THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

ALASKA RETIREMENT MANAGEMENT BOARD on behalf of STATE OF ALASKA PUBLIC EMPLOYEES' RETIREMENT SYSTEM and STATE OF ALASKA TEACHERS' RETIREMENT SYSTEM,

Plaintiff,

v.

MERCER (US), INC., MERCER HUMAN RESOURCE CONSULTING, INC., AND WILLIAM M. MERCER, INC.

Defendants.

Case No. 1JU-07-974 CI

COMPLAINT

Plaintiff Alaska Retirement Management Board ("the ARM Board") alleges for its Complaint, on information and belief as to allegations concerning other parties:

Nature of the Action

1. This action seeks redress for actuarial malpractice, breach of professional duty and breach of contract that have caused at least $1.8 billion in damages to the State of Alaska Public Employees' Retirement System ("PERS") and the State of Alaska Teachers' Retirement System ("TRS"), two retirement and benefit plans administered by the ARM Board.

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2. Beginning in the 1970s and until 2006, Defendants Mercer (US), Inc. and its predecessors, defendants Mercer Human Resource Consulting, Inc., and William M. Mercer, Inc. (collectively, "Mercer"), served as the actuarial firm for PERS and TRS (collectively the "Plans"), Alaska's two largest public pension and benefit plans. More than 80,000 Alaskans and former Alaskans who work for or who have worked for over 200 participating public employers throughout the State look to or will look to PERS and TRS for pension and post-retirement health benefits.

3. Holding itself out as "the global leader in retirement services," whose professionals use "state-of-the art tools," Mercer claims "offices in more countries than any other HR consulting firm and over 4,800 retirement consultants and actuaries worldwide." As the Plans' actuarial firm, Mercer had the responsibility to perform critical functions for PERS and TRS, including the calculation of expected Plan liabilities and the determination of employer contribution rates necessary to fund benefits the Plans promised to workers and their families. Mercer understood that accurate determinations of liabilities and contribution rates were essential to meet fundamental objectives of the Plans.

4. Those objectives – which Mercer explicitly and repeatedly acknowledged – included (a) *full funding* of the Plans – the accumulation of assets sufficient (with expected earnings) to pay benefit obligations when they became due; (b) the collection of contributions sufficient to fund each employee's future benefits *during that employee's working lifetime*; (c) the maintenance of *relatively stable contribution rates* over time, to prevent sudden changes that frustrate the orderly

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financial plans of contributing employers responsible for essential governmental functions; and (d) advance funding of *health care costs* as well as other benefit obligations. The Administrator of PERS and TRS, acting on behalf of the trustees of the Plans, retained Mercer to ensure that the Plans did not make empty, unfunded promises, disrupt the financial planning of participating employers or burden future generations with significant pension and health care costs.

5. Mercer's negligence and breaches of duty frustrated the Plans' ability to achieve these funding objectives and injured the Plans. Fully aware of the billions of dollars at stake, Mercer nevertheless made fundamental errors in methodology and even in basic calculations, and failed to assign competent, experienced personnel to work for the Plans. Because of this misconduct, Mercer miscalculated – by over $1.8 billion – the contributions necessary to fund the Plans.

6. The opportunity to collect those funds as planned has now vanished. Participating employers have understandably committed the funds elsewhere – for police officers, schoolbooks, parks, hospitals or other important functions – and their financial planning has been disrupted by huge increases in contribution rates caused by Mercer's misconduct. Just what the Plans wished to avoid – just what they hired Mercer to prevent – has occurred.

7. Mercer's failure to meet its obligations to the Plans is one of the most significant factors contributing to the financial crisis in Alaska's pension and health system. Through this action, the ARM Board seeks to recover the more than

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$1.8 billion lost because of Mercer's conduct, and so help to restore the financial stability of the Plans.

