

1 IN THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
2 BALTIMORE FIELD OFFICE

3
4 RONALD JANTZ, T. JAMEEL

5 MUHAMMAD, DONNA RING,

6 ELLEN ALTEMOSE and

EEOC CASE NO.

7 KARL BALDWIN,

531-2006-00276X

8 Complainants/

9 Class Agents

AGENCY NO.

10 vs.

HQ-06-2518-SSA

11 CAROLYN W. COLVIN,

12 Acting Commissioner,

13 Social Security

14 Administration,

15 Agency

16 _____ /

17
18 The hearing in the above-entitled matter was
19 held on Tuesday, March 24, 2015, commencing at 9:58
20 a.m., at the United States Equal Employment Opportunity
21 Commission, 10 S. Howard Street, 3rd Floor, Baltimore,
22 Maryland 21201, before the Honorable David Norken and
23 Oneeka S. Hill, Notary Public.

24

25

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25 ALSO PRESENT: T. JAMEEL MUHAMMAD

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EEOC Hearing
March 24, 2015

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PROCEEDINGS

1
2 JUDGE NORKEN: On the record. This is
3 the employment discrimination case of Ronald Jantz,
4 T. Jameel Muhammad, Donna Ring, Ellen Altemose and
5 Karl Baldwin, Complainants and Class Agents versus
6 Carolyn W. Colvin, Acting Commissioner, Social
7 Security Administration. EEOC case number
8 531-2006-00276X. Agency case number HQ-06-2518-SSA.

9 Today is March 24, 2015. My name is
10 David Norken. I'm an administrative judge. We're
11 here today for fairness hearing in this case.

12 Can the parties indicate who's present?
13 Today.

14 MR. CARSON: Good morning, Your Honor.
15 My name is Shanon Carson, S-H-A-N-O-N, C-A-R-S-O-N
16 from Berger & Montague, P.C., in Philadelphia, P.A.

17 I'm here today on behalf of complainants
18 and the class, the settlement case that Your Honor
19 certified in this case.

20 I'm here today with Sarah Schalman-Bergen
21 from my law firm, as well as Daniel Goldstein, Jameel
22 Muhammad; is one of the class agents in this case and
23 is attending today in person, Your Honor.

24 JUDGE NORKEN: And for the Agency?

25 MS. COOPER: Good morning, Your Honor.

1 I'm Jordana Cooper for Social Security Administration.
2 I'm here today with Jay Ortis and Dane Choe as well.

3 JUDGE NORKEN: Okay. Mr. Carson, would
4 you like to -- I signed a preliminary approval of
5 the -- of the settlement notices that have gone out.
6 Can you please describe the settlement agreement and
7 situation as what we have today?

8 MR. CARSON: Sure. Thank you very much,
9 Your Honor, and thank you for presiding over this
10 matter for as long as you have.

11 As Your Honor is very much aware, this
12 is a case that has been pending for a long time.
13 Class agent Ronald Jantz initially filed his
14 complaint in this matter in 2005. And my law firm,
15 along with Mr. Goldstein's law firm, Disability
16 Rights Advocate, and the Schneider Law Firm, took
17 this case over on a referral from Attorney Michael
18 Schneider, if you recall, and that was in 2007.

19 We have litigated this case vigorously
20 since that time. SSA has litigated this case
21 vigorously since that time.

22 The case has gone through various
23 discovery periods, both formal discovery and
24 informal discovery. Some of which was ordered by
25 Your Honor and some of which the parties engaged in

1 -- in addition to that, by exchanging various
2 materials over the course of years. Which included
3 a vast amount of -- of documents of data, of Human
4 Resource information and SSA's HERMES database,
5 which contained personnel information for the class
6 agents and members of the settlement class that has
7 been preliminarily certified by the EEOC.

8 So, it's safe to say, Your Honor, that
9 at this time, this case was -- was highly litigated.
10 And the settlement that was reached in this case was
11 only reached after eight years of hard-fought
12 litigation, or going on eight years in terms of our
13 involvement in the case as of this summer.

14 Earlier -- I should say, last fall an
15 opportunity arose that was presented to us by the
16 Agency to participate in mediation. And the parties
17 agreed that it was very important to engage a
18 skilled and experienced mediator with specific
19 experience in resolving complex cases like this one.

20 Both parties did due diligence on that.
21 And after discussions, agreed to retain as the
22 mediator, retired magistrate -- United State's
23 Magistrate Judge Diane Welsh, who -- whose mediation
24 practice is out of the JAMS office in Philadelphia,
25 Pennsylvania, and who was a highly respected United

1 State's magistrate judge in the United States
2 District Court for the Eastern District Court of
3 Pennsylvania for over a decade. And has had a very
4 successful mediation practice since she retired from
5 the bench.

