

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

KEITH E. SONDERLING,  
Acting Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

Hand Benefits & Trust Company,  
Stephen Hand, William David Hand, James  
Goodwin, Greg Woods, Gregg Zimmerman,  
and Hand Composite Employee Benefit Trust,

Defendants.

Case No.: 26-cv-05035

**COMPLAINT FOR ERISA  
VIOLATIONS**

Plaintiff Keith E. Sonderling, Acting Secretary of the United States Department of Labor (“Secretary”), alleges as follows:

**PRELIMINARY STATEMENT**

1. The Hand Composite Employee Benefit Trust (“Trust”) was established on May 1, 1964, and can only be used by qualified retirement plans within the meaning of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et. seq. The governing document for the Trust is the Declaration of Trust, which was amended and restated effective April 1, 2011. The Declaration of Trust states that the sole and exclusive purpose of the Trust is “to provide a trust in which the assets of employee benefit plans and other qualified trusts may be commingled in one or more investment accounts.” To become a participant in the Trust, the investing ERISA plans (“Participating Trusts”) sign a participation agreement that adopts the provisions of the Trust.

2. As of March 2019, the Trust held more than \$5 billion in assets belonging to Participating Trusts, which were invested in 102 Collective Investment Accounts, or Collective Investment Funds (collectively, “CIFs”).

3. At all relevant times, Hand Benefits & Trust Company (“Hand”) served as the named Trustee for the Trust. According to the Declaration of Trust, as Trustee, Hand is charged with the administration of the Trust in accordance with the terms of the Trust document. The Declaration of Trust authorizes Hand, as Trustee, to determine which plans will be allowed to participate in the Trust, to establish and create new CIFs, and to terminate CIFs, among other things. Hand was also the Investment Advisor for 27 of the 102 CIFs and provided Investment Advisor services for a fee. For management of the remaining CIFs, Hand appointed investment manager sub-advisors, whom Hand was responsible for monitoring. As Trustee and as an Investment Advisor and because Hand exercised discretionary authority and/or control over Trust assets and had discretionary authority and/or responsibility in the administration of the Trust, Hand was, and continues to be, a fiduciary to the Trust and Participating Trusts within the meaning of section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A).

4. Hand had an Investment Review Committee (“Committee”), to which it delegated certain trustee responsibilities. The members of the Committee were appointed by Hand’s Board of Directors (“Board”). During all relevant times, the Committee members were Stephen Hand, William David Hand (“David Hand”), James Goodwin, Greg Woods, and Gregg Zimmerman (collectively, the “Committee Members”). According to the Board minutes dated August 11, 2016, the Committee was authorized to review the performance of the CIFs, hire and monitor sub-advisors who were managing certain CIFs, and approve the CIF investment guidelines. These duties were also memorialized in certain Investment Policy Statements (“IPS”) tailored to

each CIF. The Committee Members performed these fiduciary functions and duties for the entirety of the relevant time period. Because the Committee exercised discretionary authority and/or control over Trust assets and had discretionary authority and/or responsibility in the administration of the Trust, the Committee Members were, and continue to be, fiduciaries to the Trust and Participating Trusts within the meaning of section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A).

5. ERISA requires fiduciaries to act prudently and with undivided loyalty to the plan, and to act in accordance with the documents and instruments governing the plan.

6. As a result of their actions and omissions, Hand and the Committee Members breached their fiduciary duties to prudently and loyally select and monitor the Participating Trusts' investments in the CIFs and the sub-advisors managing the CIFs. They failed to take appropriate action to correct or terminate CIFs and sub-advisors that were chronically underperforming. They further failed to act in accordance with the Declaration of Trust, the investment guidelines for the CIFs, and other governing documents. Hand's and the Committee Members' breaches caused the Participating Trusts to lose millions of dollars.

7. Hand and the Committee Members also caused CIFs to enter into unnecessary and undisclosed loan arrangements that resulted in losses to the Participating Trusts.

8. Hand and the Committee Members further participated in and failed to remedy the breaches of each other, and in doing so, breached their fiduciary duties to the Participating Trusts.

