

2017 WL 1086771

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United States District Court,
M.D. Alabama, Northern Division.

Johnny REYNOLDS, et al., Plaintiffs,

v.

ALABAMA DEPARTMENT OF TRANSPORTATION, et al., Defendants.

CIVIL ACTION NO. 2:85cv665-MHT

|
Signed 03/15/2017

Attorneys and Law Firms

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MEMORANDUM OPINION AND ORDER

Myron H. Thompson, UNITED STATES DISTRICT JUDGE

*1 Defendants Alabama Department of Transportation (ALDOT) and State Personnel Department and the proposed “Certified Intervenor Contempt Relief Settlement Class” filed a joint motion to certify the settlement class pursuant to Federal Rule of Civil Procedure Rule 23. By that motion, the parties seek preliminary approval of the proposed settlement agreement (attached as Exhibit A) and conditional or provisional certification of the settlement class, whose members are specifically identified as the 213 individual intervenors with remaining Article 15 claims (identified in doc. no. 9087-4). The parties further request that the court: (1) appoint Honorable Raymond P. Fitzpatrick as class counsel for the settlement class; (2) appoint Class Action Administrators as the settlement administrators for the Rule 23(b)(2) settlement class; (3) approve the proposed Notice of Proposed Settlement and Right to Object (as modified by the court; attached as Exhibit B); and (4) schedule a final fairness hearing for the proposed settlement. Based on the entire record before the court, the court finds as follows.

First, the court finds that the proposed settlement agreement should be preliminarily approved, that notice should be provided to the interested persons, and that a fairness hearing should be conducted.

The court further finds it appropriate to certify provisionally a Rule 23(b)(2) injunctive-relief settlement class composed of:

“The remaining 213 non-black members of the Intervenor Contempt Relief Settlement Class, who are those individual intervenors with remaining Article 15 claims identified in doc. no. 9087-4. More specifically, it is the individual intervenors who:

(a) Were identified by defendants as entitled to reclassification based on April 1994 duties (*see* exhibit nos. DX2184 and DX2188 from January 1998 hearing; *see also*, doc. no. 8843, n.3);

(b) Were employed by ALDOT after the May 29, 2001, Fairness Hearing;

(c) Currently are employed by ALDOT or were employed by ALDOT before 2007;

(d) Have been identified as having potentially valid claims for individual contempt relief for potential lost pay occurring after May 29, 2001, arising from defendants’ alleged failure to timely implement the reclassifications required by Article 15 of the 1994 Consent Decree; and

(e) Were not in a higher classification than their proposed reclassification position as of May 29, 2001. Individual intervenor class members meeting such criteria are listed on doc. no. 9087-4.”

For reasons to be articulated in a final decision regarding whether to approve the settlement, the court preliminarily finds that the settlement class meets the requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—as well as the requirement of Rule 23(b)(2) that the issues involved “apply generally to the class,” such that “relief is appropriate respecting the class as a whole.” Rule 23(b)(2) contemplates class cases seeking equitable injunctive or declaratory relief, but monetary relief does not conflict with the limitations of the Rule when it is not in the nature of a claim for damages, but rather is an integral part of the statutory equitable remedy, to be determined through the exercise of the court’s discretion. The court finds that the remaining 213 non-black members of the Intervenor Contempt Relief Settlement Class seek “make whole” equitable remedies appropriate for relief under Rule 23(b)(2). The court preliminarily finds that Honorable Raymond P. Fitzpatrick can capably serve as and should be appointed class counsel, based on the factors outlined in Rule 23(g).

***2** The court finds that the notice form attached as Exhibit B to this memorandum opinion and order, the process for distributing and collecting these forms outlined below, and the process for gathering objections or commentary—together with the fairness hearing described below—collectively constitute sufficient notice of and opportunity to be heard on the proposed settlement agreement as due process and Rule 23(e) require.

It is therefore ORDERED that the joint motion for preliminary approval of settlement agreement (doc. no. 9191) is granted as follows:

(1) The proposed settlement agreement (doc. no. 9191-2) is preliminarily approved; final approval will be subject to a hearing and review by this court of any objections to or comments about the agreement’s terms submitted by class members.

(2) An injunctive-relief settlement class, defined as “the remaining 213 non-black members of the Intervenor Contempt Relief Settlement Class, that is, those individual intervenors with remaining Article 15 claims identified in doc. no. 9087-4,” is provisionally certified under Federal Rule of Civil Procedure 23(a) and (b)(2).

(3) Honorable Raymond P. Fitzpatrick is appointed as class counsel to represent the settlement class under Federal Rule of Civil Procedure 23(g).

