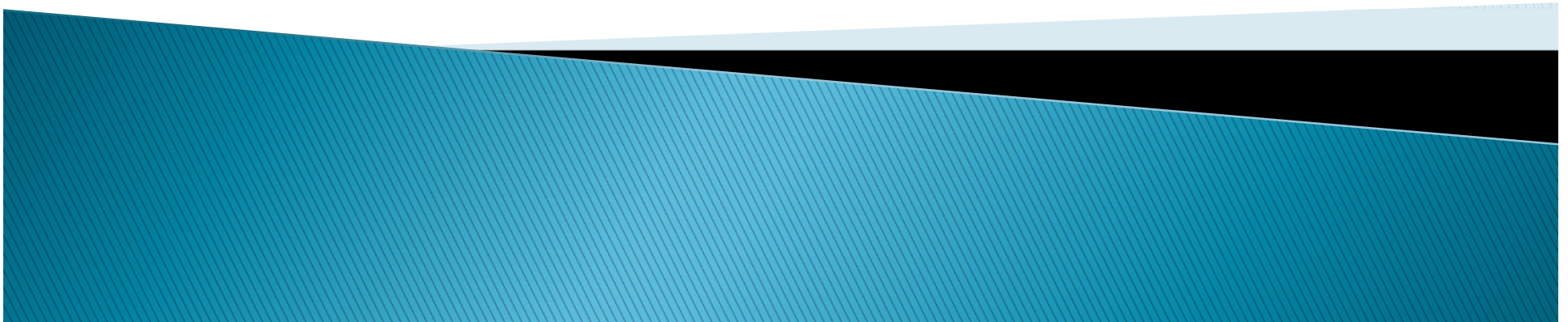


DISCUSSION TOPIC 1

Alternative Investments – What does
your Board know and what should they
know?

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June 24, 2015
Austin, Texas



Alternative Investment Types

- Private Equity – Buyout, Credit, Real Estate etc.
- Hedge Funds
- GTA/GAA
- Direct Investments – Agriculture, Real Estate



Legal Structures for Smaller Funds

- Private Equity – Commingled
- Hedge Funds – Commingled or separately managed (probably not for smaller funds)
- GTA/GAA – Commingled or separately managed (probably not for smaller funds)
- Direct Investments – Separately managed



Manager Standard of Care

- Private Equity – Varies (not usually fiduciary)
 - “Their interests over yours”
- Hedge Funds – Varies (from fiduciary to gross negligence)
- GTA/GAA– Varies (from fiduciary to gross negligence)
- Direct Investments – Probably fiduciary



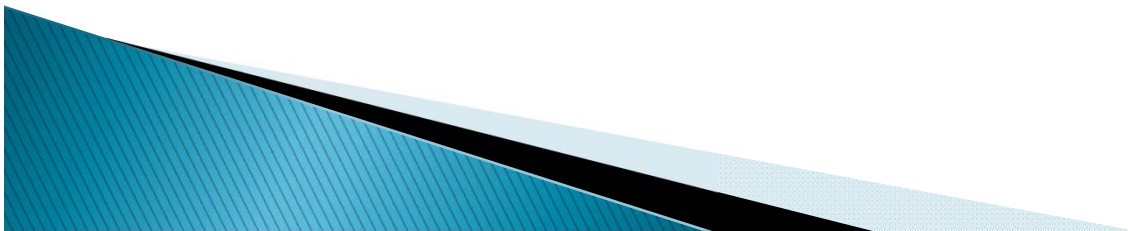
Board Process

- Does your board approve individual investments?
- Do you negotiate investment agreements ahead of board approval?
- How deeply do you go into the investment agreement with your board?



