

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

URSULA WHITE, BRUCE N. REITER, and)
MARGARET RETZ,)
Plaintiffs,)
v.) Case No.
PUBLIC EMPLOYEES RETIREMENT BOARD,) 0404-04118
Defendant,)
and)
STATE OF OREGON, LANE COUNTY, CITY)
OF EUGENE, MULTNOMAH COUNTY,)
CITY OF PORTLAND, CITY OF ROSEBURG,)
CITY OF HUNTINGTON, CANBY UTILITY)
BOARD, and ROGUE RIVER VALLEY)
IRRIGATION,)
Intervenors.)
-----)
URSULA WHITE, BRUCE N. REITER, and)
MARGARET RETZ,)
Petitioners,)
v.)
PUBLIC EMPLOYEES RETIREMENT BOARD,)
Respondent,)
and)
STATE OF OREGON, LANE COUNTY, CITY)
OF EUGENE, MULTNOMAH COUNTY,)
CITY OF PORTLAND, CITY OF ROSEBURG,)
CITY OF HUNTINGTON, CANBY UTILITY)
BOARD, and ROGUE RIVER VALLEY)
IRRIGATION,)
Intervenors.)

DEPOSITION OF EVA KRIPALANI
Taken in Behalf of the Plaintiffs
Friday, August 24, 2007

BE IT REMEMBERED that, the testimony of EVA
KRIPALANI was taken before Peggy J. Hughson, a professional
shorthand reporter certified by the State of Oregon; that
pursuant to Oregon Revised Statute 44.320 said reporter is
empowered to administer oaths to witnesses, that the
above-named witness was put under oath on Friday, August 24,
2007, at the hour of 9:30 a.m., in the law offices of Orrick,
Herrington & Sutcliffe, 1125 Northwest Couch Street, Suite
800, in the City of Portland, County of Multnomah, State of
Oregon.

APPEARANCES

Bennett, Hartman, Morris & Kaplan
Attorneys at Law
By Mr. Gregory A. Hartman
Appearing in behalf of the Plaintiffs,

Orrick, Herrington & Sutcliffe
Attorneys at Law
By Mr. Joseph M. Malkin
and
Ms. Sarah Marriott
Appearing in behalf of the Defendant,

Herrang, Long, Gary, Rudnick
Attorneys at Law
By Ms. Silvwa Go
Appearing in behalf of the Intervenors.

Hughson & Associates
503 226-1243

INDEX

EXAMINATION BY:	Page	Line
EXAMINATION BY-MR. HARTMAN:	4	5
EXAMINATION BY-MR. MALKIN:	107	11
FURTHER EXAMINATION BY-MR. HARTMAN:	110	4

EXHIBITS MARKED	Page	Line
Exhibit 1, 2-15-07 Ltr. to Hartman from Spero	18	15
Exhibit 2, 11-19-03 Ltr. to Baker from Gary	18	16
Exhibit 3, 1-23-04 Ltr. to Baker from Hartman	33	8
Exhibit 4, 1-5-04 Fax to Baker from Gary	50	24
Exhibit 5, 1-26-04 PERB Minutes	52	18
Exhibit 6, 1-30-04 Ltr. to Baker from Gary	59	5
Exhibit 7, Settlement Agreement	60	1
Exhibit 8, EWEB Settlement Agreement	91	6
Exhibit 9, Adoption of Employer Rate Adjustments	93	11
Exhibit 10, 10-12-04 Board Meeting Minutes	98	12

Hughson & Associates
503 226-1243

EVA KRIPALANI

was thereupon produced as a witness in behalf of the
Plaintiff, and was examined and testified as follows:

EXAMINATION BY-MR. HARTMAN:

Q. Ms. Kripalani, I assume with your professional
background you're familiar with what we're going to do today?

A. Yes.

Q. I assume you've taken and sat in on numerous
depositions. One thing that I do want to mention is it's
important that we communicate clearly. So if at any time I
ask you a question that you don't feel you fully understand,
please just ask me to rephrase or repeat or do whatever we
need to do so that we communicate clearly.

