

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LYLE E. FRANK** **PART 11M**

*Justice*

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MARGARETANN BIANCULLI, JANET KOBREN, MERRI LASKY, PHYLLIS LIPMAN, BARRY SKOLNICK, NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC.

Plaintiff,

- v -

CITY OF NEW YORK OFFICE OF LABOR RELATIONS, CITY OF NEW YORK, EMBLEMHEALTH, INC., GROUP HEALTH INCORPORATED (GHI),

Defendant.

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**INDEX NO.** 160234/2022  
**MOTION DATE** 05/25/2023  
**MOTION SEQ. NO.** 002

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 79, 80, 81, 82, 83, 84, 87, 88, 89, 92, 93, 94, 95, 96, 97, 98

were read on this motion to/for ORDER MAINTAIN CLASS ACTION.

Upon the foregoing documents and following oral argument, it is ordered that the motion to maintain class action status is granted for the reasons indicated below.

Background

This action was commenced by retired New York City employees (plaintiffs), who allege the defendants City of New York and Emblem Health (defendants) instituted a practice of charging copays in violation of their contractual obligations. As former New York City employees, Plaintiffs are enrolled in the EmblemHealth/GHI Senior Care plan, the purpose of which is to cover the portion of healthcare expenses that Medicare does not cover. Plaintiffs allege pursuant to a contract executed on February 25, 2000, the City “agreed to pay EmblemHealth/GHI to provide health insurance benefits to active and retired City employees and their dependents.”

These entities imposed a \$15 co-payment requirement on the enrollees of the EmblemHealth/GHI plan. Action was brought by the petitioners, requesting injunctive relief, stopping the imposition of such a copayment. This Court granted such injunctive relief. The Appellate Division, First Department, affirmed this finding.

Plaintiffs now move for class certification to include all retirees enrolled in the Senior Care plan, which includes 183,000 retirees. Plaintiffs argue class certification is proper under CPLR Sections 901 and 902 due to the numerosity of plaintiffs, common questions of law and fact and shared claims. Plaintiffs contend based on these circumstances as well as the age and abilities of plaintiffs, a class action is the best method of adjudication of plaintiffs' claims. Defendants oppose class certification, arguing primarily that it is not the superior method of adjudication of this matter.

### Discussion

The requirements for class certification under CPLR 901 (a) are (1) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable (2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (4) the representative parties will fairly and adequately protect the interests of the class and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. CPLR 901(a).

It is well settled under New York Law that CPLR 901(a) "should be broadly construed not only because of the general command for liberal construction of all CPLR sections, but also because it is apparent that the Legislature intended Article 9 to be a liberal substitute for the

narrow class action legislation which preceded it.” *City of N.Y. v. Maul*, 14 N.Y.3d 499, 509 [2010] (internal citations omitted); See also *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 91 (1980); *Dziura v. Hum. Dev. Ass’n*, 2023 N.Y.Misc.LEXIS 1716 [2023].

Moreover, in addition to the factors of CPLR 901, under CPLR 902, the court may consider additional factors in determining whether the action should proceed as a class action: (1) the interests of the members of the class in individually controlling the prosecution of or defense of separate actions (2) the impracticability or inefficiency of prosecuting or defending separate actions (3) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class (4) the desirability or undesirability of concentrating the litigation of the claim in the particular forum; (5) the difficulties likely to be encountered in the management of a class action. CPLR 902.

The defendants’ main argument against class certification is that in their view, there are other available methods for the adjudication of these claims which they believe would be more efficient. Specifically, defendant argues if the court eventually finds in favor of plaintiffs and holds the copays were unlawfully imposed, the defendants will initiate a claims process for the other nonparty retirees to file claims. Plaintiff contend the route proposed by the defendants is not a superior alternative to class certification, as it would give the defendants too much discretion and result in hardship for the elderly claimants who would have to go through a likely complicated administrative claims process.

The Court finds the circumstances here are exactly those where class certification is appropriate. Here, all factors required for class certification pursuant to CPLR 901(a) are met. Plaintiffs have identified 183,000 elderly people who are members of this plan and who would be part of the class. All such retirees are enrolled in the same health care plan, all such retirees

are generally older and/or disabled Medicare-eligible retired former employees of the City of New York or their dependents, all retirees are third-party beneficiaries to the Contract between EmblemHealth/GHI, and all were subject to the same open enrollment period and process. Moreover, all retirees are challenging the legality of the imposition of the copays generally. The commonality of factual and legal allegations is abundantly clear. It would be inefficient to require 183,000 elderly and/or disabled retirees to institute individual actions or rely on the insurer to return overcharged copays to all retirees, based on the precedent of an action brought by a few retirees. As a class action, judicial economy would occur because there would not be an untold number of lawsuits about this issue

Finally, the Court finds the argument by the City of New York against class certification unavailing, as the relief now sought in this action is retrospective, not prospective. Accordingly, it is hereby

ORDERED and ADJUDGED that the plaintiffs' motion for class certification is granted and it is further

ORDERED that Plaintiffs Margaretann Bianculli, Janet Kobren, Merri Lasky, Phyllis Lipman and Barry Skolnick are appointed as class representatives; and it is further

ORDERED that Walden Macht & Haran LLP and Pollock Cohen LLP are appointed as class counsel.

  
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	<b>10/20/2023</b>			<b>LYLE E. FRANK, J.S.C.</b>
	<b>DATE</b>			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE