

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE RETIRED PUBLIC EMPLOYEES)
OF ALASKA, INC.,)

Plaintiff,)

v.)

SHELDON FISHER, COMMISSIONER)
OF THE ALASKA DEPARTMENT OF)
ADMINISTRATION,)

Defendant.)

Case No. 3AN-16-04537 CI

**RPEA'S MEMORANDUM IN OPPOSITION TO
DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT
AND REPLY IN SUPPORT OF
RPEA'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

INTRODUCTION

The Alaska Constitution protects against diminishment of *all* the benefits available to a public employee at the time the employee is hired: “[T]he whole package is an element of the consideration that the state contracts to tender in exchange for services rendered by the employee.”¹ Defendant acknowledges that the Alaska Supreme Court has held unambiguously that the constitutional protection against diminishment applies not just to monthly pension-type payments but also to the medical insurance benefits available to employees on retirement by virtue of their membership in the Public

¹ *Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882, 887 (Alaska 2003).

Employees' Retirement System (PERS).² Defendant then attempts to distinguish between retiree medical insurance benefits and retiree dental insurance benefits, pointing to a number of superficial differences between the ways these benefits are offered to employees. [Opp. at 2] As discussed below, none of the differences is legally significant. Dental insurance benefits, like medical insurance benefits, are among the "system benefits offered to retirees when an employee is first employed" and they are thus "accrued benefits" that may not be diminished or impaired.³ The Supreme Court has held clearly: "The term 'accrued benefits' is used in article XII, section 7 *without limitation*, suggesting that *whatever* benefits might be provided by the state retirement systems were meant to be covered."⁴

For the reasons discussed in RPEA's opening memorandum and below, this court should deny defendant's motion for summary judgment, grant RPEA's motion for partial summary judgment, and set this case for further proceedings.

² See Defendant's Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment and in Support of Defendant's Cross-Motion for Summary Judgment [hereinafter "Opp.,"] at 1-2 (filed July 1, 2016).

³ *Duncan*, 71 P.3d at 887.

⁴ *Id.* (emphases added).

ARGUMENTS

RETIREES' DENTAL INSURANCE COVERAGE IS AN ACCRUED BENEFIT PROTECTED BY ARTICLE XII, § 7.

A. ELIGIBILITY TO PURCHASE DVA INSURANCE IS CONDITIONED ON MEMBERSHIP IN PERS.

To recap some critical facts discussed previously by both RPEA and defendant:

Virtually all state employees automatically become members of PERS (or the generally comparable retirement plans that apply to teachers and judges) at the time they are hired.⁵ (For simplicity sake, RPEA, like defendant, has focused its discussion on PERS members. RPEA agrees that all the same principles apply to members of the Teachers' Retirement System and the Judicial Retirement System.⁶)

Based on membership in PERS, and subject to meeting eligibility requirements, PERS members are entitled to various benefits, including disability and death benefits, retirement benefits (essentially monthly pension-type payments), and major medical insurance during retirement.⁷ PERS members are also entitled to dental-vision-audio

⁵ See AS 39.35.120; see also AS 14.25 (Teachers' Retirement System), 22.25 (Judicial Retirement System). Political subdivisions of the state may elect to participate in PERS, and, to the extent they do, their employees also are covered. See AS 39.35.120, 39.35.600.

⁶ See Opp. at 2 n.3.

⁷ See generally AS 39.35.370–.547, and, in particular AS 39.35.370 (retirement benefits), .400 & .410 (disability benefits), .420 & .430 (death benefits), .535 (medical benefits).

insurance, long-term care insurance, and life insurance.⁸ Just as with major medical insurance, the ability to obtain any of these “optional” benefits is conditioned on membership in PERS (or the comparable teachers’ and judges’ retirement systems). The statutory provision governing DVA insurance states explicitly:

A person receiving benefits under AS 14.25, AS 22.25, AS 39.35, or former AS 39.37 may obtain auditory, visual, and dental insurance for that person and eligible dependents under this section.⁹

Because participation in the DVA insurance plan – just like participation in the major medical insurance plan – is conditioned on membership in PERS, it is an accrued benefit protected by Article XII, § 7, the same as medical insurance coverage.

B. THE DIFFERENCES THE STATE IDENTIFIES ARE LEGALLY IMMATERIAL.

Defendant identifies a number of ways in which it claims retirees’ dental insurance benefits differ from retirees’ medical insurance benefits. In some instances, defendant correctly identifies a feature that distinguishes medical insurance from dental insurance, but those differences are not legally sufficient to remove dental insurance from the protection of Article XII, § 7. In other instances, defendant is mistaken that the alleged differences exist in fact; that is, often the touted differences apply to some or even most retirees’ participation in the two plans but they do not apply to all retirees eligible to

⁸ See generally AS 39.30.090, and, in particular, subsection (a)(7) (life insurance), (a)(10) (auditory, visual, and dental insurance), (a)(11) (long-term care insurance).

⁹ AS 39.30.090(a)(10). Similar eligibility language is included in subsection (a)(7) (life insurance) and subsection (a)(11) (long-term care insurance).

participate in both plans. For purposes of finding a difference between the two types of insurance that justifies a different result under Article XII, § 7, defendant cannot rely on a difference that does not apply to all participants.

As key features that purportedly distinguish medical and dental insurance, defendant asserts that dental benefits must be “selected” while medical benefits are automatically available, and that retirees who want dental insurance must pay premiums during retirement, while retirees do not pay premiums for medical insurance. [Opp. at 5-6] However, the medical and dental insurance plans are not as neatly distinct as defendant contends:

- Employees eligible for retiree major medical insurance, like employees eligible for retiree dental insurance, may elect not to receive the benefit.¹⁰
- Employees must apply when they retire to receive medical insurance benefits, just like they must apply then to receive dental insurance benefits.¹¹ An employee who never applies for benefits never becomes eligible for any benefits as a retiree.¹² No benefits are forced on anyone.¹³

¹⁰ See AS 39.35.510 (“A retired employee may, in writing, request the administrator to suspend, for any period of time, payment of all or part of the benefits to which the employee is entitled.”).

¹¹ See Exh. A at 15-17. (RPEA’s Exhibits A-E are attached to its opening memorandum; Exhibits F-H are attached to the current memorandum.)

¹² See AS 39.35.495.

