B O A R D O F T R U S T E E S
Regular Meeting
Friday, January 16, 2009, 12:00 p.m.
Retirement Fund Conference Room

M I N U T E S

D E F I N E D B E N E F I T S

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum was present, the Retirement Fund Board of Trustees Regular Meeting for the Defined Benefits Plan was called to order at 12:38 p.m. Friday, January 16, 2009, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

Board of Trustees Present:
Joe T. San Agustin, Chairman
Wilfred P. Leon Guerrero, Vice-Chairman
Gerard A. Cruz, Treasurer
James J. Taylor, Secretary
George A. Santos, Trustee
Katherine T.E. Taitano, Trustee
Antolina S. Leon Guerrero, Trustee

Staff Present:
Paula Blas, Director
Diana Bernardo, Controller
Jackie Blas, Recording Secretary
Dr. John C. Steele, Retirement Fund Medical Consultant
Greg Perez, Benefit Specialist III
Jackie Sablan, Benefit Specialist II
Lena Sanchez, Benefit Specialist II
Mike Perez, Great West Retirement Services

Legal Counsel Present:
Elyze McDonald, Carlsmith Ball

Public Present:
Attorney Jeffrey Cook
Jane Story

II. REVIEW AND APPROVAL OF BOARD MINUTES

A. September 26, 2008 Regular Meeting, October 3, 2008 Reconvened Meeting, October 31, 2008, and December 5, 2008 Regular Meetings

Treasurer Gerard Cruz, seconded by Trustee George Santos, moved to table the Minutes of September 26, 2008 Regular Meeting, October 3, 2008 Reconvened Meeting, October 31, 2008, and December 5, 2008 Regular Meetings. Without objection, the motion passed.

III. CORRESPONDENCE

None

IV. INFORMATIONAL ITEMS

None

V. DIRECTOR'S REPORT - EXECUTIVE SUMMARY

1. Candelaria Rios, et al. vs. Joseph Ada, et al. (Special Proceeding Case No. SP206-93) - Director Paula Blas reported that there is no update on the current COLA Award distribution. Chairman San Agustin stated that Senator Ben Pangelinan verbally asked whether the Retirement Fund could advance COLA payments or divert funds for COLA payments. Chairman San Agustin stated that he told Senator Pangelinan that the Retirement Fund buys paper with the proper requirements. Chairman San Agustin stated that the Retirement Fund is unofficially under Senator Pangelinan's oversight. Chairman San Agustin stated that the committees have not been officially assigned.

2. Global Custody Services - Director Blas stated that at the December 5, 2008 Board meeting, the Board continued to suspend participation in Securities Lending. According to Northern Trust the only option available to the Retirement Fund is the Basic Collateral option. Director Blas stated that this will be revisited in March 2009.

3. Real Estate Investment Trusts (REITS) - Director Blas stated that two managers, Cornerstone Real Estate Advisers and Security Capital Research & Management have been partially funded. Director Blas stated that at the December 5, 2008 Board meeting, the Board approved a 2.5% investment in REITS. Treasurer Gerard Cruz asked how much was funded. Director Blas stated $23 Million.

4. U.S. Domestic Small Capitalization Core Equity - Director Blas stated that at the December 5, 2008 Board meeting, the Board continued to defer funding for Thomson Horstmann & Bryant until March 2009, when it will be discussed at the next due diligence meeting.

5. Request for Proposal (RFP): U.S. Domestic Large Capitalization Growth Equity - Director Blas stated that Winslow Capital Management has been funded. Director Blas stated that the INTECH/JANUS contract has been signed.

6. Request for Proposal (RFP): Legal Services - Director Blas stated that the Selection Panel's recommendation is included in today's meeting packet for Board action. Director Blas stated that the Selection Panel consists of Trustee Katherine Taitano, Trustee George Santos, and Treasurer Gerard Cruz. Trustee Taitano stated that the Selection Panel decided to recommend two firms. The two firms

recommended are Carlsmith Ball LLC and Lujan Aguigui & Perez. Trustee Antolina Leon Guerrero asked whether the second firm is for when there is a conflict of interest. Trustee Taitano stated that the Panel did not intend to identify one firm for conflict only. Director Blas stated that it is not by retainer. Chairman San Agustin asked who will make the determination of which counsel to use. Trustee Taitano stated that there is flexibility on using the second counsel. Chairman San Agustin suggested using the secondary counsel for the Members and Benefits Committee cases. Chairman San Agustin also suggested for some kind of criteria. Trustee Taitano stated that the Selection Panel could develop criteria. Chairman San Agustin stated that the Board could accept the Selection Panel's recommendation and then lay out the administrative procedures. Treasurer Cruz recommended retaining Carlsmith Ball as the Retirement Fund's primary counsel unless decided otherwise.

Trustee Katherine Taitano, seconded by Trustee George Santos, moved to accept the Selection Panel's recommendation to select Carlsmith Ball LLC as the Retirement Fund's primary counsel and Lujan Aguigui & Perez as the Retirement Fund's secondary counsel in response to RFP No. GGRF-018-07. Without objection, the motion passed.

7. Request for Proposal (RFP): Proxy Voting Services - Director Blas stated that revisions were made on the Glass Lewis Agreement and this will be routed to the Board for review.

8. Request for Proposal (RFP): Defined Benefit Investment Consultant Services - Director Blas stated that the RFP for the Defined Benefit Investment Consultant Services closed on October 24, 2008. The Selection Panel consists of: Chairman Joe San Agustin, Trustee Antolina Leon Guerrero, and Rosalia Bordallo, General Accounting Supervisor.

