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IN THE SUPREME COURT OF THE STATE OF OREGON

ENTERED
JAN 09 2007
CALENDAR

In the Matter of the Consolidated Public
Employees Retirement System (PERS)
Litigation

Case Names and Numbers:

<i>Strunk</i>	<input checked="" type="checkbox"/> (S50593) (Control)
<i>Burt</i>	<input checked="" type="checkbox"/> (S50647)
<i>Dahlin</i>	<input checked="" type="checkbox"/> (S50645)
<i>Evans</i>	<input type="checkbox"/> (S50532)
<i>Sartain</i>	<input checked="" type="checkbox"/> (S50686)
<i>Whitty</i>	<input type="checkbox"/> (S50685)

**STIPULATION ONE: STIPULATION REGARDING THE
ALLOCATION OF AN ATTORNEY FEE AWARD**

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WHEREAS, in *Strunk v. PERB*, 341 Or 175, 179-180 (2006), the Supreme Court held that Petitioners Strunk, Burt, Dahlin, and Sartain (collectively “Petitioners”) are entitled to an award of attorney fees under the common fund doctrine for “restor[ing] two aspects of the PERS benefit plan that the 2003 PERS legislation had removed: (1) the guarantee of an annual eight percent earnings allocation to Tier One PERS members; and (2) COLA adjustments for members who retired between April 1, 2000, and March 31, 2004”;

WHEREAS, the Supreme Court referred the case to a special master to recommend the proper amount of fees and the proper method for apportioning the costs among the benefited parties;

WHEREAS, Petitioners and Respondents have discussed various methods for apportioning the costs among the benefited parties, the administrative concerns associated with each method, and the degree to which each method would spread an attorney fee award among as many of the benefited PERS members, retirees, or beneficiaries as possible, for each “common fund,” respectively; and

WHEREAS, Petitioners and Respondents agree that the terms of this stipulation are subject to approval by the Supreme Court;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. Allocation of fees for the restored eight percent annual earnings. PERB will apportion an attorney fee award for the restored eight percent annual earnings among current PERS Tier One members, in the method described in paragraph 2, at the time it would otherwise credit those members with annual earnings for either 2006, 2007, or 2008, as described in paragraph 3.

2. PERB will allocate the award among current Tier One members by (a) calculating the gross amount that all Tier One members would receive if they were credited eight percent of annual earnings; (b) subtracting the amount of attorney fees awarded for the restored annual earnings “common fund” from the gross amount that Tier One members would receive; (c) distributing the remainder of the earnings as they would otherwise be distributed to Tier One members. This allocation method will not recover a share of the fee award from those members

who benefited from the restored earnings in 2003 but have retired, died, or withdrawn from the system by the time that PERB allocates the attorney fee award.

3. In the first quarter of each year, PERB allocates earnings for the prior calendar year. PERB posts the earnings to Tier One member accounts early in the second quarter of each year. After the Supreme Court enters a final award in this case, PERB will allocate the award when it next allocates Tier One annual earnings, as described in subparts (a) through (c) below. "Final award," as used in this stipulation, shall mean the award upon the disposition of this case and any motion for reconsideration or appeal by any of the Petitioners or Respondents, if taken.

- a. If the Supreme Court enters a final award before the end of the first quarter of 2007, PERB will reduce the 2006 annual crediting for Tier One members in accordance with the judgment.
- b. If the Supreme Court enters a final award between the second quarter of 2007 and the first quarter of 2008, PERB will reduce the 2007 annual crediting for Tier One members in accordance with the judgment.
- c. If the Supreme Court enters a final award between the second quarter of 2008 and the first quarter of 2009, PERB will reduce the 2008 annual crediting for Tier One members in accordance with the judgment.

4. Payment of an award to Petitioners will be made within 20 days of an order by the Supreme Court becoming final, after any motion for reconsideration or appeal by any of the Petitioners or Respondents, if taken, and will not be delayed by the timing of the reduction to Tier One members' annual crediting.

5. Allocation of fees for the restored COLA adjustments. PERB will apportion a fee award for the restored COLA "common fund" pro rata among members who were subject to the COLA freeze as a result of the 2003 Legislation, in the method described in paragraph 6, as a onetime deduction from an otherwise scheduled benefit payment following the Supreme Court's final award in this case, as described in paragraph 7.

6. PERB will calculate the pro rata share owed by members included in the COLA freeze by (a) determining the amount of COLA adjustment each individual would have received

on their benefits, had PERB paid a COLA on July 1, 2004 (pursuant to the 2003 Legislation, PERB froze the COLA for certain members as of July 1, 2004); (b) dividing the fee award amount among the affected members in proportion to the amount of COLA adjustment they would have received (i.e., member A, who would have received COLA in the amount of \$60, will be allocated a share of the award that is 50% more than member B, who would have received COLA in the amount of \$30); (c) deducting the proportional share of the COLA fee award from each recipient's benefit check in the time period specified in paragraph 7. This allocation method will not recover a share of the fee award from those members who have benefited from the COLA reversal but have died and left no beneficiary receiving continuing benefits by the time of this deduction.

