U.S. Department of Labor

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Reply to the attention of: Case No. 72-033090 (48) and 72-033089 (48)
[redacted]
Direct Dial: [redacted]

OCT 28 2015

Via UPS

The Board of Trustees for the Screen Actors Guild – Producers Pension Plan
The Board of Trustees for the Screen Actors Guild – Producers Health Plan
[redacted]
c/o [redacted]
Fox Rothschild LLP
1800 Century Park East, Suite 300
Los Angeles, CA 90067

Re: Screen Actors Guild – Producers Pension Plan
EIN/PN: 95-2110997/001
Screen Actors Guild – Producers Health Plan
EIN/PN: 95-2110997/501

Dear Members of the Board of Trustees and [redacted]

We are in receipt of your letter, dated March 30, 2015, provided in response to the Department of Labor's letters (Findings Letters), dated January 13, 2015, regarding the Screen Actors Guild – Producers Pension Plan and the Screen Actors Guild – Producers Health Plan (collectively, the Plans). The purpose of this letter is to respond to the points raised in your March 30, 2015 letter.

Excessive Expenses Related to Trustee/Committee Meetings

In your letter, you asserted that more than "several" staff members and service providers attended the Trustee meetings noted in our Findings Letters. To support your assertion, you provided this Office with a table listing the number of Trustees, staff members, and service providers that attended each meeting during the period covered by our investigation. Based on the table, you determined that the average cost per person per year for two meals was between [redacted] and [redacted], with the exception of 2012 where the average cost per person increased to [redacted]. It is our understanding that the Plans conducted a study of meeting costs in 2012, and based on the study, the Plans changed caterers, which caused the cost per person to decrease to [redacted] in 2013.

According to your table, the number of staff members that attended the Trustee meetings ranged from 6 to 35 staff members. It remains unclear, however, how you determined the number of staff members as well as what their roles were in the Trustee meetings. Pending additional clarification, we continue to believe that the expenses cited in our Findings Letters relating to the Trustee meetings were excessive and in violation of the previously cited fiduciary provisions of ERISA.

Unsubstantiated Expenses Paid by the Plans

In your letter, you asserted that the hotel charges incurred by [redacted] cited in our Findings Letters were in fact related to the Plans' business. To support your assertion, you provided additional documentation, including expense reports, credit card statements, and hotel receipts. Based on the additional documentation, we will consider taking no further action with respect to the expenses cited relating to [redacted] hotel charges.

However, with respect to the executive retreat charges, we remain of the view that our original position is correct. Specifically, we do not agree with your assertion that the retreat was necessary for executives to be free from constant interruptions. Moreover, you provided no rationale as to why the Plans' conference room would not have also provided an interruption-free environment, especially when the Plans have routinely held other meetings in the conference room. In fact, it appeared that having the retreat at [redacted] was just the opposite of an interruption-free environment. According to the itinerary provided to this Office, [redacted] Friday through Sunday, and several other executives, including [redacted], [redacted], a meeting day.

We further reject your assertion that these retreats are "commonly accepted as a vitally important management tool for Taft Hartly funds..." According to your letter, offsite retreats are commonly utilized in today's business world for both for-profit businesses and non-profit organizations because of the environment it provides. However, it is our position that the Plans cannot be compared to a typical for-profit business because the Plans' expenses are directly paid from assets of ERISA-covered employee benefit plans. [redacted] was not an appropriate use of the Plans' assets, which must be used for the exclusive purpose of providing benefits to participants and beneficiaries.

In addition, we do not agree with your assertion that the total cost of the retreat was "extremely modest." First, the Plans' conference room was available at no cost, and therefore, in relation to the conference room, the resort was extremely costly. Second, the Friday meeting was only two hours, and the Saturday meeting was four hours. In total, the executives met for only six hours over the course of two days but caused the Plans to incur over [redacted].

Finally, you asserted that the retreat was held within driving distance of the Plans' office so that the executives would not incur the expense of air travel. However, if that was the case, then there was no apparent reason for the executives to stay overnight and incur the expense of lodging. Furthermore, the investigation indicated that the executives who had their children stay overnight incurred an additional [redacted] in hotel charges.

We further note that the investigation did not reveal any research or other cost benefit analysis performed to determine if it was reasonable to have the retreat at a resort, especially given the short length of the meetings and other less costly alternate locations.

The retreat was for the benefit of the [redacted], not for the exclusive benefit of participants and beneficiaries. Accordingly, it is our position that the Trustees remain in violation of the fiduciary provisions of ERISA previously cited in our Findings Letters, until [redacted] in retreat charges, plus interest is reimbursed to the Plans.

