

SUPREME COURT COPY

**SUPREME COURT OF THE STATE OF CALIFORNIA
NO. S184059**

RETIRED EMPLOYEES ASSOCIATION OF ORANGE COUNTY

SUPREME COURT
FILED

Petitioner,

vs.

SEP 15 2010

COUNTY OF ORANGE

Frederick K. Ohlrich Clerk

Respondent

Deputy

After Order of This Court Accepting Certification of Question From
The United States Court of Appeals for the Ninth Circuit

**DECLARATION OF PATRICIA M. GILBERT IN SUPPORT OF
RESPONDENT'S RESPONSE TO MOTION
FOR CALENDAR PREFERENCE**

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County of Orange

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Attorneys for Respondent
County of Orange

I, Patricia M. Gilbert, declare:

1. I am the Assistant Director of Human Resources for the County of Orange ("County"). The following facts are within my personal knowledge and, if called upon to testify, I could and would testify competently with respect thereto.
2. I have been employed by the County in its Human Resources Department for 29 years, during which time my focus has been on employee benefits. I became Benefits Manager in 1996, and was promoted to Assistant Director of Human Resources in 2005.
3. Human Resources, Employee Benefits administers self-funded and insured health plans for County employees and retirees. As Assistant Director of Human Resources, I have overall responsibility for overseeing and administering the County's employee benefit programs, including health plans in place for active and retired personnel, consistent with budget and policy authority from the Orange County Board of Supervisors ("Board").
4. I also serve as the Administrator for the County's Retiree Medical Plan, adopted by the Board in 1993 and amended by the Board in 2007, 2008, and 2009. I have served as the Plan Administrator since 1996.
5. All retired employees are permitted to enroll in group health coverage, and the Retiree Medical Plan provides a grant to eligible retirees to help offset their health insurance premiums. The initial Grant amount was calculated at \$10 per month, per year of service, capped at a maximum of 25 years, so that the initial maximum Grant amount was \$250 per month. The Retiree Medical Plan also provides for an annual adjustment of

the Grant indexed to the average of County Health Plan premium increases or decreases for the year, with a 3% cap. Thus, the grant amount for 2011 is \$18.77 per month per year of service, so that the maximum grant for 2011 is \$469.25 per month.

6. The Retiree Medical Plan is integrated with the United States Medicare health insurance program. Specifically, retirees who are age 65 and older are eligible for Medicare and must be enrolled in Medicare Parts A (without paying a premium) and Part B in order to receive a Grant.

7. Each year, the Board of Supervisors formally and publicly considers whether to adopt the health plan rates by majority vote. Given my role in helping to formulate and then implement the rates, I am familiar with the rates approved each year by the Board.

8. Over the last ten years that the Board voted each year to approve rates that were the same for retirees and active employees, the rate changes for the self-funded plans were as follows: 10% rate increase for 1997; 7.8% rate increase for 1998; 8% increase for 1999; 8% increase for 2000; 20% increase for 2001; 25% increase for 2002; 22% increase for 2003; 8.4% increase for 2004; 30% increase in Premier Wellwise for 2005 and 4.7% increase in Premier Sharewell for 2005; 0% increase for 2006; and 5.5% decrease in Premier Wellwise for 2007 and no change in Premier Sharewell for 2007.

9. On September 12, 2006, the Board approved a retiree medical restructuring plan that included a specific provision to "Split the pool (active/retirees) effective January 2008," which is the subject of the instant lawsuit.

10. On August 14, 2007, to mitigate the impact of the retiree medical

restructuring on retiree rates, and with petitioner Retired Employees Association of Orange County's ("REAOC") input in the plan selection process, the Board approved five new retiree health plan options to offer to retirees effective January 1, 2008. Four were offered through Blue Cross, and the fifth was the Exclusive Care PPO plan, offered through the County of Riverside. The Board also approved plans offered by CIGNA and Kaiser. On September 11, 2007, the Board approved the self-insured PPO rates for 2008, which were the Premier Wellwise PPO and the Premier Sharewell PPO. Specifically, the plans available to retirees for the 2008 plan year, and the number of retirees enrolled in each of those plans as of January 2008, are as follows:

CIGNA HMO: 442 Non-Medicare; 594 Medicare

Kaiser HMO: 495 Non-Medicare

Kaiser Senior Advantage (for Retirees enrolled in both Medicare Parts A and B):

