

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Chris J. Conanan, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 00-CV-3091 (ESH)
	)	
Donna Tanoue, Chairperson,	)	
Federal Deposit Insurance	)	
Corporation,	)	
	)	
Defendant.	)	

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**NOTICE OF PENDENCY OF CLASS ACTION AND  
PROPOSED CONSENT DECREE**

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## I. INTRODUCTION

### **What Is the Settlement About?**

If you are African-American and worked at the Federal Deposit Insurance Corporation (“FDIC”) at any time from May 13, 1992 to March 31, 2001, you may be a member of a Class which filed a Class Action against the FDIC for race discrimination in the delay and denial of promotions and selections for positions. The Class Representatives and their Counsel have been involved in mediation and intense negotiations for months, and after years of litigation have reached a settlement in this case. **PLEASE READ THE FOLLOWING NOTICE AND ATTACHMENTS VERY CAREFULLY. YOU MAY BE ELIGIBLE TO RECEIVE MONEY FROM THE SETTLEMENT OF THIS CASE AND YOUR RIGHTS MAY BE AFFECTED BY THIS LAWSUIT.**<sup>1</sup>

## II. HISTORY OF THE CASE

### **How Did This Case Get Started?**

On November 8, 1993, a formal administrative class complaint was filed by three African-American persons (the “administrative plaintiffs”<sup>2</sup>) who were employed by the FDIC. They brought the complaint as a proposed class action and alleged that they and other African-Americans were discriminated against on the basis of their race by the FDIC in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16, *et seq.* (“Title VII”). More specifically, the administrative plaintiffs alleged that African-American employees had been denied promotional opportunities on the basis of race as a result of a number of the FDIC’s employment policies and practices. They sought declaratory, injunctive and monetary relief on behalf of themselves and the Class for claims arising on or after May 13, 1992.

The complaint was forwarded to the Equal Employment Opportunity Commission (“EEOC”) and ultimately certified as a class action. In January 2000, the parties<sup>3</sup> began voluntary mediation, which led to an agreement in principle on terms for settlement. Pursuant to that agreement, on December 22, 2000, the Class Representatives filed a new class complaint in the United States District Court for the District of Columbia (the “Court”). The administrative class complaint pending before the EEOC was thereafter dismissed.

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<sup>1</sup> The fact that you have received this Notice does not by itself mean that you are a member of the Class or that you are eligible to receive any monetary payment.

<sup>2</sup> They include Chris J. Conanan, Willitta Gordon Hawkins and Marvin G. Gordon.

<sup>3</sup> The class was represented at the mediation by the administrative plaintiffs Chris J. Conanan and Willitta Gordon Hawkins and a third African-American employee Leonard C. Glenn (collectively referred to as the “Class Representatives” or “plaintiffs”).

The defendant is the Federal Deposit Insurance Corporation (“FDIC”) and the chairperson of the FDIC in his or her official capacity. Defendant denies all charges of wrongdoing or liability in this case. Neither the EEOC nor the Court has issued any ruling on the merits of this case.

The plaintiffs and defendant have agreed to a settlement of the lawsuit that includes both monetary and equitable relief (the “Consent Decree” or “settlement”). The Court has granted preliminary approval of the Consent Decree, but must approve this settlement after a hearing to determine if it is fair to the Class as a whole before the Consent Decree becomes final and its terms can be enforced.

### III. DEFINITION OF THE CLASS AND EFFECT OF CONSENT DECREE

#### **A. Who is In the Class?**

The Court has conditionally defined the Class to include:

All African-Americans employed by the Federal Deposit Insurance Corporation (“FDIC”) in any capacity (whether permanent, temporary, or term appointments, including all General/Corporate Grade, Liquidation Grade and Wage Grade/Prevailing Rate employees, but excluding any persons to the extent that their employment at the FDIC is or was solely in the capacity of student intern) at any time from May 13, 1992, to March 31, 2001.

The Consent Decree does not cover claims by a current or former employee of the FDIC arising from actions of the Resolution Trust Corporation (“RTC”), or commenced against the FDIC solely in its capacity as successor to the RTC.

#### **B. How Does This Settlement Affect My Rights?**

If you are a member of this Class, the proposed Consent Decree will affect you and will extinguish any rights you may have to bring a claim against the FDIC with respect to promotions or other selections for positions on the basis of race or color discrimination or reprisal that you believe affected you at any time between May 13, 1992 and March 31, 2001, unless you exercise in writing your right to “opt out” of the Class and refuse the monetary benefits of the Consent Decree as described below.

### IV. RIGHT TO OPT OUT OF PROPOSED CONSENT DECREE

#### **Can I Get Out of This Class and How?**

Under the Consent Decree, you have the choice of deciding whether or not to remain in the lawsuit.

