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UNITED STATES DISTRICT COURT 02 MAR 13 P 1:30

DISTRICT OF OREGON

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

1 MARK KEITH EIDEM, et al.,)
 2)
 3 Plaintiff on behalf of himself)
 4 and all similarly situated)
 5 individuals,)
 6 v.)
 7 Trustees United Association Union Local No. 290)
 8 Plumber, Steamfitter and Shipfitter Industry 401(k),)
 9 Pension Trust and Welfare Trust - Paul Clendenin,)
 10 Jerry Fullman, Ed Gormley, LeRoy Hammer, Dean)
 11 Morey, Nicholas Scovill, William Sikorg, Matt)
 12 Walters, Dave W. Stahly, Lyman Wernock; and)
 13 John Doe;)
 14 Defendants/Third Party Trustee)
 15 Plaintiffs,)
 16 v.)
 17 CAPITAL CONSULTANTS, LLC, et al.,)
 18 Third Party Defendants.)
 19)
 20)
 21)
 22)
 23)
 24)
 25)

NO. CV 00-1446 HA

NOTICE OF PROPOSED CLASS
SETTLEMENT WITH TRUSTEE
DEFENDANTS AND
SETTLEMENT HEARING

DATE: May 21, 2002
TIME: 1:30 pm
PLACE: Courtroom 13A
US District Courthouse
1000 SW Third Ave.
Portland, OR

INTRODUCTION

THIS NOTICE CONCERNS THE PROPOSED SETTLEMENT OF A LAWSUIT THAT WAS BROUGHT AS A CLASS ACTION ON YOUR BEHALF. IF THE SETTLEMENT IS APPROVED, ADDITIONAL FUNDS WILL BE CONTRIBUTED TO UNITED ASSOCIATION LOCAL NO. 290 PLUMBER, STEAMFITTER AND SHIPFITTER INDUSTRY 401(k) PLAN; PENSION PLAN AND HEALTH AND WELFARE PLAN ("Plans" or "Trusts"). THE PURPOSE OF THIS NOTICE IS TO ADVISE YOU OF THE STATUS OF THE LAWSUIT, INCLUDING A STATEMENT OF YOUR RIGHTS WITH RESPECT TO THE PROPOSED SETTLEMENT. ANY OBJECTION TO THE SETTLEMENT MUST BE POSTMARKED BY APRIL 25, 2002, AND MAILED TO THE CLERK OF THE COURT AND COUNSEL, WHOSE ADDRESSES APPEAR ON PAGE 5, HEREOF.

BRIEF STATEMENT OF THE CASE

A lawsuit is pending before this Court in which the Plaintiffs seek to recover damages on behalf of the Plans for alleged fiduciary breaches associated with investing plan assets with Capital Consultants and for the failure to properly monitor such investments. The Plaintiffs, who are

1 participants in the Trust Funds, have filed suit against the Trust Funds' trustees and certain
2 professional advisors to the trustees. The Settlement only involves the plaintiffs' claims against the
3 Trustees. The settlement does not involve other claims the Plaintiffs have against other professionals
4 to the Plans. In a separate lawsuit, the trustees have alleged claims against Capital Consultants, Inc.
5 and other parties. The Settlement does not involve the claims in the trustees' lawsuit.

6 The plaintiffs claim that the Trust Funds' losses were caused in part by the trustees' breaches
7 of fiduciary duty in violation of the Employee Retirement Income Security Act of 1974, as amended
8 ("ERISA"). The plaintiffs allege that the trustees violated their duty of prudence in monitoring
9 Capital Consultants, Inc. and ignored "red flags" that should have warned them that Capital
10 Consultants, Inc. was mishandling the Trust Funds' investments in private loans and equities. The
11 plaintiffs further allege that some of the Trustees accepted gifts and other consideration from Capital
12 Consultants, Inc. which caused the trustees to favor Capital Consultants, Inc. in violation of their
13 duty of loyalty to the Trust Funds' participants and beneficiaries.

