

12-16-1988

Consent Order: Distribution of Funds

Lewis Steel '63

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LISA M. AVAGLIANO, et al., :
 :
 Plaintiffs, :
 :
 -against- : 77 Civ. 5641 (CHT)
 :
 SUMITOMO SHOJI AMERICA, INC., :
 :
 Defendant. :
 -----X CONSENT ORDER
 PALMA INCHERCHERA, :
 :
 Plaintiff, :
 :
 -against- : 82 Civ. 4930 (CHT)
 :
 SUMITOMO CORP. OF AMERICA, :
 :
 Defendant. :
 -----X

MAGISTRATE MICHAEL H. DOLINGER

WHEREAS, the parties in the above-captioned matter have applied to this Court for an order concerning the distribution of monies in the Retrospective Wage Adjustment Fund ("Fund 1"), pursuant to Section VII of the Consent Decree in the above case, as follows:

1. That an interim award of \$1,500.00 be made to each class member eligible to receive monies from Fund 1; and
2. That the Social Security Administration of the United States government be retained to locate former employee class members, the cost of these services to be borne equally by Fund 1 and by defendant.

The Court finds as follows:

Background

This Court approved the Consent Decree entered into by the parties on January 15, 1987 (hereinafter "the Decree"), on March 30, 1987. The Decree provided that upon the effective date, \$580,000.00 would be placed in an interest accruing fund under the control of a Trustee appointed by the Court. This sum was designated to provide retrospective wage adjustments to former employee class members who, by January 1, 1987, had completed two years of service with defendant (Decree at 16). The Decree further provided that each former employee class member meeting the two-year service requirement was eligible to receive a retrospective wage adjustment payment pursuant to the formula set forth in Exhibit 2 of the Decree, and that no eligible former employee class member would receive a retrospective wage adjustment less than \$1,500.00 regardless of length of service (Decree at 16).

In accordance with the above provisions, and with the agreement of the parties, the Court appointed the Bank of Tokyo Trust Co. as Trustee. Sumitomo Corporation of America ("SCOA")

thereafter prepared an initial calculation of eligibility and provided copies to class counsel and to the Trustee.

A. Efforts to Notify Employees of Eligibility

In March 1988, in accordance with the provisions of the Decree, the Trustee sent certified letters to all former employee class members containing the initial calculations of eligibility pertaining to them. Of 1,116 certified letters sent to former employee class members by the Trustee during the period March 1988 to date, the Trustee has received notice from the United States Postal Service that 455 were claimed. According to the Trustee's calculations, 123 of the 303 former employee class members eligible to receive monies from Fund 1 have not been located. Because of the high percentage of former employee class members who have not been located, the Trustee has been unable to verify its initial eligibility calculations and allocate the monies reserved for eligible former employee class members as retrospective wage adjustments.

B. Social Security Administration Search

The parties have therefore agreed to retain the Social Security Administration ("SSA") to search its records of employee addresses in order to assist in locating former employee class

members. The parties have been advised that the cost of this search will be approximately \$3,000.00. The parties have agreed that such costs shall be shared equally by SCOA and Fund 1. The Court finds that, in view of the large number of unlocated former employee class members, ~~that~~ this allocation of costs of the search is appropriate and that this expenditure of Fund 1 monies is reasonable and consistent with the purpose of the Decree. The Court further finds that the cost of this search to be borne by the fund, approximately \$1,500 (less than \$5.00 per eligible class member), is minimal. The Court therefore concludes that there is no requirement under Rule 23 of the Federal Rules of Civil Procedure nor the principles of due process that class members be given notice and an opportunity to be heard concerning this expenditure of Fund 1 monies.

C. Interim Payment of \$1,500

The parties have agreed that, pending the results of the SSA search, an interim payment of \$1,500.00 (the amount mandated by the Decree as the minimum retrospective wage adjustment payment) should be awarded from Fund 1 to each former employee class member who has been located and whose eligibility has been verified. The parties have further agreed that the interim payment shall not in any way increase the obligations of SCOA to the class or the Trust Fund. The Court finds that this interim

payment is reasonable under the circumstances and consistent with the purposes of the Decree. The Court further finds that distribution of this interim award benefits those eligible former employee class members who have been located and has no adverse effect on any class member. The Court therefore concludes that there is no requirement under Rule 23 of the Federal Rules of Civil Procedure ~~for~~ the principles of due process that class members be given notice and an opportunity to be heard concerning this interim expenditure of Fund 1 monies.


WHEREAS, the parties have joined in this application, and having reviewed the submission of class counsel, it is hereby ordered:

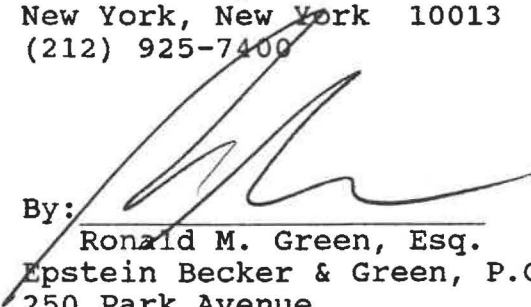
1. Within 30 days of the date of this order, the Trustee shall distribute from Fund 1 an interim award of \$1,500.00 to each eligible former employee class member.

2. The Trustee is ordered to continue to attempt diligently to locate class members who may be eligible for retrospective wage adjustment payments. In furtherance of this purpose, the parties have agreed to retain the services of the SSA in order to locate former employee class members. The cost of these services will be borne equally by defendant and by Fund 1. When the SSA has concluded its efforts to locate former employee

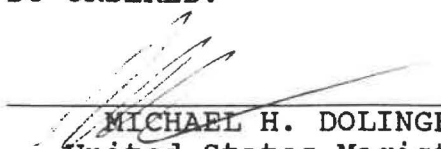
class members, or by September 15, 1989, whichever is sooner, the Trustee shall issue revised eligibility calculations based on employees located up to that date. The Trustee will provide these calculations to the parties, and after resolving any disputes concerning such calculations as may be brought to the Trustee's attention, the Trustee shall submit for the Court's approval the final calculation. Upon obtaining Court approval the Trustee shall make the proper payments to all eligible former employee class members in accordance with the approved final calculation. The Trustee shall use standard business and accounting practices to determine when monies shall be transferred from the interest-accruing fund.

DATED: New York, New York
December 16, 1988

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SO ORDERED:



MICHAEL H. DOLINGER
United States Magistrate

Dated: 12-20-88