

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 Court finds from the record there are approximately 15,000 or more persons within the class. (Jeffrey Ezell Depo., pp. 65-67 and Exhibit 8). 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 opinion of the Supreme Court of Georgia in this case, *Plymel et al. v. Teachers Retirement System et al.*, (Case No. S06A1280, October, 30, 2996) decided the issues of liability and in particular the proper construction of the applicable portions of the statute governing the Teachers Retirement System of Georgia such as O.C.G.A. §§ 47-3-1, 23, and 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. Plaintiffs contend the 20 year statute of limitations in O.C.G.A. § 9-3-22 applies, while TRS contends the applicable statute of limitations is either the six years for contract claims in O.C.G.A. § 9-3-24 or the alternative two years in O.C.G.A. § 9-3-22. 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 TRS 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 this case. (Complaint and Amendments thereto; *Plymel v. Teachers Retirement System*, Supreme Court Decision, 2006 F.C.D.R. 3290, ____ Ga. ____ (2006)). The defenses raised by TRS are the same as to each claim of all class members. (Answer; *Plymel* Supreme Court Decision).

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 two Plaintiffs and their counsel have pursued their claims to the Supreme Court of Georgia resulting in an opinion which protects all claims of the class members. This is a demonstration of the fair and adequate protection of all claims by these representatives. The circumstances indicate that they 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....”

There is currently no risk of varying adjudications as to the merits of the case, as the decision of the Georgia Supreme Court is res judicata. However, if different courts should apply different statutes of limitations, unequal results would ensue.

“(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 opinion in this case demonstrates the existence of this risk, and clearly governs the rights on the merits of all members of the class.

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 this case 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 B. Williams, et al. v. Teachers Retirement System of Georgia, et al.* (Civil Action File No. 31,390 in Chattooga County Superior Court.) Counsel representing Plaintiffs in this action also represent the Plaintiff in that action. The attorneys have assured the Court that Mr. Williams has no objection to class certification being done here in Fulton County rather than in Chattooga County. Further, Williams and his Counsel will request that the Chattooga action be dismissed upon the certification of the class in Fulton County and it is hereby ordered that Ronald B. Williams is a member of the class certified by 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 TRS where the information needed to calculate benefits is held. Therefore, this is a desirable forum for the concentration of the litigation of the claims.

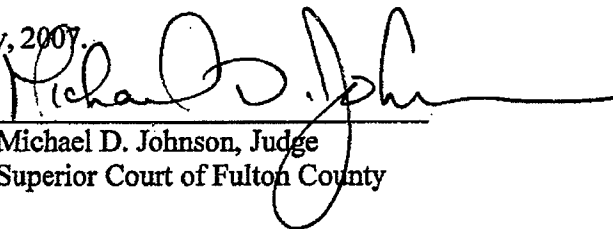
“(D) The difficulties likely to be encountered in the management of a class action.”

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 TRS 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 TRS. Further, TRS 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, 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 may be located.

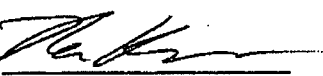
The foregoing is an analysis of each of those matters pertinent to findings under O.C.G.A. § 9-11-23. These findings lead the Court to the conclusion that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

SO ORDERED this 26 day of January, 2007.

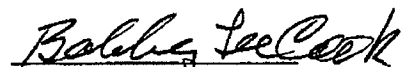

Michael D. Johnson, Judge
Superior Court of Fulton County

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