

C. 11. Securities Litigation Guidelines

Securities litigation has become increasingly prevalent among public pension plans. The ERS is cognizant that securities litigation can be a distraction to the ERS Board of Trustees, and the ERS staff, and a tax on the ERS's limited resources. In addition, because of the diversity of the ERS's investment portfolio, and the ERS's investment policy guidelines, it is likely that other institutional investors will have a larger financial interest in the relief sought in securities class action lawsuits and would therefore be more appropriate lead or co-lead plaintiffs than the ERS. As such, the ERS generally does not seek or accept lead or co-lead plaintiff status in securities class action lawsuits, but works diligently with the Plan's custodian to ensure that the ERS collects all that it is entitled to as the result of any settlements or judgments in such lawsuits.

Custodian

The ERS utilizes the services of its custodian to monitor securities class action lawsuits with respect to investments held by the ERS and to manage the timely filing of proofs of claim in such lawsuits. In this regard, the ERS has adopted the following process:

1. The custodian will have a team that is dedicated to monitoring class action lawsuits.
2. The team creates and manages a database of all class action lawsuits which is accessed by ERS service teams.
3. The ERS service team downloads class action notices and uses a tracking system based on CUSIP. The custodian has access to this information because it handles custody for all of the assets of the ERS.
4. If it is determined that the ERS held a security during the defined class period – according to the class action notice, the custodian will file a claim on behalf of the ERS as a member of the class. (Standing Instructions)
5. The custodian will not file for the ERS to become a lead plaintiff unless specifically instructed to do so.
6. The custodian will obtain a claim number and track the class action through to settlement.
7. In the event that a claim is rejected by the claims administrator, the custodian shall promptly notify the appropriate investment manager(s), and together they will identify the best course of action to remedy the reason(s) for rejection, if possible.
8. The custodian will prepare and provide the ERS with an Excel spreadsheet report listing class action filings and settlements that the ERS is involved in.

Monitoring Counsel

The ERS recognizes that there are situations when it could benefit from active participation in a securities class action lawsuit or by taking some other action in pursuit of a securities claim. The State Attorney General is therefore authorized to retain up to four law firms to: monitor the ERS's portfolio; identify, analyze and evaluate possible ERS securities claims; provide information as to new or pending securities lawsuits and settlements; and provide advice and recommendations as to whether the ERS should seek active participation in a securities class action lawsuit, opt-out of a securities class action lawsuit, file or participate in a nonclass action lawsuit or claim, or take some other action regarding a possible ERS securities claim. The law firm or firms retained for this purpose ("monitoring counsel") shall perform their services free of charge. ERS shall participate in the selection of monitoring counsel.

ERS will provide monitoring counsel with direct access to the ERS's custodian electronic transaction database. Recommendations by monitoring counsel shall be evaluated by the State Attorney General, who shall be the primary contact with monitoring counsel.

Monitoring counsel shall report to the State Attorney General all claims or potential claims. Monitoring counsel shall provide their recommendation as to the appropriate action by the ERS with respect to any claims or potential claims with recoverable losses (as defined by prevailing law addressing recoverable losses) of \$5,000,000 or more. When evaluating a recommendation from monitoring counsel that the ERS become actively involved in securities litigation, the Attorney General and the Executive Director may consider the following factors:

1. The size of the claim and the likely degree of recovery versus the time and costs involved in pursuing the matter actively.
2. Staffing constraints that might make it difficult to effectively pursue the case actively (i.e., as a lead plaintiff or through an independent lawsuit).
3. Legal analysis of the merits of the case.
4. The availability of assets from which to collect a significant recovery.
5. Any unique issues or defenses to which the ERS might be subject in the particular case.
6. The effectiveness and availability of potential witnesses.
7. Any information regarding the claim from the applicable Investment Managers including their ability to respond to requested discovery.
8. The effectiveness of potential alternatives for recovering the value of the claim, such as corporate governance actions or less costly methods of monitoring the litigation.
9. Whether the active involvement of the ERS could add value to the potential resolution or management of the case.
10. Whether any other institutional investors are in the class, and whether they are likely to become actively involved.
11. The duties, obligations and liabilities to which the ERS might be subject to in pursuing the matter actively.
12. The availability of insurance and/or indemnity for obligations and liabilities the ERS might be subject to in pursuing the matter actively.

The State Attorney General will consult the Executive Director regarding monitoring counsel's recommendation that the ERS become actively involved in litigation to pursue recovery of a claim or potential claim. If the Executive Director recommends that the ERS become actively involved in litigation to pursue recovery of a claim or potential claim with recoverable losses of \$5,000,000 or more, then the Executive Director will present his/her recommendation of a proposed course of action to the Board of Trustees for approval. If the Executive Director determines that it would be in the best interest of the ERS to become actively involved in litigation to pursue recovery of a claim or potential claim with recoverable losses of less than \$5,000,000, then the Executive Director is authorized to take reasonable steps necessary to effectuate the ERS's active involvement.

The ERS shall participate in the selection of counsel to represent the ERS in any litigation instituted to pursue recovery of a claim or potential claim.