

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

Report of Attendance at Conference or Seminar

Name of Member Attending: Steve Jolly
 Name of Conference/Seminar: SACRS Symposium
 Conference/Seminar Sponsor: SACRS
 Dates of Attendance: 4/23/13

over (1)

Brief Summary of Information and Knowledge Gained:

The ultimate charge of a FICRA TRF is to ensure or insure that benefits can be paid as promised. Two CA cities are currently in chpt 9 bankruptcy, Stockton & San Bernardino. I came to learn more about mun. bankruptcy and the

Evaluation of the Conference or Seminar:

Thought provoking. We may be seeing more and more chapter 9. We (FCERA) should get in front of the issue.

Recommendation Concerning Future Attendance:

This was a one off or one time talk but well worth it.

Signature [Handwritten Signature]

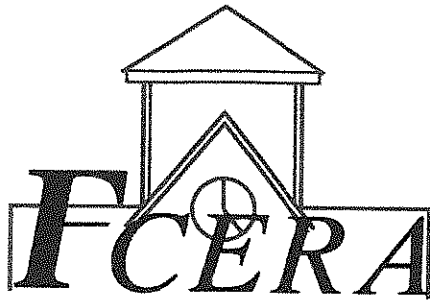
Date 4-23-13

① effect of such on employers, the plan and bond holders, we started with what is chapter 9 and the nuances. A municipality must truly be insolvent to file (AB 506). Chapter 9 dates back to the 30's.

there was the a good dialogue on workouts and terminations; even a CERCLA plan terminating an employee agency. We (FERA) should have staff review & audit our member employers' balance sheets.


the heart of the 2 chapter 9 cases lies in does CALPERS join other unsecured creditors or do they have an implied constitutional lien? their council presented their case.

Finally a discussion about what can systems do preemptively to safeguard? Policy? Law?



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Phillip Kapler
Retirement Administrator

DATE: 24 APR 13
TO: Board Members
FROM: Phillip Kapler, Administrator 
SUBJECT: SACRS Symposium – Tues, 23 APR 13
Bankruptcy, Withdrawals, Withheld Contributions
San Francisco, Airport Marriott Waterfront Hotel

I found the Symposium both informative, and confirming. With a panel of expert and experienced presenters to share their observations, there was much to take away. It was confirming, insofar as it showed that FCERA is pursuing a wise course in the attention it accords to County fiscal circumstances, and for the emphasis FCERA is giving to managing downside risk in the investment program deliberations underway.

The possibility of a major employer withdrawal or bankruptcy, heretofore not really more than hypothetical, speculative matters, has become a genuine risk that FCERA and other County systems may need to incorporate in their strategic planning and policy development. Though previous cases have been limited primarily to municipalities (Orange excepted) they provide important lessons. Included with the attachments is a list of California cases.

Chapter 9 bankruptcy was new legislation passed by Congress in the Depression Era, to provide relief from creditors for state political subdivisions (generically referred to throughout as "municipalities"). Bankruptcy is not an option for local governments unless their state has codified consent to operate under the national government act. California is one of 24 states that have done so.

Since the early 1990's, there have been about fifteen such filings, the Orange County case being among the earliest and most prominent in recent memory. More recently, Vallejo,

Stockton and San Bernadino have sought relief under Chapter 9, and retirement contribution burdens have figured prominently as contributors in each case.

A closely related topic is employer withdrawal from the retirement plan, which can be complete, partial or gradual and *de facto*. While the CERL provides guidance in such cases, attorneys and actuaries present deemed the statute to be insufficient, and each advised that retirement funds should, if they have not already, create a Withdrawal and Withheld Contributions Policy as supplements to sections §§ 31564, 31564.2, 31584.

CalPERS has their own statutes governing these circumstances. All significant bankruptcy cases to date have affected them. Their statute and policies might be a model for County plans. They recently sent withdrawal liability statements to all participating employer units.

Harvey Leiderman spoke about the importance of being proactive in this area, advising that retirement funds should look at the UAAL as an "unsecured loan" to employer units, and posture themselves as a lender in such circumstances would do. He strongly encouraged fund representatives to become more knowledgeable about county fiscal status, the budge, finance structures, assets, revenue sources, etc. Contingency plans should be in place if an employer were to approach bankruptcy, or fall in arrears on their full contribution.

Follow-ups from the meeting :

1. SACRS will send out a call for existing withdrawal policies, compile and share them with all county funds as sources for those looking to establish new policies or refine policies in existence.
2. The SACRS plenary Fall Conference may include follow-up sessions on these same topics, as among the participants, there seemed to be strong interest.
3. Fixed income, distressed debt and perhaps traditional long managers should be consulted on how they assess creditworthiness and risk of issuers, since their assessment techniques may render a guide to retirement funds hoping to better understand the risks within the fiscal structure of their plan sponsors.



