



The Commonwealth of Massachusetts
Office of the Inspector General

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October 23, 2006

Joseph E. Connarton
Executive Director
Public Employee Retirement Administration Commission
5 Middlesex Ave., 3rd floor
Somerville, MA 02145

Dear Mr. Connarton:

Pursuant to 945 CMR 1.09(3)(c), I am writing to notify you of matters that may be appropriate for administrative action by the Public Employee Retirement Administration Commission.

At PERAC's request, the Office of the Inspector General reviewed Powers & Sullivan's audit of the Middlesex Retirement System. In April, I wrote to provide you with information for your consideration of administrative action regarding the retirement board's renovation of its Billerica headquarters.

At the time, I said my staff was still reviewing the questions Powers & Sullivan raised about expense reimbursements to Middlesex Retirement Board member Lawrence P. Driscoll. This investigation is now at a stage where I feel it is appropriate to provide notice to PERAC and share our preliminary findings with you under 945 CMR 1.09(3)(c).

In brief, the records we examined appear to show that Mr. Driscoll submitted more than \$10,000 in fraudulent expense receipts between 2000 and 2004. Among other things, the Middlesex Retirement Board reimbursed Mr. Driscoll for:

- Gift shop purchases that he disguised as meals;
- Expenses tied to investment conferences he didn't attend;
- Falsified checks written in order to get the Middlesex Retirement System to cover the cost of his personal car, and
- A \$153 meal in Shanghai that, in fact, cost him only \$19.10.

In addition, records show that Mr. Driscoll billed more than \$62,000 in expenses to both the Middlesex Retirement System and to his private employer, Pacific American Securities, LLC.

Powers & Sullivan's Audit

As you know, Powers & Sullivan, the Middlesex Retirement System's outside auditors, first informed the board that they had questions regarding Mr. Driscoll's expenses in October 2004. (The audit was not finalized and publicly released until the end of 2005.) The audit called attention to more than \$8,000 in questionable reimbursements to Mr. Driscoll.

Specifically, Powers & Sullivan found that Mr. Driscoll had sought and received reimbursement for seven months of personal car lease payments to World Omni Financial Corp. that he had falsely labeled as \$3,000 in rental car costs. The auditing firm also identified more than \$5,000 in reimbursements Mr. Driscoll sought and received for meals based on duplicated stubs from restaurant bills. Some stubs were duplicated four or five times and submitted for meals from trips to different cities in different years.

In December 2004, Mr. Driscoll defended his conduct in a letter to Thomas F. Gibson, the chairman of the retirement board, and offered his "sincerest apologies for the unfortunate unpleasantness and discomfort afforded by (Powers & Sullivan's) criticisms."

"Please know that in over twenty (20) years of service to the Middlesex Retirement System, I have never knowingly committed any act of impropriety which might have brought criticism to myself or to my colleagues. If the said audit violations are violative, in any respect, of my fiduciary duty, I assure you that my actions were inadvertent," he wrote.

My office has conducted an analysis of Mr. Driscoll's expenses from 2001 to 2003, the same years covered by Powers & Sullivan's audit. In addition, we have analyzed expenses from 2000 and 2004 and, in March 2006, my staff interviewed Mr. Driscoll. To conduct the analysis, we compared the information Mr. Driscoll submitted to the Middlesex Retirement Board with his bank, credit card and airline travel records. We found that he repeatedly submitted false expenses.

In August, my staff contacted the Middlesex Retirement Board members through their outside counsel, Adler, Pollack & Sheehan, seeking follow up interviews with Mr. Driscoll and his fellow board members as well as former chairman James E. Fahey, Jr. Adler, Pollack & Sheehan replied that they would not make their clients available without a formal subpoena from the Inspector General Council.

