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August 14, 2020

**VIA EMAIL**

The Honorable Valerie E. Caproni  
United States District Court for the  
Southern District of New York  
40 Foley Square  
New York, NY 10007  
Email: CaproniNYSDChambers@nysd.uscourts.gov

Re: *Snitzer, et al. v. The Board of Trustees of the American Federation of  
Musicians and Employers' Pension Fund, et al.*, No. 17-cv-05361-VEC

Dear Judge Caproni:

Please accept this supplemental submission in response to the argument raised by Defendants that they prudently kept Plan participants informed of the Plan's financial status. See ECF #184 at 26-29 & ECF # 185-15, 185-16, & 185-17.

In our responding brief we noted:

An internal Milliman document that Milliman designated "attorneys' eyes only" under the Protective Order entered by the Court provides relevant information regarding the adequacy of Defendants' disclosures. Plaintiffs will request that the Court permit Class Counsel to publicly file that document so Class Members and the Court can evaluate the Parties' respective disclosure arguments based on a balanced record.

ECF# 196 at 26 note 20. Milliman has now agreed to remove the attorneys'-eyes designation. The document at issue and the related deposition testimony of Milliman's lead actuary on the AFM account, Bob Beher, are attached as Exhibits 1 & 2.

The document is a Milliman January 2016 draft PR strategy document designed to control reaction to the Trustees' upcoming belated disclosure about the Plan's looming insolvency. The first page of the draft states: "**Overarching Goal:** To engage participating employers and participants in open, honest communication." In response, Mr. Beher wrote in an editing comment: "Can we say straightforward or direct? Honest sounds like we have been hiding the ball, which we have but we don't need to point

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that out.” The second page has a similar PR statement: “Start open, honest communication about the status of the plan.” In response, Mr. Beher wrote in an editing bubble: “Same comment here and later as prior page about this word [honest].”

Mr. Beher’s candid statement is 100% consistent with the claims asserted by Plaintiffs and objectors that from 2010 – 2106 the defendant Trustees were “hiding the ball” about the Plan’s looming insolvency from Plan participants, and 100% inconsistent with the arguments Defendants continue to make.

Thank you for Your Honor’s consideration of this additional information.

Respectfully,

A handwritten signature in blue ink that reads "Steven A. Schwartz". The signature is written in a cursive, flowing style.

Steven A. Schwartz

cc: All Counsel of Record (via email)

# EXHIBIT 1



**American Federation of Musicians and Employer's Pension Plan**  
Communications Roadmap (11/1/16)

**Overarching Goal**

To engage participating employers and participants in open, honest communication about the status of the Plan.

**Communication Objectives**

Participants and employers:

- Aren't surprised by critical and declining status designation
- Understand how we got here
- Know that Trustees have taken proactive steps to secure the future of the Plan and will continue to do so
- Are aware that many other plans face similar challenges
- Have the background information necessary to make an informed decision (vote), if it comes to that
- Understand the business case for preserving the Plan – even if that means additional measures need to be taken
- Appreciate what the Plan continues to provide
- Understand what the impact of any changes and/or the status of the Plan may be for them

Commented [BB1]: Can we say straight forward or direct? Honest sounds like we have been hiding the ball, which we have but we don't need to point that out.





## Key Dates &amp; Activities (next 6 months)

Timing	Audience	Activity	Objectives
<b>INITIAL ANNOUNCEMENT</b>			
Early Nov.	Participants and Employers	Mail letter* to participants	<ul style="list-style-type: none"> <li>Answer questions</li> <li>Start open, honest communication about the status of the plan</li> <li>Clarify how we got here</li> <li>Describe proactive steps taken</li> <li>Reinforce the importance of preserving and appreciation for the Plan</li> <li>Prepare participants for the possibility for additional measures</li> <li>Set the expectation that they will receive more information</li> </ul>
Nov.	Employers	Conduct calls with key Employers	<ul style="list-style-type: none"> <li>Answer questions</li> <li>Start open, honest communication about the status of the plan</li> <li>Mitigate extremely negative reaction</li> </ul>
Early Nov.	Participants	Post letter to website	Same as letter
Early Nov.	Participants	Publish letter in newsletters (distributed via existing newsletters around the U.S.)	Same as letter
Early Nov.	Participants	Add feedback loop to website (link to a shared email box where)	<ul style="list-style-type: none"> <li>Give participants an outlet for potentially negative reactions</li> <li>Collect questions to be answered in future communications</li> <li>Manage expectations about getting immediate answers</li> </ul>
<b>ONGOING EDUCATION</b>			
Jan	Participants	Post educational video on website	<ul style="list-style-type: none"> <li>Build a common level of understanding about how pension plans work</li> <li>Provide an explanation that can be used consistently across activities</li> </ul>
Jan., Mar., May	Participants	Post a series of 3 newsletter articles* to the website	<ul style="list-style-type: none"> <li>Drill down on several points/sections of the initial letter; provide a deeper level of information</li> <li>Answer commonly asked questions</li> </ul>
Jan., Mar., May	Participants	Publish a series of 3 newsletter articles* (distributed via existing newsletters around the U.S.)	Same as article series