6 Like everything else in this case, the
7 mediation was also long. The settlement did not
8 result from the parties just meeting for a few
9 hours, but rather took place over a period of four
10 full-day in-person sessions at the Philadelphia JAMS
11 office. Which were attended by counsel for SSA and
12 counsel for the class agents.

13 At various times during those
14 proceedings, the class agents themselves attended
15 those hearings.

16 And with the assistance of Judge Welsh,
17 the parties were able to negotiate the settlement
18 agreement that is now before you for final approval.

19 This settlement agreement, Your Honor,
20 provides really for unprecedented, and we have
21 looked to try to see whether there were other
22 settlement agreements out there that contain some of
23 the provisions that the parties negotiated in this
24 case and we couldn't find any.

25 And at your urging, Your Honor, and I

1 think both sides have always tried to act on your
2 suggestions in this case. We focused first and
3 foremost at the mediation, during the mediation
4 process, on adjunctive relief, a programmatic
5 relief.

6 And I think, if I recall correctly, it
7 took two full days of mediation before we even
8 approached money or other issues that are -- that
9 are -- you see in the settlement agreement, because
10 the parties did focus on the programmatic relief
11 first.

12 That concluded, by the way.

13 I would say, for the record, Dr.
14 Reginald Wells, who is an extremely high ranking
15 person at SSA, just one level under the Commissioner
16 --

17 MR. ORTIS: Correct.

18 MR. CARSON: -- attended the mediation
19 personally and took a special interest in this case.
20 And saw this, in our view, my personal view, saw
21 this as an opportunity to achieve some things that
22 might otherwise not be able to be achieved.

23 And, if I were to make any comment about
24 the programmatic relief and the settlement, it is
25 that some of that relief, that is some things that

1 could not otherwise have been obtained, that is to
2 say, Your Honor, we could have continued to litigate
3 this case for another period of years, taken this
4 case to a hearing. Assuming we prevailed on a
5 hearing on the class issues, taken this case to
6 individualized class member hearings on damages
7 following that, prevailed on those issues, gone
8 through all of the appeals that the Agency has an
9 opportunity to present procedurally in this case and
10 still not been able to obtain some of the relief
11 that was obtained in the settlement agreement as a
12 result of the parties' cooperation and creative
13 efforts.

14 And we're proud of that. I think all
15 the parties are proud of what's in this settlement
16 agreement and think that it could possibly serve as
17 a model for -- in other cases involving other
18 agencies in the future, if it is finally improved.

19 I won't go through all of the specific
20 programmatic relief details because they're in the
21 settlement agreement and we have gone through them
22 in the papers. But, if your Honor has any questions
23 about any of those details, we would -- and I'm sure
24 SSA would be happy to answer them.

25 Suffice it to say, and I will just note

1 for the record, the programmatic relief does provide
2 for the creation of an entirely new office at SSA
3 for providing reasonable accommodations nationwide.
4 Which, at this point, would go by sort of a national
5 office on reasonable accommodation.

6 It might end up with another formal
7 title, but that's effectively what it is.

8 That will be staffed and funded and
9 operational as a result of the final approval of the
10 settlement.

11 The settlement also provides for new
12 career development protocols, mandatory training for
13 managers, assistive technology training for class
14 members, and any implementation board to monitor the
15 settlement over a period of four-and-a-half years.

16 One footnote on that, obviously that was
17 ending with the four-and-a-half years. It was a
18 highly negotiated term and a result of compromise
19 between the parties. But it is our belief and --
20 that the relief that is being implemented in the
21 settlement is not just relief that will exist for
22 four-and-a-half years. Because the SSA, the Agency,
23 is taking -- making some fundamental changes to its
24 operational policies and procedures concerning
25 reasonable accommodations and employees with

1 disabilities, that this is relief that should
2 hopefully continue into the future and be available
3 to assist future employees as well.

4 Based on information that was provided
5 to us during the settlement negotiations, Your
6 Honor, and we said in our papers, class counsel
7 estimate the value of this adjunctive relief or
8 programmatic relief package to be in the area of 20
9 million dollars.

10 And under the settlement agreement, if
11 you wanted to see -- I don't know that you need to
12 see more data on that. But, if you wanted to see
13 more data on that, the parties agree that they can
14 meet with you off the record and show that to you.

15 But, obviously there was a lot of
16 conversation, negotiations during the agreement, and
17 we agree that that could take place if Your Honor
18 wanted to see more on that.

19 In addition to the programmatic relief
20 package, we negotiated next, and I say next because
21 we did negotiate the settlement in a certain order.
22 We next focused on the relief, on the monetary
23 relief for the class. And, ultimately, that
24 resulted in an additional payment by SSA upon final
25 approval of the effective date of the settlement of

1 \$9.98 million dollars. And that is a
2 non-reversionary sum.

