

GOVERNMENT OF GUAM
RETIREMENT FUND
 STABILITY · SECURITY · REWARDS

Eddie Baza Calvo
 Governor

Ray Tenorio
 Lieutenant Governor

Paula M. Blas
 Director

BOARD OF TRUSTEES
Regular Meeting
 Friday, July 29, 2011, 12:00 p.m.
 Retirement Fund Conference Room

Trustees:

Joe T. San Agustin
 Chairman

Wilfred P. Leon Guerrero, Ed.D.
 Vice-Chairman
 Investment Committee, Chairman

Antolina S. Leon Guerrero
 Secretary

Gerard A. Cruz
 Treasurer
 Audit & Operations Committee,
 Chairman

George A. Santos
 Members' & Benefits Committee,
 Chairman

Katherine T.E. Taitano
 Trustee

Wilfred G. Aflague
 Trustee

MINUTES

DEFINED BENEFITS

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 12:28 p.m. Friday, July 29, 2011, 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
 Antolina S. Leon Guerrero, Secretary
 Gerard A. Cruz, Treasurer
 Wilfred G. Aflague, Trustee
 George A. Santos, Trustee

Board of Trustees Absent:

Katherine T.E. Taitano, Trustee (*Excused*)

Staff Present:

Paula Blas, Director
 Diana Bernardo, Controller
 Rosalia Bordallo, General Accounting Supervisor
 Jackie Blas, Recording Secretary
 Alice Tajjeron, Great-West Retirement Services
 Kenneth Dunstan, Benefit Program Administrator
 Jackie Sablan, Benefit Specialist II

Legal Counsel Present:

Joanne Grimes & Elyze McDonald Iriarte, Carlsmith Ball LLP

Investment Consultant Present:

Maggie Ralbovsky and Howard Yata, Wilshire Associates

Public Present:

Ricky Hernandez, Senator Ben Pangelinan's Office of Finance and Budget
 Mark Heath, Metropolitan West Capital Management
 Attorney Ricardo Bordallo, Eddie Benavente

Chairman San Agustin asked whether the Board of Trustees would agree to change the order of business and start with the Defined Benefits Meeting first. The Board indicated they have no objection to changing the order of business.

II. REVIEW AND APPROVAL OF BOARD MINUTES

A. June 24, 2011 Regular Meeting

On motion of Secretary Antolina Leon Guerrero, seconded by Trustee George Santos, and without objection, the Minutes of June 24, 2011 Regular Meeting were approved, subject to technical corrections. Motion unanimously 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 additional funding has been appropriated through Public Law 31-74, but funds will not be available until the reimbursement from Guam Waterworks Authority (GWA) to the General Fund has been completed. Director Blas stated that 50% of the reimbursement will be used to pay principal and interest of the COLA Certificates.

2. *Public Law 28-38: Interest Only Payments* – Director Blas stated that the monthly interest payments for Department of Education (DOE) and Guam Memorial Hospital Authority (GMHA) due on July 10, 2011 were paid. The Retirement Fund continues to process retirement applications for DOE and GMHA. Director Blas stated that beginning August 2011, the Retirement Fund will indicate what the savings is.

3. *Guam Memorial Hospital Authority (GMHA) Outstanding Contributions* – Director Blas stated that the Retirement Fund filed a Petition for Writ of Mandamus against GMHA on January 25, 2011. Judge Vernon Perez has not rendered his decision.

4. *Bernstein Litowitz Berger and Grossmann (BLBG)* – Director Blas stated that BLBG's Litigation Status Report dated July 26, 2011 on the following lawsuits is provided for the Board's information:

- **Lehman Brothers** – BLBG is waiting for the Court's decision on the motion to dismiss.
- **Wells Fargo** – BLBG filed a Motion for Preliminary Approval of the Settlement on July 6, 2011. The Court has scheduled a final approval hearing for October 27, 2011.
- **Genzyme Corporation** – BLBG is waiting for the Court's decision on the motion to dismiss.
- **Countrywide** - The Court issued an order placing an indefinite continuance on the final approval hearing date.
- **AXA Rosenberg** – A hearing on defendants' motion to dismiss is currently scheduled for October 14, 2011 in San Francisco.

