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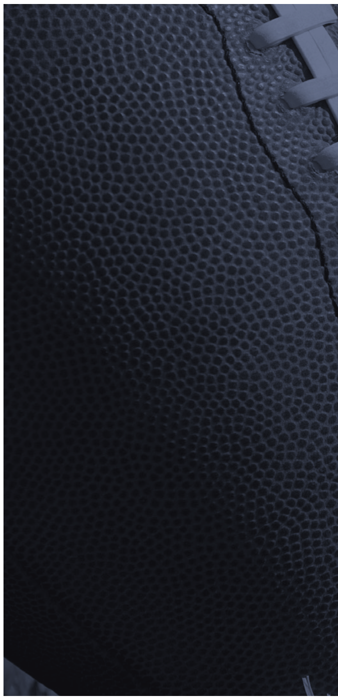

Rooney Rule Regression: Takeaways for Corporate Board Diversity

With the NFL plagued by years of scandal and backlash for its treatment of Black players, it comes as no surprise to see owners back in the spotlight battling a discrimination lawsuit. Cohen Milstein's Julie Goldsmith Reiser and Stanford Business School's Lori Nishiura Mackenzie discuss how corporations can better achieve board diversity.

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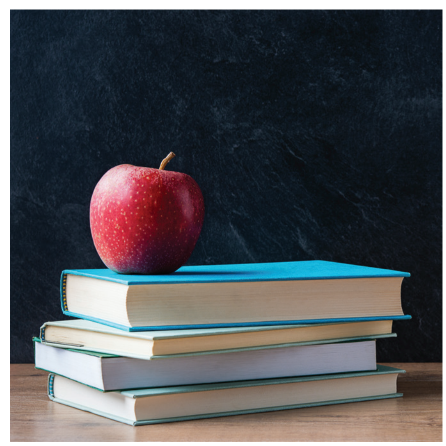

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Rooney Rule Regression: Takeaways for Corporate Board Diversity

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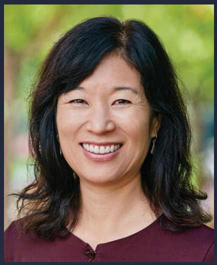

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With the NFL plagued by years of scandal and backlash for its treatment of Black players, it comes as no surprise to see owners back in the spotlight battling a discrimination lawsuit. Former Miami Dolphins head coach Brian Flores sued the NFL and three teams for racial discrimination, sparking much larger conversations about diversity in hiring and the NFL's "Rooney Rule."

The NFL implemented the Rooney Rule in 2003, requiring that at least one person of color be interviewed as part of the hiring process for vacancies in head coaching positions. It appeared to work. From 2001 to 2005, the number of Black head coaches in the NFL, while still small, tripled from two to six. After more than a decade of success resulting in nearly 25% representation of Black coaches in the NFL, the rule undeniably faltered from 2017 to 2019, with the percentage of Black head coaches dropping from 21.9% to 9.4%, where it remains today.

As an attorney who works with shareholders to hold companies accountable promoting diversity, equity, and inclusion in the workplace and a strategist who helps companies thrive through building communities with strong cultures, we recommend that companies adopt an evolved version of the Rooney Rule for their own efforts to diversify corporate boards.

There are a number of lessons that corporate boards should draw from the NFL's experience with the Rooney Rule to avoid similar backsliding.

FOR BOARDS TO SUCCEED IN THEIR EFFORTS TO DIVERSIFY, THEY MUST SHIFT FROM A COMPLIANCE MINDSET TO ONE OF TRULY VALUING DIVERSITY. THEN THEY MUST CREATE THE PROCESSES TO PREVENT BIASES FROM CREEPING INTO THEIR DECISION MAKING, FOCUSING ON CONTINUAL IMPROVEMENT RATHER THAN A ONE-TIME, QUICK FIX.

A TRUE COMMITMENT IS ESSENTIAL

We continue to believe the Rooney Rule can work if it evolves and is part of a broader, authentic commitment to diversity.

First, how did the rule lose effectiveness? The interview process now appears to reflect tokenism where White team owners interview Black candidates only to avoid a fine from the NFL, not because the Black coaches have a legitimate chance to secure a head coach position. Research shows that when there is only one minority candidate in a pool of four finalists, their odds of being hired are statistically zero.

While interviewing just one candidate from an underrepresented group does not change the status quo, interviewing at least two has a greater likelihood of leading to change. Interviewers are less likely to see any particular candidate as "the Rooney Rule" applicant and instead, consider their qualifications. And since the candidates are indeed qualified, just overlooked due to biases, their skills can now shine. A truly diverse slate can also help the candidate's performance and help interviewers be fair.

