

**RETIREMENT PLAN FOR CTA EMPLOYEES**

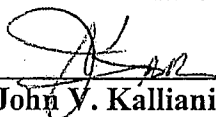
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(312) 441-9694

**NOTICE**

**TO: Retirement Allowance Committee Members and Alternates**

**FROM:**

  
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**John V. Kallianis**  
**Executive Director**

**DATE: July 16, 2003**

**RE: Retirement Allowance Committee Meeting**

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This is to announce that the meeting listed below will be held Tuesday, July 22, 2003 at the Northern Trust Company, 50 S. LaSalle Street in the Director's Dining Room on the 6<sup>th</sup> floor. The agenda for the full Retirement Allowance Committee Meeting is attached.

- The subcommittee on General Administration at 8:30 A.M.
- The Investment Subcommittee will immediately follow the Subcommittee on General Administration.
- The Real Estate Subcommittee will immediately follow the Investment Subcommittee.
- The Retirement Allowance Committee Meeting will immediately follow the Real Estate Subcommittee.

If you have any questions, please call me at (312) 463-0350.

JVK:gmb

**AGENDA**  
**For the 654<sup>th</sup> Retirement Allowance Committee Meeting of**  
**July 22, 2003**

1. Meeting will be called to order at 8:30 A.M., Northern Trust Co., 50 South LaSalle Street, Director's Dining Room, 6<sup>th</sup> floor.
2. Roll call
3. Approval of the Minutes of the 653<sup>rd</sup> meeting.
4. Investment Subcommittee
  - a.) Morgan Stanley Investment Update
  - b.) Securities Litigation Presentation Bernstein, Litowitz, Berger and Grossman
  - c.) SSARIS Proposal
5. Real Estate Subcommittee
  - a.) Champion Ventures Presentation
6. Subcommittee on General Administration
  - a.) Announcements of deaths reported since last meeting

**The Estate of William Hiller** – request for refund – gross amount adjusted due to B survivorship option.

**Andrew Hodowanic** – request for refund – gross amount adjusted due to B survivorship option (\$3,105.20).

**The Estate of Fonzie Porties** – request for refund – gross amount adjusted due to B survivorship option (\$8,239.56).

- b.) Presentation of pre-retirement surviving spouse allowances for approval.

**Leonard Harris #19689** applied for retirement benefits effective 07-01-03 and Chose the A-ALL survivorship option. He passed away on 06-29-03.

- c.) Presentation of new retirement applications for approval.

**Roberto Andino #7618** applied for a disability allowance and is requesting benefits retroactive to 07-01-03.

**Shahid Abdulla #7411** applied for a regular retirement effective 08-01-03 and is requesting benefits retroactive to 07-01-03.

**AGENDA**  
**For the 654<sup>th</sup> Retirement Allowance Committee Meeting of**  
**July 22, 2003**

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Elaine Boykin #2437 applied for a disability allowance 06-01-03 and is requesting benefits retroactive to 02-01-03.

Jose Guillen #1664 applied for a disability allowance 06-01-03 and is requesting benefits retroactive to 04-01-03.

Margaret Ottley #4989 applied for a disability allowance 06-01-03 and is requesting benefits retroactive to 03-01-03.

Walter Sanders #9824 applied for a disability allowance 06-01-03 and is requesting benefits retroactive to 05-01-03.

Richard L. Jobson #23612 applied for retirement benefits effective 08-01-03 and revoked his application.

- d.) Presentation of death benefits for approval.
- e.) Presentation of refunds of contributions for approval.
- f.) Presentation of bills and remittances
- g.) Request for refund of health premiums paid

William Reynolds – asking for refund of \$3,850.62 – spouse died 06-28-99

Leamuel Taylor – asking for refund of \$340.92

John Williams – asking for refund of \$940.80 – spouse died 04-17-02

7. Old business

- a.) Allsup, Inc. Proposal
- b.) Disability Management Proposal

8. New business

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9. Executive Session

- a.) Litigation

10. Adjournment

**BURKE, WARREN, MacKAY & SERRITELLA, P.C.**

MEMORANDUM

TO: John V. Kallianis

FROM: Michael S. Virgil, Esq.