(4) The parties have retained and consulted with Class Action Administrators, an experienced class-action notice company, regarding the most reasonable and appropriate means to provide notice to the Rule 23(b)(2) intervenor settlement class. The

parties propose that Class Action Administrators will send the Notice of the Proposed Settlement and Right to Object by first class mail to the last known addresses of the 213 persons identified by the intervenors' counsel and that the reasonable costs of such notice shall be paid from the contempt fine fund. Mr. Fitzpatrick shall provide a list of names and addresses to Class Action Administrators for use in delivering notice; cause Class Action Administrators to provide notice of the proposed settlement agreement as outlined below by March 31, 2017; collect comments from members of the conditionally certified settlement class as further outlined below; and submit the comments to the court by April 28, 2017.

(a) The court approves the use of the Notice of Proposed Settlement and Right to Object, as modified by the court, which notice is attached as Exhibit B to this memorandum opinion and order. The parties shall provide that notice to Class Action Administrators for delivery.

(b) Copies of the proposed settlement agreement are to be made available to members of the Intervenor Contempt Relief Settlement Class on a website described in the Notice of Proposed Settlement and Right to Object.

(c) A copy of the proposed settlement agreement is to be provided promptly upon request to any member of the Intervenor Contempt Relief Settlement Class.

(d) By no later than April 28, 2017, Mr. Fitzpatrick will provide to the court any objections or comments received in response to the notice. The clerk of the court, or her delegate, is to docket the objections or comments Mr. Fitzpatrick submits. The clerk of the court is to retain the original copies of all comments.

(e) By May 8, 2017, the parties shall jointly submit a brief summarizing and responding to the objections that have been filed with the court.

(f) A fairness hearing is set for 10:00 a.m. on May 12, 2017, in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, 15 Lee Street, Montgomery, Alabama, 36104. At this hearing, counsel for all parties must be prepared to respond to the objections and comments made by class members, as well as to the court's concerns, if any.

*3 DONE, this the 15th day of March, 2017.

Exhibit A

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Defendants Alabama Department of Transportation and State Personnel Department (hereinafter "Defendants"), on the one hand, and the certified Intervenor Contempt Relief Class, on the other hand, in the case of *Reynolds v. Ala. Dept. of Transportation*, case no. CV-85-T-665 (M.D. Ala.), this 6th day of February, 2017:

RECITALS

A. In 1998, the District Court certified an Intervenor class composed of all non-black employees of ALDOT. Intervenor have filed the following motions and pleadings: (i) Objections and Response to Plaintiffs' Motion for a Finding of Contempt and for Implementation of Goals (filed March 7, 1997) (ECF 1622), and (ii) Motion for Contempt Enforcement Through Race-Neutral Means, filed September 20, 1999 (ECF 4167) seeking, *inter alia*, relief for noncompliance with certain terms and provisions of Consent Decree I;

B. On April 6, 2001, the Intervenor class and Defendants entered into a partial settlement agreement resolving on a class-wide basis all claims for monetary relief through the date of the Fairness Hearing conducted by the Court on May 29, 2001. The Court approved the 2001 class settlement agreement, and the parties complied with said agreement;

C. The remaining articles of Consent Decree I expired on December 31, 2006;

D. The Court continues to hold in its registry a fund created when Defendant ALDOT paid civil contempt fines during the period from 2000 through 2004;

E. The remaining unresolved claims of the members of the Intervenor Contempt Relief Class regarding individual contempt relief relate to Article 15, paragraph 1 (reclassification). The District Court has addressed the reclassification claims in part. *See* ECF 8807 and 8883. The Special Master also addressed the reclassification claims on September 19, 2016. *See* ECF 9179. Objections to the 2016 decision are pending. ECF 9181.

F. Informed by the Special Master's recommendation and the Court's decisions to date, Intervenor and Defendants desire to settle and resolve all remaining individual contempt claims of the Intervenor Contempt Relief Class.

Now, therefore, in consideration of the mutual covenants set forth herein, the parties agree as follows:

AGREEMENT

1. Intervenor and Defendants agree that the sum of \$213,000.00 shall be released from the Court registry fine fund and \$1000.00 shall be paid to each of the 213 members of the Intervenor Contempt Relief Class identified in ECF 9087-4 in full resolution of all remaining claims for individual contempt relief concerning reclassification. The 213 non-black members of the Intervenor Contempt Relief Class are those members of the Intervenor class who were identified by Defendants as due to be reclassified based on April 1994 duties (*see* exhibit nos. DX2184 and DX2188 from January 1998 hearing; *see also*, ECF 8843, n.3); were employed by ALDOT after the May 29, 2001 Fairness Hearing; currently are employed by ALDOT or were employed by ALDOT before 2007; have been identified as having potentially valid claims for individual contempt relief for potential lost pay occurring after May 29, 2001, arising from Defendants' alleged failure to timely implement the reclassifications required by Article 15 of the 1994 Consent Decree; and were not in a higher classification than their proposed reclassification position as of May 29, 2001. Individual Intervenor class members meeting such criteria are listed on ECF 9087-4.

