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Report of Interview

U.S. Department of Labor Office of Inspector General



OIG Form 103 (OI-6/08)

Interview Date:	April 6, 2009	Location:	200 Constitution Ave Suite 600 Washington, DC	Case Number:	14-2601-0004 IA
Subject:	Jeffery Monhart	Prepared By:	Robert W. Wyche <i>rw</i>	Date Prepared:	April 6, 2009

On April 6, 2009, Assistant Inspector General (AIG) Asa Cunningham and I interviewed Jeffrey A. Monhart, Chief, Division of Field Operations, Office of Enforcement, Employee Benefits Security Administration (EBSA), United States Department of Labor (DOL), 200 Constitution Avenue, NW, Suite 400, Washington, DC. Prior to the interview, AIG Cunningham and I identified ourselves and obtained a Garity warning from Chief Monhart, which he read and signed, agreeing to answer questions in this investigation.

Chief Monhart explained that as chief of the Division of Field Operations for EBSA, his duties include monitoring EBSA investigations for conformance with the agency's enforcement policies and procedures, in addition to providing technical guidance to EBSA offices in the field. Many EBSA investigations come to Chief Monhart's attention through case summaries for significant cases and Chief Monhart believes this is how he first became aware of the Asbestos Workers Local 12 Funds investigation. Although Chief Monhart could not recall the date this case first came to his attention, he did remember it had attracted union participant and congressional interest and as a result, instructed members of his staff to make periodic inquiries with EBSA New York Regional managers regarding the status of the investigation. One issue that was being brought to Chief Monhart's attention was the fact that the Asbestos Workers Local 12 Funds investigation was progressing at a slow pace.

Chief Monhart was asked by Virginia Smith, Director, Office of Enforcement, EBSA, DOL, to serve as Acting Deputy Director, EBSA New York Regional Office (RO) from May 21, 2007 through August 16, 2007 after the retirement of Deputy Director Jeffrey Gaynor. In addition to performing the normal duties of the deputy director, Chief Monhart was also asked to observe the performance of the EBSA New York Regional managers. According to Chief Monhart, EBSA New York RO had recently appointed several first line supervisors, in addition to the Regional Director Jonathan Kay, who was also relatively new in his position. Chief Monhart was also asked to monitor several of the EBSA New York RO investigations and attempt to resolve issues that were delaying these investigations. Included in this was the Asbestos Workers Local 12 Funds investigation. Chief Monhart advised that EBSA New York RO had developed a reputation for their inability to proceed with investigations in a timely manner, which involved experienced opposing legal counsel.

Upon his arrival at EBSA New York RO, Chief Monhart stated he informed Regional Director Kay he expected to see progress in resolving the cases that had been moving slowly, including the Asbestos Workers Local 12 Funds investigation. During his temporary

assignment in EBSA New York RO, Chief Monhart reported he had attended several status meetings regarding the Asbestos Workers Local 12 Funds investigation. Chief Monhart also advised that once he arrived in New York, Jose Castillo would often come into his office (uninvited) and complain to him that his supervisors were not supporting him and stalling the Asbestos Workers Local 12 investigation. Chief Monhart recalled Mr. Castillo's specific complaints that his supervisors had ignored evidence of criminal violations and had overlooked civil violations concerning alleged shortfalls in the Asbestos Workers Local 12 Annuity Fund.

Chief Monhart recalled the following complaints raised by Mr. Castillo regarding his supervisors Director Kay and Robert Goldberg and their handling of the Asbestos Workers Local 12 Funds investigation:

- EBSA New York RO supervisors were too accommodating to counsel for the Asbestos Workers Local 12 trustees and the accounting firm of Schultheis and Panetieri, who represented the union.
- EBSA New York RO supervisors gave the Asbestos Workers Local 12 Union attorneys and accountants unnecessary extensions of time to provide documents and explanations relating to the investigative issues.
- Several of the Asbestos Workers Local 12 Union attorneys were former DOL attorneys and had influence over EBSA New York RO supervisors due to their standing as Retirement Income Security Act counsel.

During his temporary assignment with EBSA New York RO and his exposure to the Asbestos Workers Local 12 Funds investigation, Chief Monhart concluded that EBSA New York RO management was too accommodating to the attorneys representing the Asbestos Workers Local 12 Union and believes this delayed the resolution of the case. Chief Monhart stated he recommended issuing subpoenas for the requested case documents to explain fund shortages and transfers instead of continued meetings that did little to resolve the investigative issues.

Chief Monhart recalled that after his temporary assignment in EBSA New York RO, the pace of the Asbestos Workers Local 12 Funds investigation did increase. According to Chief Monhart, all parties agreed to a settlement to one group of issues and Regional Director Kay made the decision to solicit outside opinions from EBSA's Office of Regulation and Interpretations (ORI) and Office of the Chief Accountant (OCA) regarding the remaining issues of a purported shortfall. Chief Monhart believes Regional Director Kay made the right decision in moving the Asbestos Workers Local 12 Funds investigation on to EBSA's Office of the Solicitor and requesting opinions from ORI and OCA.

Although the Asbestos Workers Local 12 Funds investigation seems to be drawing to a conclusion, Chief Monhart believes that skilled supervision could have averted past delays in the investigation. Chief Monhart identifies inexperienced supervision as a cause of the delays, and does not attribute these delays to any collusion or unlawful conduct by EBSA New York RO management. Chief Monhart did not nor has not observed any evidence that would substantiate Mr. Castillo's allegations that his supervisors delayed and stalled the Asbestos Workers Local 12 Funds investigation for the purpose of making Mr. Castillo look bad.

At the conclusion of the interview, Chief Monhart was asked to provide a written statement regarding the facts discussed during this interview and will swear to this statement at a later date.

AFFIDAVIT

City: Washington Date: 4/14/09
State: D.C. Time: 2:20 p.m.

JEFFREY A. MGNHART, being duly sworn, deposes and states:

4/14/09
JAM

Statement of Jeffrey A. Monhart
Chief, Division of Field Operations
Office of Enforcement
Employee Benefits Security Administration
United States Department of Labor
202-693-8454
monhart.jeff@dol.gov

I offer the following statement at the request of Robert W. Wyche and Gene Cunningham of the Office of Inspections and Special Investigations, Office of Inspector General on April 6, 2009. On that date Messrs. Wyche and Cunningham interviewed me in my office.

I am the Chief of the Division of Field Operations in EBSA's Office of Enforcement. I have held this GS-15 position since November 2004. I have line supervision of four GS-14 individuals and one GS-6 administrative employee. I manage a division comprised of 13 employees. My division provides oversight of EBSA's 15 field offices, which conduct investigations of pension and welfare benefit plans. Oversight consists of monitoring investigations for conformance with the agency's enforcement policies and procedures, among other things. The division also provides technical guidance to the field.

In my duty of monitoring significant cases, I became aware several years ago of the New York Regional Office (NYRO) investigation of the Local 12 Asbestos Workers Annuity Fund (Local 12). I learned that the case had attracted participant and Congressional interest. I familiarized myself with the potential issues in the case and instructed members of my staff to periodically inquire of NYRO managers about the status of the case, as I did.

In early 2007, I was asked by EBSA senior management to serve as Acting Deputy Regional Director of the NYRO for a three-month detail. I was instructed to observe the capability of the NYRO managers and to hasten resolution of key investigations, including Local 12. The NYRO had demonstrated an inability to make progress on certain cases that involved experienced opposing legal counsel. Among the cases I was asked to focus on was Local 12.

My detail in the NYRO lasted from May 21-August 16, 2007. I informed Regional Director Jonathan Kay after my arrival that EBSA's headquarters expected progress on certain cases, including Local 12. During my detail, I participated in some, but not all, NYRO management meetings concerning strategy for the Local 12 case. Local 12 investigator Jose Castillo repeatedly visited my office to air his complaints that his investigation had been hindered by present and former NYRO managers. Mr. Castillo brought documents with him during his visits to press his points. Among Mr. Castillo's complaints were that evidence of criminal wrongdoing had been ignored and that NYRO managers had overlooked civil violations concerning an alleged shortfall in the Annuity Fund.

* JAA

Regarding these complaints, Mr. Kay informed me that he had evaluated any actionable criminal violations and determined (1) that the applicable statute of limitations barred any prosecution, and (2) that insufficient evidence of embezzlement existed.

Mr. Castillo's complaint that NYRO management hindered his civil case raised legitimate oversight concerns. At the time of my detail, I had developed 14 years of oversight experience in EBSA's Office of Enforcement and had acquired case management skills. Through analysis of many investigations, I gained a sense of how to expedite cases. Accordingly, I observed the actions of Mr. Kay and Supervisory Investigator Robert Goldberg concerning the Local 12 case. However, I was not privy to all conversations concerning case strategy. Mr. Castillo believed that NYRO managers were too deferential to counsel for the trustees and for the accounting firm that performed audits of the Fund. Mr. Castillo believed that NYRO management gave counsel for these parties unnecessary extensions of time to provide documents or explanations. Mr. Castillo believed at least three of the opposing attorneys (two of them former Department of Labor attorneys) had inappropriate influence because of their standing as prominent ERISA counsel.

Based upon my observation, I did form the opinion that NYRO management were too accommodating to opposing counsel and this delayed resolution of the case. I recognized that there were outstanding requests for documents and explanations. Rather than grant continual extensions, I recommended that the NYRO issue a subpoena ad testificandum so that it could compel Fund staff to explain Fund transfers.

After my detail ended, the pace of the investigation did increase. The parties settled one set of issues (unnecessary or duplicative accounting fees). The New York RSOL took under review the remaining issue, that of the purported shortfall. Mr. Kay sought and obtained the expert opinion of an experienced accountant in EBSA's Office of Chief Accountant about the remaining issue. However, the fact remains that the case has been open since February 15, 2002, over 222 days have been charged to the case, and six formal tolling agreements executed. I believe more skillful supervision could have averted the delays, but I do not attribute the delays to any collusion or unlawful conduct.

JAM
~~_____
Jeffrey A. Monhart
Chief, Division of Field Operations~~

~~_____
Date~~ JAM

3 JAM

Statement of JEFFREY A. MUMFORD Date: 4/14/09

JAM

4/14/09

I have read this statement consisting of 4 pages. I have been given an opportunity to make corrections. Pursuant to 28 USC 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of April, 2009

Jeffrey A Mumford
Deponent's Signature

Subscribed and sworn before:

[Signature]
Special Agent
4/14/09
Date

Witnessed by: [Signature] Case Number: 14-2601-0004 JA

Title: ATG

OIG 118C (OLRFI 9/05)

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Report of Interview

U.S. Department of Labor Office of Inspector General



OIG Form 103 (OI-6/08)

Interview Date:	April 6, 2009	Location:	Department of Labor Francis Perkins Building Room N5677	Case Number:	14-2601-0004-IA
Subject:	Alan D. Lebowitz	Prepared By:	Robert W. Wyche <i>RW</i>	Date Prepared:	April 6, 2009

On April 6, 2009, Assistant Inspector General Asa Cunningham and I interviewed Alan D. Lebowitz, Deputy Assistant Secretary, Program Operations, Employee Benefits (EBSA) Security Administration, Francis Perkins Building, room N5677, U.S. Department of Labor (DOL), Washington, DC.

Mr. Lebowitz was asked if he was familiar with the Asbestos Workers Local 12 Funds investigation, which was being conducted by EBSA, New York Region and provided the following statements:

- He has had knowledge of this investigation for several years.
- He normally would not be aware of specific investigations such as these, but had become familiar with the investigation after being carbon copied on various e-mails from Mr. [redacted], a retired Asbestos Workers Local 12 Union employee and Mr. Jose Castillo, an EBSA New York Region investigator.
- He also remembered receiving several e-mails directly from Mr. [redacted] and believes he may have had several telephone conversations with him.
- Mr. [redacted] had repeatedly complained to him about the amount of time the investigation was taking.
- Mr. Castillo had sent e-mails to various DOL officials, including the Secretary of Labor, complaining that the Asbestos Workers Local 12 Funds investigation, which he was assigned as the lead investigator, was being delayed by his supervisors.
- He also felt the investigation was taking longer than usual to conclude and contacted Virginia Smith, Director, Office of Enforcement, DOL, Washington, DC, and asked her to look into the matter.

Mr. Lebowitz indicated that Ms. Smith reported back to him that there were several issues, which were causing the delay in the investigation. Ms. Smith explained that the investigation had initially been reassigned to various EBSA, New York Region

supervisors and that once it was referred to the Office of the Solicitor (SOL) New York Region, several issues pertaining to the validity of the violations caused further delays.

According to Mr. Lebowitz, nothing reported to him by Ms. Smith as well as any further information he has obtained regarding the Asbestos Workers Local 12 Funds investigation has led him to believe that the investigation was purposely delayed or stalled. Mr. Lebowitz did comment that there were areas of the case, which could have been managed differently to expedite the investigation but does not believe EBSA management had intended to cause delays.