Director Blas stated that the complaint was filed on July 28, 2011. Chairman San Agustin inquired about the total exposure less the original costs. Chairman San Agustin stated that the amount recovered will be a capital gain. Chairman San Agustin asked for a numerical sequence of the settlement amounts.

Financial Reports

1. **Contributions** – Director Blas stated that as of July 26, 2011, all agencies are current with their Fiscal Year 2011 employee and employer contributions.

2. **Financial Statements** – Director Blas stated that the books for the month ending June 2011 were closed on July 25, 2011.

3. **Fiscal Year 2011 Retirees' Supplemental Benefits** – Director Blas stated that the supplemental benefits for retirees and survivors for the month of July 2011 have been paid.

4. **Fiscal Year 2011 Medicare Reimbursements** – Director Blas stated that the Retirement Fund received the July 2011 allotment from the General Fund and payments were processed accordingly.

VI. LEGAL COUNSEL'S REPORT

Director Blas stated that the Retirement Fund's Legal Counsel provided an update, for the Board's information, on the status of current litigation involving the Retirement Fund. Legal Counsel Elyze Iriarte reported on the following:

- **Jane M. Story vs. Government of Guam Retirement Fund** – Legal Counsel Iriarte stated that the Retirement Fund is waiting for an assignment of a judge to hear the case. This is the second round of assignments and that if the judges again recuse themselves, they must provide more detailed explanations justifying their recusals. Legal Counsel Iriarte stated that a motion to dismiss would be appropriate in this case.
- **Luis Reyes vs. Department of Education** – Legal Counsel Iriarte stated that the Retirement Fund has advised Mr. Reyes that it would start reducing his current annuity to pay back the \$120,000 commencing July 15, 2011. Mr. Reyes has filed a motion with the Court for an injunction against the Retirement Fund's intended action. Legal Counsel Iriarte stated that the Retirement Fund has not responded to the motion. We are awaiting a hearing date from the Court on the Motion. Chairman San Agustin stated that no effort is being made to have Mr. Reyes pay back the \$120,000. Director Blas stated that the Judgment was very clear. Director Blas stated that Mr. Reyes has not received the DOE award.

Legal Counsel Joanne Grimes stated this is a very complicated case. Chairman San Agustin stated that the Retirement Fund should effectively reduce Mr. Reyes' annuity. Legal Counsel Grimes stated that the case is before a very sympathetic Judge. Director Blas stated that the Retirement Fund is trying not to aggravate the issue. Chairman San Agustin stated that the \$120,000.00 is an opportunity loss. The Retirement Fund should make an effort to have the Court enforce payment. Legal Counsel Iriarte stated that she does not feel there will be a very big delay.

- **Government of Guam Retirement Fund vs. Guam Memorial Hospital Authority** – Legal Counsel Iriarte stated that the Court has not issued a decision on the Retirement Fund’s Petition for a Writ of Mandamus. Even though the Retirement Fund signed the Health Insurance Bailout Agreement, it has not dismissed the action against GMHA. Part of the Bailout Agreement requires GMHA to remit certain sums by September 30, 2011. If GMHA fails to make those payments, the Retirement Fund will consider the Agreement breached and will press the Court for a ruling on its Petition.
- **Class Action Lawsuit Against Guam Memorial Hospital Authority** – Legal Counsel Iriarte stated that on April 8, 2011, a class action lawsuit was filed against GMHA on largely the same grounds raised by the Retirement Fund. GMHA has not filed an Answer to the Complaint. Legal Counsel Iriarte stated that she recommends that the Retirement Fund intervene in the class action lawsuit for the purpose of dismissing duplicative forms of relief. Treasurer Gerard Cruz asked what the Retirement Fund’s position would be. Legal Counsel Iriarte stated that there is a risk that the relief in the class action will be awarded to the class and not to the Retirement Fund. Legal Counsel Grimes stated that these individuals are seeking class action damages and attorneys fees.