The revised Rooney Rule of at least two candidates (or even better, 50%) from underrepresented groups is a crucial step in the right direction. But for boards to succeed in their efforts to diversify, they must shift from a compliance mindset to one of truly valuing diversity. Then they must create the processes to prevent biases from creeping into their decision making, focusing on continual improvement rather than a one-time, quick fix.

HOW TO SUPPORT DIVERSITY EFFORTS

Here are some ways to support diversity efforts in the boardroom.

Focus on Skills, Not Titles

An anonymized skills matrix, such as the NYC Boardroom Accountability matrix, allows the search committee to assess important skills across all existing, and then prospective, board members.

AN ANONYMIZED SKILLS MATRIX, SUCH AS THE NYC BOARDROOM ACCOUNTABILITY MATRIX, ALLOWS THE SEARCH COMMITTEE TO ASSESS IMPORTANT SKILLS ACROSS ALL EXISTING, AND THEN PROSPECTIVE, BOARD MEMBERS.

This can be effective for two reasons. First, it allows boards to assess candidates based on their unique skills, not broad-based experience such as prior board experience or titles, such as having been a CEO or board member for another company. With women and people of color in low numbers on boards and in the CEO seat, this can open the door to more candidates.

Second, it can help boards more effectively identify what they need, which can lead to a more productive interview process. Boards should also retain a neutral party to populate the skills matrix of prospective board members in an anonymized way, to minimize implicit gender and racial bias.

Curate a Diverse Interview Committee

Not only will diversity on the committee lead to better decision making; it can also reduce biases. Being from an underrepresented group does not automatically make a person less biased, but because women and people of color have often experienced bias, they are more likely to practice techniques to block it.

And having a diverse committee can support the candidates in moving past stereotype threat to imagining that they could truly belong on the board and contribute in a meaningful way.

Move From a 'Quick Fix' to Inclusion

These proposals can lead to a stronger hiring process, but the work does not end here. Once a candidate is chosen, companies should commit to ongoing efforts to support the new member with a thoughtful onboarding process that aims to fully integrate the new board member.

The board should also engage in designing inclusive norms and educate incumbent members about the value of hearing from different viewpoints in order to truly benefit from the increased diversity.

NOT ONLY WILL DIVERSITY ON THE COMMITTEE LEAD TO BETTER DECISION MAKING; IT CAN ALSO REDUCE BIASES.

Research and experience show that diversity efforts must be intentionally incorporated and customized into the recruitment process to make lasting, meaningful change.

A six-year study by Credit Suisse reflected that companies with women directors on their boards outperformed shares of their peers with all-male boards by 26%. Likewise, a Morgan Stanley study found that U.S. companies with three or more female directors outperformed the earnings of companies without female directors by 45% per share.

These outcomes show that representation yields stronger performance—a metric that surely the NFL owners care about too. ■

Julie Goldsmith Reiser is Co-Chair of the firm's Securities Litigation & Investor Protection group. Lori Nishiura Mackenzie is lead strategist for Diversity, Equity & Inclusion at Stanford Graduate School of Business and cofounder of the new Stanford VMware Women's Leadership Innovation Lab.

COHEN MILSTEIN SEEKS FINAL APPROVAL OF SECURITIES FRAUD SETTLEMENT WITH AUDITOR DEFENDANT KPMG

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AS THE SECURITIES AND EXCHANGE COMMISSION WOULD LATER FIND, KPMG'S TENURE AS MILLER ENERGY'S AUDITOR WAS REPLETE WITH 'REPEATED INSTANCES OF [HIGHLY] UNREASONABLE CONDUCT.'

A federal judge last month granted preliminary approval to a settlement in which KPMG LLP, the global auditing firm, agreed to pay $35 million to shareholders of the now-defunct Miller Energy Resources, Inc. The substantial settlement, which culminated six years of litigation, is a significant victory for the class of investors, who needed to clear the high bar for auditor liability in securities fraud cases. On June 30, plaintiffs are scheduled to seek final approval of the settlement from Judge Thomas A. Varlan of the U.S. District Court for the Eastern District of Tennessee.

Cohen Milstein serves as court-appointed Co-Lead Counsel for the class of Miller Energy investors in the case, which was originally filed in March 2016. In their complaint, plaintiffs alleged that KPMG recklessly or intentionally failed to meet its obligations as the independent auditor of Miller Energy and perpetuated a massive fraud by signing off on the oil and gas firm's $480 million valuation of its Alaskan oil reserve assets, which were later revealed to be largely worthless. KPMG's role in Miller Energy's fraud, plaintiffs alleged, led to millions of dollars in investor losses and Miller Energy's eventual bankruptcy.

