

MOORE V HCA  
C/O RUST CONSULTING INC – 5114  
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**IMPORTANT LEGAL MATERIALS**



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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

DOUGLAS L. MOORE, MARY CAMP,  
GAYLORD CASE, and a class of similarly  
situated individuals,  
  
Plaintiffs,  
  
v.  
HEALTH CARE AUTHORITY, STATE OF  
WASHINGTON,  
  
Defendants.

NO. 06-2-21115-4 SEA  
NOTICE OF CLASS ACTION SETTLEMENT  
HEARING AND RIGHT TO OPT OUT

To: <<NAME1>>:

**Please read this carefully.  
It may affect your legal rights.**

**1. PURPOSE OF THIS NOTICE.**

Your rights may be affected in this lawsuit, *Douglas Moore, et al. v. Health Care Authority, et al.* This notice is given by order of the King County Superior Court. The purpose of this notice is to inform you that the Court has granted preliminary approval to a settlement between the plaintiffs and the Health Care Authority and the State of Washington (“the State”) in which the State will pay \$80 million for the benefit of the class. Eligible class members will receive pro rata shares of distributions made out of the amount paid by the State. You have the right to opt out of the class action in order to pursue your own individual action. **Members of the class who want to participate in the class action are automatically included and need not do anything now. If the settlement receives final approval, there will be a claim process in which class members eligible for relief will receive a claim form that they will need to fill out and return to the claims administrator. The claim forms will not be sent until after the settlement receives final approval. The settlement agreement can be read at <http://www.bs-s.com/cases/c-Moore-Settlement%20Page.html>.**

**2. BACKGROUND OF THE LAWSUIT.**

The Plaintiff state employees filed this class action alleging that the State wrongly omitted them from employer-paid health insurance after they met certain eligibility criteria. Plaintiffs seek monetary relief for themselves and the present and former state employees who qualify as class members. You have been identified as a possible class member. The class includes all persons with claims for health benefits under the following eligibility rules from June 2000 through December 2015:

- WAC 182-12-115(2) (former);
- WAC 182-12-115(4) (former);
- WAC 182-12-115(5) (former);
- RCW 41.05.053 (repealed); and
- RCW 41.05.065.

In June 2006, Plaintiffs filed a class action against the State, claiming that Plaintiffs and a class of similar state employees were wrongly omitted from employer-paid health insurance. Plaintiffs claimed that state employees who “averaged” half-time or more work were eligible for health insurance, and state employees did not need to work half-time in each and every month to establish eligibility for health insurance.

In 2007 the Court certified the class. The Court subsequently held that the State had failed to provide Plaintiffs and class members employer-paid health insurance. In February 2008, after the Court’s liability rulings, the State instructed all state agencies that they needed to start “averaging” employees’ work hours to determine whether employees were eligible for health insurance. Based on this litigation and the Court’s rulings, in 2009 the Washington Legislature passed statutory amendments to ensure the eligibility rules are correctly applied in the future.

In 2011, the Court granted Plaintiffs’ request to continue certifying the class for the purpose of determining the appropriate monetary relief for the class. In 2012, potential class members were provided notice of the class certification and provided an opportunity to opt out. If you did not opt out when you previously received notice, it may no longer be possible to opt out.

In November 2012, the Court issued an order that largely agreed with the Plaintiffs’ approach to calculating damages, but denied both parties’ motions due to unresolved issues of material fact.

In August 2014, the Supreme Court issued its decision in *Moore v. Health Care Authority*, 181 Wn.2d 299 (2014). The Supreme Court affirmed the superior court’s order in denying the State’s motion on damages and expressed support for Plaintiffs’ calculation of damages.

Trial was scheduled to commence in December 2015. Prior to trial, the parties entered into settlement discussions as directed by the Court. The parties agreed to general principles of a settlement, subject to signing a definitive agreement and obtaining the Court’s approval.

The parties recognize that to continue litigating the claims that would be resolved under this settlement agreement would delay the resolution of those claims for a considerable time (likely some additional years, including possible appeals); would create additional burdens and costs for both the Plaintiffs and the State; and would present uncertainties and risks as to the ultimate outcome. To avoid the uncertainty, risks, delays, burdens and costs of further litigation, the Plaintiffs and the State agreed to a settlement agreement.