**A. What Happens if I Stay a Class Member?**

If you are a Class Member and you remain in this lawsuit, you may be eligible to receive monetary relief under the Consent Decree. In order to be considered for such relief, you must complete and timely file a Claim Form, a copy of which is enclosed with this Notice and attached as Exhibit 3 to the Consent Decree. The Class Counsel listed in this Notice will act as counsel for you and the other participating Class Members, without cost or expense to you. If you remain in the lawsuit and you so desire, you may also appear by your own attorney at your own expense.

If you are a Class Member and you remain in the lawsuit, and the Court approves the Consent Decree, you will be bound by all the terms of the Consent Decree. This means that you will not be able to bring your own separate lawsuit or other legal proceeding regarding the claims covered in this lawsuit from May 13, 1992 to March 31, 2001. In other words, you will be barred from bringing a claim against the FDIC with respect to promotions or other selections for positions on the basis of race or color discrimination or reprisal that you believe affected you at any time between May 13, 1992 and March 31, 2001. Participation in this settlement will not, however, bar you from pursuing any claims against the FDIC that arise after March 31, 2001.

Attachment A to this Notice provides examples of claims that are covered by the Consent Decree and that will be extinguished unless you opt-out of the Class. If your situation is not covered by the examples, or if you do not understand them or have other questions, please immediately contact Class Counsel listed below.

**B. What Happens if I Choose to Get Out of the Class?**

If you are a Class Member and you do not want to be a part of this lawsuit, you may exclude yourself from the lawsuit by filing a written “opt-out” statement with the Court, stating that you request not to benefit from the settlement and not to proceed with a monetary relief claim under the terms of the Consent Decree.

If you opt-out of this lawsuit:

- (1) You will have no right to receive any money under this settlement;
- (2) You will not be bound by the monetary settlement in this lawsuit; and
- (3) You may bring your own individual lawsuit or other legal proceeding against the FDIC, with

your own attorney and at your own expense, with respect to promotions or selections for positions on the basis of race or color discrimination or reprisal that you believe affected you at any time between May 13, 1992 and March 31, 2001. If you opt-out of this lawsuit and bring a separate lawsuit or other legal proceeding:

- You may lose your case and receive nothing;
- It may take several years to obtain any money or other relief, if you receive any relief at all;
- You may have to pay your own attorneys' fees and the costs of litigation;
- You may obtain less money than you can get under this settlement;
- You are prohibited from being represented by the attorneys who represented the Class;
- You are prohibited from having access to information Class Counsel has obtained through the course of mediation.

### **C. What Do I Need to Do to Get Out of the Class?**

To be effective, any such "opt out" statement must be hand-delivered by \_\_\_\_\_ or mailed to the Clerk, United States District Court, 333 Constitution Avenue, N.W., Washington, D.C. 20001, and to the Claims Administrator, Settlement Services, Inc., P.O. Box 11190, Tallahassee, Florida 32302-3190, postmarked (United States Postal Service) no later than \_\_\_\_\_.

To opt-out of this lawsuit, you must submit your full name, social security number and a signed and dated copy of the following opt-out statement in your own handwriting:

I am a Class Member in the lawsuit of *Conanan, et al. v. Tanoue*, Civil Action No. 00-CV-3091 (ESH). I understand that in choosing to opt-out of the Class and settlement in this case, I will not be entitled to any money under the settlement. I also understand that if I file a separate lawsuit or other legal proceeding:

- I may lose my case and receive nothing;
- It may take several years to obtain any money or other relief, if I receive any relief at all;

- I may have to pay my own attorneys' fees and the costs of litigation;
- I may obtain less money than I can get under this settlement;
- I am prohibited from being represented by the attorneys who represented the Class;
- I am prohibited from having access to information Class Counsel has obtained through the course of mediation.

I also understand that, if the Court approves the settlement, Class Members who do not opt-out and who timely file Claim Forms may be eligible to receive a monetary payment under the settlement. I still choose to opt-out and to be excluded from the settlement.

## V. CLASS REPRESENTATIVES, CLASS COUNSEL AND CLAIMS ADMINISTRATOR

### A. **Who Are the Class Representatives?**

The following persons are the Class Representatives: Chris J. Conanan, Willitta Gordon Hawkins and Leonard C. Glenn.

### B. **Who Are the Attorneys Representing the Class?**

The following law firms and organizations are designated as counsel for the Class: Washington Lawyers' Committee for Civil Rights and Urban Affairs, 11 Dupont Circle, N.W., Suite 400, Washington, D.C. 20036, and Cohen, Milstein, Hausfeld & Toll, P.L.L.C., 1100 New York Avenue, N.W., Suite 500, West Tower, Washington, D.C. 20005.

