

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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DEPUTY

No. 38094-3-II

**COURT OF APPEALS DIVISION TWO
STATE OF WASHINGTON**

JEFFREY PROBST, Respondent, and
VIRÁG HEGYI et al., Appellants and
The Law Firm of BENDICH STOBAUGH & STRONG, Respondent, and
STEPHEN K. STRONG, et al., Respondents

v.

WASHINGTON STATE DEPARTMENT OF RETIREMENT SYSTEMS
Respondent

Appeal from Thurston Superior Court No: 05-2-00131-1

**BRIEF OF APPELLANTS IN REPLY TO THE BRIEF OF
RESPONDENTS JEFF PROBST AND THE PLAINTIFF CLASS**

Virág Hegyi Appellant by her Guardian Attila Hegyi (pro se) and
Attila Hegyi Appellant (pro se)
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Edmonds, WA 98026
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ORIGINAL

FILED 1/11/09 11:18 AM

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1 Statutes

1.1 RCW 41.04.4458

2 Court Rules

2.1 Rules of Appellate Procedure (RAP)

2.1.1 RAP Rule 3.4 1

2.1.2 RAP Rule 10.2(b) .. in Footnote 1 on Page 1 and on1

2.1.3 RAP Rule 10.3(b) 3, 4 and 5

Objections to the December 23, 2008, Brief of Respondents

Class Member Plaintiff Appellants Virág Hegyi (Ms. Hegyi) and Attila Hegyi (Mr. Hegyi) object: (1) That Class Counsel did not comply with the Rules of Appellate Procedure (RAP) Rule 10.2(b) by filing a brief of respondent 38 days after service of the Brief of Appellants; [Although, on December 12, 2008, Class Counsel moved the Court of Appeals requesting “an extension of time to file their responding brief ... until December 23, 2008”, such request was bogus¹ and the Court records do not show that the Court of Appeals granted such bogus request.]

(2) That Class Counsel arbitrarily changed the designation of this Court of Appeals case on the Title page without complying with applicable provisions of RAP Rule 3.4. Appellants Ms. Hegyi and Mr. Hegyi herein incorporate by reference the first two sentences under the first ¶ of a letter dated September 9, 2008, and sent by Stephen K. Strong (Mr. Strong, one of the Class Counsel) to David Ponzoha (Mr. Ponzoha), Court Clerk

¹ The title page and the first paragraph (¶) of said request indicated that the request applied to a single brief of plural respondents; the first sentence of the second ¶ indicated plural briefs of plural respondents; and, finally, the third sentence of the second ¶ indicated two “Respondents’ briefs (Plaintiffs and Defendant DRS).” In addition, the reasons in said request were also bogus because: (i) Respondent DRS did not need an extension of time as they filed and served their brief of respondent within the 30-day period required in RAP Rule 10.2(b); (ii) The Superior Court clerk’s completion of the supplemental designation of Clerk’s papers on December 29, 2008 was irrelevant to the completion of the brief of respondent by Stephen K. Strong et al., and Bendich Stobaugh & Strong P.C. on December 23, 2008, (and such brief made no reference to any particular supplementally designated Clerk’s paper); and (iii) the preparation of any “motion for summary affirmance” by Stephen K. Strong et al., and Bendich Stobaugh & Strong P.C. is irrelevant to the 30 days set in RAP) Rule 10.2(b) for filing a brief of respondent.

Washington Court of Appeals, Division Two. Further, we incorporate by reference sub-¶¶ 7.1 through, and including 7.2.2.2 of Class Member Plaintiff Appellants' September 17, 2008, letter to Mr. Ponzoha. [Class Counsel was in receipt of a copy of such letter on September 18, 2008.] In pertinent part of the second incorporated sentence in the September 9, 2008, letter, Mr. Strong stated that: "The plaintiff, Jeff Probst, and the class he represents are Respondents in this appeal". Under pertinent part of the incorporated sub-¶¶ of the September 17, 2008 letter, Class Member Plaintiff Appellants responded to this quoted statement (Id.) by arguing that, in addition to naming the Defendant in the Trial Court case as a Respondent in their Appeal, it seemed reasonable that Class Counsel and Mr. Probst were Respondents but the class [that Mr. Probst represented] was not a Respondent in the Appeal. Appellants requested Mr. Ponzoha to verify whether that would be proper.

On November 14, 2008, after Mr. Ponzoha was silent in this matter, Appellants filed and served the Brief of Appellants, which reflected Appellants' understanding of the proper title page. In addition to Appellants' reasoning under relevant parts of the incorporated sub-¶¶ of the September 17, 2008, letter, Appellants herein provide further reasons in support of why Class Counsel and Mr. Probst are Respondents but the class is not a Respondent in the Appeal: In ¶¶2, 3 and 8 on CP 39 and CP

40 under the Order section of the said Preliminary Order (CP 36-45), the Superior Court appointed Mr. Probst and Class Counsel to represent the Settlement Class, which class includes the two Class Member Plaintiff Appellants. Mr. Strong apparently has applied double standards by stating that one representative (Mr. Probst) of the Plaintiff Class is a Respondent but the other representatives (Class Counsel) of the Plaintiff Class are not Respondents in this Appeal. If the Plaintiff Class would be a Respondent, it would result in such nonsense as the two Class Member Plaintiff Appellants would become members of a Respondent in their own Appeal. Class Counsel and Mr. Probst have breached their court-ordered duties (§§ 2, 3 and 8 on CP 39 and CP 40 in (CP 36-45)) to represent certain Class members (sub-¶ 2.2.13 in the Brief of Appellants). Class Counsel acted as adversaries toward the Class Member Plaintiff Appellants since said Appellants appeared in this Complaint Class Action. According to the Title page of the Opening Brief of Respondent Washington Department of Retirement Systems (Brief of DRS), the DRS used the same case designation as used on the Title page of the Brief of Appellants.

(3) That the Brief of Respondents was identified as “Brief of Respondents Jeff Probst and the Plaintiff Class” (Brief of Class Counsel), which did not comply with RAP Rule 10.3(b) in pertinent part because it did not answer the Brief of Appellants, in which Class Counsel were Respondents and the

Plaintiff Class was not a Respondent.

(4) That the Brief of Class Counsel did not answer the Brief of Appellants (did not comply with RAP Rule 10.3(b) in pertinent part).

(5) That the Brief of Class Counsel collectively called plaintiff and the settlement class as "Plaintiffs", which term had been already reserved for use in, or referring to, the Complaint Class Action and any different use would hinder the clarity of relevant statements.

1 Reply to the Introduction in the Brief of Respondents Jeff Probst and the Plaintiff Class (Brief of Class Counsel)

The Introduction in the said Brief of Class Counsel did not answer the Introduction of the Brief of Appellants. The Introduction in the Brief of Class Counsel adopted by reference the arguments of the Brief of DRS. In reply, Appellants incorporate/adopt by reference the January 8, 2009, Brief of Appellants in Reply to the Opening Brief of Respondent DRS (Appellants' Reply to DRS Brief).

