

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, )  
on behalf of itself and all others )  
similarly situated, )  
Plaintiff )

v. )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

C.A. No. 11-10230-MLW

ARNOLD HENRIQUEZ, MICHAEL T. )  
COHN, WILLIAM R. TAYLOR, RICHARD A. )  
SUTHERLAND, and those similarly )  
situated, )  
Plaintiff )

v. )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

C.A. No. 11-12049-MLW

THE ANDOVER COMPANIES EMPLOYEE )  
SAVINGS AND PROFIT SHARING PLAN, on )  
behalf of itself, and JAMES )  
PEHOUSHEK-STANGELAND and all others )  
similarly situated, )  
Plaintiff )

v. )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

C.A. No. 12-11698-MLW

MEMORANDUM AND ORDER

WOLF, D.J.

August 3, 2018

On July 31, 2018, the court ordered the Competitive Enterprise Institute's Center for Class Action Fairness ("CCAF") to report whether it still seeks to participate in this case as an amicus or

guardian ad litem for the class, and to address the court's authority to permit the Master to address objections to his Report and Recommendation (the "Report"). See Docket No. 410. The court's inquiries were related to Customer Class Counsel's Motion for Accounting and Clarification that the Special Master's Role Has Concluded (the "Motion") and related memoranda (Docket Nos. 310, 377, and 397), which are under seal. On August 2, 2018, CCAF moved for access to the unredacted versions of these documents, June 21 and 25, 2018 letters to the court from the Master (Docket Nos. 329-1 and 345-1), and Labaton Sucharow, LLP's response to the July 25, 2018 letter (Docket No. 353). See Docket No. 413. CCAF asserts these documents are necessary to respond meaningfully to the July 31, 2018 Order.<sup>1</sup> Id. at 3.

Customer Class Counsel and the Master filed the memoranda related to the Motion under seal, and moved to maintain them under seal, because they referred to the Report and its exhibits, which were then sealed. The Master's June 25, 2018 letter and Labaton's Response (Docket Nos. 345-1 and 353) were also sealed because they

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<sup>1</sup> CCAF also requested that the court unseal Docket No. 302, which it characterized as the Memorandum in Support of the Motion, and the Master's June 6, 2018 letter to the court (Docket No. 381). However, Docket No. 302 is the Motion itself. Both it and the Master's July 6, 2018 letter are public. See Docket Nos. 302, 381. Therefore, no action is required concerning CCAF's request regarding these documents.

also referred to information in the then-sealed Report and exhibits.<sup>2</sup> However, the court has since released public versions of the Report and exhibits with limited redactions. See Docket Nos. 357, 401. Neither the memoranda relating to the Motion, the Master's June 25, 2018 letter, nor Labaton's response refer to sealed information. Therefore, there is no longer any reason for sealing that overcomes the presumption of public access to judicial records and proceedings. See F.T.C. v. Standard Fin. Mgmt. Corp.,

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<sup>2</sup> Labaton's Response (Docket No. 353) also referred to emails from Lynn Sarko of Keller Rohrback, LLP that not exhibits to the Report, but which Labaton has filed under seal with its objections to the Report. See Docket No. 359 at 9 n.1; Transmittal Declaration of Justin J. Wolosz, Ex. A (Docket No. 370-3 under seal). Labaton stated that it would file public versions of the exhibits to its objections that are not exhibits to the Report, including its Exhibit A, after the other parties proposed any redactions according to the stipulated protocol for adding documents to the Record. See Labaton's Motion to Impound its Objections to Special Master's Report and Recommendations and the Transmittal Declaration of Justin J. Wolosz in Support (Docket No. 365), ¶4 (citing All Parties Response to May 31, 2018 Order Regarding Additional Documents from the Record (Docket No. 259)). However, the protocol requires the parties to confer regarding proposed redactions to any documents they seek to add to the Record, and to file public versions of those documents, within 14 days after filing their objections. See Docket No 259, ¶2. Although more than 14 days have passed since Labaton filed its objections, it has not filed public versions of the documents it seeks to add to the Record. If necessary, this issue will be addressed at the August 9, 2018 hearing. In any event, at least one of Mr. Sarko's emails conveying the information Labaton references in its response to the Master's June 25, 2018 letter is now public. See R&R Ex. 35 (Docket No. 401-34). Therefore, the fact that Sarko's other emails conveying the same information are not yet public is not a reason to seal Labaton's response to the Master's June 25, 2018 letter.

830 F.2d 414, 408 (1st Cir. 1987); June 28, 2018 Memorandum and Order (Docket No. 356) at 4-6. Accordingly, the court is denying the motions to impound the memoranda and is unsealing them, the June 25, 2018 letter, and its response.

The Master's June 21, 2018 letter does reference documents developed in the Master's investigation that have not been publicly filed. Therefore, the court is ordering the parties and the Master to confer and report whether the unredacted version of the June 21, 2018 letter (Docket No. 329-1) should remain under seal.

Accordingly, it is hereby ORDERED that:

1. CCAF's Motion for Disclosure of Certain Sealed Documents Necessary to Fully Respond to the Court's Order of July 31, 2018 (Docket No. 413) is ALLOWED in part. The motions to seal the memoranda relating to the Motion for Accounting and Clarification that the Special Master's Role Has Concluded (Docket Nos. 301, 376, 394) are DENIED. The memoranda concerning the Motion for Accounting and Clarification that the Special Master's Role Has Concluded (Docket Nos. 310, 377, and 397), the Master's June 25, 2018 letter (Docket No. 345-1) and Labaton's response (Docket No. 353) are UNSEALED.

2. The Master shall confer with Labaton and, by 4:00 p.m. on August 3, 2018, report whether the unredacted version of the Master's June 21, 2018 letter (Docket No. 329-1) should remain

under seal. If either the Master or Labaton seeks to maintain the document under seal, both shall explain their positions.

3. The parties shall be prepared to address at the August 9, 2018 hearing whether there are other documents developed in the Master's investigation, or filed with the court under seal, that should now be made public.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,  
on behalf of itself and all others  
similarly situated,

Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

---

ARNOLD HENRIQUEZ, MICHAEL T. COHN,  
WILLIAM R. TAYLOR, RICHARD A.  
SUTHERLAND, and those similarly situated,

Plaintiffs,

No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

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THE ANDOVER COMPANIES EMPLOYEE  
SAVINGS AND PROFIT SHARING PLAN, on  
Behalf of itself, and JAMES PEHOUSHEK-  
STANGELAND and all others similarly situated,

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

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**SPECIAL MASTER'S MOTION TO SEAL**  
**SPECIAL MASTER'S FIRST SUBMISSION OF DOCUMENTS TO SUPPLEMENT**  
**THE RECORD (UNDER SEAL)**

Pursuant to Local Rule 7.2, and as provided for in paragraphs 7 and 11 of the Court's March 8, 2017 Order (Dkt. #237), paragraph 12(b) of the Court's May 31, 2018 Order (Dkt. #237), and paragraph 3 of the Court's July 9, 2018 Order (Dkt. #385), the Special Master hereby moves this Honorable Court to permit the Special Master's First Submission of Documents to Supplement the Record (a pleading, with accompanying documents provided in electronic format on a disc) to be filed under seal until further Court order.

WHEREFORE, the Special Master respectfully requests that the Court permit the Special Master's First Submission of Documents to Supplement the Record to be filed under seal.

Dated: August 3, 2018

Respectfully submitted,

**SPECIAL MASTER HONORABLE  
GERALD E. ROSEN (RETIRED),**

By his attorneys,

/s/ William F. Sinnott  
William F. Sinnott (BBO #547423)  
Elizabeth J. McEvoy (BBO #683191)  
BARRETT & SINGAL, P.C.  
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Email: [emcevoy@barrettsingal.com](mailto:emcevoy@barrettsingal.com)

**CERTIFICATE OF SERVICE**

I hereby certify that this foregoing document was filed electronically on August 3, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing ("NEF"). Paper copies were sent to any person identified in the NEF as a non-registered participant.

/s/ William F. Sinnott  
William F. Sinnott

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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No. 12-cv-11698-MLW

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Defendant.

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**SPECIAL MASTER'S RESPONSE TO THE COURT CONCERNING UNSEALING  
SPECIAL MASTER'S JUNE 21, 2018 LETTER TO THE COURT**



On August 3, 2018, the Court ordered the Special Master to confer with counsel for Labaton, and respond to the Court the same day, as to whether the parties agreed that the unredacted version of the Master's June 21, 2018 letter to the Court [Dkt. # 329-1] should be made available to the public. Counsel for the Special Master and counsel for Labaton have conferred and have agreed that the June 21, 2018 letter to the Court should be unsealed.

Dated: August 3, 2018

Respectfully submitted,

**SPECIAL MASTER HONORABLE  
GERALD E. ROSEN (RETIRED),**

By his attorneys,

/s/ William F. Sinnott

William F. Sinnott (BBO #547423)  
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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically on August 3, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing ("NEF"). Paper copies were sent to any person identified in the NEF as a non-registered participant.

/s/ William F. Sinnott  
William F. Sinnott

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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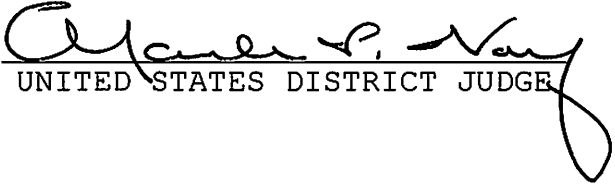
MEMORANDUM AND ORDER

WOLF, D.J.

August 3, 2018

On August 3, 2018, the Court ordered the Master to confer with Labaton Sucharow, LLP ("Labaton") and report whether they agree that the unredacted version of the Master's June 21, 2018

letter to the court (Docket No. 329-1) should be made public. The Master and Labaton reported that they agree that the letter should be unsealed. See Docket No. 416. Therefore, it is hereby ORDERED that Docket No. 329-1 is UNSEALED.

  
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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No. 12-cv-11698 MLW

**RESPONSE OF LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
TO THE COURT'S ORDER OF JULY 31, 2018**

In its Order of July 31, 2018 (ECF No. 410) the Court advised the parties that it may amend the prior Order appointing the Special Master to authorize him to respond to the objections to the Special Master's Report and Recommendations ("Report"). As its rationale for doing so, the Court stated that it believes that under the present circumstances "the operation of an adversary process promotes well-informed decision-making."

