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>> David Bacigalupi: Good morning ladies and gentlemen. I'm going to call into order the board of administration for the Police and Fire retirement plan. I'll do a roll call now that our board has gotten so large. Present is the chair, vice-chair Conrad Taylor is present, Sean Bill, trustee, is present, Michael Flaherman, trustee, will not be here today. Sean Kaldor, trustee, is present. Damon Krytzer, trustee, is present. Vincent Sunzeri, trustee, will not be here today. And not yet sworn in but trustee Richard Santos is present. So with that we'll move to the agenda for orders of the day I have a couple of items. After item 3.1 we're going to take a small break. There's a computer problem, that we need to move computers around. There will be a couple break before item 3.1. We're going to move 3.2 to after 3.4. For the flow of investment information orientation for the new members. We're going to defer items 6.8 G, the second two paragraphs, on the travel on Dr. Imeri, going to defer it one month. And then I have a request, I'll put this to the board at the time that these items come up. But Trustee Sunzeri ask that items 3.8, 4.2 and 4.3 be deferred, as he's not able to be here and wanted to participate in it. I did explain to him that with such a large board, if we tried to defer every item because one board member wasn't able to be here a lot of items would get deferred. But I'll leave that to the entire board, when we get to those items. Maybe there's some business we can take on them and get additional information if we have questions, that if you want to defer any decisions on it, we can do that and get the information, so those are for the orders of the day.

>> Just a second. Mollie is going to --

>> Russell Crosby: Mollie --

>> David Bacigalupi: Items 3.8, 4.2 and 4.3. And then the last item on the orders of the day is the City Clerk swearing in the newly appointed trustee Mr. Richard Santos.

>> Dennis Hawkins: Repeat after me: [(inaudible)] [Swearing-in oath of office]

>> Dennis Hawkins: An the constitution of the state of California. That I take this obligation freely, without any mental reservation, or purpose of evasion, that I will well and faithfully discharge the duties upon which I'm about to enter. Congratulations.

>> David Bacigalupi: Dick I'd just like to welcome you to the board. For those of you who don't know, Dick and I both served when we were active members and now with all the gray hair, we're serving as retired members. Welcome aboard, look forward to working with you.

>> Richard Santos: Thank you.

>> David Bacigalupi: With that, we'll move on to item 1, service retirements. Item 1.1A, request for service retirement for fire captain Edward Munoz, effective March 5, 2011, with 20.03 years of service, with reciprocity, deferred from the February 18th meeting. For the record does fire captain Munoz appear in the audience? Doesn't appear to be. I'll entertain a motion.

>> I'll move.

>> David Bacigalupi: Carries unanimously. Indemnity item is the application for a service retirement. For police officer Maria Del Pilar Ramon, effective April 30th, 2011. 28.87 years of service. For the record, officer Ramon is not in the autopsies. I'll entertain a motion.

>> Motion.

>> David Bacigalupi: Any discussion on the motion? hearing no further discussion, all in favor, all opposed, motion carries. Item 1 C, it's an application for service retirement for police artist Gilbert P. Zamora. Effective March 5, 2011. With 25.92 years of service, and for the record Officer Zamora is not in the audience. I'll entertain a motion.

>> I'll make a motion for approval.

>> Second.

>> David Bacigalupi: I have a motion and a second. Any further discussion on the motion? Hearing no further discussion, all in favor, all opposed, motion passes. Item 1.2, orientation to disability retirement rules with the fact that we have new board members, Mollie is going to give us a little presentation on the legalities of how this board approves disability retirements.

>> Mollie Dent: Thank you, chairman Bacigalupi, members of the board. I do have a handout that I provided to you in the form of a PowerPoint presentation and there are extra copies. I'm hoping to keep it short, not to have to do it as a PowerPoint presentation and just to run through the handout. And answer any questions that the boards might have. That the board members might have. The first -- I'll -- the first slide I'm going to ask you to take a look at is number 3. The disability process. The -- this simply outlines the five steps in the disability process. A application, a medical examination, a board hearing. And there is no rehearing, I'm sorry, and I took this from a presentation I did to the Federated board and that's the one thing that I needed to take off. Because after a board hearing here, the -- if an applicant is dissatisfied with the board's decision they go directly to a where it of mandate to the superior court. I apologize for that error. The application for disability retirement is discussed on page 4. The application can be filed by other folks but of course mainly they're filed by the applicants themselves, by the employees. With certain applications, for this board the application must be filed within one year of separation of service. That does come up sometimes so it's something to be aware of with this particular board. Once someone has filed an application for disability retirement they are scheduled for a medical examination with the board's medical physician. That is mandatory, except where the disability retirement is initiated by the board. Applicants can also submit medical reports as you've seen from the packets that you receive. And the medical director and the board have the ability to gather all of the medical information they may want from the member in order to evaluate the application. The -- after the board's doctor has evaluated the applicant, then the board holds a hearing. And at the hearing, there are three things that the board needs to look at. Does the member have a disability, as defined in our code and our plan? If the member does have a disability, is the disability service-connected or non-service-connected. So I think it's important that you remember that you start with the question of does the member have a disability? Sometimes I know it seems more intuitive to go to

whether or not it happened at work or during the course and scope of employment. But actually that's a secondary question. The first question is, is the member disabled?

>> And may I ask a question now or save it for the end?

>> Mollie Dent: Why don't we. It's up to you all. Would you rather ask them as we go through it? Okay, go ahead.

>> David Bacigalupi: Some of these things may get answered through a later part of the presentation. Why don't we go ahead and go with the presentation.

>> Mr. Chair, I'm disagreeing. Going through this as a board member I agree with Sean. When something comes to you, get that train of thought right now. When you get to the end you lose the train of thought. They we forget, it's 14 pages ago. I'd like to address those questions right now.

>> David Bacigalupi: Does anybody have a opinion?

>> Mollie Dent: I'm open to it either way.

>> I'll keep it very brief. Usually our evidence of disability would be the doctor and the letter that says they have a limitation, and then a letter from the city saying that that limitation means they can't perform the work. Is that the usual evidence we look for, for whether there's disability?

>> Mollie Dent: Well so let's turn to page 10 for the disability definition. I can see that my assistant got the pages out of order on this so I really, really apologize. So let's turn to page 10 for the disability definition. So our definition of disability is that the person is incapable of performing the duties and positions -- the duties of the position then held by him, and of any other position in the same classification of positions, to which the city may offer to transfer him. And it does not mean, or include, inability to assume said responsibilities or perform said

duties. So when the board is looking at medical evidence, what the board is looking for is incapacity to perform, not inability to perform. And yes, one of the things the board ask looking at is when the person left employment, were they able to perform the duties that they then held? Or, if they couldn't perform the duties that they then held, were they able to perform some other duties that the city could offer them, some other job that the city could offer them? So you have two issues with the disability. You have to find incapacity, not inability. And you also have to find that either they couldn't perform the job that they were in, or -- well, you have to find that they couldn't perform the job that they were in and they couldn't perform a job in the same classification that the city could transfer them to.

>> And again, we're not judging each person's capabilities, it's the letter from the city that says the job is, given his limitations, they couldn't perform this job?

>> Mollie Dent: Well, you're actually judging whether or -- In terms of incapacity you're looking at medical evidence. The department doesn't determine that. What the department determines is whether they could have accommodated those work restrictions. So what you're looking at, in terms of the incapacity or inability to perform is going to be based on medical evidence and it will include medical evidence from the board's medical doctor as well as medical evidence from the applicant if they've put it in.

>> Sean Bill: Thank you.

>> Just one follow up. What about at risk versus physically can. You can't lift your arm that's fine but if you are putting somebody at severe risk?

>> Mollie Dent: Well, there is a difference in our standard and the workers comp standard on that. The workers comp standard doesn't really look at this inability versus incapacity issue. So it -- it -- I think it -- you have to look at the medical evidence, and look at how the doctor worded the restriction. In terms of whether or not it is an incapacity or inability to perform.

>> So Mollie, on just clarifying, incapacity versus inability, if you said to me, to do this job you had to run the 40 yard dash in five seconds but you run it in six seconds, that's an inability. If you could not run the 40 yard dash then that's incapacity?

>> Mollie Dent: Yes, if your doctor would say, you absolutely can't run the 40 yard dash in five seconds, you just can't do it, that would be an incapacity to perform, based on medical evidence. If you were just to say gosh I can't run that fast, that would be an inability.

>> So, okay and the other question I had I was reading up on Social Security disability and they talk about incapacity to perform the task of the existing job, or if you had a -- if you were not able to transfer to another type of work. It sounds like the city has a different standard there is that correct?

>> Mollie Dent: The city definitely has a different standard than Social Security. The Social Security standard is quite strict because they're looking not just within your employer organization and within your job classification but they're looking much more broadly out into the workforce. So there are -- and then non-- so going on to page 12, the non-service connected disability is something that does not occur in the course and scope of employment, and the service connected disability is something where the disability itself occurs within the course and scope of employment. There are a couple of exclusions that you need to be aware of and this is on page 13. The disability can't occur before they became a member of the plan. The disability can't occur before they -- after they ceased to be a member of the plan except we do have limited circumstances under which people can be disabled where they are disabled under a reciprocal system, and we also have some provisions for people who are disabled on military duty but those are pretty limited.

>> Interrupt. Just to underscore that point. We recently had a disability application that was quite a difficult one for the board to deal with where it was clear the disease was -- the disease process was occurring during the period of employment. But the person was clearly not incapacitated from employment. He was still on full duty and could do all the duties and went to a subsequent very high stressful job and did all the duties of that job. It was a pilot and during an FAA post-employment examination it was a heart condition that took years to develop. But under

our rules it wasn't clear that the disease state had gun while employment. You also have to have incapacity, which he did not have.

>> Mollie Dent: Right, the disease had to manifest while the person was in employment in the form of incapacitating the individual. So we had at least one case recently where that didn't happen and the application was denied.

>> Richard Santos: Through the chair, Mollie, go back to page 13, it says the disability can't occur before membership in the Police and Fire plan. Years ago, when I came on, we all had back x rays, and the way I understand as the years went by the city because of money not doing what I consider some of the best health care in terms of coming on, may be undiscovered. So later on you have this same person that comes on ten years later they're applying for a back injury. There is no monitoring or measuring.

>> Mollie Dent: Well again what we're looking for is the disability. Which is the incapacity to perform. So if -- so you do have situations where someone will come on, with a preexisting condition. And they can perform for a number of years. And there may or may not be a triggering event that causes them to be unable to perform. That's why I say you have to distinguish between the disease itself and the incapacitating -- incapacity to perform.

>> You're knoll following me. The person had that back injury but not discovered due to the city medical -- the medical X rays is taken away so now we don't know that and I'm in a position now to award somebody a disability who may not have deserved that. But now I can't fight it because now they have the medical evidence but they had it prior, or we don't know.

>> Mollie Dent: Well if they did have an injury before -- the board has access through its medical doctor to all of the member's medical records if -- if -- even prior employment. So the board does have access and Dr. Das can get all of the person's medical records. So it isn't that it couldn't be found out. It may not be found out but it could be found out, if it appeared to be relevant in the particular case, and there was some reason to think that the

person had been disabled all along. But again, we're not looking at whether or not they just had a back injury. That back injury may not have been disabling.

>> My point is that if you had better medicals, prior to coming on, that makes our job I think a little more easy and more responsible.

>> Mollie, on that issue, I'd say Richard's issue going more to service connectedness to which it needed medical evidence. If you had preexisting condition and you brought that to the job maybe a congenital back disease and that was just going to progress over time and the doctors somehow said you had that, and that progresses just on its own, it just has a natural course, and your job did nothing to aggravate it, then you could not find that it was service-connected. On the other hand, if the medical evidence said, yes, that individual had this congenital disease, he brought it onto the job but the job aggravated it, then there's a lot of law on aggravation, not particularly clear, but there's a lot of law particularly in workers comp, then you could conclude that the job because it aggravated the preexisting condition, since that was a fact, you could conclude that the application should be granted as a service-connected disability. So it kind of goes to that issue.

>> And what about if on your first scenario would it be possible for them to file for a non-service connected disability and what's the difference to the board from our financial situation, for a non-service and a service disability?

>> Mollie Dent: Well there are differences between the payouts on the non-service connected disability and the service connected disability and there are differences in the general benefits. There -- I didn't want to keep -- I didn't want to get this presentation down to that level of detail. I did include a slide, though, on the -- oh, boy -- slide 9, what are the system disability benefits. There is a service connected disability allowance, and a non-service connected disability allowance, and there are generally going to be different -- there are different formulas for those. And the non-service connected disability allowance formula is generally not as generous. Medical and dental benefits attach to either, and all or a portion of the service-connected allowance may be nontaxable. So

those are kind of structurally the differences. If the board wants a more detailed presentation, on what the system benefits are, go ahead, Donna.

>> Mollie, as far as whether the person would be automatically eligible for non-service, doesn't the disability still have to occur while he's a member of the system?

>> Mollie Dent: Yes, but he was asking about the benefits. I thought we had gone on to another question.

>> The tax benefit, I understand the federal tax benefit. Is there a state tax benefit as well for the state of California?

>> Mollie Dent: I believe it's all dealt with under state law as all or partially exempt. So the next area that I want to cover is, basically, I do want to point out that, this is on slide 14. That the burden of proof is on the applicant to establish the occurrence or nonoccurrence of the conditions necessary to establish entitlement to disability retirement benefits. It's -- they're coming to you, the burden of proof is on them to make the case for their application. The -- when we're asked about well, you know, what happens if we deny one? And someone is unhappy? How is that going to be treated by a court? Applicants who are denied a disability retirement can file for a petition for writ of mandate. That's on page 7, and I really do apologize for these being so out of order. The scope of review is whether or not the board proceeded without or in excess of its jurisdiction, whether or not the board provided a fair hearing, and whether or not the board abused its discretion. And on page 8, I indicate the courts do use an independent evidence standard of review. But they also must afford a strong presumption of correctness in favor of the board's findings. And the burden on the party challenging a decision is not -- is not merely the burden of producing evidence but the burden of proof. So again, the board does -- a court will look at the entire record on its own. That's what independent review means. But the -- but they will also accord a presumption of correctness to the board's decision and require the challenger to prove up their case or why the decision is incorrect. I've included some other material in here from other -- about definitions of disability from other systems. This is on page 16 and 17. And I've included some -- 18, 19 -- I've included some references to a few cases that talk about some of the issues that have come before the board in terms of things that come up

frequently. Things like, well -- Dr. Das's position, perhaps, being different than other doctors' positions that are shown in the medical records. The -- you can't ignore the other medical doctors' information. But you are allowed to weigh the doctors' medical information in terms of which one you think has the strength and weight behind it and rational basis. So there are court decisions where it is one single doctor's medical opinion, has been upheld, even though there are more than one contrary opinion to that. The courts also pretty much uniformly hold and this is consistent with our ordinance, that the disability must be of such a character that it becomes necessary, that's the word the courts use, for the employee to retire. And the courts do say that the applicants post-injury work history is relevant although not conclusive. So if the person has continued working after the injury, it is relevant. But it's not conclusive. It's something though, that you should consider. And the courts -- the cases also hold, and again, this is consistent with our statute, that the person need not be able to perform any and all duties performed by persons in his job category. He should not be retired on a disability if he can perform duties in a given, permanent assignment. This is the issue of the department being able to accommodate the work restrictions. So that's --

>> Is there any fall off in terms of just I believe a department but go take another job, do they still qualify for disability? I mean if they are doing something outside the city?

>> Mollie Dent: They -- so I also did not get into that portion of our disability rules in this presentation. But we do have -- we do have methods for if the person were to take a job later on and the job were to be such that it was clear that the person was no longer disabled, there are ways to rescind a disability retirement, or to suspend it. We also have, for people that go out early, we have outside earnings limitations where their pensions can be offset.

>> David Bacigalupi: Mollie Mollie we also have a process for people to apply that their disability has been cured, and they --

>> Mollie Dent: And come back.

>> David Bacigalupi: They can come back if the department can accept them. Maybe we can get a follow-up to the board of those three items.

>> Mollie Dent: What I'd like to do, I definitely would like to repackage this so it is in the right order for the board. And any more information that the board would like for me to cover in it I would be glad to cover in it. I didn't want to -- you have a long meeting today. I didn't want to have this take too long but I felt like it was essential for the new board members at least to at least have our definition of disability before them as they're going through the disability applications that they will be hearing today. So that's the most significant part of the presentation today from my standpoint is on page 10, the disability definition. The rest of it is kind of background information, and I can certainly expand upon it too if there are additional issues that the board would --

>> David Bacigalupi: If you, when you repackage it, if you could expand upon Sean's questions, as far as follow-up and also on rehearing, or not rehearing, but an application to reverse a granted disability.

>> Mollie Dent: I will add some information on the benefits, on the difference between service connect and non-service connected benefits, and I will add some information on postretirement, on basically what happens after the disability retirement is granted other than a writ of mandate.

>> David Bacigalupi: And also the reporting requirements if it's a premature disability. Somebody that's been on four or five years, they have to -- there's some reporting requirements they must do as far as outside income.

>> Mollie Dent: Right, that's what I call postretirement. All of the post-retirement things that can occur that are not involved with courts. Because I think I've covered that in here.

>> Dave, I don't know if you want Mollie to amplify on causation. The first causation is that the alleged disease or injury, did it cause the incapacity, number one. Number two, even if there is incapacity, did the job cause the disease or injury? And there's a lot of law on the relatively -- you know, there's different ways you can slice how much evidence you have to have to be persuaded on the causation issue and some courts, not under this system,

but on analogous systems, just say substantial. And that doesn't help you a lot. But it at least tells you it's not a huge amount of evidence. You have to be persuaded by before you conclude that there's causation on both issues. But some automobile accident where the guy's wrecked, and it was on the job, causation at least as far as service-connected issue, was obvious. But on lots of diseases it's not so clear, and you're going to have whatever, you're going to have medical evidence plus evaluation by Dr. Das on those issues to help you.

>> David Bacigalupi: If one of you -- Mollie, if you could just briefly mention or discuss the presumptives, and how it does not apply, because the California workers' comp presumptives do not apply to this board.

>> Mollie Dent: I did discuss this in here. And I hope when it's in better numerical order that will come out. But there are hundreds and hundreds of disability retirement cases statewide, and they're very much -- very, very factually intensive, and I don't think it would be productive for either me or this board to get into some, you know, huge review of all the disability retirement cases and you overlay on that the fact that our system's definition is somewhat unique.

>> David Bacigalupi: And each situation is different and it's better to talk about it at that time rather than generalize at this point.

>> Mollie Dent: I will try to make sure to do a little more clarification to do the workers comp versus our issue. That's as far as I would want to go what's supposed to be an overview.

>> It might be helpful to have Dr. Das speak to us (inaudible) when I did my Internet research it seemed to pop up as a very key topic in determining disability. I think for lay people who have no experience A in the firehouse or in the police station in seeing what goes on or B also have no medical background it would be helpful for us to get a more in-detail explanation of causation and how that affects the claims.

>> David Bacigalupi: Dr. Das did you want to address that or is that particularly providing a future here?

>> Mollie Dent: He's not going to be able to do it at this meeting but if you want to do a future agenda item then I think he can address whether or not he would be able -- he'd like to do that at a future agenda.

>> David Bacigalupi: Could you come back to us with that, Dr. Das?

>> Dr. Das: Absolutely.

>> Pete Constant: I'd like to ask a quick question. On page 14, the burden of proof --

>> David Bacigalupi: Excuse me, Pete, can you hold on in just a second. Is there anything else from the board?

>> Richard Santos: Yes.

>> David Bacigalupi: Go ahead, Dick. I'll get right to you, Pete.

>> Pete Constant: Yeah, I actually am a member of the board, so I have a question.

>> David Bacigalupi: I think you are a liaison, as far as my understanding.

>> Pete Constant: No, I'm a nonvoting member. So I have a question on the burden of proof here and the process. The burden of proof for an applicant is on the applicant --

>> David Bacigalupi: Could you hold on a minute? Mollie, can you address this, please?

>> Mollie Dent: We've got that as a later item on our agenda, I think. As the council liaison, regardless of what his status is, I think he can go ahead and ask his question.

>> David Bacigalupi: Yes, I'll open it up after the board is finished.

>> Mollie Dent: It's -- You are the board's chair. You can determine, regardless of what his role is, you can determine the order in which questions are asked. But I didn't know any -- I thought I saw board member Santos defer to the councilmember. I'm not going to get into the middle of the order the questions that are asked in. You're the board chair.

>> David Bacigalupi: Okay, Dick.

>> Richard Santos: The way I understood it, Mr. Constant asked for the floor, and then Mr. Bacigalupi said, is there any board members want to speak. That's when I said yes. So whatever the pleasure of the chair is, I will abide by.

>> David Bacigalupi: I'd like Mr. Constant to be able to speak, but I'd like to hear from the rest of the board first.

>> Richard Santos: This presentation by Mollie Dent was very good. It is a warmup. And yes, I have been gone a few years and so on. But I think there's many, many questions that have to be answered, and example just when I talk about where whether it be Dr. Das and so on I want to find out when I went through the reports there's a lot of stuff I just don't understand. I don't think it's a big change, it's just decision-making and helps me make a better one. Let's go back to premedicals and prerequisites. I think this board needs to know what the fire and police are doing today, regardless of my time, I don't want to keep on saying that. It does have a direct relationship to some retirements, especially of people who don't have 20 years or so on, when there can be very controversial. So premedicals are very, very important to this board, that we have input, understand them and may be able to take communication to the council or whatever. Some cases where they abuse money to be the blunt of not doing things has cost us. So if people are interested in reducing disabilities then we have got to be sure we have the best of health care. So those are the kind of things that I think we should be addressing, I'd like to see this board be informed and educated on this. With the pleasure of the chair, I'm sure it's another day, it can't be done today. But I'd sure like to see some of those things and bring it to the board so each board member has an idea just what goes on. Because they don't know when you have to make that decision, that does play.

>> If that's the case we should also -- and I don't know if it's the scope of the board, but we should also address wellness too, right? And staying fit and staying healthy and how we govern that as well. If we're talking about --

>> David Bacigalupi: Well, exactly but it cut out all the wellness programs. Dr. Das could you address when do you your follow-up report for this board what the entry level examinations consist of so we know what kind of baseline we are looking at for new employees? Would that be something you could include in your report?

>> Dr. Das: Absolutely. I don't want to tread on anything else but some of the issues that Mr. Santos brings up are very critical and important. But there are kind of in terms of as an employer in terms of what kind of information you can obtain from people and what kind of -- so there's different goals for the preplacement versus the, you know, in terms of anticipation of disability retirement, so we can kind of -- is it okay if I kind of review some of the conflicts there?

>> Mollie Dent: You can do that when you bring it back. And it sounds like board member Krytzer wanted something from maybe staff on wellness programs and on what's in place for wellness right now.

>> Thank you, Mr. Chair.

>> David Bacigalupi: Okay, Pete.

>> Pete Constant: First of all I'll apologize for your lack of understanding of my role here as a nonvoting member of the board. My question is on page 14, on the burden of proof. If the burden of proof is on the applicant, when we look at the process that the two boards take, but in particular this board, why sit then that the applicant doesn't present their case to meet their burden before the city presents their case to counter that burden?

>> Mollie Dent: Well, the evidence, there's written evidence in the packet. So to the extent that the applicant wants to just rely on that written evidence, they can. The board has the written evidence in the packet. The

applicant can also be questioned by the board members. And the applicant can present verbal, too. Some do. But there is -- they have submitted evidence, in the form of written evidence, in the packet. Now, whether or not that meets their burden of proof or not, that's what the board needs to look at on a case-by-case basis. Does that help?

>> Pete Constant: Yes.

>> And the board hasn't used what you call a standard administrative type format which kind of borrows from civil litigation where the plaintiff goes first. We don't do that. And there's usually a distinction between burden of going forward with the evidence, in other words, starting first, versus, burden of persuasion, sometimes known as burden of proof. So right here the burden of persuasion is always on the applicant. But the way we do it, the applicant doesn't have to go first.

>> Pete Constant: Okay. And then on page 10 with the definitions, I know that as reports come across and applications come in, we hear the terms maximum medical improvement and being permanent and stationary with permanent restrictions. How does that comfort with the first section that's highlighted where it says, or extended in uncertain duration? So if someone is in a period where they're in an extended and uncertain duration, how can they achieve that MMI with restrictions?

>> Mollie Dent: It is a little difficult. Actually because of the second part, because when they're -- when they're in that sort of extended and uncertain duration and there's the possibility that they could have additional surgeries, or that sort of thing to improve their condition. It's also somewhat difficult to know whether they're physically incapable of performing, as opposed to merely unable, because of their current need for surgery or whatever. So although it may -- some of the issues that might seem like they would come up, under this definition, actually don't come up as much as you think they might. But we do see people coming in, yes, you know, for -- it's an extended period of time sometimes on the change in status retirements. And I'll take one minute to address the change in status because they're not on here. But the change in status retirements are ones where someone retires on a service retirement with a disability retirement pending. They've applied for a disability retirement but all of their

medicals are not done. And so once all of that's done, then they can convert to a service-connected or not -- well, normally service-connected but they can convert to a disability retirement if they meet the burden of proof for being able to show they were disabled at the time they went out on service retirement.

>> I have just one more question just real quickly. So for a career serviceman that's been doing this for 20, 30 years, they retire in service because their injury has maybe not had the maximum healing or whatever. Is there a difference -- okay, and when I come back within the next 12 months to claim disability, does that make sense? You following my --

>> Mollie Dent: Uh-huh.

>> Okay, so you've been on the line for 30 years, you have a back issue that maybe is not fully healed so you can't go through the disability process, right? So you're coming back after 12 months and then you claim the disability. Is there any other changes in terms of the benefits that we are providing in terms ever health care or financial expense to the plan members or -- versus the service retirement? I mean is there a better quality of health care plan that they qualify for or something?

>> Mollie Dent: No.

>> What's the motivation if you've already retired and you have --

>> David Bacigalupi: The shortcut is tax status. It was written into the tax codes, an opportunity to defer some or all of the disability income. And that's pretty much the only -- that's the major difference.

>> Okay, no health care, no --

>> David Bacigalupi: And in fact if you have a large sick leave payout, that is capped for a disability retirement, so you may have to pay some of that back.

>> Okay.

>> Mr. Chair, I think that was the direction that was given to Mollie to come back the next meeting or so, with details about the benefits of filing for service retirement, kind of lays out why people pursue that.

>> Mollie Dent: Yeah, I can go a little bit more into detail. I, like I say, did not want to do that today, knowing the length of your meeting, because the formula would have been pretty complicated.

>> I thought there was a health care upgrade or disability --

>> Mollie Dent: No, the health care is all the same.

>> Mollie, isn't it also if they elect the pop-up, for (inaudible) the pop-up is more expensive because they go out on disability?

>> Mollie Dent: I'd have to look at that. I mean the rules on all of that get very complicated.

>> That means they take home less because --

>> Mollie Dent: If you want a discussion of the benefits we'll come back to that.

>> David Bacigalupi: I think that might be more inclusive instead of to include them all. This was meant to be a brief orientation for those who haven't been on the process. We have some applications on the calendar today, rather than catch you cold. Obviously there is more information to be provided and we'll ask Mollie and Dr. Das to do that, and maybe even have further discussion on that. I just want to give a brief moment, is there anybody in the audience, we had some attorneys that represent many of our members and stuff as they come here. Anybody had any questions or would like to address the board?

