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JUDGE TELLS UC REGENTS THEY CAN'T HIDE INVESTMENT LOSSES

University of California Regents can't hide their losses in venture capital and stock market investments from the public, a state judge ruled in a significant Public Records Act case Thursday.

Ruling in a lawsuit brought by the Coalition of University Employees (CUE), which represents 18,000 UC clerical employees, Alameda County Superior Court Judge James Richman held that UC Regents must disclose the "internal rate of return" or "IRR" of their venture capital investments. Judge Richman also decided, in a 20-page ruling, that the Regents improperly withheld Minutes and Tapes of meetings in 2000 and 2002 when they changed their investment policy and shifted the asset allocation of their \$35 billion retirement fund.

Judge Richman rejected every argument advanced by the UC Regents and their lawyers. The Regents claimed that the IRR of their venture capital funds was a "trade secret" because it was prepared by an outside firm, Cambridge Associates, but Judge Richman reasoned, "If all this is evidence of a valuable 'trade secret,' it comes in a novel guise." The judge noted that most other major public pension funds are now disclosing the rate of return of their venture capital investments. Only the UC Regents are steadfastly refusing to disclose performance results. Balancing the public interest in knowing performance results against UC's arguments that it would be shut out of the best funds if performance results were disclosed, Richman concluded "the public interest in disclosure of the IRRs clearly outweighs the claimed need to keep them secret." Quoting an earlier Court of Appeal decision, Judge Richman remarked, "the public interest demands the ability to verify. Only in this way can the public be certain, for example, that there is not a conspiracy of silence."

On the open meeting issue, Judge Richman ruled that the Regents could only hold closed meetings when they consider a particular investment decision such as purchase or sale of a particular stock. He said the open meetings law cannot be "construed so broadly as to permit the closing of any meeting in which any discussion whatsoever about investments takes place." Since the investment moves discussed in the 2000 and 2002 meetings had already occurred, there was no reason to withhold the Minutes and Tapes of the meetings, Judge Richman said.

CUE President Claudia Horning hailed the victory by her Union, calling the lawsuit "a David-and-Goliath struggle between low-paid clerical employees and wealthy, politically connected Regents and the multi-millionaire venture capitalists who take public money and don't want to disclose how

public investments perform. This time, David won.”

Karl Olson, the attorney for CUE, said the Regents had “flunked math, civics and history,” noting that the Regents’ retirement portfolio has plummeted in the past few years and that even after UC had sued Enron and WorldCom for investment fraud and secrecy, it still resisted disclosure of performance data on its venture capital investments. “The Regents need to wake up and smell the coffee and realize that we live in a democracy. They need to realize that public pension investment decisions have to be made in open meetings, not in secret.”

The UC retirement plan manages \$34 billion for 173,343 people, including 35,165 current retirees and beneficiaries. The value of its endowment fund fell 10.7 percent last year, more than any other of the 10 largest U.S. university endowments, except for the Massachusetts Institute of Technology.

Ironically, UC – which faces a daunting budget deficit and may raise tuition by as much as 30 percent – hired outside counsel who bills at \$550 to \$600 an hour in its unsuccessful argument against disclosure of its investment losses.