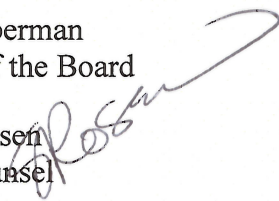


Memorandum

DATE: August 26, 2014

TO: Martin J. Oberman
Chairman of the Board

FROM: Sue-Ann Rosen 
General Counsel

SUBJECT: **Clifford Settlement Costs and Subsequent Investigations**

In June 2014, after former Executive Director Alex Clifford obtained new employment, you asked us to summarize actions taken by Metra in response to the Clifford matter to prevent similar events from occurring in the future. You also requested that we provide the Board with an accounting of the outside and in-house legal costs borne by Metra as a direct result of Mr. Clifford's departure, and the well-publicized events surrounding that departure, including the numerous investigations and hearings by various public bodies. We understand that the purpose of your request was to ensure full disclosure to the Board, the public, and media.

Since Alex Clifford's departure, the newly constituted Board and the Executive Director have worked closely in moving this agency forward. This Board has focused on its policy-making role and has given the Executive Director the autonomy to run day-to-day operations. The Board is also functioning as a body of the whole, as opposed to individually or small committees. In analyzing the events of the past 18 months, this newly constituted Board has implemented the following changes to address issues in the aftermath of the Clifford settlement and prevent recurring behavior in the future:

1. Created a Chief Audit Officer position answerable to the entire Board and the CEO. At present, this function is being performed under contract by the independent and highly respected Bronner Group until a permanent candidate is selected;
2. Prepared training materials for all board members. Training briefings are being conducted for new board members, addressing issues such as liability insurance and prohibition against using political considerations in hiring;
3. Crafted a new Ethics Manual for employees to use as a compliance tool. A similar manual for Board members will be completed soon;
4. Eliminated the use and cost of outside Board Counsel and consolidated counsel functions within Metra's in-house Law Department--to provide continuity of legal advice to the entire Board;
5. For the first time, instituted written performance goals and an evaluation process for the Executive Director;
6. Enacted an ordinance that requires disclosure and logging of all employment-related communications from outside the agency, including from public officials—to address past political pressure to hire candidates or promote employees;

7. Required hiring managers to **certify** that they did not hire candidates for political reasons;
8. Enacted an ordinance that requires RTA notification of any high-level separation agreements;
9. Ended the use of compartmentalized committee structure;
10. Ended Board involvement in approving all new hires at the \$70,000 level and above, while improving the integrity of the objective hiring process;
11. Established an ongoing professional classification and compensation program;
12. Provided for the unprecedented release of privileged information to the Office of Executive Inspector General in order to assist in the investigation of the Clifford matter.

In response to your request for an accounting of the costs associated with the Clifford separation and the subsequent investigations, the following is our analysis.

I. Summary of Cost of Clifford Matter and Investigations/Hearings:

Amount paid/to be paid to Clifford	\$652,363 ¹
Outside Attorneys' Fees and Costs	<u>\$662,494</u>
Total	\$1,314,857

The details of these amounts are set forth below.

II. Explanation of the Cost of Settlement:

A. Settlement Expense Details:

The total of \$871,927 provided for in the separation agreement and widely reported in the media constituted the authorized *maximum* payable to Mr. Clifford over an 18-month period, depending on future circumstances. In particular, the agreement specified that Metra would be entitled to offsets if Mr. Clifford gained employment or had not fully spent his relocation allowance provided for in the agreement. It is now known that in June 2014, Mr. Clifford both

¹ <u>Category</u>	<u>Estimated</u>	<u>Actual</u>	<u>Difference</u>
Salary adj. thru 2/10/14	\$25,605.79	\$25,605.79	
Salary thru 2/10/14	\$161,179.17	\$161,179.17	
RR Tier 2 Refund	\$9,992.10	\$9,992.10	
Sick/Vacation/PTO	\$63,144.33	\$63,144.33	
Attorney fees	\$75,000.00	\$75,000.00	
Empl subsidy 2/10-8/10/14	\$137,956.78	\$137,956.78	
Empl subsidy 8/11-12/31/14	\$106,686.58	\$35,300.18	\$71,386.40
Empl subsidy 1/1-8/10/15	\$174,181.57	\$59,507.82	\$114,673.74
Relocation expenses	\$78,000.00	\$60,494.36	\$17,505.64
<u>COBRA</u>	<u>\$40,180.86</u>	<u>\$24,182.57</u>	<u>\$15,998.29</u>
Total	\$871,927.18	\$652,363.10	\$219,564.07

obtained new employment and did not fully spend the dollars allotted for his relocation allowance. As a result, Metra's liability to Mr. Clifford under the agreement was reduced by \$219,564.² The total payments to Mr. Clifford under the settlement agreement will thus be \$652,363. Of this amount, Metra would have already owed Mr. Clifford \$161,376.33, which is the amount of severance to which Clifford was entitled under his employment contract in the event of early termination.