### C. **Who Is Responsible for Distributing Money and Administering the Settlement?**

Settlement Services, Inc., P.O. Box 11190, Tallahassee, Florida 32302-3190, has been designated as the Claims Administrator to assist in the administration and distribution of monetary awards made under the Consent Decree.

## VI. SUMMARY OF PROPOSED SETTLEMENT

### **What Are the Terms of the Settlement?**

The Class Representatives, the FDIC and attorneys for the Class and defendant have agreed

upon a proposed Consent Decree under which this case will be resolved without a trial. The Court has preliminarily approved the Consent Decree. The Consent Decree includes three categories of relief, described below.

**A. CHANGES IN PERSONNEL PROCEDURES AND PRACTICES**

**What Will the FDIC Do to  
Improve Its Promotions Practices?**

- Under the supervision of (and after training by) a neutral expert, the FDIC will analyze all jobs in clusters to ensure that promotions and other selections for positions are based on legitimate, merit-based criteria. These cluster job analyses will provide a solid foundation for the creation of legitimate, merit-based vacancy announcements, position descriptions and crediting plans. The neutral expert will randomly monitor the cluster job analyses and the vacancy announcements, position descriptions and crediting plans based on them.
- Accountability in the competitive promotions process will be greatly enhanced.
  - Employees who do not meet minimum qualification requirements for any vacancy for which they apply will be given notice and an opportunity to supplement their application. Merit Promotion Panels will usually include members from divisions other than the division in which the vacancy arises, and will be instructed in equal opportunity and conflict of interest rules.
  - The FDIC will standardize the interviewing process and develop written interview guidelines. If one candidate is interviewed for a job, all other candidates must be interviewed, up to a total of nine interviewees.
  - The FDIC will develop written guidelines regarding the cancellation or lapse of vacancy announcements or the failure to fill positions advertised in vacancy announcements. Supervisors will be required to provide a written explanation for any of these actions and to obtain approval from their supervisor.
  - Selecting officials must prepare written justifications stating their reasons for selecting the successful candidate(s) from among the candidates referred.
- Accountability in the non-competitive promotions process will also be greatly enhanced.
  - The FDIC will develop and use written guidelines to ensure that any benchmarks and tests used in career ladder promotions are based on merit and consistent with the job

description and cluster job analyses.

- Rules governing the awarding of career ladder promotions will be standardized.
- Employees whose career ladder promotions are to be delayed beyond the date when they have met the minimum qualifications for a career ladder promotion will be provided with 30 days advance notice of the delay, including the reason for the delay and any steps which must be taken by the employee to achieve the promotion.
- Employees will receive written explanations for decisions made as a consequence of a desk audit.
- Steps will be taken to increase the availability of career enhancement opportunities and desirable job assignments to all employees.
  - The FDIC will develop written guidelines that instruct supervisors in how to fairly and equitably distribute career enhancing opportunities among employees. Supervisors will be required to offer each employee an opportunity to develop Career Development Plans, and give employees an opportunity to meet with them annually to discuss job assignments.
  - The FDIC will expand and strengthen the Career Management Program by distributing information, encouraging its use, and monitoring its success.
  - The FDIC will be required to publicize job details of more than 60 days and provide employees with an opportunity to apply for such details.
- The FDIC (in some instances with the help of a neutral expert) will train and educate FDIC personnel specialists, managers and supervisors in the techniques and skills necessary to implement the changes in FDIC policies and personnel procedures.
- Employees will have access to FDIC training that will enhance their ability to take advantage of employment opportunities. The FDIC will also provide and promote formal mentoring and expression of interest programs.

## **B. MONITORING FDIC'S COMPLIANCE**

### **How Will the Class Ensure that the FDIC Complies With the Settlement?**

- To ensure the FDIC’s compliance with the Consent Decree, the Decree will be adopted as an order of the United States District Court for the District of Columbia and enforced as such. The Court will retain jurisdiction over the Consent Decree for 3 years.
- In the event that there is a material breach of the Consent Decree or differences in its interpretation, the parties will first attempt to resolve their differences through an alternative dispute resolution process. In the event that negotiation and mediation are unsuccessful, either party may apply to the Court for appropriate relief.
- The FDIC will take steps to ensure its compliance with the Consent Decree, including (i) providing the Class with access to the Director of the FDIC’s Office of Diversity and Economic Opportunity (“ODEO”) or his designee, who shall be the primary point of contact regarding issues related to compliance and monitoring; (ii) holding periodic meetings between Class Members and the FDIC Chief Operating Officer or Chief Financial Officer throughout the term of the Consent Decree; and (iii) establishing a new Personnel Compliance Officer position to monitor personnel-related practices for compliance and uniformity.
- The FDIC will provide Class Counsel with statistical information about the workforce and promotions, and information pertaining to equal employment opportunity requirements and tools for evaluating compliance with the Consent Decree.

