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# Consent Order Setting Schedule and Providing for Compilation and Calculation of Class Information (SMITHA ANDERSON)

Alice D. Bonner
*Superior Court of Fulton County*

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

| | | |
|---|---|---|
| **SMITHA ANDERSON,** | )( | |
| | )( | |
| **On behalf of herself and all other members of her class similarly situated,** | )( | **CIVIL ACTION FILE NO. 2008CV154757** |
| | )( | |
| **Plaintiffs,** | )( | |
| | )( | **CLASS ACTION** |
| **v.** | )( | |
| | )( | |
| **PUBLIC SCHOOL EMPLOYEES RETIREMENT SYSTEM OF GEORGIA, *et al.*** | )( | |
| | )( | |
| **Defendants.** | )( | |
| | )( | |

**CONSENT ORDER SETTING SCHEDULE AND PROVIDING FOR COMPILATION AND CALCULATION OF CLASS INFORMATION**

Counsel for the Plaintiffs and the Defendants having consented hereto, and the Court having concluded that the schedule and provision of information to which the parties have agreed will assist in the just and expeditious resolution of this action, the Court hereby enters the following Order:

1. In order to facilitate providing notice to the Plaintiff Class pursuant to O.C.G.A. § 9-11-23(c)(2), the Defendants shall furnish to Plaintiffs' counsel, on or before December 1, 2008, the following information in computerized form with respect to each Class member:

(a) The names and addresses of all living Class members, including designated beneficiaries and spouses of members of the Public School Employees Retirement System ("PSERS") who died in service;

(b) The names, Social Security numbers, and last known addresses of (i) all deceased PSERS option plan retirees who retired on and between July 1, 1991 and February 28, 2007; (ii) all deceased option plan beneficiaries, for all option plan retirees who retired on and between July 1, 1991 and February 28, 2007; and (iii) all deceased option plan beneficiaries (including surviving spouses, if applicable), for all persons who died in service on and between July 1, 1991 and February 28, 2007.

2. On or before December 1, 2008, PSERS shall make available to counsel for the Plaintiff Class and to persons designated by counsel for the Plaintiff Class all information necessary to compile and to audit the information provided pursuant to Paragraph 1 of this Consent Order.

3. On or before December 15, 2008, the Plaintiffs shall present to the Court a proposed order directing provision of notice to members of the Plaintiff Class, together with the notices proposed to be sent. Counsel for the Plaintiffs and the Defendants shall confer and shall seek to reach agreement upon the terms of the proposed order and notices.

4. Beginning on February 15, 2009, PSERS shall provide, to counsel for the Plaintiff Class and their designees, access to the information necessary to audit the calculations provided for in Paragraph 5 of this Consent Order.

5. On or before February 15, 2009, the Defendants shall provide to counsel for the Plaintiffs fifty percent (50 %) of the calculations below with respect to the members of the Plaintiff Class for whom the Defendants do not contest liability on the basis of the statute

of limitations. On or before March 31, 2009, the Defendants shall provide to counsel for the Plaintiffs the remaining fifty percent (50 %) of the following calculations with respect to the members of the Plaintiff Class for whom the Defendants do not contest liability on the basis of the statute of limitations:

A. All principal amounts, calculated as provided herein, that PSERS failed to pay to option plan retirees who retired at any time on or after August 7, 2002 and whose retirement benefits were based on an incorrect mortality table as ruled by the Supreme Court of Georgia in Plymel v. Teachers Retirement System of Georgia, 281 Ga. 409, 637 S.E.2d 379 (2006). These principal amounts shall be calculated for the period beginning August 7, 2002 and ending March 31, 2009 (the "Uncontested Period"). These principal amounts shall be the difference, calculated on a person-by-person basis, between (i) the retirement benefits properly payable to such persons during the Uncontested Period, calculated using the correct mortality table in accordance with the Supreme Court's decision of October 30, 2006 in Plymel, and adjusted for cost of living and any other increases granted and applied during the Uncontested Period; and (ii) the retirement benefits paid in fact to such persons during the Uncontested Period.

B. All principal amounts, calculated as provided herein, that PSERS failed to pay to named beneficiaries of option plan retirees or of members of PSERS who died in service, which named beneficiaries began to receive benefits at any time on or after August 7, 2002 and whose benefits were based on an incorrect mortality table as ruled by the Supreme Court of Georgia in Plymel. These principal amounts shall be calculated for the Uncontested Period. These principal amounts shall be the

difference, calculated on a person-by-person basis, between (i) the retirement benefits properly payable to such persons during the Uncontested Period, calculated using the correct mortality table in accordance with the Supreme Court's decision of October 30, 2006 in Plymel, and adjusted for cost of living and any other increases granted and applied during the Uncontested Period; and (ii) the retirement benefits paid in fact to such persons during the Uncontested Period.

C. Prejudgment interest at the rate of four percent (4%) per annum on each monthly component of the principal amounts calculated under the foregoing Paragraphs 5(A) and 5(B), (4 % per annum being the rate of interest uncontested by Defendants as being applicable with respect to past benefits, Plaintiffs contending that higher rates apply and reserving their right to seek higher rates consistent with the appeal taken in Plymel).