B. Attorneys' Fees and Costs:

As background, subsequent to the events involving former Executive Director Phil Pagano in 2010, the then Metra Board chose to retain its own law firm, separate and apart from Metra's General Counsel and its in-house Law Department, to provide legal services directly to the Board. The Board retained the firm of Johnston Greene, LLC ("JG Law") to perform this function. JG Law partners advised the Board, through a memorandum, that they were not supervised by Metra's Legal Department and were to receive their assignments directly from the Board.³ Direction to JG Law originated predominantly from the then Chairman, Brad O'Halloran, and JG Law bills were reviewed and approved by Mr. O'Halloran.⁴ After Mr. Clifford charged certain Metra Directors with wrongdoing in his April 2013 memo (which led to his separation from Metra), JG Law worked with and directed Metra-contracted firms, Hinshaw & Culbertson and Laner Muchin, to investigate and defend Metra.

Also, although Metra's in-house counsel responded to OEIG requests for information, JG Law reviewed and approved in-house responses. Also, both Laner Muchin and JG Law assisted Metra's Board during administrative and legislative hearings. Primarily, none of this work was supervised by Metra's General Counsel, Acting General Counsel, or in-house Law Department.

Thus, in understanding the legal costs set forth below, it must be underscored that 82% of legal work and billings on the Clifford claims and the aftermath, between March and early August 2013, were supervised and/or performed by JG Law at the direction of Metra's prior Chairman, Brad O'Halloran. In late August 2013, the then-Acting Chairman, Jack Partelow, and the remaining Board members, put a stop to the use of outside Board counsel, shifting that work to Metra's in-house Law Department, where it had always been prior to 2010. In doing so, Metra's Law Department, assumed the majority of the work and/or the direction of the work.

² Mr. Clifford's current annual salary is approximately \$184,620.

³ The November 2011 memo states, "Metra's Legal Department does not supervise Board Counsel, and cannot do so without risking Board Counsel's independence."

⁴ Thus, under this program and sharply distinct from past Metra practice, during the JG Law era, Metra's General Counsel did not counsel the Board on Board matters and JG Law did not answer to the General Counsel.

As a result of this shift in late August 2013, outside counsel billings significantly decreased over the following 12 months (from August 2013 to the present), as contrasted with the previous 5 months of billings (March 2013 through August 2013).

As of the current date, in-house lawyers have had to expend approximately 2,000 hours of work focused on the aftermath of the Clifford matter. Had this work been assigned to outside counsel, we estimate that Metra would have incurred approximately \$500,000 in additional fees. Most of this work relates to Metra's need to respond to a number of requests made by the OEIG in its Clifford investigation. Specifically, Metra has provided to the OEIG an estimated 100,000 pages of documents and unprecedented access to privileged documents and information.

In sum, outside legal costs incurred with respect to the negotiation and resolution of Mr. Clifford's claims, hearings, and the OEIG investigation, have amounted to a total of \$662,494 to date, as follows:

Johnston Greene, n/k/a JG Law	\$274,390.72 ⁵
Hinshaw Culbertson	\$182,934.65 ⁶
Laner Muchin	\$170,538.00
Swanson Martin & Bell	\$ 32,206.50
Suzy Choi-Lee	\$ 2,424.00

A summary description of the tasks handled by the above firms is as follows:

- **Clifford Negotiation Period:** March to June 21, 2013, the date on which Mr. Clifford departed, Metra incurred \$295,337 (44.5% of the total). JG Law, Hinshaw Culbertson, and Laner Muchin provided advice related to the Clifford claims and counseled and participated in negotiations involving the separation agreement. JG Law also spent time on the early stages of the OEIG investigation.
- **Hearings Period:** June 22, 2013 to August 31, 2013, Metra incurred \$249,277 (37.5% of the total). JG Law and Laner Muchin provided counsel during the administrative and legislative hearings. Hinshaw provided counsel on the OEIG investigation.
- **Board Shifts Work To In-House Attorneys:** August 2013 to August 2014, Metra incurred \$117,880 (18% of the total). Metra's legal work was substantially transferred to Metra's Law Department and the Board's outside

⁵ Since these bills did not detail to any degree of precision whether the work was assigned to Clifford related issues or to other board issues, in-house staff estimated the amount after reviewing invoices. Also, \$41,434 attributable to Culloton Strategies is embedded in the JG Law billing.

⁶ A substantial portion of these Hinshaw charges were attributable to the OEIG investigation.

counsel role was effectively terminated. Under the direction of the Law Department, Hinshaw Culbertson and Choi-Lee provided work relative to the OEIG matter and Swanson Martin & Bell provided work related to the RTA audit report. (Choi-Lee was Metra's former in-house Ethics Officer whom Metra retained after her departure to provide for continuity.)

We have attempted to provide both the costs associated with the above-described events that occurred since March 2013, and the context for these costs. If you need additional information, please let me know.

cc: Donald A. Orseno
Board of Directors