November 24, 2009

Mr. Kevin Wilson
Attorney, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, DC 20036-4505

Re: OSC File No. DI-08-3066

Dear Mr. Wilson:

First of all I would like to say thank you for the involvement of the Agency and for granting me the extension until November 30, 2009 to submit my comments.

My name is Jose Castillo, former Grade 12 Auditor/Investigator of the Employee Benefits Security Administration (EBSA). I was a Grade 12 with this Agency since 2002. My function with EBSA was to audit financial and accounting records of pension and health benefit funds of private entities to ensure compliance with the federal law called ERISA (Employee Retirement Income Security Act) law of 1974 which is only a small portion of the overall Internal Revenue Code (IRC) Code.

I completed the audit/investigation of the Local 12 Asbestos Workers Funds.

In April, 2009, I accepted a Grade 13 Revenue Agent position with the Internal Revenue Service. Now, my function is to audit corporate tax returns of large and medium size businesses.

The Cover-up

I completed the audit/investigation of Local 12 Funds and my documented finding shows that $1.8 million of investment earnings for 2000 was not distributed to the employees as required by the federal law. Director Kay of the New York EBSA office in collaboration with his wife who is the Solicitor of Labor, decided to ignore my findings. His wife, Patricia Rodenhausen who is by law is supposed to file a civil case against the trustees of the Fund for ERISA violation closed the case with no action.

Director Kay's discriminatory practice of making sure only white employees get promoted to Grade 13 prompted him to determine that my audit finding has no merit. By doing so, he can justify his action. Unfortunately, his action escalated into the cover-up of a multi-million dollar fraud and greatly harmed the interest of the blue-collar workers EBSA is supposed to protect.

The DOL's Office of Inspector General **supposed to be independent** investigation of my complaint was nothing more than a well-planned and coordinated effort to cover-up and legitimized the behavior of Director Jonathan Kay. **In other words, this OIG investigation was solely designed to cover-up a cover-up.**

The OIG is simply stating that it is legitimate for Director Kay and his wife to ignore the documented findings of an EBSA auditor and accept the completely undocumented alibi of the subject of the investigation and close the case. The OIG is also simply stating that Director Kay was allowed to obtain another form of report which is likewise undocumented that can only **corroborate** the subject's alibi and use it as the valid report to supersede the auditor's report.

Here are the reasons why:

1. On February 12, 2009, during the first meeting/interview, Assistant Special Agent in Charge Robert W. Wyche engaged in a very unprofessional and unwarranted conduct. After I made my initial statements, he started **shouting at me in a very aggressive way.** Mr. Cunningham apparently approved it before hand because he did not do anything to stop it. **Is Acting Inspector General Daniel Petrole aware of this? Did he approve this dirty procedure?**

   In return, in an authoritative manner, I told Mr. Wyche **"You stop yelling at me"**. It appears that he got my message. I reported this incident to you Mr. Wilson and you stated to me that they are not supposed to be doing it.

   Shouting at me in an aggressive manner **is not part** of the OIG's investigative procedures. Mr. Cunningham is a high ranking OIG official. It is appalling that his body language and demeanor appears to have sanctioned this dirty procedure. **How come this incident was not made part of this OIG Report?**

   I stand 5'3" and slender. Mr.Wyhce is bigger than me. He tried to intimidate me.

   Did he shout in an aggressive manner to Director Kay, Robert Goldberg, Director's Kay wife Patricia Rodenhausen, Jennifer Weekly and former Deputy Director Gaynor at the start of their interviews? I would absolutely not mind if Mr. Wyche did it to

these five individuals because it means equal treatment for all of us.

What is the meaning of this since I was the only one that was subjected to this dirty procedure?

2. On the same day above, after my initial statements were heard by them, both Mr. Cunningham and Mr. Wyche stated to me in unison something like this, "Why should Kay, his wife and the other jeopardized their careers by doing what you are alleging?" In fact, it was during this situation when Mr. Wyche started shouting at me as if the careers of the people I have complaint, in my opinion, is his careers or connected to his personal life. He was that emotional based on my readings of his demeanor.

3. On the same day above, Mr. Cunningham questioned me that run something like this, "Why you are filing this complaint since Director Kay and the Solicitor of Labor has a tolling agreement to preserve the statute of limitation"?

- The statements of Cunningham and Wyche as I described on #2 and #3 above are basically the same as what OIG Supervisory Agent Cheryl Garcia of the New York Office stated to me in August of 2008 when I formally complained and showed up for the interview. This event, for obvious reason, was not addressed on this report.

- Ms. Garcia tried to ask participant J. Lannigan who in the FBI he spoke to report what he sees as a corrupted investigation of Local 12 Funds initiated by Director Kay. The interview of Mr. Lannigan showing this is part of my statements. Also, she tried to get this same information from me after it was known that the FBI interviewed me and I also provided some documents (Attach. 26 of my statement).

Is this part of DOL's OIG investigative procedures? Trying to provide alibis on behalf of the persons who are the subject of the complaint?

4. On the March 12, 2009 interview, after I explained how **I received the Nov. 1, 2005 [redacted] letter from Goldberg** and reviewed it, also reviewed the six (6) additional documents already in my possession and made an initial determination of a possible criminal financial fraud violation, Mr. Cunningham tried to put words on my mouth. At the resumption of the interview after a break, he insisted that I stated to them that after I reviewed the [redacted] letter, I concluded right away that there is a

possible criminal financial fraud. Mr. Cunningham insisted that I made a determination solely based on the [redacted] letter.

Mr. Cunningham's action here was planned ahead. I felt that they specifically structured the morning of March 12, 2009 to try to spin and twist everything in an effort to discredit my allegation. Right at the resumption, after the break, he forcefully and with the use all his skills and experience insisted that I immediately concluded that there was a criminal violation based on this one letter of Mr. [redacted] dated 11/1/2005. I believe that the action of Mr. Cunningham was cooked up in Washington DC.

I made clear to them that the letter alone is not enough to conclude that there was a possible criminal fraud. I made it clear to them that I also considered the six (6) documents mentioned above that I am very familiar with. Mr. Cunningham effort to cover-up the cover-up is very apparent on this report.

This well-planned procedure to first discredit my allegations instead of first investigating it was well **manifested** right on the first day of the interview. One of first statements of Mr. Cunningham about me runs something like this. "You did not have any criminal case done and appears to have no experience doing it".

I responded by stating that I am a retired non-commissioned officer of the US military. That my MOS or specialty while I was on active duty was finance. That during my career in the US Navy, due to my skill in detecting financial fraud, I caused two military personnel to be subjected to the UCMJ (Uniform Code of Military Justice) prosecution because of financial fraud.

Note: I first served six (6) years on active duty and was discharged but remained on the reserve force. From **1984 to 1987** while I was not on active duty, I held federal civil service jobs that included years as a **Systems Accountant** with the U.S. Coast Guard (US DOT). My job then included doing internal audits of Coast Guard financial operations. It was on this job that I executed an urgently planned audit that resulted in the prosecution of a senior enlisted Coast Guard for fraud and misappropriation of government funds. I later returned to active duty in the US Navy, retired in 1997 and then worked for EBSA.

Here, Mr. Cunningham is trying to portray that I do not have the skill to detect financial fraud. Therefore, my allegation must **first be discredited.**

On the Report's summary and timeline (page 4 of 44), it states that November 2005, "Mr. Castillo received a letter from Mr. [redacted]..." The summary did not intentionally reflect what

my sworn statements states. My statements read "In the morning of November 3 or 4, 2005, Goldberg gave me a letter dated Nov. 1, 2005 from participant [redacted]."

Intentionally, neither Goldberg nor Director Kay did not make any statements who actually first receive the mails in EBSA. There is no proof in the report that they were asked this question. I explained to Mr. Cunningham, specifically, (we were face to face) that any mail is first received by Ana, Kay's secretary, and then it is given to the supervisors for distribution to the auditors/investigators. When the auditors/investigators receive the mail it's already opened and stamped. The summary/timeline is trying to portray that I directly receive mails, which is **completely not true.** Intentionally, Ana Chan, the secretary was never questioned. Again, this is just another proof that the intention of this report is to cover-up a cover-up.

5. The report shows that no effort was made to contact Robert Trujillo who was transferred to the Chicago office and ultimately left the government. Mr. Trujillo can provide second verification the claim of Mr. [redacted] that after the November 7, 2005 meeting with the trustees and counsels, Goldberg spoke to the lead counsel without the presence of either Mr. Trujillo and/or me. He assisted me in the interviews and audits of the Funds. It would also verify my allegation. Also, Mr. Trujillo will absolutely verify that on the first meeting Nov. 7, 2005 with the trustees' counsels, I was fully prepared. **He will verify that counsels showed without the promised documentation to contradict my findings on ROI, Part I.** Locating Mr. Trujillo would be an easy task if the OIG wants it.

   The OIG failed to make an honest and diligent effort to communicate with Mr. [redacted] to interview him. As reflected on the report, he was only sent an email and it was sent to his former email address. Mr. Wyche or Mr. Cunningham did not have the honesty to call and explain to him the purpose and the importance of the interview/meeting considering that he already do not trust DOL/EBSA/OIG. Also, at this time, he did not have the full understanding of what really is going on and the purpose of this.

   As expressed on his email response to Mr. Wyche, he thought at this time, that this proposed meeting is just like or the same of what occurred in the April 2006 meeting with EBSA.

   Mr. Wyche did not respond to the email response of Mr. [redacted]. On the other hand, Mr. Wyche did a telephonic interview of former Deputy Gaynor, who of course provided false statements to counter my allegations and justify his behavior.

Why Mr. Wyche did not call Mr. [redacted]? A telephone interview could have been afforded to him. The bottom line is that, the OIG made a concerted effort to minimize the evidence that would support my allegation that Goldberg made some highly questionable facial gestures behind my back November 2005 while I was rebutting the claim of the trustees' counsels. By not interviewing Mr. [redacted] it would make my allegation a notch or two less credible.

6. In response to Congressman King's letter dated 8/8/2008, Acting Inspector General Daniel Petrole told the Congressman 9/15/2008 that his office reviewed relevant documentation and discussed it with EBSA staff. However, Mr. [redacted] through the FOIA request dated 10/19/2009 requested copies of this documentation. His request was denied citing this document does not exist. (Attachment 1). Either Director Kay or Mr. Petrole is not telling the truth. Somebody is lying. These letters are located in Attachment 31 (Communication between [redacted], EBSA, and Govt. Officials). What kind of information Mr. Petrole has at this time and who provided him with it?

7. Before my August 2008 complaint with the New York OIG, before participant J. Lannigan made contact with the FBI and my filing of a formal complaint with the OSC, Mr. Schroeder wrote to the DOL's OIG Washington DC office, attention Mr. Farrell. His letter was ultimately forwarded to Director Kay and nothing was done (Attachment 2).

- It appears that without my formal complaint with the OSC, the OIG would not have acted upon on the complaint of Mr. [redacted] and attempted to and was successful in talking to the FBI of not doing anything. Is this part of the OIG's investigative procedure?

I will now provide comments on the seven (7) allegations that the OIG made conclusions stating that they are all unsubstantiated:

OSC ALLEGATION 1

Mr. Cunningham used all his experience here to twist the truth as manifested on my statements in number 4 above. Also, Mr. Wyche tried to intimidate me.

Intentionally, this OIG conclusion failed to mention the fact that my contention that the $1.8 of investment earnings for 2000 was never allocated in 2001 as the ERISA statue requires is true and correct. This conclusion failed to mention that ultimately, Director Kay was required to refer my Report of Investigation, Part II to his wife who is the New York Solicitor of Labor.

This conclusion failed to mention that the reason Director Kay ultimately referred it because, the trustees of Local 12 Funds were **unable** to provide EBSA with any documentation to disprove my findings.

* Please note that the same reason forced these trustees to settle claims on my ROI, Part I. (**Unable to provide documentation**). It appears that the OIG believed in the false statement of Robert Goldberg that I was not fully prepared on these meetings with the trustees' counsels.

* It appears that the OIG conclusion **intentionally failed** to mention on these dates of my interviews, I specifically informed these two senior OIG investigators that I have not received any documentation to disprove Issues 1 and 2 findings on my ROI, Part II. In fact, I specifically stated to Mr. Cunningham (face to face) March 12, 2009 that he can inquire with Robert Goldberg if any documentation was received. I told him that any documentation from the trustees' counsel would normally be handed to me by Goldberg.

The referral memorandum dated 12/3/2007 clearly shows that the trustees of Local 12 Funds were unable to provide the government any documentation to prove their alibi (Attahcment 3). This is also Attachment 18 of my sworn statements, page 16. Director Kay described this in the memorandum to his wife as "new investigative findings".

My allegation clearly states that I discovered this violation in November of 2005. How could this be new investigative findings? The fact was that since I discovered it, Director Kay, former Deputy Gaynor and Goldberg made the well-planned and concerted efforts to prevent it from being determined as an ERISA violation.

