

PROPOSED SETTLEMENT OF FLSA LAWSUIT AGAINST THE CITY OF NEW YORK AND NYPD

There is a provisional settlement of the FLSA lawsuit against the New York City Police Department and the City of New York. In question and answer format, here are the basics of the provisional settlement.

WHAT WAS THE LAWSUIT ABOUT?

There were five claims in the lawsuit:

- (1) The Plaintiffs claimed that the Defendants had improperly calculated the overtime rate of pay by not properly including premium pay in the overtime calculations. This claim was referred to as Plaintiffs' "regular rate claim."
- (2) The Plaintiffs claimed that the Defendants had failed to compensate officers at the overtime rate for 28-day work periods where the officers' charts exceeded 171 hours. This claim was referred to as Plaintiffs' "chart claim."
- (3) The Plaintiffs claimed that the Defendants' enforce a "15-minute rule" that resulted in the Defendants failing to pay employees for compensable work. This claim was referred to as Plaintiffs' "15 minute claim."
- (4) The Plaintiffs claimed that the Defendants wrongly denied requests to use compensatory time off. This claim was referred to as Plaintiffs' "denial of use claim."
- (5) Finally, the Plaintiffs claimed that the Defendants unlawfully placed a "cap" on the amount of cash overtime that could be earned in a month. This claim was referred to as Plaintiffs' "cap claim."

WHAT HAPPENED AT TRIAL?

A 15-day jury trial was held in November and December, 2008. The jury found in the Plaintiffs' favor on their "regular rate" and "chart" claims. Judge Scheindlin later determined that damages on these claims were \$450,000, and awarded Plaintiffs an additional \$450,000 in "liquidated damages" because the jury found that the Defendants had failed to prove that these violations were reasonable and in good faith. The jury found in favor of the Defendants and against Plaintiffs on Plaintiffs' "15 minute" and "denial of use" claims.

Judge Scheindlin ruled that Plaintiffs' "cap claim" could go to the jury only as to the five named plaintiffs, and "decertified" that claim from collective action treatment. That ruling preserved the "cap claims" of the remaining plaintiffs who subsequently joined the lawsuit in the event they decide to bring separate lawsuits. On the "cap claims" of the five named plaintiffs, the jury decided that the Defendants violated the FLSA by setting a

cap on the amount of cash overtime that could be earned. None of the five named plaintiffs ended up recovering any money on the “cap claim,” however, because the jury found they had not proved that they were damaged by an impermissible cap.

When an employee prevails in an FLSA lawsuit, the employer is required to pay the employee’s reasonable attorneys fees, and must reimburse the plaintiffs for their approved litigation costs. Judge Scheindlin ordered the Defendants to pay the following attorney fees: To Thomas Puccio, \$515,179.28; To Robbins, Russell, Englert, Orseck, Untereiner & Sauber, \$1,619,672.10; To Aitchison & Vick, \$1,515,775.30. The Court also ordered the City to reimburse litigation costs totaling \$677,567.51.

WHAT IS THE CURRENT STATUS OF THE LITIGATION

Both the Plaintiffs and the Defendants filed protective notices of appeal of the judgment to the United States Court of Appeals for the Second Circuit. While the appeal was pending, the parties reached a tentative settlement of all issues except one. The Second Circuit then authorized Judge Scheindlin to hold a fairness hearing on the settlement. The only issue remaining before the Second Circuit relates to the award of attorney fees to Thomas Puccio.

WHAT IS THE PROPOSED SETTLEMENT

The Proposed Settlement would result in both sides accepting the judgment entered by Judge Scheindlin based upon the jury’s verdict. That means that the Plaintiffs would receive \$900,000, and the benefit or certain rulings made by the Court in the Plaintiffs’ favor.

WHAT ARE THE RECOMMENDATIONS OF THE NAMED PLAINTIFFS AND THE RECOMMENDATIONS OF PLAINTIFFS’ LAWYERS

Four of the five named plaintiffs support the Proposed Settlement; the fifth named plaintiff is undecided. The trial was conducted using the testimony of “Representative Plaintiffs.” Of the 17 testifying Representative Plaintiffs, 14 reported to Plaintiffs’ counsel that they support resolving the lawsuit on the terms of the settlement, and only one favored an appeal. (Two were undecided.)

The three law firms representing Plaintiffs all support the Proposed Settlement. The lawyers, who have been working on this case for many years, see potential risk in the City’s appeal of the judgment, and believe that the Proposed Settlement will avoid that risk, while preserving the beneficial aspects of the judgment.

WILL PLAINTIFFS HAVE AN OPPORTUNITY TO EXPRESS THEIR VIEWS ABOUT THE PROPOSED SETTLEMENT?

The Settlement Fairness Hearing will take place at 2:30 PM on December 18, 2009, in the courtroom of United States District Court Judge Shira Scheindlin, Courtroom 15-C, Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007-1312. The purpose of the hearing is for the Court to determine whether to approve the Proposed Settlement. Any Plaintiff who would like to state any comment regarding the Proposed Settlement, or would like to appear in Court for the Fairness Hearing, must notify Plaintiffs' counsel promptly. Any written comments (including objections or statements in support), and notice that the Plaintiff intends to appear at the Fairness Hearing, must be received by Plaintiffs' counsel on or before December 11, 2009. These statements should be mailed to:

Will Aitchison
Aitchison & Vick
3021 NE Broadway
Portland, OR 97210

WHO DO PLAINTIFFS CONTACT WITH QUESTIONS?

If any Plaintiffs have a question regarding these issues, the Plaintiff is encouraged to contact Class Counsel for Plaintiffs:

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(503) 282-6160

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Plaintiffs should NOT contact the Court with any questions or inquiries, but should instead provide them to Plaintiffs' Counsel as instructed above.