

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

GERALD K. KANDEL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 06-872C
)	(Judge Patricia E. Campbell-Smith)
THE UNITED STATES,)	
)	
Defendant.)	

**PLAINTIFFS’ MOTION TO PRELIMINARILY APPROVE THE
AMENDED PARTIAL SETTLEMENT AGREEMENT; TO APPROVE THE
PROPOSED NOTICE OF A FAIRNESS HEARING; AND TO CONDUCT A FAIRNESS
HEARING TO CONSIDER FINAL APPROVAL OF THE AGREEMENT**

Plaintiffs respectfully submit this Unopposed Motion to Preliminarily Approve the “Amended Partial Settlement Agreement,” dated December 9, 2019. The Amended Partial Settlement Agreement was filed as a separate entry on the Court’s Docket, ECF No. 370, January 17, 2020. It was entered into by the parties with respect to the former employees of thirty (30) agencies, boards, or commissions who are members of the “Settlement Subclass.”

Plaintiffs also move for the Court to approve a draft of the attached Notice of Partial Settlement subject to the Court’s selection of an appropriate date, attached hereto as Plaintiffs’ Exhibit 1. The Notice of Partial Settlement, if approved, will be posted promptly by the Administrator on the website dedicated to this case.

Moreover, Plaintiffs also move the Court to conduct a “Fairness Hearing” pursuant to RCFC 23(e)(2) by telephone with respect to Final Approval of the Amended Partial Settlement

Agreement on a mutually available date. The hearing would be held subsequent to the Administrator's posting of the approved Notice of Settlement for thirty (30) days. Thereafter, plaintiffs will move for entry of a Final Order of Judgment by the United States in the amount of \$268,308.46 as "back lump-sum pay," including the employer's payment of employer related taxes to the "Kandel Class Settlement Trust," pursuant to the conditions reflected in the Amended Partial Settlement Agreement, exclusive of interest; attorney fees and expenses; fees and expenses of the Class Action Administrator; and the claims of 492 former employees of the Panama Canal Commission who are members of the "Panama Canal Commission Subclass."

Plaintiffs' counsel and Defendant's counsel have concluded discussions with respect to the settlement of this portion of this case which pertains to back payments for unused annual leave to all qualified members of the "Settlement Subclass" covered by the settlement, who filed timely claims with the Class Action Administrator, as embodied in the terms of the Amended Partial Settlement Agreement.

Upon satisfaction of the terms set forth in the Amended Partial Settlement Agreement, paragraph 19, Plaintiffs release, waive, and abandon all claims for interest, COLAs, locality pay, and Sunday premium pay against the United States, its political subdivisions, its officers, agents, and employees, arising out of the complaint or otherwise involved in this case, regardless of whether they were included in the complaint, excluding any of the claims for attorney fees and expenses and expenses of the Class Action Administrator with respect to the entire litigation; and excluding the claims for "back lump-sum pay" of 492 former employees of the Panama Canal Commission ("PCC") who are members of the "Panama Canal Commission Subclass" who filed timely claims with the Class Action Administrator, who separated from the PCC on and between

October 14, 1993 and September 6, 1999, and who did not produce information, such as a PCC Form 2764 or a Social Security Number, which demonstrates or would lead to the discovery of records that would demonstrate that the claimants had unused annual leave upon their separation or potential entitlement to supplemental payments for that unused annual leave. ECF No. 385 at 1-2.

Plaintiffs respectfully submit that posting the Notice of the settlement agreement on the case website is sufficient to meet the parties' obligations to provide such notice in a "reasonable manner" pursuant to Rule 23(e)(1)(B) of the Rules of the United States Court of Federal Claims. Pursuant to the Court's Order, Plaintiffs hereby "provide an explanation to convince the court of the same" for the following reasons:

(1) In *Athey v. United States*, No. 99-20151C, during a status conference, this Court approved providing notice of the settlement agreement by posting it on the case website. *See Athey*, ECF No. 294 at 5, June 28, 2017. *Athey* concerned precisely the same issues with respect to agency liability as *Kandel*, except that *Athey* concerned former employees of the Department of Veterans Affairs (VA). Thus, the *Athey* case is a companion case to *Kandel*. Plaintiffs note that no objection to this method of providing notice of the settlement was received in *Athey* by the Class Action Administrator, or by Class Counsel.

(2) In considering the "factors" to be evaluated in approving a settlement, this Court in *Athey* listed the "adequacy of notice" as one "factor." *Athey*, ECF No. 294, at 7: "(3) The reaction of the class members to the proposed settlement, taking into account the adequacy of notice to the class members of the settlement terms." The Court then specifically concluded that posting the notice on the class action website was sufficient, as well as the information contained in the notice.

See also, Jones, No. 11-681C, ECF No. 105 at 2, October 8, 2019 and ECF No. 111 at 6, December 5, 2019, Judge Griggsby.

The Settlement Agreement and the terms therein have been approved by the Attorney General of the United States on behalf of Defendant.

WHEREFORE, Plaintiffs respectfully move the Court to approve preliminarily the Amended Partial Settlement Agreement; to approve the Notice which shall be posted promptly by the Administrator on the website that it established and maintains for this case; and to conduct a “Fairness Hearing” by telephone in order to consider Final Approval of the Amended Partial Settlement Agreement and its terms.

July 20, 2020

Respectfully submitted,

s/Ira M. Lechner
IRA M. LECHNER
Plaintiffs’ Counsel/Class Counsel
1150 Connecticut Ave., NW, Ste. 1050
Washington, D.C. 20036
(858) 864-2258
iralechner@yahoo.com