A series of events took place until finally sometimes in June of 2009, the case was closed by his wife with no action. Director Kay and his wife made it appear that they are doing their jobs by doing series of tolling agreements to supposedly preserve the statute; however, this is just a pretext.

[illegible] to provide any documentation to support their alibi and contradict my well-documented findings, Director Kay solicited the assistance of the Office of the Chief Accountant (OCA) at the national office.

Also, Director Kay and his wife know that I referred many cases involving Local 2682, Local 456, Local 1175 and Local 427 Funds and they were all either settled through consent judgments or voluntary compliance in favor of the government. They know that I have a perfect success rate on my cases against funds controlled by unions. They realized that if this case is litigated, once again, I would be successful.

As a matter of fact, SOL lawyer Jennifer Weekley successfully litigated or obtained voluntary compliance against the trustees of

Funds controlled by Local 2682, Local 456 and Local 1175. In all of these cases, I successfully teamed up and worked in perfect harmony with Ms. Weekley.

With the blessing of the national office officials, the OCA performed what described as a "review". This review was used by Director Kay and his wife to close the case with no action. Although Mr. [redacted] did not request this document through the FOIA, Director Kay provided this to him unsolicited (Attachment 4). Also, he informed Mr. [redacted] that this review superseded my ROI, Part II and the case is closed with no action since no violation was found. (Attachment 5).

The request of Mr. [redacted] to obtain the referral memorandum letter dated 12/3/2007 from EBSA to the Solicitor of Labor referring my ROI, Part II was denied (Attachment 6). As stated above, this referral clearly shows that the trustees were unable to document their claim alibi there was a shortfall. This referral also clearly presented that my ROI is well-documented.

My questions are:

Is it the function and mission of the OCA to perform a review or analysis for the purpose of superseding a well-documented ROI of EBSA considering the fact that the subject of the investigation (the trustees) is unable to document their claim?

Is any U.S federal agency or for this matter, EBSA, correct in using another undocumented review created by the agency to uphold or believe in the undocumented claim of the subject it is investigating?

By email dated 10/8/2009, Mr. [redacted] questioned Assistance Secretary Borzi the validity of this procedure. Up to this day, she has not responded to him. (Attachment 7).

If this is not a cover-up, what is it?

Director Kay or his superiors above, the OIG and the Solicitor of Labor might or would insist that the OCA review is valid, if so, **where are the documents to validate it?**

Page 12 first paragraph of the OCA (Scott Albert) review states the two tables created **corroborate** one another to **compute the shortfall**. Are these two tables, the creation, is solely based on creative accounting superior evidence compared to my documentary evidence?

Remember, in the rules of evidence, documentary evidence is clear and convincing evidence which is superior to any preponderance of evidence.

The fact of the matter is, this OCA review is another creative accounting superbly done by OCA's Scott Albert to cover-up the financial fraud against [redacted] and his buddies. This fraud

was perpetuated using a likewise superbly done creative accounting in the form of a special project by James Heinzman.

OSC Allegation 2

Director's Kay alibi that someone with a strong accounting background and familiarity with the investigation was required to oversee the Local 12 Funds investigation and the OIG accepting it is clear proof how blatant the cover-up of the cover-up.

I am an auditor. All my cases under the supervision of Ms. Langone, including Local 1175 Funds, Local 427 Funds, etc that I was working on at the same time I was doing Local 12 Funds involved violations of ERISA I uncovered by auditing the accounting records. These violations could not have been detected if I was a non-accountant.

How come these cases were not turn over under the supervision of Goldberg?

And, how come Ms. Langone effectively supervised me on Local 1175 and 427 Funds that ultimately lead to successful consent judgment from a US Federal Magistrate? Director Kay was present at the Brooklyn Federal Court when the consent judgment was handed down by Judge Gold.

My statement clearly shows that ROI, Part I was all about accounting issues and it was completed under the guidance of my former supervisor, Jonathan Brown. What is the role of Goldberg in my findings of these accounting issues? **None, except to disagree with it**. As shown on my statements (Attachment 20), the trustees settled because they were unable to provide documentation to contradict my findings.

OSC Allegation 3

My only comment here is review Attachments 6, 7, 8, 11, and 12. In attachment 12, the undocumented trustees' letter dated 9/29/2006 is addressed to former Deputy Gaynor. Deputy Gaynor provided the OIG false statements.

OSC Allegation 4

My comment here is that it is the policy of EBSA to return the calls of participants. Also, if I needed some information or clarification from the participant, I need to call. This action of Director Kay was mainly designed to hinder me. Where is the **documentary proof** of Ms. Virginia Smith's statement to prove that I am providing confidential information to individuals outside of EBSA at this time frame **(November 2006 or before)?**

OSC Allegation 5 and 6

Again Mr. Cunningham, with all his skills and experience, twisted things. My statement clearly shows that it was not until October of

2006 that I discovered the $381,000 issue. He is stating that: "It should be noted that during this interview with Mr. Castillo, he failed to mention he had not discovered $381,000 in employer contributions until November 2006, giving the initial impression that this issue was discussed at all three meetings with Mr. Heinzman" ,Pg. 17 of 44. The above is just one these spins of the OIG.

This finding is just a spin, nothing else. In what way I gave them the impression that this issue was discussed during the first three meeting with Mr. Heinzman? In what way I gave them the impression that Director Kay and Goldberg were aware of this prior to November 2006? Again this is another proof that the purpose of this OIG investigation is to discredit me and not to independently find the facts. The report's assertions that OCA, SOL and ORI all agreed that violation did not exist are solely based on a non-documented alibi and claim.

The OCA, SOL and ORI cannot cite any **document** to prove that my well-documented finding is flawed. Since the trustees are unable to provide document to disprove my allegation on this issue, is it the function of the above offices to just simply make an assertion that there is no violation? Is this not a cover-up?

OCS ALLEGATION 7

It is understandable that Mr. Briglia here provided statement that is contrary to what occurred. He is under the influence of Director Kay and Co.,

Additional Allegation comments:

The comments of my real supervisor, Ms. Langone, clearly show how she is torn between telling the truth and going along with the influence of Director Kay.

How could Ms. Langone provide me with specific direction on how to do audits and do financial analysis of my cases since she has very limited accounting background?

How could she exactly tell me what to do with my cases since just about all of them always involved finding ERISA violations by understanding the accounting systems, doing comparative financial analysis, doing audit sampling, tracing the suspected transaction from the general journal, to the subsidiary ledger, to the cash disbursement journals and the source documents and to some degree using my skill in EDP Auditing?

Also, how could she tell me exactly what to do since most of my cases involved the limited review or survey of Form 1120s (corporation tax returns) Form 990s (Tax-exempt entity filing form) and in a few cases, Form 1065 (Partnership tax returns)? She has a very limited accounting

background and I do not think she understand these IRS Tax filing forms.

The bottom line is that had Ms. Langone been retained as my supervisor on Local 12 Funds, she **would not have** the knowledge and skill to justify what Goldberg was able to do. She would not have any reason to disagree with my findings since the issues are out of **her comfort zone**. Therefore, she would not have been able to execute the goal of Director Kay to cover-up this fraud.

Remember, the accounting violations presented on ROI, Part I and the more serious violations presented on ROI, Part II are all the results of my examination of Local 12 Funds' accounting records, review auditor's reports, review of the audit work papers, etc. Ms. Langone would have an extremely hard time disagreeing with me since she does not have enough accounting knowledge to understand these documents.

Ms. Langone comments according to this report completely eluded the fact that she was for most part, my supervisor, when my investigation of Local 1175 Funds was completed and the U.S. government won a consent judgment from a federal magistrate in Brooklyn. Ms. Langone completely eluded the facts that on several occasions, she was present with me at the U.S. Federal Court and on a number of occasions I had to make statements or answers questions in front of Federal Magistrate Gold in Brooklyn. Her presence was merely symbolic since her knowledge of the case is limited and is not required. However, my presence was necessary.

Ms. Langone was an extremely very young person when back in 1986, because of my skill in detecting financial fraud, a senior enlisted Coast Guard went to jail as a result of a court marshal for fraud. This accomplishment is reflected in my federal resume.

Ms. Langone never experienced being deposed by any defense counsel. Director Kay asked me one time on our way to Brooklyn Federal Court if I had any experience being depose. This is in connection with the civil litigation against the trustees of Local 1175 Funds. I was told by Solicitor of Labor lawyer Jennifer Weekley that I will be depose in the near future. I told Director Kay that I was in UCMJ proceedings twice against military personnel for financial fraud. I told him during my active duty in the US Navy, I was witness for the U.S. Government and that should count as an experience. He looked relieved after that answer.

The twisted statement of Ms. Langone here is to provide more alibi to the behavior of Director Kay. Ms. Langone was never with me when I do my field work. She is only with me whenever a settlement meeting is conducted. It would be very **awkward and uncomfortable** on her part if she would join me on my field work. In my field work, I mainly review and examine accounting records, etc. If she is present, I will need to teach her how to do it. Also she is a lot younger than me. A CPA

dealing with me on the field would have the impression that she is being trained by me.

This OIG Report completely failed to address two huge financial transaction issues that are in my statements. First, my discovery that **$1,401,997** in cash is unaccounted for and second, the discovery of the **$823,368.31** in "sweep" transaction. My statement will further explain what a sweep transaction is (page 8). Mr. Cunningham told me not to include any financial document as proof of these two issues. He stated that my statement alone is adequate. Although these two issues above were not included in my ROI Part II, it represents clear red flags of the financial fraud that took place.

The OIG report failed to properly address discriminatory practice of Director Kay's motive in hindering my investigation. The report did not show that Mr. Cunningham questioned me about the possible motive. At the first meeting, he questioned me what I think is the motive of Director Kay in hindering the investigation.

Page 22 of my statement clearly present the fact since he became Director, no minority was selected for promotion to grade 13 despite that there are three of us non-white auditors/investigators with the agency since 1999 or 2000.

If the OIG made some effort to address this issue, it will show that a white male investigator that joined the agency in 2005 was promoted to Grade 13 in 2008. It will show that there is no minority above grade 12 in the agency. It will show that this white grade 13 has not accomplished anything significant. Of course, he is excellent in his English language skills. However, Ms. Alvarez, the female Hispanic investigator who is with the agency since 1999 completed two significant criminal cases, one was successfully completed back in 2003 or 2004.

Ms. Langone, my real supervisor only completed one criminal case that was not as significant as the one done by Ms. Alvarez. However, Ms. Alvarez speaks with a distinct Hispanic accent. The black female investigator speaks with a Jamaican accent.

According to Robert Goldberg and former Deputy Gaynor they did not understand my English. **OIG knows that this bias and bigoted alibi does not belong in the U.S Government.**

This alibi is a big slap on face of Honorable Secretary Solis. This is an insult and degrading to her Spanish speaking immigrant parents from Mexico and Nicaragua. Also, this is a humiliation to Assistant Deputy Secretary Michael Davis L. Davis, whose African ancestors did not speak any English.

And most serious of all, this is a direct insult to our President Obama. His fraternal ancestors and relatives in Africa do not speak the kind of English that Goldberg and Gaynor can understand.

Mr. Petrole's ancestors from Italy, I am sure did not speak the kind of English Goldberg and Gaynor would understand. Does he know about this?

From 1993 to 1997, as the finance officer of U.S. Navy Support Activities in Naples, Italy, my English was good enough to run this $100 million a year finance operation. My English was good enough for deposition by the defense on the Local 1175 Funds litigation and good enough to respond to the federal magistrate's questions.

*The conclusion on my allegation that Mr. Goldberg made facial gestures behind my back as could not be substantiated is simply a clear sign how the OIG simply ignored and suppress the facts.

The investigative finding that I lack preparation in meeting with the trustees' counsel is solely based on the **lies of Goldberg.**

If in fact, what Goldberg said is true, how come at the end the trustees decided to settle ROI, Part I???????

Remember, Goldberg disagreed with my accounting issue findings on Part I. The trustees showed up with no documentation to disprove me. Their lawyers assured me that they have the documents.

Who lacked preparation???????

I am sure it was not me. Every day, since November 7, 2005 until April, 2009, I was always prepared and always waiting to receive and review the supposed to be documentation to disprove my findings. Every meeting all I hear is eloquent verbal presentations of counsels, using their superior English language skills. **However, no documentation.**

The OIG theory that Goldberg may have made facial gestures because of frustrations is a **simple and clear spin.**

To suppress this evidence, the OIG made a lackluster, completely insincere and unprofessional effort to communicate with Mr. Schroeder. Remember his April 2006 letter **verified** my allegation of the Goldberg gestures.

Issues no. 3 and 4 of my ROI, Part II shows a pattern of highly questionable and undocumented transfers of money from one fund to another and to the financial custodian.

