



CYPEN & CYPEN
NEWSLETTER
for
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Never Forget September 11, 2001
and
Always Remember May 2, 2011

**1. FEDERAL APPEALS COURT DECLINES TO ENFORCE
APPEAL WAIVER, BUT UPHOLDS 108 MONTHS IMPRISONMENT**

SENTENCE: Quintanilla, a former sergeant with the Miami Springs Police Department, appealed his sentence of 108 months of imprisonment after pleading guilty, under a written plea agreement, to one count of Hobbs Act extortion under color of official right. Quintanilla raised two arguments on appeal: (1) the sentence appeal

waiver in his plea agreement was unenforceable because the government breached the plea agreement by breaking a promise made during the plea colloquy; and (2) the district court erred in enhancing Quintanilla's offense level by two levels, and refusing to reduce his offense level by two levels, after finding that Quintanilla possessed a firearm in connection with the offense. After careful review, the Court of Appeals declined to enforce the waiver of the appeal, but nonetheless affirmed Quintanilla's sentence. While the magistrate judge who conducted Quintanilla's plea colloquy read out loud the terms of the waiver, she did not specifically question Quintanilla about the waiver or confirm that he understood what those terms meant. Moreover, Quintanilla's response to the magistrate judge's explanation of the waiver, "Okay," does not clearly show that he understood the magistrate judge's explanation, and the government has not identified parts of the record that make "manifestly clear" his understanding of the full significance of the waiver. And because the government briefed Quintanilla's guidelines challenges, the court refused to burden or prejudice the government by enforcing the waiver. Requiring the government to file a brief where there has been valid appeal waiver undermines the interests of both the government and defendants generally. On the merits, Quintanilla argued that no evidence supported the district court's finding that he possessed a firearm in connection with the offense. As a result, he asserted, the court erred in applying the two-level enhancement for possession of a firearm, and in refusing to apply a two-level reduction for meeting the safety-valve criteria. First, the district court did not

clearly err in finding that Quintanilla possessed a firearm during conduct relevant to the offense. He was an on-duty police officer during relevant conduct. Second, the district court did not clearly err in finding Quintanilla's possession of the firearm was in connection with the offense, because the firearm facilitated or had the potential to facilitate the offense. The record showed that Quintanilla admitted that he had agreed to provide cover and protection for a drug trafficker transporting ten kilograms of cocaine. *United States of America v. Quintanilla*, Case No. 15-145371 (U.S. S.D. Fla. August 19, 2016).

2. FLORIDA'S FIRE LAB FAILS TO REGAIN NATIONAL

ACCREDITATION: Chief Financial Officer Jeff Atwater has failed a second time to regain full accreditation for a state lab that investigates thousands of cases of fire debris every year for evidence of arson according to the miamiherald.com. The latest blow to the lab's credibility is a report last week by a three-member appeals board that upheld nine of 11 critical findings in its fire debris section, forcing the lab to remove all references to national accreditation from its web site until the problems are resolved. The loss of accreditation means a loss of prestige for the lab and could jeopardize arson investigations across Florida. The lab, known as the Bureau of Forensic Services, is the third-largest operation of its kind in the country. A national accreditation board, the American Society of Crime Lab Directors, or ASCLD, launched an investigation of the lab last year after saying it had "several complaints" -- actually two, according to Atwater's office. One was from John Lentini of Islamorada, a private investigator who

has repeatedly questioned the lab's work. Lentini cited a case in which his client, a Crawfordville man, was wrongly accused of arson and insurance fraud in a boat fire based on lab findings. Stanley Freeman received \$247,000 in public money from Atwater's office to settle a civil rights lawsuit. Lentini said the lab has repeatedly found the presence of gasoline where none existed and ASCLD agreed, finding that in 26 gasoline-related cases it reviewed at random, 14 involved "an unsupported conclusion" by lab analysts. The problems became more serious in March when the North Carolina-based accrediting agency sent a review team to the lab in Havana, near Tallahassee, where it found a series of deficiencies and suspended the lab's accreditation in the fire debris category. "The report is full of allegations that make it seem that this is a laboratory full of incompetents," lab chief Carl Chasteen responded in May. Nearly all of the deficiencies were upheld on appeal, and the suspension of accreditation will stay in effect until the lab "has resolved all of the remaining findings," a report said. Atwater, whose duties include serving as state fire marshal, has questioned the accrediting agency's motives. His office has criticized ASCLD for releasing preliminary conclusions. The appeal panel found "insufficient supporting documentation" and said specific details "are not well documented." "It is the appeal panel belief that there are opportunities for improvement in the procedures at BFS," said the report, which reiterated the review team's earlier finding of "questionable conclusions" in a number of cases. Atwater's office filed a 26-page corrective action plan with ASCLD in which it says it will review procedures, implement additional

