



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

#19-0934

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

FROM: Alain E. Boileau, City Attorney

DATE: September 17, 2019

TITLE: Resolution Authorizing Retention of Bernstein Litowitz Berger & Grossmann LLP as Special Counsel to General Employee's Retirement Plan to Pursue Co-Lead Plaintiff Status in a Federal Securities Class Action Filed against Cardinal Health, Inc., in the United States District Court, Southern District of Ohio (**Commission Districts 1, 2, 3, and 4**)

Recommendation

It is recommended that the City Commission adopt a resolution authorizing retention of Bernstein Litowitz Berger & Grossmann LLP, ("Bernstein Litowitz"), as special counsel to the City's General Employee's Retirement Plan ("Plan") to pursue co-lead plaintiff status in a federal securities class action filed against Cardinal Health, Inc., ("Cardinal"), in the United States District Court, Southern District of Ohio, and if successful, prosecute the class action as attorneys for the class.

Background

Pursuant to the Bernstein Litowitz Berger & Grossmann LLP Portfolio Monitoring Agreement with the City of Fort Lauderdale General Employees' Retirement System that was entered into in 2015, Bernstein Litowitz has brought to the attention of the Board of Trustees of the Plan a pending class action securities complaint that it filed in the United States District Court, Southern District of Ohio, against Cardinal.

The case is related to Cardinal's 2015 acquisition and follow-on integration of medical device manufacturer Cordis Corp. ("Cordis"). It is estimated that the Plan's losses amount to \$584,000 FIFO/\$602,000 LIFO during the class period. At a special meeting on August 30, 2019, the Board of Trustees of the Plan approved the pursuit of co-lead plaintiff status.

Pursuant to Section 20-113, 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 special counsel will be as follows, as stated in the Retainer Agreement:

Bernstein Litowitz will represent [City of] Fort Lauderdale [General Employees' Retirement System] in this action on a fully contingent basis and will advance all expenses of the litigation. Bernstein Litowitz will seek fees and reimbursement of expenses with respect to this action solely out of whatever recovery is obtained (if any) after notice to the class and approval of the fee request by the Court. Fort Lauderdale agrees that Bernstein Litowitz will apply for a fee constituting a reasonable percentage of the recovery obtained through this litigation. Fort Lauderdale and Bernstein Litowitz agree that the fee will be negotiated at a later date, but will not exceed 25% of the net recovery obtained. Bernstein Litowitz will also reimburse Fort Lauderdale for any of its out-of-pocket expenses with respect to this action.

The deadline for filing a motion to have the Plan appointed as co-lead plaintiff status is September 30, 2019.

Resource Impact

There is no fiscal impact to the City.

Attachment

Exhibit 1 - Resolution

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

Department Director: Alain E. Boileau, City Attorney