¹³ And no one automatically receives all the benefits to which he is entitled. Although all PERS members are guaranteed death and disability payments if they die or become disabled while employed, many employees never receive those benefits.

- Some employees eligible for retiree major medical insurance must pay premiums in order to receive that coverage – yet defendant concedes that, even for these retirees, medical insurance is part of the employment contract and therefore is protected by the constitution.¹⁴ For these retirees, medical insurance is exactly like dental insurance for other employees in that it is available only when premiums are paid and it ceases if the required premiums are not paid.¹⁵
- Employees eligible for retiree major medical insurance benefits, like employees eligible for retiree dental insurance, must make choices when they retire about exactly what benefits they wish to receive, including, for example, whether or not to cover a spouse or other dependents.¹⁶ Neither the employee nor the State knows, at the time the employee is hired, what medical or dental insurance choices the employee will make.¹⁷

¹⁴ See Exh. A at 9, 11; Exh. F at 6-7; *see also* Opp. at 15 n.59 (acknowledging that “not all PERS members are entitled to receive medical insurance at no cost and that these retirees must pay premiums”; notwithstanding this, defendant “does not contend that major medical was not a part of the employment contract for those employees that must pay premiums”).

¹⁵ See Exh. A at 11; Exh. F at 8. Active employees contribute to the cost of their retiree medical insurance coverage by making monthly payments while employed. AS 39.35.160, .170. Employees who select retiree dental insurance coverage pay for it with monthly payments while retired. AS 39.30.090(a)(1). The State contributes to the funding for major medical insurance, and does not contribute to funding the dental insurance. *Compare* AS 39.35.255 & .282 with AS 39.30.090(a)(10).

¹⁶ See AS 39.35.535; Exh. A at 17.

¹⁷ See AS 39.35.535(b) (retiree medical insurance coverage takes effect “after an election of coverage”). Employees entitled to monthly retirement benefits also make choices about coverage at the time they retire, and not before. See AS 39.35.370, .450; Exh. A at 15.

- Benefits available to retirees through both major medical and dental insurance may be changed by the State.¹⁸ If both are protected by the constitution, then the changes may not disadvantage retirees as a group.¹⁹

In short, *all* benefits are optional. The optional and elective nature of retiree dental insurance does not distinguish it constitutionally from retiree medical insurance. Further, the fact that dental insurance is only available after the retiree commits to paying premiums – and continues to pay premiums – does not distinguish dental from medical insurance, because some retirees pay premiums for their major medical insurance – and the State concedes these retirees’ medical insurance benefits are constitutionally protected. So the payment of premiums cannot be the basis for denying constitutional protection to dental insurance. And the certainty of the benefit at the time of hiring is not a factor that distinguishes medical from dental insurance, so that also cannot be the basis for denying constitutional protection to dental insurance.

What medical and dental benefits have in common and what requires treating them

¹⁸ See *Duncan*, 71 P.3d at 886 (major medical insurance coverage may be changed so long as overall the changes do not disadvantage employees); Exh. F at 6 (advising that retiree medical benefits “may change from time to time”); 2 AAC 39.280 (specifically allowing changes in the premium and terms for dental insurance when “necessary to maintain the financial integrity of the plan”).

RPEA notes that the State’s documents show that the retiree DVA plan was running a *surplus* in 2014, so that the premiums were reduced. See Exh. G. However, any facts pertinent to *why* defendant changed the retiree dental insurance plan in 2014 are outside the scope of the current motion.

¹⁹ See *Duncan*, 71 P.3d at 889-92.

the same under the constitution is that they are offered to the employee at the time of hiring.²⁰ Both thus become part of the contract for employment. Accordingly, throughout the employee's active service, the employee may count on those benefits being available to select at the time of retirement. Once benefits are offered at the time of employment and the employee accepts by beginning to work, those benefits may not be diminished or impaired.

C. THE ATTEMPTED DISTINCTION BETWEEN UNILATERAL AND BILATERAL CONTRACTS ADDS NOTHING TO THE LEGAL ANALYSIS.

Defendant devotes substantial space to distinguishing between unilateral and bilateral contracts. Defendant asserts that, when public employees are hired, they receive a *unilateral* contract for retiree medical insurance – meaning they accept that contract by performing their job during their years of active employment. Defendant asserts that employees receive only an *offer for a bilateral* contract for retiree dental insurance – meaning they accept that contract when they retire by completing a form and paying a premium each month of their retirement. [Opp. at 9-16]

This attempt to distinguish medical and dental insurance coverage fails for precisely the same reasons discussed in the previous section. To call major medical

²⁰ Compare Exh. C at 3 with Exh. F at 2-6 (showing that the two pertinent portions of the same booklet for employees reflect that retiree medical and dental insurance benefits are offered to employees in the same way at the same time); see Exh. H at 5 (earlier booklet for employees also shows how retiree medical and dental insurance are offered in the same way at the same time).

insurance subject to a unilateral contract and dental insurance subject to a bilateral contract is really nothing more than a conclusion that assumes the result defendant wants this court to reach. As discussed above, the attempted distinction fails because the two types of insurance cannot be distinguished in the ways defendant urges. The facts do not support calling one contract “unilateral” and the other “bilateral.” As detailed earlier, both types of insurance are promised when the employee is hired, but neither is available on retirement unless and until the employee takes affirmative steps at the time she retires. For both types of insurance, the retiree must apply for benefits at the time she retires. For both types of insurance, some or all applicants must pay premiums during their retirement. Given defendant’s concession that *all* retirees’ rights to major medical insurance are constitutionally protected, even though some retirees pay premiums, the fact that the right to receive dental insurance is not fully realized until the retiree agrees to and does pay premiums cannot justify labeling one type of contract “unilateral” and the other “bilateral.” The distinction between unilateral and bilateral contracts has no legal significance in this case.²¹

²¹ Defendant’s discussion of *Moro v. State*, 351 P.3d 1 (Ore. 2015), also adds nothing to the analysis here. *Moro* deals with retirement benefits, not health insurance benefits, and its analysis rests on the state and federal impairment-of-contract clauses, since the Oregon Constitution has no provision specifically protecting public employees’ benefits. In that context, the distinction between a unilateral and bilateral contract is critical. The *Moro* court held that some aspects of retirees’ benefits are not contractual at all (*see id.* at 23-28) and that others are subject to contracts that are accepted as the employee performs his work – meaning those aspects may be changed prospectively; i.e., benefits earned through years of service may not be retrospectively altered but active employees continuing in state service may receive lower benefits associated with work performed in

The Alaska Constitution says nothing about who pays for the benefits or when those payments are made. Under the Constitution and the case law, the relevant question is: What is promised when the employee is hired? On that test, retiree medical insurance and retiree dental insurance are the same: Both are promised when the employee is hired as a benefit of membership in PERS.²² Consequently, both are equally protected under Alaska Constitution, Article XII, § 7 against being diminished or impaired.

