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

St. Thomas GERS Conference Room/St. Croix GERS Boardroom
Tuesday, October 15, 2019
3:00 pm
**** 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

A. New Business

(i). Potential Solutions Based on October 1, 201~~9~~8 Valuation

IV. Privileges of the Floor

V. Adjournment

GOVERNMET EMPLOYEES' RETIREMENT SYSTEM
MINUTES OF THE BOARD OF TRUSTEES SPECIAL MEETING
October 15, 2019

I. Call to Order

The GERS Special Board of Trustees Meeting on October 15, 2019 was called to order at 3:39p.m. The meeting was held in the St. Thomas conference room by video teleconference to the St. Croix Boardroom, via Zoom. The purpose of the meeting was to discuss with the actuaries potential solutions based on the October 1, 2018 actuarial valuation.

II. Roll Call

Trustees in attendance except Trustees Maynard and Smith (Absent).

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

Also, in attendance was Pedro K. Williams, Board Counsel and Leon "Rocky" Joyner by phone and Aldwin Frias Actuaries from Segal Company via Zoom.

III. EXECUTIVE SESSION

i. A motion moved by Trustee Callwood and seconded by Trustee Cohen McDonald to go into Executive Session. The motion passed unanimously with 5 yes, 2 Absent (Maynard and Smith).

ii. A motion moved by Trustee McDonald and seconded by Trustee Callwood to come out of Executive Session. The motion passed unanimously with 5 yes, 2 Absent (Maynard and Smith).

iii. A motion moved by Trustee Callwood and seconded by Trustee Cohen to adjourn the meeting. The motion passed unanimously with 5 yes, 2 Absent (Maynard and Smith).

The meeting was adjourned at approximately 5:37 p.m.

Austin L. Nibbs, CPA, CGMA
Secretary/Administrator/CEO

GOVERNMENT EMPLOYEES' RETIREMENT SYSTEM OF THE VIRGIN ISLANDS

CONFIDENTIAL **THIS REPORT IS SUBJECT TO ATTORNEY-CLIENT PRIVILEGE**

MEMORANDUM

TO: Austin L. Nibbs, CPA
Administrator

FROM: Cathy M. Smith
General Counsel

DATE: October 15, 2019

SUBJECT: Whether the provisions of 3VIC § 718(l) and 3 VIC § 767(k) allow the Board to reduce benefits prospectively.

ISSUE: Whether the provisions of 3 VIC §718(l) and 3 VIC 767 (k) allow the Board to reduce benefits prospectively.

OPINION:
In anticipation of your upcoming meeting of the Board of Trustees, a quick analysis was performed to determine whether the provisions of 3 VIC § 718(l) and 3 VIC § 767 (k) allow the Board to reduce benefits prospectively. While I could find no similar cases to the current situation where a Board of Trustees reduced annuity payments, there were a few cases wherein the plan sponsor chose to do so.

The Supreme Court of Texas in *City of Dallas v. Trammel,* 129 Tex. 150 (1937), approved the reduction of retirement payments of a financially stressed plan to provide an equitable basis for the sharing of limited resources for all members. Similarly, the Supreme Court of Florida in *State ex rel. Holton v. City of Tampa*, 119 Fla. 556 (1934) approved a reduction in benefits in a post depression circumstance as long as the pension was not entirely cancelled. See also *Scott v. Williams*, 107 So. 3d 379 (Fla 2013), citing *Holton*, and City of *Hollywood v. Bien*, 209 So. 3d 1 (Fla. App. 2016), wherein the Court determined that the changes to the retirement system were prospective in nature and thus "within the authority of the Legislature to make." *Id.* at 389. Further, the court found that the statute did not impair any statutorily created contract rights, and thus did not result in an unconstitutional taking. *Id.*

The Legislature of the U.S. Virgin Islands made the expectation of payment contingent upon funding and so limited the Board's authority to pay benefits under 3 VIC 718(l) and 3 VIC 767 (k). While the employees likely have a claim against the GVI, the authority of the Board to adjust payments is clear.

In *Crosby v. City of Gastonia, 635 F. 3d 634 (4th Cir. 2011)*, the U.S. 4th Circuit held that the City of Gastonia was not liable for additional retirement benefits and determined that the trustees of the fund did not violate their fiduciary duty when the police retirement plan became insolvent. The terms of the fund provided that benefits were payable dependent upon available funding.

