sources of the funding for this allocation were from the settlement monies received from the fidelity, fiduciary and individual settlements.**

1) What is the status of the \$1,872,000 investment earnings for plan year 2000? **The Department needs to find out.**

2) Also, the participants are entitled to interest earned by the \$1,872,000 from Sep. 2001 until April 2006. Estimate based on 5 percent not compounded - \$343,200. **Where is this interest money?**

3) **Are the current participants' individual accounts balances correct?**

No allocation and interest were entered into their accounts since 2001 up to at least by August 30, 2004 or the present.

Total money in a "strange" or maybe fraudulent status - **\$2,215,200.** (Estimated)

All the above possible serious violations came into open because the special project (Litigation and Re-Allocation Analysis) the trustees and S & P auditors did not want the Department to know surfaced. The main component of this project is the Individualized Participant Account Allocation Statement created for each participant. A review of this statement shows that Mr. Schroeder's share of the 2000 investments earning is \$18,282.05, but he only received \$5,873.48 in August 30, 2004.

*****Is this his allocation for the 2000 investment earnings?**

*****Where is the interest figured out since he received this at least 35 months late and less than one-third of the amount if in fact this is his allocation from the 2000 investment earnings?**

S & P auditors were fully engaged in the preparation of this project. James Heinzman of S & P made a presentation to the general membership at the Marriot Hotel on April 26, 2004 of this special project and sat down one on one with a number of participants to explain it. He also billed the Fund for the time he spent one on one with these participants. Yet, during the December 2004 interview he completely forgot about this special project. When asked to name the special projects S & P did for the Funds, he only named the four (4) special projects that were already made available to the investigators.

2-9

Castillo, Jose - EBSA

From: Kay, Jonathan - EBSA
Sent: Thursday, May 18, 2006 9:26 AM
To: Castillo, Jose - EBSA
Subject: RE: Local 12 Funds

Jose:

I don't think that you need to be concerned. Bob is there to help you get the facts, just as you are. I would keep an open mind about whether there are violations until after you hear what the Fund representatives have to say and review their documents. You must remain objective until you get all the facts. Let me worry about the Congressmen.

-----Original Message-----

From: Castillo, Jose - EBSA
Sent: Thursday, May 18, 2006 9:10 AM
To: Kay, Jonathan - EBSA
Cc: Castillo, Jose - EBSA
Subject: Local 12 Funds

A reminder/concern:

I was reviewing again the latest email of [redacted]. He seems a determined person. I requested that a third person should be with this interview. You did not approve it. Although you assured me that nothing will happen like the ones that took place in the past, I am still have some concern. I still believe that a third person would preserve the integrity of this interview/meeting.

About this participant. I just thought about it this morning. I am sure that there is a serious violation here. The Litigation and Re-allocation Analysis clearly shows that.

It's dated April 26, 2004, but page 11 shows that the \$1,872,000 investment earnings for 2000 is not yet allocated. What would happen if this participant will provide his senator or congressman a copy of this documents. This document is easy to understand. I showed this to a GS-11 BA and this person immediately recognized that the 2000 investment earnings is still not allocated based on this document.

Jose

2-10

Castillo, Jose - EBSA

From: Kay, Jonathan - EBSA
Sent: Thursday, June 22, 2006 5:13 PM
To: Castillo, Jose - EBSA; Goldberg, Robert - EBSA; Gaynor, Jeffrey - EBSA
Subject: Local 12 Asbestos Workers

I assume that Jose and Bob are still meeting with Heinzman, and perhaps others, next Thursday, June 29th. Given the circumstances of this case, as well as the fact that Bob will be out of the office for three months after June 30th, I am asking whether all of us can meet on June 30th to discuss what happened and what the next steps should be. As I recall, Jose had an appointment on June 30th which we will have to work around. Jose, what time is your appointment and where is it located?

~~H~~ 10

Castillo, Jose - EBSA

From: Gaynor, Jeffrey - EBSA
Sent: Friday, June 23, 2006 8:23 AM
To: Kay, Jonathan - EBSA
Cc: Gaynor, Jeffrey - EBSA; Kay, Jonathan - EBSA; Goldberg, Robert - EBSA; Castillo, Jose - EBSA
Subject: RE: Local 12 Asbestos Workers

Jon:

I have scheduled a meeting with Jose and Bob this morning, Friday, 06/22/2006 at 10:00am to review "ALL" open items relative to this investigation.