A. Okay.

Q. And you've already shown very good practice in my next
thing I'm going to mention and that is to answer audibly and
because otherwise the court reporter gets very frustrated if
we shake our heads or nod our heads because she doesn't know
what to put down, so please answer everything audibly, all
right?

A. All right.

Q. Thank you. I'd like to start by just asking a few
questions about your professional background just to get some
sense of the kinds of things you did before you became a

Hughson & Associates
503 226-1243

1 member of the PERS Board. I know you're an attorney,
 2 correct?
 3 **A. Yes.**
 4 **Q.** When did you start practicing?
 5 **A. 1986.**
 6 **Q.** Who did you practice with, which firm?
 7 **A. I was with the Stoel, Rives firm.**
 8 **Q.** Were you with Stoel, Rives the entire time you were in
 9 active practice?
 10 **A. No. Let me think about this. It's a long time ago.**
 11 **Actually, well, I was -- that was the only law firm that I**
 12 **ever was with, yes, I did a short -- I did a huge clerkship**
 13 **for a year after I graduated from law school, then I went**
 14 **directly to Stoel, Rives.**
 15 **Q.** Can you tell us just very briefly what the nature of
 16 your practice was when you were at Stoel, Rives?
 17 **A. The nature of my practice was primarily business**
 18 **practice, corporate mergers and acquisitions, securities law.**
 19 **Q.** Did you do any work in the -- I'll just use the term
 20 very broadly, in the pension field during the time you were
 21 at Stoel, Rives?
 22 **A. Not directly.**
 23 **Q.** And after you left practice at Stoel, Rives, what was
 24 your next position?
 25 **A. I became general counsel at Kindercare Learning Centers,**
 Hughson & Associates
 503 226-1243

1 **counsel I assumed responsibility for government relations at**
 2 **one point, and for internal audit during one period of time,**
 3 **ask me to remember the exact dates, the duties changed over**
 4 **time, corporate communications and corporate philanthropy.**
 5 **Q.** During your period with the two corporations did you
 6 have any direct responsibility or involvement with whatever
 7 pension plans they may have had in existence?
 8 **A. What do you mean by direct responsibility?**
 9 **Q.** Well, was that part of your responsibility, to be
 10 responsible for some aspect of their pensions that the
 11 company had for its employees?
 12 **A. Well, certainly I supervised legal work relating to**
 13 **employee benefits.**
 14 **Q.** But no other direct responsibility other than
 15 supervising others who were more directly responsible?
 16 **A. I served on the administrative committee for the 401K**
 17 **and deferred comp plans. We didn't have a pension plan, we**
 18 **have had a 401K and different comp plan.**
 19 **Q.** And have you taken on a new professional challenge since
 20 August 3rd of this year?
 21 **A. Not yet.**
 22 **Q.** Okay. So at this point from that point you're not
 23 employed?
 24 **A. I'm not employed currently, that's right.**
 25 **Q.** Okay. Now let me back you up, and my understanding is
 Hughson & Associates
 503 226-1243

1 **now known as Knowledge Learning Corporation.**
 2 **Q.** And have you been with that I guess two sets of
 3 corporations since the time you left Stoel, Rives?
 4 **A. I have, although I recently left Knowledge Learning**
 5 **Corporation.**
 6 **Q.** Oh, okay. Let me get some approximate dates of the
 7 period of time you were with Kindercare and then the
 8 knowledge Corporation.
 9 **A. Um-hum (affirmative response).**
 10 **Q.** Rough dates.
 11 **A. I started at Kindercare in July of 1997 and I left**
 12 **Knowledge Learning Corporation on August 2nd -- is that**
 13 **right -- August 3rd, excuse me, this year.**
 14 **Q.** Okay. And I think you said that you started as general
 15 counsel?
 16 **A. Yes.**
 17 **Q.** Did your position change during the time you were with
 18 the two corporations?
 19 **A. Yes. It changed and -- I was general counsel**
 20 **consistently but I assumed some additional responsibilities**
 21 **after several years at Kindercare.**
 22 **Q.** Okay. And can you summarize for me just again very
 23 generally what your responsibilities were during the period
 24 of time you were at the two corporations?
 25 **A. My responsibilities, in addition to being general**
 Hughson & Associates
 503 226-1243

