

**Subject:** Bell v. PERB; Our File 5415-262

On July 16, 2008, a Marion County Circuit Court jury unanimously found the PERS Board liable for \$200,707.04 in damages for negligent misrepresentations made to a PERS member in the case of Kay Bell v. Public Employees Retirement Board (Marion County Case No. 07C11097). PERS Coalition attorney, Aruna Masih, represented the PERS member at trial.

Prior to trial, Marion County Circuit Court Judge Claudia Burton found that the PERS Board owes a “special duty” of care to PERS members to protect them from economic loss caused by false information or other material misrepresentation made by PERS. Trial evidence established that, in this case, PERS had provided the PERS member, a school teacher and counselor, incorrect information on annual statements and estimates over a period of many years. The PERS member resigned her position and retired in reliance on that incorrect information. Only months after the PERS member retired did PERS reveal that the information it had provided her was inaccurate by over \$1,100 per month. Of course, by this point, the PERS member’s former position had already been filled, and she had lost the seniority she had accrued. The PERS member testified that had PERS provided her accurate information in a timely manner, she would never have resigned her position and would have continued working until age 62.

The jury unanimously found that the PERS member reasonably relied on the false information provided by PERS and that she suffered loss of salary and benefits of \$200,707.04 as a result of giving up her job in reliance on the false information provided by PERS. The PERS Board has already notified the trial court of its intent to challenge the \$200,707.04 jury verdict as exceeding the caps set by the Oregon Tort Claims Act. Once the tort claims caps issue is decided by the trial judge and a judgment is entered, the case will likely also be appealed by the PERS Board.

The appeal will give the Oregon appellate courts not only the opportunity to set precedent on whether the PERS Board owes a special duty of care to PERS members to provide them accurate information but also whether the Tort Claims Act should limit damages between a fiduciary and beneficiary like the PERS Board and PERS members. The jury verdict can also be used to support legislative and administrative reform of the PERS retirement audit process, requiring PERS to perform such an audit before a member retires to allow both the member and PERS sufficient time to challenge the accuracy of the information before retirement. We will discuss possible reform proposals at the next Coalition meeting