

**EXPLANATION OF SETTLEMENT IN *DOLAN v. KING COUNTY* TO BE
SUBMITTED BY THE EXECUTIVE TO THE KING COUNTY COUNCIL
FOR ITS APPROVAL**

Summary of Relief Obtained in this Settlement

Under this Settlement, Class Members obtain retroactive PERS service credit for work over a 34-year period, *i.e.* from January 1, 1978 up to April 1, 2012. King County will pay all the omitted PERS contributions, about \$31 million.

King County will also recognize class members as county employees with full employee benefits for their positions on July 1, 2013. These benefits include King County health insurance, as well as other King County employee benefits.

How King County accomplishes this recognition, and how it organizes public defense, are up to King County and are not part of this settlement. King County may change its public defense structure or organizations, as it determines, after input from stakeholders, e.g. it may retain its multi public defense agencies or create a new multi unit organization or create a Public Defender District under state law, RCW Chp. 36.26

The only amount that the Class Members pay under the Settlement is their pro rata share of the attorney fees, to be deducted from eventual retirement checks. The percentage to be deducted from retirement checks in the future is estimated to be about 9.2%, as explained below. The common fund attorney fee is based on a percentage of the estimated \$130 million present value of the pensions obtained. The common fund is based on the PERS service obtained through this litigation to date, not on future service or on other PERS service that class members may have acquired outside of the *Dolan* litigation. Because most Class Members will have PERS service in the future or had PERS service in the past that was not obtained as a part of the *Dolan* litigation, most Class Members will have a lower percentage deducted.

The Class Included The Dolan Class Action

The Class is:

All W-2 employees of the King County public defense agencies and any former or predecessor King County public defense agencies who work or who have worked for one of the King County public defense agencies within three years of the filing of this lawsuit;

and

All W-2 employees of the King County public defense agencies and any former or predecessor King County public defense agencies who have not worked for one of the King County public defense agencies within three years of the filing of this lawsuit, but who work or have worked in a PERS-eligible position within three years of the filing of this lawsuit.

The Class does not include King County public defense employees who were never in a PERS eligible position, *e.g.* student interns.

The lawsuit was filed on January 24, 2006 and accordingly the period covered by the class definition is January 24, 2003 to July 1, 2013, when King County will recognize Class Members who are then employed by King County public defense agencies as King County employees with full employment benefits for their position. This time period is the "Class Period."

There are four current King County public defense agencies: The Defender Association (TDA); Associated Counsel for the Accused (ACA); Society of Counsel Representing Accused Persons (SCRAP); and Northwest Defender's Association (NDA). There is one former King County public defense agency, Eastside Defender Association (EDA). Collectively these agencies are the "King County public defense agencies."

The Class Is Divided Into Groups For Relief

For purposes of relief, the Class consists of five groups, listed on five separate exhibits to the Settlement Agreement.

Group one consists of those Class Members who were King County public defense employees as of April 1, 2012 or at any time thereafter until July 1, 2013.

Group two consists of Class Members who were King County public defense employees at any time during the Class Period explained above, but were not currently employed as King County public defense employees on April 1, 2012 or thereafter until July 1, 2013, and who have sixty or more months of service as a King County public defense employee.

Group three consists of Class Members who before the Class Period were former King County public defense employees and who were active members of PERS sometime during the Class Period. This group is described in the second paragraph of the class definition quoted above.

Group four consists of Class Members who were King County public defense employees at any time during the Class Period, but were not currently employed as King County public defense employees as of April 1, 2012 and were employed as active PERS members as of April 1, 2012, and whose PERS service at a King County public defense agency totaled less than sixty months, but when combined with PERS service credit earned in another PERS-eligible position is equal to or greater than sixty months.

Group five consists of Class Members who are not in Groups 1-4. Group five are Class Members who are former King County public defense employees as of April 1, 2012, who are not employed as active members of PERS as of April 1, 2012, and whose PERS service as a King County public defense employee totaled less than 60 months. Group five Class Members include those who are inactive PERS members or former PERS members who withdrew their contributions, and those who were never enrolled in PERS.

Retirement Relief Provisions: Retroactive Service Credit Back to 1978 and King County Pays All the Omitted PERS Contributions

Class Members (other than those in Group five) are eligible for PERS contributions based on retroactive PERS-eligible service, going back to January 1, 1978 up to March 31, 2012.¹ The Class Members' retroactive PERS-eligible service starts with the Class Member's initial hire date with one of the King County public defense agencies, with three exceptions that apply to a few Class Members.²

Class Members receive service credit in PERS 2 unless they are already enrolled or were previously enrolled in PERS 1 or PERS 3, in which case they will earn service credit in the plan in which they are or were previously enrolled. Class Members are entitled to retroactive PERS-eligible service credit based on the service credit rules for the PERS plan applicable to them when they worked at the King County public defense agencies.