9. Request for Proposal (RFP): Banking Services - Director Blas stated that the Selection Panel met and that the proposals are being reviewed.

10. Public Law 28-38 - Director Blas stated that the monthly interest payments for the Guam Public School System (GPSS) and Guam Memorial Hospital Authority (GMHA) are current.

11. Bernstein Litowitz Berger and Grossmann (BLBG) - Director Blas stated that there is no new update on the Lehman Brothers' case. The brief has been filed already. Director Blas stated that the Retirement Fund has notified BLBG to proceed with the Wachovia Bond Litigation on behalf of the Retirement Fund.

12. Health Plan Study - Director Blas stated that she will move forward with Milliman, Inc. to conduct the health study. Director Blas stated that the Supplemental Agreement with Milliman is ready for signatures. Trustee Leon Guerrero stated that the study could benefit the upcoming Health Insurance Request for Proposal. Trustee Leon Guerrero suggested that Management communicate with the Department of Administration to delay the process in order to review the study.

Chairman San Agustin asked Director Blas to write a letter to Mrs. Ana San Nicolas, Retirees Advocate, thanking her for her services.

Financial Report

1. Contributions - Director Blas stated that all agencies are current with their Fiscal Year 2009 employee and employer contributions.

2. ***Financial Statements / Fiscal Year 2008 Audit -*** Director Blas stated that the books for the month ending December 2008 were closed on January 12, 2009. The Fiscal Year 2008 audit is ongoing.

3. ***Fiscal Year 2008 Retirees' Supplemental Benefits -*** Director Blas stated that the supplemental benefits for retirees and survivors for the month of December 2008 were paid on time.

4. ***Medicare Reimbursements -*** Director Blas stated that the Retirement Fund continues to receive the Fiscal Year 2009 monthly allotments and payments are processed accordingly.

VI. LEGAL COUNSEL'S REPORT

No report was made at this time.

VII. TREASURER'S REPORT OF FINANCIAL STATUS

Treasurer Cruz stated that the Treasurer's Report is provided, at this meeting. It covers the Retirement Fund's Statement of Plan Assets (unaudited) for both the Defined Benefit (DB) Plan and the Defined Contribution (DC) Plan for the month ended December 31, 2008.

Treasurer Cruz stated that the investment total is $986,377,277. This is up from October 2008. This amount is below September 2008 numbers. Chairman San Agustin inquired about the cash flow. Treasurer Cruz stated that there will be no drawdown needed in January. The Retirement Fund is expecting $2.5 Million in February. There is a positive cash flow of $1.4 Million going into February 2009.

Treasurer Cruz stated that the Retirement Fund is in the middle of the 2008 audit. Controller Diana Bernardo stated that Doris Flores Brooks, Public Auditor, wants the draft audit this month. The final deadline is March 1, 2009.

VIII. STANDING COMMITTEE REPORTS

A. Members and Benefits Committee

Trustee George Santos presented his Committee's December 2008 and January 2009 reports to the Board of Trustees.

Trustee George Santos, seconded by Treasurer Gerard Cruz, moved to approve the recommendation of the Members and Benefits Committee contained on Pages 4 through 16, including the attached Annuity Worksheets, based on the Committee's review and findings during their meeting of December 10, 2008 and subsequent meetings thereafter. Without objection, the motion passed.

Trustee Santos stated that the disability applicants on Page 17 of the committee report will be heard at 2:00 p.m. this afternoon. Director Blas stated that Case No. 08-4401 asked to be rescheduled until the February 2009 Board meeting.

Trustee George Santos, seconded by Treasurer Gerard Cruz, moved to approve the recommendation of the Members and Benefits Committee contained on Pages 4 through 14, including the attached Annuity Worksheets, based on the Committee's review and findings during their meeting of January 14, 2009 and subsequent meetings thereafter. Without objection, the motion passed.

THE DEFINED BENEFITS MEETING WAS RECESSED AT 1:45 P.M.
(TO GO INTO THE DEFINED CONTRIBUTION MEETING)

THE DEFINED BENEFITS MEETING RECONVENED AT 1:55 P.M.

MEMBERS AND BENEFITS DISABILITY APPEALS HEARING

Chairman San Agustin stated that the Board of Trustees will hear the disability appeals cases currently before the Board.

CASE NO. 08-2361

Dr. John Steele, Medical Consultant, read out loud his summary report of November 5, 2008. "In our Committee discussion, we agreed that I would speak with Dr. William Fell to discuss these medical and surgical options of management of the case. I said I would then report back to the Committee with Dr. Fells' opinion and recommendations for management of the case. On October 1, 2008, the Retirement Fund received a letter from Dr. Fell certifying that the applicant had incapacitating vertigo. It attached an audiogram which showed a mild hearing loss in the right ear and that supported the diagnosis of Meniere's disease. Dr. Fell reported the patient had received medical therapy which had not provided benefit and that the option was to pursue procedures, including application of middle ear steroid of gentamicin which might alleviate the applicant's symptoms. Dr. Steele stated that he followed up this letter with a request to interview Dr. Fell. Because of patient confidentiality, Dr. Fell's secretary first phoned the applicant to ask for his/her permission that Dr. Steele be allowed to discuss the applicant's diagnosis and case management with Dr. Fell. Dr. Fell's secretary reported that the applicant would not allow this meeting. Dr. Steele therefore has not spoken directly with Dr. Fell."

