

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF GASTON

2012 APR 20 AM 11:24

12-CVS-1547

I. BEVERLY LAKE, JOHN B. LEWIS
 JR., EVERETTE M. LATTA, PORTER
 L. McATEER, ELIZABETH S.)
 McATEER, ROBERT C. HANES,)
 BLAIR J. CARPENTER, MARILYN L.)
 FUTRELLE, FRANKLIN E. DAVIS,)
 JAMES D. WILSON, BENJAMIN E.)
 FOUNTAIN, JR., FAYE IRIS Y.)
 FISHER, STEVE FRED BLANTON,)
 HERBERT W. COOPER, ROBERT C.)
 HAYES, JR., STEPHEN B. JONES,)
 MARCELLUS BUCHANAN, DAVID B.)
 BARNES, BARBARA J. CURRIE,)
 CONNIE SAVELL, ROBERT B.)
 KAISER, JOAN ATWELL, ALICE P.)
 NOBLES, BRUCE B. JARVIS,)
 ROXANNA J. EVANS, and JEAN C.)
 NARRON, and all others similarly)
 situated,)

Plaintiffs,)

v.)

STATE HEALTH PLAN FOR)
 TEACHERS AND STATE)
 EMPLOYEES, a corporation, formerly)
 known as the North Carolina Teachers')
 and State Employees' Comprehensive)
 Major Medical Plan, TEACHERS' AND)
 STATE EMPLOYEES' RETIREMENT)
 SYSTEM OF NORTH CAROLINA, a)
 corporation, BOARD OF TRUSTEES)
 TEACHERS' AND STATE)
 EMPLOYEES' RETIREMENT SYSTEM)
 OF NORTH CAROLINA, a body politic)
 and corporate, JANET COWELL, in her)
 official capacity as Treasurer of the State)
 of North Carolina, and the STATE OF)
 NORTH CAROLINA,)

Defendants.)

COMPLAINT
(Jury Trial Demanded)
(Class Action)

NOW COME Plaintiffs, I. Beverly Lake, John B. Lewis, Jr., Everette M. Latta, Porter L. McAteer, Elizabeth S. McAteer, Robert C. Hanes, Blair J. Carpenter, Marilyn L. Futrelle, Franklin E. Davis, James D. Wilson, Benjamin E. Fountain, Jr., Faye Iris Y. Fisher, Steve Fred Blanton, Herbert W. Cooper, Robert C. Hayes, Jr., Stephen B. Jones, Marcellus Buchanan, David B. Barnes, Barbara J. Currie, Connie Savell, Robert B. Kaiser, Joan Atwell, Alice P. Nobles, Bruce B. Jarvis, Roxanna J. Evans and Jean C. Narron, by and through the undersigned legal counsel, and complain on behalf of themselves and all others similarly situated (hereinafter collectively "Plaintiffs") against Defendants, State Health Plan for Teachers and State Employees, Teachers' and State Employees' Retirement System of North Carolina, Board of Trustees Teachers' and State Employees' Retirement System of North Carolina, Janet Cowell, in her official capacity as Treasurer of the State of North Carolina, and the State of North Carolina (hereinafter collectively "Defendants") as follows:

Introduction

This is an action to protect and restore the contractual and constitutional rights of the many long-serving retired employees of the State of North Carolina and ensure their future right to hard-earned medical insurance coverage. The named Plaintiffs, through their service to the State of North Carolina, earned vested rights in non-contributory medical coverage under an 80/20 health care plan for the duration of their retirement. The Defendants breached their contracts with Plaintiffs and impaired the Plaintiffs' constitutional rights when they (1) eliminated the non-contributory 80/20 health insurance plan; (2) forced the election of a significantly reduced 70/30 health insurance plan to receive a non-contributory benefit; and (3) eliminated the Plaintiffs' voluntary access to and participation in a 90/10 health insurance plan. On behalf of themselves and all other similarly situated vested retirees (believed to be in excess

of 186,000), the Plaintiffs move the Court to reinstate the contractually and constitutionally protected rights to non-contributory 80/20 coverage and the right to voluntarily contribute to and access a 90/10 health plan and for damages for the unlawfully assessed contributory premiums paid by Plaintiffs since 2011.