This will include:

- 1) "All" open allegations/complaints
 - a) receipt of the year 2000 benefits
 - b) earnings during the "black out period"
 - c) reduction of account balances right before the Plan became self directed

- 2) Present status of "ALL" our original violations contained in NYRO's 05/03/2005 V/C letter

This meeting will be held in the 12th floor conference/meeting room and you are cordially invited to attend, your schedule permitting.

:

-----Original Message-----

From: Kay, Jonathan - EBSA
Sent: Thursday, June 22, 2006 5:13 PM
To: Castillo, Jose - EBSA; Goldberg, Robert - EBSA; Gaynor, Jeffrey - EBSA
Subject: Local 12 Asbestos Workers

I assume that Jose and Bob are still meeting with Heinzman, and perhaps others, next Thursday, June 29th. Given the circumstances of this case, as well as the fact that Bob will be out of the office for three months after June 30th, I am asking whether all of us can meet on June 30th to discuss what happened and what the next steps should be. As I recall, Jose had an appointment on June 30th which we will have to work around. Jose, what time is your appointment and where is it located?

Castillo, Jose - EBSA

From: Gaynor, Jeffrey - EBSA
Sent: Friday, June 23, 2006 9:05 AM
To: Goldberg, Robert - EBSA
Cc: Gaynor, Jeffrey - EBSA; Kay, Jonathan - EBSA; Castillo, Jose - EBSA
Subject: FW: Local 12 Asbestos Workers

Bob:

12th floor conference/meeting room at 2:00pm today, Friday, 06/23/2006 will be fine.

Jeff

-----Original Message-----

From: Goldberg, Robert - EBSA
Sent: Friday, June 23, 2006 9:01 AM
To: Gaynor, Jeffrey - EBSA
Subject: RE: Local 12 Asbestos Workers

Jeff:

I would like to reschedule our meeting today on Local 12 to 2:00 p.m.

Thanks,
Bob

-----Original Message-----

From: Gaynor, Jeffrey - EBSA
Sent: Friday, June 23, 2006 8:23 AM
To: Kay, Jonathan - EBSA
Cc: Gaynor, Jeffrey - EBSA; Kay, Jonathan - EBSA; Goldberg, Robert - EBSA; Castillo, Jose - EBSA
Subject: RE: Local 12 Asbestos Workers

Jon:

I have scheduled a meeting with Jose and Bob this morning, Friday, 06/22/2006 at 10:00am to review "ALL" open items relative to this investigation.

This will include:

- 1) "All" open allegations/complaints
 - a) receipt of the year 2000 benefits
 - b) earnings during the "black out period"
 - c) reduction of account balances right before the Plan became self directed
- 2) Present status of "ALL" our original violations contained in NYRO's 05/03/2005 V/C letter

This meeting will be held in the 12th floor conference/meeting room and you are cordially invited to attend, your schedule permitting.

Jeff

-----Original Message-----

From: Kay, Jonathan - EBSA
Sent: Thursday, June 22, 2006 5:13 PM
To: Castillo, Jose - EBSA; Goldberg, Robert - EBSA; Gaynor, Jeffrey - EBSA
Subject: Local 12 Asbestos Workers

I assume that Jose and Bob are still meeting with Heinzman, and perhaps others, next

Thursday, June 29th. Given the circumstances of this case, as well as the fact that Bob
will be out of the office for three months after June 30th, I am asking whether all of us
meet on June 30th to discuss what happened and what the next steps should be. As I
all, Jose had an appointment on June 30th which we will have to work around. Jose,
what time is your appointment and where is it located?

Castillo, Jose - EBSA

From: Kay, Jonathan - EBSA
Sent: Friday, June 23, 2006 10:14 AM
To: Castillo, Jose - EBSA; Goldberg, Robert - EBSA; Gaynor, Jeffrey - EBSA
Subject: RE: Local 12 Asbestos Workers

Jeff and Bob:

Can you meet at 9:30am on June 30th?

-----Original Message-----

From: Castillo, Jose - EBSA
Sent: Friday, June 23, 2006 9:52 AM
To: Kay, Jonathan - EBSA; Goldberg, Robert - EBSA; Gaynor, Jeffrey - EBSA
Subject: RE: Local 12 Asbestos Workers

Jon,

We can have the discussion at around 9:30 AM until 11:00 or at 3:00 PM and up. My appointment is at 12:30 PM in Midtown.

