

Memorandum

TO: MAO

FROM: SPJ

DATE: March 6, 2014

RE: *Kentucky Department of Insurance v. Kentucky School Board Insurance Trust Property and Liability Fund, et al.*
Franklin Circuit Court, Civil Action 13-CI-CI-1282, 13CI-1296, and 13-CI-1297 Consolidated
Summary of March 5, 2014 Court Hearing

The Court held a hearing in the KSBIT assessment proceedings on March 5, 2014. We felt that it was not worth the expense to travel to Frankfort for the hearing, so we decided not to attend to save money for our clients. The Court previously denied our request to attend hearings by telephone. We specifically asked Judge Wingate's law clerk if we could attend the March 5 hearing by phone but received no response.

The March 5 hearing was originally intended to address KSBIT's supplemental memorandum regarding its request for payment of its legal fees from KSBIT's assets. At the February 26, 2014, hearing, Judge Wingate granted us five (5) days to respond to KSBIT's supplemental memo and asked us to schedule the matter for March 5. We filed our response within the authorized time frame. However, we later learned that the Judge already signed an Order, on February 27, partially granting KSBIT's motion. We contacted Judge Wingate's law clerk who apologized and stated they simply forgot that we were granted additional time to file a responsive brief. She informed us that the Judge would consider our brief and would allow us to state our objections at the hearing. However, we were convinced that Judge Wingate would not reconsider his decision and felt that the fees and out-of-pocket expenses incurred by attending the hearing were not justified. Based on our recommendation to forgo attendance, George Wilson on behalf of GRREC concurred. Counsel for the DOI informed me that at the hearing Judge Wingate was apologetic for the speed of the Order's entry but that he felt the need "to keep the train moving."

The only substantive matter discussed at the March 5 hearing was the process for the evidentiary hearing scheduled for March 12-13. The Rehabilitator will present proof of her assessment plans and put on witnesses to explain the plans, including the Loss Portfolio Transfer agreement with KEMI. KSBIT will have the opportunity to cross-examine the Rehabilitator's witnesses and then will present its alternative assessment

plans. The DOI will likewise have the chance to cross-examine KSBIT's witnesses. Counsel for DOI objected to cross-examination of witnesses on the grounds that KSBIT waived any objection to entering rehabilitation. However, the Court ruled that it would allow limited cross-examination of all witnesses.

The Court will hear from any school district representatives that would like to make comments regarding the assessment methodology on the second day of the hearing—March 13.

KSBIT now has updated its assessment plans, which it submitted to the Court at the hearing. I have not yet reviewed these plans.

Bourbon County's motion to intervene in the proceedings was also scheduled for a hearing. However, no one appeared on Bourbon County's behalf. It is unclear where the motion stands or if Bourbon County will seek to participate in the evidentiary hearing.

The motion for admission *pro hac vice* by counsel for TIG Insurance Company was granted. TIG filed a Statement of Position addressing the Loss Portfolio Transfer agreement with KEMI.