>> Yes. Okay. I'm Sam swift, an attorney (inaudible) 15 years. I wanted to address your question about the service retirement with disability retirement pending. When a person is taken off the line because they can't do their job they're often put on modified duty. Or they're off. During that period of time, a public safety officer still receives full pay, whether they're working or not. That's one of the benefits of being a public safety officer. But if they're still on the payroll the department has to fill behind that person and pay another salary to do that -- to do that person's job. So 15 years ago, or so, I was asked by some of the leaders in the fire department, suggest to your applicants that they retire on a service retirement, and get off the books, while their disability retirement process is pending. Because in some cases that will take a year or more. Where they're paying the person full salary and the department is filling behind them often at time and a half. So it's to the advantage of the City's financial well-being for a person to go off on a service retirement, as soon as -- when they're taken off the line and it's clear they're never going to improve enough to go back, but they still may need a surgery to another body part or whatever, it is to the benefit of the city not to have to pay for that person and fill behind that person on time and a half, it's better that they go off on a service retirement and then wait for the process to play out and then come back before this board at another time. That's why you'll see in some of the cases you'll see before you today, in virtually all of the five cases I have anyway they went off on a service retirement and then are coming back later for their disability retirement. I hope that makes sense.

>> David Bacigalupi: Thank you. Okay. Hopefully, that will help everybody make the decisions that have to be made today. Item 1.3, non-service connected disability, we have an application by police officer Robert P. Anderson request for a non-service connected disability retirement, effective March 3rd, 2011 with 20.26 years of service. And for the record, officer Anderson is present and you're representing yourself.

>> Yes.

>> David Bacigalupi: Okay. Donna.

>> Mr. Robert Anderson is requesting a non-service connected disability, based on Ellier-Donier syndrome type 4 and three aneurysms. He's 46 years old with 20.26 years of service. Medical reports are listed in your packet. Work restrictions is that he cannot participate in activities requiring heavy physical exertion. He is currently on modified duty, and at the time of application was on modified duty, and there's no permanent modified duty valuable.

>> David Bacigalupi: Thank you Donna. Dr. Das did you want to add something to this?

>> Dr. Das: Actually I'd like to in anticipation of questions.

>> David Bacigalupi: Please do.

>> Dr. Das: With respect to the whole issue of prophylactic versus incapacitating restrictions, in this particular issue I did provide, quote-unquote, prophylactic restrictions, that's in my report. I just wanted to clarify in this particular situation, they are prophylactic but the consequences are severe if the restrictions are superseded. It's not a choice issue in terms of, his -- on his matter there is an issue in terms of if the blood pressure exceeds a certain level and I can't give you a certain duration or a certain level, but at a point it could be significantly debilitating and life threatening. And that is why I feel that in this particular instance, even though it's quote unquote to prevent fur injury or a problem it is more incapacitating as opposed to an inability or a prophylactic restriction. But I didn't know how to properly word that.

>> David Bacigalupi: I think you did it verbally very well. I appreciate the information because obviously, if this -- if those restrictions were ignored it could be life-threatening. So thank you.

>> I'll entertain a motion for approval based on Dr. Das's statement.

>> Second.

>> David Bacigalupi: Motion and second. Any temperatures discussion on the motion? Hearing no further discussion all in favor, all opposed, motion carries. Bob, did luck to you. It's a scary thing, and I remember seeing you working out in the field when I was working, and I just wish you good luck in retirement and hopefully take care of yourself.

>> Thank you very much. You too.

>> David Bacigalupi: Okay item number 1.4 A change in status. First one is arson investigator Enrique Carruth. Fire department, request for a change of status from a service retirement to a service connected disability retirement, effective January 24th, 2009. 27.73 years of service. Arson investigator Carruth is present and is represented by Sam Swift.

>> Mr. Chair, is it necessary to hear all the information? I have read it very carefully, I feel I have enough facts to make a motion.

>> I actually would like a little bit of recap.

>> David Bacigalupi: Before we get the motion I'd like to have Donna give an overall presentation and Dr. Das a chance to update it like he did on the last case, and then I know sometimes when you look at these packets the evidence is overwhelming, but for the record we need to give the opportunity that everything gets presented for the record.

>> Thank you.

>> David Bacigalupi: Donna.

>> Enrique Carruth is requesting a change in status to a service connected disability based on the left ankle, left knee, right shoulder and neck. 54 years old with 27.73 years of service. Medical reports are listed in the

packet. Work restriction is that he should avoid sustained and forceful shoulder-level and above level work. He's currently service retired and at the time of application was on disability leave. No permanent modified duty available.

>> David Bacigalupi: Thank you, Donna. Dr. Das did you have anything to add to this report?

>> Dr. Das: No I didn't.

>> David Bacigalupi: If you want to make your motion at this point.

>> Richard Santos: Thank you, I see the procedure, as I understand it. My motion is to grant the change from service to disability.

>> David Bacigalupi: Okay do I have a second?

>> Second.

>> David Bacigalupi: I have a motion and second. Discussion on the motion. Sean.

>> I'd just like to hear about the bowling ball incident, it's intriguing, what exactly happened with the bowling ball that coughed the injuries?

>> Absolutely I could give you a quick synopsis. Early in my career I started in the fire service as a firefighter. That particular incident we had a garage fire or an attic fire where in many instances many of the folks store large quantities of items in their garage, they create like an attic space in the garage. And we were clearing the foyer debris doing some salvaging. And as we salvaged there was a weak portion of the thin wood at which this tenant had put some of their contents in there one of the contents was a bowling ball that came down and struck me on the head. That was one of my earliest injuries.

>> Sean Bill: And this was back when, when did that occur?

>> That was early in my career.

>> In 2007, something else occurred that re-aggravated it?

>> Numerous incidents that aggravated that particular injury.

>> In numerous incidents April 4th of '08, slipped fire injuring his low back right shoulder and knee (inaudible) those are the ones (inaudible).

>> David Bacigalupi: Thank you, Sean.

>> In going through this we are a newly constituted boards. Here are the ones I focused on. Right shoulder, page 42 it was noted that the injury was occurred or aggravated on April 4th, 2008, while in performance of his duties, falling down a rubble pile in an arson investigation, he was immediately placed on light duty due to inability to perform the job. On page 84, the doctor diagnosed a right shoulder rotator cuff tear and when they did actual surgery on page 79 it was noted that there was an actual 50% tear, it was confirmed by visual inspection going inside. In January 13th, '09, page 25 and 29, he said he was rated having reached maximum medical improvement and his doctor diagnosed an inability, that's the key term we reviewed earlier that he can't do the job or preclusionary restriction. He subsequent retired a few days later with a disability pending on January 24th. He submitted for disability within the one year time frame, our doctor confirmed him as having a disability and should restrain, having certain restrictions about shoulder level on page four, the work said there was no work available for him that would meet that restriction. And it looked as though the medical records all confirmed that disability. So just on that one body part alone it seemed all the conditions were met.

>> Again though there's a distinction between incapacity and inability, right?

>> Yeah, so the -- correct but the restrictions say he can't lift his shoulder over, he should not -- I cannot do that.

>> It says should avoid.

>> The -- so Dr. Das, I'm sorry I don't have everyone's, can you address your restriction versus what the doctor's restriction had been on page 26.

>> Dr. Das: Well, essentially, Dr. Coleman said should avoid -- the restrictions he provided were no heavy lifting with his right shoulder and no shoulder level above -- or no shoulder level above work. So essentially he doesn't want him to do those kinds of things. And what I take are the restrictions from the doctor that he's provided to him irrespective and with the second part we try to figure out whether these are due to -- I use inability in the form unfortunately but the idea is there's some type of anatomical or physiologic reason that they are absolutely unable to do this. Dr. Coleman checked off two different boxes. He says it is on his pain and also on his disability. He describes limited motion with overhead work and fatigue with prolonged use. And he said that represents an inability. And so I -- my restrictions are based, trying to avoid as much as possible the subjective component and trying to focus more on the objective component. And during my evaluation I found a little bit of diminished internal rotation and external rotation of the shoulder, that can interfere with his ability to use the shoulder in those motions. So you know, the key component is whether -- what's limiting the range of motion. And with Mr. Carruth, I don't think it's entirely pain. I think that there's a component of adhesive capsulitis, that will restrict internal rotation and external rotation. Whether that's significant functionally, that depends on the individual.

>> So the term inability on the form you give the doctors there that's really saying an incapacity, they're not able to do this function?

>> Dr. Das: Yeah, if they have an appropriate explanation that --

>> Limited range of motion being that kind of --

>> Dr. Das: Yeah, I would have preferred something like adhesive capsulitis, it limits XYZ, rather than saying fatigue. Because fatigue to me doesn't represent incapacity. The whole thing comes down to the doctor's explanations and that's why we give them the opportunity to explain. Try to explain what's prophylactic and what's preclusionary or what's an incapacity, so.

>> Question as a layperson here how physical is the arson investigator task? Are you doing a lot of heavy lifting?

>> Not specifically but in general, an arson investigator can be compared to a furniture mover. Because when they go into a house, to determine or any kind of a structure, they've got to move out the couch, the chest of drawers, they become a furniture mover, is that essentially correct?

>> That's absolutely correct. And then keep in mind that our department has one investigator on duty for 24-hour shifts. So my job is literally to -- two layer, to dig to a fire scene to come to conclusion as to what caused this fire. And whatever is in my way to get to my area where my point of origin, to identify my heat source, I need to dig down, I need to dig down deep into layers and layers and hundreds of pounds of fire debris. It may take an hour, it may take a week, on determining the issue of the fire.

>> David Bacigalupi: Okay. Dr. Das it sounds like these forms that you created, based on the definitions that we got this morning's orientation.

>> Dr. Das: I believe you are correct.

>> David Bacigalupi: Okay so we'll see a change in that?

>> Dr. Das: Yes.

>> David Bacigalupi: Until that happens, maybe you could verbally address the issue when you feel it's an incapacity and stuff, so that board members feel comfortable in their weighing of the evidence.

>> Dr. Das: If it helps, my intent was incapacity with the form. It wasn't an intent for an inability, it was an intent at incapacity, because the inability I think is well described in terms of being able to run a four minute mile versus a five minute mime and that's really not what I was shooting for.

>> David Bacigalupi: Thank you.

>> Mollie Dent: And I would say, the other doctors looking at the form would have interpreted it that way given the way that Dr. Das has described what he is looking for. So I think other doctors looking at this form would think that that work restriction is an incapacity.

>> David Bacigalupi: I think so too but at the same time we have what's written in front of us, and it can be confusing and stuff, so if we can address that.

>> Again, there are numerous cases in the pipeline and in many of those cases, this is the one that has been completed by that doctor. And I'm hoping that this won't require me to go back to every one of those doctors and re-do the form changing the words. I mean I agree --

>> David Bacigalupi: I think Dr. Das can address that verbally, that's why he's given the opportunity. I think he just needs to make a mental note that we may be calling on him for information on each one of those cases. Dr. Das. Thank you.

>> Dr. Das: Just putting a note to myself to get that form changes.

>> David Bacigalupi: Any other questions by the board? We have a motion and second on the floor. The motion is to grant a service connected disability. If there is no questions, all in favor, all opposed, motion carries. The motion carries unanimously.

>> Mr. Chair, I want to say something. When I hear some of my fellow board members questions, and I would too, especially when you see I think we need firefighters sometimes and police officers have a writing class, when you see a bowling ball, that is the wrong indication and I'm glad you asked those questions. Mr. Carruth was too modest. The early years when we didn't do much documentation, didn't say much, we were at station 8, over 350 calls a month. This was way before he was an arson investigator. He was one of the most aggressive firefighters I ever worked with. In later-on years as an arson investigator, yes, you could restruck the area, but you ask good questions, and sometimes those applications are misleading. But I would say in this case here, Rick, all the best to you, all the work you did in the community as an aggressive firefighter in the east side for many, many years, the best of luck to you.

>> David Bacigalupi: Thank God you were wearing a helmet. It could have been much worse.

>> Thank you.

>> David Bacigalupi: Okay. Next item. 1.4,B. It's an application for change of status from service retirement to service connected disability retirement by fire engineer Charles Carter, effective September 6th, 2008. 40.11 years of service. That's pretty outstanding in and of itself. And for the record, fire engineer Carter is present and is represented by Sam swift. Donna.

>> Fire engineer Charles Carter is requesting a change in status to service connected disability based on his lower back, right shoulder, left knee and right knee, 70 years old with 40.11 years of service. Medical reports are listed in your packet. His work restrictions are that he should avoid sustained squatting or kneeling. He should avoid sustained repetitive very heavy lifting. He's is currently service retired. At the time of separation and application he was on modified duty and there's no permanent modified duty available.

>> David Bacigalupi: Thank you, Donna. Dr. Das anything to add?

>> Dr. Das: No I don't.

>> David Bacigalupi: If we find the word inability in here is that an incapacity?

>> Dr. Das: On the form, yes. In my report, not necessarily. I don't think I use that word in my report, no.

>> David Bacigalupi: I don't think so either. But okay.

>> Motion to approve.

>> David Bacigalupi: Okay I have a motion. Do I have a second?

>> Mr. Chair, motion to grant this service connected disability.

>> David Bacigalupi: I'll take that as a second. Further discussion by the board? Hearing no further discussion, all in favor, all opposed, motion carries.

>> I'm a nay on this one too.

>> David Bacigalupi: A nay? Damon are you a nay?

>> Yes.

>> That happened without discussion. I read the case pretty thoroughly. And I'm comfortable with my decision on that.

>> Mollie Dent: That's fine. I need to report to the board that it takes five to actually approve or deny, because you have to have a quorum of the board to take action on the application. Mr. Richeda and I have just been talking about this. So we can -- you can -- it basically has not been approved, but it's not been denied either. I think we had this happen once before. It's -- so unless there's a subsequent motion to approve it -- to deny it, which is granted, it will stay in abeyance until we can get enough board members here to have a vote that will be able to be sustained.

>> Can we make another motion to accept, or would that be the same motion that's just failed? So we couldn't do it at this meeting?

>> What do you mean?

>> We can't make another motion to accept this?

>> Mollie Dent: To accept what?

>> David Bacigalupi: To grant the application.

>> You said unless another one has --

>> Mollie Dent: No, no, no, the motion to approve the application has failed for lack of five votes. So the only other motion that could be made now is a motion to disapprove the application. It can be rescheduled because it is still pending for a point in time when there would be an ability to -- you'd have to do a motion to reconsider at this point. And that would -- but --

>> Mr. Chair, I'll make a motion to defer this to the next meeting that we have enough of a quorum that will get a vote to create a decision.

>> Second.

>> David Bacigalupi: Motion and second to postpone this until we have enough board members to get a quorum on the vote. Is there any further discussion on that motion?

>> I have a question.

>> David Bacigalupi: Yes, go ahead.

>> Assuming that that's going to be postponed I'd like to hear from the two members of the board who voted nay in order to provide some guidance as we return, as to what issues they thought were -- what was missing. Is that --

>> In my consideration of the case, I looked at was there incapacity to perform. I didn't see that there's any capacity. Number one. Also, I -- when I thought about this case, I thought about you know, my parents who are 68, 70 years old. And I think there is some normal wear and tear of life that comes along with not just being a firefighter or a policeman, but my father-in-law had both niece replaced recently and my mother has had her knee replaced et cetera. So I think there is -- needs to be a high standard for a disability claim. And, you know, for me it's really an incapacity issue. You have to be incapacitated not to be able to perform the task.

>> The only specific I would add is that the choice of conservative care, as well, versus, you know, taking doctor's recommendations for additional surgery.

>> That's at page -- it's in the -- page 6 of 7.

>> You're not talking about the two back surgeries then? Good I'm talking about the right shoulder.

>> The shoulder, I see.

>> That's it.

>> Thanks.

>> Question I have Mr. Chair to the legal counsel, if we had a motion to rehear this, is that something we can do, because maybe the two gentlemen may change their perception.

>> Mollie Dent: Well, you don't really need to rehear it at this point. You have moved to defer it so it actually will come back to you next month, to be heard all over again with hopefully more board members present.

>> And a full hearing.

>> Mollie Dent: And a full hearing again.

>> David Bacigalupi: All right, so that will be -- oh you didn't vote. Okay so the motion is to put this off until we have next month, when we hopefully will have enough board members to get a quorum vote on it. Any further discussion on that motion? Hearing no further discussion all in favor, all opposed, motion carries. Okay. So --

>> Question, on 1.4A, I had that recorded as a unanimous vote.

>> David Bacigalupi: Yes.

>> Russell Crosby: Okay.

>> Mollie Dent: We'll track the vote.

>> David Bacigalupi: Okay, item number 1.4C. It's an application for a change of status from service to service connected disability by police lieutenant Michael Hahn and that is effective January 9th, 2010 with 27.89 years of service. And for the record, lieutenant Hahn is in the audience and is represented by Mr. Boyle. Donna.

>> Michael Hahn is requesting a change in status to a service connected disability based on low back neck shoulders elbow and right knee. He was 51 at the time of the service retirement. 27.89 years of service. Work restriction is that he should avoid frequently chasing and apprehending suspect. He's currently service retired and at the time of separation and application he was on full duty, no permanent modified duty available.

>> David Bacigalupi: Thank you, Donna. Dr. Das?

>> Dr. Das: Nothing to add.

>> David Bacigalupi: Okay, Mr. Boyle, would you like to address, so we can make sure that we have all the information that is presented here to add?

>> I would just urge the board to grant this service connected disability since Lieutenant Hahn cannot chase and apprehend suspects and there is no modified duty, according to (inaudible).

>> David Bacigalupi: Okay, thank you. Okay, questions by the board, or I'll entertain a motion.

>> I have some facts I'll just bring out. You know, in reviewing the packet I saw a few things. I saw in 2001 he had an X ray, with a cervical spine impingement. In 2002, met with a doctor, this is on page 66 and 68, he had issued with the C-6 and C-7 area which the doctor noted. In 2005, on page 39, went for an MRI on his neck with indicated he had damage to the cervical area. He had epidural injections to the neck and then looks like in August of 2010 he has prophylactic and preclusionary exclusions. Just like that noted. So I'll make a motion based on those with the epidural to the neck and so forth to approve and grant this change of status.

>> Second.

>> David Bacigalupi: I have a motion and second.

>> Before we vote can I add some comments?

>> David Bacigalupi: Yes.

>> It seems to be a culmination of numerous injuries, and the conclusion is frequent chasing of suspects, not chasing, it doesn't say he can't chase suspects, it says frequent. So before we vote I wanted to just address that.

>> David Bacigalupi: Okay, did you have a question to ask?

>> Well I mean I think that seems kind of clear from a medical report standpoint, that it's not, there was no one event, there was no debilitating event, it seems to be more of a choice issue at this point. This is not the maximum recoverability of his disability.

>> Also I would like a little clarification on preclusionary and prophylactic if we could get maybe Dr. Das to address what that means from a layperson's standpoint.

>> Dr. Das: Well, when I look at incapacity or the inability on the form what I'm looking for is a physiologic or anatomic abnormality that precludes so I'm looking for instability. Therefore if there's instability present that motion can no longer be done, because -- that motion can no longer be done or there's a neurologic injury that causes profound weakness in a muscle group or a group of muscles that prevents you from being able to do things whether or not you want to. So there's a whole issue of voluntary. And so what I try to take out of the equation is the pain component, because if pain is the primary reason why someone can't do something, there are options to treat the pain, that may help or reduce. So it's very difficult to say that there's an incapacity. It may be a lack of appropriate treatment or choices, and so the key is, to look for the physiologic or an atomic abnormality that

results in a specific problem. The presence of an imaging issue or an imaging problem doesn't necessarily mean that it translates to a functional deficit. And that's kind of one of the things that get a little bit confusing. Because persons can have imaging abnormalities for a long period of time but are still able to function at a very high level. And it really becomes a choice of when they're no longer able to tolerate that particular activity. And it's very legitimate, you know we can tolerate certain things for a period of time. And then at a certain time we aren't able to tolerate it, and medically it makes sense. The issue is whether that's an incapacity or inability is what we need to explore here.

>> And I'm not at all questioning the validity. I'm just asking I guess if you could be a limb more direct in describing he should avoid frequently chasing and apprehending suspects.

>> Dr. Das: Basically, the idea is that he shouldn't engage in those kinds of activities on a regular basis because I think it would be painful for him.

>> David Bacigalupi: And the other part of it is that the department can't accommodate that kind of a restriction. Sean you are next and then Sean.

>> So Dr, at least you spell your name right, I give you that thing. Dr. Das, your restriction talks about frequently chasing and apprehending suspects. If I look at the other doctor's restrictions, know they say no neck extension, no lifting greater than 50 pounds, no repetitive over the shoulder lifting, no overhead lifting, they're drawing a wider range of things that the officer may be drawn on doing rather than just chasing and apprehending suspects.

>> Dr. Das: That's correct. That's why I have them explain further down in terms of whether -- you know are these based on a level of reported pain? And then there's imaging studies that are presented there. And they basically show that, you know, and so what would happen if he writes down there's prolonged repetitive neck positions would cause symptoms there and that is true. If -- it would do to those imaging findings do to the osteophytes extending your neck back and can cause some nerve root irritation and you can refer pain down the leg. As far as an absolute inability or a preclusion from lifting 50 pounds, I'm not sure how she arrived at that, as

an incapacity to lift 50 pounds, versus a recommendation that he avoid lifting 50 pounds, and maybe it hurts when you get past that stage. But that doesn't necessary -- there is no -- the imaging studies don't correspond to any specific weakness that would cause a restriction of lifting more than 50 pounds. It would be reflected in more an inability as opposed to a medical reason that he couldn't lift 50 pounds.

>> And then on page 7 the findings include degenerative disk and bony changes on C-5 C-6, C-6, C-7, as well as mild spinal canal narrowing. Could you speak to that in terms of how that affects him? Is that what causes these issues and is it a hereditary condition that would be generally considered a hereditary condition, or is it something that could develop from the specific work?

>> Dr. Das: You know as far as look in terms of looking for causation for the neck degenerative changes, you know, they really haven't been able to identify obviously specific work factors. Vibration has been noted to be a problem for lower disk problems. People that are, you know, football players, can with a lot of trauma, and direct vertical compression, can have those kinds of problems. As far as these kinds of findings, you know we look at genetics and aging, primarily.

>> David Bacigalupi: Dr. Das, if you lift over 50 pounds and you have a restriction, is there a more likelihood since there's an injury to increase the injury or cause further damage?

>> Dr. Das: Yes.

>> David Bacigalupi: So it gets back to the question of, if you say no, can't lift 50 pounds, lieutenant Hahn were out in an incident and he lifted over 50 pounds he increases his injury then his restriction could be 25 pounds plus his quality of life goes down. Is that an accurate statement?

>> Dr. Das: You know, I guess yeah, it would increase his pain and if we're not able to treat the pain well it would diminish his quality of life.

>> David Bacigalupi: Thank you. Further questions by the board? Okay, I have a motion and second to approve the application. All those in favor, say aye, all opposed?

>> I'm a nay.

>> David Bacigalupi: The motion fails to pass. We'll need to continue this on to when we have sufficient number of boards to have a passing vote.

>> Would you want a motion or --

>> Mollie Dent: I think you should have a motion to agendize it for next month so it doesn't slip.

>> So moved.

>> David Bacigalupi: A motion and second to continue this on to next month. Any discussion on that? Hearing no further discussion, all in favor, all opposed, motion carries unanimously. Okay item number 1 many 4D it's an application for a change of status from a service retirement to a service connected disability retirement for fire captain Robert naughten. Effective January 24th, 2009 with 25.69 years of service. For the record, fire captain naughten is in the audience and is represented by Sam Swift. Donna.

>> Fire captain Robert Naughten is requesting a change in status to a service-connected disability based on neck, back, right wrist and right elbow. 55 years old with 25.66 years of service. Medical reports are listed in your packet. His work restriction is that he should avoid significant compressive forces to the head. He's currently service-retired. At the time of separation he was on modified duty. At the time.application he was on disability leave. And there's no permanent modified duty available.

>> David Bacigalupi: Thank you, Donna. Dr. Das anything to add?

>> Dr. Das: No I don't.

>> David Bacigalupi: Okay. Questions by the board?

>> Sure, making comments I guess to summarize this, so the facts as I see them at least, one of the things we talked about is whether these injuries are work related. I see in '87, you report on page 98, lifting a heavy patient from a bed resulting an injury. March of '99, he fell through a roof during roof ventilation on page 92. In 2002 (inaudible) FCVA resulted in injury, page 90. Page 87, in 2008 you fell down a hole while advancing a hose line down a hill. On page 81, August of '88, the roof activated in on you, while you were doing a hose line on a ladder, knocking you off the ladder and down a stairwell. In April of '89, while exercising at station as required by policy, you were impacted by another firefighter, page 81. March of '99, you fell 12 feet through a hole, through a roof, and a 260 pound individual landed on top of you, page 65 and 65. In May of '08, carrying a hose in a grass fire, stepped in a hole, causing you to fall resulting in neck and back pain on page 28. I see good documentation in each of those incidents provided and for doctor evaluations, the M.D. came up with mild cervico- thoracic strain, re-diagnosed about a year later. An X ray identifying degenerative spurs and narrowing in the spine. 2002, central stenosis, C-4, C-5, and C-5, C-6, with some other big words I don't completely comprehend. Again in 2002 multiple MRIs confirming the injuries, by 2002 quite symptomatic, quote unquote. Surgery was recommended after failure of other alternatives to reduce the symptoms. Again the diagnosis was confirmed in December. Again, you had surgery then, December 4th, upon completion of the surgery having opened you up and looked inside they confirmed the diagnosis of cervical spinal canal stenosis, C-3 through C-7, worse at C-4 and C-5, et cetera, et cetera page 41. There was a follow-up, with the reconstruction reporting that you were doing better, several times until 2008, where degenerative changes were noted and body pain was increasing and then in 2009, you report as having reached maximum medical improvement with no expectation to reduce your impairment. You were given a restriction in '09, preclusionary. No heavy lifting, repetitive bending or stooping, no sustained posturing or repetitive neck motions. The doctor reported -- oh they did the spinal surgery on you, so there was actual surgical intervention to improve your condition or maintain your conditions. You retired in the January 24th '09, filed for disability within a year. You received restrictions from a doctor which the department reported at that time they could not do. Before you retired you were serving as captain in a fire department is that correct?

>> That is correct.

>> The team responds on the engine by itself, first in on fires or medical calls. The captain participates in lifting heavy patients. While the engineer's out pumping outside. Fire attacks. Participates in the overall operations. The captain will work after the fire and continuing with the overall operations being exposed to roof falling and strenuous exercises all of which I think in that role would mean you wouldn't be capable of doing the work with the restrictions. Those are the facts as I see them in this case.

>> Richard Santos: With those alone exhausted me. I move to.

>> Can I ask.

>> David Bacigalupi: Let me take the second then we'll open it up for discussion.

>> I'll second.

>> David Bacigalupi: Motion and second. Go ahead.

>> My confusion comes with a bump of statements. That was great. I thought that was super-helpful as well. There are so many statements throughout the history of the injury that are throughout the course, cumulative trauma and numerous injuries, right, documentation that they are incredibly valued. I'm confused over whether impairment being pain is per the definition of disability. And that's really where I'm having a lot of trouble with a number of these cases and where -- where I'm just a bit conflicted reading through you know numerous doctors' reports.

>> Can I comment?