With all due respect, the adversary process has already operated in this matter. The Report of the Special Master embodies any number of findings and recommendations that are adverse to the interests of Customer Class Counsel. The factual support for and legal analysis underpinning the findings and recommendations are set forth at length and in detail in the Report itself. Customer Class Counsel have responded to those findings and recommendations with factual and legal arguments in their responses and objections to the Report. At this point the issues have been fully and fairly laid before the Court.

In short, no further advocacy adverse to Customer Class Counsel is necessary for the Court to perform its responsibilities—to conduct a *de novo* review of the factual findings, legal conclusions and recommendations contained in the Report. The fact that the Report itself may be voluminous and that the responses are also lengthy, provides no reason why the Court and its personnel cannot properly review the record to perform the Court's responsibilities.

However, if the Court determines that it will be assisted in performing its *de novo* review by the continued participation of the Special Master, and that it has the authority to expand the role of the Special Master as proposed, it should not continue to be at the financial expense of Customer Class Counsel. However the role of the Special Master vis-à-vis Counsel was properly characterized prior to the submission of the Report, the Court has openly recognized that it is now decidedly partisan and adversarial. The Special Master has also characterized his current and proposed future role in these proceedings as adversarial to Customer Class Counsel and as

an advocate of the Class's interests against those of Counsel. *See* Special Master's Response to Customer Class Counsels' Motion for an Accounting, and for Clarification that the Master's Role Has Concluded ("Special Master's Brief") at 14-16 (ECF No. 377). Indeed, it is the very adversarial nature of the Special Master's posture that forms the basis for the Court's proposal to amend the Order appointing the Special Master to enlarge his role beyond that originally contemplated.

The Special Master has in effect become a partisan party in litigation in opposition to Customer Class Counsel. The Special Master has boasted about how much money would be paid to the Class at the expense of Customer Class Counsel if his proposals are followed. "[T]he Special Master notes that the recommendations here, if followed, would return in a range of approximately \$7.4 to \$8.1 million to the Class." Report at 376 (ECF No. 357). He has designated himself as the primary representative of the Class as his *de facto* client in opposition to Court-appointed Class Counsel. "Particularly at this stage, where return of a substantial sum of money to the Class has been recommended, the Master's involvement is necessary to *represent the interests of the otherwise unrepresented Class members. . .*" Special Master's Brief at 14 (ECF No. 377) (emphasis supplied).<sup>1</sup> Under these circumstances it would be fundamentally unfair to require the Customer Class Counsel to continue to fund their litigation adversary. Any compensation to the Special Master or his assistants for services or activities post-dating the submission of the Report should not be borne by Customer Class Counsel.

Almost a century ago the Supreme Court set the guidepost to be followed regarding Special Masters and compensation for their services.

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<sup>1</sup> The Master sets himself forward as the champion of the interests of the Class notwithstanding that despite considerable coverage of the Report and the attendant legal proceedings in the popular, legal and financial press, not a single member of the highly sophisticated Class has come forward in support of the Master and his recommendations.

(A special master) occupies a position of honor, responsibility, and trust; the court looks to him to execute its decrees thoroughly, accurately, *impartially* and in full response to the confidence extended...The rights of those who ultimately pay must be carefully protected...” *Newton v. Consolidated Gas Co.*, 259 U.S. 101, 105 (1922) (emphasis supplied).

As partisan adversary, the Special Master at this point can hardly be said to be acting impartially.

Under established principles of American law, with exceptions not relevant here, litigants are not responsible for the fees or expenses of their adversaries. *In re Volkswagen & Audi Warranty Extension Litig.*, 692 Fed. 3d. 4, 13 (1<sup>st</sup> Cir. 2012) (“It is axiomatic that, under the ‘American Rule,’ each litigant pays his own attorney’s fees win or lose, unless a statute or contract provides otherwise”) (internal citations and quotes omitted). So too, Customer Class Counsel should not be held responsible to pay the Special Master to, in effect, litigate against them.

In its Order of April 23, 2018 (ECF No. 217) the Court directed Customer Class Counsel to pay \$800,000 to the Clerk of the Court, \$500,000 of which was to fund a reserve requested by the Special Master “for his anticipated participation in proceedings after his Report is filed.” At the hearing on March 7, 2017, concerning the appointment of a Special Master, the Court assured Counsel that before any order requiring them to pay anything beyond the initial \$2,000,000 deposit, notice and an opportunity to be heard would be provided. *See* March 7, 2017 Hearing Tr. at 65 (ECF No. 176). In particular, the Court assured Counsel at that hearing that they would be given the opportunity to be heard regarding where any such additional funds “should come from.” *Id.* As the Court has acknowledged, it did not in fact provide advance notice of the April 23 Order or allow Counsel an opportunity to be heard. *See* June 28, 2018 Mem. and Order at 35 (ECF No. 358).<sup>2</sup> The payment was made by Counsel under protest. *See* Customer Class

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<sup>2</sup> The Court has since acknowledged that notice and an opportunity to be heard was in fact required under FRCP 53(b)(4). *See* ECF No. 358 at 35 n. 11.

Counsels' Reservation of Rights Regarding Payment to the Court on Friday, May 11, 2018 (ECF No. 221). Regardless of the outcome of the issue of the continuing role of the Special Master in these proceedings, given the Special Master's adversarial posture, the Court should now direct the return of the \$500,000 "reserve fund."

Dated: August 6, 2018

Respectfully submitted,

Lieff Cabraser Heimann & Bernstein, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111  
415-956-1000

By: /s/ Richard M. Heimann

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*Counsel for Lieff Cabraser Heimann & Bernstein, LLP*

### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will thereby be served on this date upon counsel of record for each party identified on the Notice of Electronic Filing.

August 6, 2018

/s/ Richard M. Heimann  
Richard M. Heimann



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM,  
on behalf of itself and all others similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

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No. 12-cv-11698 MLW

**THE COMPETITIVE ENTERPRISE INSTITUTE'S CENTER FOR  
CLASS ACTION FAIRNESS'S MOTION FOR AN EXTENSION OF TIME TO  
SUPPLEMENT ITS MOTION TO PARTICIPATE (DKT. 126) PURSUANT TO THE  
COURT'S ORDER OF JULY 31, 2018 AND MEMORANDUM IN SUPPORT**

In accordance with Local Rule 7.1, and in response to the Court's Order dated July 31, 2018, ordering the Competitive Enterprise Institute's Center for Class Action Fairness ("CCAF") to, among other things, "[s]upplement its motion to participate (Docket No. 126) to address the current circumstances of the case," Order (Dkt. 401), at 3, ¶ 3(c), CCAF moves this Court for an order extending the time for it to comply with paragraph 3(c) of the Court's Order.

In accordance with Local Rule 7.1(a)(2), counsel for CCAF requested counsel's position on this motion via email in a good faith attempt to resolve or narrow the issue. Labaton Sucharow LLP and the Thornton Law Firm have advised they are opposed, and Keller Rohrback L.L.P. advised it "opposes the extension request under these circumstances." Counsel for the Zuckerman Spaeder LLP advised it takes no position on CCAF's motion. The other parties have not presently advised CCAF of their position. *See* Certificate of Compliance with Local Rule 7.1(a)(2) attached hereto.

#### **MEMORANDUM IN SUPPORT OF MOTION**

By order dated July 31, 2018, the Court has directed CCAF to respond to several questions including the Court's authority to allow the Special Master to address objections, to "[s]tate whether it remains willing and able to serve as a guardian ad litem or amicus," and under what financial terms. Order at 3. CCAF has responded to these questions in the contemporaneously-filed Response to the Court's Order of July 31, 2018 ("CCAF's Response").

Additionally, the Court ordered that CCAF "[s]upplement its motion to participate (Docket No. 126) to address the current circumstances of the case." Order at 3, ¶ 3(c). CCAF moves for an extension of time to complete this task due to recent developments.

As explained in its Response, CCAF requires affiliation with outside counsel in order to serve as guardian *ad litem*. Until Sunday, it appeared CCAF would not timely find such counsel, and would therefore advise the Court it could only participate as an *amicus* unless circumstances changed. However, the potential affiliation with Burch, Porter & Johnson, PLLC suggests that CCAF will need a more thorough supplement of its motion to participate. Assuming CCAF successfully retains

Burch, it requires additional time to determine suitable financial arrangements and inform the Court. Therefore, CCAF requests leave to file its supplemental motion to participate until August 13, 2018. CCAF believes that its Response provides sufficient detail for any parties opposed to CCAF's participation as guardian *ad litem* to file an opposition, as the Court asked. Order at 3, ¶ 4. Through its Response, parties know that CCAF proposes to fund its participation as guardian *ad litem* from fees provisionally awarded to Class Counsel based on hourly lodestar at billing rates "materially below that of the market rates charged by the plaintiffs' attorneys in this case." Response at 25. Only the rates and logistics of reporting hours need to be determined, including a potential fee multiplier that triggers "in the event of an appellate challenge to the fee award to compensate for the risk, and to deter spiteful multiplication of the proceedings." *Id.*

Theodore H. Frank will attend the August 9 motion hearing on behalf of CCAF, and by that date will have a better idea about what the financial terms of CCAF's role may be.

Therefore, CCAF moves that the Court grant an extension in time for it to supplement its motion to participate (Dkt. 126) as directed by the Court. Order at 3, ¶ 3(c) until August 13, 2018.

Dated: August 6, 2018

/s/ M. Frank Bednarz  
M. Frank Bednarz (BBO No. 676742)  
COMPETITIVE ENTERPRISE INSTITUTE  
1145 E Hyde Park Blvd. Unit 3A  
Chicago, IL 60615  
Telephone: 202-448-8742  
Email: frank.bednarz@cei.org

/s/ Theodore H. Frank

Theodore H. Frank (*pro hac vice*)  
COMPETITIVE ENTERPRISE INSTITUTE  
1310 L Street NW, 7<sup>th</sup> Floor  
Washington, DC 20005  
Telephone: 202-331-2263  
Email: ted.frank@cei.org

*Attorneys for Amicus Curiae  
Competitive Enterprise Institute  
Center for Class Action Fairness*

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)**

I certify that on August 6, 2018, CCAF emailed counsel for the parties and counsel for the Special Master in a good faith effort to narrow or resolve the issues raised in this motion. At the time of filing, Labaton Sucharow LLP and the Thornton Law Firm has advised they are opposed, and Keller Rohrback L.L.P. advised it “opposes the extension request under these circumstances.” Counsel for the Zuckerman Spaeder LLP advised it takes no position on CCAF’s motion. The other parties have not yet advised CCAF of their position.

