

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF GASTON

2017 MAY 19 AM 10:38

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, THE ESTATE OF 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,

vs.

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, DALE R. FOLWELL, in his official capacity as Treasurer of the State of North Carolina, and the STATE OF NORTH CAROLINA,

Defendants.

**ORDER
GRANTING PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT
AND
DENYING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AS TO LIABILITY**

THIS MATTER, was heard on November 14, 2016 before the Honorable Edwin Wilson, Jr., Superior Court Judge presiding pursuant to Rule 2.1 Designation, upon Plaintiffs' Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment as to Liability, and upon the arguments of counsel (Michael Carpenter and Sam McGee for the Plaintiffs and Marc Bernstein and Robert Curran for the Defendants), and the pleadings, depositions, answers to interrogatories, admissions, affidavits and stipulations. The Court finds

that there are no disputed issues of material fact and therefore renders judgment as a matter of law as follows:

Procedural Background

1. Plaintiffs brought this suit on behalf of themselves and all other similarly situated North Carolina retirees on April 20, 2012.
2. The case was deemed an exceptional case under General Rule of Practice 2.1 and assigned to the undersigned.
3. Discovery was conducted pursuant to the Court's Case Management Order, and by April 27, 2016 was substantially complete as to the issues decided herein.
4. Defendants moved to dismiss the Complaint on June 29, 2012 pursuant to Rule 12(b).
5. Defendants' Motion to Dismiss was denied on May 21, 2013.
6. The Defendants appealed the denial of their Motion to Dismiss to the Court of Appeals.
7. On June 17, 2014, the Court of Appeals affirmed the denial of the Motion to Dismiss in part and dismissed Defendants' appeal, in part.
8. Defendants petitioned for discretionary review in the Supreme Court before and after the decision by the Court of Appeals.
9. The North Carolina Supreme Court dismissed Defendants' final Petitions for Discretionary Review and Writ of Certiorari on December 30, 2014.
10. On October 11, 2016, this Court certified a class encompassing the following retired State employees (hereinafter the "Class" and/or the "Class Members"):
 - (1) All members (or their Estates or personal representatives if they have deceased since July 1, 2009) of the N.C. Teachers' and State Employees' Retirement System ("TSERS") who retired before January 1, 1988; (2) TSERS members (or their Estates or personal representatives if they have deceased since July 1, 2009) who retired on or after January 1, 1988, were hired before October 1, 2006 and have 5 or more years of contributory service with the State and (3) surviving spouses (or their Estates or personal representatives if they have deceased since July 1, 2009) of (i) deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and (ii) deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986.

11. On August 18, 2016, the Court issued an order establishing a schedule for summary judgment motions and setting a hearing. The order indicated that “[a]s 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 the 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.”
12. On September 14, 2016, Plaintiffs filed a Motion for Partial Summary Judgment and supporting materials as to all issues between the parties except as to the issue of damages for excess out-of-pocket expenses, which the parties stipulated and agreed to defer until a later date.
13. On September 14, 2016, Defendants filed a Motion for Summary Judgment on Liability and supporting materials.
14. On October 17, 2016 the parties served cross-responses and supporting materials and on November 7, 2016 the parties served cross-replies and supporting materials.
15. The motions were scheduled for hearing and heard before the undersigned at the Forsyth County Hall of Justice on November 14, 2016, with the consent of the parties.
16. Said summary judgment motions are properly before the court and are ripe for ruling.

Undisputed Material Facts and Conclusions of Law

17. The Defendants offered Class Members certain premium-free health insurance benefits in their retirement if they worked for the State of North Carolina for a requisite period of time (the “Retirement Health Benefits”).
18. The Retirement Health Benefits were earned by the Class Members through employment service to the State.
19. The Retirement Health Benefits were offered as part of the Class Members’ overall retirement benefits package through the Retirement System for Teacher’s and State Employees.
20. The Retirement Health Benefits are described alongside the other retirement benefits offered to Plaintiff Class Members in Chapter 135 of the North Carolina General Statutes.
21. The Retirement Health Benefits are deferred compensation and are a part of the contract between Class Members and the Defendants.