At this time I have determined that the information we have gathered may be appropriate for administrative action by PERAC. Therefore, I am exercising my authority to forward this information to PERAC under 945 CMR 1.09(3)(c) so that your agency can decide on the most appropriate action in this matter and determine whether Mr. Driscoll's conduct and his colleagues' response amount to a breach of fiduciary duty that, under 840 CMR 1.03, would bar any of these individuals from serving as a member or consultant to Massachusetts retirement boards.

In the March interview with my office, Mr. Driscoll admitted his meal and rental car records were misleading but said they simulated actual expenses he incurred as a board member. He claimed that during seven months spread out over three years, he tried to rent a car from an agency but that each time the agency refused to accept his Middlesex Retirement System-issued American Express card for payment. He said, in each case, his personal credit card did not have enough credit available so he drove his personal car to these conferences. Documents examined by my staff raise serious questions about the veracity of Mr. Driscoll's account.

For instance, my office subpoenaed Mr. Driscoll's credit card records from 2000 to 2006. During those six years Mr. Driscoll always had ample credit available on his personal card.

As for the meals, Mr. Driscoll claimed – to his fellow Middlesex Retirement System board members and in the March interview – he often dined in group situations in which it was inconvenient or impossible to get a receipt. As a result, he paid his share of the meal cost in cash, kept track of the amount on a chart, and submitted both the photocopied stub and the chart for reimbursement. He said this was the recordkeeping system he had used since the 1990s and he had never been questioned about it before.

While Mr. Driscoll's restaurant stubs have never before drawn scrutiny, his failure to properly document his expenses has been an issue for more than a decade. As you may recall, in both 1989 and 1993 PERAC's predecessor agency, the Division of Public Employee Retirement Administration, criticized the Middlesex Retirement Board for paying Mr. Driscoll's expenses despite a lack of proper documentation. PERA told Middlesex that Mr. Driscoll could either provide proper documentation for more than \$10,000 in expenses or reimburse the Middlesex Retirement System.

The retirement board required neither. Noting at a board meeting that "despite the retirement system's diligent search, documents were difficult to locate," Mr. Driscoll's colleagues asked him to repay the system just \$148.90 to cover the cost of hotel movie rentals, a rollaway bed, suntan lotion and a few telephone calls. Mr. Driscoll's colleagues apparently accepted his explanation that the remaining charges fell within the board's per diem travel allowance and, therefore, did not require receipts.

Similarly, in 2005, following the Powers & Sullivan audit, Mr. Driscoll, Mr. Gibson and former chairman James E. Fahey, Jr., agreed that Mr. Driscoll would repay the Middlesex Retirement System \$2,360, less than half the amount of his expenses questioned by Powers & Sullivan. The terms of the settlement approved payment based on Mr. Driscoll's duplicate meal receipts until June 6, 2003, when PERAC issued its travel regulations 840 CMR 2.00 requiring all retirement board members to submit original receipts in order to receive reimbursement.

At Mr. Driscoll's suggestion, the settlement also credited him with driving 650 miles in his personal vehicle and paying \$12 in tolls (for a total of \$255.75) each of the seven times he submitted checks payable to his car lease company, World Omni Financial Corp., in lieu of rental car receipts.

I believe the following additional information merits PERAC's review.

False Institute for International Research Conference Expenses

In 2001, 2002 and 2003 Mr. Driscoll submitted expense reports claiming that he'd attended the Institute for International Research's annual Asset Allocation Congress in Florida. According to records obtained via subpoena from the New York-based organization, Mr. Driscoll has never attended an IIR event.

In 2001, Mr. Driscoll charged the Middlesex Retirement System more than \$2,600 for expenses he said were related to the March IIR conference. Mr. Driscoll's IIR expense report includes, among other things, \$432.97 for a rental car, which in fact was the payment due on his personal car lease from World Omni Financial Corp., and a \$112 reimbursement for driving 350 miles in his personal car. (On top of the 350 miles Mr. Driscoll claimed on his expense form, Mr. Driscoll's settlement with the Middlesex Retirement System assumed he'd driven 650 miles to this conference he apparently did not attend.)

