The Financial Law Forum: Governance, Risk, and Influence: A Trustee's View Inside the NYC Pension Fund

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Tracee Davis

Welcome to the Financial Law forum. I am Tracee Davis, partner and Impact ESG litigation attorney at the law firm of Seyfarth Shaw and host of this podcast series, which is intended to explore the intersection between financial services, equal access to opportunity, and the law. Let's get started. I'm just very fortunate to have here with me today Lawrence Bosley, who is currently serving as a trustee on the New York City Pension Fund. He's going to be talking to us today about his roles, and responsibilities in serving as trustee as along with some of the fiduciary governance issues that he's faced, how the current environment and the asset management allocation area has impacted what he's doing, what the board confronts as far as decisions, as well as what shareholder activism has done to some of the responsibilities and concerns that the trusteeship faced. How long have you served as a trustee, Lawrence?

Lawrence Bosley

You know, surprisingly, it's been 7 years went by quickly.

Tracee Davis

So maybe just a couple, but it's been quite some time. So you've had an opportunity to see a lot, to experience a lot, which is one of the reasons that I thought listeners would be so interested in hearing what it is that you've been doing and what kinds of issues you've been confronting, what inspired you to become a trustee and in telling us about that chair a little bit about your background and how you got there. But I think folks would be really interested in knowing.

Lawrence Bosley

What happened was I used to work for the New York City Department of Education as a hearing officer, and we had a Union, and so I was negotiating with the Union, along with some of my other colleagues. And I got a call from the President of the Union and he wanted to do some in-house, have in-house attorneys, and he was obviously impressed by what he heard and saw for myself and what other colleagues. And so he called both of us and asked us if we were interested in filling those positions. We interviewed obviously and took the positions. And shortly after being there, and I didn't learn this at the time I learned this subsequent to an award I received and he stood up for me and he mentioned that he felt that I wasn't going to stay there if all I was going to be doing was you know, work for the Union in terms of legal work. So you know, he sat on the board of the New York City Employee Retirement System, along with our Vice President. And you know, he's also a vice president with the international team Brotherhood teams, I'm sorry, international brotherhood of Teamsters. So he has to be back and forth to DC, you know, doing a lot of cross country work. And so he asked me if I would sit on the NYCERS board, I explained to him that I didn't know anything about financing, so that might be a problem. He said no, it won't be. You'll learn. And that was how I ended up on the board.

Tracee Davis

Fascinating. That's a fascinating story. And you did learn. You learned an awful lot. And that's also why we have you here today so that you can share some of what you picked up along the way. As far as helping our listeners understand who it is that you're serving, can you tell us a little bit about the primary beneficiaries of the New York City pension fund? And also what the demographics are, and long term sustainability of the fund itself and then we'll talk a little bit about your fiduciary responsibilities to that constituency.

Lawrence Bosley

The constituency for the NYCERS, the board that I sit on and let me just break it down. So, quickly, New York City Employee Retirement System is made-up of the New York City Employees retirement system, Teachers retirement system, the BERS system, which is the Board of Education, those are the non-pedagogical employees for the Department of Education, Police and Fire. We all tend to invest together. That's why we have 300 billion under investments. But individually, we also make certain investments which we'd all like to do a little bit more of customization. But that's another story, so we'll get into that perhaps some at some other point. So what happens is, we tend to have in investment meetings and discuss the various firms that you know, our Bureau of Asset Management is bringing forward for us to look at to invest in, we make the final decisions, the trustees make the final decisions of any investments and any policy changes that are being made along either with the Bureau of Asset Management or in terms of our IPS, our investment policy statement, which tells them how to invest, what to invest in, what the limits are, you know how they're able to invest percentages and we'll get into a question about allocations that sort of runs into that. That question, the people that we invest for are all the employees of the city of New York in the various agencies of the city of New York, NYCERS has the most city employees, because obviously the others pension plans are very specific to a particular agency fire, obviously the Fire Department, Police, Police department, teachers, and Board of Education employees, all the others are in NYCERS. NYCERS has lots of different tiers. The tiers are determined by the legislature. They go back to the beginning of the fund. There was Tier 1, Tier 2, we're up to Tier 6 now. Tier 6 was just corrected to add more value to the fund. For those who are in that that that particular fund. So what happens is, these individuals work various, depending on your title and how difficult your title is, you may work anywhere from 25 to 30 years in a particular title. Most of the titles are vested after five years. But you really don't start collecting any real money until after at least 20 years on the job, and then you get a certain percentage after those 20 years, up to 30 years. And then after that they stop counting. So you're on your own if you want. If you want to keep working, that's on your own. You're not going to get another dime out of them after that.