2 The Brief of Class Counsel answered neither the Assignments of Error nor the Issues [Pertaining to Assignments of Error] in the Brief of Appellants.

The Brief of Class Counsel disobeyed an applicable provision of RAP RULE 10.3(b)² by not answering the Assignments of Error in the Brief

² *"The brief of respondent should ... answer the brief of appellant"*

of Appellants. Because the Brief of Class Counsel did not answer the Issues [Pertaining to Assignments of Error] in the Brief of Appellants, it either disobeyed an applicable provision of RAP RULE 10.3(b)² or acted pertinent to another relevant part of RAP RULE 10.3(b)³.

As a further reply, see ¶2 including all sub-¶¶ of said Appellants' Reply to DRS Brief incorporated by reference in ¶1 (supra).

3 Reply to the Statement of the Case in the Brief of Class Counsel

The Statement of the Case in the Brief of Class Counsel did not answer the Statement of the Case in the Brief of Appellants.

3.1 Reply to the section: '*Parties*':

Until June 30, 2008, Attila Hegyi had not appeared as Guardian for Virág Hegyi in this Court proceeding:

(1) On March 10, 2008, Objectors (Attila Hegyi and Virág Hegyi) jointly filed and served the Objection of Settlement Class Members to Proposed Class Action Settlement Agreement (CP 46-64);

(2) On March 19, 2008, Objectors filed and served the Settlement Class Members Reply to Response to Objection of Proposed Class Action Settlement Agreement⁴;

³ "A statement of the issues ... need not be made if respondent is satisfied with the statement in the brief of appellant."

⁴ Appellants noticed that this pleading they designated/intended to designate as Clerk's Papers in their September 29, 2008 letter to the Clerk of the Thurston County Superior Court was not included in the Clerk's Papers Index enclosed with a letter (dated October

(3) On June 26, 2008, Objectors Plaintiffs Response Brief to Plaintiffs' Supplemental Brief on Settlement Approval (CP 70-79). The assumption of Class Counsel that how and why the two Class Member Plaintiff Appellants identified Class Counsel as Respondent is incorrect. Appellants had no knowledge of whether or not Class Counsel received a common fund fee award out of the settlement of the case Class Counsel referenced as Bowles v. Dept. of Retirement Systems, etc., and Appellants cannot see how the outcome of such dilemma would either qualify or disqualify Class Counsel as respondents in the Appeal filed by two Class Member Plaintiff Appellants, who purposely and properly identified Class Counsel as Respondents (see Objection (2) on Pages 1 through and including 3, supra). Mr. Probst, Ms. Hegyi and Mr. Hegyi are plaintiffs in this Complaint Class Action as Mr. Probst is the named Plaintiff and both Ms. Hegyi and Mr. Hegyi are class member plaintiffs. Mr. Probst and Class Counsels are the representatives of the Settlement Class and Mr. Probst, Ms. Hegyi and Mr. Hegyi are members of the Settlement Class. Based on the terms of the Settlement Agreement, Mr. Probst (the named Plaintiff and both member and representative of the

1, 2008) from the Thurston County Clerk to Attila Hegyi. However, the Reply to Response to Fee Objection (also filed on March 19, 2008) that Appellants did not intend to designate was included in the Clerk's Papers Index. Appellants appended their Reply to Response to Objection to this Reply to the Brief of Class Counsel.

Settlement Class) is in a unique situation because he would receive an award, which is approximately thirty times (30x) larger than his share as a qualified settlement class member; Mr. Hegyi's situation is similar to the other approximately 24,000 Qualified Settlement Class Members who would receive partial monetary relief; Ms. Hegyi's situation is similar to those approximately 52,000 Settlement Class Members who would get nothing; and Class Counsel's situation is unique as their Attorney Fee Award is two-hundred-twenty times (220x) larger than Mr. Probst's award. Based on these numbers, it is reasonable to allege that Ms. Hegyi's situation is more similar to the majority (approximately 68%) of the settlement class members than the unique situation of either Class Counsel or Mr. Probst; and Mr. Hegyi's situation as a Qualified Settlement Class Member is more similar to the minority (approximately 32 %) of the settlement class members than the unique situation of either Mr. Probst (who is also a Qualified Settlement Class Member) or Class Counsel. The Brief of Class Counsel opposes the Brief of two Appellants (who are members of both the Plaintiff Class and the Settlement Class; and whose combined situation is similar to the situation of approximately 100% of the settlement class members) in the name of Mr. Probst and the Plaintiff Class, which is an apparent concealment of their status as

real parties in interest regarding the \$1,650,000.00 Attorney Fee Award they secured for themselves in the Settlement Agreement.

3.2 Reply to the Section: *'The Settlement Class'*:

Appellants object that the first sentence under Section "The Settlement Class" is vague because of two undefined expressions, that is: "this case" and "proposed". The definition of the term "this case" would determine the meaning of the term "Originally" and combined, the terms "this case", "Originally" and "proposed" would determine that which members of which retirement systems and/or plans were included in the proposed class. The logical assumption is that "this case" means the Complaint Class Action (CP 3-8), and Originally, the proposed Class in this Complaint Class Action (CP 3-8) included all former, current, and future members of the state retirement systems with claims for accrued interest under RCW 41.04.445 as per ¶3 on CP 3 and ¶19 on CP 7 in (CP 3-8). This definition included members of much more retirement systems and/or plans than specified under the Section "The Settlement Class" in the Brief of Class Counsel. It is clear from applicable court records filed with the Court of Appeals in this case that, originally, Class Counsel defined a vague and broad plaintiff class in the Complaint Class Action (¶3 on CP 3 and ¶19 on CP 7 in (CP 3-8)). Then, Class Counsel proposed to change this

broad and vague class practically to the one described in the first ¶ under the section “The settlement Class” in the Brief of Class Counsel. Then, Class Counsel (1) Prepared an Order Certifying Class in which Class Counsel reduced the class to consist of all members of PERS who transferred from PERS Plan 2 to PERS Plan 3; (2) Presented such Order to the Superior Court Ex-parte; (3) Obtained the date and signature by the Court on such Order (which made such Order the Order of the Court (CP 21-24) that certified a litigation class (Certified Class). After securing Certification of the Class for trial, Class Counsel did not move for trial. In further reply, see pertinent parts on Pages 2 through and including 5 of Appellants’ Reply to DRS Brief, incorporated by reference in ¶1 (supra).