Nearly at the end of the series of interviews by the OIG, I told Mr. Cunningham that I finally reviewed the documents that were provided by the trustees. My findings (Attachment 8) show that a number of relatives of the trustees are being credited as having worked and money was transmitted to the financial custodian on their behalf. However, the documents show that these relatives never worked.

These are the issues that Director Kay tried to obtain an exemption (pages 18 to 19 of my statement and attachment 22, documented evidence).

Mr. Cunningham told me flatly that the results of my review on these issues are not to be included on statement. Again, this is another proof that the OIG's investigation is solely designed to cover-up a cover-up.

As you remember Mr. Wilson, I mentioned this to you and you stated to me to make sure it is included in my comment. As you notice I forwarded this finding to Assistant Secretary Borzi.

Since the Scot Albert (OCA) review asserted that the investment earnings for 2000 was in fact distributed to the participants, Mr. Schroeder requested Director Kay to show or demonstrate where in the New York Life statement the transaction entry can be found. The question was asked (Attachment 9). It appears that a single entry on Mr. [redacted] statement in 2001 to show that transaction does not exist. Up to this date, November 24, 2009, Director Kay has not provided him with the answer or document to prove he received that $18K earning.

The Security and Exchange Commission (SEC) realized and accepted its responsibility in the mishandling of the Bernard Madoff investigation. EBSA, on the other hand, legitimized the same type of financial fraud. President Obama's hope and aspiration of changing Washington does not apply to EBSA.

The victims of Bernard Madoff are mostly well educated investors that expected to make profit. On the other hand, Mr. Schroeder and his buddies are all blue-collar, lowly educated and in many cases sickly workers who earned this investment earning by exposure to asbestos.

The Madoff victims are now represented by prominent lawyers and the SEC fulfilled its function. **On the other hand, what did EBSA have done?**

Did the SEC's OIG investigator shouted in an aggressive manner to any of the agency's employees during the inquiry into the mishandling of the Madoff issue????????

Maybe Mr. Petrole would like to know.

For a job-well done by Mr. Robert Goldberg, he was selected by Director Kay as Associate Deputy Director.

And lastly, this OIG report appears to believe just about every **statement made by Director Kay, his wife, his wife's subordinates, Robert Goldberg and Kay's other personnel to be true**. On other hand, the report is written to show that just about all my key statements are untrue. **Is this possible**?

Absolutely not possible. Here is the reason why.

My background investigation as required by the IRS was finally completed. The report shows that Director Kay, Robert Goldberg and Ms. Langone, my real supervisor, provided statements to the Office of Personnel Management (OPM) investigator that are seriously negative about me. The statements were so negative that if EBSA is a private entity and I am not a current federal employee, I could be terminated by the IRS.

However, the statements are absolutely inconsistent with the records as reflected on my Official Personnel File. The IRS determined that these statements **are not credible**. The Territory Manager, who is above my Group Manager stated that he read the transcripts. His demeanor and body language show his disbelief of these statements. (Attachment 10).

*The letter states there is another discrepancy about my education. However this was resolved after I submitted a copy of the U.S. accreditation in 1999 of my education completed from a foreign country.

Sincerely

11/24/09

Jose Castillo

U.S. Department of Labor

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New York, NY 10004
Phone: (212) 607-8600
Telefax: (212) 607-8681

BY FEDERAL EXPRESS

October 26, 2009

[redacted]

Re: FOIA Request concerning Asbestos Workers Local 12 Benefit Funds

Dear Mr. [redacted]:

This is in response to your Freedom of Information Act ("FOIA") request dated October 19, 2009. In the request you sought all records related to the investigation of the Asbestos Workers Local 12 Benefit Funds as it relates to a letter sent by the Office of the Inspector General to Representative Peter King. Specifically you requested:

> *"any and all documents, notes, messages records, entries, including...that formed the basis for the statement contained in Mr. Daniel R. Petrole's letter dated September 15, 2008 to Representative Peter King: 'The Fund Trustees subsequently filed a civil complaint against the Fund's former administrator and auditor, and this complaint was settled in late 2002.'"*

This office has no records responsive to your October 19, 2009 request. We have forwarded your October 19, 2009 request to the Department of Labor's Office of Inspector General ("OIG") for their direct response.

You may file an appeal of this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting documents or arguments. The appeal should include a copy of your initial request and a copy of this letter. To facilitate processing, you may wish to fax your appeal to: (202) 693-5538. The appeal should be sent to the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N2428, Washington, D.C. 20210. If mailed, both the envelope and the letter of appeal should be clearly marked "Freedom of Information Act Appeal".

Sincerely,

Jonathan Kay
Regional Director

U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210

SEP 15 2008

The Honorable Peter T. King
U.S. House of Representatives
Washington, D.C. 20510

Dear Representative King:

This is in response to your August 8, 2008, correspondence, in which you request that the Office of Inspector General (OIG) investigate the Department of Labor's handling of Asbestos Workers Local 12 Annuity Fund Case No. 30-0909939. In your correspondence, you state that it is your understanding that approximately 500 Plan participants, including one of your constituents, [redacted], did not receive their investment earnings for the year 2000. Further, you state that Mr. [redacted] has informed you that alleged violations by the Plan trustees have been ignored by the Department of Labor.

My office has received previous inquiries regarding this matter and is aware that the Department's Employment Benefits Security Administration (EBSA) has been conducting an investigation of the Local 12 Annuity Fund. Based upon my office's review of relevant documentation, and discussions with EBSA staff, it appears that the Fund's administrator advised the Department in early 2002 that there may have been discrepancies in Fund allocations. The Fund Trustees subsequently filed a civil complaint against the Fund's former administrator and auditor, and this complaint was settled in late 2002. In November, 2005, the Department received a letter from Mr. [redacted] which questioned the correctness of the allocations and the payments made to the participants. It is my understanding that EBSA's investigation of this matter is continuing, and that the Department's Office of the Solicitor recently contacted Local 12 officials regarding this matter. Accordingly, at this time, it does not appear that any alleged violations have been ignored by the Department.

However, if Mr [redacted], or anyone else, has specific information, documentation, or evidence indicating that officials from either EBSA or the Office of the Solicitor have engaged in any misconduct in their handling of this investigation, we would request that such information or documentation be provided directly to my office. In the absence of such information, we cannot take any further action at this time, since the matter appears to be under appropriate review by the Department.

Please feel free to contact me, at 202-693-5100, if you have further questions regarding this matter. Alternatively, your staff may contact Nancy Ruiz de Gamboa, Assistant Inspector General for Management and Policy, at (202) 693-5224.

Sincerely,

Daniel R. Petrole
for Gordon S. Heddell
Inspector General

Castillo Jose

From: dkc.castillo@att.net
Sent: Monday, November 23, 2009 6:01 AM
To: Castillo Jose
Subject: FW: Re:
Attachments: Castillo 4306.doc; Eder4106.doc; OIG DOL 312.doc; DOL-OIG 3-11-06.doc; Office of Racketeering 2-7-06.doc

---------- Forwarded Message: ----------
From: [redacted]>
To: dkc.castillo@att.net
Subject: Re:
Date: Sat, 21 Nov 2009 23:50:53 +0000

Agent Castillo:

As per your request, I have attached hereto copies of correspondence that I sent to the OIG in Washington D.C. prior to my meeting with Mr. Gaynor, Mr. Goldberg and you at the NYRO in April of 2006.

In my February 7, 2006 letter to the Office of Racketeering and Fraud Investigations, I expressed an opinion about you, for which I now apologize. While I still believe the NYRO of EBSA was influenced to exclude a recommendation of a criminal investigation be forwarded to the U.S. Attorney Office concerning these matters, you certainly were not part of it.

[redacted]

--- On **Thu, 11/19/09, dkc.castillo@att.net** ***<dkc.castillo@att.net>*** wrote:

From: dkc.castillo@att.net <dkc.castillo@att.net>
Subject:
To: [redacted]
Date: Thursday, November 19, 2009, 10:59 AM

[redacted],

I understand that before the April 2006 meeting (Deputy Gaynor, Goldberg and Auditor Castillo (myself)) with EBSA you contacted the OIG Washington DC to complain of what you believe as a corrupted EBSA's investigation of the Local 12 Funds.

Please provide me with copies of these correspondence by responding to this email if your can.

Thanks for your anticipated cooperation.

Jose Castillo
Former Auditor/Investigator of EBSA New York

April 10, 2006

U.S. Department of Labor
OIG, Room S-5506, G-701
200 Constitution Avenue
Washington, D.C. 20210

Attn: Marcus S. Eder

SUBJECT: Asbestos Workers Local 12 Benefit Funds

Dear Mr. Eder:

Reference the above subject I want to thank you for your letter dated April 5, 2006. The information contained therein is both useful and informative and will be retained. Please find enclosed herein my letter to Agent Jose Castillo, dated April 3, 2006. If you would be kind enough to include this correspondence with information previously supplied regarding this matter for consideration by your agency, I would be in your debt.

Sincerely,

[redacted]

April 3, 2006

United States Dept. of Labor/EBSA
33 Whitehall Street
Suite 1200
New York, NY 10004

Attn: Jose Castillo

SUBJECT: April 13th Meeting at EBSA

Dear Mr. Castillo:

Reference the above subject and our previous e-mail, enclosed please find copies of my January 14th and February 4th (enclosure #1) correspondence to Regional Director Jonathan Kay.

You will note that I have expressed concerns about the professionalism and performance of the ongoing investigation into Local 12 Benefit Funds conducted by your office and yourself. Director Kay's recent correspondence to Senator Schumer dated February 14, 2006 duplicates in substance his predecessor, Director F. Clisham's August 2001 letter to me explaining EBSA policy of non-disclosure. While I understand the concept of this policy, I hope you can understand my fear that this five-year expanse of time may seriously jeopardize, if it hasn't already, any legal recourse I may enjoy under statute of limitations regulations as they pertain to fraud.

If Director Kay has no information he is willing to share with a United States Senator, he certainly has no intention of sharing any with me at the proposed meeting at your office. I stand by my February 4th letter to the Director, which also asks questions not, in my opinion, restricted by the investigation, but pertaining to ERISA obligations that the fund must create corrected filings to replace alleged fraudulent reports. If this were the case it would indicate that reports have been, in fact, rejected pursuant to Title 29, Sec. 1024. Certainly the participants are not expected to rely on compromised filings for their information concerning the years of the alleged fraud investigation, 1993-1999.

I have not received the courtesy of a reply to either my January 14th or February 4th letter to Director Kay. With this in mind, I believe the purpose of any meeting would be political in nature; an opportunity for the Director to promote the illusion that proper protocol, impartiality, and open mindedness exists as the investigation continues. I do not believe this is, in fact, the case.

On December 17, 2005, I telephoned four employee trustee members of my funds at their residences. Trustee member Nick Grgas, president of Local 12, in response to my complaint that trustees were failing to "inform and educate" participants of ongoing fund developments including negotiations with the DOL investigation, said "...they're (EBSA) nitpicking at insignificant and minute points that have no relevance to anything meaningful". I responded that in light of the alleged failures of the benefit funds over past years I had "...no problem with the DOL insisting that all the t's are crossed and the i's dotted". At this point, Mr. Grgas further stated "...when the agent is speaking at the meetings, his supervisor is behind him shaking his head negatively, with his eyes looking skyward in an exasperated fashion." I did not ask specifically the name of the supervisor nor did Mr. Grgas volunteer it. He did tell me that this individual was approached after this meeting and asked if he could "...intervene favorably in the funds behalf." This same supervisor said, "...There's nothing I can do directly...he's the agent-in-charge." Though the conversation with Mr. Grgas is paraphrased here, I would swear under oath to its accuracy in substance.

What are the people involved with this investigation in your office thinking? Don't you have a staff meeting to prepare subject matter before discussions with trustees and providers of the funds? What message of discord is being sent inadvertently, or even more sinister, intentionally, to fund administration? "Here's something you good 'ole boys should look into, or create/destroy a paper trail about...we won't look into it now, but here's a little heads up!" I have enclosed a letter from Ms. Sharon Watson, Director of Participant Assistance, EBSA (enclosure #2) in which she states "...resolution of EBSA investigations varies....depending upon...level of cooperation obtained from the parties involved." What "level of cooperation" does your offices' obvious display of disunity and lack of resolve inspire with the administration of these funds? The impression I received from Mr. Grgas was "...they can't even agree amongst themselves what's important...why should we worry about it...if we ignore them, they'll go away."

Sometime ago I had a private conversation with then employee trustee member, [redacted] where I discussed what I felt were inaccuracies and omissions in 5500 report filings. His response to me was "...do you think any one actually reads those things!" If he had said "...actually cares about those things" perhaps he would have been more prophetic with regard to the New York Regional Office.

