

## ***Strunk* Case Attorney Fees and Costs: Frequently Asked Questions**

### **Question 1. What is the exact algorithm for the calculations so that an affected retiree may determine whether the one-time deduction is correct?**

**Answer:** The retiree's actual benefit payment received on July 1, 2004 times the specific cost-of-living adjustment (COLA) that would have been applicable to that retiree effective July 1, 2004 (payable August 1, 2004) times the adjustment factor (94.49%) equals the fee deduction.

The adjustment factor was calculated by dividing the total Oregon Supreme Court-awarded member attorney fees and costs attributable to the COLA restoration (\$763,367.00) by the total amount of COLAs (\$807,886.08) that would have been applicable July 1, 2004, based on the benefit payments actually received by the group of affected retirees.

### **Q2. How does the difference in COLA for different retirement years and months affect the calculation?**

**A:** The difference in COLA percentages for different retirement years has a direct affect on the calculation as shown above because the calculation is based on the specific COLA percentage that would have otherwise been applicable July 1, 2004 for the specific affected retiree.

### **Q3. If I stayed in the variable account after retirement, how does that affect the calculation?**

**A:** Staying in the variable after retirement could affect the actual benefit payment that would have been paid in 2004 which, in turn, affects the fee deduction calculation as described above.

### **Q4. Why aren't other current and future retirees required to pay a portion of the *Strunk* legal fee?**

**A:** In compliance with the Oregon Supreme Court's decision, only those PERS members who retired under the Money Match formula between April 1, 2000 and March 31, 2004 (approximately 21,500 retirees), also known as "window" retirees, were included. These were the only retirees affected by the COLA freeze overturned in the *Strunk* decision, so it is their restored COLA that constitutes the "common fund" from which the specified attorney fees were awarded by the Oregon Supreme Court.

The *Strunk* ruling also restored annual earnings crediting at the assumed rate (currently 8 percent) to Tier One member regular accounts. At the direction of the Oregon Supreme Court, the attorneys representing non-retired Tier One members in the *Strunk* case were entitled to \$1,394,566 in fees and costs. This amount was recovered from earnings that would have otherwise been credited to Tier One members for 2007, resulting in an effective earnings crediting rate of 7.97 percent.

### **Q5. Why is PERS using the 2004 COLA on the fixed benefit, as opposed to the COLA on the revised benefit? And, why 2004 and not 2003 when the PERS Reform legislation was passed?**

**A:** In compliance with the Oregon Supreme Court's decision, the actual benefit received on July 1, 2004 was used in the calculation as described above. This is neither a "fixed" nor a "revised" benefit but rather the benefit that was actually paid. The calculation was based on 2004 payments to include all the affected retirees who retired between April 1, 2000 and March 31, 2004.

### **Q6. Why are the payments post-tax and not pre-tax?**

**A:** The one-time deduction comes from a retirement payment that would otherwise be taxable to the benefit recipient.