3.3 Reply to the Section: *‘Facts’*:

Appellants object that the first sentence under Section “Facts” is vague. The Appellants-designated Clerk’s Papers include (CP 3-8), (CP 9-20), (CP 21-24), (CP 25-35) (CP 36-45), etc., which should qualify as underlying facts concerning the merits of this Appeal. It is clear that Appellants appealed both the completeness and correctness of the Superior Court’s findings in (CP 80-93). The Court of Appeals has sufficient food for thought regarding this Appeal. Such Court has the authority to request more information than already submitted. The

second and third sentences in the second ¶ under Section “Facts” are not supported by facts and they contradict pertinent parts of relevant Court records including (CP 3-8). In reply to the first ¶ on Page 4 (the last ¶ under the Section “Statement of the Case”) in the Brief of Class Counsel, see Appellants’ reply under ¶1(g) on Pages 13 and 14 of the said Appellants’ Reply to DRS Brief incorporated by reference in ¶1 (supra).

4 Reply to the Appellate Jurisdiction in the Brief of Class Counsel

As there was no Section “Appellate Jurisdiction” in the Brief of Appellants, the Section “Appellate Jurisdiction” in the Brief of Class Counsel did not answer the Brief of Appellants. Regarding the finality and appealability of the Order (CP 80-93), the language of such Order was so confusing it confused even the Clerk of the Court of Appeals, Division Two: “it appears that the notice was filed prematurely” (in the first ¶ of his August 27, 2008 letter). Attila Hegyi as Guardian for Virág Hegyi did not file the “notice for discretionary review of the superior court’s refusal to appoint an attorney for her at public expense to represent her in the settlement hearing on June 30th” [2008]. Appellants appended a copy of Ms. Hegyi’s request for GR 33 reasonable accommodation to the said Appellants’ Reply to DRS Brief. It is clear from the record that the accommodation was requested not

for June 30th but “until the decision of subject class action becomes final” and Ms. Hegyi’s request did not make such reference that the GR 33 reasonable accommodation would be at public expense. The Court of Appeals received Virág Hegyi’s Notice for Discretionary Review on July 29, 2008. It is clear that Ms. Hegyi requested the “review by the designated appellate court of the June 30, 2008, decision denying adequate reasonable accommodation for the disabled Virág Hegyi and promising, but not providing, such decision in writing”. Ms. Hegyi’s Notice for Discretionary Review appeared to the Court of Appeals as being a request for appointment of counsel and such Court did not make further action pending the determination of Ms. Hegyi’s indigency by the superior Court. The superior Court received Virág Hegyi’s Ex Parte Motion for Findings of Indigency, Ex Parte Affidavit/Declaration of Indigency and a [Proposed] Findings of Indigency and Order to Transmit Findings of Indigency – RAP 15.2(c) on August 8, 2008. The Superior Court has not yet made its decision.

5 Reply to the Argument in the Brief of Class Counsel

The Section “Argument” in the Brief of Class Counsel did not answer the Argument in the Brief of Appellants. Mostly, the statements in the Section “Argument” in the Brief of Class Counsel are vague and not supported by evidence. Appellants did not misstate the standards for

approving a settlement and they did not contend that they should have received full real damages rather than a compromise. Appellants incorporate/adopt by reference sub-¶3.2 on Page 18 in the Brief of Appellants. It is clear that Appellants made an assumption in regard to the general purpose of a class action and they did not contend that they should have received full real damages rather than a compromise in the Settlement Agreement subject to Appellants Appeal. Appellants argued, among many other things, that Class Counsel should have not included the Attorney Fee Award into the Settlement Agreement. It has been apparently a bad-faith tactic of Class Counsel that they use expressions like that Appellants “attack the superior court’s findings of fact” or Appellants “base their appeal heavily on attacks on the superior Court’s findings” in order to build a subconscious negative rapport of the two Appellants in the minds of applicable members of the Court of Appeals. Appellants have not attacked the findings of the Superior Court. Appellants mostly identified inconsistencies in, and/or what was missing from, the findings of the Superior Court; and the identified elements of such inconsistencies/incompleteness should qualify as cited evidence. In reply to Footnote 3 on Page 6, Appellants incorporate by reference Page 8 of the Brief of DRS and they point out that, on such Page 8, the DRS did not allege that the Settlement Agreement was

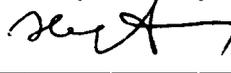
provided to the Superior Court. In further reply, see ¶¶4 & 5 in the said Appellants' Reply to DRS Brief adopted by reference in ¶1 (supra).

6 Reply to the Conclusion in the Brief of Class Counsel

The Section "Conclusion" in the Brief of Class Counsel did not answer the Conclusion in the Brief of Appellants. In further reply, see ¶6 in the said Appellants' Reply to DRS Brief.

7 Dates and Signatures

Dated in Edmonds, Washington this 11th day of January 2009, by:

(Virág Hegyi)  

Virág Hegyi by her Guardian Attila Hegyi and Attila Hegyi (Pro se)

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8 Affidavit of Service

I declare that I have caused a copy of this document (the Brief of Appellants in Reply to the Brief of Respondents Jeff Probst and the Plaintiff Class) to be mailed to each addressee below:

Department Counsel Timothy J. Filer, Esq.

Foster Pepper PLLC

1111 Third Ave. Suite 3400

Seattle, WA 98101-3299

Class Counsel Stephen K. Strong, Esq.

Bendich, Stobaugh & Strong, P.C.

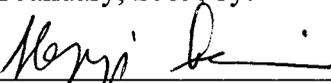
701 Fifth Avenue, Suite 6550

Seattle, WA 98104-7097

STATE OF WASHINGTON
BY _____ DEPUTY
09 JAN 19 2:16:59
COURT OF APPEALS
BY _____

I declare under penalty of perjury under the laws of the state of Washington that the forgoing is believed to be true and correct.

Dated in Edmonds, Washington this 11th day of January, 2009, by:



Marianna E. Hegyi

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APPENDIX

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EXPEDITE
 No hearing set
 Hearing is set
Date: March 21, 2008
Time: 9:00 AM
Judge/Calendar: The Honorable Chris Wickham

CONFIRMED RECEIVED
[Signature]
Time 9:01-6

MAR 19 2008

FOSTER UPPER PLATE

FILED
MAR 19 2008
SUPERIOR COURT
BETTY J GOULD
THURSTON COUNTY COURT

RECEIVED
MAR 19 2008
BENDICH, STUBAUGH & STRONG, P.C.

SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

JEFFREY PROBST and
a class of similarly-situated individuals,
Plaintiffs
vs.
DEPARTMENT OF RETIREMENT SYSTEMS,
Defendant

The Honorable **CHRIS WICKHAM**
Case No.: **05-2-00131-1**
(Consolidated Case)
SETTLEMENT CLASS MEMBER'S
REPLY TO RESPONSE TO OBJECTION
OF PROPOSED CLASS ACTION
SETTLEMENT AGREEMENT

OBJECTION

1 The undersigned Attila Hegyi and Virág Hegyi object that:
1.1 The Response to Objection consistently misspells their family name
1.2 The following frivolous statement (which has no sound basis in fact or law, which is not warranted by good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, which is interposed for improper purpose, which is not warranted on the evidence, and which denies factual contentions) in the Response to Objection implies that all objections in the Objection (*Docket No. 70, Case No. 05-2-00131-1 filed on 03/10/2008*) are vague and frivolous:
"The Heygis [*sic.*] object to every part of the settlement and notice, with the apparent

Case No.: 05-2-00131-1
Reply to Response to Objection - 1 of 18

Attila Hegyi and Virág Hegyi (Pro se)
19620 81 PL W, Edmonds, WA 98026
Phone: 206-388-8801 Fax: 425-775-5747

COPY

1 hope that one of their objections will not be found as frivolous¹. Heygi [*sic.*]
2 Objection, pp. 1-17." (Pg. 14, Lines 16 to 18, Response to Objection, March 14, 2008)

3 1.3 Based on irrelevant information and on opinion, the Response to Objection advises the
4 Court to reject the Objection: "The Heygis [*sic.*] are currently involved in two
5 different lawsuits² against the state of Washington regarding former employment.
6 Their objection in this action thus appears designed as some sort of misguided attack¹
7 on the State or an effort to obtain some sort of monetary gain. The Court should reject
8 the objection." (Pg. 15, Lines 3 to 6, Response to Objection March 14, 2008)

9 **REPLY**

10 2 In an attempt to provide opportunity for the Honorable Court and experienced
11 Counsels to see the Consolidated Case based on facts and reasoning from the point of
12 view of two layperson Class Members, which angle seems to be quite different from
13 the point of view of the negotiating Counsels and the Parties (consisted of Plaintiff and
14 DRS), the layperson's Objection alleged (either expressed or implied) that the

15 _____
16 ¹ APR 5 (e)(3):

17 "I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State
18 of Washington."

18 RULES OF PROFESSIONAL CONDUCT (RPC)

19 PREAMBLE: A LAWYER'S RESPONSIBILITIES, [9] [Washington revision]:

20 "In the nature of law practice, however, conflicting responsibilities are encountered. Virtually
21 all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to
22 the legal system and to the lawyer's own interest in remaining an ethical person while earning a
23 satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such
24 conflicts. Within the framework of these Rules, however, many difficult issues of professional
25 discretion can arise. Such issues must be resolved through the exercise of sensitive professional
26 and moral judgment guided by the basic principles underlying the Rules. These principles
27 include the lawyer's obligation conscientiously and ardently to protect and pursue a client's
28 legitimate interests, within the bounds of the law, while maintaining a professional, courteous
and civil attitude toward all persons involved in the legal system."

25 ² APR 5 (e)(7): "I will abstain from all offensive personalities, and advance no fact prejudicial to
26 the honor or reputation of a party or witness unless required by the justice of the cause with
27 which I am charged."

1 Proposed Settlement is not fair, not adequate and not reasonable to most of the Class
2 Members and to conclude the Consolidated Case/Action.

3 3 The experienced Counsels did not respond to the **merit** of the layperson's Objection.

4 4 The sentence³ on Page 4, between Lines 14 and 16 in the Response does not support
5 the statement in the sub-title: *Class Action Settlements Reached in Arm's-Length*
6 *Negotiations Between Experienced Counsel [sic.] are Presumptively Reasonable.*

7 5 On its face and for its negotiators, the Proposed Settlement can appear as being
8 reasonable, but it is unfair to most members of the class described as: "The class
9 includes all former, current, and future members of the state retirement systems with
10 claims for accrued interest under RCW 41.04.445"⁴ in the Consolidated Case (§ 3,
11 *Pg. 3, Case No. 05-2-00131-1, Complaint, Docket No. 5, filed on 01/20/2005*)

12 6 Jeffrey Probst (Mr. Probst) needed a Class because he could reasonably pursue justice
13 only by bringing his case to the Court as a class action after seeking justice at least
14 since September 2003.

15 7 The legitimate interest of both Mr. Probst and the Class (of similarly situated members
16 of PERS 2 who transferred to PERS 3 during Phase 1) was to submit an unambiguous
17 complaint on behalf of Mr. Probst and the Class (Plaintiffs).

18 _____
19 ³ "The Court evaluates whether settlement was the product of arm's-length negotiations by
20 experienced counsel who understood the case in its complexity and risk involved, and whether
the settlement is "fair, adequate, and reasonable."

21 ⁴ As per RCW 41.04.445(1), This section applies to all members who are:

- 22 (a) Judges under the retirement system established under chapter 2.10, 2.12, or 2.14 RCW;
23 (b) Employees of the state under the retirement system established by chapter 41.32, 41.37,
41.40, or 43.43 RCW;
24 (c) Employees of school districts under the retirement system established by chapter 41.32 or
41.40 RCW, except for substitute teachers as defined by RCW 41.32.010;
25 (d) Employees of educational service districts under the retirement system established by
chapter 41.32 or 41.40 RCW; or
26 (e) Employees of community college districts under the retirement system established by
chapter 41.32 or 41.40 RCW.

1 8 Class Counsels' duty¹ was to represent the legitimate interests of Plaintiffs (Mr. Probst
2 and the Class of PERS 2 members who transferred to PERS 3 during Phase 1).

3 9 Based on ¶¶ 7 and 8 (Id.) and pertinent parts of Case files, the efforts to include others
4 in the Class was against the legitimate interests of both Mr. Probst and the Class.

5 10 Both the Class⁵ and the Claims⁶ in the Complaint are ambiguous terms (including that
6 their descriptions use the words "includes" and "including" instead of "consists of").

7 11 Lacking proper determination, the meaning of the Class became an issue of
8 interpretation, which can result in as narrow meaning as the Class consists of those
9 members of PERS 2 who transferred to PERS 3 during Phase 1 similarly to Mr.
10 Probst, or as broad as the Class consists of all such members of the Washington state
11 retirement systems who had accrued interest on their retirement accounts⁷ similarly to
12 Mr. Probst, and the meaning of the Claims can be interpreted to fit the Class.

13 12 Any interpretation different from the most narrow meaning (the Class that consists of
14 those PERS 2 members who transferred to PERS 3 during Phase 1 similarly to Mr.
15 Probst) would mean not complying with relevant part of the last sentence of PRC
16 Preamble [9]¹, that is: "conscientiously and ardently to protect and pursue a client's
17 legitimate interests, within the bounds of the law"; although, the layperson objectors
18 do not know how the Court finds that who would become members of a class (whether

19
20 ⁵ "The class includes all former, current, and future members of the state retirement systems with
21 claims for accrued interest under RCW 41.04.445 " (*Sent. 2, § 3, Pg. 3, Case No. 05-2-00131-1, Complaint, Docket No. 5, filed on 01/20/2005*)

22 ⁶ "DRS has violated its fiduciary and statutory duties, including RCW 41.04.445 and RCW
23 41.40.795, by failing to calculate and pay accrued interest to Probst and members of the class"
24 (*§ 11, Pg. 3, Complaint Class Action, Case No. 05-2-00131-1, Docket No. 5, filed on 01/20/2005*)

25 ⁷ This unambiguous description is supported by many references in both the Complaint including
26 the second sentences of §§ 2 & 3 on Pg. 1, all §§ under Facts on Pgs. 2 and 3, and § 11 under
27 Claims on Pg. 3, and the Answer including the second sentence of § 2 and including sub-§§ on
28 Pgs. 1 and 2; the first sentence of § 5 on Pg. 2, and the first two sentences of § 7 on Pg.3.