Dr. Steele's comment was that histories and testimony by numerous family and friends who know the applicant confirmed that the applicant is affected by a severe form of Meniere's disease of the right ear. However the maximal disability rating for this disease by AMA Guidelines is 30%. This is much below the level required for disability pension. Because Meniere's disease may cease spontaneously, the applicant's condition can not be said to be permanent. Furthermore, though the applicant is affected by the uncomfortable sensation of vertigo, the applicant is not totally disabled by it. Dr. Steele stated that he thinks that the applicant's medical management is not being guided by specialists familiar and experienced with the management of incapacitating Meniere's disease. Dr. Steele stated that by his neurological training and personal experience, he is quite certain there are noninvasive medical managements and safe surgical procedures which hold a high degree of success. It is therefore most desirable for the applicant to be seen at a specialty clinic on the mainland. Dr. Steele stated that he senses that the applicant may choose the current situation since the applicant's mother-in-law who suffers the same disease is extremely negative about procedures and believes that she can not be helped.

Dr. Steele stated in his conclusion that he recommends that the Board continue to deny disability pension because the applicant's disability by AMA Guidelines is low (i.e., 30%) and the applicant is neither totally nor permanently disabled by Meniere's disease.

Chairman San Agustin asked what Dr. Fell's conclusion is. Dr. Steele stated that Dr. Fell's letter stated that "the patient has already been through maximal medical therapy and this has not provided any benefit and at this time the applicant is incapacitated by the problem and is unable to work." Legal Counsel Elyze McDonald stated that Dr. Fell's letter should be submitted for the record and Dr. Steele should reference the applicant by case number.

At this time, Dr. Steele read out loud his summary report of May 12, 2008. "On November 22, 2007, I prepared a summary report about this 33 year old Data Control Clerk II with the Bureau of Statistics and Planning who made application on October 12, 2007 for disability retirement because of Meniere's disease. The applicant's symptoms had begun in 2002 and since July 2006, they had been persistent and disabling. The applicant suffered tinnitus in the right ear, diminished hearing in the right ear, and episodes of vertigo. These are the hallmark symptoms of Meniere's disease. The applicant also experienced imbalance when walking and was liable to stumble and fall. By AMA Guidelines, the applicant suffered 11% to 30% impairment of the whole person because of this condition. I did not feel the applicant was a candidate for Medical Disability Retirement and I was optimistic that further management would relieve the applicant's disabling symptoms. Because the applicant did not agree with this decision, the applicant made application for further evaluation. The applicant was therefore seen on April 22, 2008 by Internist Vincent Duenas for the Retirement Fund. By AMA Guidelines, Dr. Duenas assessed the applicant's disability as 30%."

Dr. Steele stated in his summary and recommendation that a third examiner for the Retirement Fund finds the applicant's disability for Meniere's disease to be below 50% (i.e. 30%). Dr. Steele stated that there are very effective medical and surgical treatments for severe forms of this disease and is certain that they will be recommended by Dr. Fell, the ENT specialist who is currently seeing the applicant. Dr. Steele stated that he recommends that the Board continue to deny disability pension.

Chairman San Agustin asked Legal Counsel to define disability. Legal Counsel McDonald read the definition of disability out loud from 4GCA Section 8123 (a) – "A member less than sixty-five (65) years of age, who shall become totally and permanently disabled for service, either mentally or physically, regardless of how or where the disability shall have occurred after joining the Retirement Fund, shall be entitled to a disability retirement annuity; provided, that he is not receiving disability payments from the United States Government for substantially the same ailment; and further provided that, to be eligible for a disability retirement annuity from a non-occupational cause, he shall have had at least six (6) years of actual service as a member of the Government of Guam Retirement Fund prior thereto, or five (5) years of actual service as a member of the Government of Guam Retirement Fund prior thereto if he has been medically certified to be terminally ill." Chairman San Agustin asked whether the three physicians met the requirements of the statute. Dr. Steele replied, "No." Legal Counsel McDonald stated that the Board should consider the entire packet. Chairman San Agustin stated to rely on the physician and assess whether the applicant is totally and permanently disabled. Trustee Leon Guerrero asked whether the AMA Guidelines was used at rating the applicant at 30% impairment. Legal Counsel McDonald recommended having Dr. Steele explain the use of the AMA Guidelines. Dr. Steele stated that the Retirement Fund adopted a resolution to follow the AMA

Guidelines. Chairman San Agustin sated that the three physicians consistently rated the applicant 30% impaired.

At this time Chairman San Agustin asked whether the applicant would like to address the Board of Trustees and if so, the applicant was advised that he/she would then waive his/her right of privacy. Chairman San Agustin indicated that no one came forward to address the Board.

Treasurer Cruz stated that there is a chance that the applicant may improve or get worse, which may cause other symptoms, and then the applicant may again apply as a new applicant. Director Blas stated that there is no limitation. Trustee Leon Guerrero stated that Dr. Fell had suggested a procedure. Dr. Steele stated that the safe option is to treat the nerve so it would cease to function. Dr. Steele stated that as a physician he is distressed that the applicant has not been advised of other ways, options, or remedies to take. Legal Counsel McDonald stated that the applicants should be assessed. Chairman San Agustin stated that the Board can not suggest medical remedies.

Trustee Antolina Leon Guerrero, seconded by Trustee Katherine Taitano, moved to accept the findings and recommendation that the applicant does not meet the requirements of the AMA Guidelines and to disapprove disability for Case No. 08-2361. With a unanimous vote of yes, the motion passed.