Fiduciary Issues

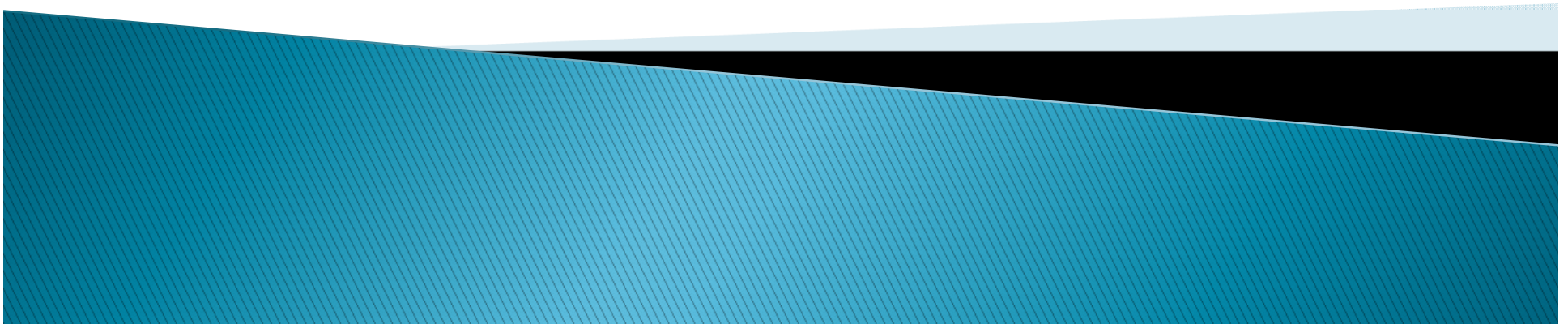
- Does your board understand well each type of investment structure?
- Should the board understand well each type of investment structure under the prudent man rule?
- Is a board/your board capable of understanding the differing standards of care especially in relation to the total investment?



DISCUSSION TOPIC 2

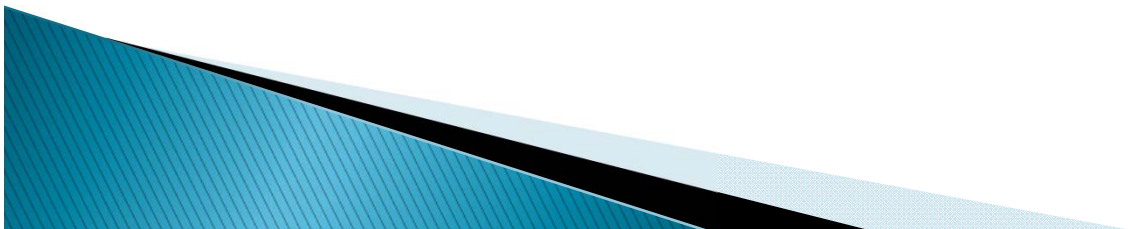
Succession planning in the event of loss of key staff members

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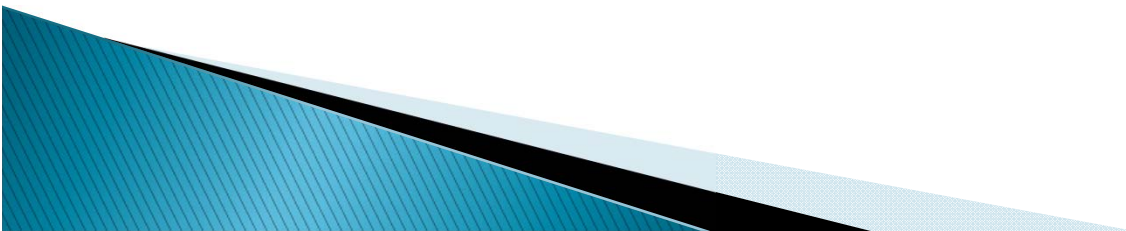
Succession Planning

- Why should your Board do this?
 - Fiduciary duty
 - Prudence
 - Projects image of stability



Who is critical?

- Executive Director
- CIO
- Operations / Benefits Manager
- General Counsel?



Process

- Identify Critical Staff
- Cross Train to the extent possible
- Naming early a successor to an ED
 - Stability
 - Risk of loss of disappointed employee
 - What if they never leave? Joe Paterno/Bobby Bowden
- Contractual tie ups and incentives
- Should a Board care? Is anyone indispensable?



Legal Issues

- Grooming for a position – Cause of action if not ultimately given?
- Contractual promises/inducements



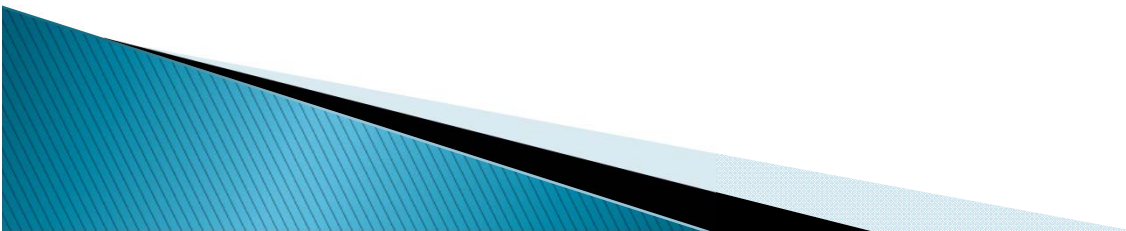
Sudden Departure Issues

- ▶ **Fired ED**
 - Contractual issues
 - For cause?
 - Contractual severance
 - Agreed severance/waiver of claims – gift issue?
- ▶ **Interim ED – What is or should be the extent of their authority?**
 - Should the Board limit the Interim ED’s authority?
 - Can the Board do that under your plan document?