The Parties

8. Since October 1, 2005, the ARM Board has been the trustee of the assets of PERS and TRS.

9. PERS is a retirement plan for employees of approximately 160 separate participating employers, including the State of Alaska as an employer, and political subdivisions of the State, including municipalities, local government bodies, housing authorities, and other public organizations throughout Alaska. It provides defined pension, disability, survivor and health care benefits to plan members hired prior to July 1, 2006, and their beneficiaries. Nearly 61,000 individuals and their families now depend on PERS for benefits or will be eligible for benefits upon retirement. PERS held approximately $9.38 billion in assets as of June 30, 2006.

10. TRS is a retirement plan for educators in Alaska working at 58 separate public educational employers throughout the State. Like PERS, TRS provides defined pension, disability, survivor and health care benefits to plan members who were hired prior to July 1, 2006, and their beneficiaries. Nearly 20,000 individuals and their families now depend on TRS for benefits or will be eligible for benefits upon retirement. TRS held approximately $4.3 billion in assets as of June 30, 2006.

11. Until the ARM Board was established on October 1, 2005, PERS was overseen by the Public Employees' Retirement Board ("PERB") and TRS by the Teachers Retirement Board ("TRB") (collectively, "the Boards"). From July 1, 1993,

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until the establishment of the ARM Board, the Alaska State Pension Investment Board ("ASPIB") acted as trustee of the assets of PERS and TRS and managed the investment of those assets. Prior to July 1, 1993, the Commissioner of the Alaska Department of Revenue acted as trustee of the assets of PERS and TRS and managed the investment of those assets.

12. The Division of Retirement Benefits ("DRB") of the Alaska Department of Administration administers PERS and TRS.

13. Mercer (US), Inc. (formerly known as Mercer Human Resources Consulting, Inc., and as William M. Mercer, Inc.) is a Delaware corporation with its principal place of business at 1209 Orange Street, Wilmington, Delaware, 19801. Mercer presents itself as one of the most competent, sophisticated and experienced advisors to pension and benefit plans. It claims that "Clients choose Mercer when they want to work in partnership with their consultant, want strategic advice as well as flawless administration and execution of their HR programs, want best-practice advice and solutions tailored to their business and environment, or need global and/or local perspectives and resources."

14. Mercer also represents that it has particular expertise in health care: "Mercer combines health and benefits expertise from the world's leading benefits consultancy with best-in-class technology and services to provide the resources and support necessary to help employers design and deliver comprehensive health benefits programs."

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15. Mercer's fees reflect its promises of best-in-class performance: Mercer received approximately $2.5 million for its work for PERS and TRS between June 1999 and April 2006, and billed the Plans at rates as high as $430 an hour.

16. Mercer is a wholly owned subsidiary of Marsh & McLennan Companies, Inc. ("Marsh"), which claims to be one of the world's largest consulting, risk management and insurance brokerage firms. Marsh is a Delaware corporation with its principal place of business at 1166 Avenue of the Americas, New York, NY 10036-2774. Its shares trade on the New York Stock Exchange.

Jurisdiction and Venue

17. The Court has subject matter jurisdiction over this action pursuant to AS 22.10.020. The amount in controversy exceeds $100,000.00.

18. This Court has exclusive personal jurisdiction over Mercer pursuant to the parties' contract, which provides that "[a]ll actions concerning this contract shall be brought in the Superior Court of the State of Alaska." The Court also has personal jurisdiction under AS 09.05.015(a). Mercer maintains an office at 1031 West 4th Avenue, Suite 400, Anchorage, Alaska 99501, and engages, and has engaged in substantial business activities in the State of Alaska.

19. Venue is proper in the First Judicial District, among other reasons because the Plans are administered by DRB in Juneau, the ARM Board, which serves as the trustee of the Plans' assets, is based in Juneau, the series of contracts between DRB and Mercer were negotiated and executed in Juneau, and Mercer regularly met and

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communicated with representatives of the Plans in Juneau in connection with its work for the Plans.