CASE NO. 08-2536

Legal Counsel McDonald stated Case No. 08-2536 was previously denied by the Board of Trustees and is now on appeal.

Dr. Steele, Medical Consultant, read out loud his summary report of September 12, 2008. "On January 6, 2003, I prepared a disability assessment summary of this applicant who was then 45 years of age and who suffered chronic muscle pain after a trivial work injury. The applicant was obese and during the same time the applicant had suffered bilateral carpal tunnel syndrome which was partially relieved by median nerve release on the right but was not operated on the left. The applicant was known to suffer uncomplicated hypertension and to have suffered hypothyroidism in the past. The applicant had been seen by multiple specialists and their evaluations had reached widely differing conclusions. Though some felt the applicant suffered fibromyalgia to account for the applicant's chronic pain, others did not agree with that diagnosis. Some had found the applicant to be depressed and others not to be depressed. For many years, the applicant had been compensated by the Workers Compensation Commission through payments by the Guam Memorial Hospital Authority (GMHA). The applicant's disability rating by AMA Guidelines was very low, but because the applicant's primary physician, Dr. Ericson, was a strong advocate for disability, I recommended that the applicant be interviewed by members of the Retirement Fund. On July 29, 2008, I prepared another report after receiving clinical notes by Neurologist K.M. Chen. In an opinion of March 29, 2003, he concluded "the applicant is still suffering from complications of carpal tunnel syndrome despite surgery twice on the right hand. The applicant should be considered for permanent disability." I continued to feel that the applicant's symptoms of carpal tunnel syndrome and chronic pain which had also been assessed by Physiatrist Salzberg was less than 5%, and did not warrant a disability pension. My next note about the applicant was July 9, 2007. The applicant had made a new application for disability on December 22, 2006. The applicant's claim then was for "carpal tunnel syndrome, chronic back pain, neck pain, arthritis, thyroid, hypertension, diabetes, depression." The applicant had not worked since 1992 and continued to receive compensation through the Workers Compensation Commission and GMHA. Peter John

Camacho GMHA Administrator confirmed that the applicant had not worked at the Hospital for more than ten years. "The employee claims he/she is unable to stand or to sit for a prolong period of time. Employee is unable to type due to carpal tunnel syndrome. Employee sustained a back injury in 1992 which at the time was attributed to transporting a patient to their room." He reported, "As of 2005 the employee is on an indefinite leave status approved by the applicant's physician, Dr. Kwang Ming Chen." Mr. Camacho's report concludes "based on the applicant's physician's statement provided to the Authority, employee is unable to work due to multiple and serious medical reasons provided by the applicant's physician." At the time of the applicant's new application in 2006, the applicant's physician was Dr. Lombard and Dr. Ericson no longer cared for the applicant. The applicant was assessed for disability by Psychiatrist Victor Perez on April 3, 2007. He noted, "The chronic pain condition mimics physical activity." He assigned a disability rating of Class 4 for mental and behavior disorder and gave a percentage disability of 80%. In the AMA Guidelines Table 14-1 (page 363 of the Fifth Edition Class 4) this class is defined as "marked impairment with levels significantly impairing useful functioning." The AMA Guidelines do not attach a disability rating by percentage impairment, and the 80% impairment assigned by Dr. Perez was arbitrary. Furthermore, though he assigned this very high percentage impairment, in his evaluation he reported that the applicant's thought process was normal as was association. The application had no hallucination, delusion or dangerous ideation. He felt the applicant's psychiatric examination and mental state were normal. The applicant's insight was appropriate and the applicant showed good judgment. Psychiatrist Perez did not feel there was significant depression of the applicant's mood though the applicant's affect was depressed. His evaluation indicated that the applicant had a long history of depression and chronic pain. He felt both conditions prevented the applicant from working. The applicant had seen a psychiatrist since 1992 and continued to receive services from the Department of Mental Health and Substance Abuse.

Dr. Steele stated that on February 8, 2007, the applicant was also assessed by Dr. Fred Schroeder who concluded the applicant's symptoms were worsening pain in the neck shoulders and arms yet the applicant's examinations showed no significant decrease in their range of motion or decrease of strength. The applicant also complained of low back pain and though the applicant showed a decrease in the range of its movement this was not associated with any neurological deficit. He noted that the applicant had complaints of carpal tunnel syndrome and tarsal tunnel syndrome but the applicant's physical findings did not confirm this. His estimate of disability was 45% for low back pain, carpal tunnel syndrome, neck pain, diabetes, hypertension and hypothyroidism. He regarded the applicant's depression as Class 3 which is, "moderate impairment compatible with some, but not all useful functioning." He assigned a disability rating for that of 14% giving a total disability rating of 53%.

Dr. Steele stated that in his summary of July 9, 2007, he felt the applicant's medical condition and symptoms had been evaluated by many doctors and specialist since a trivial injury in 1992 and the consensus was that the applicant's disability by AMA Guidelines was very low. The applicant's primary symptoms was of chronic pain and though evaluators spoke of the applicant being depressed, objective symptoms of depression were not recorded by the applicant's examiners including Psychiatrist Perez. Dr. Steele stated that, on July 9, 2007, he recommended that we continue to deny disability pension.

Dr. Steele stated that the applicant was seen by Internist Dr. Doris Lim for a third opinion on December 3, 2007. Dr. Lim assessed the applicant's disability by AMA Guidelines to be Class 1 to 3 for mental and behavioral disorder and the upper extremity (i.e. carpal tunnel syndrome). The applicant's disability for depression was between, "impairment levels that are compatible with most

useful functioning, and impairment levels that are compatible with some but not all useful functioning." Dr. Lim did not assign a value for disability.