Miller Energy catapulted itself from an oil and gas penny stock to a behemoth company traded on the New York Stock Exchange following its 2009 acquisition of the Alaskan oil assets. Though Miller Energy purchased those oil reserve assets for only $2.25 million in a bankruptcy fire sale, the company spent the next five years telling investors that the assets were in fact worth $480 million. After Miller Energy replaced its small auditing firm with the global powerhouse KPMG in 2011, the company continued to file financial statements that represented the gargantuan valuation of the Alaska assets, all with KPMG's blessing.

But as the Securities and Exchange Commission (SEC) would later find, KPMG's tenure as Miller Energy's auditor was replete with "repeated instances of [highly] unreasonable conduct." By 2014, the truth finally began to emerge, with Miller Energy announcing a staggering $265.3 impairment charge to the Alaska assets, followed by a $149.1 million impairment the following year. Over the following months, the company announced it was suspending dividend payments, the SEC filed charges against the company, the New York Stock Exchange delisted Miller Energy stock, and, in October 2015, Miller Energy filed for Chapter 11 bankruptcy, later admitting that the Alaska assets were worthless all along—and that its years of financial statements to the contrary, all with KPMG's blessing, were a sham.

In August 2017, the SEC confirmed what plaintiffs had alleged, announcing charges against KPMG and its lead partner on the Miller Energy engagement "for "improper professional conduct and securities law violations by KPMG" relating to its review and audit of Miller Energy's financial statements. The SEC concluded that KPMG repeatedly turned a blind eye to evidence that the Alaskan assets were grossly overvalued, in violation of its legal and professional duties as an independent auditor. As a result of its misconduct, the SEC ordered KPMG to conduct a comprehensive review of its quality controls for audits and training materials with the oversight of an independent monitor, pay a civil money penalty of $1 million, and disgorge all of its Miller audit fees plus interest, a total of more than $5 million.

From the very start, however, plaintiffs faced tough odds in their attempt to hold KPMG liable. Courts typically require plaintiffs to meet a higher standard for finding auditors liable for securities fraud than defendant companies or their officers and directors, making it rare for auditor cases to even withstand motions to dismiss, let alone reach a favorable settlement or judgment. For the next five years, though, Cohen Milstein successfully fought against KPMG's determined effort to defeat the lawsuit, surviving three motions to dismiss and multiple rounds of class certification and *Daubert* briefing in both the district court and the Sixth U.S. Circuit Court of Appeals.

Coming on the heels of the successful motion to dismiss decision obtained by Cohen Milstein in a separate case pending against Deloitte, another "Big Four" audit firm, the $35 million settlement agreement with KPMG shows that even under the high standards applicable to such cases, auditors can be held to account if they fail to adhere to their obligations to objectively and independently evaluate the accuracy of a public company's financial statements. ■

FOR FIVE YEARS, COHEN MILSTEIN SUCCESSFULLY FOUGHT AGAINST KPMG'S DETERMINED EFFORT TO DEFEAT THE LAWSUIT, SURVIVING THREE MOTIONS TO DISMISS AND MULTIPLE ROUNDS OF CLASS CERTIFICATION AND *DAUBERT* BRIEFING IN BOTH THE DISTRICT COURT AND THE SIXTH U.S. CIRCUIT COURT OF APPEALS.

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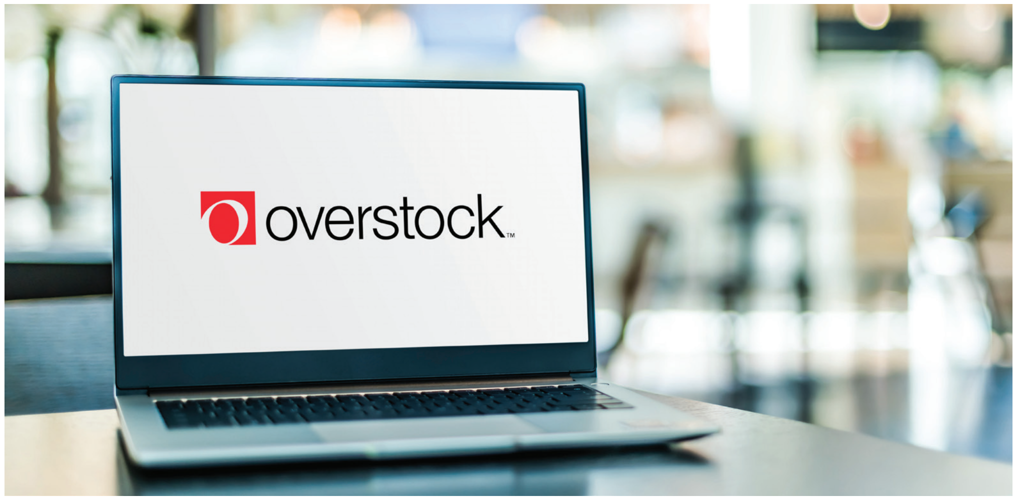
NCPERS SIGNS AMICUS BRIEF IN SUPPORT OF INVESTORS' APPEAL OF *OVERSTOCK* DISMISSAL