The Court opined that "... the gorilla in the room is that a fundamental term of the contract since 1959, before any of the plaintiffs can be said to have acquired vested rights in the Fund, was the statutory caveat that benefits would be paid only "so long as funds are available." 1959 N.C. Sess. Laws Ch. 301, § 2. Although the plaintiffs maintained that the funding proviso ceases to apply upon vesting of an officer's entitlement to benefits, the court found no support in the clear language of the statute for that contention. The Court further opined that "It is not reasonable, in our opinion, to expect that a contractual obligation expressly contingent upon available funding may nonetheless be enforced once funding has dissipated and the contingency has been frustrated. The far less tortured interpretation leads one to expect that once the funding evaporates, so does the obligation. And without a contractual obligation, there can be no cognizable breach thereof and, thus, no legal claim for damages."

I thought it relevant to cite Circuit Court Judge Davis who wrote a concurring opinion in this case. Judge Davis noted "that no one doubts that the Appellants, dedicated former public servants who spent a career in law enforcement regularly putting their lives on the line, are deserving of every consideration. As the panel opinion notes, it appears that the Supreme Court of North Carolina, in ways that vary significantly from the approach of federal courts, has been especially solicitous of Contract Clause claims asserted in a wide range of circumstances by government employees against their state and local employers. *See, e.g.,* *Faulkenbury v. Teachers' and State Employees' Retirement System of North Carolina*, 345 N.C. 683, 483 S.E.2d 422 (N.C. 1997). Nevertheless, like the district court, this court simply cannot blink at the fact that when the North Carolina legislature amended the Supplemental Retirement Fund in 1959, it expressly conditioned such benefits on the availability of funds, and it did so in a manner that did not impose any statutory duty on the City of Gastonia. Though the City touted the existence of the fund and no doubt used it as a part of its overall recruitment strategy to hire law enforcement officers, it is clear that, throughout the fund's existence, the burden of its continuing viability was placed squarely on the shoulders of its Trustees.

The Board's reduction of benefits, however, does not suggest that affected members are left without a remedy. The affected members may directly seek the funding from the plan sponsor (the GVI and its instrumentalities) necessary to restore their expected benefits.

Please note that we have not addressed the contract issue between the plan sponsor and the members and the ensuing obligations of the plan sponsor to either fund the plan and/or pay the benefits promised. Nor have we addressed whether the rights and responsibilities of public employers and employees are contractual in nature and are established when the employees enter the retirement system and are therefore not subject to unilateral change. This memo only addresses the Board of Trustees ability to reduce benefits.

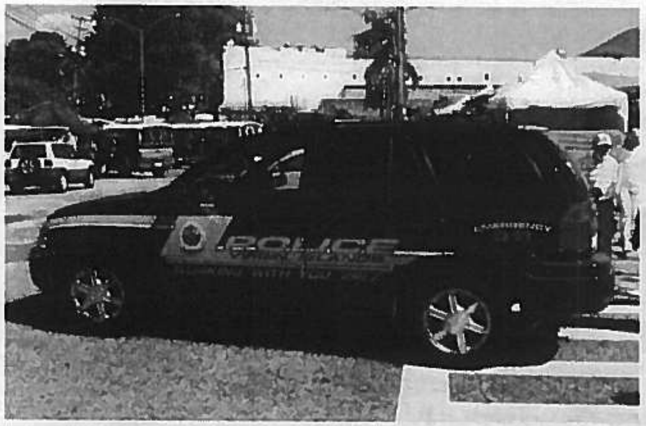
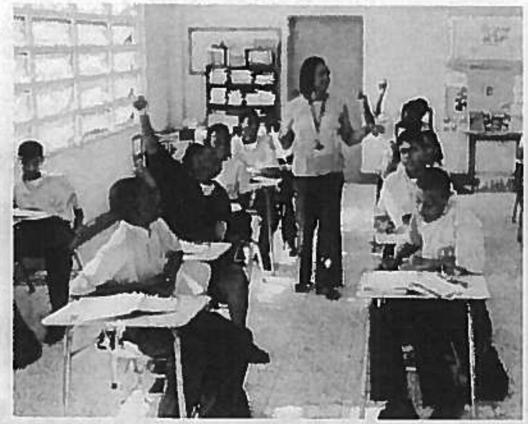
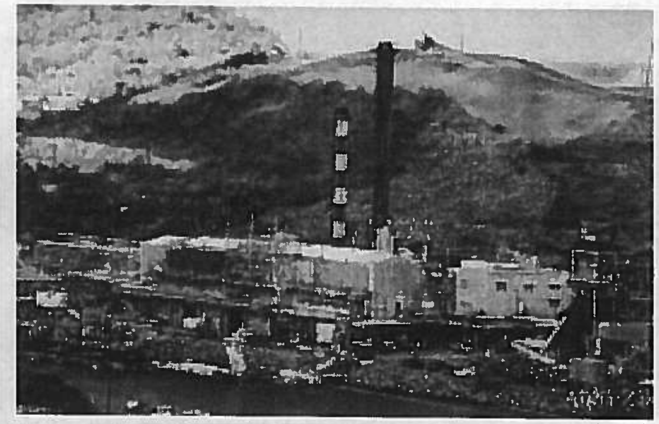
Conclusion:

While there is no case law on specifically addressing the Board's ability to reduce benefits, we feel confident, consistent with the exercise of its fiduciary duty and the clear statutory language in 3 VIC § 718(l) and 3 VIC § 767 (k), allows the Board of Trustees to reduce benefits as recommended by the actuary until appropriate funding is received from the plan sponsor (GVI and its instrumentalities).

The GERS Board of Trustees have a fiduciary responsibility not only to the retirees, but to the active members of the System. Absent funding by the plan sponsor, if the GERS Board of Trustees takes no action, sometime in 2021, the GERS will run out of liquid assets. That means that if the Board of trustees fails to act to preserve the limited resources, current retirees of the GERS can expect an immediate 75% in reduction of benefits. In the future, active members of the GERS who subsequently retires, and the current retirees can expect to receive even less, because the number of active members paying into the System will continue to be reduced and not replaced. Therefore, the Board has a fiduciary responsibility to take whatever action within its ability to preserve assets for all its members.

Reduction Analysis

	45 % Reduction	40% Reduction	30% Reduction	75% Reduction
	55% Received	60% Received	70% Received	25% Received
1.	239 negative balance	177 negative balance	111 negative balance	1838 negative balance
2.	615 less than $100	506 less than $100	328 less than $100	1749 less than $100
3.	785 less than $200	697 less than $200	588 less than $200	1691 less than $200
4.	871 less than $300	765 less than $300	590 less than $300	1217 less than $300
5.	1,803 less than $500	1,683 less than $500	1,406 less than $500	765 less than $500
6.	2,840 less than $1,000	2958 less than $1,000	2,968 less than $1,000	753 less than $1,000
7.	841 less than $1,500	1142 less than $1,500	1628 less than $1,500	0 less than $1,500
8.	20 less than $2,000	87 less than $2,000	383 less than $2,000	0 less than $2,000
			JUDICIARY	
9.	1 = $1,842.03	1 = $2,025.53	1 = $2,392.53	1 = $741.02
10.	1 = $2,024.11	1 = $2,214.48	1 = $2595.23	1 = $881.86
11.	1 = $2,815.61	1 = $3,095.65	1 = $3,655.72	1 = $1,135.39
12.	1 = $2,954.22	1- = $3,239.59	1- = $3,810.34	1- = $1241.97
13.	1- = $3,05529	1 = $3,340.66	1 = $3,911.41	1+ $1,343.04

GOVERNMENT EMPLOYEES' RETIREMENT SYSTEM OF THE VIRGIN ISLANDS

Potential Solutions Based on October 1, 2018 Valuation

September 19, 2019

Rocky Joyner, ASA, FCA, MAAA, EA

Aldwin Frias, FSA, FCA, MAAA, EA

Segal Consulting

Doc #8998107v4

Background

- To ensure that all promised benefits under GERS are paid when due, employer contributions must be sufficient to properly fund the System.
- The funding policy adopted by the Board targets 100% funding in 20 years. This meets actuarial standards and if followed would ensure that GERS is able to pay the full promised benefits as they come due.
- **However**, actual amounts contributed by the government employers have been **significantly less** than the ADEC (*see slide 3*) for many years:
  - Therefore, current benefits are not being funded adequately on an actuarial basis.
  - As a result of this extended underfunding, the assets of the GERS will be depleted within 2 to 3 years.
- At that time, paid benefits will be based on employer contribution income as it is received. **Currently this is expected to be about 25% of the promised benefit.**

Contribution History: 2000 – 2019

History of Employer Contributions			
Plan Year Ended September 30,	Actuarially Determined Employer Contributions	Actual Contributions	Percentage Contributed
2000	$64,992,493	$44,078,554	**68%**
2001	64,179,332	43,387,158	**68%**
2002	95,186,021	50,594,531	**53%**
2003	117,124,599	51,588,235	**44%**
2004	108,358,399	54,084,454	**50%**
2005	120,184,848	51,542,030	**43%**
2006	131,059,471	65,061,430	**50%**
2007	137,797,268	60,778,382	**44%**
2008	138,488,871	75,871,146	**55%**
2009	147,490,851	80,177,004	**54%**
2010	157,817,709	77,004,630	**49%**
2011	162,841,336	80,849,762	**50%**
2012	178,644,349	66,677,155	**37%**
2013	172,439,842	64,431,322	**37%**
2014	189,715,251	68,298,617	**36%**
2015	200,089,791	72,287,934	**36%**
2016	247,158,137	86,346,838	**35%**
2017	250,574,023	84,802,335	**34%**
2018	267,743,116	96,747,868	**36%**
2019	277,523,563	82,979,021 (projected)	**30%**

The decline in funding percentage since 2000 is predominately due to statutory contributions being significantly less than needed for proper actuarial funding of the System.

Potential Board Actions

- Rationale and Considerations:
  - The GERS Board has the fiduciary obligation to administer the plan for all its members.
  - According to Section 718(l) of the VI Code: "The System shall not pay benefits to an employee unless his and the employer's contributions adequately finance benefits and related costs provided under this chapter."
  - The GERS has not been adequately financed as shown earlier, resulting in an impending insolvency and significant loss of income for plan recipients.
- In lieu of billing the government employers the full ADEC of 69% of payroll that will likely going to be ignored, the following slides outline possible Board actions to minimize the reduction in benefits for plan participants and sustain the future viability of GERS.

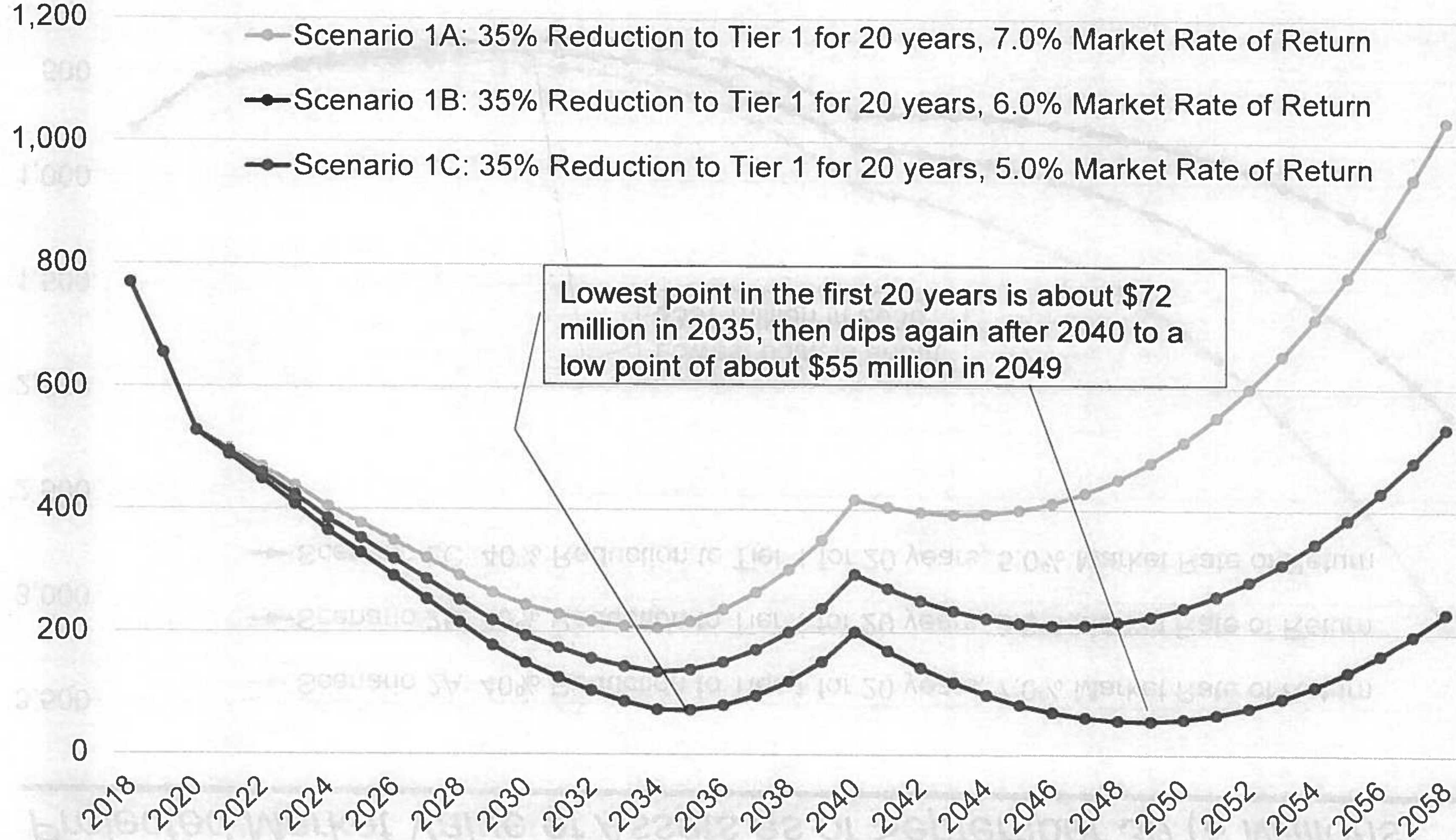
Potential Board Actions *continued*

- Starting on January 1, 2020, increase employer contributions by 3% of pay every 5 years
- Effective October 1, 2020, suspend Tier 1 benefits by at least 35%, 40% or 45% for the next 20 years
- Rationale and Considerations:
  - GERS Board has the authority to increase employer contribution rates every 5 years. Five 3% increases in the future is projected to produce an average of $36.3 million increase in contributions per year over the next 20 years.
  - 35% to 45% suspensions to Tier 1 benefits are projected to reduce benefit payouts over $100 million per year over the next 20 years. Tier 2 benefits are already at least 30%-60% lower relative to Tier 1 benefit levels.
  - Currently, the projected FY2018 employer contributions of $83.0 million will fall short of the ADEC of $277.5 million by $194.5 million.
  - The two actions described above are sufficient to avoid future insolvency and continue providing meaningful benefits, provided there are no other adverse experience.
  - In order to avoid any suspension to a Tier 1 employee's benefit, an employer (or former employer) could be allowed to pay from its own operating income, the 35% (or 40% or 45%, depending on the Board's final action) of the member's benefit that otherwise would have been suspended.

