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CITY COUNCIL MEETING
JANUARY 19, 1983

CITY OF WHITTIER
NOTICE OF
PENDENCY OF
CLASS ACTION

City Clerk Reimche presented a Notice of Pendancy of Class Action, City of Whittier vs. State Compensation Insurance Fund and cross complaint State Compensation Insurance Fund vs. City of Whittier, et al re Workers' compensation liability.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

RECEIVED
1983 JAN -3 AM 8:58
ALICE H. REMACHE
CITY CLERK
CITY OF LODI

CITY OF WHITTIER, a municipal
corporation, et al., on behalf of
themselves and all other public
entities in the State of
California similarly situated,

Plaintiffs,

vs.

STATE COMPENSATION INSURANCE
FUND and DOES I through X,
inclusive,

Defendants.

STATE COMPENSATION INSURANCE
FUND,

Cross-Complainant,

vs.

CITY OF WHITTIER, etc., et al.,

Cross-Defendants.

CIVIL NO. CA 000590

NOTICE OF PENDENCY
OF CLASS ACTION

TO MEMBERS OF THE PLAINTIFF CLASS:

YOU ARE HEREBY NOTIFIED that the following public entities have brought an action in the Superior Court of California for the County of Los Angeles against defendant State Compensation Insurance Fund ("SCIF"): Cities of Whittier, Marysville, San Rafael, Escondido, Grover City, Inglewood, Garden Grove, Redlands, Yuba City and Huntington Beach ("plaintiffs").

Plaintiffs brought this action on their own behalf and on behalf of a class identified as all cities and counties in the State of California which are now or have ever been insured by SCIF for workers' compensation liability and which

employ or have employed policemen, firemen and other persons ("safety employees") entitled to compensation in the nature of one year's full salary continuation benefits under Labor Code Section 4850 ("Section 4850 benefits"), whether or not the occasion has arisen to pay such benefits (the "class members").

In addition, a subclass is identified consisting of all class members which within the four years preceding January 10, 1980 have made demand on SCIF for reimbursement of Section 4850 benefits paid by class members to their safety employees within the four years preceding such demand, where such benefits were paid for safety employee disabilities which arose while each such class member was insured by SCIF (the "subclass members").

Plaintiffs allege causes of action for declaratory relief, breach of contract, bad faith and breach of statutory and fiduciary duties, based upon SCIF's refusal to reimburse plaintiffs for Section 4850 benefits they paid to their disabled safety employees. Plaintiffs seek to recover compensatory damages for all subclass members against SCIF for its failure to reimburse cities and counties insured by SCIF for benefits paid to their safety employees pursuant to Labor Code Section 4850. If the action is successful, the amount of compensatory damages recoverable by each subclass member will be based upon the amount of Section 4850 salary continuation benefits paid by each such member within the designated time period. Plaintiffs also seek to recover punitive damages (for members of the subclass), costs of suit and attorneys' fees from SCIF. SCIF denies liability for these Section 4850 benefits, contending its insurance policies do not cover such benefits. SCIF has asserted affirmative defenses for failure to state a cause of action, lack of subject matter jurisdiction, exclusive jurisdiction of the Workers' Compensation Appeals Board, no liability, no basis for declaratory relief, no mutuality of consent, no consideration, lack of intent by plaintiffs, lack of intent by SCIF, laches, statute of limitations, waiver and an affirmative defense based on Labor Code §5500.5. Further, SCIF has filed a cross-complaint seeking to recover for unjust enrichment from class members or to set off against any judgment entered on the complaint, the added premiums which it allegedly would have charged had Section 4850 benefits been reimbursed; and to recover attorneys' fees and costs if it is successful in defending the complaint or on the cross-complaint.

On September 30, 1982 the Court ordered that this action be certified as a class action, that plaintiffs be certified as class and subclass representatives and that

this Notice of Pendency of Class Action be sent to all potential class and subclass members.

THE COURT HAS NOT AS YET EXPRESSED ANY OPINION AS TO THE MERITS OF EITHER THE CLAIMS OR THE DEFENSES ASSERTED IN THE ACTION.

The class and subclass are represented by the law firms of Kegel, Tobin & Hamrick, David Lister and Donna Vose; and Lawler, Felix & Hall, Robert P. Mallory and Randolph C. Visser, whose addresses are indicated below.

If you wish to be included in the class and/or subclass and be represented by the existing class counsel, you need take no action in response to this notice. The costs of suit and fees to class counsel, if any, will be paid solely from the recovery, if any, obtained on behalf of the class and/or subclass.

If instead you wish to enter an appearance in this action through counsel of your own choosing, you may do so. In such event you should give written notice of your appearance in the action to the Court and to counsel for plaintiffs and counsel for defendant on or before February 28, 1983, addressed as follows:

Deputy Clerk, Los Angeles Superior Court
Department 59
Room 519
111 North Hill Street
Los Angeles, California 90012

Lawler, Felix & Hall
Robert P. Mallory
Randolph C. Visser
700 South Flower Street
Suite 3100
Los Angeles, California 90017
(213/629-9300)

Kegel, Tobin & Hamrick
David E. Lister
Donna Vose
3325 Wilshire Boulevard
Los Angeles, California 90010
(213/380-3880)

Attorneys for Plaintiffs and the Plaintiff Class

State Compensation Insurance Fund
George S. Bjornsen
1275 Market Street
San Francisco, California 94103
(415/565-1235)

Attorneys for Defendant

If you participate in this action, either through counsel for the class and subclass or through counsel of your own choosing, you will participate in the benefits of any settlement or judgment obtained for the class and/or subclass. Conversely, any judgment denying recovery to the class and/or subclass will bind you and you will not thereafter be entitled to sue SCIF for any claims stated in the complaint.

The Court will exclude you from the class and subclass if you request exclusion, in writing, on or before February 28, 1983. If you desire to be excluded from the class and subclass, mail or deliver your request to the Court by February 28, 1983 at the address set forth above. Persons requesting exclusion from the class and subclass will not be entitled to share in the benefits of any settlement or judgment in favor of the class and/or subclass, nor will they be bound by any judgment denying recovery to the class and/or subclass.

If you do not specifically request exclusion from the class and subclass, and you do not enter an appearance by counsel of your own choosing, you will be included in the class and/or subclass and the above-named class counsel will represent your interests in the action. You will be asked at some future date to provide information which will enable the Court to determine whether you qualify for such membership.

The nature of this action is only summarized in this notice. For a more detailed statement of the matters involved you may inspect the Court file during regular business hours at the Court's address, set forth above, or contact class counsel whose addresses and telephone numbers are also set forth above. DO NOT CALL THE COURT.

DATED: December 30, 1982.

NORMAN R. DOWDS
Judge, Superior Court of California,
County of Los Angeles