Vice-Chairman Wilfred Leon Guerrero, seconded by Secretary Antolina Leon Guerrero, moved to approve that the Retirement Fund’s Legal Counsel intervene in the class action lawsuit against the Guam Memorial Hospital Authority. Without objection, the motion unanimously passed.

- **Bautista vs. Perez** – Legal Counsel Iriarte stated that Plaintiff Joseph Guthrie has revived this case asking that the Court enforce its February 18, 2003 Order.

Legal Counsel Iriarte stated that Mr. Guthrie claims that the Retirement Fund violated the Court’s Order in signing the Health Insurance Bailout Agreement. Mr. Guthrie also asks the Court to compel the Retirement Fund to challenge in Court Public Law 31-1, which expanded the class of persons exempted from having their annuities suspended upon re-employment. The hearing on Mr. Guthrie’s Motion will be on August 15, 2011. The Retirement Fund’s response to the Motion is due August 1, 2011. Director Blas stated that the hearing will clarify Public Law 31-1 and Public Law 31-74. Legal Counsel Iriarte stated that the opposition brief will show what was being done which will show the Judge that the order is being implemented.

- **Meeting with Attorney General**

Legal Counsel Iriarte stated that a meeting was held at 10:00 this morning with the Attorney General (AG) of Guam. The AG was amendable in issuing an opinion of not paying timely contributions. The AG’s opinion will include the tax implications and the legal implications. Chairman San Agustin asked what the Retirement Fund is seeking. Legal Counsel Iriarte stated that the Retirement Fund is seeking that the law is what it is. The Retirement Fund is not a creditor and this being emphasized to all agencies is the Retirement Fund’s goal. Treasurer Cruz asked who is personally responsible. Legal Counsel Iriarte stated that the AG will bring charges against individuals. Treasurer Cruz stated that the Board’s position is to take a civil approach to collect payment.

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) and Prior Year Receivables for both the Defined Benefit (DB) Plan and the Defined Contribution (DC) Plan for the month ended June 30, 2011. Treasurer Cruz stated that the Retirement Fund's total assets including the DC Plan is \$1.757 Billion.

Treasurer Cruz stated that the Retirement Fund is operating within its existing drawdown authority which is sufficient to cover through the end of the Fiscal Year. The estimated drawdown for Fiscal Year 2012 is \$36 Million.

VIII. STANDING COMMITTEE REPORTS

A. Investment Committee

Vice-Chairman Wilfred Leon Guerrero reported that the Quarterly Performance Meeting for the Quarter Ended March 31, 2011 was held on July 27 and 28, 2011. In addition, Vice-Chairman Leon Guerrero noted that, on July 28, 2011, the Investment Committee held its regular meeting for July 2011. The Committee reviewed and approved the Investment Committee Minutes of June 10, 2011.

Vice-Chairman Leon Guerrero introduced the new Investment Consultants - Mr. Howard Yata and Ms. Maggie Ralbovsky of Wilshire Associates (Wilshire). A meeting with the new Investment Consultants was held on July 27 and 28. They provided new ideas regarding asset allocation. Vice-Chairman Leon Guerrero stated that Annual Reviews were conducted on July 28 with Franklin Templeton, Income Research & Management, and Garcia Hamilton. Ms. Ralbovsky stated that their first meeting with the Board was a very productive meeting. Ms. Ralbovsky stated that the Board was very engaged and there was a healthy exchange of ideas.

Investment Performance - Ms. Ralbovsky reported that they reviewed the Investment Performance for the quarter ended March 31, 2011. The Investment Consultants provided an overview noting the following:

- The Portfolio performed well during the quarter, ranking in the top 20th Percentile of the Wilshire peer group universe.
- The quarter-end Total Fund Return of 4.51% outperformed its 4.03% benchmark.
- All investment mandates outperformed their relevant benchmarks except REITs, which slightly underperformed its benchmark.