The early retirement benefits discussed in *Sheffield v. Alaska Public Employees' Association, Inc.*²³ provide a useful analogy. For a period of time prior to 1986, the State offered an optional early retirement benefit, under which eligible employees could opt to retire at age 50 instead of the then-usual minimum retirement age of 55, and they would receive all the regular retiree benefits, but adjusted actuarially to be equivalent to those that would be available if the employee retired at age 55.²⁴ In 1981, the PERS board changed the actuarial calculation, with the effect that an employee taking early retirement would receive less in monthly payments than the employee would have received under the formula that was in effect when the employee was hired.²⁵ The Alaska Supreme Court held that this attempt to adjust (and diminish) the retirement benefits violated the

years to come (*see id.* at 32-40). The Alaska Constitution, Article XII, § 7 would not tolerate this result.

²² *See* AS 39.30.090(a)(10), AS 39.35.535.

²³ 732 P.2d 1083 (Alaska 1987).

²⁴ *See id.* at 1084, discussing former AS 39.35.370(a)-(c).

²⁵ *See id.*

nondiminishment clause; the Court ruled that employees must be allowed to choose early retirement on the terms that were available when the employee was hired or any more advantageous terms that the State subsequently offered to employees.²⁶

That holding is significant for the current case because, like DVA benefits, the early retirement benefits addressed in *Sheffield* were entirely “optional.” Employees were told when they were hired about this benefit that they might choose in the future, but the choice of whether to accept the benefit did not occur until the moment of retirement. Presumably, many employees never selected early retirement benefits. However, those who chose the benefit were entitled to receive it on the terms offered at the time they were hired, not on less advantageous terms developed later on.²⁷

For the same reasons that defendant calls the contract for DVA insurance benefits “bilateral,” defendant also could have termed the contract for early retirement benefits “bilateral,” since in both instances the available benefit is just an offer to contract until the employee retires and decides to accept the offer. The Supreme Court rejected the claim that early retirement benefits were not protected by the nondiminishment clause. The close analogy between DVA benefits and early retirement benefits requires the same result here.

²⁶ See *id.* at 1089 & n.13 (if an actuarial adjustment occurs between the time an employee is hired and when she retires, she should be permitted to select which table of benefits applies to her).

²⁷ See *id.*

D. THE FACT THAT MEDICAL AND DENTAL INSURANCE BENEFITS ARE DEFINED IN DIFFERENT STATUTORY CHAPTERS IS LEGALLY IRRELEVANT.

The State makes much of the fact that some benefits are defined in AS 39.35, which describes the Public Employees' Retirement System, while other benefits, including DVA, are defined in AS 39.30, which describes Insurance and Supplemental Employee Benefits. [Opp. at 17-20] However, placement of the different benefit programs in different chapters of the statutes makes no constitutional difference. Constitutionally, what matters is whether the availability of the benefits depends on being a member of the Public Employees' Retirement System: "system benefits offered to retirees when an employee is first employed and as improved during the employee's tenure may not be 'diminished or impaired.'"²⁸ Unquestionably, dental insurance benefits (just like medical insurance benefits) are available to retirees *because* they are members of PERS. As quoted above, AS 39.30.090(a)(10) requires that, to obtain DVA insurance, the applicant must be "receiving benefits under [PERS or one of the other

²⁸ *Duncan*, 71 P.3d at 886. Courts from other jurisdictions with a constitutional nondiminishment provision comparable to Alaska's have rejected claims that medical benefits are not protected in the same way as pension benefits because they are set forth in different statutes, holding instead that what matters is whether the benefits are available because the retiree is a member of the established public employees' retirement system. See *Everson v. State*, 228 P.3d 282, 295 (Haw. 2010); *Kanerva v. Weems*, 13 N.E.3d 1228, 1243 (Ill. 2014).

public employee retirement systems].”²⁹

The reason that DVA benefits, and other benefits like long-term care insurance and life insurance, are placed in AS 39.30, rather than in AS 39.35, is that these benefits are “optional” in a sense other than that used in describing the employee’s ability to choose whether or not to receive the benefits. That is, in AS 39.35, the legislature has mandated the State to provide certain benefits to covered employees.³⁰ In AS 39.30, the legislature authorized but did not require the State to provide other benefits. AS 39.30.090(a) states that “The Department of Administration *may* obtain a policy or policies of group insurance covering state employees [and certain others], subject to [specified] conditions.” AS 39.30.091 authorizes the Department of Administration to provide the benefits listed in AS 39.30.090 “by means of self-insurance,” rather than by purchasing insurance policies.

If the State had never acted on this authorization and never bought or self-insured any of the coverages it is authorized by AS 39.30.090(a) to offer, then an employee clearly could not claim that such benefits were a part of his employment contract. However, once the State chose to offer any of those benefits to employees, the offered benefits became part of the employment contract, the same as any other benefit offered

²⁹ See also AS 39.35.535(e) (requiring the administrator to inform retiring PERS members of their right to choose optional health insurance coverages, including DVA insurance).

³⁰ See, e.g., AS 39.35.370, .400, .410, .420, .430, .535.

to the employee at the time of hiring.

The permissive aspect of the benefits described in AS 39.30.090(a) means that, unlike with the benefits described in AS 39.35, the Department of Administration could choose to stop offering these benefits without further action by the legislature. But, under the Alaska Constitution, such a change could apply only to employees hired after the date this change took effect.