Dated: August 6, 2018

/s/ M. Frank Bednarz

M. Frank Bednarz

**CERTIFICATE OF SERVICE**

I certify that on August 6, 2018, I served a copy of the forgoing on all counsel of record by filing a copy via the ECF system.

Dated: August 6, 2018

/s/ M. Frank Bednarz

M. Frank Bednarz

**IN THE UNITED STATES DISTRICT COURT  
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**DECLARATION OF M. FRANK BEDNARZ IN SUPPORT  
OF THE COMPETITIVE ENTERPRISE INSTITUTE'S  
CENTER FOR CLASS ACTION FAIRNESS'S  
RESPONSE TO THE COURT'S ORDER OF JULY 31, 2018**

**DECLARATION OF M. FRANK BEDNARZ**

I, Michael Frank Bednarz declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called as witness, could and would testify competently thereto.

2. I am an attorney licensed to practice law in the Commonwealth of Massachusetts and State of Illinois.

3. **Exhibit A**, entitled “Minutes,” and dated October 6, 2008, is a true and accurate document from Arkansas Teacher Retirements System’s website as it appeared on August 6, 2018 at: [https://www.artrs.gov/BoardMinutes/Minutes2008/10\\_6\\_08\\_BOT\\_MINUTES.pdf](https://www.artrs.gov/BoardMinutes/Minutes2008/10_6_08_BOT_MINUTES.pdf).

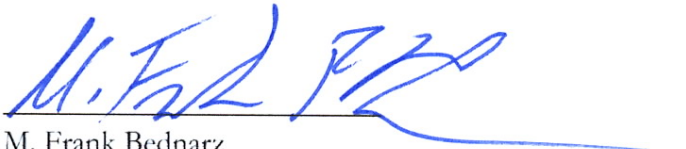
4. **Exhibit B**, entitled “Campaign Contribution And Expenditure Report” is a document filed with the Arkansas Secretary of State; it is a true and accurate copy of the document as it appeared on August 4, 2018 at: [https://www.sos.arkansas.gov/ce\\_search/index.php/search/save\\_pdf/6819](https://www.sos.arkansas.gov/ce_search/index.php/search/save_pdf/6819).

5. **Exhibit C** is a true and accurate archive copy of the following newspaper article: Michael Wickline, ARK. DEMOCRAT-GAZETTE (Nov. 10, 2011), *Shoffner returns donors’ \$10,000*, as it was filed in *Knurr v. Orbital ATK, Inc.*, No. 16-cv-1031, Dkt. 25-3 (E.D. Va. Oct. 27, 2016).

6. **Exhibit D** is a true and accurate archive copy of the following newspaper article: Chad Day, ARK. DEMOCRAT-GAZETTE (May 22, 2013), *Shoffner lived rent-free near the Capitol for most of her first term, landlord says*, as it appeared on August 4, 2018 from the online archive available at: <https://www.pressreader.com/usa/arkansas-democrat-gazette/20130522/281560878322249>.

I declare under penalty of perjury under the laws of the United States of America that that the foregoing is true and correct.

Executed on August 6, 2018, in Chicago, Illinois.



M. Frank Bednarz



# **Bednarz Decl.**

## **EXHIBIT A**

**MINUTES**

**ARKANSAS TEACHER RETIRMENT SYSTEM  
BOARD of TRUSTEES  
1400 West Third Street  
Little Rock, AR 72201**

**Monday, October 6, 2008  
1:00 p.m.**

<b>ATTENDEES</b>	
<b>Board Members Present</b>	<b>ATRS Staff</b>
Dr. Richard Abernathy	Gail Bolden, Chief Operating Officer
Monty Betts	Judy Brown, Supv. Retiree Payroll
Hazel Coleman, Vice Chair	Christa Clark, Chief Legal Counsel
Mike Creekmore designee for Martha Shoffner	Suzanne Davenport, Chief Financial Officer
Dr. Paul Fair	Paul Doane, Chief Executive Officer
John Fortenberry	Kim Godfrey, Deputy Legal Counsel
Steve Kelly designee for Jim Wood	Markay Grimmett, Investments
Beverly Leming	Wayne Greathouse, Dir. Public Sectors
Susannah Marshall designee for Candice Franks	Mullahalli Manjunath, Mgr. Data Processing
Robin Nichols, Chair	Willana Prince, Member Services
Linda Parsons	Michael Ray, Dir. Member Services
Janelle Riddle	Hugh Roberts, Dir. of Real Estate
	George Snyder, Chief Risk Management/Internal Audit
<b>Board Members Absent</b>	Jane Toledo, Secretary
Dr. Ken James	Leslie Ward, Dir. of Private Equity
Bobby Lester	
	<b>Guests</b>
<b>Consultants Present</b>	Bryant Cranford, Esq., Rose Law Firm
PJ Kelly, Ennis Knupp	Hellen Halloway, ARTA President Elect
Joe Marzano, Ennis Knupp	Richard Hutchison, AEA
	Mike Mertens, AAEA
	Matthew Miller, BLR
	Evelyn Nelson
	Warren Stephens, Stephens, Inc.
	Warren Simpson, Stephens, Inc.

Board of Trustees - Minutes

October 6, 2008

Page 2

- I. **Call to Order/Roll Call.** Chair, Robin Nichols, called the meeting to order at 1:05 p.m. Roll call was taken and Dr. Ken James and Bobby Lester were noted as absent.
  
- II. **Adoption of Agenda. THE MOTION FOR ADOPTION OF THE AGENDA WAS MADE BY DR. ABERNATHY AND SECONDED BY MS. PARSONS. CHAIR, ROBIN NICHOLS MADE TWO CHANGES TO THE AGENDA MOVING ITEM "IX. SELECTION OF OPPORTUNISTIC GLOBAL EQUITY MANAGERS" TO BECOME ITEM V. AND ADDING AS NEW ITEM AS PART OF THE CHIEF EXECUTIVE OFFICER'S REPORT. "PRESENTATION BY MR. WARREN STEPHENS". THE AGENDA, AS AMENDED, WAS UNANIMOUSLY APPROVED BY THE BOARD.**
  
- III. **Approval of Board of Trustees Minutes from August 7, 2008. THE MOTION FOR APPROVAL OF THE AUGUST 7, 2008 BOARD OF TRUSTEES MINUTES WAS MADE BY MS. LEMING, SECONDED BY MS. COLEMAN, AND UNANIMOUSLY APPROVED BY THE BOARD.**
  
- IV. **Committee Meeting Reports/"DRAFT" Minutes.** The following Minutes (items A-E) were presented to the Board for review as an update of Committee actions and will be presented at future Committee meetings for approval.
  - A. **Combined Executive and Policies/Legislative Committee of August 7, 2008.** Robin Nichols, BOT Chair
  - B. **Investment Committee of August 7, 2008 and September 23, 2008.** Beverly Leming, Chair
  - C. **Administrative Personnel Committee of September 22, 2008.** Janelle Riddle, Chair
  - D. **Executive Committee of September 22, 2008.** Dr. Richard Abernathy, Chair
  - E. **Policies/Legislative Committee of September 23, 2008.** Linda Parsons, Chair
  - 1) **Approval of Certain Rules & Regulations Changes.** (Resolution No. 2008-60) Christa Clark, Chief Legal Counsel gave a brief overview of this Resolution which authorizes staff to proceed with policy changes previously presented and approved by Committees. Policy 9-1 clarifies the implementation of the Compound Cola, Policy 9-3 is technical corrections on Disability Retirement, Policy 8-7 clarifies the requirements for ATRS members who are establishing service credit for Free Military Service under A.C.A. §24-7-601, Policies 11-3 and 11-4 updates ATRS' model QDRO order (adopted in 1995) to include

Board of Trustees - Minutes

October 6, 2008

Page 3

legislative changes, address T-DROP, and make language consistent with how our plan is currently operating. These QDRO changes are primarily technical and will assist staff in performing calculations as well as avoiding the need to utilize ATRS' actuary for calculations.

**THE MOTION FOR ADOPTION OF RESOLUTION NO. 2008-60 WAS MADE BY MS. PARSONS, SECONDED BY MS. COLEMAN, AND UNANIMOUSLY APPROVED BY THE BOARD.**

- V. **Selection of Opportunistic Global Equity Managers.** (Resolution No. 2008-64) PJ Kelly of Ennis Knupp reviewed the presentation "Global Equity Manager Finalists" dated October 2008 with the Board. This is a request for approval to retain a series of managers (at least three) that have been recommended by the Investment Committee and who would offer complementary yet unique strategies with their global portfolio platforms. Funds would be drawn from other global and US active and passive managers.

**THE MOTION THAT THE BOARD OF TRUSTEES APPROVE THE RECOMMENDATION OF THE INVESTMENT COMMITTEE TO RETAIN THE FOLLOWING THREE INVESTMENT FIRMS AS GLOBAL EQUITY MANAGERS: BEDLAM ASSET MANAGEMENT, LONDON, UK (\$200 MILLION ALLOCATION); DE SHAW, NEW YORK, NY (\$300 MILLION ALLOCATION) AND LAZARD INVESTMENT MANAGEMENT (\$300 MILLION ALLOCATION. FUNDING IS TO COME FROM THE EXISTING GLOBAL PORTFOLIO AS PROPOSED BY THE ENNIS GLOBAL EQUITY MANAGER FINALISTS REPORT OF OCTOBER 2008 AND FURTHER TO INSTRUCT THE STAFF TO UNDERTAKE ALL NECESSARY ACTIONS, INCLUDING NEGOTIATION OF FEES, TO EFFECTUATE THIS MOTION.**

**AND**

**THE MOTION THAT THE BOARD OF TRUSTEES APPROVE THE RECOMMENDATION OF THE INVESTMENT COMMITTEE TO CONVERT THE EXISTING MANDATES OF WELLINGTON MANAGEMENT'S GLOBAL RESEARCH PORTFOLIO, OPPENHEIMER CAPITAL'S DOMESTIC LARGE CAP VALUE PORTFOLIO AND T ROWE PRICE DOMESTIC LARGE CAP GROWTH PORTFOLIO INTO THE FOLLOWING PORTFOLIO STRATEGIES OFFERED BY WELLINGTON MANAGEMENT, BOTH ITS GLOBAL OPPORTUNITY FUND (\$100 MILLION) AND ITS GLOBAL PERSPECTIVES PORTFOLIO (\$200 MILLION), AND T ROWE PRICE, ITS GLOBAL PORTFOLIO (\$200 MILLION). FUNDING IS TO**

Board of Trustees - Minutes

October 6, 2008

Page 4

**COME FROM THE EXISTING PORTFOLIOS WITH EACH FIRM ACCORDING TO THE ENNIS KNUPP GLOBAL EQUITY MANAGER FINALISTS REPORT OF OCTOBER 2008 AND FURTHER TO INSTRUCT THE STAFF TO UNDERTAKE ALL NECESSARY ACTIONS, INCLUDING NEGOTIATION OF FEES WHERE POSSIBLE, TO EFFECTUATE THIS MOTION WAS MADE BY MS. LEMING, SECONDED BY MS. PARSONS, AND UNANIMOUSLY APPROVED BY THE BOARD.**

The Board requested negotiation of Lazard Investment Management's higher fees.