912 Medicare

Blue Cross – Private Fee for Service – Custom (for Retirees enrolled in both

Medicare Parts A and B): 137 Medicare

Blue Cross – Private Fee for Service - Standard (for Retirees enrolled in both

Medicare Parts A and B): 17 Medicare

Blue Cross – Traditional HMO: 16 Non-Medicare

Blue Cross – Select HMO: 112 Non-Medicare

Premier Wellwise PPO: 313 Non-Medicare; 1,662 Medicare

Premier Sharewell PPO: 525 Non-Medicare; 330 Medicare

Exclusive Care PPO: 32 Non-Medicare; 1 Medicare

11. For the self-insured plans, the monthly premium in 2008 for a retiree enrolled in Medicare, but only Part B (as opposed to Parts A and B), was \$555.60 for Wellwise and \$194.46 for Sharewell; the monthly premium for a retiree enrolled in Medicare, Parts A and B, was \$357.17 for Wellwise and \$125.01 for Sharewell; the monthly premium for a retiree and one dependent who was also enrolled in Medicare Part B only was \$992.15 for Wellwise and \$267.88 for Sharewell; and the monthly premium for a retiree and one dependent where both were enrolled in Medicare, Parts A and B, was \$595.29 for Wellwise and \$148.82 for Sharewell.

For the HMOs, the monthly premium in 2008 for a retiree enrolled in Medicare, but only Part B, was \$477.92 for CIGNA, \$520.89 for Blue Cross Traditional, and \$408.26 for Blue Cross Select; the monthly premium for a retiree enrolled in Medicare, Parts A and B, was \$404.39 for CIGNA; the monthly premium for a retiree and one dependent who was also enrolled in Medicare Part B only was \$944.59 for CIGNA, \$1041.78 for Blue Cross Traditional, and \$816.51 for Blue Cross Select; and the monthly premium for a retiree and one dependent where both were enrolled in Medicare, Parts A and B, was \$811.38 for CIGNA.

For the Medicare Advantage Plans, the monthly premium in 2008 for a retiree enrolled in Medicare, but only Part B, was \$426.01 for Kaiser Sr. Advantage; the monthly premium for a retiree enrolled in Medicare, Parts A and B, was \$195.32 for Kaiser Sr. Advantage, \$238 for Blue Cross Smart Value Custom, and \$109 for Blue Cross Smart Value Standard; the monthly premium for a retiree and one dependent who was also enrolled in Medicare Part B only was \$852.02 for Kaiser Sr. Advantage; and the monthly

premium for a retiree and one dependent where both were enrolled in Medicare, Parts A and B, was \$390.64 for Kaiser Sr. Advantage, \$476 for Blue Cross Smart Value Custom, and \$218 for Blue Cross Smart Value Standard.

For retirees not enrolled in Medicare, the monthly premium for a retiree in 2008 was \$793.72 for Wellwise, \$277.80 for Sharewell, \$612.70 for CIGNA, \$610 for Kaiser, \$593.86 for Blue Cross Traditional HMO, and \$465.45 for Blue Cross Select HMO. The monthly premium for a retiree with one dependent was \$1,468.37 for Wellwise, \$486.15 for Sharewell, \$1,211.02 for CIGNA, \$1,220 for Kaiser, \$1,187.73 for Blue Cross Traditional HMO, and \$930.90 for Blue Cross Select HMO. The monthly premium for a retiree with two or more dependents was \$1,984.29 for Wellwise, \$638.94 for Sharewell, \$1,685.02 for CIGNA, \$1,769 for Kaiser, \$1,722.20 for Blue Cross Traditional HMO, and \$1,349.80 for Blue Cross Select HMO.

In addition, the Grant amount covered all or part of these premiums for eligible retirees.

12. The existing and new health plan options offered to retirees during the 2008 Open Enrollment provided cost-effective alternatives that allowed retirees to reduce or maintain their monthly premiums while maintaining equivalent or comparable benefits in light of the splitting of the pool. This ensured that retirees would not be substantially impaired in their ability to choose 2008 plans that were comparable in premiums and benefits to their 2007 plans. For example:

a. Retirees without Medicare had the following lower cost or virtually cost neutral options for 2008 when compared with 2007:

- i. Premier Wellwise to Blue Cross Traditional HMO; and
- ii. Premier Wellwise to Premier Sharewell. The savings in Premier Sharewell premiums could in some cases offset the higher annual deductible.

