# NOTE 21: CONDUIT DEBT OBLIGATIONS, COMMITMENTS, AND CONTINGENCIES

## A. Conduit Debt Obligations

The State, by action of the General Assembly, created the North Carolina Medical Care Commission which is authorized to issue tax-exempt bonds and notes to finance construction and equipment projects for nonprofit and public hospitals, nursing homes, continuing care facilities for the elderly and related facilities. The bonds are not an indebtedness of the State and, accordingly, are not reflected in the accompanying financial statements. Each issue is payable solely from the revenues of the facility financed by that issue and any other credit support provided. In addition, no commitments beyond the payments from the facilities and maintenance of the tax-exempt status of the conduit debt obligation were extended by the North Carolina Medical Care Commission. Therefore, each issue is separately secured and is separate and independent from all other issues as to source of payment and security. The indebtedness of each entity is serviced and administered by a trustee independent of the State. Maturing serially and term to calendar year 2053, the outstanding principal of such bonds and notes as of June 30, 2024, was $4.68 billion with interest rates varying from .75% to 6.13%.

The North Carolina Capital Facilities Finance Agency (Agency) is authorized by the State to issue tax-exempt bonds and notes to finance industrial and manufacturing facilities, pollution control facilities for industrial (in connection with manufacturing) or pollution control facilities and to finance facilities and structures at private nonprofit colleges and universities, and institutions providing kindergarten, elementary and secondary education, and various other nonprofit entities. The Agency's authority to issue bonds and notes also includes financing private sector capital improvements for activities that constitute a public purpose. The bonds issued by the Agency are not an indebtedness of the State and, accordingly, are not reflected in the accompanying financial statements. Each issue is payable solely from the revenues of the facility financed by that issue and any other credit support provided. In addition, no commitments beyond the payments from the nonprofit entities and maintenance of the tax-exempt status of the conduit debt obligation were extended by the North Carolina Capital Facilities Finance Agency. Therefore, each issue is separately secured and is separate and independent from all other issues as to source of payment and security. The outstanding principal of such bonds and notes as of June 30, 2024, was $1.29 billion carrying both fixed interest rates and variable interest rates which can be reset periodically.

The North Carolina Department of Transportation (NCDOT) is authorized by General Statute 136-18(39) and General Statute 136-18(39a) to enter into private partnership agreements to finance by tolls and other financing methods the cost of constructing transportation infrastructures. Such an agreement was entered into on June 26, 2014, with I-77 Mobility Partners LLC (Mobility Partners) to design, build, finance and operate the I-77 High Occupancy Toll (HOT) Lanes Project. The NCDOT issued $100 million of senior private activity bonds (PABs) on behalf of Mobility Partners and provided additional direct funds of $116.2 million. The PABs are not an obligation of the NCDOT or the State. The bonds are payable from payments received by the Mobility Partners, and NCDOT has committed to maintaining the tax-exempt status of the bonds. Additional funding was obtained by Mobility Partners in the form of a federal Transportation Infrastructure Finance and Innovation Act (TIFIA) loan in the amount of $189 million. In April 2024, I-77 Mobility Partners LLC sold $371 million of Senior Secured Notes with the proceeds used (in part) to prepay its outstanding TIFIA Loan. The NCDOT was also providing limited credit enhancement support for the Project through the Developer Ratio Adjustment Mechanism (DRAM) as set forth in Section 13.3 of the Comprehensive Agreement; however, the refinancing caused the DRAM to be of no further force and effect per Section 13.3.6 of the Comprehensive Agreement. As of June 30, 2024, the outstanding principal of the PABs was $100 million.

## B. Litigation

***Hoke County Board of Education et al. v. State of North Carolina et al. — Right to a Sound Basic Education*** **(formerly *Leandro*) —** In 1994, students and boards of education in five counties in the State filed a suit in Superior Court requesting a declaration that the public education system of North Carolina, including its system of funding, violates the State constitution by failing to provide adequate or substantially equal educational opportunities, by denying due process of law, and by violating various statutes relating to public education. Five other school boards and students therein intervened, alleging claims for relief on the basis of the high proportion of at-risk and high-cost students in their counties' systems.

The suit is similar to a number of suits in other states, some of which resulted in holdings that the respective systems of public education funding were unconstitutional under the applicable state law. The State filed a motion to dismiss, which was denied. On appeal, the North Carolina Supreme Court upheld the present funding system against the claim that it unlawfully discriminated against low-wealth counties but remanded the case for trial on the claim for relief based on the Court's conclusion that the constitution guarantees every child the opportunity to obtain a sound basic education. Trial on the claim of one plaintiff-county was held in the fall of 1999. On October 26, 2000, the trial court, in Section Two of a projected three-part ruling, concluded that at-risk children in North Carolina are constitutionally entitled to such pre-kindergarten educational programs as may be necessary to prepare them for higher levels of education and the "sound basic education" mandated by the Supreme Court. On March 26, 2001, the Court issued Section Three of the three-part ruling, in which the judge ordered all parties to investigate certain school systems to determine why they are succeeding without additional funding. The State filed a

Notice of Appeal to the Court of Appeals, which resulted in the Court's decision to re-open the trial and call additional witnesses. That proceeding took place in the fall of 2001. On April 4, 2002, the Court entered Section Four of the ruling, ordering the State to take such actions as may be necessary to remedy the constitutional deficiency for those children who are not being provided with access to a sound basic education and to report to the Court at 90-day intervals remedial actions being implemented. On July 30, 2004, the North Carolina Supreme Court affirmed the majority of the trial court's orders, thereby directing the executive and legislative branches to take corrective action necessary to ensure that every child has the opportunity to obtain a sound, basic education. Thereafter, the State took steps to respond to the trial court's orders.

On June 15, 2011, the General Assembly enacted legislation which placed certain restrictions on the North Carolina pre-kindergarten program which had been established by the General Assembly in 2001. Following a hearing requested by the plaintiffs, the trial court entered an order prohibiting the enforcement of legislation having the effect of restricting participation in the program. On appeal, the North Carolina Court of Appeals affirmed the trial court's order prohibiting the State from denying any eligible "at risk" children admission to the program. The State appealed this decision, and in November 2013, the North Carolina Supreme Court held that amendments to the 2011 legislation had rendered the appeal moot. The case was remanded to the Superior Court.

On March 13, 2018, the Superior Court issued an Order appointing WestEd to serve as the Court's independent, non-party consultant to make recommendations for specific actions necessary to achieve sustained compliance with the constitutional mandates of *Leandro*. On October 4, 2019, WestEd submitted its final report and recommendations to the Court. The WestEd report estimated that over the eight-year period beginning in the fiscal year 2019-2020, it could take as much as $6.86 billion in additional funding beyond 2018-2019 appropriations for the State to meet its *Leandro* obligations. On January 21, 2020, the Court entered a Consent Order Regarding the Need for Immediate Systemic Action for the Achievement of *Leandro* Compliance. In that Order, the Court found that many children across North Carolina are still not receiving the constitutionally required opportunity for a sound basic education and the State had to make systemic changes and investments to fulfill its obligations. Consistent with that decision, the Court ordered the State Defendants, in consultation with the plaintiff parties, to develop a comprehensive remedial plan to provide all children with the opportunity for a sound basic education. The Court did not order the State to appropriate any funds but ordered the State to remedy the deficiencies identified in its Order of January 21, 2020.

In June 2020, the parties submitted a Joint Report to the Court on Sound Basic Education (SBE) for All: Fiscal Year 2021 Action Plan For North Carolina. The Joint Report detailed the actions the State and NC SBE were committed to taking in the first year (Fiscal Year 2021) of an eight-year Plan. The parties agreed that the actions outlined in the Joint Report were the necessary and appropriate actions needed in Fiscal Year 2021 to begin to adequately address the constitutional violations in providing the opportunity for a sound basic education to all children in North Carolina. The State Defendants estimated that the costs of the action steps detailed in the Joint Report would require an additional State investment of $426.99 million in Fiscal Year 2021. The Court thereafter ordered the parties to formalize the commitments in the Joint Report in a Consent Order which the Court entered on September 11, 2020.