Operation of the Plans

20. PERS and TRS provide retirement, health, and other benefits to the employees of their participating employers. Once promised, the amount of these benefits is protected under the Alaska Constitution. To pay benefits, the Plans save for the future, accumulating assets during the working careers of employees to pay benefits in future years.

21. The Plans accumulate assets from three principal sources: (a) contributions from participating employers; (b) contributions from employees themselves; and (c) investment income earned on Plan assets. It is crucial that the Plans receive sufficient contributions in order to have the resources to satisfy future benefit obligations.

22. The Boards consistently adopted prudent, conservative funding goals for the Plans. They rejected the practice of funding benefits on a pay-as-you-go basis. Instead, they adopted these goals (among others):

23. ***First***, the Boards wanted full, 100% funding – meaning that the Boards expected to collect all of the contributions necessary (with expected earnings) to pay expected benefits. In fact, in some years the PERS Board established a goal of 102% funding, to ensure that assets would be sufficient to pay for liabilities and for any additional benefits granted retroactively to plan participants. A funding level of less than 100% can force a plan to collect money as liabilities become due, rather than

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saving in advance, and can saddle future generations with the obligation to pay prior generations' benefits.

24. ***Second***, the Boards wanted to fund each individual employee's future benefits during that employee's working lifetime. Unlike other pension and benefit plans, the Boards did not want one generation of employees to fund their predecessors' or successors' benefit obligations. Every year, as employees enter and leave the Plans and salaries fluctuate, the financial characteristics and composition of the Plans changes. The Boards decided to collect in a given year the amounts needed to pay for benefit obligations arising that year and a reasonable, actuarially calculated portion of any prior accrued liability. This policy fairly allocates the cost of future benefits, ensuring that those benefits will be funded in advance by the people who will eventually receive them.

25. ***Third***, the Boards wanted relatively stable employer contribution rates. The participating employers in PERS and TRS are government entities, with many demands on their limited funds. Establishing a funding goal of relatively stable contribution rates affords the participating employers the ability to make sound decisions about where to commit their remaining capital and how to fund essential governmental functions.

26. ***Fourth***, the Boards decided to require advance funding not only for pension benefits, but for health benefits as well. This policy was not only prudent, but also rare among public funds. According to statements made by Mercer, outside of

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Alaska, until recently public funds in only three other states accrued in advance for health benefits.

27. Retirement and health plans depend on their actuaries to assist them in achieving funding goals like those adopted by the PERS and TRS Boards. The actuary's role is critical. Among other things, the actuary calculates the value of the plan's current assets and the plan's future liabilities and determines the employer contribution rates needed to achieve funding goals. In the case of PERS and TRS, the actuary determines how much money, expressed as a percentage of payroll, each employer should contribute each year to meet plan goals.

28. The Alaska Constitution prohibits the diminution of benefits, which heightens the importance of accurate calculation of liabilities.

29. If the actuary improperly calculates the employer contribution rate, the plan may not collect enough money to meet obligations as they come due. It is thus imperative that the employer contribution rate be calculated correctly, and plans seek to hire actuaries who promise that they can professionally, competently and correctly calculate that rate.

Mercer's Services to the Plans and the Boards

30. Before and during the time it provided services to the Plans and the Boards, Mercer held itself out as one of the most experienced, qualified and capable employee pension and benefit consulting and actuarial firms in the world.

31. Beginning in the 1970s and continuing through March 22, 2005, DRB and Mercer entered into a series of written contracts, which DRB and Mercer

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understood were intended to benefit the Plans. Those contracts obligated Mercer to provide a variety of actuarial consulting services to the Plans. These included:

(a) preparing actuarial valuation reports setting forth the actuarial value of the Plans' assets and liabilities;

(b) calculating and recommending a consolidated employer contribution rate and, also, employer contribution rates for each PERS employer, as well as a system-wide employer contribution rate for TRS; and

(c) preserving, at least until May 2008, all notes and other work product created by Mercer in the performance of its duties, providing access to those materials on request.