For Group one Class Members, King County will pay the PERS contributions for retroactive PERS-eligible service back to January 1, 1978.³ The Group one Class Members for whom King County will make the PERS contributions are listed on Exhibit B of the Settlement Agreement.

For Group two Class Members, King County will make the PERS contributions for retroactive PERS-eligible service back to January 1, 1978. Group two Class Members are listed on Exhibit C of the Settlement Agreement.

For Group three Class Members, King County will make the PERS contributions for retroactive PERS-eligible service back to January 1, 1978, except certain Class Members who are in PERS 1 may have contributions for earlier service as provided in footnote 1. Group three Class Members are listed on Exhibit D of the Settlement Agreement.

¹ Class Members who (a) are now enrolled in PERS 1, (b) who are or were employed in a PERS-eligible position during the Class Period, and (c) who have not yet attained thirty years of PERS-eligible service, are entitled to retroactive service credit for service at the King County public defense agencies before 1978, but only to the extent that service or a portion of the service does not exceed the thirty-year maximum service credit for PERS 1.

² The exceptions are: (1) for Class Members hired by one of the public defense agencies before January 1, 1978, their retroactive PERS-eligible service under this agreement begins on January 1, 1978; (2) for those Class Members initially hired in a position that is not PERS-eligible (*e.g.*, student intern), their eligible service begins when they start working in a PERS-eligible position (*e.g.*, lawyer); (3) for those Class Members already enrolled or previously enrolled in PERS 1, 2 or 3, their PERS eligible service commencement date will be their prior enrollment date, but they will earn retroactive monthly service for their work as a King County public defense employee starting with their initial hire with one of the public defense agencies, unless the service is within exceptions 1 or 2 stated above, in which case the provisions of those exceptions applies, or unless they are within the provision concerning PERS 1 members with less than 30 years of PERS service as described in footnote 1.

³ Because King County enrolled King County public defense employees in PERS in the pay period encompassing April 15, 2012, those Group one Class Members, who began employment at a King County public defense agency after April 1, 2012 and who had no previous periods of employment at a King County public defense agency, have already had all PERS pension contributions paid. King County therefore does not owe any PERS contributions for these Group one Class Members.

For Group four Class Members, King County will make the PERS contributions for retroactive PERS-eligible service back to January 1, 1978. The Group four Class Members are listed on Exhibit E of the Settlement Agreement.

For Group five Class Members, King County will make the PERS contributions for retroactive PERS-eligible service back to January 1, 1978, only if (a) the Group five Class Member obtains a PERS eligible job in the future, and (b) the eligible service, that the Class Member obtains in that PERS-eligible job, coupled with the Class Member's retroactive PERS-eligible service gives the Class Member sixty or more months of PERS eligible service. Group five Class Members who obtain a PERS eligible job in the future must notify King County that they have been enrolled in PERS as a result of that job and must notify King County when their service in the PERS-eligible job, coupled with their service as a King County public defense employee, gives that Class Member sixty months of PERS service. The Group five Class Members are listed on Exhibit F of the Settlement Agreement.

Class Members Will Become King County Employees with Full Employee Benefits As Of July 1, 2013

On July 1, 2013, Class Members who are employed by the King County public defense agencies immediately before July 1, 2013 shall become employees of King County with full employee benefits for their positions. How King County accomplishes this recognition, and how it organizes public defense, are up to King County and are not part of this settlement.

Class Members may use or cash out their accumulated vacation as provided in their collective bargaining agreement or public defense agency's personnel policies. Class Members may carry over up to 100 hours of sick leave, provided that the maximum amount of carried-over sick leave may be increased by King County in cases of exceptional need.

King County will use the Class Member's initial hire date with a King County public defense agency as their initial King County hire date for purposes of determining vacation and leave accrual rates.

Compromised Claims, Counterclaims and Defenses

The settlement is a compromise. Plaintiff contends that the Class Members did not have the same employee benefits as King County employees, e.g., those working in the Prosecuting Attorney's Office in similar positions. Plaintiff contends that the Class Members have claims for non-PERS benefits (the "other benefit claims") that they could bring in an amended complaint and litigate in this case. King County has defenses to that claim and also could contend that the other benefit claims would not relate back to the date of filing of the lawsuit. The Class would dispute these King County contentions. The Settlement compromises, releases and fully extinguishes all of the other benefit claims in return for valuable consideration from King County explained below.