Mr. Castillo, in the past you mentioned you may want to interview me relative to fund issues and I would make myself available to you for that purpose, but for reasons expressed herein, I must decline a general meeting with your regional office. I, however, would be interested in such a meeting with any EBSA office or division in Washington D.C. that I have had a previous contact with and would personally bear the expense of travel or lost compensation from my employment as a result of such an accommodation.

Please feel free to distribute this correspondence in any manner you deem appropriate.

Sincerely,

[redacted]

Cc: Ms. Sharon Watson
Mr. James Denman
OIG/DOL

March 12, 2006

Office of the Inspector General
U.S. Dept. of Labor
200 Constitution Avenue, NW, Suite S-5506
Washington, D.C. 20210

SUBJECT: Asbestos Workers Local 12 Benefit Funds

Dear Hotline Inspector:

Reference the above subject and my previous correspondence of March 11, 2006, copy of which is enclosed, attached hereto please find copies of correspondence which were initially enclosed with my February 7, 2006 letter to Inspector Farrell. These items are being forwarded for your information and scrutiny. Thank you for your interest in this matter.

Sincerely yours,

[redacted]

March 11, 2006

Office of the Inspector General
U.S. Dept of Labor
200 Constitution Ave, NW, Suite S-5506
Washington, D.C. 20210

SUBJECT: Asbestos Workers Local 12 Benefit Funds

Dear Hotline Inspector:

Reference the above subject and my recent telephone conversations with Sheila of Inspector Farrell's office, and Marcus of the hotline office, enclosed please find a copy of my February 7, 2006 correspondence. I have also enclosed copies of postal receipts and delivery confirmations for that original letter in the hope they may be useful in locating it. Thank you in advance for your attention to this matter.

Sincerely yours,

[redacted]

February 7, 2006

Office of Racketeering and Fraud Investigations
Thomas F. Farrell, Deputy Asst. Inspector General
200 Constitution Avenue NW, Suite S-5014
Washington, DC 20210

SUBJECT: Asbestos Workers Local 12 Benefit Funds

Dear Inspector Farrell:

Reference the above subject, I seek the scrutiny of your division to insure the investigation of ERISA funds conducted by the New York Regional Office since 2001, and headed by Director Jonathan Kay, has been inclusive, appropriate, and meets the standards set by the Department of Labor. As is readily evident from the text of my recent communications with that Regional Office, copies of which are enclosed, I have become frustrated, confused, and somewhat suspicious that their goals and motives mimic those of fund trustees and service providers at the expense of fund participants and beneficiaries. It should be noted here that five of the fund trustees are also officers of the Local Union #12. One of those officer/trustee members, who I notified the Regional Office years ago was receiving inappropriate payments from these benefit funds, is now an International Vice-President.

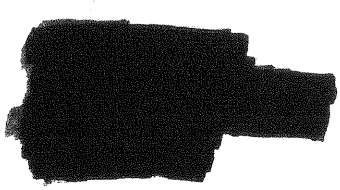
It is also my opinion that the agent in charge of this investigation, Mr. Jose Castillo, has somehow been influenced to exclude, from the outset, recommending the U.S. Attorney conduct a criminal investigation into what is obviously a well orchestrated and elaborate "scheme to defraud" ERISA funds, as alluded to in the civil litigation (U.S. D.C.E.D.N.Y. CV02-2916).

As detailed in your division's web site, I feel possible violations have occurred within the following areas: Theft or misuse of union assets, false reports on ERISA required documents, and embezzlement from an employee benefit fund.

I have taken the liberty to highlight areas of information contained in the attached previous correspondence, which may illustrate areas of my allegations, or support my opinions of the New York Regional Office's performance. I have not included all the enclosures mentioned in my past letters, but can supply them at your request.

I have no wish to remain anonymous with regard to my complaint, and can be reached at the below address and telephone.

Sincerely yours,



U.S. Department of Labor

Employee Benefits Security Administration
33 Whitehall St., Suite 1200
New York, NY 10004
Phone: (212) 607-8600
Telefax: (212) 607-8681

December 3, 2007

To: Patricia M. Rodenhausen
Regional Solicitor

From: Jonathan Kay JK
Regional Director

Re: Local Union 12 Asbestos Workers Annuity and Welfare Funds
EBSA Case Nos.: 30-099939(48) and 30-099940(48)

Enclosed please find a supplemental Report of Investigation (ROI) and supporting exhibits in the above matters. As you are aware, by memo dated May 4, 2007 we referred an action ROI addressing fiduciary breaches that involved the above-referenced plans and three other affiliated funds. The issues raised in the May 4, 2007 transmittal have been analyzed by NYRSOL. The instant ROI describes four additional series of transactions, the first three of which are limited to the Annuity Fund, while the fourth one concerns the Welfare Fund.

Background

By way of background, in or about 2000 the Annuity Fund trustees decided that they would convert to a self-directed plan which would allow participants to self-direct their own investments. Simultaneously, the Annuity Fund selected New York Life as the custodian of the Annuity Funds assets which exceeded 45 million dollars.

Immediately prior to the conversion to a self-directed plan, the Annuity Fund contends that it discovered that 1) Fund Administrator, Jerome Market, may have diverted money from the Fund and 2) throughout the 1990s earnings on the Annuity Fund's investments may have been improperly allocated to individual participants accounts. According to the Annuity Fund's trustees, the improper allocations resulted in over- or understatement of participants' accounts. The situation was aggravated by the fact that some participants whose accounts were overstated received distributions during the 1990s and excessive benefit payments were not recouped from these individuals. Again, according to the trustees, the diversions and mismanagement resulted in the amount of Annuity Fund assets available for immediate investment as of December 31, 2000 being approximately $1.9 million less than the then current participants' account balances which balances did not reflect the year 2000 investment earnings.

At the same time the Trustees were sorting out the account balances, with the help of the Schulteis and Panettieri accounting firm, the Annuity Fund's trustees had to decide how to allocate the Annuity Fund's investment earnings for 2000 which are reported as $1.8 or $2

million in different places. According to the trustees, the $1.9 million shortfall between assets on hand and participants' account balances was made up by the $1.8 million in 2000 earnings which enabled the Annuity Fund to "go live" with the self-directed accounts at New York Life in June 2001. The trustees readily admit that the 2000 earnings were not allocated to individual participants' accounts in 2001. Rather, the trustees contend that the earnings were not allocated until 2004, subsequent to resolution of a lawsuit the trustees initiated in May 2002 against former Plan Administrator, Jerome Market, and others. The lawsuit resulted in separate payments by fidelity and fiduciary carriers as well as defendants that totaled approximately $1.3 million. Upon receipt of these funds the trustees state that the 2000 earnings could, and were, finally allocated to individual participant accounts. The Trustees admit that no lost opportunity costs, attributable to the delay from 2001 to 2004, were distributed when the 2000 earnings were allocated in 2004.

New Investigative Findings

The new investigative findings are:

1) In September 2001 the new Plan Administrator for the Annuity Fund, Al Wassell, directed New York Life to use $374,768 of the unallocated year 2000 investment earnings (which had grown to $381,099.30 by September 2001) as employer contributions.

   The Fund's trustees contend that the $381,099.30 was actually used to pay plan expenses that had initially been taken out of employer contributions that had been remitted. Despite repeated requests, the Annuity Fund was unable to specify what expenses were at issue.

2) The year 2000 investment earnings of either $1.8 or $2 million were never allocated to individual participants' accounts. The basis for this conclusion is two-fold. First, there is conflicting evidence about whether there actually was a shortfall between the amount of assets the Annuity Fund had in hand and the aggregate amount of all participants accounts. If there was no shortfall, the trustees explanation that they couldn't allocate the year 2000 earnings in 2001, i.e., that they needed the earnings in order for the plan to go self-directed has no merit. Second, the NYRO could not identify an audit trail establishing that the earnings were actually allocated in 2004 as the trustees contend.

3) On May 2, 2002 $421,449.84 of Annuity Fund assets were used to satisfy certain employers' obligations to make contributions to the Annuity Fund.

4) The trustees of the Welfare Fund permitted $1,237,691.50 of Welfare Fund assets to be transferred the Annuity Fund for reasons that are unexplained and thus appear to be improper. The amount was transferred on the three dates in the amounts noted.

June 6, 2001	$489,577.50
November 20, 2001	$431,127.00
January 8, 2002	$316,987.00

Attached hereto is the last in a series of tolling agreements relevant to the above issues. A separate series of tolling agreements have been executed with regard to the issues referred to RSOL in May 2007. The attached tolling agreement tolls the statute of limitations as of July 17, 2006 "with respect to any action ...regarding the allocation of the Annuity Fund's earnings for the year 2000...." The attached tolling agreement expires on December 31, 2007.

The attached tolling agreement encompasses the first two issues discussed in this memo. The NYRO did not have any information about the non-allocation of the year 2000 earnings until it received a copy of a special project report from the Schulteis and Panettieri accounting firm in October 2005 and receipt of a November 7, 2005complaint about the 2000 earnings from participant [redacted]. The third new investigative finding would be time-barred under the six year rule on May 1, 2008. It would appear that only the January 8, 2002 transfer in the fourth finding is actionable, but absent a tolling agreement, may be barred on January 7, 2008.

Attachments: Tolling Agreement
Enclosures: ROI, Exhibits

U.S. Department of Labor

Employee Benefits Security Administration
33 Whitehall St., Suite 1200
New York, NY 10004
Phone: (212) 607-8600
Telefax: (212) 607-8681

BY FEDERAL EXPRESS

August 3, 2009

Re: Local 12 Annuity Fund

Dear [redacted]:

This is in response to your July 12, 2009 e-mail requesting certain documents and information relating to the Department of Labor's ("Department") investigation of the above-referenced employee benefit plan. (Copy of July 12, 2009 email is enclosed.) We will treat your e-mail as a request under the Freedom of Information Act ("FOIA") and have produced with this letter those documents that are responsive to your request.

I have paraphrased the four items of information or documents that your email requested directly below and have provided my response to each of your requests:

1) The date that the most recent tolling agreement expired.

   Response: See enclosed copy of most recent tolling agreement.

2) Copy of Mr. Castillo's investigative report on the "second set of issues (allocation issue).

   Response: A copy of the investigative report is attached. Certain portions of the report have been redacted in accordance with Exemption 4 of the FOIA, 5 U.S.C. Section 552(b)(4) which provides an exemption from disclosure for records concerning trade secrets and commercial or financial information obtained from a person that is privileged or confidential and Exemption 7(C) of FOIA, 5 U.S.C. Section 552(b)(7)(C), which provides an exemption from disclosure for records that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

   Although not required by your request, I have also enclosed a copy of the March 26, 2009 report prepared by the Office of the Chief Accountant, Employee Benefit Security Administration which supersedes the findings in Items 1 and 2 of Mr. Castillo's investigative report. A portion of the report has been redacted in accordance with Exemption 7(C) for the reasons stated above.

OCA REVIEW

3) Copy of any U.S. Department of Labor, Office of Inspector General ("OIG") report into "any areas of the local 12 issues."

Response: This office does not have a copy of any such report. However, we have initiated the process of forwarding your request to the OIG. If you wish to contact the OIG directly, their website, www.oig.gov, contains information about how to do so.

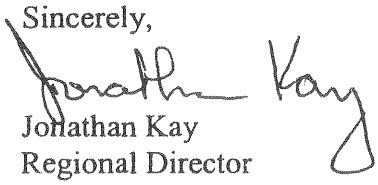
4) Provide details about the identity of the "others" as referenced in my July 9, 2009 letter to you that reviewed the Local 12 investigations and provide the name and the telephone numbers of the "Head Solicitor" who reviewed the Local 12 issues.

   Response: There are no records that are responsive to this request. You should be aware that the FOIA does not require agencies to do research for you, to answer written questions, or to create records in order to respond to a request.

   The name of the heads of the various Solicitors Offices and the contact number for such individuals may be located on the website for the Solicitor's Office which is www.dol.gov/sol. As a general matter, the Plan Benefits Security Division is the group within the national Solicitor's Office that has jurisdiction over matters arising under the Employee Retirement Income Security Act ("ERISA").

You may file an appeal of this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting documents or arguments. The appeal should include a copy of your initial request and a copy of this letter. To facilitate processing, you may wish to fax your appeal to: (202) 693-5538. The appeal should be sent to the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N2428, Washington, D.C. 20210. If mailed, both the envelope and the letter of appeal should be clearly marked "Freedom of Information Act Appeal".

Sincerely,



Jonathan Kay
Regional Director

Enclosures: July 12, 2009 e-mail
Tolling Agreement
Report of Investigation
OCA Report

U.S. Department of Labor

Employee Benefits Security Administration
33 Whitehall St., Suite 1200
New York, NY 10004
Phone: (212) 607-8600
Telefax: (212) 607-8681

BY FACSIMILE AND FIRST CLASS MAIL

July 9, 2009

[redacted]

Dear [redacted]

The Employee Benefits Security Administration's New York Regional Office has conducted investigations of the Local 12 Asbestos Workers Annuity Fund and related funds. In June 2008 the Department achieved voluntary compliance with the parties on viable issues including the restoration of $172,270.28 to the Annuity Fund and related funds. A second set of issues, primarily involving the Annuity Fund, has been reviewed by the Regional Office, the Department's Office of the Solicitor, EBSA's Office of Chief Accountant, as well as others, and no additional violations were found. The Regional Office has now closed its investigations of the Annuity Fund and related funds.