On March 15, 2021, the State Defendants submitted the Comprehensive Remedial Plan required under the January and September Consent Orders. The State Defendants, including the NC State Board of Education, agreed that the actions outlined in that Plan were the necessary and appropriate actions needed over the next eight years to address the constitutional violations and provide the opportunity for a sound basic education to all children in North Carolina. Attached to the Plan was an Appendix which detailed the implementation timeline for each action step, as well as the estimated additional State investment necessary for each of the actions described in the Plan. The State Defendants estimated that the actions steps in the Plan would cost an additional $5.5 billion in recurring funds at the end of the eight-year implementation period.

On June 7, 2021, the Court entered an Order directing the State Defendants to implement the Comprehensive Remedial Plan in full and in accordance with the timelines contained therein. The Court further ordered the State Defendants to seek and secure "such funding and resources as are needed and required to implement in a sustainable manner the programs and policies set forth in the Comprehensive Remedial Plan." The Court held open the possibility of entering judgment in the future "granting declaratory relief and such other relief as needed to correct the wrong" if the State fails to implement the actions described in the Plan. Finally, the Court ordered State Defendants to submit a report no later than August 6, 2021, regarding progress toward fulfilling the terms and conditions of the Order and stated that it would hold a hearing in September 2021 to address issues raised in that report.

On August 6, 2021, the State Board of Education and the State of North Carolina filed separate Reports on Progress on the Comprehensive Remedial Plan. On August 27, 2021, the Plaintiffs and the Plaintiff Intervenors filed Reponses to those Reports. The Court scheduled a hearing on September 8, 2021, to "address issues raised in the reports and responses."

On October 16, 2021, the trial court held a hearing during which it indicated that it would enter an order directing certain executive branch officials to transfer funds sufficient to fund Years two and three of the Comprehensive Remedial Plan. On November 10, 2021, the trial court entered such an order.

On November 18, 2021, the State Budget Act was enacted. On that day, the State filed a notice of appeal of the trial court order transferring funds, followed shortly by an appeal of the Legislative Leaders who noticed intervention into the case by virtue of N.C. General Statute §1-72.2. The State filed a petition to bypass the Court of Appeals and have the claim directly heard by the North Carolina Supreme Court. That petition was granted by the Court, who first remanded the case for clarification on how the enactment of the State Budget Act impacted the trial court order of November 10, 2021.

At the same time the appeal was entered of the trial court order transferring funds, the Office of the State Controller filed a petition for temporary stay, writ of supersedes and writ of prohibition with the Court of Appeals enjoining the trial court from ordering the transfer of funds without an appropriation. The writ of prohibition was granted and subsequently appealed to the Supreme Court.

During that time, the Honorable Michael Robinson was selected to preside over the matter. Judge Robinson amended the trial court order of November 2021 by incorporating the financial changes associated with the State Budget Act. Judge Robinson also incorporated his understanding that because the Court of Appeals had recently entered a writ of prohibition in a collateral appeal barring the transfer of funds, the trial court was no longer permitted to include the transfer within the bounds of the amended order.

The case was heard by the North Carolina Supreme Court on August 31, 2022. On November 4, 2022, the Supreme Court filed an opinion. With that opinion, the Supreme Court stayed the writ of prohibition issued by the Court of Appeals, in part, concluding that the court erred when it concluded that it lacked the authority to order the transfer of funds. Mandate on the opinion issued directly to the trial court on November 29, 2022, commanding that the trial court conform the subject order to the Supreme Court opinion. Subsequently in January 2023, the North Carolina Supreme Court lifted the stay of the writ of prohibition and reinstated the prohibiting the trial court from ordering the transfer of funds. In March 2023, the North Carolina Supreme Court lifted the stay of the writ of prohibition and reinstated the writ, which prohibits the trial court from ordering the transfer of funds. The Controller argued that judicial branch mandated transfers in this matter would subject the Controller to criminal and civil liability before the basic elements of procedural due process were met, and that there were many outstanding issues unaddressed in the Court's earlier opinion. The North Carolina Supreme Court found that the Controller made a sufficient showing of substantial and irreparable harm should the judicial branch mandate transfers of funds in this matter. The writ of prohibition is currently in effect until the Court has made a final decision on the remaining issues in the case.

Since that time, the trial court convened a hearing to determine what funds remained due to satisfy the obligations of Years 2 and 3 of the Comprehensive Remedial Plan. Following the entry of an order on April 14, 2023, the Legislative Intervenors appealed the matter to the North Carolina Court of Appeals, and thereafter, were granted a bypass petition to the North Carolina Supreme Court. After extensive briefing, the case was heard by the North Carolina Supreme Court on February 22, 2024, and a decision is pending.

***Michael Hughes, on behalf of himself and others similarly situated v. Board of Trustees Teachers' and State Employees' Retirement System, et al.***- This suit involves a declaratory judgment action, a claim for "violation of N.C. General Statute § 135-5"; and Breach of Contract, all of which arise from an allegation that, as a retiree from North Carolina's Teachers' and State Employees' Retirement System ("TSERS"), Plaintiff is entitled to receive a comparable cost of living increase in his retirement allowance each year in which the North Carolina General Assembly increases the salaries of active State employees, and that such increases must be comparable. This matter is a putative class action, which Plaintiff purports to bring on behalf of retirees in TSERS, the Consolidated Judicial Retirement System ("CJRS"), and the Legislative Retirement System ("LRS") against the TSERS Board of Trustees, TSERS, CJRS, LRS, State Treasurer Dale R. Folwell (in his official capacity as ex officio Chair of the TSERS Board of Trustees), and the State of North Carolina ("Defendants").

Defendants moved to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure for failure to state a claim, arguing there is no statutory basis for Plaintiff's claim that he is entitled to such an increase because: (1) the portion of the statute on which Plaintiff's argument relies, N.C. General Statute § 135-5(o), which states that retired TSERS members "may receive cost-of-living increases in retirement allowances if active members of the system receive across-the-board cost-of-living salary increases[,]" is permissive, not mandatory; (2) the condition that must be met before retirement allowances may be increased – that "active members of the system receive across-the-board cost-of-living salary increases" has not been met since Plaintiff retired; and (3) Plaintiff's Complaint concedes that the TSERS Board of Trustees does not have the authority to award retirement allowances pursuant to N.C. General Statute § 135-5(o). Defendants' Motion to Dismiss came on for hearing on August 24, 2022, in Wake County Superior Court. The court entered an order on August 26, 2022, that denied Defendants' motion.

The matter is currently pending before the superior court and discovery has begun. Defendants are in the process of drafting a motion for judgment on the pleadings and motion to dismiss Plaintiff's Complaint on all three causes of action because: (1) they are nonjusticiable under the political question doctrine; (2) they are barred by sovereign immunity as a matter of law; (3) there is no private right of action for "Violation of N.C. General Statute § 135-5"; and (4) Plaintiff does not have standing to bring this action against CJRS and LRS. At this stage, the N.C. Department of Justice (NC DOJ) believe that there is only a remote likelihood that Plaintiff's claims can continue against CJRS and LRS. The plaintiff's only allegation that he has a relationship to any of the Defendants in this case is that he is a retiree of TSERS, a pension plan administered by the North Carolina Retirement Systems Division within the Department of State Treasurer. TSERS is not the same pension plan as the CJRS or LRS pension plans named in this suit and Plaintiff has not alleged that he is a vested member of CJRS or LRS, or otherwise alleged a relationship with either entity. With regard to the claims by Plaintiff and the putative class of TSERS retiree he purports to bring this claim under, Defendants are optimistic about their motion to dismiss and for judgment on the pleadings, and

therefore, at this stage, the likelihood of an unfavorable outcome is only reasonably possible. Defendants will strongly consider an interlocutory appeal if the sovereign immunity arguments raised in the motion to dismiss are denied and the claims are not otherwise resolved by the motions. If Defendants are unsuccessful, they will need to revisit their evaluation of the likelihood of an unfavorable outcome and the fiscal exposure of the State may be substantial in the event of the favorable outcome of this litigation for Plaintiffs.

