



STATE OF NEW MEXICO  
*Educational Retirement Board*

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## **Facts Behind Recent Coverage of Lawsuits**

Santa Fe, NM, June 29, 2009 – The Educational Retirement Board (ERB) takes its responsibilities to its retirees, members, and the taxpayers very seriously. Although the ERB ordinarily will not comment on lawsuits concerning the agency or its investments, when unfounded, baseless claims are made in the lawsuits and at press conferences, the ERB will respond to bring needed clarity.

On June 16, 2009 Frank Foy, the ERB's former chief investment officer, filed another lawsuit alleging wrongdoing on the part of current and former members of ERB's Board of Trustees and employees in relationship to several ERB investments.

It is important to note that it is very easy to bring a lawsuit. And, it is very easy for some plaintiffs and their lawyers to include all manner of unsubstantiated allegations, questionable claims, and innuendo in a lawsuit. There is no test of whether those claims can be included before a lawsuit is filed. That does not come until later. That is a key reason why courts frown on the parties and their lawyers 'trying' a case in the press rather than in court, although there are some who will attempt to do that.

New Mexico has a new law that allows plaintiffs who successfully bring private suits against those who would defraud the State to recover large sums of money for themselves and the State. Used properly, the new law will benefit the State as well as those plaintiffs. But, as with any tool, the new law can be subject to abuse by those seeking publicity and personal benefit. Only time will show whether the checks included in the new law will keep it from being abused.

The history of this litigation goes back to 2005, when the legislature allowed the ERB to do what already had been done in many other states: diversify its investments to bring more strength and stability to the pension fund. Frank Foy was the ERB's chief investment officer when that process began and played a crucial role in hiring investment managers such as Austin Capital Management and advisors such as Aldus Equity, both of which occurred in 2006.

That was before Bob Jacksha was hired as the ERB's Chief Investment Officer, a position of trust and responsibility for which he is well-qualified. Mr. Jacksha's skill and training made him a logical choice for the job and he earned it on merit. Allegations in Mr. Foy's lawsuit about Bob Jacksha's supposed role in events that occurred before he started working at the ERB only highlights the phantom threads used to weave the web of intrigue or "matrix of corruption" alleged by Mr. Foy and his lawyer.

ERB Trustees, who serve as our governing board, also have been unjustly maligned. This also includes former state Treasurer Doug Brown, a past Trustee and public servant of solid record and reputation.

The litigation process will test Mr. Foy's claims and weed out those without any basis in fact or law. In the meantime, it is important not to accept as fact unsubstantiated allegations, questionable claims, and innuendo or to allow them to harm the reputations of honorable people.

New Mexicans have well-founded concerns about the actions of some in relation to investments made by ERB and other state agencies. The ERB has not ignored those concerns. However, rather than grandstanding, the Board of Trustees asked staff to carefully review what occurred and determine what well-founded legal action can be taken to recover damages. Staff has completed part of this review and will make recommendations to the Board. This process may not result in the same headlines, but the ERB believes the process will be more successful.

Under the Board's direction, staff also is continuing to tighten its due diligence procedures. These procedures were put in place in 2007. The ERB continues to improve those procedures based on what has been learned in New Mexico and elsewhere.