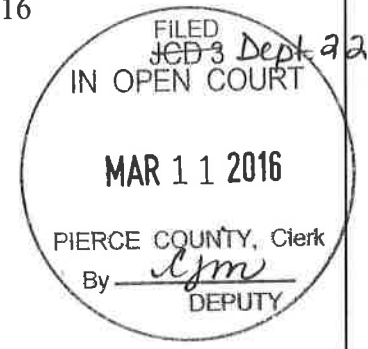


The Honorable John R. Hickman
March 11, 2016
10:30 am
Remann Hall



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

KEVIN DOLAN and a class of similarly
situated individuals,

Plaintiffs,

v.

KING COUNTY, a political subdivision of
the State of Washington,

Defendant,

and

DEPARTMENT OF RETIREMENT
SYSTEMS

Intervenor

NO. 06-2-04611-6

**ORDER REGARDING PAYMENT OF
CLASS COUNSEL ATTORNEY FEE
FROM PENSION CONTRIBUTIONS AND
REPAYMENT OF THE
CONTRIBUTIONS**

MATTER BEFORE THE COURT

The Court approved class counsel’s common fund fee of \$12,554,000 in an order dated August 28, 2015. The Court denied the motion of the Department of Retirement Systems (DRS) to reconsider in an October 28, 2015, order. The October 28th order provided that “class counsel’s fee, \$12,554,000, is paid from funds (contributions) held and owed by King County and is deducted from the common recovery for the class thereby reducing the class’s pension benefits. The reduced benefits create an offset to or reduction from each class member’s pension.” Order of October 28, 2015 ¶7. The August 28, 2015, Order provided that class members have the option of having their pensions reduced to account for the service credit obtained in the *Dolan* case. For

1 class members who choose not to have their pensions reduced to account for the PERS
2 contributions used to pay class counsel's common fund fee, the Order of August 28, 2015
3 provides that they may pay DRS an amount equal to "their pro rata share of the fees with cash
4 now or time payments or by transferring funds from an existing retirement account." Order of
5 August 28, 2015 ¶3.

6 The Orders of August 28, 2015 and October 28, 2015, left open the issue of the
7 appropriate interest rate/discount rate. The discount rate/interest rate is used to determine the
8 amount of each class member's pro rata share of the common fund attorney fee and the amount
9 each class member's pension should be reduced to account for the common fund attorney fee.
10 Class members are those identified in the Court's June 5, 2015 order.

11 The Court held a hearing on November 13, 2015 on the issue of the appropriate
12 discount rate/interest rate and made an oral ruling on that issue on December 11, 2015. After
13 the Court made its oral ruling and prior to entry of an order, Plaintiffs and DRS agreed to a
14 stipulated resolution of all issues regarding the payment of Plaintiffs' attorney fees from
15 pension contributions and the repayment of those contributions by class members to the
16 pension system. The stipulated resolution includes the interest/discount rate, the methodology
17 to allocate properly the attorney fee payments among class members, and the implementation
18 details necessary to ensure that the pensions paid are consistent with the pension contributions
19 made to the plans and consistent with pension system laws and rules.

20 Plaintiff class members (Plaintiffs) and DRS stipulate to the following agreement
21 governing payment of class counsel attorney fees from state pension contributions and payment
22 of those contribution amounts to the Public Employees Retirement System (PERS) by class
23 members.

24 1. The Office of the State Actuary (OSA) will perform calculations to be used to
25 allocate the Court approved class counsel fee of \$12,554,000 among class members for whom
26 King County is making PERS contributions under the Court's orders. The calculation is
27 described in paragraph 2 of this stipulation.

- 1 a. The interest/discount rate used in the calculation will be 7.5% and that rate will
2 not be subject to future adjustment.
- 3 b. The Actuary's calculations will be based on July 31, 2014 data.
- 4 c. OSA will perform the calculations used to allocate attorney fees after the
5 conclusion of the 2016 legislative session, regular session or extraordinary
6 session.¹
- 7 d. The OSA calculations will include class members whose data was not available
8 to OSA for its previous calculation of value. The inclusion of additional class
9 members may reduce the pro rata share of the attorney fees for each individual
10 class member and may affect the reduction percentage to account for the
11 common fund fee. See paragraph 2 below.
- 12 e. The OSA calculations will include class member data submitted through the
13 cooperative efforts of Plaintiffs and King County on or before the last day of the
14 2016 legislative session, including any extraordinary session. If, after the final
15 submission of class member data to OSA and before the sending of notices as
16 provided in paragraph 3 below, the parties learn of additional class members
17 eligible for *Dolan* service credit, DRS and class counsel will estimate a pro rata
18 share of the attorney fee for such newly identified members.

