

TSM

IN THE CIRCUIT COURT  
OF MONTGOMERY COUNTY, ALABAMA

NATIONWIDE RETIREMENT  
SOLUTIONS, INC.,

Plaintiff,

v.

ALABAMA STATE  
PERSONNEL BOARD,  
PEBCO, INC.,  
and ALABAMA STATE  
EMPLOYEES ASSOCIATION,

Defendants.

Case No. CV-2009-1088

2009 JUL 15 AM 11:23

**COMPLAINT FOR INTERPLEADER**

Plaintiff Nationwide Retirement Solutions, Inc., brings this action for interpleader pursuant to Alabama Rule of Civil Procedure 22, and alleges as follows:

**PARTIES**

1. Plaintiff Nationwide Retirement Solutions, Inc., ("NRS,"), provides customized retirement-plan solutions to governmental employers. NRS is a corporation registered in Delaware and headquartered in Ohio, with its offices and principal place of business in Ohio.

2. Defendant Alabama State Personnel Board ("Personnel Board") is the entity of the State of Alabama that supervises the State's personnel department and civil service and merit system. It has the power, granted by statute, to adopt certain rules and regulations with the force of law.

3. Defendant Alabama State Employees Association ("ASEA") is a not-for-profit, 501(c) organization with its principal office and place of business located in Montgomery County, Alabama. ASEA is a membership organization open to all state employees.

4. Defendant PEBCO, Inc. ("PEBCO"), is a wholly-owned subsidiary of ASEA with its principal office and place of business located in Montgomery County, Alabama.

#### JURISDICTION AND VENUE

5. A substantial part of the events or omissions giving rise to this Complaint occurred in Montgomery County, Alabama.

6. The sum of money as to which NRS alleges there is a dispute is at least \$720,000, including the third quarter 2009 and estimated fourth quarter 2009 installments of the "sponsorship fees" due under the Administrative Services Agreement, dated March 1, 2004, between PEBCO, Inc. and NRS, and the remaining Draw Down Account funds through and including December 2009 provided for under the Administrative Services Agreement.

7. This Court has personal jurisdiction over all defendants because they are residents of the State of Alabama.

#### THE CLAIM

8. The State of Alabama makes a supplemental retirement plan available to state employees. That plan, called the State of Alabama Public Employees Deferred Compensation Plan ("the Plan"), permits state employees to save for retirement on a tax-deferred basis by deferring portions of their compensation, in accordance with Section 457 of the Internal Revenue Code, 26 U.S.C. § 457. The Personnel Board is the Plan's sponsor and fiduciary.

9. Under state law, the Personnel Board adopts the Plan as recommended by the employees of the State of Alabama through the ASEA. Ala. Rev. Code § 36-26-14. The

Personnel Board is authorized to adopt and arrange for consolidated and efficient administrative services such that the Plan operates at no cost to or contribution from the State of Alabama. *Id.*

10. In 2003, ASEA conducted a search for providers of administrative services and investment options through a competitive RFP process, pursuant to its responsibility to recommend the Plan terms to the Personnel Board. NRS participated in that RFP process and was selected from among a number of other participants to perform certain administrative services for the Plan. NRS's affiliate, Nationwide Life Insurance Company ("NL"), was selected to provide fixed and variable annuity contracts to the Plan that offer certain investment options for the Plan's participants.

11. In March 2004, the Personnel Board approved the choice of NRS to provide certain administrative services, and NL to provide certain annuity contracts. The Personnel Board also approved a "Funding Agreement" that set forth the terms of the Plan, including the general terms of the annuity contracts provided by NL.

12. NRS and PEBCO, Inc., entered into a March 1, 2004 Administrative Services Agreement between them. Under the Administrative Services Agreement, NRS agreed to make certain payments to PEBCO and ASEA in return for their performance of certain administrative, marketing, sponsorship, and other services for the Plan. Those payments are made in quarterly installments each year.

13. The next payment under the Administrative Services Agreement, in the amount of \$432,740.81, is due on July 15, 2009. The fourth quarter installment is due on October 15, 2009. No further installments are due after October 15, 2009, because the Administrative Services Agreement has been terminated, effective December 2009.

14. In addition, NRS maintains funds for ASEA/PEBCO in a Draw Down Account, in accordance with paragraph 5 of the Administrative Services Agreement. ASEA and PEBCO receive periodic reimbursement payments from the Draw Down Account. The sum of money currently in the Draw Down Account, \$287,243.40, is to pay ASEA and PEBCO for reimbursable expenses incurred through the contract's termination.

15. On April 29, 2009, the Personnel Board adopted an Amendment to the Plan ("Amendment") that purports to alter retroactively and prospectively the terms of the Plan and the law regarding the Plan. In particular, the Amendment purports to prohibit the payments referred to in paragraphs 13 and 14 above by NRS to the ASEA / PEBCO (the "future payments"), and to impose liability in connection with such payments.

16. By demanding that the future payments be "restore[d] to the Plan," the Amendment asserts on behalf of the Plan an ownership interest in, and a right to, the future payments to ASEA/PEBCO. On June 26, 2009, the Personnel Board sent a letter to NRS, ASEA, and PEBCO, demanding that no further payments be made to ASEA and/or PEBCO.

17. Three participants in the Plan have also claimed that the Plan and all of its participants have a legal right to future payments, including the July 15 payment and the Draw Down Account. The Personnel Board, having declared itself, in the Amendment, the Plan sponsor and the only disinterested fiduciary of the Plan, purports to act as fiduciary representing ownership interests of the Plan participants with respect to these future payments.

18. ASEA and PEBCO together claim contractual rights to the future payments under the Administrative Services Agreement. They claim the Personnel Board's Amendment unlawfully and unconstitutionally impairs the obligation of ASEA's/PEBCO's contracts and violates

ASEA's/PEBCO's due process rights. ASEA/PEBCO have filed an action to seek a declaration that the Personnel Board's Amendment is null and void.

19. NRS and NL are now caught between competing claims to these future payments. NRS faces the possibility of dual liability for the same sum of money, both to ASEA under the Administrative Services Agreement and to the Personnel Board and the Plan, under the Personnel Board's Amendment and other claims of ownership

20. NRS currently holds the sums at issue, and upon direction of the Court, will pay to the Clerk of Court all sums currently due to ASEA, namely the \$432,740.81 payment due on July 15. NRS will pay future sums from the Draw Down Account to the Clerk of Court as they become due.

21. Upon obtaining service of process on the defendants, NRS prays for an order directing payment of the future proceeds to the Clerk of Court, and discharging and releasing NRS and NL from further obligation with respect to the sum at issue.

WHEREFORE, NRS requests that:

- (1) the defendants be required to interplead and settle between themselves their rights to the future payments under the Administrative Services Agreement;
- (2) NRS and NL be discharged from all liability to the defendants for any future payments, and only to the extent of the funds rendered to the Court for interpleader; and
- (3) NRS be awarded costs and attorneys' fees.



Sharon D. Stuart  
J. Paul Zimmerman

OF COUNSEL:

CHRISTIAN & SMALL LLP  
505 North 20<sup>th</sup> Street, Suite 1800  
Birmingham, AL 35203  
(205) 795-6588 (Telephone)  
(205) 328-7234 (Facsimile)

-and-

Charles C. Platt  
WILMER HALE  
399 Park Avenue  
New York, NY 10022  
212-230-8860 (Telephone)  
212-230-888 (Facsimile)

David W. Bowker  
WILMER HALE  
1875 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
Telephone: (202) 663-6000  
Facsimile: (202) 663-6363

Attorneys for Plaintiff  
Nationwide Retirement Solutions, Inc.

**PLEASE SERVE THE FOLLOWING DEFENDANTS BY CERTIFIED MAIL:**

Alabama State Personnel Board  
300 Folsom Administrative Building  
64 North Union Street  
Montgomery, AL 35130-4100

PEBCO, Inc.  
c/o Registered Agent E. J. McArthur  
110 North Jackson Street  
Montgomery, AL 36104

Alabama State Employees Association  
110 North Jackson Street  
Montgomery, AL 36104



SUMMONS-CIVIL

Case No.  
CV- 2009-1088

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

Plaintiff: Nationwide Retirement Solutions, Inc.

v.

Defendants: Alabama State Personnel Board, PEBCO., Inc., and Alabama State Employees Association

NOTICE TO: **PEBCO, Inc.**  
c/o Registered Agent E. J. McArthur  
110 North Jackson Street  
Montgomery, AL 36104

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU ARE REQUIRED TO MAIL OR HAND DELIVER THE ORIGINAL WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY: SHARON D. STUART WHOSE ADDRESS IS: CHRISTIAN & SMALL, LLP, 505 20<sup>TH</sup> STREET, NORTH, SUITE 1800, BIRMINGHAM, ALABAMA 35203

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN **30 DAYS** AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT OF DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure:

\_\_\_\_\_ You are hereby commanded to serve this summons and a copy of the complaint in this action upon defendant.

XXXXX Service by Certified Mail of this summons is initiated upon the written request of Sharon D. Stuart pursuant to the Alabama Rules of Civil Procedure.

Date 7/14/09  
1

\_\_\_\_\_ *M. Pittman* \_\_\_\_\_ KR  
Clerk Signature (Deputy Clerk Initials)

XXXXX Certified Mail

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at [www.usps.com](http://www.usps.com)  
**OFFICIAL USE**

2009 JUL 15 AM 11:23  
CLERK OF DISTRICT COURT

RETURN OF SERVICE;

Return of receipt (Return receipt here I certify that I in \_\_\_\_\_

\_\_\_\_\_  
(Date)

BY: \_\_\_\_\_  
SERV TITLE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here

\_\_\_\_\_  
(Date)

Send To  
PEBCO, Inc.  
c/o Registered Agent E. J. McArthur  
110 North Jackson Street  
Montgomery, AL 36104

2932 E6PR 0000 0280 6002

SUMMONS-CIVIL

Case No.  
CV- 2009-1088

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

Plaintiff: Nationwide Retirement Solutions, Inc.

v.

Defendants: Alabama State Personnel Board, PEBCO., Inc., and Alabama State Employees Association

NOTICE TO: **State of Alabama Personnel Board**  
300 Folsom Administrative Building  
64 North Union Street  
Montgomery, AL 35130-4100

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU ARE REQUIRED TO MAIL OR HAND DELIVER THE ORIGINAL WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY: SHARON D. STUART WHOSE ADDRESS IS: CHRISTIAN & SMALL, LLP, 505 20<sup>TH</sup> STREET, NORTH, SUITE 1800, BIRMINGHAM, ALABAMA 35203

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN **30 DAYS** AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT OF DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure:

You are hereby commanded to serve this summons and a copy of the complaint in this action upon defendant.

XXXXX

Service by Certified Mail of this summons is initiated upon the written request of Sharon D. Stuart pursuant to the Alabama Rules of Civil Procedure.

Date 7/16/09  
1

*Melissa Pittenger*

*KR*

Clerk Signature

(Deputy Clerk Initials)

XXXXX

Certified Mail

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only. No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Postmark Here

(Date)

2009 JUL 15 AM 11:23  
CLERK OF COURT  
MONTGOMERY COUNTY

RETURN OF SERVICE;

Return of n  
(Return receipt I  
I certify the  
in

BY:

SER  
TTTL

(Date)

Alabama State Personnel Board  
300 Folsom Administrative Building  
64 North Union Street  
Montgomery, AL 35130-4100

05E2 6698 0000 0290 6002

SUMMONS-CIVIL

Case No.  
CV- 2009-1088

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

Plaintiff: **Nationwide Retirement Solutions, Inc.**

v.

Defendants: **Alabama State Personnel Board, PEBCO, Inc., and Alabama State Employees Association**

NOTICE TO: **Alabama State Employees Association**  
110 North Jackson Street  
Montgomery, AL 36104

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU ARE REQUIRED TO MAIL OR HAND DELIVER THE ORIGINAL WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY: SHARON D. STUART WHOSE ADDRESS IS: CHRISTIAN & SMALL, LLP, 505 20<sup>TH</sup> STREET, NORTH, SUITE 1800, BIRMINGHAM, ALABAMA 35203

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN **30 DAYS** AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT OF DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure:

You are hereby commanded to serve this summons and a copy of the complaint in this action upon defendant.

XXXXX

Service by Certified Mail of this summons is initiated upon the written request of Sharon D. Stuart pursuant to the Alabama Rules of Civil Procedure.

Date 7/16/09  
1

*Sharon D. Stuart*

KK

Clerk Signature

(Deputy Clerk Initials)

XXXXX

Certified Mail

U.S. Postal Service  
**CERTIFIED MAIL**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

RETURN OF SERVICE;

Return of receipt  
(Return receipt he  
I certify that  
in \_\_\_\_\_

BY: \_\_\_\_\_  
SERV  
TITL: \_\_\_\_\_

(Date)

Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	

Postmark Here

(Date)

Alabama State Employees Association  
110 North Jackson Street  
Montgomery, AL 36104

2009 JUL 15 AM 11:23

EH22 EB99 0000 0290 6002