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Report of Interview

U.S. Department of Labor Office of Inspector General



OIG Form 103 (OI-6/08)

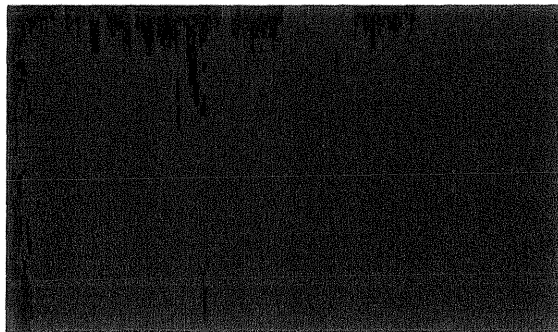
Interview Date:	April 8, 2009	Location:	EBSA New York Region 33 Whitehall Street New York, NY	Case Number:	14-2601-0004-IA
Subject:	Michael Briglia	Prepared By:	Robert W. Wyche <i>RW</i>	Date Prepared:	April 14, 2009

On March 11, 2009, Assistant Inspector General (AIG) Asa Cunningham and I interviewed Michael Briglia, Senior Investigator, Employee Benefits Security Administration (EBSA), New York Regional Office (RO), United States Department of Labor (DOL), 33 Whitehall Street, Suite 1200, New York, New York. Prior to the interview, AIG Cunningham and I identified ourselves and obtained the following personal information

Name: Michael Briglia

Home
Address:

Cellular
Telephone:
Work
Telephone:
EOD:



During an interview with Jose Castillo, Investigator, EBSA, New York RO, DOL in this investigation, Mr. Castillo indicated he had briefed his acting supervisor, Mr. Briglia on the Asbestos Workers Local 12 Funds investigation. Mr. Castillo also reported that Mr. Briglia had commented to him that it appeared "serious criminal violations" were present in the Asbestos Workers Local 12 Funds investigation.

Mr. Briglia was given a Garity warning at the onset of the interview, which he read and signed, agreeing to answer questions in this investigation. Mr. Briglia was questioned regarding his contact with Mr. Castillo as his acting supervisor and his involvement in the Asbestos Workers Local 12 Funds investigation.

Mr. Briglia reported that early in calendar year 2007 he was given the assignment of acting supervisor for a short period of time, while his supervisor Nichelle Langone, Supervisory Investigator, EBSA, New York RO, DOL, was away from the office. According to Mr. Briglia, it was at this time that Mr. Castillo approached him regarding the Asbestos Workers Local 12 Funds investigation. Mr. Castillo wanted Mr. Briglia to review and render an opinion on some of the documents he had regarding the investigation. Mr. Briglia could not recall the exact documents but did remember they

had to do with the Asbestos Workers Local 12 Union funds accounts and that Mr. Castillo had specific questions regarding accounting procedures used on the documents. Mr. Briglia remembered that the document, as well as Mr. Castillo's explanations, seemed confusing and that the issues Mr. Castillo was trying to prove would require additional documents.

When asked if he ever commented to Mr. Castillo that the Asbestos Workers Local 12 Funds investigation appeared to contain criminal violations, Mr. Briglia replied that the documents shown to him by Mr. Castillo did not have enough information for him to make a comment of that nature. Mr. Briglia stated Mr. Castillo never briefed him on the entire Asbestos Workers Local 12 Funds investigation and confined his questions to accounting issues on a group of documents he showed him. Mr. Briglia felt that Mr. Castillo was attempting to gain support for his investigative theories; however, Mr. Briglia did not draw any conclusions due to Mr. Castillo's lack of documented evidence.

At the time Mr. Castillo came to him, Mr. Briglia was unaware that Ms. Langone was not Mr. Castillo's supervisor in the Asbestos Workers Local 12 Funds investigation. It was not until Ms. Langone returned to the office that Mr. Briglia learned that Robert Goldberg, Supervisory Investigator, EBSA, New York RO, DOL, had supervisory oversight of this investigation.

During his meeting with Mr. Castillo, Mr. Briglia never gave him any specific instructions pertaining to the Asbestos Workers Local 12 Funds investigation, as was normal procedure for acting supervisors. The only advice Mr. Briglia remembers giving Mr. Castillo during their meeting was that he thought Mr. Castillo needed more information to make his arguments more understandable. Mr. Briglia advised that he does not recall having any further contact with Mr. Castillo regarding the Asbestos Workers Local 12 Funds investigation.

At the conclusion of the interview, Mr. Briglia provided a sworn written statement regarding the facts discussed during this interview.

AFFIDAVIT

City: NEW YORK Date: APRIL 8, 2009

State: NEW YORK Time: 11:50 AM

MICHAEL R. BRIGLIA being duly sworn, deposes and states:

~~_____~~

MB

APRIL 8, 2009

**United States Department of Labor
Employee Benefits Security Administration
Senior Investigator Michael R. Briglia**

April 8, 2009 – Memorandum re Local 12

In early 2007, on one of several occasions when I was acting for Nichelle Langone when she was away from the office, I was approached by Jose Castillo regarding his Local 12 case. He indicated that he wanted me to look at some of the documents that he had received and give him my opinion on them. We went into a conference room so that he could spread out the documents on a table. Jose was trying to get me to agree to his interpretation of the issues that the documents evidenced.

He showed me documents that he had obtained from the funds and from the fund accountants. I remember thinking that it seemed to be a very complicated situation. I don't have very much specific recollection, but I do recall that it seemed to me that he would need more documents in order to prove the issues that he was contemplating.

I did not give him any specific instructions to follow, as it is not normally the policy of our office for acting managers to make any substantive decisions in the absence of the regular manager. I assumed that Nichelle Langone was supervising the case as Jose was on our track.

I did not follow up with Jose afterwards, nor did he seek me out again. I learned later on that Nichelle Langone was not supervising the case, that Bob Goldberg was.

(Handwritten initials) MJB
4/8/09

Statement of MICHAEL R. BIGLIA Date: APRIL 8, 2009

SWORN
APRIL 8, 2009

I have read this statement consisting of 3 pages. I have been given an opportunity to make corrections. Pursuant to 28 USC 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 8 day of APRIL, 2009

Michael R. Biglia
Deponent's Signature

Subscribed and sworn before:

W. D. Doyle
Special Agent

4/8/09
Date

Witnessed by: [Signature] Case Number: 14-2601-0004-IA

Title: ATIA

OIG 118C (OLRFI 9/05)

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Report of Interview

U.S. Department of Labor Office of Inspector General



OIG Form 103 (OI-6/08)

Interview Date:	April 8, 2009	Location:	EBSA New York Region 33 Whitehall Street New York, NY	Case Number:	14-2601-0004-IA
Subject:	Carmela Pagano	Prepared By:	Robert W. Wyche <i>RW</i>	Date Prepared:	April 13, 2009

On April 8, 2009, Assistant Inspector General (AIG) Asa Cunningham and I interviewed Carmela Pagano, Senior Investigator, Employee Benefits Security Administration (EBSA), New York Regional Office (RO), United States Department of Labor (DOL), 33 Whitehall Street, Suite 1200, New York, New York. Prior to the interview, AIG Cunningham and I identified ourselves and obtained the following personal information

Name: Carmela Pagano

Home

Address:

Home

Telephone:

Work

Telephone:

EOD:

During an interview with Jose Castillo, Investigator, EBSA, New York RO, DOL in this investigation, he indicated he had discussed the Asbestos Workers Local 12 investigation with several EBSA New York RO certified public accountants (CPA), who, according to Mr. Castillo, agreed with his investigative findings. One of these CPAs was identified as Ms. Pagano during an interview with Scott Albert, Chief, Division of Reporting Compliance, Office of the Chief Accountant, EBSA, Washington, DC. Ms. Pagano was given a Garity warning at the onset of the interview, which she read and signed, agreeing to answer questions in this investigation. Ms. Pagano was questioned regarding her contact with Mr. Castillo and her involvement in the Asbestos Workers Local 12 Funds investigation.

Ms. Pagano stated that approximately two or three years ago, Mr. Castillo first approached her with questions he had regarding accounting issues he had identified in the Asbestos Workers Local 12 Funds investigation. Ms. Pagano could not recall the exact questions asked by Mr. Castillo, but recalled it had to do with money he thought was owed to fund participants of the union. Ms. Pagano remembered that the documents shown to her by Mr. Castillo seemed incomplete and lacking information needed to answer his questions. Ms. Pagano suggested to Mr. Castillo that he obtain additional documents and trace the

assets in order to "follow the money." According to Ms. Pagano, Mr. Castillo did not brief her on the entire investigation but only requested information on isolated accounting issues.

According to Ms. Pagano, it is not unusual for an investigator to ask for assistance or clarification of issues on various investigations. Ms. Pagano has been approached by Mr. Castillo with questions on other investigations he was working such as the Local 1175. Ms. Pagano has most recently spoken to Mr. Castillo several months ago when he approached her and asked her about participant loans. Again, Mr. Castillo's questions focused on a specific issue and not on the entire investigation. Ms. Pagano's response to Mr. Castillo this time was that a participant loan is an asset and he needed to use an accounting equation: "A (Assets) = L (Liability) + E (Equity)," to help him identify where the money belongs.

At the conclusion of the interview, Ms. Pagano provided a sworn written statement regarding the facts discussed during this interview.

AFFIDAVIT

City: New York Date: 4/9/09
State: NY Time: 11:00 AM

_____, being duly sworn, deposes and states:

ep
4/9/09

C Number: 14-2661-0004IA Page 1 of 4 Deponent's Initials

D

On April 8, 2009 at 1:30PM I was asked to provide information by Gene Cunningham, Assistant Inspector General and Robert W. Wych, Assistant Special Agent in Charge, Office of Inspection and Special Investigations, U.S. Department of Labor, Office of Inspector General.

This statement is being provided in response to questions that were asked in regard to Local 12 Investigation.

My name is Carmela Pagano and I am a Sr. Investigator for the U S Department of Labor, Employee Benefits Security Administration. I started my career at EBSA on July 6, 1999 after I was RIF from DOD DCAA where I had 11 years of service. I received my promotion to Sr. Investigator three years ago. I am also a Certified Public Accountant. I received my certification from New York State on October 27, 1995.

About 2 to 3 years ago Jose Castillo came into my office and asked questions regarding Local 12 money that was participants' money. The amount may have been close to \$2 million. Jose showed me some documents to explain his position. Since this incident occurred around 2 to 3 years ago, I can't be certain because I don't remember exactly what documents I saw.

Routinely investigators rely on each others expertise to help in their own cases or maybe just to clarify a particular issue. I have spoken to Jose regarding a case that we had similar issue. His case was with Local 1175 and I was working with the Pavers Roadbuilders DC Annuity Fund.

I did explain to Jose that you had to follow the trail. Trace the money. If in fact at the end of the year the amount doesn't add up ask for supporting documentation on what happened to the money. Plan an audit trail to back up your findings with checks, bank statements etc.

About a few months ago Jose asked me about participant's loans. I gave him a definition of a participant loan and that the loan was an asset. I also told him to put the money into the accounting equation $A(\text{Assets})=L(\text{Liability})+E(\text{Equity})$. This would help you identify where the money belongs.

After speaking and emailing Jose regarding participants' loans, Scott Albert from the National Office called to speak to me regarding this issue. I called him and explained what I emailed and also told Jose regarding this asset.

Jose also asked me recently if for example in 1999 there was x amount of money as an ending balance and then in 2009 that amount was not there and the explanation he wasn't satisfied with. I told him go back to when the money was first posted to the account and follow the trail. If you find that all of a sudden the money is not there and you don't have any explanations that seem logical go back to that time and asked for supporting documentation on what happened to that money and why the money isn't showing on the

books/statement. Tell the representatives that you need supporting evidence to back up that issue. Find out if there were any checks drawn on that money and why.

Jose did explain that the participants were complaining and that they went to the national office with their complaints. I believe that he mentioned that the participants went to the FBI which were interested in the case. I forgot to mention this when being interviewed by Mr. Cunningham and Mr. Wych.

esp
4/9/09

Statement of Paul A. Adams Date: 4/9/09

copy
4/9/09

I have read this statement consisting of 4 pages. I have been given an opportunity to make corrections. Pursuant to 28 USC 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 9 day of April, 2009

Paul Adams
Deponent's Signature

Subscribed and sworn before:

Robert D. [Signature]
Special Agent

4/9/09
Date

Witnessed by: [Signature] Case Number: 14-2601-0004 IA

Title: ATA

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Report of Interview

U.S. Department of Labor Office of Inspector General



OIG Form 103 (OI-6/08)

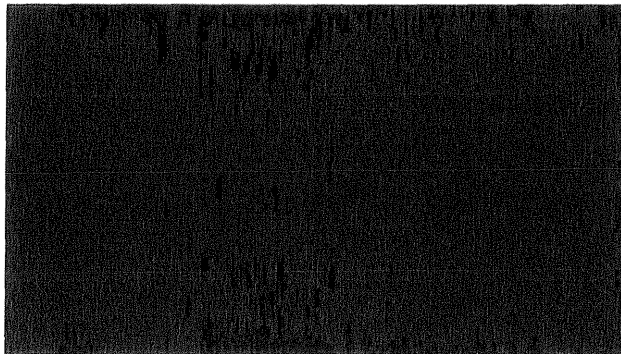
Interview Date:	April 8, 2009	Location:	EBSA New York Region 33 Whitehall Street New York, NY	Case Number:	14-2601-0004 IA
Subject:	Walter Blonski	Prepared By:	Robert W. Wyche <i>RW</i>	Date Prepared:	April 13, 2009

On April 8, 2009, Assistant Inspector General (AIG) Asa Cunningham and I interviewed Walter Blonski, Senior Investigator, Employee Benefits Security Administration (EBSA), New York Regional Office (RO), United States Department of Labor (DOL), 33 Whitehall Street, Suite 1200, New York, New York. Prior to the interview, AIG Cunningham and I identified ourselves and obtained the following personal information:

Name: Walter Blonski

Home
Address:

Home
Telephone:
Work
Telephone:
EOD:



During an interview with Jose Castillo, Investigator, EBSA, New York RO, DOL in this investigation, he indicated he had discussed the Asbestos Workers Local 12 investigation with several EBSA New York RO certified public accountants (CPA), who, according to Mr. Castillo, agreed with his investigative findings. One of these CPAs was identified as Mr. Blonski during an interview with Scott Albert, Chief, Division of Reporting Compliance, Office of the Chief Accountant, EBSA, Washington, DC. Mr. Blonski was given a Garity warning at the onset of the interview, which he read and signed, agreeing to answer questions in this investigation. Mr. Blonski was questioned regarding his contact with Mr. Castillo and his involvement in the Asbestos Workers Local 12 Funds investigation.

