

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON FIELD OFFICE**

LAWRENCE D. DURNFORD

and

MARK GLICKMAN

CLASS AGENTS,

v.

**JOHN D. ASHCROFT,
ATTORNEY GENERAL,
U.S. DEPARTMENT OF JUSTICE,**

AGENCY.

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) **EEOC Case No. 100-2000-07059X***
) **Agency Case No. B-96-2206**

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)
) **September 15, 2004**

* formerly EEOC Case No. 100-A0-7059X

NOTICE OF RESOLUTION OF CLASS ACTION

TO: White male applicants for employment not selected as Immigration Judges during 1994 and 1995.

FROM: David Weiser and Jeremy Wright of Kator, Parks, & Weiser, P.L.L.C., 812 San Antonio St., Suite 100, Austin, Texas 78701.

Michael J. Kator of Kator, Parks, & Weiser, P.L.L.C., 1020 19th Street, N.W., Suite 350, Washington, D.C. 20036.

Mike Milligan, 303 Texas Avenue, Suite 808, El Paso, Texas 79901

Bruce I. Waxman, Chief Counsel, Employee/Labor Relations, Office of the General Counsel, Executive Office for Immigration Review, U.S. Department of Justice.

PLEASE READ THIS NOTICE CAREFULLY. *This notice is sent to you because your rights may be affected by a proposed settlement agreement.*

OVERVIEW

Purpose of this Notice

This notice is given pursuant to 29 C.F.R. 1614.204(g). You are being sent this notice because you may be a Class Member. The purpose of the notice is to advise you of a proposed settlement agreement (the Settlement Agreement) between the Class Agents and the United States Department of Justice, EOIR (the Agency), in the above-captioned class action before the Equal Employment Opportunity Commission (EEOC). This Settlement Agreement will affect the rights of all Class Members. This Notice describes the rights you may have under the Settlement Agreement and how you may assert those rights.

Recovery under the Proposed Settlement Agreement

The Settlement Agreement, which is attached, provides that the Agency will pay a total of eleven million five hundred thousand dollars (\$11.5 million), which will be deposited into a Settlement Fund. This \$11.5 million is the entire payment by the Agency to settle this case. This payment covers all damages, interest, and taxes, as well as costs, fees, and expenses incurred by the Class Counsel for the totality of the litigation. A Claims Administrator designated by Class Counsel will be solely responsible for the distribution of the funds according to formulas which are attached as an exhibit to the Settlement Agreement. There will be no non-monetary relief.

Reasons for the Settlement

Continuing with the litigation would incur additional delay, risk and increasing expenditure. The parties are vigorously at odds over liability and damages. The Settlement provides benefit and certainty to the Class now instead of prolonging the disagreement.

Class Member Information Session

Class Counsel will host an information session for Class Members regarding the settlement on October 5, 2004 at 10:00 a.m. at the following location: Grand Hyatt Washington, 1000 H Street, N.W., Washington, D.C. ("Metro Center"). Class Counsel will discuss in detail the terms of the Settlement Agreement and the distribution formula. Class Counsel will be available to respond to any questions or concerns of Class Members regarding the settlement. Class Counsel strongly encourages Class Members to participate in the information session.

Further Information

Further information about the Settlement Agreement and this Notice is available from Class Counsel Kator, Parks, & Weiser, P.L.L.C., 812 San Antonio St., Suite 100, Austin, Texas 78701, Telephone (512) 322-0600, Facsimile (512) 477-2828, Email IJClass@katorparks.com. Neither the Agency nor the EEOC can provide additional details.

BACKGROUND OF LITIGATION

Class Agent Lawrence D. Durnford, on behalf of himself and others similarly situated, filed an EEO complaint against the Agency on March 1, 1996, alleging discrimination on the basis of race (White) and sex (male). Mr. Durnford alleged discrimination in his non-selection for the position of Immigration Judge during 1994 and 1995. After several years of litigation on procedural and class certification issues, on April 25, 2002, the EEOC Administrative Judge (AJ) defined the Class as “White male applicants for employment not selected as Immigration Judges during 1994 and 1995.”

In September 2002, the EEOC AJ bifurcated the issue of liability from that of damages. That month, the parties entered into extensive liability-related discovery and preparation, which included deposing 35 witnesses, including expert witnesses, the disclosure of extensive amounts of documents and the exchange of expert reports. During the pendency of discovery, Mark Glickman was added as a Class Agent. The hearing on liability, initially scheduled for June 2003, was stayed pending mediation by a private mediator. Mediation took place in Washington, D.C. and Austin, Texas.

Throughout litigation, the Agency denied any wrongdoing or liability. The Class and the Agency disagreed as to liability and damages, including the amount recoverable if the Class prevailed and the calculation of monetary damages. In January 2004, after nearly nine years of litigation and five months of mediation, the Agency and the Class Agents reached an agreement in principle. The agreement in principle was the basis for the negotiations that led to the Settlement Agreement.

SUMMARY OF SETTLEMENT AGREEMENT

This Notice provides only a summary of the terms of the Settlement Agreement. While every effort has been made to ensure the accuracy of this summary, the specific terms of the Settlement Agreement shall govern. The Settlement Agreement is attached to this Notice. It will also be posted on the website of the Class Counsel at <http://www.katorparks.com/durnford.htm> and the Agency website at <http://www.usdoj.gov/eoir>.

