

# **RISE Delaware Update for December 16th**

## **RISE Delaware Litigation Update From Mary Graham**

All,

Updating you on the litigation.

### **LITIGATION STATUS**

As explained in my last email (on December 4, 2023), the briefing in the Delaware Supreme Court on the State's appeal of Judge Scott's Stay Order of October 19, 2022, and RISE's cross-appeal of the denial of its attorneys' fees was completed on October 19, 2023. You can find the briefing on the RISE website under the legal documents tab.

The Delaware Supreme Court has set oral argument for January 31, 2024.

### **WHY IS THE LITIGATION STILL GOING ON?**

The short answer is that the Carney Administration is stubbornly and irrationally (and vindictively?) persisting in keeping the litigation going.

The longer answer is this. In my last email, I noted how the SEBC on October 2, 2023 had pulled the plug on Medicare Advantage and voted for having only a Medicare Supplement plan identical to Medicfill in the next contract cycle. This vote effectively retracted and nullified the SEBC's improper action of February 28, 2022 in adopting Medicare Advantage in violation of the APA that was the subject of RISE's lawsuit. The State also has terminated the Highmark MA contract signed in September 2022. Even if it wanted to, the Supreme Court cannot wave a magic wand for the State's lawyers and undo what has happened in the real world. Thus, the Administration's continuation of its appeal can serve no legitimate purpose.

Given our (hard-won) victory in the real world, as Dale Swain so appropriately recognized in public comment on October 2, the Carney Administration should do the right thing and drop its appeal of the Stay Order. And thereby stop wasting public monies and stop causing RISE to have to expend Retirees' and employees' donated, hard-earned dollars on appellate proceedings.

RISE has, since the Stay Order, been very interested in trying to reach a settlement with the State so that we could use all the donated money to pay down on what is owed the Superior Court lawyers. We have tried several times. Unfortunately, the Carney Administration is not interested in any settlement. So, we will have to keep going through oral argument and pay our wonderful current lawyer, Sid Liebesman of Fox Rothschild, to prepare to argue the many issues that could and should have been resolvable if the State would simply start to act reasonably. But it won't surprise you that the State won't. We know all too well the Carney Administration's egregious conduct that required the RISE lawsuit to be filed in the first place (and if you want a relatively short refresher, read our October 19, 2023 appellate reply brief on the RISE website §II.B, pp 16-21).

### **WILL THERE BE A NEED TO RAISE MORE MONEY?**

I have been asked why in the last month or two we have not been pushing to raise money. We had hoped that there could be a settlement and there would be little, if any, need to raise more money.

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Unfortunately, as noted, the State is not dropping its appeal and is not willing to settle. Given that obtaining a fee award from the Courts is never a sure thing, I expect that, after the holidays, we will be asking you to donate (again), and asking you to encourage others to donate who have not previously done so (there are still many Retirees who don't even know about the lawsuit or how close they came to being on MA). This all seems incredibly unfair when the Carney Administration can just tap into public funds (which include your tax dollars) to continue a battle against us it has already lost.

But I want you to know that we are doing everything we can to minimize the need to raise more money. I will continue to volunteer my time to help Sid get prepared for oral argument. It is unfortunate that high-stakes, complex litigation, like ours, is so expensive. And that the State can make us pay doubly, in dollars, for litigation to preserve our rights that it improperly tried to take away.

Regards,

Mary

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**RISE Delaware: Retirees Investing in Social Equity Delaware**

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<https://www.gofundme.com/f/rise-delaware-round-2-legal-and-other-costs>

**Our Web site:** [www.risede.com](http://www.risede.com)

**Checks may be made payable to: RISE Delaware**

**Address: RISE Delaware, P.O. Box 7262, Newark, DE 19714**

Public Meeting Calendar: State of Delaware

<https://publicmeetings.delaware.gov/#/>