19 2. After OSA calculates the total present value of all *Dolan* class pension liability
20 as of July 31, 2014, and the pension liability for each individual class member as of the same
21 date, OSA will "bring these values forward" to July 31, 2015 using 7.5% as the
22 interest/discount rate. July 31, 2015 is the date used by the Court to determine the amount of
23 class counsel's fee. The values as of July 31, 2015 will be used to determine the pro rata
24 amount of attorney fees attributed to each class member. Previously OSA determined that class

25 _____
26 ¹ The 2016 regular legislative session is expected to end by March 31, 2016. If the session ends by that date, there
27 is no extraordinary session, and OSA has received class member data, OSA expects to have the calculations
completed by May 1, 2016, *i.e.*, in about 30 days after the regular legislative session ends.

1 member pensions should be reduced by 13.65% to account for the common fund fee deducted
2 from the common recovery.² This calculation percentage may change because more class
3 members will be included in the OSA calculation. These calculations are described below.

4 a. DRS shall calculate each class member's pro rata share of the attorney fee by
5 dividing that member's individual Dolan pension liability as of July 31, 2015 by
6 the total Dolan class pension liability as of July 31, 2015 and multiplying the
7 resulting ratio times the court-approved attorney fee of \$12,544,000. The
8 individual attorney fee will be used to determine the payment alternatives to the
9 pension reductions.

10 b. Using an interest/discount rate of 7.5%, OSA shall calculate the percentage
11 amount class member pensions need to be reduced because pension
12 contributions were used to pay the common fund attorney fee.

13 c. Plaintiffs' pensions will be reduced by the percentage amount determined by
14 OSA, but this amount shall apply only to the portion of the pension produced by
15 Dolan service credit. The pension reduction percentage for a class member will
16 be the OSA-determined pension reduction percentage in subsection (b)
17 multiplied by the ratio of Dolan service credit for an individual class member
18 divided by the total PERS service credit of that member.

19 3. Plaintiffs will be notified of the individual attorney fees calculated as provided
20 under paragraph 2 of this stipulation. The notice will be sent by DRS and will be in the form of
21 an "optional invoice". Plaintiff class members will have 90 days from a date stated in the
22 notices to choose a contribution payment option described in subsections below. The
23 instructions in this notice will be agreed by Plaintiffs and DRS, and approved by the Court.

24
25
26 ² Under this agreement, some of the contributions that this Court ordered King County to pay to DRS in its
27 October 28, 2015 order will be paid to class counsel as attorney fees.

- 1 a. As an alternative to pension reduction in paragraph 2, individual class members
2 may choose one of the following options.
- 3 i. A class member or class member's beneficiary may pay DRS an amount of
4 pension contributions equal to the member's attorney fee amount (calculated
5 in paragraph 2(a)) either before expiration of the 90 day notice period or
6 within 60 days after the 90-day notice period. The amount may be paid by
7 check or through any roll-over of funds from an eligible retirement plan
8 allowed by law. If the amount of pension contributions equal to a class
9 member's attorney fee is paid in full before expiration of the 90-day notice
10 period or within 60 days after the 90-day notice period, his or her pension
11 will not be reduced.
- 12 ii. A class member or class member's beneficiary may make a partial payment
13 of the pension contributions equal to the member's attorney fee amount on
14 the same terms as stated in subparagraph (i) above. If a partial payment is
15 made, the member's pension will be reduced only in proportion to the
16 amount of the contributions left unpaid.
- 17 iii. A class member working for a PERS employer on the date this order is
18 effective may arrange an installment payment plan of up to five years for
19 attorney fees through any PERS employer willing to make such an
20 arrangement (King County has agreed to such an arrangement, subject to
21 proper documentation being submitted by the requesting class member).
22 Interest will accrue monthly at the rate of 0.625% per month (7.5% per year)
23 on the unpaid balance. If the installment payments are completed within 5
24 years or less, a member's pension will not be reduced.
- 25 b. If a class member does not make the payments or installment plan arrangements
26 stated in subparagraph (a), the member's pension will be reduced by the
27 percentage calculated pursuant to paragraph 2(b) and (c).

1 4. The following special circumstances require adjustments to provisions in
2 paragraphs 1, 2 and 3 for certain class members.