In addition to recognizing Class Members as King County employees, with full employee benefits for their position, on July 1, 2013, King County is making omitted PERS contributions to establish retroactive PERS-eligible service credit back to 1978 for the Class Members. King

County is further compromising by foregoing its statute of limitations defense that Class Members could not receive service credit for any time period more than three years before this lawsuit was filed, i.e., before January 24, 2003. King County is also paying both the employer contributions to PERS and the contributions to PERS that would have been deducted from the Class Members' salaries on either a pre-tax basis as employer pick-up contributions or on an after tax basis as employee contributions before 1984. King County contended that it was entitled to reimbursement for the employer pick-up contributions and the Class argued that King County was not so entitled. Under the Settlement Agreement, King County forgoes any right to seek reimbursement or payment from the Class Members for the PERS contributions. King County's agreement not to assert its statute of limitations defense and or to seek reimbursement or payment from Class Members, its agreement to pay the PERS contributions for the retroactive PERS-eligible service and its recognition of those Class Members employed by the King County public defense employees immediately before July 1, 2013 as King County employees with full employee benefits for their positions constitute the valuable consideration that the Class receives in exchange for compromising, releasing and extinguishing the other benefits claims in this Settlement Agreement.

Common Fund: Value of Pension Relief Obtained

In a class action, the value of the relief obtained for the class is called the "common fund" and the common fund obtained in the *Dolan* class action settlement is the value of the PERS pension benefits conferred upon Class Members as a result of Class Counsel's efforts.⁴

Plaintiffs' expert determined the present value of the PERS pension benefits. The present value is based only on the retroactive PERS-eligible service that Class Members obtained under the Settlement Agreement. It does not include prior PERS service that Class Members may have nor does it include PERS service that Class Members have after April 1, 2012 when the Court ordered King County to begin enrolling currently employed Class Members in PERS and to make the required PERS contributions.

Plaintiffs' expert determined that the present value of PERS pension benefits obtained due to Class Counsel's efforts is about \$130 million. The present value calculation uses standard present value assumptions set forth in the Settlement Agreement. The Settlement Agreement accepts \$130 million as the common fund based on the present value calculation and the underlying present value assumptions.

Class Counsel's Attorney Fee and Costs

Class Counsel are the law firm of Bendich, Stobaugh & Strong, P.C., and the firm's attorneys. Class Counsel's attorney fees and costs are based on *Bowles v. Dept. of Retirement Systems*, 121 Wn.2d 52, 72, 73 (1993). There, the Washington Supreme Court determined that the class counsel's fee and the reasonableness of the fee in a class action involving public

⁴ As a result of Class Counsel's efforts, the currently employed Class Members will become King County employees with full employee benefits for their positions on July 1, 2013. This relief has considerable value and may be considered in assessing the reasonableness of the class counsel's common fund fee, but is not part of the Common Fund as defined in the Settlement Agreement.

employee benefits is based on the percentage of the common fund that the requested fee is. The Supreme Court explained that the “benchmark” fee in a common fund case is 25% of the recovery obtained and 20% to 30% is the usual range for a common fund fee. *Id.*

In *Bowles*, the plaintiff class obtained an increase in the value of their PERS pension benefits. And the court in *Bowles* required DRS to advance the attorney fees out of the PERS fund on behalf of the plaintiff class subject to future reimbursement by the class. *Bowles*, 121 Wn.2d at 69. Attorney fees in *Bowles* were calculated as a percentage of the present value of the class recovery and that percentage was then deducted from the class members’ future pension payments in order to repay DRS for advancing the fee on behalf of the class members.

The common fund obtained in this action is the value of the PERS pension benefits conferred upon Class Members as a result of Class Counsel’s efforts, which Class Counsel’s expert calculates, using actuarial methods, at about \$130 million. Thus, the 25% benchmark common fund fee under *Bowles* would be \$32.50 million and the range for a common fund fee would be \$26 to \$39 million, 20% to 30%. The \$12 million common fund fee Class Counsel seeks here (about 9.2% of the \$130 million common fund) is below the normal range for common fund fees. Class Counsel would seek the \$12 million as their fee even if the common fund value were lower so long as the \$12 million dollar fee is at or below the normal range, i.e., if it is 20% or less of the common fund.

Award to Named Plaintiff

The named plaintiff Kevin Dolan is to receive a plaintiff’s award of \$45,000 for his work in assisting class counsel. Mr. Dolan’s participation from 2006 through 2012 has included but is not limited to, commencement of this lawsuit, class certification, discovery matters (including answering interrogatories, producing extensive personal records, and deposition testimony), preparation of declarations, attendance at meetings, communications with Class Members, and assisting Class Counsel in the trial court proceedings, the proceedings in the Supreme Court, and in the Legislature.