checks and balances and hold a class for its lab analysts. “While we are disappointed with your decision to uphold most of the findings of March 7, we have nonetheless been working diligently to resolve all outstanding matters of alleged non-compliance,” Deputy Chief Financial Officer Jay Etheridge wrote on September 16. “We are eager to have this matter resolved as soon as possible.” Etheridge’s letter indicated that the CFO’s office wants to arrange a follow-up site visit by the appeal board within the next three weeks.

3. GOVERNMENTS TOLD GROWTH DEPENDS ON OPEN

WALLETS: Money managers and institutional investors have a message for governments in developed markets: It is time to spend some money according to pionline.com. Their concern is that monetary policy, necessary in the aftermath of the financial crisis, has reached its limits. Adding a hefty shot of government spending could work in tandem with that effort, creating growth, improving tax receipts and, at the same time, potentially making much-needed improvements to infrastructure. The shape and form of each country’s fiscal policy will likely vary -- across so-called helicopter money, infrastructure spending and tax breaks. Monetary policy is not going to rebuild the economy. We need other things, and that is fiscal stimulus,” said Carsten Stendevad, CEO at Danish pension fund ATP, Hilleroed, which has 800 billion Danish kroner (\$119.9 billion) in assets. A number of countries -- particularly Germany and some countries in northern Europe -- can afford fiscal stimulus, he said. “The incremental effects of further monetary policy I think are highly

limited. The distortive effects of monetary policy in the financial market and the real economy, including a number of real estate markets, are very clear. So we need other policy instruments to be put forth. The area of infrastructure is the obvious place to start,” Mr. Stendevad said. His view was echoed by Antony Barker, Manchester, England-based director of pensions at Santander U.K. PLC, sponsor of the £11.3 billion (\$15 billion) Santander U.K. Group Pension Scheme Common Fund. “I have regularly said policy is the wrong way round -- (the government) should issue 100-year gilts and use the money to build” a number of U.K. infrastructure projects. “Apart from the direct economic/employment benefit of these infra deals, generating a long-term gilt price point will help hedging/valuations and extra supply should hopefully improve yields, meaning companies can invest in their businesses rather than fund made-up deficit numbers,” which in turn would generate further economic growth, profits and tax receipts, said Mr. Barker in an e-mail. A number of money management executives also added their voices to the call for fiscal spending, although they are split when it comes to the form it should take. Some agreed with pension fund sources that infrastructure spending is the way forward. Marino Valensise, head of multiasset and income at Barings in London, said helicopter money, which involves the printing of money and its distribution to the public, is “superior” in the short and long term. “If it generates some inflation -- and it will -- that is great news. The world as it is today has accumulated so much debt that it will not be able to repay it. If (a country) does not want to restructure or default -- which would be unpalatable for a G7 country -

- the only alternative is to grow out of its debt or inflate away part of that stack of debt.” Growth is not a “credible forecast for the world. There is only one China,” so there is a need to create inflation. “It has to be big but more importantly targeted so to increase the prosperity for the majority of people,” Mr. Valensise said. While governments have implemented some forms of spending, such as bailing out the banks in the years since the global financial crisis, more is needed. “Since the crisis, fiscal policy has not been used to effect -- maybe politics is paralyzing the use of fiscal policy -- and the entire burden of any kind of stimulus has fallen on monetary policy,” said Salman Ahmed, chief investment strategist at Lombard Odier Investment Management in London. “What we need is a proper shift, not necessarily of the same scale as monetary policy developments ... but it has to be frontloaded as we need growth now, not in five years' time.” Paul Brain, London-based head of fixed income at Newton Investment Management, said the firm has been talking about the need for spending for about a year now, and acknowledged that conversation on the topic has picked up outside the company, too. As economies restructure post crisis, “whatever the central bank does is a sticking plaster to stop a serious economic decline,” he said. What is also needed is a higher target for inflation. The ECB, for example, is aiming for inflation close to but below 2%. Xavier van Hove, London-based fund manager responsible for running \$2.3 billion in global and European equity funds at GAM, said inflation needs to be at 3% to 4% for savers to start spending. The financial crisis, he said, has left individuals and corporations psychologically predisposed against