**VI. Staff Reports.**

A. **Medical Board Report.** Willana Prince, Supervisor Benefits and Counseling, presented the July, August and September, 2008 Summaries of Disability Applications Submitted for Consideration by the Medical Committee to the Board.

**THE MOTION FOR APPROVAL OF THE MEDICAL BOARD REPORTS WAS MADE BY MS. COLEMAN, SECONDED BY MS. LEMING, AND UNANIMOUSLY APPROVED BY THE BOARD.**

B. **Personnel Report.** Gaye Swaim, Director of Human Resources, presented the Personnel Report, the Office of Personnel Management of the Department of Finance and Administration's Pay Plan Study and 2009-2011 Pay Plan Implementation Recommendations. Ms. Swaim reviewed ATRS' Hiring Process, including OPM job classification (job description), advertisement/posting requirements, application review and selection process, candidate interview and selection process, the interview panel, the scoring of the candidate, the Position Disposition Form signed by the Executive Director, background checks and the Offer Letter.

C. **Chief Fiscal Officer's Report.** Suzanne Davenport, Chief Financial Officer, provided the Financial Comparison versus Previous Year report for April and May of 2008 to the Board and reviewed details of the June 2008 Balance Sheet/Income Statement.

D. **Payroll Report.** Judy Brown, Supervisor of Retiree Payroll, provided the March, April, May, June, July, August and September, 2008 Payroll Report and reviewed details with the Board. The Board was also provided with a review of the Cost-of-Living increase comparing July 2007 and July 2008.

Board of Trustees - Minutes

October 6, 2008

Page 5

- E. **Investments Report.** Wayne Greathouse, Director of Public Sectors, reviewed the updated Public Securities status report for the ATRS portfolio as of September 30, 2008 indicating only two significant changes 1) most managers balances have gone down due to the market situation and funding some of the real estate and private equity draws are coming out of the public sectors, and 2) the addition of Lincoln Vale, was noted and will be funded with \$15 million on November 1, 2008. Per the Boards' request a 5-year review of manager fees was provided. Fees and percentage of assets going towards fees and commissions remain the same over this time period.
- F. **Chief Operating Officer's Report.** Gail Bolden updated the Board on renovations, which included adding additional cubes on the second floor, are complete. Plans to enhanced security measures are moving forward, Senior Staff members obtained and reviewed bids for security cameras to monitor the parking areas, Irwin Saviers will oversee the installation of the cameras. The Pre-Retirement counselors are taking laptops with them out in the field. In order to secure our member's data, all data is encrypted, only the counselors have the keys and if someone were to get into one of these laptops the only thing that could be done is to reformat the drive.
- G. **Chief Legal Counsel's Report.** Christa Clark

Legal is currently reviewing the tax issue of withholdings on the lump sum death benefit. ATRS has received materials, which are currently being reviewed. A recommendation is expected from Policies/Legislative Committee for the December meeting.

The pending fiduciary insurance issue is also being reviewed. One of the major carriers that had bid on the Boards fiduciary insurance changed their policy and developed their own form for the insurance. ATRS' insurance broker was not familiar with the new form and was not comfortable making a recommendation until was reviewed by specialists. A recommendation is expected for the December meeting.

- 1) **Selection of Alternatives Investment Counsel.**  
With the growing demands on in house legal staff to address the expanding commitments to private markets, it is important to have a relationship with special investment counsel experienced in the subtleties and legal documents related to private equity, real estate, hedge fund partnerships and other vehicles that are part of the private market/alternatives investment arena. The

Board of Trustees - Minutes

October 6, 2008

Page 6

firms will be billing in increments on a monthly basis, but their rates are very competitive.

**THE MOTION TO HIRE THE TWO FIRMS OF KUTAK ROCK, LLP AND MORGAN LEWIS, LLP AS ALTERNATIVES INVESTMENT COUNSEL WAS MADE BY MS. LEMING, SECONDED BY DR. ABERNATHY, AND UNANIMOUSLY APPROVED BY THE BOARD.**

2) **Selection of Portfolio Monitoring Counsel.**

This request involves the area of class action counsel and the pursuit of fraud and other misdeeds by the management of public companies in which ATRS is invested. Currently we employ the firm of Bernstein Litowitz Berger for such services. This firm will continue to be engaged by ATRS. The general policy is to have several such firms who monitor our portfolio and when they determine that there is a potential claim or defensible action against a company, they will notify and seek to have ATRS serve in a lead plaintiff action to recover losses incurred due to fraudulent or other wrongful action. A formal RFP process was undertaken. The firms are to be engaged on a purely contingent basis for Portfolio Monitoring Services. ATRS will receive quarterly monitoring reports and recommendations for review by legal counsel.

**THE MOTION TO ADD THREE FIRMS TO THE ATRS APPROVED LIST OF MONITORING COUNSEL OF 1) KAPLAN FOX, LLP OF NEW YORK; 2) NIX, PATTERSON & ROACH, LLP OF DANGERFIELD, TEXAS; AND 3) LABATON SUCHAROW, LLP OF NEW YORK, WAS MADE BY MS. LEMING, SECONDED BY MS. RIDDLE, AND UNANIMOUSLY APPROVED BY THE BOARD.**

- H. **Chief Risk Management/Internal Audit Report.** George Snyder reported that as of September 22, 2008 ATRS is completely staffed. There is one person directly responsible for the Business Continuity Plan, which is moving along really well. Will provide draft when available. The Internal Audit has started doing the assessment of risk, breaking down from agency to division, to processes, to steps and figuring out what internal controls are in place, if any. From that process a level of risk is assigned, then the materiality of the risk is assessed with recommendations of changes and processes with follow-ups to be monitored monthly. Internal Audit is systematically

Board of Trustees - Minutes

October 6, 2008

Page 7

going through the System looking at every process and every department to create a complete flowcharted narrative design of how everything in the agency works. From that Risk Management will determine levels of risk by examining what is in place to control potential errors that could happen and from that recommending changes dealing with the monitoring, set the levels of where we are going to do what we are going to look and design and entire audit plane. It is anticipated that within 4-6 months there will be a draft available for Committee and Board review.

**VII. Presentation by Warren Stephens, CEO of Stephens, Inc.** Warren Stephens (CEO of Stephens, Inc. since 1986) and Warren Simpson presented their insights with regard to the current market situation. Mr. Warren Stephens provided several handouts and charts to the Board for review, which details what is going on in the financial world and in the credit markets right now which is unprecedented. Of the items reviewed was the VIX Index. The VIX Index is a measure of volatility in the stock market created based on options trading at the Chicago Board of Options looking at a broad base of companies and the buying and selling in those options to create the VIX Index. The U.S. Commercial Paper Market chart show the lack of loans to U.S. Companies in the U.S. Paper market making it hard time for companies to fund their day to day operations. The Federal Reserve injected \$900 Billion to get people lending again. The London Inter-Bank Borrowing Rate (LIBOR) is the rate banks loan other banks and the chart indicates an almost straight up movement in the LIBOR rate meaning banks are not willing to lend to other banks largely due to the real estate backed securities and the derivatives on the books of other financial institutions not be properly priced on the books and the possibility that the bank may not be solvent. Credit Default Slots indicating the increase in insurance premiums to secure returns on investments. Lehman Brothers, Bear Sterns, Merrill Lynch will become part of Bank of American, JP Morgan and Goldman Sachs had to convert to bank holding companies to access to the Fed to be able to keep their operations going. All of these firms are either gone or substantially changed in their format and going forward will mean a great deal of change to the employees and the way they operation. Many of these companies were leveraged 30 to 1 since the 1990s. Additionally, instead of having equities and traditional corporate bonds they had, as a group, 0 asset backed securities in 1990 to 25% of their assets in mortgage backed securities and derivatives (50/50). Not pretty, not fun, will manage to get through current market situation which will require a fundamental change in the way our financial system operates, securitization and regulations. This is not a "wall street bailout" but a way of unfreezing the system.



Board of Trustees - Minutes

October 6, 2008

Page 8

**VIII. Chief Executive Officer's Report.** Paul Doane, CEO discussed several areas including details related to the upcoming election of Board Members cycle set to commence later this year. The recently approved Ennis Knupp contract was recently reviewed at the Legislative level and approved. There an update on the earlier approved concept of implementation of a "paperless board meeting".

- A. **Discussion of Committee Reassignments/Appointments.** The Board was provided with a summary of the current Committees listing.
- B. **Board Membership Discussion and Election Schedule.** Summary of the projected timeframe for the upcoming elections for the three positions in the Spring taking office July 1, 2009 including the election vendor selection process. The following corrections were noted on summary of term expirations, Ms. Parsons represents the 4<sup>th</sup> Congressional District and Ms. Riddle represents the 3<sup>rd</sup> Congressional District.

Legal Counsel is to provide the Board with a requested copy of the previously adopted rotation schedule regarding committee terms and expirations.

- C. **Code of Conduct.** This is a suggested format for review and possible adoption by the Board at a future meeting of the Board.
- D. **Ennis Knupp Contract.**
- E. **Paperless Meetings Update.** Still proceeding with the Paperless Board Meeting. The Board was provided with a summary of the process as well as the pros and cons for review. It is anticipated that this will be in place at the beginning of the next term (July 1, 2009).