3 We all read these days, unfortunately,
4 about some settlements that get done out there in
5 the world where there's a settlement, and in
6 agreement to pay certain amount of money, but what
7 actually happens is, most of that money ends up
8 reverting back after some claim processes.

9 We are very cognitive of that. It's a
10 highly negotiated issue as part of our mediation
11 discussions and we are proud that we negotiated a
12 settlement where not one penny will revert back.
13 All of that money will be paid.

14 Notice, you asked about notice, Your
15 Honor. The settlement agreement itself set forth
16 very detailed provisions for notice of the
17 settlement to the settlement class, a notice
18 program. Which I might add, the parties believe
19 goes above and beyond what would be required under
20 the relevant regulations.

21 But those notice provisions -- and this
22 is detailed in the declarations that were provided
23 with our motion for final approval, including
24 specifically I would refer to the declaration of the
25 Angion Group, which was the Claims Administrator

1 that was appointed in this case, as well as the
2 declaration of Dane Choe on behalf of SSA, where
3 they set forth the actions that were taken to comply
4 with those notice provisions.

5 Most significantly notice was provided
6 not just to the 571 employees that prior had been
7 identified as both having a targeted disability and
8 having made a best qualified list of not being
9 selected, but notice was electronically provided by
10 e-mail and by Internet but to all current employees
11 of SSA. Which is a group of over 60,000 people. As
12 well as sent out where possible electronically and
13 where not possible by mail, in various formats, to
14 former employees that had been identified as
15 potential class members by the parties.

16 And -- so those steps were -- were
17 taken, Your Honor, and -- and achieved.

18 I will -- I'll come back to this in a
19 couple of minutes. But we'll note right here for
20 the record, that while notice went out to well over
21 some number of -- well over 60,000 people, and there
22 was a lengthy time period to submit objections to
23 the settlement, that there were a total of two
24 objections that were made to the settlement.

25 And if I would say anything, I would say

1 what that signifies is that this settlement has been
2 positively reviewed by the critics. Every one of
3 these people had access. And the settlement
4 agreement itself -- and let me say one more thing.

5 In addition to the notice that I just
6 described, the -- the case website, which has
7 existed for this case for years at
8 www.ssadisabilityclassaction.com, we posted all of
9 the relevant documents concerning settlement,
10 including the settlement agreement itself on that
11 website.

12 And we know through review of statistics
13 that it was often visited and those documents were
14 reviewed. And the fact that there were only two
15 letters received objecting to any aspect of this
16 settlement is highly significant to your decision as
17 to whether to approve the settlement.

18 Of course, and these cases are cited in
19 our papers, settlements including the EEOC where
20 there are 20 or 30 or 40 objections. We're not
21 dealing with that situation here, where you have to
22 consider all of that circumstance here.

23 Of the two objections, one of them was
24 made by a woman named Suzin, S-U-Z-I-N, Veney,
25 V-E-N-E-Y. And her objection, Your Honor, was

1 solely focused on one thing. She had a concern
2 that she had an individual EEOC or EEO claim pending
3 that would be subsumed by this settlement and that
4 was her concern.

5 We looked into that issue, meeting and
6 conferring with our colleagues to my left, and they
7 confirmed that her claim is not going to be -- not
8 only that her claim is not going to be consumed by
9 the settlement, but I received an e-mail from
10 Mr. Ortis this morning that said that she can both
11 participate in the settlement.

12 Correct me if I'm wrong, but that she
13 can make a claim in the settlement and continue to
14 prosecute whatever -- I don't know what her own
15 individual EEO issue is, but can continue to
16 prosecute that issue.

17 We reached out to Ms. Veney and informed
18 her of that fact. And on Monday, March 23rd, at
19 6:59 p.m., so that's yesterday evening, Your Honor,
20 we received an e-mail that was sent from Ms. Veney
21 to Ms. Schalman-Bergen, my colleague, which says:

22 "Good afternoon, Ms. Schalman-Bergen.
23 Given that my pending EEO claims are not and will
24 not be subsumed in the Jantz class action in whole
25 or in part, I'm withdrawing my objection in the

1 Jantz class action case. I hope the EEOC approves
2 this settlement agreement. If you have any
3 questions or concerns, please contact me."

4 And she gives some telephone numbers and
5 e-mail where she can be reached.

6 JUDGE NOROKEN: Do you have that copy
7 with you?

8 MR. CARSON: Yes, Your Honor. We can
9 hand this up to you and make sure that it's part of
10 the record.

11 JUDGE NOROKEN: Okay.

12 MR. CARSON: Now the one letter out of
13 all of the potential settlement class members that
14 received notice, and that was a letter. It was
15 timely sent to us. It was received on December 24th
16 or it was sent, I should say, cause it's dated
17 12-24-14. And it is from a current SSA employee who
18 works in an office in Phoenix, Arizona, to my
19 knowledge, named Dafnah, D-A-F-N-A-H. And her last
20 name is hyphenated and it's Nissanov-Zular.