Tracee Davis

So, you're serving a wide swath of titles of city employees, those who vary in roles and responsibilities, educational background contributions to the city. They then may also belong to their own trade unions and organizations, but you oversee the monies that are collected on their behalf through the city for their retirement.

Lawrence Bosley

Yeah, yeah. Each agency contributes, you know, on behalf of the Member. And then we invest that money to ensure that for the longevity of the Fund, but also it should be understood that in the particular makeup of of New York City, what say we have a 7% actuarial return we need to get every year. Any years that we go above that, it's smoothed out over the long term. But if we fall below, then the city, it has to make up the difference. So it's also very important for the cities budget that we make our actuarial returns each year.

Tracee Davis

Understood. Understood. And so, you have a whole team of service providers who assist you and your fellow trustee board members in managing the $300 billion of asset under management, right?

Lawrence Bosley

That's correct. We have consultants.

Tracee Davis

Talk. Talk about that.

Lawrence Bosley

Yeah, well, each retirement system group has its own consultants. We at NYCERS have and that's ERS, have two consultants. We have Talon, which is our quote on quote, general consultant and the reason I say quote on quote is because they actually do quite a bit more than a typical general consultant in that they oversee or work with our Bureau of Asset Managers and equities and in fixed income and also in, in our alternative credit section. Then you have Stepstone who's currently our consultant for all our other alternatives. Then you have Black Rock, who does our fund to fund investments, and those are for smaller funds that we're trying to grow in order to have them be able to come eventually directly to us to invest. But these are smaller funds usually. Well, they're emerging managers clearly, but some of them are MWBE's, meaning minority women investment Managers who are trying to grow to be able to handle our money and come directly to us.

Tracee Davis

And it's almost like an incubator type of fund or designation for the asset managers who are up and coming?

Lawrence Bosley

Yeah, funded funds are important in that you have, you know, your general fund is or your portfolio is mostly invested by the large Apollo, Black Rock, Blackstone, EQT, the names that go on and on. You know those are your big funds that can handle the size of our our investments. But you need to grow new managers for example, it would be Vista. Came out of our fund to fund managers AND is now one of the largest SaaS managers in the world. Also clear, Clear Lake I'm sorry, and Tomo bravo, those are examples of what were fund to funds that eventually were able to come to us direct and are now, actually we're fortunate that happened because they sort of leave, they're usually sold out as soon as they start a fund, but they usually leave a space for us out of gratitude for you know, initial assistance to them.

Tracee Davis

Now let me let me just back up, I don't want to cut you off, but yeah, I think it's important for us to help listeners understand where this desire to ensure that you're growing relationships with funds that may not be the Blackrocks of the bunch. And I think the discussion for, to completely understand this area, almost starts with the fiduciary responsibility that you as a trustee have to the fund, to the funds beneficiaries, and the likes. So let's open the discussion to some of the challenges that you face, what are your fiduciary obligations? What are some of the challenges that you face, and how do you navigate the legal fiduciary responsibility and ethical obligations with the accountability that you have for the performance meeting that 7% annual threshold?

Lawrence Bosley

According to New York State, maximum returns and the concentration is solely to be on the retirees welfare and the welfare of the fund. You know that's sort of a general, but it speaks to how you have to craft any sort of other considerations within those guidelines. So the idea of having or creating a fund to fund was the notion that you need to continue to create new managers and the other thing is the reality that smaller managers generally create more alpha because they're dealing with the small and medium market, whereas the really large investors are concerned with the larger, larger market sizes and they can miss some of the alpha out there in the in finance world, yeah the marketplace. So and then the other thing is that diversification, you don't want to have all your funds in four or five managers. I mean that's not that's not very healthy for a fund.

Tracee Davis

You're talking diversification?

Lawrence Bosley

Absolutely. There's an argument for diversification as part of your fiduciary responsibility to ensure that you can weather the storm, you when there are changes in the market and also be able to capture alpha when the market changes or new markets are created. If you have smaller managers who are more flexible and can you know pivot to different market conditions.

Tracee Davis

And can tap into unseen market opportunities?

Lawrence Bosley

And that's a fact too. And that's why you want to make sure that you have diversity of like women, men, people of color, because they'll be aware of markets and be conscious of market trends that, you know, say one or the other groups would not necessarily be because they're not akin to those groups or they're not as familiar with those possibilities. So ergo, diversity in that way as well, you're right, yeah.