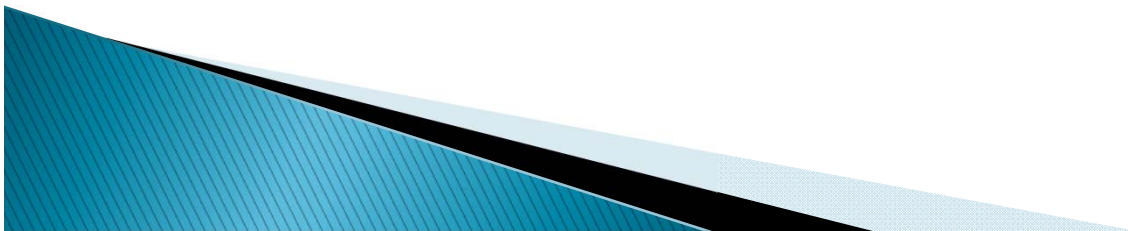


Conclusions

- ▶ Done correctly, succession planning could enhance a stable image and environment.
- ▶ Can create issues with lack of upward mobility for some staff
- ▶ Maybe simple periodic Board discussion is the best

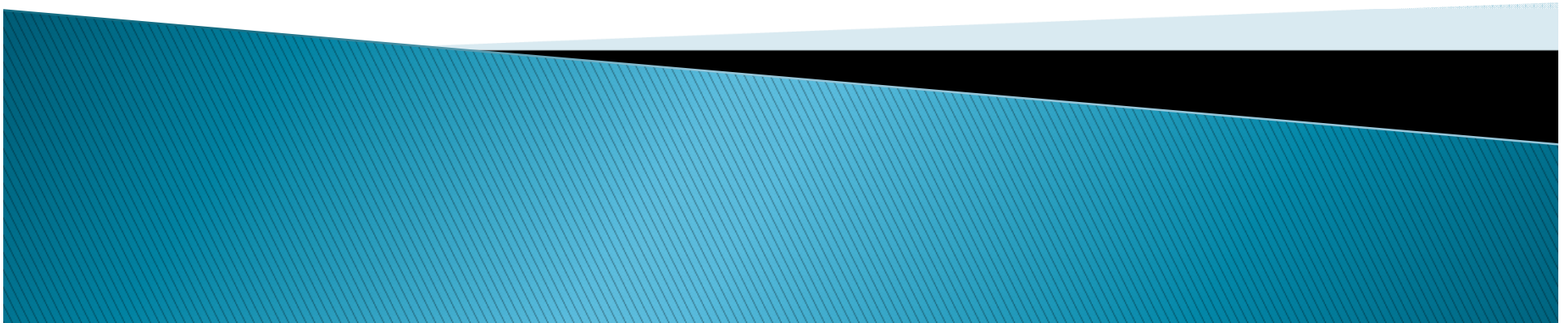


**Remember, proper
preparation prevents poor
performance.**



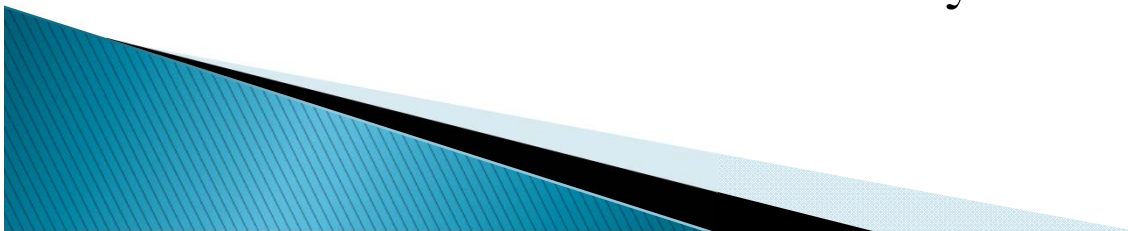
DISCUSSION TOPIC 3
**Forming alliances and working
successfully with stakeholders,
participants, plan sponsors and other
agencies of government**