\*Send a courtesy copy to Employers before sharing with participants

**Commented [BB2]:** We have this as a footnote but should we devote some more space to this question here. We presume they will mail to participants but I don't know that we can assume they would send to employers in advance so we should discuss.

**Commented [BB3]:** Same comment here and later as prior page about this word

**Commented [DF4]:** Is this feasible and realistic? There might be a few key employers where it makes sense to strengthen the relationship with more frequent contact and info

**Commented [BB5R4]:** Not sure who that might be outside the employer trustees but we can ask. They have 6,000 contributing employers

**Commented [DF6]:** Ask Bill: is there more than just the main website?

**Commented [BB7R6]:** There is the plan web site and I doubt they would want this option in more than one place. To the extent there are other web sites where participants might want to ask questions, perhaps links to the AFMEPF web site could be provided

**Commented [BB8]:** Seems to be some words missing

**Commented [BB9]:** This timing seems really ambitious for a video for this group since I doubt they will sign off on anything at the meeting without a more robust proposal

**Commented [BB10]:** What is difference between this row and prior row?

# EXHIBIT 2

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 1:17-cv-05361-VEC

5 - - - - -x

6 ANDREW SNITZER and PAUL LIVANT,  
7 individually and as representatives of  
8 a class of similarly situated persons,  
9 on behalf of the American Federation of  
10 Musicians and Employers' Pension Plan,  
11 Plaintiffs,

12 -against-

13 THE BOARD OF TRUSTEES OF THE AMERICAN  
14 FEDERATION OF MUSICIANS AND EMPLOYERS'  
15 PENSION FUND, THE INVESTMENT COMMITTEE  
16 OF THE BOARD OF TRUSTEES OF THE  
17 AMERICAN FEDERATION OF MUSICIANS AND  
18 EMPLOYERS' PENSION FUND, RAYMOND M.  
19 HAIR, JR., AUGUSTINO GAGLIARDI, GARY  
20 MATTS, WILLIAM MORIARITY, BRIAN F. ROOD,  
21 LAURA ROSS, VINCE TROMBETTA, PHILLIP E.  
22 YAO, CHRISTOPHER J.G. BROCKMEYER,  
23 MICHAEL DEMARTINI, ELLIOT H. GREENE,  
24 ROBERT W. JOHNSON, ALAN H. RAPHAEL,  
25 JEFFREY RUTHIZER, BILL THOMAS, JOANN  
KESSLER, MARION PRESTON,

Defendants.

- - - - -x

February 11, 2019  
ROBERT BEHAR

VERITEXT LEGAL SOLUTIONS  
MID-ATLANTIC REGION  
1801 Market Street - Suite 1800  
Philadelphia, PA 19103



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1 Behar  
2 THE WITNESS: Okay.  
3 MR. HARRISON: I have 273, I'm  
4 ready on my end.  
5 MR. KRINER: Okay.  
6 Q Mr. Behar, on 272 there's an  
7 e-mail from Miss Foster to Miss Kilkelly with a  
8 copy to you, and the subject is "Pension Plan  
9 Communication Road Map."  
10 Do you see that?  
11 A Yes.  
12 Q Does that refresh your  
13 recollection what that title means?  
14 A Yes.  
15 Q What is it?  
16 A It's a document developed by  
17 Denise and her staff which outlines a potential  
18 communication program with participants.  
19 Q It outlines a plan for whom to  
20 communicate with participants?  
21 A The fund.  
22 Q On 273 there's a reference to  
23 the overarching goal.  
24 What does that refer to?  
25 A The overarching goal of the