Jose

-----Original Message-----

From: Kay, Jonathan - EBSA
Sent: Thursday, June 22, 2006 5:13 PM
To: Castillo, Jose - EBSA; Goldberg, Robert - EBSA; Gaynor, Jeffrey - EBSA
Subject: Local 12 Asbestos Workers

I assume that Jose and Bob are still meeting with Heinzman, and perhaps others, next Thursday, June 29th. Given the circumstances of this case, as well as the fact that Bob will be out of the office for three months after June 30th, I am asking whether all of us can meet on June 30th to discuss what happened and what the next steps should be. As I recall, Jose had an appointment on June 30th which we will have to work around. Jose, what time is your appointment and where is it located?

Castillo, Jose - EBSA

From: Gaynor, Jeffrey - EBSA
Sent: Friday, June 23, 2006 10:15 AM
To: Kay, Jonathan - EBSA; Castillo, Jose - EBSA; Goldberg, Robert - EBSA
Cc: Gaynor, Jeffrey - EBSA
Subject: RE: Local 12 Asbestos Workers

Jon:

That will be fine...

Jeff

-----Original Message-----

From: Kay, Jonathan - EBSA
Sent: Friday, June 23, 2006 10:14 AM
To: Castillo, Jose - EBSA; Goldberg, Robert - EBSA; Gaynor, Jeffrey - EBSA
Subject: RE: Local 12 Asbestos Workers

Jeff and Bob:

Can you meet at 9:30am on June 30th?

-----Original Message-----

From: Castillo, Jose - EBSA
Sent: Friday, June 23, 2006 9:52 AM
To: Kay, Jonathan - EBSA; Goldberg, Robert - EBSA; Gaynor, Jeffrey - EBSA
Subject: RE: Local 12 Asbestos Workers

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We can have the discussion at around 9:30 AM until 11:00 or at 3:00 PM and up. My appointment is at 12:30 PM in Midtown.

Jose

-----Original Message-----

From: Kay, Jonathan - EBSA
Sent: Thursday, June 22, 2006 5:13 PM
To: Castillo, Jose - EBSA; Goldberg, Robert - EBSA; Gaynor, Jeffrey - EBSA
Subject: Local 12 Asbestos Workers

I assume that Jose and Bob are still meeting with Heinzman, and perhaps others, next Thursday, June 29th. Given the circumstances of this case, as well as the fact that Bob will be out of the office for three months after June 30th, I am asking whether all of us can meet on June 30th to discuss what happened and what the next steps should be. As I recall, Jose had an appointment on June 30th which we will have to work around. Jose, what time is your appointment and where is it located?

2-11

still, Jose - EBSA

From: Gaynor, Jeffrey - EBSA
Sent: Friday, September 22, 2006 12:46 PM
To: Castillo, Jose - EBSA; Goldberg, Robert - EBSA; Kay, Jonathan - EBSA
Cc: Gaynor, Jeffrey - EBSA
Subject: RE: Analysis of response from Golub to NYRO's 07/05/& 07/07 2006 requests for information / documentation

Jose:

I appreciate that you are working on the ROI for Local 427 and I appreciate your comments noted below but I believe that my previous memo to you was quite clear.

I want to review the documents that Golub referred to in his 09/11/2006 response to our 07/05 & 07/07 2006 letters to him and I prepared a summary of these documents so you would know specifically what I want to see.

All I want you to do at this point is to give me copies of the items that I requested, items that should be in your case files and easily accessible.

If there is anything about this request that you don't understand, please see me.

Otherwise, I'll expect to receive these items by COB on Monday, 09/25/2006.

-----Original Message-----

From: Castillo, Jose - EBSA
Sent: Friday, September 22, 2006 11:51 AM
To: Gaynor, Jeffrey - EBSA; Goldberg, Robert - EBSA; Kay, Jonathan - EBSA
Cc: Castillo, Jose - EBSA
Subject: RE: Analysis of response from Golub to NYRO's 07/05/& 07/07 2006 requests for information / documentation

Jeff,

I am trying to finish the ROI for Local 427 Funds at the moment. The responses of Golub which me and to some extent Goldbberg already reviewed before are nothing new.