Automobile Expenses

It is your position that the employment contract of the Plans' key executives permitted the reimbursement of automobile expenses related to the Plans' business. It is our view, however, that the employment contracts themselves were imprudent and failed to state any mechanism or controls, such as requiring a mileage log, to determine the percentage of automobile expenses, including maintenance and repair expenses, related to the Plans' business as opposed to personal use.

The lack of controls is further evident by your acknowledgement that the Plans' expense policy could be seen as "open-ended." You also acknowledged that a car repair expense in the amount of [redacted] incurred by [redacted] was a personal car repair expense and that [redacted] has since reimbursed the Plans in full, but without interest. Accordingly, this Office will consider taking no further action with respect to the expenses incurred by [redacted] upon adequate supporting documentation of reimbursement to the Plans, such as a copy of a cancelled check.

With respect to [redacted] car registration and insurance fees, you maintained that the car was solely used by [redacted] for the Plans' business. However, because there were no controls implemented to determine if the car was in fact used solely by [redacted] [redacted] for personal purposes, this Office is unable to substantiate your assertions.

This Office will consider revising its position upon additional documentation substantiating the percentage of automobile expenses related to the Plans' business as opposed to personal use. Pending additional documentation, however, it remains our position that [redacted] and the Trustees, by their failure to adequately monitor the Plans' automobile expenses, violated the previously cited fiduciary provisions of ERISA.

Partial Correction

It is our understanding that the Trustees took partial corrective action regarding this issue. Specifically, the Trustees adopted an updated Employee Business Expense Policy that limited automobile expense reimbursements to the cost of mileage at the IRS mileage rate upon submission of supporting documentation.

Meal Expenses for [redacted] Meetings

In your letter, you asserted that many of the meal expenses related to the meetings cited in our Findings Letters were reasonable. To support your assertion, you provided additional information regarding the attendees of the meetings as well as the purpose of the meetings. Based on our review of the additional information, it appears that most of the meetings did involve the Plans' business, with the exceptions noted below.

You acknowledged that [redacted] meal expenses related to the Investment Committee of [redacted] meetings and [redacted] meal expenses related to the [redacted] meetings were not related to the Plans' business. It is our understanding that the Trustees have obtained reimbursement from [redacted] in the amount of [redacted], plus interest, but are still seeking reimbursement from the [redacted] in the amount of [redacted].

This Office will consider taking no further action with respect to this issue upon adequate supporting documentation of these reimbursements to the Plans, such as a copy of cancelled checks. Otherwise, it is our position that [redacted] and the Trustees, with respect to this issue, remain in violation of the previously cited fiduciary provisions of ERISA.

Moving Expenses

In your letter, you asserted that [redacted] had reimbursed the Plans [redacted] for [redacted] personal moving expenses during the course of our investigation. This Office will consider taking no further action with respect to this issue upon adequate supporting documentation of the reimbursement, such as a copy of a cancelled check. Otherwise, it is our position that [redacted] and the Trustees, with respect to this issue, remain in violation of the previously cited fiduciary provisions of ERISA.

Improper Holiday, Anniversary, and Farewell Parties

It is your position that you were unaware of any regulations, case law, or other guidance that would call into question "moderate" costs associated with holiday, anniversary, and farewell parties. Accordingly, we direct your attention to Field Assistance Bulletin (FAB) 2012-01, which discusses fiduciary duties with respect to apprenticeship plans, but the principles of which apply to other employee benefit plans. FAB 2012-01 provides:

> [T]rustees and other plan fiduciaries must discharge their duties solely in the interests of the plan's participants and beneficiaries, and for the exclusive purpose of providing…benefits to participants and defraying reasonable expenses of administering the plan. ERISA § 404(a)(1)(A). Those duties must be performed with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. ERISA § 404(a)(1)(B).

In light of these fiduciary duties, FAB 2012-01 further identifies several actions that result in potential fiduciary violations, including:

> lack of oversight of plan vehicles, equipment, and other inventory; unreasonable instructor salaries and bonuses; employee meal stipends that are excessive or not reasonably related to the provision or promotion of the plan's training program; and **payments for staff holiday parties,** flowers, and donations to charitable, non-profit organizations, scholarship and memorial funds [emphasis added].

In addition, you asserted that holiday, anniversary, and farewell parties promoted employee morale and productivity, and were commonly accepted in today's business world as a vitally important management and human resource tool. However, it is our position that the Plans cannot be compared to a typical for-profit business because the Plans' expenses are directly paid from assets of ERISA-covered employee benefit plans. As such, these expenses must be guided by ERISA's exclusive benefit rule, which provides that fiduciaries must discharge their duties with respect to the plan solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries.