CEO provided a report/summary to the Board regarding upcoming staff travel and will provide a summary at each Board meeting. Trustees were reminded of the requirement (Resolution 2008-01) to provide a written/verbal report to the Board for any conferences attended. CEO provided a brief summary of the allowable expense reimbursements for GSA guidelines, which was also outlined in a memo provided to the Board.

CEO provided an update to members to address some of the financial chaos and the benefits of a defined benefits plan vs. defined contribution plans.

CEO visited with Bernstein Litowitz while on due diligence visits in New York and requested a more user friendly/client sensitive report to be provided on

Board of Trustees - Minutes

October 6, 2008

Page 9

things specifically affecting ATRS. This is expected at the next reporting cycle.

Rodney Thomason, head of Fox Ridge management team at Woodland Heights. The lease up was started 4-5 months behind schedule and are now on schedule with 14 units leased up on the new building at a pace of 1-1/2 units per month.

**IX. Authorization of Staff to Pursue Biennium Contract for Election Vendor.**

(Resolution No. 2008-61) Christa Clark, Chief Legal Counsel requested the Board's to authorize the staff to proceed with the process and hiring of a qualified vendor to handle the election of new Board members. To stay on track with the December launch of the election cycle and given the fact that the Board does not reconvene until early December, there would be inadequate time for the Board to approve a vendor at that date. Staff will provide and keep the Board advised of its progress in lining up the firm to conduct this role. Also, it is important from a cost and time saving standpoint to retain a firm that will be able to manage the election process (which will involve a state wide effort for certain positions up for election) for both the 2009 and 2010 years. Three seats are slated to expire each of the next two years.

**THE MOTION FOR ADOPTION OF RESOLUTION NO. 2008-61 WAS MADE BY MS. LEMING, SECONDED BY MS. RIDDLE, AND UNANIMOUSLY APPROVED BY THE BOARD.**

- X. Approval of Investment Committee Policy Change to Add Two Non-Board Members.** (Resolution No. 2008-62) Paul Doane, CEO This action would have the Investment Committee add two non-Board members to be selected by the Investment Committee from a group with strong experience in the investment community. There have been excellent candidates that have indicated interest to serve without compensation.

**THE MOTION FOR ADOPTION OF RESOLUTION NO. 2008-62 WAS MADE BY MS. LEMING, SECONDED BY MS. PARSONS, AND UNANIMOUSLY APPROVED BY THE BOARD.**

- XI. IRS Determination Letter Discussion.** Paul Doane, CEO and Bryant Cranford, Esq., outside Counsel and staff reviewed the merits of considering the seeking of a Letter of Determination from the IRS that would be important in insuring the continued tax qualified status of the Fund. The last such Letter was secured in 1972 by the Board. There is considerable controversy and differences of opinion about whether it is appropriate to volunteer for this type of examination by the IRS versus taking a "wait and see" attitude. There are

Board of Trustees - Minutes

October 6, 2008

Page 10

significant costs (\$15-30K) to becoming involved in the process. Bryant Cranford provided a memo which he reviewed summarizing this issue for the Board. Mr. Cranford's final recommendation was to pursue an IRS Determination Letter, which would allow ATRS to reduce the percentage of any fines.

This will also be a topic of discussion at the upcoming NCTR conference being attended by the CEO and several Trustees. A decision needs to be made by January 2009 regarding the filing of an IRS Determination Letter.

This was a discussion only item and no decision was made at this time.

- XII. Approval to Authorize the Undertaking of a System's Compliance Audit.** (Resolution No. 2008-63) Due to the exigent nature of this matter, if it was felt appropriate to pursue, this action would authorize the staff to enter into a process that would result in the selection of a firm to conduct an in-depth audit of the System to best insure its compliance with all appropriate tax laws and statutes. It would be an important step if the Board sought a Letter of Determination or not.

**THE MOTION FOR ADOPTION OF RESOLUTION 2008-63 WAS MADE BY MS. LEMING, SECONDED BY MS. RIDDLE, AND UNANIMOUSLY APPROVED BY THE BOARD.**

The Board requested to be kept informed as to the status of this process. CEO is to contact Nancy Williams of Ennis Knupp and/or our Actuary, GRS, regarding this item.

- XIII. Other Business.**

Hugh Roberts, Director of Real Estate, provided the Board with information about a potential buyer, Mr. Snyder, to purchase ATRS' property located at 1500 West 3<sup>rd</sup> Street, Little Rock, AR (a vacant building), which had been a part of the ATRS portfolio for approximately 10 years. The appraisal of the property six months ago was \$420K. Mr. Snyder's original offer was \$360K, which was rejected. Mr. Snyder came back today with an offer of \$390K and Mr. Roberts made a counter-offer of \$405K cash deal for the 6,000 square feet of property, which was accepted by Mr. Snyder.

**THE MOTION TO ACCEPT MR. SNYDER'S OFFER OF \$405K TO PURCHASE THE PROPERTY LOCATED AT 1500 WEST 3<sup>RD</sup> STREET WAS MADE BY MS. LEMING, SECONDED BY MS. PARSONS, AND UNANIMOUSLY APPROVED BY THE BOARD.**

Board of Trustees - Minutes

October 6, 2008

Page 11

Hugh Roberts, Director of Real Estate, updated the Board on the status of property insurance. As of October 1, 2008 ATRS renewed the property insurance with Regions (previously Rebsaman) with same coverage, same excess coverage policy at a saving of approximately \$16K.

**Chairman, Ms. Nichols, called an Executive Session to order at 4:20 p.m.**

**XIV. Adjourn.**

**THE MOTION TO ADJOURN WAS MADE BY MR. BETTS, SECONDED UNANIMOUSLY, AND UNANIMOUSLY APPROVED BY THE BOARD.**

Chairman, Ms. Nichols, adjourned the Board of Trustees meeting at 5:00 p.m.

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Jane Toledo, Recorder

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Paul Doane, Executive Director

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Robin Nichols, Chair  
Board of Trustees

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Date Approved

# **Bednarz Decl.**

## **EXHIBIT B**

# CAMPAIGN CONTRIBUTION AND EXPENDITURE REPORT

State and District Candidates Only

**To be filed with:**  
**Charlie Daniels, Secretary of State**  
**State Capitol, Room 026**  
**Little Rock, AR 72201**  
**Phone (501) 682-5070**  
**Fax (501) 682-3408**

Check if this report is an amendment

For assistance in completing  
 this form contact:  
 Arkansas Ethics Commission  
 Post Office Box 1917  
 Little Rock, AR 72203-1917  
 Phone (501) 324-9600  
 Toll Free (800) 422-7773

**THIS FORM CANNOT BE USED FOR THE FINAL REPORT - ALL INFORMATION MUST BE COMPLETE  
 THIS REPORT MUST BE FILED WITH THE SECRETARY OF STATE**

**1. Name of Candidate**  
 Martha Shoffner

**Address**  
 P.O. Box 3020

**City, State and Zip** Little Rock, AR 72201 **Phone Number:**

**Office Sought** State Treasurer **District Number:** 0

Does the candidate have a campaign committee? ( ) Yes (X) No  
 If yes, complete the following:

**Name of Chairperson/Treasurer:**

**Mailing Address:** **Phone Number:**

**2. Type of Election:** (check one only) Year of Election: 2010  
 Primary  Primary Runoff  General  General Runoff  Special

**3. Type of Report:** (check one only) This report covers what period? ( 10 / 01 / 09 ) through ( 12 / 31 / 09 )

- |   |   |  |   |
|---|---|--|---|
| <input type="checkbox"/> 10 Day Preelection                         | <input type="checkbox"/> January Monthly  | <input type="checkbox"/> June Monthly      | <u>Special Elections Only:</u>            |
| <input type="checkbox"/> First Quarter (due April 15)               | <input type="checkbox"/> February Monthly | <input type="checkbox"/> July Monthly      | <input type="checkbox"/> May Monthly      |
| <input type="checkbox"/> Second Quarter (due July 15)               | <input type="checkbox"/> March Monthly    | <input type="checkbox"/> August Monthly    | <input type="checkbox"/> November Monthly |
| <input type="checkbox"/> Third Quarter (due October 15)             | <input type="checkbox"/> April Monthly    | <input type="checkbox"/> September Monthly | <input type="checkbox"/> December Monthly |
| <input checked="" type="checkbox"/> Fourth Quarter (due January 15) |   | <input type="checkbox"/> October Monthly   |   |

SUMMARY	FOR REPORTING PERIOD	CUMULATIVE TOTAL
<b>4. Balance of campaign funds at beginning of reporting period</b>	43,295.00	
<b>5. Interest (if any) earned on campaign account</b>	0.00	0.00
<b>6. Total Loans (enter total from line 12)</b>	0.00	0.00
<b>7. Total Monetary Contributions (enter total from line 18)</b>	21,750.00	65,045.00
<b>8. Total Expenditures (enter total from line 27)</b>	829.00	1,847.00
<b>9. Balance of campaign funds at close of reporting period</b>	64,216.00	

**10. ( ) NO ACTIVITY** (check if you have not received contributions, loans, or made expenditures during this reporting period)

I certify to the best of my knowledge and belief that the information disclosed in this report is a complete, true, and accurate financial statement of my (the candidate's) campaign contributions and expenditures.

\_\_\_\_\_  
 Signature of Candidate or Candidate's Representative

Sworn to and subscribed before me, a Notary Public, in and for \_\_\_\_\_, County, Arkansas, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
 (Legible Notary Seal) Notary Signature \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_

**Note: If faxed, notary seal must be legible (i.e., either stamped or raised and inked) and the original must follow within ten (10) days.**

The law provides for a maximum penalty of \$2,000 per violation and/or imprisonment for not more than one year for any person who knowingly or willfully fails to comply with the provisions of A.C.A. § 7-6-201 through § 7-6-227. This report constitutes a public record. This form has been approved by the Arkansas Ethics Commission.

### 11. LOAN INFORMATION

Please Type or Print  
Do not list loans previously reported

DATE	NAME AND ADDRESS OF LENDING INSTITUTION	GUARANTOR(S) IF ANY	AMOUNT
<b>12. TOTAL LOANS DURING REPORTING PERIOD</b>			\$ 0.00

### IMPORTANT

The limits on campaign contributions do not apply to loans or contributions made by a candidate from his or her own personal funds to the campaign, or to personal loans made by financial institutions to the candidate and applied to his or her campaign. Any loans made by a candidate to his or her campaign and any loans made by a financial institution to a candidate and applied to his or her campaign shall be reported in Section 11.

