

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF GASTON

2016 AUG 18 PM 3: 52

12-CVS-1547

GASTON CO. C.S.C.  
 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. )

**ORDER DENYING DEFENDANTS'  
 MOTION TO AMEND CASE  
 MANAGEMENT ORDER  
 &  
 SETTING BRIEFING DEADLINES  
 AND HEARING DATES FOR CLASS  
 CERTIFICATION AND SUMMARY  
 JUDGMENT**

**THIS MATTER** is before the Court upon the Defendants' Motion to Amend the Case Management Order ("CMO") served on May 5, 2016 (the "Motion"). The matter came on for hearing by telephone on May 19, 2016. The Plaintiffs objected to the Motion and filed a written response and the Defendants thereafter filed a written reply. The Court having considered the written submissions and the arguments of counsel determines that there is no good cause to grant the motion and that the Motion should be denied. Further, on the Court's own motion and after discussion with counsel, the Court has determined that the schedule for certain proceedings in the case shall be as set forth below.

**THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Defendants' Motion to Amend the CMO is **DENIED**.
2. The briefing for the class certification motion is in accordance with the CMO (as previously amended) and the Plaintiffs shall serve their Reply in Support of the Motion for Class Certification within 30 days after the Defendants serve their Response.
3. A hearing on the class certification motion is scheduled for September 2, 2016 at 9:00 AM at the Forsyth County Courthouse.
4. Motions, briefs and all supporting affidavits and other materials for Summary Judgment shall be filed by September 12, 2016.
5. Responses to Motions for Summary Judgment, including all supporting affidavits and other materials, shall be served on opposing counsel on or before October 17, 2016.
6. Replies in Support of Summary Judgment, including all supporting affidavits and other materials, shall be served on opposing counsel on or before November 7, 2016.

7. The parties shall jointly provide the Court with one copy of all summary judgment materials sufficiently in advance of the hearing to allow the Court to review the materials.
8. A hearing on any summary judgment motions is scheduled for November 14, 2016 at 10:00 AM at the Forsyth County Courthouse, with the hearing to continue from day to day as necessary.
9. As the parties have agreed, the briefing and hearing on summary judgment shall be limited to: (1) the issue of liability for all Plaintiffs (and class members, should the class be certified); and (2) the issue of damages for all Plaintiffs (and class members, should a class be certified) for alleged excess premium payments only for periods during which each Plaintiff (and class member) was enrolled in the State Health Plan's 80/20 coinsurance plan. The issue of damages for excess out-of-pocket costs, if any, for Plaintiffs (and class members, should a class be certified) who enrolled in the 70/30 and 90/10 coinsurance plans is deferred.
10. Due to the limitations on the scope of summary judgment and the general nature of proposed expert testimony, the deadline for deposing expert witnesses is continued. Should liability be established, the parties shall confer regarding a deadline and process for deposing expert witnesses if such depositions are deemed necessary at that time.
11. Paragraph 24 of the CMO, which requires the parties to confer following disposition of the class certification motion in order to develop a schedule for summary judgment, is rescinded, as the parties have already conferred and agreed to the

schedule set forth in this Order. All other deadlines and schedules applicable to expert discovery, class certification, and summary judgment remain in effect.

12. In all other respects, the terms of the CMO as filed on December 18, 2012 and as previously amended remain in effect.

This the 16<sup>th</sup> day of August, 2016.



Edwin G. Wilson, Jr.  
Designated Superior Court Judge (Rule 2.1)