22. The Class Members vested into the Retirement Health Benefits upon reaching certain employment service milestones.
23. Class Members vested in the Retirement Health Benefits as follows:
 - a. For Class Members who retired before January 1, 1988, vesting occurred upon their retirement.
 - b. For Class Members who retired on or after January 1, 1988, vesting occurred upon the earlier of January 1, 1988 if they had already earned five years of contributory service as of that date or at a later date upon their subsequent earning of five years of contributory service as defined in Chapter 135 of the North Carolina General Statutes.
 - c. For surviving spouse Class Members (or their Estates or personal representatives if they have deceased since July 1, 2009) of (i) deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and (ii) deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986, vesting occurred upon the deceased spouse-employee's retirement date.
24. The promise of the Retirement Health Benefits in exchange for employment service to the State and as part of the overall compensation package constitutes a contract between the Class Members and the Defendants.
25. Beginning in 1982, the State Health Plan offered one primary health plan that it was required to offer to all Class Members on a non-contributory (premium-free) basis for the duration of the Class Member's retirements subject to the vesting described above.
26. Over the same time period, the State Health Plan also offered optional health plans that differed in the type of benefits offered and that were not required to be offered premium-free.
27. The currently offered 80/20 "Enhanced" Plan (formerly called the "Standard" Plan) was the continuation of the primary "regular state health plan" that had been offered premium-free from 1982 until August 31, 2011.
28. The Retirement Health Benefits consist of an entitlement to a non-contributory (premium-free) health plan equivalent to the 80/20 regular state health plan that had been long offered and provided to Class Members (hereinafter the "80/20 Standard Plan").

29. The most appropriate way to measure the value of a health plan received by a member of that plan and to compare the value between offered plans is through the calculation and use of a plan's actuarial value. Through the use of actuarial values, it can be determined whether a given plan is equivalent to another plan or not – the effective actuarial equivalency (hereinafter such calculation methodology referred to as “Equivalent”).
30. From September 1, 2011 through 2016, the 80/20 Standard Plan required the payment of a premium in order to enroll in said plan.
31. The health plan(s) offered by the State Health Plan at the 70/30 level and referred to by the State Health Plan as the “Basic” and “Traditional” Plans from 2011-2016 is of a lesser value than the 80/20 Standard Plan and was not and is not Equivalent to the 80/20 Standard Plan.
32. The base Medicare Advantage Plans offered by the State Health Plan to Medicare retirees from January 1, 2014 through December 31, 2016 were at least Equivalent to the 80/20 Standard Plan.
33. “When the General Assembly enacted laws which provided for certain benefits to those persons who were to be employed by the state and local governments and who fulfilled certain conditions, this could reasonably be considered by those persons as offers by the state or local government to guarantee the benefits if those persons fulfilled the conditions.” *Faulkenbury v. Teachers' & State Emples. Ret. Sys.*, 345 N.C. 683, 691, 483 S.E.2d 422, 427 (1997).
34. “[P]ursuant to the plaintiffs' contracts, they were promised that if they worked for five years, they would receive certain benefits if they became disabled. The plaintiffs fulfilled this condition. At that time, the plaintiffs' rights to benefits in case they were disabled became vested. The defendants could not then reduce the benefits.” *Faulkenbury v. Teachers' & State Emples. Ret. Sys.*, 345 N.C. 683, 692, 483 S.E.2d 422, 428 (1997).
35. “A public employee has a right to expect that the retirement rights bargained for in exchange for his loyalty and continued services, and continually promised him over many years, will not be removed or diminished.” *Bailey v. State*, 348 N.C. 130, 141, 500 S.E.2d 54, 60 (1998).
36. The contract to provide the Class Members the Retirement Health Benefit was breached when Class Members were forced to pay premiums for the 80/20 Standard Plan starting in September of 2011.
37. The “Contract Clause” of the United States Constitution provides that “No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . .” U.S. Const. art. I, § 10.