If a candidate desires to use or raise campaign funds to repay himself or herself for personal funds that he or she contributed to the campaign, then he or she would need to report those personal funds as a loan in Section 11.

If a candidate does not desire to use or raise campaign funds to repay himself or herself for personal funds that he or she contributed to the campaign, then those personal funds would not be reported in Section 11. Instead, they would be reported as a campaign contribution either in Section 15 or on line 17, depending upon the amount.

The law provides for a maximum penalty of \$2,000 per violation and/or imprisonment for not more than one year for any person who knowingly or willfully fails to comply with the provisions of A.C.A. § 7-6-201 through § 7-6-227. This report constitutes a public record. This form has been approved by the Arkansas Ethics Commission.

**13. NONMONEY CONTRIBUTIONS**

(Does not include volunteer services by individuals)

Date of receipt	Full Name and Address of Contributor	Description of nonmoney item	Value of nonmoney item	Cumulative Total From This Contributor
<b>14. TOTAL NONMONEY CONTRIBUTIONS</b>			0.00	

**IMPORTANT**

In addition to monetary contributions, candidates are required to report the receipt of any nonmonetary (“in-kind”) contributions. A candidate receives an in-kind contribution whenever a person provides him with an item or service without charge or for a charge which is less than the fair market value of the item or service in question.

The value of an in-kind contribution is the difference between the fair market value and the amount charged. In-kind contributions are addressed in greater detail in Sections 205 and 206 of the Commission’s Rules on Campaign Finance & Disclosure.

The law provides for a maximum penalty of \$2,000 per violation and/or imprisonment for not more than one year for any person who knowingly or willfully fails to comply with the provisions of A.C.A. § 7-6-201 through § 7-6-227. This report constitutes a public record. This form has been approved by the Arkansas Ethics Commission.



**15. ITEMIZED MONETARY CONTRIBUTIONS OVER \$50**

Please Type or Print

(Use Additional Copies Of This Page If Necessary)

<b>Date</b>	<b>Full Name And Mailing Address Of Contributor</b>	<b>Place Of Business/ Employer/Occupation</b>	<b>Amount Of Contribution</b>	<b>Cumulative Total From This Contributor</b>
10/01/2009	Bank of America 1100 North King Street Wilmington, DE 19884	Bank, Bank of America	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  2,000.00	2,000.00
10/12/2009	Ark Monroe, III 425 West Capitol Ave. Suite 1800 Little Rock, AR 72201	Bank, Bancorp South, Banker	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  250.00	250.00
10/13/2009	The Capital Bank 12224 Chenal Pkwy Little Rock, AR 72211	Bank, The Capital Bank	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  1,000.00	1,000.00
10/19/2009	Gary Canada, Sr. 105 Cherry Street England, AR 72046	Bank, Bank of England, President	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  100.00	100.00
10/26/2009	James & Margaret Schenebeck 14904 Lamplight Way Little Rock, AR 72211	Central AR Gem, Mineral & Geology Society, President	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  100.00	100.00
10/30/2009	Pat Norsworthy 1155 West HWY 165 England, AR 72046	Federal Drier & Storage Co., Owner	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  200.00	200.00
10/02/2009	Gerald & Anita Schenebeck P.O. Box 11 Lonoke, AR 72086	Self-Employed, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  100.00	100.00
11/12/2009	Mason & Co. Realty 215 South 2nd Street Jacksonville, AR 72076	Mason & Co. Realty, Real Estate	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  500.00	500.00
11/10/2009	Thomas & Elizabeth Dubbs 140 Broadway New York, NY 10005	Labaton Sucharow, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  1,000.00	1,000.00
<b>Subtotal of Contributions This Page</b>			<b>5,250.00</b>	

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**15. ITEMIZED MONETARY CONTRIBUTIONS OVER \$50**

Please Type or Print

(Use Additional Copies Of This Page If Necessary)

<b>Date</b>	<b>Full Name And Mailing Address Of Contributor</b>	<b>Place Of Business/ Employer/Occupation</b>	<b>Amount Of Contribution</b>	<b>Cumulative Total From This Contributor</b>
11/11/2009	Bernard & Sandra Persky 170 East End Ave. Apt. 4B New York, NY 10128	Labaton Sucharow, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  1,000.00	1,000.00
11/11/2009	Tim & Che Herron 45 Wedgewood Forest Drive The Woodlands, TX 77381	Self Employed, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  2,000.00	2,000.00
11/12/2009	Eric & Tara Belfi 1707 Route 25A Laurel Hollow, NY 11791	Labaton Sucharow, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  750.00	750.00
11/12/2009	Louis & Mickaelle Gottlieb 120-11 83rd Ave. Kew Gardens, NY 11415	Labaton Sucharow, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  750.00	750.00
11/12/2009	Mark Arisohn One Scarsdale Road Apt. 301 Tuckahoe, NY 10707	Labaton Sucharow, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  500.00	500.00
11/13/2009	Grasten Power Technologies, LLC 2201 Timberlock Place Suite 110 The Woodlands, TX 77380	Grasten Power Technologies, LLC	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  1,500.00	1,500.00
12/02/2009	Robert Kaplan 850 Third Avenue 14th Floor New York, NY 10022	Kaplan Fox & Kilsheimer LLP, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  2,000.00	2,000.00
12/02/2009	Fred Fox 850 Third Ave. 14th Floor New York, NY 10022	Kaplan Fox & Kilsheimer, LLP, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  2,000.00	2,000.00
12/02/2009	Richard Kilsheimer 850 Third Ave. 14th Floor New York, NY 10022	Kaplan Fox & Kilsheimer, LLP, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  2,000.00	2,000.00
<b>Subtotal of Contributions This Page</b>			12,500.00	

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## ITEMIZED MONETARY CONTRIBUTIONS OVER \$50

Please Type or Print

Date	Full Name And Mailing Address Of Contributor	Place Of Business/ Employer/Occupation	Amount Of Contribution	Cumulative Total From This Contributor
12/02/2009	Donald Hall 850 Third Ave. 14th Floor New York, NY 10022	Kaplan Fox & Kilsheimer, LLP, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  <div style="text-align: right;">2,000.00</div>	2,000.00
12/02/2009	Joel Strauss 850 Third Ave. 14th Floor New York, NY 10022	Kaplan Fox & Kilsheimer, LLP, Attorney	<input checked="" type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt  <div style="text-align: right;">2,000.00</div>	2,000.00
			<input type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt	
			<input type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt	
			<input type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt	
			<input type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt	
			<input type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt	
			<input type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt	
			<input type="checkbox"/> Primary Election <input type="checkbox"/> Primary Run-Off <input type="checkbox"/> General Election <input type="checkbox"/> General Run-Off <input type="checkbox"/> Debt	
<b>16. TOTAL ITEMIZED MONETARY CONTRIBUTIONS OVER \$50</b>			21,750.00	
<b>17. TOTAL NONITEMIZED MONETARY CONTRIBUTIONS</b>			0.00	
<b>18. TOTAL MONETARY CONTRIBUTIONS THIS REPORT</b> (includes totals from lines 16 and 17)			21,750.00	

The law provides for a maximum penalty of \$2,000 per violation and/or imprisonment for not more than one year for any person who knowingly or willfully fails to comply with the provisions of A.C.A. § 7-6-201 through § 7-6-227. This report constitutes a public record. This form has been approved by the Arkansas Ethics Commission.





# **Bednarz Decl.**

## **EXHIBIT C**

## **Shoffner returns donors' \$10,000 She says 1 check 5 separate gifts**

Arkansas Democrat-Gazette (Little Rock)

November 10, 2011 Thursday

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**Section:** FRONT SECTION

**Length:** 1648 words

**Byline:** MICHAEL R. WICKLINE ARKANSAS DEMOCRAT-GAZETTE

### **Body**

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In 2009, state Treasurer Martha Shoffner accepted a New York law firm's \$10,000 check to her campaign but facing recent questions about it, has decided to give the \$10,000 back.

The single check was meant to be contributions of \$2,000 each from five law partners at the firm, Shoffner's chief deputy said.

It's unclear whether Arkansas ethics rules allow multiple contributors who are not married and not sharing bank accounts to make their donations in a single check.

The firm - Kaplan, Fox & Kilsheimer LLP - has a securities monitoring contract with the Arkansas Teacher Retirement System. Shoffner is a member of the board of trustees for the system.

Shoffner also reimbursed \$9,874 to her campaign carry-over account because campaign and carry-over funds were used to pay for a \$900-a-month lease for a vehicle that was used for campaigning, for her office and for her personal use, said the chief deputy, Debbie Rogers.

During the past few weeks, the Arkansas Democrat-Gazette has questioned Shoffner and some of her employees about the \$10,000 check and the \$900-a-month lease.

In a campaign-finance report for Oct. 1-Dec. 31, 2009, Shoffner reported \$2,000 contributions on Dec. 2, 2009, from Robert Kaplan, Fred Fox, Richard Kilsheimer, Donald Hall and Joel Strauss of the law firm. Fox could not be reached for comment at the firm Wednesday after a firm representative referred this newspaper's questions to him.

### **THE CHECK**

The Democrat-Gazette last week asked how Shoffner knew that the check was intended to be five contributions, whether the check or any other document stated that, and, if so, would she show a copy of the check or document. She declined to do so.

Rogers said the contributions were put on one check at the instruction of Cord Rapert, who worked for Shoffner and went with her to New York.

Shoffner returns donors' \$10,000 She says 1 check 5 separate gifts

However, Rapert, 24, of Jonesboro, now a student at Arkansas State University, said he advised an assistant at the firm that the maximum individual contribution to a state office candidate in Arkansas is \$2,000 per election. It's "incorrect" to indicate that he suggested that the five contributions be made in one check, he said.

"I would have never instructed them to put it on one check, because we know it's not proper with the Ethics Commission," said Rapert.

Shoffner said she's not blaming Rapert. "I am not trying to get Cord in trouble at all," she said.

Rogers, who is a sister of former state Treasurer Jimmie Lou Fisher, said when asked whether it was proper to have five contributions in one check that "inquiries were made by the treasurer, and being unable to determine satisfactorily that such practice is allowable without question, the decision was made to return the contributions to the donors." Shoffner said she decided to return the \$10,000 after consulting Graham Sloan, executive director of the Arkansas Ethics Commission. She said it is a gray area in the law.