This analysis also answers defendant’s claim that the State is “under no obligation to keep the offer of coverage under the 2000 [dental] plan open indefinitely.” [Opp. at 16] Defendant is partly correct: Because of the permissive nature of AS 39.30.090(a)(10), the State may at any time amend or delete entirely its DVA insurance offering – but it must do so prospectively only, such that the changes apply only to those employees who first become members of PERS after the date of the change.³¹

E. CASE LAW FROM OTHER STATES HAS LIMITED PERSUASIVE VALUE – BUT CASES FROM STATES WITH CONSTITUTIONAL PROTECTION FOR PUBLIC EMPLOYEES’ BENEFITS SUPPORT RPEA’S POSITION IN THIS CASE.

Defendant discusses a case where the Nebraska Supreme Court distinguished

³¹ Cf. *Sheffield*, 732 P.2d at 1085-89 (State could limit the early retirement program – as it did in 1986 – but the form of the program in effect at the time an employee was hired controls throughout that employee’s retirement). The State typically makes these changes to the benefits available to retirees by defining a new “Tier” of employees, with employees hired after a certain date being placed into a new Tier, which may have fewer benefits than Tiers for earlier-hired employees. See generally RPEA Exh. A at 5.

between pension payments and long-term disability (“LTD”) insurance coverage.³² The Nebraska court called the pension a part of a state employee’s deferred compensation, but found the LTD insurance coverage voluntary and optional on the part of a state employee and therefore not covered by state case law precedent that protected the pension against diminishment.³³

Nebraska has no specific constitutional guarantee against diminishment of a state employee’s benefits. Its courts’ analyses of the different benefits, and how they may or may not be changed, therefore have little persuasive value in Alaska.

More relevant are decisions from other states that offer state employees constitutional protections similar to Alaska Constitution, Article XII, § 7. Hawaii is one of those states.³⁴ In *Everson v. State*, the Hawaii Supreme Court held that the state employees’ health benefits plan is an “accrued benefit,” just like the monthly retirement allowance.³⁵ The critical factor, according to the Hawaii court, is that eligibility for health benefits, just like retirement benefits, is based on membership in the state retirement system; consequently, both are protected by the state constitution.³⁶

³² Opp. at 18-19, discussing *Livingston v. Metropolitan Utilities Dist.*, 692 N.W.2d 475 (Neb. 2005).

³³ See *Livingston*, 692 N.W.2d at 479-81.

³⁴ See Haw. Const., art. XVI, § 2 (“Membership in any employees’ retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired.”).

³⁵ See *Everson v. State*, 228 P.3d 282, 297-99 (Haw. 2010).

³⁶ See *id.*

Everson is akin to Alaska’s *Duncan*, but part of the holding also responds to one of the points defendant makes in the current case. In Hawaii, retirement payments are funded entirely by contributions made by the state and the employees during their years of active service; by contrast, medical insurance coverage may require payments by retirees who wish to participate in the plan.³⁷ Notwithstanding this difference in payment – and the fact that retiree medical insurance benefits would stop if the retiree ceased paying for them – the Hawaii Supreme Court held that medical insurance is an accrued benefit protected by that state’s constitution.³⁸ The Hawaii payment requirement makes Hawaii’s medical insurance benefits similar to Alaska’s DVA benefits, and the reasoning of the Hawaii court supports finding that Alaska’s DVA benefits are protected by the Alaska Constitution.

Illinois also has a nondiminishment clause in its state constitution.³⁹ Its supreme court reached a decision like *Duncan* and *Everson*, holding that the constitutional protection applies to retirees’ health insurance benefits as well as to their retirement payments, and the state therefore could not change the health insurance program to the

³⁷ See *id.* at 298. In this respect, the Hawaii health insurance plan is not unlike Alaska’s major medical insurance plan, where some retirees must pay monthly premiums for coverage.

³⁸ See *id.* at 298-99.

³⁹ See Ill. Const., art. XIII, § 5 (“Membership in any pension or retirement system of the State . . . shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.”).

detriment of retirees.⁴⁰ The Illinois court has not considered a benefit package precisely like Alaska's DVA insurance, but broad language by that court suggests that, if Illinois offers such a program, it would be covered by that state constitution's nondiminshment clause:

Whether a benefit qualifies for protection under article XIII, section 5 [of the Illinois Constitution], turns simply on whether it is derived from membership in one of the State's public pension systems. If it qualifies as a benefit of membership, it is protected. . . . How the benefit is actually calculated plays no role in the inquiry.⁴¹

In sum, if this court considers case law from other jurisdictions, the decisions from Hawaii and Illinois have greater persuasive value than the decision from Nebraska, and they support a conclusion by this court that the DVA insurance offered in Alaska is an accrued benefit protected against diminishment under Article XII, § 7.

⁴⁰ See *Kanerva v. Weems*, 13 N.E.3d 1228, 1239-44 (Ill. 2014).

⁴¹ *Id.* at 1244.


REEVES AMODIO LLC
500 L STREET, SUITE 300
ANCHORAGE, ALASKA 99501-1990
PHONE (907) 222-7100, FAX (907) 222-7199

CONCLUSION

For the reasons set forth above and in RPEA's opening memorandum, this court should deny defendant's motion for summary judgment and should grant RPEA's motion for partial summary judgment.

Respectfully submitted, this 22nd day of July, 2016.

REEVES AMODIO LLC


Susan Orlansky [ABA 8106042]
Counsel for Plaintiff

Certificate of service:

I certify that I caused a copy of the foregoing Memorandum and the accompanying Exhibits to be served by hand delivery on:

Jessica Alloway
Attorney General's Office
1031 W. 4th Ave., Suite 200
Anchorage, AK 99501

By: 

Date: 7.22.2016

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE RETIRED PUBLIC EMPLOYEES)
OF ALASKA, INC.,)

Plaintiff,)

v.)

Case No. 3AN-16-04537 CI

SHELDON FISHER, COMMISSIONER)
OF THE ALASKA DEPARTMENT OF)
ADMINISTRATION,)

Defendant.)

AFFIDAVIT OF COUNSEL

STATE OF ALASKA)
)ss
THIRD JUDICIAL DISTRICT)

SUSAN ORLANSKY, first being duly sworn, upon oath states:

1. I am counsel of record for the plaintiff in this case. The following statements are based on my first-hand knowledge and are offered to explain and authenticate the exhibits submitted with the plaintiff's Motion for Partial Summary Judgment.