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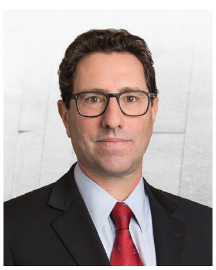

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THE COMPLAINT FILED ON BEHALF OF LEAD PLAINTIFF MANGROVE PARTNERS MASTER FUND LTD. READS MORE LIKE A JOHN GRISHAM NOVEL THAN A TYPICAL STOCK FRAUD CASE.

Shareholders of online-retailer-turned-blockchain-technology-company Overstock.com Inc. have asked a federal appeals court to revive their securities fraud class action against Overstock and its founder, Patrick Byrne, after the district court ruled that Byrne's plan to manipulate Overstock's stock to harm short sellers was legal.

The complaint filed by Cohen Milstein on behalf of lead plaintiff Mangrove Partners Master Fund Ltd. reads more like a John Grisham novel than a typical stock fraud case. Plaintiffs allege that Byrne decided to resign as Overstock CEO in August 2019 after learning that his romantic relationship with a Russian spy was about to become public. But before leaving, he devised a scheme to goose the Overstock's sagging share price by creating a sham illiquid "Digital Dividend" that would force the stock's legion of short sellers to buy company stock at any price.

A month later, the recently resigned CEO was in Indonesia, safe from extradition, where he spent three days on a boat dumping his remaining 4.7 million Overstock shares for a cool $90 million—money he quickly invested in precious metals and cryptocurrencies to avoid the clutches of the "Deep State." On September 18, 2019, the same day Byrne sold his last million shares, Overstock ended the "short squeeze." Over the next 10 days, the stock tanked 62%, leaving investors holding the bag.

Plaintiffs quote statements from Byrne on his blog showing that he deliberately designed the unregistered Digital Dividend to create the short squeeze that artificially increased Overstock's stock price so that he could knowingly sell his stock at inflated prices.

But U.S. District Judge Dale A. Kimball said the defendants—Utah-based Overstock, Byrne, the company's former CFO, and its current retail president—didn't violate securities laws. The district court reasoned that, among other things, plaintiffs had not shown that the market was "deceived" by the Digital Dividend because news reports had published details of the short squeeze after it started.

In their appeal to the United States Court of Appeals for the Tenth Circuit, shareholders make numerous arguments as to why the district court's decision should be reversed—among them Judge Kimball's finding that because lead plaintiff Mangrove Partners was a short seller, it was not entitled to benefit from the fraud-on-the-market presumption that underpins all securities fraud class actions.

That aspect of the *Overstock* decision prompted enough concern from the National Conference on Public Employee Retirement Systems (NCPERS) and several public employee retirement systems in the Tenth Circuit (which includes Utah, Colorado, Oklahoma, New Mexico, Kansas, and Wyoming) to sign a friend-of-the-court, or amicus, brief in support of the appellant shareholders.

Established in two Supreme Court decisions, *Affiliated Ute* (1972) and *Basic v. Levinson* (1988), the fraud-on-the-market presumption holds that because stock prices factor in all material public information, investors need not show individually that they relied on a particular fraudulent statement or omission when they bought or sold that stock. That reliance is presumed, unless rebutted by defendants. Without the *Basic* presumption, shareholders wouldn't be able to form a class to pool their claims, and all but the largest investors would have damages too small to merit litigating.

If the district court's standard prevails in the Tenth Circuit, the amicus brief argues, it would impact public pension funds' ability to serve as lead plaintiffs, or even participate as passive class members, in securities class actions where they had shorted defendant company stock. Such a holding flies in the face of both logic and longstanding precedent, the amicus brief maintains.

