



MR-IA-001-004

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DES MOINES, IOWA

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

EVERT CONNER, et al.,	:	
	:	
Plaintiff,	:	NO. 4-86-CV-90871
	:	
vs.	:	
	:	
TERRY BRANSTAD, et al.,	:	
	:	
Defendants,	:	
	:	
and	:	ORDER APPROVING
	:	CONSENT DECREE
RUSS and SYBIL FINKEN, et al.,	:	
	:	
Intervenors.	:	

On July 15, 1994, the parties filed a comprehensive, forty-five page consent decree in an attempt to resolve this eight year old class action litigation. Pursuant to Federal Rule of Civil Procedure 23(e)¹, on August 31, 1994, this court entered an Order Granting Preliminary Approval of Consent Decree. That order was subsequently modified on September 9, 1994. Those orders provided that the Defendants both post a

¹ Federal Rule of Civil Procedure 23(e) states:

(e) **Dismissal or Compromise.** A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

notice to all members of the class and provide individual notice to all class members by mailing or delivering to the individual class members and their guardians a copy of the notice of proposed settlement referred to in the court's August 31st and September 9th orders. This notice was to be made on or before September 21, 1994. Within two weeks of the signing of the Order Granting Preliminary Approval of Consent Decree, Defendants were required to identify subclass members residing in the community and provide written notice to them at their last known address, in the form approved by the court.

This matter came on for hearing on November 14, 1994 for the purpose of determining whether the court would grant final approval for the consent decree. Appearing for the Plaintiffs were Sondra B. Kaska and Linda M. Levey of Iowa Protection and Advocacy Services, Inc., Iowa City, Iowa. Appearing for Defendants was Deputy Attorney General Gordon E. Allen, Des Moines, Iowa. Counsel for Intervenors was Michael Hansen, General Counsel for AFSCME, Des Moines, Iowa. Having reviewed the proposed Consent Decree and the accompanying documents, having heard the arguments of counsel for the parties, and having reviewed the post-hearing submissions concerning this final order, the court concludes the following:

1. The court is satisfied that the requisite notices were provided by the Defendants within the time frame set forth in the court's prior orders. Forty-five (45) days were allowed for class and subclass members to express their views regarding the proposed Consent Decree and the court has reviewed all written correspondence addressing this issue received by class members, subclass members or their guardians, friends or relatives. This written correspondence has also been made available sufficiently in advance of the hearing to all counsel of record.

2. The court finds that the Consent Decree is a fundamentally fair, adequate and reasonable resolution of this litigation and it is consistent with the public interest.

See, e.g., Angela R. by Hesselbein v. Clinton, 999 F.2d 320, 324 (8th Cir. 1993) ("Before approving a class action settlement and entering the requested consent decree, then, a federal court must determine 'that the settlement is consistent with the statute the consent judgment is to enforce and fairly and reasonably resolves the controversy in a manner consistent with the public interest,'" quoting *Citizens for a Better Environment v. Gorsuch*, 718 F.2d 1117, 1128 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1219 (1984)); *United States v. City of Chicago*, 978 F.2d 325, 333 (7th Cir. 1992) ("A class action lawsuit cannot be dismissed by a consent decree or other settlement 'without court approval.' *Fed. R. Civ. P. 23(e)*. This requirement implies that a court may not approve a consent decree without determining that it meets basic standards of fairness."); *United Black Firefighters Ass'n v. City of Akron*, 976 F.2d 999, 1004 (6th Cir. 1992) (when approving a class action consent decree pursuant to *Fed. R. Civ. P. 23(e)*, "[t]he district court may not approve the consent decree unless it is fair and reasonable to those it affects and is consistent with the public interest," citing *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983)); *United States v. Akzo Coatings Of Am., Inc.*, 949 F.2d 1409, 1435 (6th Cir. 1991) (finding that approval of consent decree in CERCLA litigation required determination of whether decree is "fair, reasonable and adequate," and stating these factors for considering whether the decree is "fair": "the strength of the plaintiff's case, the good faith efforts of the negotiators, the opinions of counsel, and the possible risks involved in the litigation if the settlement is not approved," quoting *United States v. Hooker Chemical & Plastics Co.*, 607 F. Supp. 1052, 1057 (W.D.N.Y. 1985)); *United States v. Cannons Engineering Corp.*, 899 F.2d 79, 84 (1st Cir. 1990) (In assessing settlement of CERCLA litigation, "[t]he relevant standard, after all, is not whether the settlement is one which the court itself might have fashioned, or considers ideal, but whether the proposed decree is fair, reasonable, and faithful to the objectives of the governing statute," citing *Durrett v. Housing Auth.*, 896 F.2d 600, 603-04 (1st Cir.