Mr. Blonski described Mr. Castillo as an individual who had a reputation for periodically "shopping" around the office asking various EBSA Certified Public Accountants (CPA) accounting questions. Mr. Blonski recalled Mr. Castillo coming to him approximately two years ago asking him to examine a financial statement and requesting his interpretation of how the assets on this statement were allocated. According to Mr. Blonski, the document did not provide factual information that could be used to establish an audit trail explaining the origin of the assets. Mr. Blonski

suggested to Mr. Castillo that he obtain documentation that would support the figures on the statement. Mr. Blonski stated that Mr. Castillo never identified the case he was investigating and did not provide any information other than the specific statement he had referenced.

Mr. Blonski advised Mr. Castillo also came to him approximately three to six months ago and asked him if plan loans could be considered trust assets. Mr. Blonski responded that participant loans are trust assets and provided Mr. Castillo with a sample 5500 form, which identifies participant loans as trust assets. Again, Mr. Blonski reported that Mr. Castillo never referred to a specific case and was interested only in the topic of participant loans.

At the conclusion of the interview, Mr. Blonski provided a sworn written statement regarding the facts discussed during this interview.

AFFIDAVIT

City: New York Date: 4/9/09

State: NEW YORK Time: 11:15 AM

Walter Blonski, being duly sworn, deposes and states:

04/09/09
WB
WB

Case Number: 14-2601-0004 IA Page 1 of 3 Deponent's Initials

[Handwritten mark]

April 9, 2009

Walter Blonski
Sr. Investigator, EBSA

This statement is being provided at the request of Gene Cunningham, Assistant Inspection General, and Robert W. Wyche, Assistant Special Agent in Charge, US Department of Labor, Office of Inspector General. This statement is not intended to be a transcript of the information provided during the interview. Some additional facts have been added after additional synaptic connections were made to retrieve long term information.

A.S.A.C. Wyche and S.A. Cunningham interviewed me on April 8, 2009 regarding technical accounting questions Auditor Jose Castillo had on his examination of Local 12. About 18 months ago, Auditor Castillo showed me a response to an issue he raised whereby \$2.75 million was shown as a loan in one year, then not shown as an asset until he raised the question. It is my understanding that the fund is an individual account plan and therefore the participants account balances were understated by \$2.5 million. Further, assets were transferred between financial institutions. The receiving institution prepared participant information based on the assets they had under their control.

The document did not provide factual information that could be used to establish audit trail that the loans in questions were taken into consideration when the statements were performed. I told Auditor Castillo if that was my investigation, I would pursue the issue until a factual response was provided.

About three months ago, Auditor Castillo asked a second question. Specifically, whether plan loans were trust assets for purposes ERISA financial presentation. I provided him the page and paragraph of DOL's instruction to preparing Form 5500 that stated that participant loans are trust assets.

WB
4/9/09
WB
09

Statement of Walter Blonski Date: 4/9/09

~~WB~~
~~4/9/09~~
WB 4/9/09

I have read this statement consisting of 3 pages. I have been given an opportunity to make corrections. Pursuant to 28 USC 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 09 day of April, 2009.

Walter Blonski
Deponent's Signature

Subscribed and sworn before:

[Signature]
Special Agent

4/9/09
Date

Witnessed by: [Signature] Case Number: 14-2601-0004JA

Title: ATG

2

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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

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- 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

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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

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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

(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, 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.) 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.

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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 the 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

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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

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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.

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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.

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

Signed before/received by me at (Street and City) 200 Constitution Ave. NW. Washington DC
on this 18th day of November, 20 06 20210

Rodrick Sautter
(Signature of Investigator/Witness)

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Report of Interview

U.S. Department of Labor Office of Inspector General



OIG Form 103 (OI-6/08)

Interview Date:	March 10, 2009	Location:	201 Varick Street, New York, New York	Case Number:	14-2601-0004 IA
Subject:	Patricia M. Rodenhausen	Prepared By:	Robert W. Wyche RW	Date Prepared:	March 20, 2009

On March 10, 2009, Assistant Inspector General (AIG) Asa Cunningham and I interviewed Patricia M. Rodenhausen, Regional Solicitor (RSOL), Office of the Solicitor (SOL), United States Department of Labor (DOL), 201 Varick Street, New York, New York. Prior to the interview, AIG Cunningham and I identified ourselves and obtained the following personal information:

Name: Patricia M. Rodenhausen

DOB:

Home

Address:

Cellular

Telephone:

Work

Telephone:

EOD:

RSOL Rodenhausen was given a Garity warning at the onset of the interview, which she read and signed, agreeing to answer questions in this investigation. RSOL Rodenhausen was questioned regarding her responsibilities as RSOL and her contact with Jose Castillo, Investigator, Employee Benefits Security Administration (EBSA), New York RO, DOL.

RSOL Rodenhausen explained that cases referred to SOL by EBSA are screened by SOL counsel and are then assigned to a SOL attorney by a SOL supervisor. RSOL Rodenhausen receives recommendations from a SOL supervisor for attorneys who would be handling the EBSA referrals, which she is usually in agreement.

According to RSOL Rodenhausen, the Asbestos Workers Local 12 Funds investigation was assigned to Jennifer Weekley, Attorney, SOL, New York Region, DOL, by her supervisor Dennis Kade. The Asbestos Workers Local 12 Funds investigation is a employee Retirement Income Security Act (ERISA) case and Ms. Weekley only handles ERISA cases for SOL.

RSOL Rodenhausen explained she was familiar with Mr. Castillo based on his work on a previous "1175" case and Part 1 of the Asbestos Workers Local 12 Funds

investigation. RSOL Rodenhausen was under the opinion that Mr. Castillo's work on previous cases handled by SOL was very helpful with no reported problems. Specifically with Part 1 of the Asbestos Workers Local 12 Funds investigation, RSOL Rodenhausen approved Ms. Weekley's legal analysis and settlement terms, after which, the Asbestos Workers Local 12 Union agreed to a settlement.

RSOL Rodenhausen reported hearing of problems with Mr. Castillo on or about December 2007, after he had submitted his report of investigation (ROI) for Part 2 of the Asbestos Workers Local 12 Funds investigation to SOL. RSOL Rodenhausen recalled the Asbestos Workers Local 12 Funds investigation had been divided into two parts by EBSA due to the possibility of an easy settlement in Part 1 and more complex issues requiring further analysis in Part 2. RSOL Rodenhausen received a draft legal analysis from Ms. Weekley in early spring of 2008, which questioned some of Mr. Castillo's investigative findings in Part 2 of the Asbestos Workers Local 12 Funds investigation.

It was at this time that RSOL Rodenhausen requested that the Office of Regulatory Interpretation (ORI), DOL, examine the issues questioned in the Asbestos Workers Local 12 Funds investigation to determine if these issues were "prudent." ORI's response was that the findings could be interpreted either way and a decision was made by RSOL Rodenhausen not to sue the Asbestos Workers Local 12 Union trustees at this time but to obtain an extension on the tolling agreement. The Asbestos Workers Local 12 Union trustees were in agreement with this and a new tolling agreement was signed.

In May or June 2008, SOL arraigned a meeting with the Asbestos Workers Local 12 Union trustees during which, SOL advised the trustees that additional documents would have to be provided in order to clear up the questioned issues. There were several meetings held in addition to this one in which the Asbestos Workers Local 12 Union trustees were informed to provide SOL with more documents. RSOL Rodenhausen maintained that EBSA was kept informed of all conversations SOL had with the Asbestos Workers Local 12 Union trustees.

RSOL Rodenhausen recalled sometime after EBSA had been issued a copy of Ms. Weekley's legal analysis draft of the Asbestos Workers Local 12 investigation, Ms. Weekley came to her concerned about e-mails that were being sent by Mr. Castillo. Ms. Weekley reported the e-mails from Mr. Castillo were being sent not only to her, but other EBSA Management and DOL officials to include the Secretary of Labor. Shortly after this, RSOL Rodenhausen began to be copied on e-mails by Mr. Castillo, which he was complaining that EBSA and SOL were not accepting his investigative findings in the Asbestos Workers Local 12 Funds investigation. According to RSOL Rodenhausen, some of Mr. Castillo's e-mails were also sent to SOL's national office.

RSOL Rodenhausen described Mr. Castillo's e-mails as ranting, containing scrambled English, and very poor arguments outlining his disputes and conclusions. RSOL Rodenhausen was also receiving further complaints from Ms. Weekley, that her reputation was being challenged by Mr. Castillo in many of these e-mails. Ms. Weekley was advised by RSOL Rodenhausen not to respond to anymore of Mr. Castillo's e-mails and to communicate only with Mr. Castillo's supervisors at EBSA. It was at this time that RSOL Rodenhausen decided that Mr. Castillo should not attend a meeting at SOL, which was scheduled to discuss SOL's legal analysis of the Asbestos Workers Local 12 Funds investigation.

RSOL Rodenhausen had discussed her decision with Mr. Castillo's supervisors, Regional Director Kay and Mr. Goldberg, who asked her to reconsider allowing him to attend the meeting due to Mr. Castillo's involvement in the investigation. RSOL Rodenhausen had also received a request through Regional Director Kay from Virginia Smith, Director of Enforcement, EBSA, DOL, Washington, DC to reconsider her decision. RSOL again based her decision on Mr. Castillo's consistent poor judgment in sending his e-mails and the fact that EBSA supervisors, not the investigators usually attend these meetings. RSOL Rodenhausen suggested Mr. Castillo's supervisors could later brief him on the meeting.

RSOL Rodenhausen advised that from November 2008 through February 2009, Ms. Weekley was out of the office on maternity leave. SOL's goal was to have Ms. Weekley review the remaining issues in Part 2 of the Asbestos Workers Local 12 investigation when she returned from maternity leave and submit a final draft of the legal analysis. The tolling agreement in place was good through March 2009. Once Part 2 of the Asbestos Workers Local 12 Funds legal analysis was completed by SOL, RSOL Rodenhausen planned to forward it to Timothy Houser, Associate Solicitor, Planned Benefits Security Division, EBSA, DOL, Washington, D.C. for his analysis and interpretation. RSOL Rodenhausen added that EBSA had forwarded the unresolved issues in Part 2 of the Asbestos Workers Local 12 Funds investigation to the Office of the Chief Accountant (OCA), DOL, Washington, DC for their interpretation of the questioned investigative issues. RSOL Rodenhausen added that SOL will not submit their final draft report until OCA has submitted their report.

RSOL Rodenhausen made the following comments regarding Part 2 of the Asbestos Workers Local 12 Funds investigation:

- The Asbestos Workers Local 12 Funds investigation had been under investigation by EBSA for several years prior to SOL receiving the ROIs for Part 1 and Part 2 of the investigation.
- She was informed by EBSA management that SOL would be receiving a case

from EBSA that "had been around for a while."

- She acknowledged there were many delays by the Asbestos Workers Local 12 Union trustees in providing information and documentation.
- These delays were not unusual and are typical in EBSA ERISA cases.
- There are presently four issues remaining in Part 2 of the investigation, two of which are being reviewed by OCA and two by EBSA pending receipt of additional records from the Asbestos Workers Local 12 Union trustees.
- Once these issues are resolved, SOL will submit a final draft of the legal analysis.

RSOL Rodenhausen discussed her familiarity with a number of appeals filed by Mr. Castillo after his denials of selection for promotion to a GS-13. RSOL Rodenhausen advised that counsel for SOL usually handles labor relations for EBSA but due to her relationship with EBSA and Mr. Castillo in the ongoing Asbestos Workers Local 12 Funds investigation, she recused herself. RSOL Rodenhausen stated that Evan Barouh, Attorney, SOL, New York Region, telephone 646/264-3668) and James Magenheimer, Attorney (retired - August 2008), SOL, New York Region, telephone 201/798-4068 both represented DOL management during Mr. Castillo's appeals. RSOL Rodenhausen stated Mr. Barouh expressed concerns that Mr. Castillo could be dangerous because he always talked about his past military service and his use of guns and target practice. RSOL Rodenhausen was told by Mr. Barouh that he felt Mr. Castillo was "not balanced."

RSOL Rodenhausen indicated she has never gotten the impression that EBSA management was attempting to stall or interfere with the Asbestos Workers Local 12 Funds investigation and confirmed that she was never asked by anyone to delay the investigation. To RSOL Rodenhausen's knowledge, Mr. Castillo is still the lead investigator for the Asbestos Workers Local 12 Funds investigation and has been briefed by Ms. Weekley and EBSA supervisors on every detail of the investigation. RSOL Rodenhausen would prefer not to ask for an extension of the current tolling agreement, but will if the investigative issues are not resolved by the time the tolling agreement expires.