38. Under the three-part test utilized by North Carolina, an unconstitutional impairment of contract exists where (1) there is a contractual obligation, (2) the state's actions impaired that contract, and (3) the impairment was not reasonable and necessary to serve an important public purpose. See *Bailey*, 348 N.C. at 140, 500 S.E.2d at 60 (quoting *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1 (1977)).
39. The Defendants substantially impaired the contracts with the Class Members.
40. The impairment was neither reasonable nor necessary to serve an important public purpose.
41. Class Members who paid premiums for their individual enrollment in the 80/20 Standard Plan since September 1, 2011 through the entry of this Order are entitled to damages for breach of contract commensurate with the amount of premiums paid by each such Class Member, which amount varied based on the year and whether they were eligible for Medicare coverage.
42. The base premium rates for the 80/20 Standard Plan is as follows for the applicable period of time for retired Class Members:

80/20 Standard Plan Retirees' Monthly Premium Rate		
<u>Plan Year-Rate Period</u>	<u>Non-Medicare</u>	<u>Medicare</u>
09/01/2011-06/30/2012	\$21.62	\$10.00
07/01/2012-12/31/2012	\$22.76	\$10.52
01/01/2013-06/30/2013	\$22.76	\$10.52
07/01/2013-12/31/2013	\$22.76	\$10.52
01/01/2014-12/31/2014	\$63.56	\$00.00
01/01/2015-12/31/2015	\$63.56	\$00.00
01/01/2016-12/31/2016	\$104.20	\$00.00
01/01/2017-12/31/2017	\$105.04	\$00.00

43. The calculation of the exact amount of monetary damages payable to the Plaintiff Class for excess premiums paid for the 80/20 Standard Plan is calculable based on the records and data kept by the Defendants in their normal course of business.
44. The calculation and determination of the monetary damages for those Class Members who were enrolled in the 70/30 Basic Plan from September 1, 2011 through 2016 (or any part of that time period) will be the subject of further proceedings in this Court as previously agreed and stipulated by the parties.
45. The Class Members' contractual right to the Retirement Health Benefits is "property" protected by the "Law of the Land" clause of the North Carolina Constitution. N.C.

Const. art I, § 19 (“No person shall be . . . in any manner deprived of his . . . property, but by the law of the land”); *see e.g., Bailey*, 348 N.C. at 154–55, 500 S.E.2d at 68–69 (a vested employment benefit “confers a contractual right, which is also a property right, the uncompensated impairment of which by subsequent legislation can constitute a taking in violation of the Law of the Land Clause”).

46. Imposing premiums on the 80/20 Standard Plan from September 1, 2011 forward constituted a “taking” under state law of Class Members’ private property by restricting and/or eliminating Class Members’ contractual right to the non-contributory 80/20 Standard plan and reducing a vested retirement benefit.
47. Defendants have taken these property rights from the individual Class Members without just compensation. Defendants violated Class Members’ rights under our State Constitution and the Plaintiffs are entitled to partial summary judgment as a matter of law for said violations of Article I, Section 19, of the Constitution of North Carolina (the “law of the land” clause).
48. In addition to monetary damages, permanent injunctive relief, specific performance, and a writ of mandamus are appropriate to enforce the provision of the Retirement Health Benefits to the Class going forward.

Based on the foregoing facts, conclusions of law, and application of applicable North Carolina law, the Court hereby **ORDERS, ADJUDGES, and DECREES** as follows:

- A. The Plaintiffs’ Motion for Partial Summary Judgment is **GRANTED**.
- B. The Defendants’ Motion for Summary Judgment as to Liability is **DENIED**.
- C. Judgment is hereby entered in favor of the Plaintiff Class and against the Defendants as described below.
- D. Defendants shall provide the 80/20 “Enhanced” Plan (as offered by the State Health Plan in September 2011), or its Equivalent, premium-free to all non-Medicare-eligible Class Members for the duration of their retirements.
- E. Defendants shall provide either or both the Base Medicare Advantage Plan (as offered by the State Health Plan in 2014 to Medicare-eligible retirees) or its Equivalent, or the 80/20 Enhanced Plan (as offered by the State Health Plan in September 2011) or its Equivalent, premium-free to all Medicare-eligible Class Members for the duration of their retirements.
- F. Defendants are enjoined from charging (or withholding from a pension payment) any premium to a Class Member for their individual enrollment in any plan or plans that is or are offered by the Defendants pursuant to paragraphs D and E of this Order.