All provisions in the settlement agreement apply to all class members unless an exception is specifically stated. **MEMBERSHIP IN THE CLASS ALONE DOES NOT NECESSARILY MAKE YOU ELIGIBLE FOR MONETARY RELIEF PURSUANT TO THE SETTLEMENT AGREEMENT.**

### **3. GENERAL FEATURES OF THE SETTLEMENT**

**A. HEALTH BENEFITS.** The State will continue enrollment and fund the employer contribution required for continued enrollment for those State employees who meet the eligibility requirements for health insurance pursuant to RCW 41.05.065 or other state laws.

#### **B. COMPENSATION FOR DAMAGES DUE TO OMITTED HEALTH BENEFITS.**

**i. Eligible Employees:**

The following criteria outline both the class members and months that are considered eligible for relief. The criteria will be applied to the State’s electronic payroll records to determine eligibility. Class members who are determined eligible from the State’s electronic payroll records will receive a claim form if the settlement is approved. Receipt of this notice and membership in the class does not mean that you are eligible for monetary relief.

**General Criteria:**

The following employees are not eligible for relief even if they may be class members:

- a.** Members of the Washington Conservation Corp unless they hold an administrative or supervisory position;
- b.** Employees of Washington State University’s Cooperative Extension Program who hold a federal civil service appointment and are thereby eligible for insurance coverage under federal regulations and the employee elected to participate in the federal health program in lieu of state employee health benefits;
- c.** Officers and employees of the state convention and trade center;
- d.** Enrollees in the Washington Service Corp;
- e.** Students of a higher education institution who are employed by the institution;

- f. Work study students;
- g. Employees who received health insurance as the spouse, dependent or other family member of another PEBB subscriber;
- h. Employees who waived health insurance; and
- i. Employees with less than three months of potential eligible relief.

**Specific Criteria:**

There are different criteria that apply based on whether an employee is a faculty member at a two or four-year higher education institution or whether an employee is a non-faculty employee. There are also different criteria in different time periods for the faculty due to the eligibility rules changing over time. The general criteria are as follows:

- a. **Non-Faculty Non-Permanent:** Employees who worked without health insurance on average 480 or more hours for more than six months, with at least eight or more hours of work in each month, are considered eligible for health insurance in the seventh month of working and in months thereafter that they work eight or more hours. If an employee is considered eligible for benefits and has a month with less than eight hours, the employee loses eligibility and must re-establish eligibility to attain any additional eligible months. Due to the settlement involving separate lawsuits and time periods (June 2000 - June 2003, June 2003 - December 2012, and January 2013 - December 2015), the criteria are applied to each applicable time period separately rather than the entire time period.
- b. **Non-Faculty Career Seasonal:** Employees who work at least half-time (80 hours per month on average) on a nine, ten, or eleven-month seasonal basis, with a corresponding one, two, or three month off-season with at least one month in the off-season having zero hours, for two consecutive seasons and who return for work in the third season for at least three months, are eligible for year-round health insurance in both the working season and the off-season starting in the second season of work. The employees will continue to be considered eligible for health insurance in the third season and following seasons if the seasonal work criteria are met. If the criteria are not met, employees will lose their eligibility and must re-establish eligibility. All qualifying work must be for the same employer in the same position. Due to the settlement involving separate lawsuits and time periods (June 2000 - June 2003, June 2003 - December 2012, and January 2013 - December 2015), the criteria are applied to each applicable time period rather than the entire time period.
- c. **Faculty Career Seasonal:** Faculty who in an academic year worked on average more than half-time in three consecutive quarters, with one of those quarters below half-time, and who also had a fourth quarter in an academic year below half-time, for two consecutive academic years and who return for a third consecutive academic year and work in the first quarter of that academic year, are eligible for year-round health insurance in both the working season and off-season starting in the second season of work. The faculty member will continue to be considered eligible for health insurance in the third season and following seasons if the seasonal work criteria are met. If the criteria are not met, the employee will lose their eligibility. If a faculty member has two consecutive quarters with zero hours, the employee will need re-establish eligibility. All qualifying work must be for the same employer, but faculty at community and technical colleges can combine their employment at different colleges to establish and retain eligibility. This criteria applies to faculty at community and technical colleges from June 2004 to June 2006 and to faculty at four-year higher education institutions from June 2000 to December 2009.
- d. **Faculty Consecutive Averaging:** Faculty who in an academic year worked on average more than half-time in three consecutive quarters, with one of those quarters below half-time, and who also had the fourth quarter in an academic year below half-time, for two consecutive academic years and who return for a third consecutive academic year and work in the first quarter of that academic year, are eligible for year-round health insurance in both the working season and off-season starting in the third season of work. The faculty member will continue to be considered eligible for health insurance in the third season and following seasons if the seasonal work criteria are met. If the criteria are not met, the employee will lose their eligibility. If a faculty member has two consecutive quarters with zero hours, the employee will need re-establish eligibility. All qualifying work must be for the same employer, but faculty at community and technical colleges can combine their employment at different colleges to establish and retain eligibility. This criteria applies to faculty at community and technical colleges from June 2006–December 2015 and to faculty at four-year higher education institutions from January 2010 - December 2015.

