

August 14, 2012

Two New Patronage Capital Cases Hit Alabama Coops

Two new class action patronage capital cases were recently filed in Alabama against two different electric cooperatives: *Recherche LLC v. Baldwin County Electric Membership Corp.* (CV-2012-900820.00, Baldwin County, AL) and *Harkless v. Dixie Electric Cooperative* (CV-2012-900073.00, Macon County, AL). The two cases were filed on the same day, June 27, 2012, and have the same plaintiffs' attorneys.

The *Baldwin EMC* and *Dixie* complaints are nearly identical, and they share many similarities with the other patronage capital cases that have been filed recently. In essence, the Plaintiffs claim that the coops did not comply with their statutory obligations to make refunds to members, and that many members move away or die before the patronage capital is refunded—thereby allowing the coops to retain the funds unlawfully. The Plaintiffs further claim that the coops are required under Alabama law to refund patronage capital on an annual basis. Both cases are class actions, brought on behalf of all present and former members of the coops.

The *Baldwin EMC* and the *Dixie* Defendants each have filed similar motions to dismiss on four grounds: First, the Plaintiffs have failed to allege that the Defendants breached their bylaws. Second, the Plaintiffs do not have a private right of action under the enabling statute for cooperatives. Third, the Plaintiffs have no right to annual disbursements of revenues. Fourth, the Plaintiffs claims' are barred by the statute of limitations and the rule of repose.

These cases add to the growing list of patronage capital cases filed against electric cooperatives. From 2009 to 2012, at least 10 such cases have been filed in seven states: Arkansas, Georgia, Missouri, New Mexico, North Carolina, South Carolina, and Texas. We have previously issued Legal Alerts regarding these cases—most are in active litigation.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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