The Court of Appeals, in a split decision, ruled for the Defendants the State and the Retirement System Division concluding that sovereign immunity shields the State from the COLA-grounded lawsuits for breach of contract. Plaintiffs are seeking an en banc rehearing/review from the Court of Appeals, and the expectation is that Plaintiffs will seek a discretionary review from the Supreme Court, if unsuccessful with the en banc request.

***Queen Anne's Revenge (QAR)/ North Carolina Department of Natural and Cultural Resources (NCDNCR). Intersal v. Wilson (NCDNCR), 15 CVS 9995***, is a breach of contract action involving a 2013 Settlement Agreement between Intersal and NCDNCR concerning, inter alia, the negotiated media rights of the parties regarding the *Queen Anne's Revenge (QAR)*. Intersal primarily seeks damages for photos related to the *QAR* posted on various websites by DNCR allegedly in violation of the terms of the settlement agreement, lost profits on a proposed exhibition tour of the *QAR*, and lost licensing fees for video of the recovery and conservation efforts.

In November 1996, operating under a search permit issued by NCDNCR, Intersal discovered the *QAR* wreckage. Pursuant to the *QAR* permit, Intersal was entitled to claim treasure recovered from the ship. However, Intersal elected to forgo its claim to treasure in order to obtain exclusive media and replica rights related to the *QAR* shipwreck and its artifacts as well as the right to search for a second ship, the *El Salvador*. On September 1, 1998, Intersal and NCDNCR negotiated an Agreement (1998 Agreement) outlining the parties' rights and responsibilities.

On July 26, 2013, Intersal filed a Petition for a Contested Case in OAH alleging NCDNCR violated the 1998 Agreement. On October 15, 2013, Intersal, NCDNCR and Nautilus (Intersal's video designee) executed a Settlement Agreement (2013 Agreement). The 2013 Agreement superseded the 1998 Agreement and outlined the parties' renegotiated media rights and the terms for the search for the *El Salvador*. In July 2015, Intersal filed this breach of contract claim alleging NCDNCR breached the 2013 Agreement by, inter alia:

1. Displaying over 2,000 *QAR* images and over 200 minutes of video without the required watermark or timestamp.
2. Failing to implement mandates of the 2013 Agreement such as changes to the *QAR* project media policy.
3. Failing to inform Intersal of commercial opportunities under the collaborative commercial narrative language of the 2013 Agreement.
4. Interfering with Intersal's *QAR* media rights by allowing filming and photographing of *QAR* recovery operations by other parties.
5. Interfering/failing to participate in an exhibition tour. Diminishing Intersal's tour by participating in a limited exhibit tour of museums and "profiting" from the museum tour.
6. Failing to make artifacts available for duplication.
7. Failure to renew a permit for the search of the *El Salvador*.

DNCR initially prevailed on a motion to dismiss which was subsequently overruled, in part, by the N.C. Supreme Court (Intersal v. Hamilton, 373 N.C. 89, 834 S.E. 2d 404 (2019)). The Court held that (1) any claims for breach of the 1998 Agreement were properly dismissed; (2) Intersal's breach of contract claims concerning its QAR media rights under the 2013 Agreement were still available; and (3) the trial court erred in dismissing Intersal's breach of contract claim arising from NCDNCR's failure to renew Intersal's El Salvador permit.

The parties then engaged in discovery, including seven experts and 14 fact depositions. In August 2021, the parties filed cross-motions for summary judgement which were heard in January 2022. In February 2023, Business Court Judge Earp granted in part and denied in part each parties' motion. Judge Earp held:

1. Intersal's motion for partial summary judgment is GRANTED that, after the effective date of the 2013 Agreement, NCDNCR's posting on the internet of non-commercial media of the *QAR* project produced without including a time code stamp, watermark and/or a link to the proper website constituted a breach of Paragraph 16(b)(1) of the 2013 Agreement.
2. Intersal's motion for partial summary judgment is GRANTED that, after the effective date of the 2013 Agreement, NCDNCR's posting of non-commercial media of the *QAR* project on websites other than its own constitutes a breach of Paragraph 16(b) of the 2013 Agreement.
3. NCDNCR's motion for summary judgment with respect to Intersal's First Claim for Relief is GRANTED to the extent that Intersal asserts that NCDNCR breached Paragraph 16(b)(1) of the 2013 Agreement by failing to mark digital media that predates the effective date of the *QAR* project prior to producing it in response to a public records request.
4. NCDNCR's motion for summary judgment with respect to Intersal's claim for breach of contract with respect to the *El Salvador* is GRANTED, and Intersal's second Claim for Relief is dismissed with prejudice.

Plaintiff's proffered experts have estimated damages in this matter at up to $451 million for breaches related to Intersal's claimed media rights, and hundreds of millions more related to the *El Salvador*.

A trial in this matter took place in Wake County Superior Court in November 2024 on the remaining issues which, absent some peripheral, smaller claims, were for lost licensing fees/lost profits for photographs posted to the internet, lost profits from an exhibition tour and lost fees from improper posting/producing videos. NCDNCR had already been found to have breached the contract with Intersal. Therefore, the jury was instructed that Intersal was entitled to damages, even if they were only nominal damages. Intersal offered evidence from several expert witnesses and asked the jury to award more than $56 million in damages. This included $31 million dollars related to photographs and $25 million for failing to collaborate in conducting a blockbuster tour of *QAR* artifacts. The jury found NCDNCR breached the contract and was awarded damages in the amount of $527 thousand. Plaintiff and Defendants have thirty days to appeal the verdict.

***Lake v. State Health Plan —*** The main issue is whether the State wrongfully charged a monthly premium to retired State employees for the State's 80/20 coinsurance health plan. The general theme of the complaint is that the State established vesting requirements under which if the employee fulfilled the requirements, the State contracted with each employee to provide 80/20 coinsurance insurance coverage at no monthly premium to the retiree for the duration of each retiree's retirement. Similarly, the plaintiffs allege that the State terminated an optional 90/10 coinsurance health plan to which they allegedly had vested rights. Plaintiffs claim (1) breach of contract; (2) unconstitutional impairment of contract; (3) unconstitutional denial of equal protection; and (4) unconstitutional denial of due process. The plaintiffs also allege a variety of equitable claims (e.g., specific performance, common fund) that piggy-back on the legal claims.

The State moved to dismiss, and, after a hearing, the trial court denied the motion. On May 19, 2017, the trial court issued an order granting plaintiffs' motion for partial summary judgment and denying defendants' motion for summary judgment as to liability. The trial court held that plaintiffs, and all class members, are entitled to the version of the 80/20 coinsurance plan in existence in September 2011, or its equivalent, with no premium for their lifetime. The trial court's order would provide damages for retirees who remained on the 80/20 coinsurance plan at the amount of premiums they actually paid. Any method for determining damages for retirees who switched to the zero-premium 70/30 coinsurance plan is yet to be determined.

The State appealed. On March 5, 2019, a panel of the Court of Appeals unanimously reversed the order of the superior court and remanded for entry of summary judgment in favor of the State. The plaintiffs have petitioned to the North Carolina Supreme Court for discretionary review of the decision of the Court of Appeals. The petition for discretionary review was allowed and the case is now being briefed in the North Carolina Supreme Court.

The State Treasurer has stated that if the trial court's ruling stands – which would require reversal of the Court of Appeals – the costs to the State could exceed $100 million, not including the cost to the State Health Plan of complying with the plaintiffs' demands going forward.

On October 4, 2022, the North Carolina Supreme Court affirmed in part, reversed in part and remanded the Court of Appeals' decision. The Supreme Court concluded that the eligible retired State employees possessed a vested right protected under the Contracts Clause. The Court also held that genuine issues of material fact needed to be resolved in order to answer whether the General Assembly substantially impaired the retired State employees' vested rights. If so, it must be determined whether any such impairment was reasonable and necessary. The Supreme Court remanded to the trial court on these issues.

The matter is currently pending before the superior court on remand. The parties are in the process of discussing additional discovery to be conducted in this case based on the directives from the Supreme Court and developing a case management order to accommodate the issues identified by the Supreme Court. Written and oral discovery is likely to follow. Additionally, in November 2022, plaintiffs reached out to State defendants to entertain a possibility of settlement.