1 on its own initiative or on motion, or on any other way), they understand the meaning
2 of relevant part of CR 23(c)(3)⁸; and event if it would be unfavorable to Mr. Probst
3 and the Class (consisting of those members of PERS 2 who transferred to PERS 3
4 during Phase 1), the only fair expansion of this Class could be to include all members
5 of the Washington state retirement systems who had accrued interest on their
6 retirement accounts, and then, based on CR 23(c)(4)(B)⁹, dividing this expanded class
7 into appropriate subclasses and treat each subclass as a class in order to pursue justice
8 for all individuals possibly affected by the alleged Claims⁶ of the Consolidated Case.
9 **13** For a layperson, it seems reasonable to assume that after the Parties (via experienced
10 Counsels) exchanged information during the period between September 2003, and
11 December 30, 2004, such information and period should have been adequate to
12 comprehend the case and submit a complaint containing unambiguous definitions of
13 “Class” and “Claims” on January 20, 2005, and both a complex system of terms for
14 identifying the Class at different stages of the process: (Class, Initial Class, Proposed
15 Class, Proposed Additional Class, Preliminary Qualified Class, Qualified Class, and
16 Settlement Class) and a lengthy litigation could have been avoided.

17 **14** Based on pertinent part of ¶ 43 in the Proposed Settlement, Qualified Class Members
18 would only include those “who are entitled to relief under this Settlement Agreement”,
19 which means **excluding** about 52,076 (or around 69% of the) proposed Settlement
20 Class members (the group of affected members in PERS 2 and TRS 2) and possibly
21 also excluding the remaining part of PERS 2 and TRS 2 members, and members of
22 PERS 1, TRS 1, LEOFF 1 and 2, SERS 2, JRS and WSPRS 1 and 2.

23
24 ⁸ “The judgment in an action maintained as a class action under subsection (b)(1) or (b)(2),
25 whether or not favorable to the class, shall include and describe those whom the court finds to
be members of the class”

26 ⁹ “a class may be divided into subclasses and each subclass treated as a class, and the provisions
of this rule shall then be construed and applied accordingly.”

1 **15** If the Court approves the Proposed Settlement, that makes any further proceedings on
2 behalf of any excluded member or group uncertain because:

3 **15.1** It ‘...creates substantial uncertainty as to which members of the class will actually be
4 bound by the class judgment as “the judgment in a class action will bind only those
5 members of the class whose interests have been adequately represented by the existing
6 parties to the litigation” *Gonsales v Cassidy*, 474 F 2d 67, 75 (1973), citing *sam Fox*
7 *Publ b Co v United states*, 366 US 683, 691 (1961)’ (pertinent part of Footnote 9, Pg.
8 12, DRS Responding Brief to Motion for Class Certification, *Case No. 05-2-00131-1*,
9 *Docket No. 37*, filed on 05/19/2006)

10 **15.2** “that decision will leave no one to act as the proposed class plaintiff” (Pg. 5, line 12 in
11 *part, Department’s Reply in Support of Motion to Defer Class Certification Pending*
12 *Judicial Review, Docket No. 42, Case No. 05-2-00131-1, filed on 05/26/2006*) because
13 Mr. Probst was the only Plaintiff identified by name in the Complaint on which the
14 Consolidated Action is based, and “Plaintiff agrees that he has accepted the relief
15 provided in this Settlement Agreement as a complete compromise of matters involving
16 disputed issues of law and fact.” (*Sen. 2 ¶ 60, Pg. 11, Proposed Settlement Agreement*)

17 **15.3** Although, “Nothing in the Certification Order, this Settlement Agreement, the
18 Preliminary Approval Order, or the Dismissal Order shall be construed to preclude
19 Class Counsel from seeking to obtain certification in the Consolidated Action of a
20 class or sub-class consisting of some or all of the Proposed Additional Class Members
21 or from seeking to propose the appointment of one more representatives of such class
22 or sub-class” (*Sen. 1, ¶ 67, Pg. 12, Proposed Settlement Agreement*); the Proposed
23 Settlement still leaves Class Counsel without any commitment to take action and seek
24 one or more named individual(s) as the Plaintiff(s) to replace Mr. Probst as the
25 Plaintiff in the Consolidated Action and represent an either class or sub-class of
26

1 uncertain members after the Plaintiff in the Consolidated Action already agreed “that
2 he has accepted the relief provided in this Settlement Agreement as a complete
3 compromise of matters involving disputed issues of law and fact.” (Id.) and, on the
4 other hand, Class Counsel may revisit the Consolidated Action and pursue possibly
5 different terms based on a new interpretation of the Consolidated Action and possibly
6 negotiate terms substantially different from the Terms of the Proposed Settlement
7 Agreement for a yet undefined Non-Settlement Class Members of the Washington
8 state retirement systems; in either case, a large number of Settlement Class Members
9 (mostly members of PERS 2) is being used only as a leverage during negotiations,
10 because they receive nothing.

11 **15.4** For the layperson objectors, it does not make sense to pursue a court case without
12 “matters involving disputed issues of law and fact” (Id.) related to that case, and it
13 makes sense to pursue justice on behalf of either the most narrow or the most broad
14 Class (§ 11 supra) and “to resolve the common claim in a single proceeding binding
15 all class members. *Smith v. Behr*, 113 Wn.App. at 318-19.” (Page 6, last part of
16 Footnote 4, Plaintiff’s Reply on Motion to Certify Class, Docket No. 40, Case No. 05-
17 2-00131-1, filed on 05/26/2006).

18 **16** The undersigned Class Members incorporate by reference their Objection (Docket No.
19 70, Case No. 05-2-00131-1 filed on 03/10/2008)

20 **17** “This case involves accrued interest on accounts of members of TRS Plan 2 and PERS
21 Plan 2 who either left those plans or transferred to TRS Plan 3 and PERS Plan 3. ...
22 The remaining claims by non-settling employees who transferred from TRS Plan 2 to
23 Plan 3 prior to January 20, 2002 are still pending. ... the parties received ... the Heygi
24 [sic.] objection to everything...” (Relevant parts, Relief Requested, Pg. 1, Response to
25 Objection, dated March 14, 2008); we object and reply:

1 17.1 We the undersigned Class Members object that the term “objection to everything” is
2 vague; we refer to ¶¶ 6-14 (supra) and further reply: this Consolidated Case No.: 05-2-
3 00131-1 was initiated by filing a Complaint on behalf of Plaintiff and a class that
4 (arguably) included all of those past, present and future members of the Washington
5 state retirement systems who had accrued interest on their retirement accounts, that is:
6 PERS 1 and 2, TRS 1 and 2, LEOFF 1 and 2, SERS 2, JRS and WSPRS 1 and 2.