debt. “So the traditional answer that making debt cheap enough will incentivize borrowing and spending does not apply today,” Mr. van Hove said. Cheap money will not change a now conservative attitude toward borrowing or spending among individuals and corporations. “What we need ... is government spending,” he said. Sources said such spending would bring some relief to pension funds and other institutional investors, which have been battered by low interest rates and yields. “Easing money has not been without cost. It has cost pension funds dearly, and corporates and the funds they have sponsored,” said Mr. van Hove. Wilshire Consulting said U.S. corporate pension plans' aggregate funding ratio was 76.2% at the end of August, falling 5.1 percentage points year-to-date. JLT Employee Benefits said the funding ratio of U.K. defined benefit funds was 74% at August 31, vs. 78% a month previous and 83% as of August 31, 2015. “If we can raise the nominal GDP rate of an economy, and perhaps modestly raise inflation, the assets we own in pension funds over time will easier match liabilities,” said Mr. Brain. The liability side of the pension fund balance sheet would also improve, were bond yields to rise. Infrastructure spending may also present investment opportunities for pension funds, said sources, although that is not the ultimate goal, said ATP's Mr. Stendevad. “On the one hand, (fiscal policy) might create investment opportunities for us -- that would be nice. But that is not why we are asking for it. I would support it even if it didn't mean a single opportunity for us. It is for the effect on the economy; we have made great money over the past couple of years, achieved fantastic returns helped by monetary

policy. But we would much prefer to do that supported by economic fundamentals,” he said. While sources are sure the time is right for government intervention, they are not convinced that their prayers will be answered. “On the fiscal policy side right now, resistance is mainly political,” said Mr. Ahmed. He said it is unusual for fiscal policy to be deployed outside of a crisis. “The current situation I would describe as a slow-burn crisis -- we have slow growth, very low interest rates.” Benjamin Mandel, executive director, global strategist in the multi-asset solutions group at J.P. Morgan Asset Management in New York, agreed that a sudden change to fiscal policy outside a recession is unlikely. “We have no illusion about it happening suddenly,” Mr. Mandel said. “The political side of fiscal policy is more complicated (than monetary policy). Those controlling the government budget don't have the luxury of being independent central banks. Fiscal ... operates with a little more inertia, typically needing a big, galvanizing event to get loosening,” he said.

4. EIGHT SOCIAL SECURITY MYTHS DEBUNKED: Social Security provides critical benefits to more than 50 million people a year; almost 170 million workers contribute a chunk of their paycheck, to the tune of \$900 billion annually, to keep those benefits flowing. You would think with all the people and money involved that we would all understand exactly how the program works. Not so according to Kiplinger.com. The complexity of the system, its evolution and a shift in demographics that threatens its solvency have created confusion over what Social Security can and will deliver . . . and even whether it

will continue to exist. Here are eight of the most common myths and misconceptions, along with explanations that set the record straight.

- **The Maximum Social Security Benefit Is \$2,600.** Social Security benefits are primarily based on two variables: your highest earnings over 35 years and your age when you file for benefits. The maximum benefit for someone retiring at full retirement age (66 for people born in 1943 through 1954) in 2016 is \$2,639 a month. (The average monthly benefit this year is about half that much.) The maximum benefit normally increases each year, but it can fall, too, as it did in 2016 from the 2015 level. The age at which you claim is also key. For each year you wait after full retirement age until 70, you will get an 8% boost in benefit. Again, assuming your 35 highest-earning years qualifies you for the highest benefit, you'd get \$3,576 at age 70. Conversely, if your full retirement age is 66, you will take a 25% cut in the benefit if you claim at 62, the earliest date at which you're eligible. In that case, the maximum monthly amount is \$2,102 in 2016. You might be wondering why the maximum benefit at 70 is not 132% of the amount you would get at 66 (\$2,639), nor is the benefit at age 62 a 25% reduction of \$2,639. It is complicated, but suffice it to say that each individual's benefit turns on the benefit levels in the year a person turns 62. So, a beneficiary who claims at age 62 will have a different base level from one who turns 66 in the same year, and a beneficiary who turns 70 that year will have yet

another base level.