Tracee Davis

Well, recognizing that this is an objective, how are you and your fellow trustees navigating the challenges in the geopolitical climate that currently exists and the headwinds that, what we all know as ESG is currently facing?

Lawrence Bosley

For us, we've doubled down on both ESG and DEI. We're trying not to get caught up in the political headwinds because we don't believe that those will last forever. And not only that, but again, we have a fiduciary responsibility to bring back the alpha and the and the size returns that we need and we know, and there's tons of literature, that point to the fact that diverse boards, those who determine whether a fund is viable or not, those who source when they're all diverse, you get this large headwind in terms of finding out what's out in the investable universe. When you don't have that, you get less of that. You also tend to get group think if everybody's the same and everybody's playing off the same play sheet, Or seeing off the same out of the same hymnal. So you want to maintain the diversity from all of those various aspects and like environment. Well, what good is a check if your Members have to keep moving or they have expensive heating bills or excessive air conditioning bills?

So those are things that you know you can take into consideration as to why you would invest or not invest in something. And we think to not think of those things and to keep burning fossil fuels as we have divested in scope one and scope two of the of fossil fuel investments, Scope three was just too difficult. We had a three-year consultation with the consultant on how to do this, we in fact were sued, a conservative group used several retirees to, it was in the newspaper so I'm not saying anything that's confidential, right. So they lost the suit because the judge in the case felt that they didn't have standing. But I think they would have lost under the business judgment rule, you know. So we did use a consultant. It took three years and we didn't just arbitrarily and capriciously make the decision, we actually had hoped that CalSERS and CalPERS, which are two larger funds than ours, that are from California, the teachers and the state retirement system. However, t they didn't follow. They decided to continue with engagement, and just recently I read that CalPERS is now thinking of putting aside of divesting from fossil fuels as well. I think they realized what we realized a long time ago, that engagement was not going to make a difference to these funds, not funds but to the Exxon and Texacos of the world.

Tracee Davis

Right.

Lawrence Bosley

And so, you know to be true to our investors, and for the long term health of the society, so that those checks matter and make a difference, we decided to stick with ESG, obviously caring about the shareholders as well as the stakeholders, as well as the shareholders, that was important to us as well because the stakeholders are our Members.

Tracee Davis

Right.

Lawrence Bosley

So that's the social part. And then obviously who doesn't want good governance? I mean, that's almost idiotic to suggest that you're not interested in good governance of firms. And so we understood it as simply own the libs kind of right wing silliness that, you know, really the firms have to do more of the dealing with that than we as a retirement system because if we invest in them, they need to follow the rules that we set in the terms of the investment.

Tracee Davis

And can you talk about that, I mean to the extent that you're not divulging anything confidential, can you talk about how the fund goes about identifying the issues that it's going to use as an influence in your investment decisions? And you talked about a three-year study that that was the basis for deciding how you were going to pursue the climate environmental benchmarks that have been put into place. Are there any other belts and suspenders that you can talk with us about that might help others who are interested in continuing with what initiatives they have to ensure that shareholder stakeholder interests in profit driven opportunities are the of the utmost concern, while countering it with these non-economic necessarily on their face, objectives that are often tagged as ESG considerations?

Lawrence Bosley

Yes. In in our contract documents, you know, investors are forbidden from engaging in subprime loans, you know which we have, of course, define for them. We don't invest in tobacco, prison phone calls, there are a number of things that we put in that what we consider those to be. I'm sorry, I just went blank. Yeah, in other words, bad news relationships. In other words, it will look bad if it gets in out in the newspaper that we're investing in certain things that are controversial within the society, reputational risk. I'm so sorry.

Tracee Davis

That's OK. Let, let's just talk about that again.

Lawrence Bosley

So that can be a basis for why we make certain decisions is reputational risk to the pension fund.

Tracee Davis

And how do you drill down to identify that which might be a reputational risk factor and not be assailed for it just being viewed more as shareholder activism?

Lawrence Bosley

Write down things through BAM, the Bureau of Asset Management will come up in their in their due diligence with a particular fund. You know they'll have to say, well, right now we're under, you know, SEC concerns about XYZ or FTC concerns about you know something that's going on with the product that affirm that we can, that we control. it may come up through a board member who read something in the newspaper regarding a firm that's upcoming or a firm that we invest in already, it's come from a number of sources, but once we're aware of it, then we have to take action. And that action may take different, you know, may, look different depending on what the circumstance is. And then also what the firm explains to us, you know that they're doing in terms of the litigation and we also litigate.