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1 Behar  
2 communication road map.  
3 Q And that's Milliman's road map?  
4 A Milliman developed a road map  
5 for discussion with the trustees. Ultimately  
6 it's -- the trustees have to have a road map.  
7 Q Did you provide input on this?  
8 A Again, I don't recall, but it's  
9 quite likely I did. I can't imagine it would  
10 have gone out without me reviewing it.  
11 Q Did you provide comments?  
12 A Again, I don't remember doing  
13 it, but I'm quite sure I would have.  
14 Q And Miss Foster is copying you  
15 and Mr. Campe and Miss tenBroek on the pension  
16 plan communication road map; correct?  
17 A Correct.  
18 (Communication road map marked  
19 Exhibit 274 for identification.)  
20 (Pause)  
21 MR. KRINER: Frank, do you have  
22 274?  
23 MR. HARRISON: I just received  
24 it, good to go.  
25 Q Mr. Behar, you've been handed

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1 Behar  
2 274. Do you recognize 274?  
3 A It looks like the communication  
4 road map, yes.  
5 Q And are they your comments in  
6 the "commented BB1," reflected on the first  
7 page?  
8 A Again, I presume so, that's my  
9 initials.  
10 Q So you wrote this comment in  
11 the block that says, "Can we say straightforward  
12 or direct," question mark. "Honest sounds like  
13 we have been hiding the ball, which we have, but  
14 we don't need to point that out."  
15 Do you see that?  
16 A Okay, yes.  
17 Q Did you write that?  
18 A Again, it appears I did.  
19 Q And then on the second page,  
20 are these also your comments?  
21 A Again, it appears to be true,  
22 yes.  
23 Q And BB3 you say, "Same comment  
24 here and later as prior page about this word."  
25 Do you see that?

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1 Behar  
2 A Yes.  
3 Q And the word was changed  
4 according to your suggestion; is that right? Or  
5 consistent with your suggestion?  
6 A I don't know.  
7 Q Look back at 273.  
8 A Okay.  
9 Q It was changed --  
10 A I see it.  
11 Q -- consistent with your  
12 suggestion?  
13 A Assuming 274 precedes 273, yes.  
14 Q The words you used are here,  
15 right, "straightforward"?  
16 A Yes, I see that.  
17 Q Were these comments that you  
18 provided to Miss Foster?  
19 A Again, I don't know what this  
20 document was attached to, but that looks to be  
21 the case, that's who I would have been providing  
22 comments to.  
23 Q And in the first comment on the  
24 first page, the clause that says, comma, "which  
25 we have, but we don't need to point that out,"



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1 Behar  
2 who's the "we"?  
3 A Well... I'm not sure exactly.  
4 I suppose "we" would be  
5 Milliman, but I don't know the context -- I  
6 don't know what else it would mean in this  
7 context.  
8 Q What ball was Milliman hiding  
9 at this time?  
10 A That's -- Milliman wasn't  
11 hiding anything, so...  
12 Q Well, you said that.  
13 A I understand that. I'm just  
14 saying it doesn't make any sense.  
15 Q Okay. So what was being  
16 hidden?  
17 MS. GROSSMAN: Objection.  
18 A I think, looking back at this,  
19 I believe that's just a reference to the  
20 trustees not having something like this in the  
21 past, like this road map.  
22 Q Explain that. I don't  
23 understand.  
24 A Well, we were proposing a  
25 communication road map.

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1 Behar  
2 Q Right. So you were hiding the  
3 communication road map?  
4 A No.  
5 I'm saying the trustees didn't  
6 have a communication plan, so...  
7 Q So they weren't communicating?  
8 A Well, they didn't have a plan  
9 like this.  
10 Q So they were hiding something?  
11 A Well --  
12 MS. GROSSMAN: Objection.  
13 MR. HARRISON: Form.  
14 A Yeah, I think that's -- that's  
15 a comment taken out of context, but...  
16 Q How so? You're making comments  
17 to the draft; right?  
18 A I'm making comments to the  
19 drafter.  
20 Q Okay. And the drafter adopted  
21 your comment?  
22 A Yes.  
23 Q Replaced "honest"?  
24 A Right.  
25 Q So how am I losing context with

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1 Behar  
2 asking you if the trustees had been hiding  
3 something?  
4 A The -- I guess the opposite of  
5 honest is dishonest. So use of the word  
6 "honest" implies dishonesty, and that's not what  
7 I meant.  
8 Q Well, you said, "which we have,  
9 but we don't need to point that out."  
10 A I'd say that's a casual comment  
11 taken out of context.  
12 Q What's the context I'm missing?  
13 A This is me talking to one of my  
14 colleagues.  
15 Q But what are you talking about  
16 that was being hidden?  
17 A I'm talking about the absence  
18 of a prior communication plan.  
19 Q And prior communications?  
20 A Well, yes.  
21 Q Of information?  
22 A There's always been  
23 communication, yes.  
24 Q But there's -- some information  
25 has not been communicated; correct?