## **JURISDICTION AND VENUE**

9. This action arises under ERISA and is brought by the Secretary to obtain relief under ERISA sections 409 and 502(a)(2) and (a)(5), 29 U.S.C. §§ 1109 and 1132(a)(2) and (a)(5), to redress violations and enforce the provisions of Title I of ERISA.

10. This Court has jurisdiction over this action pursuant to ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1).

11. Venue with respect to this action lies in the United States District Court for the Southern District of Texas, pursuant to ERISA section 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Trust is administered in Houston, Texas, within this district, and the fiduciary breaches and other ERISA violations at issue in this Complaint occurred within this district.

## **PARTIES**

12. The Secretary is authorized to enforce Title I of ERISA by, among other things, filing and prosecuting claims against fiduciaries who violate ERISA. 29 U.S.C. §§ 1132(a)(2), (a)(5).

13. Hand is headquartered in Houston, Texas and is the Trustee and an Investment Advisor for the Trust and the CIFs in which Participating Trust assets were held. At all relevant times, Hand was a fiduciary to the Trust and the Participating Trusts under ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A). It was also a party in interest under ERISA sections 3(14)(A) and (B), 29 U.S.C. §§ 1102(14)(A) and (B), because it was Trustee and Investment Advisor to the Participating Trusts.

14. At all relevant times, Stephen Hand, David Hand, James Goodwin, Greg Woods, and Gregg Zimmerman were members of Hand's Investment Review Committee and were charged with fiduciary duties, including selecting and monitoring CIFs and sub-advisors for CIFs

and approving the CIF investment guidelines. They were thus fiduciaries to the Trust and the Participating Trusts under ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A). David Hand, Stephen Hand, and James Goodwin were also on Hand's Board of Directors. David Hand acted as Chairman, and Stephen Hand acted as Secretary to the Board. All of the Committee Members, except Zimmerman, were also corporate officers of Hand as follows: Stephen Hand (President), David Hand (CEO), James Goodwin (Treasurer & Secretary), and Greg Woods (Vice-President). Thus, the Committee Members were parties in interest under ERISA sections 3(14)(A) and (H), 29 U.S.C. §§ 1002(14)(A) and (H), because they are fiduciaries, board members, and/or corporate officers of the Hand, the Trustee.

15. The Trust holds assets of employee benefit plans as defined by ERISA section 3(3), 29 U.S.C. § 1002(3), which are subject to coverage under ERISA pursuant to section 4(a)(1) of ERISA, 29 U.S.C. § 1003(a)(1). The Trust can only be used by qualified retirement plans or trusts, and its sole purpose is to provide a trust in which the assets of employee benefit plans and other qualified trusts may be commingled in one or more investments for the purpose of providing retirement benefits. Participation by Participating Trusts in the Trust provides retirement benefits to plan participants as defined by ERISA section 3(2)(A), 29 U.S.C. § 1002(2)(A). The Trust, therefore, is covered by ERISA. 29 U.S.C. § 1003(a). The Trust is joined as a party defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to ensure that complete relief can be granted.

### **FACTUAL BACKGROUND**

16. Pursuant to the Declaration of Trust (the governing document for the Trust), the Trust permits qualified retirement plans or trusts to commingle assets in one or more investments or funds.

17. To become a participant in the Trust, a Participating Trust signs a participation agreement that adopts the provisions of the Trust.

**Hand as Fiduciary**

18. Pursuant to the Declaration of Trust, Hand was the named Trustee of the Trust. Hand served as Trustee at all relevant times. Hand, as Trustee, “may establish . . . separate Investment Accounts as it may deem necessary and advisable to provide for the collective investment and reinvestment of assets of [Participating Trusts] deposited in the Composite Trust.” Hand, as Trustee, has “the rights, powers, and privileges of an absolute owner in the management and administration of the Composite Trust and Investment Accounts established pursuant to [the] Declaration of Trust.” As Trustee, Hand also had “exclusive management and investment authority with respect to the Composite Trust and each Investment Account.”