3 a. Members already receiving pension benefits (“interim retirees” under the
4 Court’s prior orders) who do not choose an optional attorney fee plan under
5 paragraph 3, will have an additional reduction of their future pensions to account
6 for receiving full, unadjusted pensions prior to entry of this order. The
7 adjustment will be calculated using the methodology in WAC 415-02-340.

8 b. If a class member dies while paying contributions under an installment plan, the
9 monthly pension benefit of a beneficiary (if any) will be reduced by a
10 percentage proportional to the member’s unpaid contributions. If a lump sum
11 benefit is paid in lieu of a monthly benefit, the lump sum benefit will be reduced
12 by the amount of the member’s unpaid contributions.

13 c. If a class member defaults in the payment of monthly installment payments or
14 leaves PERS employment before the payment plan is completed, DRS will
15 terminate the installment payment plan. Upon retirement or leaving PERS
16 employment the member’s monthly pension benefit will be reduced by a
17 percentage proportional to the amount of unpaid contributions.

18 d. If a class member retires before completing payments in an installment plan, the
19 member may receive a full pension by paying, before retirement, the balance of
20 contributions owed. If the balance owed is not paid before retirement, the
21 member’s pension will be reduced by a percentage proportional to the unpaid
22 balance.

23 5. DRS and King County have a dispute over whether King County should be
24 required to pay interest on retroactive contributions for the service credit established by the
25 Court’s June 5, 2015 Order. The Court is currently scheduled to hold a hearing regarding that
26 dispute on May 20, 2016. The calculations made by OSA under this Stipulation and Order are
27 not applicable to that dispute. Upon approval of this stipulation by the Court and entry of the

1 Court's order, King County shall pay from the contributions otherwise being held for payment
2 to DRS for Dolan service credit to Plaintiffs' class counsel the amount previously approved by
3 the Court for the common fund fee award, \$12,544,000. King County's payment of that
4 amount to class counsel shall partially satisfy its obligation to make contributions to PERS for
5 service credit established by the Court's June 5, 2015 Order.

6 6. DRS and the plaintiffs agree to fully cooperate to implement the points in this
7 stipulation.

8 FINDINGS

9 From the Court's review of the extensive briefing and evidence presented by the parties
10 in several attorney fee motions preceding the Stipulation, the Court is fully advised about the
11 issues in the Stipulation regarding payment of class counsel attorney fees. The Court approves
12 this Stipulation as a fair and reasonable way to resolve the issues concerning payment of
13 common fund attorney fees from the pension benefits awarded to Plaintiff class members as a
14 result of the litigation, and the issues concerning repayment to PERS of pension contributions
15 used to fund payment of the common fund attorney fees.

16 ORDER

17 THE COURT BEING FULLY ADVISED, it is hereby

18 ORDERED THAT Plaintiff class members and the Department of Retirement Systems
19 shall implement their Stipulation Regarding Payment of Class Counsel Attorney Fees
20 according to the terms of the Stipulation.

21 IT IS FURTHER ORDERED, that King County pay within seven business days of this
22 order the amount of \$12,544,000.00 to Plaintiff class counsel from the contributions being held
23 for payment to the Public Employees' Retirement System for the service credit awarded by this
24 Court's June 5, 2015, order approving resolution of the service credit dispute between Plaintiff
25 class members and King County.

26 IT IS FURTHER ORDERED that the Stipulation and Order are part of the Plan
27 Document for PERS Plan 1, PERS Plan 2, and PERS Plan 3. For each of PERS Plan 1, Plan 2,


1 and Plan 3, the Plan Document is the written materials defining the terms of the plan, consistent
2 with the written materials previously designated by the DEPARTMENT and submitted to the
3 Internal Revenue Service for purposes of plan qualification.

4 All other issues not addressed in this order or prior orders are reserved.

5 Dated this 11 day of March, 2016.

6 
7 _____
8 JOHN R. HICKMAN
9 SUPERIOR COURT JUDGE

9 Presented by:
10 BENDICH STOBAUGH & STRONG, P.C.

11 
12 _____
13 David F. Stobaugh, WSBA #6376
14 Attorneys for Plaintiffs


FILED
JCD-9 Dept. 22
IN OPEN COURT

MAR 11 2016
PIERCE COUNTY, Clerk
By Cjm
DEPUTY

15 APPROVED BY:
16 FOSTER PEPPER PLLC

17 
18 _____
19 Tim Filer, WSBA #16285
20 Attorneys for King County

21 FREIMUND JACKSON & TARDIF, PLLC

22 
23 _____
24 Michael E. Tardif, WSBA # 5833
25 Attorneys for Defendant DRS
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