The Agency will deposit \$11.5 million into a Settlement Fund, which Class Counsel will establish as a qualified Settlement Fund under Part 468B of the Internal Revenue Code. A Claims Administrator, to be designated by Class Counsel, will administer the funds according to provisions of a distribution formula set forth in Exhibit 7 to the Settlement Agreement. The formula allocates the recovery in proportion to the injury suffered by each Class Member. The amount to be distributed to each Class Member is not known at this time because it will depend on the number of Class Members who claim relief and the formula calculations particular to each Class Member. In addition, a portion of the Settlement Fund will be allocated to the Class Agents and other Class Members according to contributions made during the class action litigation. There will be no injunctive relief.

The Claims Administrator will have the sole authority to determine who is eligible to receive monetary relief. Anyone determined by the Claims Administrator to be a Class Member will be eligible to receive monetary relief. Pursuant to the Settlement Agreement and applicable regulations, no Class Member may opt out of the Settlement Agreement. However, any Class Member may elect not to receive the monetary relief afforded under this Settlement Agreement. Any monetary relief that is unclaimed or rejected will be reallocated to the participating Class Members pursuant to the distribution formula, if feasible.

Final Approval of the terms of the Settlement Agreement shall bind all Class Members, including those not seeking recovery from the Settlement Fund. The Settlement Agreement extinguishes all claims, of all Class Members and the Class Agents, in the past, present, or the future against the Agency pertaining to the selection of applicants for the position of Immigration Judge during 1994 and 1995. Each Class Member wishing to receive monetary relief of any kind must first complete the Claim Form and Release, which is Exhibit 1 to the Settlement Agreement.

Class Counsel are solely responsible for all aspects of the distribution of the monetary relief, including determining the distribution methodology set forth in Exhibit 7 to the Settlement Agreement and (by and through the appointed Claims Administrator) the determination of relief to be accorded each individual.

Except as specifically stated otherwise in the Claim Form and Release, all information provided to Class Counsel for administration and distribution of the Settlement Fund shall be treated as confidential. The confidentiality provisions in the Protective Order issued by the EEOC AJ in the administrative case will continue to govern materials used in the mediation, negotiation, and administration of the Settlement Agreement.

Under the Settlement Agreement, class counsel has designated the sum of three million nine hundred sixty-six thousand six hundred sixty-six dollars (\$3,966,666) to be allocated to a Litigation Fund for attorneys' fees, costs and expenses out of the Agency's total payment of \$11.5 million. In addition to attorney fees, this sum covers such items as the cost of the services of expert witnesses, deposition transcripts, travel, and mediation.

The Settlement Agreement is subject to Final Approval by the EEOC AJ. The Settlement Agreement becomes effective upon the date that the EEOC AJ issues a decision approving the Settlement and all appeals have been finally determined or the time for filing appeals has expired. Once effective, the terms of the Settlement Agreement are binding on all Class Members, even those who do not seek recovery from the Settlement Fund.

Class Counsel will be responsible for notifying Class Members of the EEOC AJ's Final Approval of the Settlement Agreement and providing Class Members with the Claim Form, Exhibit 1 to the Settlement Agreement, necessary to seek monetary relief from the Settlement Fund. This Claim Form, and the Release therein, must be executed and timely submitted in order to receive monetary relief.

No funds shall be distributed until any administrative appeals of the EEOC AJ's Final Approval to the EEOC have been fully and finally resolved or the time for such appeal has passed, and/or the Agency has affirmed the Settlement Agreement, and/or the Agency's opportunity to abrogate the Settlement Agreement has expired, pursuant to part VII of the Settlement Agreement.

Although the Claims Administrator will withhold monies for payments of FICA, income and employment taxes (if any), each individual receiving an award from the Settlement Fund shall be ultimately responsible for satisfying all personal tax obligations.

RIGHTS OF CLASS MEMBERS

Seek Monetary Relief or Do Nothing

You may seek monetary relief provided you qualify for allocation under the distribution formula and timely submit the Claim Form and Release. You must submit a signed Claim Form and Release to obtain monetary relief under the Agreement. Despite your eligibility, you may elect to not seek monetary relief.

Object to the Settlement Agreement

If you object to any terms within the Settlement Agreement because you believe they benefit only the Class Agents or are otherwise not fair, adequate and reasonable to the Class as a whole, you must file a written petition to vacate the Settlement Agreement, postmarked no later than 30 days from the date of this notice of resolution. The petition should be sent to Administrative Judge Richard E. Schneider, Equal Employment Opportunity Commission, Washington Field Office, 1801 L St., N.W., Suite 100, Washington, D.C. 20507-1002.

You must also send a copy of any objection to Class Counsel: David Weiser, Kator, Parks, & Weiser, P.L.L.C., 812 San Antonio St., Suite 100, Austin, Texas 78701; **and** to Agency Counsel: Bruce I. Waxman, Chief Counsel, Employee/Labor Relations, U.S. Department of Justice, Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

If you do not submit your objection in a timely manner, you waive your opportunity to present such objection or otherwise appeal. Your objection must show proof that you are a Class Member, state the basis for any objection, and provide documentation to support the objection.

FAIRNESS HEARING

Pursuant to 29 C.F.R. § 1614.204(g)(4), the Administrative Judge will hold a hearing to determine the fairness, adequacy, and/or reasonableness of the Settlement Agreement on November 5, 2004 at the Embassy Suites Hotels, 1900 Diagonal Road, Alexandria, VA, 22314 at 10:00 a.m.

If the EEOC AJ grants final approval to this Settlement Agreement despite objections or a petition to vacate, you will only be permitted to appeal the determination of Final Approval if you filed an objection or a petition to vacate with the EEOC AJ. The EEOC AJ will determine the rights of the Class Members with respect to the matters covered by the Settlement Agreement, and all Class Members are bound by the judgment.