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PRIVATE MARKETS

EXCLUSIVE: Pension questions legality, ethics of Saybrook investment

29 October 2014 | By Sam Sutton

- Saybrook acquired TTSI in 2011
- Truck drivers awarded $1.2 mln in unpaid wages, reimbursements
- LA pensions readying letters of concern

Three pensions plan to raise concerns with an investment by Saybrook Capital in Total Transportation Services Inc, a transportation and logistics company that a California labor division found had improperly characterized truck drivers as independent contractors rather than employees.

On Oct. 21, the Los Angeles City Employees' Retirement System's governance committee instructed its investment staff to compose a letter to Saybrook Capital that will encourage the private equity firm to "behave legally" in the resolution of the labor dispute, LACERS Commissioner Elizabeth Greenwood told Buyouts. The letter is to be considered by the retirement system's full board at a later date.

"What we're concerned about is that you manage your business legally, ethically and that you produce a return," Greenwood said, describing the tenor of the proposed letter to Saybrook Capital. "When it comes out that you may not have managed your business legally or ethically, and that it could affect the return, you have our attention." LACERS committed $8 million to Saybrook Capital's $350 million, vintage-2008 debut fund, earmarked for investments in mid-market companies that present operational or financial complexities.

Saybrook Capital used the fund to recapitalize Rancho Dominguez, Calif.-based TTSI in 2011. Saybrook executive Jonathan Rosenthal chairs the company's board of directors, according to his LinkedIn profile. It is not clear if executives at the firm take an active role in the day-to-day management of TTSI.

TTSI leases company-owned trucks to drivers, who sign independent contractor agreements. Drivers use their leased trucks to transport cargo containers on behalf of TTSI's clients. The company pays drivers for each container they move, deducting the cost of fuel, maintenance, insurance and registration from their payments. The leases allow drivers to purchase the truck upon the completion of their contract.

The dispute with truck drivers centers on whether TTSI improperly uses the independent contractor model. The drivers argue that their relationship with TTSI is more like employee to employer than independent contractor to company; for example, they point to a lease clause in their agreement with the company that they say prohibits them from using the leased trucks to transport cargo for other drayage companies.

Several drivers filed claims to that effect with the California Department of Industrial Relations' Division of Labor Standards Enforcement (DLSE). Since February 2013, the DLSE has ruled against TTSI in 17 cases, awarding more than $1.2 million in the form of unpaid wages, reimbursements for expenses paid by the workers, and interest, spokeswoman Jules Bernstein told Buyouts in an email. As of early October, TTSI still faced about 40 active wage and hour claims at the state level, though some of those may be dismissed.

In a letter sent to Los Angeles officials and Saybrook Capital investors, TTSI characterized the claims as “nothing more than an ongoing attempt to unionize independent contractors” and said that organizers are trying to “discredit the stellar reputation TTSI has built over the last 20 years in business” by engaging with Saybrook’s limited partners.

LP Concerns

The increasingly expensive dispute between TTSI and its truck drivers appears to have LACERS and the Los Angeles Fire and Police Pensions worried.

“We usually don’t get involved,” Ray Ciranna, general manager of Los Angeles Fire and Police Pensions, told Buyouts. The pension system committed $5 million to the Saybrook Capital fund in 2008 and plans to draft a letter outlining its concerns. “Our concern is that we don’t really want to lose money,” Ciranna said.

The California Public Employees’ Retirement System is also examining Saybrook’s stake in TTSI. CalPERS committed $19.8 million to the Saybrook fund through an emerging managers program run by advisor GCM Grosvenor.

On Aug. 18, the CalPERS investment committee heard Alejandro Paz describe his experience as a TTSI driver during a period allotted for public comments. After Paz’s remarks, Investment Committee Chairman Henry Jones said that he would ask CalPERS staff to investigate the matter.

“Our staff, as well as our fund-of-fund advisor that manages the Saybrook strategy, are engaging on this issue,” CalPERS spokesman Joe DeAnda told Buyouts.

Saybrook Capital’s debut fund had netted a 16.7 percent internal rate of return and 1.4x investment multiple as of March 31, according to CalPERS.

Executives at Saybrook Capital and TTSI did not respond to requests for comment. Attorneys named as TTSI representatives did not respond to a request for comment.

An Independent Contractor

Former TTSI drivers, including several members of the International Brotherhood of Teamsters, allege that the company took improper deductions from their payments. They also accuse the company of retaliating when they filed claims with the DLSE.

Paz did not own a truck when he started working for TTSI in 2009, so he leased a company-owned vehicle for approximately $1,600 per month, he told Buyouts. The lease, which included a clause specifying his status as an independent contractor, also made him responsible for the truck’s insurance and registration costs, as well as maintenance and fuel costs, according to a TTSI lease agreement provided by a labor organization that represents the truckers.

“Once I figured out what I had gotten myself into, I started to see some red flags,” Paz said. “I had to maintain the truck, and then all the expenses were on me.”

Drivers had to haul enough cargo to earn $1,500 in payments from TTSI in order to clear $300 to $400 per week after deductions, Mario Marquez, a former TTSI driver, told Buyouts. Doing so became harder when shipping traffic at Southern California ports slowed, and less transportable cargo was available.

In June 2013, Paz filed a claim with the DLSE saying that TTSI misclassified him as an independent contractor and that he was entitled to roughly $159,000 in unlawful deductions (including the lease payment) and expenses. Later that year, Paz said that TTSI’s President, Chief Executive and Co-founder

Victor La Rosa, asked him to consider withdrawing the complaint.

After Paz refused, "That's when things started to get bad," he said.

Paz relied on TTSI to dispatch him to specific hauls. After they filed claims with the DLSE, both Paz and Marquez allege that TTSI dispatchers switched their shifts and assigned them to slower-moving loads, which limited the number of containers they could transport in a pay period.

Ruling Favors Truckers

The DLSE heard Paz's case on May 20, 2014.

According to an "Order, Decision or Award" document provided by a labor organization that assisted Paz, TTSI contended that Paz was an independent contractor "engaged in his own truck-driving business" who could drive for other companies. TTSI characterized its business as that of middleman between independent drivers and customers and that it had no control over the manner in which Paz delivered cargo.

Paz argued that TTSI dictated which loads he hauled, the rates at which he was compensated, and the deductions taken from his compensation—more characteristic, he argued, of an employee-employer relationship. "The truck's under TTSI's name. The registration is under TTSI's name. The customer's under TTSI's name. I don't negotiate anything," Paz told Buyouts.

On May 24, Paz received a letter from TTSI that said his contract had been terminated. A termination letter signed by La Rosa cites Paz's testimony in front of the DLSE, in which he argued that he was not an independent contractor, as the reason for his firing.

"Your statements, made under oath, that you are not an independent contractor as you had previously represented by signing the agreement constitute a material breach of the Independent Contractor Agreement," according to a copy of the letter shown to Buyouts.

In August, the DLSE found in Paz's favor, noting that TTSI failed to prove that he had been an independent contractor and that the company controlled "all meaningful aspects of the business relationship," including rate of compensation, schedule, the location and delivery of cargo, as well as compliance with laws, rules and regulations.

The DLSE awarded Paz approximately $50,000 in its decision, including roughly $18,000 to reimburse deductions to his compensation, $26,300 for truck fuel and $5,100 in interest. The DLSE did not consider Paz's lease payment to be a deduction and excluded that total from the award.

TTSI appealed the decision to the Department of Industrial Relations appeal board, Paz told Buyouts. To date, he has not received any payment related to the award.