*4 2. Both Notice of this Settlement Agreement and payment of the forgoing funds shall be administered and paid by Class Action Administration, LLC of Westminster, CO. The reasonable costs of such administration shall be paid from the contempt fine fund. Members of the Intervenor Contempt Relief Class receiving payments shall be responsible for payment of all taxes and fees of any sort payable as a result of their receipt of funds.

3. The forgoing payments shall not be considered in calculating retirement benefits for employees under the State Retirement System. Neither Defendants nor Intervenor shall make contributions to the State Retirement System as a result of such payments. No current retirees' benefits shall be adjusted because of such payments.

4. Intervenor release all further claims, demands, causes of action or requests for further relief, monetary or nonmonetary, compensatory or injunctive, whether for individual class members or for the class as a whole, for matters arising out of Defendants' previously adjudicated contempt of Consent Decree I, the 2000 civil contempt order or all past motions or other requests for contempt relief in the *Reynolds* litigation.

5. Intervenor and Defendants agree that the sum of \$150,000.00 shall be paid to Raymond J. Fitzpatrick, Jr. from the court registry fine fund and paid to Raymond P. Fitzpatrick, Jr. for all remaining attorney's fees and expenses of the intervenor that have accrued in this litigation. Said payment shall be made by the Clerk within thirty (30) days of court approval of this agreement.

6. Intervenor further release any and all other claims against or interest in the contempt fine fund held by the Court except for the specific obligations provided for herein.

7. Intervenor, jointly with Defendants, shall seek approval of this Agreement by the Court as a class action settlement consistent with the provisions of Rule 23, F.R.Civ.P. This Agreement is contingent on its full approval by the Court.

8. The parties to this Agreement shall promptly submit it to the Court for approval by joint motion with an appropriate proposed notice to the class. Notice of the proposed settlement shall be provided by email to all current ALDOT employees by ALDOT and first class mail to the last known addresses of the 213 persons identified in paragraph 1, above. The reasonable costs of such notice shall be paid from the contempt fine fund. All payments required under this Agreement, except attorney's fees paid as provided in paragraph 5, shall be disbursed by the Clerk and paid within ninety (90) days of Court approval of this Agreement.

9. Upon approval and full compliance with the Agreement, Intervenor shall be dismissed as a party to the *Reynolds* litigation and the Intervenor class shall be wholly dissolved.

10. The parties agree to jointly defend the lawfulness and validity of this Agreement should any person or party challenge it.

11. Should the Court reject this Agreement, the contempt claim dispute shall return to status quo ante, and the Intervenor Contempt Relief Class will be dissolved.

Counsel for Adams Intervenor

Counsel for Defendants

NOTICE OF PROPOSED SETTLEMENT AND RIGHT TO OBJECT

TO: Non-Black Employees of the Alabama Department of Transportation Who May Have Claims for Individual Contempt Relief Arising from Article 15 Reclassifications After May 29, 2001.

*5 This case was originally filed in 1985 and involves claims of alleged racial discrimination in employment opportunities with the Alabama Department of Transportation ("ALDOT") by Plaintiff classes of African-American ALDOT employees. In 1998, the District Court also certified an Intervenor class, which is composed of all non-black employees of ALDOT. This notice is directed to the 213 non-black employees who were members of the Intervenor class who were identified by Defendants as due to be reclassified based on April 1994 duties; were employed by ALDOT after the May 29, 2001 Fairness Hearing; are currently employed by ALDOT or were employed by ALDOT before 2007; have been identified as having potentially valid claims for individual contempt relief for potential lost pay occurring after May 29, 2001, arising from Defendants' alleged failure to timely implement the reclassifications required by Article 15 of the 1994 Consent Decree; and were not in a higher classification than their proposed reclassification position as of May 29, 2001 (hereinafter, referred to as the "Intervenor Contempt Relief Class"). The purpose of this notice is to provide notice of a proposed settlement to members of the Intervenor Contempt Relief Class and of the termination of their participation in this case.

You should carefully read this notice to learn what provisions of the proposed settlement may affect you and what rights you may have to oppose the settlement. You should not rely on this notice for a full disclosure of all of the terms of the proposed settlement. The complete settlement agreement is available for review at www.rfitzpatricklaw.com/blog/aldot-intervenor-settlement-agreement/. The terms of the proposed settlement will not be implemented unless the settlement is approved by the Court after a Fairness Hearing, which will be held on May 12, 2017.

