

**NORTH DAKOTA STATE INVESTMENT BOARD  
SECURITIES LITIGATION COMMITTEE  
MINUTES OF THE AUGUST 11, 2020, MEETING**

**MEMBERS PRESENT:** Troy Seibel, Chair  
Jodi Smith, Vice Chair  
Dean DePountis, Attorney General's Office  
Connie Flanagan, Chief Financial Officer  
David Hunter, Executive Director/CIO

**STAFF PRESENT:** Missy Kopp, Retirement Asst  
Jan Murtha, Dep Exec Dir/Chief Retirement Officer

**GUESTS:** John Blessington, K&L Gates  
Ron Sparkes, K&L Gates  
Ryan Tosi, K&L Gates

**CALL TO ORDER:**

Mr. Seibel, Chair, called the State Investment Board (SIB) Securities Litigation Committee (SLC) regular meeting (virtual) to order at 2:05 p.m. on Tuesday, August 11, 2020, at the Retirement and Investment Office (RIO) (virtual host), 3442 E Century Ave, Bismarck, ND.

**AGENDA:**

IT WAS MOVED BY COMMISSIONER SMITH AND SECONDED BY MS. FLANAGAN AND CARRIED BY A VOICE VOTE TO APPROVE THE AGENDA FOR THE AUGUST 11, 2020, MEETING.

AYES: COMMISSIONER SMITH, MS. FLANAGAN, MR. DEPOUNTIS, MR. HUNTER, AND MR. SEIBEL  
NAYS: NONE  
MOTION CARRIED

**MINUTES:**

IT WAS MOVED BY MR. HUNTER AND SECONDED BY MS. FLANAGAN AND CARRIED BY A VOICE VOTE TO ACCEPT THE MINUTES OF THE APRIL 30, 2020, MEETING AS DISTRIBUTED.

AYES: MS. FLANAGAN, MR. DEPOUNTIS, MR. HUNTER, COMMISSIONER SMITH, AND MR. SEIBEL  
NAYS: NONE  
MOTION CARRIED

**CHARTER:**

Mr. Hunter reviewed the SLC charter, authority, and policy.

Election of officers of the SLC took place for the period of July 1, 2020 - June 30, 2021.

IT WAS MOVED BY MR. HUNTER AND SECONDED BY MS. FLANAGAN AND CARRIED BY A VOICE VOTE TO NOMINATE MR. SEIBEL AS CHAIR AND COMMISSIONER SMITH AS VICE CHAIR OF THE SIB SECURITIES LITIGATION COMMITTEE FOR THE PERIOD OF JULY 1, 2020 - JUNE 30, 2021.

AYES: MR. DEPONTIS, MR. HUNTER, COMMISSIONER SMITH, MS. FLANAGAN, AND MR. SEIBEL

NAYS: NONE

MOTION CARRIED

**SECURITIES LITIGATION FIRMS:**

Mr. Hunter reviewed Securities Litigation firms the SIB and SLC has engaged since 2009.

- K&L Gates - 2009 WG Trading (plaintiff's attorney)
- K&L Gates - 2012 Tribune
- Kasowitz Benson Torres - 2015 General Motors
- Grant & Eisenhofer - 2016 Volkswagen (plaintiff's attorney)
- Grant & Eisenhofer - 2019 Danske Bank (plaintiff's attorney)
- Kessler, Topaz, Meltzer, Check, LLP - 2020 Nissan Motor Co., Ltd.

Financial Recovery Technologies (FRT) was hired in 2018 to recover investment losses in the U.S. and international securities litigation cases.

Since 2011, annual cash recoveries have ranged from a low of \$153,480 in fiscal 2014 to a high of \$692,958 in fiscal 2012, noting the annual recoveries are often materially impacted by the occurrence (or absence) of one or two major cases in any year.

Securities litigation recoveries approximated \$345,000 in the fiscal year ended June 30, 2019 and \$644,000 in the fiscal year ended June 30, 2020.