2. Exhibit F is an excerpt from the AlaskaCare Retiree Insurance Information Booklet, May 2003, as updated in 2012. It is an excerpt from the same booklet from which pages previously were provided as Exhibit C. I received the full copy of the booklet from my client.

REEVES AMODIO LLC
500 L STREET, SUITE 300
ANCHORAGE, ALASKA 99501-1990
PHONE (907) 222-7100, FAX (907) 222-7199

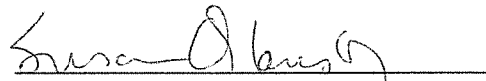
REEVES AMODIO LLC
500 L STREET, SUITE 300
ANCHORAGE, ALASKA 99501-1990
PHONE (907) 222-7100, FAX (907) 222-7199

3. Exhibit G is a copy of a letter from Buck Consultants to Michele Michaud, as a representative of the State of Alaska. I downloaded these pages from a disc I received from counsel for the defendant as part of the Defendant's Initial Disclosures, as indicated by the Bates numbers assigned by the defendant (lower right hand corner of each page).

4. Exhibit H is an excerpt from the Alaska Public Employees' Retirement System Information Handbook, prepared by the Division of Retirement and Benefits, dated April 1, 1985. I received the full copy of this booklet from my client.

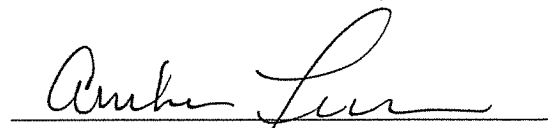
5. From the formatting and printing, I understand that Exhibits F and H are accurate copies of documents prepared by the State of Alaska and made available to employees.

DATED this 22nd day of July, 2016.


Susan Orlansky

SUBSCRIBED and SWORN to before me this 22nd day of July, 2016.

NOTARY PUBLIC
AMBER FARMER
STATE OF ALASKA
My Commission Expires Oct. 15, 2019


Notary Public in and for Alaska
My Commission Expires: October 15, 2019



**Retiree Insurance
Information Booklet**

May 2003

TABLE OF CONTENTS

This booklet was effective January 1, 2003.

MEDICAL PLAN

INTRODUCTION	5
WHO IS COVERED	5
Benefit Recipients	5
Dependents	6
HOW TO ELECT COVERAGE	7
CHANGING YOUR DEPENDENT COVERAGE	8
WHEN MEDICAL COVERAGE STARTS	9
New Benefit Recipients	9
Open Enrollment	9
Marine Engineers Beneficial Association Members	9
Dependents	9
WHEN MEDICAL COVERAGE ENDS	10
Ineligible Retirees	10
Failure to Pay Premium	10
Dependents	10
HOW MEDICAL BENEFITS ARE PAID	11
Benefit Year	11
Deductibles	11
Coinsurance	12
Recognized Charge	12

Lifetime Maximum	14
Pre-existing Conditions Limitation	15
Effect of Medicare	16
COVERED MEDICAL EXPENSES	16
Provider Services	18
Nurse Advice Line	19
Hospitalization	19
Home Health Care	20
Skilled Nursing Care	22
Skilled Nursing Facility	24
Outpatient Procedures and Plan-required	
Second Opinions	25
Retiree-elected Second Opinions	26
Certification	27
When To Call	28
Certification of Additional Days	29
Benefits Without Certification	30
Mental Health/Chemical Dependency	
Benefits Without Certification	31
Prescription Drugs	32
Card Program	33
Mail Order Program	33
Definitions	34
Exclusions	34
Radiation, X-rays, and Laboratory Tests	35
Rehabilitative Care	36
Outpatient Preoperative Testing	37
Outpatient Ambulatory Surgery	38
Anesthetic	38
Pregnancy	38
Durable Medical Equipment/Supplies	39
Travel	41
Emergencies	42
Treatment Not Available Locally	42
Second Surgical Opinions	43
Surgery In Other Locations	44

Mental Disorder and Chemical Dependency	
Treatment	44
Mental Disorders.....	44
Chemical Dependency	45
Medical Treatment of Mouth, Jaws, and Teeth.....	45
Medical Treatment of Obesity	47
Plastic, Cosmetic, and Reconstructive Surgery	48
Mastectomy/Breast Reconstruction.....	48
MEDICAL EXPENSES NOT COVERED	49
Limitations and Exclusions	49
INDIVIDUAL CASE MANAGEMENT.....	55

DENTAL-VISION-AUDIO (DVA) PLAN

INTRODUCTION	57
WHO MAY BE COVERED AND PREMIUM PAYMENT	57
Benefit Recipients	57
Dependents	58
HOW TO ELECT COVERAGE.....	59
WHEN DVA COVERAGE STARTS	60
New Benefit Recipients	60
Open Enrollees.....	60
Marine Engineers Beneficial Association Members	60
Dependents	60
WHEN DVA COVERAGE ENDS	61
Failure to Pay Premium	61
Ineligible Retirees	61
Discontinuance of Coverage	61
Dependents	62

CHANGING YOUR DVA COVERAGE..... 62

DENTAL BENEFITS

HOW DENTAL BENEFITS ARE PAID 64
 Benefit Year..... 64
 Annual Maximum Benefit 65
 Deductible..... 65
 Recognized Charge 65
 Advance Claim Review 67

COVERED DENTAL SERVICES..... 69
 Class I Preventive Services 69
 Class II Restorative Services 69
 Class III Prosthetic Services 70

DENTAL SERVICES NOT COVERED 71

VISION AND OPTICAL BENEFITS

HOW VISION BENEFITS ARE PAID 73
 Benefit Year..... 73
 Deductible..... 73
 Coinsurance 73
 Recognized Charge 73

COVERED VISION AND OPTICAL SERVICES 75

VISION AND OPTICAL SERVICES NOT COVERED 76

AUDIO BENEFITS

HOW THE AUDIO BENEFITS ARE PAID 79
 Benefit Year..... 79
 Maximum Benefit 79
 Deductible..... 79
 Coinsurance 79
 Usual, Customary, and Reasonable Charges 80

MEDICAL PLAN

INTRODUCTION

The State of Alaska retirement systems provide extensive and valuable benefits for you and your family including hospitalization, medical, surgical, maternity care, and other services necessary for the diagnosis and treatment of an injury or disease. Your health care coverage is good worldwide. These benefits may change from time to time. You should ensure that you have the current booklet by contacting the Division of Retirement and Benefits.

