

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

LESLIE RIDLE, COMMISSIONER)
OF THE ALASKA DEPARTMENT OF)
ADMINISTRATION,)

Defendant.)

RPEA’s OBJECTIONS TO DEFENSE EXHIBITS

In accordance with the Pretrial Order, RPEA submits the following list of its objections to the Defendant’s exhibits. RPEA has provided capsule descriptions, rather than attaching lengthy exhibits, but can supply copies if the court requests. Given the nature of the objections, and the parties’ expectations for trial, it does not appear necessary for the court to render pretrial rulings on the objections. The parties have agreed that all exhibits that either side intends to admit will be admitted through a witness; that is, even as to unobjected-to exhibit, the parties will not simply hand the court a stack of documents, but instead will have a witness explain each document before it is offered for admission. That would be an adequate and appropriate time for the court to rule on objections that are made. Depending on the testimony and the purpose for which it is offered, RPEA has advised the State that it may not object to certain exhibits.

RPEA’s objections can be grouped into categories:

Exhibits describing pre-2013 versions of the retiree dental plan (Exhibits 2000-2012): RPEA reserves the right to object to these exhibits as irrelevant and therefore inadmissible under Evidence Rule 402. This case concerns RPEA’s contentions that the 2014 modifications to the retiree dental plan diminished and impaired the benefits available to retirees as of 2013. Under *Duncan v. Retired Public Employees of Alaska*, a retiree is entitled to retain the benefits offered at the time of hiring or *any better benefits offered to retirees during the employee’s tenure as an active employee*.¹ RPEA has never asserted that the dental benefits available to retirees prior to 2013 were better than the 2013 retiree dental benefits.² Thus, the details of any plan in effect before 2013 should be irrelevant to any issue at trial.

Exhibit describing the health care benefits available to active employees as of 2018 (Exhibit 2013): Exhibit 2013 is a voluminous document listing all of the health care benefits currently available to an active state employee. RPEA objects on the ground of irrelevance. Much of the document has nothing to do with dental benefits, and even the pages addressing dental benefits apply to active employees not retirees. This exhibit should be excluded under Evidence Rule 402.

¹ See 71 P.3d 882, 886 (Alaska 2003) (“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’”).

² RPEA does not mean to concede that the 2013 dental benefit package was the best the State ever offered to retirees – only to acknowledge that it has not claimed before and will not claim at trial that a previous package was better. This trial will focus on the differences between the 2013 and 2014 plans.

Exhibits that are emails (Exhibits 2017-2019): RPEA objects to admission of these emails as hearsay. They are out-of-court statements, inadmissible under Rule 802, and no obvious exception to the rule against hearsay applies.

Exhibits that are expert reports (Exhibits 2021, 2029, 2042, 2049): The State has marked as exhibits the full report and supplemental report from each of its two expert witnesses. RPEA objects to these exhibits as hearsay, inadmissible under Evidence Rule 802. The experts may testify consistent with their reports, but the reports themselves, each offering essentially a written version of the witness's testimony, should not be admitted.

The State separately has marked portions of these reports that set forth tables the witnesses have prepared. RPEA has advised the State that it will not object to admission of most of those exhibits as illustrative of each witness's testimony.³ RPEA understands the State may be willing to apply the same rule to a comparable table prepared by RPEA's witnesses. RPEA recognizes that it will be much easier for the witnesses and the court if tables with substantial detail – such as tables offering line-by-line comparisons of the 2013 and 2014 plans or tables reflecting numerical analysis developed by a witness – are admitted as written exhibits, rather than expecting the witnesses and the court to rely only

³ In other words, RPEA does not intend to concede the accuracy of any of the tables, only the convenience of admitting a table with substantial detail as illustrative of the witness's testimony.

The exception, where RPEA will object to a table, is discussed separately below.

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on oral testimony.

The State also separately marked its experts' Curricula Vitae, and RPEA has advised that it will not oppose admission of these exhibits, again, simply as a convenience to the witness and the court. RPEA understands the State likewise will not oppose admission of RPEA's witnesses' CVs.

Exhibit that is a table excerpted from an expert report (Exhibit 2023): This exhibit is a table from the appendix to one of the State's expert's reports. Unlike the tables discussed above, to which RPEA will not object, this table includes two columns of commentary that offer essentially a written version of the expert's testimony. RPEA objects on grounds of both hearsay and relevance. One column is headed "Industry" and states the witness's opinion about how the 2014 Moda plan compares to the industry standard and to a so-called "best practice." Besides being a hearsay summary of the witness's proposed testimony, this column is largely irrelevant, as the question for trial is not how the Moda plan compares to other plans in the industry but only how the 2014 Moda plan compares to the retiree dental plan in effect in 2013. The final column is headed "Observations" and this column also is hearsay, a written summary of the witness's proposed opinion testimony. RPEA objects to presenting the witness's expert opinions in a table for the same reason as it objects to presenting the expert's opinions in the narrative portion of the report. RPEA would not object if the table were redone without the final two columns.


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Exhibits that are spreadsheets (Exhibits 2029-2038): The State has marked as exhibits the spreadsheets containing the raw data on health care claims on which the parties' experts' analyses rely. RPEA has agreed not to object, if the court wishes to have these spreadsheets in evidence – but RPEA respectfully suggests that the court may not want these exhibits admitted under Evidence Rule 403. These exhibits make sense only to someone who is an expert in dental care claim processing and spreadsheet review. For a non-expert, the exhibits are at best confusing and at worst misleading, if they are not read accurately. The parties retained experts precisely so that lawyers and judges would not need to try to analyze the spreadsheet data. If the exhibits have no value to the court, they should not be admitted.

Exhibits that are articles from professional journals (Exhibits 2040-2042): These three exhibits are copies of articles from professional dental journals. They are inadmissible as hearsay. Evidence Rule 803(18) allows a party to call an expert witness's attention to statements contained in a professional periodical. The rule expressly provides that, if the source is established as a reliable authority, "statements [from the article] may be read into evidence but may *not* be received as exhibits." (Emphasis added.)

Respectfully submitted, this 24 day of March 2018.

REEVES AMODIO LLC


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Certificate of service:

I certify that on March 27, I caused a copy of the above document to be served by first class mail and email on the following:

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