"I just wanted to rectify the situation," she said.

In recounting his conversation with Shoffner, Sloan said, "My advice, if you had called before you deposited a check is I would have said, 'Send it back and get a separate check from each of those individuals.'" "You can't really unring the bell," Sloan said, but "the only remedial action that I could think of would be to return [the check]." Rogers said the \$10,000 was returned Friday.

Sloan said the state Ethics Commission has never considered whether accepting a \$10,000 contribution from a firm intended to be five \$2,000 contributions violates the ethics laws. The commission determines whether a violation has occurred, he said.

Under Arkansas Code Annotated 7-6-205 (b), "No contribution shall be made to or knowingly accepted by a candidate or his or her campaign committee ... unless the contribution is made in the name by which the person providing the funds for the contribution is identified for legal purposes." Sloan said he doesn't see a problem with a husband and wife who have a joint account and are both listed on the account giving a \$4,000 check to represent two \$2,000 contributions.

## RETIREMENT SYSTEMS

George Hopkins, executive director of the Arkansas Teacher Retirement System, said the system is the lead plaintiff in one suit filed in 2010 by the law firm and lead plaintiff with two other institutional investors in another suit filed by the firm in 2009.

The firm has been working for the system since December 2008. The system has four securities monitoring firms. It doesn't pay them anything, Hopkins said. "The presiding judge decides what amount, if anything, that these firms are paid," he said.

Hopkins said he didn't know until recently that the firms contribute to state officials and he's never asked any of the firms to contribute to any trustees who are state officials and never had a trustee ask him to make such a request. State Auditor Charlie Daniels also serves on the system's board of trustees.

In the past several years, it's become common for attorneys for firms that were hired to monitor the investments of the Arkansas Public Employees Retirement System and/or the teacher retirement system to contribute to the state treasurer and the state auditor.

## NEW YORK



Shoffner returns donors' \$10,000 She says 1 check 5 separate gifts

Shoffner's contact with the law firm in 2009 came when, according to records in her office, she and Rapert were in New York on Nov. 29-Dec. 3 for a conference of the National Association of State Treasurers. The conference was actually Nov. 30-Dec. 2.

Asked why she decided to return to Little Rock on Dec. 3 rather than Dec. 2 since a copy of the conference agenda shows that the last event started at noon Dec. 2, Rogers said that the final luncheon of the conference concluded at 1:30 p.m. "and as the annual lighting ceremony of the Christmas tree in Rockefeller Center was scheduled for that evening, the decision had been made for the treasurer to attend that event on behalf of the state of Arkansas" and return to the state the next day.

Rogers said the cost to the state for Shoffner and Rapert to stay the evening of Dec. 2 in New York rather than return to Arkansas that day was \$1,068.29, including \$515 for Shoffner's hotel room and \$415 for Rapert's.

The total cost of the trip was \$6,219.26, Rogers said.

Rapert said he attended the tree-lighting ceremony with Shoffner but that they stayed an extra day in New York for a fundraiser at the law firm. That's when Shoffner received the \$10,000 check, he said. He said attorneys at the firm offered to hold a fundraiser for her after she met one of them at a previous conference.

Shoffner said she didn't stay to attend a fundraiser and that there was no fundraiser. She visited the firm's office before she flew back to Arkansas on Dec. 3, didn't solicit funds, but did receive a \$10,000 check, she said. "There was absolutely no reason for them to give it to me," Shoffner said.

#### THE VEHICLE

The \$900-a-month vehicle lease was for a Ford Freestar, a minivan with seating for seven. Shoffner leased it using campaign carry-over funds and campaign funds. She acknowledged using the vehicle for personal use some of the time that she had it. She said she thought she was complying with state law.

The Democrat-Gazette asked whether Shoffner signed a lease agreement that included an option to purchase the vehicle, and whether she could provide a copy of the lease and purchase agreements. She declined to provide copies.

Rogers said the lease for the campaign use of the vehicle was paid for from campaign funds, which is allowed under law.

"Following the election, as the question of state vehicles was still in the courts awaiting resolution, she continued to lease the vehicle for her official duties using carry-over campaign funds, which is allowable under Arkansas state law," Rogers said.

"However, because the vehicle was subject to minimal personal use during that time that was not documented, Treasurer Shoffner made the decision to reimburse 100 percent of the lease expenditures out of personal funds to resolve any issues that may have arisen over her use of the leased vehicle," Rogers said.

Sloan of the Ethics Commission said he and commission chief legal counsel Rita Looney talked Tuesday with a Shoffner representative about Shoffner's vehicle lease.

Under state law, a candidate is allowed to use campaign funds to lease a vehicle for campaign use, but not for personal use, he said, and an officeholder can use carryover funds to lease a vehicle for office-related use, but not for personal use.

"If personal use did occur, you cannot go back and change [that]," Sloan said. "The only remedial action that came to mind was reimbursement to make up for personal usage." Whether it would be OK for Shoffner to travel from

Shoffner returns donors' \$10,000 She says 1 check 5 separate gifts

her home to the Capitol and back home in the vehicle "is just an unanswered question," Sloan said. "It would depend on the facts of the situation." PAST PROBLEMS

Last week, Shoffner admitted that a report filed in January that showed that she had \$97,349.67 in carry-over funds on May 19, 2010, from her campaign, and \$47,356.29 on Dec. 30 was wrong.

State law limits officeholders' carry-over funds to an amount equal to the office's annual salary, which in this case is \$54,305.

Shoffner acknowledged the errors by filing five amendments to campaign-finance reports last week, after the Democrat-Gazette questioned her about them.

In one amendment, she changed her reported carryover to show no balance on the May 19 and Dec. 30 dates in 2010 and no expenses during that period.

Shoffner, a Democrat from Newport, has been the treasurer since 2007 and was re-elected to her second four-year term in November 2010.

Her predecessor as treasurer, Delight Democrat Gus Wingfield, was reprimanded and fined \$750 by the Arkansas Ethics Commission in 2004. The actions stemmed from his decisions to give promotions and pay increases to members of his family, actions that were disclosed by the Arkansas Democrat-Gazette.

This article was published 11/10/2011

**Load-Date:** November 10, 2011

# **Bednarz Decl.**

## **EXHIBIT D**

## SHOFFNER LIVED rent-free near the Capitol for most of her first term, landlord says.

Texas landlord: FBI asked about her checks

Arkansas Democrat-Gazette 22 May 2013 CHAD DAY

Martha Shoffner stayed rent-free for most of her first term as state treasurer at a law office a few blocks from the state Capitol, her landlord confirmed Tuesday.

Tim Herron, a Texas lawyer, said Shoffner, 68, began staying at the two-story, gray brick house he used as an office at South Ringo and West Second streets shortly after she was elected in 2006.

Herron, who owned the building at the time, said Shoffner paid the utility bills at the office in exchange for living there until about two years ago, when he allowed the office to go into foreclosure because his firm didn't need it anymore.

Shoffner, whose primary home is in Newport, then moved into an apartment across downtown Little Rock, also owned by Herron and his wife, Che Williamson. This time, though, Shoffner was required to pay rent at the Rainwater Flats apartment, a little more than \$800 per month, Herron said.

Herron's arrangement with his tenant has now become a large part of what federal agents say motivated Shoffner to begin soliciting cash bribes from a bond broker in exchange for her directing a large of part of the state's business to the



broker.

In federal court papers unsealed Monday, an FBI agent said the broker paid Shoffner \$6,000 about every six months so she could pay for what she said was a \$1,000-a-month apartment in Little Rock. In total, the agent accused Shoffner, who resigned Tuesday, of accepting cash payments of at least \$36,000 over a period of years.

The payoff allegation was contained in a criminal complaint that accuses Shoffner of attempt and conspiracy to commit extortion under color of official right. The allegation came to light two days after FBI agents arrested Shoffner at her Newport home after an FBI informant secretly recorded her taking a \$6,000 cash bribe hidden in a pie box in return for the lucrative state business she directed his way, the complaint says.

In the criminal complaint, Shoffner's living arrangement was

also cited by a cooperating witness, who told federal agents in April 2012 that Shoffner had begun using the unnamed broker more than others during the same time in 2011 that the treasurer was looking for a new place to live in Little Rock. The witness said Shoffner had just learned that a downtown building in which she had been living for free was about to be sold.

During this period, Shoffner made frequent remarks about not being able to afford a place in Little Rock to avoid commuting the 90 miles from Newport on a daily basis, the witness said. As treasurer, Shoffner was paid \$54,304.80 a year.

In a phone interview Tuesday, Herron said that he didn't have a reason to ask Shoffner about the source of her rent payments. She has continued to pay rent for the apartment at the Rainwater Flats in the 500 block of East Capitol Avenue. He and his wife received a check just a week or so ago, which they deposited, he said.

Questions about Shoffner's living arrangement didn't come up until an FBI agent contacted Herron six months to a year ago, the lawyer said. The agent asked Herron to provide copies of Shoffner's monthly rent checks for the apartment, which Herron said he turned over. The agent also brought up the rent-free arrangement and Herron's campaign contributions to Shoffner in past elections.

"They wanted to know what the deal was," he said of the FBI.

Herron said he told the agent the story from the beginning.

He and his wife bought the building at 1021 W. Second St. in 2004, which county property records confirm.

Herron, whose practice is outside Houston in a community called The Woodlands, needed the building for himself and his staff to use while handling federal civil cases re-



Search Results

garding hormone-replacement therapy that were assigned to a judge in the Eastern District of Arkansas.

At first, Herron said, he and his wife periodically stayed at the office, which has a living quarters on the second floor. But Herron said they tired of that quickly, and after his wife began teaching summers as an adjunct professor at the University of Arkansas at Little Rock's W.H. Bowen School of Law, they decided to buy the condominium at The Rainwater Flats.

Sometime in 2006 or early 2007, Herron said, he began looking for someone to live in the office building so it would be occupied around the clock. The office is in a part of downtown Little Rock that often results in many homeless people congregating around the nearby properties, he said.

At this time, Herron said, he also had become involved in Arkansas politics, contributing to several of-

ficials including both of Shoffner's campaigns, including a \$2,000 contribution from him and his wife in 2010, which state records confirm.