At the conclusion of the interview, RSOL Rodenhausen was asked to provide a written statement regarding the facts discussed during this interview and will swear to this statement at a later date.

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Wyche, Robert - OIG

From: Shapiro, Howard - OIG
Sent: Wednesday, February 04, 2009 3:17 PM
To: Cunningham, Asa - OIG; Wyche, Robert - OIG
Subject: FW: Local 12 Annuity Fund

Attachments: Loca12ROIIPARTII.pdf; Local12EventsOIG.doc; SchroederApr32006.pdf; RE: Local 12 Funds; FW: Local 12 Annuity Fund; ERISASec.404.pdf; Local12FundPlanDoc..pdf; Asbestos Workers Annuity Fund 2000 Investment Earnings; Local 12 Asbestos Workers investigation; RE: Local 12 question; Local 12 question; TurrisiJAug078.doc; Response from DOL re 9 15 08.pdf

 Loca12ROIIPARTII.pdf (711 KB)	 Local12EventsOIG.doc (65 KB)	 SchroederApr32006.pdf (386 KB)	 RE: Local 12 Funds	 FW: Local 12 Annuity Fund	 ERISASec.404.pdf (58 KB)	 Local12FundPlanDoc..pdf (35 KB)
 Asbestos Workers Annuity Fund ...	 Local 12 Asbestos Workers inve...	 RE: Local 12 question	 Local 12 question	 TurrisiJAug078.doc (24 KB)	 Response from DOL re 9 15 08.pdf	

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

From: Ruiz de Gamboa, Nancy - OIG
Sent: Friday, October 03, 2008 4:55 PM
To: Shapiro, Howard - OIG
Cc: Carnohan, Susan - OIG; Heddell, Gordon - OIG; Petrole, Daniel - OIG
Subject: Fw: Local 12 Annuity Fund

Howard: I got a msg from Rep. King's staffer about this yesterday. If you recall, in our letter to King, we told them we needed more specific info in order to go any further. Let me know what you think. We will need to get back to King's staffer.

Thanks,
Nancy

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

From: Castillo, Jose - EBSA <Castillo.Jose@dol.gov>
To: Heddell, Gordon - OIG; Petrole, Daniel - OIG; Ruiz de Gamboa, Nancy - OIG
Cc: Chao, Elaine; Campbell, Bradford - EBSA
Sent: Fri Oct 03 16:25:00 2008
Subject: Local 12 Annuity Fund

Inspector General Gordon Heddell:

Sir:

I am obligated to communicate to you, Mr. Petrole and Ms. Ruiz de Gamboa directly.

Mr. [redacted] CC'd the attached letter of yours dated 9/15/2008 address to Congressman King to me.

Also, CC'd on [redacted]'s mail are Mr. Bradford Campbell, Sharon Watson and Jonathan Kay, the Regional Director of EBSA, New York.

Attached is my Report of Investigation referred to the Solicitor of Labor in New York.

Also attached is the Sequence of Events I maintained with supporting documents that are scanned.

Your letter mentioned the Fund Administrator's letter to EBSA advising the Department about the discrepancies in the Fund allocation and the filing of the civil complaint against the former Fund Administrator and auditor.

Sir, with due respect, I believe this letter is missing the point.

My well- documented Report of Investigation disclosed that the trustees of the Annuity Fund did not allocate the investment earning for 2000 as required by the plan document and ERISA Sec. 404 (A) and (D).

Up to this day (Oct. 3, 2008), the trustees counsels, the Solicitor of Labor lawyer , Jonathan Kay and Bob Goldberg, can not provide me with any document, not even half a page, to disprove my allegations stated on the report or to prove that the alibis of the trustees counsels are true.

Your letter to Congressman King mentioned about specific information, evidence or documentation be provided to you directly that indicate misconduct in the handling of this investigation.

Under the Department of Labor No FEAR Act, I am officially informing you that my investigation of Local 12 Funds was hindered and undermined by the Regional Director for the purpose of covering the fraud committed by the trustees of Local 12 Funds. In one instance, he tried to obtain a determination from the Office of Exemptions if the \$421,000 prohibited transactions cited on my report can be classified as exempted transactions. (See sequent of events).

Review the Sequence of Events and the supporting documents. The whole story is there. If you need more information, please call me or maybe Ms. Ruiz de Gamboa can call me.

I attached some important documents to support my allegations.

A participant named _____ spoke to the FBI concerning the misconduct of EBSA officials.

I was interviewed by the FBI for over 2 hours.

In one of my conversation with _____, he threaten to expose this to the media.

I already filled an official complaint with the Office of Special Counsel and provided them with all the documented exhibits mentioned on my Sequence of Events.

Mr. Heddell, I am nobody, these participants, 500 or so, are nobody. They are mostly lowly educated and also NOT of the best of health due to exposure to asbestos. Our agency is their only hope and last resort. They and I are powerless. Only the truth is on our side.

Respectfully

Jose Castillo
Auditor

Wyche, Robert - OIG

From: Shapiro, Howard - OIG
Sent: Wednesday, February 04, 2009 3:18 PM
To: Cunningham, Asa - OIG; Wyche, Robert - OIG
Subject: FW: Local 12 Funds investigation

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

From: Ruiz de Gamboa, Nancy - OIG
Sent: Thursday, October 16, 2008 11:57 AM
To: Clark, Richard - OIG; Farrell, Thomas - OIG; Shapiro, Howard - OIG; Ceglia, Helen - OIG; Franzman, Marjorie - OIG
Cc: Carnohan, Susan - OIG
Subject: Fw: Local 12 Funds investigation

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

From: Castillo, Jose - EBSA <Castillo.Jose@dol.gov>
To: Garcia, Cheryl - OIG; Woolard, Shannon - OIG
Cc: Heddell, Gordon - OIG; Petrole, Daniel - OIG; Ruiz de Gamboa, Nancy - OIG; Chao, Elaine; Campbell, Bradford - EBSA
Sent: Thu Oct 16 11:52:32 2008
Subject: Local 12 Funds investigation

Ms. Garcia,

When I sat down with you guys on August 12, 2008, it appears that according to your reactions, there is no misconduct.

Here's my view why grave misconduct was done.

First, the regional director insisted that I continue to gather additional evidence after the issuance of the VC letter dated May, 3, 2005. At this time, he is now strongly disapproving of the issues stated on the VC letter that he approved and signed. Also, there is absolutely no more evidence to be gathered.

On many occasions after the issuance of the VC letter, he questioned the validity of the issues.

Finally, I was permitted to write the Report of Investigations Part I, after almost two years. During this period, the trustees' counsels can not provide me with any documents to prove that my allegations are incorrect. They offered me verbal presentations.

Whenever I asked him, Goldberg and Gaynor, what documents the trustees' counsels possessed to disprove my allegations, I got a blank face because not anyone of them can answer it, yet they strongly disagreed with my findings to the point of questioning my abilities and to also what I perceived as insulting to my ethnicity. (Goldberg on a number of occasions stated that maybe they misunderstood me).

This may sound harmless, but for me that speaks with an accent and English is not my native tongue, it feels insulting because I felt that I may have spoken improper English.

Goldberg used this "misunderstood" alibi to state that the issues on the VC are not good enough.

So, without any document to disprove my allegations, counsels agreed to settle in 2008

When on May 2006, I finalized my discovery that the 500 participants never received their earnings of about \$2 million for 2000 and that according to my documented accounting evidence there was no short fall, the RD only stated "thank you" after I informed him.

The two surrogates he assigned to provide me with "additional supervision" never bothered to review my evidence. Instead, they just keep on disagreeing with me.

For the time being, the criminal statue of this discovery expired.

It was not until, December of 2007, when the \$2 million earnings that the participant never received issued was finally referred.

During this time period, the RD strongly disagreed with this findings and insisted that I do not understand the issue and that I have a extreme view of this and did not do a good job.

However, if I asked him what document the trustees counsels possessed to prove their claims is true and to prove that my allegations is incorrect. He cannot answer it nor Goldberg.

What happened here is the referral to SOL of part II was delayed on purpose, to the point where its nearing to the expiration of the civil statue.

Part II issues could have been referred back in 2006. During this time, I already have all the accounting evidence to prove that the 2000 earning was not credited to the participants and that there was no short fall in 2000 as the trustees lawyers claimed.

And, based on the letter of Inspector General Heddell, he was not completely informed.

And, why the RD is so personally involved on this investigation and to strongly disagreed with it without any valid documented reasons?

And, why he assigned two surrogates to disagreed with my findings and again with no valid documented reasons?

And, why he delayed the normal process?

And, why he personally provided me with "his own undocumented alibis" to try to prove that my findings is incorrect?

And, why he tried to obtain a determination from the Office of Exemptions to classify the \$421,000 prohibited transaction stated on Part II of my report as an exempted transaction?

And, why he thinks, as far as Local 12 Funds investigation, it is his function as regional director to see if a prohibited transaction discovered during the investigations, can be resolved by making it a exempted transaction?

And, why he is not doing the effort mentioned above on my other cases and the cases my the rest of EBSA's?

And, why he prevented my real supervisor to be my supervisor on Local 12 Funds with no valid reasons?

Just now, Goldberg gave me a letter coming from the Office of Senator Hillary Clinton. Again, it is about Schroeder complaint.

I will not be surprise if we receive a letter from Senator Schumer in the near future.

Again, as far as I am concern, my investigation speaks the truth and the regional director hindered it, obstructed it for the purpose of covering up the fraud of \$2 million against the 500 participants.

he congressman and the senator deserved honest answers.

Respectfully

Jose Castillo

Auditor

Wyche, Robert - OIG

From: Shapiro, Howard - OIG
Sent: Wednesday, February 04, 2009 3:21 PM
To: Cunningham, Asa - OIG; Wyche, Robert - OIG
Subject: FW: Local 12 Funds

Attachments: Local 12 ltr to counsel; Local12ROIPARTII.pdf; FW: Local 12 Annuity Fund; Local12AnnuityFundPlanDoc..pdf; Local 12 question



Local 12 ltr to
counsel



Local12ROIPARTII.
pdf (711 KB)



FW: Local 12
Annuity Fund



Local12AnnuityFun
dPlanDoc..pdf...



Local 12 question

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

From: Jacob, Gregory - SOL [mailto:Jacob.Gregory@dol.gov]
Sent: Wednesday, July 23, 2008 11:39 PM
To: Shapiro, Howard - OIG
Subject: FW: Local 12 Funds

Howard,

I am forwarding this to OIG because it suggests potential fraud and misconduct by EBSA and possibly by some attorneys in SOL.

Greg

---Original Message---

From: Castillo, Jose - EBSA
Sent: Wednesday, July 23, 2008 5:01 PM
To: Chao, Elaine; Kay, Jonathan - EBSA; Kay, Jonathan - EBSA; Goldberg, Robert - EBSA
Cc: Weekley, Jennifer - SOL; Kade, Dennis - SOL; Rodenhausen, Patricia - SOL; Campbell, Bradford - EBSA; Hauser, Timothy - SOL; Jacob, Gregory - SOL; Castillo, Jose - EBSA
Subject: Local 12 Funds

For the record:

Honorable Secretary Chao

This comments and questions are directed to the Regional Director, EBSA NYRO, however I believe you must know what's going on. The Solicitor of Labor, Mr. Gregory Jacob and Mr. Tim Hauser must likewise also know.

Participant [redacted] left me a message back in April telling me that the New York Office is engage in the cover-up in the investigation of Local 12 Funds. He stated that he already meet with the FBI agent in New York, alleging that people at EBSA are covering-up the fraud against the investment earning of the Annuity Fund.

Participant [redacted] likewise told me on the phone back in April that he is planning to call the FBI because people at EBSA were probably bribed to downplay the investigation of Local 12 Annuity Fund.

As direct by the attached email dated 7/15/2008 from the RD, my comments are directed to him and Bob Goldberg. Although RSOL and the rest are CC'd.

o, Bob Goldberg directed me to field questions to counsels' trustees in connection with the scheduled meeting on July 31, 2008 between counsels and possible trustees and RSOL; to only be attended by Goldberg and possibly the RD. According to Goldberg the purpose of the meeting is to discuss the issues.

My questions and comments are all in connection with the attached letter dated June 5, 2008 from RSOL to trustees counsels and my well-documented findings (Report of investigation).

Also attached is my Report of Investigation dated 11/30/2007.

**Also attached is my email to the RD and his response dated 5/12/2006 informing him of my findings based on my review of the accounting records (e.i. audit work papers, financial statements and Form 5500s) and the plan document.

**In response, the RD, assigned the Deputy Director who is now retired to additionally supervised me.

By the way, my actual and real supervisor was and is totally excluded from the Local 12 Funds proceedings. The RD stated that this is too complicated for my real supervisor to be involved.

However, The Deputy and Bob Goldberg, the two people he assigned to supervise me NEVER BOTHERED TO REVIEW MY ACCOUNTING EVIDENCE THAT LED ME TO DETERMINE that there was no shortfall of the plan assets for 2000 and the earnings was never allocated to the participants. The above two are well-experienced auditors/accountants. Goldberg routinely teaches accounting to our non-accountant investigator. The Deputy practices public accounting.

NO CRIMINAL INVESTIGATION WAS STARTED because Goldberg, the Deputy and the RD himself STRONGLY DISAGREED WITH MY FINDINGS, although none of them have seen my accounting evidence. So, I can not even convince them there was a legitimate civil case. The criminal statute of the fraud expired.