>> Yeah, yeah.

>> In Mr. Kaldor's presentation, the one thing that he didn't point out is the surgery in 2002 was a fusion of four levels with plates and screws. Now, you've only got about seven levels in the cervical spine, I think, maybe eight, four of them are fused. So you have a vertebra and a disk, a vertebra and a disk, a vertebra and a disk. Now you've fused four of those levels with plates and screws. That only lasts so long. That bought him a few more years but it eventually falls apart as a result of the series of injuries and the day-to-day wear and tear of are his job. It's not just a pain question but it's the plates and screws, what can you do that now that they're in there? Do you extend the fusion further? Do you take the plates and screws out? I mean he's got a stiff neck as a result of these plates and screws but it's not working anymore. It doesn't allow him to function any longer. It got him some more years, but then it finally gave out basically.

>> Do you have anything to add on this?

>> Dr. Das: Would I have included that if the neurosurgeon had included that on the medical reports.

>> Well, actually there is a medical report from Dr. Vernal but you didn't include it in the records from --

>> Dr. Das: Which?

>> From 2-17-09 from Dr. Vernal.

>> Dr. Das: I might not have had it, then because I would have included that one, for sure.

>> It came from risk management. I'm not sure why you didn't have it, but he said he shouldn't continue as a firefighter any longer. He looked at his spine and said, we bought you some time but you're done.

>> Dr. Das: Yeah, I would love to -- I would definitely review that and include that in the future if that -- if he gave the specific analysis, yes.

>> My question is you had the surgery in 2002 and the fused vertebra, serious surgery, but on page 8 one of the doctors note you were able to ski and engage in aerobic routines. Could you speak to the 2006 how things deteriorated for you so we could have a perspective?

>> Well, I had a couple more injuries since the surgery. After the surgery I got to admit I was doing pretty well for a couple of years, then I had a couple of injuries and kind of led up to not being able to do what I was able to do right after the surgery. One thing they left out is they replaced a disk too. They didn't just fuse. They took out four disks and put in titanium. What the doctors told me, you do anything more you're not going to be able to move your neck anymore. So pretty much it is what it is.

>> No more skiing?

>> No.

>> David Bacigalupi: One of the things we've commented on here before is when somebody's injured and they're incapacitated by their injuries and I know Dr. Das has addressed you know the pain level, but it's not necessary in my opinion, reviewing these cases for somebody to have to come in here in a wheelchair before I can grant the fact that they can no longer perform the job of a police officer or a firefighter. So that's something to consider as well when you are calling for somebody to come help you at your house fire or prowler in your backyard.

>> Richard Santos: Mr. Chair, I think that's an excellent point. Comment about working captain. That's part of it when you have those four people at the scene when this one person after surgeries and depreciation over the years, the inability to do the job, if he came in in a wheelchair I don't think we would be making faster decisions. But when Sean Kaldor read that, likes I said, what more do you need?

>> David Bacigalupi: Anything further? I have a motion and second to grant the application. All in favor, all opposed, motion carries.

>> Mr. naughten, thank you very much.

>> Thank you.

>> David Bacigalupi: Item number 1E, Gilbert Siqueiros, and for the record, fire engineer Siqueiros is present and represented by Sam swift. Donna.

>> Fire engineer Gilbert Siqueiros is requesting a change in status to a service-connected disability based on neck, lower back, left shoulder, right shoulder, and left knee. 62 years old with 28.46 years of service. Medical reports are listed in your packet. His work restriction is that he should avoid sustained forceful shoulder level or above shoulder level work. He is currently service retired. At the time of separation at the time of application he was on disability leave, no permanent modified duty available.

>> David Bacigalupi: Thank you Donna. Dr. Das, do you have anything to add?

>> Dr. Das: Anticipating questions, Mr. Siqueiros has -- as I noted in the report was working full duty prior to getting surgery, and postoperatively, was not able to return back to full duty. And I would attribute this to most likely postsurgical adhesive capsulitis, which would be a complication from the surgery so he is probably worse after the surgery than he was prior to the procedure. So that's one of the -- sometimes in terms of treatment can actually end up going the other way for you and I think in his particular situation that's what happened.

>> David Bacigalupi: Thank you Dr. Das for your helpful comments. Questions by the board?

>> Richard Santos: I have a motion to grant the change to a service connected disability.

>> David Bacigalupi: I have a motion do I have a second?

>> Second.

>> David Bacigalupi: Any further questions.on the motion?

>> Just throw out the question, Dr. Das, your recommendations were kind of summarized. The restrictions say there are inability to perform the job based on the restricted range of motion or the impingements felt when he is trying to do the job so he is quite clear he is incapable of doing the job.

>> David Bacigalupi: Anything further Sean? Okay. Hearing no further discussion, all in favor, all opposed, motion carries.

>> Richard Santos: Many of you have not seen Gil, looks like he has lost a lot of weight, obviously taking that pain and so forth. He is a very caring individual, Gil for all your service thank you very much, a job well done.

>> Thank you.

>> David Bacigalupi: Okay, next item is item 1.4F. It is an application for a change of status from service retirement to service connected disability by fire engineer Gregory Toscano effective November 15th, 2008 with 28.27 years of service. And for the record, fire engineer Toscano and is represented by I'm sorry sir I don't know your name.

>> Mason Bledsoe.

>> David Bacigalupi: Thank you, Mr. Bledsoe. Okay, Donna.

>> Fire engineer Gregory Toscano is requesting a change in status to service-connected disability based on neck, upper back, lower back, left shoulder, right shoulder, right hip, left knee and heart, 64 years old with 28.25 years of service. Medical reports are listed in your packet. Medical restrictions are he should avoid shoulder or above shoulder level work in safety situations. He is currently service retired. At the time of separation at the time of application he was on leave no permanent duty available.

>> David Bacigalupi: Thank you, Don nah. Dr. Das?

>> Dr. Das: Nothing to add.

>> David Bacigalupi: Motion by the board?

>> Richard Santos: Motion to grant his retirement service connected disability.

>> Second.

>> David Bacigalupi: Hearing no further discussion. Hearing this, all in favor, all opposed?

>> Register me as opposed on this application.

>> David Bacigalupi: We have one no.

>> Richard Santos: Daniel Gregory, it's been many years. This gentleman by you, is this Mr. Bledsoe's son?

>> Yes.

>> Richard Santos: You did a lot for us all, you did a lot of sacrificing, hope the remaining years you're in top shape.

>> Thank you. And take care of Alviso, please.

>> Richard Santos: Will do.

>> I want to thank the board for everything, thank you very much.

>> Richard Santos: You're welcome.

>> David Bacigalupi: Let's because of voting and stuff, let's take a five minute recess here. [Recess]

>> David Bacigalupi: We'll reconvene the meeting. And we're on the item 1.4G. It is an application for change of status from service retirement to service connected disability retirement for police sergeant Daniel Vasquez. For the record Sergeant Vasquez is in the audience is present and is represented by Sam swift. Donna.

>> Police sergeant Daniel Vasquez is requesting a change in status to service connected disability based on left shoulder --

>> David Bacigalupi: A little louder Donna is your microphone on?

>> It is on. Can you hear me?

>> David Bacigalupi: No.

>> Did anybody turn it off during the brake?

>> David Bacigalupi: Let's just hold off for a minute. The difference Donna, I'm used to broadcasting my voice across intersections and loud auditoriums. [Pause] are yeah, we'll hold off, make sure everything is functioning properly. We'll still need to break at 3.1. [Pause]

>> David Bacigalupi: Okay just let me rehash in case it wasn't recorded. I'm not sure what part of the equipment was working and what part wasn't. We're now on item 1.4G application for change of status from service retirement to service connected disability retirement for police sergeant Daniel Vasquez effective December 27th, 2008, with 28.53 years of service. For the record police sergeant Vasquez is in the audience and is represented by Sam Swift. Now, Donna.

>> Police sergeant Daniel Vasquez is requesting a change in status to service-connected disability based on lower back, left shoulder and right knee. 54 years old with 28.53 years of service. Medical reports are listed in your packet. He is current service retired. At the time of separation, he was on disability leave, at the time of application modified duty, and no permanent modified duty available.

>> David Bacigalupi: Thank you Donna Dr. Das anything to add to the information in your packet?

>> Dr. Das: 90 don't.

>> David Bacigalupi: Questions by the board.

>> Question for Dr. Das, we talked about an incapacity or inability or prophylactic just for recap.

>> Dr. Das: His treating physician provided prophylactic restrictions.

>> I'd like to ask, first going through the packet it looks like Mr. Vasquez had surgery to his shoulder for his injury, had numerous back injections or epidural steroid injections then he went and had knee surgery which was aggravated again in 2009 and this was all documented by numerous reports throughout his career. So reviewing

his packet and going through the surgeries and with the epidural injections I'm going to make a motion for approval.

>> David Bacigalupi: Okay I have a motion and I have a second. Is there further discussion on the motion?

>> I have a question about kind of the post-surgeries, it says: You didn't experience a full recovery after the surgery. What were the differences I guess postop in your back?

>> Okay Kim I have two surgeries one to the knee which was the earlier and the latest one.

>> Back.

>> I didn't have a back surgery. I had shoulder and knee surgery. Betsy Shotwell, Director of Intergovernmental Relations shoulder and knee.

>> Epidural injections.

>> I got it. I was thinking about the battery charge but that was your shoulder.

>> Yes.

>> Mr. Vasquez are you currently employed anywhere or are you in full retirement?

>> I'm in full retirement.

>> David Bacigalupi: Any temperatures questions? Hearing no further discussion, all in favor in favor? All opposed?

>> Nay.

>> David Bacigalupi: One nay, the motion passes. Danny, worked together a long time there, had some good times and had some not so good times but enjoy your retirement. It's well deserved. I know you plugged away right up until as long as you could so take care of yourself.

>> Thank you, thank the board.

>> David Bacigalupi: Okay, necessary item, item number 2, death notifications. 2.1, notification of the death of Peggy J. Donald. Identification technician from the police department, retired 4-1-1975. Passed away of 1212 of 2010. There's no survivorship benefits to be paid and with that for the long time employee, I'd like to have a moment of silence, please. [Moment of silence.]

>> David Bacigalupi: Thank you. Okay, item number 3.1. Discussion and action regarding selection of Milliman or Cheiron, is that how you say?

>> Cheiron.

>> David Bacigalupi: 50-50 chance of getting it right. Milliman or Cheiron as the plan's actuary, and authorization for the secretary to negotiate and execute a contract with the selected firm for an amount of not to exceed $650,000 at a term of three years. We have both firms here to make a presentation.

>> I'll just briefly introduce the process we went through. Currently the board's actuary is Segal, and they have been extended on a one-year contract, so we felt it was time to issue an RFP for ongoing services for a three-year term. We issued an RFP, received three responses. One -- one response we received from Gabriel Rotor Smith we felt was nonresponsive. So in our view we eliminated them from our analysis and review and so that narrowed it down to two firms, Cheiron and Milliman and we've brought them here today to make a presentation to the board. Our recommendation is that the board hire one of the firms today, for the three-year term. And in our

analysis, after we reviewed the proposals, we ranked Milliman the highest of the two remaining bidders that we looked at and we had a point-scoring system. And now the responses that they've presented in their proposal, they're going to be going through those in their presentations today. So rather than go through the RFP and the questions they're actually going to be going through their responses so the board will see -- can understand what we saw in their proposals. And with that I'd like to introduce Cheiron.

>> David Bacigalupi: Okay and there's a handout that's been passed out to everybody. Mollie.

>> Mollie Dent: I just wanted to add and I can do it after the presentations. I do want to expand a bit on presentations on page 3 of the staff memo concerning some of the Milliman.

>> David Bacigalupi: Okay only thing Mike you've asked them to be succinct.

>> Yes. We told them 15 minutes, at the most. If possible. Because we know it's a long agenda today.

>> David Bacigalupi: Thank you.

>> Just briefly for the whole board, can you explain why we are, again just briefly going to an RFP for an actuary and not having Segal respond to the bid?

>> Well, I believe the two years ago, there was an RFP issued and Segal was the only responder. And so we've continued their contract on a yearly basis. And -- but we felt it would be in the board's best interest to have a three-year contract. So there's some finality and some assurance that the firm would be continuing for the three years.

>> Russell Crosby: And it goes beyond the staff feeling. The City Auditor made a recommendation that if either board has kept their actuary for more than five years, that there be another RFP or an audit performed. And we

felt that given that circumstance, and in the last RFP there was only one bidder, Segal, that we were better to open it up and do the RFP at this point rather than just audit Segal.

>> That was exactly what I was alluding to, because the City Auditor telling us five years with the same actuary, either get it re-audited or --

>> Mollie Dent: And the board actually accepted that recommendation from the City Auditor.

>> And Segal did not choose to bid.

>> Yes, Segal did not choose to bid.

>> Russell Crosby: Correct.

>> David Bacigalupi: Thanks, Mike. You can go ahead and bring them on.

>> While they're coming in, why did Segal choose not to bid, do you know why?

>> No, I don't know. We did not ask them why they did not.

>> David Bacigalupi: Gentlemen, please go ahead.

>> I was trying to think if it was morning or afternoon. But good morning, and thank you for this opportunity. My name is Gene Kalrosky, and I'm from the firm of Cheiron. With me is Ken Kent and David Holland. We'll get into the staffing issues later. I'm going to talk about the firm our formation our plan experience staffing and hone in on every firm has something that they hold their hat in what sets them apart, we're going to focus a lot on that. Then on the RFP, there were several technical questions, from the RFP, if we have time we'll delve into those but I understand the board -- we have a 20 minute time frame here so we'll take it from the beginning. I was formerly

an equity partner and member of the board of directors of Milliman for 21 years. In 2002 actuarial firms and investment consulting firms starting imposing liability limitations and this spawned after Lacera sued their consultant for more than a billion. We in the Washington, D.C. practice resisted this. Based on the advice that firms cannot concluded together to set liability limitations. The end of the game at the end of 2002 I was fired and sued for several million and went through a scorched-earth litigation for a year. My eight partners in my practice quit, as well. They were sued and we began a firm, in the midst of lawsuits, and no clients, and no salaries. But then things started coming together. And in 2005, things ended. The Department of Justice sued all the firms for conclusion. They had a ten-year settlement and Cheiron from that point forward thrived. The name of the firm comes from the Greek mythological character, Cheiron. Centaurs are usually despicable characters, but there was one that wasn't, and that was Cheiron. And he broke away from the pack and became advisor to the gods. And what really brought it dear to my heart is that Cheiron became the constellation Sagittarius, and I'm a Sagittarian. And so are three of in my partners, if you are wondering where the firm came from. Our core business is trust -- jointly trusted, trustee pension and health funds, primarily pension. I would say 75-25, pension versus health. Offices in Washington, D.C., Charlotte, Chicago, New York, Philadelphia, Portland, San Diego, and due to our expansion on the West Coast, we are opening an office this year in Los Angeles. One of the staff members that will be there will be David Holland. I may myself, within a few years, matriculate over to the West Coast, because the major of my business seems to be here. We believe our reputation nationally is for integrity, because we were willing to make the hard decision back in 2002 and innovation really is the thing that sets us apart. And we'll get into the concrete example of that. Our vision for Cheiron is to continue to seek ways to combine technology advancements with the highest credentialed staff to make our decisions. We believe technology is underutilized in our industry when you look at all other industries, dramatically changed except the actuarial industry hasn't. We stay focused on using technology. We want to remain a financially focused firm as opposed to a firm that does outsourcing or administrative tasks. We are going to be increasing our international scope. We've joined the European affiliation EURAX. We are always emphasizing and ensuring quality work because that is our liability limitation, ensuring quality work. And we do quite a bit of education efforts for policy makers because our home base is in Washington, D.C. and spend quite a bit of time with people in Congress. The administration pension czar Phyllis Borze and with other associations and the like. That's a big part of our focus in Washington. And we want to compete in the global marketplace while maintaining responsiveness and flexibility

for doing the work ourselves that is opposed to doing outsourcing overseas. Today, eight years after, or it's going to be nine years this fall, after the split, I'm showing you our list of our public sector experience. And what really started us going on the West Coast is in 2005 when San Diego hit rock bottom and everything collapsed there, we were brought in to try to bring sanity to the system. We are very proud of our efforts since 2005 of bringing that system back up to respectability. And we've worked with your -- San José Federated plans, City of San Francisco, we're the actuaries to Fresno and Santa Barbara, and we just recently completed our second audit of CalSTERS. I'm going to turn it over to Ken now to discuss more about Cheiron.

>> On the next page, we show you the key senior staff that is dedicated to working with you. As one of our working models we have co-leaders on all significant clients, which you would absolutely qualify for. The purpose for having co-leaders is one, for our own interaction in terms of performing the work we believe provides a higher level of quality. We also believe that two people should always be available so that you can always get one of us, as a minimum. And so we can always met your needs in terms of timing and board meetings in case there's a conflict. So it avoids conflict. We both stay up to date. In addition, we have John Coburg for OPEB work and Fiona Liston, another senior consultant with a great deal of public sector experience. All of us are fellows of society of actuaries, the highest credentialed qualification for the actuary in the profession. David Holland, who is with us today, is the project manager, and his job is to connect the dots between staff and the work and the assignments. And the resources that we need to be able to perform your work in a timely fashion.

>> David is also a near FSA.

>> Very near. So as -- if we turn to the next page as I said we want the highest credentialed -- credentialing for the leadership of our client base. Our reputation for creatively and responsiveness has brought us into a lot of difficult situations as Gene pointed out which got us involved in San Diego. Involved in the auditing of CalSTERS, we've consulted to the state of New Jersey some other systems that have had serious challenges and need the innovation that we've been able to provide. We keep our clients satisfied, that is demonstrated by never having been terminated from a large client relationship. And never having a claim for a mistake filed against. [Knock wood]

>> What we know is our advantage is that we integrate highly qualified staff and use the latest technologies as Gene pointed out. It's not just the use of technologies which actuaries by nature can get into, but taking those technologies, and converting them into a methodology for communicating that information to our clients. So that they can then appreciate what that technology has to offer. And we will illustrate that a little bit later. We said substantial successful experience in transitioning large cases. We're a new client. Every one of our clients was transitions. Our goal and the opportunity to transition is to improve in your processes, to be exposed to them and to make suggestions of how things can be done differently and more smoothly. And we have a proven track record and reputation for maintaining integrity and most specifically objectivity. Our approach to technology and our communications style leaves us in a position to remain objective in the process. If you turn to page 11 this is the historic model of actuarial work. You still will get this type of information in our valuation reports, which tells you here's where you were last year, here's where you are this year and a lot of numbers. But that doesn't tell you what the risk is going forward. That doesn't give you the type of information that provides you with the ability to make decisions of what could happen in the future. That's where we use the technology, and on page 12, demonstrate that technology through graphics that are all interactive to quickly illustrate what the impact is of the current results on the future outlook of the funds that we serve.

>> We're going to conclude our presentation with touching upon at least one of the key issues from the RFP, there were five. De-risking defined benefit plans setting assumptions impact of down saving gross versus net valuations and valuing the supplemental retirement benefit reserve. The term de-risking a defined benefit pension plan has really taken on new meaning following the market crash of 2008. Everyone has learned that the traditional model of investing a pension fund didn't work. We didn't focus on what could happen in a devastating tail ends of the potential returns. Although we did experience in the '90s the opposite tail, the upside and unfortunately, lessons we learned now are too late but we could have used the period of high returns to act as a buffer to what happened in 2008. But to us, the key risk of a defined benefit plan boils down to one item. It's not investment volatility. Or contribution volatility. It's the inability to provide benefits without having to raise contributions to unsustainable levels. If plans have to go to 60, 70, 80, 90, 120% of payroll, other bad things are going to happen, either taking up wages or furloughs or the like. Minimizing the probability that you would ever

have to reach that level. Not going into details I want to jump to the chase and talk about the steps we would take, and the first one is listed as board education, and establishing the board risk preference. And I want to just take those two bullets and turn it over to our projection model, which the live model is up on the screen and what you have on page 16 is just an illustration of one of the scenarios, what's up there. Up on the screen is actually the live software. And what it's showing is a projection on the top graph you see gray bars. Those are the projected liabilities of the plan. And you see two lines there. The green line are the market value of assets. And the gold line is the actuarial smoothed value of assets which over time smooths into the market value. You take the ratio of your assets to your gray bars, the liabilities, and that's your funded ratio. Now we haven't done evaluation for you so this is close but it won't be exact to your plan. Take as much data as we have and put it into our system. But it's showing how with your current amortization period you would expect to get full funding by the year 2026 or 7. Down below, though, it's showing the kind of contributions that are needed to reach that. The magenta, little pink bars are the member contributions, little 10.5%. And then the gold bars are the City's contributions, which prior year were 39% of payroll, this year 50% of payroll. Fiscal year. And it's expected to increase based on some of those investment losses you've had recently that are being phased in. So this is the projection of your system of where the contributions are going and where the funded ratio on the top, assets to liabilities. All of that's driven or primarily driven by this column here which is the investment return. Right now your investment assumption is 7.75. Most actuarial projections are done with a single return for each and every year in the future and then major discussions for a pension fund are based on that type of projection. When any actuary can tell you with 100% certainty you'll never get 7.75 each and every year. That's a virtual impossible situation. So why are all the decisions being made on something that is an impossible scenario? We would like to stress test first with return. We're in good markets this year. If we earn 20% this year what will that do to next year's rate? I see 55%, previously it was or it's the third year, 62% dropped down to because it's a one year budget lag to 59%. And we could play with different returns in the short run. We can also go through history and say, the markets in 1937, what were they like? And we can recreate historical rates of returns and just take the plan, stress test it through periods of history and see how many times are you reaching unsustainable levels of contributions, how many times are you fully funded, how many times are you in positions you can't accept. This is what technology can do to actuarial work. To have reports that have 10,000 numbers in them and have the board look at last year versus this year you're not seeing the forest from the trees. And we like taking this technology and not only playing with

rates of return but also, for example, you've got pay growth assumptions, right now most public sector systems are experiencing low pay growth for a short time. We could test the impact of only having 1% pay growth for four years and see what happens with the results. We can play with membership growth, your amortization periods and your discount rate and live you could have the what-if scenarios going back and forth and you start absorbing what it means to stress test this fund. We live and breathe this all the time. This is the center piece of our work. This comes part and parcel with the retainer services, we don't charge extra for this. This is our X ray machine. This is what we use to study the plans and bring it to our clients. We go to one level of sophistication beyond that and we look at probabilities of results. You know that your -- not only -- if I can ask a question, what is your expected return, I think it's 6.75? After you take out expenses and your standard deviation might be 12. So we're going to look at the probability -- I'm going to do a stochastic projection for you and look at returns that follow a bell curve and let's see the likelihood for funded ratios for the plan and I'm going to pick the year 2026 that's 16 years from your last valuation date. Now what it's running is 500 projections using all those different returns. And it's stating that in 2026, there is a 60% chance, you read it down here that the contribution rate would be 80% or less. There would be a 50% chance that the contribution rate would be 65% or less. So this shows you the wide dispersion of possible results. And down below is the funded ratio, in 2026 your funded ratio is expected to be close to 100% because that's really because you're making unsustainable contributions. But I'm going to do one last thing with this model then go back to the presentation to tell you about risk. If one could get that risk down to tolerable levels like 2%, at some point in the future interest rates rise and you can get a 6% return with 2% risk, when I'm through with this look at the difference in the dispersion of the results. Look at contributions that could be as low as zero to as high as 120 you will see dramatically different results. Now you see results that don't have that wide dispersion, and that's what de-risking a pension plan is all about. What can you do to try to level that playing field so you don't have to face the dramatic risk of down sides and upside. And so that's just an intro to how woo woe introduce the de-risking issue.

>> Is it okay with the board if I ask a --

>> David Bacigalupi: Sure.

>> So first, on that first -- on the first graph you showed you us, what are you actually solving for then? Are you solving for the liability or the employer contribution rate?

>> The employer contribution rate because when a valuation is done each year based on the return, there is a unfunded liability that I think is amortized 16 years gain or loss each year and there's some SRBR implications but that's how it's solved. Yes.

>> How did the year 2024 come up with a solve for part 2?

>> You mean this --

>> Back when we hit fully funded status.

>> That's only because of your current amortization periods. If you earn 7.75 each year and pay those kinds of dollars into the funds, if those conditions happen you arrive at full funding 2024.

>> So you solve for 2024 or you solve for the 70%?

>> I solve for the contribution rates each year, and that will determine the cash going into the plan. So take that cash going into the plan, take the 7.75 earnings and the benefits going out, what would happen to the assets and liabilities? That would be not solving for it but that would be your results. If you pay this amount down below and you earn this amount you would be this well funded in 2024.

>> So you pick the 66 and the 70 and the 69, or how did that come out?

>> I didn't really pick it, I picked it based on your own funding policies, which is 16-year -- each year I measured the gains and losses you have from that valuation, and if there's a gain or loss it's amortized over 16 years.

>> So if we made the decision as a board that we want to be fully funded by 2018 and we want to see what the contributions are, you could back it and that would change the contributions. Or if we said we don't want to contribute more than 64% that would change --

>> Yeah. This could be customized so you could set a contribution level and not actually have that float and say what if we always keep a contribution level at 20%, 30%, 40% and then -- and you could start that way. A number of our clients do that. But if I want to fully fund this plan over a shorter period, what I might do -- and let me go back to your pay increase.

>> I gotcha, it will update.

>> I could have shortened your amortization period to ten years or maybe even eight years. And now there at 2018 you're just about there and now you've got contribution rates that are through the roof.

>> We don't want to say that.

>> 90% of payroll.

>> Take that off. I have one more quick question. So this is assuming the normal curve as well. What about things like the SRBR, can that be modeled as well?

>> It is actually in there right now.

>> Done, thanks.

>> We deal with the SRBR with the Federated plan as well.

>> Carmen Racy-Choy: Just one added comment. Just assume you earn the discount rate of 7.75 net.

>> When we show you the historic rate it actually pairs out funds that would go into the SRBR so that is already embraced in the model.

>> Could you plug in 1974 or 1943, just out of curiosity.

>> High gift price time.

>> Yeah, but I think in the end, then the '90s take over.

>> Change your amortization back to 16 at the top so we see something a little bit more -- one of the functions of your amortization period is to smooth out those results so it doesn't get as bad. But there you go.

>> So on returns itself as well so we're assuming 7.75 or 6.75 you know whatever we put in, can we use Monte Carlo simulation instead?

>> This stage here is Monte Carlo simulation. So Monte Carlo simulation requires you to develop an expected return and expect risk, and then you test returns over that spectrum. And it's a lot to absorb but I think if you repeatedly see this and this is put in front of you, you start getting it and we see a number of our clients finally get used to this and it has been quite powerful for us.

>> Can I add one thing? One of the things about the nature of this model is for the consultants at Cheiron, this is an open platform. What that meanings is each of us to be able to present it must be able to program these aspects. And we typically end up creating aspects that we learn our clients want to see, because it starts to approach the nature and the area that they're most interested in. So those boxes across the top would evolve to be able to address the types of questions we anticipate you may have.

>> For example, if you wanted to fix your contribution rate at a single level we could set it up that way. So typically if all our clients they customize the questions they want at the top.

>> David Bacigalupi: Okay, in summary is there anything else you would like to pass onto the board?