**ii. CLAIM PROCESS.** Claim forms will be sent out to class members who are eligible for relief in this case. Claim forms will not go out until the settlement has final approval. Class members who receive the claim form will be required to fill out the form, sign it, and return it to the claims administrator. The claim form will consist of a request for payment. **Receipt of this notice and membership in the class does not mean that you are eligible for monetary relief or that you will receive a claim form.**

**iii. FORMULA FOR DISTRIBUTING FUNDS TO QUALIFYING CLASS MEMBERS.** Class members who are eligible for relief will receive pro rata distributions from the \$80 million paid by the State based on the class member's months in which he or she should have received health insurance but did not. The amount of each person's payment will be calculated based on payroll data, without any need for class members to provide proof of the amount due. Distributions will be made out of the amount paid by the State, less costs and fees. An individual eligible class member's distribution will equal the ratio of number of eligible months in which that eligible class member should have received health insurance but did not over the total number of eligible months in which eligible class members should have received health insurance but did not for which class eligible members submit claims multiplied by the total distribution amount (\$80 million less costs and fees). The compensation is for lost health and longevity and other damages or expenses incurred by eligible class members.

**iv. RESIDUAL SETTLEMENT FUNDS.** Any residual funds claimed but not collected shall be deposited into the Public Employees' and Retirees' Insurance Account. If the residual amount exceeds \$15,000, the Washington Health Care Authority will make recommendations on improving the information provided to employees and agencies about employee benefits eligibility and processes to identify eligible employees. For those recommendations that require legislative approval, the recommendations shall be provided to the Legislature at the legislative session following any residual undistributed settlement fund to Health Care Authority. If the Legislature fails to approve this provision and does not provide the spending authority for the purposes stated in the preceding paragraph, the residual funds will be dispersed under terms agreed on by the parties at a later date and approved by the Court.

**v. AWARDS TO REPRESENTATIVE PLAINTIFFS.** Plaintiffs Douglas Moore, Mary Camp, and Gaylord Case are the representative Plaintiffs who brought this lawsuit on behalf of themselves and the class members. Due to the representative Plaintiffs' work in performing services that other class members rely upon, it is common for representative Plaintiffs to receive class representative awards. The settlement agreement provides for a \$35,000 class representative award for each representative Plaintiff. The representative Plaintiffs' participation in the litigation from 2003 through 2016 has included, but was not limited to, investigation of the claims, commencement of the lawsuit, participation in discovery matters, and assisting class counsel.

**vi. FEES AND COSTS.** The class is represented by the law firm of Bendich, Stobaugh & Strong, P.C. The law firm has 35 years of experience representing public employees in class actions. Additional information about the law firm and its attorneys can be found on the firm's website, [www.bs-s.com](http://www.bs-s.com). The law firm has represented the plaintiffs and pursued this matter on behalf of the class since 2006. In a fee award, which requires court approval, the class as a whole will pay out of the total recovery a contingency fee or percentage of recovery to class counsel. This amount is in the range of 20 to 30 percent of the total recovery and the "benchmark award" is 25 percent of the total recovery obtained. *Bowles v. Dep't of Retirement Systems*, 121 Wn.2d 52, 72 (1993). Class counsel have obtained both an estimated \$50 million in additional health benefits for class members between 2008 and 2015, plus the \$80 million payment by the State pursuant to this settlement. The Court preliminarily found the fee award of 18.5% of the \$130 million in total monetary relief, or \$24 million, to be reasonable. This fee will be paid out of the class recovery as a whole and not from any amount distributed to any class members.

#### **4. DO NOTHING TO PARTICIPATE IN THE CLASS ACTION.**

Class members who want to participate in the class action are automatically included and do not need to do anything at this time. Class counsel will represent your interests in the action and seek recovery on your behalf. If the settlement receives final approval, there will be a claim process in which eligible class members eligible for relief will receive a claim form that they will need to complete and return to the claims administrator. Eligible class members will not need to provide proof of their claims; the amounts to be paid will be calculated based on payroll data. The claim forms will not be sent until the settlement receives final approval. The class will consist of all class members who do not opt out. Any final judgment in this litigation will be binding on all class members, whether they are entitled to relief or not. Receipt of this notice and membership in the class does not mean that you are eligible for monetary relief.