Parties

1. Plaintiff I. Beverly Lake is the former Chief Justice of the North Carolina Supreme Court and is currently a citizen and resident of Wake County, North Carolina, who retired from service as an employee of the State of North Carolina or a qualified employing unit under N.C.G.S. § 135-48.1(11) (hereinafter "State of North Carolina employee") on or about February 1, 1993. Plaintiff I. Beverly Lake worked for the State of North Carolina in a number of positions during various periods from February, 1969 to February 1, 1993 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

2. Plaintiff John B. Lewis, Jr. is a former judge of the North Carolina Court of Appeals and is currently a citizen and resident of Wake County, North Carolina, who retired from service as a State of North Carolina employee on or about January 1, 2001. Plaintiff John B. Lewis worked for the State of North Carolina from August 27, 1982 to January 1, 2001 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

3. Plaintiff Everette M. Latta is a former Executive Director with the Department of State Treasurer and is currently a citizen and resident of Wake County, North Carolina, who retired from service as a State of North Carolina employee on or about December 31, 1990. Plaintiff Everette M. Latta worked for the State of North Carolina from September, 1961 to

December 31, 1990 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

4. Plaintiff Porter L. McAteer is a former Engineering Instructor with Gaston College and is currently a citizen and resident of Gaston County, North Carolina, who retired from service as a State of North Carolina employee on or about September 1, 1998. Plaintiff Porter L. McAteer worked for the State of North Carolina from 1965 to September 1, 1998 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

5. Plaintiff Elizabeth S. McAteer is the former Clerk of Superior Court of Gaston County and is currently a citizen and resident of Gaston County, North Carolina, who retired from service as a State of North Carolina employee on or about February 1, 2010. Plaintiff Elizabeth S. McAteer worked for the State of North Carolina from December 31, 1981 to February 1, 2010 and had more than 5 years of creditable service with the State of North Carolina at the time of her retirement.

6. Plaintiff Robert C. Hanes is a former Deputy Superintendent with the Charlotte-Mecklenburg School System and is currently a citizen and resident of Mecklenburg County, North Carolina, who retired from service as a State of North Carolina employee on or about January 1, 1990. Plaintiff Robert C. Hanes worked for the State of North Carolina from September 1, 1949 to January 1, 1990 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

7. Plaintiff Blair J. Carpenter is a former District Supervisor with the Division of Motor Vehicles and is currently a citizen and resident of York County, South Carolina, who retired from service as a State of North Carolina employee on or about August 1, 1989. Plaintiff

Blair J. Carpenter worked for the State of North Carolina from July 1, 1961 to August 1, 1989 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

8. Plaintiff Marilyn L. Futrelle is a former Classroom Teacher with the Hickory Public School System and is currently a citizen and resident of Catawba County, North Carolina, who retired from service as a State of North Carolina employee on or about January 1, 2004. Plaintiff Marilyn L. Futrelle worked for the State of North Carolina from August, 1973 to January 1, 2004 and had more than 5 years of creditable service with the State of North Carolina at the time of her retirement.

9. Plaintiff Franklin E. Davis is a former School Principal with the Charlotte-Mecklenburg School System and is currently a citizen and resident of Mecklenburg County, North Carolina, who retired from service as a State of North Carolina employee on or about November 1, 1992. Plaintiff Franklin E. Davis worked for the State of North Carolina from November, 1963 to November 1, 1992 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

10. Plaintiff James D. Wilson is a former Superintendent with the Lenoir County Public School System and is currently a citizen and resident of Burke County, North Carolina, who retired from service as a State of North Carolina employee on or about July 1, 1994. Plaintiff James D. Wilson worked for the State of North Carolina from September, 1969 to July 1, 1994 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

11. Plaintiff Benjamin E. Fountain, Jr. is a former President of Isothermal Community College and is currently a citizen and resident of Wake County, North Carolina, who retired from

service as a State of North Carolina employee on or about September 1, 1985. Plaintiff Benjamin E. Fountain, Jr. worked for the State of North Carolina from September, 1950 to September 1, 1985 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

12. Plaintiff Faye Iris Y. Fisher is a former Vice President for Student Services with Stanly Community College and is currently a citizen and resident of Stanly County, North Carolina, who retired from service as a State of North Carolina employee on or about October 1, 1992. Plaintiff Faye Iris Y. Fisher worked for the State of North Carolina from August 21, 1959 to October 1, 1992 and had more than 5 years of creditable service with the State of North Carolina at the time of her retirement.

13. Plaintiff Steve Fred Blanton is a former Classroom Teacher with the Charlotte-Mecklenburg School System and is currently a citizen and resident of Mecklenburg County, North Carolina, who retired from service as a State of North Carolina employee on or about August 1, 2004. Plaintiff Steve Fred Blanton worked for the State of North Carolina from August 1, 1973 to August 1, 2004 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

14. Plaintiff Herbert W. Cooper is a former Teacher with the Union County School System and is currently a citizen and resident of Union County, North Carolina, who retired from service as a State of North Carolina employee on or about June 1, 2002. Plaintiff Herbert W. Cooper worked for the State of North Carolina from August, 1976 to June 1, 2002 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

15. Plaintiff Robert C. Hayes, Jr. is a former Special Agent in Charge with the State Bureau of Investigation and is currently a citizen and resident of Haywood County, North

Carolina, who retired from service as a State of North Carolina employee on or about January 1, 2011. Plaintiff Robert C. Hayes, Jr. worked for the State of North Carolina from January 6, 1987 to January 1, 2011 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

16. Plaintiff Stephen B. Jones is a former Assistant Controller with UNC General Administration and is currently a citizen and resident of Durham County, North Carolina, who retired from service as a State of North Carolina employee on or about January 1, 2009. Plaintiff Stephen B. Jones worked for the State of North Carolina from January 1, 1980 to January 1, 2009 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

17. Plaintiff Marcellus Buchanan is a former Special Agent with the State Bureau of Investigation and is currently a citizen and resident of Clay County, North Carolina, who retired from service as a State of North Carolina employee on or about November 1, 2011. Plaintiff Marcellus Buchanan worked for the State of North Carolina from August 1, 1989 to November 1, 2011 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

18. Plaintiff David B. Barnes is a former Special Agent in Charge with the State Bureau of Investigation and is currently a citizen and resident of Buncombe County, North Carolina, who retired from service as a State of North Carolina employee on or about June 1, 2001. Plaintiff David B. Barnes worked for the State of North Carolina from September 1, 1973 to June 1, 2001 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

19. Plaintiff Barbara J. Currie is a former Fiscal Manager with North Carolina State University and is currently a citizen and resident of Wake County, North Carolina, who retired from service as a State of North Carolina employee on or about August 1, 2005. Plaintiff Barbara J. Currie worked for the State of North Carolina from March 14, 1990 to August 1, 2005 and had more than 5 years of creditable service with the State of North Carolina at the time of her retirement.

20. Plaintiff Connie Savell is a former Classroom Teacher with the Cleveland County School System and is currently a citizen and resident of Cleveland County, North Carolina, who retired from service as a State of North Carolina employee on or about July 1, 2006. Plaintiff Connie Savell worked for the State of North Carolina from August, 1975 to July 1, 2006 and had more than 5 years of creditable service with the State of North Carolina at the time of her retirement.

21. Plaintiff Robert B. Kaiser is a former Special Agent with the State Bureau of Investigation and is currently a citizen and resident of Burke County, North Carolina, who retired from service as a State of North Carolina employee on or about December 1, 1998. Plaintiff Robert B. Kaiser worked for the State of North Carolina from August 1, 1973 to December 1, 1998 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

22. Plaintiff Joan Atwell is a former Teacher Assistant with the Charlotte-Mecklenburg School System and is currently a citizen and resident of York County, South Carolina, who retired from service as a State of North Carolina employee on or about January 1, 2010. Plaintiff Joan Atwell worked for the State of North Carolina from September 1, 1966 to

January 1, 2010 and had more than 5 years of creditable service with the State of North Carolina at the time of her retirement.

23. Plaintiff Alice P. Nobles is a former Teacher Assistant with the Charlotte Mecklenburg School System and is currently a citizen and resident of Mecklenburg County, North Carolina, who retired from service as a State of North Carolina employee on or about July 1, 2007. Plaintiff Alice P. Nobles worked for the State of North Carolina from January, 1972 to July 1, 2007 and had more than 5 years of creditable service with the State of North Carolina at the time of her retirement.

24. Plaintiff Bruce B. Jarvis is a former Criminal Specialist with the State Bureau of Investigation and is currently a citizen and resident of McDowell County, North Carolina, who retired from service as a State of North Carolina employee on or about February 1, 2002. Plaintiff Bruce B. Jarvis worked for the State of North Carolina from January 23, 1973 to February 1, 2002 and had more than 5 years of creditable service with the State of North Carolina at the time of his retirement.

25. Plaintiff Roxanna J. Evans is a former Office Assistant with the Department of Health and Human Services and is currently a citizen and resident of Wake County, North Carolina, who retired from service as a State of North Carolina employee on or about June 1, 2002. Plaintiff Roxanna J. Evans worked for the State of North Carolina from November 1, 1990 to June 1, 2002 and had more than 5 years of creditable service with the State of North Carolina at the time of her retirement.

26. Plaintiff Jean C. Narron is a former Administrative Secretary with the Department of Justice and is currently a citizen and resident of Wake County, North Carolina, who retired from service as a State of North Carolina employee on or about July 1, 1990. Plaintiff Jean C.

Narron worked for the State of North Carolina from June, 1958 to July 1, 1990 and had more than 5 years of creditable service with the State of North Carolina at the time of her retirement.

27. Defendant State Health Plan for Teachers and State Employees formerly known as the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan (hereinafter the "State Health Plan") is a corporation established and existing under state law, including but not limited to N.C.G.S. § 135-48.2, and is the corporate body of the State of North Carolina that maintains and administers the State Health Plan as described in N.C.G.S. § 135-48.1 *et seq.*

28. Defendant Teachers' and State Employees' Retirement System of North Carolina is a corporation (hereinafter the "Retirement System") that has been established pursuant to N.C.G.S. § 135-2 and is authorized to conduct all business, invest all of its funds, and establish and purchase all insurance benefits for retired employees in accordance with Chapter 135 of the North Carolina General Statutes for the benefit of the members of the Retirement System. The Retirement System withholds funds from retirees' retirement benefit checks to pay for the unlawful premium contributions complained of herein.

29. Defendant Board of Trustees Teachers' and State Employees' Retirement System of North Carolina (hereinafter the "Retirement System Trustees") is a body politic and corporate established pursuant to N.C.G.S. § 135-6 and is vested with the general administration and responsibility for the proper operation of the Retirement System, the Consolidated Judicial Retirement System of North Carolina, and the Legislative Retirement System of North Carolina, and is the trustee of the funds of said retirement systems.

30. Defendant Janet Cowell is the Treasurer of the State of North Carolina and is sued herein in her official capacity as State Treasurer and as Chairman of the Board of Trustees of the

State Health Plan. Ms. Cowell and the State Department of the Treasurer oversee and administer the State Health Plan.

31. Defendant State of North Carolina is a sovereign state of the United States.

Class Action Allegations

32. Plaintiffs bring this action on behalf of themselves and on behalf of all other persons similarly situated pursuant to Rule 23 of the North Carolina Rules of Civil Procedure.

The class(es) which Plaintiffs seek to represent in this action includes:

All retired persons who vested in the State Health Plan prior to September 1, 2011, and their surviving spouses and eligible children whose health insurance retirement benefits have been or will be impaired by Session Laws 2011-96, 2011-85, 2009-16 and 2008-168 or any other statute, Session Law, Bill, or other law, rule, regulation, or plan document, and if such persons are now deceased or will be deceased prior to the conclusion of this lawsuit, all of their living beneficiaries entitled to receive any damages as set forth herein or retirement health benefits under any health retirement benefit plan, or their estates, as applicable.

This class is ascertainable and there is a well-defined community of interest among the members of the class. Furthermore, this class is so numerous (expected to be in excess of 186,000 members of the class) that joinder of all members of the class is impractical.

33. The following issues of law and fact, among others, exist as to members of the class:

- a. The class members are retired State of North Carolina employees;
- b. The class members are all vested in the State Health Plan and/or predecessor plans;
- c. All said class members were vested in a non-contributory 80/20 Health Insurance Plan;

- d. All said class members were vested in an optional partially contributory 90/10 Health Insurance Plan;
- e. The class members all had a contract with the State of North Carolina to provide the foregoing health insurance benefits during their retirement;
- f. The Defendants breached the contract with the class members by unilaterally reducing and/or terminating the above-mentioned vested health insurance benefits;
- g. The above-stated contract has been impaired by the enactment of Session Laws 2011-96, 2011-85, 2009-16 and 2008-168;
- h. The passage of Session Laws 2011-96, 2011-85, 2009-16 and 2008-168 violated the class members' constitutionally protected rights to due process and equal protection under the law;
- i. The class members are all entitled to injunctive, declaratory, and other allowable relief (including damages) for the above-stated wrongful acts of the Defendants.

34. These questions of law and fact common to the members of the class predominate over any questions affecting only an individual member or members.

35. Plaintiffs will fairly and adequately protect the interests of the Class in that Plaintiffs have no interests that are antagonistic to other members of the Class and have retained counsel competent and experienced in the prosecution of class actions.

36. The Defendants have acted or refused to act and will continue to act or refuse to act on grounds generally applicable to the class, thereby making appropriate injunctive or declaratory relief with respect to the class as a whole.

37. Separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for Defendants.

38. This class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy. Prosecution as a class action will avoid repetitious litigation. There will be no material difficulty in the management of this action as a class action.

39. Defendants are sued herein in the matter of a contract between the Defendants, including the State of North Carolina, on the one hand and Plaintiffs on the other. Therefore, no sovereign immunity exists as to said contractual claims. In addition, Plaintiffs' claims are based on the assertion of constitutional protections and rights, and such claims are not subject to sovereign immunity. Plaintiffs have complied with all applicable conditions precedent to bringing suit.

Facts

40. Plaintiffs all had at least five (5) years of creditable service with the State of North Carolina prior to the enactment of Session Laws 2011-96, 2011-85, 2009-16 and 2008-168, and are, therefore, vested and eligible to receive health insurance benefits from the State Health Plan on a non-contributory basis for an 80/20 plan and access to an optional 90/10 health benefit plan.

41. During their tenure of employment with the State of North Carolina, Plaintiffs were granted certain benefits appurtenant to their status as State of North Carolina employees and as part of their overall compensation for employment. One such benefit is health/medical insurance through the State Health Plan that is in place and/or maintained by Defendants on the date on which the Plaintiffs vest for benefits.

42. The Plaintiffs continued their employment as State of North Carolina employees in exchange for certain deferred compensation from the State, including but not limited to retirement benefits and guaranteed health insurance benefits throughout the duration of their retirement.

43. The promise and provision of certain guaranteed health benefits for the duration of their retirement induced the Plaintiffs and all others similarly situated to continue working as a State of North Carolina employee and forego additional options and opportunities for employment and benefits from other employers.

44. In 1981, the State of North Carolina enacted Session Law 1981-1398 codified as N.C.G.S. § 135-33 *et seq.*, (the “1981 Law”) which stated in relevant terms:

The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 145-40.3:

(2) Retired teachers and state employees; ...

Employees and retired employees covered under the Predecessor Plan will continue to be covered, subject to the terms hereof;

45. The 1981 Law created a contract between Plaintiffs and Defendants, including the State of North Carolina that obligated the State of North Carolina to provide Plaintiffs with health benefits without Plaintiffs’ contribution in exchange for Plaintiffs’ employment with the State of North Carolina.

46. In 1983, the State of North Carolina enacted Session Law 1983-761 and in doing so, included members of the North Carolina General Assembly as persons who were eligible to receive benefits pursuant to the 1981 Law.

47. Persons that retired from the State of North Carolina after 1981 until the 1987 Law (as hereinafter defined) was enacted, were contractually entitled to receive, and did receive,

benefits pursuant to the contract between the State of North Carolina and State of North Carolina employees.

48. In 1987, the State of North Carolina enacted Session Law 1987-857 (the “1987 Law”), which revised the 1981 Law, and required State of North Carolina employees or retirees that retired after January 1, 1988 to work at least 5 years to receive retiree health benefits. The 1988 Plan Booklet stated, in relevant part:

The State of North Carolina pays for coverage under the Plan for the following individuals on a **noncontributory (no cost to you)** basis:

-Retired North Carolina public school teachers and State employees;

In order to qualify for benefits under the Plan, an employee who retires on or after January 1, 1988 must have completed at least 5 years of contributory service prior to retirement.

49. By enacting the 1987 Law, the State of North Carolina created a contract as a matter of law between the State of North Carolina and State of North Carolina employees, including Plaintiffs, upon the following pertinent terms:

- a. When a State of North Carolina employee worked five (5) years, the employee’s retirement health benefits would vest according to the terms of the applicable State Health Plan without any contribution or premium payments by the retiree; and
- b. Such plan guaranteed a 90/10 health insurance benefit without any retiree contribution from 1987 through 1991, and an 80/20 health insurance benefit without any retiree contribution from 1991 through September 1, 2011.

Hereinafter the above-stated commitment is referred to as the “non-contributory 80/20 Health Benefit,” the “80/20 Health Benefit,” and/or the “Health Benefit.”

50. The minimum guaranteed non-contributory 80/20 Health Benefit was expressly stated in all Plan documents from 1991 until 2011, meaning that all persons who vested in Health Benefits until 2011 were contractually guaranteed a minimum 80/20 benefit. Such vesting occurred for all Plaintiffs’ employment from 1981 to 1987, all Plaintiffs who were members of the North Carolina General Assembly from 1983 through 1987, all Plaintiffs with 5 years of service following the 1987 Law having been enacted, all Plaintiffs that were grandfathered in by the 1987 Law, and all Plaintiffs that vested from 1991 through September 1, 2011, and their surviving spouses and eligible children, as applicable.

51. The 1987 Law “grandfathered in” the 1981 Law, therefore the 1987 Law did not change, alter, or amend any rights to receive benefits vested under the 1981 Law.

52. Persons that vested before and after enactment of the 1987 Law received the non-contributory 80/20 Health Benefit from 1991 until September 1, 2011.

53. In 2005, the State of North Carolina enacted Session Law 2005-276, which allowed the State Health Plan to offer a 90/10 optional health insurance plan to qualified employees and retirees. A health insurance plan offering a 90/10 co-insurance rate was offered and elected by many employees and retirees on a partially contributory basis. Hereinafter the foregoing health insurance benefit plan is referred to as the “90/10 optional Health Benefit.”

54. On July 1, 2008, the State of North Carolina enacted Session Law 2008-168 (“2008 Law”), which stated, in relevant part:

The Plan shall administer one or more group health plans that are comprehensive in coverage and shall provide eligible employees and retired employees coverage on a noncontributory basis under at least one of the group plans

with benefits equal to that specified in subsection(g) of this section.

55. On April 22, 2009, the State of North Carolina enacted Session Law 2009-16, which effective as of July 1, 2009, unilaterally eliminated the 90/10 optional Health Benefit. Hereinafter Session Law 2009-16 is referred to as the “2009 Law.”

56. As a direct result of the 2009 Law, upon information and belief, the Plaintiffs David B. Barnes, Everette M. Latta, and Robert C. Hayes, Jr. and other similarly situated persons were forced to end their participation in the 90/10 optional Health Benefit and elect a reduced benefit plan. In addition, all Plaintiffs and other persons similarly situated were foreclosed from opting for the 90/10 optional Health Benefit as a result of the 2009 Law.

57. On April 5, 2011, the North Carolina General Assembly passed Senate Bill 265, which eliminated, for the first time, the non-contributory 80/20 Health Benefit. Senate Bill 265 was subsequently vetoed by the Governor.

58. On May 11, 2011, the State of North Carolina enacted Session Law 2011-85 (Senate Bill 323), which recodified and affirmed portions of Senate Bill 265. Session Law 2011-85 required Plaintiffs to either pay a contributory rate to receive the 80/20 Health Benefits or elect a significantly reduced 70/30 Health Benefit in order to receive health benefits without contribution.

59. On May 26, 2011, the State of North Carolina enacted Session Law 2011-96 (House Bill 578), which made certain parts of Session Law 2011-85 effective on September 1, 2011 and revised the prior law to remove references to the health benefits in place prior to July of 2009.

60. Hereinafter Session Laws 2011-85 and 2011-96 are collectively referred to as the “2011 Law.”

61. The 2011 Law, for the first time, set forth mandatory rates of retiree and employee premium contribution for the 80/20 Health Benefit and mandatory premium contribution rates for the 70/30 Health Benefit for non-retired vested employees.

62. The 2011 Law, 2009 Law, and the 2008 Law failed to grandfather-in Plaintiffs, thereby unconstitutionally, unilaterally, and wrongfully eliminating their vested non-contributory 80/20 and partially contributory 90/10 optional Health Benefits.

63. The Defendants' acts in eliminating the non-contributory 80/20 Health Benefit breached the contract(s) formed with Plaintiffs that guaranteed Plaintiffs would receive a non-contributory 80/20 Health Benefit to all persons who vested prior to the effective date of the 2011 Law.

64. Plaintiffs provided services to the State of North Carolina in exchange for receiving Health Benefits after vesting, and such benefits included a non-contributory 80/20 Health Benefit, as set forth in Plan documents from 1991 until at least 2011. By requiring the Plaintiffs to now contribute to receive the 80/20 Health Benefit, the Defendants are in breach of their contractual obligations to Plaintiffs.

65. Under North Carolina law, the State of North Carolina could not cease providing a non-contributory 80/20 Health Benefit, because Plaintiffs' rights to receive a non-contributory 80/20 Health Benefit were vested upon Plaintiffs meeting the vesting requirements in the 1987 law, and as set forth in the Plan documents.

66. As a direct result of the 2011 Law, the Defendants forced Plaintiffs I. Beverly Lake, John B. Lewis, Jr., Everette M. Latta, Porter L. McAteer, Elizabeth S. McAteer, Robert C. Hanes, Blair J. Carpenter, Marilyn L. Futrelle, Franklin E. Davis, James D. Wilson, Benjamin E. Fountain, Jr., Faye Iris Y. Fisher, Steve Fred Blanton, Herbert W. Cooper, Stephen B. Jones,

Marcellus Buchanan, David B. Barnes, Barbara J. Currie, Connie Savell, Robert B. Kaiser, Joan Atwell, Alice P. Nobles, Bruce B. Jarvis, Roxanna J. Evans, Jean C. Narron, and other similarly situated persons to pay a premium contribution in order to maintain their already guaranteed non-contributory 80/20 Health Benefit.

67. As a direct result of the 2011 Law, the Defendants forced Plaintiff Robert C. Hayes, Jr. and other similarly situated persons to elect the significantly reduced and lesser valued 70/30 benefit in order to maintain health insurance benefits without additional contribution.

First Cause of Action
(Breach of Contract – Non-contributory 80/20)

68. Plaintiffs incorporate herein their previous allegations of the Complaint.

69. On or about September 1, 2011, Defendants ceased providing Plaintiffs the already vested non-contributory 80/20 Health Benefit.

70. As a result of this breach of contract, on and after September 1, 2011, Plaintiffs have been forced to pay premium contribution in order to maintain their already guaranteed health insurance coverage or elect to receive a lesser valued 70/30 Health Benefit in order to avoid paying higher monthly premium contributions.

71. Defendants did not have authority under N.C.G.S. § 135-48.1 *et seq.* (and predecessor statutes) or under the North Carolina Constitution or otherwise to unilaterally discontinue or withdraw such already vested Health Benefits to Plaintiffs.

72. Defendants breached their contract with each Plaintiff, including all others similarly situated, and Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

Second Cause of Action
(Breach of Contract – Elimination of 90/10 Plan)

73. Plaintiffs incorporate herein their previous allegations of the Complaint.

74. On or about July 1, 2009, as a result of the 2009 Law, Plaintiffs were no longer able to select a partially contributory 90/10 optional Health Benefit plan, although their vested contractual rights with Defendants mandated such an option.

75. As a result of this breach of contract, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

Third Cause of Action
(Unconstitutional Impairment of Contracts)

76. Plaintiffs incorporate herein their previous allegations of the Complaint.

77. Defendants' acts complained of herein have deprived Plaintiffs of the protection against impairing the obligations of contracts in violation of Article 1, Section 5 of the North Carolina Constitution and/or Article 1, Section 19 of the North Carolina Constitution, which incorporate Article 1 Section 10 of the United States Constitution, as well as Article 1 Section 10 of the United States Constitution.

78. As a result of this impairment of contract, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

Fourth Cause of Action
(Violation of Due Process)

79. Plaintiffs incorporate herein their previous allegations of the Complaint.

80. Defendants' failure to provide Plaintiffs the non-contributory 80/20 Health Benefit and 90/10 optional Health Benefit and acts in depriving Plaintiffs of said earned benefits constitute a deprivation of property without due process of law in violation of Article 1, Section 19 of the North Carolina Constitution.

81. As a result of the foregoing violation of rights, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

Fifth Cause of Action
(Equal Protection)

82. Plaintiffs incorporate herein their previous allegations of the Complaint.

83. Defendants' acts complained of herein have deprived Plaintiffs of equal protection of the laws in violation of Article 1, Section 19 of the North Carolina Constitution.

84. As a result of the foregoing violation of rights, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

Sixth Cause of Action
(Petition for the Issuance of a Writ of Mandamus, or in the alternative, a Preliminary and Permanent Injunction/Specific Performance)

85. Plaintiffs incorporate herein their previous allegations of the Complaint.

86. Defendants illegally ceased to provide the non-contributory 80/20 Health Benefit to vested employees, including Plaintiffs, as set forth herein.

87. Defendants illegally ceased to provide the 90/10 optional Health Benefit to vested employees, including Plaintiffs, as set forth herein.

88. Plaintiffs are entitled to the issuance of a writ of mandamus requiring that the Defendants reinstate and continue to provide the already vested health benefits to Plaintiffs and others similarly situated.

89. In the alternative to the issuance of a writ, Plaintiffs are entitled to the issuance of a preliminary and permanent injunction requiring the Defendants to reinstate and provide the non-contributory 80/20 Health Benefit to Plaintiffs and reinstate the 90/10 optional Health Benefit.

90. Plaintiffs are likewise entitled to an order for specific performance requiring the Defendants to provide the vested 80/20 Health Benefit and 90/10 optional Health Benefit per the terms of the contracts with Plaintiffs.

Seventh Cause of Action
(Declaratory Judgment)

91. Plaintiffs incorporate herein their previous allegations of the Complaint.

92. The Gaston County Superior Court, as a court of record within its respective jurisdiction, has the power to declare rights, status, and other legal relations of all the parties hereto pursuant to N.C.G.S. § 1-253 *et seq.*

93. Insofar as there arises a conflict amongst the parties as to the rights, duties, privileges, and obligations of the parties as to the validity or constitutionality of North Carolina Session Laws 2009-16, 2011-85, and 2011-96 that the Court find, declare, and establish said rights as dictated by law and equity under the circumstances.

94. Insofar as there arises a conflict amongst the parties as to the rights, duties, privileges, and obligations of the parties as to the contractual rights between Plaintiffs and Defendants with regard to the non-contributory 80/20 Health Benefit, that the Court find, declare, and establish said rights as dictated by law and equity under the circumstances.

95. Insofar as there arises a conflict amongst the parties as to the rights, duties, privileges, and obligations of the parties as to the contractual rights between Plaintiffs and Defendants with regard to the 90/10 optional Health Benefit, that the Court find, declare, and establish said rights as dictated by law and equity under the circumstances.

Eighth Cause of Action
(Constructive or Resulting Trust/Common Fund)

96. Plaintiffs incorporate herein their previous allegations of the Complaint.

97. As a consequence of Defendants' acts complained of herein, Plaintiffs and other members of the class are entitled to have a constructive or resulting trust or common fund impressed upon all funds held by Defendants to which Plaintiffs and other members of the class are entitled, and the actuarial equivalent of the underpayment and interest thereon.

Prayer for Relief

WHEREFORE, the reasons set forth in this Complaint, Plaintiffs (including all persons similarly situated) pray the Court for the following relief:

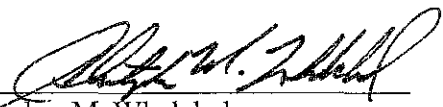
1. That the Court certify this action as a class action;
2. That the Court order Defendants to identify members of the class and to provide a full accounting of all past, present, and future benefits to which Plaintiffs and other class members are entitled as a consequence of his or her and other class members being vested with the foregoing Health Benefits;
3. That the Court order Defendants to immediately reinstate the non-contributory 80/20 Health Benefit for Plaintiffs (including all persons similarly situated);
4. That the Court order Defendants to immediately reinstate the 90/10 optional Health Benefit to Plaintiffs (including all persons similarly situated);
5. That the Court declare that Plaintiffs and other class members are vested with the non-contributory 80/20 Health Benefit and the 90/10 optional Health Benefit and that the 2008 Law, 2009 Law, and 2011 Law, which eliminated Plaintiffs' non-contributory 80/20 Health Benefit and eliminated the 90/10 optional Health Benefit, constitutes a breach of contract and a violation of the Constitution of North Carolina;

6. That Defendants be ordered to reinstate Plaintiffs' vested benefits in the form of a Writ of Mandamus, a preliminary and permanent injunction, or specific performance;
7. For damages caused by Defendants' breach of contract and/or impairment of contract or other constitutional violations;
8. That this matter be tried before a jury on all issues so triable;
9. That Defendants be required to pay all costs incurred by Plaintiffs in this action, including pre-judgment and post-judgment interest and reasonable attorneys' fees, as allowable; and
10. For such other and further relief as the Court deems just and reasonable.


Respectfully submitted this 30th day of April 2012.

**GRAY, LAYTON, KERSH,
SOLOMON, FURR & SMITH, P.A.**

By:



Christopher M. Whelchel
N.C. State Bar 31857



Michael L. Carpenter
N.C. State Bar 35202
Marcus R. Carpenter
N.C. State Bar 42730
Post Office Box 2636
Gastonia, North Carolina 28053-2636
Telephone: 704-865-4400
Facsimile: 704-866-8010
cwhelchel@gastonlegal.com
mcarpenter@gastonlegal.com
mrcarpenter@gastonlegal.com

Attorneys for Plaintiffs