32. Mercer prepared annual actuarial valuation reports for both PERS and TRS.

33. The valuation reports informed the Plans, the Boards, participating employees, Plan participants and beneficiaries, and the public of the funded status of the Plans. Thus, each valuation report set forth Mercer's calculations of the actuarial value of the respective plan's assets and liabilities, as well as the resulting funding percentage for the plan.

34. The valuation reports also included Mercer's "determination of the appropriate contribution rate" for employers in the system. Based on its calculations and professed expertise, Mercer determined an employer contribution rate that Mercer represented would ensure that the Plans would achieve their funding goals.

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35. Mercer knew that a crucial function of its actuarial work was to inform the Boards accurately of the Plans' funded status and provide the basis for determination of employer contribution rates. Mercer knew that the Boards relied on Mercer's work to make financial and administrative decisions regarding the Plans, including whether to seek adjustments in contribution rates and whether to increase benefits.

36. Recognizing the importance of its role, Mercer represented in each valuation report its work was carried out by actuaries who were "fully qualified to provide actuarial services to the State of Alaska," and that it had "employed generally accepted actuarial methods and assumptions" in preparing each valuation.

37. Mercer regularly attended meetings of the Boards, where Mercer actuaries presented the underlying assumptions, methods, findings and conclusions of its valuation reports. Mercer actuaries advised the Boards as to the contribution rates necessary to meet the Board's funding objectives, and as to the consequences of decisions concerning benefits and other financial and operational matters.

38. Mercer fully understood and acknowledged the Plans' essential funding goals. For example, at a January 23, 2003, joint meeting of the Boards, a written presentation given by Mercer's Brian R. McGee repeated and confirmed all of these goals:

- **Full funding:** Mercer confirmed that the Plans wanted a "100%, or more recently for PERS, 102% target funded ratio of assets to accrued liabilities";

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- **No inter-generational transfers:** Mercer confirmed that the Plans wanted to "pay for benefits during the working lifetime of employees";
- **Stable rates:** Mercer confirmed that the plans wanted to have "relatively stable [contribution] rates over time"; and
- **Health care costs:** Mercer confirmed that the Plans wanted to accrue assets to pay for "retiree medical" costs, as well as other obligations.

39. Year in and year out, Mercer represented that its calculated employer contribution rates would allow the Boards to reach their funding goals. In reliance on Mercer's analysis and recommendations, the Boards consistently adopted employer contribution rates designed to achieve the Plans' conservative funding goals.

Mercer's Errors

40. Despite Mercer's representations that it was a fully qualified, global leader in retirement services, equipped with state of the art tools, and despite its certifications in each valuation report that it had used generally accepted actuarial methods, in fact – and unknown to the Boards at the time – Mercer's work was riddled with significant errors. Mercer persistently neglected and disregarded its professional obligations and duties to the Boards and the Plans.

41. Beginning at least in the early 1990s, Mercer made critical errors in the annual valuation reports and other materials provided to the Boards and DRB. Mercer erroneously calculated – and thus materially undervalued – the Plans' liabilities,

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causing the Boards to adopt insufficient contribution rates and to make benefit increases that the Boards would not have made had Mercer discharged its professional obligations.

42. This complaint does not attempt to identify all of Mercer's errors. The most significant of Mercer's errors fall into two categories, health care errors and coding errors:

Health Care Errors

43. One of the most important of Mercer's responsibilities was to calculate the future health care liabilities, a major and growing obligation of the Plans. Mercer failed at this task, employing methods and assumptions that fell far short of professional standards. In fact, it appears that none of the actuaries who led Mercer's work for the Plans and signed valuation reports were health care actuaries, even though Mercer employed many health care actuaries among its thousands of consultants and actuaries around the world.