On November 5, 2019, the SLC identified Bernstein Litowitz Berger & Grossman, Grant & Eisenhofer, and Labaton Sucharow as pre-approved law firms to be utilized on a case by case basis to provide legal counsel when new securities litigation related cases are raised for further consideration by FRT.

**CASE UPDATES:**

K&L Gates representatives updated the SLC on the WG Trading and Tribune cases.

WG Trading - The SIB's initial investment with Westridge Capital Management was \$75,269,880.

There were 17 SIB client funds impacted by the case; Public Employees Retirement System, Teachers' Fund for Retirement, Bismarck City Employee and Police Pension Plans, Job Service, City of Fargo Employee Pension Plan, WSI, State Fire & Tornado, State Bonding, Risk Management, Risk Management Workers Compensation, Insurance Regulatory Trust Fund, Petroleum Tank Release Compensation Fund, ND Association of Counties, City of Bismarck Deferred Sick Leave, Fargo Dome Permanent Fund and Cultural Endowment Fund.

To date, the Receiver has made three distributions of funds to investors. The distributions to SIB were as followed:

1. On March 21, 2011, SIB recovered a total of \$63,930,633.62, distributed as follows:
  - a. ND Pension Trust: \$19,912,957.02
  - b. ND Insurance Trust: \$12,294,359.53
  - c. ND Enhanced Lehman: \$31,723,317.07
  
2. On December 28, 2012, SIB recovered a total of \$3,137,614.23, distributed as follows:
  - a. ND Pension Trust: \$ 977,294.52
  - b. ND Insurance Trust: \$ 603,375.62
  - c. ND Enhanced Lehman: \$1,556,944.00
  
3. On October 14, 2015, SIB recovered a total of \$5,944,067.48, distributed as follows:
  - a. ND Pension Trust: \$1,851,443.74
  - b. ND Insurance Trust: \$1,143,091.73
  - c. ND Enhanced Lehman: \$2,949,532.01

On June 29, 2020, the Receiver sought court approval for a final distribution of assets. Under the plan submitted by the Receiver, SIB is scheduled to receive the following additional funds:

4. Final Distribution: A total distribution of \$2,257,404.67, to be distributed as follows:
  - a. ND Pension Trust: \$ 703,124.72
  - b. ND Insurance Trust: \$ 439,113.12
  - c. ND Enhanced Lehman: \$1,120,146.83

The SIB will have recovered all of the \$75,269,880 it invested in the Westridge entities once the final distribution is received.

Tribune - The SIB was named as a defendant arising out of the Tribune bankruptcy proceedings which related to securities that were purchased by external investment managers in one or more portfolios held by the SIB on behalf of its clients. In 2007, all of the stockholders of the Tribune Company engaged in a buyout. The creditors allege that as a result of that buyout, the Tribune company filed for bankruptcy. On July 15, 2019, the Litigation Trustee filed a Notice of Appeal to the Second Circuit, appealing the various judgments of the U.S. District Court that dismissed the claims against defendants in the action and denying leave to amend the complaint to add a constructive fraudulent transfer claim. Briefing of the legal issues before the Second Circuit is complete, and oral argument is set for August 24, 2020.

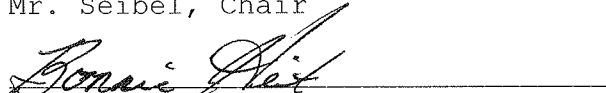
**OTHER:**

The next Securities Litigation meeting is scheduled for Thursday, November 5, 2020, at 1:00 p.m. at the Retirement and Investment Office, 3442 East Century Avenue, Bismarck, ND.

ADJOURNMENT:

With no further business to come before the SLC, Mr. Seibel adjourned the meeting at 2:31 p.m.

  
\_\_\_\_\_  
Mr. Seibel, Chair

  
\_\_\_\_\_  
Bonnie Heit  
Recorder