7 18 “This “de minimis level of objections” supports a finding that the settlement is fair,
8 reasonable, and adequate ... Heygis [*sic.*] are thus the only class members who object
9 to the settlement terms pertaining to the class” (*Lns. 7-8 and between 13 & 16, Pg. 14,*
10 *Response to Objection, dated March 14, 2008*); we object and reply:

11 18.1 We the undersigned Class Members object the first quoted sentence because the
12 expression: “de minimis level of objections” is vague and the conclusion based on this
13 vague expression is false. As per the Law Dictionary¹⁰, the expression “de minimis
14 level of objections” is neither peculiar to the Law nor has a peculiar meaning in the
15 law. According to <http://latin-phrases.co.uk/dictionary/d/>, the English translation of
16 the Latin phrase: “de minimis” is: “Of the most insignificant things”. Substituting this
17 meaning for the Latin phrase in the expression would result: “Of the most insignificant
18 things level of objections”, which is an improper English expression. If the Response
19 meant that one objection is the most insignificant thing, the undersigned proposed
20 Settlement Class Members object to that meaning. Since the Response made reference
21 to neither “de minimis non curat lex” (the law does not concern itself with trifles)¹⁰
22 nor “de minimis non curat praetor” (a praetor does not care about petty matters)¹⁰, the
23 undersigned Class Members object in advance to the application of either of such
24

25 ¹⁰ A Law Dictionary of Words, Terms, Abbreviations and Phrases Which are Peculiar to the Law
26 and of Those Which Have a Peculiar Meaning in the Law (By James Arthur Ballentine)
<http://books.google.com/books?id=C288AAAIAAJ>

1 doctrines of law when considering the Objection. Further, we fulfilled all
2 requirements under § 10 under Order (*§ 10, Pg. 5, Preliminary Approval Order,*
3 *Docket No. 62, Case No. 05-2-00131-1 filed on 12/14/2007*) by filing our Objection
4 with the Clerk of the Court, setting forth the specific grounds for the objection and
5 attaching any supporting papers, postmarked no later than the expiration of the
6 Objection Period, and mailed with correspondence referring to the Probst Class Action
7 Settlement to the named Counsels. The Preliminary Approval Order did not set any
8 level of objections, which includes any “de minimis level of objections”. Thus, the
9 Honorable Court is obligated to consider and make a decision regarding the **merits** of
10 the Objection and not whether the level of objections are de minimis or not. Even if
11 seemingly insignificant by the number, one man’s (alleged) objection: "E pur si
12 muove" (And yet it moves)¹¹, still could be the reasonable assertion.

13 **18.2** The undersigned Class Members incorporate by reference ¶ 8, including all sub-¶¶ of
14 the Objection (*Docket No. 70, Case No. 05-2-00131-1 filed on 03/10/2008*) in general,
15 and its sub-¶¶ 8.2.3, 8.2.4, 8.2.4.1 and 8.2.42 in particular, and further reply:

16 **18.3** The obvious lack of objections supports a finding that the Proposed Settlement is
17 unfair based on the following facts and reasoning:

18 **18.3.1** The Preliminary Approval Order¹² was not attached to the Settlement Agreement.

19 **18.3.2** Relevant information in the Complaint, other relevant documents (including the two
20

21 ¹¹ http://en.wikipedia.org/wiki/E_pur_si_muove!

22 ¹² "Preliminary Approval Order" means the order, substantially in the form attached to this
23 Settlement Agreement as Exhibit A, that will among other things, if entered by the Court, (a)
24 preliminarily approve the settlement as fair, reasonable and adequate to the Settlement Class,
25 (b) preliminarily certify the Settlement Class solely for settlement purposes and appoint
26 Plaintiff as the representative Settlement Class, (c) approve the mechanisms set forth in this
27 Settlement Agreement for giving notice to the Settlement Class Members, (d) approve the
28 form of the Class Notice and the Claim Form, (e) set the Objection Period and the Claims
Period, and (f) set the date and time for the Final Settlement Hearing..." (*relevant part of ¶ 38
on Pg. 6 in the Proposed Settlement*)

1 referenced Court orders and discovery responses) and E-mail, telephone and/or face-
2 to-face communications, were not provided with the Notice.

3 **18.3.3** The Notice, the Claim Form and the Proposed Settlement did not provide adequate
4 information to make an informed decision whether to object the Proposed Settlement.

5 **18.3.4** Considering the inadequate information provided to layperson Settlement Class
6 Members, and the unfairness of the process, which includes contacting about 76,000
7 proposed Settlement Class Members only **after** securing a Preliminary Approval
8 Order from the Court, which found in part that: "The proposed Settlement Agreement
9 appears to be fair, reasonable, and adequate and has been entered into in good faith.
10 The Settlement is the product of arm's-length, serious, informed, and non-collusive
11 negotiations between counsel for the Settlement Class and the Department. These
12 negotiations took place following discovery and contested litigation on the merits. In
13 reaching the settlement and pursuant to this Court's direction, the Parties engaged in
14 three full-day mediation sessions before an experienced mediator knowledgeable in
15 this field and the settlement arises from the mediator's proposal for resolving the
16 settled claims. Counsel for the Settlement Class and for the Department are
17 knowledgeable and experienced in class action litigation and in the subject matter
18 involved in this case" (§ 3, Pg. 5, *Preliminary Approval Order, Docket No. 62, Case*
19 *No. 05-2-00131-1 filed on 12/14/2007*) but still not attempting to contact all remaining
20 possibly affected members of the Washington state retirement systems (who had
21 accrued interest on their retirement accounts). When comparing all of the above and
22 the relatively small benefits one objector possible can receive in return for the invested
23 time, costs of, and the possible trouble for, preparing an informed Objection, it made
24 an objection apparently a no-brainer for around 76,000 proposed Settlement Class
25 Members, which also can explain that why only **one out of 52,076 excluded**

1 Settlement Class members objected to the proposed terms of the Settlement (and only
2 by joining to the objection of another) which, altogether, cannot support a finding that
3 the settlement is fair, reasonable and adequate.