## 5. YOU MUST OPT OUT IF YOU DO NOT WANT TO PARTICIPATE IN THE CLASS ACTION.

Class members who do not want to participate in the class action must opt out of the class action. You may wish to opt out if you have large personal losses or substantial expenses as a result of not having the health insurance at issue in this lawsuit.

If you elect to opt out, (a) you will not share in any recovery that may be paid to eligible class members, (b) you will not be bound by any further orders or judgments entered for or against the class after the day this notice was issued, (c) class counsel will no longer represent you, and (d) you may have the right to pursue claims against the State by filing your own lawsuit at your own expense. If you wish to opt out, you should immediately seek counsel and investigate possible issues that may bar your pursuit of any claim, including the statute of limitations.

If you want to opt out of the class action, you must provide Class Counsel with a signed letter stating your decision to opt out by first class mail received no later than 4:00 p.m. on June 15, 2016. The letter must contain the following information:

1. Your name;
2. Your address;
3. Your telephone number and email address;
4. Your social security number (see below);
5. A statement that you “elect to opt out of the *Moore v. Health Care Authority* class action;”
6. The letter must be signed by you and dated.

If you elect to opt out, your social security number is needed to ensure the correct person is removed as a class member. The social security number will be held in strict confidence by the parties and will not be publicly disclosed in any manner.

Please sign your letter and mail your opt-out notification to:

Class Counsel in *Moore v. HCA*  
Bendich, Stobaugh & Strong, P.C.  
701 Fifth Ave., #4850  
Seattle, WA 98104

Unsigned requests will not be accepted. Letters requesting to opt out that are not received by 4:00 p.m. on June 15, 2016 will not be accepted. If a member of the class is deceased, his or her personal representative or estate has the right to opt out.

## 6. FAIRNESS HEARING.

The settlement agreement is subject to final approval by the Court. By approval of the content of this notice, the Court expresses no opinion on the merits of the case or the amount and terms of the settlement. A hearing will be held in Judge Sean O'Donnell's courtroom, W-817 King County Courthouse, Third and James, 516 Third Avenue, Seattle, WA 98104, at 10:00 AM on June 24, 2016. You do not have to attend this hearing in order to receive the above-described benefits. If any class member has an objection to the proposed Settlement Agreement, the objection must be made **in writing (DO NOT TELEPHONE THE COURT OR ATTORNEYS)** prior to 4:00 p.m. on June 15, 2016, by filing the original objection with the Clerk of the Court and by delivering copies of any such objections to the attorneys for both sides. Any statements in support of the proposed settlement may be submitted in the same manner as objections. An objection shall be filed as follows:

**File Original Objections in Writing, Showing Case Name And Number and Include Your Name, Address, and Telephone Number, With:**

Clerk of Court  
C-607, King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Provide Copies of All Objections To ALL Of the Following Offices:**

Counsel for Defendants in *Moore v. HCA*  
Timothy G. Leyh and Randall Thomsen  
Calfo Harrigan Leyh & Eakes LLP  
999 Third Ave, 44th Floor  
Seattle, WA 98104

Class Counsel in *Moore v. HCA*  
Bendich, Stobaugh & Strong, P.C.  
701 Fifth Ave., #4850  
Seattle, WA 98104

Eric Mentzer  
Office of the Attorney General  
7141 Cleanwater Dr SW  
PO Box 40126  
Olympia 98504-0126

## 7. ADDITIONAL INFORMATION.

Additional information about this action is available at class counsel's website: [www.bs-s.com](http://www.bs-s.com). The settlement agreement can be read at: <http://www.bs-s.com/cases/c-Moore-Settlement%20Page.html>. For more detailed information, all documents in the court file may be inspected during regular business hours at the Clerk's Office in the King County Superior Court, 516 Third Avenue, Seattle, WA 98104.

**Please Do Not Contact the Judge or Court Clerk About This Matter.** Neither the Judge nor the Clerk of King County Superior Court will be able to answer any questions you have about the matters in this notice, other than the Clerk's office can inform you when and where you can review the court records.

Dated May 20, 2016.

This Notice has been approved and ordered to be given by  
King County Superior Court Judge Sean O'Donnell