WHO IS COVERED

Benefit Recipients

The plan covers, automatically at no cost, benefit recipients of the Public Employees' Retirement System, the Teachers' Retirement System, the Elected Public Officers Retirement System, and the Judicial Retirement System, as well as benefit recipients of the Marine Engineers Beneficial Association who retired from the State of Alaska after July 1, 1986, **except for the following who must elect coverage and pay a premium:**

- Benefit recipients of the Public Employees' Retirement System (PERS) if they were first hired under the PERS on or after July 1, 1986, who are under age 60 and are not receiving a disability benefit.
- Benefit recipients of the Teachers' Retirement System (TRS) if they were first hired under the TRS on or after July 1, 1990, who are under age 60 and are not receiving a disability benefit.

- Benefit recipients of the Public Employees' Retirement System (PERS) if they were first hired under the PERS on or after July 1, 1996, are age 60 or older and who do not have at least 10 years of credited service.
- Benefit recipients under a Qualified Domestic Relations Order.

Enrollment periods are described on page 8.

Dependents (See page i for addenda.)

The following dependents may be covered:

- Your spouse. You may be legally separated but not divorced.
- Your children from birth (exclusive of hospital nursery charges at birth and well-baby care) up to 23 years of age *only* if they are:
 - Your natural children, stepchildren, foster children placed through a State foster child program, legally adopted children, children in your physical custody and for whom bona fide adoption proceedings are underway, or children for whom you are the legal, court-appointed guardian;
 - Unmarried and chiefly dependent upon you for support;
and
 - Living with you in a normal parent-child relationship.
 - This provision is waived for natural/adopted children of the benefit recipient who are living with a divorced spouse, assuming all other criteria are met.
 - Only stepchildren living with the retiree more than 50% of the time are covered under this plan.

Children incapable of employment because of a mental or physical incapacity are covered even if they are past age 23. However, the incapacity must have existed before age 23 and the children must continue to meet all other eligibility criteria. You must furnish the Division evidence of the incapacity, proof that the incapacity existed before age 23 and proof of financial dependency. This proof must be provided no later than 60 days after their 23rd birthday or after the effective date of your retirement, whichever is later. Children are covered as long as the incapacity exists, they meet the definition of children except for age, and you continue to provide periodic proof of the continued incapacity as required.

When you retire, you must list your dependents under the health plan so claims may be paid. If your dependents change later, you must complete a form to add or delete dependents from your account.

If more than one family member is retired under a retirement plan sponsored by the State of Alaska, each eligible family member may be covered by this program both as a benefit recipient and as a dependent, or as the dependent of more than one benefit recipient.

HOW TO ELECT COVERAGE

Benefit recipients who must pay a premium (see pages 5-6) must elect coverage either:

- Before the effective date of their retirement benefit,
- With their application for survivor benefits, or
- During the annual open enrollment period.

Coverage may be elected for:

- Retiree only,
- Retiree and spouse,
- Retiree and child/children, or
- Retiree and family (spouse and child/children).

WHEN MEDICAL COVERAGE ENDS

Coverage under the Medical Plan ends at the earliest time one of the following occurs:

Ineligible Retirees

Coverage ends on the last day of the calendar month in which you cease to be eligible for a benefit from any retirement system.

Failure to Pay Premium

Coverage ends on the last day of the calendar month in which you last make the required monthly premium (if you are required to pay a premium for coverage).

Dependents

If you are provided with or have elected coverage for your dependents, their coverage ends on the same day as your coverage ends, unless:

- You divorce. Coverage for your spouse ends on the date the divorce is final.
- Your child no longer meets all eligibility requirements. Coverage ends at the end of the month in which your child first fails to meet these requirements.
- Coverage is discontinued for all dependents.

Health coverage may be continued if one of the above situations (except for failure to pay a premium) occurs. Please see the "Continued Health Coverage" section on pages 95-99.

May 5, 2014

Ms. Michele Michaud
 State of Alaska
 PO Box 110203
 Juneau AK 99811

Re: Alaska Mid-Year 2014 Retiree Dental/Vision/Audio Rate Update

Dear Michele:

Buck Consultants is pleased to present the results of our analysis of State of Alaska dental, vision, audio plan data and a mid-calendar 2014 retiree rate update. Rates cover the projected cost of dental, vision and audio claims and administration for retiree and dependent coverage. Our report summarizes rates, the benefits and data analyzed, and methods and assumptions used for projections.

Rate Update Summary

	<u>Dental/Vision/Audio Coverage</u>			July 1, 2014	
	CY 2013	CY 2014	% Change	update*	% Change
Retiree Only	\$ 70	\$ 70	0%	\$ 63	(10)%
Retiree & Spouse	\$ 139	\$ 139	0%	\$ 125	(10)%
Retiree & Child(ren)	\$ 125	\$ 125	0%	\$ 113	(10)%
Retiree & Family	\$ 198	\$ 198	0%	\$ 178	(10)%
Survivor	\$ 70	\$ 70	0%	\$ 63	(10)%

*Updated as per request to reflect impact of the change in dental claim administrator, benefit plan, and network differential.

This rate change is expected to achieve the goal of maintaining assets in the dental, vision, and audio portion that cover IBNR (incurred, but not reported) plus two months' contingency, approximately three and one-half months estimated claims costs, while maintaining the rates for the period July 1, 2014 through December 31, 2015. Estimated total assets as of December 21, 2014 represent approximately 5.8 months' claims and by December 31, 2015 the assets will grade down to 3.5 months.

Alaska Retiree Dental, Vision and Audio Benefits and Data Elements

- Benefits
 Dental, vision and audio coverage is provided through the AlaskaCare Retiree Health Plan and is available to employees of the State and subdivisions who meet retirement criteria based on the tier in effect at their date of hire. Retiree dental, vision and audio coverage is fully funded by retiree-paid premiums.