19. Among the duties and responsibilities of the Trustee set forth in the Declaration of Trust, Hand was responsible for administering the Trust, including investing the Participating Trusts’ assets in CIFs, making distributions to Participating Trusts, and fulfilling withdrawal requests from the Participating Trusts. Hand, as Trustee, had the authority to establish the rules and procedures for the administration of the CIFs in “its sole discretion.” Hand also had the discretion to establish and terminate CIFs.

20. Hand is, and, at all relevant times, was an Investment Advisor to several of the Participating Trusts. Under the Declaration of Trust, Hand, as Trustee, had the authority and discretion to invest the funds of the Participating Trusts in the CIFs pursuant to the Declaration of Trust. Of the 102 CIFs, Hand was the Investment Advisor for 27 of the CIFs, which totaled at least \$493 million in Participating Trust assets.

21. For the remaining CIFs, Hand was authorized to enter into Investment Advisory Agreements appointing investment sub-advisers to provide investment advice with respect to the assets of the CIFs. Hand entered into Investment Advisory Agreements with these sub-advisers. Pursuant to these agreements, Hand retained final authority to accept or reject the advice of the sub-advisers. Hand, therefore, retained ultimate authority over investment decisions of the CIFs.

### **The Committee Members as Fiduciaries**

22. As part of Hand's fiduciary duties as Trustee, it was charged with selecting, onboarding, and monitoring the CIFs holding Participating Trusts' investments. Hand delegated certain of these functions to the Investment Review Committee. The Committee Members were responsible for conducting due diligence on CIFs before they were onboarded, hiring and monitoring sub-advisers, monitoring the performance of the CIFs, and approving the investment guidelines for the CIFs, among other things. These duties also were memorialized in certain Investment Policy Statements ("IPS") tailored to each CIF. The Committee Members performed these functions and duties for the entirety of the relevant time period.

### **Mandatory Investment Guidelines**

23. Hand, as Trustee, was required to manage the CIFs in accordance with the investment guidelines contained in each CIF's IPS. Section 3.2 of the Declaration of Trust states, in part, that: "The Trustee shall invest and reinvest the assets of each Investment Account [CIF] in accordance with the investment objectives, guidelines, and restrictions set forth in the Declaration of Investment Account for each such Investment Account."

### **Hand's Policies**

24. Hand's policies expressly contemplate that it (through the Committee) will perform due diligence before selecting and onboarding CIFs. Hand's Trust Policy provides that

Hand must “analyze the individual investment needs of each investment responsibility account under administration and [] fill those needs with investments which have been selected through a process of careful research and analysis.” The Committee must “review due diligence, ADV Part I & II reports and interviews to evaluate the manager’s experience, knowledge, capabilities, resources and standards, prior to hiring a manager.” The Trust Policy includes additional criteria for Hand to consider when selecting an investment advisor, including whether the advisor consistently outperforms the market benchmark over a full market cycle, whether the advisor consistently earns positive Alpha (outperforming a benchmark after accounting for risk), the organization/ownership of the advisor, the advisor’s qualifications, its allocation of resources, its management philosophy, and its decision-making process.

25. Hand’s Trust Policy states that it is to administer CIFs in accordance with the appropriate regulations, and “maintain procedures which will enable it to discharge its fiduciary duties and responsibilities in accordance with the applicable fiduciary duties and liabilities and the prohibited transaction provisions of ERISA.”

26. Hand’s Trust Policy also states that the Committee will evaluate a manager’s performance each quarter. To assess each manager, the Committee will evaluate the performance of their CIF, the risk level, and how the CIF measures against its benchmark stated in the IPS. The Trust Policy states that performance over three to five years during a full market cycle is generally the best time frame for evaluating a manager and provides that the Committee will evaluate the ongoing staff of each investment advisor.

