

CORAL GABLES RETIREMENT SYSTEM  
SPECIAL MEETING  
Minutes of April 18, 2014  
Youth Center Theater/Auditorium  
405 University Drive  
9:00 a.m.

MEMBERS:	A	J	A	S	O	N	J	F	M	A-10	A-18	APPOINTED BY:
	13	13	13	13	13	13	14	14	14	14	14	
Andy Gomez	-	-	P	P	P	P	P	P	E	E	P	Mayor Jim Cason
Manuel A. Garcia-Linares	P	P	P	P	P	P	P	P	P	P	E	Vice Mayor William H. Kerdyk, Jr.
Bob Campbell	-	E	E	P	P	E	P	E	P	E	E	Commissioner Patricia Keon
Jon G. Ridley	-	-	-	P	P	E	P	P	P	P	P	Commissioner Vince Lago
James Gueits	P	P	P	P	P	P	P	P	P	P	P	Commissioner Frank C. Quesada
Joshua Nunez	-	-	-	P	P	E	P	E	P	P	P	Police Representative
Randy Hoff	P	P	P	P	P	P	P	P	P	P	P	Member at Large
Donald R. Hill	P	P	P	P	P	P	P	P	P	P	P	General Employees
Troy Easley	P	P	P	P	P	P	P	P	P	P	P	Fire Representative
Diana Gomez	-	-	-	-	-	P	P	P	P	P	P	Finance Director
Elsa Jaramillo-Velez	-	-	-	-	-	P	P	P	P	P	P	Human Resources Director

STAFF:  
Kimberly Groome, Retirement System Administrator  
Alan E. Greenfield, Board Attorney

P = Present  
E = Excused  
A = Absent

GUESTS:  
Craig Leen, City Attorney  
Jim Linn, Attorney

Chairperson James Gueits calls the meeting to order at 9:08 a.m. There was a quorum present. Mr. Campbell and Mr. Garcia-Linares were excused. Mr. Easley joined the discussion via conference call. This was done based on the Attorney General's opinion in 2002-82 December 11, 2002 which says in the absence to the contrary the requisite number of members must be physically present at a meeting in order to constitute a quorum. In other words a board member may participate by electronic means but in all circumstances a quorum of the board must be physically present at the meeting.

1. Roll call.
2. Attorney discussion relative to any claims against Nyhart.

Chairperson Gueits informs that he had an opportunity to review the claim. They have claims which are brought solely in the name of the Retirement Board and then the balance of the claims are on behalf of the City.

Jim Linn reports that the root of the issue is the actuary certified benefits for a number of employees without any indication that they might be impacted by the 415 limits. As a result of that the City expended money to set up the Preservation of Benefits Plan and entered into settlement agreements with several former employees. They basically had to reexamine everything the actuary did with respect to the 415 calculations. The Board has seen the report the City Commission asked the City Attorney to prepare and then based on that report, which found several areas of poor performance, negligence, professional malpractice on part of the actuary, the City Commission directed the City Attorney to move forward with some type of legal action. There are a number of counts but they are somewhat repetitive. In each aspect you have direct claims by the Retirement Board which are direct because this Board had the contract with the actuary. The contract they had with the actuary is very clear in terms of the actuary's duty both in terms of acting to the full extent of the actuary's professional responsibility and also to indemnify the fund for any problems that occurred which were omissions by the actuary that were causing the fund money. So there is a breach of contract claim, a breach of warranty claim that the actuary's work did not conform to professional standards, there is a contractual indemnification claim based on the contract language in which the actuary agrees to indemnify and hold harmless the Board from all liability for any way connected to actuary's performance. There is a common law indemnification claim, a negligent misrepresentation claim which is based on these benefit certifications that they believe were not done in accordance with professional standards.

Mr. Easley joined the meeting via conference call at this time.

Mr. Linn continues. There is a professional malpractice count that in their opinion and the City's actuary's opinion the Board's actuary did not follow generally accepted actuarial standards in four specific areas. Those are the direct claims. The City has entered into these settlement agreements which in the City's view resolved claims that would have likely resulted in litigation against the Board as well as the City. In the settlement agreements the individual employees assigned their claims to the City to pursue whatever claims they might have. Instead of them bringing a lawsuit the City is essentially standing in the shoes of the former employees. There are a series of counts in the complaint for similar claims assigned by the former employees. There are breach of contract claims, third party beneficiary, professional malpractice, negligent misrepresentation and estoppel which is something the employees raised to say they had lied on the benefit certifications they had been given which later turned out to be, in some cases, their benefits were significantly less than certified as a result of the 415 limits. There are a number of claims for Maria Menendez and Cathy Swanson. Then there are direct claims by the City which again recite a lot of the same claims. They are trying to cover the whole potential waterfront in terms of covering all these counts from various angles. The City is a third party beneficiary of this Board's contract with the actuary. The City is asserting all of these claims as third party beneficiary.