Sincerely,

Jonathan Kay
Regional Director

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Castillo Jose

From: dkc.castillo@att.net
Sent: Thursday, November 19, 2009 10:13 PM
To: Castillo Jose
Subject: Fw: FOIA Request - Asbestos Workers Local 12 Benefit Funds
Attachments: FOIA 814.doc

---------- Forwarded Message: ----------
From: [redacted]
To: Jose Castillo <dkc.castillo@att.net>
Subject: Fw: FOIA Request - Asbestos Workers Local 12 Benefit Funds
Date: Fri, 14 Aug 2009 15:42:34 +0000

--- On **Fri, 8/14/09** [redacted] wrote:

From: [redacted]
Subject: FOIA Request - Asbestos Workers Local 12 Benefit Funds
To: foiareqwuests@dol.gov, Watson.Sharon@dol.gov, Kay.Jonathan@dol.gov
Cc: Lebowitz.Alan@dol.gov, Davis.Michael.L@dol.gov, Borzi.Phyllis@dol.gov, Carol.Danko@mail.house.gov
Date: Friday, August 14, 2009, 11:41 AM

Reference the above subject and Director Watson's letter dated July 30, 2009, I am attaching the document which is self explanatory. Thank you.

[redacted]

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August 14, 2009

VIA FACSIMILE/ORIGINAL BY REGULAR MAIL

Employee Benefits Security Administration
33 Whitehall St., Suite 1200
New York, NY 10004

Dear Freedom of Information Officer:

Reference Director Watson's letter dated July 30, 2009, and the DOL web site, I am submitting the enclosed request for documents relative to the Asbestos Workers Local 12 Benefit Funds investigation:

1- Report of Investigation known as "Part 1".
2- Exhibit #94.
3- Any document sent to or used by the OIG/DOL that shows civil suit order/stipulation "closing" or "settling" suit in year 2002, signed by Judge Gershon or Judge Go.
4- Special Project of S&P as noted in exhibit #93.
5- Exhibits #103, and #'s105 thru #'s 110.
6- Exemptions #'s 3, 4, & 7C.
7- Rent receipts or deposits for building rental due to the Pension Fund from Local 12A (Regional Abatement), and an unknown roofing Company or location of rental receivable assets in financial filings during scope of investigation (1990's).
8- Referral letter from RD Kay to Mr. S. Albert, OCA requesting his review of Annuity Fund issues, with any and all attachments.
9- Analysis Letter from Agent Castillo regarding S. Albert Review, with any and all attachments.
10- Documented evidence used by the Albert Review to prove the existence of a "shortfall".
11- Referral Letter from RD Kay to NY Solicitor P. Rodenhausen forwarded with ROI #'s 1 & 2, with any and all attachments.

Thank you for your kind attention to this request.

Sincerely,

U.S. Department of Labor

Employee Benefits Security Administration
33 Whitehall St., Suite 1200
New York, NY 10004
Phone: (212) 607-8600
Telefax: (212) 607-8681

BY FEDERAL EXPRESS

September 25, 2009

Re: Local 12 Asbestos Workers Employee Benefit Plans

Dear [redacted]:

This is a supplemental response to your letter dated August 14, 2009 requesting certain documents under the Freedom of Information Act ("FOIA") relating to the Department of Labor's ("Department") investigation of the above-referenced employee benefit plans. Specifically, this letter responds to items 9 and 11 of your August 14, 2009 letter and thus, completes this office's response to your August 14, 2009 request.

Please be advised that I am providing with this letter copies of the records that are responsive to item 9 of your August 14, 2009, although some portions of such records have been redacted in accordance with Exemption 5 of the FOIA, 5 U.S.C. Section 552(b)(5), which provides an exemption from disclosure for the deliberative process privilege which encourages open, frank discussions on matters of policy between subordinates and superiors; protects against premature disclosure of proposed policies before they are finally adopted; and protects against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for any agency's action and in accordance with Exemption 7(C) of FOIA, 5 U.S.C. Section 552(b)(7)(C), which provides an exemption from disclosure for records that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Additionally, I am withholding the referral letters referred to in item 11 of your August 14, 2009 letter pursuant to Exemption 5 of the FOIA, 5 U.S.C. Section 552(b)(5), which is described above.

You may file an appeal of this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting documents or arguments. The appeal should include a copy of your initial request and a copy of this letter. To facilitate processing, you may wish to fax your appeal to: (202) 693-5538. The appeal should be sent to the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N2428, Washington, D.C. 20210. If mailed, both the

envelope and the letter of appeal should be clearly marked "Freedom of Information Act Appeal".

Sincerely,

Jonathan Kay
Regional Director

Enclosures:

Castillo Jose

From: dkc.castillo@att.net
Sent: Monday, November 23, 2009 6:02 AM
To: Castillo Jose
Subject: Fw: Asbestos Workers Local 12 Benefit Funds

---------- Forwarded Message: ----------
[redacted]
To: Jose Castillo <dkc.castillo@att.net>
Subject: Fw: Asbestos Workers Local 12 Benefit Funds
Date: Sat, 21 Nov 2009 23:01:07 +0000

Agent Castillo:

In reply to your e-mail request dated November 19, 2009, attached please find my October 8th e-mail, which is self explanatory.

Again, I have never received an acknowledgment or reply to my 10/08/09 correspondence.

[redacted]

--- On **Thu, 10/8/09,** [redacted] wrote:

From: [redacted]
Subject: Fw: Asbestos Workers Local 12 Benefit Funds
To: Borzi.Phyllis@dol.gov
Cc: Solis.Hilda@dol.gov, Davis.Michael.L@dol.gov
Date: Thursday, October 8, 2009, 2:56 PM

Madam Assistant Secretary Borzi:

Thank you for your kind response correspondence, dated 9/4/09 and 9/16/09 sent by Director Watson, to my recent inquires regarding the above subject. These letters clearly state that EBSA's Office of Enforcement and regional offices routinely consult with other agencies within EBSA, such as the OCA and SOL. Both ROI's, Parts 1&2, clearly illustrate that Fund Trustees were unable to provide any factual documentation to contradict the findings of Agent Castillo. Likewise, the 9/29/2006 letter from the fund attorney to Director Gaynor was devoid of any pertinent documentation to support trustee and service provider claims of the existence of a shortfall of assets within the

7

annuity fund.

With this in mind, is it routine and within EBSA guideline and protocol for Director Kay to consult the agencies mentioned above to produce reports or studies, that mirror the aforementioned undocumented 9/29/06 letter, for the purpose of superseding the documented findings of Agent Castillo. Please respond with examples or precedents of any regulatory enforcement agency (EBSA, SEC) consulting higher management in order to assist the subject of an investigation that cannot produce credible financial documentation to contradict the government's findings. My 8/3/09 letter from Director Kay stated in part that "...FOIA does not require agencies to do research for you,...or to create records...". Are these same agencies required to "do research" and "create records" for others? Thank you.

[redacted] - Participant since 1971

U.S. Department of Labor

Employee Benefits Security Administration
Washington, DC 20210

September 4, 2009

Dear [redacted]:

I am responding to your email inquiries to both Assistant Secretary Borzi and me related to the investigation of the Asbestos Workers Local 12 Benefit Fund.

In conducting investigations and evaluating evidence gathered, EBSA's Office of Enforcement and its regional offices routinely consult with other offices within EBSA with particular expertise in relevant matters, including the Office of the Chief Accountant (OCA), as well as the Department of Labor's national and regional Solicitor offices (SOL).

In this matter, EBSA decided after a careful review of the evidence and appropriate consultation with OCA and SOL that no basis for a criminal referral or a civil enforcement action exists.

Sincerely,

Sharon S. Watson
Director
Office of Participant Assistance

cc: Jonathan Kay

Castillo Jose

From: dkc.castillo@att.net
Sent: Tuesday, August 04, 2009 10:59 PM
To: Castillo Jose
Subject: FW: Issues no 3 and 4
Attachments: Review.doc; Attached-1H.pdf; Attached-2$.pdf; Attached-3.pdf; Attached-4B.pdf; Attached-5B.pdf; Loca12ROIPARTII[1].pdf

---------- Forwarded Message: ----------
From: dkc.castillo@att.net
To: borzi.phyllis@dol.gov,
Cc: davis.michael.l@dol.gov, solis.hilda@dol.gov
Subject: FW: Issues no 3 and 4
Date: Wed, 05 Aug 2009 02:53:14 +0000

Madame Assistant Secretary:

First of all congratulations for your appointment by our President. You are extremely qualified for this position.

My name is Jose Castillo, former GS-12 Auditor for EBSA, New York Regional Office. I completed the investigation of Local 12 Annuity Fund November 30, 2007 and my Report of Investigation (ROI) was referred to the New York Solicitor of Labor December 2007.

There was a tolling agreement that expired June 30, 2009. This ROI was referred for the purpose of filing a federal civil complaint against the trustees for violation of ERISA.

I filed a formal complaint against EBSA regional director Jonathan Kay and his wife who is the Solicitor of Labor with the U.S. Office of Special Counsel (OSC) for abuse of authority and hindering my investigation of Local 12 Funds to cover up the fraud committed by the trustees. The fraud is clearly detailed in my ROI.

I resigned from EBSA effective April 25, 2009 and April 26, 2009 accepted a GS-13 (LMSB) Revenue Agent with the IRS. I do corporate tax return audits of Large and Medium Size corporations based in Manhattan. For almost 11years I worked for EBSA.

Doing the work in order that American retirees, active workers and their dependents obtain their benefits under ERISA and protecting these benefits, in my feeling, one of the two most satisfying work and service to my adopted country I ever did. I did a total of over 20 years active and reserve duty status in the US Navy. Served aboard three warships and one overseas station. I am a Dessert Storm I veteran and retired in 1997.

Madam Secretary, attached are the result of my review of the documents presented by the Local 12 Annuity Fund trustees' lawyers to address issues no. 3 and 4 of my ROI part II. These issues were developed because during my audit/investigation the trustees completely ignored and failed to provide me with the documents. These discoveries were made during the course of the

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investigation of my complaint by OIG Special Agents Gene Cummingham and Robert Wyche which started in February 12 until April 7, 2009.

In my statements to these OIG Agents, I tried to include statements concerning the results of my reviews of issues no. 3 and 4 since it is clear the Jonathan Kay intervened and disagreed with my determination as if he is the defense counsel of the trustees. However, Gene Cunningham explicitly told me that it can not be included. The OSC lawyer handling my complaint informed me that the OIG Agent is not correct in this issue. The OSC lawyer told me to make sure that I will make a comment about this.

The documents I presented without any doubt, is clear and convincing evidence that a criminal violation as well as civil violation had occurred. Yet, it appears that Jonathan Kay completely ignored this and I completely believe that he was able to convince Alan Lebowitz, Virginia Smith and Jeff Monhart that there is no violation.

I already formally informed Secretary Solis and Deputy Assistance Secretary Davis that because of the personal and close connection of Kay to the national management personnel mentioned above, Issues no 1 and 2 of my ROI, Part II would be completely ignored. Participants Schroeder, Jim Lannigan and John Turrissi and others who also called and complaint but would like to remain anonymous are powerless against such a connection.

By the way, Madam Secretary these three powerless participants are all Vietnam-era veterans and two of them ([redacted] and [redacted]) are receiving Veterans health care due to military service connected injuries.

As a vetaran myself, I will do what ever I am capable of doing , to at least provide honor and respect to their service to this country. However, whatever I am capable is just so little.

Madam Secretary, IF the tolling agreement was not extended, I can assumed that the wife of Kay decided alreadythat my ROI Part II has not merit and in other words, the benefits of these lowly educated blue collar workers are lost BECAUSE this is what Jonathan Kay wants.

Madam Secretary, Secretary Solis and Deputy Davis and you were nominated by the President in his hope and aspiration that Washington will change. Alan Lebowitz and company represent the Washington that President Obama wants to change. I hope the President will not fail.

I am just an immigrant from a third world country. I have nothing and cannot match the power of the connection of Kay.

Madam Secretary I suggest to review my ROI part II and the OIG report.

My comments will be made as soon as the OIG report is submitted to the OSC.