14 The Trust Funds have lost in excess of \$45 million as a result of the private loans and equities
15 managed by Capital Consultants, Inc.; however, the Trust Funds will recover a portion of these
16 losses from the Receiver's liquidation of Capital Consultants, Inc., settlements negotiated in the
17 trustees' lawsuit against Capital Consultants, Inc. and related parties, and other sources.

18 The Defendant Trustees deny that they violated their fiduciary duties to the Trust Funds.

19 CLASS CERTIFICATION AND CLASS DEFINITION

20 This Court has ruled that the Plaintiffs' suit is to be maintained on behalf of a class of
21 Plaintiffs consisting of:

22 All persons who were Participants in, beneficiaries or alternate payees of the United
23 Association Local No. 290 Plumber, Steamfitter and Shipfitter Industry 401(k) Plan, Pension Plan
24 and Health and Welfare Plan as of September 1, 2000, other than the Defendant Trustees, or their
25 beneficiaries, executors, successors or assigns.

**The Court also appointed Mark Eidem as a representative of the Class. The fact that
you are a member of the class does not necessarily mean that you will be entitled to receive a
benefit or an allocation of funds to your account if the settlement is approved.**

20 TERMS OF THE PROPOSED SETTLEMENT

21 This Agreement embodies a compromise settlement of disputed claims, and nothing in this
22 Agreement, including the furnishing of consideration for this Agreement, constitutes any finding of
23 wrongdoing by the defendants, or creates any inference of wrongdoing or admission of wrongdoing
24 or any liability in this or any other proceeding.

25 The parties reached their proposed settlement with the assistance of Judge Edward Leavy of
the U.S. Court of Appeals for the Ninth Circuit, who conducted settlement negotiations at the request
of the trial judge, the Honorable Ancer Haggerty. The following is only a general summary of the
proposed settlement for its complete terms, interested persons are referred to the Class Action
Settlement Agreement on file with the Clerk of the Court.

1 In summary, the Plaintiffs' efforts created a common fund to be distributed among the Plans
2 (the "Settlement Fund"). The settlement provides that the insurer for the defendant trustees will pay
3 \$3,738,864.80 to settle plaintiffs' claims against them, plus interest on the fund. As a part of the
4 settlement, the Class will release all claims against the defendant Trustees and the Board of Trustees
5 arising out of the Trust Funds' investments in private notes and equities managed by Capital
6 Consultants. The Class also acknowledges that it is in privity with the Trustee Defendants with
7 regard to related actions against third parties with respect to these investments, and may not relitigate
8 claims on behalf of the Plans against these third parties. The payments by the insurer for the
9 Defendant Trustees is conditioned upon the entry of a Bar Order by the Court which would provide
10 protection against the filing of any future claims regarding these matters. The settlement fund will be
11 reduced by attorney fees and expense reimbursements awarded to Class Counsel and by the expenses
12 associated with administering the settlement. The Settlement Fund will be allocated between the
13 Trust Funds as follows:

		<u>Percentage</u>
8	(i) 401(k)	15.51%
9	(ii) Pension	42.84%
10	(iii) Health & Welfare Fund	<u>41.65%</u>
		100%

11 The settlement payments allocated to the Local 290 Pension Plan and the Health and Welfare
12 Plan shall be used by these plans to pay benefits to the plans' participants and beneficiaries. The
13 settlement payment to the 401(k) Plan shall be allocated in proportion that a participant's investment
14 in the non-publicly traded assets of Capital Consultants investment program bears to the 401(k)
15 plan's total investment in the non-publicly traded assets of Capital Consultants investment program,
16 excluding investments allocated to defendants.

17 As their fee for services rendered on behalf of the Class Members, Class Counsel will ask to
18 be awarded a portion of the settlement. Class Counsel's fee agreement with Class Members
19 indicates that they are entitled to thirty-three and one-third percent (33.33%) of the settlement fund.
20 However, Class Counsel has agreed to reduce this fee to an amount not in excess of fifteen (15%)
21 percent of the settlement fund. Class Counsel will seek attorney's fees of no more than \$550,000.
22 Class Counsel will also request reimbursement for reasonable expenses they have advanced on
23 behalf of the Class in amount of approximately \$5,000. Class Counsel will also ask an award of
24 \$15,000.00 to go to Mark Eidem as class representative for services rendered in connection with this
25 lawsuit. The amount of an award of attorney's fees and class representative compensation and costs
must be approved by the Court and will reduce the Settlement Fund.

