



**CITY OF FORT LAUDERDALE  
City Commission Agenda Memo  
REGULAR MEETING**

**#23-0870**

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**TO:** Honorable Mayor & Members of the  
Fort Lauderdale City Commission

**FROM:** D'Wayne Spence, Interim City Attorney

**DATE:** September 5, 2023

**TITLE:** Resolution Authorizing Retention of Robbins Geller Rudman & Dowd LLP  
as Special Counsel to General Employee's Retirement Plan to Pursue  
Named and Lead Plaintiff Status in a Federal Securities Class Action to be  
Filed against Holley, Inc., *et al.*, in the United States District Court, Western  
District of Kentucky - **(Commission Districts 1, 2, 3, and 4)**

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**Recommendation**

The Interim City Attorney recommends that the City Commission adopt a resolution authorizing retention of Robbins Geller Rudman & Dowd LLP, ("Robbins Geller"), as special counsel to the City's General Employee's Retirement Plan ("Plan") to pursue named and lead plaintiff status in a federal securities class action to be filed against Holley, Inc., and certain of its senior insiders, (collectively, "Holley"), in the United States District Court, Western District of Kentucky, and if successful, prosecute the class action as attorneys for the class.

**Background**

Pursuant to the Engagement Agreement for Portfolio Monitoring between the City of Fort Lauderdale General Employees' Retirement System and Robbins Geller, Robbins Geller has proposed to the Board of Trustees of the Plan a class action securities action that would be filed in the United States District Court, Western District of Kentucky, against Holley.

The Complaint will allege violations of the Securities Exchange Act of 1934 arising out of statements made by Holley and its senior officers regarding the company's business, operations, and prospects. It is estimated that the Plan's losses amounted to \$453,000 during the proposed class period. At its meeting of August 10, 2023, the Board of Trustees of the Plan approved the pursuit of named and lead plaintiff status in the proposed litigation.

Pursuant to Subsection 20-113(n), Code of Ordinances of the City of Fort Lauderdale, Florida, the City Attorney, the City Attorney's designated assistant or special counsel serves as attorney for the Board of Trustees in all suits and actions to which the Board may be a party. To implement the motion passed by the Plan's Board of Trustees, the

City commission should adopt a resolution pursuant to Section 4.10 of the Charter of the City of Fort Lauderdale, which provides, "The city commission may, by resolution, authorize one (1) or more special counsel to be retained for the purpose of performing such legal duties as may be prescribed by said resolution. Each such resolution shall further prescribe the compensation to be paid the special counsel." Compensation to be paid Robbins Geller will be as follows, as stated in the Retainer Agreement:

- A. The Attorneys shall advance all costs and expenses which are incurred in the investigation, prosecution and litigation of this case. Attorneys will petition the Court to be reimbursed for these costs and expenses prior to any distribution of fees to class counsel or recovery to the class. The Client is not liable to pay any of the costs or expenses of the Litigation, whether attorneys' fees or costs or otherwise. Attorneys' reimbursement of costs and other expenses is contingent upon a recovery being obtained. If no recovery is obtained, Client will owe nothing for costs and other expenses. In the event that an order is entered awarding costs and expenses in favor of defendants, Attorneys will be responsible for such costs and expenses, not the Client.
- B. The sole contingency upon which Attorneys shall be compensated as to fees, costs and expenses is a recovery in the Litigation, whether by settlement or judgment. In the event Attorneys are approved as Lead Counsel, any fees, costs or expenses resulting from a successful outcome of the Litigation will be paid entirely out of the class' recovery upon Court Approval. In no event, however, shall Attorneys seek to be paid fees in excess of the following amounts:

- 25% up to the first \$100 million;
- 22% up to the next \$50 million;
- 20% up to the next \$50 million;
- 18% up to the next \$50 million; and
- 15% up to any excess over \$250 million.

Costs and expenses shall include but not be limited to, travel expenses, telephone, copying, fax transmission, depositions, investigators, messengers, mediation expenses, computer research fees, court fees, expert fees, other consultation fees and paralegal expenses, as approved or awarded by the Court in the Litigation. Any recovery in the Litigation shall first be used to reimburse disbursements and expenses in the Litigation.

- C. In the course of the Litigation, Attorneys may, without notice to Client, retain and/or work with other law firms, in which case, Attorneys would divide any legal fees they receive with such other firms. Client agrees that Attorneys may divide fees with other attorneys for serving as local counsel, of counsel, as co-counsel, or for other services performed. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting the prosecution of the action. The division of fees with other counsel is Attorneys' sole responsibility and will not increase the fees described

above.

- D. In the event that the Litigation is resolved by settlement under terms involving any “in-kind” payment, such as stock, the contingent fee agreement shall apply to such “in-kind” payment.

**Resource Impact**

There is no fiscal impact to the City.

**Attachment**

Exhibit 1 - Resolution

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Prepared by: Paul G. Bangel, Senior Assistant City Attorney

Charter Officer: D'Wayne Spence, Interim City Attorney