21 I'll spell it for the court reporter.
22 It's N-I-S-S-A-N-O-V, hyphen, capital Z, as in
23 zebra, U-L-A-R. So Nissanov-Zular.

24 Ms. Nissanov-Zular is a person who I
25 personally spoke with on the phone after she --

1 after receiving this letter from her because I
2 wanted to find out a little bit more about her
3 letter. And I believe that she received the notice
4 in the settlement, that she wrote this letter in
5 good faith, that -- but I'll just describe first
6 what her specific objections are.

7 One, she believes that fair compensation
8 in this case would be, and she writes in capital
9 letters, retroactive promotions for each employee
10 from the first time she or he were on the best
11 qualified list with appropriate grade increases,
12 salary, NTSB contributions, and retirement payment,
13 exclamation points.

14 And her second complaint appears to be
15 related to Step 4 in the settlement distribution
16 process, whereby 15 additional settlement sharers
17 were being provided to settlement class members who
18 made EEO complaints during the relevant time period.

19 And here's what I would say about Ms.
20 Zular, Ms. Nissanov-Zular's letter. It, and I say
21 it respectfully, it fails to acknowledge that a
22 settlement is a compromise. And it also fails to
23 acknowledge the risks that this case presented in
24 terms of our, that is complainants and the class
25 agents, being able to prevail or completely prevail.

1 And so, while it's nice and I agree
2 that, speaking for the complainants in this case,
3 that getting the type of relief that she refers to
4 in her letter would be a nice thing to achieve, it
5 would not be a feasible thing to achieve. And on
6 that point, and Your Honor has a great experience on
7 this, even if we were to prevail, again overcoming
8 all of the arguments and defenses that SSA would
9 have otherwise made to Ms. Nissanov-Zular's claim,
10 there's no guarantee that she would have gotten this
11 relief even then. Because presumptively the type of
12 damages that the EEOC regularly would have awarded
13 such a situation would be back pay. Not to say
14 that --

15 JUDGE NORKEN: And in statement, but
16 that there would have to be many hearings on each
17 case.

18 MR. CARSON: Correct, Your Honor.

19 And the other thing, of course, and
20 asserting this on behalf of -- of all class members,
21 that this is a case that is -- the time period goes
22 back to August 22, 2003. And the -- the act of
23 attempting to ascertain all of the promotions for
24 all of the class members and then remake those
25 things happen would -- I can't even imagine how you

1 would possibly go about to start to do that, and how
2 it would displace people that are already in certain
3 positions, and how it would take -- you would have
4 to take into account the fact that many settlement
5 class members were denied for promotions, and then
6 suddenly applied for promotion and were hired for
7 that promotion. So already received that type of
8 relief.

9 And the list goes on in terms of the --
10 the feasibility of what Ms. Nissanov-Zular asks
11 there.

12 With respect to the situation with her
13 issue taken with, arrived with awarding 15 extra
14 settlement shares to people who submitted EEO
15 claims, we went and checked. And, in fact, we don't
16 believe that this is a -- maybe she doesn't realize
17 that this is an issue that she didn't understand.

18 She actually made an EEO claim and is
19 receiving the 15 extra shares for that claim. And
20 in the scheme of the settlement formula, the 15
21 shares is a very minor -- and I'll get to the number
22 of shares that can possibly be awarded in one moment
23 and you'll see.

24 But the estimated maximum, and I'll come
25 back to this to explain it further in one second,

1 the estimate maximum number of shares is 1,160. And
2 so, 15 shares is a relatively minor award for
3 someone who did go the extra step in pursuing their
4 rights and submitting an EEO claim.

5 And especially because this is an EEO
6 settlement and there's not an opt-out right and
7 claims are being subsumed in the settlement, we
8 thought that it was only fair to recognize that in
9 the settlement formula by giving some extra shares
10 to people who made EEO complaints.

11 So, again, I have nothing but respect
12 for Ms. Nissanov-Zular, but I think her objection
13 does not prevent final approval of this settlement
14 for the reasons that I've stated.

15 I'll just sort of highlight and
16 underline. There were no objections to the
17 settlement other than the two that I just
18 referenced. There were no objections to the
19 settlement to any aspect of the settlement
20 distribution formula other than with respect to the
21 EEO issue I just referenced. There were no
22 objections to the requested attorneys' fees for the
23 requested reimbursement of costs or to the requested
24 amounts for the Claims Administrator, the
25 plaintiffs' damages expert. There were no

1 objections to the requested service awards for the
2 class agents.