***My review disclosed that the investment earning for 2000 was not allocated and there was no short fall as the trustees are claiming and the plan document states that the investment earning must be allocated whether there is a gain or loss (or short fall). See . 90 Of the ROI, page 1. See attached.

I was excluded from any meeting because according to the RD, I was disrespectful to RSOL.

Here's my questions and all starts with * ends with ???????

On issue First:

The RSOL letter states that the \$381,000 Annuity Fund earnings was paid out of the Fund without documentation or written explanation.

The ROI clearly states that the \$381,000 was used as part of the employer contribution transmittals. Exhs. 98, 99, 100, 101 AND 102 SHOWS how this monies was transferred from the frozen account to the main fund account.

Also, review Table B and Table C on pages 3 and 4 of my ROI.

So in other words this monies was used with documentations as proof of its use. These documents are not make believe theories.

The RSOL letter is not correct in my view.

The claim of the trustees that the \$381,000 was used for fund expenses is of course not documented.

The method of payment is also not documented because both the payment and the fund expenses that were paid are both non-existing.

Other words, these transactions, the payment and the expenses paid DOES NOT show on the financial statements or the accounting records of the Fund.

So, my questions are:

*What method of payment was used to pay these fund expenses that has no documentation?????

*What are these expenses for and how come its not recorded on the Fund's accounting records?????

If the method of payments were checks, where are these checks?????

*Who are the payees??????

*If the payments were done in cash and there is no record of either the cash payments or the expenses where the cash were paid, are these legal FUND RELATED activities?????

On issue Second

The plan document is clear. See attached.

If plan asset is less than the participants' account balance, the fund shall still be apportioned (or allocate) among the participants.
The alibi of the trustees not to allocate or apportion net assets available for benefits in 2000 because plan asset was less than total participants account balance does not cut it.

My questions are:

* If in fact, plan assets is less than participants' account balance, how come it does not reflected on the financial statements and filed Form 5500, can you explain why??????????

* How come the financial data for 2000 was used forward to prepare financial statements and Form 5500s for 2001, 2002 and so on and not an amended ones to show the claimed short ll?????????

How come the participants were not officially informed of the short fall??????????????

*How come the claimed short fall issue was never discussed in the minutes of the trustees meetings?????????????

On issue Third

My ROI DOES NOT mentioned any delinquent contributions from employer controlled by the trustees.

My review DID NOT see any proof that the trustees controlled employers are delinquent BASED on the review of the the payroll audits performed by auditors from Schultheis & Panettieri.

However, my documented findings show that the monies transmitted by the trustees controlled employers to the Annuity Fund is a lot less than what the Fund transmitted to the financial custodian on behalf of these employers.

In other words, the trustee controlled employers only mailed \$585,216.71 actual monies to the Fund, but the Fund transmitted \$1,006,666.55 to the financial custodian on behalf of these employers. The difference is \$421,449.84.

This is based on the documented records (e.i. checks issued by the trustee controlled employers) subpoenaed from the banks.

Exh. 172 through 178)

Review Table S on page 24 of my ROI.

So, my questions are:

*Can you explain (with documentation) why the records show \$1,006,666.55 was transmitted to the financial custodian when only \$585,216.71 was received from the employers controlled by the trustees?????

, ROI shows that the \$1,006,665.55 was TAKEN OUT from an account that is holding both plan asset monies and receiving current employer contributions monies. See Fleet National Bank Account No. 9427-741968 on page 20 and 21 on my ROI.

In other words, plan asset monies were used to augment this \$1,006,665.55 employer contribution transmittal because only \$585,216.71 was actually received from these trustees controlled employers.

In other words, the records show that these trustees controlled employers mailed the correct amount of monies to the Fund. However, the MONEY TRAILS show they mailed a much SMALLER AMOUNT.

To me this is creative accounting for the purpose of hiding a violation (fraud) and of course the payroll audits of James Heinzman's Schulthies and Panettieri DID NOT SEE THIS.

The EBSA's regional director, Jonathan Kay tried to classify this \$421,449.84 shortage as POSSIBLY an exempt transaction. He tried to request the Office of Regulation and Interpretation (ORI) to make a determination. See Attached.

* If in fact there were subsequent mailing of checks to the Funds to make up for the difference of \$421,449.84, where are these checks??????

* And, can you show proof that these checks were deposited into an account owned by the Annuity Fund??????

* If in fact these subsequent checks were deposited into an account owned by the Fund, how come there is no record of this bank account??????

no controls this bank account??????

Wyche, Robert - OIG

From: Shapiro, Howard - OIG
Sent: Wednesday, February 04, 2009 3:24 PM
To: Cunningham, Asa - OIG; Wyche, Robert - OIG
Subject: FW: Local 12 Funds

Attachments: Local12ResponseNov08.pdf



Local12ResponseNov08.pdf (40 K...)

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

From: Ruiz de Gamboa, Nancy - OIG
Sent: Friday, November 14, 2008 12:35 PM
To: Shapiro, Howard - OIG; Farrell, Thomas - OIG; Clark, Richard - OIG; Franzman, Marjorie - OIG; Carnohan, Susan - OIG
Cc: Petrole, Daniel - OIG
Subject: FW: Local 12 Funds

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

From: Castillo, Jose - EBSA [mailto:Castillo.Jose@dol.gov]
Sent: Friday, November 14, 2008 12:20 PM
To: Kay, Jonathan - EBSA; Goldberg, Robert - EBSA
Cc: Langone, Nichelle - EBSA; Ackerman, Jean - EBSA; Weekley, Jennifer - SOL; Kade, Dennis - SOL; Rodenhausen, Patricia - SOL; Chao, Elaine; Campbell, Bradford - EBSA; Heddell, Jordan - OIG; Ruiz de Gamboa, Nancy - OIG; Lebowitz, Alan - EBSA; Smith, Virginia - EBSA; Monhart, Jeff - EBSA
Subject: Local 12 Funds

For the record:

It is important that my real supervisor, Ms.Langone gets this information.

I have completed the review of the additional documents submitted to dispute my allegations on my ROI, Part II that:
(I reviewed the info shown on all the pages, almost a foot high)

(1) \$421,000 of plan asset was used to augment employer contributions transmittals on behalf of employers controlled or owned by the Funds' employer trustees (Issue No. 3);

(2) The transfer of Welfare Fund money to the Annuity Fund without documentation and with NO record to reflect the transactions to both the Annuity and Welfare Funds financial records (Issue no. 4).

The three loose-leaf binders are supposed to contain supporting documentation to prove that the two employers controlled by the trustees deposited or transmitted money to the Annuity Fund.

According to my ROI, these two employers, Regal Insulation and Hailey Insulation only transmitted a total of \$67,057. However, the Fund office transmitted a total of \$303,398 employer contributions to the financial custodian of the Fund on behalf of these two trustee controlled employers. The difference is \$213,833. Meaning, \$213,833 of plan assets were used to augment their employer contributions responsibility.

According to Walter Blonski (Senior Investigator and a CPA), when I presented him these facts, it appears that kickbacks here in involved.

The additional 30 or so pages are supposed to document that the transfers of Welfare Fund money to the Annuity Fund is not a violation or any form of prohibited transaction.

*****The three loose-leaf binders are completely worthless. I already received these documents before. To make it bulky or thicker (it's almost a foot high), the same group of documents were copied two, three, four, five and six times and then included it on the stack. Remember add another one because I already have it.

*****The additional 30 pages are also worthless since I cannot match it with any transaction in question.

When I provided Jonathan Kay my request for additional documents, I only requested bank statements and copies of checks to prove that the \$213,833 difference actually went to the Annuity Fund bank accounts.

I do not need a foot high stack of documents that does not mean anything.

Since Bob Goldberg is my "special supervisor" on these cases, I am asking him to show me how, if any, of these hundreds and hundreds pages will prove that my allegation is incorrect or the trustees lawyers claim to be true.

My real supervisor and Jonathan Kay and the Solicitor of Labor are invited to be present as Goldberg would prove that my allegation is incorrect.

Goldberg needs to prove it since as my special supervisor on these cases, he is functioning as a buffer or liaison between me and the trustees high priced lawyers. He is always trying to disprove my allegations or justify the trustees claims. However, he CAN NOT DOCUMENT IT AND always telling me to consider the verbal presentations of the lawyers. And worst of all, he does not bother to review my documented accounting evidence.

He's been doing this since November of 2005.

The letter of the trustees' counsels stated that DOL can review the additional documents for the remaining four trustees controlled employers at the Fund Office.

Well, ladies and gentlemen, As far as I am concern, I am accepting the invitation.

I am willing to spend another day at the Fund office. Goldberg and maybe another investigator can come. I suggest one of our newest investigators. I can provide good of the job training on how to trace transactions from the point of origin to the the bank accounts. I can also give him or her a little auditing training.

I stand by my allegation that \$421,000 plan asset was used to augment employer contributions of the trustees controlled employers.

When the SOL reviewed this allegation, it first asserted that this is delinquent employer contributions attributed to the trustees. However, there is no document to support that theory.

When SOL tried to theorized that maybe these \$421,000 was deposited into a bank account that is not on the record to dispute my allegation.

This theory is again crazy because if this so called bank account is not

on the record as owned by the Annuity Fund, then it is money laundering.

Then the regional director tried to see if this PT can be classified as an exempted transaction which is completely out of line and crazy.

***And this trustees counsels letter completely ignored Issue No. 2, which is the failure to allocate \$2 million of the investment earnings of the 500 participants for the year 2000. (Issue no. 2)

***And they did not provide any document to dispute my allegation that \$381,099 investment earning for 2000 was used as employer contributions in Oct, 19, 2001. (Issue no. 1)

To develop my allegations for Issues 1 and 2, it took me about 30 minutes to gather all the documented accounting evidence.

The trustees' lawyers should be able to gather all the documents in one day to contradict my allegations and prove their claims to be true.

Instead, it's been over two years now, and all I get are verbal presentations.

Again, the bottom line, I believe that my investigation of these cases was hindered and obstructed for the purpose of covering up the fraud of \$2 million investment earnings of the 500 participants.

Respectfully

Rose Castillo
Auditor, GS-12

Wyche, Robert - OIG

om: Shapiro, Howard - OIG
ent: Wednesday, February 04, 2009 3:22 PM
To: Cunningham, Asa - OIG; Wyche, Robert - OIG
Subject: FW: Local 12 Funds

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

From: Ruiz de Gamboa, Nancy - OIG
Sent: Wednesday, October 08, 2008 6:29 PM
To: Petrole, Daniel - OIG; Shapiro, Howard - OIG; Farrell, Thomas - OIG; Ceglia, Helen - OIG; Carnohan, Susan - OIG; Franzman, Marjorie - OIG
Subject: Fw: Local 12 Funds

FYI, as discussed.

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

From: Ruiz de Gamboa, Nancy - OIG
To: Castillo, Jose - EBSA
Sent: Wed Oct 08 18:23:48 2008
Subject: Re: Local 12 Funds

Mr. Castillo:

The OIG received your two email communications and we are reviewing them to determine what, if any, action is warranted from us.

Nancy Ruiz-de-Gamboa
Assistant IG for Management and Policy

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

From: Castillo, Jose - EBSA <Castillo.Jose@dol.gov>
To: Heddell, Gordon - OIG
Cc: Petrole, Daniel - OIG; Ruiz de Gamboa, Nancy - OIG; Chao, Elaine; Campbell, Bradford - EBSA
Sent: Tue Oct 07 15:27:30 2008
Subject: Local 12 Funds

Inspector General Heddell:

Attached is the 9/12/2008 email I sent to Secretary Chao, Assistant Secretary Campbell and EBSA New York Regional Director Kay.

I was responding to Jonathan Kay's asking me if I have any additional requests for documents from counsels of Local 12 Funds.

On July 31, 2008, counsels for the trustees, Bob Goldberg and Jennifer Weekley of the Solicitor's meet and conducted "discussions".

I am the investigator/auditor for these cases but I was not included because according to Jonathan Kay, I disrespected the Solicitor of Labor which is headed by his wife, Patricia Rodenhausen.

During this meeting, Ms. Weekley and Bob Goldberg question James Heinzman of the accounting firm Schultheis & Panettieri and trustees counsels.

The attached memo to record the discussions, the proposed letter by the Solicitor and my 9/12/2008 email to the Secretary and Kay explains it all.

The bottom line, Mr. Heddell, I need documented evidence from counsels and James Heinzman that would prove their claims to be true and my allegations as reflected by my Report of

Investigation to be incorrect.

I have been asking for these documents since the summer of 2006.

The trustees and Heinzman can not provide one.

Ms. Weekley, in one of our phone conversations, stated to me that my documented evidence can be overcome by testimonies. She stated that a judge or a jury may believe the testimonies instead of documented evidence.

Respectfully

Jose Castillo
Auditor

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.

Wyche, Robert - OIG

From: Shapiro, Howard - OIG
Sent: Wednesday, February 04, 2009 3:19 PM
To: Cunningham, Asa - OIG; Wyche, Robert - OIG
Subject: FW: Local 12 Funds

Attachments: Letter from Senator Clinton dated 9/24/2008; Local 12 Annuity Fund



Letter from Senator Clinton da...
Local 12 Annuity Fund

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

From: Petrole, Daniel - OIG
Sent: Tuesday, October 28, 2008 10:54 AM
To: Farrell, Thomas - OIG; Clark, Richard - OIG; Shapiro, Howard - OIG
Subject: FW: Local 12 Funds

Please review and advise as to anything new.

