

EMPLOYEES RETIREMENT SYSTEM
OF THE GOVERNMENT OF THE VIRGIN ISLANDS
SPECIAL MEETING OF THE BOARD OF TRUSTEES

St. Thomas/St. Croix via Zoom
Monday, December 28, 2020
10:00 am
** AGENDA **

I. Call to Order

II. Roll Call

III. EXECUTIVE SESSION

This portion of the meeting will be closed to the public for matters pertaining to trade secrets / or financial or commercial information/ or personal/ or legal matters; or matters whose premature disclosure will frustrate the implementation of the proposed agency action.

A. Unfinished Business

(i). VI Finest Foods LLC Settlement Proposal

IV. REGULAR SESSION

V. Privileges of the Floor

VI. Adjournment

**GOVERNMENT EMPLOYEES RETIREMENT SYSTEM
MINUTES BOARD OF TRUSTEES SPECIAL MEETING**

December 28, 2020

The Special Meeting of the Board of Trustees for December 28th was called to order at 10:04 a.m. The meeting was held via Zoom. At roll call, Trustees present were Callender, Bowry, Cohen, Liger, and Smith. McDonald and Clendinen (ex-officio) were absent.

Staff in attendance: Austin Nibbs, Administrator, Cathy Smith, General Counsel, and Ishmael Meyers, Deputy General Counsel.

Also, present in the meeting were Pedro Williams, Board Counsel, Shari N. D'Andrade, Senior Associate, Kellerhals Ferguson Kroblin PLLC, and Desiree Hill, Stenographer.

Regular Session

A motion was made by Trustee Cohen and seconded by Trustee Bowry to go into Executive Session. The motion passed with 5 yes (Bowry, Cohen, Liger, Smith, Callender); 1 absent (McDonald).

Executive Session

There was discussion on the pros and cons on the settlement offer from Charleswell and Percell since July 2020, to include the settlement discussion memorandum from Attorney D'Andrade to Cathy Smith, General Counsel dated December 16, 2020.

A motion was made by Trustee Smith and seconded by Trustee Cohen to accept the Administrator's recommendation to approve the settlement with V.I. Finest Foods of \$50K initial payment with an interest rate of no less than 4%.

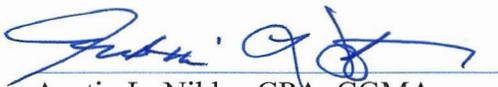
Note: All other points in the latest settlement proposal were acceptable to the Board as outlined in the December 16, 2020 memo to GERS General Counsel. See attachment.

A motion was made by Trustee Liger and seconded by Trustee Smith to come out of Executive Session. The motion passed with 5 yes (Bowry, Cohen, Liger, Smith, Callender); 1 absent (McDonald).

Adjournment

A motion was made by Trustee Cohen and seconded by Trustee Smith to adjourn the meeting. The motion passed with 5 yes (Bowry, Cohen, Liger, Smith, Callender); 1 absent (McDonald).

The meeting ended at approximately 10:58 a.m.



Austin L. Nibbs, CPA, CGMA
Administrator/CEO
Secretary, GERS Board of Trustees

From: Shari D'Andrade
To: Smith, Cathy
Subject: VIFF Guarantors Action
Date: Wednesday, December 16, 2020 11:58:10 AM
Attachments: Settlement Discussions Grid.docx

Hi Cathy,

Here's a recap of our conversation.

Per Attorney Smock, here's the latest settlement proposal:

- Consent judgment for \$2.75MIL
- \$50K initial payment either immediately upon execution of the Consent Judgment (preferable) or within 30 days
- \$5K monthly payments for 5 years
- \$250K lump sum payments upon the anniversary of entering into the settlement agreement for 5 years
- At the end of the 5 years, a final balloon payment of \$1,420,000.
- Estate Fortuna as collateral and security interest in all WestBay assets.
- No prepayment penalty.
- Interest was addressed, but should be considered.

Attached is the grid that shows how these settlement discussions changed over these months. The Board authorized repayment of no less than \$2.75MIL, an initial payment of at least 15% (\$412,500 based on \$2.75MIL repayment), no more than 5-years repayment term, and collateral.

Hank believes that this may be the best possible scenario and isn't confident that the Guarantors will live up to the terms of the settlement agreement (neither am I). As an upfront benefit, GERS saves attorneys' fees and time with moving for summary judgment and waiting for the court to grant it. The matter is before Judge Meade and I believe if we filed for summary judgment, it would sit for a long time. Also, having the consent judgment in hand means we can immediately execute upon the guarantors' default and get WestBay's accounts receivables and the Fortuna property (I believe we guesstimated that it's worth approx. \$40K). As we discussed, Percell's assets are tied up in trusts, etc. and Charleswell doesn't appear to have any free and clear assets.

There are downsides, namely the low down payment, the 5-year term, and potential default. With the above proposal, GERS would at least recoup some money and it's been almost a year since GERS received any money on the loan. Hopefully, the Board can decide tomorrow. I do not recommend engaging in further settlement discussions with Charleswell and Percell, this has been dragged out for entirely too long.

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Shari N. D'Andrade

Senior Associate

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	<u>Guarantors' July 24, 2020</u>	<u>GERS' June 26th RESPONSE</u>	<u>Guarantors' July 6th Proposal</u>	<u>GERS' July 6th RESPONSE</u>	<u>Guarantors' July 9th, Proposal</u>	<u>12/16/2020</u>
Total Repayment	\$2MIL	\$2.75MIL	\$2MIL	<i>For Board's consideration</i>	\$2MIL	\$2.75MIL
Term/ Frequency of Payments	5-year term	<i>Unchanged; added repayment made on a reverse graduated payment schedule—higher initial payments that will decrease over the repayment term (this was proposed because GERS should recoup as much as possible as soon as possible, in the even the Guarantors' later default)</i>	<i>Unchanged; however, no mention of reverse graduated payment schedule</i>	<i>Unchanged</i>	7-year term, quarterly payments starting January 1, 2021	5-year term; monthly payments of \$5K
Interest Rate			Interest rate at WSJ Prime Rate= 3.25%	<i>For Board's consideration</i>	Interest rate to be negotiated	Not specified.
Initial Payment	\$250K initial payment to be made within 6 months	<i>For Board's consideration</i>	<i>Unchanged</i>	<i>For Board's consideration</i>	Reduced \$250K initial payment, to \$50,000.00 every year towards principal. Changed because of the impact of COVID-19 on WESTBAY and the food services contract with DOE.	\$50K either upon signing the Consent Judgment or within 30 days thereof.

Security	<ul style="list-style-type: none"> • Consent Judgment for full amount under Guaranty • Collateral in 4-4-27 Estate Fortuna 	<ul style="list-style-type: none"> • Agreed. 	<p><i>Unchanged as to real property but no mention of consent judgment</i></p>	<ul style="list-style-type: none"> • Consent Judgment for full amount owed. • Assignment of Gov't contracts and business to be reviewed 	<ul style="list-style-type: none"> • <i>Agreed (shall include language concerning credits for payments made.)</i> • <i>Agreed, plus security interest in all WESTBAY assets.</i> 	<ul style="list-style-type: none"> • <i>WestBay</i> • <i>Fortuna Property</i>
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Per Board, Settlement authority was:

- *Repayment no less than \$2.75MIL*
- *Initial payment no less than 15% of total agreed amount*
- *Repayment no more than 5 years*
- *Collateral (Consent judgment, real property, security interest in WESTBAY)*