27. The Hand Performance Evaluation Policy for Collective Investment Funds, dated July 3, 2014 (“Evaluation Policy”) articulates Hand’s ongoing monitoring of the investment performance of the CIFs. The Evaluation Policy lists four primary Performance Evaluation

Criteria: (1) use time weighted rate of return data to evaluate managers; (2) compare Investment Performance of the portfolio as follows: comparison to absolute goal; comparison to market index; comparison to other portfolio or peer; (3) evaluate if the portfolio strategy developed has an appropriate risk tolerance; and (4) evaluate overall investment performance of the manager with emphasis on three- and five- year returns over a full market cycle.

28. The Evaluation Policy lists other criteria that Hand may also use to evaluate investment performance, including the Sharpe Ratio, Sortino Ratio, Alpha, and comparing portfolio fundamentals such as valuation and growth measures to relevant benchmarks.

29. Another performance measure listed by the Evaluation Policy is comparing a manager's performance to a peer group. The peer ranking performance standards are: 1 year – Top 75% of peer group; 3 years – Top 50% of peer group; and 5 years – Top 50% of peer group. If a manager falls below the “minimum peer rankings” listed, the Committee must deem the manager on a watch basis for that quarter.

30. Hand's Statement of Principles of Trust Management is reviewed and adopted annually by Hand's Board of Directors. It states that Board-appointed committees, such as the Investment Review Committee, should, among other things:

- Meet at least quarterly and more frequently if necessary and prudent;
- Approve and document the opening of all new Hand B&T accounts purchases/sales of assets, and closing of accounts;
- Provide for a comprehensive review of all new accounts for which the bank has investment responsibility;
- Provide for a review of each CIF at least once during each calendar year. Written policies should address the scope, frequency, and level of the review (trust committee, subcommittee, or disinterested account officer). Generally, discretionary account reviews should cover the administration and the suitability of the account's investments and non-discretionary account reviews administration;
- Keep comprehensive written policies which address all important areas;

- Provide for an adequate annual audit of all fiduciary activities; and
- Review examination reports of Hand B&T by supervisory agencies and record actions taken in its minutes.

**Failure to Conduct Due Diligence Prior to Inclusion of CIFs in the Trust**

31. Hand and the Committee Members were responsible for selecting the CIFs that became part of the Trust and in which Participating Trusts could invest. Hand and the Committee Members also were responsible for selecting the sub-advisors who managed certain CIFs. In many instances, Hand's and the Committee Members' selection of a CIF also meant that they were appointing a sub-advisor for that CIF because the CIF was proprietary to that sub-advisor.

32. Hand and the Committee Members failed to use a prudent and loyal due diligence process when selecting and onboarding CIFs and sub-advisors into the Trust. In selecting most of the CIFs, Hand and the Committee Members failed to collect and review information sufficient to adequately and prudently assess the suitability of including the CIFs as an investment option for the Trust and the Participating Trusts. And for other CIFs, Hand and the Committee Members had sufficient information showing that the CIF's—and, by extension, the CIF sub-advisor's—investment strategies were already unsuccessful when they selected the CIF and made it available for investment by the Participating Trusts.

33. Further, Hand and the Committee Members failed to adequately document what, if any, due diligence was performed or the rationale for selecting and onboarding CIFs and investment strategies that were already unsuccessful.

34. Examples of the CIFs impacted by these failures include, but are not limited to, the Trademark Tactical Risk Funds, SMART Target Date Funds, Horizon Funds, QS US Small Capitalization Equity Fund, QS Investors Global DI, Clearbridge Large Cap Growth, and Mizan All Equity Moderate Allocation Fund.

**Failure to Monitor CIFs in the Trust**

35. Hand and the Committee Members failed to fulfill their duty to prudently and loyally monitor the performance of the CIFs and sub-advisors.

36. Hand and the Committee did not create and maintain comprehensive written policies, records, and minutes or conduct the type of reviews and audits that were required by Hand's Statement of Principles of Trust Management and Trust Policy.

37. The Committee Members purportedly monitored the CIFs' performance through discussions at Committee meetings. The Committee Members, however, did not actually hold quarterly or other formal Committee meetings as required by the Statement of Principles of Trust Management and Trust Policy. When the Committee did meet, Committee meeting minutes were not contemporaneously created.