On March 24, 2023, the State defendants requested approval to retain private counsel, which was approved on April 4, 2023. The entire case file was subsequently transferred to private counsel. On April 18, 2023, the parties had a status conference with the judge to discuss a case management order for the case on remand, which was the last case activity in which N.C. Department of Justice (NC DOJ) attorneys participated. On April 27, 2023, the Order removing NC DOJ attorneys as counsel was filed. While the actual exposure amount or the likelihood of an unfavorable outcome is difficult to determine at this time, there is a reasonable or probable possibility that a substantial amount against the State may be awarded.

***Legionnaires' Disease Litigation/2019 Mountain State Fair – North Carolina Department of Agriculture and Consumer Services***. This litigation arises out of a Legionnaires' disease outbreak allegedly connected to the 2019 North Carolina Mountain State Fair. The 2019 North Carolina Mountain State Fair was hosted and organized by the North Carolina Department of Agriculture and Consumer Services (NCDA&CS) from September 6 to 15, 2019, on the grounds of the Western North Carolina Agricultural Center in Fletcher, North Carolina. On or about September 23, 2019, local public health officials began tracking an outbreak of Legionnaire's Disease. Following an investigation, the North Carolina Department of Health and Human Services and the Center for Disease Control found that the outbreak was likely caused by exposure to *Legionella* bacteria in aerosolized water vapor coming from hot tubs displayed by two vendors at the 2019 Mountain State Fair. The outbreak was believed to have resulted in 136 cases of Legionaries' disease, one case of Pontiac Fever, 96 hospitalizations, and four deaths.

Plaintiffs are individuals that alleged to have contracted Legionnaires' disease at the 2019 Mountain State Fair and the estates of two individuals that are alleged to have died as a result of contracting Legionnaires' Disease. In total, there are 78 individual Plaintiffs asserting claims. The Plaintiff brought claims against the two hot tub vendors in a series of 19 lawsuits filed in Henderson, Buncombe, and Mecklenburg County Superior Court. The hot tub vendors then brought third-party claims against NCDA&CS and seven other vendors that had been at the 2019 Mountain State Fair. Plaintiffs then amended their complaints to assert direct claims against NCDA&CS and the other vendors. NCDA&CS has also filed cross-claims and counterclaims for contribution and indemnity against the two hot tub vendors.

All of these cases have been consolidated under a single Superior Court Judge pursuant to Rule 2.1 and the parties are currently in the process of exchanging written discovery. Plaintiffs have not yet submitted a universal settlement demand or total estimate of their alleged damages. The maximum claimed exposure would be $78 million ($1 million per Plaintiff). However, it is too early to determine the actual exposure amount or the likelihood of an unfavorable outcome as the parties are just beginning written discovery. It does appear that Plaintiffs have shifted their focus to NCDA&CS as the primary target given that the hot tub vendors appear to have insufficient assets. The discovery in this matter is ongoing. A more precise estimate of exposure may become available at or about the dispositive motions stage (summary judgment) of the proceedings. The exposure to the State remains, however, due to a large number of plaintiffs and several wrongful death claims.

***Map Act Litigation (Kirby v. North Carolina Department of Transportation and subsequent cases)*** **—** The Transportation Corridor Official Map Act (Map Act) was enacted in 1987 to provide the N.C. Department of Transportation (NCDOT) with the authority to record corridor maps that imposed restrictions on a landowner's rights to improve, develop, and subdivide property within the corridor, which restrictions may remain indefinitely. The Map Act did not require NCDOT to purchase the property at the time of the filing of a future corridor map. Starting in 1989, NCDOT filed 27 separate maps that affected approximately 8,500 parcels of land. In June of 2016, the North Carolina Supreme Court ruled that the filing of a transportation corridor map pursuant to the Map Act resulted in a taking of the property owners' rights to improve, develop, and subdivide their property. Under state law, whether a property owner should be paid for the property, and how much, are determined on a case-by-case basis.

Since the last update, NCDOT has continued to acquire parcels and settle cases that have been filed in the Map Act corridors. The most current numbers as to remaining cases and dollar value are available from NCDOT.

Landowners' attorneys have also recently raised two new theories of recovery. If those theories prevail, NCDOT's potential liability will be expanded beyond the current number of known cases.

***Buffkin v. Hooks*** **—** The American Civil Liberties Union of North Carolina and North Carolina Prisoner Legal Services, Inc., filed this class action on June 15, 2018, on behalf of three named individual offenders infected with hepatitis-C (HCV) against the North Carolina Department of Public Safety (DPS) and four individual state employees, including the Secretary of DPS. The suit sought class certification for "all current and future prisoners in DPS custody who have or will have HCV and have not been treated with direct-acting antiviral drugs." The plaintiffs also sought relief in the form of a declaratory judgment that DPS' policy for treating inmates infected with HCV violated the Eighth Amendment, and that failure to screen all persons in DPS for the virus violates the Eighth Amendment and the Americans with Disabilities Act. To that end, plaintiffs requested injunctive relief from the court ordering DPS to (1) formulate and implement an HCV treatment policy that meets the current standard of medical care, including identifying and monitoring persons with HCV; (2) treat the class members with appropriate direct-acting antiviral drugs; and (3) provide named plaintiffs and class members with an appropriate and accurate assessment of their level of fibrosis or cirrhosis, counseling on drug interactions, and ongoing medical care for complications and symptoms of HCV. The three individual plaintiffs also sought compensatory and punitive damages.

The plaintiffs' motion for class certification, which was granted on March 20, 2019. The plaintiffs also secured a partial injunction regarding application of the then existing policy governing the treatment of HCV. The case proceeded to discovery. Following an unsuccessful mediation, the parties resolved this litigation through a negotiated resolution which required various policy changes. Because the matter was certified as a class action, the Court had to approve the settlement and enter the same as a consent decree.

Thereafter, Plaintiffs' counsel, as the "prevailing party" (i.e. they secured a partial injunction and a consent decree), pursued attorneys' fees of approximately $1 million. The parties negotiated a resolution of the fees claim for $450 thousand. The resolution of the attorneys' fees claim concluded with all active litigation in this matter. Thereafter, the case remained open as the Department of Adult Correction (DAC) (as of January 2023, DAC operates as a separate cabinet-level agency that oversees the state's prison system) was obligated under the consent decree to meet certain benchmarks and make regular reports to Plaintiffs' counsel regarding treatment of HCV in state prisons.

As of October 3, 2024, the last of the required reports was sent to Plaintiffs' counsel. However, under the terms of the consent decree, Plaintiffs' counsel may request a supplemental report between April 1, 2025, and March 8, 2026. So the case will remain dormant until March 8, 2026.

***Pasquotank Prison Litigation***. In October 2017, four inmates at Pasquotank Correctional Institution murdered four employees and injured additional employees during an escape attempt. The estates of the four employees who were killed, and two injured employees have brought

multiple lawsuits in the Industrial Commission, state court, and federal court against individual state defendants as well as against state officials, the Department of Public Safety, and Correction Enterprises (a division of the Department of Public Safety). The State is defending the individual State defendants under the Defense of State Employees Act. While the State has limited insurance coverage for claims against individual defendants in excess of $1 million, the potential exposure to the State is nonetheless significant if the State does not prevail on available legal defenses.

The State has resolved the lawsuit filed by one of the estates (Howe), and the State has prevailed on other state and federal claims. Claims for three estates are currently stayed in the Industrial Commission but the State has strong defenses to those, and they are capped at $1 million each.

***Lexington/AIG v. NC, POELIC, et al.*** This matter is related to *McCollum and Brown v. Red Springs*, et al., 5:15-cv-00451-BO (EDNC) which is a Section 1983 action filed against a local police department, a county sheriff's office, and two former State Bureau of Investigation (SBI) agents. The plaintiffs in that case (McCollum and Brown) alleged various constitutional violations by the law enforcement defendants related to their confessions, subsequent convictions, and incarceration. A jury returned a verdict of $75 million dollars against the two SBI agents (all other defendants settled out before a jury reached a verdict). That verdict was appealed.