1 that you were appointed to the Board, to the PERS Board,
 2 September 1st of 2003. Does that sound correct?
 3 **A. That sounds correct.**
 4 **Q.** Okay. I would like to review the appointment process
 5 with you and go through the steps that you went through from
 6 the time that you first had an interest in doing this up
 7 until the time of the appointment. Did you apply for the
 8 position, were you asked to consider taking the position?
 9 Explain to me how that happened.
 10 **A. As I recall, I was asked to consider taking the**
 11 **position.**
 12 **Q.** Okay. And who asked you to do that?
 13 **A. I believe the -- Marti Lynn Satoff, who was the**
 14 **Governor's general counsel at the time.**
 15 **Q.** And approximately how long before your actual
 16 appointment do you recall that she approached you and asked
 17 you to consider that appointment?
 18 **A. I don't specifically recall. I don't recall.**
 19 **Q.** Obviously you eventually got the appointment so you must
 20 have indicated an interest in serving on the PERS Board?
 21 **A. Yes.**
 22 **Q.** Okay. Other than speaking with Marti Satoff, did you
 23 speak with anyone else during the appointment process as it
 24 went forward up to the time you were actually appointed?
 25 **A. Yes.**
 Hughson & Associates
 503 226-1243

1 being the initial contact.
 2 **A. Yes.**
 3 **Q.** Other than the initial contact and the solicitation to
 4 see whether you had any interest in serving on the Board, did
 5 you have additional conversations with Marti Satoff at later
 6 times about PERS and the PERS system?
 7 **A. Yes.**
 8 **Q.** Okay. About how many conversations prior to your
 9 appointment?
 10 **A. How many conversations?**
 11 **Q.** Yes.
 12 **A. I really don't know.**
 13 **Q.** More than one?
 14 **A. Yes.**
 15 **Q.** Okay. And did you talk with her about issues relating
 16 to litigation that might arise out of the 2003 Reform
 17 Legislation?
 18 **A. Yes.**
 19 **Q.** Okay. Tell me as best you can recall what you recall of
 20 those conversations.
 21 **A. Oh, I don't recall any specific details of the**
 22 **conversations. I think it was generally an acknowledgement**
 23 **that there was going to be litigation, that there -- or that**
 24 **litigation -- certainly that there was litigation and that**
 25 **that would be an aspect of what the PERS Board would be**
 Hughson & Associates
 503 226-1243

1 prior to your appointment indicate to you that the Governor
 2 wished the PERS Board to take a certain position regarding
 3 potential litigation?
 4 **A. No.**
 5 **Q.** I'd like to ask a couple of questions now about the
 6 state of your knowledge on about the time that you were
 7 appointed, September 1st, 2003. Prior to and up to that
 8 time, had you followed the PERS issues any more carefully
 9 than an ordinary citizen would? Did you have any particular
 10 focus on them?
 11 **A. No.**
 12 **Q.** Okay. At the time of your appointment, turning to the
 13 City of Eugene case, had you reviewed any documents, orders,
 14 anything of that nature about the City of Eugene case?
 15 **A. I don't think prior to my appointment, no.**
 16 **Q.** Okay. Similar question with the Reform Legislation.
 17 Prior to your appointment or at the time of your appointment
 18 had you reviewed any of the Reform Legislation?
 19 **A. Yes, I believe prior to the appointment I had reviewed**
 20 **some of the Reform Legislation.**
 21 **Q.** And just for the record, I believe the other four
 22 colleagues that you had on the Board were also appointed
 23 September 1st, 2003?
 24 **A. I believe that's correct.**
 25 **Q.** So a brand-new Board all came together at that time?
 Hughson & Associates
 503 226-1243