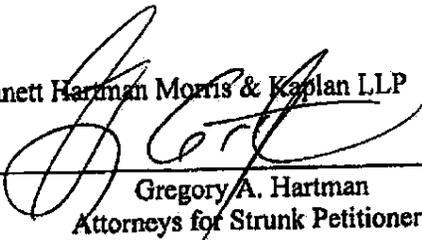
7. PERB will make this onetime deduction from the benefit payments within a reasonable time after the Supreme Court's final award in this case.

8. Payment of an award to Petitioners will be made within 20 days of an order by the Supreme Court becoming final, after any motion for reconsideration or appeal by any of the Petitioners or Respondents, if taken, and will not be delayed by the timing of the deduction from benefit payments.

SO STIPULATED:

Dated: January 2nd, 2007

Bennett Hartman Morris & Kaplan LLP

By: 

Gregory A. Hartman
Attorneys for Strunk Petitioners

Dated: January __, 2007

Dunn Carney Allen Higgins & Tongue

By: _____

Scott A. Jonsson
Attorneys for Sartain Petitioners

[Signatures continued on next page.]

STIPULATION RE ATTY. FEE ALLOCATION, IN THE MATTER OF THE CONSOLIDATED PERS LITIGATION (STRUNK), S50593

on their benefits, had PERB paid a COLA on July 1, 2004 (pursuant to the 2003 Legislation, PERB froze the COLA for certain members as of July 1, 2004); (b) dividing the fee award amount among the affected members in proportion to the amount of COLA adjustment they would have received (*i.e.*, member A, who would have received COLA in the amount of \$60, will be allocated a share of the award that is 50% more than member B, who would have received COLA in the amount of \$30); (c) deducting the proportional share of the COLA fee award from each recipient's benefit check in the time period specified in paragraph 7. This allocation method will not recover a share of the fee award from those members who have benefited from the COLA reversal but have died and left no beneficiary receiving continuing benefits by the time of this deduction.

7. PERB will make this onetime deduction from the benefit payments within a reasonable time after the Supreme Court's final award in this case.

8. Payment of an award to Petitioners will be made within 20 days of an order by the Supreme Court becoming final, after any motion for reconsideration or appeal by any of the Petitioners or Respondents, if taken, and will not be delayed by the timing of the deduction from benefit payments.

SO STIPULATED:

Dated: January , 2007

Bennett Hartman Morris & Kaplan LLP

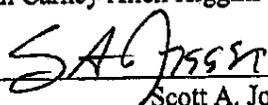
By: _____

Gregory A. Hartman
Attorneys for Strunk Petitioners

Dated: January 5 , 2007

Dunn Carney Allen Higgins & Tongue

By: _____

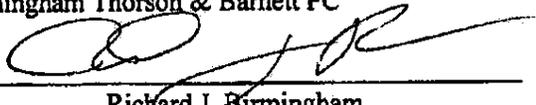

Scott A. Jonsson
Attorneys for Sartain Petitioners

[Signatures continued on next page.]

STIPULATION RE ATTY. FEE ALLOCATION, IN THE MATTER OF THE CONSOLIDATED PERS LITIGATION (*STRUNK*), S50593

Dated: January ^{5th} __, 2007

Birmingham Thorson & Barnett PC

By: 
Richard J. Birmingham
Attorneys for Dahlin Petitioners

Dated: January __, 2007

Swanson Lathen Alexander & McCann PC

By: _____
J. Michael Alexander
Attorneys for Burt Petitioners

Dated: January __, 2007

Stoel Rives LLP

By: _____
Stephen S. Walters
Special Counsel, State of Oregon
Jeremy D. Sacks

Dated: January __, 2007

Harrang Long Gary Rudnick PC

By: _____
William F. Gary
Attorneys for Non-State Respondents

Dated: January __, 2007

Orrick, Herrington & Sutcliffe LLP

By: _____
Leah L. Spero
Attorneys for Respondent PERB

Dated: January __, 2007

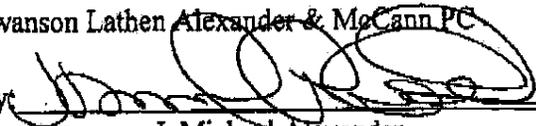
Birmingham Thorson & Barnett PC

By: _____

Richard J. Birmingham
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Dated: January 5, 2007

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Leah L. Spero
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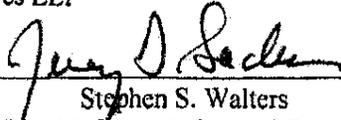
Swanson Lathen Alexander & McCann PC

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J. Michael Alexander
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Jeremy D. Sacks

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By: Karla Aedem OSB 99207 for

William F. Gary
Attorneys for Non-State Respondents

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J. Michael Alexander
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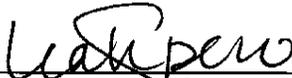
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