38. Similarly, there is no documentation demonstrating efforts by Hand or the Committee Members to inquire into the reasons for troubled CIFs' sub-par performance, and no explanation as to why these CIFs or their sub-advisors were retained despite their consistent poor performance and the loss of millions in Participating Trusts' assets.

39. In the reports purportedly reviewed by the Committee, there were CIFs that repeatedly appear on the "Review" list for years without documentation reflecting attempts by Hand or the Committee to conduct a deeper inquiry into their underperformance or the sub-advisor's management.

40. Several of the funds, such as the Trademark Tactical Risk Funds, lagged their benchmarks for years and were in the single digit percentile of fund performance, meaning that more than 90% of comparable funds performed better. Although the Committee Members stated that these funds were on a "close watch," it appears that neither Hand nor the Committee Members took any steps to evaluate them further.

41. Hand and the Committee Members also purportedly monitored the CIFs' performance through a "PIP" score but failed to take substantive actions when it indicated that a CIF was consistently and materially underperforming. The PIP score is Hand's own internal measure that purports to evaluate the performance of and risk associated with each CIF. A PIP score considers three risk factors: the Sharpe ratio, standard deviation, and performance over the prior eight quarters. A PIP score ranges from 0 to 100, with scores 70–100 classified as "Pass," and scores 0–69 classified as "Review."

42. Even though Hand and the Committee Members possessed these PIP scores, they did not use the PIP scores to address chronically underperforming CIFs. According to the Hand PIP reports, only 25% to 44% of the CIFs received passing scores from March 31, 2016 to June 30, 2019. In fact, the failure rate of CIFs increased during this time period from 58% in March 2016 to 75% in June 2019. Hand and the Committee Members did not perform any further inquiry or take any affirmative actions regarding funds with low PIP scores.

43. For example, the Trademark Tactical Risk Funds had PIP scores ranging between 13 to 41 in August of 2016, that declined steadily each quarter until ranging in between 0 to 15 by the first quarter of 2018. Hand and the Committee Members did not place the funds on probation, reduce allocations to the funds, or terminate the CIFs. The Committee, instead, simply repeated that the funds were on a "close watch" after each review.

44. Hand and the Committee Members also failed to inquire or take substantive action when objective data showed that a CIF's PIP score was inflated and inaccurate. Hand and the Committee Members had access to performance data for each of the CIFs separate and apart from the PIP reports, such as quarterly fund fact sheets and performance reports. They did not,

however, take action when the objective data showed underperformance that did not match a passing PIP score.

45. Hand and the Committee Members, moreover, did not ensure that the CIFs were managed in a manner consistent with their individual IPS.

46. The CIFs at issue consistently underperformed and were imprudent by every measure applied to them—benchmarks designated in their fact sheets, IPSs, or both; PIP scores; risk adjusted returns; and performance relative to Morningstar category, peer group, or industry index comparators. Hand and the Committee Members often had sufficient information showing that the CIFs' and their sub-advisors' investment strategies were unsuccessful when selected for inclusion in the Trust and continued to be unsuccessful quarter after quarter after being onboarded. Hand and the Committee Members, however, took no affirmative actions to address these failing CIFs and investment strategies, choosing instead to focus their efforts on increasing fees collected from onboarding and maintaining as many CIFs as they could successfully market.

47. The CIFs impacted by Hand's and the Committee Members' failure to monitor include, but are not limited to, the Trademark Tactical Risk Funds, SMART Target Date Funds, Horizon Funds, BCM Dynamic Belay Target Date Funds, QS Investors Global DBI, QS US Small Capitalization Equity Fund, First Trust All Equity Allocation Fund, Clearbridge Large Cap Growth, Clarivest Emerging Markets, DGI Growth, and Mizan All Equity Moderate Allocation Fund.

#### **Failure to Terminate CIFs**

48. Hand and the Committee Members' failure to properly monitor the CIFs resulted in their failure to terminate CIFs that had materially underperformed for years. For CIFs managed by a sub-advisor, Hand and the Committee Members' failure to properly monitor the

sub-advisors resulted in their failure to terminate the sub-advisors' appointment despite their poor performance for years.

