From: Kai Jones [mailto:jonesk@bennetthartman.com] On Behalf Of Greg Hartman Sent: Tuesday, May 27, 2008 11:34 AM Subject: Arken; Our File 5415-260

Today, we received the attached decision from Judge Kantor of the Multnomah County Circuit in the Arken PERS window retiree case. This decision is intended to clarify the original ruling on summary judgment which was issued last year on June 20, 2007 (copy also attached).

As you will recall, in last year's decision, Judge Kantor found in favor of both Arken and Robinson petitioners on the grounds that Section 14b of the 2003 Legislation prevented PERS from recouping any alleged overpayments from PERS window retirees. On behalf of Arken petitioners, we asked Judge Kantor to clarify this decision because we did not raise Section 14b as a basis for summary judgment in the Arken case and because Judge Kantor failed to rule altogether on Arken petitioners' first claim for relief alleging breach of contract and promissory estoppel in light of the Oregon Supreme Court's COLA decision in Strunk.

In today''s decision, Judge Kantor has ruled against Arken petitioners on that breach of contract and promissory estoppel first claim for relief. However, his initial decision protecting all window retirees under the Section 14b reasoning still stands. We are still analyzing the opinion, but based on our initial review, it appears that Judge Kantor found that the Supreme Court''s decision in Strunk did not rule that the 2003 Legislature created a contractual right to the 20 percent earnings. Therefore, the breach of contract claim will have to be decided by the appellate courts. While we are disappointed by the decision, we want to remind you all that we have always expected this case to be decided ultimately by the Oregon Supreme Court.

We will update you once we have completed a more thorough review of Judge Kantor's decision.

Kai Jones, Legal Secretary Bennett, Hartman, Morris & Kaplan, LP 111 SW 5th #1650, Portland, OR 97204 503-227-4600