Alaska Retiree Dental, Vision and Audio Benefits and Data Elements

Administration and Data Sources

The plan described above was administered by Wells Fargo Insurance Services beginning July 1, 2009. Wells Fargo Insurance Services was acquired by HealthSmart in January 2012. Claims and enrollment data for July 2009 through December 2013 were provided by HealthSmart and included in our analysis. We also incorporated run-out benefit payments through March 2014 as provided by HealthSmart. Moda provided year-to-date retiree dental benefit payments for January 1, 2014 through March 14, 2014. The claims administration transitioned from HealthSmart to Moda on January 1, 2014

Rate Projection Methods and Assumptions

Buck projected historic claim data to calendar 2014 and 2015 for retirees using the following summarized steps:

1. Develop historic claim cost rates – annual per employee costs for each type of coverage for each year in the experience period of fiscal 2010 through March 2014. Fiscal 2014 claims were annualized based on the 3 months of claims received. These claim costs have been adjusted to account for the transition to Moda effective January 1, 2014.
2. Adjust for plan design – multiply each historic paid claim cost rate by the relative value of benefits to be provided in the projection year compared to the relative value of benefits provided during each year in the experience period. Plan design adjustments were made based upon estimates Moda provided.
3. Adjust for claim fluctuation, anomalous experience, etc. – explicit adjustments are often made for past or anticipated large claims or other anomalous experience. Because we accounted for both Alaska-specific and national trend factors as described below, we did not make any additional smoothing adjustments.
4. Trend all data points to the projection period – project prior years’ experience forward to calendar 2014 and 2015 for retiree benefits on an incurred claim basis. Trend factors derived from historic Alaska-specific experience and national trend factors are shown in the table below. Additionally, we assumed membership growth of 3.0% per year for overall budget projection purposes, based on observed trends over the last 4 years.
5. Apply credibility to prior experience – adjust prior years’ data by assigning weight to recent periods, as shown at the right of the table below. Greater credibility is typically given to recent experience. Note also that we averaged projected plan costs using Alaska-specific trend factors and national trend factors, assigning 75% weight to Alaska-specific trends and 25% to national trends:

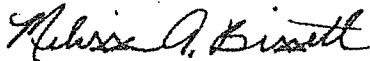
Period*	Alaska-Specific DVA	National DVA trend	Credibility Weighting
PY 2014	1.3%	4.1%	
FY 2013	1.3%	5.0%	30%
FY 2012	2.4%	5.7%	40%
FY 2011	7.3%	5.7%	20%
FY 2010	7.6%	5.9%	10%

* Fiscal-year data is used where available to reduce the number of months projected (e.g., FY10 data is projected 6 months less than CY10 data to obtain CY14 rates).

Rate Projection Methods and Assumptions

6. Add administration costs – no adjustments were made for internal administrative costs. Third party retiree plan administration fees for calendar 2014 are \$6.25 per retiree per month for dental, vision and audio benefits.
7. Assumed interest earned on fund assets for dental, vision and audio is 2% based upon most recent 4 years' financial statement information.

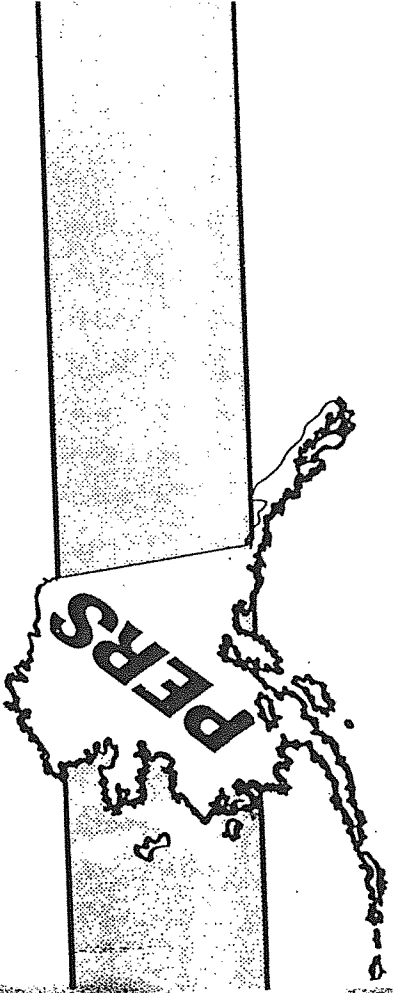
This analysis was conducted after a review of the data provided, and according to generally accepted actuarial and underwriting principals described above, and using the sets of reasonable assumptions shown above. Please let us know if you have any questions regarding the retiree healthcare rate recommendations.



Melissa A. Bissett, FSA, MAAA Senior Consultant,
Health and Productivity

- c: Mike Barnhill, State of Alaska
Monica DeGraff, Buck Consultants
Chris Hulla, Buck Consultants

Will
Do Not Remove



ALASKA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

INFORMATION HANDBOOK

Including Special Provisions for
Peace Officers and Firemen

April 1, 1985

Alaska Public Employees' Retirement System
The Division of Retirement & Benefits
J.K. Humphreys, Director

Board Members
Steve Hafling, Chairman
Marlene Johnson
Ben Humphries
Mary Notar
James Wellington

Denali Towers, Suite 401
2600 Denali
Anchorage, AK 99503
Phone: (907) 277-7504

Pouch CR
Juneau, AK 99811
Phone: (907) 465-4460

TABLE OF CONTENTS

Introduction	1
Retirement Years	1
Administration of the PERS	1
Membership in the PERS	3
Employers Participating in the PERS	4
Funding of the PERS	5
Vesting and Credited Service	7
Vesting	7
Credited Service	7
Earlier Service Credit	8
Military Service Credit	9
Temporary Service Credit	10
Elected Official Service Credit	10
Alaska Bureau of Indian Affairs Service Credit	11
Retirement Benefits	13
Minimum Requirements for Retirement	13
Benefit Calculation	13
Benefit Payments	14
Minimum Benefit	15
Conditional Service Benefit	15
Reemployment after Retirement	16
Retirement Options	17
Normal Retirement	17
Early Retirement	17
Joint and Survivor Options	18
Level Income Option	20
Disability Benefits	23
Occupational Disability	24
Nonoccupational Disability	24
Pre-Retirement Death Benefits	27
Nonoccupational Death	27
Occupational Death	28
Designation of Beneficiary	29