The charges on Mr. Driscoll's Middlesex Retirement System-paid American Express card included \$1,669.44 at the Palm Beach Hilton, about five minutes away from the Ritz Carlton where IIR held its conference. IIR records show that Mr. Driscoll neither registered for the conference, nor attended any of the sessions.

IIR records show Middlesex Retirement Board member Brian Curtin and Mr. Gibson, then the Middlesex Retirement Board's general counsel, attended the conference. American Express records show Mr. Curtin and Mr. Fahey staying at the conference hotel. (IIR records don't show Mr. Fahey registered for the conference, so it is unclear why a room at the conference hotel was charged to his American Express card.) American Express records also show board members John H. Burke Sr. and James M. Gookin staying at the Palm Beach Hilton at the same time as Mr. Driscoll.

I don't know why Mr. Driscoll, Mr. Burke and Mr. Gookin were at the Palm Beach Hilton because they won't answer questions from my office. However, if PERAC asked the question, they would be obligated to answer.

In 2002, Mr. Driscoll again submitted more than \$2,000 in expenses he claimed were related to IIR's March Asset Allocation Congress. Those expenses include a \$432.97 check made out to World Omni Car Rental, a fictitious entity. (World Omni Financial Corp., then the holder of Mr. Driscoll's car lease does not have a rental arm.) The check is number 915, dated March 1, 2002, on Mr. Driscoll's Bank of New Hampshire account. Mr. Driscoll also submitted this check (and other IIR-related expenses) to his private employer, Pacific American Securities, for reimbursement.

Bank of New Hampshire records show that check number 915 was never presented for payment. Apparently, Mr. Driscoll wrote check 915 solely to seek reimbursement from the Middlesex Retirement System and Pacific American Securities. More details about the checks Mr. Driscoll made out to World Omni are below.

Although IIR and American Express records show that Mr. Driscoll did not register for or attend the 2002 Asset Allocation Congress, his Middlesex Retirement System-issued American Express bill (and a hotel receipt submitted with his expenses) show that Mr. Driscoll stayed at the conference hotel, the Turnberry Isle Resort & Club, for two nights at a cost of \$847.63.

According to IIR, Mr. Burke, Mr. Curtin, Mr. Fahey and Mr. Gibson all registered for and attended the conference. Mr. Burke, Mr. Curtin, Mr. Fahey and Mr. Driscoll all charged rooms at Turnberry Isle to their Middlesex-issued American Express cards.

In 2003, Mr. Driscoll again submitted expenses to attend IIR's Asset Allocation Congress. This time, he included an advertisement for the conference with his expense report. Again, IIR's records show that Mr. Driscoll did not attend the conference. Neither his Middlesex-issued American Express card nor his personal credit card show a charge for Mr. Driscoll to register for the conference. Still, he billed Middlesex \$1,126.25 for expenses he attributed to the Palm Springs conference.

According to IIR records no Middlesex board members attended the 2003 conference.

The charges Mr. Driscoll attributed to the IIR conference include 650 miles allegedly traveled in his personal car or \$237.25. Even if he had attended the conference, Palm Springs is less than 150 miles from the Fort Myers airport, where Driscoll landed, making it extremely unlikely he would have driven 650 miles during the three-day conference.

Mr. Driscoll billed Middlesex \$451 for airfare to the conference. The price includes a \$100 change fee for exchanging a ticket that took him from Boston to Savannah on

April 10 and Jacksonville to Boston on April 16 for a Boston-Fort Myers-Boston roundtrip ticket.

The airplane flight – which according to Mr. Driscoll’s handwritten note was originally booked for a conference in Jacksonville that was cancelled – coincides with his commute from Middlesex’s Billerica headquarters to his Cape Coral home and back. Although the IIR conference took place from April 28 to April 30, Mr. Driscoll’s Delta ticket took him from Boston to Fort Myers on April 22 and back to Boston on May 6. He attended Middlesex Retirement Board meetings on April 17 and May 8.

