

In the United States Court of Federal Claims

No. 06-872C

(E-Filed: October 30, 2020)

)	
GERALD K. KANDEL, <u>et al.</u> ,)	
)	Class Action Settlement; Fairness
Plaintiffs,)	Hearing; RCFC 23(e).
)	
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	
)	

ORDER

Before the court is plaintiffs’ unopposed request for approval of the parties’ proposed amended partial settlement agreement (settlement agreement), ECF No. 370. See ECF No. 388 (motion requesting that the court set a fairness hearing to consider final approval of the settlement agreement, ECF No. 370). For the following reasons, the plaintiffs’ request is **GRANTED**; and, the court **APPROVES** the parties’ amended partial settlement agreement, ECF No. 370.

I. Background

This case is a class action that involves two subclasses—the “Settlement Subclass” and the “PCC Subclass.” See ECF No. 172 (amended order approving class certification); ECF No. 387 (order defining the two subclasses). Plaintiffs summarize the claims in their first amended complaint as follows:

When members of the two plaintiff sub-classes retired, died, or separated with unused annual leave to their credit, they were entitled to payment for accrued and accumulated, unused annual leave under § 5551 of title 5 of the United States Code equal to the “pay” they would have received had they worked their regular and customary scheduled hours until the period of their unused annual leave expired. However, when they received payment of the lump-sum for their unused annual leave, they did not receive the full payments to which they were entitled because the computation of their lump-

sum payment did not include an amount equal to the pay which they regularly and customarily received immediately prior to the date the employee became eligible for a lump-sum payment for unused annual leave.

ECF No. 401 at 2. And plaintiffs explain the distinction between the two classes as follows:

The “opt-in” plaintiff class consists of two subclasses, a “Settlement Subclass” consisting of the former employees of twenty-nine federal agencies plus certain employees of the Panama Canal Commission, and a “PCC Subclass” consisting of 492 former employees of the Panama Canal Commission who do not have a social security number, or do not personally possess their PCC Form 2764, or have not requested [the appropriate agency] to provide it.

Id. at 3.

On December 9, 2019, the parties reached an agreement to resolve the claims brought by the Settlement Subclass.¹ See ECF No. 370. According to the terms of the settlement agreement, defendant agrees to pay a total of \$268,308.46, to be distributed to individual settlement subclass members by the class action administrator. See id. at 8. This sum represents the payments due to settlement subclass members to account:

for the difference between what they had received in lump-sum payments and what they should have received had their lump-sum payments been properly calculated to include the pay increase that became effective during their unused annual leave period, Sunday premium pay (for those who separated on or before October 1, 1997), foreign post allowances, living quarters allowance, and separate maintenance allowances.

Id. at 4. The settlement amount also includes “any required employer’s contributions for Social Security and Medicare,” but does not include “interest, attorney fees, expenses, and costs, and the costs and fees of the class action administrator.” Id. at 5, 6, 7.

In exchange, settlement subclass members have agreed to:

¹ The court notes that although the settlement agreement was filed before the court’s order defining the subclasses was issued, and before the resulting amended complaint filed, the parties confirmed at the status conference held on September 17, 2020, that the claims as outlined in the settlement agreement track with the claims of the settlement subclass as stated in the amended complaint. See ECF No. 398 at 1 (noting that the parties represented that no changes to the settlement agreement would be required as a result of the amended complaint).

release, waive, and abandon all claims for lump-sum payments for unused accumulated and accrued annual leave, Sunday premium pay (for those who had separated on or before October 1, 1997), and foreign post allowances, against the United States, its political subdivisions, its officers, agents, and employees, arising out the complaint or otherwise involved in the is case.

Id. at 7.

Upon receipt of the settlement funds, the class action administrator “will make payments to claimants in the form of a check from the Settlement Trust, mailed to the last known address of each class member.” Id. at 9. The settlement agreement details the timing of these payments, and the protocol for managing undeliverable checks. See id. at 9. The class action administrator will also calculate the amount to be withheld from each settlement subclass member’s payment, and remit all such withheld funds to the proper authority on their behalf. See id. at 10.

On July 20, 2020, plaintiffs filed an unopposed motion in which they requested that the court preliminarily approve the amended partial settlement, to approve the proposed notice of a fairness hearing, and to conduct a fairness hearing to consider final approval of the agreement. See ECF No. 388. The court granted the motion on August 6, 2020, see ECF No. 391, and notice was sent to the settlement subclass members in accordance with the procedures approved by the court, see ECF No. 394 (plaintiffs’ notice of compliance).

The court conducted a fairness hearing on September 30, 2020. See ECF No. 404 (fairness hearing transcript). At the fairness hearing, the plaintiffs asked the court to approve the settlement agreement, and defendant did not oppose the request. Neither the court nor the parties received any objections from members of the Settlement Subclass.

II. Legal Standards

Under Rule 23(e) of the Rules of the United States Court of Federal Claims (RCFC), “[t]he claims, issues, or defenses of a certified class . . . may be settled, voluntarily dismissed, or compromised only with the court’s approval.” “[T]he court may approve [the settlement] only after a hearing and only on finding that it is fair, reasonable, and adequate.” RCFC 23(e)(2). In reaching this judgment, the court considers whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;

- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 - (iv) any agreement required to be identified under RCFC 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Id. The court has discretion to accept or reject a proposed settlement, but it may not alter the proposed settlement; nor may it decide the merits of the case or resolve unsettled legal questions. Adams v. United States, 107 Fed. Cl. 74, 75-76 (2012) (citing Evans v. Jeff D., 475 U.S. 717, 726-27 (1986); Nat'l Treasury Emps. Union v. United States, 54 Fed. Cl. 791, 797 (2002)).

III. Analysis

The proposed settlement agreement is the result of more than a year of arms-length negotiations between the parties. See ECF No. 404 at 18. The settlement agreement awards each settlement subclass member one hundred percent of the amount owed to each individual, as calculated by their employing agency and reviewed by plaintiffs' expert. See id. at 9. And for any settlement subclass member for whom records could not be located, but who the parties believed were entitled to payment, defendant erred on the side of assuming payment had not been made. See id. at 9-10. At the fairness hearing, defendant's counsel described in detail the methodology used for determining those amounts. See id. at 7-11.

It is clear to the court that the parties have worked diligently, and have competently represented their respective clients' interests in this endeavor. In addition, the terms of the agreement—to pay each settlement subclass member the full amount they are owed—are fair and reasonable.

Plaintiffs' counsel then described for the court the process for distributing the funds. Upon receiving the funds from defendant, the class action administrator is

prepared to calculate withholdings for each settlement subclass member, and disburse funds to both the subclass member and the appropriate withholding authority. See id. at 12-13. The class action administrator will also ensure that payments are made to the appropriate heir for any settlement subclass members known to be deceased. See id. at 13. Plaintiffs' counsel reported that he expects the process to take only approximately one month, as the class action administrator already has much of the relevant information. See id. In the court's view, the process described appears both efficient and effective.

Defendant's counsel clarified that, while the settlement agreement does not obligate the government to pay attorneys' fees, an agreement may be reached as to additional amounts at a later time. See id. at 16. No other agreements have been made in connection with the proposed settlement. See id. at 17.

And finally, the court finds that the terms of the settlement "class members equitably relative to each other." RCFC 23(e)(2)(D). It is undoubtedly the case that each class member will receive a different amount to settle their claims. Nevertheless, such a division of the settlement funds is fair and appropriate because the amount due to each settlement subclass member has been individually calculated.

For the foregoing reasons, the court finds that the proposed settlement agreement is fair, reasonable, and adequate, and comports with the requirements of RCFC 23(e). As the court stated at the hearing:

Based on the detailed information that has been provided to the [c]ourt in preparation for this hearing, including the settlement agreement, notices to the settlement subclass members and notice of compliance, indicating that the notice was communicated to the settlement subclass members, along with the presentations made today . . . [t]he [c]ourt is satisfactorily persuaded that the settlement is fair and appropriately accounts for the interests of all parties.

ECF No. 404 at 19-20.

As a final matter, the court notes that the settlement agreement requires the parties to act within fourteen days of the court's final approval thereof. See ECF No. 370 at 8. The date of this order shall be the date from which all such deadlines are calculated.

IV. Conclusion

Accordingly,

- (1) The court **GRANTS** the parties' request, and **APPROVES** the amended partial settlement agreement as proposed by the parties, ECF No. 370;

- (2) The date of this order shall be the date from which all deadlines included in the amended partial settlement agreement are calculated; and
- (3) On or before **November 13, 2020**, the parties are directed to **FILE a joint status report** proposing a plan for proceeding with the remaining claims in this case.

IT IS SO ORDERED.

s/Patricia E. Campbell- Smith
PATRICIA E. CAMPBELL-SMITH
Judge