RE: 1. Retroactive Recovery of Option B Benefits  
2. Refund of Health Insurance Premiums

DATE: July 16, 2003

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FACTS

The Retirement Plan for Chicago Transit Authority Employees provides joint and survivor annuity options to Participants. One of those options is referred to as "Option B" and is found in Section 13.2 reading as follows:

A reduced monthly retirement allowance payable to the retired employee while both such retired employee and the spouse (designated by such retired employee in accordance with the provisions hereof) shall live, and:

- (i) If such retired employee shall predecease the said designated spouse, all or a specified fractional part-  $\frac{1}{2}$  or  $\frac{2}{3}$  thereof, as specified by the employee in his election – of such reduced monthly amount payable to the spouse for the then remainder of his or her lifetime; or
- (ii) If the said designated spouse shall predecease the retired employee, the monthly amount payable to such retired employee for the then remainder of his or her lifetime shall be that monthly amount which would have been payable had no option been elected.

In the instant case a Participant's wife died in 1999, and he failed to notify the Plan of her death. Consequently, the Option B benefit continued at a reduced amount. The Participant died in March 2003 at which time the Plan first learned of the wife's death.

OPTION B ISSUE

Is the Participant's estate entitled to recover the difference from the wife's death in 1999 to the Participant's death in March 2003 in the annuity amount

which would have been payable had no option been elected and the reduced amount which was in fact paid?

#### OPTION B OPINION

The Participant's estate is entitled to recover the difference. If the difference is not paid, it would be an impermissible forfeiture of a vested benefit.

#### OPTION B DISCUSSION

Governmental plans which are qualified under Section 401(a) of the Internal Revenue Code, such as the Retirement Plan, are exempted from the ERISA vesting rules and must meet the vesting requirement of Sections 401(a)(4) and (7) as in effect on September 1, 1974. Before ERISA, qualified plans had to provide fully vested benefits to Plan Participants only when they attained normal retirement age or upon complete or partial Plan termination or complete discontinuance of contributions.

Can the Retirement Plan require a Participant to notify the Plan of his spouse's death and if the Participant does not, refuse to pay the increased benefit retroactively? A similar issue arose in Cotter v. Eastern Conference of Teamsters Retirement Plan, 898 F. 2d 424 (1990). In this case the Participant continued his employment after his normal retirement date. The Plan provided a retirement benefit under those facts. However, Mr. Cotter did not apply for that benefit and when he later learned of it, he requested retroactive payment. The Plan argued that the benefits did not begin until he filed a claim for them. The Court answered the issue as follows:

Although our review of Miles' interpretation of the Plan's terms is not de novo, we nonetheless reject his interpretation as an abuse of discretion. [FN2] As the facts of this case demonstrate, Miles' interpretation of the Plan might lead to forfeiture of vested rights to retirement benefits where, as here, a participant does not immediately file a claim. Such a forfeiture plainly violates 29 U.S.C. § 1053(a), which provides: "Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age" (emphasis added). See also Hummell v. S.E. Rykoff & Co., 634 F. 2d 446, 449 (9<sup>th</sup> Cir. 1980) (legislative history ERISA reveals that "vested employee rights cannot be forfeited for any reason") (emphasis in original)); see also Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 510, 101 S.Ct. 1895, 1899, 68 L.Ed.2d 402 ("the concepts of vested rights and nonforfeitable rights are critical to the ERISA scheme"). Given the incompatibility between Miles' interpretation and the statutorily prescribed critical aspect of the ERISA scheme which we have mentioned,

the requirement that a participant file a claim before vested retirement benefit payments begin is unreasonable and would constitute an abuse of discretion. (Emphasis added)

Although the court's opinion makes reference to ERISA and ERISA does not apply to the Retirement Plan, the discussion is about forfeitures upon attainment of normal retirement age and as mentioned earlier, the pre-ERISA vesting requirements required 100% vesting upon attaining normal retirement age, the same requirement being discussed in Cotter.

By analogy, requiring the Participant to notify the Plan of the death of his wife and denying benefits if he does not, is an impermissible forfeiture just as requiring the filing of a claim is an impermissible forfeiture.

#### REFUND OF HEALTH INSURANCE PREMIUMS

It should be noted that the vesting requirements apply to pension benefits and not to welfare benefits. This could be a distinction between the retroactive payment of Option B benefits and the refund of health insurance premiums when the Plan is advised belatedly of a dependent's death. However, since the premium for the dependent coverage is withheld from a Participant's pension, that is a link back to the pension and may be sufficient to make the refusal to refund the premium an impermissible forfeiture of the pension.

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