Mr. Driscoll lives in Florida and commutes to Middlesex board meetings. The retirement system is not supposed to pay the cost of his airplane commute.

Mr. Driscoll’s IIR expenses include \$278 in meals – all of them submitted using the duplicate restaurant stubs criticized by Powers & Sullivan. The conference charges don’t include a hotel bill, a point noted by Powers & Sullivan, which Mr. Driscoll explained by saying he’d shared a room with another “Public Plan Sponsor” and described as a way to save the retirement system money.

Mr. Driscoll’s personal credit card bill shows charges in Cape Coral when he was ostensibly at the conference in Palm Beach.

World Omni lease payments

Powers & Sullivan’s audit criticized Mr. Driscoll for seeking reimbursement for his car lease payments to World Omni by categorizing the expenses as car rentals. My staff matched the World Omni checks Mr. Driscoll submitted for reimbursement from 2001 to 2003 against his bank statements and found that five of the seven checks were never presented to his bank for payment.

Records from Cape Coral National Bank show that Mr. Driscoll started paying World Omni Financial Corp. with automatic debits in April 2001 – but he continued to present World Omni checks to the Middlesex Retirement System (and in most cases Pacific American Securities) for two more years. Starting in 2002, Mr. Driscoll made out the checks to two fictional entities “World Omni Auto Rental” and “World Omni Car Rental.” World Omni is an automotive lender that does not have a rental department.

In August 2002, Mr. Driscoll wrote a \$7,000 check to World Omni, apparently paying off his car lease. Despite the fact that he no longer owed World Omni money, Mr. Driscoll submitted two more World Omni checks to Middlesex for reimbursement in 2003.

Bank	Check Number	Date	Payee	Presented for Payment
Cape Coral National Bank	611	Jan. 20, 2001	World Omni	Yes
Cape Coral National Bank	614	Feb. 28, 2001	World Omni	Yes
Bank of New Hampshire	909	Jan. 11, 2002	World Omni Auto Rental	No
Bank of New Hampshire	915	Mar. 1, 2002	World Omni Car Rental	No
Bank of New Hampshire	924	April 25, 2002	World Omni Auto Rental	No
Bank of New Hampshire	1150	Jan. 17, 2003	World Omni Car Rental	No
Bank of New Hampshire	1154	Mar. 16, 2003	World Omni Auto Rental	No

False Rogers Casey Conference Expenses

In March 2003, Mr. Driscoll submitted an expense report claiming he'd spent \$654.97 attending the CRA Rogers Casey Hedge Fund Conference in Naples, Florida. Rogers Casey records show that Mr. Driscoll did not attend the conference, which according to his expense report ran from March 17 to March 19, 2003.

The expenses Mr. Driscoll submitted – and Middlesex reimbursed – included a check to World Omni Auto Rental, which was never presented for payment. (See above.) They also included \$417 for a plane ticket from Boston to Fort Myers to Boston. Delta airline records show Mr. Driscoll used the ticket to fly from Boston to Fort Myers on Feb. 13 and returned to Boston on March 26. Middlesex minutes show that Mr. Driscoll attended board meetings on Feb. 13 and March 27. The Feb. 13 minutes note that Mr. Driscoll had to leave early to catch a flight. He missed the March 6 meeting.

Mr. Driscoll's personal credit card records show that he purchased gas in Cape Coral, ate at a Fort Myers restaurant and spent money at Lowe's Home Improvement Center in Cape Coral while he was allegedly at the Rogers Casey conference in Naples. Neither Mr. Driscoll's personal credit card nor his Middlesex-issued American Express card show any transactions in Naples during the conference. Evidence suggests that Mr. Driscoll used the CRA Rogers Casey conference as a pretext to get the Middlesex Retirement System to pay for his airplane commute to the board meetings.