As previously indicated, the investigation revealed several instances of holiday, anniversary, and farewell parties during the period covered by the investigation, including an anniversary party at (b) (4) [redacted] that cost the Plans almost (b) (4) for 10 people. In another instance, an anniversary gift cost the Plans over (b) (4). It is our view that such expenses were unreasonable and not for the exclusive purpose of providing benefits to, participants and beneficiaries.

While we do not disagree that holiday, anniversary, and farewell parties may promote employee morale and productivity, such expenses may not be paid out of the Plans' assets. Accordingly, it is our position that the Trustees remain in violation of the previously cited fiduciary provisions of ERISA, until (b) (4) [redacted] in costs associated with holiday, anniversary, and farewell parties, plus interest is reimbursed to the Plans.

For the reasons stated above, it is also our position that the Plans' updated Employee Business Expense Policy, which permits holiday, anniversary, and farewell parties as well as award and service recognition gifts, violates ERISA Sections 404(a)(1)(A) and (B).

Employee Lunches/Dinners

You similarly asserted that employee lunches promoted employee morale and productivity, and such expenses are commonly accepted in today's business world. In addition, you noted that the employee lunches outlined in our Findings Letters fell into several different categories: work lunches, photo day, employee appreciation, and special occasions.

Although employee lunches and dinners may promote employee morale and productivity, as previously noted, the Plans' expenses cannot be compared to those of a typical for-profit business. Again, the Plans' expenses must be guided by ERISA's exclusive benefit rule, which provides that fiduciaries must discharge their duties with respect to the plan solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries.

Based on the additional information you provided, this Office will consider taking no further action with respect to the work lunch at [redacted], which appeared to be related to the Plans' business and may not have been unreasonable or inconsistent with ERISA's exclusive benefit rule.

However, all other non-work lunches and dinners for employees were unreasonable expenditures and not solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries. Accordingly, it is our position that the Trustees remain in violation of the previously cited fiduciary provisions of ERISA, until [redacted] in costs associated with non-work lunches and dinners, plus interest in reimbursed to the Plans.

Improper use of [redacted]

It is your position that use of [redacted] by Trustees and the Plans' key executives were reasonable because they were safer than taxis, and the companies that operated [redacted] town cars carried more insurance in the event of an accident. We remain of the view, however, that our original position is correct.

First, no research or other cost benefit analysis was provided to this Office to indicate that safety was the Trustees' rationale at the time they used [redacted]. Second, the Trustees' concern over increased insurance coverage appears to be minimal given that the Trustees subsequently modified the Plans' Travel Policy to only allow a "taxi, or similar form of non-luxury transportation."

In addition, you asserted that, based on additional research, you found that out of thirty-eight (38) instances in which [redacted] town car was used, the cost of [redacted] was less than the cost of a taxi on eleven occasions, and within [redacted] of the cost of a taxi on four occasions. However, we note that based on your own research, the Trustees and the Plans' key executives utilized a method of transportation that was more expensive than a taxi over 70% of the time.

Trustees have a fiduciary duty to defray unreasonable and unnecessary expenses. The use of a [redacted] service may not be per se unreasonable, but in the instances where it would have been less costly to travel by taxi, which was over 70% of the time, use of a [redacted] was an imprudent and unreasonable use of the Plans' assets.

You further asserted that even if [redacted] were unreasonable, the difference in cost between a taxi and [redacted] during the period covered by the investigation was only [redacted]. While we continue to believe that the Trustees violated the previously cited fiduciary provisions of ERISA, we do not disagree that only the difference in cost should be reimbursed to the Plans.

Improper Use of the Plans' Facilities

You provided this Office with additional information indicating that the conference room was a facility not leased by the Plans but in fact common property of the building and utilized by all tenants. Based on the additional information, we will consider taking no further action with respect to this issue.

Services by a Party in Interest

It is your position that [redacted], in [redacted] capacity as [redacted], was delegated with the authority to hire, fire, and oversee insurance agents and consultants, and that as such, [redacted] had no responsibility or involvement with the Plans' relationship with [redacted]. Furthermore, you note that [redacted] when the Plans initially retained [redacted], and [redacted] made all decisions regarding subsequent renewals.

However, pending confirmation from [redacted] that [redacted] had no responsibility or involvement with the Plans' relationship with [redacted], we continue to believe that [redacted] and the Trustees remain in violation of previously cited fiduciary provisions of ERISA.