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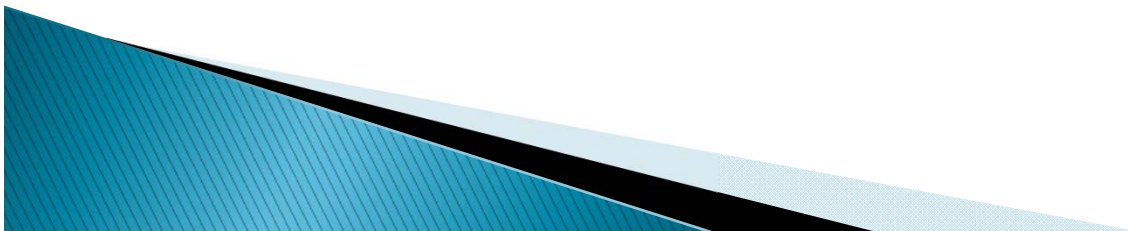
Coming together is a
beginning;
keeping together is progress;
working together is success.

Henry Ford



STEP 1 - IDENTIFY THE STAKEHOLDERS

A stakeholder is a person or group likely to be affected by (or who thinks they will be affected by) a decision -- whether it is their decision to make or not.



Stakeholders

Plan Participants

Beneficiaries

Legislators

Fund Staff

Plan Sponsor

Other Govt. Entities

Taxpayers/Public at Large



STEP 2 - DEFINE

- ▶ Identify all of the Issues
- ▶ Control the Process (i.e. written questionnaires, in person meetings, webcasts)
- ▶ Create Ground Rules and Guidelines
- ▶ Timeline
- ▶ Determine Desired Outcome (not the ultimate decision necessarily, but the end product)
- ▶ Convening (gathering the parties together)



STEP 3 - FACILITATE

- ▶ Facilitation - a way of helping groups work together
- ▶ Usually, the facilitator is supposed to be nonpartisan or neutral, but can also help steer to conclusion.
- ▶ As the parties try to collect information, formulate proposals, defend their views, and take account of what others are saying, a facilitator reminds them of the ground rules they have adopted and intervenes when someone violates the ground rules.



STEP 4 - MEDIATE

- ▶ Mediation is used to help stakeholders deal with strong disagreement
- ▶ Identify potentially unfair or unimplementable outcomes
- ▶ Create conflict assessment that spells out what the issues are, who the stakeholding interests are, where they disagree and where they might find common ground



STEP 5 - CONSENSUS

- ▶ Create Consensus (not necessarily unanimity)
- ▶ Consensus is the product of a good-faith effort to meet the interests of all stakeholders.
- ▶ Generally, everyone agrees they can live with the final proposal.
- ▶ Stakeholders will settle for agreement that goes as far as possible toward meeting the critical interests of all stakeholders. (It is absolutely crucial that this definition of success be clear at the outset.)



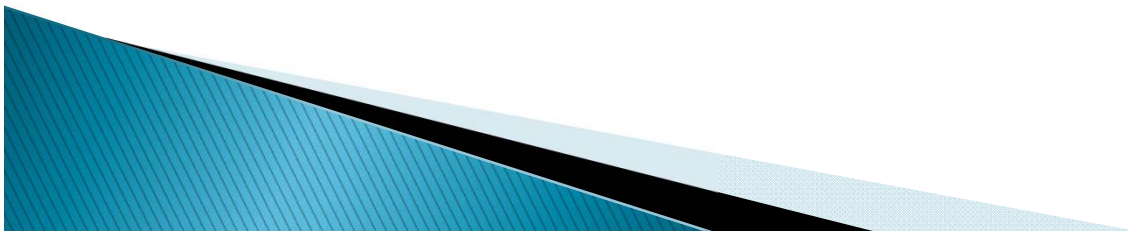
STEP 6 - FINALIZE

- ▶ Communicate
 - With Stakeholders
 - With Press
 - With Participants
- ▶ Implement
- ▶ Continue to foster and build the alliance for future needs