Securities Lending - Ms. Ralbovsky stated that they discussed Securities Lending. Securities Lending will be further discussed at the next quarterly performance meeting. Vice-Chairman Leon Guerrero stated that the Retirement Fund's Legal Counsel will work on a draft policy on Securities Lending.

Economic Risk Factor Based Asset Allocation - Ms. Ralbovsky reported that they discussed Economic Risk Factor Based Asset Allocation on risk versus return. The Board wanted to focus on real risk. Further analysis of what returns would be if the Retirement Fund implements an Economic Risk Factor Based Asset Allocation will be provided at the next quarterly meeting.

Manager Evaluations - Ms. Ralbovsky stated that based on Manager Evaluations there are no recommendations to change any of the managers. Ms. Ralbovsky noted that Atalanta was put on

watch since it is underperforming and also due to style drifting. Metropolitan West and Eaton Vance were put on watch due to organizational changes.

Active Risk Budgeting - Ms. Ralbovsky stated that further discussion on Active Risk Budgeting is recommended. An analysis to determine if a passive suite can be implemented will be provided at the next quarterly meeting.

Asset Allocation - Vice-Chairman Leon Guerrero informed the Board that no change to the asset allocation or rebalancing of accounts is recommended at this time. Vice-Chairman Leon Guerrero also informed the Board that the next Quarterly Performance Meeting is scheduled for August 24-25, 2011.

Trustee George Santos, seconded by Treasurer Gerard Cruz, moved to accept the Investment Committee Report. Without objection, the motion unanimously passed.

B. Members and Benefits Committee

Trustee George Santos presented his Committee's July 2011 report to the Board of Trustees.

Trustee George Santos, seconded by Secretary Antolina Leon Guerrero, moved to approve the recommendation of the Members and Benefits Committee contained on Pages 4 through 11, including the attached Annuity Worksheets, based on the Committee's review and findings during their meeting of July 15, 2011 and subsequent meetings thereafter. Without objection, the motion unanimously passed.

Disabled Adult Survivor Benefit Stipend Applicant – SARAH MAE MARTINEZ FAMA

Trustee Santos stated that Ms. Fama is applying for Disabled Adult Survivor Benefits on her own behalf. Trustee Santos stated that Ms. Fama is the biological child of deceased retiree Edilberto V. Fama who passed away on March 29, 2011. Trustee Santos stated that based on their review and findings during their meeting of July 15, 2011, the Committee recommends Board approval of the application for Disabled Adult Survivor Benefits for Sarah Mae Martinez Fama.

Trustee George Santos, seconded by Secretary Antolina Leon Guerrero, moved to approve the application for Disabled Adult Survivor Benefits for Sarah Mae Martinez Fama, contained on Page 12, based on the Committee's review and findings during their meeting of July 15, 2011 and subsequent meetings thereafter. Without objection, the motion unanimously passed.

Correspondence No. 10-02 – JOSEPH M. MESA

Trustee Santos stated that Mr. Mesa has submitted a letter dated June 19, 2011 requesting for an extension of the payment arrangements pursuant to his promissory note for retirement service credit. Trustee Santos stated that based on their review and findings during their meeting of July 15, 2011, the Committee recommends Board approval of Mr. Mesa's request for an extension of the payment arrangements to the promissory note. Chairman San Agustin inquired about the expiration date of the promissory note. Secretary Antolina Leon Guerrero stated that the completion date is July 2, 2011 and the extension is up to July 2015. Chairman San Agustin asked what the impact would be. Trustee Santos stated that the Retirement Fund would gain on the interest payment.

Trustee George Santos, seconded by Secretary Antolina Leon Guerrero, moved to approve to grant Joseph M. Mesa's request for an extension of the payment arrangements pursuant to his promissory note for retirement service credit, contained on Pages 13 and 14, based on the Committee's review and findings during their meeting of July 15, 2011 and subsequent meetings thereafter. Without objection, the motion unanimously passed.