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

From: Castillo, Jose - EBSA [mailto:Castillo.Jose@dol.gov]
Sent: Monday, October 27, 2008 4:16 PM
To: Iverson, Kristine - OCIA
Cc: Chao, Elaine; Heddell, Gordon - OIG; Petrole, Daniel - OIG; Ruiz de Gamboa, Nancy - OIG
Subject: Local 12 Funds

s. Kristine A. Iverson
Assistant Secretary for Congressional and Intergovernmental Affairs

***The first attachment is the series of events to correctly explain the issue concerning 's claim that my email interview on him implied that the \$381,099 investment earning of the Annuity Fund for 2000 was used by the trustees as employer contribution.

Bob Goldberg, "the special supervisor" assigned to me by the Regional Director requested from me all the emails related to this one particular issue only. He stated that this email interview did not occur. I told him, " it occurred, but you seems to have forgotten it". He also provided me a copy of the 's letter to Senator Clinton dated 8/11/2008 and the letter of the Senator dated 9/24/2008 addressed to you. It appears that your office is gathering information in order to respond to Senator Clinton's request for comments.

***The second attachment is the email I sent to Inspector General Heddell and his staff, CC'd the Honorable Secretary Chao and her Assistant Secretary for EBSA Bradford Campbell, informing them that my investigation of Local 12 Funds was hindered and obstructed by the Regional Director for the purpose of covering up the fraud by the trustees of the Fund.

My well documented Report of Investigation, Part II illustrates how the fraud was committed and my "Sequence of Events" illustrates how my investigation was obstructed and ultimately delayed to the point where the criminal statue expired and civil statue may have already expired and the 500 participants and their beneficiaries have no other recourse.

Report of Investigation, Part II was referred to the Solicitor of Labor, however, I am not allowed to be involved anymore, so I have no information of the status. According to the Regional Director, I disrespected the Solicitor of Labor.

This email also informed the Inspector General that his information about this case is incomplete, incorrect and he is using information that is undocumented.

All the above information plus the attachments are well documented.

The Regional Director, Bob Goldberg, the Solicitor of Labor, New York, which is headed by the wife of the Regional Director, up to this date, DO NOT have any DOCUMENT, NOT EVEN A SINGLE PAGE, to prove that the allegations on my Report of Investigation, Part II are incorrect or my investigation of these case is flawed. The trustees' high-priced counsels, up to this date, do not have any DOCUMENT, not even a single page, to prove what they are claiming IS TRUE.

I hope the above information above will guide you in your effort to respond to Senator Clinton's office.

Respectfully

Jose Castillo
Auditor

Wyche, Robert - OIG

From: Shapiro, Howard - OIG
Sent: Wednesday, February 04, 2009 3:19 PM
To: Cunningham, Asa - OIG; Wyche, Robert - OIG
Subject: FW: Local 12 Annuity Fund

Attachments: NYBLNov08.pdf; NYLifeAnnuityFundJune01.pdf



NYBLNov08.pdf (61 NYLifeAnnuityFundJ
KB)



une01.pdf (7...

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

From: Ruiz de Gamboa, Nancy - OIG
Sent: Friday, November 07, 2008 6:07 PM
To: Shapiro, Howard - OIG; Farrell, Thomas - OIG; Franzman, Marjorie - OIG
Subject: Fw: Local 12 Annuity Fund

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

From: Castillo, Jose - EBSA <Castillo.Jose@dol.gov>
To: Goldberg, Robert - EBSA; Kay, Jonathan - EBSA
Cc: Ackerman, Jean - EBSA; Chao, Elaine; Lebowitz, Alan - EBSA; Heddell, Gordon - OIG; Weekley, Jennifer - SOL; Rodenhausen, Patricia - SOL; Ruiz de Gamboa, Nancy - OIG; Watson, Sharon - EBSA; Campbell, Bradford - EBSA; Castillo, Jose - EBSA
Sent: Fri Nov 07 18:02:01 2008
Subject: Local 12 Annuity Fund

For the record:

The first attachment is New York Life statement as of June 19, 2001.

The first page shows that the \$381,099 investment earnings of the Fund from Sept 2000 until Dec. 2000 is placed in a suspense account. NY Life is awaiting instruction from the Fund office on how to allocate it.

On October 2001 this money was used by the plan administrator as employer contributions.

The second page shows that as of June 19 2001, the Fund has an investment earnings of \$1,323,527.23

Total trust account balance with New York Life is

\$47,931,470.14

Also, this statement shows that total participants account balance is

\$46,607,942.91

Earnings is

\$1,323,527.23

**The initial total participants account balance of \$46,686,166.17 was reduced by withdrawals and loan repayments.

So, where is the short fall?

The second attachment is the account statements from the two Fleet Bank accounts and New York Life of the Fund as of June 30, 2001.

One Fleet bank account is	\$387,828.34
Second	is \$323,077.45
New York Life is	\$52,155,047.26
Total is	\$52,865,953.05

again, where is the shorfall????

Bob Goldberg requested me to provide him with hard copy documents dispute the claim of Local 12 Funds high priced and well-connected lawyers that in June 2001, the Fund is short of assets to go live and no to allocate the Net assets available for benefits to the participants thereby reflecting their correct account balances and OF COURSE THEIR INVESTMENTS EARNINGS FOR 2000.

Since the summer of 2006 after I obtained this document, I started asking from the trustees' lawyers to provide me documents to support the claim that there was a short fall in 2000.

Short fall means that total participants account balance was less that the Fund total assets.

Today is November 7 2008. Since then until now, I was only provided with excellent verbal presentations. No documents.

The regional director even provided me with his own completely out of line alibis that does not make any sense.

I believe that it is not his function to provide me with an alibi, specially if it does not make any sense.

At one point I was told that I did not really understand the issue and I did not do a good investigation.

There are now two senators and one congressman that would like an honest information from ur agency about this case.

wo participants already spoke to the FBI claiming cover-up by our agency.

I was already interviewed by the FBI for over two hours in response to the claim of one participant.

Here' what I need to say.

When I discovered back in May 2006 that the allocation was not done and there was no short fall, the regional director completely and strongly disagreed with me and so were his" special additional supervisors " assigned to provide me with supervision.

However, up to this foday, the regional director, Goldberg, the trustees' counsels and the Solicitor of Labor does not a even half a page of document to prove that I am incorrect or to prove the claim of a short fall is true.

In other words, a cover-up took place.

The 500 participants I am fighting for are lowly educated and sickly. Asbestos did it. They are, like me, are powerless and not well -connected.

Here is what I need. The trustees' counsels need to provide me with documents to contradict my documented evidence.

Please let's do the right thing.

spectfully

Wyche, Robert - OIG

From: Shapiro, Howard - OIG
Sent: Wednesday, February 04, 2009 3:25 PM
To: Cunningham, Asa - OIG; Wyche, Robert - OIG
Subject: FW: Local 12 Funds

Attachments: ROIPartLocal12Funds.pdf; July3108MEMo.pdf; Local12AnnuityDefaulted.pdf



ROIPartLocal12Fu
nds.pdf (387 ...



July3108MEMo.pdf
(63 KB)



Local12AnnuityDefa
ulted.pdf (2...

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

From: Ruiz de Gamboa, Nancy - OIG
Sent: Tuesday, December 02, 2008 4:16 PM
To: Franzman, Marjorie - OIG; Shapiro, Howard - OIG; Clark, Richard - OIG; Farrell, Thomas - OIG
Subject: Fw: Local 12 Funds

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

From: Castillo, Jose - EBSA <Castillo.Jose@dol.gov>
To: Goldberg, Robert - EBSA; Kay, Jonathan - EBSA
Cc: Langone, Nichelle - EBSA; Ackerman, Jean - EBSA; Weekley, Jennifer - SOL; Kade, Dennis - SOL; Rodenhausen, Patricia - SOL; Heddell, Gordon - OIG; Ruiz de Gamboa, Nancy - OIG; Lebowitz, Alan - EBSA; Smith, Virginia - EBSA; Monhart, Jeff - EBSA; Chao, Elaine
Sent: Tue Dec 02 16:10:44 2008
Subject: Local 12 Funds

For the record:

Starting at page 14 through page 15 is Table 3 of my ROI, Part I. This table shows that the Annuity Fund's Loan Receivables amounts as reflected on the financial statements prepared by Heinman and the statements from New York Life differ substantially.

For example, for the year 2003, the financial statement shows \$1,575,263.00 while the NYL statement shows \$4,019,518.62 for a difference of \$2,444,255.62.

Heinzman audit work papers and notes to the financial statement does not explained the huge difference.

On the July 31, 2008 "discussion" with Bob Goldberg, Ms. Weekley of the SOL, Heinzman, with counsels of the trustees, he was asked by Goldberg to explain the difference.

*I was not present at this discussion because according to the regional director, I disrespected the Solicitor of Labor.

This is the wordings of the memo (attached).

"Heinzman indicated that the loans receivable amount in the New York Life's records was much higher than what was listed in the financial statements because New York Life includes all loans historically that were in default. This is being done by New York Life for tax purposes".

This is absolutely a fraudulent statement and a big lie.

ATTACHED IS a page of New York Life statements showing the Loan Receivables amount. It's

named by NYL as " Loan Fund".

Total Loan Receivable is \$4,019,518.62. Above is minus \$11,686,21 Loan Default. This amount represents the participant's loan that defaulted for the year 2003.

In 2000 and 2002 there is no recorded Loan Defaults. In 2001, there is a defaulted Loan of \$25,000.

As explained by New York Life as the record keeper and fund custodian starting in 2000, all loan defaults are immediately recorded as disbursements and as deductions to the total amount of Loan Receivables.

Form 1099s are issued for the year.

Because the Loan Receivables amount on the financial statement appears to be understated, the Net Assets Available for Benefits is also understated.

It appears that Goldberg and the Solicitor of Labor have no intention of asking for documented proof to support this claim of Heinzman.

This is fraudulent accounting and fraudulent reporting.

Respectfully

Jose Castillo
Auditor

30

July 19, 2004

United States Dept. of Labor/EBSA
3 Whitehall Street
Suite 1200
New York, NY 10004
Attn: Mr. Jose Castillo

SUBJECT: Asbestos Workers Local 12 Benefit Funds

Dear Mr. Castillo:

Reference the above subject and my previous correspondence dated June 6, 2004, I urge your department to conduct a full and complete investigation into the mismanagement of the above-mentioned funds by trustees and service providers. I further request your department not rely solely on information provided and acquired by the recent investigation completed by the fund accountants, which in my opinion selectively ignored or failed to address pertinent questions which deserve to be answered. I would like to share some of my concerns with your department, and thank you in advance for your interest in reviewing them. I list items of concern here in no specific order or preference.

ACCOUNTING ISSUES

- If annuity and pension hour contributions for fund year 1999 attached hereto (enclosure #1) are compared, you will note a difference of over 9,300 hours in the line item of "Asbestos Workers Local 12", the paid officers/trustees of the union. Please note also that hours for all other employer contributions for the funds are exactly similar between the annuity and pension plans during this fund year, as they should be. Since it is impossible to have an annuity hour earned without a pension hour, how did this happen? If the administrative assistant working in the office is included in the annuity but not the pension, the difference should be reflective of actual hours she worked during the year (approximately 1500 to 1800), not the 9,300 hour discrepancy. Was this error ever corrected in subsequent reports?
- In many years when the "Holiday-Unemployment" fund had it's own EIN, fund expenses exceeded interest earned by that fund, since there was no participant account deductions applied, excess expenses must have been met by monies from other funds, most likely the annuity fund. How are those monies being re-imbursed to participant accounts?
- The firm of Marcum & Kliegman LLP was the only truly "independent auditor" affiliated with the investigation into the benefit funds. Why is the firm of Schultheis & Panettieri described as an "independent: accountant" in litigation and correspondence when they have had a compensated relationship with the fund, administrators, and trustees since fund year 1998? Why have administrators refused to list reasons for the Marcum Kliegman LLP termination in 5500 reports (sec. "C", part II) of the 2001 annuity fund? Why have trustees refused to seek a refund of the almost \$85,000 paid to Marcum & Kliegman LLP over two calendar years directly from that service provider whose work they have described as inferior. I have enclosed a copy of a newspaper article (enclosure #2) which describes the Marcum Kliegman LLP firm as specializing in the field of "forensic accounting". Did the "letters of appointment" for Marcum & Kliegman LLP mention the need for specific timetables of completion required by the trustees? Did Marcum & Kliegman LLP violate any written instructions from the trustees?

- During their “independent” investigation of fund abuse, many participants were questioned as to their knowledge or involvement of the “scheme to defraud” alleged to have existed in the civil litigation initiated by trustees of the funds. Were trustee members who signed disbursement checks in question interrogated? If not, why not? Were some participants questioned on separate occasions? Did these participants give replies on the second interrogation that differed from their original answers? Did professional interrogators outside of fund employ ever question individuals with regards to these matters?