Other friend-of-the-court briefs were submitted by consumer advocates and law professors. ■

PENSION FUNDS FILED AN AMICUS BRIEF ARGUING THAT THE LOWER-COURT DECISION COULD IMPACT THEIR ABILITY TO PARTICIPATE IN SECURITIES CLASS ACTIONS WHERE THEY HAD SHORTED DEFENDANT COMPANY STOCK. SUCH A HOLDING FLIES IN THE FACE OF BOTH LOGIC AND LONGSTANDING PRECEDENT, THE BRIEF MAINTAINS.

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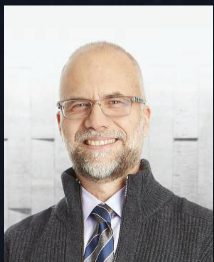
SECURITIES LITIGATION 101:

UNDERSTANDING SHAREHOLDER DERIVATIVE LAWSUITS



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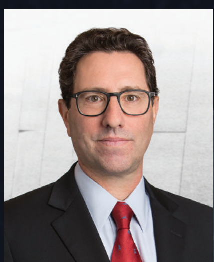

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Eds: This is the first in a regular series of articles designed to explain some of the ins and outs of investor litigation to non-practitioners.

Over the past few years, companies including Alphabet, Boeing, Pinterest, Victoria's Secret, and Wynn Resorts have agreed to sweeping corporate governance reforms to settle derivative lawsuits brought by their shareholders. Though mainstream news outlets have focused on the behavior that led to these lawsuits and the groundbreaking settlements themselves, we thought it would be helpful to discuss the nature of these "indirect" lawsuits and how they differ from other securities class actions.

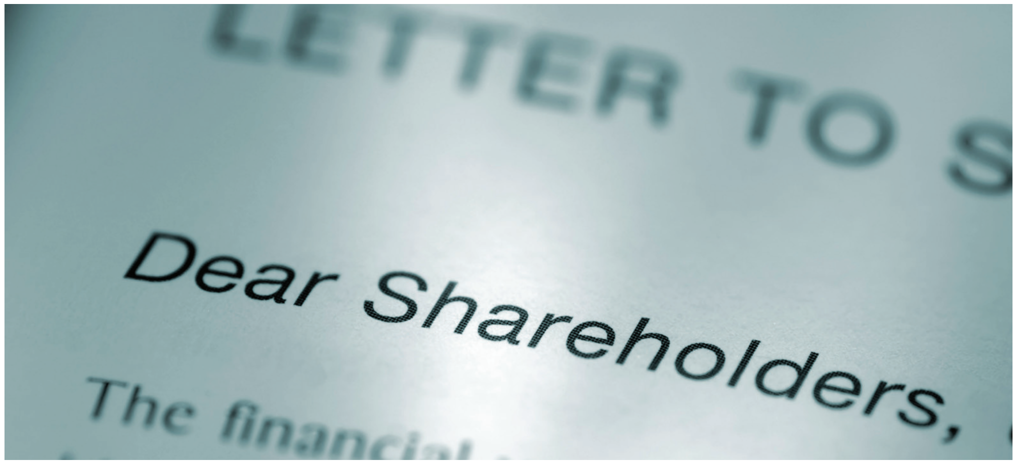
Let's start with some differences.

In a traditional securities class action, shareholder plaintiffs sue the company and certain of its officers and directors for violations of securities laws. In a derivative class action, shareholder plaintiffs sue corporate leaders *on behalf of the company* for breaching their fiduciary duty to the company and harming long-term shareholder value. In other words, shareholders "stand in the shoes" of the corporation to protect the present and future value of their stock holdings.

This leads to another important difference. While plaintiffs in a securities class action typically seek to recover monetary damages directly from the company and individual defendants, the goal of a derivative lawsuit is to address corporate governance and/or internal-control weaknesses that exposed the company to reputational and financial damage. While a settlement may include a financial contribution from defendants or their insurers, that money goes to the corporation—and is frequently tied to commitments to effectuate corporate governance changes to enhance the company's long-term value.

Courts have made clear that before filing a derivative lawsuit it is advisable for a shareholder to first exercise her statutory shareholder rights to seek certain types of documents from the company. This "books and records demand," which takes the form of a letter sent to the company's Board of Directors, seeks internal non-public documents that enable a shareholder to better evaluate her concerns and, if warranted, file a derivative lawsuit with allegations supported by the documents the company produces.

WHILE PLAINTIFFS IN A SECURITIES CLASS ACTION TYPICALLY SEEK TO RECOVER MONETARY DAMAGES DIRECTLY FROM THE COMPANY AND INDIVIDUAL DEFENDANTS, THE GOAL OF A DERIVATIVE LAWSUIT IS TO ADDRESS CORPORATE GOVERNANCE AND/ OR INTERNAL-CONTROL WEAKNESSES THAT EXPOSED THE COMPANY TO REPUTATIONAL AND FINANCIAL DAMAGE.



