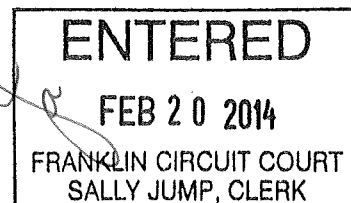


COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II

CONSOLIDATED CIVIL ACTION No. 13-CI-01282



**SHARON P. CLARK, in her capacity as  
COMMISSIONER  
KENTUCKY DEPARTMENT OF INSURANCE**

**PETITIONER**

**V.**

**KENTUCKY SCHOOL BOARD INSURANCE  
TRUST PROPERTY AND LIABILITY FUND, et al.**

**RESPONDENTS**

**ORDER**

This matter is before the Court upon Petitioner's *Motion to Bifurcate* and Respondent KSBIT's *Motion to Clarify Standing and to Authorize Payment of Legal Fees*. The case was called before the Court during its regular civil motion hour on Monday, February 10, 2014. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby **GRANTS** Petitioner's *Motion to Bifurcate*, in part. The declaratory action on the question of the liability of the KSBIT Funds to repay the Kentucky Surplus Notes shall be **BIFURCATED** and determined separately from the hearing on the methodology and the start date of the assessment. While the Court grants the *Motion* to the extent that the legal issues shall be determined separately, the Court **DENIES** Petitioner's *Motion* to the extent Petitioner seeks a briefing schedule on the Surplus Notes liability issue. The Court believes a briefing schedule is premature at this time.

With respect to Respondent's *Motion to Clarify Standing and to Authorize Payment of Legal Fees*, the *Motion* is hereby **GRANTED IN PART AND DENIED IN PART**. The Court **GRANTS** Respondent's *Motion* to the extent Respondent requests clarification on the issue of its standing. Respondent has standing through its trustees to be involved in the rehabilitation process and propose alternative methodologies for rehabilitating the fund. KSBIT, through its trustees, has standing to remain in this action because KSBIT has a "present or substantial interest" in the subject matter of the case. *See Plaza B.V. v. Stephens*, 913 S.W.2d 319, 322 (Ky. 1996). The Court is afforded broad discretion in presiding over a rehabilitation proceeding, and the Court in this instance believes that it would be prudent to have additional rehabilitation plans and methodologies. For these reasons, the Court **FINDS** that KSBIT, through its trustees, has standing to be involved in the rehabilitation process and propose alternative methodologies for rehabilitating the fund.

KSBIT's second request for clarification relates to legal fees being paid from the KSBIT Funds. The Court **DENIES** Respondent's *Motion*, and **FINDS** that KSBIT's legal fees cannot be paid from the KSBIT Estate. In denying this portion of Respondent's *Motion*, the Court notes that KSBIT's attorneys also represent KLC and KLCIS. Since KSBIT did not object to entering rehabilitation at the very first meeting of the parties before the Court, the Court believes that any legal fees KSBIT has incurred as a result of continued involvement in the case can fairly be attributed to protecting the interests of KLC and KLCIS in the apparent creditor-debtor relationship those entities have with KSBIT. Any fees expended in KSBIT's name seeking to secure repayment of

loans made to KSBIT by KLC and KLCIS are properly attributable to KLC and KLCIS and not to KSBIT. As such, those entities should bear the cost of representation.

SO ORDERED, this 20<sup>th</sup> day of February, 2014.

**Signature on file with  
original document**

\_\_\_\_\_  
**THOMAS D. WINGATE**  
**Judge, Franklin Circuit Court**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, this 20 day of February, 2014, to the following:

**Hon. Peter F. Ervin**

**Hon. La Tasha Buckner**

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**Signature on file with  
original document**

✓ ~~Sally Jump, Franklin County Circuit Court Clerk~~