The fact of the matter is, up to this point the trustees have not provided us with proof that the year 2000 earnings was in fact allocated to the participants. No allocation was done up to this point. They are in violation and it's \$1.8 million plus interest. It's well over \$2 million and affecting about 600 participants.

Our agency's priority is to protect the interest of the Ps and Bs.

On the other hand, the participant() and our office has documentary proof that the allocation of the year 2000 earnings was not done.

We have the document to prove it, all they did so far is make misleading statements. Statements are not good. They need to be supported by documents.

Both you and Goldberg never reviewed the documents of Schroeder. His documents is crystal clear. Even a Benefit Advisor fully understood it.

ar they have not given us proof that is was done. On the other hand, and our ce has documentary proof that no deposit of earnings was done to the core fund.

We need to do a VC letter now. The statement from them addressing the issue of the allocation of the earnings is just a waste of time and a delaying process. If the allocation was done according to the plan document and a transaction took place,

would not be complaining on this issue and it should be reflected on his statement a long time ago.

Jose

-----Original Message-----

From: Gaynor, Jeffrey - EBSA
Sent: Friday, September 22, 2006 9:49 AM
To: Castillo, Jose - EBSA
Cc: Gaynor, Jeffrey - EBSA; Kay, Jonathan - EBSA; Goldberg, Robert - EBSA
Subject: FW: Analysis of response from Golub to NYRO's 07/05/& 07/07 2006 requests for information / documentation

Jose:

I reviewed subject and made some notes below on each of the areas covered by Golub. What I would like is for you to give me a copy of the various previous responses that Golub refers to in his 09/11/2006 letter to wit:

Item (2) referred to a letter sent to the NYRO dated 10/21/2005 Item (5) referred to a letter to the NYRO dated 03/08/2006 and exhibit #6 of the 10/21/2005 materials that were given, Item (6) refers to a letter dated 08/17/2006 that we rec'd Item #7 and Item #9 both contain references a letter dated 08/18/2006 from Engel.

Please get me copies of these letters and any/all attachments thereto ASAP.

Thanks,

Jeff

-----Original Message-----

From: Gaynor, Jeffrey - EBSA
Sent: Friday, September 22, 2006 9:31 AM
To: Gaynor, Jeffrey - EBSA
Cc: Gaynor, Jeffrey - EBSA
Subject: Analysis of response from Golub to NYRO's 07/05/& 07/07 2006 requests for information / documentation

Golub responded to our questions in the numeric order they were presented in the NYRO's 07/05/2006 letter.

- 1) Requested docs that support collection work performed by Bus. Mgrs.
Ans already provided by Union Counsel. Supplemental response w/b forthcoming.
- 2) Requested copies of supporting calculations performed on "stipends".
Ans provided in a letter to us dated 10/21/2005. Request we clarify what we still have questions on...

Requested copy of 2003 the S&P Investment Tracking Report.
Info made avail to JC in JAN '06 when he visited the Fund's office.
They will make the doc avail again and give us copies of what we request.

- 4) Pertains to V/C item #7-- had questions on various "additional charges/hours billed" by Heinzman and Murray.

They explained why these additional hours were charged.

Pertains to V/C #8-- No supporting documentation for various individuals listed requested description of work performed/time frames involved. Info already provided, most recent in S&P letter to RG dated 03/08/2006 also references "Exhibit 6 of Oct 21, 2005 materials" that included various materials/workplaces and time sheets.

6) Requested copies of 2005 Local 12 contribution remittances to Annuity FD. Info already provided under cover letter dated AUG 17, 2006

7) Requested copy of 2003 year end custody statement from the Bank of NY. Info provided in ltr from Engel to JC AUG 18, 2006.

8) Question pertained to allocation of 2000 Annuity earnings (\$1,871,978) on AUG 30, 2004. Ans was that a detailed response will be provided under separate cover. Spoke to Engel said NYRO should rec same by Friday, SEP 22, 2006.

9) Requested copies of the Core Fund statements for the year 2001 and 2002. Info was provided in ltr from Engel to JC AUG 18, 2006.

10) Request was made to visit S&P to review their work papers pertaining to V/C #10. They are will to do this however, state that all audit/project work papers were made available to JC at five previous meeting and work papers were delivered to JC in response to other document requests. Also they want a list of specifics to be reviewed.