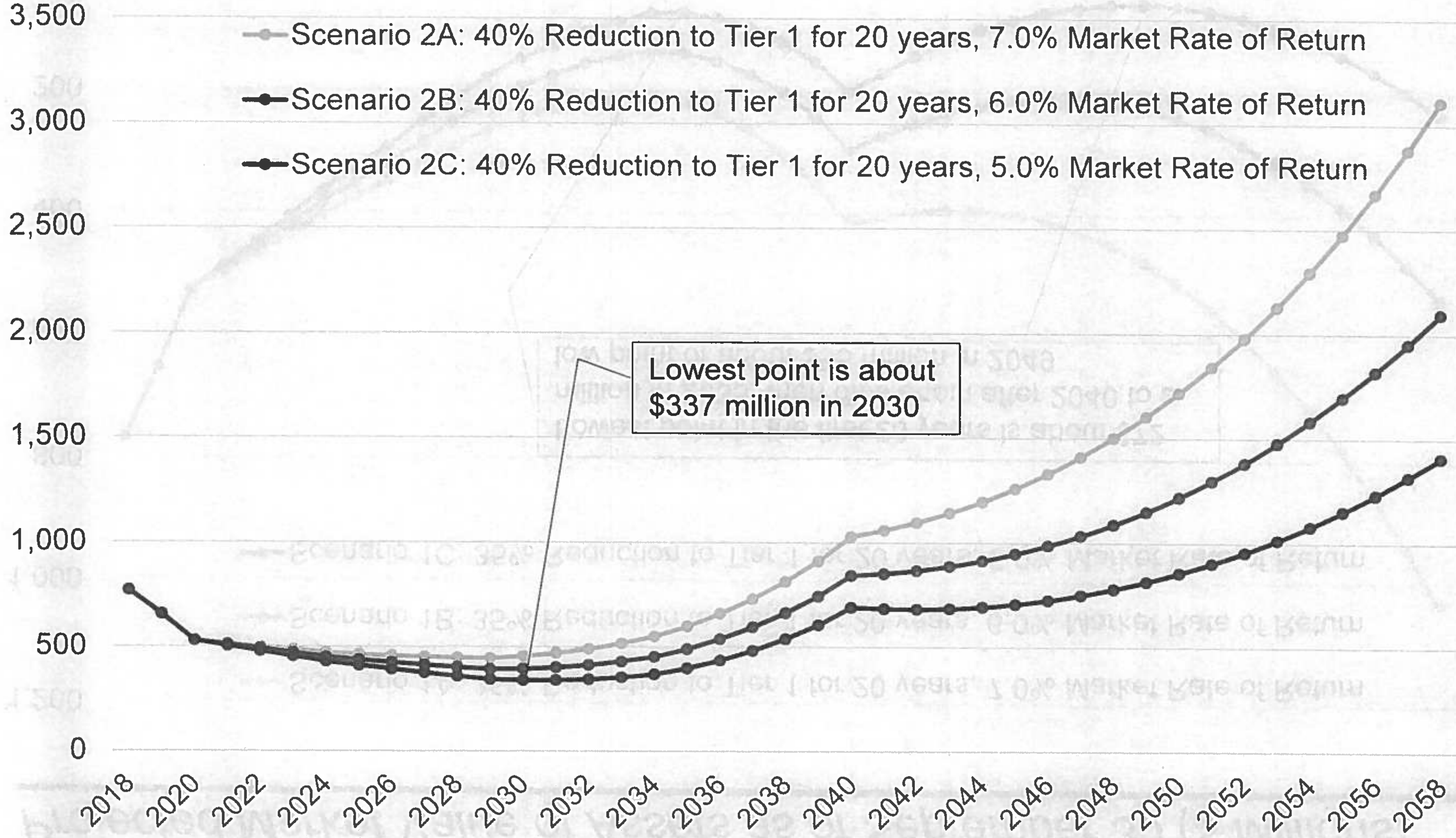
Potential Board Actions *continued*

- For all scenarios, starting January 1, 2020, increase employer contributions by 3% of pay every 5 years, to an ultimate rate of 35.5% of pay, effective January 1, 2040
- In order to evaluate the sensitivity of these potential Board actions to expected investment income, each benefit suspension scenario was projected based on three different investment return scenarios: 7%, 6% or 5% per year.
- Scenario1:
  - Effective October 1, 2020, suspend Tier 1 benefits by 35% for 20 years
  - Annual investment return assumption of 7.0% (1A), 6% (1B) or 5% (1C)
- Scenario 2:
  - Effective October 1, 2020, suspend Tier 1 benefits by 40% for 20 years
  - Annual investment return assumption of 7.0% (2A), 6% (2B) or 5% (2C)
- Scenario 3:
  - Effective October 1, 2020, suspend Tier 1 benefits by 45% for 20 years
  - Annual investment return assumption of 7.0% (3A), 6% (3B) or 5% (3C)
- Next slides show our projections. These projections are based on the data, results and assumptions (except as noted above) used in the October 1, 2018 valuation.