TRUSTEE ISSUES

- The civil litigation filed on behalf of the fund participants in this matter (USDC-Eastern Dist. NY Civil Action No. 02-CV-2916) makes mention of “improper disbursements” made within the fund which were “...not authorized by the Annuity Fund or the Trustees” (para. 20). To my knowledge all disbursement checks must be countersigned by a trustee member. How is it possible a trustee signed a disbursement check without authorizing it? Is there any evidence the trustees who signed such checks were in collusion with the fund manager?
- Annuity Fund assets were transferred to New York Benefit Life Investment Company in September of 2000. It was contended at this time, the discovery was made that fund assets were valued less than participant/beneficiary account shares. I believe the timetable for the hiring of the investigating accounting firm of Marcum & Kliegman LLP began earlier than the date alluded to in para. 20 of the civil litigation (December 2000). If the investigation only began in December, why was there a quarter year delay? Why did the trustees of the fund allow the fund manager to maintain his office, rather than taking a leave of absence or dismiss him? This put Mr. Market in a position of orchestrating the investigation into his affairs.
- Did officer/trustee contributions into their personal individual fund accounts influence their objectivity into their fiduciary responsibilities? Included with enclosure #1 are copies from 5500 reports of 1998 and 1999’s annuity funds schedule of contributions. Note that the number of hours listed for “Asbestos Workers Local 12” is representative of four paid officers (all trustees) and possibly one administrative assistant. If based on four officers, the average annual hourly account contribution in 1998 would be over 7,745 hours. There are only 8,760 hours in a year. This would average compensation for 24 hours per day for over 322 days per year. Are these huge contributions into their accounts accurately indicated in the minutes of the monthly bills announced and recorded at regular monthly meetings?
- Trustee members, their relatives and friends have recently retired from the union putting them in a category where their retirement excludes them from having their individual account balances adjusted in negative fashion. Did their participation in the fiduciary process, or affiliation with trustee members, provide them with “insider information” which influenced their decision to retire and escape the responsibility of reimbursing the fund for their account overpayments?

PROCEDURAL ISSUES

- There are several arbitrary procedures for recovering fund assets from accounts. Retired participants are excused from reimbursing over-payments to their accounts. Active participants are excused from reimbursement if their account balances are not capable of providing it. These shortfalls are made up from insurance proceeds provided by premiums paid for by all participants. Why are selected participants only able to have proceeds for fund mismanagement applied to their accounts?

- It is being proposed that my individual annuity account is being adjusted starting with a “beginning balance” in 1993 that is inaccurate and arbitrary based upon the funds own investigation. How can my account be “adjusted” when an accurate starting point cannot be achieved?
- The proposed remedies, for members such as myself with 34 years participation in the funds, do nothing to address the mismanagement that most likely occurred prior to 1993, costing us principal and compounded investment yields over many years.

These are a few of many questions and concerns I, and possibly other fund participants, have devised over a period of time that has exceeded my initial correspondence with your department on June 28, 2001. Certainly more exist, perhaps with greater importance and more far reaching repercussions than the ones I have listed. In the many contacts I have had with you and your department since June of 2001, you have always reassured me that although completion of the investigation may be lengthy, it will be thorough and full. During our conversation of June 16, 2002, you were kind enough to explain to me that the involvement of the Marcum & Kliegman LLP accounting firm, which has been of great interest to me, would be fully examined in the course of your work, and that you could subpoena the funds for the documents in question, or contact Marcum & Kliegman LLP directly. This area, along with the obligation and duties of the trustees and service providers to exercise “prudent” and immediate action and judgments based on information provided them, without concern for their own liability is paramount. Your regional director, Mr. Clisham, in his correspondence to me dated August 1, 2001 stated in part “...fundamental goal of the Title 1 is to protect the integrity of private-sector and union sponsored employee benefit plans by prohibiting abuse and mismanagement by plan administrators. ...ERISA mandates that managed plans must meet certain standards of conduct...aimed at assuring that plan funds are protected and that participants...receive their benefits”.

I thank you in advance for insuring that your department’s investigation meets the goals of the United States House of Representatives when they stated “The safeguarding effect of the fiduciary responsibility section will operate efficiently only if fiduciaries are aware that their dealings will be open to inspection, and that individual participants and beneficiaries will be armed with enough information to enforce their own rights as well as the obligations owed by the fiduciary to the plan in general”.

Sincerely,

January 7, 2005

United States Dept. of Labor – EBSA
1 Whitehall Street
Suite 1200
New York, NY 10004
Attn: Mr. Jose Castillo

SUBJECT: Asbestos Workers Local 12 Benefit Funds

Dear Mr. Castillo:

Reference the above subject and our telephone conversation of December 30, 2004, attached hereto please find enclosures related to various topics we discussed at that time.

Enclosures #1 and 2 are copies of "Exhibit B" from the Asbestos Workers Annuity Fund for the years 1998 and 1999. These exhibits show a deduction for "Real Estate Tax". Since this fund has no asset of real property, a deduction for a tax expense would seem improper. There may exist similar items from years prior or subsequent to these examples on 5500 reports I do not possess.

Enclosure #3 is a copy of my July 19, 2004 correspondence to your department. Many of the questions and contentions I presented in this correspondence have yet to be answered or addressed by either the trustees of the funds or your department, and I am extremely disappointed and dismayed at that failure. The second paragraph under "Accounting Issues" deals with the Asbestos Workers "Holiday-Unemployment" or "Vacation Fund". Monies are received at the fund office, after taxes are withdrawn, from signatory employers based on a participant employee members hours worked under a collective bargaining agreement. These monies are applied to individual participant amounts based on a calendar year. Accounts are dispersed to participants no later than April 1st of the following year no expense or user fees withdrawn. Both the 5500 reports and the summary reports for this fund, when it had an individual EIN separate from the Welfare Fund prior to 2002, show administrative expenses exceeded interest earned. Since the interest was the funds only source of income, excess administrative expenses must have been paid using monies from other sources.

The third topic we discussed was the civil litigation initiated by the fund attorney in a complaint involving the former fund administrator's son, James Market, and another relative, James Keogh. Participants were made aware of the existence of this action last April by the fund attorney (docket #20396/03 filed in New York State Court).

I was disappointed to learn during our conversation on December 30 that participants would not be entitled to any information your department has compiled during the course of the lengthy investigation into fund activities that is nearing completion. It confuses me that I was able to learn much more about the ENRON corporation scandal by reading the New York Times than I have been permitted to learn about my own funds. I have been denied access to accounting document studies and details of settlements of civil litigations, although the cost of these actions was borne of the expenses of participants like myself. It is for these reasons again I urge your department to recommend criminal prosecution of any individuals alleged or found to have willfully and knowingly participated in a "scheme to defraud" the funds, as the civil litigation against the former administrator and accountant contends.

Sincerely yours,

January 14, 2006

Jonathan Kay -- Regional Director DOL/ESBA
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 (no 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

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 ... he's 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

Wyche, Robert - OIG

From: Castillo, Jose - EBSA
Sent: Tuesday, October 31, 2006 7:05 PM
To:
Cc: Castillo, Jose - EBSA
Subject: Local 12 Annuity Fund

Mr. ;

Please email me your responses to the following:

1) Did the trustees or plan administrator informed the membership that the fund's investment earnings from 9/1/2000 to 12/31/2000 with New York Benefit Life (\$380,000, this is part of the 1.8 million earnings for 2000) was used and allocated as employer contributions?

Note: This monies was put into a frozen account, separate from the core fund monies. In October 19, 2001, Al Wassell directed New York Benefit Life to use this as employer contribution offset.

2) Did the trustees or NY Benefit Life inform the membership that the individual account balances were adjusted (it was supposed to be reduced) in 2004? In connection with this reduction of the account balances, did you guys received any documents or notice showing that your account balance at that time was reduced?

Thanks

Jose

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do no disclose without consulting the Employee Benefits Security Administration. If you think you received this message in error, please notify the sender immediately.

Wyche, Robert - OIG

From: [redacted]
Sent: Tuesday, October 31, 2006 11:22 PM
To: Castillo, Jose - EBSA; Lebowitz, Alan - EBSA; Kathleen.Terrillion@mail.house.gov; schumer@mail.senate.gov; carrie.draffen@newsday.com
Subject: Asbestos Workers Annuity Fund

Attachments: castillo1705.doc; DeptofLabor719.doc



castillo1705.doc (22 KB)
DeptofLabor719.doc (37 KB)

Mr. Castillo:

Reference our telephone conversation of this afternoon, as you requested, I have reviewed my records and all trustee/administrator correspondence. I have found no reference to participants having been informed of the use of \$380,000 of the year 2000 investment yield (the total of which was \$1.8Mill) to make up differences/shortfalls of employer contributions in participant accounts. You explained this \$380K originated from a "frozen account", separate from the core fund, and was directed to New York Benefit Life on 10/19/2001 by the fund administrator, Al Wassell. with instructions to use these monies to offset employer contributions. Again, I found no reference in my records which would document this transaction, or explain it to the participants. I found no information or reference to the existence of a separate "frozen" account for holding participant investment yield.

Using monies designed with one intent for something else is not new to my funds. Please re-read my letters attached as they refer to the Holiday/Unemployment/Vacation Fund.

Thanks.

Tr.

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[href=http://spaces.live.com/spacesapi.aspx?wx_action=create&wx_url=/friends.aspx&mkt=en-us](http://spaces.live.com/spacesapi.aspx?wx_action=create&wx_url=/friends.aspx&mkt=en-us)

31

HILLARY RODHAM CLINTON
NEW YORK
SENATOR
RUSSELL SENATE OFFICE BUILDING
SUITE 472
WASHINGTON, DC 20510-4824
202-456-4601

COMMITTEES:
ARMED SERVICES
ENVIRONMENT AND PUBLIC WORKS
HEALTH, EDUCATION, LABOR, AND PENSIONS
SPECIAL COMMITTEE ON AGING

United States Senate

535/96

WASHINGTON, DC 20510-3204

September 24, 2008

Ms. Kristine A. Iverson
Assistant Secretary for Congressional and Intergovernmental Affairs
United States Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Assistant Secretary Iverson:


Enclosed is a letter from Mr. He has brought to my attention his concerns regarding the investigation of Local 12 funds.

I would appreciate your reviewing the information that has been presented and providing me with your comments. Please address your reply to my state office:

United States Senator Hillary Rodham Clinton
780 Third Avenue, Suite 2601
New York, New York 10017-2024
Attention: Yekyu Kim

Your cooperation and assistance are greatly appreciated. I look forward to hearing from you soon.

Sincerely yours,



Hillary Rodham Clinton

HRC/yck_mg
cc. Federal Bureau of Investigation

RECEIVED
2008 OCT 02 A 8:28
FEDERAL SENATORIAL
OFFICE OF THE SECRETARY
OF THE SENATE
WASHINGTON, DC 20510

August 11, 2008

Department of Constituent Affairs - Labor Issue
Office of U.S. Senator Hillary Rodham Clinton
780 Third Avenue, Suite 2601
New York, NY 10017
Fax: 212-688-7444
Attn: Ms. Kim

Subject: EBSA Issue of NYRO Investigation Local 12 Funds

Dear Ms. Kim:

It is my belief that the above subject investigation by the Department of Labor's EBSA Division, New York Regional Office has been compromised. I base this belief on the following:

In reply to a complaint I made to the Department of Labor, I received a reply dated August 1, 2001 that an investigation into Local 12 was "already ongoing", making this the eighth year of that inquiry. By comparison, a similar embezzlement in the same international union (Association of Heat and Frost Insulators and Asbestos Workers) Local 89 (Trenton/Atlantic City) was investigated by the DOL, turned over to the NJ Attorney's Office in Newark, prosecuted and pleaded between May 2007, when the defendant/administrator resigned, and June 2008, a timeframe of thirteen months! To my knowledge there has never even been a criminal examination conducted in the Local 12 scandal, although a civil suit with many allegations of criminal conduct described as a "scheme to defraud the funds" by administrators, service providers and their relatives was in the hands of the NYRO in May 2002, well within the framework permitted in the criminal statute. I believe it has been the intent of the NYRO to delay all action so that criminal and civil statutes will expire, leaving participant and dependent members (five hundred to one thousand, active and retired) of the fund without recourse or recovery. Why is the protocol of the Local 89 investigation different from that of Local 12?

The August 1, 2001 letter I received from Francis Clisham, Regional Director instructs me to contact the agent-in-charge, Jose Castillo, with additional information. Oddly, during this investigations marathon length, at one point Agent Castillo told me his superiors instructed him to have "no further contact with me". The agent later told me he is required to answer my inquires. Castillo was assigned a "special supervisor" for this case and only this case. When I inquired of his superior, Regional Director Kay, why Castillo's current supervisor was inadequate for this case, his answer was ambiguous. I met this "special supervisor", Robert Goldberg at a meeting I attended in April 2006 at EBSA offices. My recollection is he had no input at that meeting and seemed vague on the issues discussed. Could it be the function and assignment of Mr. Goldberg isn't to examine the issues but rather to make them irrelevant? Another attendee of this meeting, a Mr. Associate Regional Director Gaynor, told me he would definitely get back to me, after his May 2006 meeting with service providers of the fund, to answer my contention that the annuity fund investment yield of year 2006 (\$1.8 million then, over \$4 million with interest today) was never allocated to participant account statements as required by ERISA and fund by-laws. That individual remained without keeping his promise.