Regarding reference to NYRO's 07/07/2006 letter, it reiterated that a detailed explanation of the allocation of the 2000 investment earnings is being prepared.

discussed was the fact that a claim was made by the Annuity Fund for \$683,812 and they accepted the lesser amount of \$566,500 in an effort to resolve the matter without the need for litigation. It also noted that the Annuity Fund rec'd additional \$\$\$ other sources including the fidelity bond carrier and "other" defendants.

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Employee Benefits Security Administration. If you think you received this message in error, please notify the sender immediately.

2-12

COLLERAN, O'HARA & MILLS L.L.P.
1225 FRANKLIN AVENUE, SUITE 450
GARDEN CITY, NEW YORK 11530

WALTER M. COLLERAN (1912-1998)
RICHARD L. O'HARA
JOHN F. MILLS (1939-2003)
EDWARD J. GROARKE
CHRISTOPHER P. O'HARA
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HEALTH & SAFETY CONSULTANT

MICHAEL D. JEW
STEPHANIE SUAREZ
ROBIN YOUNG TYRRELL
JOHN S. GROARKE

September 29, 2006

Via E-Mail and Regular Mail

Jeffrey Gaynor, Esq.
Deputy Regional Director
Employee Benefits Security Administration
United States Department of Labor
33 Whitehall Street
Suite 1200
New York, New York 10004

Re: Local 12 Benefit Funds
Our File #: 1608-4-0233

Dear Mr. Gaynor:

Enclosed please find the explanation you requested relating to the 2000 investment earnings.

Very truly yours,

COLLERAN, O'HARA & MILLS L.L.P.

By: 

DENIS A. ENGEL

DAE/jat

cc: Christopher P. O'Hara, Esq.
Ira Golub, Esq.
S. Kaplan, Esq.
J. Heinsman
R. Goldberg
J. Castillo



At the March 22, 2000 Trustees' Meeting, a discrepancy was discovered by the Board of Trustees of the Asbestos Workers Local 12 Annuity Fund (the "Fund") relating to the investment income earned on Fund assets for 1999. The discrepancy first became evident from discrepancies between the 1999 year end reports of the Funds' investment adviser, Thomas Reynolds, Sr. of Reynolds Securities, Ltd. ("Reynolds"), and the financial reports prepared by the Funds' accountant, Robert Weinstein of Lawson, Holland & Co., P.C., Certified Public Accountants ("Weinstein"). Reynolds reported a positive return on investments of approximately 1%, for the same period that Weinstein reported a loss on investments of approximately 3%.

At the first Board of Trustees meeting following this discovery, on June 15, 2000, the Trustees immediately sought to uncover the reason for this discrepancy and hired an audit firm to examine the Fund's records and advise the Trustees accordingly. The Trustees resolved to direct the accounting firm that was to be retained for this purpose to ascertain the exact value of the total net assets of the Fund and to explain and reconcile the different investment returns that had been reported by Reynolds and Weinstein. The Trustees engaged in due diligence by soliciting proposals and interviewing a number of accounting firms, including Marcum & Kleigman LLP("M&K"). At the Board of Trustees meeting held on October 19, 2000, the Board of Trustees retained M&K to assist them in accomplishing the foregoing.

M&K identified an issue relating to the stated value of the Individual Accounts and a possible discrepancy between the annual investment earnings

allocated to participants' accounts. The Trustees requested that M&K investigate this issue as well.

The Trustees met with representatives of M&K on several occasions and a representative of M&K was present at the Trustees meeting on March 8, 2001. At that meeting M&K reported on the services that they had performed and information that had been garnered to that date. The Trustees questioned the performance of M&K and the fees that had been paid and requested that M&K provide them with a more detailed report on their activities and time charges. When M&K could not complete the tasks with which they were charged, M&K was terminated on April 19, 2001. M&K did provide the Trustees with a draft report, a copy of which has been provided to the U.S. Department of Labor (the "DOL"). At the time M&K was terminated, payment had already been made to M&K of fees in the amount \$83, 988.00.00. M&K contends that they are owed an additional \$101,083.30, which monies the Trustees have refused to pay.

Due to the lack of necessary information, as a result of the problems with M&K's performance, the Trustees were unable at that time to institute corrective measures regarding the correct balances of and the monies that should have been allocated to the Individual Accounts. To correct this deficiency as expeditiously as possible, the Trustees' retained the accounting firm of Schultheis & Panettieri (S&P) in May of 2001. The Trustees were familiar with S&P's services and capabilities as S&P had been previously hired to conduct payroll audits with respect to the Fund. S&P was and continues to be an accounting firm with extensive experience with multiemployer employee benefit plans. S&P immediately began to

work to resolve the discrepancies described above and began serving in the capacity of Fund auditor. S&P, as you are aware, continues to serve as Fund auditor.