Mr. Driscoll's Brother-in-Law's Funeral

In October 2003, Driscoll submitted expenses totaling \$2,400 to attend a Trustees Educational Conferences and Seminars event in New Orleans. TECS is run by Mr. Driscoll's ex-wife and one of their daughters.

Mr. Driscoll included a note saying he'd submitted two plane tickets with his expenses because his brother-in-law died before the conference but the funeral was during the conference so he flew to Boston for the funeral and then went back to the conference. The conference ran from Oct. 14 to 17. According to the funeral notice in the Lowell Sun, Driscoll's brother-in-law's funeral was held on Oct. 18, the day after the conference ended.

Ticket information received from Delta Airlines in response to a subpoena shows that Mr. Driscoll flew from Ft. Myers to New Orleans on Oct. 14, the day the conference started, from New Orleans to Boston on Oct. 16, two days before the funeral, and back to Ft. Myers on Oct. 19, the day after the funeral. In other words, Mr. Driscoll charged the Middlesex Retirement System for his detour to Boston but he never returned to New Orleans. His original ticket would have taken him from Ft. Myers to New Orleans on Oct. 14 and New Orleans to Ft. Myers on Oct. 19.

Mr. Driscoll's credit card bills confirm his whereabouts. He charged items at the New Orleans airport on Oct. 16, incurred charges in Massachusetts on Oct. 17 and Oct. 18, and in Cape Coral starting Oct. 19.

In addition, although Mr. Driscoll left New Orleans on Oct. 16 – after just two days - he submitted a New Orleans hotel bill for five days. My staff has been unable to ask Mr. Driscoll who stayed in that room for the extra three days.

Hard Rock Café, Shanghai China

Mr. Driscoll's November 2001 expense report for a TECS conference in San Diego includes a meal receipt for \$153. The restaurant name on the receipt is cut off but there are several clues that the receipt should have been rejected:

- The date on the receipt is not the same day that Mr. Driscoll claimed the meal;
- The pre-printed portions of the receipt are in both English and Chinese, and
- The amount of the charge is preceded by the letters RMB not a dollar sign.

By date and amount, we matched the receipt to his personal credit card and discovered that it was for a meal at the Hard Rock Café in Shanghai, China, that cost 153 Renminbi or, according to Mr. Driscoll's credit card bill, \$19.10.

There is no evidence that he was in China on Middlesex business. Therefore, he didn't incur the expense on behalf of the system's beneficiaries. In addition, he didn't spend \$153 – he spent \$19.10.

New Orleans “meals”

In October 2002 Mr. Driscoll went to New Orleans for an investment meeting of the First America Asia Fund. The meal receipts he submitted include two “dinner” receipts: one for \$160.13 and another for \$92.60. Neither of the credit card receipts included a tip line, which is unusual for a restaurant receipt.

We matched the dates, amounts and addresses of the establishments against Mr. Driscoll's personal credit card statement and discovered that neither receipt was for a meal.

On Oct. 27, Mr. Driscoll spent \$160.13 at Boogie Woogie, a gift shop on Bourbon Street. Boogie Woogie was unable to provide an itemized receipt of Mr. Driscoll's purchases but in telephone interviews, employees said the store's merchandise included bawdy t-shirts and other gifts evocative of New Orleans.

Mr. Driscoll's expense report also includes a "dinner" receipt for the \$92.60 he spent at RTC Slidell Discount Grocery on Oct. 24, the day he arrived in the New Orleans area. Despite its name, RTC isn't a grocery store. "We're pretty much tobacco, liquor, soft drinks," said co-owner Teresa Chow.

Taken together, the above examples represent more than \$9,000 in apparently fraudulent expenses submitted by Mr. Driscoll.