3 And again, I think that's the strongest
4 indicator. And being along with Mr. Goldstein,
5 firms that handle class actions routinely, when
6 class members see issues with class settlements,
7 they know how to object to those issues and present
8 them to the court for review. And the fact that
9 that didn't happen here I think is strongly
10 indicative that this is a settlement that is worthy
11 of final approval.

12 Another reason this settlement is worthy
13 for final approval, it was -- and this should also
14 be contrasted against the number of objections.
15 There have been 1,023 claim forms submitted to date,
16 and that includes 991 timely claim forms.

17 And we'll get back to the issue of
18 timely in one second, meaning received by the
19 original claim deadline in the settlement agreement.

20 30 late -- 30 claim forms that were
21 received between the end of the claim period and the
22 date of our final approval motion, and two
23 additional claim forms that have been received since
24 last week, when we filed the final approval motion,
25 for a total of 1,023.

1 Pursuant to the settlement agreement,
2 those claim forms have gone to the Claims
3 Administrator who is working jointly with
4 plaintiffs' damage expert, Dr. Richard Keaggy, under
5 the -- and I highlight this as well, under the
6 supervision of Ms. Schalman-Bergen at my firm and
7 Ms. Cooper and Mr. Ortis and their colleagues at
8 SSA.

9 And they've been having dialogue
10 concerning the administration of these claim forms,
11 which is, you know, involved. Multiple telephone
12 calls on a weekly basis, joint calls with the Claims
13 Administrator, working together cooperatively to,
14 you know, if the Claims Administrator has a
15 question, how do I resolve this or how do we want to
16 deal with that, and meeting and conferring between
17 the parties to do so in a way that's consistent with
18 the settlement agreement, but also fair; realizing
19 that they're not lawyers filling out these claim
20 forms and we need to be flexible.

21 Sometimes people forget to fill out a
22 question or -- or didn't follow the form exactly,
23 and we want to be -- to deal with that issue in a
24 reasonable way.

25 To date, 359 of those 1,023 claim forms

1 have been deemed preliminarily ineligible by the
2 Claims Administrator. Most typically because the
3 person is either not a TDE, and actually confirm
4 that they're not a TDE.

5 And just so, you know, again, the
6 settlement went out to all current employees. So
7 that was something that we expected to see some
8 measure of or affirmed that they were a person that
9 didn't apply for promotion, make a PTL and not be
10 selected for the position. And so, those obviously
11 needed to be weeded out.

12 Where there are issues that look like a
13 cure could resolve the issue, the claims
14 administrator sending a letter to those people and
15 giving them an opportunity to cure, and has already
16 received back some cured claim forms. And we expect
17 to receive back some more over the ensuing period
18 between now and when claims would be finally
19 calculated for damages purposes and paid.

20 The current situation, and we use this
21 for purposes of obtaining final approval today,
22 there are 678 claim forms that have been deemed
23 preliminarily eligible. And of those, the vast
24 majority of people who are definitely going to
25 participate in the settlement.

1 And I'll give you an example, Judge.
2 You'll understand.

3 We have identified previously that there
4 were 571 people who met the class criteria. So of
5 those, which are -- we call Claim Form B class
6 members, 248 out of the 571 have submitted claim
7 forms. They're in because they satisfy the criteria
8 which we previously ascertained.

9 218 C1 settlement class members of
10 returned claim forms, these are people who are known
11 TDEs. And so, the issue there was just ascertaining
12 that the second part, that they made a -- that they
13 applied for a promotion, made a BQL and were not
14 selected.

15 And -- and that's -- so for those,
16 that's the subset for which the plaintiffs' damages
17 expert who has access to all that HERMES information
18 that have been previously produced in, can go back
19 and check. Just do a quick check to make sure that
20 those people did satisfy that criteria, the
21 settlement.

22 And if any questions arose, could go
23 back to SSA and say, you know, do you have the
24 information that will allow us to confirm that. And
25 that process has been -- is occurring and has been

1 going smoothly.

2 And the last group, the so-called Claim
3 Form C2 class members, those are people who did not
4 previously identify themselves as TDEs and also
5 needed to be checked for BQL status. And those are
6 the ones for which some documentation would be
7 required as to TDE status, whether or not they chose
8 to fill out the Self-identification Standard Form
9 256 or also have the opportunity alternatively to
10 provide medical documentation.

11 And so, that's where the verification
12 process lies for those folks and that's occurring as
13 well.

14 Assuming 678 eligible claims, the
15 average award in this settlement would be \$9,308. A
16 very significant award for a class action case.

17 The average settlement shares under the
18 settlement distribution formula, this is based on
19 the claims administrator sampling which was set
20 forth in our motion for final approval, is 459
21 sharers.

22 The estimated settlement share is \$20.28
23 per share.

24 The minimum award, so, you know, a class
25 member who applied for -- who is a TDE, who applied

1 for a promotion, made a BQL, and was not selected in
2 the latest years, for example, 2012 or 2013, and
3 didn't satisfy any of the other criteria, would
4 receive \$202.80.

5 And the estimated maximum award, someone
6 who satisfied all of the settlement criteria and
7 produced denial promotion, went back to the earlier
8 years, maximum award of \$23,524.82.

9 Again, for the record, those are
10 estimates, Your Honor. Those will be refined, but
11 they're based on information that's been received to
12 date.

13 This settlement requests service awards
14 of \$110,000 total from the gross settlement amount.
15 Again, there were no objections received to that
16 request.

17 The settlement awards are to be broken
18 down. 43,332 to Ronald Jantz, who was the original
19 class agent in this case and who's originated and
20 lived and breathed this action since 2005, 10 years.
21 And \$16,667 to each of -- to Jameel Muhammad, Donna
22 Ring, Ellen Altemose, and Karl Baldwin.

23 Collectively these service awards
24 constitute 1.1 percent of the total gross settlement
25 amount. They were, as Mr. Muhammad can -- another

1 highly negotiated term of the settlement. And we
2 believe these awards are consistent with the case
3 law that's cited on page 23 of our brief.

4 These folks were deposed. They were
5 involved in the case, not just in a -- because a
6 lawyer put them on the caption. This was their case
7 and they were deeply involved in this case. And
8 communicated with counsel over the course of many
9 years, participated in all aspects of the case,
10 participated in material decision-making in this
11 case, and also worked on their own time with respect
12 to fielding many calls.

13 And especially referring here to
14 Mr. Muhammad. Because in his role, SSA -- he took
15 many inquiries from class members over the years in
16 response to those and took his personal time in
17 doing so.

18 So we think these awards are very
19 justified here.

20 Fees and costs. We made absolutely
21 clear to SSA that we -- we -- we -- we would not
22 engage in a discussion about attorneys' fees and
23 costs until we negotiated a relief that we would
24 negotiate for the class.

25 JUDGE NORKEN: One question.

1 MR. CARSON: Sure.

2 JUDGE NORKEN: The service awards, have
3 they also take part in the shares too?

4 MR. CARSON: They take part in the
5 shares. And one more thing I forgot to mention with
6 respect to these awards.

7 The class agents release is a broader
8 release than the release of the settlement class
9 members. So these are -- these are service awards
10 and that's how they've been identified by the
11 settlement agreement. But it is extremely relevant
12 that the consideration for this additional payment
13 that the class agents are receiving includes a
14 general release of claims, which the settlement
15 class members are not providing.

16 And so, they are giving up additional
17 consideration for these payments that some of the
18 additional class members are not giving up.

19 It became apparent to us at some point
20 in the negotiations that, if this settlement was
21 going to get done, class counsel was not going to
22 receive all of its billed attorneys' fees in this
23 case. We made a conscious decision following
24 discussion that all of the firms' comprising class
25 counsel were willing to do that. And we -- it was

1 done for the good of the class. There's no other
2 way to put it.

3 It's sometimes involved, and I will
4 speak personally, discussions with my partners who I
5 went and go back and discuss this issue with, and
6 say that it is what it is. And what it is, is a --
7 is that in order to get this done, class counsel
8 agreed to an attorneys' fee that would constitute
9 54.7 percent of its actual billed time on the case.

10 Class counsel collectively spent over
11 11,500 hours on this case over the period that I
12 referred to earlier.

13 Mr. Goldstein's firm came into the case
14 the same time as my firm, so we were both involved.

15 We were brought in by Mr. Schneider.
16 Mr. Goldstein was brought in by the union. And we
17 are the ones that collectively organized the other
18 firms coming into the case. And all of the firms
19 agreed to take this cut on their fees to see this
20 settlement be consummated.

21 We have set forth in our motion for
22 final approval I think the -- the bases for our
23 request that more than satisfy, given this cut.

24 Typically in these cases, if there is a
25 common fund, like there is being created here,

1 courts, the EEOC, will approve up to a third of that
2 common fund. And we are requesting considerably
3 less than that here.

4 Obviously there are fee shifting
5 statutes that would have permitted me legally on a
6 legal basis to argue for an additional amount of
7 fees, but our request of \$2.87 million represents
8 less than 54.7 percent of our actual load stock.
9 And we believe that should be approved.

10 The same issue arose with respect to
11 costs, and we separately negotiated reimbursement of
12 costs of \$400,000. These are actual out-of-pocket
13 expenditures that were made by the class counsel
14 over the course of this case.