1990)); *Durrett*, 896 F.2d at 603-04 (settlement of class action under 42 U.S.C. § 1983 and the Fair Housing Act of 1968, 42 U.S.C. § 3604(b)); *Davis v. City and County of San Francisco*, 890 F.2d 1438, 1444 (9th Cir. 1989) ("The district court reviews a decree [under *Fed. R. Civ. P. 23(e)*] under a 'universally applied standard' to determine whether the settlement is 'fundamentally fair, adequate and reasonable,'" quoting *Officers for Justice v. Civil Serv. Comm'n of the City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983)).

3. The terms of the Consent Decree, incorporated herein, impose upon Defendants a number of ongoing responsibilities intended to rectify the problems on which the claims are based. The signing of this Decree by the parties ends the first phase of the litigation and marks the beginning of the second phase, implementation. The second phase, during which the parties implement the terms to which they have agreed, is critical to the successful outcome of the case.

4. The language of the Consent Decree anticipates ongoing supervision and involvement by this court. *See, e.g.*, § 14.01 (terms may be directly enforced by the court); § 14.02 (meetings between the parties may be held more often at the request of the court); § 14.04 (modifications by motion of the parties and order of the court or on court's own motion); and § 15.02 (fees available for enforcement).

5. Due to the systemic reform nature of this litigation, this court shall maintain jurisdiction for purposes that include but are not limited to, supervising the implementation of the consent decree, enforcing compliance with its terms, and modifying the terms as necessary.

A consent decree serves a dual function. It is an agreement between the parties reached through mutual consent, and so has the attributes of a contract. It also serves as *res judicata*, barring either party from bringing a separate lawsuit, and so has the attributes of a judgment. Because of its hybrid nature,

a consent decree can be labelled as either a judgment or a contract depending upon the purpose for which it is being reviewed.

Phoenix Resources, Inc. v. Duncan Township, 155 F.R.D. 507, 509 (M.D. Pa. 1994). Because of the unique nature of consent decrees, the Eighth Circuit has pointed out that "[o]rdinarily, a district court retains the inherent authority to modify or enforce a consent decree." *Picon v. Morris*, 933 F.2d 660, 662 (8th Cir. 1991)(citing *Spallone v. United States*, 493 U.S. 265 (1990) and *McDonald v. Armontrout*, 908 F.2d 388, 390 (8th Cir.1990)); see *Beckett v. Air Line Pilots Ass'n*, 995 F.2d 280, 285 (D.C. Cir. 1993)("well-established principle that a trial court retains jurisdiction to enforce consent decrees..."); *In re Pearson*, 990 F.2d 653, 658 (1st Cir.1993) ("A consent decree is not simply a contract entered into between private parties seeking to effectuate parochial concerns.... The court stands behind the decree, ready to interpret and enforce its provisions")(citations omitted); *Hook v. State of Arizona, Dep't of Corrections*, 972 F.2d 1012, 1014 (9th Cir. 1992)("A district court retains jurisdiction to enforce its judgments, including consent decrees."); *Newman v. Graddick*, 740 F.2d 1513, 1520 (11th Cir. 1984)("These [consent] decrees are judicial acts over which the court has continuing jurisdiction."); *Stotts v. Memphis Fire Dep't*, 679 F.2d 541, 557 (6th Cir. 1983), *rev'd on other grounds*, *Firefighters Lovan Union No. 1784 v. Stotts*, 467 U.S. 561 (1984)("A trial court has continuing jurisdiction to modify a decree should its operation become unreasonable."); *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1371 (6th Cir.), *cert. denied*, 429 U.S. 862 (1976)("It is well established that courts retain the inherent power to enforce agreements entered into in settlement of litigation pending before them."); see also *City of Las Vegas, Nev. v. Clark County, Nev.*, 755 F.2d 697, 701 (9th Cir. 1985); *United States v. Georgia Power Co.*, 634 F.2d 929, 932 (5th Cir. 1981). The court's retention of jurisdiction remains true even where the decree is silent as to continuing

jurisdiction. *Picon*, 933 F.2d at 662.

This litigation is dismissed. However, the court shall maintain continuing jurisdiction to enforce, modify and interpret the provisions of the Consent Decree in the event it becomes necessary.

IT IS SO ORDERED.

DATED this 2nd day of December, 1994.



MARK W. BENNETT
U.S. DISTRICT COURT JUDGE