44. First, Mercer far underestimated the rate at which health care costs should be assumed to grow. In order to calculate future health care costs, it is essential to determine the "health cost trend," a calculation of the percentage change in health care costs in each year. For example, in the actuarial valuation report for PERS that Mercer issued for the Plan year ending June 30, 1999, Mercer used the following health cost trend:

FY99	9.5%
FY00	8.5%

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FY01	7.5%
FY02	6.5%
FY03	5.5%
FY04-FY08	5.0%
FY09 & later	4.5%

The health cost trend numbers that Mercer used were much too low, significantly under-estimating the amount by which health care costs should be assumed to increase. As Mercer knew, given the number of beneficiaries and the long time period involved, a change of just a few percentage points in the assumed health cost trend will have a huge effect on calculated liabilities. Accordingly, Mercer's error in choosing a health cost trend rate significantly understated the Plans' future benefit obligations and caused Mercer to calculate an employer contribution rate that was insufficient to meet true future obligations.

45. Second, Mercer compounded this error by failing adequately to monitor its health cost trend assumptions. Rather than determining the health cost trend annually, providing each year a new set of projections based on current real-world health conditions, Mercer calculated the health cost trend only every five years. For the next four years, Mercer applied its prior assumptions, without determining whether available information about health care costs required a change.

46. Because Mercer failed to monitor its assumptions each year, its valuation reports failed to reflect escalations in real-world health costs. For example, Mercer steadfastly maintained its projection that health care costs would grow by only

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7.5% in fiscal year 2001 even after actual health care costs increased by 20% in both calendar year 1999 and 2000 and DRB projected costs to grow by 15% in calendar year 2001.

47. Third, Mercer failed to take into account real-world data in determining the health care premium to use in calculating expected health care costs. Mercer calculated health care costs for future years by multiplying an assumed health care premium for the current year by the assumed percentage rate of increase. Therefore, an error in the current year's premium would affect all future years. Each year, DRB and the Plans informed Mercer of the actual health care premiums the Plans were paying. Rather than using these real-world premiums each year, Mercer looked at real-world data only every five years. In the intermediate four years, Mercer calculated the health care premium by taking the prior year's premium and increasing it by Mercer's health cost trend percentage for that year. Even as health care premiums continued to increase in the real world, Mercer continued to ignore actual data and to ignore the fact that its assumed costs were moving further off track each year. For this reason as well, Mercer underestimated the Plans' true future health care liabilities and recommended unreasonably low employer contribution rates.

48. In addition to these errors, Mercer failed to analyze the separate components of health care costs or evaluate the health care needs of different groups within the population of the Plans in the manner required of a competent actuary. Medical costs typically vary based on age, and the costs of prescription drugs change at a different rate than do other medical costs. Until 2005, Mercer ignored these issues,

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failing to consider differences between prescription drug costs and other health care costs, and addressing population aging only by bluntly dividing Plan participants into "over 65" and "under 65" categories. Mercer made these basic errors even though it had been criticized as early as 1995 for not properly analyzing the age distribution of the population. In a routine 1995 actuarial audit, the firm of Foster Higgins criticized Mercer's method and recommended that Mercer modify its health care assumptions "to reflect the age of your retiree group." Mercer ignored this advice until 2005.

49. According to figures reported by Mercer itself in the 2002 valuation reports for PERS and TRS, Mercer's erroneous calculations of the health care cost trend and the health care premiums caused Mercer to understate the Plans' liabilities by approximately $1.3 billion.

Coding Errors

50. A second significant category of Mercer's errors are "coding errors," errors in entering information about Plan benefits and provisions into Mercer's computer models. As Mercer knew, an actuary's work depends on correct entry of data into actuarial algorithms. Because the algorithms are applied to tens of thousands of participants and beneficiaries, coding errors can cause massive mistakes, and competent actuaries take care to prevent them. Mercer failed to do so.