4 **18.4** In reference to the first two sentences of the quoted finding (Id.), for a layperson, it is
5 not clear that how (and based on what authority) the Attorneys for Plaintiff and the
6 Class of similarly situated individuals, [which] either “includes all former, current and
7 future members of the state retirement systems with claims for accrued interest under
8 RCW 41.04.445” (*Title in part, and Sen. 2 in part, § 3, Pg. 1, Complaint Class Action,*
9 *Docket No. 5, Case No. 05-2-00131-1 filed on 01/20/2005*) or “consisting of all
10 members of PERS who transferred from Plan 2 to Plan 3” (*Sen. 1 in part, § 10, Pg. 3,*
11 *Order Certifying Class, Docket No. 45, Case No. 05-2-00131-1 filed on 06/30/2006*)
12 became the Counsel for the Settlement Class (*§ 1, Pg. 5, Preliminary Approval Order,*
13 *Docket No. 62, Case No. 05-2-00131-1 filed on 12/14/2007*) and negotiate and then
14 execute an agreement dated November 30, 2007, on behalf of such **unauthorized**
15 proposed Settlement Class **before** filing the Plaintiffs’ Motion for Preliminary
16 Approval of Settlement Agreement (*Docket No. 59, Case No. 05-2-00131-1 filed on*
17 *12/07/2007*) and **before** the Preliminary Approval Order (*Docket No. 62, Case No. 05-*
18 *2-00131-1 filed on 12/14/2007*) conditionally certified the Settlement Class and
19 appointed both the representative of the proposed Settlement Class and Class Counsel.
20 As objectors stated in their Objection: Both the Proposed Settlement and the
21 Preliminary Order apparently “put the carriage before the horse” (*§ 7, Pg. 5, Docket*
22 *No. 70, Case No. 05-2-00131-1 filed on 03/10/2008*). In pertinent parts, the Order
23 Certifying Class clearly ordered: “Others suggested by plaintiff may be included in the
24 class **after** further briefing and **further order of the Court.**” (*Sen. 3, § 10, Pg. 3,*
25 *Order Certifying Class, Docket No. 45, Case No. 05-2-00131-1 filed on 06/30/2006*)
26

1 19 “Most points raised in the Heygi [*sic.*] objection are discussed above under the factors
2 set forth in Pickett.” (*Lns. 17-19, Pg. 14, Response to Objection, March 14, 2008*):

3 19.1 We the undersigned Class Members object this one-sentence response to 17 pages of
4 our objections because this response is both vague and inadequate.

5 20 “The Heygis [*sic.*] also make numerous additional points that lack any basis in fact or
6 law. For example, the Heygis [*sic.*] complain that members in other retirement plans
7 such as LEOFF, JRS, and SERS, are not included in the class (Heygi [*sic.*] Objection,
8 p. 4), when they were never part of the case”; (*Lns. 19-23, Pg. 14, Response to
9 Objection, dated March 14, 2008*); in object and reply:

10 20.1 We object the first sentence because it is vague and it lacks any basis in fact or law.
11 We object the second sentence because the term “class” is vague and because we did
12 not use the expression “are not included in the class” or “not included in the class” in
13 our Objection. As a further reply, we refer to sub-¶ 17.1 (*supra*).

14 21 “The Heygis [*sic.*] also complain Probst's claims are not typical of the settlement class
15 claims and subclasses are supposedly warranted (*id.*, pp. 6-7), when the class members
16 all share the exact same claim and the settlement agreement treats their losses the
17 same.” (*Lns. 22-25, Pg. 14, Response to Objection*); we object and reply:

18 21.1 We object the quoted sentence. It is vague and its first half is an incorrect rewording
19 of sub-¶¶7.2.2.1.2 on Pg. 6 and 7.4 on Pg. 7 (parts of our structured analysis proving
20 ¶7 (Pg. 5) that is: Both the Proposed settlement and the Preliminary Order apparently
21 “put the carriage before the horse”). Without waiving objection, we reply as we can:

22 21.2 We incorporate by reference sub-¶ 7.2.2.1.2 on Pg. 6 of our Objection; in addition,
23 only Mr. Probst (and maybe a few class members) knew that they had a cause of
24 action before receiving the Class Action Notice (about six week after the execution
25 date of the Class Action Settlement agreement):

1 **21.3** We incorporate by reference sub-¶ 7. 4 on Pg. 7 of our Objection; in addition, we refer
2 to our reply under sub-¶18.4 (supra) implying that before the date of the Preliminary
3 Approval Order, the Attorneys for Plaintiff and the Class were authorized to execute a
4 proposed Settlement Agreement negotiated only on behalf of those PERS 2 members
5 who transferred to PERS 3.

6 **21.3.1** The composition of losses are different for proposed Settlement Class Members in the
7 following groups: who withdrew their Accumulated Contributions from Plan 2 or
8 transferred their Accumulated Contributions to Plan 3, who transferred their
9 Accumulated Contributions during the initial transfer window or after, who transferred
10 in Period 1 or Period 2 (sub-¶21.3.3 infra); and the composition of Mr. Probst's losses
11 are typical to the loss-composition of those PERS 2 members who transferred their
12 Accumulated Contributions to Plan 3 in Phase 1 (we do not have adequate information
13 about the transfer conditions for TRS).

14 **21.3.2** The claim of Mr. Probst and a Class of all former, current, and future members of the
15 Washington state retirement systems who had accrued interest on their retirement
16 accounts is the same, that is: the DRS has violated its fiduciary and statutory duties by
17 failing to calculate and pay accrued interest to Mr. Probst and members of the class.

18 **21.3.3** The Proposed Settlement (by contracting the class as described Id., and expanding the
19 class that was certified) created a Settlement Class that consists of all PERS 2 and
20 TRS 2 members who actually either withdrew their Accumulated Contributions from
21 their retirement accounts or transferred their Accumulated Contributions to their PERS
22 3 or TRS 3 retirement accounts. Those members **who transferred** their Accumulated
23 Contributions to PERS 3 **have claims** (related to calculating either the 110% “match”
24 if transferred during Phase 1 or the 111% “match” if transferred during Phase 2) **in**
25 **addition** to claims of those members who withdrew their Accumulated Contributions.
26

1 21.3.4 We object that “the settlement agreement treats their [*class members*’] losses the
2 same” because it is both vague and misleading; we attempt to reply as we can:

3 21.3.5 On the one hand, the treatment is the same: the [proposed] Settlement Agreement
4 neither recognizes nor treats the losses of any Settlement Class Member.

5 21.3.6 On the other hand, the treatment of Settlement Class Members is not the same because
6 the majority would get nothing while the minority would get partial monetary relief.

7 22 “The Heygis [*sic.*] also argue that statement in the Notice that "Your rights are
8 governed by the Settlement Agreement" is "incomplete" and "misleading" because the
9 "Settlement Class Members’ rights might be governed by the U.S. Constitution,
10 Federal and State Laws, State and Court Rules" *Id.*, pp. 2-3. The Heygis [*sic.*] are
11 currently involved in two different lawsuits against the State of Washington regarding
12 former employment. Their objection in this action thus appears designed as some sort
13 of misguided attack on the State or an effort to obtain some sort of monetary gain. The
14 Court should reject the objection.” (*Ln. 24, Pg. 14 – Ln. 6, Pg. 15, Response to*
15 *Objection, dated March 14, 2008*); without waiving objection (1.3 *supra*), we reply:

16 22.1 We refer to sub-¶17.1 (*supra*) and contend that only a malicious mind can imply a
17 non-existing connection between the first sentence² and the other three sentences¹.

18 22.2 We have neither designed nor executed any attack on the State.