S&P, within a period of a few months, uncovered two critical problems that explained the discrepancy between the total of the Individual Accounts and the value of total plan assets and described their findings in an Interest Allocation Analysis dated September 28, 2001. (For more detail, see Section 5(D) of the S&P Response, dated October 21, 2005, which was provided to the DOL by S&P in response to various inquiries from the DOL, hereinafter referred to as the "October 21, 2005 Materials"). It should be noted that M&K failed to accurately identify these issues. The first problem S&P uncovered was that the former Fund Administrator, Jerome Market ("Market") and former Fund Accountant, Weinstein posted investment earnings to the Individual Accounts (going back as far as 1993) that were not consistent with the actual earnings of the Fund. It should be noted that the review and correction went back to 1993 as that was the earliest year for which there were records sufficient to permit accurate calculations. S&P advised the Trustees that, in some years, a higher than actual return was posted, while in other years, a lower than actual return was posted. It was clear, however, that the net effect of the errors was that the Individual Accounts were, in the aggregate, over-stated. The amount of the overstatement, as set forth in the Fiduciary Insurance Claim, filed with the Fund's carrier on or about October 9, 2002, was determined by S&P to be in the amount of \$683,812. Subsequent retirements and distributions increased this amount to \$695,770, which is the amount set forth in Exhibit 5(H)(3) of the October 21, 2005 Materials. This is the total aggregate

amount by which distributions were made to retired participants that exceeded the amount that they should have received had they been credited with the proper investment earnings.

The second issue dealt with plan assets that were either wrongfully taken or inaccurately distributed from the Fund by the former Fund Administrator and/or Fund Accountant. To address this issue, the Trustees asked S&P to quantify the amount of the shortfall attributable to these actions. S&P's investigation included a review of all Annuity Fund disbursements for the years 1992 – 2000 in an effort to determine the amounts attributable to wrongful actions of the Fund Accountant and Fund Administrator and to quantify the effect of such wrongful actions with respect to each Individual Account. After receiving this information, on or about April 30, 2002, the Trustees immediately instituted measures to recover the shortfall from the responsible parties. In this regard, the Trustees (1) notified DOL and the U.S. Attorney's Office on May 15 and May 10, 2002 respectively; (2) filed claims with the applicable Fidelity Bond and Fiduciary Insurance carriers, and (3) filed various lawsuits, including a lawsuit against the former accountant Robert Weinstein, Lawson, Holland & Co., P.C., and Mary Weinstein, as well as a lawsuit against Jerome Market, both individually and as the former Fund Administrator, among others, to restore the amounts wrongfully taken or distributed. DOL was kept fully apprised of all of these actions.

On June 26, 2001, after two years of consideration and extensive input from the Fund's professionals, the Trustees continued to move forward in implementing their decision to change the administration of the Fund to a participant directed

investment program that would permit participants to control the manner in which their account balances would be invested by choosing from among a broad range of investment options in accordance with Section 404(c) of the Employee Retirement Income Security Act of 1974, as amended.¹ It should be noted that the default investment vehicle established in connection with the participant directed investment program was the Core Fund. In essence, the Core Fund is a blended portfolio established exclusively for purposes of the Local 12 Annuity Fund, which generally was designed to mirror the investment managers and asset mix in place during the period immediately preceding the transition to the participant directed investment program.

The transition to a participant directed account program, in this case with New York Life, necessitated that there were monies available for investment for every dollar that is reflected in the individual accounts of the Fund participants. Accordingly, the Trustees ability to effect the transition to a participant directed account platform needed to be managed to address in a prudent manner two significant factors resulting from the differential between the assets available to be transferred to New York Life (and available for investment by participants) and the monies that should have been reflected in the Individual Accounts. First, as described above, the assets of the Fund were depleted by (i) the improper investment allocations (during the period 1993 to 1999) and (ii) the assets of the Plan that had been wrongfully taken or distributed by the former Fund Administrator and former Fund Accountant. Second, the true value of each

¹ In anticipation of this conversion, the Trustees moved the Fund's assets to New York Life in May

Individual Account could not be determined until (i) S&P concluded its review of the proper amount of investment earnings for the Fund as a whole, and its impact on the Individual Accounts; and (ii) the Trustees concluded their efforts at recouping monies from the responsible individuals.