Expenses billed to both Middlesex and Pacific American

In his March interview with my staff, Mr. Driscoll said his employer, Pacific American Securities, does not pay any of his business expenses. This is inaccurate. My office subpoenaed Pacific American's records of payments to Mr. Driscoll and discovered that he does submit expenses to Pacific American.

A comparison of the expenses Mr. Driscoll submitted to Pacific American and to the Middlesex Retirement System showed that he frequently submits the same bills to both his private employer and the Middlesex Retirement System. In the five years of records my staff examined, Mr. Driscoll double-billed more than \$62,000 in expenses.

Mr. Driscoll's expense payments from Pacific American are taken out of future commission checks. As a result, he is not receiving the full amount he double-bills. Instead, Mr. Driscoll benefits from this by lowering his tax liability since the Internal Revenue Service does not treat expense payments as income (unlike commissions). Pacific American may also be lowering its tax liability since the company doesn't have to pay its share of Social Security or Medicare on its expense checks.

In 2000, Mr. Driscoll billed more than \$20,000 in expenses to both employers. In 2001, he double-billed more than \$16,000 and in 2002, he double-billed more than \$13,000. He submitted fewer expenses to Pacific American in 2003, double-billing just \$3,000 that year. In 2004, he double-billed more than \$5,000.

We do not have Mr. Driscoll's Middlesex expense reports for 2005; however, we found more than \$3,000 that he charged to his Middlesex-paid American Express card and then claimed as Pacific American expenses.

Among other things Mr. Driscoll:

- billed both Middlesex and Pacific American for two of the three IIR conferences he did not attend;
- submitted the same bills to his two employers but claimed they were for different purposes;
- charged Pacific American for attendance at conferences devoted to Massachusetts' pension funds even though he told my staff that he does not have any clients in Massachusetts.

For instance, in June 2004, Mr. Driscoll told Pacific American that he'd spent more than \$600 to attend a May conference for Louisiana Trustees and another \$800 to attend a June meeting of the Massachusetts Association of Public Trustees meeting on Cape Cod.

However, he used many of the same receipts to bill Middlesex for his attendance at a First America Asia Fund advisory committee meeting in May and at the June conference of the Massachusetts Association of Contributory Retirement Systems in Hyannis. Mr. Driscoll's double-billing for these trips included two hotel stays, taxis, tips and airfare and totaled \$1,047.02.

In addition, Mr. Driscoll charged Pacific American \$235.70 for airfare to attend the Cape Cod conference. He used the same airline ticket receipt to seek reimbursement from both Middlesex and Pacific American when he attended the July Stars & Stripes Summit in Orlando. In other words, he sought reimbursement for the same airplane ticket three times.

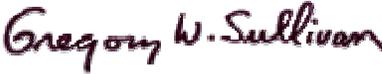
In 2005, he again double-billed his MACRS hotel stay, charging his room to his Middlesex-paid American Express card and then submitting the \$385.05 hotel bill to Pacific American.

In 2000, Mr. Driscoll billed Pacific American for his attendance at the Middlesex Retirement System's annual conference. He submitted three hotel bills to Pacific American: his own, the bill for Middlesex's hospitality suite and the bill for fellow Middlesex board member Jim Gookin's room. All three rooms were charged to a Middlesex-paid American Express card. Mr. Driscoll charged his own room and the hospitality suite on his card. Mr. Gookin paid for his room using his own Middlesex-paid American Express card.

I believe these facts clearly show that Mr. Driscoll has violated his fiduciary duty to the beneficiaries of the Middlesex Retirement System and should be penalized under 840 CMR 1.01.

In addition, since 1989 Mr. Driscoll's fellow board members have repeatedly turned a blind eye to his undocumented and poorly documented expenses – even after regulators and auditors called their attention to his misdeeds. I urge PERAC to consider the board's reaction to Mr. Driscoll's actions as you determine whether the current Middlesex Retirement Board members and the board's former chairman failed to fulfill their fiduciary duties.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory Sullivan
Inspector General

cc: PERAC commissioners