49. The CIFs impacted by Hand and the Committee Members' failure to monitor include, but are not limited to, the Trademark Tactical Risk Funds, SMART Target Date Funds, Horizon Funds, BCM Dynamic Belay Target Date Funds, QS Investors Global DBI, QS Small Capitalization Equity Fund, First Trust All Equity Allocation Fund, Clearbridge Large Cap Growth, Clarivest Emerging Markets, DGI Growth, and Mizan All Equity Moderate Allocation Fund.

#### **Hand and the Committee Members' Conflict of Interest**

50. Hand generated revenue through, among other things, administrative fees paid by the CIFs and the Participating Trusts.

51. To increase the number of CIFs and the fees they generated, Hand decided to aggressively market its collective investment fund services to investment advisors. One of these marketing efforts involved Hand contracting with Acceleration Retirement (a firm that gathers data on and qualifies Registered Investment Advisors) to identify firms that would be subject to a "program of extensive calling efforts." These firms were potential targets to generate new CIFs, which, in turn, would generate additional fees for Hand. The second phase of the project identified a list of advisor prospects willing to speak with Hand regarding their collective investment fund services. The marketing project, in its early stages, generated at least two new CIFs in the Composite Trust and anticipated fees of \$112,000. The QS Small Capitalization Equity Fund CIF, which was funded as of October 2017, appears also to have been added as a result of Hand's marketing efforts.

52. The people who made the decision whether to onboard new CIFs and to terminate existing CIFs—the Hand Board of Directors and the Committee Members—were also the people conducting due diligence on potential new CIFs and monitoring existing CIFs.

53. Committee Members Stephen Hand, David Hand, and James Goodwin comprised a majority of the Hand Board of Directors.

54. The five Committee Members were responsible for monitoring 102 CIFs holding total assets of \$5,041,065,575. Hand offered one CIF in the Trust as of 1971, added 2 more CIFs between 2005 and 2007, and then added 99 CIFs between 2008 and 2019. Despite this dramatic increase in CIFs in the Trust, Hand did not materially increase its staff to handle the increased demands for selection and monitoring.

55. As Hand added more CIFs to the Trust (and collected more fees) and failed to terminate chronically underperforming CIFs, the number of CIFs with failing PIP scores increased. So, too, did Participating Trusts' losses increase.

#### **Hand and the Committee Members' Use of Plan Assets**

56. Hand and the Committee Members used Participating Trust assets for their own purposes and of their own accord when they unilaterally caused CIFs to enter into short-term loans with the Hand Short Term Investment Fund (“Hand STIF”), a fund in the Trust created by Hand.

57. Under the Declaration of Trust, Hand, as Trustee, had discretion to manage participant withdrawals from the CIFs. Section 4.7 of the Declaration of Trust mandates that the withdrawal occur “within a reasonable time following the applicable Valuation Date.”

58. Despite language of the Declaration of Trust, Hand decided to cash out all withdrawal requests on the same day as they were made. To accomplish this, Hand and the

Committee Members created a Short-Term Loan Fund within the Hand STIF. When CIFs did not have sufficient liquid assets to meet the withdrawal requests on the same day the requests were made, Hand and the Committee Members entered those CIFs into short-term loans with the Hand STIF and the Hand STIF provided the funds for the withdrawals. Those CIFs paid back the Hand STIF, plus interest, once additional deposits came into the CIF. Interest on the loans was paid with the plan assets of the Participating Trusts remaining in the CIF.

59. Hand and the Committee Members tracked these loans on a simple Microsoft Excel spreadsheet, with no other method of documenting or otherwise memorializing the existence of these loans. Significantly, Hand and the Committee Members did not disclose the loans to Participating Trusts.

60. There are also no documents memorializing the motivation for the loans.

61. Hand's and the Committee Members' practice of using undisclosed loans to pay withdrawal requests caused the CIFs to expend plan assets to pay the interest on these loans, which resulted in losses to the Participating Trusts.