In 1994, the District Court approved Consent Decree I, an injunction that required numerous reforms to the employment practices of ALDOT. The Court conducted extended proceedings regarding implementation of the Decree. In 2000, the Court found Defendants (including ALDOT and the State Personnel Department) in civil contempt for failure to implement the decree in a timely manner and entered civil contempt fines. The Court also conducted proceedings regarding potential relief for ALDOT employees seeking individual contempt relief due to the delay in implementing the decree.

On April 6, 2001, the Intervenor class and Defendants partially settled "all claims for monetary relief related to Intervenor's allegation of noncompliance and to dismiss all grievances ..." Under that agreement, Defendants paid to the Intervenor class

approximately \$8,350,000 to settle all claims for monetary relief arising before the May 29, 2001 fairness hearing. The Court approved the settlement, and the parties fully implemented the settlement many years ago.

On December 31, 2006, Consent Decree I expired. Since 2007, the Court has addressed the issue of individual contempt relief for members of both Plaintiff and Intervenor classes. This proposed settlement is intended to resolve all remaining individual contempt claims or issues involving members of the Intervenor Contempt Relief Class.

TERMS OF PROPOSED SETTLEMENT

The proposed settlement is summarized as follows:

a. The sum of \$1,000 per class member will be paid to each of the 213 members of the Intervenor Contempt Relief Class who asserted claims for individual contempt relief for potential lost pay occurring after May 29, 2001, due to Defendants' alleged failure to timely implement the reclassifications required by Article 15 of the 1994 Consent Decree. Those Intervenor Contempt Relief Class members were proposed for reclassification based on their duties in 1994; had not exceeded their reclassification position by May 2001; and were employed by ALDOT after May 2001.

b. All remaining claims for attorney's fees and costs of Intervenor's class counsel are settled for the sum of \$150,000. All fees through the end of 2006 when the decree terminated have previously been paid. No services since the termination of the decree have been compensated.

c. The sums payable to 213 identified class members (\$213,000) and for attorney's fees (\$150,000) will be paid from the contempt fines previously paid by Defendants that are held in the Court's registry. Upon implementation of the settlement, the Intervenor Contempt Relief Class will terminate and the class members will be dismissed from the litigation. Any further court proceedings regarding the Plaintiffs' remaining unresolved claims and the disposition of the remaining fine funds held by the Court will be separately addressed by Plaintiffs and Defendants.

HOW TO OBJECT

*6 If you are a member of the Intervenor Contempt Relief Settlement Class and want to object to the proposed settlement, you must submit that objection **in writing** to the attorney for the Intervenor Contempt Relief Settlement Class by the deadline date of **April 21, 2017**. The attorney for the Intervenor Contempt Relief Settlement Class will file such objections with the Court. Such written objection must list the reasons why you are objecting. The date and place of the hearing on objections is set forth below.

The name and address of the attorney for the Intervenor Contempt Relief Settlement Class to whom you must submit your objection by the deadline date of **April 21, 2017** is as follows:

Raymond P. Fitzpatrick, Jr.

1200 Corporate Drive, Ste. 105

Birmingham, Alabama 35242

You also may address any questions that you have concerning objections to the proposed settlement to the same address. Please include your mailing address, and email address, and day and evening telephone numbers. **UNDER NO CIRCUMSTANCES SHOULD YOU MAKE DIRECT INQUIRIES TO THE COURT ABOUT THIS SETTLEMENT.**

WHEN AND WHERE THE COURT WILL HEAR OBJECTIONS

On May 12, 2017, at 10:00 a.m., United States District Judge Myron H. Thompson of the United States District Court for the Middle District of Alabama, will convene a hearing to determine whether the proposed settlement agreement should be approved and confirmed as fair, reasonable and adequate. The hearing will be held in Courtroom 2FMJ of the Frank M. Johnson, Jr. U.S. Courthouse Complex, which is located at 15 Lee Street, Montgomery, Alabama, 36104. You may appear and object to the proposed settlement or otherwise be heard on matters relating to the proposed settlement only if you submit written objections or comments to Raymond Fitzpatrick as described in this Notice. Put another way, no member of the Intervenor Contempt Relief Settlement Class will be heard at the hearing on May 12, 2017, unless the person desiring to be heard has filed written objections or other papers with class counsel Raymond Fitzpatrick by **April 21, 2017**. Furthermore, if any member of the Intervenor Contempt Relief Settlement Class wishes the court to consider written objections or other papers at the hearing on May 12, 2017, he or she must submit these objections or documents to class counsel by no later than **April 21, 2017**.

If you have an objection to the proposed settlement and do not submit it, you will not be able to object to the settlement in the future.

DONE, this the 15th day of March, 2017.

Myron H. Thompson

UNITED STATES DISTRICT JUDGE

All Citations

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