Dr. Steel stated that on February 3, 2008, he again prepared a summary evaluation which included Dr. Lim's opinion of 2007. Dr. Steele stated that in his comment, he wrote: "this 49 year old former GMHA employee has not been employed for many years after a trivial injury at work in 1992. The applicant's application for disability pension was rejected by the Retirement Fund in 2003. The applicant again made application in 2007. The applicant's symptoms remain the same. The applicant's primary physician ranks the applicant's disability as 100% without reference to AMA Guidelines. Psychiatrist Perez assesses 80% disability for mental and behavioral disorder. Dr. Schroeder assesses 45% by AMA Guidelines for medical diseases which do not include a disability component for depression but which he estimates as only 14%. A recent opinion by Dr. Lim was not helpful in clarifying the applicant's disability status or providing a value of disability. Dr. Steele stated that he recommended that the Retirement Fund members interview the applicant to understand the applicant's disability and the applicant's life during the applicant's many years of unemployment.

Dr. Steele stated that the applicant was interviewed by the Retirement Fund members following this recommendation and the applicant came with his/her lawyer. Both were upset with me and the Retirement Fund for not awarding the applicant a disability pension. During the interview, the applicant spoke forcibly and the applicant's movements were entirely normal and the applicant exhibited no physical limitation or disability. The applicant was outspoken and clear in his/her statements and there was nothing in the applicant's manner or mood to suggest significant depression. It seemed clear to all those who participated in this interview that the applicant did not deserve a full medical disability. The applicant's lawyer disagreed and threatened legal action against the Board if the applicant did not receive it.

Dr. Steele stated that the Retirement Fund has recently received a further submission which begins with an application completed by Dr. Jeffrey Nasir on September 16, 2008. In this first page, he concludes the applicant's diagnoses are, "severe panic, anxiety, and depression complicated by multiple medical symptoms. The applicant's symptoms had begun in 1992 and the applicant had consulted him since March 26, 2008. He completed only the first page. In his certification of disability, he did not find the patient was totally disabled. The applicant's condition was not improving. The applicant was ambulatory. Dr. Steele stated that because Dr. Nasir was not available to complete this assessment, Dr. Schroeder agreed to complete it and he provided his reevaluation which was received by the Retirement Fund on August 29, 2008. He indicated that he had been asked by the Retirement Fund to provide an updated disability evaluation of the applicant. He noted that on several occasions the applicant's application for disability retirement had been denied. The applicant's symptoms to him in August 2008 were those of carpal tunnel syndrome, bilateral foot pain, pain syndrome, hypothyroidism, depression, vertigo, hypertension, diabetes, and residual hip and knee pain related to a "fall."

In respect to:
1) Carpal tunnel syndrome: The applicant complains of "bothersome numbness of his/her hands and describes frequently dropping things and difficulty picking up small objects;"
2) Foot pain – The applicant has "experience this for ten years and on the left, the applicant has a painful heel pain. Though surgery was recommended for its removal, the applicant has not proceeded with this and has pain in the heel with prolong standing so, the applicant may limp and need to sit

down. A heavy cabinet fell on the applicant's right toe many years ago and since that time the applicant has continued to have pain in that toe;"
3) Myofascial pain syndrome – "The applicant has been diagnosed with myofascial pain syndrome or fibromyalgia." The applicant's symptoms were those of pain in the shoulders and neck. The applicant had difficulty in raising his/her arms above his/her head. Different therapies had had little effect on this chronic pain syndrome;
4) Hypothyroid – "The applicant has been treated for hypothyroidism for fifteen years. With medication, the applicant is euthyroid and asymptomatic;"
5) Depression – "The applicant had been diagnosed with depression. The applicant had been on multiple medications. The applicant continues to be followed by Mental Health for this. The applicant has never required hospitalization for depression. The applicant admits to some suicidal thoughts but has never attempted suicide;"
6) Vertigo – "Several times in a month, the applicant experiences what he/she describes as a vertigo which may last for several days and which is accompanied by nausea and vomiting. The applicant attributes it to the changes in the weather." Whether this is truly vertigo or some other symptom is not certain and Dr. Schroeder did not induce vertigo by cold caloric testing;
7) Hypertension – "The applicant has had hypertension for ten years and reported to Dr. Schroeder that he/she had had high values at times up to 200/100. On occasion, the applicant was seen in the emergency room. In his examination of the applicant, Dr. Schroeder records his/her blood pressure as 120/80, which is normal;
8) Diabetes – Dr. Schroeder records that the applicant has had diabetes for a long time and is currently on oral therapy and has a variable blood sugar. The applicant reports some blurring of his/her vision;
9) Fall – In 2000, the applicant slipped on a wet floor and fell hard. Since that injury, the applicant had been bothered by pain and his/her hips and knees. However, the applicant reported that he/she could stand for 10 to 15 minutes before he/she had to sit down. The applicant was able to walk for 10 to 15 minutes. The applicant could lift five to ten pounds. After sitting for 30 minutes, the applicant needed to get up and stretch and move about.