Mr. Leen comments that this is not about any sort of relationship with the City or the Board and Randall Stanley in the sense that they may like him and were happy with a lot

of what he did for the fund for a number of years and there was a lot of back and forth sometimes between the City and the Board. It is not personal at all. In the interactions he has had with Mr. Stanley he thinks he is a nice man. He thinks the issue is that stepping back a year or two and thinking about what happened with 415 and the chaos that ensued. Maria Menendez was told at one point she would lose over 80% of the pension. The pain that cost her and the way they had to act relatively quickly to address that list of people that were informed they would not get their full pension benefits. Then it turned out the list was not entirely correct. It just kept going back and forth and caused a lot of harm to people. He thinks it is justified to go forward with this complaint.

Chairperson Gueits asks what role if any will Nyhart's carrier play in any of this. Mr. Linn responds that by contract they are supposed to have insurance and they presume their carrier will mount a legal defense. A lot of times these kind of claims end up settling with the insurance carrier. Chairperson Gueits asks what the chances of a prompt settlement are. Mr. Linn answers that once a lawsuit is filed he is not sure it operates real promptly. They have looked at cases brought against other actuaries around the country typically claims like this. They are looking at damages of \$1 million and maybe more but in the range of actions high profile cases against actuaries is not a huge amount. Nyhart is a national actuarial firm. You might expect they would want to put this behind them. He thinks that would weigh the favor of some kind of settlement but having been involved with litigation like this you can never really predict that will happen. Chairperson Gueits asks what defenses they anticipate to raise. Mr. Linn thinks they will raise Mr. Stanley had communications written and verbal with the Board about 415 and about the potential effects on plan members. Several specific requests during the time period covered by this complaint between 2006 and 2012 which he said the Board ought to have him do a complete analysis of the 415 impacts and that wasn't done. He is sure they will assert the Board should have had him do that. Their belief and the City's actuary's belief is that is really something he should have been doing anyway. Mr. Leen adds that they think ultimately those were already part of his duties because you cannot certify to someone something that is wrong. Whether he thought he needed additional authority or not to do this, in their view it was already required as part of his professional responsibility. Chairperson Gueits agrees.

Dr. Gomez asks if they communicated back to them on a regular basis some of the concerns they had. Mr. Linn thinks that the typical scenario would be that Mr. Stanley would write a letter and the letter would be discussed at a Board meeting then the Board would take some type of action or not. There is not much in the way of formal written responses back to these letters.

Chairperson Gueits informs that Mr. Greenfield has just joined the meeting. He updates Mr. Greenfield on Mr. Linn's review of the claim. Mr. Linn informs that he has been communicating with Mr. Greenfield and did provide him with a preliminary draft of the complaint and Mr. Greenfield had a number of suggestions most of which were incorporated into the draft.

Chairperson Gueits asks for Mr. Greenfield's thoughts on the action. Mr. Greenfield apologizes for being late. The one thing he still does not have is the litigation report. Mr. Leen thought it was more of the complaint and not the litigation report. He didn't realize Mr. Greenfield wanted the litigation report to the Commission. Mr. Greenfield states that when you file a complaint one of the things you have to do in good faith is to thoroughly investigate and make sure the facts you are alleging are correct. He is sure the City has alleged the facts that they thought were correct and he doesn't know whether or not there was something in the litigation report that would make it factually different. One of the things is that it is really the City bringing the complaint and the Board will have a lesser complaint. It seemed that when he read the complaint the City's complaint was secondary and everything about the Retirement Board was first. He didn't know if that tactically made any difference. Mr. Linn felt it was better the way it is. Other than that he felt the complaint was well drafted. He thinks it would withstand a motion to dismiss and then the case goes on. If the Board is concerned about getting involved from the point of view of taking time out of their schedules he would think whether the Board was a party or not they are going to get deposed. One of the other questions he had was when they had the claim against UBS it was the Board versus UBS. Then after the case was settled there was some friction between the Board and the City relative to who got the settlement money. He thinks it is clear in this complaint that the City has its claim for the reimbursement which is strictly the City's. He was wondering whether or not the claim for reimbursement, which is the Board's claim, if that is going to be an issue that the Board is going to have to fight about with the City relative to it going into the Board's pot versus the City's pot. Mr. Linn doesn't know if the Board has extended any funds other than what it paid to Mr. Stanley. Mr. Hoff points out that they had to pay other actuaries to review the 415 limits. Mr. Greenfield informs that Ms. Groome is making a list of the damages. Mr. Linn responds that those need to be reimbursed to the extent the fund paid out moneys as a result of the problems with the actuary then the Board should be reimbursed for those moneys. The complaint doesn't reflect that but they do want to include it. Chairperson Gueits was going to ask the same question. What type of relief is the Board seeking? If the party that seems to be really damaged is the City by virtue of the fact they had to create the fund and fund it so from that standpoint they are making affirmative claims here. What kind of relief are they asking the Court to fashion for them notwithstanding the amounts they spent which in the grand scheme of things might not be a lot of money.