Payment By Class Members Through Deductions From Their Future Retirement Checks of Attorney Fee Advanced by DRS

As in *Bowles*, the Class will pay the common fund attorney fee advanced by DRS through a percentage deduction from their future pension checks. As in *Bowles*, the percentage to be deducted is the percent that the common fund attorney fee is of the common fund, i.e., 9.2% with a common fund of \$130 million and a common fund attorney fee of \$12 million. The percentage would be higher here if the common fund were lower or it would be lower if the common fund were higher. As in *Bowles*, DRS will advance the class members’ payment by: (1) King County paying the common fund fee to Class Counsel out of the omitted PERS contributions to otherwise be paid to DRS or (2) if DRS prefers, by the PERS Trust Fund or DRS advancing the Common Fund Fee. The Class Members will repay the advanced common fund attorney fee to the PERS Trust fund(s) or DRS by the deductions from retirement benefits.⁵

⁵ As an alternative, instead of repaying DRS from the Class Members future retirement benefits for the advance of the common fund attorney fee, the Class Members may pay DRS or the PERS fund directly. If the Class Member chooses this option, the Class Member’s pro rata share of the common fund attorney fee will be determined

Not all class members will have the same percentage deducted because the percentage deduction from a class member's future retirement benefit is based only on the retroactive PERS-eligible service earned for the King County public defense work that is the subject of this action and excludes other PERS service the Class Members may have had previously or PERS service they will have in the future. With a \$130 million common fund and a \$12 million attorney fee, Class Members who obtained all their PERS eligible service due to Class Counsel's efforts will have an estimated 9.2% deduction. For those who did not obtain all their PERS eligible services due to the Class Counsel's efforts, the deduction percentage will be lowered by the fraction that the PERS service obtained in the *Dolan* litigation is to their overall PERS service. For example, if a Class Member had 120 months of retroactive PERS-eligible service in King County public defense agency work and a total of 360 months of PERS service credit at retirement, the fraction is one-third and the actual percentage deducted would be one-third of 9.2%, or about 3.07%, with a \$130 million common fund and \$12 million common fund attorney fee. Because most Class Members will earn additional PERS service after resolution of this case or because they have prior PERS service, the actual deduction will be less than the estimated 9.2% as shown in the preceding illustration.

For Class Members who are Judges participating in the Judicial Benefit Multiplier Program, the deduction percentage is based on the effect that the retroactive PERS-eligible service obtained in this case has on the percentage of the Judge's final average salary the Judge is eligible to obtain as a pension.⁶

based on the percentage of the common fund that the value of the Class Members PERS pension benefit is of the common fund. For example, if the value of the Class Member's PERS Benefit is \$500,000, the Class Member's pro rata share would be \$500,000 divided by \$130,000,000 (common fund) times \$12,000,000 (common fund attorney fee) which equals about \$46,154 (Class Member's pro rata share of the common fund attorney fee). If the Class Member chooses this alternative, the Class Member may pay their share of the pro rata common fund attorney fee by using funds in an existing retirement account (such as an IRA) or they may choose to repay DRS over five years either by payroll deductions for those employed in PERS positions or by a payment plan acceptable to DRS for those not employed in PERS positions.

⁶ By way of illustration, under PERS 1 and 2, a PERS member earns 2% of his or her average final salary for each year of service, while under the Judicial Benefit Multiplier Program, participating Judges earn 3.5% of their final average salary for each year of Judicial service. Thus, for each year of service as a Judge — by way of illustration on how the deduction percentage for the common fund attorney fee is calculated for Judges participating in the Judicial Benefit Multiplier Program — if Class Member Judge has 10 years of retroactive PERS-eligible service as a King County public defense employee and 15 years of PERS service as a Judge in the Judicial Benefit Multiplier Program when the Judge retires, the public defense service equates to 20% of his or her average final salary (10 years times 2% per year) while the Judge's work as a Judge in the Judicial Benefit Multiplier Program for 15 years equates to 52.5% of the Judge's average final salary (15 years times 3.5%). Thus, in this illustration, the Judge's PERS pension equals 72.5% of the Judge's average final salary. The Judge's King County public defense service thus provides, in this illustration, about .2759 or 27.59% of the Judge's final salary (.20 divided by .7250 equals .2759 or 27.59%) and the deduction percentage for the Judge for the common fund attorney fee would be .2759 times 9.2 which equals 2.538% of the Judge's monthly pension amount.

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