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1 Behar  
2 MS. GROSSMAN: Objection.  
3 A Well, you know, I don't know  
4 what -- what you're referring to.  
5 Q It was your words, not mine.  
6 A I understand.  
7 Q That's why I'm asking you --  
8 MR. HARRISON: Argumentative.  
9 A You're asking me to remember a  
10 comment, an isolated comment, I made in an  
11 e-mail to a colleague.  
12 Q An edit of a document to a  
13 colleague.  
14 A Right. I edit all kinds of  
15 documents in the course of my work.  
16 Q You don't remember, sitting  
17 here today; is that your testimony?  
18 A Again, I don't remember  
19 specifically what I was referring to --  
20 Q Okay.  
21 A -- other than the absence -- as  
22 I said earlier, the absence of a prior  
23 communication plan.  
24 Q Okay. Is that your testimony,  
25 what it refers to, or is that your guess?

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1 Behar  
2 A (No response)  
3 Q What part refers to the absence  
4 of a communication plan?  
5 A You asked me what I thought I  
6 meant by the comment, and that's what I  
7 responded.  
8 Q How does that refer to the  
9 absence of a communication plan?  
10 A Well, I said there wasn't one  
11 before.  
12 Q So what was hidden? You don't  
13 recall that; right?  
14 A No.  
15 MS. GROSSMAN: Objection.  
16 Q Is that correct?  
17 A That's correct, I don't  
18 remember.  
19 Q Okay.  
20 (Series of e-mails beginning  
21 Bates No. MILL 9544 marked Exhibit 275  
22 for identification.)  
23 (Pause)  
24 MR. HARRISON: I just received  
25 275, thank you.

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1 Behar  
2 BY MR. KRINER:  
3 Q Mr. Behar, I have handed to you  
4 Exhibit 275, it was produced by Milliman,  
5 bearing, the first page, MILL 9544. Do you have  
6 that?  
7 A Say that again.  
8 Q 275.  
9 A Yeah, I see that.  
10 Q It was produced by Milliman.  
11 A Oh, yes.  
12 Q And it includes e-mail traffic  
13 in which you participated; correct?  
14 A Yes.  
15 Q Let me direct your attention to  
16 page 2. About midway down the page there's a  
17 February 17, 2017 e-mail from you --  
18 A February what? February when?  
19 Q Seventeen.  
20 A Okay.  
21 Q 2017.  
22 Do you see that?  
23 A Yes.  
24 Q And you wrote -- first of all,  
25 do you have any reason to believe you did not

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1 Behar  
2 write this e-mail?  
3 A No.  
4 Q Do you have any reason to  
5 believe you did not write it on February 17,  
6 2017?  
7 A No.  
8 Q And so your e-mail says, "I did  
9 speak to Maureen, and it was more of the same  
10 about how dysfunctional this process is."  
11 Do you see that?  
12 A Yes.  
13 Q What's that reference to?  
14 A This was a reference to the  
15 development of a -- what they referred to as a  
16 road show. The trustees were making  
17 presentations to various musician conferences  
18 and local unions, and this e-mail was written  
19 prior to the first of those road shows.  
20 And the development of the  
21 content was done in an extremely tight time  
22 frame, and there were a lot of players in the  
23 mix, and it was a very difficult process.  
24 Q Did Ms. Kilkelly use the word  
25 "dysfunctional" in communication with you?

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1 Behar  
2 A Either she used it or I used  
3 it; I don't remember which. Maybe we both used  
4 it.  
5 Q What's your interpretation of  
6 "dysfunctional" in the context of this e-mail?  
7 A It's what I just said; it was  
8 done in --  
9 MR. HARRISON: Form.  
10 A The process was on a very tight  
11 time frame, a lot of players involved, very  
12 complicated subject matter, and we were trying  
13 to come up with a presentation to participants.  
14 It was just a difficult process.  
15 Q On the first page you wrote, on  
16 February 18, 2017 -- there's an e-mail at the  
17 top of the page; do you see that?  
18 A Okay.  
19 Q Do you have any reason to  
20 believe you did not send this e-mail?  
21 A The one from February 18?  
22 Q Yes.  
23 A No.  
24 Q Do you have any reason to  
25 believe it was not on February 18?