Dr. Steele stated that the earlier examiner, familiar with the syndrome of fibromyalgia had evaluated the applicant. In April 1996, Bruce Gilliland, Professor of Medicine and a Rheumatology from Washington, examined the applicant. He noted that the applicant had been given the diagnosis of fibromyalgia. "The applicant's symptoms had begun abruptly during his/her work when the applicant was transporting an OB patient to the delivery room." The applicant had complaints of both low back pain and cervical pain since that time. The applicant was also experiencing wide spread mascuskeletal pain. The applicant had been tried on a variety of medications. His examinations revealed diffuse tenderness over the classic tender points. The applicant was however very tender also over the control points such as the forehead, the third finger, medial meliles and medical and medial clavicle. He noted that the patient had a somewhat, "indifferent response to his/her statements that pressure on the tender points hurt. The patient indicates that he/she did not know how he/she could stand living with all the pain that he/she is having." There is no question the patient has been trying to give a pain response to the examiners palpation of his/her mascuskeletal. In any event, the diagnosis is debatable when the control points are also tender. The disability issue is an important aspect to this case. I don't think that we should get into this situation where we try to quantitate the amount of the applicant's disability. There is no question that this patient has some disability however because of the patient examination and which the control points are also tender, some investigator in this field would question the diagnosis of fibromyalgia particularly when there is litigation or disability involved." (Abstracted from Dr. Gilliland's consultation.)

Dr. Steele stated that in June 2002, Physiatrist Charles Salzberg who is an expert about fibromyalgia evaluated the applicant for the Retirement Fund. The applicant's complaints to him were of neck pain, bilateral hand pain and carpal tunnel syndrome with symptomatology in both hands. He recorded that the applicant's symptoms had been present for ten years. The applicant had had two carpal tunnel surgeries on the right hand. The applicant's neck pain caused headaches. On a pain scale of 1 to 10, the applicant ranked his/her pain during Dr. Salzberg's examinations as 9. The applicant described the pain as aching pins and needles in the neck and upper extremities, specifically the hands. The applicant's pain complaints in the hands were worse at night and wakened him/her. On examination, he found a limitation in the cervical range in movement. There was no significant neurological or musculoskeletal abnormality. Dr. Salzberg concluded, "The patient has bilateral carpal tunnel symptomatology. The right hand was previously released. The left hand still is symptomatic and needs to undergo surgery. From a medical source statement point of view, I see no limitation and why the patient could not lift or carry weights on a frequent basis. The applicant has no limitation with sitting, walking, bending, squatting, stooping, kneeling, crouching or crawling. The applicant does have limitation using his/her bilateral hands repetitively. Manuel muscle strength in the bilateral hands is decreased. The applicant does have weakness and difficulty using his/her finger for fine motor control. The applicant has difficulty with handling. The applicant however has no difficulty with the sensation in the bilateral hands or the feet although the applicant does lack 2 points discrimination in the bilateral hands more so on the left than the right." Dr. Salzberg concluded, "I would state that the applicant's impairment according to the AMA guides to the evaluation of permanent impairment would equal a 5% impairment of the whole person. This is based on bilateral hand weakness as well as a lack of two point discrimination."

Dr. Steele stated that the applicant's last work at GMHA many years ago as a patient service representative. It required a fair amount of sitting at a desk but also some moving about from place to place. The applicant has been off work because of his/her injury since 1992. Dr. Steele stated that Dr. Schroeder did not specific the applicant's normal daily activities at his/her home or in the community. On examinations, the applicant weighed 182 lbs and his/her height was 4'10 inches. The applicant's general examination by Dr. Schroeder was normal. The applicant's neck movement was limited and there was tenderness over the cervical paraspinal muscles and both trapezius muscles. The shoulders could be abducted to 90 degrees. There was full range of movement of the elbows and of the wrist and hands. The applicant's grip was good in both hands. There was very mild diminution on the right and left which was a little more prominent on the left (i.e. 4/5). The applicant was able to pick up small objects with only mild difficulty. There was no sensory impairment and monofilament testing showed sensation was normal over both hands. The applicant was able to abduct the hips to 65 to 75 degrees and the applicant experienced mild pain which was more prominent on the right. Both knees showed a full range in movement but were tender to palpation. The applicant's back showed a reduced range of movement and tenderness over the paraspinal muscle. The applicant's gait was slow and the applicant limped.

Dr. Steele stated that Dr. Schroeder assigned a disability rating of 49% by AMA guidelines for cardiovascular/hypertension, endocrine, diabetes, hypothyroidism, upper extremities/carpal tunnel. All these assignments are on the high side given that the applicant's blood pressure is now normal, the applicant's diabetes is uncomplicated and manages by oral medication, hypothyroidism is controlled by medication, and the applicant does not show any significant impairment from carpal tunnel syndrome. Dr. Schroeder's assignment of 49% is too high for metabolic disease. Dr. Schroeder does

not include disability ratings for the applicant's muscle pain and mood disorder which he attributes to fibromyalgia and depression. He does not record the classical symptoms of fibromyalgia or signs of depression in his examination.

Dr. Steele, in his comment, stated that by these evaluations, it is unlikely that the patient suffers a true myofascial syndrome of fibromyalgia. These symptoms recorded by Dr. Schroeder do not indicate serious depression. This former GMHA employee has experienced chronic pain since a trivial injury at the applicant's work in 1992. The applicant has not been employed since that time and has received compensation from the Worker Compensation Commission and from GMHA. In 2003, the applicant's application for disability retirement was carefully considered and the opinions of many physicians who had assessed the applicant were considered. The Retirement Fund disallowed disability. In 2007, the applicant reapplied for a disability pension. The applicant's symptoms were the same and had not altered. They were those of chronic pain and of depression. During this past 14 months, since July 2007, the applicant has been carefully reevaluated by examiners for the Retirement Fund and by physicians of the applicant's choosing. Past and present evaluations indicate that fibromyalgia is unlikely and the applicant's symptoms of chronic muscle pain do no relate to this diagnosis. The severity of the applicant's depression is difficult to assess but the applicant does not have symptoms or evidence of disabling symptoms of this condition. The applicant's disability by examiners using AMA Guidelines remains below 75%.