19 22.3 We do not design anything misguided.

20 22.4 We are seeking justice, which includes receiving adequate monetary relief:

21 22.5 We are not the ones seeking monetary gain in connection with this class action.

22 22.5.1 Approximated number of Settlement Class Members: 76,000

23 22.5.2 Gets nothing: 52,077 (69%)

24 22.5.3 Gets partial monetary relief: 23,923 (31%)

25 22.5.4 Members’ Approximated Total Direct Net Loss: \$ 11,700,000.00

1	22.5.5	Proposed Amount of Net Settlement Proceeds:	\$ 3,842,500.00	(33%)
2	22.5.6	Average Net Recovery of Settlement Class Members:	\$ 50.56	
3	22.5.7	Claim Floor is set at:	\$ 15.00	(30%)
4	22.5.8	Attorney Fee Award is set at:	\$ 1,650,000.00	(30%)

5 **22.6** In reference to ¶3 on Pg. 9 of the Response to Objection, the reason (and the examples
6 listed to prove such reason) of setting a \$15.00 Claim Floor is illogical. Financial
7 institutions can make good profit by administering such monetary funds that are part
8 of interest they should have paid but have not paid for several years. In reference to
9 the examples, there are approximately 63,470 Settlement Class Members who are
10 active members and their recovery would be deposited directly into their retirement
11 accounts. In case of the approximately 12,530 non-active members, those who
12 transferred to Plan 3 and those Plan 2 members who partially withdrew their
13 retirement funds still have retirement accounts and the recovery could be deposited
14 directly into such accounts. The issue of writing checks relates to only a fraction of
15 those Settlement Class Members who fully withdrew their retirement funds. This
16 minimal need for writing checks cannot support a Claim Floor set at the 30% level of
17 the average recovery.

18 **22.7** In reference to the incomplete statement under ¶14 on Pg. 16 of our Objection, we
19 clarify that we meant to object both the amount of the Attorney Fee and the Class
20 Representative Awards and that these awards were included in the negotiated
21 settlement amount. We meant to **increase the Class Representative Award**, to
22 **decrease the Attorney Fee Award**, and that both of these awards be paid by the DRS
23 **in addition to** any negotiated settlement amount. The first part of the first sentence
24 under ¶ 92 of the Proposed Settlement Agreement: "Class Counsel contend that
25 Plaintiff contributed to the creation of a common fund in this case by bringing the
26

1 claim to the attention of counsel” sounds like the Class Representative Award is a
2 finding fee for bringing business for Class Counsel, in which case, any Class
3 Representative Award should have been taken out from Class Counsel’s Award and
4 not the negotiated settlement amount.

5 **22.8** In reference to our proposal of **increasing** the Class Representative Award (Id.), and
6 ¶4 on Pg. 4 of the Response to Objection arguing that a much lesser than the proposed
7 amount (after making the math) is reasonable it cannot be shown that “the lawyer's
8 obligation conscientiously and ardently to protect and pursue a client's legitimate
9 interests, within the bounds of the law” was upheld in light of pertinent part of the last
10 sentence of Footnote 1 (supra).

11 **CONCLUSION**

12 **23** The **Proposed** Settlement Agreement is different neither in form nor in content from
13 the Settlement Agreement, and the Preliminary Approval Order uses many references
14 and language applicable to an Approved Settlement Agreement, which makes it
15 extremely difficult for a layperson to evaluate, reference, or object the proposed terms
16 of the Proposed Settlement Agreement.

17 **24** Apparently, there is a conceptual difference between Class Counsel and the
18 undersigned class members because Class Counsel evaluates every aspect of the
19 Objection from the point of view of the Settlement Agreement (which includes the
20 Attorney Fee Award) while the objecting class members object the Proposed
21 Settlement Agreement from the point of views of the Settlement Class and the Class of
22 the Consolidated Action, from which angles, the Settlement Agreement is not fair, not
23 adequate and not reasonable to either conclude the Consolidated Action nor from the
24 point of view of most Settlement Class Members.

25 ///

1 25 Because the negotiating parties involved the 76,000 of Settlement Class Members into
2 this case only after agreeing on the terms of, and executing, the Settlement Agreement,
3 and still have not involved Non-Settlement Class Members, the Plaintiffs (we) never
4 had an ownership over their (our) own case.

5 26 Because of the last sentence of ¶104 in such Agreement (Id.): “The Court is not
6 authorized to modify the terms of the negotiated settlement“, the only way for
7 Plaintiffs (us) to regain ownership over their (our) own case is to:

8 26.1 Reject the agreement as a whole;

9 26.2 Form a committee of capable members representing interest groups in each such Plan
10 of the Washington state retirement systems that earns interest on member accounts;

11 26.3 Direct the Counsels for Plaintiffs to submit appropriate Motion(s) to the Court to
12 involve Union co-counsels on behalf of each class whose members pay Union fees;

13 26.4 Support the efforts of Plaintiff and this representative body advised by their Counsels
14 and Union co-counsels to reach consensus on Class(es) and Claims and to provide the
15 results and their expectations of handling the case, including negotiation, to Counsels;

16 26.5 Direct the Counsels for Plaintiffs to submit appropriate Motion(s) to the Court to
17 certify the agreed Class(es);

18 26.6 Direct the Counsels for both Defendants and Plaintiffs to re-evaluate the case and set
19 up new negotiations utilizing the committee’s input;

20 26.7 Allow the participation of one representative from each agreed class (in addition to
21 Mr. Probst) in these negotiations to ensure that different groups (if applicable)
22 negotiate equitable terms on equitable grounds

23 DECLARATION OF SERVICE

24 We declare that we have caused to hand-deliver a copy of this Reply to Response to Objection to
25 each of the addresses below:

26
27 Case No.: 05-2-00131-1
28 Reply to Response to Objection - 17 of 18

Attila Hegyi and Virág Hegyi (Pro se)
19620 81 PL W, Edmonds, WA 98026
Phone: 206-388-8801 Fax: 425-775-5747

1 **Clerk of the Court** **Department Counsel** **Class Counsel**
2 Thurston Co. Sup. Court Tim J. Filler, Esq. Stephen K. Strong, Esq.
3 2000 Lakeridge Drive SW Foster Pepper PLLC Bendich, Stobaugh & Strong, P.C
4 Olympia, WA 98502-6045 1111 Third Ave. Suite 3400 900 Fourth Ave. Suite 3800
5 Seattle, WA 98101-3299 Seattle, WA 98164
6

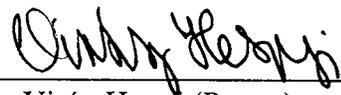
7 We declare under penalty of perjury under the laws of the state of Washington that the forgoing
8 is believed to be true and correct.

9 Dated: on 03/19/2008 in Edmonds, WA

By: 

Attila Hegyi (Pro se)

11 Dated: on 03/19/2008 in Edmonds, WA

By: 

Virág Hegyi (Pro se)