>> I'll just summarize with this, annotate the presentation. Your greatest challenges still lie ahead of you and we think most of the firms, of the named first, they can do the valuation. But having the ability to guide funds through the most challenging and complex issues is what's most important. And I think that's where our forte is, getting into the most complex challenges. Kent showed you earlier we got into some very high profile assignments even in Eastern Europe and dealing with their Social Security systems and national negotiations going on in the rail industry and the trucking industry and I think that's what sets it apart along with the tool that would deliver the most value for you. That's our conclusion. We'd be excited and honored to work with you and thank you for your time.

>> David Bacigalupi: Thank you very much.

>> I have one question here. Could you explain to us from the board's perspective what would be the pros for or the cons for us having the same or different actuaries than the other plan?

>> The pros of having different actuaries is, you'll find out one's better than the other. And so it will be easy for you to see that. And the cons are, if one's a lot better than the other one, then -- and it's not your plan then you're getting a poorer service.

>> Pete Constant: And then the pros and cons of having the same actuary, I guess would be the inverse?

>> If you are sure you have the actuary, the pro is you pick the best for your firm. I would like to say for the firm, Ken's been at Mercer. I've been at Milliman. I've been once before at Towers. It's the actuary you get. Firms don't

have a single style. It's the actuary that you hire that determines what you get. If we change to another firm we're not going to change our colors.

>> And I think there's one other thing. Cheiron focuses in really two industries, but a similar concept. We deal with multiemployer Taft Hartley funds. We deal with public sector plans where we are always dealing with joint boards. That is our focus. It's not a sideline. It's not one division. All of the actuaries that are at Cheiron have experience in both of those areas. And provide us with the opportunity to collaborate across the country.

>> And maybe just to accentuate that point, you use the term one division. Most of the other firms have other divisions within the firm that don't do pension work, they do health, life, casualty, other kind of work. And so he and I have both been in firms like that and we know the difference of having a firm with a singular focus.

>> David Bacigalupi: Okay, thank you, gentlemen.

>> Thank you.

>> Thank you.

>> The second firm is Milliman and their headquarters at least for servicing this plan will be from Seattle, Washington.

>> And would Cheiron be out of L.A?

>> Their headquarters are at McClain, Virginia, but they have a small office in San Diego, and now they're setting up a smaller office in Los Angeles.

>> Mollie Dent: If you would want me to address those issues before they come in would you ask them to wait outside for one moment?

>> David Bacigalupi: Gentlemen, could you wait outside for a moment?

>> Mollie, could you address the issues at page 3 of the staff's memo?

>> Mollie Dent: So staff's memo is correct, that Milliman, some all of the firms raised one objection in common which we found to be at -- correct. And I think Cheiron made one minor comment open our form, which we also found to be acceptable. The Milliman firm made a -- more comments on our form, which we found to be problematic and on some of them we would definitely if that firm is selected, want to get explicit board approval to include that kind of provision in the contract. So I don't know if you want me to go through that now, or if you want to go through -- there's two ways you can do this. You can go through the process, this has been put on your agenda for authorization to negotiate and execute. If it was just on your agenda for authorization to negotiate, we would then come back to you with these issues, once we had gone through them with the selected consultant.

>> Russell Crosby: Mollie, why don't you just summarize what the issues are very briefly. Give us the three or four issues that it's about liability primarily and the board needs to understand that even if Cheiron acceptance liability there's no assets there. It's a very small professional association.

>> Mollie Dent: I'll go through the --

>> Russell Crosby: On the other hand, Milliman wants to limit liability, because they are a large firm and they actually have assets that would be problematic. And they don't accept liability with any other public client that they have. So please, summarize briefly.

>> Mollie Dent: I'm going to respond to the board member, secretary Crosby. There are two options for you. You can go through the selection process and then we will negotiate a contract with the person that you've selected and bring that contract back. If you want to go directly today, to authorizing the secretary to execute a contract,

with the firm that you select, then I will talk to you about the problems, all of them, with Milliman's objections, to the form of contract, and I will be glad to do that. So you let me know which way you want to go.

>> David Bacigalupi: Sit the pleasure of the board to hear the other presentation and then have Mollie go into it?

>> Hear the other presence.

>> Thank you Mollie.

>> David Bacigalupi: Okay.

>> David Bacigalupi: Thank you gentlemen for waiting.

>> No worries.

>> David Bacigalupi: Now's your time.

>> Okay, thank you.

>> David Bacigalupi: I'd ask you to be concise.

>> Thank you for having us today. My name is Daniel Wade from Milliman's Seattle office and I'm here with my colleague John Bosford. He will be our OPEB, our other post employment benefits post retirement health care actuary. Mark Oleman, my co-lead consultant, couldn't be with us here today. He had a previous commitment in Texas. Fortunately we have a very deep team, and John was able to join us from the San Francisco office. We understand that we only have about 15 to 20 minutes and we'll have that followed by a question-and-answer if necessary. We have a very full agendas so let's get started. The discussion outline, we'll talk about who we are and confirm that we understand your issues and needs. We're instructed by staff to concentrate on current

actuarial assumptions and methods of the plan and possibilities for improvements and refinements and we agree that that would be a good idea so we have dedicated several slides to that project. We have demonstrated discussing answers to the questions posed in the RFP. We wanted to address them all in the written material but due to the limited time we will probably be skipping a lot of these items. We want to allow some time at the end to show you our projection modeling capabilities. We have a model that's been programmed to your plan to reflect the current and future employer contribution rates and funded status for your plan under various assumptions and scenarios. Who are we? We're a large consulting services company, an important thing to emphasize here is we have a large employee benefits practice and health practice, and we can bring that combined expertise to your plan to meet your needs. A significant portion of our business is in the public sector and nearly all of my clients are. We have a significant California presence. Mark is co-lead consultant for CalSTERS, we have four California counties governed by the 1937 act as retainer clients. We've done six audits for 37 act clients, audits can provide good exposure to other actuarial approaches and methods and we can bring the best and latest ideas to you. Replicating another actuary's work is also done with an audit and that will be a vital skill as we look to match Segal's results when transitioning the work. We have a very experienced deep and qualified team. City staff brought in its memo that we provided the greatest depth of staff resources to support your requests and research, and we certainly appreciate that compliment. Everyone on this chart as 15 to 30 years of experience. Mark and I are at the top supervising all the work for the account. Pete and John are our peer review actuaries. We really place a premium in peer review. I'll happy to discuss that later if you like in the question and answer session. We do place a premium on peer review. We have over 60 years of experience serving the public sector clients, we participated in all the alphabet soup of public sector organizations. We have a newsletter specifically written for public sector clients called Periscope and a recent issue included an article by Mark regarding the governmental accounting standards boards, GASB's preliminary views, and we also have experience with SRBR. And now I'll turn it over to John to discuss our resources and approach to meeting clients' needs.

>> Thank you. So one of the key advantages that we think that we have as Milliman over other firms is that we can deliver to you what we call small firm service with big firm resources. We've already highlighted the size of our firm and we have a dedicated employee benefits research group and a large national network of consultants upon which we can draw from their knowledge in order to view problems of our clients. But at the same time, the firm,

the way we can deliver small firm service is that the structure as the firm is very decentralized. 100% of the firm is owned by its employee principals and so the engage team that's put together for each client has the ability to make decisions that are tailored to each client's need. Because of that, we can deliver what we call that small firm service but with the big firm services. We think that's unique in the industry. Let me talk a little bit about our retiree medical expertise. A fair amount of work would be on your retiree health care plan. Milliman has over 900 clients and growing for whom we do what we call a GASB 45 retiree medical valuations. Over 30 of those clients are served by the proposed consulting team, so this consulting team has experience not only in the public pension sector but as well as retiree medical GASB 45 valuation work. There are two senior health care actuaries and two senior pension actuaries that have to be involved in each valuation. Another thing that we have is Milliman is recognized as a leader in the health care actuarial -- in the health care industry and we can bring to you as a value, as an added value our Milliman health care reform tool that we have developed to help you model the impact of health care reform on your health plan. You might find that to be valuable in the future down the road. Briefly talk about actuarial assumptions and methods, and what we might recommend, what kind of changes we might recommend. First off, the inflation assumption. Of 3.5%. We believe that that is too high at this point in time. We believe that due to a number of reasons, if you look forward-looking projections that all the projections from -- if you look at treasury 30 year tips, Social Security projections as well as even ten year forecast by the mean forecast by economists, all of these are coming in around 2.5% or so which is significantly lower than 3. We would recommend an inflation assumption of somewhere in the range of 2.75 to perhaps 3% as a long term inflation assumption. Investment return of 7.75%. We know you've recently lowered that from 8% down to 7.75. We believe that is still too high and in part because we think the inflation assumption in which the assumption is built of 3.5% was too high, that we believe this is too high, too, and we think it would be a very hard bogey to hit as far as a long-term investment return. We would recommend lowering that to perhaps 7 to 7.25 range. One thing that you need to take is a account in setting this assumption too, besides the underlying inflation is the impact of the SRBR. We'll show that in another slide of how you'd want to value that SRBR and make sure that that's reflected properly in the assumption. At this point I'll turn it back over to Dan.

>> Thank you. And I will go very quickly over this slide. As you're aware there is a one year lag between the calculation date and the implementation date for new rates and we have some ideas for how we could address

that leg. I mean it was fairly significant factor, with the 2008 rates, being used for the 2009-10 contribution period, because the 2008 rates did not reflect the assumption changes that were made with the June 30th, 2009 valuation nor the 2009 asset losses. So I'd like to talk very briefly again about your amortization method. As you're aware under your methodology you take the UAAL, so that's the difference between the entry age normal actuarially accrued liability, essentially the funding target, and the current level of assets and you amortize that in 16 layers. Now there are advantages, there are definitely advantages and disadvantages to this approach and we can actually hit on those a little bit when we get to the model. But suffice it to say that it is a very complex method and I'm not sure that you necessarily gain more accurate results because of the -- you know due to that complexity. So that's something to consider. I do have pros and cons and I'd be happy to discuss those further. Now I'll turn it back over to John to talk about OPEB assumptions.

>> We also looked at your assumptions used for your retiree health care plan. The investment return is based on a hybrid of what you would earn on the City's assets and the assets that are actually invested in the trust on the retiree health care side. You're using a 4.75% investment return assumption on city assets. And again, this appears on the surface to be too high. We figure that your City's assets are -- have some significant constraints in terms of what you can invest in, and we would want to look at the investment policy and perhaps review that return assumption and lower it to 4, 4.25% range. Same goes for 7.75 is probably too high as I mentioned earlier. Another thing we would look at is the medical trend. You currently have a grade-down period of ten years, after which it flattens out at a fairly low rate of about 5%. We'd recommend perhaps extending that grade-down period over a longer time horizon. Some recent studies that were done by the society of actuaries point to a wronger time horizon in order to line it up with projections in the national health care expenditures so you're more consistent with what the overall health care costs would grow as a percent of GDP.

>> Could I interrupt for one second? How would you handle, or how would you suggest you handle the volatility of age and longevity versus just the trend?

>> Of just the trend?

>> Versus the trend of aging and longevity?

>> Well, you would have -- the aging factor would be a separate factor that we would build in. And the trend would actually take into account that you're increasing costs into aging of the group. So the trend itself would have to reflect the fact, back it out and value the aging separately. But the volatility, basically what you're going to have is you're going to have ups and downs. There's nothing you can do about it in the short term, but you continue to do valuations each year, and you're going to continue to make corrections along the way. So you know there's no way that we can predict well three years from now is it going to go up 9%, is it going to go up 8% is it going to spike to 12 because the government is put in more money? So you really can't -- all you can do is continual to make adjustments but we think that the -- I think it does go to my point though that having the melt trend stop at ten years we found that that's no longer realistic and we'd suggest expanding that outwards, further out.

>> What are your clients typically using for a medical trend?

>> For a what trend?

>> What was typical that people use for a medical trend that you're seeing, your clients?

>> We're starting it at anywhere from 9 to 10%, sometimes a little bit higher, depending on the plan design, as well as taking into account health care reform, and what that impact will be, and grading it down over a period of potentially 30 to 40 years you get to about 5%. So it's a longer grade-down period and it's based on a fair amount of research and development that was done under the society of actuaries, and we've taken that study and then made some adjustments internally within Milliman to come up with a new approach at looking at these medical trends.

>> One more question. The swaps market, I don't know if they have been successful, I guess this is more of a question, but in pricing in the volatility of that into longer-term expectations, are they trying to have the most

accurate numbers looking down the road at our funding status, has that been back-tested, are you aware of, like swaps on longevity, for instance?

>> We've not looked at that.

>> Okay, I was just curious.

>> So let's move on to -- and again, as I've mentioned, we want to take into account health care reform and build that into your assumptions. So we're going to keep moving forward. I know you wanted us to address best practices, and rather than go through all of this, I just wanted to point out in terms of best practices, actuarial standards now require that a more generational mortality improvement be built into your mortality assumptions that you use, in other words, not just static mortality today, but build in projected improvements. We believe your current assumptions don't do that, and the new standards of practice require that you either build those assumptions in or make statements as to why you're not doing it. And so we would recommend looking at that and actually build that in to reflect the latest standards of practice. And with that let's go back over to Dan and start talking about de-risking liabilities.

>> So there are three basic policies at the disposal of decision makers for pension plans, and each policy is interrelated and can play a role in de-risking defined benefit pension liabilities. The funding contribution policy, this is how you determine contribution level, set the target asset level, includes the amortization length and type, includes asset smoothing period and corridor. And one thing you can do there is you could actually consider contributing to a funding target that's above the actuarial accrued liability, and contribute until there's a reserve for future adverse contingencies that's been created. Investment policy is probably the most obvious candidate for de-risking. If you just focus on the assets side then you're looking to minimize volatility for a given level of expected return. If you're looking at both assets and liabilities, you could select assets with a higher correlation with benefit payments. You could purchase annuities or you could invest in assets that better match cash flows, which would typically be long duration bonds. I see that you already have a allocation to that in your target asset allocation. If you are willing to do it you can sacrifice expected returns to gain more contribution stability. Now, that

will mean higher initial contributions as the discount rate to discount future payments under GASB 27 is tied to the expected investment return assumption. Lastly, the benefits policy, it is possible to correlate benefits to assets. In Wisconsin, if asset returns meet certain objectives, there are increases in the retired members' colas. And if asset returns fall short, you can actually see decreases in members' benefits, but not below the initial benefit levels. And just wanted to say one other item about it. If we're fortunate enough that surplusses emerge, it is important to be cautious about retroactive benefit increases, could consider just adjusting to a less risky investment policy, take some of the risk off the table. And another thing that could be done is you could use the surplus for a D.C. plan rather than improving the D.B. plan. I'm going to skip this item just to say that there are different ways to treat administrative expenses in our calculations, and we'd be happy to talk to you about that. Couple of minimum retiree benefit reserve. What we did here is we looked at historical returns for an asset allocation similar to yours. We applied the five-year smoothing mechanism. We then normalized the results to average 7.75% returns, and here are the results. I know it's a little small, but bear with me. The light blue are the returns up to 7.75%. The dark blue and the red reflect the, quote, excess earnings, those over 7.75%, and 10% of the excess is used for the SRBR. So those are the little red boxes you can see at the top. As long as you have volatile returns, the SRBR will be a drain on expected returns. You could value that using some kind of options pricing formal but the more typical way to value it is to reduce the investment return assumption. That's a logical method within the framework of GASB 27, which says discount with expected returns, lower expected returns, lower discount rate. And when we did our analysis of the historical averages we found that it would result in about a .13 reduction in investment return. I'm going to skip this slide too except to say there are issues that arise when payroll is stagnating or decreasing and we have potential ideas to deal with those issues. And with that I will call up our model.

>> I just wanted to point out to the board that internally we have done an analysis of the adjustment to the expected reserves due to the SRBR. We are coming up with something about 30 basis points. Now, it could be that they don't have all the specifics of our assets, like the volatility and so forth, but we have that.

>> We just looked at historical returns rather than a future projection. That would be a different.

>> Our model is forward-looking not historical. Also we use pricing which suggestions discounting at the risk free rate as opposed to which is the fundamental mechanism behind optional pricing. Just comment on the fact that it's slightly different.

>> Okay well thank you. Now we'll take a look at our model. Hope you can see it up there. What we've done here is we've input your liabilities, your normal cost, your asset levels, your layers for amortizing IAL and what we did is plug in a 20% return since June 30, 2010 and here is a model we have for projecting the employer contribution rates and the funded ratios over time. There are a lot of things that can be done with this model. I'll just highlight a few of them. There's the asset corridor, as you are aware you widened the asset corridor on June 30th, 2009 to be 30%. We anticipate this will be less of an issue for you going forward as you're now within the corridor. Smoothing period you can talk about smoothing the assets over up to 15 years like Cal PERS or you can just take a market value of assets or you can do anything in between. And what I'd really talk to you about is the amortization period. So in blue, the scenario number 1 is what we have with your 16 layer approach. And so over time you have increases to the contribution rate as the asset losses, the deferred asset losses of 2008-9 are being recognized. And then you actually see a decrease here as the 20% works its way through, 20% 2010-11 return works its way through the asset mechanism. You have a level for several years. We're assuming you just earn 7.75 each year. If you do that you're going to have very level contributions at about 56%. Then there's a dip downwards, due to the 2005 losses going away. There is a dip upwards, that's due to the 2007 gains going away, and then there's a precipitous drop as we have the losses for 2008 working their way through, and you're just contributing at the normal contribution rate. Now in yellow we have what's known as a 16 year open rolling amortization period. What happens there is you take the entirety of the UAAL each year, and you divide it by a 16-year amortization factor, so next year comes along and you take the entire UAAL, which should be smaller if all assumptions are met every year, and then you amortize that over a 16-year layer. And you could see the pattern that emerges once again. You have increases though not as steep for the asset losses working their way through the smoothing mechanism. Then you have a decline every year, steeper decline as the 20% has an effect, and then you have a decline every year, as the UAAL shrinks, but the amortization period stays the same. The last item is a 30-year closed amortization period so this is kinds of like a mortgage. You have 30 years, the next year comes along, you take the entire the reason we chose 30 is that's the widest that you can do and still be in

compliance of GASB 27. And so you can see the pattern that emerges there, we have actually a dip, because the 30-year is such a wide horizon, and then very stable after the initial, and that's based on the assumption that 7.75 is met each year. I want to highlight one other thing that this model can do, it can look at the -- you can look at different investment return assumptions. We have some preprogrammed in and we can look at any kind of assumption that you want. Here is a negative one, this is if returns are bad. Here is a more happy one if returns are good, we get down to that normal cost rate much sooner. And then the last thing I wanted to show on this screen is the fact that we can adjust the discount rate. So John mentioned we might be looking for a 7 or 7.25 discount rate. I'll just put in 7.25 and we can see what happens. Obviously the rates go up as you're discounting at a lower rate. We can also change the actual returns to match the 7.25. As you can see there, results there, obviously you have a higher peak, you get up closer to about 67% under the current scenario. And very similar shape, it's just that it's a higher contribution rate. Last thing I want to show you is our stochastic projection modeling. Here is where we take a look at the investment returns and we treat it like a random variable. And so you can have quite a range of investment returns and as a result you have quite a range in employer contribution rates. And could you see where you end up, with the fifth percentile returns at the top of the yellow. 95th percentile of the returns bottom of the green and anywhere in between depends on what the results are. And this can be useful when you look at different asset allocations, you can look at how the shape of it changes, and also just the mean level and in addition to mean level you can really look at the volatility. So with that, unless John has anything to add, we'll turn over to questions and answers.

>> David Bacigalupi: Thank you gentlemen, questions by the board. Carmen anything to add? Okay, thank you very much for your presentation.

>> Thank you very much.

>> Thank you.

>> David Bacigalupi: Did you have some information?

>> Mollie Dent: Did you want me to go ahead?

>> David Bacigalupi: Yes please.

>> Mollie Dent: I'll run through objections that Milliman had to the contract and my understanding of what they were. I have not had discussions directly with Milliman, and I was not contacted by their attorney. I understand with respect to the limitation of liability and gross negligence, that Milliman has agreed that they will be liable for what I would call standard negligence. Originally they had proposed that they would only be liable for gross negligence. I understand they have withdrawn that position which would have been rather extreme but have said that they want a limitation of liability of $10 million for standard negligence, and will accept unlimited liability for gross negligence.

>> That's correct.

>> Mollie Dent: That's my understanding of the current status of their proposal. I view that as acceptable from a fiduciary standpoint. I did not view their original position as acceptable from a fiduciary standpoint. I view the limitation of liability as something -- our office does not normally recommend it but I don't view it as something that's outside the scope of the board's discretion to accept, if that's your desire. I believe they also agreed to provide insurance in the amount of $10 million.

>> That's correct.

>> Mollie Dent: For both professional negligence and for commercial general liability. Whereas the insurance requirement in our contract --

>> Was $5 million.

>> Mollie Dent: -- was $5 million. So they're -- normally an indemnity provision should be greater than your insurance, but since they agreed to provide greater insurance than your standard insurance would be you are getting another $5 million of coverage. That's what I would say about that. If that's the contract they're willing to go with and that's what the board wants to approve, a limitation -- we have never approved limitations of liability in any previous board contracts to my knowledge.

>> Just one comment. Even though they're asking for that limitation, in effect, if you hire Cheiron, their insurance is $5 million and they're not well capitalized firm. So if there was an issue, and you sued them for more than $5 million you may not recover anything.

>> David Bacigalupi: Okay.

>> We don't have access to their books but we doubt they're very well capitalized, Cheiron that is.

>> David Bacigalupi: Did I hear a statement made that they have that limitation of liability in all their contracts?

>> We contacted them and they said with all their public sector clients in California, they mentioned that several of them have that limitation. For instance, Lacera has a $10 million liability contract in their contract with Milliman.

>> Mollie Dent: I was not able to confirm that with Lucera, but it's not unheard of to have a limitation of liability. It is something that we feel like you specifically need to approve, though, and it's not something that we or the city commonly bread to.

>> David Bacigalupi: It's something that you want to bring to our attention and as fiduciaries it is still at acceptable level to accept.

>> Mollie Dent: Yes, as long as they're willing to accept unlimited liability for gross negligence, and to have a simple negligence standard of liability. Yes. The other issue mentioned in the memo, it is a little confusing. There

is a bit of confusion between jurisdiction and venue. We would agree that if the federal courts do accept jurisdiction, then it should be venued in the northern district of California. However, it's really up to the courts whether or not they accept jurisdiction. The basis here would be diversity. So we would want to just make sure that we -- that we said that yes, if there is federal court jurisdiction they accept it. And we would not contest it. We would allow them to try to get jurisdiction in federal court but we would want, if they were not able to, for it to be venued in Santa Clara County superior court. We always ask for that. We would recommend that you not waive jury trial. But again, that's not -- that's a strong recommendation on the part of our office. But I'm not going to say that you can't. Or that it's never done. But it would be a strong recommendation that you not waive jury trial. That is a big deal with many of these firms, however. So that's -- that's that particular issue. It's my understanding that they are -- I'm not sure where they are on the jury trial issue. I think they understand that they can only get jurisdiction in federal court if the courts accept it and if the courts don't then it would have to come back to Santa Clara County superior court.

>> I did speak with their counsel and they said with all their public sector clients in California all those clients have waived jury trial.

>> Mollie Dent: And I'm surprised but I haven't talked to any of those other folks. There were a couple of areas that they also had some objections to that I understand they've basically withdrawn. They had some provisions that would have conflicted with the public records act and they had some provisions that would have basically provided that you didn't own the information that they developed for you. We have standard language that we use where information that you have paid for, you own it. And of course, everything that comes to you in this kind of public meeting is a public record. So I understand that those -- they would --

>> They understand that there are several areas, many areas that we have no control over public records requests. So -- and they worked -- they deal with that with all their other public sector clients.

>> Mollie Dent: And then the others were pretty minor, I think, and I think that we -- I mean you never know until you're done with the contract whether you're going to have all the issues worked out but the two specific issues, if

the board wanted to go with the Milliman firm would be if you want to do the waiver of jury trial and you want to agree to a limitation of liability of $10 million then you would want to do that I could include that in the draft contract. That is not going to say that we won't come up with other issues, and it -- but those are the two that we know of right now.

>> David Bacigalupi: Thank you, Mollie. Questions by the board?

>> I'd like to hear the staff's logic behind why they would like Milliman better than Cheiron. Just a history of --

>> In my view you can tell the styles are different. I view Milliman as the actuary of actuaries. You can tell by the answers they gave. They're always focused on the nitty-gritty. You know, the very details of the calculation, yes, they can do the stochastic modeling that Cheiron can perform. But they're just focusing on what you want the actuary to focus on, in my view. And they answered the staff questions -- unfortunately what -- the grading wasn't included, but the answers to their questions, they got the highest grade on the specific questions we asked. Cheiron, certainly they can do the work. But I think just watching them their focus is more on that model. And that model, I think you need to focus on the nuts and bolts first and I think that's where Milliman would serve the board best in that regard.

>> Russell Crosby: If I could step in, I think that when we were discussing it as staff, you've probably got the two best firms that are dealing with public plans, certainly in California at this point before you, Cheiron and Milliman. High quality. One is large, one is small. One -- we've had good experience so far with Federated with them. My concern would be, going forward, a more resource-oriented concern. Yes, Cheiron is building out their California operation, yes, they're going to establish an office in Los Angeles. But Milliman is the 400 pound gorilla.

>> They are a larger firm, they have much better research capability than Cheiron.

>> Russell Crosby: And as an organization, we've already got Cheiron for Federated, so we've got access to their resources and thinking, and all of that stuff on the Federated side, and yes, we use that between the two trust funds. Milliman, if they came in on Police & Fire, yes, we would use some of their intellectual capacity over on Federated, and in some ways play the two firms off against each other, because you'll get different opinions, different thoughts, different approaches to problems. And from my perspective, there is an -- well, from my perspective there's an advantage in having two firms. Staff might say -- some of the lower level staff might say, well but it's easier, once you've connect it with one firm just to channel data, you don't have to do two setups, you don't have to deal with two data operations. So in that respect it is easier from a staff standpoint just to have one. And that would be Cheiron, because Federated has already got them. But stepping away from our own convenience and kind of ease of living, to what is a better answer for the City of San José, with two trust funds, and two operations going on, I personally believe we'd be better off to have two qualified actuaries in the mix, that we can then play one off against each other. And eventually, it goes to Pete's question as well. Over time, and Cheiron's answer was, you're going to have two guys there, you're going to have a horse race going on, and over time you can settle on one or the other. Right now, we're not in a position to really have an opinion, we're moving from I would call them somewhat different firms, to call them the premier firms in the business. And I think that's a valuable thing for the trust funds, for the city, for everybody involved to have as much intellectual capacity on this problem as possible. Carmen, you want to throw out anything else?

>> Carmen Racy-Choy: I'll try and cover a little the proposal terms of each organization, each firm as we see them.

>> David Bacigalupi: Carmen, could you hold off one second.

>> Please, those are all the questions I had.

>> David Bacigalupi: Thanks.