Dr. Steele, in his opinion, stated that after careful and objective review and given the opinions of many physicians who have evaluated the applicant, "I continue to feel the applicant's disability is not total." Though the applicant's symptoms have persisted for many years, they have not resulted in physical disability and could still abate, so the applicant's disability is not permanent. Dr. Steele stated that his recommendation is for the Board to continue to deny disability pension.

Dr. Steele read out loud his November 5, 2008 report which is an addendum to his report of September 12, 2008. "Subsequent to my report of September 12, 2008, the Retirement Fund received radiological reports from Guam Radiology Consultants. Multiple examinations that had been ordered by Dr. Fred Schroeder were performed on October 6, 2008. They had been done to clarify earlier x-ray studies of August 29, 2008. Those studies of August 29, 2008 included normal x-rays of the thoracic spine and of both shoulders. A view of the pelvis and bilateral hip series on August 29, 2008 showed a suspicious bone lesion of the right femur 17 centimeters from the hip joint, which was incompletely imaged. A lumbosacral spine series showed narrowing of the L5-S1 intervertebral disks space compatible with degenerative disk disease. It also showed probable right nephrolithiasis. The examinations of October 6, 2008 include: 1) A contrast MRI of the lumbosacral spine: The report concludes "minimal degeneration disk disease found at L5-S1." There is no evidence of spondylosis or facet arthrosis. There is a normal appearing central canal, lateral recesses in the intervertebral neuroforamina are demonstrated; 2) MRI of the right hip: The report concludes "there is minimal hyper intense signal adjacent to the greater trochanter at the tendons insertion of the gluteus medius." These findings suggest tendinosis or possible greater to trochanter bursitis. No other abnormalities of the hip or right femur are apparent; 3) MRI of the right femur: This examination showed "endosteal cortical thickening of the proximal right femoral diaphyseal." There were no periosseous abnormalities and the suspicious lesion of the femur seen by plain x-ray on August 29, 2008 was not confirmed."

Dr. Steele stated in his summary and conclusion that the MRI imaging studies done on October 6, 2008 to clarify minor abnormalities seen in plain x-rays of the lumbosacral spine and right femur of August 29, 2008 are now reported. They show minor lumbar spondylitic change at L5-L1 which is compatible with the patient's age. A suspicious lesion of the right femur seen on the plain x-ray of August 29, 2008 is not confirmed by MRI scan of the right femur. The radiologist recommends "continued clinical, radiographic and MRI surveillance with repeat imaging studies in three months if the patient's clinical symptoms are warrant." These multiple x-ray studies do not contribute new information about the patient's application for disability, nor do they offer support for it. Dr. Steele dated that his opinion remains as of September 12, 2008 and does not recommend disability pension.

Chairman San Agustin stated that there were two physicians. Chairman San Agustin asked whether the first application was denied and was not appealed. Director Blas stated that the applicant was denied, appealed, and denied. Director Blas stated that this is a new application (applied in 2006). Chairman San Agustin asked why there is a second application. Dr. Steele stated that the applicant's ailment has progressed.

Chairman San Agustin stated that the applicant has gone to every aspect of a medical examination. Chairman San Agustin stated that the related symptoms add in to the applicant's diabetes. Trustee Taitano asked Dr. Steele why he mentioned that Dr. Doris Lim's evaluation was not helpful. Dr. Steele stated that he did not pick up 15% of the impairment made by Dr. Lim. Dr. Steele stated that it was an oversight. Trustee Leon Guerrero asked what is the relevance of the April 9, 1996 report. Legal Counsel McDonald stated that the Board should be looking at the full reports by the physicians.

At this time Chairman San Agustin recognized Attorney Jeffrey Cook. Attorney Cook stated that, as counsel of record, he should have been given notice of the meeting date. Vice-Chairman Leon Guerrero reiterated on the waiver of privacy. Attorney Cook asked where does it show that the Retirement Fund is using the AMA Guidelines. Chairman San Agustin stated that the Retirement Fund Board of Trustees adopted use of the AMA Guidelines. Legal Counsel McDonald stated that it was passed by resolution. Attorney Cook stated that Page 17 of the "General Multi-System Examination" form sent to physicians (reads out loud page 17 question and answer) "Within reasonable medical probability and AMA standards of disability determination, does the applicant have some impairment of body or mind that substantially precludes him/her from performing, with reasonable regularity, the substantial and material parts of any of the following? 1. Any gainful work or occupation that he/she would be competent to perform was it not for that impairment? (Answer – Yes); 2. The duties of any assigned position in the service of the Government of Guam? (Answer – Yes); 3. The current material and essential functions of his/her position, as described in the attached Department Head Statement? (Answer – Yes); 4. If yes to any of the above, please answer whether it is reasonably certain that such impairment will continue indefinitely? (Answer – Yes)." Attorney Cook inquired about the 75% impairment threshold. Attorney Cook stated that the word impairment should preclude a person from employment. The physicians answered yes on the form but the Retirement Fund needs to meet the AMA rating of 75%. Legal Counsel McDonald stated that the Board has discretion to follow or not to follow the physicians report. Legal Counsel McDonald stated that the Board should not rely on percentage but should consider the physicians reports for the Board consideration. Attorney Cook asked the Board to consider the physicians' ratings.

At this time the applicant, Jane Story, apologizes to Dr. Steele on her outburst from the last meeting. Ms. Story informed the Board that she did report back to work and she fell. Ms. Story stated that she

can not function; she can not work in her condition. Attorney Cook again asked the Board to consider the case. Attorney Cook stated that he questions the policy that seems to go against the statute. Attorney Cook stated that the question of the Retirement Fund's form needs to be clarified. Attorney Cook stated that the statute does not talk about percentage. Trustee Leon Guerrero stated that the Board relies on the physician to evaluate the applicants. Attorney Cook mentioned that Ms. Story was on Workman's Compensation and her salary cut-off. Ms. Story is now not getting paid at all. Dr. Steele stated that his role is to put the medical opinions together and is very careful in assembling the reports. There are different criteria. It is a percentage of impairment. Dr. Steele stated that it is from experience based on the AMA Guidelines. Dr. Steele stated that he does agree with Attorney Cook that the form on Page 17 does need to be taken out or reworded. Dr. Steele thanked Attorney Cook for pointing out the questions and answers on Page 17 General Multi-System Examination form. Treasurer Cruz asked Dr. Steele what an 80% depressed person would look like. Dr. Steele stated that the individual won't even be here at the meeting.

Treasurer Gerard Cruz, seconded by Trustee George Santos, moved to deny the disability appeal for Case No. 08-2536, based on all the physicians' reports. With a unanimous vote of yes, the motion passed.

B. Investment Committee

Vice-Chairman Wilfred Leon Guerrero reported that the Investment Committee met on January 9, 2009. The Committee reviewed and approved the Investment Committee Minutes of November 14, 2008.

Vice-Chairman Leon Guerrero stated that the following was discussed and approved by the Investment Committee for Board action:

1. Bernstein's December 29, 2008 Letter "Wachovia Securities Litigation" - Vice-Chairman Leon Guerrero stated there is a request for Bernstein Litowitz Berger & Grossmann (BLBG) to file a lawsuit claiming $88,435 from the purchase of a bond issued by Wachovia which was not included in the lawsuit filed in June 2008. Vice-Chairman Leon Guerrero stated that BLBG could recover the Retirement Fund's loss of $88,435.00. Vice-Chairman Leon Guerrero stated that the Investment Committee recommends that the Board affirm the Committee's decision to authorize BLBG to proceed with the filing of claims on behalf of the Retirement Fund.

Vice-Chairman Wilfred Leon Guerrero, seconded by Trustee Gerard Cruz, moved to approve the Investment Committee's decision to authorize Bernstein Litowitz Berger & Grossmann to proceed with the filing of claims against Wachovia Corporation on behalf of the Retirement Fund. Without objection, the motion passed.

Information Items

1. Income Research & Management (IRM) – Vice-Chairman Leon Guerrero stated that the Investment Committee reviewed IRM's request to move $19 Million of the Commercial Mortgage Backed Securities out of the IRM Portfolio, and to extend the "Guideline Waiver" beyond the six-month time frame granted by the Board of Trustees in October 2008. Controller Bernardo stated that it will be transferred into the Transition Portfolio. Vice-Chairman Leon Guerrero stated the Investment Committee will be meeting with IRM in March. Vice-Chairman Leon Guerrero recommended

deferring IRM's request until March 2009. Secretary James Taylor asked if it was possible for the Retirement Fund to sue the previous bond manager. Management indicated they would follow up on the question.

2. Fund of the Remaining Managers

a. Vice-Chairman Leon Guerrero stated that funding of the following managers was deferred for discussion during the meetings with Mercer Investment Consulting, Inc. during the next quarterly performance meeting in March 2009:

1. Cornerstone (REITS) – was partially funded $13.8 Million on December 2008.
2. Security Capital Research & Management (REITS) – was partially funded $9.2 Million on December 2008.
3. Thomson Horstmann & Bryant (U.S. Domestic Small Cap) – not funded – pending meeting in March 2009.

b. INTECH/JANUS – Vice-Chairman Leon Guerrero stated that once all signatures are obtained on the agreement, INTECH/JANUS will be funded via the transfer of assets from an existing manager.

3. Asset Allocation – Vice-Chairman Leon Guerrero stated that the total market value of the portfolio dropped from approximately $1.129 Billion at September 30, 2008 to approximately $986.3 Million as of January 7, 2009.

4. March 4, 5, and 6, 2009 "Quarterly Performance and Annual Manager Reviews" – Vice-Chairman Leon Guerrero stated that the Investment Committee reviewed and discussed the Agenda for the December 2008 Quarterly Performance Review and the Annual Review of the Non-U.S. Equity and Fixed Income Managers. A copy of the Agenda is provided, at this meeting, for the Board's information.

C. Audit Committee

No report was made at this time.

D. Governmental Liaison

No report was made at this time.

IX. OLD BUSINESS

None

X. NEW BUSINESS

None

XI. OPEN DISCUSSION / GENERAL PUBLIC INPUT

None

XII. ANNOUNCEMENTS

None

XIII. ADJOURNMENT

There being no further business before the Board for the Defined Benefits Plan, on motion of Trustee George Santos, seconded by Treasurer Gerard Cruz, and without objection, the meeting was adjourned at 4:12 p.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of January 16, 2009 Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on March 6, 2009.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas