

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DAVID FLOYD, et. al.,

Plaintiffs, 08 Civ. 01034 (AT)

-against-

THE CITY OF NEW YORK, et. al.,

Defendants.
-----X

STIPULATION OF SETTLEMENT OF COUNSEL FEES, COSTS, EXPENSES

AND ORDER

WHEREAS, on January 31, 2008, Plaintiffs in the above-captioned action filed a Complaint pursuant to 42 U.S.C. § 1983; the Fourth and Fourteenth Amendments to the United States Constitution; the Constitution and laws of the State of New York; and

WHEREAS, on August 12, 2013 the Court imposed a final order of permanent injunction and ordered several forms of permanent relief; and

WHEREAS, on October 31, 2014 the United States Court of Appeals for the Second Circuit affirmed the District Court's Opinion of July 30, 2014 denying the police unions motion to intervene, granted the City of New York's motion to withdraw the appeal of this matter with prejudice, and remanded this case back to the District Court for further proceedings as may be appropriate in the circumstances; and

WHEREAS, the Parties now seek to resolve the issue of counsel fees, costs and expenses, without further litigation, on terms just and fair to all Parties and hereby enter into the within Stipulation of Settlement of Counsel Fees, Costs and Expenses and Order. ("Fee Stipulation"); and

WHEREAS, the terms of this Fee Stipulation were extensively and vigorously negotiated in good faith, over a period of several months; and

WHEREAS, the Defendants and the Plaintiffs agree that, having obtained the above-described relief, Plaintiffs are entitled to an award of reasonable attorneys' fees and costs, and

WHEREAS, the negotiations have resulted in this Fee Stipulation, which is subject to Court Approval, settles the counsel fees, costs and expenses in this action, in the manner and upon the terms set forth below,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

A. DEFINITIONS

1. "Fee Stipulation" shall mean this Stipulation of Settlement of Counsel Fees, Costs and Expenses and Order, executed by the Parties in the above-captioned action.
2. "Effective Date" shall mean (30) thirty days following the "Final Approval Date" defined below, and shall also be the date upon which this Fee Stipulation enters into effect.
3. "Final Approval Date" shall mean the date on which this Court endorses this Fee Stipulation and following any court proceedings and/or rulings, if applicable, in connection with the approval of this Fee Stipulation.
4. "Plaintiffs" shall mean the Class Representatives and Class Members.
5. "Parties" shall mean Plaintiffs and Defendants.
6. "Class Representatives" shall mean the Named Plaintiffs in the above captioned action.
7. "Settlement Class" shall mean the class of Plaintiffs agreed upon by the Parties.
8. "Class Members" shall mean all members of the Settlement Class.

9. "Class Counsel" shall mean Plaintiffs' attorneys of record in the above-captioned action.

10. "Defendants" shall mean the City of New York, the New York City Police Department, and their predecessors, successors, or assignees together with past, present and future officials, employees, representatives, and agents.

11. "City" shall mean the City of New York.

12. "NYPD" shall mean the New York City Police Department.

13. "*Floyd/Ligon* Remedial Order" shall mean the joint Opinion and Order issued in the above-captioned action, dated August 12, 2013 (ECF No.s 372, 373), as modified by the Order Modifying Remedial Order, dated July 30, 2014 (ECF No. 466).

B. INTRODUCTION

1. The Parties enter into this Fee Stipulation after arm's length good faith negotiations for the purpose of avoiding the burdens of further litigation over the payment of counsel fees, costs and expenses in this action.

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391.

C. COUNSEL FEES, COSTS AND EXPENSES FOR LITIGATION THROUGH OCTOBER 31, 2014

1. The City shall pay future periodic payments and up-front cash at a cost in the sum of ten-million four-hundred thirty thousand dollars (\$10,430,000.00) for counsel fees, and eight-hundred twenty-thousand dollars (\$820,000.00) for costs and expenses to Class Counsel, and the Plaintiffs hereby agree to accept said payment in full satisfaction of all claims for attorneys' fees, costs, and expenses, in, arising from, or in connection with this action, from the

beginning of time through and until October 31, 2014. Plaintiffs agree that payment shall be made by check as follows: \$3,003,097.75 to Beldock, Levine & Hoffman, LLP, \$700,000.00 payable to BARCO Assignments Ltd. and delivered to Kipnes Crowley Group, LLC, to fund the purchase of an annuity to provide future periodic payments to Jonathan C. Moore, Esq., on behalf of Moore & Goodman, LLP, more fully described in Exhibit A, \$4,667,660.73 to the Center for Constitutional Rights, and \$2,879,241.52 to Covington & Burling, LLP. These (4) four payments shall be made within (60) sixty days from the Effective Date of this Stipulation and Order. No post-judgement interest shall accrue if payment is issued within 60 days from the Effective Date of this Stipulation and Order. Any payment received beyond the 60 day period shall accrue interest as provided by the Federal Rules of Civil Procedure.

D. COUNSEL FEES, COSTS AND EXPENSES
FROM NOVEMBER 1, 2014 UNTIL TERMINATION OF THE COURT'S JURISDICTION

1. The City agrees to pay reasonable counsel fees, costs and expenses to Class Counsel for time and expenses incurred in this matter, from November 1, 2014 until the Court's jurisdiction in this matter has terminated, and the Plaintiffs hereby agree to accept said payment in full satisfaction of all claims for attorneys' fees, costs and expenses, in, arising from, or in connection with this action, during that time period. To be compensated for fees, costs and expenses accrued during this time, Class Counsel agrees to first submit to the City, all invoices for their time and expenses incurred, with a description of the associated expenses and services rendered, annexed thereto, and allow the City sixty (60) days from the City's receipt of both the invoices and descriptions, for the purposes of their review and comment.

2. Within 45 days of the Effective Date of this Stipulation and Order, the Plaintiffs will submit to the City a statement for fees and costs incurred for the period of November 1, 2014 through and including the date of the Effective Date of this Stipulation and Order.

Thereafter, Class Counsel agrees to submit to the City at six month intervals, additional requests for reimbursement of reasonable counsel fees, costs and expenses. Class Counsel agrees to submit a single joint application for fees, costs and expenses, inclusive of all counsel fees, costs and expenses for the time period for which Class Counsel seeks compensation. Class Counsel further agrees to engage in good-faith discussions and negotiations, if applicable, concerning the associated fees, costs and expenses, and further agrees to provide the City with additional information and/or documentation upon request, concerning the associated fees, costs and expenses that would reasonably assist the City in its review process.

3. After the City has received the requisite documents and information and has had at least sixty (60) days to review, comment, and after the Parties have engaged in good-faith discussions and negotiations with Class Counsel, if applicable, concerning the associated fees, costs and expenses, the Class Counsel may then submit the associated fee demand to the Court. Any dispute over fees, costs and expenses shall be adjudicated by the Court. The City reserves its right to object to any application for such fees, costs and expenses. Alternatively, if the Parties are able to resolve a request for fees, costs and expenses by Class Counsel, the Parties shall submit a fee stipulation regarding the request, to the Court for approval.

E. RELEASE

1. In consideration of the payment set forth in C(1) above, the Plaintiffs individually and on behalf of their respective heirs, executors, administrators, personal representatives, successors and assigns of each of themselves hereby jointly and severally release and forever discharge the City and NYPD, including without limitation their predecessors, successors, or assignees together with past, present and future officials, employees, representatives, and agents and their respective heirs, executors, administrators, personal representatives, and transferees and each of them from any and all claims for fees, costs, and expenses arising from or in connection

with the above-captioned action through October 31, 2014, and this Fee Stipulation shall be deemed a release to that effect.

2. This Fee Stipulation resolves all claims for attorneys' fees, costs, and expenses accruing from the beginning of time through the duration of the Court's retention of jurisdiction, in accordance with the provisions of this Fee Stipulation, as set forth in paragraphs C and D of this Fee Stipulation.

3. Each of the undersigned represents that he or she has been duly authorized by their respective clients, to enter into this Fee Stipulation. This authorization was recently confirmed by two of the named plaintiffs, Lalit Clarkson and David Ourlicht. Recent repeated attempts to contact David Floyd and Deon Dennis were unsuccessful.

4. Facsimile signatures are acceptable for execution and filing of this Fee Stipulation.

F. APPLICATION AND PARTIES BOUND

1. This Fee Stipulation applies to, and is binding upon the Plaintiffs and the Defendants, including the City's officers, agents, employees, successors, and assigns. This Fee Stipulation is enforceable only by the Class Representatives and the Defendants. The undersigned Class Counsel certify that they are authorized to enter into and consent to the terms and conditions of this Fee Stipulation and to execute and legally bind the Plaintiffs to the Fee Stipulation. The undersigned Counsel of the Defendants certifies that they are authorized to enter into and consent to the terms and conditions of this Fee Stipulation and to execute and legally bind the Defendants to this Fee Stipulation.

**G. NOTIFICATION OF PARTIES UNDER
THE SETTLEMENT STIPULATION AND ORDER**

1. All notices contemplated by this Stipulation, shall be delivered by hand and by email as follows:

Baher Azmy, Esq.
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Tel. (212) 614-6439
dcharney@ccrjustice.org

Philip I. Irwin, Esq.
Covington & Burling LLP
620 Eighth Avenue
New York, NY 10018
Tel. (212) 841-1000
pirwin@cov.com

Jonathan Moore, Esq.
Beldock Levine & Hoffman, LLP
99 Park Avenue, Suite 1600
New York, NY 10016
Tel. (212) 490-0900
jmoore@BLHNY.com

Thomas Giovanni, Esq.
Amatullah K. Booth, Esq.
New York City Law Department
Office of the Corporation Counsel
100 Church Street
New York, NY 10007
Tel. (212) 356-3534
abooth@law.nyc.gov
tgiovanni@law.nyc.gov

**H. APPROVAL ORDER, COURT JURISDICTION,
AND TERMINATION OF THIS STIPULATION**

1. As soon as practicable after execution of this Fee Stipulation, but not later than (15) fifteen days after execution of the Stipulation, Class Counsel shall submit to the Court the

Fee Stipulation and a motion seeking entry of an order requesting approval of the terms of the Fee Stipulation.

2. On or after the Final Approval Date, the Parties will jointly request that the Court enter this Fee Stipulation as an order. The Court shall retain jurisdiction over this action for the purposes of adopting any orders resulting from the Fee Stipulation.

3. The terms of this Fee Stipulation shall be a full, final, and complete resolution of the counsel fees, costs and expenses in this action. Notwithstanding the foregoing, in the event that any appeals or petitions are taken or filed by the Parties regarding the Court's approval of the Fee Stipulation in this action, any and all obligations required to be undertaken pursuant to this Fee Stipulation by Defendants are stayed, pending the final determination of any such appeals or petitions. The Fee Stipulation shall not become effective nor shall the Defendants be required to undertake any obligations in the event that the final determination of any such appeals or petitions, result in a rejection of the settlement, as set forth in this Fee Stipulation.

I. NULLIFICATION

1. In the event the Court does not approve this Fee Stipulation, the Parties shall meet and confer in good faith to determine whether to agree upon a modified Fee Stipulation. If they are unable to do so, this Fee Stipulation shall become null and void.

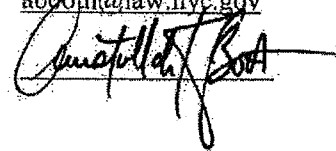
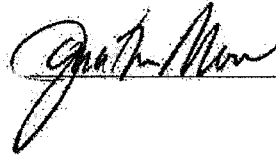
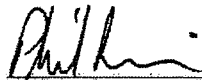
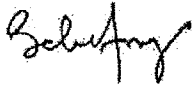
SIGNATURE BLOCKS

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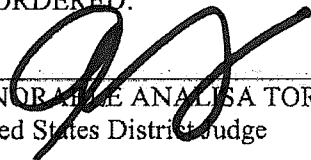


Dated: New York, New York

~~December 2016~~

1/24/17

SO ORDERED:



HONORABLE ANALISA TORRES
United States District Judge

[Exhibit A]

Future Periodic Payments

Periodic payments made according to the schedule as follows (the "Periodic Payments"):

Payee: Jonathan C. Moore

Beginning 6/1/2018, \$50,000.00 annually, guaranteed for 4 years, with the last guaranteed payment on 6/1/2021;

Beginning 1/15/2026, \$10,720.85 monthly, guaranteed for 60 months (5 years), with the last guaranteed payment on 12/15/2020.

(cost of annuity: \$700,000.00)

Consent to Non-Qualified Assignment

Payee acknowledges and agrees that the City shall assign its liability to make the Periodic Payments set forth above to Barco Assignments Ltd. ("the Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of the City (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

Such assignment, when made, shall be accepted by Payee without right of rejection and shall completely release and discharge the City from the Periodic Payments obligation assigned to the Assignee. Payee recognizes that, upon such assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the City shall thereupon become final, irrevocable and absolute.

Liberty Mutual Insurance Company will provide a Certificate of Guarantee that allows for Liberty Mutual Insurance Company to assume the responsibility to make any and all payments under the annuity contract in the event that Liberty Life Assurance Company of

Boston were unable to make said payments. Liberty Life Assurance Company of Boston will distribute a Notice of Financial Commitment to BARCO Assignments Ltd. with the contract.

Stipulation Regarding Settlement Obligations And Novation

It is understood that the City is not a guarantor or insurer with respect to the aforementioned annuity. The purpose of this stipulation is to make clear that the obligations and responsibilities of the City are satisfied upon issuance of the aforementioned settlement monies and the execution of the assignment agreement.

It is agreed that the City will assign the obligation to make the specified periodic payments to the Assignee. The obligation of the City to make periodic payments shall, by this *novation*, become the sole and exclusive duty of the Assignee, and the terms and conditions of payments shall remain unchanged in lieu of the substitution of the Assignee for the obligations of the City.

Execution of the assignment agreement and funding of the annuity will absolutely and completely discharge the City from any further future periodic payment obligation. If either the Assignee or the issuer of the annuity contract purchased by Assignee to make the payment obligation specified above fail to make payments or become insolvent or bankrupt, Payee or Payee's heirs or representatives' sole remedy to enforce the payment obligations assigned shall be against Assignee, the guarantors, Liberty Mutual Insurance Company and Liberty Life Assurance Company of Boston, and/or other responsible party other than the City will have absolutely no future periodic payment obligations to Payee under those circumstances.

Right to Purchase an Annuity

The Assignee reserves the right to fund the liability to make the Periodic Payments through the purchase of an annuity policy from Liberty Life Assurance Company of Boston

("Annuity Issuer"). The Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Assignee may have Liberty Life Assurance Company of Boston mail payments directly to the Payee. The Payee, or a duly authorized representative of Payee, shall be responsible for maintaining a current mailing address for Payee with Liberty Life Assurance Company of Boston.

Payee's Rights to Payments

Payee acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by any Payee; nor shall any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

Payee's Beneficiary

Any payments to be made after the death of Payee, Jonathan C. Moore, pursuant to the terms of this Settlement Agreement shall be made to Carol R. Sharpe, his spouse, or to any such person or entity as shall be designated in writing by Payee to the Assignee. If no person or entity is so designated by Payee, or if the person designated is not living at the time of the Payee's death, such payments shall be made to the estate of the Payee. Payee may request in writing that Assignee change the beneficiary designation under this Agreement. Assignee will do so but will not be liable, however, for any payment made prior to receipt of the request or so soon thereafter that payment could not reasonably be stopped. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Insurer's Assignee. The designation must be in a form acceptable to the Insurer's Assignee before such payments are made.

Discharge of Obligation

The obligation assumed by the Assignee to make each Periodic Payment shall be fully discharged upon the mailing of a valid check or electronic funds transfer in the amount of such

payment on or before the due date to the last address or account on record for the Payee or Beneficiary with the Annuity Issuer. If the Payee or Beneficiary notifies the Assignee that any check or electronic funds transfer was not received, the Assignee shall direct the Annuity Issuer to initiate a stop payment action and, upon confirmation that such check was not previously negotiated or electronic funds transfer deposited, shall have the Annuity Issuer process a replacement payment.