While the matter was on appeal, Lexington Insurance Company (AIG) filed a declaratory judgement action against POELIC and the State seeking a determination that the excess policies it provided to POELIC do not provide coverage (or provide limited coverage) for the jury's verdict against the SBI agents. N.C. Department of Justice (N.C. DOJ) approached AIG about a consent stay of the declaratory judgment action pending the full and final resolution on the appeal of the underlying litigation. AIG agreed, and N.C. DOJ secured a stay in the case.

In the Spring of 2023, the Fourth Circuit affirmed the jury's verdict, and the matter was remanded to the District Court for Plaintiffs to begin collection proceedings. At that time, N.C. DOJ worked with counsel for McCollum and Brown to set up a mediation with the State and all the insurance carriers to hopefully secure enough coverage to satisfy the judgement that was pending against the SBI agents. That effort was ultimately unsuccessful as the insurance carriers remained largely steadfast in their positions that there was limited insurance coverage available to cover the judgement against the SBI agents. Thus, the stay in this case was lifted. However, McCollum and Brown (who were added as defendants to this action by AIG) moved to dismiss this action. McCollum and Brown argued that under the prior pending action doctrine, the underlying litigation (which now includes the coverage issues) takes precedent and thus the state court should not entertain the coverage issues presented by Lexington's declaratory judgment action. The trial court agreed and dismissed the case. AIG has appealed that ruling.

For our part, N.C. DOJ, on behalf of the State/POELIC, along with private counsel for the SBI agents, engaged in negotiations with counsel for McCollum and Brown in an attempt to limit the responsibility of the SBI agents and to resolve the exposure of the State to pay the judgment. N.C. DOJ was able to successfully negotiate a resolution with Plaintiffs' counsel for $7.5 million which resolved all potential claims against the State and to cabin off claims against the SBI agents which would fully resolve once Plaintiff's complete their claims against the excess insurance carriers.

***Zayre-Brown v. NC Dept. of Adult Correction, et al., (3:22-cv-00191-MOC)*** In April 2022, Plaintiff, an incarcerated state prisoner, filed a lawsuit against the Department of Adult Correction (DAC) and several Department officials following the denial of her request for gender affirming surgery. Plaintiff alleges that the denial of her requested surgery constitutes deliberate indifference in violation of the Eighth Amendment and Article I, Section 27 of the North Carolina Constitution. Plaintiff also claims the denial violates the Americans with Disabilities Act and the Rehabilitation Act.

Plaintiff filed a motion for preliminary injunction – which the Court denied. Defendants filed a motion to dismiss which was also denied. Thereafter, the case proceeded to discovery, including expert reports and depositions. Efforts to reach a mutually agreeable resolution were unsuccessful. Following the filing of cross motions for summary judgment, the Court denied Defendants' motion for summary judgment, and partially granted and partially denied Plaintiff's motion for summary judgment. The Court granted Plaintiff's motion for summary judgment on her Eighth Amendment claim and entered an injunction directing DAC to re-evaluate her request for surgery through a new committee of outside physicians which the Court had to approve.

DAC appealed to the Court's injunction and unsuccessfully sought a stay of the injunction, first with the District Court and then with the Fourth Circuit. Because DAC could not secure a stay, it complied with the injunction by suggesting two outside physicians to re-evaluate Plaintiff's request for surgery, whom the District Court approved. The new committee concluded that the requested surgery was not medically necessary, and DAC reported that back to the District Court on November 6, 2024. Meanwhile, the Fourth Circuit directed the parties to submit supplement briefs by November 19, 2024, addressing the impact of Plaintiff's imminent release on the appeal. On November 19, 2024, DAC submitted a supplemental brief to the Fourth Circuit advising the Court that Plaintiff had been released on November 2, 2024, at the completion of her sentence, and that as a result, her claims for injunctive relief are moot as is the appeal. Moreover, DAC noted that the well-established case law provides that where a judgment on appeal becomes moot that judgment should be vacated. On November 26, 2024, the Fourth Circuit entered an order and judgment dismissing the appeal as moot and vacating the judgment of the district court.

Accordingly, Plaintiff's Eighth Amendment claim is now moot and only two claims remain (1) the state constitutional claim and (2) the disability claim. Because Plaintiff seeks damages for the state constitutional claim and for the disability claim, and because DAC demanded a jury trial, those claims must be tried to a jury. The District Court had set this matter for trial to begin on December 16, 2024, but it recently took the case off of the trial calendar and directed the parties to mediate the case (a second time) before February 3, 2025.

***Lannan et al. v. UNC Board of Governors; Dieckhaus et al. v. UNC Board of Governors.*** In these two purported class-action lawsuits, students enrolled at several constituent institutions have sued the University of North Carolina System (UNC System) seeking a refund of all or a portion of their tuition and fees for the spring 2020 and fall 2020 semesters when the schools moved to on-line instruction due to the COVID outbreak. While the UNC System has been successful in Dieckhaus in defending against the claims related to the spring 2020 semester, the matter is pending before the N.C. Supreme Court and could possibly be reviewed and overturned for the case to continue into litigation. In the Lannan case, which stems from the pivot to online classes in fall 2020 at certain campuses, the universities were unsuccessful in having the case dismissed at the trial court. A 3-judge panel of the North Carolina Court of Appeals upheld the trial court's denial of the university's motion to dismiss, and the case is now before the N.C. Supreme Court. Given how many individuals were impacted by the move to online classes and the decisions made to close campus facilities, if the plaintiffs are successful the damages could be in the millions of dollars. N.C. DOJ are awaiting decisions from the North Carolina Supreme Court that either end both suits or potentially send both back to the trial court to commence the discovery.

***North Carolina Bar and Tavern Association; et al., v. Cooper.*** During the early stages of the COVID-19 pandemic, a large group of bar owners sued Governor Roy Cooper (in his official capacity) asserting that one of the orders the Governor issued under the Emergency Management Act (EMA) responded to the pandemic violated several provisions of the North Carolina Constitution. They also sought preliminary injunctive relief. After a hearing, a superior court judge denied plaintiffs' motion for a preliminary injunction. The Governor moved to dismiss plaintiffs' complaint.

More than a year later, after all orders limiting plaintiffs' businesses had been lifted, plaintiffs filed an amended complaint on October 26, 2021. In their amended complaint, plaintiffs sought compensation/damages as a remedy for their state constitutional claims. The Governor again moved to dismiss plaintiffs' claims. Plaintiffs moved for partial summary judgment on their claims under the fruits of labor clause, EMA Act and the Public Records Act. The superior court denied plaintiffs' motion for partial summary judgment and granted the Governor's motion to dismiss. Plaintiffs appeal the dismissal of their claims to the Court of Appeals.

A panel of that Court held that the superior court had properly dismissed plaintiffs' claims under the Emergency Management Act and the Public Records Act. It also held, however, that the superior court had erred in dismissing plaintiffs' fruits-of-labor and equal-protection claims. The panel instead awarded summary judgment to plaintiffs on those claims. The Governor then petitioned the N.C. Supreme Court for discretionary review of the panel's decision with respect to the fruits-of-labor and equal-protection claims. Plaintiffs also conditionally petitioned the N.C. Supreme Court, if it allowed the Governor's petition, to review the dismissal of their statutory claims as well. The Court granted both the Governor's and plaintiffs' petitions and heard argument on October 23, 2024. The case is currently pending a decision from the N.C. Supreme Court.

***Tiffany Howell; et al. v. Cooper et al.*** In December 2020, plaintiffs, a small group of bar owners, sued the Governor (in his official capacity) and the State of North Carolina, alleging that Governor Cooper's time-limited restrictions on bars to protect public health during the COVID-19 pandemic violated three provisions of the state constitution: the fruits-of-labor clause, N.C. Constitution. Article I, § 1 (count 1); the law-of-the-land clause, id. art. I, § 19 (count 3); and the equal protection clause, id. (count 4). Plaintiffs also alleged that two provisions of the Emergency Management Act, under which the Governor issued the challenged executive orders, were unconstitutional: N.C. General Statute § 166A-19.31(b)(2) (count 2), and N.C. General Statute § 166A-19.30(c) (count 5).

