



State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO Box 081
TRENTON, NJ 08625-0081

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

PAULA T. DOW
Attorney General
HOWARD J. MCCOACH
Administrator

M E M O R A N D U M

TO: Honorable Paul A. Sarlo, Chairman
Senate Budget and Appropriations Committee

FROM: *Barbara Haley*
Howard J. McCoach, Administrator
Office of the Attorney General

DATE: April 18, 2011

SUBJECT: Senate Budget and Appropriations Committee
Follow-up Questions and Answers

On behalf of the Attorney General, enclosed please find the Department's responses. If you have any questions, please contact me at (609) 292-9660.

Enclosure

c: Paula T. Dow, Attorney General
Phillip Kwon, First Assistant Attorney General
Marc Ferzan, Executive Assistant Attorney General
Deborah R. Edwards, Chief of Staff
Barbara Haley, Deputy Administrator
Kristen A. Fischer, Director Budget and Grant Operations
Charlene M. Holzbaur, Director



DEPARTMENT OF LAW AND PUBLIC SAFETY

FY 2012 Senate Budget and Appropriations Committee Follow-up Questions

Senator Sarlo:

Recently, the Executive authorized NJ Transit to retain Washington, D.C. law firm Patton Boggs to challenge the \$271 million request for payment New Jersey received from the federal government for work done on the canceled Hudson River train tunnel. Please provide a recommendation regarding the State's need to set aside a payment of \$271 million in the FY 2012 Budget in case the State does not win the challenge.

Answer:

The Committee has asked for a recommendation regarding the need, if any, to set aside money in the FY 2012 Budget in case the State does not prevail in its dispute with the Federal Transit Administration arising out of the cancellation of the Access to the Region's Core ("ARC") project. As with any major legal dispute, the Department performed a risk assessment to determine whether to recommend that an appropriation be made specifically for the ARC contingent liability. Based on the Department's assessment of strong legal defenses and likelihood of success, we did not recommend that an additional appropriation was necessary at this time.

Senator Pennacchio:

The State of New Jersey sued former executives and directors of Lehman Brothers, contending that fraud and misrepresentation caused the state's public pension fund to lose \$118 million. Please provide an overview of where at this time the State is on the civil litigation and/or criminal investigation. Please provide information as to if the State is using outside counsel and if so, please provide the details of the fees association with this case.

Answer:

On March 17, 2009, the State of New Jersey, Department of the Treasury, Division of Investment ("Division") filed a complaint in the Superior Court of New Jersey against certain directors and officers of bankrupt Lehman Brothers ("Lehman") and its auditors, Ernst & Young LLP ("E&Y"), based on allegations of violations of state and federal securities laws, negligent misrepresentations, fraud, aiding and abetting, and breach of fiduciary duty. The Division seeks to recover more than \$192 million in damages stemming from its purchase of approximately \$385 million in common stock, preferred stock, and notes issued by Lehman.

The Division's case is based on numerous misstatements and omissions in Lehman's public filings, as well as oral statements made directly to the Division. Those

misstatements and omissions pertained to, among other things, Lehman's: "net leverage ratio" (a key ratio of certain assets to certain equity); real estate-related asset valuations; liquidity; risk management controls; and concentrations of credit.

After the original complaint was filed, the defendants removed the matter to federal court as a claim "related to" the Lehman bankruptcy. The Division's case was subsequently transferred to the multidistrict litigation ("MDL") for Lehman Brothers-related litigation, which is venued in the United States District Court for the Southern District of New York. As a consequence of the transfer to the MDL, discovery in the Division's case is suspended, as is the defendants' obligation to respond to the Division's complaint. This delay is likely to continue until the class actions stemming from the collapse of Lehman Brothers are resolved.

Although the Division has not engaged in discovery, its case has benefited from disclosures in connection with Lehman's bankruptcy proceeding, including the bankruptcy examiner's 2,200-page report dated March 11, 2010. That report details Lehman's use of accounting manipulations to enhance its 2007 year-end and first and second quarter 2008 financial results to maintain investor confidence. On April 13, 2011, the Division filed an Amended Complaint, which expands the factual bases of the Division's case based on, among other things, the examiner's report.

The Division is represented in the Lehman case by the law firms of Berger & Montague, P.C., Cohn Liffand Pearlman Herrmann & Knopf LLP, and Zuckerman Spaeder LLP (retained to address technical bankruptcy issues), under the supervision of this Department. Outside counsel has agreed to represent the State on a contingency fee basis, and advance all costs, including expert fees, incurred in connection with the prosecution of the action. Outside counsel is entitled to compensation for the legal services performed and costs incurred only if a recovery of damages is obtained pursuant to a settlement or judgment.