Tracee Davis

Talk to us about the litigation and when you decide or elect to I, let me restate that; talk to us about the litigation and when it's advantageous or in the stakeholders best interest for the fund to pursue litigation.

Lawrence Bosley

You know, the litigation department will come to us and they'll say, you know, we've got issues. You know, there's certain, you know, we lost a certain amount of money because the company was found to have engaged in certain fraudulent practices or they're engaged in some sort of, you know, miss maltreatment of employees or there are problems with the product and the way that they, you know, gave us information about the product was inaccurate and we lost X amount of money either in the stock or through the direct ownership of the fund through a third party fund. So then that'll set up a scenario where they'll ask us, you know, we want to either be the lead plaintiffs in the suit, or it may be an overseas suit, in which case they'll have a U.S. attorney, U.S. group of attorneys, and then they'll have a foreign group of attorneys. I mean, I'm not telling you, you already know, as in London and several other European countries, you have to have on the ground attorneys, you can't have overseas attorneys come and work on a case. Also, sometimes we just want to make a company to assist with certain practices. We don't necessarily want to sue them for money, but we want them to stop certain practices that we found out that they're engaged in, which aren't necessarily illegal, but they could do us reputational risk, and we think they're bad practices for, say, employees or consumers. So those would be derivative suits.

Tracee Davis

Yeah. The impact that the fund and your role as a fiduciary for the fund is on a much larger scale and has greater ripple effects for the societal and economic considerations that are of importance to your membership. I mean, am I misstating it?

Lawrence Bosley

No, I think you're right on the beam. The only problem is, as was suggested in your original question, is we have to wrestle with the returns versus the social good or the environmental aspect or the governance aspects when we take a look at what we perceive as problems. You know, there are lots of things we like to do disinvest from certain, like in other words, we disinvested from Russia when they invaded Ukraine, we didn't have very much equity in equity stakes in, Russia to begin with. But that was almost immediately. Immediate. But there's some other situations in the world where you know it, it's fraught with much more difficulty in making the determination as to whether we should get out of those funds or not. They're not easy answers all the time.

Tracee Davis

Right, right, not easy answer. And a mindful eye has to always remain on making sure that you hit the 7% return.

Lawrence Bosley

Yeah, yeah, But that's across the entire portfolio. I mean, in real estate, you want to be sure that you know in, in every group you want to make sure you have a minimal amount of returns, but they're all more than 7% and the alternatives you want to make sure, say in real estate, it's at least 8 to 9%. I think infrastructure I think is the same thing, 8 or 9%, private equities I think the minimum is 10%. And you would never want to be anywhere near that, you know, in real, in the real world scenarios. But if worst comes to worst, that would be the smallest return you would be able to accept. And in that then down the line, up and down the line. And then there's a percentage of overweight and underweight you can be depending on the market, you know what's happening in the marketplace before you need to make some moves to either bring it, bring it up, to even value or you know, back down if you're overweight to bring it back down to even the value.

Tracee Davis

Interesting.

Lawrence Bosley

Yeah, but that's done by the Bureau of Asset Management. But in the allocation, that's where they're given the percentages. They can go either over or under in their percentages.

Tracee Davis

So what kind of issues do you foresee in the future in your role as far as pension governance goes?

Lawrence Bosley

Well, there are issues, you know, because we're five different funds, we don't all invest in the exact same thing. We tend to do it for the most part, but we would like to have a lot more customization, but we'd have to expand our Bureau of Asset Management, which we're in talks to do now and I'd like to see us personally, you know, this is me, this is not the whole board. Although I suspect most of my board would be fine with it, you know we're looking for a larger expansion geographically into just instead of just Europe, some of Asia excuse me and the United States, I think we should be looking at India, LATAM and Africa. And so geographically, I would love to see us expand more and I think that's going to happen. I'd also love to see us engaged in VC capitalism we had it years ago about, I think now it's probably about 20 years ago, they had a CIO that didn't like it for lack of transparency and some other issues. And so they sort of let those funds get to an endpoint and then they stepped away from them. We missed out on the last two run ups where VC did was the best in the private equity subclass in terms of returns. So we certainly need to get on board with that, we now have someone, a DCIO who's very versed in both VC and equity, growth equity. So I think we should be seriously looking at that and a number of other things, digital investments, not crypto, not going there, but that could be a possibility in the in the future if there's greater regulation and less volatility.

Tracee Davis

Staying nimble and close to the market and very sensitive to where the growth and the growth in profits might lie, and not staying too wedded to any one space, it sounds exactly like what you need to do in order to make certain you're serving your constituency.