DERIVATIVE LITIGATION IS AN INTERESTING OPTION FOR PENSION FUNDS OF ALL SIZES WHO ARE INTERESTED IN PROTECTING THE LONG-TERM VALUE OF THEIR HOLDINGS BY ADDRESSING SHORTCOMINGS IN A VARIETY OF AREAS, INCLUDING CORPORATE GOVERNANCE, WORKPLACE SAFETY, ENVIRONMENTAL COMPLIANCE, DEI, AND CYBERSECURITY.

It is also worth noting that derivative lawsuits must clear a high bar early in the proceeding. Plaintiffs must convince the court that it was necessary to file the lawsuit; merely demanding that the Board of Directors make the necessary governance changes would be "futile" because the directors are insufficiently independent to correct the wrongdoing. In some cases, the documents produced by the corporation in response to a books and records demand may provide support for why a pre-suit demand on the board would be futile.

Unlike federal securities litigation, derivative lawsuits are not subject to the Private Securities Litigation Reform Act of 1995 (PSLRA), which directs judges to select as lead plaintiff the movant or movants with the largest presumptive losses, if they are typical and adequate class representatives. In derivative litigation, the "relative economic stakes of the competing litigants in the outcome of the lawsuit" is just one of six factors judges use to select lead plaintiffs. So sophisticated institutional investors who may not have the largest position in the company may be appointed based on the quality of their legal pleadings, ability to represent the class, willingness to lead the case, and selection of counsel, among other factors, providing they pledge to remain shareholders throughout the litigation.

All these characteristics make derivative litigation an interesting option for pension funds of all sizes who are interested in enhancing the long-term value of their holdings by addressing shortcomings in a variety of areas, including corporate governance, workplace safety, environmental compliance, DEI (diversity, equity, and inclusion), and cybersecurity. ■

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> *We really are in a new world,*
>
> LAURA GILSON, CHIEF LEGAL COUNSEL AT THE ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM

THE GREAT RESIGNATION—PENSION PLANS BECOME RESIGNED TO THE NEW NORMAL

The Great Resignation. The Great Reassessment. The Great Refresh. There's no shortage of monikers for the phenomenon that began in 2021 and continues today. Americans first quit work in record numbers in April 2021, according to the U.S. Bureau of Labor Statistics (BLS). They broke that record again in July and August of 2021 before hitting an all-time high of 4.5 million "quits" in November. Defined as voluntary separations initiated by employees, "quits" are an indicator of workers' willingness or ability to leave jobs, the BLS says. The trend doesn't appear to be fading: the BLS reported well over 4 million quits in both January and February of this year.

The Great Resignation has affected almost every industry and impacted employers across the country, including pension plans. What does the trend look like in the pension world and what lessons can we learn from peers? We asked colleagues from two different-sized state retirement systems to tell us how their systems have been affected by the Great Resignation, what challenges it has created for them, and how they've responded.

Recognize the New Reality:

"We really are in a new world," says Laura Gilson, Chief Legal Counsel at the Arkansas Public Employees Retirement System (APERS), a pension system with 64 employees. Gilson notes that a confluence of events with multifaceted causes has shaped this new reality. The COVID-19 pandemic was clearly a primary impetus, as it caused workers to reflect on their careers and their lives. While the pandemic may have triggered the Great Resignation, however, changes in demographics also play a role, Gilson says. Millennials and Generation Z, who now make up the largest portion of the workforce, are also more than twice as mobile as older employees, according to a late 2021 survey. More than three-quarters of Gen Z workers (ages 18-24) and nearly-two thirds of Millennials (ages 25-40) surveyed said they would soon be hunting for new jobs, compared to only one-third of baby boomers (ages 57-75). Just as there wasn't a single cause of the Great Resignation, Gilson notes, no single answer can address all the challenges it has created.

Flexibility is Key:

Janet Bray, Chief Organizational Excellence Officer at the Teacher Retirement System of Texas (TRS), says flexibility is key for employers. She notes: "It is important for employers to consider work-life balance," observing that today the need to balance personal needs and business needs is critical. That statement is confirmed by recent studies, including research conducted by Oracle, which found that 88% of workers have changed their definition of "success"—with work-life balance (42%), mental wellness (37%), and workplace flexibility (33%) now top priorities.