Plaintiffs originally sought a declaration that the executive orders were unconstitutional, an injunction preventing defendants from enforcing the orders against them, and money damages. In January 2021, defendants moved to dismiss under Civil Rules 12(b)(1), (b)(2), and (b)(6). Defendants also moved to transfer plaintiffs' constitutional challenges to the Emergency Management Act to a three-judge panel. In March 2021, the trial court transferred plaintiffs' challenge to N.C. General Statute § 166A-19.30(c) (count 5) to a three-judge panel.

On May 11, 2021, plaintiffs then filed an amended complaint adding as defendants Tim Moore, in his official capacity as Speaker of the House of Representatives, and Phil Berger, in his official capacity as President Pro Tempore of the Senate. Plaintiffs' amended complaint did not make any substantive changes to their original claims. Just three days later, on May 14, 2021, the Governor lifted all restrictions on bars and similar businesses. Executive Order No. 215, 35 N.C. Reg. 2651 (May 14, 2021).

In July 2021, the State and the Governor moved to dismiss the amended complaint. The legislative defendants filed an answer. In February 2022, the trial court granted the State's and the Governor's motion to dismiss in part. The court dismissed plaintiffs' equal protection claim. The court also dismissed plaintiffs' claim for injunctive relief as moot because no executive order restricting the operations of bars had been in effect since May 2021. By contrast, the court allowed plaintiffs' fruits-of-labor and law-of-the-land claims for money damages to proceed to discovery. Finally, the court transferred plaintiffs' remaining constitutional challenge to the Emergency Management Act, N.C. General Statute § 166A-19.31(b)(2) (count 2), to a three-judge panel.

The State and the Governor appealed to dismiss the denial of their motion to dismiss. In a 2-1 decision, the Court of Appeals affirmed the trial court's order allowing plaintiffs' fruits-of-labor and law-of-the-land claims for money damages to proceed to discovery. Judge Arrowood dissented. Defendants filed a notice of appeal based on Judge Arrowood's dissent. Defendants also petitioned for discretionary review as to additional issues not addressed in the dissent. The N.C. Supreme Court allowed the petition. The Court heard arguments on October 23, 2024, and the case is currently pending a decision.

***Ussery v. Hooks et al. (federal court)***. Plaintiff commenced this action by filing a Complaint on April 21, 2023, naming Governor Roy Cooper (in his official capacity), Wake County District Attorney Lorrin Freeman (in her individual and official capacity) and several others as defendants. The plaintiff subsequently filed an Amended Complaint on May 1, 2023. The Amended Complaint asserted claims pursuant to 42 U.S.C. § 1983 for an alleged violation of Plaintiff's constitutional rights under the First and Fourteenth Amendments; and a claim that Defendants conspired to deprive Plaintiff of her rights in violation of the North Carolina Constitution.

On September 9, 2023, Plaintiff filed a Motion for Leave to file a Second Amended Complaint (SAC), which was granted on November 7, 2023. Plaintiff subsequently filed her Second Amended Complaint on November 15, 2023. The Second Amended Complaint removed Governor Cooper as a named defendant, and names the City of Raleigh, Raleigh's Chief of Police, a Raleigh Police Captain, and Raleigh Police Officers John and Jane Does 1-4, Wake County District Attorney, Lorrin Freeman; the Secretary of the North Carolina Department of Public Safety; several officers of the North Carolina State Capitol Police, and the Chief of the North Carolina General Assembly Police Department as defendants. All defendants are sued in both their individual and official capacities.

Plaintiff's SAC asserts six causes of action: Count I: Conspiracy to deprive Plaintiff of her rights under the North Carolina Constitution against all defendants; Count II: A 42 U.S.C. § 1983 claim for violation of the First Amendment against all defendants; Count III: A Section 1983 claim for violation of due process under the Fourteenth Amendment to the United States Constitution against all defendants; Count IV: A Section 1983 claim for a *Brady* violation against Defendant Freeman; Count V: A Section 1983 claim for violation of equal protection under the Fourteenth Amendment against all defendants; and Count VI: Claims for violations of Article I, § 12, 14, and 19 of the North Carolina Constitution against all defendants. Collectively, Plaintiff seeks declaratory relief, compensatory and nominal damages, and costs and expenses of this action, including reasonable attorney's fees. On December 20, 2023, all the defendants moved to dismiss Plaintiff's SAC pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

The district court granted defendants' motions to dismiss and entered final judgment on the merits against Plaintiff on June 20, 2024. The district court dismissed Plaintiff's federal claims with prejudice and dismissed Plaintiff's state law claims without prejudice. Plaintiff filed the notice of appeal on July 19, 2024, and filed her opening brief on October 4, 2024. The briefing has not yet been completed in the Fourth Circuit.

***Utility Easement Issues: The consequences of the decisions in Department of Transportation v. Canady, 2020 N.C. App. LEXIS 943 and Department of Transportation v. Prior, Wake County 20-CVS-6521.*** A recent trend in eminent domain cases is that the property owners and their counsel are asserting additional damages resulting from the imposition of Permanent Utility Easements (PUEs), Aerial Utility Easements (AUEs) and Drainage/Utility Easements (DUEs) as part of the condemnation process. The Department of Transportation (DOT) has always recognized that the acquisition of these easements was a near total taking of the easement areas and has also been willing to acknowledge circumstances where the location and nature of the easement could result in damages to the remainder of the affected property. However, in recent years, the property owners have asserted that the damages evaluation of these easements must be considered as if DOT was exercising its rights to the "fullest extent of the law," relying on State Highway Commission v. Black, 239 N.C. 198, 79 S.E.2d 778 (1954). The practical effect of this argument is that the imposition of a PUE, AUE or DUE across a property's road frontage is now evaluated for damages purposes as if the Department of Transportation (DOT) has cut off all access to the property, resulting in damages greatly exceeding DOT's initial appraisals.

The first of these cases to be heard in Superior Court was Prior, in Wake County in December 2022. Judge Graham Shirley sided with the property owners in his ruling. The DOT's argument that the damages resulting from these easements was a matter for the jury to consider (which it always had been in the past) was overruled. Numerous other Superior Court judges have adopted Judge Shirley's decision, and DOT to date has not appealed or tried any of these cases to a jury. The damages in Prior went from the N.C. DOJ estimation of $164 thousand to a settlement of $1.25 million, and other cases have had similar increases in the amount of damages. The Condemnation Section has worked with DOT and Duke Energy to limit damages by amending the language of the easements, but there are still some property owners and their attorneys who would prefer seeking increased damages rather than the protections of the amended language.

***Ussery v. Cooper et al. (state court)***. Following the dismissal without prejudice of her state law claims in federal court, Plaintiff commenced this action by filing a Complaint in July 2024 in Wake Country Superior Court, naming Governor Roy Cooper (in his official capacity), the City of Raleigh, Raleigh's Chief of Police, a Raleigh Police Captain, and Raleigh Police Officers John and Jane Does 1-4, Wake County District Attorney, Lorrin Freeman; the Secretary of the North Carolina Department of Public Safety; several officers of the North Carolina State Capitol Police, and the Chief of the North Carolina General Assembly Police Department as defendants.

The Complaint sets forth four causes of action: Conspiracy to deprive Plaintiff's North Carolina constitutional rights; violation of N.C. Constitution Article I, § 12 for the right to assembly and petition, violation of N.C. Constitution Article I, § 14 for freedom of speech;

violation of N.C. Constitution Article I, § 19 for equal protection and due process. The plaintiff seeks both declaratory relief and monetary damages. On September 24, 2024, the State Defendants moved to dismiss Plaintiff's complaint pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(6) of the North Carolina Rules of Civil Procedure. The other defendants also moved to dismiss the claims against them. Those motions to dismiss remain pending a hearing.

***UNC Hospitals, DHB/Provider Audit.*** UNC Hospitals filed annual Medicaid cost reports with the N.C. Department of Health and Human Services (NC DHHS) for fiscal years 2007 through 2011. NC DHHS Provider Audit disagreed with certain issues on the cost reports relating to "zero paid claims" and made audit adjustments in Notices of Program Reimbursements dated May 20, 2015 and August 30, 2016. UNC Hospitals on June 4, 2015 and September 9, 2016 sought agency reconsideration. Separately, for fiscal years 2016 through 2021, UNC Hospitals included certain cases and charges relating to "zero paid claims" in calculations used for Medicare Upper Payment Limit payments to UNC Health's owned hospitals. NC DHHS Provider Audit disputed UNC Health's inclusion of cases and charges relating to "zero paid claims." On November 25, 2024, the parties reached an agreement to resolve the dispute and extinguish all potential liability in exchange for payment of $5 million to UNC Health.

