# Update on CalPERS Long Term Care Litigation May 27, 2018

By Dave Muir
Chair, CalPERS Long Term Care Ad Hoc Committee

## Background

In 1995, the California Legislature authorized CalPERS to compete in the long term care (LTC) insurance market by offering LTC policies to state and local government employees and their families. An aggressive marketing program by CalPERS led to more than 175,000 people enrolling in the program.

CalPERS promised low and consistent premiums and guaranteed that inflation protection benefits would not result in premium increases. Key policy provisions stated that premiums would never increase due solely to a change in age or health and that any premium changes would be on an issue age basis for all similar coverages. The policy expressly prohibited rate increases to meet increasing liabilities caused by those who purchased inflation protection benefits.

In 2013, CalPERS announced it was increasing premiums by a whopping 85% for those with policies that included inflation protection and life time benefits. Many, after paying premiums for over 20 years, had to reduce benefits in order to avoid the 85% rate increase, or drop their coverage entirely.

Outrage at the premium rate increase was quick and extreme, resulting in a class action against CalPERS that was filed in February 2016 by one of the premier law firms that specialize in representing insurance policy holders. The actuarial firm that advised CalPERS in establishing the original premium rates was also sued.

## Settlement with Actuarial Firm

In October 2017, a settlement was reached with the actuarial firm for $9.75 million. The settlement proceeds will be distributed as follows:

> $598,000 to plaintiffs' law firm to cover costs incurred to date
>
> $1,000,000 to the plaintiff's law firm to cover future costs of litigation
>
> $200,000 to the firm that administers class actions to cover administrative costs
>
> The balance (roughly $8,000,000) to be distributed pro-rata to the approximately 122,800 members of the class without the need to file a claim.

The $9.75 million settlement against the actuaries is considered an excellent result, given the extreme difficulty of having to prove the actuaries were negligent nearly 22 year ago when the original premium rates were established.

CalPERS Motion to Decertify the Class:

In order for a case to proceed as a class action, the plaintiff must satisfy the court that issues of law and fact predominate. The plaintiffs were able to pass this test at the outset, allowing the case to proceed as a class action. After most of the discovery in the case was completed, CalPERS' filed a motion to decertify the class based on additional information developed during discovery. The motion was denied in May 2018. Our law firm reported this development on its website: "This was an important decision because it means the class case will be going to trial."

Trial Date**:**

The Court has set a tentative trial date for May 13, 2019, but the Court also indicated that the 30-day trial would likely begin in June 2019.