1 dealing with. You know, as I recall, the conversations were
 2 more in the nature of we want you to have a full -- be fully
 3 aware of what you're taking on here, that it's going to be a
 4 busy time and will require a fairly significant time
 5 commitment.
 6 **Q.** During those conversations, and again, I'm still focused
 7 on the preappointment --
 8 **A. Yes.**
 9 **Q.** -- did Ms. Satoff express any opinions or make any
 10 statements about the position that the Governor would like to
 11 see the PERS Board take on any issues relating to the 2003
 12 Reform Legislation?
 13 **A. Will you repeat that question?**
 14 **Q.** Sure, it was kind of a long one.
 15 **A. Yes.**
 16 **Q.** Again, focusing on the preappointment conversations --
 17 **A. Yes.**
 18 **Q.** -- did Ms. Satoff at any time indicate to you that the
 19 Governor desired or wished the PERS Board would take any
 20 particular position regarding potential litigation over the
 21 2003 Reform Legislation?
 22 **A. She did not express that the Governor desired the PERS**
 23 **Board to take a particular position.**
 24 **Q.** So that I'm sure I'm comprehensive, you've given me a
 25 number of names and I want to ask did anyone at any time
 Hughson & Associates
 503 226-1243

1 **A. That's my recollection, yes.**
 2 **Q.** Again, that's not in dispute but just to put some things
 3 on the record so we have them officially.
 4 **A. Yes.**
 5 **Q.** I'd like to now do a little bit of a -- not really a
 6 sidetrack but to move away from the specifics of the
 7 litigation issues and talk a little bit about how PERS
 8 operates in regard to open meetings. And I want to make it
 9 very clear I'm not asking you to express any opinion about
 10 how the open meetings law works, I'm asking some practical
 11 questions about how PERS operates or how the PERS Board
 12 operates.
 13 **A. Um-hum (affirmative response).**
 14 **Q.** And I don't think there's any dispute that PERS is
 15 subject to Oregon's Meetings law, as far as you know?
 16 **A. As far as I know, no.**
 17 **Q.** All right. And essentially that, among other things,
 18 means that Board meetings are public?
 19 **A. Yes.**
 20 **Q.** And there's a process of announcing that a Board
 21 meeting's going to take place prior to the Board meeting
 22 taking place?
 23 **A. Yes.**
 24 **Q.** And again, I'm focused on PERS practice, not the law.
 25 The Board meets typically about once a month in public
 Hughson & Associates
 503 226-1243

1 session; is that correct?
 2 **A. Yes.**
 3 **Q.** And there are various subcommittees that meet from time
 4 to time?
 5 **A. Yes.**
 6 **Q.** Okay. Under the PERS Board practice is there any
 7 restriction on the ability of members to communicate with
 8 each other outside those formal Board meetings or
 9 subcommittee meetings?
 10 **A. Yes.**
 11 **Q.** So is it your understanding of how PERS works that you,
 12 for instance, would be restricted from calling Mr. Pittman
 13 and discussing an issue with him that would be of interest?
 14 **A. No, I don't understand that I'm restricted from calling**
 15 **Mr. Pittman and discussing an issue with him.**
 16 **Q.** Okay, that's --
 17 **A. Yeah.**
 18 **Q.** I'm just trying to understand the practice.
 19 **A. Yeah.**
 20 **Q.** So there's nothing that restricts you from making a
 21 phone call to another Board member and discussing an issue
 22 that is of interest?
 23 **A. Not that I'm aware of.**
 24 **Q.** Okay. What about conference calls? If conference calls
 25 take place, do those come within the open meeting --
 Hughson & Associates
 503 226-1243

1 **A. My understanding is that if there's more than two**
 2 **members present, then yes, there is an issue at least as to**
 3 **whether they come within the open meetings.**
 4 **Q.** And the two comes from the fact that three would
 5 constitute a quorum?
 6 **A. I believe that's right.**
 7 **Q.** Okay. So is it also true that two of you Board members
 8 could meet and discuss issues and that would be permitted,
 9 but, if you get to the quorum level, then there's an open
 10 meetings concern?
 11 **A. Yes, I believe that's correct.**
 12 **Q.** Is that the way it works?
 13 **A. Yes.**
 14 **MR. HARTMAN:** Okay.
 15 (2-15-07 Ltr. to Hartman from Spero, EXB. 1 Marked)
 16 (11-19-03 Ltr. to Baker from Gary, EXB. 2 Marked)
 17 **Q.** Let me hand you Exhb. Number 2, which is a letter from
 18 Bill Gary I believe addressed to Mr. Baker, if I remember
 19 correctly. First question: Have you seen that letter
 20 before?
 21 **A. Yes.**
 22 **Q.** The date on the letter is November 19th, 2003. So
 23 that's about two-and-a-half months after you were appointed
 24 to the Board?
 25 **A. Yes.**
 Hughson & Associates
 503 226-1243

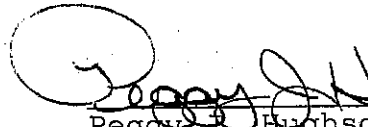

1 **Q.** I'll come back to the letter in a minute but I'd like to
 2 just focus on that timeframe, if I may, that two-and-a-half
 3 months. In addition to public meetings, did you have other
 4 conversations with other Board members during that period of
 5 time concerning both the City of Eugene litigation or the
 6 litigation which -- let's just call it the Strunk litigation
 7 which eventually took place involving the 2003 legislation?
 8 **A. Yes.**
 9 **Q.** Okay. Can you tell us who Jim Baker -- what role Jim
 10 Baker played at that time?
 11 **A. Well, Jim Baker was a partner at the Orrick firm and we**
 12 **engaged the Orrick firm -- the PERS Board had engaged the**
 13 **Orrick firm as fiduciary counsel for the Board.**
 14 **Q.** And did Mr. Baker become the lead counsel for the PERS
 15 Board in the Strunk litigation?
 16 **A. That's my understanding, yes.**
 17 **Q.** Okay. Did you have a special role acting as liaison or
 18 otherwise on behalf of the Board with the Orrick firm and
 19 with Mr. Baker?
 20 **A. I served as the Chair of the Litigation Subcommittee of**
 21 **the Board, yes.**
 22 **Q.** Okay. Who was on the Litigation Subcommittee of the
 23 Board?
 24 **A. Brenda Rocklin and myself.**
 25 **Q.** And can you describe for me just generally what the
 Hughson & Associates
 503 226-1243

1 duties of that subcommittee were during this period of time?
 2 I'm really focused on the first two-and-a-half months you
 3 were on the Board.
 4 **A. The duties of the subcommittee -- well, generally, I**
 5 **mean the Board likes to divide -- the Board likes to assign**
 6 **committee work so that the full Board doesn't need to be**
 7 **involved in absolutely every decision. I mean there's a fair**
 8 **amount of work that goes on and it's thought to be more**
 9 **efficient. The duties of the Litigation Subcommittee were to**
 10 **I think gain a more in-depth understanding of what the**
 11 **litigation -- the pending litigation was and to help at least**
 12 **advise the Board as to the position that the Board would take**
 13 **with respect to those litigation matters.**
 14 **Q.** And as Chair of that Litigation Subcommittee, did you
 15 undertake a special role? Again, I'm focused with the
 16 liaison with Mr. Baker or others at Orrick who were providing
 17 legal services.
 18 **A. I would say that a special role, I think that Brenda and**
 19 **I both acted probably -- I mean certainly spent an equivalent**
 20 **amount of time dealing with Orrick and, you know, with the**
 21 **matters relating to the litigation.**
 22 **Q.** I'm going to ask a number of questions, and, as I'm sure
 23 you can appreciate, the issues of attorney/client privilege
 24 are -- we may brush up against those sometime. And I'm going
 25 to try not to ask you questions at least at this point which
 Hughson & Associates
 503 226-1243

C E R T I F I C A T E

1
2
3 I, Peggy J. Hughson, a Certified Shorthand Reporter
4 for Oregon, hereby certify that EVA KRIPALANI personally
5 appeared before me at the time and place set forth in the
6 caption hereof; that at said time and place I reported in
7 stenotype all testimony adduced and other oral proceedings
8 had in the foregoing matter; that thereafter my notes were
9 reduced to typewriting under my direction, and that the
10 foregoing transcript, pages 1 to 117, both inclusive,
11 constitutes a full, true, and accurate record of such
12 testimony adduced, and oral proceedings had, and of the whole
13 thereof.

14 Witness my hand at Portland, Oregon, this 10th day
15 of September, 2007.

16
17
18 
19 Peggy J. Hughson
20 Certified Shorthand Reporter
21 CSR No. 90-0024
22 

23 ORIGINAL
24
25