Cost of Living Adjustments	31
Cost of Living Allowance (COLA)	31
Post Retirement Pension Adjustment (PRPA)	32
Medical Benefits	35
Contributions	37
Interest Earned on Contributions	37
Exemption from Garnishment	37
Refund of Contributions	37
Reinstatement of Contributions	38
Payment of Indebtedness	38
Voluntary Savings	40
Peace Officers and Firemen	41
Contributions	41
Benefit Calculation	41
Normal Retirement Benefit	42
Limitation on Credited Service	42
Election to Terminate Peace Officer/Fireman Coverage	42
General Provisions	43
Duplicate Benefits	43
Tax Treatment	43
Adjustment Due to Errors	44
Penalty for False Statements	44
PERS Forms	45



INTRODUCTION

The Public Employees' Retirement System (PERS) was established effective January 1, 1961, to attract the most qualified personnel to seek, secure and remain in public service employment. Since that time, there have been substantial improvements and the PERS is now a highly flexible plan which allows members to prepare for their specific retirement needs. The retirement, disability, and survivor/death benefits under the PERS compare very favorably with benefits offered by other public and private plans. Some argue that the Alaska PERS is one of the best plans in the nation. The benefits described in this booklet, when combined with income from other sources, should enable you to meet your financial obligations with a minimum of worry.

This handbook describes the major points of the PERS and is designed to familiarize you with the system and the various benefits. If there is any difference of interpretation between this handbook and the actual statutes or the regulations governing the PERS, the statutes and regulations shall prevail.

RETIREMENT YEARS

Retirement should be the time for enjoyment and enrichment—the opportunity to pursue special interests and hobbies, to travel, and do all those things you have always wanted to do. As the daily expenses of living escalate, most people become more and more concerned about whether they will have enough money available to enjoy their retirement years. Your participation in the PERS will help you prepare for your financial security after retirement.

ADMINISTRATION OF THE PERS

The Commissioner of the Department of Administration has the statutory responsibility to appoint an Administrator for the PERS and has appointed the Director of the Division of Retirement and Benefits. The Administrator oversees the operation of the system and, together with the

Public Employees' Retirement Board, administers the plan. The Board consists of five members. Three are members of the Personnel/Labor Relations Board and are appointed by the Governor and two are PERS members elected by the membership.

The PERS Board members are:

C.R. "Steve" Hafling Chairman 1147 G Street Anchorage, AK 99501 Term expires: July 20, 1990	Ben Humphries 3707 Locarno Drive Anchorage, AK 99504 Term expires: June 20, 1988
James "Pat" Wellington 6115 Stacclem Drive Anchorage, AK 99504 Term expires: March 7, 1990	Marlene A. Johnson P.O. Box 218 Hoonah, AK 99829 Term expires: June 20, 1986
Mary A. Notar 3371 Douglas Highway Juneau, AK 99801 Term expires: March 7, 1990	

The Administrator and the Board prescribe policies, regulations and other activities necessary to carry out the intent and purpose of the Public Employees' Retirement System (PERS), Alaska Supplemental Benefits System (SBS), and the Deferred Compensation Plan (DCP) for State of Alaska employees. Semi-annual board meetings are held in the spring and the fall and interested PERS members are encouraged to attend. The PERS Board is empowered to hear appeals by members, beneficiaries and employers. Following its decision, the Board is required to submit its findings to the Administrator.

The PERS is characterized as an "employer" system, which means that each employer in the system serves as the intermediary between its employees and the PERS. If you have a problem or need information, you should contact the person who handles retirement matters for your employer. If you are unable to obtain the assistance you need, please send your inquiry to or contact:

The Public Employees' Retirement System
Division of Retirement and Benefits
Pouch CR
Juneau, AK 99811
Phone: (907) 465-4460

If you live in the Anchorage, Mat-Su or Kenai Peninsula areas, please send your inquiry to or contact:

The Public Employees' Retirement System
Division of Retirement and Benefits
Denali Towers, Suite 401
2600 Denali
Anchorage, AK 99503
Phone: (907) 277-7504

To assist us in responding to your inquiries about your service or benefits, please include your Social Security number on all correspondence. All PERS records are maintained by Social Security number.

Anytime you change your address, please let us know. This is especially important if you terminate employment and plan to receive a benefit at a later date.

MEMBERSHIP IN THE PERS

You are eligible for membership in the PERS if you are a permanent full-time or permanent part-time employee of the State of Alaska. If you are an employee of a participating political subdivision, your membership eligibility is dictated by the terms of the participation agreement between your employer and the PERS. Unless otherwise specified by a political subdivision, membership is mandatory.

- "Permanent full-time" means an employee who is occupying a permanent position which regularly requires working 30 or more hours per week.
- "Permanent part-time" means an employee who is occupying a permanent position which regularly requires working at least 15 hours but less than 30 hours per week.

Elected officials may file a written waiver of coverage to indicate that they do not want their service to be covered under the PERS. Once the waiver has been filed, all future elected official service will not be covered, unless a written revocation of waiver is filed. The revocation applies only to service rendered after the date it is filed; service which occurs between the date of the waiver and the date of the revocation may not be credited retroactively. There is no limit on the number of times an elected official may file a waiver or a revocation. Form 02-1832, "Participation of Elected Official" is used to file either a waiver or a revocation.

Temporary or nonpermanent employees, except those who work for the State Legislature during legislative sessions, and employees working less than 15 hours per week are not eligible for membership in the PERS.



MEDICAL BENEFITS

Comprehensive major medical insurance coverage is provided without charge for each person receiving a retirement, disability or survivor benefit from the PERS. In addition to coverage for yourself, your spouse and your eligible dependent children are also covered without charge. Coverage is automatic and continues as long as you or your surviving spouse are receiving benefits. Identification cards and information describing the coverage will be provided to you when you begin receiving benefits.

You will also receive information concerning the voluntary Dental-Vision-Audio (DVA) group plan. There are two DVA options available: (1) coverage for yourself only, or (2) coverage for yourself, your spouse and eligible dependent children.

When you or your covered dependents become eligible for Medicare, it will be assumed that you have applied for Medicare Part B. Physician's Expenses. Medicare benefits for which you are eligible will be subtracted from total covered expenses before the benefits payable under the State plan are calculated. Your insurance claim will be processed by the State's health insurance carrier and you will receive payment without delay based on what the carrier estimates Medicare will pay. Once you have received payment from Medicare, you must send a copy of Medicare's explanation of benefits to the State's health insurance carrier so benefits can be coordinated and any necessary adjustments made.