"When I moved to Arkansas, I was thinking about retiring there, so I thought, as usual, like I do in Texas, I needed to find out who's what and what's who and you need to contribute money to politicians," he said.

"I was interested in my wife getting a faculty job at UALR law school, so I gave money to politicians. That's what you do when you want something in any state, including Texas," he said. "I had no business relationship with the treasurer's office. She never gave me anything."

Herron said Steve Faris, a Democrat and then-state senator from the Malvern area, referred Shoffner, who had said she was looking for a place in Little Rock.

In an interview Tuesday, Faris, who is now serving on the state Lottery Commission, confirmed that he had referred Shoffner to Herron, whom Faris described as a friend.

"I just knew he had a place, and she was looking for one, and they worked something out," Faris said in an interview Tuesday, noting that he wasn't aware of any of the details of the arrangement between Herron and Shoffner.

Herron said he spoke with Shoffner, and they worked out the agreement for her to pay the utilities but no rent.

"Essentially, it killed two birds with one stone," Herron said. "We had somebody there every night, so it was a good deal for us, and I guess it was a great deal for her, too," he said.

Herron said the arrangement worked well even while his business in Arkansas was winding down. After his role in the federal cases

ended, he didn't need the office anymore and put it up for sale. He said it sat for two years without any takers.

"It was a good deal for me because I had the place for sale for two years listed with a Realtor," he said. "She kept it nice, and it looked better than if there hadn't been anybody there."

According to tax records, the Herrons also failed to pay property taxes in 2005, 2006, 2007 and 2008 on the home and the Arkansas commissioner of state lands began actions to file a quitclaim deed against the Herrons to eventually put the house up for auction to pay off the tax burden.

According to a redemption deed filed in Pulaski County Circuit Court, Herron paid off \$6,652 in back taxes along with interest and penalties totaling \$8,764.10 in March 2010.

Less than nine months later in January 2011, First National Bank filed a foreclosure claim on the property. Foreclosure proceedings have also been started on the apartment, court records show.

On Tuesday, Herron said that at that point, he and his wife were tired of Arkansas. (She also didn't get the faculty teaching job).

"We had that condo, and we no longer needed that because my wife had taught law school at UALR for six summers. She got sick and tired of it and got a teaching job in Texas, and our practice in Arkansas was virtually nonexistent," he said.

"So [Shoffner] needed a place because we no longer had that building, so we leased the condo to her," he said.

When the FBI agent called him, Herron said, the rent checks were the agent's foremost interest. The agent also questioned Herron regarding any business he had with



the treasurer's office.

here, hope it's good there' and something like that," he said.

Other than a few follow-up calls concerning the checks, Herron said, that was last time he talked with the agent, whose name he couldn't recall. Herron said he volunteered to testify before a grand jury but so far hasn't been called.


Since turning over copies of Shoffner's rent checks, Herron said, he has kept quiet at the FBI's request but Shoffner's arrest made keeping the secret "moot."

FBI spokesman Kim Brunell said Tuesday that she couldn't comment on whether Shoffner was being investigated further regarding the arrangement with Herron.

He saw the news Monday on the Internet.

"I said, 'Well, we just lost a paying tenant,' he said. Information for this article was contributed by Claudia Lauer and Noel Oman of the Arkansas Democrat-Gazette.

"We're just going to follow the facts wherever they may lead," she said, noting the investigation was still considered to be ongoing.

 Write a comment...

Herron said he hasn't spoken to Shoffner recently.

 Page View  Share  Comment  Save  More

 Bump it  Dump it

"The only thing I hear from Martha is when I get a rent check, and there's usually a personal note that she wraps the check in a piece of paper. She writes, 'The weather's good

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,  
on behalf of itself and all others  
similarly situated,

Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,  
  
Defendant.

---

ARNOLD HENRIQUEZ, MICHAEL T. COHN,  
WILLIAM R. TAYLOR, RICHARD A.  
SUTHERLAND, and those similarly situated,

Plaintiffs,

No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,  
  
Defendant.

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THE ANDOVER COMPANIES EMPLOYEE  
SAVINGS AND PROFIT SHARING PLAN, on  
Behalf of itself, and JAMES PEHOUSHEK-  
STANGELAND and all others similarly situated,

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,  
  
Defendant.

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**SPECIAL MASTER'S SUPPLEMENTAL RESPONSE TO CUSTOMER CLASS  
COUNSEL'S MOTION FOR ACCOUNTING, AND CLARIFICATION THAT THE  
SPECIAL MASTER'S ROLE HAS CONCLUDED**

On July 31, 2018, the Court ordered the Lawyers and the Special Master to supplement their previous memoranda<sup>1</sup> to address the Court's authority to permit the Master to address objections to his Report and related issues. Dkt. # 410. As the Master stated in his Reply, the Customer Class's narrow reading of the March 8, 2017 Appointment Order ("Appointment Order") as limiting the Special Master's role strictly to submission of his written Report is "at odds with the language and spirit of the appointment and defies common sense." *See* Dkt.# 377. However, should the Court wish to amend the Appointment Order to direct the Master to respond to the Law Firms' objections and address related issues going forward, the Court may do so under ¶ 16 of the Appointment Order itself as well as under the authority expressly granted by Fed. R. Civ. P. 53(b)(4) and (f).

Both the Appointment Order, and Fed. R. Civ. P. 53 upon which it derives its authority, allow the Court to amend the Appointment Order with appropriate notice to the parties. The Appointment Order provides: "[t]his Order may be modified upon request of the Master or a party, or by the court *sua sponte*, after providing notice and an opportunity to be heard." Order, ¶ 16. This language, unambiguous, recites (and cites) the amendment provision in Rule 53(b)(4). *See* Fed. R. Civ. P. 53(b)(4)(an "order may be amended at any time after notice to the parties and an opportunity to be heard.") The rules make clear that the Court may amend the Appointment Order to delegate additional tasks to the Special Master so long as the Court provides adequate notice to the parties of its intention to amend (which it has) and affords the parties an opportunity

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<sup>1</sup> On June 19, 2018, Labaton filed a Motion for Accounting, and Clarification that the Special Master's Role Has Concluded. Dkt. #302. The Court directed the Special Master to respond, and the Special Master subsequently filed a Response. Dkt. # 377. On July 13, 2018, Labaton filed a motion for leave to file a sur-reply. Dkt. # 397.



to be heard on that issue (which it has through this briefing and the hearing scheduled for August 9, 2018).

While the First Circuit has never commented on precisely when an order appointing a Special Master may be amended, outside the First Circuit amendments are made as a matter of course. As prescribed in Rule 53(b)(4), the Court may freely amend an order after affording the parties notice and an opportunity to be heard. Rule 53 does not place any limitation on this right. The Court, for example, may add a new provision not explicit in the original order. *See C.D.S., Inc. v. Zetler*, 254 F. Supp. 3d 625, 633 (S.D.N.Y.), report and recommendation adopted, 283 F. Supp. 3d 94 (S.D.N.Y. 2017) (amending order to permit *ex parte* communications between the Special Master and the Court); *Halderman v. Pennhurst State Sch. & Hosp.*, 536 F. Supp. 522, 523 (E.D. Pa. 1982) (deleting words in the appointment order to “lay to rest once and forever the perennial contention that the Special Master possesses powers over and beyond” the functions delegated to him by the Court). It may even do so even after a finding—not made in this case—that the original order was deficient. *See Glover vs. Udren*, W.D. Pa., No. CIV.A. 08-990 (Nov. 9, 2011) (ordering amendment of order appointing special master where order failed to include full requirements set out in Rule 53(b)).

An amendment to extend the Master’s role to expressly permit the Master to address the Law Firms’ objections falls squarely within the range of permissible reasons for amending an order under Rule 53(b)(4). *See In re Welding Rod Products Liab. Litig.*, N.D. Ohio, No. 103-CV-17000, 2005 WL 5417813, (Sept. 8, 2005) (amending order of appointment to extend Special Master’s involvement)<sup>2</sup>. Allowing the Special Master to respond to objections is consistent with

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<sup>2</sup> The Court is not required to expressly reserve its right to amend an order, even though it did so in *In re Welding* as part of a two-tiered appointment in that case. Rather than authorize the master to conduct a complete investigation, the court opted to reassess the need for the Master after he expended 1,000 hours on the case. To determine how to proceed at that juncture, the order required the Court to “assess the need for [the Master’s] ongoing involvement and

the Appointment Order's provision permitting the Court to continue availing itself of the Special Master's expertise, such as resubmitting part or all of the Report to the Special Master for additional consideration. *See* Order, ¶ 12 (“[a]ction on the Master’s Report and Recommendation will be taken in the manner described in Federal Rule of Civil Procedure 53(f).”); Fed. R. Civ. P. 53(f)(1) (“In acting on a master’s order, report or recommendations, the court must give the parties notice and an opportunity to be heard. and may adopt or affirm, modify, wholly or partly reject or reverse, *or resubmit to the master with instructions.*”)(emphasis added). It is more efficient for the Court to resolve the objections prior to his own determination, rather than resubmitting to the Master at a later time, as the Appointment Order contemplates could happen. *See D.C. vs. Dep’t of Educ.*, D. Haw., No. CIV 07-00362 ACKKSC (July 25, 2008) (Court remanded Report back to the Special Master to revisit factual findings to address party’s objection that Master had failed to consider certain costs in determining total hours reasonably expended.) Allowing the Special Master to respond to objections prior to the Court’s *de novo* determination would effectively streamline the back-and-forth between the Court and the Special Master and save the Court and the parties this additional step.

In sum, the Court has authority to amend the March 8, 2017 Appointment Order as it deems appropriate under Fed. R. Civ. P. 53(b)(4) and ¶ 12 of the Appointment Order.

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[ ] extend the terms of his compensation accordingly (internal citations omitted).” 2005 WL 5417813, at \* 1. Though it made sense to add such language in *Welding*, a reservation of its right to amend was not, and *is* not, required by Rule 53. The Law Firms had the opportunity to object to the Appointment Order, issued seventeen months ago. They did not. If the Law Firms objected to the terms of the Appointment Order, including the Court’s right to amend it after notice to the parties and an opportunity to be heard, the time for raising those objections was in March 2017.

Dated: August 6, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically on August 6, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing (“NEF”). Paper copies were sent to any person identified in the NEF as a non-registered participant.

/s/ William F. Sinnott

William F. Sinnott