At the time of the Plan conversion to self-directed investing, the Trustees were informed by S&P that the allocable earnings to be distributed to participants was \$1,871,978 during the 2000 plan year. S&P also made the Trustees aware of the fact that there was a shortfall in Fund assets (*i.e.*, a difference between the assets on hand as of December 31, 1999, and the amounts reflected by adding up all of the Individual Accounts) in the amount of approximately \$1,900,309. (See, Exhibit 5(D)(8) in the October 21, 2005 Materials).²

It is the coincidence of the 2000 earnings (approximately \$1.9M) and the discrepancy between Fund assets and Individual Account Statements (also approximately \$1.9M) being almost the same that may have led some to conclude that the Trustees decided to forego allocating the 2000 earnings in order to make up the asset shortfall. Such is not the case. All Plan assets, including the 2000 earnings were delivered to New York Life in order to permit the Trustees to move forward with their decision to permit a self-directed investment arrangement, as outlined below. However, the actual reimbursement to Individual Accounts of the 2000 investment earnings was made to each participant after receipt of the litigation and insurance proceeds, as set forth herein.

2000.

² After reducing overstated Individual account statements to the proper amount, the actual remaining shortfall was reduced to \$695,770.00. (Exhibit 5(H)(3) of the October 21, 2005 Materials.)

The Trustees considered all the facts and circumstances and determined, in consultation with Counsel and S&P, that the prudent course of action was to proceed with the transition to New York Life and the establishment of participant directed accounts as soon as practicable. In order to accomplish this transition, the Trustees suspended allocation of the 2000 earnings in the amount of \$1,871,978 the majority of which remained in the Core Fund. This was necessary to fully fund the shortfall and enabled the Trustees to move forward with the transition to the participant direct account platform with New York Life while avoiding any reduction in Individual Accounts. As part of this decision, the Trustees determined to delay the allocation of the 2000 investment earnings until such time as the Fund had sufficient monies on hand (through recoupment of claims on the fiduciary insurance and fidelity bond carriers and the litigation filed against Weinstein, Jerry Market and others).

The Trustees also determined to place a temporary "freeze" on 30% of the account balance on each of the Individual Accounts and to keep that money in the Core Fund. This "freeze" was put in place as of the June 21, 2001 Board of Trustees meeting. In temporarily "freezing" 30% of each participant's Individual Account balance, the Trustees separated a portion (30%) of each participant's Individual Account (that otherwise would have been available for participant-directed investment) and invested such monies in the Core Fund. The monies were to be held (i.e., frozen) until such time as the Trustees could identify through S&P the proper earnings allocation to be credited to each participant's Individual Account, at which point the "frozen" portion of each account could be reallocated accordingly. It

is important to note that the \$1,871,978 was, at all relevant times, held by the Fund and invested in the Core Fund. One effect of the freeze was to remove that 30% from active participant direction.

The actions taken by the Trustees, as described above, were consistent with the language of the Plan. Section 2.05 of the Rules and Regulations of the Asbestos Workers Local 12 Annuity Fund (the "Plan") provides as follows:

Valuation of Total Fund In no event and at no time shall the total amount in all Individual Accounts at any Valuation Date, plus amounts established for expenses at that time, exceed the total net assets of the fund. If such an event should occur, then all existing Individual Accounts shall automatically be proportionately reduced so that the total of all Individual Accounts, plus amounts established for expenses, is not more than the total net assets.

By determining in 2001 not to allocate the 2000 investment earnings in the amount of \$1,871,978, but rather to allocate such monies pro rata to all participants, the Trustees were (to the extent possible based on the available information) temporarily reducing the Individual Accounts in accordance with Section 2.05 of the Plan. Moreover, the Plan states in Sections 2.01 and 2.02 that the valuation of the Individual Accounts must be done "as soon as practicable" following the respective Valuation Date.