### **Harm to the Trust and Participating Trusts**

62. As a result of the conduct described above, Hand and the Committee Members breached their fiduciary duties in violation of ERISA sections 404(a)(1)(A), (B) and (D), 29 U.S.C. §§ 1104(a)(1)(A), (B) and (D).

63. As a result of the conduct described above, Hand and the Committee Members caused millions of dollars in losses to the Trust and to the Participating Trusts. An accounting for each impacted CIF up to the date by which the fiduciary breaches are corrected is necessary to fully calculate the Trust's and Participating Trusts' losses. Hand and the Committee Members are jointly and severally liable for these losses pursuant to ERISA section 409(a), 29 U.S.C. § 1109(a).

### FIRST CLAIM FOR RELIEF

64. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts and incorporates by reference the averments and allegations of paragraphs 1 through 63 inclusive.

65. As Trustee and fiduciaries to the Trust and Participating Trusts, Hand and the Committee Members—Defendants Stephen Hand, David Hand, James Goodwin, Greg Woods, and Gregg Zimmerman—had a duty to act prudently and solely in the interest of the Trust and the Participating Trusts and in accordance with documents governing the Participating Trusts and the Trust. These duties required Hand and the Committee Members to conduct due diligence in the selection of CIFs and sub-advisors to the CIFs, to monitor the CIFs and their sub-advisors adequately, and to terminate the CIFs and their sub-advisors when appropriate.

66. Hand and the Committee Members did not select and onboard CIFs in a prudent and loyal manner. For many CIFs, Hand and the Committee Members did not obtain sufficient prior actual performance data to adequately evaluate the CIFs before selecting and onboarding them and their sub-advisors. For other CIFs, the performance data reflected that the investment strategies were already unsuccessful, yet Hand and the Committee Members selected and onboarded the CIFs and their sub-advisors.

67. Hand and the Committee Members failed to monitor the CIFs and their sub-advisors in a prudent and loyal manner. Hand and the Committee Members failed to adequately measure the performance of the CIFs and their sub-advisors and failed to use information about CIFs' poor performance to conduct meaningful inquiries, to terminate chronically underperforming CIFs or sub-advisors, alter investment strategies, or reallocate the Trust's and Participating Trusts' investments. Hand and the Committee Members also failed to ensure that

the actual investment of CIF assets were aligned with the investment strategies contained in each CIF's IPS, as required under the Declaration of Trust.

68. By the conduct described above, Hand and the Committee Members:
- a. failed to discharge their duties with respect to the Participating Trusts solely in the interest of the participants and beneficiaries of the Participating Trusts and for the exclusive purpose of providing benefits and defraying reasonable expenses of plan administration, in violation of ERISA section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A); and
  - b. failed to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B); and
  - c. failed to discharge their duties in accordance with the documents and instruments governing the Participating Trusts and Trust, in violation of ERISA section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

69. As a result of the conduct described above, Hand and the Committee Members caused losses to the Trust and Participating Trusts and are liable to make good to the Trust and Participating Trusts those losses and to restore to the Trust and Participating Trusts any profits it made from their use of Participating Trust assets pursuant to ERISA section 409(a), 29 U.S.C. § 1109(a).

## SECOND CLAIM FOR RELIEF

70. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts and incorporates by reference the averments and allegations of paragraphs 1 through 69 inclusive.

71. As Trustee and fiduciaries to the Trust and Participating Trusts, Hand and the Committee Members—Defendants Stephen Hand, David Hand, James Goodwin, Greg Woods, and Gregg Zimmerman—had a duty to refrain from causing the CIFs to enter into transactions that were not prudent or exclusively for the benefit of the Participating Trusts.

72. Hand and the Committee Members caused CIFs to enter into unnecessary and undisclosed short-term loans with the Short Term Loan Fund within the Hand STIF, which caused the CIFs to expend Participating Trust assets in paying interest on the loans.