- **Social Security Will Go Broke Within the Next 20 Years.**

Social Security is essentially a pay-as-you-go system. Most everyone contributes 6.2% of each paycheck, and employers kick in an equal amount (self-employed folks pay the full 12.4%). As long as payroll taxes exist, Social Security will never go broke. Until 2010, payroll taxes brought in more than enough to cover benefits for retirees and other recipients. The surplus went into a trust fund, which is invested in special Treasury securities. The fund also reaps interest on the securities plus taxes on the benefits of some beneficiaries. Problem: In recent years, more money has gone out in benefits than has come in from payroll taxes. The government has been using the interest on the securities to cover the shortfall but will have to start redeeming the securities themselves by 2020. Failing a fix by Congress to raise taxes or cut benefits, or both, the trust fund will run out of money in 2034. That does not mean benefits will disappear altogether. Payroll taxes will still be enough to cover 79% of promised benefits. Will a 21% reduction in benefits really happen? Probably not. Much as Congress dislikes confronting hard choices, it is not likely to risk the reaction of millions of Social Security beneficiaries (read voters) to the idea of such a cut. Expect a solution to be pounded out long before 2034.

- **You Do Not Have to Pay Taxes on Social Security Benefits:**

For millions of beneficiaries, that is wishful thinking. If your combined income -- that is, adjusted gross income not including any Social Security benefits plus any nontaxable interest plus half your benefits -- is between \$25,000 and \$34,000 for singles and \$32,000 to \$44,000 for couples filing jointly, you will owe taxes on up to 50% of your Social Security benefits. If your combined income exceeds the \$34,000 limit for singles or the \$44,000 limit for couples, you will owe tax on up to 85% of your benefits. Just over half of all beneficiaries paid federal tax on Social Security benefits in 2015. You may also have to pay state taxes on part of your benefits. Four states -- Minnesota, North Dakota, Vermont and West Virginia -- tax up to 85% of Social Security benefits. Colorado, Connecticut, Kansas, Missouri, Montana, Nebraska, New Mexico, Rhode Island and Utah also tax a portion of Social Security benefits but provide exemptions based on income or age.

- **Due to Social Security's Shortfall, You will not Get Back the Dollars You Contributed to the System. Reality check:** You do not get back exactly what you put into the system anyway. Benefits are based on your 35 highest-earning years. But Social Security uses a progressive formula that replaces a higher portion of income for lower earners than for high earners -- not a dollar-for-dollar match of what each worker pays in. Whether you will recoup more or less than the amount of tax you paid into the system depends on your earnings and how much tax

you paid during your career, your age when you claim benefits, whether you are married, and how long you (and your spouse) live to collect benefits. Even if Social Security did pay a dollar-for-dollar match, the dollars you contributed are not stowed in your personal lock box, awaiting you at retirement. In fact, the money you paid went to fund someone else's retirement; your benefits come from the payroll taxes of current workers.

- **Raising the Bar on Earnings Subject to Payroll Taxes Would Fix the System's Shortfall.** Under the current system, workers pay 6.2% of their wages, up to \$118,500 in 2016, to fund Social Security benefits; employers kick in another 6.2%. If you are self-employed, you pay the whole 12.4%, up to \$118,500. (You and your employer also pay 1.45% each to fund Medicare Part A, which covers hospital stays. That tax has no income cap.) Some policymakers maintain that raising or eliminating the cap on payroll taxes would generate enough money to get the system back on track. Not so, according to the Committee for a Responsible Federal Budget, a bipartisan policy group. Although removing the cap would significantly improve Social Security's finances, it would not cover the shortfall altogether, partly because benefits are keyed to income. The higher the income subject to payroll tax, the higher the benefits paid out later to high earners (although not as much as the extra amount they put in), reducing the potential savings to the system.

- **If you do not Claim Benefits Early, You Risk Not Getting Your Fair Share.** If you claim benefits as soon as you are eligible, at 62, you get a 25% to 30% reduction in your benefit compared with what you would get at full retirement age (66 for people born between 1943 and 1954; 67 for those born in 1960 and later). For every year you wait to take it after full retirement age, until you reach age 70, you get an 8% boost in benefits. Social Security actuaries calculate benefits with the goal of equalizing the total amount you get over your life expectancy whether you take benefits early, at full retirement age or at age 70. If you die before you reach your life expectancy, you will not get your "fair" share regardless of when you claim Social Security. If you live longer than your life expectancy, you will get more than your allotted amount. Fair or not, if you have reason to believe you will not reach your life expectancy, you might as well take the benefit early and enjoy the money. If you think you will live well beyond your expected lifetime, you may be better off waiting until 70 because the bigger benefits over time will add up to much more than if you collected earlier, for a lower amount.
- **If You Take Social Security and Keep Working, You Must Give Back Most of Your Benefits.** It is true that Social Security beneficiaries younger than full retirement (currently 66) who keep working and earn more than the cap -- \$15,720 in 2016 -- lose \$1 in benefits for every \$2 they earn over that cap. But this

rule, known as the earnings test, eases in the year you reach full retirement age. In that year, you give up \$1 for every \$3 you earn over a much larger cap -- \$41,880 in 2016 -- before the month you reach your full retirement age. Starting in the month of your birthday, there is no limit on how much you can earn. Better yet, Social Security will adjust your benefits going forward with the goal of insuring that, over your life expectancy, you will be repaid every dime you lost to the earnings test.

5. SOME 2017 RETIREMENT LIMITS LIKELY TO CLIMB: According to a piece in hrinsights.blogs.xerox.com, this season invariably invites predictions of next year's benefit plan limits given that the annual COLA adjustments for most limits are measured using the CPI-U announced by the Bureau of Labor Statistics for July, August and September. BLS announces these a few weeks after the indicated month ends and the July and August numbers are now a matter of public record. The September rate will be released this year on October 18, at which time the guessing will be over. With both the July and August rates in hand, there is little doubt that we will see some increases in the benefit limits for 2017. From time to time we have seen the CPI-U retreat slightly, but we would need to see a fairly significant decrease in the September figure to eliminate the projected increases shown below. More likely, the September CPI-U will advance slightly. But for any of these limits to jump to the next level, a 2.7% increase would be needed in just one month. That is not likely to happen. Accordingly, here are select predictions:

	<u>2016</u>	<u>2017</u>
401(k) deferrals (also 403(b) and 457 deferrals)	\$18,000	\$18,000
Catch-up	\$6,000	\$6,000
Defined contribution annual addition	\$53,000	\$54,000
Defined benefit maximum pension	\$210,000	\$215,000
Compensation limit	\$265,000	\$270,000
Highly Compensated Employee threshold	\$120,000	\$120,000
Officer	\$170,000	\$175,000
QLAC	\$125,000	\$125,000

6. ICMA-RC OFFERS VIRTUAL REALITY REALIZERETIREMENT APP TO PUBLIC SECTOR EMPLOYEES:

ICMA-RC has introduced a mobile app that allows users to experience virtual reality and personalized animation on their smartphone, believed to be industry firsts. The development of these mobile app innovations are meant to build upon the initial success of the ICMA-RC RealizeRetirement Tour, which is currently traveling around the country promoting retirement savings to public sector employees. Two of the Tour elements -- a 360 degree virtual reality experience and an animated personalized "My Retirement Dreams" video -- will now be accessible on ICMA-RC's mobile app, which is available to download at the App Store® and Google Play. The ICMA-RC virtual reality video can be viewed via smartphones or by using custom mini virtual reality glasses that will be distributed at various events and conferences. The virtual reality video will give users a unique view of a "day in the life" of three public sector employees. The virtual reality video includes an enroll button on the interface, allowing public sector employees to enroll via their mobile device as permitted by their employer. The "My Retirement Dreams" animation app allows participants to create a personalized positive experience of their future self when they retire. Users will answer a few questions, snap their picture and then see an instant personalized video of themselves enjoying retirement. The experience allows users to share their video through social media, while providing a lens to start thinking about what retirement may look like. "The first several months of ICMA-RC's RealizeRetirement® Tour have been a tremendous success, and this is a way to build upon

those results," said Gregory Dyson, Senior Vice President and Chief Operating Officer of ICMA-RC. "By making innovative technology from the Tour broadly available to local and government workers through our mobile app, we are able to expand our reach and motivate users to think about and plan for retirement in a fun, interactive way." For more information about the ICMA-RC RealizeRetirement Tour, visit RealizeRetirementTour.org.

7. RESEARCH PAINTS BLEAK PICTURE ABOUT EMPLOYEE

FINANCES: The majority of people are not confident about their financial future, according to benefitnews.com, but plan sponsors are well positioned to help determine what individuals need and what their next steps should be. More than a quarter of a million people have completed Fidelity Investments' Money Checkup tool since it launched in June, giving the company insights into how people save and how they feel about their finances. The online tool collects demographic information and asks users a list of questions about their debt, how much they have saved and what their monetary goals are. It also asks if they are close to reaching their goals. From that data, Fidelity found that more than half of those surveyed do not have healthy savings and spending habits or behaviors, and only 38% have more than three months of expenses saved in their emergency fund. Financial wellness is not a one-size-fits-all story, you cannot just look at millennials, men or women to see how people are doing financially. According to Fidelity's data, the vast majority of millennials are not confident in their financial future, with 89% of respondents saying they

do not feel great about their financial situation. When Fidelity looked at Generation X, the situation was even bleaker, with 92% of Gen Xers saying they do not feel fantastic about their financial situation, because of competing financial priorities. Gen Xers have been called the sandwich generation, and that is true from the data. Out of respondents from age 36 to their early 50s, twenty-one percent are not investing in their future. That means they are not contributing to their retirement savings, setting money aside for their children's educations or working toward other savings goals. Another 20% said, they invest on their own. Nearly all single mothers said they do not feel good about their financial situation. We do see that people who are married or partnered, regardless of income or savings goals, they automatically report feeling more confident, explaining that those people have a backup plan if something goes wrong because they have someone who shares the responsibility with them. Out of the top three working generations, baby boomers are the most confident -- likely because they have time, they have paid down their debt, their kids have moved out and life has evened out a bit. This gives hope to Generation X that things will get better. The survey found that people who have six or more months' worth of expenses saved in an emergency fund feel better about their financial situations than those who do not. Being able to save even a small amount each month, even if a person carries a lot of credit card or student loan debt, contributes to one's financial confidence, Fidelity found. The study also found that younger generations are far more likely to have college debt. About 47% of those surveyed said they had college

debt. Fifty-three percent of respondents said they have credit card debt. Plan sponsors should consider holding conversations with employees about good and bad debt. Student loan debt is usually low interest, while credit card debt can become debilitating over time. The focus should be on not accumulating more of that bad debt. A small number of baby boomers (13%) carry some educational debt, which could be their own college expenses or those of their children or grandchildren. Fifty percent of boomers have credit card debt. Even with those numbers, 76% of all respondents said they felt good about their debt situation, which can be good or bad. Some people just accept that debt is part of their lives and they have to live with it, while others have a solid plan in place to pay down their debt. The biggest thing people said they were saving money for was a vacation. Millennials are saving to buy a home, while Generation X and the baby boomers are saving for home repairs or something special. When each generation was asked if they were meeting their savings goals, the boomers were the most confident, with one-third saying they were on track to meet their savings goals. Forty-two percent of millennials said they are saving but are not quite there yet. Being financially well is more than numbers on a piece of paper. As a financial institution we can look at someone's financial situation and make a flat call, but we have to account for people's expectations and how they feel about their financial situation before making the call about whether someone is financially well or not. Employers need to dig into the data they have access to, and partner with their financial wellness provider to determine what each employee needs when it

comes to financial security. Fidelity is making a concerted effort to reach those individuals who have not made a change to their retirement savings rate in two or more years or who are not keeping an eye on their asset allocation. How do we engage with those we have not been able to engage with in the past? How do we give them reminders to re-engage with us? How do we create messaging that resonates with everyone?