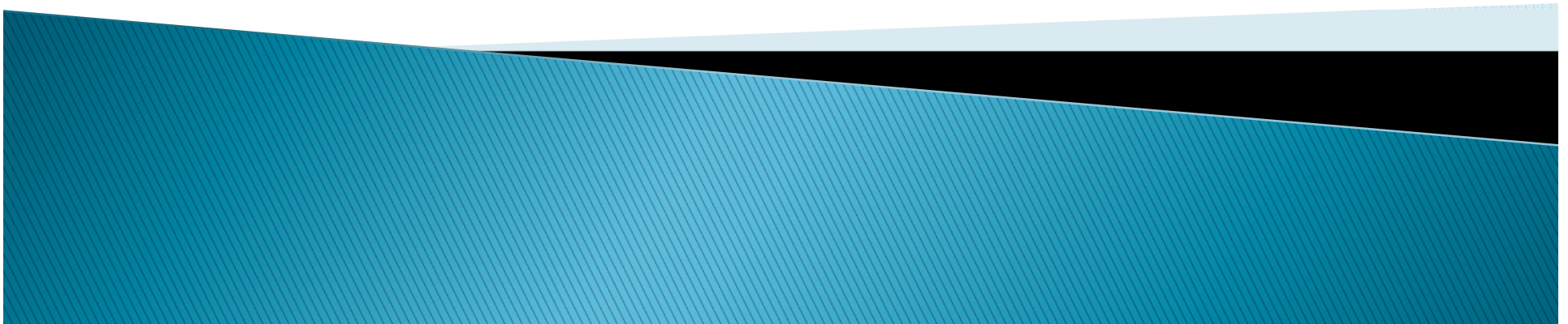
Alliance - the union of two thieves
who have their hands so deeply
inserted in each other's pockets that
they cannot separately plunder a third.

Ambrose Bierce



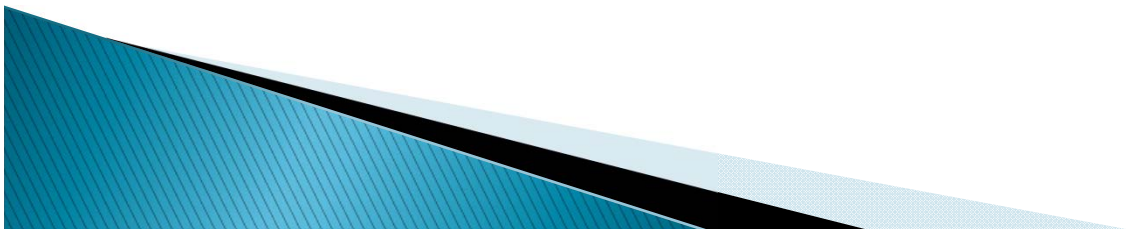
DISCUSSION TOPIC 4
**Advising your board on plan sponsor
initiated benefit cuts**

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Board's Role

- Carry out the plan document
- Educate members / public / legislators
- Change benefits? – Some plans but not the norm



Legally questionable changes

- Is the Board obligated to enforce plan provision changes if of dubious legality? What if fiduciary counsel opines plan changes are not legal?
- Can a board bring a declaratory judgment action? Should it bring such an action? Must it bring such an action?
- Any other action a board could take? Opinion of State Attorney General?



Hypothetical

The City of Confusion has on its agenda for a council meeting a proposal to cut COLAs across the board, including for retirees. The state constitution has protections which are clearer for retirees than for actives that such a change is not constitutional. Fiduciary counsel to the Board has given an opinion to the Board that the changes are very likely not constitutional as to retirees but unclear for all other members. The Board Chairman decides to attend the council meeting and speak about the proposal.

What can the Board Chairman say?

What should she say?

Can she mention the legal opinion?

Can she advocate a position?



Hypothetical continued

The City passes the plan change reducing the COLA. The Board meets with staff. Staff advises the Board that there will be a very large out of pocket cost (as well as a huge amount of staff time/overtime) to program the changes and an even larger cost to reprogram them if a court found them unconstitutional. Beneficiaries are threatening to sue but have not done so yet.

Can the Board bring a declaratory judgment action?
Should it do so given the costs involved?



Hypothetical continued

Some beneficiaries bring suit. The Board meets to decide whether to authorize expenditures to have fiduciary counsel file an amicus brief. It is contemplated that the brief will tell the court the costs to the plan of programming and reprogramming the changes.

Can/should the Board authorize the expenditure?
Can the brief also take a position of the legality of the change?



Hypothetical continued

Some beneficiaries bring suit. The Board meets to decide whether to authorize expenditures to have fiduciary counsel file an amicus brief. It is contemplated that the brief will tell the court the costs to the plan of programming and reprogramming the changes.

Can/should the Board authorize the expenditure?
Can the brief also take a position of the legality of the change?



Hypothetical continued

While deciding about whether to authorize the amicus brief, the Board is also deciding whether to suspend enforcement of the plan change as to retirees pending decision by a court, consistent with the opinion the Board received from fiduciary counsel.

Does the Board have authority to enact the suspension?

What factors should the Board consider in making that decision?