In April, TRS was able to onboard the largest new hire class in its history, bringing the total number of TRS employees to 892. The new hires are comprised primarily of call center staff, who now work 100% remotely. The ability to offer remote work has proven key to successfully recruiting new employees.

Gilson reports that APERS has also successfully moved call center staff to remote work and that removing the distractions inherent to a crowded call center room has increased performance. Productivity is tracked in real time by supervisors, who are able to see metrics such as how much time staff spends on calls and how many calls they take, and APERS has found that technology has not impeded the successful transition to remote work.

Both pension plans are careful to note that while flexible work arrangements are becoming the norm, 100% remote working may not be appropriate or available for many positions. Bray says many TRS managers are offering a hybrid work arrangement with 2-3 days a week in the office. Gilson agrees that different positions may require different accommodations when it comes to remote work. For example, when she recruited last year for a part-time attorney position, all applicants expected—indeed, required—that the work would be performed remotely. She notes that the position probably would have been remote, at least temporarily, due to the pandemic, but that the pandemic had shifted power to the applicants. She is currently recruiting for a full-time attorney position and anticipates that the position may not be filled by someone who works 100% remotely.

> *"It is important for employers to consider work-life balance,"*
>
> JANET BRAY,
> CHIEF ORGANIZATIONAL EXCELLENCE OFFICER AT THE TEACHER RETIREMENT SYSTEM OF TEXAS

Work within the confines—and change them when you can

Gilson points out that government pension plans often have to work within the confines of the governmental system in which they operate. For example, in her case, remote work was allowed at that time under State of Arkansas government directives. Pension plans may have to be increasingly creative within those limits when recruiting new employees in today's marketplace. Furthermore, according to Bray, if the opportunity exists to change those limitations, it may well be worth pursuing such efforts.

For example, TRS staff brought to its Board the results from a classification and compensation review that the system had undertaken. The review demonstrated the impact of the Great Reassessment on TRS, including direct costs (such as a 67% increase in costs to pay out annual and overtime leave at separation, difficulty in hiring key positions that require skills that are in high demand, and paying a premium for contract work that could be done at less expense by TRS employees) and indirect costs (increases in workload and burnout). Detailing the pressing need, staff recommended that TRS leave the state classification and compensation plan and adopt a TRS-specific classification structure, which was permitted by state law. At its February meeting, the TRS Board agreed and authorized implementation of a new classification structure.

Bray calls the new classification structure "a powerful tool for TRS" that will make it easier to conduct labor market comparisons, adjust classification system parameters as necessary to reflect the skills needed by the agency, and recruit talent using job titles that make sense in the market. A new salary structure will give TRS the flexibility it needs to respond to market shifts and the ability to vie against businesses who are often competitors for candidates to fill jobs.

THE GREAT RESIGNATION HAS AFFECTED ALMOST EVERY INDUSTRY AND IMPACTED EMPLOYERS ACROSS THE COUNTRY, INCLUDING PENSION PLANS. WHAT DOES THE TREND LOOK LIKE IN THE PENSION WORLD AND WHAT LESSONS CAN WE LEARN FROM PEERS?

Play Your Strong Suit—Mission and Culture:

In the end, retirement systems' most powerful tool may come down to the mission and culture of their organization. Bray notes that nearly every Texan knows someone who has made a significant impact in their lives and who is a member of the TRS system—a teacher, coach, counselor, or family member—and it is this support for the community and desire to be a part of the community that is crucial. Gilson agrees and adds that having a culture that values staff and prioritizes employee well-being in a collaborative environment is critical to today's workforce and necessary to attract and retain the best and brightest.

That message resonates with Bray, who says that "executive management at TRS values the input of employees." She notes that the executive director and the deputy executive director promote an open-door policy and regularly hold "employee huddles" that serve as pulse checks around the agency. Another aspect of the organizational culture within TRS is its serious commitment to diversity, equity, and inclusion in the workforce, which includes a high-level director of Diversity, Equity and Inclusion. "If I had known that work could be like this", Bray says, "I would have been here a lot sooner." And that's a valuable lesson for all pension plans as we adapt to the changes wrought by the Great Resignation. ■

Suzanne Dugan heads Cohen Milstein's Ethics & Fiduciary Counseling practice, which assists pension systems in creating and updating policies and procedures designed to address these and other fiduciary issues.