15 By and -- by far, the largest
16 expenditure, Your Honor, were on our experts. We
17 had, as you are well aware, Dr. Richard Keaggy &
18 Associates, who are extremely well-known, reputable
19 statistics firm. So much so, that SSA agreed that
20 they could play the role that they've played in the
21 settlement process as well.

22 JUDGE NORKEN: Even famous in the
23 Walmart case.

24 MR. CARSON: Even famous in the Walmart
25 case, Your Honor.

1 Implementation. If -- if -- yesterday
2 Ms. Schalman-Bergen emailed you, and I have
3 additional copies with me.

4 JUDGE NORKEN: I made a copy as well.

5 MR. CARSON: Okay.

6 JUDGE NORKEN: The only change I made
7 was to add the administrative judge.

8 MR. CARSON: Yes, okay. And then here's
9 a copy of the e-mail from Ms. Veney that I referred
10 to earlier.

11 Shall I leave another copy here with you
12 or --

13 JUDGE NORKEN: Sure.

14 MR. CARSON: Okay. This is a proposed
15 order and judgment granting complainants on opposed
16 motion for final approval of class action settlement
17 attorneys' fees and costs.

18 And if Your Honor signed this -- just to
19 give you an idea of the timeline.

20 If Your Honor signed this order today,
21 our understanding, based on meeting and conferring
22 and looking at the relevant regulations, is that the
23 effective date would occur 90 days, plus 10 days
24 mailing out, which would be, by our counting, July
25 2, 2015.

1 And in terms of the implementation
2 schedule, the gross settlement amount, if the
3 effective date was reached, that is, if there was no
4 appeal or anything that continued the case in that
5 time period, the gross settlement amount would be
6 deposited by SSA 10 business days after the
7 effective date.

8 The service awards and class counsel
9 fees and costs would be paid three business days
10 after the deposit, and the class member settlement
11 awards would be paid 30 days after deposit or as
12 soon as reasonably practicable.

13 I want to mention something about that.
14 Under the proposed final approval order that's been
15 submitted, we would continue, because we don't want
16 to prejudice people, we would continue to process
17 late claims that were received and that were
18 otherwise valid and eligible up to the effective
19 date. And those would be paid out of the class
20 amount.

21 And then under the settlement agreement,
22 late claims that were received after the effective
23 date, that is, from the effective date, which in my
24 hypothetical is July 2nd, for a period of another
25 four months, would be paid out of the whole back

1 fund. Thus providing us sufficiently lengthy time
2 period of -- for individuals to submit that claim
3 forms and receive an award.

4 JUDGE NORKEN: That's a \$200,000 fund,
5 right?

6 MR. CARSON: Correct, Your Honor, that
7 is a \$200,000 fund.

8 If Your Honor has any other questions
9 about any other of the specific aspects of the
10 settlement, I'm happy to answer them.

11 My colleague Ms. Schalman-Bergen, again,
12 is happy to answer any questions that deal
13 specifically with respect to claims administrator
14 issues, because she has been the person who's been
15 involved with that on a daily basis.

16 But, otherwise, Your Honor, thank you
17 for allowing us to make this presentation. It is --
18 this case has been a very incredible experience for
19 all of us on the plaintiffs' side, or plaintiffs'
20 side over this period of years. And sitting here
21 today is the culmination of that. And so, we are
22 very proud to be able to make this presentation, and
23 thank you for your consideration.

24 JUDGE NORKEN: One question.

25 MR. CARSON: Sure.

1 JUDGE NORKEN: How is the Schneider firm
2 being paid?

3 MR. CARSON: Sure, Your Honor. I will I
4 -- I can look up and tell you exactly, cause it's
5 been so long since I've thought about that issue.

6 When Mr. Schneider referred this case to
7 us, we entered into an agreement with him, whereby
8 we would -- I believe we would count his time into
9 the case as of that date. He has not done any work
10 on the case since it was referred in 2007.

11 And I have my computer here. And if you
12 can give me two minutes, I can look that up so we
13 can put it on the record, if you'd like.

14 JUDGE NORKEN: But, essentially what
15 you're saying is that you -- they'll be paid through
16 your firm?

17 MR. CARSON: Yes. They would not
18 receive any other further funds or be able to seek
19 any further funds. Whatever they would receive
20 would be out of the amount that would be awarded to
21 class counsel.

22 JUDGE NORKEN: And that is the agreement
23 that you've made with them?

24 MR. CARSON: And that's a written
25 agreement.

1 JUDGE NORKEN: Okay. Anyone else on
2 plaintiffs' side want to speak?

3 MR. GOLDSTEIN: I will just clarify that
4 a little bit more.

5 Mr. Schneider is getting his
6 proportional share in terms of his hours, times and
7 agreed hourly wage we agreed on, so that's how he's
8 being compensated.

