

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Richard J. Birmingham
Birmingham Thorson & Barnett, P.C.
601 Union Street, Ste. 3315
Seattle, WA 98101
(206) 467-1243
OSBA #81032

Honorable Ancer L. Haggerty

FILED 02 MAR 29 15:23 JSDC:ORF

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ANDREW McPHERSON,)
)
Plaintiff on behalf of himself)
and all similarly situated)
individuals,)

v.)

Trustees of Eighth District Electrical Profit Sharing;)
Pension; and Health and Welfare Plans: William J.)
Birkett, Jr.; Klaas deBoer, Jr.; John Malone; Duane I.)
Tidwell; Robert Bodell; Ralph Lufen; Phil Oaks;)
Frank Kulow; Clifford C. Howard; Susan King;)
Benjamin Antunes; Robert Legino; William H.)
Simmons; Leslie Miller; Kent Pellegrino; Rick)
Oakland; Don Herzog; Joe Wolfe, Jr.; Marshall L.)
Johnson; Robert Mayhew; Matthew Frazer; James)
Peterson; Craig E. Whitney; Robert D. Grinstead, Jr.;)
Blaine Newman; Manuel Pino; Alan Solum; Richard)
Zier; James Riney; Trustees of the Electrical Industry)
Benefit Vacation and Paid Holiday Fund; Dwane)
Tidwell, Gene Franck, Mike Hastings, Ralph Lufen;)
Chris Syrces; Dan Friesen; Segal Advisors, Inc., as)
investment advisor/fiduciary; and Tim Rutledge, as)
investment advisor/fiduciary,)

Defendants,)

NO. CV-00-1445 HA

NOTICE OF PROPOSED CLASS
SETTLEMENT WITH TRUSTEE
DEFENDANTS AND A SERVICE
PROVIDER AND SETTLEMENT
HEARING

DATE: May 21, 2002
TIME: 1:30 p.m.
PLACE: United States District
Court, Portland, OR

1
2
3
4
5
6
7

INTRODUCTION

8
9
10
11
12

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 EIGHTH DISTRICT ELECTRICAL PENSION PLAN; EIGHTH DISTRICT ELECTRICAL HEALTH AND WELFARE FUND AND THE IBEW ELECTRICAL INDUSTRY BENEFIT VACATION PAID HOLIDAY FUND. 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 MAY 13, 2002, AND MAILED TO THE CLERK OF THE COURT AND COUNSEL, WHOSE ADDRESSES APPEAR ON PAGE 5, HEREOF.

13
14
15
16
17
18
19
20
21

BRIEF STATEMENT OF THE CASE

22
23
24
25

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 participants in the Trust Funds, have filed suit against the Trust Funds' trustees and certain professional advisors to the trustees. The Settlement only involves the plaintiffs' claims against the Trustees. The settlement does not involve the Plaintiff's claim against Segal Advisors, Inc. and Tim Rutledge. Nor does the settlement involve other claims the Plaintiffs have against other professionals to the Plans. In a separate lawsuit, the trustees have alleged claims against Capital Consultants, Inc. and other parties. The Settlement does not involve the claims in the trustees' lawsuit.

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

The Trust Funds have lost in excess of \$50 million as a result of the private loans and equities managed by Capital Consultants, Inc.; however, the Trust Funds will recover a portion of these losses from the Receiver's liquidation of Capital Consultants, Inc., settlements negotiated in the trustees' lawsuit against Capital Consultants, Inc. and related parties, and other sources.

The defendant trustees deny that they violated their fiduciary duties to the Trust Funds.

CLASS CERTIFICATION AND CLASS DEFINITION

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

All persons who were or should be deemed Participants in, beneficiaries or alternate payees of the Eighth District Electrical Pension Fund; Eighth District Electrical Health and Welfare Fund; IBEW Electrical Industry Benefit Vacation and Paid Holiday Fund as of September 1, 2000, other than the Defendant Trustees, or their beneficiaries, executors, successors or assigns.

The Court also appointed Andrew McPherson 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.

TERMS OF THE PROPOSED SETTLEMENT

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

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 Ancor 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.

In summary, the Plaintiffs' efforts created a common fund to be distributed among the Plans (the "Settlement Fund"). The settlement provides that the insurer for the defendant trustees will pay \$5,250,411 million to settle plaintiffs' claims against them, plus interest until the date of final Court approval. As a part of these settlements, the Class will release all claims and potential claims against the Defendant Trustees, and the Board of Trustees arising out of the Trust Fund's investments in private notes and equities managed by Capital Consultants. The Class also acknowledges that it is in privity with the Defendant Trustees with regarding to related actions against third parties with respect to these investments, and may not relitigate claims on behalf of the Plans against these third parties. The payments by the insurer for the defendant trustees is conditioned upon the entry of a Bar Order by the Court which would provide protection against the filing of any future claims regarding these matters. The settlement fund will be reduced by attorney fees and expense reimbursements awarded to Class Counsel and by the expenses associated with administering the settlement. The settlement payment is allocated between the Trust Fund as follows:

(i)	Eighth District Pension Fund	\$4,585,729
(ii)	Eighth District Health & Welfare Fund	\$ 426,034
(iii)	IBEW Electrical Industry Vacation/ Paid Holiday Fund	\$ 238,648
		<hr/>
		\$5,250,411

The settlement payments allocated to the Eighth District Electrical Pension Plan, the Eighth District Electrical Health and Welfare Plan and the IBEW Electrical Industry Benefit Vacation and Paid Holiday Fund shall be used by these plans to pay benefits to the plans' participants and beneficiaries.

As their fee for services rendered on behalf of the Class Members, Class Counsel will ask to

1 be awarded a portion of the settlement. Class Counsel's fee agreement with Class Members indicates
 2 that they are entitled to thirty-three and one-third percent (33.33%) of the settlement fund. However,
 3 Class Counsel has agreed to reduce this fee to an amount not in excess of sixteen percent (16%)
 4 percent of the settlement fund. Class Counsel will seek attorney's fees of no more than \$840,000.
 5 Class Counsel will also request reimbursement for reasonable expenses they have advanced on behalf
 6 of the Class in amount of approximately \$7,000.00. Class Counsel will also ask an award of
 7 \$15,000.00 to go to Andrew McPherson as class representative for services rendered in connection
 8 with this lawsuit. The amount of an award of attorney's fees and class representative compensation
 9 and costs must be approved by the Court.

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

12 EFFECT OF SETTLEMENT

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

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

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.

18 SETTLEMENT HEARING

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

24 Objections to the proposed settlement by Class Members will be considered by the Court at
 25 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 May 13, 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

address is listed below, at least four (4) days prior to the hearing if you wish to attend.

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

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.

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: McPherson v. Eighth District Electrical Trustees, No. CV-00-1445 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 May 13, 2002.

Dated to be effective as of this ^{MAXEN} ~~May~~ 29, 2002.

Judge, U.S. District Court

By: *Garrick King*