

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 17-CI-1348
DIVISION I

JEFFREY C. MAYBERRY, ET AL.

PLAINTIFFS

v.

KKR & CO., L.P., ET AL.

DEFENDANTS

**PLAINTIFFS' AND KENTUCKY RETIREMENT SYSTEMS'
JOINT NOTICE TO THE COURT AND PARTIES**

* * * * *

Plaintiffs Jeffrey C. Mayberry, Hon. Brandy O. Brown, Martha Michelle Miller, Steve Roberts, Teresa Stewart, Jason Lainhart, Don D. Coomer, and Ben Wyman, (“Named Plaintiffs”) and Nominal Defendant Kentucky Retirement Systems (“KRS”), by counsel, having agreed to the following as indicated by the signatures of their respective counsel affixed below, hereby notify the Court and the other parties as follows:

Since this action was filed, Kentucky Retirement Systems (“KRS”) has established an independent special litigation committee of the Board of Trustees to investigate and consider the claims asserted in Named Plaintiffs’ Amended Complaint, and determine what role KRS should take in this litigation, including whether KRS should directly assert the claims advanced in the Amended Complaint. Based upon the work of the special litigation committee, and for the reasons set forth below, KRS has determined that, at this time, KRS: (1) will not pursue the claims asserted by Named Plaintiffs; (2) would not have been in a position to pursue those claims had they been brought to KRS prior to the filing of the Complaint or the Amended Complaint;

and (3) believes that it is in the best interests of KRS for Named Plaintiffs to continue their pursuit of these claims on a derivative basis on KRS's behalf.

Named Plaintiffs agree that the current KRS Trustees have expended diligent and significant efforts to stabilize the KRS funds by restructuring its investments to protect its assets and reduce expenses while adopting more conservative investment policies and more realistic actuarial and investment return assumptions, hiring new advisors and consultants, and undertaking to investigate prior conduct at the Funds including, investigating the merits of the claims made by Named Plaintiffs in this litigation, including specifically whether KRS can undertake the claims made herein and whether the best interests of KRS would instead be served by Named Plaintiffs' pursuit of the claims with their counsel of record.

Based on the investigation by the independent special litigation committee and the information currently available to it, the derivative claims made by Named Plaintiffs appear to have merit and should proceed to discovery under the civil rules. The amount in controversy in the Amended Complaint is substantial and, if recovered, could have a significant impact on the financial well-being of KRS and its member employees and retirees. The nature of the claims, however, is not typical of litigation a corporate board or state agency could easily authorize at this stage or pursue. Litigation of the nature and scope brought by Named Plaintiffs and their counsel is likely to be very expensive and time consuming. Despite the enhancements to, and added expertise of, the current Board of Trustees, it would be extremely onerous for KRS to maintain these claims by itself. KRS believes that there would be significant risk to KRS should it undertake to pursue these, or similar, claims on its own, especially in the form of costs of litigation and devotion of limited KRS time and resources without the certainty of recovery. The

defendants in this action have already shown that they will vigorously defend the claims in a manner that will necessitate substantial resources to contest.

KRS believes that counsel for Named Plaintiffs are highly skilled, having specialized experience in cases of similar scope and magnitude, are highly motivated, and, as a result, are capable of handling litigation of this nature. In the derivative format, Named Plaintiffs and their counsel will bear the primary risk of litigation costs and time necessary to pursue these claims without undue expense to KRS, while providing a substantial potential recovery that would directly benefit KRS.

Likewise, the Named Plaintiffs appear to be serious and respected members of KRS, some with legal experience, and appear to have the best interests of KRS at heart, including recovery of a significant amount of funds for KRS, its member retirees, and future retirees. Named Plaintiffs are members and beneficiaries of one or more KRS pension plans and have been during the time period of alleged wrongdoing as set forth in the First Amended Complaint (“FAC”) filed January 12, 2018. Based on KRS’s observations and the investigation of the independent special litigation committee, KRS believes that Plaintiffs are appropriate and adequate representatives for KRS and they are qualified to prosecute the derivative claims herein on behalf of KRS through their counsel of record.

KRS recognizes that there may be risks to it in the pursuit of these claims, even on a derivative basis, including, but not limited to, the unavoidable costs of litigation, even as a nominal defendant, the costs of counsel for former board members, officers, and employees (which KRS is statutorily obligated to pay), and potential claims by other defendants, although KRS believes any such claims would be unfounded. Despite these risks, KRS is persuaded based upon the information available to it, that the potential rewards of this litigation, in which

billions of dollars are sought on behalf of KRS and its member retirees and state employees, justify pursuit by Named Plaintiffs of their claims. This is especially true when viewed in light of the fact that Named Plaintiffs have capable and experienced counsel who have themselves undertaken much of the time, risks, and costs associated with such litigation.

KRS notes that several Defendants have raised the issue of Named Plaintiffs' standing to pursue their derivative claims to the ultimate benefit of the seriously underfunded KRS pension and insurance obligations, and KRS's members. Based on Named Plaintiffs' vigorous prosecution of this case to date, their retention of highly qualified counsel, and their status as respected members of KRS, as well as KRS's own inability to pursue these claims directly, KRS acknowledges that Named Plaintiffs have standing to maintain this action and are currently acting in the best interests of KRS. KRS has considered the possibility that Named Plaintiffs' action could be dismissed on standing grounds. Although KRS disagrees with that possibility, KRS reserves all rights which might then be available to it, including to step into the shoes of the Named Plaintiffs and directly pursue such claims should the Named Plaintiffs' claims be dismissed on standing grounds and should KRS then determine that it is in its best interests to do so. Should KRS take such action, under established law, KRS and Plaintiffs believe KRS's claims should relate-back to the filing of the Complaint by Named Plaintiffs in this action.

CONCLUSION

Recognizing that Named Plaintiffs have standing to pursue these claims, that KRS is not in a position to directly pursue these claims, and that Named Plaintiffs are represented by capable and experienced counsel who are willing to assume the expenses and risks associated with pursuing the claims in this action on behalf of KRS and its members, KRS declines, at this time, to seek realignment as a plaintiff in this action and agrees that it would have declined to pursue

these claims had it been asked to do so before Plaintiffs filed the Complaint on December 27, 2017 and the Amended Complaint on January 12, 2018 for the reasons stated above. KRS reserves the right to seek realignment as plaintiff if KRS subsequently determines that doing so is in the best interests of KRS, in the event a court determines that Named Plaintiffs lack standing to pursue these claims or dismisses the claims on a ground that is unique to the Named Plaintiffs' status that would not bar KRS from continuing to maintain some or all of the claims made in this action.

Respectfully submitted,

/s/ Christopher E. Schaefer

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CIVIL SUMMONS

Plaintiff, MAYBERRY, JEFFREY C. , ET AL VS. KKR & CO. LLP, , ET AL, Defendant

TO: SARAH BISHOP
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The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ Amy Feldman, Franklin Circuit Clerk

Date: 04/19/2018

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

Not Served because: _____

Date: _____, 20 _____

Served By _____

Title