***Vidant Hospital, UNC Hospitals, DHB/Provider Audit.*** Vidant filed annual cost reports for fiscal years 2010 through 2016. Provider Audit (Jim Flower's team) disagreed with certain issues on the cost reports and made audit adjustments in Notices of Program Reimbursements dated January 12, 2017, April 13, 2018, March 18, 2019, and May 31, 2019. Vidant appealed all in 2017 through 2019 by requesting reconsideration. The parties were not able to resolve one issue, known as "zero paid claims." Vidant has appealed to this issue for all seven fiscal years. Vidant and Division of Health Benefits (DHB) have both submitted position papers to the hearing officer. DHB's defense is based on the State Medicaid Plan, the Centers for Medicaid Services (CMS) Provider Manual, informal guidance received from CMS, and concurrence from DHB's outside auditing firm. Note also that University of North Carolina Hospitals (UNC Hospitals) has appealed the same "zero paid claims" issue for multiple cost years, and N.C. Department of Health and Human Services (NC DHHS) leadership has participated in several high-level discussions with UNC Hospitals. UNC Hospitals estimates the value of these claims is about $13 million. The situation with UNC Hospitals is complicated as UNC Hospitals may have received some overpayments from DHB. On November 3, 2022, the Hearing Officer issued a decision upholding DHB's audit findings and rejecting Vidant's challenge. On December 29, 2022, Vidant appealed to the Office of Administrative Hearings disputing claims of $22.9 million for fiscal years 2010-2016 and $13.35 million for fiscal years 2017-2021. Discovery was completed including 12 depositions and expert witness disclosures. On August 8, 2023, the parties reached an agreement to resolve the total $36.25 million in claims in dispute through a settlement payment of $14 million to Vidant. The agreement resolves all of Vidant's past and future claims relating to the treatment of zero paid claims. The UNC Hospitals appeal with claims in dispute of about $13 million has not been resolved.

***Kinsley v. Ace Speedway Racing, Ltd., 20 CVS1001*** During the early stages of the COVID-19 pandemic, to reduce the spread of the virus, the Governor issued executive orders that limited how many spectators could attend sporting events. A speedway in Alamance County refused to comply with those orders and instead announced that it would break the law and allow more spectators to attend its races. Thousands of spectators attended those races after local law-enforcement officials declined to intervene.

In response, the Secretary of the Department of Health and Human Services issued an order as authorized under North Carolina's public health laws that required the speedway to close until it agreed to follow the Governor's executive order. The speedway did not comply and remained open. The Secretary then sued the speedway, and a trial court granted injunctive relief that required to speedway to close. Only then did the speedway finally stop holding races in violation of the orders.

Several months later, the Governor issued a new executive order that increased the number of spectators that could attend sporting events, and the trial court's injunction dissolved. The Secretary voluntarily dismissed the claims against the speedway. In the meantime, however, the speedway filed its own counterclaims against the Secretary. The Speedway sought damages, claiming that the Secretary had violated its constitutional rights. The Secretary moved to dismiss the counterclaims on the basis of sovereign immunity and failure to state a claim. The trial court denied the Secretary's motion. The CoA affirmed that decision as did the NCSC in an opinion published on August 23, 2024. The case has been remanded to Alamance County Superior Court for further proceedings.

***N.C. School Boards v. Moore*** This case began in 1998 when Plaintiffs filed a complaint against numerous state officials in their official capacities seeking a determination from the court that certain civil penalties paid into the General Fund of the treasury should have been required, pursuant to the North Carolina Constitution, to go to public schools. The North Carolina Supreme Court ruled that the penalties must be paid to the State Civil Penalty and Forfeiture Fund for the benefit of the public schools, rather than the General Fund. The Supreme Court remanded the case to the superior court for implementation. Upon remand, on August 8, 2008, Plaintiffs obtained a judgment against Defendants or their predecessors in interest for the sum of $747.83 million. However, the superior court judge noted in his Memorandum of Decision and Judgment that, "because of the constitutional limitations and the separation of power between the judicial, legislative and executive branches of government, the Court does not have the authority to direct the manner and means by which the judgment is to be satisfied or the amount of time in which it is done." $729.7 million of the August 8, 2008, judgment remains unpaid by Defendants.

On August 1, 2018, Plaintiffs filed a complaint in Wake Country Superior Court, 18 CVS 009586, seeking to renew the 2008 judgment. The Complaint alleges that on or about August 8, 2008, in an action in the Superior Court of Wake County, civil action number 98-CVS-4982, Plaintiffs obtained a judgment against Defendants or their predecessors in interest for the sum of $747.83 million. The Complaint alleges

that $729.7 million remains unpaid by Defendants. Defendants filed a motion to dismiss the Complaint on August 27, 2018, on the ground of collateral estoppel. Defendants did not contest the validity of the August 8, 2008, judgment, or the amount that remains unpaid on that judgment. Rather, Defendants contend that Plaintiffs cannot obtain execution to enforce the judgment and that because of constitutional limitations and separation of powers, the court does not have the power to order the Defendants to pay the judgment. *See Richmond Cty. Bd. of Educ. v. Cowell*, 803 S.E.2d 27, 32 (N.C. Ct. App. 2017).

The matter came up for a hearing and the court concluded the following in a written order issued on March 6, 2019:

- Plaintiffs obtained a valid judgment against Defendants or their predecessors in interest for the sum of $747.83 million on August 8, 2008.
- $729.7 million of the August 8, 2008, judgment remains unpaid by Defendants.
- The Complaint appropriately states an action for recovery on a judgment, and that the Complaint makes specific reference to that judgment by date, amount, and docket number.
- Because of the constitutional limitations and the separation of power between the judicial, legislative and executive branches of government, the Court does not have the authority to direct the manner and means by which the judgment is to be satisfied or the amount of time in which it is done.
- Judgment is hereby entered against the Defendants in the amount of $729.7 million.

**Other Litigation.** The State is involved in numerous other claims and legal proceedings, many of which are normal for governmental operations. A review of the status of outstanding lawsuits involving the State by the North Carolina Attorney General did not disclose other proceedings that are expected to have a material adverse effect on the financial position of the State.

## C. Federal Grants

The State receives significant financial assistance from the federal government in the form of grants and entitlements, which are generally conditioned upon compliance with the terms and conditions of the grant agreements and applicable federal regulations, including the expenditure of the resources for eligible purposes. Under the terms of the grants, periodic audits are required and certain costs may be questioned as not being appropriate expenditures. Any disallowance as a result of the costs questioned could become a liability of the State.

An audit conducted by the United States Department of Health and Human Services Office of Inspector General concluded that the State did not comply with Federal and State requirements when making Medicaid claims for school-based Medicaid administrative costs. Based on the audit, the Office of Inspector General recommended that the State refund $53.8 million to the federal government for non-compliant claims. The State disagrees with the findings and recommendation. Once a final determination of liability is made, the amount will be paid to CMS. As of June 30, 2024, the State had not received a demand for recovery from CMS.

For the fiscal years 2011-2013, the State received more than $34.8 million in unallowable performance bonus payments under the Children's Health Insurance Program Reauthorization Act. The overpayments were the result of the overstatement of the enrollment numbers in its request. CMS has issued a disallowance and a demand for recovery. The State disagrees with the findings and has appealed. Other states also appealed, and the matters were consolidated for a decision by the Departmental Appeals Board (DAB). The DAB issued its decision, finding that CMS had erred in its interpretation of the statute, but also remanded the case to CMS to determine if there were overpayments made. The State is awaiting further information and guidance from CMS.

As of June 30, 2024, the State is unable to estimate what liabilities may result from additional audits of Federal grants and entitlements.

The State refunds federal shares of drug rebate collections to CMS. As of June 30, 2024, the amount due to CMS was $206.24 million.