51. Mercer's coding errors included:

(a) Incorrectly entering, and thus significantly overstating, the reimbursement paid by Medicare for certain PERS members. This understated PERS's liabilities;

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(b) Assuming that certain retired employees of PERS and TRS would make contributions toward their health benefits until age 65, when, in fact, those employees contribute only until age 60. Mercer thereby overestimated the employees' future contributions and underestimated the Plans' liabilities;

(c) Ignoring certain salary increases based on merit and seniority, thus underestimating the salary-based benefits to which employees would be entitled;

(d) Assuming that certain retired employees of PERS members would defer health care benefits until age 60, even though those employees are entitled to full health care benefits at age 50, thereby underestimating PERS's liabilities;

(e) Ignoring survivor benefits for the spouses of certain employees of PERS and TRS members, thereby underestimating the Plans' liabilities; and

(f) Omitting service beyond the normal retirement age when projecting certain disability benefits, underestimating the Plans' liabilities.

52. These basic errors show that Mercer failed to provide the care and attention the Plans contracted for and deserved. In view of the size of PERS and TRS, the coding errors had immense consequences. Taken together, they caused Mercer to understate the Plans' liabilities by more than $500 million.

The Milliman Audit

53. In 2002, the Boards and the Plans hired another prominent actuarial firm, Milliman, Inc., to conduct a routine audit of Mercer's work. Milliman's limited assignment was to "review the work of Mercer to see if it was reasonable, consistent

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and accurate." Milliman's audit report, issued in October 2002, revealed for the first time Mercer's major errors in calculating expected health care costs.

54. The Milliman audit report noted that "One of the most critical assumptions in the [actuarial] valuation is the expected increase in medical costs." Milliman concluded, however, that several of Mercer's actuarial assumptions used in calculating health care costs were not "reasonable and appropriate." Milliman criticized each of the three major health care errors committed by Mercer that are described above.

55. Milliman found that Mercer's health cost trend assumptions were far too low. Rather than the figures Mercer was then using – 7.5 percent in FY2001, trending down to 4 percent in FY2014 – Milliman's "healthcare actuaries would have recommended the assumption start within a range of 9% to 11% in 2001 with a gradual decline to about 5%."

56. Milliman also disapproved of Mercer's decision to revisit the health cost projections only every five years, advancing one year through the assumed progression in each of the four intervening years. Milliman determined that Mercer should revisit the assumption annually, and that simply moving one year down the schedule without a searching review was an error: "We recommend that this assumption be reviewed prior to every valuation until such time as medical costs have stabilized close to the rate of price inflation. In our opinion, the 2001 valuations should not have simply moved one year down the schedule without a thorough review."

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57. Milliman also criticized Mercer's failure to use available current data on health care premiums. Milliman warned that "Given the recent history of medical cost increases, the Mercer method can significantly understate liabilities if the actual increases are greater than the assumed increases." Milliman found that Mercer's approach was unreasonable, producing inaccurate results:

> Mercer anchored the blended premium several years ago and has escalated it by the assumed increases. Therefore, the blended premium used in the 2001 valuations was $577.40 when the actual blended premium was $668.00. This means the valuations are using a starting point for the projection of future medical costs that is almost 14% lower than the current blended premium. It would take three years for the assumed premium to catch up with the actual premium if there is no medical inflation during that time. This does not appear reasonable to us.

Milliman recommended that "the valuations always adjust the starting point for future projections based on the latest actual premium levels."

58. Milliman's report also revealed for the first time several of Mercer's coding errors, including Mercer's incorrect use of salary data and incorrect projection of disability benefits.

59. After communicating its findings to Mercer, Milliman presented the results of its audit to a joint meeting of the Boards on October 24, 2002. Mercer's actuaries attended that meeting. Tellingly, Mercer made no effort to mount any significant defense of its work. It accepted without debate all of Milliman's criticisms of its health care calculations and coding errors.

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60. The Mercer representatives at the meeting did not reveal that Mercer's own health care actuaries agreed with Milliman's criticisms. In October 2002, in response to the Milliman audit, Mercer's "State of Alaska Team" actuaries sought the advice of a Mercer actuary who was a health care expert. Like the Milliman actuaries, this Mercer health care actuary concluded in an internal memo that the health cost trend assumptions Mercer was using were "low." The memo observed that it "seems unrealistic to expect a sudden decrease in" the trend rate "in the next two to three years." This health care actuary concluded that the trend assumption that the State of Alaska Team was using "falls below the lower end of the trend range recommended by the AFSC [Mercer's own Actuarial Finance Steering Committee] and is also below the 20th percentile of valuation trend assumptions for Mercer valuations from 2001." Worse, the effect of the "low trend assumption may also be compounded by a cost per retiree assumption that is currently 13.6% below the actual premium."

