

The Honorable Cindi Port
Hearing: July 22, 2024
Without Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

DANA RUSH and a class of similarly
situated individuals,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

NO. 21-2-04314-0 SEA

ORDER GRANTING PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON LIABILITY FOR THE
DEFINED BENEFIT IN THE
SUPPLEMENTAL RETIREMENT PLAN

GARY WOLF and a class of similarly
situated individuals,

Plaintiffs,

v.

STATE OF WASHINGTON and THE
WASHINGTON STATE BOARD OF
COMMUNITY AND TECHNICAL
COLLEGES,

Defendants.

NO. 23-2-20449-2 SEA

THIS MATTER came before the Court on Plaintiffs' Motion for Partial Summary Judgment on Liability for the Defined Benefit in the Supplemental Retirement Plan. Before ruling, the Court considered the following documents and evidence:

1. Plaintiffs' Motion Partial Summary Judgment on Liability for the Defined Benefit in the Supplemental Retirement Plan;

2. The Declaration of Alexander F. Strong with Exhibits 1 through 12;
3. The Declaration of David F. Stobaugh with Exhibits 1 through 5;
4. The Declaration of Dana Rush with Exhibits A and B;
5. Defendants' Response to Plaintiffs' Motion Partial Summary Judgment on Liability for the Defined Benefit in the Supplemental Retirement Plan;
6. The Declaration of Eric A. Mentzer in Support of Defendants' Response to Plaintiffs' Motion for Partial Summary Judgment on Liability for the Defined Benefit in the Supplemental Retirement Plan with Exhibit A;
7. The Declaration of John Boesenberg in Support of Defendants' Response to Plaintiffs' Motion for Partial Summary Judgment on Liability for the Defined Benefit in the Supplemental Retirement Plan with Exhibit A;
8. Plaintiffs' Reply on Motion for Partial Summary Judgment on Liability for the Defined Benefit in the Supplemental Retirement [sic] Plan;
9. The Declaration of Erika Haack;
10. The Declaration of Gary Wolf (dated January 17, 2020)
11. Plaintiffs' Notice of Presentation of Order with Exhibit A;
12. Declaration of Alexander F. Strong with Exhibits 1 through 3;
13. Defendants' Response to Notice of Presentation of Order with Exhibit A; and
14. Plaintiffs' Reply.

It is ORDERED that Plaintiffs' Motion for Partial Summary Judgment on Liability for the Defined Benefit in the Supplemental Retirement Plan is GRANTED. The court incorporates its oral rulings.

DATED this ____ day of _____ 2024.

THE HONORABLE CINDI PORT

King County Superior Court
Judicial Electronic Signature Page

Case Number: 21-2-04314-0
Case Title: RUSH VS WASHINGTON STATE OF
Document Title: ORDER
Signed By: Cindi Port
Date: July 25, 2024



Judge: Cindi Port

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 35E902175D6BCFBE416A7DC3ECA4B64834A5D5AC
Certificate effective date: 4/30/2020 10:19:11 AM
Certificate expiry date: 4/30/2025 10:19:11 AM
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O=KCDJA, CN="Cindi Port: GE3inpRJ6RGCb9i4jC11QQ=="

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DANA RUSH and a class of similarly
situated individuals,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

No. 21-2-04314-0 SEA

(Consolidated with No. 23-2-20449-2 SEA)

NOTICE OF FILING OF ORAL RULING

Notice is hereby given of the filing of excerpts of a verbatim report of proceedings containing this Court’s June 7, 2024 oral ruling granting plaintiffs’ motion for partial summary judgment on liability for the defined benefit in the supplemental retirement plan, which was incorporated by reference in the written order entered on July 25, 2024, Dkt. 90.

DATED this 7th day of August, 2024.

Respectfully submitted:

STOBAUGH & STRONG, P.C.

/s/ Alexander F. Strong
Alexander F. Strong, WSBA #49839
David F. Stobaugh, WSBA #6376
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Phone: (206) 622-3536
Attorneys for Plaintiffs

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DANA RUSH,)	
)	
Plaintiff,)	
)	
)	No. 21-2-04314-0
)	
vs.)	
)	
STATE OF WASHINGTON,)	
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS
June 7th, 2024

APPEARANCES:

FOR THE PLAINTIFF:	ALEXANDER STRONG Attorney at Law
FOR THE DEFENDANT:	ERIC MENTZER Assistant Attorney General

BE IT REMEMBERED that on June 7th, 2024, the above-captioned cause came on for hearing before the Honorable Cindi Port, Judge of the Superior Court in and for the County of King, State of Washington; the following proceedings were had, to wit:

Katrina Smith, CSR	Official Court Reporter
930 Tacoma Avenue South	Dept. 6, Superior Court
Tacoma, Washington 98402	(253) 798-7432

1 THE COURT: All right. Thank you, Mr. Strong.

2 I think I'm prepared to rule.

3 MR. STRONG: Thank you, Your Honor.

4 THE COURT: All right. As it relates to
5 Mr. Strong's last point, I do find that the deposition
6 testimony contradicts his declaration testimony and
7 that this is the first time that he has been asked to
8 make a ruling regarding the applicability of this plan
9 regarding unbroken service credits. And, therefore, it
10 is a direct contradiction to his declaration testimony
11 that the plan has always been administered.

12 I start there because -- I also believe my
13 question to Mr. Mentzer is also on point. That just
14 because if even I were to accept the declaration
15 testimony, that the plan has always been administered
16 this way with unbroken service credits, that doesn't
17 mean that the plan was administered correctly legally
18 because of the plain language of the plan itself.

19 So I have to make a ruling on this motion based on
20 the plain language of the plan, which is contract
21 interpretation, and I find that the plain language of
22 the plan is "ten or more years of service." It does
23 not have "unbroken" in that definition, and it doesn't
24 have "continuously employed" in that language.

25 And that the plain language of the plan controls

1 that "ten or more years of service" means ten or more
2 years of service without the additional language that
3 the State is asking me to infuse into this contract.

4 Therefore, I am granting the motion for summary
5 judgment as to liability only.

6 And so, Mr. Strong, if you could submit a new
7 order to the bailiff after submitting it to Mr. Mentzer
8 for signature, I would appreciate it.

9 MR. STRONG: Will do, Your Honor.

10 Do you have a time frame for when you want that?
11 It might be hard for me to get it today, but I'm sure
12 that I can confer with Mr. Mentzer.

13 THE COURT: Today would be best because I'm back
14 into trial. It's a very long trial on Monday. So
15 today would be best.

16 MR. STRONG: Okay.

17 THE COURT: But if you can't get it done today,
18 early next week is fine.

19 MR. STRONG: I think I can -- I'll do my best to
20 do it today. I think we can make that work.

21 Thank you, Your Honor.

22 THE COURT: All right.

23 MR. MENTZER: Do you want to know my availability
24 this afternoon, Your Honor?

25 I mean, I'll try to make it work. I'll make my

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*****CERTIFICATE*****

I, Katrina A. Smith, do hereby certify that the foregoing transcript was taken by me stenographically and reduced to the foregoing from an audio file and that the same is true and correct as transcribed, to the best of my ability;

That I am a certified court reporter;

That I am in no way related to or employed by any party in this matter, nor any counsel in the matter;

And that I have no financial interest in the litigation;

DATED at Tacoma this 1st day of August 2024.

Katrina Smith

KATRINA A. SMITH
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