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SACRS SYMPOSIUM

**A Bankruptcy, Pension Obligations &
Good Faith Discussion:**

**Functioning under the County Employees Retirement
Law (CERL) - Withdrawals, Close of Plan,
Consolidations, Bankruptcy and Refusal to
Pay Contributions**

**Tuesday, April 23, 2013
9:30 AM – 3:30 PM**

**San Francisco Airport Marriott Waterfront Hotel
1800 Old Bayshore Highway
Burlingame, CA 94010
(650) 692-9100
Irvine Room**

SACRS SYMPOSIUM AGENDA
TUESDAY, APRIL 23, 2013
San Francisco Airport Marriott Waterfront Hotel
Irvine Room

Similar to Cal PERS, some CERL systems are dealing with special districts seeking to leave or otherwise curtail their obligations to the retirement systems under a variety of circumstances. This all-day session presents an in-depth discussion of the various exit issues between '37 Act systems and a public entity's pension obligations

8:30 A.M. Breakfast & coffee available for attendees

9:30 A.M. – Opening Remarks

Moderator: Robert Palmer, SACRS Executive Director

9:30 A.M. – 10: 30 A.M.

Topic 1 Chapter 9 Bankruptcy

Speakers: Ileana Hernandez, Attorney, Manatt, Phelps, Phillips
Ivan Kallick, Attorney, Manatt, Phelps, Phillips

- I. Overview of Chapter 9 Bankruptcy**
 - A. Requirements for Entering Chapter 9
 - B. AB 506 Limitations to Filing
 - C. Consequences of Filing Petition
 - D. Monetary and Non-monetary Costs of Filing
 - E. Role of Bankruptcy Court
 - F. Municipality Powers
 - G. Role of Creditors
 - H. Role of Residents, Employees, Retirees
 - I. Plan of Adjustment
 - J. Requirements to Confirm a Plan of Adjustment

- II. History of Municipal Bankruptcies in the United States**
 - A. Origins of Chapter 9 Bankruptcy
 - B. Chapter 9 Bankruptcy Cases Outside of California
 - Jefferson County, Alabama 2011
 - Central Falls, Rhode Island 2011
 - Harrisburg, Pennsylvania 2011
 - C. Chapter 9 Bankruptcy Cases in California
 - Orange County, California 1994
 - West Contra Costa Healthcare District-2006



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- City of Vallejo, California 2011
- City of Stockton, California 2012
- City of San Bernardino, California 2012

III. Public Pensions as Creditors and Parties in Interest

- A. Filing Proof of Claims
- B. Priority of Claims-*Administrative Claim v. Unsecured Claims*
- C. Payment of Claim
- D. Timing of Payment

IV. Does the State of California's Have An Interest in and/or a Role in Preventing Bankruptcy and/or Participating in a Chapter 9 Bankruptcy?

10:30 A.M. Morning Break

10:40 A.M. - Noon

TOPIC 2 The Impact on CERL Systems: Withdrawals, Close of Plan, Consolidation, Bankruptcy, or Refusal to Make Contributions

Speakers: Lance Kjeldgaard, Attorney, The Kjeldgaard Law Firm
Paul Angelo, Senior Vice President & Actuary, The Segal Company

I. The CERL with regard to withdrawals, close of plan, consolidation, bankruptcy, or refusal to make contributions

Relevant California Code Sections:

- Withdrawals 31564 – 31564.2
- Close of Plan 31483, 31564.2, 31564.5
- Consolidation 31648.2
- Refusal to make contributions 31584
- What do these sections require?
- Are they sufficient to handle the specific situations?
- Are they sufficient to deal with a special district filing for bankruptcy?

II. Situations for Discussion:

- If a district withdraws under 31564 and 31564.2, how is the withdrawal liability determined? How does the withdrawal liability relate to the district's UAAL before the withdrawal?
- What if the district wants to move all of its safety members to PERS and leave two general members in the CERL system,

does this amount to an effective withdrawal under 31564 and 31564.2?

- What if the district lays off all but two employees, is this an effective withdrawal?
- In anticipation of bankruptcy, how do we establish the withdrawal liability as a secured debt?
- If the district is a JPA, should we include the underlying public agencies in our demand to secure the any withdrawal liability?
- What role should LAFCO play in securing the withdrawal liability of a district going out of business?
- If the County takes on the district employees because the County is picking up services, what is the effect of an intra-system transfer and who pays for any withdrawal liability or UAAL?
- What if the district lays off all of its employees, is this an effective withdrawal under 31564, even though the employees didn't vote to withdraw?
- There is a possibility that in a multi-employer plan, the judge could direct a measure of withdrawal liability that helps the debtor agency but has adverse consequences on other employers. How can such a circumstance be avoided or mitigated?