- b. Retirees with Medicare A&B had the following lower cost or virtually cost-neutral options for 2008 when compared with 2007:

- i. CIGNA HMO to Blue Cross PFFS, with no restrictions on the provider as long as they accept Medicare, and similar benefit co-payments to existing CIGNA HMO;

- ii. Premier Wellwise PPO to Blue Cross PFFS, which has lower out of pocket costs for services, and no restrictions on provider as long as they accept Medicare; and

- iii. Premier Wellwise PPO to Premier Sharewell PPO, which has similar benefits. The savings in Premier Sharewell premiums could in some cases offset the higher annual deductible.

13. When comparing the health premium rates from the 2007 pooled rates to the 2008 split pool rates, it is important to keep in mind that even if the pool had remained commingled, there would have been an increase in the 2008 rates across the board due to inflation and related medical cost increases. The impacts of the 2008 rates vary significantly among the retirees, and depend on the plan selection, the retiree's Medicare status and the number of enrolled dependents, if any. A number of retirees elected new, lower cost plans. Some retirees had lower monthly health plan rates as a result of selecting a lower cost plan.

14. On August 12, 2008, the Board adopted the Retiree Insured Health Plans Rates for 2009, for the same plans listed above. CIGNA's rates increased 9.5% for active

employees, and 13.2% for retirees. While Kaiser's rates increased 7.9% for active employees, they increased only 4.9% for pre-65 retirees and an average 5% for post-65 retirees. The remaining plans were made available only to retirees, and their rates increased as follows: Blue Cross HMOs increased their rates by 9%, Exclusive Care by 9.996%, Blue Cross's Standard Private Fee for Service by 19.7%, and Blue Cross's Custom Private Fee for Service by 13%.

15. On August 19, 2008, the Board voted to adopt the following retiree self-funded PPO Health Plan rates for Premier Wellwise and Premier Sharewell for 2009, at a rate increase of 16% over the 2008 rates, while there was a 13% rate increase for active employee premiums:

a. Premier Wellwise

For retirees enrolled in Medicare, but only Part B (as opposed to Parts A and B), the monthly premium in 2009 for a retiree was \$644.50; the monthly premium for a retiree enrolled in Medicare, Parts A and B, was \$414.32; the monthly premium for a retiree and one dependent who was also enrolled in Medicare Part B only was \$1,150.89; and the monthly premium for a retiree and one dependent where both were enrolled in Medicare, Parts A and B, was \$690.54.

For retirees not enrolled in Medicare, the monthly premium for a retiree was \$920.72; the monthly premium for a retiree with one dependent was \$1,703.31, and the monthly premium for a retiree with two or more dependents was \$2,301.78.

As of January 2009, there were 256 non-Medicare retirees and 1,629 Medicare retirees enrolled in Wellwise.

b. Premier Sharewell

For retirees enrolled in Medicare, but only Part B (as opposed to Parts A and B), the monthly premium for a retiree was \$225.57; the monthly premium for a retiree enrolled in Medicare, Parts A and B, was \$145.01; the monthly premium for a retiree and one dependent who was also enrolled in Medicare Part B only was \$310.74; and the monthly premium for a retiree and one dependent where both were enrolled in Medicare, Parts A and B, was \$172.63.

For retirees not enrolled in Medicare, the monthly premium in 2009 for a retiree was \$322.25; the monthly premium for a retiree with one dependent was \$563.93, and the monthly premium for a retiree with two or more dependents was \$741.17.

As of January 2009, there were 537 non-Medicare retirees and 329 Medicare retirees enrolled in Sharewell.

16. On July 28, 2009, the Board voted to adopt Retired Insured Health Plan Rates for 2010 for the following nine retiree health plans:

Anthem Blue Cross Select HMO

Anthem Blue Cross SmartValue Custom PFFS

Anthem Blue Cross SmartValue Standard PFFS

Anthem Blue Cross Traditional HMO

CIGNA HMO

Kaiser HMO

Kaiser Permanente Senior Advantage HMO

Exclusive Care PPO (Pre-65)

Exclusive Care PPO (Post-65)

17. Because of the retiree experience, their rates fared better for 2010 than did the active employee rates. While CIGNA's rates increased 5.5% for active employees, they increased only 4.39% for both pre and post-65 retirees. While Kaiser's rates increased 4.6% for active employees and 5.95% for post-65 retirees, they *decreased* 18% for pre-65 retirees.