Mr. Leen informs that they have a breach of contract count against Mr. Stanley. When he did the certification letters the System was billed for that. He would think they would have a good argument that they should get reimbursed for all of those. Chairperson Gueits agrees these causes of action are viable in terms of their ability to bring them. He agrees that there is probably a breach of their agreement but what are their damages.

Mr. Hoff states that Mr. Linn and his firm represent the City going through this whole process. Will they be following along with him on each step and are those additional expenses the Board will incur as a result of the lawsuit? Mr. Leen informs that their interests are completely inline. He thinks it would be appropriate for Mr. Linn to represent the Board along with the City of Coral Gables. He is happy to have the Board

Attorney involved as well and he has been helpful. Mr. Hoff points out that ultimately Mr. Linn is being paid by the City therefore his client is the City of Coral Gables. Mr. Leen states that the Board could agree that he can represent the Board in this case. Under the bar rules he has to be comfortable that it would not create a conflict of interest for him. He could represent the Board to the same extent he represents the City. One way to be careful about that is they could have their own Board Attorney involved. Chairperson Gueits wants to be sure the Board has an agreement with counsel for the City that covers and protects their communications. He wants to be sure that they maintain their attorney/client privilege with Mr. Linn. He would like some type of a joint representation. Mr. Leen wants to be clear in the individual capacity of Board members that the City represents them individually in these sort of actions. They can provide counsel at depositions.

Mr. Greenfield feels comfortable that he doesn't need to enter an appearance in the litigation but he would like to have Mr. Linn copy the Board on what he is doing so they know before they read it in the paper or anywhere else. As long as they get copied on whatever is happening he can keep the Board advised as to what is going on. He has every confidence that Mr. Linn and Mr. Leen will do a good job in representing the Board. Mr. Leen informs that he will make a commitment that he will keep the Board and the Board Attorney advised. Whenever something is brought to the Board it is made public there are limited circumstances that something can be private so by being able to go to Mr. Greenfield they are doing this together. There may be more protections which means they may not want to send certain strategic things to the Board as a whole unless there is a decision made. They might have to go to both the Commission and the Board to decide that. They will be able to file this complaint and he would like for the Board to authorize Mr. Greenfield to work with them to make sure all their claims are stated fairly. If they are not able to settle this case and it goes to discovery they are committing that they will appear with the Board members individually and they will help them prepare for their deposition. They are here in the spirit of cooperation and appreciate the Board considering this. They think it is in the best interest of the City and the Retirement Board. They think their interest are completely aligned. They think it will right a wrong that occurred to people in the retirement plan and the City employees. He recommends that the Board approve this.

Chairperson Gueits asks if Mr. Easley had anything to say. Mr. Easley informs that he doesn't have anything to say at this time. He is just listening. Chairperson Gueits asks Mr. Greenfield's opinion about the Board being a party to the claim. Mr. Greenfield informs that he doesn't see any downside. He sees a potential upside. Chairperson Gueits asks if Mr. Greenfield's recommendation is to proceed with the complaint as it is drafted. Mr. Greenfield answers affirmatively.

**A motion was made by Mr. Hoff and seconded by Ms. Gomez to make the Board a party to the suit and that Mr. Greenfield precede with the City to draft a complaint along the lines of what has been presented to the Board.**

**Discussion:**

Mr. Easley agrees with the motion that they should carry forward.

**Motion unanimously approved (9-0).**

3. Public Comment. There was no public comment.
4. Adjournment.

The next scheduled Retirement Board meeting is set for Thursday, May 8, 2014 at 8:00 a.m. in the Youth Center Auditorium.

Meeting adjourned at 9:47 a.m.

APPROVED

JAMES GUEITS  
CHAIRPERSON

ATTEST:

KIMBERLY V. GROOME  
RETIREMENT SYSTEM ADMINISTRATOR