



ALERT

APRIL 2019



Kentucky Court Holds That Public Pension Plan Beneficiaries Lack Standing to Sue

A lower court's decision to allow beneficiaries of Kentucky's Public Retirement System to sue administrators and advisors over fiduciary responsibilities is overturned.

As we previously discussed in our Alert "[Novel Suit by Kentucky Pension Beneficiaries Continues](#)," in December 2017, beneficiaries of Kentucky's public pension system ("KRS") sued various KRS trustees, officers, advisors, and investment managers in state court. *Mayberry et al. v. KKR & Co., L.P. et al.*, No. 17-CI-1348 ("*Mayberry*"). In November 2018, the trial court denied defendants' joint motion to dismiss for lack of standing. Various defendants appealed the trial court's ruling to the Kentucky Court of Appeals.

Just recently, the Court of Appeals vacated the lower court's order, holding the plaintiffs-beneficiaries lacked standing to sue under Kentucky law. The Court of Appeals rejected all four grounds on which the lower court had found standing. The Court held that: (i) the plaintiffs-beneficiaries had not satisfied Kentucky's test for constitutional standing because they did not allege any "impairment of their right to receive benefits"; (ii) standing could not be based on Kentucky's statute imposing fiduciary duties on the KRS officers and trustees, as "statutory 'standing' is not a substitute for constitutional standing"; (iii) a state pension fund is not a trust for the purposes of allowing a beneficiary to sue a third party; and (iv) taxpayer standing was lacking because plaintiffs-beneficiaries had "asserted a mere speculation or expectancy that their taxes have increased or will increase because of Defendants' actions."

The plaintiffs have appealed the decision to the Kentucky Supreme Court. We will continue to monitor further developments.



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