Under the terms of the settlement, the expenses of administering the settlement, such as
providing this notice, will also be deducted from the settlement.

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EFFECT OF SETTLEMENT

6 If the proposed settlement is approved, the claims brought against the Defendant Trustees on behalf of the class will be released in exchange for the payments previously described. It is the Defendant Trustees' position that no amounts are payable to Class Members or to the Plans, and if Plaintiffs' claims were litigated before this Court, class members would receive no award of damages. On the other hand, if Plaintiffs were to prevail in the litigation, some plans or class members might receive more than is called for under the settlement agreement, although that is not certain.

7 If approved, the settlement will resolve completely any claims, or potential claims by any class member against the Defendant Trustees based upon the facts, transactions, occurrences or failures to act upon which this action was brought. Those facts, transactions, occurrences and failures are summarized in this Notice, under the heading Brief Statement of the Case. The effect of settlement, if approved by the Court, will therefore be to release and extinguish all such claims for the payments except as provided by the settlement agreement and the Plans.

8 The settlement will not affect the rights of any class member to receive a benefit under the terms of the Plan. The settlement will also not affect the rights of Class Members to sue professional advisors and fiduciaries to the funds other than the current or former Trustees.

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SETTLEMENT HEARING

12 The Court has made a preliminary determination that the proposed settlement appears to be reasonable. The Court will hold a hearing in the United States District Courthouse, 1000 S.W. 3rd, Portland, Oregon, at 1:30 p.m. on May 21, 2002, unless adjourned by the Court (without further notice), to determine whether, as recommended by both Plaintiffs' class counsel and the class representatives, the Court should approve the proposed settlement.

13 Objections to the proposed settlement by class members will be considered by the Court at that time, but only if such objections are filed in writing with the Clerk of the Court and served as set forth below, in person or by mail, postmarked on or before April 25, 2002. Attendance at the hearing is not necessary. However, class members wishing to be heard orally in opposition to the proposed settlement should indicate in their written objection their intention to appear at the hearing. Because the time and date of this hearing may be continued or adjourned please contact Class Counsel, whose address is listed below, at least four (4) days prior to the hearing if you wish to attend.

14 Class members who support the proposed settlement need not appear at the hearing or take any other action to indicate their approval.

15 **All Class Members will be bound by the Court's ruling regardless of whether you appeared or filed an objection. There is no right to opt-out of this settlement.**

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ADDITIONAL INFORMATION

Any questions you have about the matters in this Notice should not be directed to the Court, but may be directed by telephone or letter to Class Counsel:


Richard J. Birmingham,
Birmingham, Thorson & Barnett, P.C.,
601 Union Street, Ste. 3315,
Seattle, WA 98101
Telephone: (206) 467-1240

You may, of course, seek the advice and guidance of your own lawyer if you desire. The pleadings and other records in this litigation, including a complete copy of the proposed Stipulation of Settlement, may be examined and copied at any time during regular office hours at the Office of the Clerk, United States District Court, 1000 S.W. 3rd, Portland, Oregon 97204.

IMPORTANT REMINDERS AS TO TIME LIMITS

If you wish to object to the proposed settlement, you must file your written objection with the Clerk of the Court, Attention: *Eidem v. Local No. 290 Trustees*, No. CV 00-1446 HA, Federal District Court of Oregon: 1000 S.W. 3rd, Portland, Oregon 97204 and serve it on Richard J. Birmingham, Birmingham Thorson & Barnett, P.C. Suite 3315, 601 Union Street, Seattle, Washington 98101 and Chrys Martin, Bullivant, Houser & Bailey, P.C., 300 Pioneer Tower, 888 S.W. Fifth Avenue, Portland, Oregon 97204-2089, and it must be postmarked on or before April 25, 2002.

Dated to be effective as of this March 13, 2002.

By: 
Honorable Ancer L. Haggerty
U.S. District Judge