In the instant circumstances, it was not possible for the Individual Accounts to be valued until after monies were recouped by the Fund through the litigations and S&P performed their Re-Allocation Analysis (See, litigation and Re-Allocation Analysis, April 26, 2004, Exhibit 5(H)(1) in the October 21, 2005 Materials). Indeed, as soon as practicable thereafter, the Trustees valued the Individual Accounts, distributed the litigation proceeds, ceased the "freezing" of the Individual

Accounts and "allocated" the 2000 investment earnings. It is important to note that had the Trustees allocated the 2000 investment earnings in 2001: (i) the Plan could not at that time have migrated to a participant directed account platform (because assets on hand would have been materially less than the assets reflected in the Individual Accounts), (ii) the Trustees would have been compelled to adjust (i.e., reduce) the Individual Accounts so as not to exceed the total net assets of the Fund in circumstances in which the Trustees did not yet know by how much to reduce each of the Individual Accounts; and (iii) because the Trustees were aware that the Individual Accounts were inaccurate at that time, the allocation of the 2000 investment earnings would have compounded the errors made by the former Fund Administrator and former Fund Accountant, and magnified the inaccuracy of the Individual Accounts.

As the litigation against the former Fund Administrator, former Fund Accountant and others proceeded, the Trustees directed the new Fund Administrator to place all litigation proceeds in a Special Account bearing interest. In addition, as the Trustees became sufficiently apprised of additional details relating to the errors in the 2000 earnings allocation as applied to Individual Accounts, on January 23, 2002, the Trustees adopted a Motion directing the Fund's Counsel to prepare a letter to be sent to the participants regarding the research that S&P was conducting with respect to the 2000 investment earnings allocation.

Eventually, as has been demonstrated, the Trustees recovered from the Fidelity Bond, Fiduciary Insurance, the former Fund Administrator, the former Fund Accountant and others a total of approximately \$1,614,375 (For more details,

see Section 5(H) of the October 21, 2005 Materials). In April 2004, the Trustees directed S&P to prepare individual statements for each participant that would explain (1) how the proper interest allocation affected each participant's account; (2) how the litigation recovery was allocated to each participant's account and (3) the total of the participant's account. (For examples, see Section 5(H)(21) of the October 21, 2005 Materials). The Trustees determined that, upon S&P's preparation of these statements, they would distribute the statements to the participants along with an explanation of these specific circumstances, giving them a period of time to review the statement and ask any questions they may have.

A meeting was convened at which all participants were invited on April 26, 2004. The Trustees and representatives of S&P and Colleran, O'Hara & Mills explained the outcome of the litigation and the methodology for allocating the proceeds. (This explanation and methodology has been provided to the DOL on several occasions in the form of the Power Point presentation, and is available in Section 5(H) of the October 21, 2005 Materials). The Trustees afforded each member the right to review the statement prepared by S&P and also offered to have individual questions answered in a meeting with the new Fund Administrator and a representative of S&P. The Trustees also stated that, should an individual's circumstances warrant, an appropriate adjustment to the statement could be made. Only a small group of participants requested such an explanation³ and no

³ Participant Henry Schroeder was one such participant. It should be noted that he did not dispute the amounts contained in his statement at that time to the current Fund Administrator and Fund Accountant.

participant offered any special circumstance and all participants were satisfied with those explanations. On or about August 31, 2004, the Trustees adopted the S&P statements and “unfroze” the 30% previously held in the Core Fund. At that time, and through to the present, the participants have had the ability to invest the assets in their accounts on a self-directed basis.

In summary:

- the 2000 earnings never left the Trust; the earnings remained primarily in the Plan’s Core Fund where they earned income;
 - each participant obtained his or her share of the investment return of the assets in the Core Fund ;
 - once the litigation and insurance proceeds were distributed to Participants (after the 2004 Special Membership Meeting) all assets were “unfrozen” and participants were free to invest in whatever options New York Life made available;
 - the Trustees treated all participants in exactly the same fashion:
 - o they were all informed along the way as to important developments;
 - o they each received their pro-rata share of the 2000 earnings;
 - o they each received their pro-rata share of the litigation and insurance proceeds;
-

- o they each had their accounts reviewed and adjusted to reflect actual earnings, rather than the erroneous earnings posted to accounts by the former Administrator and former Accountant from 1993-1999; and
- o they each had an opportunity to voice concerns and/or objections as to the process prior to actual implementation.

For all these reasons, it is abundantly clear that the Trustees acted reasonably and prudently under trying and difficult circumstances. Throughout the DOL's inquiry into these matters, they have cooperated fully and completely.