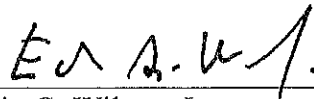
- G. The relief in paragraphs D, E and F is hereby enforced as a permanent injunction and a writ of mandamus is hereby issued by this Court to the Defendants to effectuate and enforce said provisions.
- H. The Plaintiff Class is entitled to the recovery of monetary damages in the amount of premiums actually paid by any and all Class Members for enrollment in the 80/20 Standard Plan from September 1, 2011 through the date of the entry of this Order, provided that each Class Member shall be entitled only to the repayment of premiums that are attributable to their individual enrollment and not to any premiums that are attributable to, for example, enrollment of a spouse, child or family.
- I. The foregoing monetary damages shall be paid into a common fund established by this Court and shall be administered and paid to Class Members (after deduction for such reasonable costs, attorneys' fees, and other administrative costs as appear) subject to further order of this Court.
- J. No later than two months after the date of this Order, the Defendants shall (a) calculate the monetary damages attributable to each Class Member consistent with this Order; (b) transmit that information to the Plaintiffs; and (c) provide an explanation of the calculations in sufficient detail to allow a meaningful review by the Plaintiffs. The damage calculations shall include reference to the damages due each Class Member. Plaintiffs shall be entitled to audit and verify the methodology, process and any information provided by Defendants and retain expert(s) to assist with the verification of any such damage calculations and data. Such audit and verification process shall include the following requirements in phased order: (1) conferral between those persons calculating the damages on behalf of Defendants and the expert(s) retained by Plaintiffs in order to agree on a methodology and process for the calculation of the damages, including the relevant data sources, and the agreed-upon data fields to result from the calculations; (2) agreement and application between the foregoing on test-case options to test the methodology and data sources on an interim basis and prior to the full calculations and make any adjustments to the methodology and process as may be needed; (3) after calculation of the damages by Defendants, the creation of a one percent stratified sampling and confirmation of the attributable damages for the sample by Plaintiffs - stratified between calculation categories of persons and data, such categories to be defined consistent with the agreed upon methodology and process; and (4) adjustments or recalculations as may be necessary and agreed-upon between the parties based on the sampling and final review. If the parties cannot agree on a calculation methodology or on the results therefrom, as promptly as possible and no later than three months after the date of this Order, the parties shall bring any disagreements to the attention of the Court, which will adjudicate any such dispute and provide additional guidance as necessary. No later than four months after the date of this Order or two weeks after the Court's resolution of any disagreements (whichever is later), the parties

will submit the final damage calculations to the Court along with a recommendation for further action by the Court to memorialize the calculations as a monetary judgment.

K. A declaratory judgment is hereby entered as follows:

- a. The Retirement Health Benefits are contractual and part of the Class Member's deferred compensation.
 - b. The contract between the Class Members and the Defendants for the Retirement Health Benefits entitles each Class Member to non-contributory (premium-free) health insurance under the 80/20 Standard Plan, or its Equivalent, for the duration of their retirements.
 - c. The Defendants breached the contract for the Retirement Health Benefits when Class Members began to be charged premiums for the 80/20 Standard Plan on September 1, 2011.
 - d. The Defendants impaired the contract for the Retirement Health Benefits with the Class Members when premiums were assessed against Class Members starting in September 1, 2011 for enrollment in the 80/20 Standard Plan.
 - e. The breaches and impairments described above deprived Plaintiffs of earned benefits and constitute a deprivation of property in violation of the "Law of the Land Clause" of Article 1, Section 19 of the North Carolina Constitution.
- L. Within fifteen (15) days of the issuance of this Order, counsel for Plaintiffs and Defendants shall confer and determine a schedule and amended case management plan to complete any necessary discovery, motion practice, or trial for the determination of the damages to be awarded to the Plaintiff Class Members who elected the 70/30 "Basic" or "Traditional" Plan or the CDHP Plan from September 1, 2011 to the present.
- M. The relief entered in paragraphs D through I shall be stayed until 35 days after the later of: (1) the resolution of any appeal made by the Defendants, or (2) the entry of a final judgment.

This the 17 day of May, 2017.



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