Lawrence Bosley

Yeah, it's greater, greater sense of diversification. Yeah, greater diversification without adding tremendous risk, I mean, but obviously you have to add some risk if you're not, if you don't have any risk, then you then you're not making any money. You know, those would be defensive, you know, the criteria. So no, I agree with how you just stated I think need to take more risk, more geographical as well as types of assets that we invest in, but that’s personally just me.

Tracee Davis

Yeah. No, I understand this is just based upon your seven years of experience. And what about those who might be interested in following in your path? How would you recommend that they sort of situate themselves to be exposed to the kind of opportunities, ready themselves should that opportunity come about and next steps?

Lawrence Bosley

Well, in my position, obviously I got there because I happen to be an attorney working at one of the three largest unions, the three largest unions sit on the NYCERS, the ERS board, which is the the NYCERS board which handles almost all of the municipals except for fire, police teachers and Board of Education, so that's not something you could replicate. So as far as being a trustee, you'd have to be in a Union and then one of the three unions, and then your President would have to ask you to sit in, in, in their place on the board. So that's not really something one can replicate. However, what I would suggest that if one has a financial degree or is interested in getting a finance degree, that working at the Bureau of Asset Management would be an amazing start to one’s career. The reason I say that is while you won't make the same money as your peers who come out and go into investment banking and things of that nature, what you'll have under your belt is you'll be able to learn about all the various asset classes, how to do due diligence, all of the inner workings of what LP 'S go through. So then you become much more marketable when you decide to step out and say, gravitate towards a private equity firm or credit firm or credit shop. You know, you'll already have background on what's you know, what LP's are looking for. And also how to do the evaluations and you know you'll start to have some credibility with the numbers. So, you know, which are the things that they look for, so it really would be quite valuable. I think there's an early learning experience, in fact, a lot of that's one of the situations we have problems we have is that people come and they go, you know once they get value.

Tracee Davis

The value of the knowledge and experience.

Lawrence Bosley

Exactly. So you know, that's why we're working on making a larger pay package. And you know, I mean, you get a retirement. You know, there's a lot of things, advantages that you get working for the city.

Tracee Davis

BAM?

Lawrence Bosley

Yeah, the Bureau of Asset Management. And then you could also work in the controllers Office, cause they work, there are aspects of the controllers office that work with munis and bonds and different things that have nothing to do with the retirement system. So you can get a good head start there.

Tracee Davis

Interesting. Very interesting. Excellent career advice, Larry, and we can't thank you enough for the time that you've spent talking with us today and sharing some of your knowledge and experience with us.

Lawrence Bosley

You're an attorney working in compliance could also get you meaningful work at the Comptroller's office dealing with the pensions, which could ultimately get you a gig at some large firm, financial firm, knowing how to deal with compliance issues.

Tracee Davis

Excellent. So the controllers office, we did not get to talk about the Controllers Office and its oversight over the pension funds, but your suggestion is that even within the controller's office, there's an opportunity to almost pivot or segue, having experience working on compliance from that front and that's because the controller office oversees the work.

Lawrence Bosley

The Bureau of asset management is overseen by the Controllers Office, and so they've, it used to be people who worked in compliance would do both controllers office, and you know compliance issues and the retirement fund issues. But what we've done is we've moved the whole section of the attorneys over into the retirement section so that contract didn't take from three years down to nine months to get them done, because you've got the concentration of work specifically on those contracts and not splitting up the work.

Tracee Davis

And you're talking about contracts with the third party?

Lawrence Bosley

Third party vendors who will be investing our money, exactly, yeah. Once we say, yeah, we think you'd be, you would be great for handling our money, and the board says fine, we'll go with that with that group, there's still another year left of, you know, compliance work and determining the sidecar, the issues and the contractual issues and all those things that I mentioned before that you can't invest in, they need to be apprised of all of that.

Tracee Davis

Interesting.

Lawrence Bosley

Yeah, cause there are countries, and certain kinds of products that that we won't allow for you to invest in with our money.

Tracee Davis

Right. Again, thank you. Thank you so much for your time, Larry. I hope we weren't too brutal on you with the questions.

Lawrence Bosley

I just hope I gave you some answers that made sense.

Thank you for joining us today and please continue to listen in as we explore other issues that relate to the intersection between financial services, equal access to opportunity, and the law. In closing, I'd like to thank Xavier Dudas of Veneer Productions LLC for producing this podcast series. Thank you.