>> First I'll start with Milliman. You can see that staff asked them to come and to talk to you about the issues that they see with the methodologies and assumptions. You can see that Milliman didn't try to avoid the issue. They came, they took the time to read your valuations, analyze the assumptions, and write about what are the key things. Cheiron did not do that. Cheiron came and, at a very high level, said yeah, we were asked to do this but they -- it didn't seem they had done the same effort. So from a preparation perspective, one team developed -- put in more team towards your business, towards trying to get your business than the other one. The other thing that we see on Milliman, there is considerable more depth when it comes to the health valuations. The actuarial specialties are very distinct, and if you know pension plans does not mean you can do health valuation. And the specialties are very different. So although a lot of the pension actuaries will provide you with health valuations, typically it is approximations to the valuations. Milliman has real heath -- and what that actually means is, in the society of actuarial exams, they took the health specialization, so they have tremendously more expertise. And these will be on your account. We don't believe that that depth of resource and that significant expertise on the health side is there on Cheiron's side. Also, the investment expertise, actuaries are asked to determine or to help the board determine what is the appropriate discount rate. Milliman has a very significant investment practice and really the experts at trying to do the modeling around the discount rate, it's the investment arm of this organization. So again, where Milliman has significant expertise but Cheiron, I think they're adequate but I wouldn't say they've got strong depths on that front. This advantage I think of the specific team, I think you saw the presentation skills of the pension actuary. I'm not going to comment further. But you're going to have to listen to him, you know, quite frequently. So that's a bit -- the ability to get the message across sometimes is, I mean there's a lot of content there. But you definitely see that a lot of actuaries have this issue. So I won't go on it any further.

>> Just one comment. The lead consultant on this, or this case, would be a person named Mark Oleman, who had some other commitment today. But he's much more animated. And these two gentlemen would really be focusing on the OPEB valuation. So it would be more Mark would be focusing on the pension side. And he is very animated.

>> David Bacigalupi: I think you guys have covered that enough. They're actuaries. You can't expect -- yeah, that's fine.

>> I'll do the same with Cheiron. We believe that Cheiron has definitely the capacity to do a great job on the pension, and probably a good job on the health valuations. They have the capacity to guide the board to investment decisions. My issue there is: What if Gene Kalrosky was to be hit by a bus tomorrow? Really, you have one key person in that organization. And if he were to somehow either start get disinterested in your account or simply something God forbid happens to him, there's no other senior staff in that organization that we could go to. With Milliman they already have two senior FSAs on the pension side, two senior ones on the health side. One leads, the other person takes over. So you've got tremendous continuity. So I think these are kind of the -- again, from staff perspective if we were to have Cheiron also on the Police and Fire board it would be a lot less work. That's a bonus for us, not necessarily for the board.

>> David Bacigalupi: Thank you Carmen.

>> I have I guess one question for Cheiron then one question about the liability. On Cheiron what was the rationale, was the same firms for the Federated plan, why did they choose Cheiron?

>> Russell Crosby: Carmen wasn't here for that meeting, actually, she was on maternity leave. And it really came down to the personalities of the individuals. Which is a very legitimate concern. You are going to be sitting in front of these people or they're going to be sitting in front of you a fair amount each year. And you have to be comfortable that you want to sit and listen to that individual. And there were some issues and the presentations, more than anything else it seems to be the presentation skills of the Milliman team.

>> That's fair. The second question I guess is maybe I'm in my mind minimizing the issue of liability. But you know there's tons of evidence and transparency behind all of their recommendations as well. I'm trying to think, I haven't had a lot of experience in directly working with actuaries. Okay, so you know they come up with assumptions for us but there's tons of transparency. Where's the real issue in liability?

>> Russell Crosby: Well there have been some cases where Mercer in particular was mailed with $500 million in the stay of Alaska. So that's why the --

>> What kind of recommendation --

>> Russell Crosby: Around their valuations and costing out benefit plans. That's the problem, once that occurred, all the actuaries have dropped back -- the ones who had assets have dropped back and said oh well we've got to have limitations on liability. And the ones who don't are saying, well, yeah, we'll take your liability issues, we'll take that on. But you have to recognize that in the ultimate event of a catastrophic failure on their part, Cheiron doesn't have any assets beyond the $5 million that you've got in the insurance policy. That's all you're going to get there. With Milliman it's a $10 million insurance policy, but that's all you're going to get there, is the $10 million. And a catastrophic event could be potentially hundreds of millions of dollars.

>> I think several of the issues, the main issues that have come up is either actuary has recommended an assumption that didn't prove out over time or they actually made calculation errors. And so I think one of their concerns is, if they're performing some work for $100,000 fee, and they're calculating a liability in the billions, that if there's no limit at all, their fee is $100,000. They could be sued in the case of Alaska, $500 million. So they're trying to eliminate that disparity.

>> So we are more concerned with the negligence than the number kinds of --

>> Damon, another concrete example I had with the City of Fresno, the actuary said they would use the mortality table but adjusted forward, that was the assumption that was put down on paper, that was adopted by the board. When they did the calculations, again, the human error, they used the mortality table but pushed it back. It was a garden variety screw up but made it a big deal.

>> One kind of key issue here, is that I don't know the specifics of Alaska or the other cases had internal actuarial staff. But internally I can say that we reproduce the results of the valuation typically within a narrow band. So obviously, we have all the data they do. And we reproduce the number and if we're not within 3% we're calling and saying please give us more detail on why it isn't X. So there could be minor errors in the number. But if the -- if there is a serious error, which is going to cause you to go over the liability, I would say that internally, staff should and would catch it.

>> Mollie Dent: So I want to respond just kind of quickly to the issue of the negligence versus the limitation of liability. Staff does not -- I understand that we've now have really very competent staff. But you don't want to take on the liability to have to ensure the consultant's work. On the other hand, if you do feel like you have the staff that can -- is going through the work with a fine tooth comb, then the limitations of liability may be more reasonable under those circumstances. So that's why I feel very strongly that they should be held to a standard of just a -- if they're negligent, they're going to be liable. The limit of that liability might be $10 million, unless they're grossly negligently, in which case it would be unlimited. That's why I -- if that's their current position, I'm not opposed to it from the standpoint of your fiduciary duty.

>> David Bacigalupi: Good, thank you, Mollie.

>> Cheiron's modeling seemed very powerful. But I don't want to drive decisions. You need to make decisions based on what the right thing -- you pick your assumption rate based on what you think is going to happen, not just seeing what the effect will be and not trying to get a number out of the model. Who do you think will give us better input into what's the most recent or best thinking about each of our thinking? Whether it's the amortization tables or the discount rates or whatever?

>> I believe Milliman especially based on the answers they gave to the questions we raised where we focused on assumptions and methods, they were by far the best answerers.

>> Thank you.

>> And the models, I'm sorry --

>> David Bacigalupi: Sean's next and then Damon.

>> I guess on the insurance guy if we wanted to go to Qi Ron they would want to bump up if we put that part of the contract or is that a false assumption?

>> Russell Crosby: They may not be able to.

>> Mollie Dent: We haven't had that conversation with them I don't think.

>> A substantial premium increase.

>> David Bacigalupi: Damon.

>> Damon Krytzer: And I guess sort of a comment on the last one is, you know, both of the models seem to be pretty similar and they're based on the inputs which are come in from the individuals.

>> Yes, they can both do the same thing really.

>> It looks to me Apple versus Microsoft.

>> The smooth gooey versus the clunky.

>> Russell Crosby: They don't like to have the models live like they were demonstrating it today. Yes they can do it but their preference is take it back run the model and verify with you rather than doing something on the fly.

>> That would be context for his speech.

>> Well Cheiron says that their on the fly model would be available to us. Will Milliman be do the same as well that we could play with things?

>> I don't know the answer to that question. They may for a fee be able to provide a model for us. I think the problem with the modeling it's maybe good for one or two going through it one or two times. But after a whole you -- you can get so many results, you're basically going to confuse yourself after a while.

>> We're chasing our tail, I agree with you, we don't want to make decisions based on trying to get a model result. It would just be a handy thing to have, that's all.

>> Mollie Dent: I do want to say having Milliman comments on the ownership provision I agree with Mike that they may be more reluctant to having -- they'll be bad to run the model for you and produce whatever results you want, I assume. They may be more reluctant to show it publicly running this way because of proprietary concerns.

>> And there's also an issue that if someone who doesn't understand the model is using it, they could easily misinterpret their results or input the wrong parameters, let's say. And then get a result that's not correct. So I think that's another of their issues.

>> But however I'm sure that they would be willing to the extent to say you're interested in running a certain set of scenarios I'm sure they would be willing to bring it in, have somebody sit with you and say what is it you want to run and you know run those scenarios for you and for the rest of the board. Meaning fundamentally from a modeling capacity, they both have the capacity to show you the key financial statistics. They're fundamentally using similar models and to the extent you're interested in having certain answers, they will both provide you with those answers. But in Milliman's case we'll just need to give them a heads-up and say please bring the model and

we maybe want to run XYZ scenarios and be prepared to run other things. They want the one who really knows the model sort of there and guiding it as opposed to sort of handing it over.

>> One last question on the price. You mentioned you're asking for authorization to approve $650,000. How does that compare to our run rate with Segal and our expenses in this category and our budget?

>> I think -- I believe with Segal the ongoing fees are roughly -- the contract is $150,000 a year, so that would be $450,000. But the issue here is, we think -- we wanted to give ourselves some room, over the three years, not that we would necessarily spend -- have the board spend that much. But normally, when -- in my experience the Milliman fees and the Segal fees are within a few percentage points of each other, always very close when I see in competitive bidding. And Cheiron give themselves a little bit more room.

>> I just didn't want to commit with something that's significantly out of line of what we've been seeing in the past.

>> Mollie Dent: My understanding is the contract will be a fixed fee and hourly. There will be fixed fees for valuations that we know they need to do and it looks like there's a CPI with maybe a cap for adjusting these and the same thing on the hourly fees will be what will apply to the sort of miscellaneous work that you don't have a fixed fee for.

>> Are we pre-agreeing on a $650,000 contract with them?

>> It's a not to exceed.

>> We're asking what, the 130, and rates and an amount to be used in the next three years?

>> Mollie Dent: You also have the table in there for their valuations. Which are the amounts that they have said they will at least in the initial year charge for the valuations.

>> And those are very close to Segal's amounts, fixed charges. I believe their experience hourly rate's a little bit higher than Segal. On the other hand, the Segal hourly rates are in the $400s at the high end. Whereas Milliman's is capping out at 395. It's kind of a mixed bag but it's set relatively close.

>> And I guess somewhat academic, but 3 to 5% for inflation when they're talking about 2.75? What's that about?

>> Mollie Dent: Well the way I would read this from the standpoint of drafting a contract, and just listening to, sometimes there would be a little bit more detail about this than the memo but I read this as a CPI adjustor, actually not a 3 to 5%. And I would normally -- normally I would draft this contract just so that you know, if that's what they have asked for, a CPI and then not to exceed. And I would probably start at 3 and if it went to 5.

>> As I remember the proposal they all had this kind of wording in there. I just sort of took -- took the wording and made it simple. But it would be a CPI based.

>> So you would use your own recommendation on CPI?

>> Mollie Dent: That's one of the details that would have to be worked out in the negotiation of the contract. And if you get to a point with these kinds of contracts that you think you've got a substantial issue left then it would come back to the board for further direction. But I would not anticipate that on this particular detail.

>> David Bacigalupi: Okay, any other questions by the board? Entertain a motion.

>> I'll make a motion to recommend Milliman as the actuary pending legal's review of the contract and coming back if there's any changes to it.

>> Mollie Dent: So now if the board is going to -- I'll wait and see if there's a second. I'm sorry.

>> Second.

>> David Bacigalupi: Okay I have a motion and second. Mollie do you need in the motion the fact that we accept the limited liability amount?

>> Mollie Dent: If you want to accept the $10 million on liability and if you want to agree to waive jury trial I would want that in the motion. Otherwise I would not consider that to be within the scope of what I've been directed to draft.

>> David Bacigalupi: Okay, will you include that in your motion? To accept the $10 million liability, and to waive the jury trial?

>> What was the status on the jury trial though? You said that's not a common practice for that?

>> David Bacigalupi: They have it in all their other contracts.

>> They said all their other public sector clients in California have waived jury trial.

>> Mollie, you have not confirmed that?

>> Mollie Dent: Have not confirmed that. It's not common in city contracts I know that but I won't say had it's -- certainly out there in terms of contracts in the private sector and I wouldn't doubt that it's out there in terms of some other public sector contracts.

>> I would say in my experience from the hedge fund side when we contract with J.P. Morgan they put those in you got to waive jury.

>> I'm fine with that, liability of waiving the jury trial.

>> David Bacigalupi: And the second is okay with that? Okay.

>> And the 650,000 cap? Okay.

>> David Bacigalupi: With all those we have a motion and second on the floor. Any temperatures discussion on the motion?

>> Mollie Dent: That's to execute a contract with Milliman subject to legal rube if we have other issues we'll bring them back.

>> David Bacigalupi: That's correct. Hearing no further discussion all in favor, all opposed, motion carries, passes unanimously. Okay. With that we're going to take a -- 10?

>> Russell Crosby: 10 minute break.

>> David Bacigalupi: Ten minute breaker so we can reposition computers or something.

>> Russell Crosby: And you can pick up lunch. It's over here as ordered. [Recess]

>> David Bacigalupi: Okay, I'll call this meeting back to order. As and we said during the orders of the day, we're going to put item 3.2 after 3.4. So we'll start with 3.3, overview of the investment structure. Carmen you're on.

>> So this is just a quick introduction to the investment structure. First, just some background information. A new asset allocation was adopted by the board back in October 2009. And in December 2009 a transition was undertaken in order to implement the new target allocation. We implemented wherever possible through active mandates where the investment structure called for active mandates. However, when it wasn't possible we implemented through indices or passive mandates. We also recommended to the board that managers did not sit

fit into the new structure be removed. So there was I believe approximately eight or nine managers that had to be removed from the investment structure. So here is at a quick glance the equity investment structure. It's divided between U.S. large cap, international equities, U.S. small cap, emerging equities, and global convertible bonds. The global convertible bonds was kind of an opportunistic allocation and that's why you see an allocation of zero at the target. However in reality, obviously, the board made an allocation. It was 2.2%. But since it's not part of the investment structure on a continuous basis we show it as zero. The idea behind this investment structure is that it's important to split the mandates, the world geography, by basically specific mandates, and try to get the best manager within the specific, in this case, geographies. So for emerging markets, we have Alliance Bernstein and the Boston Companies. For U.S. large cap we currently have just one active mandate and fundamentally staff believes that U.S. large cap is a fairly efficient market, and so our thought was we needed to be predominantly passive. That is why you see below Robico, who is the only active manager. Romblein has two mandates and manages hence about two-thirds of the U.S. large cap allocation. U.s. small cap equities, we have RS Investment, which was a recent addition. I believe RS was added in the fourth quarter of 2010. Romblein, currently, obviously it's a passive mandate. I don't believe the intent is to have passive mandates in small cap. Small cap is an asset class where we feel there is significant value-added so we will be replacing Romblein when an appropriate -- when a search is conducted. International equities, again, that's another market where staff believes active management pays off. If you pick a good manager. It's very important from the -- when making decisions between passive mandates and active mandates to take asset classes where really the managers with significant skill can add values. Because when the market is Tao too efficient, even very smart managers find it very difficult to add value. So on the international equity side we currently have Brandis and William Blair. As you see in the performance report I believe William Blair did very, very well last year. So next, here what we're showing is the fixed income allocation investment structure. Here you have a 10% allocation to Phipps. Staff recommended a customized benchmark of 35% 5-year TIFs, 35% 10-year TIFs, and 30% 15-year. It's a buy-and-hold mandate, because trading in TIFs market is actually very expensive. The benchmark was constructed with the idea of maximizing the link to inflation and minimizing the interest rate risk. The plan also has a cores bond allocation which is currently actively managed by sites. A long bond allocation which is currently actively managed by income research. And the plan has an allocation of 5% to credit opportunities. This is currently filled by a bank loan mandate which is to Sykes, high yield mandates to Makai Shields and a 2%

mandate to Pimco Disko, which Pimco has the mandate to go across different credit markets, find what the best opportunities are. Next we're going to cover the alternative investment structure, private equity. There's a 5% allocation. There are various managers. As you will see later on in the performance report. The performance report doesn't really include much about the private equity investments. The information there comes in a separate performance report, usually 1 to 2 months following this one. So whenever NEPC produces them, we will invite them over and we will ask them to present that performance report and it will have a lot more information about how each private equity manager has done. So at this point in time, the information is still a bit sketchy but that's normal for private equity. Real Estate, there's a 10% allocation. Currently it's physical properties, as you know we are in the process of transitioning from owning physical properties into hopefully going towards a fund structure. And this is ongoing. Commodities, currently, the exposure to commodities is through a swap. On the Dow Jones UBS commodity index, clearly when -- this is a fully collateralized swap. Which means that the combination of the collateral and the swap replicates a holding in the commodity market. It is as if you had physical assets. Currently, it is a passive mandate however, I believe the board has approved two managers and we are basically going through the contracting stage. So active management, as soon as the contract is done, this asset class will be actively managed. Hedge funds, the investment structure calls for a 5% allocation. This has not yet been allocated. And finally, opportunistic. Which the board has decided to fill currently with private debt. Private debt fundamentally has a private equity type structure but basically it is fixed income investments. And currently this will be shared by three managers, White Oak, Blackstone, and Medley. I believe the approval happened in the third quarter of 2010. Currently since this is like a private equity, when they have investments they actually request the money. So I believe as a tier end, only about 8 to $9 million had been called, but this will fund fairly quickly as time passes. Are there any questions?

>> David Bacigalupi: Questions by the board.

>> I have a couple and a lot I guess we're going to cover in the next section. Regarding I guess opportunistic. I'm curious about the timing of the allocations, right? How often is that rebalanced and how tactical is that, what's the decision process for anything opportunistic?

>> It is fairly tactical. I mean, at the time it was made it was viewed that the best opportunities from a return perspective were in private debt. There's obviously since this is private equity, once we're in we can't necessarily just walk away, unlike a regular manager where you can reflect. However, there are other opportunistic investments that could or should be made, the board can decide to increase the target asset allocation to this specific category of investments and then you know basically the board can decide to make additional investments.

>> So I guess more specific to like convertibles for instance which is pretty liquid but there are certain points in time when premium drops out or there's no coupon or something like that. How quickly can that decision be made?

>> We made the allocation. For all three asset Class oops and one of the -- the convertible was attractive so we invested in that, and we can liquidate that on any given date. They are completely liquid. They're paying out as the bond matures or the dividend gets paid out or coupon gets paid out. So their size of the allocations actually stays the same or decreases slightly. So we are drawing down effectively from that two class. But when we talked to the manager, when we hired them, at that time, the intention was as the spreads have become normalized we come back to the board and say this has been a really good investment but we think we should reverse that and go to other opportunistic threads.

>> Did we answer your question, though? Your question was specific to private debt, I believe.

>> Yeah, because I'm going to ask later on about just the allocation decisions and how dynamic versus passive it is but would cover that later. But yeah, you did. And then I guess the money goes between cash and opportunistic or does it go back into the allocation to fully invested, if we decide convertibles is no longer the right asset class, where does that go?

>> Currently we are overallocated to equities fundamentally because of that decision. So the target equity allocation is 40%. But since we have allocated Calamos as opportunistic allocation, really the equity allocation is

42%. Currently we're under-allocated to hedge funds. We're under-allocated to real estate just because of the liquidity and the complexity of these decisions around hedge funds and we're holding the money, we're also under-allocated to opportunistic because although we've selected managers, we have not fully funded those mandates. So basically we've got a lot of money that basically can be used and the convertible mandate is basically using that money. Hopefully, by the time we get rid of that specific mandate then we can go back and say okay well now is the time maybe to fulfill our allocation to Real Estate or to fulfill the hedge fund allocation or the opportunistic piece as they call in capital, then we will need to go get it from somewhere else. So I guess one of two things will happen. Either staff will determine that it's appropriate to move out of convertible, and at that point in time we will look at what is the attitude of the money from an investment perspective or we'll need money, and we'll determine well we've had a great run with convertibles, maybe it's time to get out. Either we'll need the money and we'll kind of look for sources and that will be one of them or the other way. Basically, that's kind of the --

>> Okay.

>> -- quick picture.

>> So a second question, the decision to carve out absolute return. Instead of adding that into equity or fixed income or whatever the underlying instruments are. I assume that's straight long-short or not necessarily?

>> No, I think what strategies we would use is still to be determined. It could be global macro, it could be a combination of strategies. That -- the composition of that bucket hasn't been determined and that's part of the reason we've just carved it out in alternative as opposed to putting into the buckets. Plus due to sensitivity over the expense of holdings in hedge funds, basically this is the pension plan's first allocation to hedge funds. So in order to be able to keep tabs on how much hedge funds we have, we kind of bucket it as one bucket. But as you know the reality is the underlying risk is either equity or fixed income or something else. And so maybe in the next ALM one of the things that we could do is explore well, which strategies should be undertaken and put it back in

the appropriate bucket. But as a first go I think from a presentation perspective, it was kind of important to convey that this is the total allocation potential.

>> So assuming then that all long-short is going to fall under that allocation for now, is that just the long exposure or is that the total dollars allocated to the strategy?

>> That is the total dollars allocated to the strategy.

>> So the 5% could be net long 3% or 2%?

>> That's correct.

>> Okay. I just have two more. There were two asset classes that seemed to be either not there, underrepresented, one was international fixed and emerging markets seemed to be pretty low as well. Are those under review at all?

>> Well international fixed, typically pension plans I would say don't allocate much to international fixed income. The rationale behind that is that over long periods of time, the thought is, for liquid markets, that there -- after currency, the return on international fixed income should be the same as the local fixed income. Otherwise arbitrageurs would get into the game and would arbitrage the profits away. This is clearly not the case for emerging market depth where there's a significant liquidity premium that we can obtain by investing in those markets. So staff is definitely currently considering coming back to the board and fundamentally suggest a change in structure to include emerging market depth. But we currently are not considering investing in international fixed income.

>> And then with the emerging market, considering the correlation with commodities too I would imagine that (inaudible) --

>> Yes.

>> All right, my last question is, on the debt portfolio in general, so obviously our TIFs are laddered, and I guess I'm curious if those dates change, or if they just stay on the same duration ladder. And then if the -- in aggregate, the managers are more interest rate anticipatory or reactionary?

>> This is a buy and hold mandate. So at this stage we're going to give you a more in-depth review of the structure in later meetings, but the idea when we built this was to maximize the responsiveness to inflation. We've designed basically the benchmark. And at this stage, the intention is to review the benchmark every couple of years. And we're going to review it from two perspectives. Is this doing the job of hedging the plan's exposure versus inflation and is -- basically are the terms exposing us to undue interest rate risk. And given the fact that what this allocation is trying to achieve and given the fact that in the TIFS market as we will show you in later presentation there isn't a lot of value-added from active management and on a net of fee basis when you actually do the analysis there isn't you know at the median level there isn't a whole lot of added value. Even potentially at the top quartile level. So that's kind of the thought behind the buy and hold mandate.

>> Kind of expand on that. They have rolled down one year so there are really now four, nine and 14. And also, the swap was initially 50% two-year treasury and now it is a one-year treasury.

>> So the swap on the commodity.

>> On the commodity, excuse me. When the commodity was a two-year, 50% in the two-year, 50% on the TIF, and since then the two-year has rolled down to one-year.

>> But since that is not an active decision, to change it from two-year to one-year, obviously it's just a maturity issue?

>> Yeah, it's just a rolling down the curve.

>> So is that something reviewed to see if it's worth staying at a two-year, for instance?

>> Yeah, I mean, we can definitely look into that and see what the cost advantages of rolling it up and down the curve. Because we are going to active managers for the commodity in the very near future, just rolling it up and down the curve didn't make that much sense.

>> And the intention, when we made the recommendation to use 50% of the collateral, in a two-year treasury was just to make up for the cost of the swap. And in reality since inception we've made up the cost of the swap plus an additional ten basis points. So really the intent was just to pick up a little bit of extra yield and help us with the cost and that's been achieved.

>> Thank you.

>> If there are no further --

>> David Bacigalupi: Sean did you have a question?

>> Yes, I'm just -- in terms of the, you know, the TIFS portfolio being 10% of the portfolio and then having 5% allocated to a long bond strategy, they're kind of contradictory, I would think, right, they kind of cancel each other out. Your long duration would help you in a deflationary environment, your TIFS would actually have a call back on the premium you've accrued, on the interest on the inflation premium, that's one quarter behind you. What was the kind of the logic or the idea in terms of allocating you know 10% to TIFS 10% to commodity and then throwing in the long bonds going in the other direction?

>> The logic behind it was you don't want to find yourself in a situation where -- you want to have certain asset classes that will do in every market environment. Now if the board is comfortable saying we believe that inflation is what we need to worry about, then you would obviously put the TIFS in place eliminate the long

bonds. However, the board's position was, we should have asset classes that do well regardless of the environment that we face. So we want to have long bonds which do well in a deflationary environment and TIFS and real assets which do well in an inflationary environment. Obviously they do work in the opposite direction. But you do have a significant exposure, either way. So it's important to make sure that the plan has a reasonable position and wouldn't incur too much losses in either scenario. Again, it is the board's decision, meaning if really the members of the board decide that we don't believe we need to worry about deflation, and because they do work in opposite directions, you know that would be your decision to make.

>> And then in terms of liquidity of the premium you know, the private equities, reasonably illiquid, realty's reasonably illiquid. Your commodity swap is reasonably illiquid, right? So do you feel that you're collecting enough of an excess premium for that illiquidity in these investments that you guys are putting in there? Because that's really the point of my opinion of going into illiquid investments is you figure up that spread. You feel like that's there still in the environment that we're in?

>> That's an excellent question. Let me take it one investment at a time. Private equity we have had to be perfectly honest, tremendous difficulty getting information, I've been here for two and a half years, and I've been asking NEPC to get us information about how our private equity investments are doing versus peers. I have still not seen that.

>> That to me is an important note. You want transparency, you want disclosure from your managers.

>> Carmen, what's the --

>> Russell Crosby: Our problem is, it's not just the manager, we've also got a consultant. The issue is the consultant, not necessarily the manager.

>> Carmen Racy-Choy: Not necessarily the manager.

>> The pricing is arbitrary anyway.

>> Yeah, very subjective.

>> Carmen Racy-Choy: That's correct, that's correct. So however, we are -- they are going to come and talk to you. We have asked them to come and talk to you about private equity and cover specifically the performance of every investment. The fund has all of the big name in private equity the fund holds. I don't see necessarily the issue with managers but it is nice I think to have greater disclosure. So we're going to try ask the consultant to come and talk to the board in more detail about the specifics of every manager. Obviously the private equity program is still young. Which fundamentally means --

>> Why haven't they given an answer. You said you have tried for two and a half years. What has been their --

>> What we are trying to get is more information than just what has been the return on your fund. We're trying to get information about what are your top 20 investments and please tell us how each has done. Once you get to that level of information it's sometimes difficult to get the info. Now we're not hugely sure whether the problem is consultant or whether the problem is the managers but we've undertaken the process of asking for the information ourselves so that we can assess whether the problem is the managers or not giving the info or is it the consultant just not wanting to spend the time because they don't view this as important from their overall client servicing perspective.

>> Are these like venture capital investments, or are they traditional private equity LBO type?

>> Carmen Racy-Choy: They're traditional private equity, predominantly LBO type, although we do have a little bit of growth, growth-type investments. And we have mezzanine investments. We also have -- so some distressed private equity.

>> Okay.

>> There are firms like, oh I can't remember the name of it now, that plot private equity, though, based on a return base instead of a holding base. You know, basis, to try to -- to try to regress to what the actual holdings and then you know whether or not there's alpha created.