## D. Highway Construction

The State has placed on deposit in court $357.06 million for a potential liability to property owners for contested rights-of-way acquisition costs in condemnation proceedings. The State may also be liable for an additional $111.11 million in these proceedings. As of June 30, 2024, the State had no outstanding verified contractor's claims.

## E. Construction and Other Commitments

On June 30, 2024, the State had commitments of $6.15 billion for construction of highway infrastructure. Of this amount, $3.2 billion relates to the Highway Fund, $399.11 million relates to the N.C. Turnpike Authority, and $2.55 billion relates to the Highway Trust Fund. The other commitments for construction and improvements of state government facilities totaled $659.43 million, including $313.19 million for the General Assembly, $117.57 million for the Department of Adult Correction, $72.58 million for the Department of Administration, $48.01 million for the Department of Agriculture, and $31.39 million for the Department of Public Safety.

On June 30, 2024, the University of North Carolina System (component unit) had outstanding construction commitments of $798.78 million (including $190.23 million for North Carolina State University, $120.67 million for University of North Carolina Chapel Hill, $105.2 million for University of North Carolina Health Care System, $68.13 million for East Carolina University, and $59.18 million for Elizabeth City State University).

On June 30, 2024, community colleges (component units) had outstanding construction commitments of $152.75 million (including $52.55 million for Wake Technical Community College, $21.03 million for Fayetteville Technical Community College, $17.61 million for Western Piedmont Community College, $7.51 million for South Piedmont Community College, and $7.34 million for Central Piedmont Community College).

The Department of Environmental Quality has other significant commitments of $314.51 million for clean water and other cost reimbursement grants. On June 30, 2024, the Department of Natural and Cultural Resources had other outstanding commitments of $158.24 million for clean water grants to non-governmental organizations and local and state government. The Department of Public Instruction has other significant commitments of $1.05 billion for needs-based public school building capital fund cost reimbursement grants awarded to Local Education Agencies (LEAs) for school capital projects.

The 911 Board (Board), part of the Department of Information Technology Services, sets aside a portion of its fund annually to support local Public Safety Answering Points (PSAPs). The PSAPs apply to the Board for the funds with improvement project proposals that the Board evaluates and either approves or denies. On June 30, 2024, the 911 Fund (special revenue fund) had outstanding commitments for these cost-reimbursement grants and contracts to the PSAPs totaling $39.87 million.

On June 30, 2024, the Administrative Office of the Courts had outstanding software in development contract commitments of $173.38 million.

The State Treasurer has entered contracts with external fund managers of several investment portfolios within the North Carolina Department of State Treasurer External Investment Pool (External Investment Pool), where the State Treasurer agrees to commit capital to these investments. More detailed information about the External Investment Pool is available in a separate report (See Note 3A).

The University of North Carolina Investment Fund, LLC (UNC Investment Fund) at the University of North Carolina at Chapel Hill has entered into agreements with limited partnerships to invest capital. These agreements represent the funding of capital over a designated period of time and are subject to adjustments. As of June 30, 2024, the UNC Investment Fund had approximately $1.68 billion unfunded committed capital.

## F. Tobacco Settlement

In 1998, North Carolina, along with 45 other states, signed the Master Settlement Agreement (MSA) with the nation's largest tobacco companies to settle existing and potential claims of the states for damages arising from the use of the companies' tobacco products. Under the MSA, the tobacco companies are required to adhere to a variety of marketing, advertising, lobbying, and youth access restrictions, support smoking cessation and prevention programs, and provide payments to the states in perpetuity. The amount that North Carolina will receive from this settlement remains uncertain, but projections are that the State will receive approximately $4.74 billion from the inception of the agreement through the year 2025. Since the inception, the State has received approximately $3.88 billion in MSA payments. In the early years of MSA, participating states received initial payments that were distinct from annual payments. The initial payments were made for five years: 1998 and 2000 through 2003. The annual payments began in 2000 and will continue indefinitely. However, these payments are subject to a number of adjustments including an inflation adjustment and a volume adjustment. Some adjustments (e.g., inflation) should result in an increase in the payments while others (e.g., domestic cigarette sales volume) may decrease the payments. Also, future payments may be impacted by continuing and potential litigation against the tobacco industry and changes in the financial condition of the tobacco companies. At year-end, the State recognizes a receivable and revenue in the government-wide statements for the tobacco settlement based on the underlying domestic shipment of cigarettes. This accrual estimate is based on the projected payment schedule in the MSA adjusted for historical payment trends.

## G. Other Contingencies

The Civil Rights Division of the U.S. Department of Justice investigated the state's mental health system and found the State to be in violation of Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sec 12131, and the following, as interpreted by the U.S. Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999), and Section 504 of the Rehabilitation Act of 1973 (Rehab Act), 29 U.S.C. Sec 794(a). On August 23, 2012, the Civil Rights Division and the State entered into an agreement that addresses the corrective measures that will ensure that the State will willingly meet the requirements of the ADA, Section 504 of the Rehab Act, and the *Olmstead* decision. Through the agreement, it is intended that the goals of community integration and self-determination will be achieved. Both parties to the agreement have selected a reviewer to monitor the State's implementation of this agreement. The reviewer has authority to independently assess, review, and report annually on the State's implementation of and compliance with the provisions of this agreement. The potential

liability to the State cannot be reasonably estimated. If the State fails to comply with this agreement, the United States can seek an appropriate judicial remedy. To date, the State has demonstrated good faith effort by providing sufficient funding essential to meeting the settlement requirements. The State is responsible for determining and identifying the amount of appropriation funding that is needed to fulfill this agreement which was originally going to be phased in over eight years (2013-2020). The settlement agreement was first extended for an additional year to July 1, 2021, to give the State more time to meet the requirements. In March of 2021, the parties signed an agreement acknowledging the State's compliance in some areas of the agreement but extending other items for an additional two years. In March 2023, the parties entered into another two-year extension of the agreement, which included the development and approval of an Implementation Plan to outline how the State will come into substantial compliance by July 2025. In December of 2024, the parties expect to sign a Sixth Modification to the agreement acknowledging the State's compliance with several additional requirements of the agreement, but extending other items for an additional two years, through July 1, 2027. In Session Law 2012-142 Section 10.23A.(e), $10.3 million was appropriated as recurring funds to support the Department of Health and Human Services in the implementation of its plan for transitioning individuals with severe mental illness to community living arrangements, including establishing a rental assistance program. In Session Law 2013-360, additional money was appropriated in the expansion budget for $3.83 million for fiscal 2014 and $9.39 million for fiscal 2015. Funding has continued each budget year at appropriate levels to meet the terms of the agreement with a current net appropriation for Transition to Community Living across all N.C. Department of Health and Human Services (NC DHHS) divisions at $83.8 million in each year of the biennium of the 2023-25 biennium.

In Session Law 2015-241, the North Carolina Housing Finance Agency (NCHFA), in consultation with the N.C. Department of Health and Human Services (NC DHHS), was authorized to administer the Community Living Housing Fund (CLHF) in order to provide permanent community-based housing in integrated settings appropriate for individuals with severe mental illness and severe and persistent mental illness. The funds are first transferred from NC DHHS and then must be appropriated by the General Assembly in order for the NCHFA to expend the funds. NC DHHS transferred $2.89 million to the Community Living Housing Fund in fiscal 2015. House Bill 1030 authorized the NCHFA to expend receipts of $5.52 million transferred from DHHS to the CLHF in fiscal 2017. Session Law 2017-57 and Session Law 2018-5 provided funds of $4.2 million and $3.96 million, respectively, transferred from DHHS to the CLHF. In fiscal years 2019 through 2021, NC DHHS transferred $10.47 million to the CLHF and Session Law 2020-97 appropriated those funds for the State to meet its commitment to the supported housing requirements of the agreement. At present, the work continues with the funds available through continuing budget provisions. NC DHHS did not transfer any funds to the CLHF for SFY 2021-22 or SFY 2022-23 as no funds remained in accordance with the law. NC DHHS transferred $3.37 million in remaining funds to the CLHF at the end of the 2023-24 fiscal year.

The State is liable for an ongoing worker's compensation claim for a former employee who was severely injured and will require care for life. The estimated total cost of care is currently $25.6 million.