D. The difference between (i) the present value of all future retirement benefits expected to be paid to the members of the Class for whom calculations are performed under the foregoing Paragraphs 5(A), 5(B), and 5(C), all calculated using the correct mortality tables in accordance with the Supreme Court's decision of October 30, 2006 in Plymel, and (ii) the present value of all future benefits expected to be paid to such persons if the Supreme Court's decision of October 30, 2006 had affirmed rather than reversed this Court's Order of January 9, 2006 in Plymel. These calculations shall be performed on a person-by-person basis using April 1, 2009 as the present value date, and the calculations shall employ a discount rate of seven (7) percent.

E. In making calculations pursuant to this Paragraph 5, PSERS shall, to the extent practicable, use formulas and methods that will facilitate easy adjustment of its calculations of the total past benefits due to each Class Member if variables, including interest rate and time of actual payment, were to change.

6. On or before February 2, 2009, the Plaintiffs and the Defendants shall file any motions addressed to the merits of any claims or defenses in this action.

7. On or before April 6, 2009, counsel for the Plaintiffs shall file their application for an award of attorneys' fees and expenses. The application shall come on for hearing at 10:00 a.m. on May 18, 2009 or at such other time and date as the Court may specify by subsequent order.

8. On a date to be agreed upon by the parties or specified by subsequent order of the Court, PSERS shall provide to counsel for the Plaintiff Class and their designees, access to the information necessary to audit the calculations provided for in Paragraph 9 of this Consent Order.

9. On a date to be agreed upon by the parties or specified by subsequent order of the Court, the Defendants shall provide to counsel for the Plaintiffs the following calculations with respect to members of the Plaintiff Class for whom the Defendants contest liability on the basis of the statute of limitations:

A. All principal amounts, calculated as provided herein, that PSERS failed to pay to option plan retirees who retired at any time on and between July 1, 1991 and August 7, 2002 and whose retirement benefits were based on an incorrect mortality table as ruled by the Supreme Court of Georgia in Plymel. These principal amounts shall be calculated for the period beginning July 1, 1991 and ending May 31, 2009

(the "Contested Period"). These principal amounts shall be the difference, calculated on a person-by-person basis, between (i) the retirement benefits properly payable to such persons during the Contested Period, calculated using the correct mortality table in accordance with the Supreme Court's decision of October 30, 2006 in Plymel and adjusted for cost of living and any other increases granted and applied during the Contested Period; and (ii) the retirement benefits paid in fact to such persons during the Contested Period.

B. All principal amounts, calculated as provided herein, that PSERS failed to pay to named beneficiaries of option plan retirees or of members of PSERS who died in service, which named beneficiaries began to receive benefits at any time on and between July 1, 1991 and August 7, 2002, and whose benefits were based on an incorrect mortality table as ruled by the Supreme Court of Georgia in Plymel. These principal amounts shall be calculated for the Contested Period. These principal amounts shall be the difference, calculated on a person-by-person basis, between (i) the retirement benefits properly payable to such persons during the Contested Period, calculated using the correct mortality table in accordance with the Supreme Court's decision of October 30, 2006 in Plymel and adjusted for cost of living and any other increases granted and applied during the Contested Period; and (ii) the retirement benefits paid in fact to such persons during the Contested Period.

C. Prejudgment interest at the rate of four percent (4%) per annum on each monthly component of the principal amounts calculated under the foregoing Paragraphs 9(A) and 9(B), (4 % per annum being the rate of interest uncontested by Defendants as being applicable with respect to past benefits, Plaintiffs contending that

higher rates apply and reserving their right to seek higher rates consistent with the appeal taken in Plymel).

D. The difference between (i) the present value of all future retirement benefits expected to be paid to the members of the Class for whom calculations are performed under the foregoing Paragraphs 9(A), 9(B), and 9(C), all calculated using the correct mortality tables in accordance with the Supreme Court's decision of October 30, 2006 in Plymel, and (ii) the present value of all future benefits expected to be paid to such persons if the Supreme Court's decision of October 30, 2006 had affirmed rather than reversed this Court's Order of January 9, 2006 in Plymel. These calculations shall be performed on a person-by-person basis using June 1, 2009 as the present value date, and the calculations shall employ a discount rate of seven (7) percent.

E. In making calculations pursuant to this Paragraph 9, PSERS shall, to the extent practicable, use formulas and methods that will facilitate easy adjustment of its calculation of the total past benefits due to each Class Member if variables, including interest rate and time of actual payment, were to change.

10. The discovery period in this action is extended to and through May 1, 2009.

11. All other then-unresolved matters in this litigation shall come on for hearing on May 18, 2009 or on such date and time as the Court may specify by subsequent order. The Court, subsequent to this hearing, shall enter final judgment with respect to such matters.

SO ORDERED, this 13th day of November, 2008.

Alice D. Bonner

ALICE D. BONNER
Senior Judge, Superior Court of Fulton County, Business Case Division

**Consented to by:**

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