Payee Representative

If at any time any Payee is for any reason legally incapable of acting on such Payee's own behalf, all notices, designations, or instruments required or permitted to be executed by or delivered to such Payee and all payments required to be made to such Payee shall be executed and delivered to or by, and paid to, any legal guardian, conservator, custodian, or trustee (any of the foregoing being hereinafter referred to as a "Representative") appointed to act for such Payee or with respect to such Payee's property. All payments made to any Representative shall be held and applied by such Representative solely for the benefit of the Payee for whom such representative acts.

7/2001

Non-Qualified Assignment and Release of Periodic Payment Obligation

"Payee (Attorney)" Jonathan C. Moore
"Assignor" City of New York
"Assignee" Barco Assignments Ltd.
"Annuity Issuer" Liberty Life Assurance Company of Boston
"Effective Date"

This Agreement is made and entered into by and between the parties hereto as of the Effective Date with reference to the following facts:

- A. Payee has negotiated a settlement that results in the obligation of Assignor to make periodic payments to Payee as stated in Addendum No. 1 (the "Periodic Payments"); and
- B. The parties desire to effect an assignment of Assignor's periodic payment liabilities to Assignee.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties agree as follows:

1. The Assignor hereby assigns and the Assignee hereby assumes all of the Assignor's liability to make the Periodic Payments. The Assignee assumes no liability to make any payment not specified in Addendum No. 1.
2. The Assignee's liability to make the Periodic Payments is no greater than that of the Assignor immediately preceding this Agreement. Assignee is not required to set aside specific assets to secure the Periodic Payments. The Attorney has no rights against the Assignee greater than a general creditor. None of the Periodic Payments may be accelerated, deferred,

increased or decreased and may not be anticipated, sold, assigned or encumbered.

3. The obligation assumed by Assignee with respect to any required payment shall be discharged upon the mailing on or before the due date of a valid check in the amount specified to the address of record.
4. This Agreement shall be governed by and interpreted in accordance with the laws of New York.
5. The Assignee may fund the Periodic Payments by purchasing an annuity contract or funding agreement issued by the Annuity Issuer. All rights of ownership and control of such annuity contract or funding agreement shall be and remain vested in the Assignee exclusively.
6. The Assignee may have the Annuity Issuer send payment under any annuity contract or funding agreement purchased hereunder directly to the payee(s) specified in Addendum No. 1. Such direction of payments shall be solely for the Assignee's convenience and shall not provide the payee with any rights of ownership or control over the annuity contract, funding agreement or against the Annuity Issuer.

7. Assignee's liability to make the Periodic Payments shall continue without diminution regardless of any bankruptcy or insolvency of the Assignor.

8. In the event that the Settlement is declared terminated by a court of law this Agreement shall terminate. The Assignee shall then assign ownership of any annuity contract or funding agreement purchased hereunder to Assignor, and Assignee's liability for the Periodic Payments shall terminate.

9. This Agreement shall be binding upon the respective representatives, heirs, successors and assigns of the Payee, the Assignor and the Assignee and upon any person or entity that may assert any right hereunder or to any of the Periodic Payments.

10. Payee hereby accepts Assignee's assumption of all liability for the Periodic Payments and hereby releases Assignor from all liability for the Periodic Payments.

Assignor: City of New York

By: 
Authorized Representative

Title Senior Counsel

Assignee: Barco Assignments Ltd.

By: _____
Authorized Representative

Title _____

Payee: Jonathan C. Moore

By: 
Authorized Representative

Title Attorney / Payee

Addendum No. 1 Description of Periodic Payments

Payee Jonathan C. Moore

Beginning 6/1/2018, \$50,000.00 annually, guaranteed for 4 years, with the last guaranteed payment on 6/1/2021;


Beginning 1/15/2026, \$10,720.85 monthly, guaranteed for 60 months (5 years), with the last guaranteed payment on 12/15/2020.

Beneficiary: Carol R. Sharpe, spouse

Payee may request in writing that Assignee change the beneficiary designation under this agreement. Assignee will do so but will not be liable, however, for any payment made prior to receipt of the request or so soon thereafter that payment could not reasonably be stopped.

Initials

Assignor



Payee



Assignee