Self-Dealing by the Plans' Fiduciary

It is your position that after [redacted] fraudulent activities were discovered, the Trustees cancelled any further work by [redacted], terminated [redacted] employment, and recovered losses to the Plans through filing a claim with the insurance carrier. Based on the additional information provided, we will consider taking no further action with respect to this issue.

Excessive Investment Management Fees

In your letter, you asserted that the [redacted] was structured as a fund of funds with the result being that the person who decided what percentage of the Plans' assets should be allocated to the underlying funds was not a fiduciary to the Plans. You further assert that as such, the Trustees retained [redacted] to serve as an investment manager so that the Trustees would not be held liable for the decisions made by the [redacted] Fund.

Based on your own assertion, it is clear that the Trustees retained [redacted] to serve as a fiduciary insulator for their own purpose, and not solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries. Other than serving as a fiduciary insulator, [redacted] did not provide actual investment management services. Rather, our investigation indicated that it was the Trustees, not [redacted], that exercised the actual discretion to invest the Plans' assets in the [redacted]. According to the minutes of the June 4, 2004 meeting of the Plans' Finance Committee [redacted] indicated that [redacted] would be able to provide fiduciary services "if the Trustees agree[d] to invest in the [redacted]. The role of [redacted] would be to provide Trustees with fiduciary insulation...."

Furthermore, the investigation indicated that during the period [redacted] was retained as an investment manager, [redacted] did not reallocate the Plans' assets nor did [redacted] dispose of the Plans' assets. In fact, based on interviews with [redacted] personnel, [redacted] did not even have the actual discretion to dispose of the Plans' assets, unless it was directed to do so by the Trustees.

[redacted] Clearly, [redacted] did not even consider itself as the investment manager over the [redacted], and yet the Plans were paying investment management fees.

Moreover, it is questionable if [redacted] could even be considered an investment advisor in this case. As we noted in our Findings Letters, [redacted] produced to the Trustees on a bi-annual basis a three page report explaining whether the [redacted] was performing in line with objectives stated in its prospectus and whether there has been a change in the investment portfolio manager. A lot of the information contained in the report could easily have been found on the fund's public internet website. More notably, there appeared to be no investment advice rendered in any of these reports.

To further justify [redacted] retention as an investment manager over the [redacted], you asserted that all of the other funds the Plans were invested in were run by a manager who acknowledged that he or she was a fiduciary to the Plans. We remain of the view, however, that our original position is correct.

The investigation indicated that in or about 2006, the Trustees decided to invest the Plans' assets in the [redacted]. The [redacted] was invested in the [redacted], which in turn was invested in real estate. The investigation indicated that [redacted] was not a fiduciary with respect to the [redacted] real estate investments.

In that case, as noted in the meeting minutes dated June 15, 2006 of the Finance Subcommittee, the Trustees agreed that there would be no real benefit to the Plans by retaining [redacted] as a fiduciary over the [redacted] The Plans' counsel noted that as long as the Trustees exercised procedural prudence in reliance on [redacted] and [redacted] with respect to their periodic review of the investment, the Trustees should be adequately protected from liability. Furthermore, the Plans' counsel noted that even if the Trustees could be held accountable as fiduciaries, any liability incurred should be covered by the Trustees' Fiduciary Liability Insurance Policy.

The Trustees clearly had alternatives that were less costly than retaining [redacted] as a fiduciary over the [redacted], as evidenced by the Plans' investment in [redacted] Yet, our investigation did not reveal any research or other cost benefit analysis performed to determine if it was reasonable to retain [redacted]

Finally, you asserted that the Trustees did subsequently review [redacted] fees in relation to the actual services provided, and an independent fiduciary hired by the Trustees in 2010 found that [redacted] services should be terminated. However, [redacted] was retained in 2004, and our investigation did not reveal any evidence that the Trustees reviewed [redacted] fees in comparison to the actual services provided during the entire six years leading up to the termination of its services.

Accordingly, it is our position that by causing the Plans to pay a total of [redacted] in fees to [redacted], which was excessive and unreasonable in relation to the actual services provided, the Trustees remain in violation of the previously cited fiduciary provisions of ERISA, until the Plans are reimbursed excess payments, plus interest.

Conclusion

In our view, for the reasons stated above, your clients continue to be in violation of ERISA and will remain so until corrective action is taken with respect to the violations discussed above. Please advise me, in writing, **within ten (10) days** what action your clients intend to take to correct the violations cited.

If you have any questions, please call [redacted]

Sincerely,

Ty Fukumoto
Deputy Regional Director