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Order Certifying a Class (WILLIAM A. WILLIS)

Alice D. Bonner
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WILLIAM A. WILLIS,	)(	
	)(	
On behalf of himself and all other members of his class similarly situated,	)(	**CIVIL ACTION FILE NO. 2007CV128923**
	)(	
Plaintiffs,	)(	
	)(	**CLASS ACTION**
v.	)(	
	)(	
EMPLOYEES' RETIREMENT SYSTEM OF GEORGIA , *et al.*	)(	
	)(	
Defendants.	)(	
	)(	

FILED IN OFFICE
AUG 27 2007
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

APB ~~[PROPOSED]~~ **ORDER CERTIFYING A CLASS**

The Court, having considered the entire record and all evidence in this case, determines that it is proper to certify a class in this action pursuant to O.C.G.A. § 9-11-23 and the discretion vested in this Court. The following shall constitute a class of Plaintiffs.

> All member beneficiaries and beneficiaries designated by members pursuant to O.C.G.A. § 47-2-121, and the estates of both groups to the extent they can be identified and located by Plaintiffs' counsel, who are owed either back-pay of benefits or prospective future correction of benefits, or both, in accordance with the ruling of the Georgia Supreme Court in its Order of October 30, 2006, *Plymel v. Teachers Retirement System of Georgia,* 281 Ga. 409, 637 S.E.2d 379 (2006), which the parties acknowledge constitutes binding precedent in this action, establishing that ERS has calculated optional retirement benefits that were not actuarially equivalent to the benefits otherwise payable to those beneficiaries had they selected the maximum plan of retirement upon their retirements.
>
> The parties acknowledge that the class description set forth above is in the broadest terms, and that Defendants reserve and do not waive the defense of statute of limitations as to the class members identified herein. The form and the timing of notice to class members and the issue of payment shall be resolved by subsequent order of this Court.

FACTS SUPPORTING CLASS CERTIFICATION

O.C.G.A. § 9-11-23(a)(1). "The class is so numerous that joinder of all members is impracticable."

The parties stipulate that there are several thousand persons within the class. This group is so large that the Court finds that each person cannot practically represent himself or herself either by joinder in one action or in separate actions. *See Ford Motor Co. v. London,* 175 Ga. App. 33, 36, 332 SE2d 345 (1985); *Stevens v. Thomas et al.,* 257 Ga. 645(2), 361 SE2d 800 (1987).

O.C.G.A. § 9-11-23(a)(2). "There are questions of law or fact common to the class."

The parties acknowledge that the opinion of the Supreme Court of Georgia in *Plymel v. Teachers Retirement System,* 281 Ga. 409, 637 S.E.2d 379 (2006), is binding precedent in this action. The decision, while construing O.C.G.A. Chapter 47-3, also resolves the issue of the liability and in particular the proper construction of the applicable portions of the statute governing the Employees' Retirement System of Georgia such as O.C.G.A. §§ 47-2-1, 47-2-26 and 47-2-121. These questions of law apply to the claims of the members of the class. In addition the Court has before it the issue of what statute of limitations governs the claims asserted in this action. The resolution of this issue governs all claims of the parties in the class. *See State Farm Mutual Automobile Insurance Company v. Rudine Mabry. 274 Ga. 498, 556 SE2d 114 (2001).*

O.C.G.A. § 9-11-23(a)(3). "The claims or defenses of the representative parties are typical of the claims or defenses of the class."

The members of the class assert the same claims. That is, all of them assert that ERS has paid them and/or continues to pay them monthly benefits as optional-plan retirees that are less

than actuarially equivalent to maximum-plan benefits as required by the statute and construed by the Supreme Court in *Plymel, supra.* (Complaint and Answer). The defenses raised by ERS are the same as to each claim of all class members. (Id.).

O.C.G.A. § 9-11-23(a)(4). "The representative parties will fairly and adequately protect the interests of the class."

The pursuit of this action thus far demonstrates compliance with this principle. The circumstances indicate that the Plaintiff and his counsel have and will continue to fairly and adequately protect all the claims of the class members. Further, here in this action no conflicts of interests have appeared or are likely to appear among the class members at any level. Neither do the attorneys who represent the class have any conflicts with any member's claims so far as appears in the record before the Court.

O.C.G.A. § 9-11-23(b)(1). "The prosecution of separate actions by or against individual members of the class would create a risk of:

(A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class...."

If several independent actions were brought by different class members resulting in varying interpretations of the applicable statutes governing the merits of these claims it might require ERS to increase benefits to some members but not others even though the members stand in the same factual positions. Likewise, if different courts should apply different statutes of limitations unequal results would ensue and again impose a particular burden on the Trustees of ERS.

"(B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests...."

The Georgia Supreme Court's decision in *Plymel, supra,* demonstrates the existence of this risk, and clearly governs the rights on the merits of all members of the class in this action.

O.C.G.A. § 9-11-23(b)(3) "The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) The interest in the members of the class in individually controlling the prosecution or defense of separate actions..."

Once a class is certified, the opinion of the Georgia Supreme Court in *Plymel, supra.,* will govern the merits of all claims of all members of the class. Since this opinion is favorable to the claims of all members, the interest in further litigating the merits by any member is insignificant. There does remain at this time the issue of the proper statute of limitations to be applied to the claims of members. However the desire of having one resolution of that issue rather than a risk of different resolutions greatly outweighs the interest for individual control by any class member.

"(B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class..."

There is but one other such action pending so far as is known to the parties or the Court and that is *Ronald L. Bowman. v. Employees' Retirement System of Georgia,* (Civil Action File No. 2007SUCV245 in Catoosa County Superior Court.) Counsel representing Plaintiffs in this

action also represent the Plaintiff in that action. The attorneys have assured the Court that Mr. Bowman has no objection to class certification being granted here in Fulton County rather than in Catoosa County. Further, Bowman and his Counsel will dismiss the Catoosa action following filing of this order.

"(C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum..."

Fulton County is the location of the offices of ERS where the information needed to calculate benefits is held. Therefore, this is a desirable forum for the concentration of the litigation of the claims.

"(D) The difficulties likely to be encountered in the management of a class action."

A class action is more appropriate here than in some other circumstances reflected in the reported cases in that the identity of the class members is readily available in the records of ERS along with the data needed to make calculations of additional benefits to be paid. Notification will be easier than in some other cases because the addresses of the class members are generally known by ERS. Further, ERS operates a web site used to disseminate information to retirees, including members of the class. To the extent that there are some claims that now belong to the estates of deceased members and that may require additional effort to notify the appropriate persons, but here it is at the very least known who the persons are who retired in such a way as to be members of the class and from that those managing estates of deceased persons can be located.

The foregoing is an analysis of each of those matters pertinent to findings under O.C.G.A. § 9-11-23. These findings lead the Court to the conclusion that the questions of law or

fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

SO ORDERED this 27 day of August, 2007.

Alice D. Bonner

Senior Judge Alice D. Bonner
Superior Court of Fulton County, Business Court

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