>> Yes. Typically because private equity will have negative returns early in their investment cycle, and this is a very young plan, so, you know, you can't just judge from the absolute number. You typically need two things. One, to have bi-vintage year. And what that means is just by the year of issue. So absolutely. There are different databases that plot how is for example venture capital that was issued in 2006 doing? And it's important to have that information for every manager to know in which quartile the ranking. So that you know are they doing well relative to their peers? Because since their return in full will be negative for a significant number of years, you can just use the numbers to make that judgment call. So --

>> But there is also an active -- and increasingly active secondary market for these too and I would imagine some of the pricing can come from that.

>> Yes, I'm not positive but --

>> Well, I don't think the issue necessarily is the pricing because the pricing is available, you look at the financial statement and you look at, they describe their method of valuation and so you can determine an IRR. But if you have a buyout that has earned plus 3%, over its four-year life now is that good or is that bad? The only way to judge is to look at where they rank versus their peers and if that could be a top quartile performance, if that's a top quartile performance I'm going to cut them a lot of slack. If they're just barely making the top half we're going to start asking a lot more questions about their investments, what they're doing well, what they're not doing well. So in short on the private equity side we've asked NEPC to come in May and to present the performance report relating to private equity. And we've asked them to spend some time explaining how has each manager done versus their peers. And more importantly, to provide you with how they see the private equity investment plan going forward happening. The second piece of the question relating to Real Estate, are we getting enough of a

premium for the illiquidity. Given that currently, a lot of the properties are being sent into American realty, which is a core fund. A lot of pension plans invest predominantly in core funds. The main reason for that is the inflation protection. Pension plans obviously, the liabilities will inflate exponentially in an inflationary scenario and since it's really important to manage surplus, you want to make sure that your assets will inflate hopefully by the same amount. So having assets that inflate with higher inflation is very important. And that's why a lot of pension plans do a lot of heavy-duty investing in core funds such as American realty. However, the cost, since really in fact you're making that investment for insurance reasons, you don't really get necessarily a return that's appropriate for the liquidity of the investment. So, we as a pension plan, this board has said up the real assets you bucket, 10% in commodities, 10% in TIFs. The view on real estate is yes, it does respond to inflation in the long term but it does not respond to inflation quickly enough for us to use it as a hedge for an inflationary scenario. So we're using commodity and we're using TIFS which respond to inflation in a quicker fashion. And given the reason for investing in real estate for this plan is very different than other pension plans, I think the investment profile should be more geared towards mezzanine, so fixed income type instruments and higher value-added so higher volatility investments. Currently, the Real Estate plan is under review. And you can definitely expect to see a very small allocation to core real estate in the next plan, and a significantly higher allocation to other types of real estate investments. If that happens and it's approved then the board would be extracting the appropriate premiums for the illiquidity.

>> Did the staff look into the possibility of investing in a public REIT versus the pooled investments and what are the thoughts, why not go to a public REIT that you could cleat if you need to do, 30 days or whatever?

>> There are a couple of advantages of REIT investments compared to real physical holdings. One of them is that every REIT is very different so you need to have very significant expertise in reading REIT contracts and understanding the specifics of a REIT. The different structures and there are lots of REIT structures have very different implications on whether your investments will appreciate. So we view it as a very specialized area of expertise. And you would pretty much need to have a consultant with specific not just real estate but REIT expertise to guide you there. So this would not be an area where we feel, you know, we can just ponder and

make an investment. The other thing is the link between REITs, since REITs are exchange-traded, they tend to have a very high correlation with equity and fixed income, whereas traditional property, real estate --

>> Breaks away a little in that correlation?

>> Exactly, has a significantly lower correlation and hence a higher diversification benefit.

>> To Sean's earlier point about TIFS and long bonds, I don't want to just take a bet on red and a bet on black and hope we come out a winner, because it's a sheer loss either way. This is probably point four but as we get into investment options in the future sessions, it would be great to review that option.

>> Absolutely. Actually, in one of the lay presentations, one of staff's recommendation is that the AALM dates back to 2009. So staff is recommending that the AALM and U-1 be done this year. And one of the main things you would want to consider in an AALM is what would happen to the plan's assets if we were hit with a high inflation scenario and similarly you would explore what happens in a deflationary scenario. If you take a look at how the investments would do and how would the contribution rates change, then you can determine, first of all we are not fully hedged in either direction. So we are kind of really having doing a half-bet here, half-bet there. But as you said, I don't know that the board wants to make a call. And however, I think we could definitely do further analysis on this in the ALM.

>> One thing I'd add on that too, an organization like, I think Russell investments is a --

>> Russell Crosby: We're using them.

>> Places like Russell have groups like overlay strategy groups and one way to say okay I just want to clear out my inflation risk would be to go to a place like Russell and say structure me a swap where I'm a payor five years from now for a five-are year swap at a set price for the entire value of the portfolio. And make it a kind of a -- you got to make it a higher strike, to kind of make it affordable, but in the case where if you're worried about a

hyperinflationary type of environment, it could end up being a much cheaper way to hedge out your inflation exposure. Because if rates were above the level you're paying then you now are capturing 100% exposure to that. Kind of not probably the right place to discuss it right now but, you know, those overlay strategies can make a lot of sense in terms of just taking care of issues like that I think.

>> If we used an overlay, though, we would have to then definitively have a -- like a risk budget for instance or some kind of a metric to manage against, as opposed to just doing that and saying, okay, well, our returns are neutral to some extent, but we'd like you to bet red or black.

>> Right, or you could say you know, instead of doing a straight out five year five year forward swap, for (inaudible) I want to do a swaption and you would amortize the cost of that option over the time period that it protects.

>> Russell Crosby: You're getting a whole lot more sophisticated than every other pension plan in the state already.

>> Is that good or bad? I don't know.

>> We actually -- this is a very interesting point because we talked to Russell about the possibility of switching our fixed income from a fixed rate to a floating rate. And rather than just going straight to floating rate and selling the fixed rate have a swap on top of it, doing that.

>> Very common strategy.

>> And that structure works very well. The other issue is that how fast you expect this increase in interest rates comes in because then your opportunity cost gets expensive. So the idea was that maybe we can buy some swaps, a swaption on the early year and on the longer federal go for a straight swap.

>> There's all kinds of ways you could structure in terms of a spread trade, depending on how you want on the budget.

>> Russell Crosby: We've actually got a lot to accomplish today, and that's carrying us off in other direction. Carmen, why don't you wrap up here, and let's move on to performance.

>> Sure. I'll just wrap up by saying that the right place to explore that is really the asset liability study because it is in that context the board finds that they would like to have greater comfort of controlling, for example, the high inflation scenario, at that point in time, we can model an investment strategy and give the board a greater sort of comfort with that. So with that said, I'm moving over to the performance reports.

>> David Bacigalupi: This will be item 3.4.

>> That's correct.

>> This is the presentation that as of December 31st, the performance of the pension plan. I'm going to go ahead and what I'm going to do is just talk about the highlights and then focus more on the question that will come from the board. On page 2, is a review of what happens to the market last year, and this is a calendar year, not a fiscal year. And as can you see, the small cap U.S. did really well, compared to the larger cap, this is this has been going on for almost five years. Everybody expected it to change rather than keep going straight up. The other part of the market that did very well was the merger market relative to European market. European market as you have heard through the news they had a lot of issues in terms of the fiscal policies and what's going on with some of their structuring. So the emerging market did much, much better than developed markets. But overall, almost all asset class, everything had positive return except if you were short the pa market and all asset class were very positive last year. The fund did very well. We did 13% for that year. And I think if you go to the page 4, the two-year period of December 2010 the return was 16.7 which outperformed the benchmark by 1%. The biggest events that happened to the plan last year was structuring a commodity and direct lending manager that we listed last

year. Three managers were selected: White Oak, Medley and Blackstone GSO, and their selection was based on distribution across credit curve and also during the maturity. So we kind of distributed that way.

>> Carmen Racy-Choy: I'll take over and go to page 6. The only comment that I want to make there is cash as of December 30 was very high, at 87 million approximately. This was due to the fact that the MEPT refund, fundamentally the board made the decision to change MEPT as a real estate manager. And the -- we went in the queue for a certain number of months. Ultimately the redemption which I believe was around 40, $46 million, this money, we're down right now to about $15 million in cash. So $70 million of the 87 that you see here has already been invested. I'll go on to page 7 which is the overview. The key about this pension plan is that the board made the decision to tone down on equity investments. And to try and focus on minimizing risk and maximizing return per unit of risk. I'm going to show you a little bit the graphs, some of the graphs later on, but the key to understand is, since the plan has a 40% allocation, and that's very conservative relative to peers, the fact that the plan was able to be in the second quartile at a time when equity, the equity markets basically was ripping and did phenomenally well is amazing. Typically in a traditional 60-40 type portfolio if the equity market is doing really well, you do really well. But then when a tough patch happens, you perform really poorly. The idea from the design of this portfolio was to be kind of an all-weather portfolio and try and perform well through all markets. So fundamentally, there's no shame in being in the second quartile especially given the significantly lower allocation to equity that this plan has. So I want to start by introducing some of the jargon that is used. Clearly on page 7, the first line is the actual return of the fund. This is labeled San José Police and Fire. You can see that last year's return was 13.2. This is gross of fees. I want to point out to the fact that the second line, which is labeled net, is not really the plan's net return. This is simply the fees, the total return net of investment manager fees. Clearly, in our financial statements, when we show a net number, this would be net of investment manager fees, expenses and so forth. Second, the allocate index which is the third line is fundamentally the return given the current allocation, but using passive benchmark returns. What you need to know is the difference between the allocation index and the actual return is actually either the manager added value or the manager detracted value. Same thing with respect to the total fund benchmark. What that actually is, it's the return assuming the fund was invested at the target allocation throughout the entire time period and using the passive benchmark return. So the difference between the allocation index and the total fund benchmark is really the value added or detracted

because we were not able to rebalance on a daily basis. Fundamentally I think the biggest thing is over the last three months actually, manager detracted ten basis points, given the significant allocation to passive investments. This is not exactly you know, unusual, an unexpected outcome. The -- I think the main thing as well as over the last year there was fundamentally no manager either added value or detracted value and the key is, you typically would like the difference between your total fund benchmark and the allocation index to be very close. Over the last year the difference was nil, and this fundamentally is a tribute to the fact that the rebalancing is happening at a reasonable frequency. As a result there's no detracted value there.

>> Quick question, the net numbers you said were net of an investment manager fee.

>> Carmen Racy-Choy: Only.

>> So if we'd gone straight passive really the difference between the active, allocation index as you say, and the -- sorry, the passive allocation index and the active managers, is not just ten basis points. It's much bigger because you have to factor in their costs right?

>> Carmen Racy-Choy: That's correct but the allocation index is not on a net basis. It's on a gross basis.

>> There's more than that -- I'm saying if all we did was passive --

>> Carmen Racy-Choy: That's correct.

>> There is still cost to be incurred that's in that line?

>> Carmen Racy-Choy: In the second line, in the net number, but not in the third line.

>> Is it possible to obtain the third line, or is there also investment expenses that would need to be recognized out of that? Or is it all passive?

>> Carmen Racy-Choy: Since the allocation index is a gross number it is possible to obtain it. If you were 100% passive and every single manager had no tracking error to its benchmark, then you would be exact on it.

>> So our cost of active management is not ten basis points, it is more than that because we're talking year-to-date, 14.5% versus a net of 14.0.

>> Well, even if you hire a passive manager you have a little bit of a cost.

>> That's what I'm asking. How much --

>> Carmen Racy-Choy: Yes.

>> Depends on the type of asset class and depends on the type of investment you're making. So a passive emerging market might cost you 15.5% versus active would be 1.5%. On the large cap equity you're talking .25% versus .1, or .0. It very much depends on the type of asset class. But there is a cost, even to the passive manager.

>> Carmen Racy-Choy: Absolutely.

>> That is the real difference, to compare expense-ladened passive versus an expense-ladened active, and see, are we really getting anything out of those guys.

>> Carmen Racy-Choy: Absolutely, absolutely.

>> And just a very brief comment. Some of the number, because of any error that NEPC makes, is not exactly correct. Because they are showing Calamos as of under performing the benchmark, where we confirm both with

the State Street and Calamos that they actually outperformed the benchmark. So it's a small difference, but if you are talking about one or two basis points.

>> Given that it's not considered here, but it is later. Is how much risk the manager is taking versus the index too and that's covered in the sharp ratio principally.

>> Well, ask Ali to go over -- I took the highlights only of the managers. However, before he does that, I just want to comment with respect to the one-year Calamos return. When we received this return about a week before it was distributed to the trustees, staff identified the fact that one of our managers, Calamos, was reporting to us a very different return, 300 basis points off from the NEPC reported return. We asked NEPC to look into it. When we received the final return, NEPC had only put in a footnote saying that there is a discrepancy there. Staff took the initiative to go look into it, and spoke to the custodian, identified what the problem was, and calculated a corrected one-year number for Calamos of 11.5. And by the way, that was the same number being reported for Calamos on the Federated plan, as well. So we just wanted to make that comment that there's an issue with that one-year number.

>> Russell Crosby: Again in the interest of time, can we just highlight the ones that absolutely need some highlighting today and move on? Particularly with a small asset or a small amount of money, let's not belabor it.

>> Most of our allocation equity sides are in the passive, so it's very little to say about that. Robico is the only active manager, and they are very value-oriented, so they had a very good 2008, 2007. But the last 2009, 2010 they have lagged behind. We still think they're a pretty good firm, and if the value comes back they are a very good exploiter on that side. On the international side we have really four managers, Brandis, William Blair, which Brandis tends to be more value oriented. William Blair is very much a growth allocation, and (inaudible) and the Boston Company which are really emerging market but very index-hugging from my point of view. William Blair did extremely well last year, but over longer time period they have not done as well. And if you note that some of the negative red numbers is relative to the benchmark that we dictate to them, which is really the ACRI plus 1.5%. So they match the ACRI, but they have underperformed the benchmark that we asked them to do. The

Alliance, Bernstein and Boston companies, both of them have underperformed one year 357 forever. So these are two managers that I'm actively looking at for a replacement. On the fixed income site, Barclay they are a very robust organization in terms of investment. They had some turnover on the staff but it was mostly on the marketing side. So the core investment people are still there and performing very well. Their numbers have been good year after year. And there was nothing really in that regard that was disconcerting. And on page 12, this looks at some of the more opportunistic allocation that we have, both sites, Makai shields which are high yield and back allocation oops has structure, assets bond growth so they have been contributing about $34 billion to the assets and $34 million to our cash flow which we paid for the benefit. And therefore, that structure is very good. And Calamos as Carmen mentioned the performance has been keeping up with their benchmark and the global funds which they closed their transaction recently. The commodities, justice swaps there is nothing to talk about that, and that's basically it.

>> Carmen Racy-Choy: So my last comment is on page 14. This was fundamentally the outcome of the 2009 ALM and the investment structure. I'm going to start by covering page 15 and then highlight the difference to page 14. So page 15 you can see that the total fund as well as the fund benchmark are in the lower right quadrant. Fundamentally what that actually means is that the return of the fund is below median, and the risk assumed by the plan is higher than median. And what I want to highlight is that on page 14, you can see, this is the return and volatility over the last year. And you can see that the fund, as well as the benchmark, are both in that upper left quadrant. What that actually means is that the risk assumed by the plan is below median, while the return is above median. And so, the key there is, that the sharp ratio is in the -- almost in the upper quartile. And so we are definitely working on maximizing the return per unit of risk, and that's a huge difference in positioning of the fund and of the benchmark between 2009 and 2010. And this was as a result of the board's decisions on the asset liability stained on the investment structure. Any questions?

>> Carmen, who are the three people that are up there a little bit higher, have you guys talked to them at all to see what they're doing differently in terms of their strategy? I think you guys are doing great on them, you know, in that quadrant. Just curious, seem to be three there in the same risk profile and jumped up their returns. Just curious if they used a different allocation or we heard anything about that?

>> That's a good question. We'll look into it and let you know in the next meeting. We actually didn't think of --

>> You know why copy if you can just steal their ideas and --

>> Right.

>> Why reinvent the wheel? I'm be curious what they're doing.

>> Okay, I think typically the consultants won't tell you who it is but they'll tell you what it is they're doing.

>> That would be brevity of interesting to know.

>> Exactly.

>> David Bacigalupi: Any other questions? Okay, let's go back to 3.2. This is the qualitative review of the assess allocation. Staff. Who is going to present?

>> Carmen Racy-Choy: So the idea really was to start with this presentation because this provides a qualitative review of the ALM, so the decision relating to the allocation between equities, fixed income and alternatives. And this kind of provides a high level rationale. Clearly this is not as good as doing the actual ALM and one of the recommendations coming out of this presentation is we think that the board should review the ALM this year. However, I'll take you through -- so this would have been good to start with but just due to time consideration we started with the performance report first. So a little bit of background relating to the pension plan structure. The -- obviously the pension consultant is now Milliman, and the investment consultant is NEPC. Your custodian is Safely. What are the important documents? I would say the most important document is really your asset liability study. The majority of the pension plan's risk resides from the decision made in the asset liability study. That big split between equity, fixed income and alternatives drives the absolute majority of the plan's

risk. The norm in the industry is to review it every two to three years and that's part of the reason we're recommending a review this year as well as one was in 2009. The second most important document is the statement of investment policy. This is typically reviewed every year or more frequently in our case. Various other documents are typically done. This is usually -- doesn't come to the board's attention unless there is something required from the board for approval. What we're going to talk about today is what is investment risk in a pension plan context and I think that's very critical to understand that component, because investment risk in a pension plan context is all about managing surplus. Then we're going to talk about the long term asset mix, what is it, why is it important and we are going to do a quick qualitative review. So this is your ten minute tour of the asset liabilities studies decision. We're going to talk briefly about risk analytics. Agendas for future meetings we are suggesting that at the next meeting, a review of the equity investment structure, so this is going to be a more detailed review of why you have the equity structure that you do. Why the staff, and your consultant make specific choices between active and passive mandates, and again, we're going to discuss the style of the equity structure. We're also going to cover fixed income investment structure, the real assets, other alternatives investment structure, in following meetings. Then later on would like to talk to you about the management of the short term asset allocation. Which you can also current, it's done in a passive way so we simply use rebalancing. If the allocation falls outside of the permitted range by the board, we rebalance all the asset classes to the target. I would like to talk to you about currency risk and currency alpha and portable alpha. So next we're going to discuss investment risk. In a pension plan, risk is the divergence of the growth of the assets and that of the liabilities. Why is that, very simply put, the surplus drives all of the financial characteristics of the pension plan. The funding ratios, contributions and so forth. So it's important that we always keep in mind that we're not just managing the asset sides, really. We need to be managing how the asset moves in conjunction to the liability. So, just very briefly, typically, investments and alternatives and investments in equities result in volatility risk, and the reason is, liabilities tend to behave like fixed income investments. So when you invest in alternatives or when you invest in equities, the inherent volatility, and the fact that equity or alternatives investment return in the short term, in the short term may deviate from the long term expected performance of that asset class, results in a deterioration or in some cases an improvement in the plan's financial condition. So risk basically caused by equity or alternative investments is typically justified if their expected long term return exceeds that of long term income. And it currently is in the long term environment. The economic environment, specifically interest rates

and inflation impact both the fund return through the asset class returns and the liabilities through the choice of the discount rate. This obviously interest rate cause surplus to change. Because both the direction and the magnitude of the change in the value of the assets and the liabilities does not necessarily match. Next, we're going to talk about the long term asset mix, why -- what is it and why it's important. I think I've already mentioned the long term asset mix is fundamentally the allocation between equity, fixed income and alternative investments. Various studies have shown that the most significant factor explaining the difference in returns between pension plans is their long term asset mix. So that's why it's so important to spend quite a bit of time making sure that that fundamental is right. Here is an illustration, so this is not specifically for our pension plan. But this is a little bit generic. However, what you see there, the first graph, policy risk, this is the risk coming from the ALM and it's about 11.2 and that total risk you see on the picture on the right is 11.4. So when we say that most of the plan risk really comes from the decisions made in the ALM, this is definitely the case. Currently just a quick peek at your long term asset allocation. You have a 25% allocation to fixed income. A 40% allocation to equities. And a 35 allocation to alternatives. However currently we are overweighing fixed income because we currently have a lower allocation to real estate. And we have not funded hedge funds. And the opportunistic investments have not fully drawn in their capital. So a lot of that capital currently resides in fixed income. The board approved changes to the asset allocation in 2009 that resulted in an increase in a median return of ten basis points while corresponding surplus risk decreased by .8, basically what this actually -- this is saying, in words, what the graph in the performance report was trying to convey, in that there was a huge improvement in the reward-to-risk ratio. Qualitative review of the asset allocation. First we are going to talk about the investment objectives of the plan and second we're going to talk about risk. Because really it is all about the goal we want to achieve and what is the risk we are willing to take on. The long term asset mix decision needs to take into account two key things. One is that obviously, one needs to optimize the investment return, in order to deliver pensions at the lowest possible cost. And the second thing is that the board has a fiduciary responsibility to ensure members' benefits are protected. Now, these goals are really in conflict, because optimizing returns really means 100% in equity and ensuring members' benefits are protected actually means 100% in fixed income. So obviously, the objective is to achieve the highest possible return without exposing the plan sponsor or the members to undue risk. Financial flexibility in the pension funding formula. This is fundamentally the basic actuarial equation, benefits and expenses need to be funded by contribution and investment income. The investment income is really under

your control, but only in the long term. As a result, the only thing that you control in the short term is the contribution, and that causes tremendous volatility in the contribution level. The question is, can the plan sponsor tolerate the contribution level of an unfavorable scenario. The result of the 2008 market downturn, as well as changes to the economic and noneconomic actuarial assumptions, resulted in the city having significantly increased contributions. I apologize but the table isn't very clear, but I just want to clarify that that first in the bottom table, the first line is the total contribution. The first two columns really represent 2009 and 2010, the first column is 2009-2010, fiscal year. The second one is the 10-11 fiscal year. And after that, it's budgeted city contributions. So again, the first row is the total, and the second row is actually Police and Fire alone. The key there is to kind of convey that the 10-11 fiscal year level is about 100 million for both retirement and OPEB. This is expected to increase to 225 predominantly as a result of the 2008 market downturn.

>> So car men this area here in terms of the City's contribution is probably the most important factor in terms of determining our risk budget in terms of what we can withstand in terms of down side risk.

>> Carmen Racy-Choy: Absolutely. Especially when you put it in context that the city's payroll is 500 million. When you see that for both plans, the Federated and the Police and Fire, in '15-16 fiscal year, really the combination is expected to be about 80% of payroll. Obviously, that's very significant. So in the coming slides, we're going to talk about the plan characteristics that impact the asset allocation decision. The plan characteristics that impact the asset allocation first is the nature of the plan benefits. Final earnings component that this plan has, fundamentally provides a link to inflation through salaries, and typically the best investment to hedge for that is long term equity returns. Because they're significantly more correlated with inflation than long term fixed income. The ratio of liability to payroll, obviously the higher the ratio, the lower the advisable equity allocation. The ratio of deficit to contributions, the higher the ratio, again the lower the advisable equity allocation. Funding ratio and market value ratio, fundamentally, states the financial position of the plan and the higher the deficit position the more conservative should the board be, and consequently the lower the equity allocation may be. Demographic characteristics, average age, the total liability of retired members, in fact the plan horizon and the investment program in a very significant way. So the higher the average age and the higher the inactive liabilities, the lower advisable equity allocation. This is just a snapshot of fundamentally the prior slides, what

we've tried to capture here is the different ratios. And how -- what they actually means in terms of asset allocation. So the red and orange boxes fundamentally imply that the asset allocation needs to be conservative. The blue boxes imply that the asset allocation can be aggressive. The bottom line, I won't go through the numbers. But this is for OPEB and pension combined for Police and Fire. And the bottom line is, you see, six orange and red boxes versus two blue, which suggests that a conservative allocation is appropriate. So sorry, the prior slide was actually pension alone, the next slide is the OPEB one. But fundamentally the same conclusions are drawn for both. Fundamentally, what the qualitative analysis of what the plan characteristic suggests is that the plan and the plan sponsor have very limited capacity for risk. And now we're going to look at where you stand comparatively to your peers, when it comes to the asset allocation decisions.

>> Russell Crosby: Carmen, can we summarize that very briefly.

>> Carmen Racy-Choy: Okay. Basically, comparatively, (no audio) here is the equity allocation is either in the bottom 20% or the bottom 33%, depending whether you benchmark yourself versus the rest of public plans or the rest of plans in general. So we're fairly conservatively positioned. Fixed income, before I move to fixed income, the main reason you have seen the qualitative characteristics. But this is also a very big reason why we like to keep the equity allocation fairly low, is the fact that diversification by source of risk is just as important as diversification by asset class. And currently about 80% of the plan asset risk comes from the public and private equity allocation. And given that typically, credit tends to have its down cycles at the same time as the equity market, if you actually combine these as one risk, fundamentally, 90% of the plan risk comes from one source. And clearly, if you have a significantly higher equity allocation, this would be an even bigger number. So fundamentally, this is the driving factors behind the allocation. What I'll do is maybe I'll conclude it here and open it for questions.

>> What we haven't seen or what we haven't really done in this allocation, and I'm super-impressed with the results, because this isn't a judgment on the management team. But we haven't really attributed our sources of risk in a way that we can do much with, right? If you're in a period where interest rates are going to rise, you can make an argument or even mathematically see that holding fixed income could be riskier than holder

equities. You could look at a 60-40 portfolio, and say right now, 80% of our risk is coming from our fixed income not our equities. So we're not being compensated on the unit of risks here, because you're not --

>> Russell Crosby: One of the things that occurred in the other board meeting at this point was an open discussion about risk and the fact that there aren't any risk metrics either in the performance report or anything else you've seen. And really to open it up particularly to the new board members to say, are there risk metrics that you would like to see incorporated and that you would like to see reported on, on a regular basis. The Federated plan is already kind of out in front of you in doing some work on that. But that would be a good thing to then channel directly back to Carmen is if you would like to see any kind of risk met are tricks or any kind of further analysis around risk channel it over there and we will begin to get that into the performance reports for you.

>> Carmen Racy-Choy: I'll just add one thing the fact that on page 40 if I may take you there, really what we've got over the coming slides is described the impact of an interest rate increase. And fundamentally what we're conveying is fixed -- the asset side would actually lose approximately $65 million if interest rates were to rise by 1%. So the financial condition of the plan would deteriorate. And if you look at what would happen if interest rates decreased, we also show on page 44 that you would encounter gains on the asset side but significant losses on the liability side. And so surplus would again deteriorate. So fundamentally, we believe that fixed income is not the place to be. It's a lose-lose proposition currently and definitely in the next ALM you -- I mean, you will see that staff will be trying to minimize the fixed income allocation. This is fundamentally the main reason why we think so. The key there is, if we're not going to be in equity, if we're not going to be in fixed income in a significant way then we need to learn on alternatives. And that's really the bottom line of sort of the trying to capture the answer to your question.

>> I would add to that I mean I think that, you know, the fixed income space it would make a lot of sense to consider alternative asset managers for part of that allocation rather than separate it out and it was kind of what you were talking about earlier, you know, equity hedge funds in equity bucket, fixed income managers in the fixed income. The goal would be to find the best manager you can or the best risk adjusted and whether it's a hedge fund or whether it's a traditional low (inaudible) so maybe to consider as we go forward is you know, look for

managers, especially in interest rate environment we're in now, you want somebody that has the flexibility and capability to move quickly, you know that has the internal capacity to do that, rather than being locked in to --

>> Russell Crosby: And this is really an introductory conversation. We'll continue on every month for the foreseeable future to analyze one aspect or another of the portfolio.