RECESS: 1:26 P.M.

RECONVENED: 2:13 P.M.

Disability Case No. 10-007

Chairman San Agustin informed everyone present at today's meeting that the disability applicants are referred to by their case numbers. The names of the applicants are not provided or known by the Board of Trustees. Chairman San Agustin stated that if an applicant would like to address the Board, he/she would have to waive his/her rights to the privacy of their medical records and he/she must state his/her name for the record. Chairman San Agustin recognized that there is someone that would like to speak on behalf of the applicant. Attorney Ricardo Bordallo stated that he will be speaking on behalf of Eddie Benavente.

Secretary Leon Guerrero stated that this case is before the Board for its third consideration. Secretary Leon Guerrero stated that the applicant applied for disability on July 8, 2010 for episodes of dizziness. The applicant was examined on October 2010 by Dr. Patrick Santos, November 2010 by Dr. Fred Schroeder and March 2011 by Dr. Doris Lim. A clarification was provided from the three physicians. Chairman San Agustin asked why this case is before the Board again. Secretary Leon Guerrero stated that the motion for disapproval failed to pass twice. Legal Counsel Iriarte stated that the case was postponed in order to obtain further information. Trustee Santos stated that some members of the Board did not want to vote on the motion until further information was submitted. Secretary Leon Guerrero stated that Dr. Doris Lim, Dr. Fred Schroeder, and Dr. Patrick Santos were asked to answer three questions.

Secretary Leon Guerrero asked the applicant what has he been doing since his last interview with the Board. The applicant stated that he taught history at a local community college in July 2011. Secretary Leon Guerrero asked whether the applicant was employed anywhere else. The applicant replied, "No."

At this time Secretary Leon Guerrero reads out loud the questions and the answers provided by the three physicians:

Question a. Does #10-007 have some impairment of body or mind?" If "yes", please describe the impairment of body or mind.

Answer-Dr. Lim: Upon reviewing #10-007 medical records from the neurologists, I can infer that #10-007 has impairment of the mind (anxiety).

Answer-Dr. Schroeder: #10-007 does have some Significant Impairment of body or mind. His diagnosis is severe, episodic vertigo (n.o.s.) and I would consider this to be a Significant Impairment. At the times of his attacks, he is quite

incapacitated; although this does not preclude employment, it does place some limitations on what he can do.

Answer-**Dr. Santos**: Chronic intermittent vertigo.

Question b. **Is the impairment terminal or expected to last for a continuous period of not less than twelve (12) months? Please explain or clarify your answer.**

Answer-**Dr. Lim**: He needs counseling and referral to a clinical psychiatrist to manage his anxiety. Otherwise his condition will last more than 12 months.

Answer-**Dr. Schroeder**: Is his condition expected to last for 12 months? Yes, since he has been bothered by this for something over 2½ years now, and since there is no real sign of improvement, I would expect it to last another 12 months. The question on the Report of Medical Evaluation was – is it a permanent condition? And I am not willing to say that this is fully permanent.

Answer-**Dr. Santos**: Not terminal but will last indefinitely.

Question c. **Does the applicant’s impairment preclude him or her from regularly performing the substantial or material parts of any gainful work or occupation? Please explain or clarify your answer.**

Answer-**Dr. Lim**: #10-007 condition would preclude him from doing his job. He would best be advised to seek consultation with a psychiatrist to manage his anxiety.

Answer-**Dr. Schroeder**: Does he have an Impairment which precludes him from regularly performing the substantial or material parts of any gainful employment? I would say no. Certain precautions and restrictions are required: He should avoid driving, avoid heights and hazardous situations because should an attack occur, he might be at risk of injury. During the time of his acute attack, he is incapacitated. However, this lasts only about 5-10 minutes and can occur up to about several times a day. Since his work is mainly at a desk, I do not think his condition precludes him from doing this work or other sedentary non-hazardous work. He should avoid “field work.”

