

ARKANSAS GENERAL ASSEMBLY

Senator Jim Luker
Senate Chairman

Representative Billy Gaskill
House Chairman



LITIGATION REPORTS OVERSIGHT SUBCOMMITTEE OF THE ARKANSAS LEGISLATIVE COUNCIL

June 18, 2010

Senator Henry "Hank" Wilkins, IV
Chairman, Legislative Council

Representative Allen Maxwell
Chairman, Legislative Council

Dear Co-Chairmen:

The Litigation Reports Oversight Subcommittee met on Wednesday, June 9, 2009 at 3:00 p.m. in Room 149 at the State Capitol. The subcommittee heard 2 proposed settlement agreements.

The first settlement agreement dealt with Rush v. Perryman et. al., USDC/ED No. 1:07-cv-1BSM and Rush v. Ozarka College, Claims Commission No. 07-0618-cc Settlement and Release Agreement. The plaintiff was the former President of Ozarka Community College in Melbourne, Arkansas. He sued the college and college officials alleging that his termination was unlawful. Of the ten original claims asserted by the plaintiff, all but one was dismissed by the trial court on a dispositive motion filed by the defendants.

In the one surviving claim, plaintiff asserted that, although he had received a pre-termination hearing, he was also entitled under the Due Process Clause to an additional post-termination hearing. Following the trial court's ruling, the defendants took an interlocutory appeal to the United State Court of Appeals for the Eighth Circuit. The Eighth Circuit upheld the trial court's decision and concluded that where the reason for an employee's termination may be damaging to his reputation, the employee is entitled to a post-termination hearing.

Having denied the defendant's claim of qualified immunity, the Eight Circuit remanded the case to the trial court. Plaintiff asserted that the Eighth Circuit's decision necessarily encompassed a finding that the defendants were liable for violating plaintiff's due process rights and that the only remaining question for trial was the amount of damages he should recover. Because the plaintiff had been terminated in 2005 from a job paying roughly \$125,000 per year, and has apparently not been employed since then, the extent of the possible damages, while unknown, might have been quite large. In addition, the related cases in federal court and the Claims Commission had both been pending since 2007 and thus plaintiff's counsel's claim for attorney's fees might also have been quite substantial.

In that context, the college decided a potential settlement was worth considering. The college has insurance coverage for claims such as those raised by the plaintiff. Under the policy, the college would pay a deductible of \$50,000 and the insurance company would pay \$100,000, in return for a complete release of all claims relating to the plaintiff's employment and termination. The subcommittee voted to favorably review the settlement.

The second proposed settlement agreement, Thru Tubing Solutions, Inc. v. Richard Weiss, Director, Department of Finance and Administration – Pulaski County Circuit Court No. CV 09-3906, is recommended on the basis that the plaintiff, Thru Tubing Solutions, Inc. has provided information sufficient to verify entitlement to the manufacturing machinery and equipment exemption on its purchases of certain property for the periods 7-1-06 through 9-30-07.

Under the terms of the agreement, the Department will refund to Thru Tubing Corporation the total amount of \$143,934.90. This total amount consists of \$116,700.09 (representing state tax and interest paid by Thru Tubing), \$3,327.11 (representing local tax and interest paid by Thru Tubing), and \$23,907.70 (representing interest that accrued following the date of payment by Thru Tubing). The above amounts will be paid in the form of a cash refund. In return for this settlement payment, Thru Tubing will take all necessary actions to obtain dismissal of the lawsuit with prejudice. Thru Tubing also relinquishes its claims to any costs and fees incurred in relation to the lawsuit. The subcommittee voted to favorably review the settlement.

The Office of the Attorney General reviewed 20 cases of new litigation, 50 cases that were closed and 5 cases that were monitored with the subcommittee. The Department of Finance and Administration, Office of Revenue Legal Counsel reviewed 8 cases of new litigation, and 1 closed case. The Arkansas Public Service Commission reviewed the current status of 3 cases.

Respectfully submitted

Senator Jim Luker, Co-Chair

Representative Billy Gaskill, Co-Chair