73. By the conduct described above, Hand and the Committee Members:

- a. failed to discharge their duties with respect to the Participating Trusts solely in the interest of the participants and beneficiaries of the Participating Trusts and for the exclusive purpose of providing benefits and defraying reasonable expenses of plan administration, in violation of ERISA section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), and
- b. failed to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B); and

- c. failed to discharge their duties in accordance with the documents and instruments governing the Participating Trusts and Trust, in violation of ERISA section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

74. As a result of the conduct described above, Hand and the Committee Members caused losses to the Trust and Participating Trusts and are liable to make good to the Trust and Participating Trusts those losses and to restore to the Trust and Participating Trusts any profits it made from their use of Plan assets pursuant to ERISA section 409(a), 29 U.S.C. § 1109(a).

### **THIRD CLAIM FOR RELIEF**

75. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts and incorporates by reference the averments and allegations of paragraphs 1 through 74.

76. Hand and the Committee Members—Defendants Stephen Hand, David Hand, James Goodwin, Greg Woods, and Gregg Zimmerman—are liable as fiduciaries for the fiduciary breaches of their co-fiduciaries under ERISA section 405(a), which makes a fiduciary “liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan . . . (1) if he participates knowingly in . . . an act or omission of such other fiduciary, knowing such act or omission is a breach; (2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or (3) if he has knowledge of a breach by such other fiduciary, unless he makes a reasonable effort under the circumstances to remedy the breach.” 29 U.S.C. § 1105(a)(1), (2), and (3).

77. As set forth above, Hand and the Committee Members knowingly participated in the fiduciary breaches of each other. Hand and the Committee Members knew that each were failing to monitor the CIFs and sub-advisors and failing to terminate the CIFs and sub-advisors

that were underperforming. Further, they knew that each were causing the CIFs to enter into undisclosed, unnecessary short-term loans with the Hand STIF. Additionally, the Trustee delegated the responsibility of performing due diligence for sub-advisor hiring to the Committee, and both the Trustee and the Committee Members knew and were responsible for the other's failure to ensure proper due diligence was performed prior to onboarding CIFs and sub-advisors. By knowingly participating in the fiduciary breaches of each other, Hand and the Committee Members breached their fiduciary duties and are jointly and severally liable for each other's breaches pursuant to ERISA section 405(a)(1), 29 USC 1105(a)(1).

78. By failing in their duty to monitor each other in violation of ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1), as set forth above, Hand and the Committee Members enabled each other to breach their fiduciary duties to the Trust and Participating Trusts and are jointly and severally liable for each other's breaches pursuant to ERISA section 405(a)(2), 29 U.S.C. § 1105(a)(2).

79. Despite knowing that each other had breached fiduciary duties to the Trust and Participating Trusts as set forth above, Hand and the Committee Members failed to make reasonable efforts to fully remedy the breaches and are jointly and severally liable for each other's breaches pursuant to ERISA section 405(a)(3), 29 U.S.C. § 1105(a)(3).

80. As a result of the conduct as described above, Hand and the Committee Members caused losses to the Trust and the Participating Trusts, for which they are jointly and severally liable pursuant to ERISA section 409(a), 29 U.S.C. § 1109(a).

#### **PRAYER FOR RELIEF**

WHEREFORE, the Secretary of Labor prays that this Court enter an Order:

1. Requiring Hand to restore all losses and unjust profits caused to the Trust and the Participating Trusts as a result of Hand's fiduciary breaches, plus interest.
2. Requiring Hand to restore all losses and unjust profits caused to the Trust and the Participating Trusts as a result of the Committee Members' fiduciary breaches, plus interest.
3. Requiring the Committee Members—Stephen Hand, David Hand, James Goodwin, Greg Woods, and Gregg Zimmerman—to restore all losses and unjust profits caused to the Trust and the Participating Trusts as a result of their fiduciary breaches, plus interest.
4. Requiring the Committee Members to restore all losses and unjust profits caused to the Trust and the Participating Trusts as a result of Hand's fiduciary breaches, plus interest.
5. An injunction barring Hand and the Committee Members from serving as a fiduciary or service provider to any ERISA-covered employee benefit plan.
6. Granting such other relief as may be equitable, just and proper, including injunctive relief.

Dated: June 25, 2026

Respectfully Submitted,

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