Respectfully

Jose Castillo

---------- Forwarded Message: ----------
From: "Castillo, Jose - EBSA" <Castillo.Jose@dol.gov>
To: "Goldberg, Robert - EBSA" <Goldberg.Robert@dol.gov>
Cc: "Kay, Jonathan - EBSA" <Kay.Jonathan@dol.gov>,"Castillo, Jose - EBSA" <Castillo.Jose@dol.gov>,<dkc.castillo@att.net>
Subject: Issues no 3 and 4
Date: Fri, 17 Apr 2009 21:45:03 +0000

Bob,

Attached is the result of my review plus the attachments

Sincerely

Jose

April 9, 2009 Review of documents related to Issues No. 3 and 4 of my Report of Investigation, Local 12 Annuity and Welfare Funds

Cases Number 30-099939 and 099940 (48)

My review of the remittance documents (three stacks) disclosed that the Fund office transmitted money to New York Life as employer contributions on behalf of three employees that are relatives of the owner Donnelly/Hailey Insulation, a trustee controlled employer. They are Donald Donnelly, Chris Donnelly and Matthew Donnelly. However, the employer contribution reports show that for the period covered by the three transmittals reviewed, majority of the times, **these three relatives did not work.**

Review of the individual employer contribution transmittal reports which record the number of hours worked and the amount of contributions paid by the employer towards the Welfare, Annuity, Vacation, Pension and Education Funds disclosed serious anomaly. A sampling of these individual employer contribution reports shows the following (**Attached-1**):

Week ending 4/1/2001 shows five employees worked and contributions to all the five (5) Funds were transmitted totaling **$2,791.60** on their behalf from Donnelly/Hailey Insulation to the Fund Office. The three employee relatives are not listed on this transmittal as having worked. However, the Fund Office transmitted funds to the New York Life on their behalf as summarized below (**Attached-2**):

[redacted]	Week ending 4/1/2001	35 hours	$217.00
	4/1/2001	48 hours	$297.60
	4/1/2001	47 hours	$291.40
Total			**$806.00**

Review of the Welfare Fund bank record shows $107,049.18 was received as total employer contributions for all the Funds for the period. Part of this amount is $32,525.82 for the Annuity Fund. Review of the Welfare Fund transaction journal shows that the $32,525.83 was transferred to the Annuity Fund.

In other words, the $868.00 Annuity Fund contributions for the five employees listed as having worked, which is part of the $2,791.60 total contribution to all the Funds is actually transferred to the Annuity Fund as part of the $32,525.82.

However, on the 10/19/2001 transmittal totaling $1,555,604.7, $806.00 was transmitted to the New York Life for the three employee relatives.

The transmittal documents show that these three employees, in numerous ending pay periods, **did not work or only one or two of them worked.** However, the Annuity Fund transmitted monies on their behalf. These transactions occurred in the beginning of 2001 until May 2002 which is the period covered by the three transmittals I reviewed.

In June 29, 2007, Fund Administrator Albert Wassell was subpoenaed to appear with the proper documentation to support several transactions that involved the transfers of monies from the Welfare Fund to the Annuity Fund. In August 17, 2007 he appeared without the required documentation. Fund's counsels explained that it would be a huge project if the documents are submitted. In November, 2008, these three stacks were submitted to SOL; however, in order that it will properly address the issues, cash transfer records/documents must also be submitted.

For the period from January 2001 until May 2002 which covers three transmittals, there are thirty-five (35) weeks ending pay periods that the Fund office transmitted monies of behalf of these three relatives despite there are no records that they worked. The estimated total of these **thirty five week ending pay periods** could be well over **$25,000**.

The trustees were obligated to submit these documents in order for **issue no. 3** and **4** of my Report of Investigation, Part II to be properly addressed. By submitting these documents (individual employer's contribution reports), it show that the total amount of money transmitted by the Fund Office to New York Life on these three transmittals is the same as the total amount of money the Fund Office received from contributing employers.

When these three stacks were submitted, it was reviewed three times and according to this investigator/auditor it did not meet the proper documentation requirement to address Issues no. 3 and 4. Finally, the money transfers documents (Welfare Fund cash transfer records and copies of the cancelled checks) were submitted **February 2009**. These documents proved that cash were transferred from the Welfare Fund to the Annuity Fund and these transfers are employer contributions for the Annuity Fund. The volume of this document is not even near to how trustees' counsels described it when it was subpoenaed.

However, the discovery that these three relatives of the company's owner being credited as having worked and contributions transmitted to the financial custodian on their behalf shows criminal violation under 18 U.S.C. Section 1027, See United States v. S & Vee Cartage Co., 704 F.2D 914 (6th Cir., 1983)(**Attached-3**). This explains the reasons why the money transfers from the Welfare Fund to the Annuity Fund were done without proper documentation as **disclosed** report. Additionally, when these documentations were subpoenaed, it was ignored and counsels provided the agency with unbelievable explanation.

It should also be noted that my investigation only covered three transmittals for the period January 1, 2001 until May 2002. The additional **eight transmittals** which covered the period after May 2002 until the year 2005 were subpoenaed; however, the trustees just **simply ignored it**. Goldberg is fully aware of this and showed no concern.

The facts disclosed by this discovery show that criminal violations occurred. However, my investigation is only geared towards civil violations and the time of my discovery, the criminal statue has expired.

After my Report of Investigation was referred to the Solicitor of Labor, a statue of limitation analysis was done **March 28, 2008**. According to the analysis of the SOL, it considers Issue no. 3 as a case of delinquent employer contribution issue. I strongly disagreed because there is no financial evidence to signify that it is a case of delinquent employer contribution issue. I expressed my disagreement with the SOL on my email dated March 31, 2008 **(Attached-4)**

On April 2008, Jonathan Kay attempted to obtain an exemption from the national office for these transactions instead of requiring the trustees to provide the proper documentation **(Attached-5)** On December 4, 2008 meeting, Kay insisted that these three stacks are proper documentation to address Issue no. 3 and 4. This auditor completely disagreed.

B. FALSE STATEMENTS AND CONCEALMENT OF FACTS IN RELATION TO DOCUMENTS REQUIRED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

18 U.S.C. § 1027, as amended (1974)

Whoever, in any document required by title I of the Employee Retirement Income Security Act of 1974 (as amended from time to time) to be published, or kept as part of the records of any employee welfare benefit plan or employee pension benefit plan, or certified to the administrator of any such plan, makes any false statement or representation of fact, knowing it to be false, or knowingly conceals, covers up, or fails to disclose any fact the disclosure of which is required by such title or is necessary to verify, explain, clarify or check for accuracy and completeness any report required by such title to be published or any information required by such title to be certified, shall be fined not more than $10,000, or imprisoned not more than five years, or both.

BACKGROUND

Section 1027 was enacted in 1962, in amendments to ERISA's predecessor, the Welfare and Pension Plans Disclosure Act (WPPDA) (29 U.S.C. §§ 301-309). Upon the enactment of ERISA in 1974, section 1027 was amended to expressly refer to ERISA-covered employee benefit plans. It applies to false statements and concealment of facts in relation to ERISA-covered plans committed after January 1, 1975.

Title 18 U.S.C. § 1027 not only encompasses those documents required to be published under the Employee Retirement Income Security Act of 1974 or certified to the plan administrator, but also includes those required to be **kept as part of the records** of any employee welfare benefit plan or employee pension benefit plan. This additional clause was included because such records are required to contain necessary basic information from which the annual reports or certified information, may be verified, explained, or clarified and checked for accuracy and completeness. See 29 U.S.C. § 1027.

ELEMENTS OF PROOF

In order to establish a violation of 18 U.S.C. § 1027 the government must allege and prove the following essential elements:

1. **The jurisdictional entity related to false statements or concealment of facts occurring after January 1, 1975, is an employee benefit plan subject to title I of ERISA (29 U.S.C. § 1001 et seq.).**

   For the definition of an employee benefit plan, refer to the "Coverage" section, found under part II of this Guide.

2. **The violator can be "any person."**

   Under the second element, the violator need not be an officer, administrator, trustee, or any other fiduciary to the employee benefit plan. The statute is unlimited in its scope and applies to "whoever" violates its provisions. Potential violators under the statute may be, for example:

   A beneficiary or participant who knowingly submits a false claim against the plan. In United States v. Bartkus, 816 F.2d 558 (3rd Cir. 1989), cert. denied, 484 U.S. 842 (1987), a participant falsified and concealed facts on a hospital invoice for medical services and a "coordination of benefits" form;

   A plan participant who knowingly submits a false loan application against his account balance in the plan;

   A service provider who knowingly submits an inflated billing or invoice to the plan or other correspondence that contains misrepresentations. In United States v. Sarault, 849 F.2nd 1479 (9th Cir. 1988), the correspondence was a letter that falsely stated the existence of assets of an insurance provider to the plan. In United States v. Furst, 886 F.2d 558 (3rd Cir. 1989), cert. denied, 493 U.S. 1062 (1990), it was held that a bank trust officer's knowledge of the bank's own records was sufficient for determining whether he made false statements in reports required to by kept when he made representations about the status of an employee benefit plan's bank accounts. In United States v. Martarano, 596 F.Supp. 621 (E.D. Pa. 1984), aff'd, 767 F.2d 63 (3rd Cir. 1985), cert. denied, 474 U.S. 949 (1895), the false statements concerning the use of premiums were made by the health service provider; or

   An employer who knowingly submits a false remittance statement in connection with contributions to a plan. See United States v. S & Vee Cartage Co., 704 F.2d 914 (6th Cir. 1983), cert. denied, 464 U.S. 935 (1983).

3. **The false statement or concealment involves a document which is required by title I to be:**

a. **Kept As Part Of Plan Records**

Examples of records that are necessary to be kept are as follows:

The plan trust document;

Checking account statements with canceled checks, debit and credit memoranda;

Savings account statements;

Statements from equity fund investments;

Mortgage notes;

Loan agreements with supporting documents;

General ledgers, cash disbursement and cash receipts journals;

Service provider agreements and reports; See United States v. Martarano, supra.

Remittance sheets for collectively bargained plans; See United States v. S & Vee Cartage, supra; United States v. Odom, 736 F.2d 150 (5th Cir. 1984).

Claim documents;

Hospital invoices for medical services and "coordination of benefits" form; See United States v. Bartkus, 816 F.2d 255 (6th Cir. 1987), cert. denied, 484 U.S. 842 (1987); and

Employer payroll records verifying contribution to the plan; See Combs v. King, 764 F.2d 818 (11th Cir. 1985).

The fact that the document may have been supplied voluntarily is irrelevant if the document should have been kept, contains knowing fabrications, and the other elements of section 1027 are in place. Cf. United States v. McCarthy, 422 F.2d 160 (2nd Cir. 1970) (Labor Management Reporting and Disclosure (LMRDA) case: analogous provision under 29 U.S.C. § 439).

Documents required by the statute must be kept even if they are not used to prepare documents inherent to the reporting and disclosure requirements of ERISA. If it can be ascertained that the documents required to be kept are false, then the violator can be charged with a violation of this statute whether or not the accuracy of the annual report to

which the documents apply is actually affected by them. Cf. United States v. Budzanoski, 462 F.2d 443 (3rd Cir. 1972) (LMRDA case: analogous recordkeeping provisions by labor organizations which also are required to file annual financial reports under 29 U.S.C. § 436). It makes no difference whether the defendant anticipated that the records submitted would be incorporated into the annual report or be used to verify, explain, clarify or check the annual report for accuracy and completeness. See United States v. Martorano, supra.

A document need not be generated within the plan in order to be considered as a violation of section 1027. For example, false remittance statements submitted by an employer to the plan, in which the hours worked by employees and/or the number of employees eligible for participation and contribution to the plan is under reported, have been the subject of successful prosecution under the statute. See United States v. S & Vee Cartage Co., supra; United States v. Odom, supra. In United States v. Sarault, supra, the defendant, who represented an insurer, sent a letter to the plan administrator, verifying assets of the proposed fiduciary liability insurer, even though the insurer had no assets.

b. **Published**

The most common of these documents are the annual report and the summary plan description.

ANNUAL REPORT (Form 5500)

ERISA sections 103 and 104 (29 U.S.C. §§ 1023, 1024) require employee benefit plans to file an annual report, which is submitted to DOL and the Internal Revenue Service (the Internal Revenue Service receives the reports and furnishes them to DOL), and to publish the report by making a copy of the filed report available to participants.

The annual report can be described as the information return of the employee benefit plan. It contains an income statement and balance sheet that will disclose the financial "picture of the plan." Also, a financial statement and opinion prepared by an independent qualified public accountant, as well as an actuarial statement, is required as part of the annual report. (Certain plans may be exempt from this requirement.)