8. CALIFORNIA GOVERNOR SIGNS BILL TO BOOST PENSION

FUND FEE DISCLOSURE: Private equity and hedge funds must disclose the fees they charge to California's public pension funds under a bill signed by Governor Jerry Brown (D) on September 14, 2016. A.B.2833 by Assemblyman Ken Cooley (D) is intended to boost transparency about investment costs for the California Public Employees' Retirement System and California State Teachers Retirement System. The new law also applies to city and county retirement systems, the University of California Retirement System and other independent public retirement systems. State Treasurer John Chiang (D) and the American Federation of State, County and Municipal Employees sponsored the bill. "Greater transparency in the fees paid to Wall Street will benefit all stakeholders in pension administration--taxpayers, administrators of all public and private pension plans, and all California cities, counties, and state governments and employees. Under the new law, investment vehicles must tell the pension systems the fees and expenses they charge directly to the systems, other fees the vehicles pay to fund managers

such as carried interest, and the gross net rate of return since a vehicle's inception. The pension funds must disclose the information in a report presented at a public meeting at least once a year, starting in 2017. The disclosure requirements will be included in all new contracts between the public systems and investment vehicles, and in existing contracts through which the systems make new capital commitments starting January 1, 2017. According to Chiang's office, CalPERS disclosed in 2015 that it has paid \$3.4 billion in performance fees to equity managers since 1990. The state worker fund has \$26.4 billion, or 8.9%, of its portfolio invested in private equity. As state treasurer, Chiang serves on the board of directors for CalPERS and CalSTRS. A.B. 2833 won unanimous votes in the Senate and Assembly to reach Brown's desk September 2, 2016.

9. COURT INVALIDATES LAWYER'S FEE SPLIT WITH

LITIGATION INVESTORS: In a first-impression issue, the Pennsylvania Superior Court has affirmed the dismissal of a lawyer's unjust enrichment claim against litigation funders, ruling that the fee agreement between them and the plaintiff could not be enforced. A three-judge panel of the court ruled that a 2008 contingent fee agreement between attorney Bruce McKissock and client Polymer Dynamics was not valid, because it provided for unrelated parties with no legitimate interest in the litigation to benefit from the outcome. The amended fee agreement, which they entered while appealing a \$12.5 million verdict in pursuit of a larger award, had said McKissock would receive a one-third legal fee, from which he would pay the unrelated

parties who were funding the litigation. "The requisite elements of champerty have all clearly been met in the present case," Judge John T. Bender wrote in a September 13 published opinion. "Accordingly, we are constrained to conclude that the 2008 fee agreement is invalid and, therefore, [McKissock] is not entitled to any fees under said agreement." Polymer Dynamics filed a lawsuit against Bayer Corp. in 1999, alleging that a malfunction in Bayer's machinery caused Polymer to become insolvent. Polymer expected an award of at least \$100 million, Bender's opinion said, but the 2005 verdict was only \$12.5 million. Both parties appealed -- Polymer seeking a larger award, and Bayer arguing the \$12.5 million verdict was excessive -- but Polymer required money from investors to continue in the litigation. The investors included a number of individuals, referred to in Bender's opinion as the litigation fund investors, and Pafco Investment. After the U.S. Court of Appeals for the Third Circuit affirmed the verdict, Polymer gave the balance of the recovery amount, after taxes and fees, to Pafco, which then paid the individual investors. By that time, McKissock had withdrawn his representation of Polymer due to a conflict. So Polymer had paid legal fees to its new firm, Gross McGinley, and to Bochetto & Lentz, which represents Pafco. In 2011, one of the creditors, through the entity WFIC, filed a complaint over the distribution of the litigation proceeds. McKissock filed an answer and new matter asserting his cross-claims, including the unjust enrichment claim against the investors. With regard to WFIC's claims, the trial court ruled that WFIC did not have a priority over other creditors. Several of McKissock's claims were resolved at