08/11/2008 10:54AM (GMT-04:00)

Ms. Kim/Senator Clinton
August 8, 2008
Page 2

My February 4, 2006 letter was the result of my telephone conversation with Regional Director Kay on January 26, 2006. During this conversation the Director tried to "sell me" the idea that the settlement of a civil suit brought about by the trustees of the fund, settled out of court with a confidentiality agreement keeping details from participants, and no admission of guilt on the defendant's behalf, should be enough to satisfy. The suit did not involve the non-allocation issue or the improper reduction of participant account values by trustees, in violation of fund by-laws. My April 3, 2006 letter involves questionable conduct by EBSA personnel revealed to me during a conversation with a trustee member. The July 26, 2006 letter requests the NYRO forward to Deputy Secretary Lebowitz in Washington D.C. information and accounting studies that Director Kay refused to let me examine, studies that as a participant I paid for in fund expenses. In November 2006, Agent Castillo sent me an e-mail interview, which implied his investigation disclosed the use of participant investment yield assets (\$381,000) as employer contributions by fund trustees. This criminal act, once verified, should have been immediately brought to the attention of the attorney general for prosecution. I have time and again asked the NYRO to involve the Washington D.C. Office of the Chief Accountant and the Solicitor of Labor in the Local 12 examination, but they want no oversight into their dealings. I ask now for your assistance in recruiting the FBI and Justice Department in the investigation, not of my unions conduct, but of the inaction of the NYRO of the EBSA. All three letters referenced are enclosed. I have also enclosed your release form and an article related to the Local 89 embezzlement.

I realize it is common practice to hire a former employee of an agency to represent interests brought before that agency. The law firm Thelen Reid Brown Raysman & Steiner LLP, retained by the service providers involved in these matters, employs Sherwin Kaplan, a veteran DOL solicitor with deep roots and affiliations in that agency. I feel if any normal protocol or procedure has not been followed, or my fact, evidence, financial statement, or exhibit is discounted or overlooked as a result of Mr. Kaplan's affiliation, that would be a gross violation of the process.

The enclosures sent in today's facsimile are relative to only the few illustrations I have referenced within. I have additional letters, emails, telephone conversations and contacts with the NYRO and DOL officials in Washington D.C., too numerous to mention or include with my request, but they will be at your future disposal.

Thank you in advance for your interest in this matter.

Member of Congress
Third District, New York

339 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3203
(202) 225-7896

1003 PARK BOULEVARD
MASSAPEQUA PARK, NY 11762
(516) 541-4225

For Suffolk County:
(631) 541-4225

pete.king@mail.house.gov
www.peteking.house.gov



Congress of the United States
House of Representatives
Washington, DC 20515-3203

August 8, 2008

COMMITTEE ON HOMELAND SECURITY
RANKING MEMBER

FINANCIAL SERVICES COMMITTEE

SUBCOMMITTEE ON CAPITAL MARKETS

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

SUBCOMMITTEE ON HOUSING

Mr. Gordon S. Heddell
Inspector General
U.S. Department of Labor
200 Constitution Avenue NW, S-5502
Washington, D.C. 20210-0001

Dear Inspector General Heddell,

I am writing to request an investigation into Local 12 Annuity Fund Case No. 30-099939 which is being handled by the Department of Labor's New York City Office.

It is my understanding that the approximately 500 participants in the Asbestos Workers Local 12 Annuity Fund, including my constituent [redacted], did not receive their investment earnings for the year 2000, which by now would amount to almost \$3 million.

While the Fund's trustees cited shortfalls, Mr. [redacted] has told me that further investigations by the Department of Labor have uncovered conflicts, discrepancies, and omissions in accounting that have never been explained by the trustees. He has reason to believe that this violation of ERISA law has been presented to Department of Labor supervisors on several occasions, and each time has been ignored, as no further action has been taken.

The union sent the case to the Department of Labor in 2002, and it has yet to be resolved. I request that you thoroughly investigate the Department of Labor's handling of this case, and come to a resolution as quickly as possible. Thank you for your prompt attention to this matter. I look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter T. King", written over a horizontal line.

PETER T. KING
Member of Congress

PTK/cd



SEP 15 2008

The Honorable Peter T. King
U.S. House of Representatives
Washington, D.C. 20510

Dear Representative King:

This is in response to your August 8, 2008, correspondence, in which you request that the Office of Inspector General (OIG) investigate the Department of Labor's handling of Asbestos Workers Local 12 Annuity Fund Case No. 30-0909939. In your correspondence, you state that it is your understanding that approximately 500 Plan participants, including one of your constituents, did not receive their investment earnings for the year 2000. Further, you state that Mr. [redacted] has informed you that alleged violations by the Plan trustees have been ignored by the Department of Labor.

My office has received previous inquiries regarding this matter and is aware that the Department's Employment Benefits Security Administration (EBSA) has been conducting an investigation of the Local 12 Annuity Fund. Based upon my office's review of relevant documentation, and discussions with EBSA staff, it appears that the Fund's administrator advised the Department in early 2002 that there may have been discrepancies in Fund allocations. The Fund Trustees subsequently filed a civil complaint against the Fund's former administrator and auditor, and this complaint was settled in late 2002. In November, 2005, the Department received a letter from Mr. [redacted] which questioned the correctness of the allocations and the payments made to the participants. It is my understanding that EBSA's investigation of this matter is continuing, and that the Department's Office of the Solicitor recently contacted Local 12 officials regarding this matter. Accordingly, at this time, it does not appear that any alleged violations have been ignored by the Department.

However, if Mr. [redacted], or anyone else, has specific information, documentation, or evidence indicating that officials from either EBSA or the Office of the Solicitor have engaged in any misconduct in their handling of this investigation, we would request that such information or documentation be provided directly to my office. In the absence of such information, we cannot take any further action at this time, since the matter appears to be under appropriate review by the Department.

Please feel free to contact me, at 202-693-5100, if you have further questions regarding this matter. Alternatively, your staff may contact Nancy Ruiz de Gamboa, Assistant Inspector General for Management and Policy, at (202) 693-5224.

Sincerely,

Gordon S. Heddel
for
Gordon S. Heddel
Inspector General

Working for America's Workforce

January 12, 2009



Mr. Howard Shapiro
Council to Inspector General
U.S. Department of Labor
200 Constitution Avenue NW, S-5502
Washington, D.C. 20210-0001

Subject: Local 12 Annuity Fund Case No. 30-099939

Dear Mr. Shapiro:

Reference the above subject, Congressman Peter King's letter to Inspector Heddell dated August 8, 2008, and Mr. Daniel R. Petrole's reply for Inspector Heddell dated September 15, 2008, I wish to thank you for your telephone contact of December 31, 2008. If you recall, during our telephone conversation you invited me to personally provide you with information that I considered pertinent to this matter, provided such information was not part of the continuing investigation being conducted by the NYRO of the EBSA. You insured me that you personally would review any information supplied with an unbiased, independent outlook, but could not re-examine issues involved in the ongoing study. I expressed doubt in my ability to supply any pertinent, first-hand factual knowledge based on the Department of Labor's policy of restricting information during investigations. You encouraged me to "do your best", and I thanked you for the call on New Year's Eve. If you would care to add or amend points I have made here to better enhance the accuracy of my recollection of our conversation, I would appreciate it.

I would readily agree to the conditions you spoke of during our conversation of December 31, 2008, if you would be kind enough to agree to correct and explain the errors contained in your offices reply to Congressman King. Mr. Petrole made note in his correspondence of the civil suit filed by Fund Trustees against the former Fund Administrator, and stated... "this complaint was settled in late 2002." This is not true. Mr. Petrole presented this as fact to the Congressman after stating the reply was ... "Based upon my office's review of relevant documentation". Information regarding this civil complaint is readily available, and clearly shows the case was dismissed on March 9, 2004 in an order and stipulation signed by Judge Nina Gershon. It further shows the original complaint was amended on May 23, 2003, which basically is a withdrawal of the original complaint, and re-instituted with change. I suspect Mr. Petrole obtained information during... "discussions with EBSA staff" concerning this matter and without confirming its accuracy, relayed it to the Congressman. The absence of Mr. Petrole's confirmation of this pertinent information I imagine would make Congressman King's office skeptical of any other information contained in the reply to its congressional inquiry. Accuracy in the matter of the civil suit is paramount because NY Regional Director Kay has stated... "the fact that a civil lawsuit has been filed seeking recovery of funds that have allegedly been embezzled may be a factor that this agency and a prosecutor may take into account in determining whether to move forward with a criminal investigation/prosecution."

U.S. DOL/OIG
January 12, 2009
Page 2

Another example of EBSA inaccuracy concerning chronology of events is obvious in an e-mail correspondence in which Director Kay stated his office had received my inquiry, regarding a questionable real estate tax deduction, in late 2008 when in reality his office was in possession of it since 2001. The civil complaint, in addition to the discrepancies in Fund allocations alluded to in Mr. Petrole's reply, alleged service providers, domestic corporations, parties of interest and unidentified co-conspirator(s) participated in a "scheme to defraud the Funds" and contained numerous accounts of criminal activity. This information was forwarded to the NYRO of EBSA in May of 2002.

The responsibility of the OIG-DOL has been defined as "... conducting civil, criminal, and administrative investigations relating to alleged or suspected violations of Federal laws, rules or regulations as they pertain to DOL programs, operations and personnel." Congressman King's letter was very clear in stating that participants of this Fund "... did not receive their investment earnings for the year 2000", which, if true, is a criminal violation of ERISA/Federal law that was not prosecuted before the criminal statute was allowed to expire. Mr. Petrole's reply seems to indicate that because the EBSA investigation is "continuing" the OIG/DOL has no responsibility or mission function in this matter. If the EBSA sends no "closing letter" concerning their investigation, ongoing for nine calendar years now, will your office conduct its own in one year... in five.... in ten years? If in reality the mission of the OIG/DOL is to spin the investigative work of others and run interference for congressional inquiries, it would be fruitless and wasteful to proceed on my, or the Congressman's part. If you are sincere in this effort, as you sounded to me in our telephone conversation, I am eager to participate. Thank you!

Sincerely,

Cc: Congressman Peter King
Secretary Bradford Campbell

32

Wyche, Robert - OIG

From:

Sent: Saturday, April 04, 2009 1:26 PM

To: Wyche, Robert - OIG; Solis, Hilda - OSEC; Lebowitz, Alan - EBSA; Shapiro, Howard - OIG; carol.danko@mail.house.gov; investigates@cbsnews.com; tzambito@nydailynews.com; dglovin@bloomberg.net

Subject: RE: Local 12 Congressional Inquiry

Attachments: Shapiro 1-11-09.doc; Clinton 8118.doc

Mr. Wyche:

The attachments are self explanatory. Inspector Heddell's still uncorrected reply to Congressman King's inquiry reinforces my opinion that your organizations involvement in this subject is solely an attempt to legitimize an EBSA examination that has been compromised. I feel the probably unparalleled length of this exam has been designed from the outset to allow criminal and civil culpability to expire. Trustee members accepted improper payments as service providers. Unbelievably, one such individual still serves as a trustee. Secretary Lebowitz, top EBSA official, more than three years ago expressed personally to me his concern over the duration of this exam. Still it drags on. I am entitled to no information on the accuracy of my fund financial publications or account balance, but a trustee caught with his hand in the cookie jar, still serves. A fellow participant related an incident where he recieved a telephone inquiry from an OIG employee named "Garcia" who was interested, not in the allegations of crime and fraud contained in the civil suit, but only in the name of the person he contacted in the FBI. If your purpose in having me attend another worthless, unproductive meeting such as the one I attended in 2006 is to find out who I spoke with in the justice department so far, I can save myself the trip into Manhattan, because that would be my business. The silver lining in keeping abreast of the developments in the Madoff, WorldCom and ENRON scandals is the education one gains with regard to the workings of Federal Regulatory Agencies. One can only hope the "transparencies" President Obama spoke of during his campaign have taken root.

Thank you.

Subject: Local 12 Congressional Inquiry

Date: Thu, 2 Apr 2009 17:31:37 -0400

From: Wyche.Robert@oig.dol.gov

To

Mr.

I work for the Office of Inspection and Special Investigations, Office of the Inspector General, U.S. Department of Labor. I have been assigned to investigate several complaints, which were made regarding the handling of the Asbestos Workers Local 12 Funds investigation by the Employee Benefits Security Administration, New York Region. This case was referred to my office as a congressional inquiry from the U.S. Office of Special Counsel, Washington, DC.

I, along with the Assistant Inspector General for the Office of Inspection and Special Investigations will be in New York next week from Tuesday April 7, 2009 through Friday morning April 10, 2009. We would like to meet with you next Wednesday or Thursday to discuss some of the allegations made in this case. Please e-mail me or call me at 202/693-7106 and let me know if this will work with your schedule.

Thank you,

Robert W. Wyche

Assistant Special Agent in Charge

U.S. Department of Labor

Office of Inspector General

Office of Inspection and Special Investigations

Office: 202/693-7106

Cell: 202/427-9101

Windows Live™: Keep your life in sync. [Check it out.](#)

January 12, 2009

Mr. Howard Shapiro
Council to Inspector General
U.S. Department of Labor
200 Constitution Avenue NW, S-5502
Washington, D.C. 20210-0001

Subject: Local 12 Annuity Fund Case No. 30-099939

Dear Mr. Shapiro:

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U.S. DOL/OIG
January 12, 2009
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Cc: Congressman Peter King
Secretary Bradford Campbell

August 11, 2008

Department of Constituent Affairs – Labor Issue
Office of U.S. Senator Hillary Rodham Clinton
780 Third Avenue, Suite 2601
New York, NY 10017
Fax: 212-688-7444
Attn: Ms. Kim

Subject: EBSA Issue of NYRO Investigation Local 12 Funds

Dear Ms. Kim:

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August 8, 2008
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