



## **Lawsuit Settlement Ends an Undermining Distraction for the AFM-EPF Plaintiffs fail to prove claims, Board of Trustees remains unchanged**

On Wednesday, March 25, we informed participants that a settlement had been reached to end litigation against certain current and former AFM-EPF Trustees. This is good news. For more than two years, patently false claims have besmirched our Pension Plan while the Trustees have been doing everything possible to steer it toward financial stability.

During that entire time, the plaintiffs, Musicians for Pension Security (MPS) and the politically motivated individuals behind it have tried to capitalize on that lawsuit to advance their self-serving agenda. We have made a good faith effort not to get into a back-and-forth with these detractors, who have never advanced any sort of rational and achievable plan to address the challenges facing not just our Fund, but the nearly 120 other multiemployer pension funds from coast to coast dealing with precisely the same situation.

Throughout the Plan's difficult times, as we have told you before, the Trustees have been working to increase contributions to the Plan and improve its status. Annual contributions rose significantly from \$54 million in 2009 to \$76 million in 2019, thanks in large part to the Trustees mandating a 19.9% increase in the rate of contributions and to Union negotiations with employers. The new sources of streaming revenue negotiated by the AFM are particularly helpful now at a time when COVID-19 is decimating live performances and new film/TV recordings. The plaintiffs and MPS have done absolutely nothing other than sling mud and undermine these efforts.

MPS and the plaintiffs have always relied on wild claims and flashy language instead of anything resembling facts or common sense, and their current framing of the settlement follows the same tired playbook. The simple truth of the matter is that the plaintiffs did not prove their case, let alone achieve an "unambiguous victory."

Here is something you should know: Two of the most prominent and respected experts in the pension field concluded that the Trustees went well beyond what is expected of Trustees under the law and general principles of good conduct.

- Phyllis Borzi, the former Assistant U.S. Secretary of Labor under President Obama – who was the top government official responsible for enforcing fiduciary obligations, and who the plaintiffs themselves describe as "viewed as a champion of pension holders rights" – concluded that the Trustees acted consistent with their fiduciary duty in connection with the

Plan's asset allocation. She further opined that the Trustees' decision-making process met or exceeded industry standards of prudence. This is coming from the person who was responsible for making these determinations for the Department of Labor.

- Cary Franklin of Horizon Actuarial Services – one of the most respected actuaries in the multiemployer plan community – concluded that the Trustees' asset allocation decisions represented reasonable measures and that the "Trustees' process was second to none."

## **The Settlement**

Like any legal settlement, this one represents a compromise – in this case one that allows us to finally put to rest this undermining distraction at a crucial moment for the future of the Plan. Here are some facts about the settlement:

- The expert opinions of Ms. Borzi and Mr. Franklin were huge hurdles for the plaintiffs, which demonstrated that the wild accusations coming from the plaintiffs and MPS had no evidentiary support. The plaintiffs needed to settle because they weren't going to win.

- The Trustees settled because at least \$17 million in proceeds from the \$26.85 million settlement would be paid to the Plan by the Plan's fiduciary insurers. None of the current or former Trustees who are defendants are paying a dime. The alternative was to drag on this sideshow and allow the available insurance to be further consumed by legal fees and expenses. Recall that the plaintiffs originally sought recovery of investment losses that they estimated to be in the hundreds of millions of dollars.

- The plaintiffs' lawyers can pocket the balance of the settlement proceeds if it's approved—about \$10 million. They are the ones who profited by using their unsupported mudslinging to push this case to the eve of trial before agreeing to settle for much less than they originally demanded.

- The structure of the Board is unchanged. While the plaintiffs demanded the removal of the Trustees, that didn't happen. Nor is there any change in who appoints Trustees. The Trustees agreed to work with an experienced independent fiduciary who will no doubt confirm what Ms. Borzi and Mr. Franklin already did – that the Board utilizes an excellent decision-making process with respect to Plan investments.

- Two Trustees who previously expressed plans to leave the Board – for reasons having nothing to do with this lawsuit – will indeed do so sometime over the next 18 months.

- The investment consultant who monitored our Outsourced Chief Investment Officer (OCIO) had seen its role already reduced by the Trustees – again, having nothing to do with this lawsuit. This consultant has departed under the settlement.

- The Trustees also agreed to some additional reporting about Plan investments on their website, much of which the Plan has already been providing to participants for some

time. One look at the Plan's website will show that the Trustees are already committed to providing participants with full and complete information on things like investments (anyone can request any of the investment manager reports going back six years) and the Plan's status, well beyond what is required by law. In fact, the AFM-EPF is unique among multiemployer pension plans for both its level of communication and transparency.

Agreeing to these settlement terms was a very good deal for the Pension Plan and all of our valued participants. The most important result of the settlement is that the litigation is finally behind us, so we can focus our full attention on preserving the Plan's solvency for all active participants, retirees and beneficiaries, now and in the future.

Of utmost importance now is the approval of the Plan's application under the Multiemployer Pension Reform Act. From the beginning, MPS and its proxies have sought to use this lawsuit to try to block that application from being approved and put into effect. Let us again be perfectly clear—failure to make necessary benefit reductions would lead to the insolvency of the AFM-EPF and dramatic reductions in benefits for participants, including those who are protected from any cuts due to their age or disability under MPRA.

### **The Plan's Current Asset Allocation**

Now that the plaintiffs have failed to prove their claims about the Plan's past investments, MPS is making new claims about current investments as "overly risky" and a series of "bets." Yet, MPS offers not one shred of evidence to support this biased and inaccurate characterization, except to make apples-to-oranges comparisons to other pension plans. In fact, the pages of the new reports cited by MPS explicitly warn against such comparisons with a clear disclaimer: "The utility of this comparative information is limited. The investment allocation of any plan, including AFM-EPF, is developed based on a variety of factors unique to the plan... Accordingly, this comparison, standing alone, does not indicate the appropriateness of any particular allocation."

MPS and the plaintiffs have inappropriately compared the Plan's performance to stock market index funds, ignoring the very important reasons that a pension plan must be well-diversified. For example, had the Plan shifted more of its assets into the stock market as MPS and the plaintiffs suggest, the current market crash would have had a greater effect on our assets. And, if we followed MPS's logic, losses during the 2008-2009 financial crisis would have been much worse too. MPS and the plaintiffs repeatedly cherry-pick individual data points that serve their own interests, but a comprehensive look shows that the Plan's average annualized investment return stands at a very strong 8.9% since the end of the financial crisis (4/1/09 through 3/31/19). We will not be bullied into making imprudent decisions with Plan investments.

MPS has positioned itself as naysayers whose singular goal is undermining the Plan and your confidence in the Trustees for patently political purposes. Their entire approach is telling you things they think you will want to hear. The goal of the Plan's Trustees is to tell all participants

what you need to hear—in other words, the truth. We're confident that honesty will carry the day.

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We wish all of our participants the best during this unprecedented public health and economic crisis. These are very difficult times for our country and musicians are among the hardest hit. We take seriously our responsibility to protect your retirement security and deliver the facts about our Pension Plan.