61. Mercer kept this analysis secret from the Boards and DRB. The internal memo describing the analysis was disclosed only years later, when the Plans demanded that Mercer disclose its work papers in connection with the investigation of this case.

Damage to the Plans

62. Taken together, Mercer's health care errors and coding errors, manifestations of Mercer's persistent disregard for its contractual and professional responsibilities to PERS and TRS, caused Mercer to undervalue PERS' and TRS' liabilities by at least $1.8 billion.

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63. The opportunity to raise those funds from the participating employers as the obligations were incurred is gone, as is the participating employers' opportunity to raise the needed funds from taxpayers and other sources of revenue. Mercer's errors have frustrated the Plans' abilities to meet the very funding goals that they explained to Mercer, that Mercer understood, and that Mercer was hired to help the Plans meet.

64. As Mercer anticipated, the employers participating in PERS and TRS make spending decisions each year based, in part, on the contribution rates adopted by the Boards on the basis of Mercer's actuarial valuations. The funds that the Boards would have otherwise raised were never collected from taxpayers or have been spent by employers on governmental obligations and services. Employers cannot simply save now to fund benefits for which they should have saved years ago. Nor can they reverse the expenditures they made years ago in reliance on Mercer's actuarial calculations.

65. Absent a recovery of damages, those employers find themselves in exactly the position that the Boards worked to prevent: the employers must fund benefits for current workers and, at the same time, pay off unexpectedly high past liabilities.

66. The Plans' goal to fund an employee's future benefits during that employee's working lifetime also cannot be achieved. Instead, participating employers, while straining their finances to fund the benefits of current employees, must now make contributions to fund benefits for past employees long after their working lifetimes.

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67. Mercer was retained to help prevent just these problems. Instead, its misconduct, negligence and inattention has injured the Plans. It is the actuary's task – it was Mercer's duty – to calculate properly and reasonably the amount that the Boards needed to collect in order to meet their funding goals. Had the Boards known the Plans' true liabilities, they would have taken measures necessary to ensure that PERS and TRS were fully funded. Instead, in breach of its duties, Mercer underestimated the Plans' liabilities and damaged the Plans by the amount of the underestimated liabilities.

68. Mercer's errors also caused the Plans to commit to obligations they would not otherwise have incurred. Relying on Mercer's underestimation of the Plans' liabilities, the Boards voted to award more than $140 million in Ad Hoc Post-Retirement Pension Adjustments, and the Commissioner of Administration concurred. Those benefits would not have been awarded had Mercer provided accurate valuations. Now awarded to Plan participants, those benefits cannot be rescinded.

FIRST CAUSE OF ACTION

(Professional Negligence and Malpractice)

69. The ARM Board repeats and realleges the allegations of paragraphs 1 through 68.

70. Mercer owed the ARM Board and the Plans a duty to use such skill, prudence, and diligence as other members of the actuarial profession commonly possess and exercise.

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71. By its persistent errors and failure to act in accordance with its professional responsibilities, Mercer breached that duty.

72. The ARM Board and the Plans reasonably and properly relied upon Mercer's advice.

73. As a direct, proximate, and foreseeable result of Mercer's breach of its duty, the Plans sustained damages in an amount to be determined at trial, but no less than $1.8 billion.

SECOND CAUSE OF ACTION

(Breach of Contract)

74. The ARM Board repeats and realleges the allegations of paragraphs 1 through 73.

75. Mercer entered into a series of written agreements with DRB to serve as the Plans' actuary. Among other things, these agreements obligated Mercer to provide accurate and reliable actuarial services on behalf of PERS and TRS and to exercise due care in performing services for the Plans.