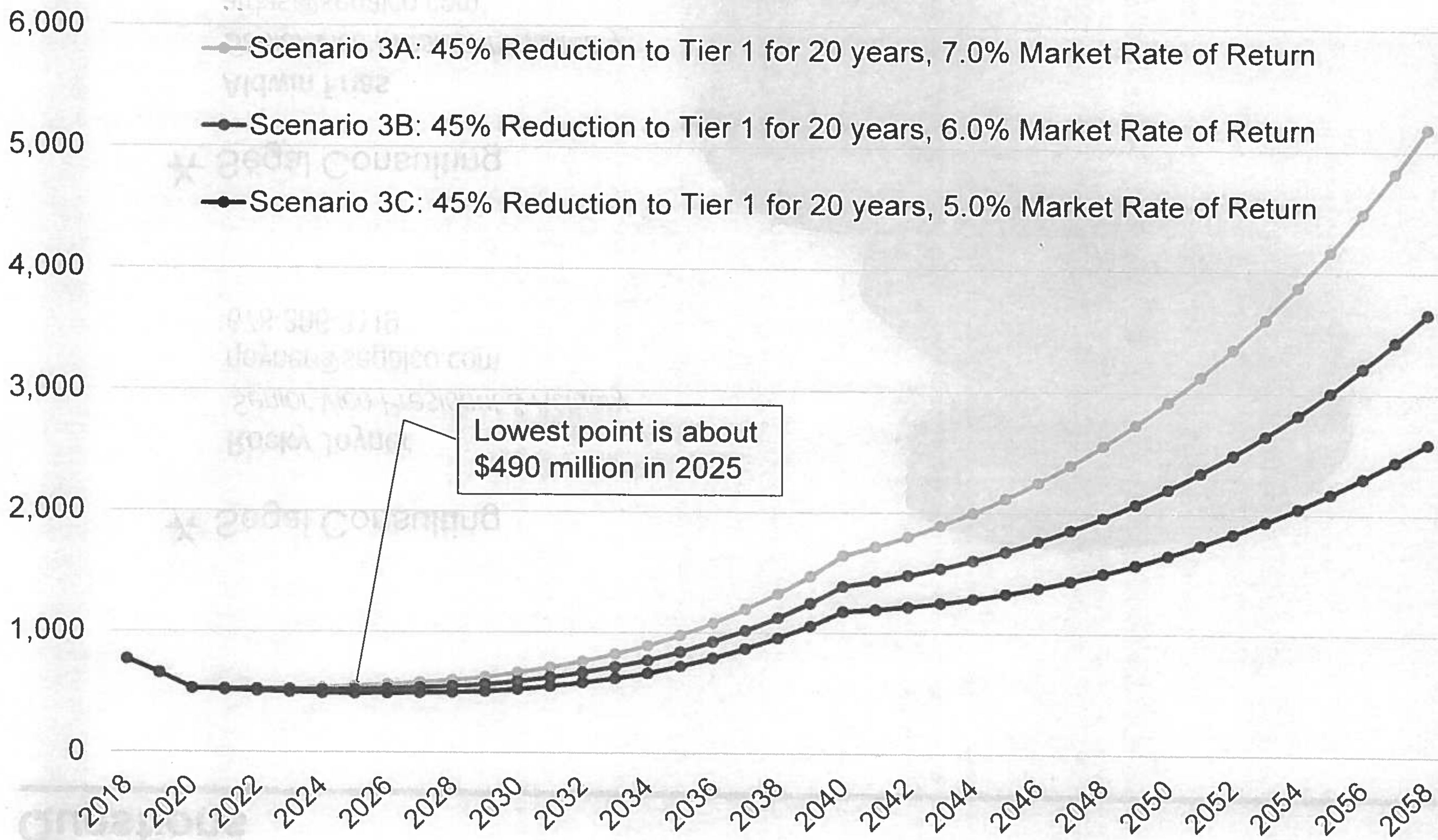
Potential Board Actions *continued*
Projected Market Value of Assets as of September 30 ($ Millions)



Potential Board Actions *continued*
Projected Market Value of Assets as of September 30 ($ Millions)



Potential Board Actions *continued*
Projected Market Value of Assets as of September 30 ($ Millions)



Questions

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