summary judgment in the investors' favor, and some were dismissed as moot. McKissock's unjust enrichment cross-claim was dismissed entirely at the trial court level, leading to his Superior Court appeal. The WFIC claims and McKissock's cross-claims were not the only litigation to arise out of the *Polymer v. Bayer* lawsuit. In addition to those, Polymer filed a legal malpractice suit against McKissock, in which summary judgment was granted in McKissock's favor. McKissock also filed a claim against Polymer for his fee. According to a 2011 opinion in that case, *McKissock & Hoffman v. Polymer Dynamics*, the only compensation McKissock's firm received for its work on the Bayer lawsuit was a \$25,000 payment, which was substantially less than the amount due pursuant to the fee agreement. But the trial court and Superior Court denied McKissock's motion to compel arbitration in the fee dispute, and McKissock took no further action, according to court documents. George Bochetto of Bochetto & Lentz, who represented Pafco, said he was "delighted" with the Superior Court's most recent decision on the 2008 fee agreement. "We maintained from the very beginning that it was an unenforceable contract," Bochetto said. Arthur W. Lefco of Marshall Dennehey Warner Coleman & Goggin represented McKissock, who is now senior counsel at Marshall Dennehey. "We were disappointed, but the court has spoken," Lefco said. He said he will have to confer with McKissock over whether to seek an appeal at the Supreme Court level.

10. LET SOCIAL SECURITY HELP GUIDE YOU BACK TO WORK:

There is no denying that we all need a helping hand every now and then. Whether it is to change a tire, move into a new home, or build a tree house, knowing someone is there to lend a hand is always reassuring. Social Security offers this same assurance to all those we serve each day, including beneficiaries with disabilities. When you are ready to return to work or work for the first time, they are here. The Ticket to Work program offers beneficiaries with disabilities access to meaningful employment. Employment occurs with the assistance of Ticket to Work employment service providers called Employment Networks. The primary goals of employment networks are to assist you with a variety of work-related tasks to prepare you for the workforce. Their beneficiaries get help finding a job and staying employed, as well as instruction on their wage-reporting responsibilities to Social Security. Ultimately, they assist in guiding you back to work. The program is free, voluntary, and offers help to people ages 18 through 64 who receive Social Security disability benefits. If you are interested in this program, they are here to provide support throughout your journey. In fact, this program focuses on your financial independence. Beneficiaries go to work, get a good job that may lead to a career, and become financially independent. One major benefit of this career starter is that as a beneficiary, you are able to keep your cash benefits and Medicare or Medicaid. Throughout your transition to work, there are protections in place to help you return to benefits if you find you are unable to continue working due to your disability. Take advantage of the Ticket to Work program today, as you connect the right mix of free employment support services and

approved service providers that best fit your needs. If you are ready for the workforce, they are ready to help guide you all the way.

11. FPPTA TRUSTEES SCHOOL: The Florida Public Pension Trustees Association's Trustee School will take place on September 25 through September 28, 2016 at the Hyatt Regency Coconut Point in Bonita Springs, Florida. A link on FPPTA's web site, will take you to the Hyatt Regency Coconut Point website to make your room reservations. You may access information and updates about the Conference at FPPTA's website. All police officer, firefighter and general employee plan participants, board of trustee members, plan sponsors and anyone interested in the administration and operation of the Chapters 112, 175 and 185 pension plans should take advantage of this unique, insightful and informative program.

12. 46TH ANNUAL POLICE OFFICERS' AND FIREFIGHTERS' PENSION TRUSTEES' SCHOOL: The 46th Annual Police Officers' & Firefighters' Pension Trustees' School will take place November 2 through 4, 2016. You may access information and updates about the Conference, including area maps, a copy of the program when completed and links to register at the Radisson Resort, Celebration, (Orlando) Florida Please continue to check the FRS website for updates regarding the program at www.myflorida.com/frs/mpf. All police officer and firefighter plan participants, board of trustee members, plan sponsors and anyone interested in the administration and operation of the Chapters 175 and 185 pension plans should take

advantage of this unique, insightful and informative program.

13. SIGNS TO GET YOU THROUGH THE DAY: The past, present and future walk into a bar, it was tense.

14. PARAPROSDOKIAN: Artificial intelligence is no match for natural stupidity.

15. TODAY IN HISTORY: In 1964, “The Man from U.N.C.L.E.” premieres on NBC-TV.

16. KEEP THOSE CARDS AND LETTERS COMING: Several readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

17. PLEASE SHARE OUR NEWSLETTER: Our newsletter readership is not limited to the number of people who choose to enter a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

18. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.