

Please include this topic on the agenda for sharing/discussion

From: "White, Terri" <Terri.White@KEDC.org>

Date: July 17, 2014 at 8:33:01 AM EDT

To: KEDC Member Superintendents <KEDCMemberSuperintendents@KEDC.org>

Subject: FW: KSBIT Assessment Litigation - July 15 court hearing

Please see message below at the request of Mrs. Hutchinson:

Begin forwarded message:

From: Sarah Jarboe <sjarboe@elpolaw.com>

Date: July 16, 2014 at 9:46:18 AM EDT

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Cc: "Michael A. Owsley" <mowsley@elpolaw.com>

Subject: KSBIT Assessment Litigation - July 15 court hearing

All,

Many issues were addressed at the Franklin Circuit Court July 15 hearing. Regarding the Property and Liability ("P&L") Fund assessment, the Rehabilitator informed the court that KSBIT miscalculated its deductible on an excess insurance policy as a result of which KSBIT mistakenly recorded approximately \$2 million of receivables on its financial statements. Counsel for KSBIT stated that it would have to look into this matter further. If the Rehabilitator is accurate, the P&L assessment will increase by \$2 million, for a total of \$14 million.

Additionally, the Rehabilitator re-visited the court's adoption of KSBIT's proposed start date of 1995 for the P&L assessment. KSBIT's P&L assessment plan, which the court initially adopted, assessed members that participated in KSBIT in years in which the P&L Fund experienced a net operating loss. According to KSBIT, the fund first experienced a net operating loss in 1995. At the hearing, the Rehabilitator

informed the court that in determining the years in which KSBIT had a net operating loss, KSBIT did not take into account its investment income. When this income is accounted for, KSBIT did not actually experience an operating loss in 1995. KSBIT takes the position that investment income is simply excess income earned on money in KSBIT's bank account and is unrelated to underwriting losses. By excluding this income, KSBIT determined when the P&L Fund suffered losses due to inadequate premiums regardless of whether the fund ultimately experienced a surplus due to investment income. The Rehabilitator and KSBIT will tender new proposed assessment spreadsheets to the court today and the court advised it will enter a ruling on these matters by Thursday, July 17.

According to the DOI, invoices for the Workers' Compensation ("WC") Fund are ready and will likely be sent out by the end of this week. Depending on the court's ruling on the above issues, the DOI hopes to send out invoices for the P&L Fund by the end of next week. The DOI has set the same payment deadline for each fund: **school districts that bond the payments will have until September 30 to do so and school districts that do not bond the payments must pay by August 30.** The DOI stated that the P&L Fund currently has only 90 days or less of operating funds, which is the reason why they have set the early payment deadline. However, we have requested that no payments be due until September 30 and have tendered an order to that effect. We will advise you if the court enters a ruling concerning the payment deadline.

As we have previously relayed, the invoices that you will soon receive for the WC and P&L assessments do not include the \$8 million Surplus Notes or the \$1.3 million of interest that the Kentucky League of Cities ("KLC") has already collected on the notes. These issues are still being litigated in the Franklin Circuit Court. If the court ultimately rules that KLC is entitled to payment of the Surplus Notes, the KSBIT members will have to pay a second assessment for their portion of the \$8 million. However, if the court rules that KLC is not entitled to payment and should not have collected interest on the Surplus Notes, the KSBIT members will not receive a second assessment and should receive a proportionate refund of the \$1.3 million.

At the July 15 hearing, the parties also brought to the court's attention the numerous outstanding motions which were heard on June 11. In particular, the parties addressed the Member Cities' motion to intervene and GRREC's motion to file an intervening complaint in the Surplus Notes action. The judge stated that he would rule on all of the pending motions by Thursday, July 17 but indicated that he thought he had already denied GRREC's motion. Accordingly, it seems likely that GRREC's motion to intervene in the Surplus Notes action will be denied.

The Department of Insurance is still drafting a complaint against KSBIT alleging mismanagement of the insurance trust. We expect the complaint to be filed within the next two weeks.

Let Mike Owsley or me know if you have any questions. We will continue to keep you updated on the KSBIT litigation.

Sarah P. Jarboe

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