9 I would just add that it was -- it
10 really should be recognized, and Mr. Carson already
11 has, but Social Security Administration, their
12 counsel, recognized where there were areas of common
13 interest. And in those areas were extraordinarily
14 constructive and creative. And in those areas, as
15 is always the case in adversary litigation, where
16 there are opposing interests, they were civil and
17 vigorous at the same time. We could not have done
18 this without a truly determined effort on both
19 sides. Not just to settle the case, but to do a
20 good settle.

21 And between Mr. Carson's leadership and
22 the excellent representation by Social Security, I
23 think we have a deal we can show you proudly.

24 JUDGE NORKEN: Okay. The Agency?

25 MS. COOPER: Thank you, Your Honor. I

1 think Mr. Carson's taken Your Honor through the
2 history.

3 I do appreciate the words of
4 Mr. Goldstein, and I think we would give credit back
5 to our client, Your Honor.

6 The programmatic relief is something
7 that we are very proud to present. It's extremely
8 creative, and we do think we'll position our agency
9 as a true leader.

10 They were among the leaders in the area
11 of targeted disabilities to begin with. We feel at
12 this point they would be potentially unrivaled
13 leader, and we do give good credit to our client for
14 many of the creative and excellent ideas that are
15 reflected in the settlement agreement.

16 And that is the proudest part of this
17 resolution, which was extremely long and hard fight,
18 as Your Honor is extremely aware, and perhaps the
19 only remaining original member of the litigation in
20 the room.

21 JUDGE NOROKEN: Well, in the room, yes.

22 MS. COOPER: And Mr. Muhammad.

23 In any event, Your Honor, we are proud
24 to present that.

25 We had litigated vigorously, but we then

1 came to the settlement table of what we thought were
2 excellent ideas. And we are glad that class counsel
3 understood them to be as such. And with some
4 tweaking, we were able to come up with an excellent
5 package that we are truly proud of and that we hope
6 Your Honor will approve.

7 JUDGE NORKEN: You're done?

8 MS. COOPER: Yes, Your Honor.

9 MR. NORKEN: Anyone from the Agency want
10 to speak?

11 MR. ORTIS: No, Your Honor.

12 JUDGE NORKEN: Mr. Muhammad, you're the
13 only one, only class agent here. Do you wish to
14 speak?

15 MR. MUHAMMAD: Yes, thank you.

16 Most of you know that I have been
17 involved in representing disabled employees for more
18 than 10 years, and this is my first class action. I
19 want to thank, for the record, the outstanding
20 representation that we have received. Also want to
21 thank the agency for creative and honest dialogue to
22 reach this settlement agreement.

23 I know in the settlement some folks
24 might feel they are not being made whole, but that's
25 not the nature of a settlement.

1 All the parts of the puzzle are
2 necessary for us to get to where we are today.
3 Everyone had a part to play. All of us I think have
4 grown from the experience.

5 I just want to say thank you.

6 JUDGE NORKEN: Ms. Veney has withdrawn
7 her objection. The only objection remaining is
8 Dafnah Nissanov-Zular.

9 Is she here today?

10 She's not here today, okay.

11 Well, I must say that it has been a long
12 road. And I -- it's obvious that, according to the
13 settlement agreement, no one gets a promotion, but
14 they do get a simulation of back pay, which is very
15 significant. And they also get the -- the very
16 significant equitable relief as well.

17 I believe that the settlement is fair
18 and adequate, and I'm -- I'm going to approve this
19 settlement.

20 And I thank the parties for coming and
21 for their long work on this case, once I denied the
22 motion for reconsideration and call the parties and
23 said, are we ready for all out discovery.

24 And I thank the parties and I'm going to
25 sign this. I'll sign it now.

1 MR. CARSON: Thank you very much, Your
2 Honor.

3 MR. GOLDSTEIN: Thank you, Your Honor.

4 MR. MUHAMMAD: Thank you.

5 MR. ORTIS: Thank you.

6 JUDGE NORKEN: Okay. That's done.

7 Is there anything further we need to
8 talk about?

9 I thank the parties and off the record.

10 (Hearing concluded at 10:55 a.m.)

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1 State of Maryland
2 City of Baltimore, to wit:

3
4

5 I, ONEEKA S. HILL, a Notary Public of the
6 State of Maryland, City of Baltimore, do hereby certify
7 that the within-named proceedings took place before me
8 at the time and place herein set out.

9 I further certify that the examination was
10 recorded stenographically by me and this transcript is
11 a true record of the proceedings.

12 I further certify that I am not of counsel
13 to any of the parties, nor in any way interested in the
14 outcome of this action.

15 As witness my hand this 6th day of April,
16 2015.

17
18

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ONEEKA S. HILL
Notary Public

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23
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My Commission Expires:

25

June 16, 2017

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.