>> I could capture my thoughts on risk in maybe a six-hour conversation in maybe two sentences, one is that we can't manage by return. Return is, you know, backward looking, you can't really tell. But you can measure risk. And what I think would be appropriate to see or at least consider moving forward is to manage by a risk budget itself. And then, decide okay, well, earlier you had mentioned there's two conflicting points. Okay we can't maximize return but then also have maximum benefit. We can maximize the return per unit of risk, and then decide how much risk we want to add or take away, and we can do that at the asset level, we could do that at the sector level, at the country level if we wanted to be that granular, and then wrap that up into the portfolio level as well.

>> Carmen Racy-Choy: We are in the process of considering a risk system, and the main goal of putting in place a risk system is to be able to present the -- at the portfolio level the type of risk analytics you're mentioning and to be able to drill down to the holdings level and say that's where our risk is coming from. So definitely, we would like to move there. We actually included a budget, I believe you are going to see a budget and a component of the next budget for the next fiscal year is a risk system that has the intention, the first thing we would do there is put the asset metrics in place.

>> So I saw the budget. Is that risk metrics, is that what that is?

>> Carmen Racy-Choy: Well we haven't chosen risk metrics per se, but at this stage what we're doing is, we are defining what are the risk analytics that we want to see. And I'll try to capture maybe your thoughts off line on that, and I can convey what is it we are looking for based on the feedback that I've gathered so far. But very much a risk budgeting type of approach would be one of the things we're looking at. We're also looking at tracking surplus

risk. So we need to have not just the asset side but the liability side, too. Because just like we need to make sure we're managing risk on the asset side, we can't lose focus on the fact that really the big risk in the plan is surplus risk. So we need to track the two pieces. But we need to start with the asset side first because the liability side will be significantly more complex to put in place. So we'll start with that phase and phase 2 will be the liability side.

>> Okay, any other questions?

>> Carmen, when the Federated board received this presentation there were a couple of things that were a little bit different. One was the optimistic pessimistic scenarios for forecasting. Are there things that this board will be seeing similarly for training?

>> Carmen Racy-Choy: Currently, the idea when we do the next ALM is to ask the consultant to consider similar scenarios over 20 years as well. So when we do the next asset liability study for the Police and Fire board, we will have that information. Currently, we have a ten-year projection from two years ago, so really just an eight-year projection and it's significantly out of date, because there's various decisions that have been made since. So we didn't feel that they would really convey the appropriate message nor were they reliable given they're out of date.

>> Carmen, thank you so much, you have been carrying the load of presentations for so long, you can't catch your breath at all. I just want to relay that these little slides towards the end, kind of like a red light green light study on where we can take risk and not take risk. The situation now is kind of obvious, you would say the same thing ten years ago is obviously where we should be. Having a continual update of this, but not every month or anything, but annually, at least, to say are the numbers starting to move, can we look at our profile, what are the key triggers. When we see individual numbers so often but not see the big picture, here's eight different metrics and they're all starting to move this way. Okay, maybe we ought to start thinking about our strategy or asset mix. I just wanted to relay that.

>> Carmen Racy-Choy: Thank you.

>> David Bacigalupi: Thank you, Carmen. Okay, item number 3.5, presentation by city attorney's office regarding the Brown Act, San José sunshine, public records act and other relevant legal requirements. Mollie your brief synopsis, please.

>> Mollie Dent: Yeah. I'm going to go pretty quickly on this, and kind of -- I realize the board just received the presentation today. But I wanted you to have some informational material, especially the new board members, on three topics. The Brown Act which is California's open meeting law, state law. The City's own sunshine requirements, and the public records act. These are just three sort of topics that are tied together by open government regulations. Some of the highlights for the Brown Act, were the state open meeting law. Just so that we're clear, the -- this board is subject to the Brown Act, it's the kind of legislative body that is subject to the Brown Act. And the law very much wants your meetings to be conducted openly and in front of the public in a manner where the public can participate and see what you're doing. The -- a meeting is a gathering of a majority of the legislative body at the same time and place to receive information discussed, deliberate or take any action. And I think that's looking at page 6 of the presentation. I do want to emphasize that meetings among you occur obviously in this room. But meetings among you that would be subject to the Brown Act can occur in other settings as well. Meetings can occur when people progressively talk to each other. Meetings can occur via e-mail communicates among board members. So meetings are not necessarily just the conversation that you have in this board room. And that's something that you really do have to be careful of. Because those other meetings which are not in a public setting and are not being handled in accordance with the Brown Act are extremely problematic if they occur. The exemptions to the board act -- to the Brown Act on page 7, obviously there are social or ceremonial gatherings where no business is discussed. This is not saying that you can't all be for example at a conference somewhere together. But if you're all at a conference somewhere together you can't talk about business that is within the jurisdiction of this board. Then I do briefly want to talk about the serial meeting prohibition. It is a series of communications between individual members that ultimately involve a majority, regarding a specific issue within the jurisdiction of the legislative body. And I -- it's not just on items that are on an agenda. It can be items that would be -- would come before you on a future agenda. So it includes, as I say, on slide 9, face-to-face meetings, e-mails, phone calls and personal intermediaries. And -- there was an amendment to the Brown Act within the last three years or so, to really clarify that city staff cannot be used to carry

communication from one board member to the next. For the purpose of having the board form a consensus and have a discussion outside of the context of a publicly noticed meeting. So prior law had -- was not to that effect. And there was a case involving the city of Fremont that the state legislature felt needed to be rectified and they rectified it saying that that kind of thing ought not to occur.

>> So that means I or a city employee couldn't go talk to one person then talk to another person a day later, talk to another person a day later and then that would constitute a meeting?

>> Mollie Dent: Well, you as a board member, if you as a board member, talked to Russell, and then Russell went and talked to what constituted a majority of the board about what your position was on the topic, that would be a violation of the Brown Act. He would be acting as your intermediary. Now you know obviously members of the public may come talk to you and they may come talk to multiple board members. But it's the communication between you that is prohibited.

>> Okay, thank you.

>> Mollie Dent: So I'm not going to go over the open meeting requirements that are on page 10 too much because these are mostly dealt with by staff. Except to note that the teleconferencing provision which we've dealt with before which is that a majority of the legislative body must participate from locations within the jurisdiction. And there are specific requirements for how the teleconference location gets posted, how it -- what kind of accessibility requirements it must meet and the fact that you have to have technology for the public to actually participate from the teleconference location. So that's just background information for you. Page 11, addresses the closed meeting exceptions that apply to this board. There are more closed meeting exceptions than this, but these are the ones that apply to this board. Litigation, real estate and certain disability matters can be heard in closed session. Pages 12 and 13 just really remind you for the penalties for violation of the Brown Act. Including misdemeanor liability for members under certain circumstances. As well as invalidation of the action. Then injunctive relief on page 14 and one that actually turns out to be a big cost in this kinds of litigation, attorney's fees on page 15. If you lose one of these cases you could end up paying some pretty good attorney's

fees. The next series of slides starting with slide 16 have to do with the City's sunshine rules. And the City's sunshine rules are really primarily more just require more advance notice than the Brown Act does. And have some specific posting requirements for the materials and for recording of the meetings and posting of the meeting minutes and that sort of thing. The -- we had a question about the presentation materials last month. Presentation materials on nonaction items like this presentation today or like Carmen's presentation earlier don't have to be posted in advance because you're not taking action on them. It's really when you're in the mode of taking action that those things have to be posted. You have to be careful. If you do have an agendized memo and a recommendation in that memo is an action item then you have something subsequent come out afterwards and it's not posted whip the deadline, that can constitute a substantive change that the board would need to decide to waive sunshine on. But as I say, these posting and time deadline requirements are mainly handled by the staff. But they do make it difficult, for example, to change agenda items at the last minute. Then briefly, I'm going to talk about the public records act. Again, this is not something that the board probably will have a lot of -- a lot of interface with. Public records act, the California public records act requires, most -- many, many public documents including many board documents to simply be made available to the public and that's the way to put it. And staff responds to those public records acts requests. Public records are records that are related to public business, prepared, owned, used or retained by the city. And I have examples of public records on page 20. Photos, tapes, drawings, maps, film, e-mails, obviously the board packet's a public records. Obviously the staff memos are. There are some exemptions to disclosure under the public records act. I've covered those on page 21. And I've kind of focused them on some of the exemptions that would apply to retirement board. There are records related to alternative investments that are not public records. But in general --

>> Some of the new board members may have seen it in the press. A lot of the litigation on disclosure of retirement benefits, you remember the $100,000 club. So this is a real, live issue for retirement boards.

>> Mollie Dent: Right. The courts have not actually -- I don't know that we have a reported appellate court case on retirement benefits. But there is a reported appellate court case, the holding is the employees' salaries are public records. There are some superior court records on retirement cases and this board does publish the pension payments as a public record.

>> I think there's an appellate court case in San Diego counties involving 100,000, other than that it was all superior court decisions.

>> Mollie Dent: The courts are very -- do enforce the public records act and there is sort of a catch-all exemption which I mention on page 22. For an ability to argue that it's in the public interest, not to disclose the information, but most cases find in favor of disclosure. So if general rule with the public records act is to promptly comply in writing, and our office works with staff on public records act requests, if they are controversial in any way. The only thing I'll mention on public records because it's still a bit of an outstanding issue out there, there's not an answer to it. But just as the e-mails can be ad seriatim meetings or your twitter conversations can be ad seriatim meeting, or even Facebook postings can be ad seriatim meetings. There is a possibility that if you are doing business on your personal mobile device, that relates to the City's business, it could constitute -- there is no case law saying that it is a public record. The one case that was tried on that issue got decided on a procedural issue. But certainly, there are probably consumer advocacy groups out there that think that when you're doing -- when you're talking about or doing work that would come before the board, or might be related to the board's business, even though it's on your own laptop and even though it's on your own phone, there -- it's an open question out there whether or not that could become a public records.

>> What would that make -- do you have an example of that?

>> Mollie Dent: Um -- it would be, well, it's easy enough on a computer. It's easy enough on the computer. It's an e-mail.

>> A text message.

>> Mollie Dent: A text message would be on the phone.

>> While you're sitting in the meeting?

>> Mollie Dent: Well it could -- I'm sort of throwing that out there for you as that's an issue that's pending out there and we can't tell you that yes or no that will be a public record.

>> So if you're sending an e-mail unrelated to board business while you're sitting here in the board?

>> Mollie Dent: No I'm talking about e-mails or text messages related to board business. I'm not talking about your doctor appointments or your lunch arrangements. I'm talking about e-mails or text messages related to board business. And it may not matters whether or not you are sitting here in the board meeting.

>> That may open up the entire contents of your phone. It's kind of ridiculous but it's something to be considered.

>> David Bacigalupi: We discussed this what, two years ago or something.

>> Mollie Dent: And there was no more information on it.

>> David Bacigalupi: Because there was information about if you had a city subsidized cell phone or computer, that was discoverable, but then the question came in, your personal one. And it sound like the courts are moving that way.

>> Mollie Dent: I wouldn't say they're moving that way. It's just an open question still. There hasn't been a successful case get to that level. For public records I think for the board members, that's really probably the only time you might ever really hear about a public records act request. Because most of the other records are held at the administrative level.

>> David Bacigalupi: Anything else? Mollie thank you for being brief. Lot of information but we thought it was important to get at least an orientation to it.

>> Pete Constant: I have one question here. Molly, on the personal, are the records on personal devices, didn't the council take an action on that setting a city policy on that? I know it applies to council. Does it apply to boards?

>> Mollie Dent: I think it's part of your rules resolution. I don't think -- my recollection of the council policy is that if the council receives a communication during the council meeting, that was one of the concerns the council had that they would receive communications during the council -- you can correct me if I'm saying this wrong. During the council meeting that related to something that they were hearing right then, they're supposed to disclose it.

>> David Bacigalupi: Usually those council policies they continue on to their boards and commissions as well.

>> Pete Constant: I think we've actually taken action further than that to make any city related business on personal devices. We've said they are public records of the City of San José. I think we should check it out. I know it applies to us, I'm just not sure how it applies to others.

>> David Bacigalupi: If the council is going to do it for themselves they're going to do it for their boards and commissions as well.

>> Mollie Dent: I don't know if the sunshine resolution was updated or the council resolution was only. It may be pending for the other to be updated.

>> David Bacigalupi: Thank you. All right, item 3.6, approval of Department of Retirement Services administrative budget proposal for fiscal year 2011-2012. And who was --

>> Veronica.

>> David Bacigalupi: Veronica is on the spotlight.

>> Veronica Niebla: Due to the length of the meeting I didn't bring the presentation slide show to put up. I was hoping to just go through the slides that are presented and included in your board packet. So the first slide is pretty much just an overview of how the budget was developed. If I step back for a minute just to let you know that this is really the administrative budget for the plan. These are only the administrative fees. However there are summaries on other investment expenses. So the most important slide I guess is the third slide or the third page which is the proposed budget for the fiscal year. And the first column has the actuals for 2009-2010. Then you've got the adopted budget for the current fiscal year, the forecast for the current year and the proposed budget and the last column has the percentage change from the proposed budget and the current year budget. And the following slides I go over the detail for the changes.

>> And actually I would say that slide number 4 is the important slide. Particularly, where the expense amounts are converted into basis points. If you look at the first block of information you see personal services is eight basis points and other admin is six basis points. Most of the 37 act counties in the state are struggling to keep themselves under 18 basis points for those two line items and there's a tendency that some of what we put in these two buckets are excluded in the other plans. So from a comparison standpoint, you're looking at a very low-cost plan. If you compare us to other, particularly the 37 act counties in the state, even with the increases that we've got built in here this is a very chief operation. And importantly, that second block of information, if you look at the money manager fees, part of what the staff did here was to beat up the money managers, fire them and go passive where we could. And what you see is the result of very slight increases in cost at the top, is that we've taken a whole lot out of the money managers at the bottom. Go ahead Veronica.

>> So --

>> Russell Crosby: And just again in the interest of time let's try to keep it short and summarize.

>> Sure. What I'll go over is just maybe highlight the pieces that are the budget proposals. The largest one will be in the nonpersonal services and has to do with the databases for the investment group, the research databases that Carmen touched on earlier. The expected budget for that is about $420,000, and there's three bullet points

outlining the use of those databases. Another big budget -- not big but another budget proposal would be the $50,000 for the facilities modification but we do see some savings in other areas of nonpersonal equipment due to just better utilization of online communication and reduction in postage and printing. Professional services, we've got an increase and a lot of it has to do with the consultant that we have procured for the development and replacement of our pension administration system. This was a proposal before the board this current year. We've now selected L.R. Weschler and the contract will continue on to next fiscal year and the budget representatives that cost. There was some additional cost due to the IRS voluntary compliance fees that are outlined in the last built.

>> Russell Crosby: And then the only other major item --

>> Go back through the accounting.

>> Russell Crosby: Account is thing staff and what we are proposing there is to add a couple of positions. There will be two new trust funds starting June 1st, there are the two new health care trust, we're going to be responsible for those as well, and at this point our accounting staff is stretched beyond the limit. So what we're proposing is a supervising accountant and an investment accountant to be added to the staff next year.

>> Richard Santos: Mr. Chair.

>> David Bacigalupi: Go ahead, Dick.

>> Richard Santos: This is for the secretary. Is all the moneys paid for all the salaries and all that personnel, does it all come from the pension plan, period?

>> Russell Crosby: It's split between this pension plan and the Federated plan.

>> Richard Santos: So it actually come from their timing system based on all these systems, and so on?

>> Russell Crosby: Correct.

>> Richard Santos: When was the last time you were audited, 33, 34 positions you have, when was the last time you had a complete audit of positions, and so on?

>> Russell Crosby: An operational audit, I don't know that it has ever been done in the City of San José. That seems to be what you're asking is a operational audit. A financial audit is done every year.

>> Richard Santos: In terms of how many positions do we have, is it warranted, not warranted, you know, like what we used to do years ago when I was in the city here, case studies and different things on salaries and all those things, I don't know if that's the term they use today.

>> Russell Crosby: And what you have in your package is, we have looked at other plans in the state of comparable size and what you see is particularly in the accounting area we are way under what other people have.

>> Richard Santos: Overall.

>> Russell Crosby: And overall that is what I was introducing on page 4 which is if you look at our costs which are directly related to head count, our plan is significantly below other plans in the state. You are looking at a combined cost of roughly 14 basis points. Most of the 37 actual plans as a rule have 18 basis point limitation, and they struggle to stay under that so we are significantly less costly than other plans in the state.

>> Richard Santos: So when we say all the salaries and all the benefits to run this plan comes from the retirement fund, so do you -- so I'm trying to understand, and yet you are a hired, and when we have employs who are hired you're hired by the city, correct?

>> Russell Crosby: Correct.

>> Richard Santos: So to me you work for the plan. So for instance for yourself do you report to this board or do you report to the City Manager?

>> Russell Crosby: I report to the City Manager.

>> Richard Santos: I find that very odd.

>> Russell Crosby: I do, too.

>> Richard Santos: I've had some these things come into my mind, and I'll get a chance to meet with you.

>> Russell Crosby: The structure here is different that be any other plan in the state in that everywhere else, I and the senior staff report to the board. Not to the city or the county or the underlying plan sponsor. The only place in California that that happens is San José.

>> Richard Santos: Uh-huh. Yes, I don't really see that as a real partnership. But that's another day. We'll take a look at those things, I'll meet with to you kind of go over these things. It sort of breaks the curiosity. The more knowledge you have, the better it is. Thank you.

>> Russell, does the city charge a premium for the salaries?

>> Russell Crosby: No, it's just a pass-through.

>> David Bacigalupi: Russell or Veronica, medical director support, increased 21%, I don't understand the explanation.

>> Veronica Niebla: What you're seeing there is a portion of that has to do with the city puts together a labor distribution report which estimates what estimated payroll cost will be for the next fiscal year. So a portion of that increase you're seeing there is that, is the actual fringe benefits, it's the benefits cost, the health insurance cost, some of those increases for the medical -- the medical director is Das and his support staff that he has also there's been a consolidation of medical support staff before there was a staff technician that was assisting Das now there's another person that's assisting Dr. Das, and the two physicians have different costs associated with them. The second staff person that's added now has a lot more experience and knowledge to assist Dr. Das. So it's a combination of two that you're seeing there.

>> David Bacigalupi: When we used to contract outside for a medical director, prior to using the city's medical director, we had a contract and if there was an inflation clause like you know we have in all our typical city contracts it was like 2 or 3% inflation as years go by. I'm not sure I understand -- did I understand you correctly to say that the city reviewed his work, and then charges us more?

>> No, no, it wasn't they review his work. They review all --

>> Russell Crosby: It's the fringe benefits for every employee everywhere in the city. As administration costs go up that reflects in here. You're also seeing inside this personal services line on page 3 there's also a fringe benefit increase that affects all of us that comes to the benefit plans as well. Look at page 3, first line item, personal services. You see there's a fairly substantial increase from 2010 to 2011. Part of that is driven by the City's increased fringe benefit cost. Fringes being pension, health care, health insurance, retiree health insurance, all of those things that roll in. Medicare has also increased its cost. All of those pieces get rolled up into the personnel services line. And that's part of what's going on with this. There is some additional resource, and it's directed at supporting him particularly with these disability determinations. Secretarial help, she's a medical assistant to help him process the paperwork and keep these moving.

>> Richard Santos: So through the chair -- we pay for these things through the retirement system.

>> Russell Crosby: Correct.

>> Richard Santos: We have no say over them other than to increase but if we wanted to hire our own doctor, which when I was here before that's what we did. That's when I was involved, prior to Dave, then went on with Dave, Mr. Russ McAdam, so on, we made things independent, where you work for the plan. It keeps all the politics aside. In this case here, let's go back to it, I don't mean to be making fun, just trying to understand it again, we pay for this all out of this fund, yet we don't have any say other than to give an increase, or decrease, whatever may be? But we don't hire the personnel.

>> David Bacigalupi: We hire the medical director, correct?

>> Russell Crosby: I believe in the case of the medical director you --

>> Richard Santos: We used to in the beginning we didn't. Yet this doctor, Dr. Hahn, is the city doctor plus the retirement doctor, is that correct? So if we wanted to, we could hire an independent doctor, is that correct?

>> Russell Crosby: I believe you could.

>> Richard Santos: That's the way it was before.

>> Mollie Dent: Yes, you could.

>> David Bacigalupi: Okay, and my only last thing on the budget is, we're not being charged more for what his allocation of time is?

>> Russell Crosby: No.

>> Mollie Dent: I do want to point out because I need to. Your -- the budget and I'm not -- your budget does not include legal support for the city attorney's office. It does include amounts paid for outside counsel. I have to bring it up.

>> David Bacigalupi: Yes because we've discussed it before.

>> Mollie Dent: The Federated plan is different. Our budget is still pending, the city attorney's office budget is still pending with the city council. Depending what happens with the budget of the city attorney's office, our office may be coming back to this board with additional information on how you may be --

>> Have the opportunity?

>> Mollie Dent: The opportunity, you might have to get the legal services that you might think you need. That's all I can say. But this does not include at this point any monetary support for the city attorney's office. It does include your outside projected outside counsel fees.

>> Richard Santos: Through the chair. The answer is, to me, it's like, that's your right. If you want to participate, then you -- that's with your right. We don't have to pay for that. That's just services because you want to participate. We when I was here we made sure we had legal counsel for the plan.

>> Mollie Dent: I understand.

>> David Bacigalupi: We've had these discussions, somewhere on the lines, nobody got bruised.

>> Mollie Dent: Believe me I'm not here just because I want to be here personally.

>> Richard Santos: I understand.

>> Mollie Dent: But the role of the city attorney's office under the city charter, depending what happens under the budget and our ability to provide the support we do to the plan, may require us to come back and have a conversation with you. We do a lot of work. Our office prepares many of the contracts for the plan. Our office reviews all of the domestic relations orders. We represent the plan in most of its litigation. We are involved with all of the outside counsel. So there is a significant amount of legal work for the plan that is done by the city attorney's office. And so there is -- there would be, regardless of who the person was, an administrative or who the firm was or whether it's us or some outside firm an administrative cost to the plan for legal services. There are -- there is a lot of legal work that gets done.

>> Richard Santos: I don't think -- through the chair, a question, that's your right of representation. I know you're not arguing, I'm just to explain how I feel. You had your chance and now I'm telling you the way I feel about it. The idea is if you want to participate that's your right and you pay. Same as us, we had a right to have legal years ago when the city only was influenced and represented by the city when I was here. We had no rights. We brought in our own independent counsel which we pay for. As long as the plan is independent, I don't see a problem. You want to participate, do legal stuff, anything our outside counsel can't do we should pay you. If you want to participate in my opinion that's your right of representation.

>> Mollie Dent: Your outside counsel doesn't do most of your legal work, that's all can I say.

>> David Bacigalupi: Not to debate but when the city attorney's office comes back to this board with a proposal or whatever, this came up before, we can look at it then and make our decision then what we can do. It was established in the past that the charter, I believe it's the charter, allows the city attorney's office to be present.

>> Mollie Dent: The charter mandates that the city provide -- mandates that the city act as legal counsel. It does not mandate the manner in which we do that.

>> David Bacigalupi: Or that we have to pay for it.

>> Mollie Dent: And it doesn't mandate how much work we have to do.

>> David Bacigalupi: You do a lot of work, there's no doubt there.

>> Mollie Dent: So we can have a conversation about how your legal work is done, if we need to have that conversation.

>> David Bacigalupi: For the sake of the new board members that weren't involved in previous discussions, it was if we're going to pay, we're going to pay for the best bang for our buck not -- not that -- Mollie you do great work, but I mean you know, we're still going to look outside.

>> Can I just make one comment? I was just going to say, 14 basis points seems really reasonable to me. If I look at an investment manager and you told me they were only charging you 14 bips for your asset allocation for endowment type of model, you are getting a really good deal. I mean, this would cost you 1% if you went to McKenna or 1% if you went to Sequoias Heritage Foundation if you got a really good deal with that.

>> At the same time we face challenges from the city which highlights the cost in going Cal PERS versus doing it internally.

>> In Cal PERS though, I would say Cal PERS is not necessarily the model you want to follow though, unless you want the sheep going off with the crook.

>> I understand.

>> David Bacigalupi: You have to understand that the increases also are involving a major change in staffing with some -- I mean we have some real investment experts which we -- you know we've really focused on in the last few years and stuff and a credit to our --

>> Russell Crosby: I think where Mr. Santos is going with this conversation, too, on the addition of staff in accounting, even if you approve that we've still got to go through the city. And deal with the positions and getting them approved and all of that process. So there's more, that's why we're having some issues with the city, try to get the budget through you first and then we take it to the city and then we go true the machine there and then we're likely to come back to you after that's all been done.

>> David Bacigalupi: This contributes more of what you were saying before Dick, this board approves two more accountants. We may not get those for a while because this falls under the city, we're not hiring anybody right now.

>> Richard Santos: I remember this conversation 15 years ago, when at that time the city attorney wouldn't even agree to have outside counsel before we actually became independent and when we became independent, there was savings and so on. I understand the work they do, not just that issue, but especially when it comes to positions, I just don't agree. If this plan is going to be independent, whether it be you who report to the board and we make the decision, we supposed to be away from the politics and other influences it should be independent. To get away from that today to me is not the way to go. The way is to be independent and of course we like the city services, we all do. But this board, that's why you're supposed to be the responsible person. That's why you have nine today, you have the uniform and so on. I don't understand how I'm going to pay for something and somebody else is going to hire him. It don't make sense. That's not a partnership, that's not a collaborative, that's the not where I come from. You sit down you work together any time I pay for something this is what we want. So that's another day.

>> One other question also. Has the board ever looked into any kind of incentive system for the investment professionals, if they outperform their indices? I think Canada does some of this stuff. So let's say your guys --

>> Russell Crosby: Actually a couple of plans in the state do that. There have been a lot of issues around that. In fact, San Bernardino was pretty out in front on that score. The county reached in dismantled that and the CEO and a fair chunk of the staff have left because of that.

>> One thing we should be looking at as a board to keep our long term cost down is having some kind of incentive structure for the people who are outperforming, just like you were in the private sector, because that's where they go if they get to the point they're disenchanted, or whatever. Having a little extra incentive for out-performance to -- they're committed to a three-year rolling basis, you know, falling behind.

>> David Bacigalupi: Part of the problem with the structure of this.

>> City.

>> David Bacigalupi: You can't face two bosses.

>> Russell Crosby: To come back to Mr. Santos for just a second, when I was hired, there were two large communities that included trustees from Police and Fire and Federated and members of the community and I think there may have been some council representation. It was two very large committees. I think each one was 15 people each. And I emerged through that process but trustees were indeed involved in I believe some kind of collaborative effort at that point. Of course it was before my time how that got done. But my interview process did include two big panels that did have trustees, and a plethora of other --

>> Richard Santos: Just a further comment. You know I understand responsibilities and ultimate responsibilities but all I know is this. In real life you can't have two bosses. All I know is this years ago we went to the independent counsellable, there was all kind of talk that couldn't be done, yet the courts at that time upheld differently. I hope we don't have to resolve that. When I see melon the outside increases 21% and if we don't have a say in that I got to question that. It just doesn't make sense. So everybody is worrying about cost today, this is a huge amount of cost. As long as we're getting the bang for our money and getting the services we want and everybody happens to be happy and sufficient, and bringing the cost down that's a different story.