76. The Plans and the Boards are intended and/or third-party beneficiaries of those agreements.

77. The ARM Board, the Boards, DRB, and the Plans performed all of their obligations under the contracts with Mercer.

78. By repeatedly committing errors in providing actuarial services to the Plans, the Boards, DRB, and the ARM Board, and in failing promptly to discover and disclose those errors, Mercer breached its contractual obligations.

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79. As a direct and foreseeable consequence of Mercer's repeated breaches of its obligations under the agreements, the Plans have suffered damages in an amount to be determined at trial, but in no event less than $1.8 billion.

THIRD CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

80. The ARM Board repeats and realleges the allegations of paragraphs 1 through 79.

81. Under its agreements with DRB, Mercer owed the duty of good faith and fair dealing implied in all contracts governed by Alaska law.

82. The ARM Board, the Boards, DRB, and the Plans performed all of their obligations under the contracts with Mercer.

83. By repeatedly committing errors in providing actuarial services to the Plans, the Boards, DRB, and the ARM Board, and in failing promptly to discover and disclose those errors, Mercer violated its implied duty of good faith and fair dealing.

84. As a direct and foreseeable consequence of Mercer's breach of its duty of good faith and fair dealing, the Plans have suffered damages in an amount to be determined at trial, but in no event less than $1.8 billion.

FOURTH CAUSE OF ACTION

(Negligent Misrepresentation)

85. The ARM Board repeats and realleges the allegations of paragraphs 1 through 84.

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86. Mercer made false representations, including regarding its use of reasonable actuarial methods and assumptions in rendering actuarial advice to the Plans, the Boards, DRB, and the ARM Board, regarding its calculation of liabilities of the Plans and Plan contribution rates, and regarding the qualifications and abilities of the individuals who performed work for the Plans.

87. These representations were materially false and Mercer, in the exercise of reasonable care, would and should have known of their falsity.

88. Mercer was required to take reasonable care to insure that its representations were accurate.

89. The Plans and the Boards reasonably and justifiably relied on Mercer's representations.

90. As a direct, proximate, and foreseeable result of Mercer's negligent misrepresentations, the Plans have suffered damages in an amount to be determined at trial, but in no event less than $1.8 billion.

FIFTH CAUSE OF ACTION

(Unfair Trade Practices under Alaska's Unfair Trade Practices and Consumer Protection Act, AS 45.50.471)

91. The ARM Board repeats and realleges the allegations of paragraphs 1 through 90.

92. Mercer entered into a series of commercial agreements with DRB to serve as the Plans' actuary.

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93. In connection with these agreements, Mercer made false and misleading representations, including regarding (a) the methods and assumptions used to render actuarial advice to the Plans, the Boards, DRB, and the ARM Board; (b) calculation of the Plans' liabilities; (c) calculation of Plan contribution rates; and (d) the qualifications and abilities of the individuals who performed work for the Plans.

94. These false and misleading representations in fact misled and deceived the Plans, the Boards, DRB, and the ARM Board in connection with the services provided by Mercer violation of Alaska's Unfair Trade Practices and Consumer Protection Act, AS 45.50.471.

95. As a direct, proximate, and foreseeable result of Mercer's conduct described herein, the Plans have suffered damages in an amount to be determined at trial, but in no event less that $1.8 billion, subject to trebling under the Unfair Trade Practices and Consumer Protection Act.

WHEREFORE, the ARM Board requests judgment awarding:

1. Damages in an amount to be determined at trial, but in no event less than $1.8 billion;

2. Treble damages under AS 45.50.531;

3. Pre- and post-judgment interest at the legal rate;

4. The costs and expenses of this action, including attorneys' fees under AS 45.50.537 and as otherwise provided by law; and

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5. Such other and further relief as the Court deems just and proper.

DATED this 6th day of December, 2007 at Juneau, Alaska.

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