Answer-**Dr. Santos**: Yes, he has chronic intermittent vertigo and places him and others at safety risk.

Secretary Leon Guerrero stated that all three physicians answered yes to Question a. On Question b, all three physicians agree that it will last more than twelve months. On Question c, Dr. Santos answered that it will preclude employment; Dr. Schroeder answered no; and Dr. Lim advises the applicant to see a psychiatrist.

Director Blas reads out loud the definition of **Total and Permanent Disability**: *“A total and permanent disability for the purposes of this Chapter is one which results from some impairment of body or mind which can be expected to result in death, or can be expected to last for a continuous period of not less than twelve (12) months. The impairment shall be one that substantially precludes a person from performing with reasonable regularity the substantial and material parts of any gainful work or occupation that he would be competent to perform were it not for that impairment, and if founded upon condition which render it reasonably certain that it will continue indefinitely.”*

Trustee Wilfred Aflague asked what medication the applicant takes when he teaches. The applicant stated that he is not sure of the name of the medication. Treasurer Cruz asked whether the medication controls the applicant's dizziness. The applicant stated that the medication puts him to sleep but he fights it. The applicant stated that he cuts the pill in half and that the medication prevents him from falling. Treasurer Cruz asked what the applicant does at work. The applicant stated that he walks around, follows the curriculum and lesson plan. Treasurer Cruz asked whether the dizziness started prior to his brain surgery. The applicant replied, "Yes." The applicant stated that he is plagued with two separate symptoms. Treasurer Cruz asked how often vertigo occurs. The applicant stated that it occurs several times a day. Secretary Leon Guerrero asked whether the applicant feels when vertigo will occur. The applicant stated that he usually does. Vice-Chairman Leon Guerrero asked whether the applicant was a political appointee. The applicant replied, "Yes." Vice-Chairman Leon Guerrero asked whether the applicant applied for disability before or after the new term. The applicant replied, "Before."

Chairman San Agustin stated that he is disturbed with the definition of "Total and Permanent Disability." Vice-Chairman Leon Guerrero stated that Chairman San Agustin is making a point that the applicant may be gainfully employed. Vice-Chairman Leon Guerrero stated that the dean who hired the applicant took a great risk of hiring him under a conditional employment. Vice-Chairman Leon Guerrero pointed out that as a former dean, he would not hire the applicant. Trustee Aflague stated that he knows about vertigo and is ready to vote on this matter. Chairman San Agustin asked whether there are any further comments from the Board. The Board indicated that they have no further comments. Chairman San Agustin also asked the applicant if he has any comments. The applicant indicated that he has no comments.

Secretary Antolina Leon Guerrero, seconded by Trustee George Santos, moved to deny Disability Retirement for Disability Case No. 10-007. Votes as follows: Yes votes – Secretary Antolina Leon Guerrero, Trustee George Santos, Trustee Wilfred Aflague, Chairman Joe San Agustin; No votes – Vice-Chairman Wilfred Leon Guerrero, Treasurer Gerard Cruz. With four "Yes" votes, the motion passed.

IX. TRAVEL REPORT

No report was made at this time.

X. OLD BUSINESS

None

XI. NEW BUSINESS

None

XII. OPEN DISCUSSION / GENERAL PUBLIC INPUT

None

XIII. ANNOUNCEMENTS

None

XIV. ADJOURNMENT

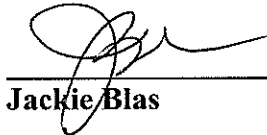
There being no further business before the Board for the Defined Benefits Plan, on motion of Trustee George Santos, seconded by Treasurer Gerard Cruz, and without objection, the meeting was adjourned at 2:54 p.m. Motion unanimously passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of July 29, 2011 Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on August 26, 2011.



ANTOLINA S. LEON GUERRERO, Board Secretary

RECORDING SECRETARY:



Jackie Blas