

Summary of Motion for Summary Judgment Hearing

The hearing consisted of cross-motions for Summary Judgment (a potentially dispositive motion, deciding whether there are any factual issues in controversy for a jury to decide, or whether one side or the other is entitled to judgment as a matter of law, based on the undisputed facts of record.) The judge considers the legal pleadings, the papers and answers exchanged in discovery, the deposition testimony, admissions and stipulations, and the law as argued by the parties in their briefs and at the hearing. The Defendants' motion for summary judgment sought to dispose of the case in its entirety (if the judge finds there was no "contract" for retiree health benefits, or if so, there was no breach or impairment of the relevant contract terms for post-employment health benefits). Our motion was only for partial summary judgment, asking the judge to find as a matter of law that there was a contract term to provide the "Standard" (or "Regular") "State Health Plan" which was (and remains) an 80/20 plan (currently the PPO 80/20 "Enhanced" Plan). If successful, we will have established liability for breach/impairment of the contract to provide "the" State Health Plan on a non-contributory (premium-free) basis, by imposing a premium on the 80/20 plan offered to and selected by retirees. The extent of that breach (as to others moved to the 70/30 plan, for instance) and the measure of damages would remain to be tried or determined by subsequent proceedings, even if the partial summary judgment is granted in our favor.

Mr. Bernstein did an excellent job trying to focus the judge's attention on all the many variables and details that complicate any health benefits plan, arguing that the "contract" is incapable of definition; and pointing out that both the State Health Plan, the Legislature, and our class members have always made and/or accepted changes to those variables; and, the Legislature reserved the right to amend the statutes and, consequently, putting a partial premium on one of the plans offered (which just happened to have an "80/20" coinsurance rate) was just another acceptable change in the State Health plan offerings. Therefore, the Defendants claim, the "contract" (if there is one) for a non-contributory health plan option is fulfilled by maintaining a "premium-free" PPO 70/30 "Traditional Plan" (formerly called the "Basic" plan before 2014), even though it is admittedly a "less valuable" post-employment health benefit than the 80/20 plan that was "premium-free" before September 1, 2011.

On behalf of the Plaintiffs, Sam McGee, Michael Carpenter, and Bill Moore rebutted Mr. Bernstein's arguments very capably and demonstrated that in order to win, the State would have to prove elements that were either unsupported by the admitted facts, or at least were in dispute; while for the Plaintiff Class to win, the judge only had to find that the promise of non-contributory 80/20 health coverage was made and delivered as part and parcel of the retirement benefits package (deferred compensation to retired teachers and State employees), and that taking a premium out of pension checks for the same plan that was noncontributory

before September of 2011 breached and impaired that contract. The judge seemed to test the waters with questions about the Defendants' arguments (the "right to amend" clause, for instance) which naturally kept us more on the defensive side of the battle. That may be an indication that he is "vetting" a possible decision in our favor, or that he has real concerns about those issues. We tried to emphasize the long standing promise and practice of an "80/20" State Health Plan being offered (on enrollment forms and in publications) and being provided to retirees since 1982 through the "Indemnity," "Regular," or "Standard" plans, all of which were an "80/20" type plan, although other options (sometimes with partial premiums) were also available to employees and retirees. Particularly in and after 2011, the same "PPO 80/20 Standard" plan was offered, accepted and delivered as "the" State Health Plan, except that a premium was deducted from the Retirement System pension checks for any retiree remaining on their "Standard" 80/20 plan after September 1, 2011. In general, at the hearing the Judge kept his thoughts very close to the vest, provided little to no commentary, and it was therefore difficult to ascertain which direction he may be leaning.

Judge Wilson's ruling is expected before Christmas. It is likely that the Judge will re-review the briefs (which number several hundred pages) before making his final determination. There are several options for his decision: (1) find that there are genuine issues of material fact and set a date for trial, (2) issue summary judgment for the Plaintiffs in part or in whole and then set a date for further proceedings, including possibly a trial for disputed issues including damages, or (3) issue summary judgment for the Defendants in whole, which would effectively end the case at the trial court level and set the stage for an appeal by the Plaintiffs.

If there is an appeal from the summary judgment ruling by either the Plaintiffs or Defendants, we will be compiling a record on appeal and submitting briefs for several months, after which an oral argument would likely be heard (just like when the Defendants appealed from the Order denying their motion to dismiss.) If there is no appeal, we will likely be engaged in expert discovery for some period of time, and then would possibly have another summary judgment hearing and/or a trial. We are probably looking at the late spring of 2017 before having another court appearance if we receive a favorable ruling and the State does not attempt to take another interlocutory (premature) appeal. The judge could hear from the parties again before that, if he has questions or if there is a request for re-hearing. In any event, we will keep you and our class representatives informed by letter and/or email; we will try to keep the entire class current by posting information on the website.