Noon – 1:00 P.M. LUNCH BREAK

LUNCH WILL BE PROVIDED BY SACRS: This time will be used as a working lunch; general questions can be raised from the floor and discussed openly among the attendees

1:00 p.m. – 2:00 p.m.

TOPIC 3 Cal PERS and Dealing with the Insolvency Issues of Public Agencies

Speaker: Peter H. Mixon, General Counsel, California Public Employees Retirement System (Cal PERS)

- A Tale of Three Cities: Vallejo, Stockton, and San Bernardino Unresolved Issues and Lessons Learned
- What are the statues under which PERS operates?
- Calculation and notification of withdrawal liabilities of individual employers



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2:00 p.m. Networking Break

2:10 P.M. – 3:00 P.M.

Topic 4 Municipal Insolvency: Fat Tail Events and How to Manage the Risks

Speaker: Harvey Leiderman, Attorney, Reed Smith LLP

- I. Risk Management: Stress test your plan**
 - Contributions – normal cost and UAAL
 - Cash flow
 - Investment portfolio
 - Impact on other employers
 - Benefit payments to members
- II. Risk Mitigation: Take affirmative action**
 - Use the powers the CERL and the Constitution give you
 - Audit your employers
 - Consider amortization alternatives
 - Consider financial accommodations
 - Act like a lender
 - Collateralize the debt
 - Negotiate negative covenants
 - Take an active role in Ch. 9, pre and post-filing
 - Test the Tenth Amendment

3:00 P.M.

Closing: Conclusions and Follow-up Assignments

Speakers: Tom Ford, SACRS Treasurer
Robert Palmer, SACRS Executive Director

- What would the attendees want as follow-up items to the session?
- Timelines and communications

■ Origins of Chapter 9 Bankruptcy

- The U.S. Bankruptcy Code was amended in 1934 to allow municipalities to declare bankruptcy.
- Chapter 9 of the Bankruptcy Code was developed in 1934 when municipalities faced the strain of the Great Depression and has been amended multiple times since it was declared constitutional in 1937.
- Since the establishment of Chapter 9 bankruptcy, over 600 municipalities have filed for bankruptcy, and most of these have been special purpose districts.

■ Requirements for Entering Chapter 9

- Must be a municipality (a political subdivision or public agency or instrumentality of a state, including counties, cities, districts, and various authorities; not the state of California).
- “Specifically authorized” under state law to be a debtor under federal bankruptcy law.
- Must be “insolvent” (municipality is unable to currently or prospectively pay its bills as they become due; referred to as the “cash flow” test).
- Desires to effect a plan to adjust debts.
- Negotiations with creditors and unions are at an impasse or futile.

■ AB 506 Limitations to Filing

- Enactment of AB 506 was a reaction to California’s fiscal crisis and heightened fears that municipalities would follow the City of Vallejo.
- The new law places certain procedural restrictions on a municipality’s ability to file for bankruptcy protection.
- The Bankruptcy Code requires explicit state approval before a municipal entity can file for bankruptcy protection under Chapter 9.
- Under the new law, as a prerequisite for state approval of the filing:
 - The local public entity must participate in a “neutral evaluation process,” or
 - The governing board of the local public entity must declare a fiscal emergency and adopt all resolutions authorizing the filing (by a majority vote) after noticed public hearing.

■ Chapter 9 Bankruptcy Cases in California

- Orange County, California (1994)
 - Financial distress caused by derivatives and pooled funds
- West Contra Costa Healthcare District (2006)
 - Budget issues – rising costs and falling tax revenues
- City of Vallejo, California (2011)
 - Budget issues – rising costs and falling tax revenues
- City of Stockton, California (2012)
 - Budget issues – rising costs and falling tax revenues
- City of Mammoth Lakes, California (2012)
 - Developers' lawsuit and adverse judgment
- Mendocino Coast Hospital District (2012)
 - Financial stress in health care delivery system
- City of San Bernardino, California (2012)
 - Budget issues – rising costs and falling tax revenues

- Rejection of collective bargaining agreements and memorandum of understanding
- Modification to retiree health benefits
- Priority of Claims (Administrative Claim v. Unsecured Claim)
- Use of the Claim Allowance/Objection Process
- Use of the Plan of Adjustment Process