>> Russell Crosby: And the 21% isn't coming blindly from the city, it's a conversation between me, Das and odors to provide him with more support. In fact I'm representing you in negotiating that effort to say we're not going to pay unless the service is coming to these boards. Part of what I'm responsible for, part of what I'm doing is to make sure that your fear, you're not getting screwed by the city.

>> Richard Santos: I appreciate your candor.

>> Russell Crosby: That's part of what we do here with the staff. And with this budget is to make sure that the service that we get out of Das is what we're paying for and nothing else. That we're not being -- there's no kind of allocation game going on, there's nothing, no second agenda there, the city isn't burdening the cost in some way to make something extra off of what gets charged here, it is simply a pass-through and we've agreed that what he's doing and the additional support that he would get, we're sharing with the city. We're not paying the full freight on his position, or his position either, we're picking up, I think it's 50, 40% of Das? 40, and the other 60% is being picked up by the city, so it's not just like we're taking on whole freight and sticking it on the pension trust at all. That's not happening.

>> David Bacigalupi: Sean.

>> I've got a series of questions, if I can just fire full, you can give me as brief a response as you like for sake of time. The medical director, put that one to bed. The actual cost for this year is $98,000. So we're talking about going to $131,000 which is more like a 33% increase in his cost?

>> Veronica Niebla: Yes, and that's actually a projection off of what we've received to date. With prefunding and other pieces, sometimes there's expenses that we don't know until the end of the year when things are trued up. So it's a projection from now.

>> So it's a good size percentage increase. Some of that is getting incremental services and some of us our pension costs are going up. We've decided there's another option to pursue so for $30,000 not too much of an

issue. On personal service let's go to nonpersonal equipment. The forecast is 600,000, we're going to 1.1 million, nearly 100% increase and in there I think the largest chunk of that is a $420,000 information system, analytic databases. Have we already talked about or approved or discussed that, or are we setting up a budgets for it -- I don't know --

>> Russell Crosby: This is something that we've been talking about on the staff, the need to acquire risk -- it really goes to your question, risk control, risk analytics, neither one of the trust funds has anything at this point. If we went out and bought a product on the market that's what you're looking at is that additional cost.

>> So I don't have a problem recognizing --

>> Russell Crosby: And you wouldn't experience it if and when we brought back to you a proposal to go and acquire that system. So at that point you could --

>> I assume the benefit would be better than the cost. I don't have a problem earmarking the cost for this but we'll have to have a discussion how much is needed and how much it gets for us and all that.

>> Russell Crosby: Correct.

>> I guess my last point was on the head count. We've talked about two additional people but the chart on page 3 shows us increasing from three and a half to -- sorry from 30 and a half to 34 and a half people four person increases?

>> That's due to vacancy. If you see the first the actual the adopted we have 33.5 positions. There's some vacancies that we're filling and the one add is from the 33 to 34.

>> So the forecast because there's nobody there and so you're adding one position but the chart shows two because it's split between the two Federated and us?

>> I'm sorry where do you see the two?

>> There's the supervisor accountant that's a new position and investment accountant that's a new position.

>> Russell Crosby: Different subject.

>> Veronica Niebla: Oh, I'm sorry. It's actually a consolidation. So in order to get the new accounting structure, we have to utilize some add and delete function of the city and also some reclassifications. So the accounting group in total is only growing by one.

>> Adding one head count to account for all the extra stuff that's going on. And that difference between the forecast for personal services and the proposed is more than 10% but as I understand is vacant position so there's currently cost savings in there.

>> Russell Crosby: Correct.

>> Those are my questions. Thank you very much.

>> David Bacigalupi: Any other questions? If not I'll entertain a motion.

>> I'll move to approve the Department of Retirement services budget for fiscal year 2011-2012.

>> Second.

>> David Bacigalupi: I have a second. Is there further discussion on the motion? Not hearing any further discussion, all in favor, all opposed, the motion carries unanimously. Okay item number 3.7, discussion and action

on City's request to allow Ice Miller LLP to work for the city on establishment on an other post employee benefits OPEB trust. There's a memo in your packet from Mollie.

>> Mollie Dent: It's a very short memo, a fairly straightforward request, similar to the request you would get from the plan actuary to do some actuarial work for the city. So but for a lawyer it's very important when they're taking on a new client, where the client that they currently have, to allow them to work for that new client. This work will be done for the city and paid for by the city.

>> Motion to approve.

>> I'll second.

>> David Bacigalupi: Okay I have a motion and second. Any further discussion on the motion? Hearing no further discussion? All in favor, all opposed, motion carries unanimously. Item 3.8. This is one of the items requested by board trustee Sunzeri to defer, because he wants to participate in that, and I think it's potential, isn't it?

>> Russell Crosby: And this is one I already responded, on this.

>> David Bacigalupi: And there was a time line.

>> Russell Crosby: We had to have something in by last Tuesday, we had a holiday last Monday. We met that deadline and the letter is in the package.

>> David Bacigalupi: Okay, unless there's any questions of Russell I'll make that a note and file. Okay, item 3.9, discussion of AB 1743 and action on amendment of board's placement agent policy.

>> Mollie Dent: You also have a short memo from me on that. This is an amendment to your placement agency policy so bring it into compliance with some state legislation that became effective January 1st, 2011.

>> David Bacigalupi: Okay. So unless there's any questions I'll entertain a motion.

>> Motion to approve.

>> Second.

>> David Bacigalupi: I have a motion and second. Any further discussion on the motion? Hearing no further discussion, all in favor, all opposed, motion carries unanimously. Okay. Item number 3.10, discussion regarding council liaison. And there's some information in your packet on that. We have Councilmember Constant as an appointed liaison to the board. Thought there was more information forthcoming on this. Mollie were you going to present the ordinance on that?

>> I believe that's included on this. Oh, the ordinance.

>> David Bacigalupi: This is the memo but the actual ordinance.

>> Mollie Dent: This is the council policy, no, the ordinance did not get in here. So there is -- when the -- so this is the memo that was -- that formed the basis for the new retirement board governance ordinance, the February 4th memo. And in the memo, it indicated on page 2, item D, that there would be a city council liaison as a nonvoting member to each of the retirement boards. All council, boards and commissions that don't have members on them, have liaisons. So previously, this board had two councilmembers that were actually trustees. And so you did not have a liaison, when you had the two trustees. So there is a -- so there is a council ordinance that adds council liaisons as non -- as member -- that makes represented -- that has council liaisons as representatives to boards and commissions. Wheys attached to your -- the council memo then is the council policy on council liaisons. It has come to our attention, after the governance ordinance weighs adopted, we have

come up with a couple of areas of the ordinance that need to be worked on. And this is one of them, that the -- the language about a council liaison and a nonvoting member is going to either need to be amended into the governance ordinance, or an amendment to the liaison council -- the council policy is going to need to be adopted by council in order for the person to function as a fully participating member if you will. So our office is planning on bringing forward an amendment to the governance ordinance with some proposed cleanups. There's three areas of cleanup actually. One has to do with the residency requirement. One of them has to do with the process for appointing the final public member of the Police and Fire board. That's a clerical issue. And the other is this so we go back to council to see exactly how they wanted this particular slot to function. But right now you have a liaison. Right now you have a council liaison, Mr. Constant's been appointed the council liaison and it is our office's understanding that they want -- it is our office's understanding that when the council approved this memo they did want him to function as something more than the normal council liaison.

>> David Bacigalupi: Russ.

>> I definitely. (to 1:08:30).

>>

>> I definitely agree that council has the authority to make Councilmember Constant a nonvoting member of the board. It's just they exercise it through an ordinance, not through a sentence in the mayor's memo.

>> David Bacigalupi: I think that speaks to the specifics that the ordinance is actually the law that we operate by. Not the memo that set up the ordinance.

>> And we have -- and the ordinance is obviously just being drafted and I believe it might have been Councilmember Constant last month mentioning a big backlog of ordinance before the council so it's not clear when the council is even going to hear this. But the point is, it's very important to get this clarified properly. Because obviously, if the council wants Councilmember Constant to be a nonvoting member, that would

include going into closed session item. Put closed session meetings, for example on attorney client privilege materials. But if Councilmember Constant is not an actual member and we let him in then we waive the attorney client privilege. Not a wise outcome. This is a matter for the council, we just I think need to --

>> Mollie Dent: There are two --

>> Monitor the manner in which the council achieves this goal.

>> David Bacigalupi: Mollie.

>> Mollie Dent: So right now, there is an ordinance that provides that all boards and commissions have council liaisons. So that is in place right now, that does not require any amendment of the ordinance. The ordinance also spells out what council liaisons can and can't do. In much less detail than this policy spells out. So the council has two options. They can look at amending the policy to carve out a different role for this particular council liaison, or they can look at amending the ordinance. They are going to be doing that before your next board meeting.

>> David Bacigalupi: Okay thank you.

>> Pete Constant: So I'd like to address the board. First of all as both attorneys know when there are questions about laws, they -- the courts often look to legislative intent. And the legislative intent is clear in the memorandum, and by the council action. In fact, as the person who co-authored this memo, I can tell you very clearly what the legislative intent was. The fact that an error was made in drafting the ordinance does not change the legislative intent. Now I serve in this capacity on both this board and the Federated board. There's not been an issue on the Federated board. And this was brought up with the city attorney's office before actually anybody on this board brought it to my attention for the ordinance to be corrected. So I think it's clear and I think if one of the attorneys would like to offer a differing opinion on what legislative intent is and how it's looked at by the courts, I think it's very clear what the council direction was and we have it here in writing and we have recorded tonight minutes of the council session along with the vote.

>> David Bacigalupi: Russ.

>> Obviously intent, Councilmember Constant is exactly right stating the importance of intent and the court's recourse to intent and interpreting ambiguous provisions of statutes or ordinances in this case. Here we don't have an ordinance, we have nothing. Obviously, the council probably intends this or Councilmember Constant has just told us that the council intends this to happen. So I fully respect that and understand that. But they haven't done it. It's not like there's an ambiguous provision in an ordinance as to which we can have recourse to legislative intent. We have nothing in the ordinance. You just can't go with something, you know and this could have serious consequence. I think it would be very valuable to have Councilmember Constant as a nonvoting member of this board. I don't think anybody disputes that. It's just there is a lawful way to achieve that goal. They haven't done it. They need to do it.

>> David Bacigalupi: Well I think there is something in there because Mollie says that every board and commission will have a liaison.

>> Not as a nonvoting member that's what I can see is a critical missing piece. They obviously just created, we have the whole ordinance governance chapter that created the new board structure in tremendous detail adding the outside board members, adding the retiree board member. Obviously, that's where that -- there just would have been a very easy additional section to that ordinance, specifying the council liaison member would be a nonvoting, I'm sorry the council liaison person would be a nonvoting person. Easy to do, should have been done, wasn't done.

>> What's the difference between a nonvoting member and a council liaison?

>> Mollie Dent: That's you've come to the heart of it. There is another ordinance that is not -- there is another code section that is not part of the governing -- governance ordinance which creates the council liaisons. So the -- and that ordinance could be read to allow for a nonvoting member in effect. I mean, the role that is carved out for

the council liaisons in that ordinance is not very prescribed. However, for most council liaisons -- for all other council liaisons up until now, the council has adopted this council policy on the council liaisons which is not the same as an ordinance. They have a council policy on the council liaisons which is clear that most council liaisons are not nonvoting members. That they are liaisons. You can read this policy and you can see that their participation is different than full participation. So there is --

>> How is the participation different from a nonvoting versus just a liaison? I mean that's what I don't understand.

>> The only issue that I've thought of is with respect to closed sessions. We have state laws entitled the Brown Act that talks about the board and its membership. Now it is certainly possible that under the law, under the structure of ordinances that exist now it could be concluded that a council liaison is a member of the board. But I don't think it's wise to take a chance on that issue, when it could be seen as not to be the case. And it's readily possible to eliminate the clarity by just adopting an amendment or coming forward with a technical cleanup amendment, and then we don't have -- ordinance then we don't have the question --

>> Russell Crosby: Didn't Mollie say that that will happen before the next board meeting?

>> Mollie Dent: Yes, that will happen before the next board meeting.

>> Pete Constant: And if I could interject, I think as Russell can attest to in Federated, that because of the fact of the ordinance not being in effect, I have not gone into closed session and respected that line. You have seen Sean a very clear example earlier in the meeting where participation was not allowed in discussion and that is a concern to me. That's a concern to the mayor. That's a concern to the city council. Because that is not what the council's intent was or my role sitting here in this. And to be shut down and not have an opportunity to participate is not the intent. And I don't think it's healthy for the board. I don't think it's healthy for the plan sponsor. You saw it here yourself just a couple of hours ago. That's my concern.

>> David Bacigalupi: The correction there I'd have to say was the fact that the board was allowed to finish their business before you were allowed to speak. That is true. You did get your opportunity to speak and part of the answer to your question is, it's very specific in the council policy on liaisons, that the liaison should not be an advocate for the commission, give direction or influence a decision of the commission.

>> Pete Constant: But a council policy is not binding like an ordinance and only the council can enforce their policy and in fact the council has policies that they waive on a very frequent basis. It has no effect of law.

>> Dave.

>> David Bacigalupi: Go ahead.

>> Another point that should be made, when you're a liaison you are a representative to another entity and you owe whatever obligations including a fiduciary obligation. You are sort of an observer/participant at another body. If you are a member of this body then you owe fiduciary responsibilities whether you're voting or not to this body. It may be not what they want, I'm not sure. Because in that point, just like when councilmembers were on this board, just as members, not as liaisons but as members, they were --

>> Conflicted.

>> Right. But they had to deal with that conflict. And when they were here, they were board members, with fiduciary duties to the board, and to the participants of the plan.

>> David Bacigalupi: They worked very hard to get the councilmembers off the board.

>> Gotcha.

>> Mollie Dent: So that's what's going to come back before the council before the he next board meeting, what that role will be between a liaison at one end and a few participating member of the board like they used to be at the other end. There's a -- a wide variation, and somewhere it's clear that there's a line in the middle there, beyond a normal council liaison, but not a full voting member of the board. So --

>> And you want to make sure what role that member has in determining accord. You know, just little things like this.

>> So I think some of the sensitivity to this was, the reconstitution of the board, was in response to some outside research and commentary about making sure there wasn't a political influence upon doing the right things for the -- for the members of the plan and for the plan itself really to properly serve the members and to serve the funders of the plan. So an agreement was reached with the different bargaining groups and the city to constitute the board in this way and I think there was an understanding in that agreement that this was a liaison role, if I think in the spirit of liaison role, it certainly makes sense and I don't think there's any issue having a means of communication, sharing what's going on, someone giving us feedback about the work plan and agendas, is absolutely appropriate. But if that role is morphed into something that gives direction and influence it reintroduces that political aspect, reintroduces the city council agenda, rather than the plan's, what must be done for the plan. And I think the City's needs need to be known and fit into all this, same way if members needs to be put into that but when the agreement was reached I think it was this, this liaison type policy, that was considered to be a no big deal. If this is something that is a council policy and can be waived by the council at any time then there really is -- there is no agreement about what that liaison role might be. I'd be interested what they come back with and where it goes.

>> Mollie Dent: We'll be glad to bring it back next month.

>> David Bacigalupi: Okay and the other thing I'd like to say is I'd like to thank you on behalf of the board. We went into closed session on the 18th and you excused yourself, that avoided us being put in an awkward position. Thank you.

>> Pete Constant: Where do I stand in the meantime? Do I get to come up and state my position or am I waiting until all discussion is completed? I think it's important for me to know. That's my question. Since you control the meeting.

>> David Bacigalupi: Well, as far as I see, you are a liaison, you'll be allowed to participate at the proper time.

>> Pete Constant: Which is when, that's what I'm asking? When is that proper time?

>> David Bacigalupi: After the board has finished its discussion or if any of the board members would like your participation. That is always an option too.

>> I mean just from my perspective I would say that you know with the city being the big back stop here on the financial side of this fund, most certainly want to know their input you know. So I think it's helpful to have some input from the councilmember on the issues that perhaps especially us new board members don't have the background on. So we do have -- I mean, you know, it's balance.

>> Richard Santos: Through the chair --

>> You can understand we don't want a local 230 person sitting in a POA person sitting as direct representatives. We all take our hat on as trying to do what's best for the plan whether there's councilmembers on or not.

>> My point the city's back stopping it so if it was a private sector pension fund they'd have big representation at the table.

>> Which is how it was but they said they didn't want --

>> David Bacigalupi: It was their decision to take them off. You got to understand, that's what this whole process was about.

>> Right, but he doesn't have a vote, right, so he still doesn't have an actual impact on the decision other than discussion.

>> David Bacigalupi: See what the ordinance comes back he may have a vote.

>> Mollie Dent: It is clear it was to be a nonvoting member, I don't think there is any question about that.

>> Pete Constant: I don't think it's really accurate to say that council didn't want on the board because it's specifically worded in the memorandum to be a nonvoting board member. And I think again, that's what the council voted on. That's the intent. So I'll make sure to report this back to the council, and we'll have the amendment real soon.

>> David Bacigalupi: Good.

>> Richard Santos: I would just say, in terms of transparency, what we're trying to do today, I welcome the liaison. I think the more we can do together, the better. And I think the information gets back to the city council even faster than waiting for a memorandum, all kinds of stuff, instead of the way you choose to handle the meeting is fine to me but I welcome, whether it be Peter or anyone else I think it's best for us.

>> David Bacigalupi: Any other comments?

>> I work with Pete, but I think he would pushes ordinances through, if the ordinance had gone through, I think it would be our open door, to go over there rather than having memos and so forth, being written. I think you could expedite a process. Looking at it as a nonvoting, I don't think it would be any different than what you'd -- than today. My understanding. I mean you'd be able to talk a little bit different but it's not going to be anything

different. You'd express your views today and I think as a nonvoting you'd just be doing the same thing. My understanding of it. I was a little confused, liaison, nonvoting, it was like Sean was. I was confused on that.

>> Pete Constant: Granted, the rule changed after the first time I asked to speak, the subsequent conversation where I was allowed to integrate and ask questions. I think that's important. I tell you the council thinks this is serious enough, they have put a standing agenda item every single Tuesday for their representative on the board to come and report on what's happening, keep them abreast of the situation. So it is different than it has been in the past. You can look at that and see that that is not the way the council handles any other liaison throughout the organization. Because this is a new process, and the council is clearly interested in the subject, took a very active role in instituting this memorandum. And the subsequent ordinance which had an omission in it. Around I think that's the key there, it was an omission, it wasn't something that the council did one day and then came back and changed another.

>> David Bacigalupi: Okay. Item number 4 old business continued deferred items. Item 4.1 discussion and action regarding a process and schedule for recommending the ninth board member to the city council. And this we've been delaying until we had our eighth member, I know it was reported publicly otherwise that we couldn't schedule a meeting but we were actually waiting until we had a full board up except for the ninth member. We have our eight board members so we need some discussion and a plan to interview the candidates to fill in the ninth spot.

>> Russell Crosby: If I could, the process that was used in Federated was the trustees received the applications and on all the remaining applicants that had been through the council and the council had approved. At this point there are six additional candidates out there. One of them got picked up a week -- two weeks ago and he is now on the Federated board. The other six I would suggest that we send the applications out to the board members, that you then rank them and communicate back to us your ranking 1 through 6 of those remaining people. We, then, add up who gets how many votes. And schedule the top 3 candidates in for an interview with you.

>> David Bacigalupi: Sounds like a great sedge to me.

>> Russell Crosby: I would suggest we try to do this as a special meeting rather than trying to do it in the context of the regular scheduled meeting. We could have it over at first street smaller meeting site, et cetera.

>> David Bacigalupi: I think that would be a good idea as well. Because we're getting more involved in investments, utilizing the entire board, rather than subcommittees so that's something that could be off site, at a special meeting.

>> Mr. Chair, I'd like to so move that we follow the secretary's recommended approach. Receive resumes, we'll score them and --

>> David Bacigalupi: Motion and second Any further discussion? Hearing no further discussion, all in favor, all opposed, motion carries. Unanimously.

>> Mr. Chair, would you like to have a discussion scheduling the special meeting?

>> David Bacigalupi: No, nobody has their calendars.

>> Russell Crosby: We're missing two key players.

>> David Bacigalupi: Item 4.2 and 4.3 were requested by board member Sunzeri to defer. I would suggest, that means they are going to be quite involved, to go ahead and defer that if the board agrees since it is such a late hour. Okay we'll defer item 4.2 and 4.3 until next month. 4.4 verbal update on status of IRS filing.

>> Mollie Dent: Your obligation got filed.

>> Thank you.

>> Russell Crosby: Perfect Mollie.

>> David Bacigalupi: Good Mollie. Any questions of Mollie on that? Okay. Item number 5 standing committee reports and recommendations, there is none. Item 6 is the consent calendar. I won't read through them all. It's been posted. But usually items on the consent calendar are taken in one motion unless there is something to be deferred. I have one item to be deferred and that's 6.8G.

>> Russell Crosby: The two Deutsche Banc and Milken.

>> David Bacigalupi: Deutsche Banc and Milken, I understand there's some complications with city traveling, move our people, so I'd prefer those two.

>> I'd just make a comment for the record. I've been to the Milken institute's conferences and they're really good. From an investment perspective that's probably one of the top conferences that he could go to. You know, they basically cover a huge amount of investment markets over a period of I believe four days, they go down into you know fixed income, you know, what's going on in different regions of the world, whether different things that are happening, and you know, technology and how that's impacting the investment world. So I think it would be very beneficial for him to go. I've been myself probably seven of the last ten years and I've always found it one of the best conferences I've gone to. And Deutsche Banc too.

>> David Bacigalupi: I got a question for you Russell would it be better for this board to approve it if they think that this is a worth wile for Dr. Imiri to go to and then you work out whatever probes are going on?

>> Mollie Dent: I don't know that there are problems and it may be that these don't actually need board approval. I don't think it's going to slow things down. It depends how they're structured and we just need to get more information about how the approval process should go on them.

>> Does it hurt to approve them?

>> Mollie Dent: One of them is very problematic, because it's not clear on the agenda who's paying for it. So -- and the other one you would have to --

>> Is that the Milken one?

>> Mollie Dent: Yes.

>> I might help on that, might make a call on his behalf.

>> Mollie Dent: There are issues with conferences that are paid for by other people by city staff. That's the issue. It's not whether or not this is a good conference or anything.

>> David Bacigalupi: So as it's written here on the agenda it's not good to approve it so we'll pull it off the send agenda, those two items only, and unless there are any others on the consent agenda the board would like to pull I'll take a motion for the empire --

>> Pete Constant: Mr. Chair, correction on both minutes, I was present on both meeting meetings, I was present on each, not even an also present.

>> Richard Santos: Mr. Chair, I wasn't here.

>> David Bacigalupi: I understand.

>> Pete Constant: That would be item C, the February 3rd and February 8th meeting.

>> Russell Crosby: Were you there on the 6th?

>> Pete Constant: No, I missed the 6th.

>> Mollie Dent: Can we get a note and file it was inadvertently omitted as a consent item.

>> David Bacigalupi: One thing at a time here. There needs to be a correction in the minutes. Can we make a note of that correction when the motion was made? And what was your Mollie?

>> Mollie Dent: Just to note that 6-12 inadvertently got omitted out of consent calendar so you'll have to do a separate item on that one.

>> What does that moan?

>> Russell Crosby: When you look at item 6, consent calendar 6.1 through 6.11, it should have been 6.12.

>> David Bacigalupi: Okay so we'll have to do that one separately.

>> Make a motion to approve consent calendar, item 6.1 through 6.11 with the notation that the minutes for the last two board meetings should be updated to reflect Councilmember Constant's attendance.

>> David Bacigalupi: Okay and the removal of the items on 6.8G, the second two lines.

>> Correct, and the removal of Ali's trips to Deutsche Banc and the Milken institute.

>> David Bacigalupi: I have a motion, do I have a second?

>> Second.

>> David Bacigalupi: Any further discussion on the motion? Hearing no further discussion, all in favor, all opposed, motion carries.

>> Mr. Chairman, I make a motion to approve the item 6.12, communication information.

>> David Bacigalupi: I have a motion, do I have a second?

>> Second.

>> David Bacigalupi: I have a motion and second. Any discussion on that motion? Hearing none, all in favor, all opposed, motion carries. Unanimously. Item number 7 is education and training. I won't read them all out. There's a lot of good training coming up. The Wharton school is very good. They are all very good. Staff reviews these things and puts them up there.

>> Richard Santos: Do you still have to take a test?

>> David Bacigalupi: Yes, you still have to take a test.

>> Richard Santos: That was brutal.

>> David Bacigalupi: Anybody that is interested in getting any of this training, which is highly recommended, contact Russell's office.

>> Russell Crosby: And you all received an e-mail from Mary earlier in the week about the program at Berkeley --

>> (inaudible)

>> Russell Crosby: Yeah, so -- anybody interested in that, let us know, so we can get you enrolled quickly and make sure we lock the slots in.

>> All right I think I'm interested in that one.

>> Russell Crosby: Would you just call Mary then?

>> Yes. (inaudible).

>> Russell Crosby: That is IFEBP and it's their certified --

>> David Bacigalupi: Go through them and you actually get a cap certification.

>> Russell Crosby: You're a qualified trustee.

>> David Bacigalupi: Okay, any other of the education and training, contact Russell's office. Okay this part of the agenda is for proposed agenda items. Any board member like to request a proposed agenda item for next month?

>> Richard Santos: Yes, Mr. Chair, I'd like to have a discussion on location. When you and I were before we used to be at City Hall, of course we changed over here, now I understand we're not going meeting -- I come here to meetings all the time. The sound's not good. I don't care for the location. I'd like to see us kicking around to go back to the building that you and I helped buy purchase a long time ago and I think the reason is it's easier for our staff and everyone else. Also things, tee coffee, I'm not a coffee drinker whatever, little things like that I think are just easier. And when we ask staff for something off the cuff, go get file so-and-so, something, our archives are there, things that we need are more appropriate. So I would like to see us conduct business at our place of business, which would be metro.

>> David Bacigalupi: I personally agree with you. I see all of our staff having to traipse down here. Unfortunately there would be one person who was inconvenienced.

>> Pete Constant: Actually there was council action. It needs to be discussed at the next meeting because of the sunshine ordinance and the videotaping and all of that it should probably be scheduled for --

>> David Bacigalupi: Okay why don't we put that on the agenda for next month.

>> Russell Crosby: April agenda.

>> Richard Santos: I don't want to nitpick but example if we could be sent binders with all this thing, 15 inch thick thing put it in a binder, that is why, it's not loose and it wouldn't get lost. When I'm finished I could take what I want and leave the binder for staff to fill again. What's lost or what have you --

>> David Bacigalupi: That is sort of a administrative thing.

>> Richard Santos: Work through. Mr. Taylor, I'd like to see the vice chair with signs on, everybody is identified that's the things I like to see so I know who's who.

>> David Bacigalupi: Those are administrative things, contact Russell.

>> Richard Santos: Thank you for welcoming me and making it easy.

>> David Bacigalupi: Okay, time for public comments.

>> Wore them down.

>> David Bacigalupi: Hearing none, this meeting is adjourned. Thank you.