

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION No. 17-CI-01348**

JEFFREY C. MAYBERRY, et al.

PLAINTIFFS

v.

KKR & CO. LLP, et al.

DEFENDANTS

ORDER

This matter is before the Court upon the Kentucky Public Pension Authority's *Emergency Motion for Extension of Time*. This Motion came before the Court during its regular Motion Hour via Zoom on Wednesday, April 21, 2021. Hon. Sarah Bishop appeared on behalf of the KPPA, Hon. Victor Maddox appeared on behalf of the Attorney General, Hon. Michelle Lerach appeared on behalf of the Tier 3 Group proposed intervenors, and Hon. Grahmn Morgan appeared on behalf of the PAAMCO/Prisma Defendants. Counsel for all other parties were present on the call. The KPPA requests an additional extension of time for the law firm Calcaterra Pollack to complete its investigative report and submit that report to the Attorney General. Ms. Bishop represented to the Court that there is still substantive work to be performed in the investigation, though the investigation is winding down. Mr. Maddox reaffirmed that the investigative report will be of immense help to the Attorney General in crafting the forthcoming intervening complaint. In response, Ms. Lerach notes that this is the latest in a series of extensions of time for this investigative report to be completed and expressed worry that this could lead to indefinite delay. Mr. Morgan requested that the upcoming May 6 Oral Argument on the Tier 3 Group's Motion to

Intervene be rescheduled in the event the KPPA is granted additional time to submit its investigative report.

The Court is acutely aware that this will be the third extension that the Court has granted for completion of this investigation, and the Court agrees that the investigation cannot be used to forestall this case indefinitely. Therefore, this will be the final extension that the Court will grant for KPPA to turn in its investigative report to the Attorney General.

On another point, the Court also is aware that it had scheduled Oral Argument on the Tier 3 Group's pending Motion to Intervene for Thursday, May 6, 2021. Briefing has been completed on that Motion. However, the Court believes it cannot fully evaluate the merits of that motion until after KPPA has completed its investigation and the Attorney General has submitted his intervening complaint. In this Court's November 30, 2018 Opinion and Order in this case, the Court found, among other findings, that the Original Plaintiffs were able to pursue their claims in a derivative capacity on behalf of KPPA; the Court found that while it was not clear that Kentucky law requires a demand be made upon the KRS Board to bring suit on behalf of its members as a prerequisite to a derivative lawsuit, the Court found that the demand requirement "was essentially met when the KRS Board expressly declined to bring suit." *Opinion and Order*, Franklin Cir. Ct. Case No. 17-CI-1348, at 9 (Nov. 30, 2018).

However, now that the Supreme Court of Kentucky has determined that the Original Plaintiffs lacked standing to pursue their claims, it is no longer clear that KPPA will refuse to pursue claims against Defendants. Certainly, the results of the investigative report could sway KPPA into holding a different position regarding its participation in this litigation than it held in 2017 and 2018. In this sense, the Tier 3 Group's pending Motion to Intervene cannot be adequately

evaluated until completion of the investigation; therefore, the Court finds it necessary to further postpone the May 6 Oral Argument on that Motion until a later date.

Accordingly, the Court **ORDERS** the following:

- 1) KPPA shall have until Monday, May 17, 2021 to submit the investigative report to the Attorney General. Upon submission, the KPPA shall file a notice with the Court that it has turned the completed investigative report over to the Attorney General;
- 2) After receiving the report, the Attorney General shall have ten (10) days thereafter to submit his intervening complaint;
- 3) If the investigative report is not submitted by the May 17 deadline, counsel for KPPA will be required to appear before the Court to show cause why the investigation has not been completed despite the deadline for completion being repeatedly extended. The KPPA should also make the Calcaterra Pollack principals who are performing the investigation available for the Court's inquiry in the event the May 17 deadline is not met. This will be the final extension for submission of the report that the Court will grant, and failure to meet this deadline could result in penalties and sanctions for KPPA; and
- 4) The previously scheduled May 6 Oral Argument on the Tier 3 Group's Motion to Intervene is rescheduled for Monday, May 31, 2021 at 2:00 p.m. E.S.T.

SO ORDERED, this 21st day of April, 2021.



PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

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