18. On July 28, 2009, the Board voted to adopt the following retiree self-funded PPO Health Plan rates for 2010, at a rate *decrease* of 1.3% over the 2009 rates, while there was a 1.3% rate increase for active employee premiums:

a. Premier Wellwise

For retirees enrolled in Medicare, but only Part B (as opposed to Parts A and B), the monthly premium in 2010 for a retiree was \$636.12; the monthly premium for a retiree enrolled in Medicare, Parts A and B, was \$408.93; the monthly premium for a retiree and one dependent who was also enrolled in Medicare Part B only was \$1,135.93; and the monthly premium for a retiree and one dependent where both were enrolled in Medicare, Parts A and B, was \$681.56.

For retirees not enrolled in Medicare, the monthly premium for a retiree was \$908.75; the monthly premium for a retiree with one dependent was \$1,681.17, and the monthly premium for a retiree with two or more dependents was \$2,271.86.

As of January 2010, there were 224 non-Medicare retirees and 1,653 Medicare retirees enrolled in Wellwise.

b. Premier Sharewell

For retirees enrolled in Medicare, but only Part B (as opposed to Parts A and B), the monthly premium in 2010 for a retiree was \$222.64; the monthly premium for a retiree enrolled in Medicare, Parts A and B, was \$143.12; the monthly premium for a retiree and one dependent who was also enrolled in Medicare Part B only was \$306.70; and the monthly premium for a retiree and one dependent where both were enrolled in Medicare, Parts A and B, was \$170.39.

For retirees not enrolled in Medicare, the monthly premium for a retiree was \$318.06; the monthly premium for a retiree with one dependent was \$556.60, and the monthly premium for a retiree with two or more dependents was \$731.53.

As of January 2010, there were 543 non-Medicare retirees and 356 Medicare retirees enrolled in Sharewell.

19. On July 27, 2010, the Board adopted the following Retiree Health Plans and associated rates for 2011:

a. Anthem Blue Cross Select HMO

For retirees enrolled in Medicare, but only Part B (as opposed to Parts A and B), the monthly premium for a retiree is \$509.30; and the monthly premium for a retiree and one dependent who is also enrolled in Medicare Part B only is \$1,018.62.

For retirees not enrolled in Medicare, the monthly premium for a retiree is \$580.65; the monthly premium for a retiree with one dependent is \$1,161.30, and the monthly premium for a retiree with two or more dependents is \$1,683.89.

For retirees with dependents, where those covered have mixed Medicare and non-Medicare enrollment, the monthly premium for a retiree and one or more dependents,

where one has Medicare Part B only, is \$1,089.95, and the monthly premium is \$1,476.99 where two have Medicare Part B only.

b. Anthem Blue Cross Medicare Advantage Custom PPO

The monthly premium for a retiree enrolled in Medicare, Parts A and B, is \$405.72; and the monthly premium for a retiree and one dependent where both are enrolled in Medicare, Parts A and B, is \$342.00.

c. Anthem Blue Cross Medicare Advantage Standard PPO

The monthly premium for a retiree enrolled in Medicare, Parts A and B, is \$171.00; and the monthly premium for a retiree and one dependent where both are enrolled in Medicare, Parts A and B, is \$342.00

d. Anthem Blue Cross Traditional HMO

For retirees enrolled in Medicare, but only Part B (as opposed to Parts A and B), the monthly premium for a retiree is \$649.81; and the monthly premium for a retiree and one dependent who is also enrolled in Medicare Part B only is \$1,299.63.

For retirees not enrolled in Medicare, the monthly premium for a retiree is \$740.85; the monthly premium for a retiree with one dependent is \$1,481.71, and the monthly premium for a retiree with two or more dependents is \$2,148.46.

For retirees with dependents, where those covered have mixed Medicare and non-Medicare enrollment, the monthly premium for a retiree and one or more dependents, where one has Medicare Part B only, is \$1,390.66, and the monthly premium is \$1,884.47 where two have Medicare Part B only.

e. Anthem Blue Cross Senior Secure Medicare HMO

The monthly premium for a retiree enrolled in Medicare, Parts A and B, is \$326.88; and the monthly premium for a retiree and one dependent where both are enrolled in Medicare, Parts A and B, is \$653.76.

f. Kaiser HMO

For retirees not enrolled in Medicare, the monthly premium for a retiree is \$640.01; the monthly premium for a retiree with one dependent is \$1,280.02, and the monthly premium for a retiree with two or more dependents is \$1,856.07.

g. Kaiser Permanente Senior Advantage HMO

For retirees enrolled in Medicare, but only Part B (as opposed to Parts A and B), the monthly premium for a retiree is \$512.03; the monthly premium for a retiree enrolled in Medicare, Parts A and B, is \$234.88; the monthly premium for a retiree and one dependent who is also enrolled in Medicare Part B only is \$1,024.06; and the monthly premium for a retiree and one dependent where both are enrolled in Medicare, Parts A and B, is \$469.76.

h. SCAN HMO

The monthly premium for a retiree enrolled in Medicare, Parts A and B, is \$255.00; and the monthly premium for a retiree and one dependent where both are enrolled in Medicare, Parts A and B, is \$510.00.

20. On August 17, 2010, the Board voted to adopt the following retiree self-funded PPO Health Plan rates for 2011, at a rate increase of 24.6% over the 2010 rates, where the increase was mostly attributable to an increase in catastrophic claims (over \$50,000) and a related increase in hospital claims:

a. Premier Wellwise

For retirees enrolled in Medicare, but only Part B (as opposed to Parts A and B), the monthly premium for a retiree is \$792.61; the monthly premium for a retiree enrolled in Medicare, Parts A and B, is \$509.53; the monthly premium for a retiree and one dependent who is also enrolled in Medicare Part B only is \$1,415.37; and the monthly premium for a retiree and one dependent where both are enrolled in Medicare, Parts A and B, is \$849.22.

For retirees not enrolled in Medicare, the monthly premium for a retiree is \$1,132.30; the monthly premium for a retiree with one dependent is \$2,094.74, and the monthly premium for a retiree with two or more dependents is \$2,830.74.

b. Premier Sharewell

For retirees enrolled in Medicare, but only Part B (as opposed to Parts A and B), the monthly premium for a retiree is \$277.41; the monthly premium for a retiree enrolled in Medicare, Parts A and B, is \$178.33; the monthly premium for a retiree and one dependent who is also enrolled in Medicare Part B only is \$382.15; and the monthly premium for a retiree and one dependent where both are enrolled in Medicare, Parts A and B, is \$212.31.

For retirees not enrolled in Medicare, the monthly premium for a retiree is \$396.30; the monthly premium for a retiree with one dependent is \$693.52, and the monthly premium for a retiree with two or more dependents is \$911.49.

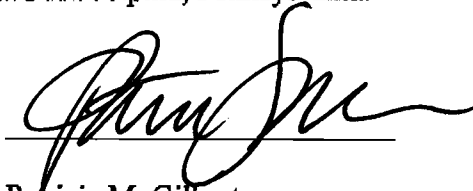
21. When combined with the premium offset provided by the Retiree Medical Grant, about 75% of post-65 retirees enrolled in Premier Wellwise will pay less than

\$400 per month for Premier Wellwise PPO coverage in 2011.

22. Regarding the mortality rate of our retirees, according to our records, 200 retirees have passed away over the past year. Specifically, there were 22 deaths in September 2009, four in October 2009, one in November 2009, 18 in December 2009, 30 in January 2010, 11 in February 2010, 40 in March 2010, 16 in April 2010, 16 in May 2010, 19 in June 2010, 11 in July 2010, and 12 in August 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed September 13, 2010, at Philadelphia, Pennsylvania.



Patricia M. Gilbert

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, California 94607.

On September 15, 2010, I served true copies of the following document(s) described as on the interested parties in this action as follows:

Declaration of Patricia M. Gilbert in Support of Respondent's Response to Motion for Calendar Preference

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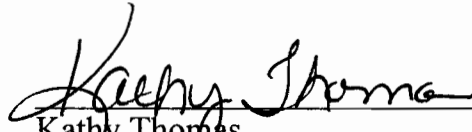
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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 15, 2010, at Oakland, California.


Kathy Thomas

1510734.1