SUMMARY PLAN DESCRIPTION

ERISA section 101 and 102 (29 U.S.C. §§ 1021, 1022) address the filing and disclosure requirements of the summary plan description (SPD). A summary plan description should include, in a manner understood by the average plan participant: the name and type of administration of the plan; the name and address of the person designated for the service of legal process; the name and address of the plan

administrator; names, titles, and addresses of trustees; a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirement regarding eligibility for participation and benefits; the source of financing of the plan; and the procedures to be followed in presenting claims for benefits under the plan.

c. **Certified To The Plan Administrator**

ERISA section 103 (29 U.S.C. § 1023) provides that certain documentation, as needed by the plan administrator to file reports and operate the plan in accordance with the ERISA, must be furnished to the administrator and its accuracy certified by third parties within 120 days after the end of the plan year or as otherwise provided by DOL regulation. False statements in connection with this material would be a violation of section 1027. Such third parties include insurance carriers, banks, or similar institutions.

4. **The violator makes or causes to be made a false statement, which the violator knows to be false, or knowingly conceals, covers up, or fails to disclose any facts on any documents required by title I of ERISA.**

The fourth element requires the government to prove that the violator knowingly made false statements or knowingly failed to disclose facts. An act is done knowingly if done voluntarily and intentionally, and not because of mistake, or accident, or other innocent reason. (1 Devitt & Blackmar, Federal Jury Practice and Instructions, Section 14.04.)

An intent to defraud the plan or the plan's reliance on the false statement or omitted fact is not required. It is not necessary that the "recipient" of the false statement believe the information to be false in order for this element to be met. The mere fact that a record was submitted, which contained a knowing falsification or concealment, and was required to be kept, is enough to satisfy the element. Cf. United States v. Budzanowski, supra.

In United States v. Martorano, supra, the court held that general intent (knowingly making a false statement or a knowing failure to disclose) rather than specific intent (knowing that such false statement or failure to disclose violates statutory disclosure requirements) is all that is required to prove a violation of section 1027.

In United States v. S & Vee Cartage Co., supra, the following jury instruction was approved:

> "An act is done 'knowingly' if done voluntarily and intentionally, and not because of mistake or accident... A statement or representation is 'false'...if untrue when made, and then known to be untrue (by the person making it or causing it to be made) or made with reckless indifference as to its truth or falsity or with a conscious purpose to, avoid learning the truth."

If the violator knowingly submitted false reports or records, or submitted them in reckless disregard for the truth or falsity of their contents, the standard for knowing conduct for liability under section 1027 is met. See United States v. S & Vee Cartage Co., Inc., supra; United States v. Tolkow, 532 F.2d 853 (2d Cir. 1976).

However, in the only reported decision which upheld a section 1027 conviction for "knowingly failing to disclose facts" in a required document, United States v. Tolkow, supra, the court concluded that a modified "willful" state of mind was required for a plan trustee charged with "knowingly failing to disclose" a prohibited transaction on the annual report. The court referenced the statute's similarities to the disclosure requirements under the Labor Management Reporting and Disclosure Act (29 USC § 401 et seq.) and held that "knowingly" required proof of a "voluntary conscious failure to disclose without ground for believing that such non-disclosure is lawful or with reckless disregard for whether or not it is lawful." The court cited the defendant's concern whether the plan had previously loaned money to the party-in-interest as strong circumstantial evidence that the defendant knew that such loans were required to be disclosed on the annual report as a "prohibited transaction."

In contrast, in United States v. Santiago, supra, the court upheld a jury instruction to the effect that mere knowledge on the part of the plan administrator of the false statements which he caused to be made on the annual report was sufficient as to this element.

Note: Under 18 U.S.C. § 2(b) any person who knowingly causes a false statement or omission of a required fact to be made or omitted by an innocent intermediary is culpable as a principal for purposes of section 1027. Cf. United States v. Haggerty, 419 F.2d 1003 (7th Cir. 1969)(29 U.S.C. § 439). Further, the fact that a union president and steward was not an employer did not preclude his conviction for aiding and abetting by the employer's making of false statements in reports submitted to an employee benefit plan. See United States v. Odom, supra.

	Cro- Am Insulation	03/11/20[illegible]	[illegible].00	279.00
	Cro- Am Insulation	03/18/20[illegible]	38.00	235.60
	Cro- Am Insulation	03/25/2001	35.00	217.00
	Cro- Am Insulation	04/01/2001	28.00	173.60
	Shelter Rock Cont,	04/01/2001	7.00	43.40
	Shelter Rock Cont,	04/08/2001	35.00	217.00
	Cro- Am Insulation	[illegible]	[illegible]	217.00
	Cro- Am Insulation	[illegible]	[illegible]	130.20
	Shelter Rock Cont,	04/22/2001	14.00	86.80
	Cro- Am Insulation	04/29/2001	28.00	173.60
	Cro- Am Insulation	05/06/2001	35.00	217.00
	Cro- Am Insulation	[illegible]	[illegible]	[illegible]
	Cro- Am Insulation	[illegible]	[illegible]	[illegible]
	Cro- Am Insulation	[illegible]	[illegible]	[illegible]
	Cro- Am Insulation	06/03/2001	28.00	173.60
[redacted]	B.C.Flynn Contracting	01/31/2001	89.00	331.08
	B.C.Flynn Contracting	02/25/2001	98.00	364.56
	Ace Insulation Inc.	[illegible]	[illegible]	[illegible]
	Regal Insulation	[illegible]	[illegible]	130.20
067-82-2678 [illegible]	John Grando Inc.	[illegible]	[illegible]	217.00
	John Grando Inc.	05/27/2001	35.00	217.00
[redacted]	Thomas J Donnelly	02/25/2001	35.00	217.00
	Thomas J Donnelly	03/04/2001	35.00	217.00
	Thomas J Donnelly	[illegible]	[illegible]	217.00
	Thomas J Donnelly	[illegible]	35.00	217.00
	Thomas J Donnelly	03/25/2001	35.00	217.00

Asbestos Workers Local No. 12 Annuity Fund
Annuity Contributions reported to New York Life

Printed: 10/12/2001 10:49:05
File created on: 10/12/2001

SS #	Name	Contractor	Work Date	Hours	Ann $
[redacted]		Thomas J Donnelly	04/01/2001	35.00	217.00
		Thomas J Donnelly	04/08/2001	35.00	217.00
		Thomas J Donnelly	[illegible]	[illegible]	217.00
		Thomas J Donnelly	[illegible]	[illegible]	[illegible]
		Thomas J Donnelly	[illegible]	[illegible]	[illegible]
		Thomas J Donnelly	05/06/2001	35.00	217.00
		Thomas J Donnelly	05/13/2001	35.00	217.00
		Thomas J Donnelly	05/20/2001	35.00	217.00
		Thomas J Donnelly	[illegible]	35.00	217.00
		Thomas J Donnelly	[illegible]	35.00	217.00
[redacted]		Island	[illegible]	[illegible]	[illegible]
		Island	02/11/2001	32.00	198.40
		Island	02/18/2001	40.00	248.00
		Island	02/25/2001	32.00	198.40
		Island	[illegible]	[illegible]	[illegible]
		Island	[illegible]	[illegible]	[illegible]
		Island	[illegible]	35.00	217.00
		Island	03/25/2001	28.00	173.60
		Island	04/01/2001	35.00	217.00
		Island	04/08/2001	28.00	173.60
		[illegible]	[illegible]	[illegible]	[illegible]
		[illegible]	[illegible]	[illegible]	[illegible]
		[illegible]	[illegible]	[illegible]	[illegible]
		Island	05/06/2001	32.00	322.40
		Island	[illegible]	[illegible]	[illegible]

[redacted]	[illegible]	04/01/2001	5.00	279.00
	[illegible]	04/07/20[illegible]	38.00	235.60
	[illegible]	04/15/200[illegible]	38.00	235.60
	[illegible] Insulation	04/22/2001	49.00	303.80
	[illegible] Insulation	04/28/2001	38.00	235.60
	[illegible] Insulation	05/05/2001	63.00	390.60
[redacted]	County Insulation	01/07/2001	21.00	130.20
	County Insulation	01/14/2001	35.00	217.00
	County Insulation	01/[illegible]/2001	[illegible]	[illegible]
[redacted]	County Insulation	[illegible]/2001	28.00	173.60
	County Insulation	[illegible]/2001	38.00	235.60
	County Insulation	[illegible]	[illegible]	217.00
[redacted]	AMEC [illegible]	04/[illegible]/2001	2[illegible].00	1500.40
	AMEC [illegible]	05/29/2001	322.00	1996.40
	Par Plumbing Inc.	01/31/2001	21.00	126.00
[redacted]	[illegible]	[illegible]	[illegible]	[illegible]

Asbestos [illegible]
[illegible]

Printed: 10/12/2001 10:49:03
File created on: 10/12/2001

[redacted]	Par Plumbing Inc.	04/30/2001	133.00	824.60
	Par Plumbing Inc.	05/31/2001	181.00	998.20
[redacted]	Thomas J Donnelly	03/[illegible]/2001	37.00	229.40
	Hailey Insulation	04/25/2001	21.00	130.20
	Thomas J Donnelly	03/25/2001	14.00	86.80
[redacted]	Thomas J Donnelly	04/22/2001	52.00	322.40
	Thomas J Donnelly	04/29/2001	40.00	248.00
	Thomas J Donnelly	05/06/2001	38.00	235.60
[redacted]	Thomas J Donnelly	06/05/2001	65.00	403.00
	Thomas J Donnelly	02/25/2001	35.00	217.00
	Thomas J Donnelly	03/04/2001	35.00	217.00
[redacted]	[illegible]	[illegible]	[illegible]	[illegible]

30S

4/17/01

Local 12 Fund Office
25-19 43rd Ave
Long Island City, NY 11101
Tel. (718)-784-8883
Fax (718)-784-8359

Contractor Name:	Hailey Insulation Corp.
Telephone:	(631) 689-0450
Fax:	(631) 689-0450
Week Ending Sunday:	04/01/01

Employee SS #	Last Name	First Name	Hours Paid	Welfare Fund	Annuity Fund	Vacation Fund	Pension Fund	AJEF Fund
[redacted]	[redacted]	[redacted]	35	223.65	217.00	105.00	140.00	12.25
[redacted]	[redacted]	[redacted]	35	223.65	217.00	105.00	140.00	12.25
[redacted]	[redacted]	[redacted]	35	223.65	217.00	105.00	140.00	12.25
[redacted]	[redacted]	[redacted]	35	223.65	217.00	105.00	140.00	12.25
		TOTALS	140.00	$894.60	$868.00	$420.00	$560.00	$49.00

Check Amt. $2,791.60

130

7
329
336
100%

1.65

05/17/2001
12:33:34

HEAT AND FROST INSULATORS
HOURS EDIT LIST
For One Contractor
REPORT FOR April 01, 2001

CONTRACTOR: Hailey Insulation Corp. 305

MEMBER NAME	SS #	Hours Health	Pension	Annuity	Vacation	AJEF	Rate Appr/Mech	Date Received	Annuity Amount	Vacation Amount
[redacted]	[redacted]	35.00	35.00	35.00	35.00	35.00	0.00	04/17/2001	217.00	105.00
		35.00	35.00	35.00	35.00	35.00	0.00	04/17/2001	217.00	105.00
		35.00	35.00	35.00	35.00	35.00	0.00	04/17/2001	217.00	105.00
		35.00	35.00	35.00	35.00	35.00	0.00	04/17/2001	217.00	105.00

TOTAL HOURS: 140.00

	Health	Pension	Annuity	Vacation	AJEF
TOTAL DOLLARS:	894.60	560.00	868.00	420.00	4

Castillo Jose

From: dkc.castillo@att.net
Sent: Monday, November 23, 2009 6:02 AM
To: Castillo Jose
Subject: Fw: RE: Asbestos Workers Local 12 Annuity Fund

---------- Forwarded Message: ----------
From: [redacted]
To: Jose Castillo <dkc.castillo@att.net>
Subject: Fw: RE: Asbestos Workers Local 12 Annuity Fund
Date: Fri, 20 Nov 2009 02:59:06 +0000

--- On **Thu, 11/19/09, Kay, Jonathan - EBSA** ***<Kay.Jonathan@dol.gov>*** wrote:

From: Kay, Jonathan - EBSA <Kay.Jonathan@dol.gov>
Subject: RE: Asbestos Workers Local 12 Annuity Fund
To: [redacted]
Date: Thursday, November 19, 2009, 12:58 PM

[redacted]

I wanted to acknowledge receipt of your email and indicate that we will provide you with a response.

From: [redacted]
Sent: Friday, November 13, 2009 4:24 PM
To: Kay, Jonathan - EBSA; Borzi, Phyllis - EBSA; Davis, Michael. L- EBSA
Cc: Solis, Hilda - OSEC; Watson, Sharon - EBSA; Carol.Danko@mail.house.gov
Subject: Asbestos Workers Local 12 Annuity Fund

Director Kay:

Reference the above subject, I again call your attention to my previous questions concerning the discovery of a certain $1.5 million dollar allocation "...credited to participant accounts", as contended by the OCA's Mr. Scott Albert on page 15 of his report. I have attached the full text of these questions hereto. Your September 15, 2009 letter concerning this question (which you choose not to share with personnel from the national office who had been previously included in our e-mail correspondence) mailed directly to myself, stated the following: "We (NYRO) are **not** in possession of any New York Life record of your annuity plan account with a transaction of $18, 282.05, an amount you were advised by the plan administrator **that your account earned in 2000**." Why is this not a serious violation of ERISA?