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- "Credit Suisse Investors Ink $25M 'Icebreaker' Rate Swaps Deal," *Law360* – February 11, 2022
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- "Classwide Arbitration Is Not Dead Yet, as Casino Antitrust Decision Shows," Reuters – February 10, 2022
- "Tribe Can Pursue Class Arbitration in Gambling Supply Suit," *Law360* – February 9, 2022
- "9th Circ. Denies Panel Rehearing on $13M Google Deal," *Law360* – February 3, 2022
- "NC Environmental Groups Resume Lawsuit Against U.S. EPA Over Ongoing Genx Crisis," *Star News Online* – February 1, 2022
- "Ill. Casino Must Face Ex-Workers' Claims in ERISA Suit," *Law360* – January 28, 2022
- "Social Media Company Sued for Federal Officer's Murder," *CBS Mornings* – January 21, 2022

AWARDS & ACCOLADES

- Cohen Milstein's Theodore J. Leopold Named One of *Law360*'s "Titans of the Plaintiffs Bar" – April 1, 2022
- Cohen Milstein's Michelle C. Yau Appointed to *Law360*'s 2022 Benefits Editorial Advisory Board – March 31, 2022
- Six Cohen Milstein Attorneys Named to *GCR*'s "Who's Who Legal: Competition 2022" – March 22, 2022
- Twelve Cohen Milstein Lawyers Recognized Among the 2022 Lawdragon 500 Leading Lawyers in America – February 18, 2022
- Jay Chaudhuri Named Core Rodel Fellow in Public Leadership and E Pluribus Unum Fellow – February 15, 2022

UPCOMING EVENTS

- **May 10-13** | State Association of County Retirement Systems (SACRS) Spring Conference, Omni Rancho Las Palmas Resort, Rancho Mirage, CA – Richard E. Lorant
- **May 22-25** | National Conference of Public Employee Retirement Systems (NCPERS) Annual Conference & Exhibition, Omni Shoreham Hotel, Washington, DC – Richard E. Lorant and Christina D. Saler
- **June 21-24** | National Association of Public Pension Attorneys (NAPPA) Legal Education Conference, Omni Louisville Hotel, Louisville, KY

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Molly J. Bowen is an associate with the Securities Litigation & Investor Protection practice group. Following a clerkship for Judge Karen Nelson Moore of the United States Court of Appeals for the Sixth Circuit, Molly entered private practice and began prosecuting antitrust, consumer and securities cases. She joined Cohen Milstein in 2016 and has been an integral part of the firm's success in securing landmark settlements in shareholder derivative lawsuits designed to preserve shareholder's long-term investment in public companies by challenging discriminatory and abusive practices and promoting fair treatment and advancement of employees. For this issue of the* Shareholder Advocate, *Molly spoke with Editor Christina Saler.

I grew up in ... the small town of Westmont, Illinois. It is a short train ride from Chicago, so my parents often took my sibling and me into the city to enjoy the amazing museums, festivals, and sports teams. As teenagers, we would take the train into the city with our friends and enjoyed a sense of independence and adventure. My parents recently moved from Westmont to be close to my family in Maryland. With an active 4-year-old little girl and a baby boy on the way, it is wonderful to have them so close!

I became interested in the law ... during my fellowship with the Avodah: Jewish Service Corps. I worked in the legal services department of an organization that provided support to victims of domestic abuse and sex trafficking. Many of the people the organization served were immigrants. As a member of the legal services department, I worked closely with potential clients to understand their stories and advise them of their rights, as well as working with the attorneys to prepare applications for immigration relief and drafting client affidavits. I also advocated for my clients to obtain shelter, helped them with safety planning when they were leaving a dangerous situation, and coordinated with law enforcement when clients were pursuing criminal cases against their abusers. This work was incredibly rewarding and instilled in me the desire to become an advocate for those who have been wronged. After two years, I enrolled in law school.

So far, a career highlight ... was settling the *Alphabet Shareholder Derivative Litigation*. In that case we applied the securities laws to address financial damage to the company caused by the company's systemic discriminatory practices against its employees, which we alleged certain officers and directors ignored and covered up. Our novel theory allowed us to create new corporate governance standards around anti-discriminatory practices designed to improve corporate culture and board oversight to support a diverse work force.

I'm currently watching and reading ... things focused on food. My husband and I love *Top Chef*. The new season just started, and it is set in Houston. Since Houston is home to the largest Nigerian population in the country, the show is going to challenge the contestants with Nigerian cuisine and Tex-Mex traditional foods. In my neighborhood book club I'm reading Michelle Zauner's memoir, *Crying in H-Mart*. Zauner writes about growing up Korean American, losing her mother and struggling with her own identity, and some of her more moving family exchanges occurred over plates of delicious Korean food. I don't normally read memoirs but am thoroughly enjoying this one. ■

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