Director Kay sir, you are ignoring my direct question concerning the $1.5 mil allocation credited to participant accounts in October 2001, as referenced by Mr. Albert.

Your September 15, 2009 letter goes on to instruct me to refer to the fund service providers "Litigation and Re-Allocation Analysis, which you included with your letter. There is no mention of Mr. Albert's $1.5 million/October 2001 allocation mentioned in that document either. This being the case, I consider the Re-Allocation Analysis flawed and superseded. Your letter mentioned my meeting with fund officials who went over the "particulars" of my account, and suggested I contact them. Fund Officials never mentioned Mr. Albert's October 2001 allocation during my meeting with them either. If they are not aware of it, why would I want to contact them? There is no mention of an October 2001 allocation **gain** in my personal custodial statement. There is no mention of a **reduction** to my account in my custodial statement resulting from alleged previous annual allocations made in error during previous decades, as detailed in the service providers "Litigation and Re-Allocation Analysis".

ERISA was formed in part so that individual participants have access to **simplified** financial information which enables them to protect their rights. The activity trail of this fund would make Mr. Madoff proud! The individual custodial account is the sole basis of fund activity as it concerns the participant. Without direct line item reflection of allocation of fund investment gain or loss, and fund expenses appearing on an individual custodial account, the fund is nothing more than a puppet which can be manipulated by the fiduciary. Where is my **custodial** record of these alleged financial events which ERISA provided me?

[redacted]

--- On **Tue, 9/1/09,** [redacted] wrote:

> From: [redacted]
> Subject: Fw: RE: Local 12 Benefit Funds
> To: Kay.Jonathan@dol.gov, Borzi.Phyllis@dol.gov, Davis.Michael.L@dol.gov
> Cc: Lebowitz.Alan@dol.gov, Solis.Hilda@dol.gov, Watson.Sharon@dol.gov, Smith.Virginia@dol.gov, Carol.Danko@mail.house.gov
> Date: Tuesday, September 1, 2009, 6:28 PM

If I have failed to ask my question in a plain fashion so it is easily understood, please accept my sincere apology. I will try to explain it by using the document that Director Kay stated "superseded" the published report of investigation dealing with allocation issues of the subject annuity fund. Page 15 of the Scott Albert report, dealing with use of the **2000 year investment earnings** states, and I quote: "Therefore, substantially all of the $1.5 million employer contributions **were allocated and credited to participants' accounts in October, 2001".** Mr. Albert has documentation I do not possess. The custodial account, in my possession presently, lists a single contribution for October 2001,an employer contribution for hours worked, and not associated with an allocation of yield. My participant share of the $1.5 million allocation Mr. Albert has discovered would total somewhere in the neighborhood of $14, 210, using a direct proportion of my originally reported share ($18,282 of a $1.9 allocation). Mr. Albert clearly and without question states that an allocation

"credited to participant accounts" occurred at that time. This is not a "theory" of a deposit, or a deposit held in escrow or put into a separate account, but one actually "credited to participant accounts". Under ERISA this event must be recorded by the **fund custodian** . For all I know, my, and only my, individual custodial statement could be incorrect. If Mr. Albert has the statement that clarifies this issue, please provide me with it. I will ask for it under a separate FOIA request. As soon as I receive this document I will direct my questions to New York Life, and not your department. Thank you!

[redacted] - Participant since 1971

--- On **Sun, 8/30/09,** [redacted] wrote:

> From: [redacted]
> Subject: Fw: RE: Local 12 Benefit Funds
> To: Kay.Jonathan@dol.gov, Borzi.Phyllis@dol.gov, Davis.Michael.L@dol.gov
> Cc: Lebowitz.Alan@dol.gov, Solis.Hilda@dol.gov, Watson.Sharon@dol.gov, Smith.Virginia@dol.gov, Carol.Danko@mail.house.gov
> Date: Sunday, August 30, 2009, 7:47 PM

I am resubmitting this request which I made one month ago. Please do not ignore my very polite request for financial information that, under ERISA law, must be reflected on my custodial account statement.

--- On **Sun, 8/2/09** [redacted] wrote:

> From: [redacted]
> Subject: RE: Local 12 Benefit Funds
> To: "Jonathan - EBSAKay" <Kay.Jonathan@dol.gov>, Borzi.Phyllis@dol.gov
> Cc: Lebowitz.Alan@dol.gov, Solis.Hilda@dol.gov, Davis.Michael.L@dol.gov, Watson.Sharon@dol.gov, Smith.Virginia@dol.gov, Carol.Danko@mail.house.gov
> Date: Sunday, August 2, 2009, 4:02 PM

Director Kay:

Your office has closed its investigation of the above subject concerning the second set of issues, primarily involving the Annuity Fund and questions related to the allocation of the year 2000 investment yield. My share of the total allocation for year 2000 has been reported as $18,282. **Now that you have determined where and when that allocation was performed, can you inform me of the dated line item this event is reflected within my personal custodial statement, published by New York Life. This is my request in my 7/22/09 e-mail.** My reference to the figure $10,499 was to illustrate by example

that individual allocation amounts do appear on my individual custodial statement. The $10,499 figure represents my share of the fund allocation for the period of time 1/1/01 to 6/20/01, and is listed on the custodial statement on a line item dated 6/20/01, described as "Gain/Loss" under the heading " Investment Activity". I expect or seek no other figure for my year 2000 allocation share than the one previously reported to me as $18,282. Thank you.

[redacted]

--- On **Wed, 7/29/09, Kay, Jonathan - EBSA** ***<Kay.Jonathan@dol.gov>*** wrote:

From: Kay, Jonathan - EBSA
<Kay.Jonathan@dol.gov>
Subject: RE: Local 12 Benefit Funds
To: [redacted]
Date: Wednesday, July 29, 2009, 7:22 PM

[redacted]

First, I wanted to update you on the status of our response to your July 12, 2009 email. I anticipate that our response will be sent to you later this week or early next week.

Second, I want to clarify exactly what you are seeking in your July 22, 2009 email, below. Are you requesting any document that indicates that your portion of the investment earnings for the year 2000 was something other than $18,282.05? Would you be good enough to forward a copy of the February 1, 2008 letter from this office with all enclosures.

Thank you.

From: [redacted]
Sent: Wednesday, July 22, 2009 1:13 PM
To: Kay, Jonathan - EBSA; Goldberg, Robert - EBSA; Lebowitz, Alan - EBSA
Cc: Solis, Hilda - OSEC; Davis, Michael. L- EBSA ; Watson, Sharon - EBSA; Smith, Virginia - EBSA; Carol.Danko@mail.house.gov
Subject: Fw: Local 12 Benefit Funds

Director Kay:

I have received your communication dated July 16, 2009 which you sent through the U.S. Postal Service. The letter stated that your office is processing, reviewing files,and preparing a response to my e-mail request dated July 12, which is included herein.

I received a letter from your office, dated February 1, 2008 in answer to an inquiry I made on January 31 of that year. At that time I was uncertain that my individual annuity account balance contained any investment yield allocation for a particular time frame not included in the year 2000 allocation issue, and therefore not subject to information restrictions presented by the ongoing investigation policy of the EBSA. That letter stated in part:

"2) Copy of your account statement showing that on 6/20/2001 **$10,499.13** gain is posted into your account. This represent investment earnings from 1/1/2001 to 6/20/2001 allocated to you.

3) Copy of New York Life Statement showing that from 1/1/01 to 6/20/01, the plan earned investment earning of **$1,323,527.23** and the **$10,499.13** is allocated as your share of the earnings."

This was of great help to me. Since any restriction on a the year 2000 allocation information has been removed with the closing of the case, similar information provided to me by return e-mail would be greatly appreciated. Any allocation must appear on my New York Life Custodial Individual Statement. If it does not, the transaction did not exist. The New York Life Statement provided to me by your office includes posted custodial transactions from 9/1/00 to 8/6/07. The year 2001 allocation posted on 6/20/01 is listed under "Investment Activity" as "Gain/Loss", and is the only activity listed on the statement under that heading. My individual allocation share for year 2000 is reported as $18,282.05; part of the total participant allocation of over $1.8 million. I find no individual figure, or combination of figures under any headings which would equal this amount. This summarizes my confusion over the year '00 issue. If the statement your office sent originally has been replaced or corrected please attach it to your return e-mail.

I realize that processing a FOIA request is time consuming. Secretary Lebowitz, in his 11/9/06 correspondence to me expressed his own concern about the "length" of the subject investigation. My inquiry concerning the '01 allocation to my account was addressed in **one** day. I have been waiting the better part of a decade for information concerning my year 2000 allocation, and you have the ability to end that by simply referencing information in a statement I already posses. Since Secretary Lebowitz, Director Watson and

others have taken the time and effort in the past to explain to me, and the elected officials who contacted them on my behalf, the policy of EBSA non-disclosure, or have expressed an interest in this subject, I have included them in this e-mail. I have sent Secretary Solis a certified letter in April of this year, and want to continue to inform her as she hopefully prepares a response to my letter.

When the U.S. House of Representatives enacted the heightened disclosure requirements of ERISA, they issued a statement which reads in part; "....the safeguarding effect of the fiduciary responsibility section will operate efficiently only if fiduciaries are aware that the details of their dealings will be open to inspection, and that individual participants and beneficiaries will be armed with enough information to enforce their own rights as well as the obligations owed by the fiduciary to the plan in general". My hope is that everyone who takes the time to read this communication still shares their sentiment. Thank you.

[redacted] - Participant since 1971

--- On **Sun, 7/12/09,** [redacted] wrote:

> From: [redacted]
> Subject: Fw: Local 12 Benefit Funds
> To: Kay.Jonathan@dol.gov
> Cc: Solis.Hilda@dol.gov,
> Davis.Michael.L@dol.gov,
> Lebowitz.Alan@dol.gov,
> Smith.Virginia@dol.gov,
> Watson.Sharon@dol.gov,
> Goldberg.Robert@dol.gov,
> Carol.Danko@mil.house.gov
> Date: Sunday, July 12, 2009, 5:59 PM
>
> Director Kay:
>
> I am in thankful receipt of your July 9, 2009 letter informing me that your office has closed the Local 12 Funds Investigation. With the "ongoing investigation" status restricting information now removed from this case, may I inquire the following concerning your correspondence:

#1- In the past, a Ms. Kinny Dell informed me during a conversation that a tolling agreement extending the civil statute of limitations concerning the Local 12 Fund issues existed. What was or is the date of expiration for this latest EBSA/Fund tolling agreement?

#2- Did former Agent-in -Charge Castillo complete an investigative report for the second set of issues (allocation issue)? If so, as the FOIA Officer, may I request a copy through you?

#3- In the past, I declined an invitation by OIG personnel to attend a meeting with them. Did the OIG initiate an investigation into any area of Local 12 issues, and if so may I obtain a copy of that through you, the FOIA Officer?

#4- Your letter states, "....second set of issues,...has been reviewed by the Regional Office, the Department's Office of the Chief Accountant, as well as others..." Can you please elaborate who the "others" are in detail, and provide me with the name and telephone number of the Head Solicitor who reviewed the issues?

Thank you for your continued concern.

[redacted]

--- On **Thu, 7/9/09, Kay, Jonathan - EBSA** ***<Kay.Jonathan@dol.gov>*** wrote:

> From: Kay, Jonathan - EBSA
> <Kay.Jonathan@dol.gov>
> Subject: Local 12 Benefit Funds

To: [redacted]
<schank18@yahoo.com>
Date: Thursday, July 9, 2009, 1:08 PM

[redacted]

Attached please find a letter explaining the status of our investigations in Local 12 matters. A hard copy of the attachment is being sent to you by regular mail.

<<Untitled.PDF>>

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

LARGE AND MID-SIZE
BUSINESS DIVISION

November 6, 2009

Jose Castillo
Internal Revenue Agent
Large and Mid Size Business

Dear Mr. Castillo:

I have reviewed the information contained in the Report of Investigation concerning your Final Limited Background Investigation which indicated discrepancies regarding a previous employer and your education.

After considering the file in this matter and additional information from staffing and your OPF, I have decided to close the case without action. I hope that you will understand that this investigation was necessary in your own interest as well as that of the Internal Revenue Service.

No record of the investigation will be filed in your Official Personnel Folder (OPF) unless you specifically request it. Should this be the case, a copy of the letter will be included therein for a per . d not to exceed two (2) years. Please sign and return the acknowledgement copy to this office if it is your desire to have a copy placed in your (OPF).

Sincerely,

Brian R. McDonald

Brian R. McDonald
Acting Territory Manager
LMSB Financial Services – Territory 9

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