### **C. MONETARY PAYMENTS**

#### **What Money Is Available to the Class and How Do I Get Money Under the Settlement?**

- The Consent Decree requires the FDIC to pay, among other things, the sum of Eleven Million Five Hundred Thousand Dollars (\$11,500,000), which will be deposited into a settlement fund and paid to Class Representatives and to all other Class Members in accordance with the distribution formula, attached as Exhibit 6 to the Consent Decree, as compensation for lost earnings and compensatory damages claims. To be eligible to receive a monetary award, Class Members must complete and timely file a Claim Form, a copy of which is enclosed with this Notice, and attached to the Consent Decree as Exhibit 3.
  - This settlement fund is divided into a Back Pay Fund, which provides monetary relief for back pay, front pay, employment benefits and/or interest claims, and a Damages Fund, which provides monetary relief for emotional distress, mental anguish, and pain and suffering claims.

- The calculation of the amounts due to each Class Member will be handled by the Plaintiffs' Expert, and the administration and distribution of the monetary amounts will be handled by the Claims Administrator. The amount due to each Class Member will be determined by the distribution formula, attached as Exhibit 6 to the Consent Decree. The FDIC will not be involved in determining the eligibility of any monetary awards made to Class Members.
- Each Class Member will be notified of his or her monetary award and given the opportunity to seek adjustment of that award if he or she believes that the award determination has been made by the Plaintiffs' Expert in error. *See* Exhibit 4 to the Consent Decree.
- The Consent Decree provides for the defendant to pay the six persons<sup>4</sup> who have acted as class representatives over the course of the litigation an additional sum totaling Five Hundred Thousand Dollars (\$500,000) in recognition of their diligent prosecution of this case.
- The Consent Decree provides for the defendant to pay to attorneys representing the Class the sum of Two Million Dollars (\$2,000,000) for attorneys' fees and costs incurred in litigating this action from 1992 up to the date the Court enters an Order granting Final Approval of the Consent Decree.
- The Consent Decree provides for the defendant to pay approximately One Million Three Hundred Ninety-Five Thousand Dollars (\$1,395,000) for costs associated with implementing and monitoring the Consent Decree and employer taxes on payments to Class Members.

## VII. ADDITIONAL INFORMATION

### A. **What Opportunity Will I Have to Give My Opinion About the Settlement?**

#### **What is the Fairness Hearing?**

There will be a hearing (the "Fairness Hearing") to determine whether the proposed Consent Decree should be approved. Once a date is determined, a Notice will be issued to you, advising you of the date and location of the hearing. *See* Exhibit 5 to the Consent Decree.

Attachment B to this Notice provides the proposed schedule up to the Fairness Hearing. This schedule must be approved by the Court.

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<sup>4</sup> They are Chris J. Conanan, Willitta Gordon Hawkins, Leonard C. Glenn, Marvin G. Gordon, Jacqueline K. Taylor and Charles Thompson.

## **B. Where and How Do I Get More Information About the Settlement?**

If you have any questions or need additional information about the proposed Consent Decree and this Notice, you may contact one of the following attorneys for the Class:

Avis E. Buchanan, Esq.  
Washington Lawyers' Committee  
for Civil Rights & Urban Affairs  
11 Dupont Circle, N.W., Suite 400  
Washington, D.C. 20036

Joseph M. Sellers, Esq.  
Suzette M. Malveaux, Esq.  
Cohen, Milstein, Hausfeld & Toll, P.L.L.C.  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, D.C. 20005

If you wish to call Class Counsel, use the toll free number **1 (888) 800-8112**, and leave a message and your inquiries will be addressed as soon as possible. If you have procedural questions about the claims process, you may call the Claims Administrator toll free at **1 (888) 688-6028**. For more information about the class action and proposed Consent Decree, you may also contact Class Counsel's website at [www.cmht.com/casewatch/civil/fdic.html](http://www.cmht.com/casewatch/civil/fdic.html).

## **C. Where and How Can I Get A Full Copy of the Settlement?**

This Notice contains only a summary of the proposed Consent Decree. The full terms of the settlement are set forth in detail in the Consent Decree and exhibits, which (together with the pleadings in this case) may be examined during regular office hours at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C. 20001.

Current FDIC employees may also obtain a complete copy of the Consent Decree with exhibits from the FDIC's internal website on the Office of Diversity and Economic Opportunity ("ODEO") homepage. The Consent Decree, with exhibits, will also be available on the FDIC's external website at [www.fdic.gov](http://www.fdic.gov), and on Class Counsel's website at [www.cmht.com/casewatch/civil/fdic.html](http://www.cmht.com/casewatch/civil/fdic.html).

## **VIII. ADDRESS CHANGES**

### **How and What Do I Do to Make Sure The**

**Claims Administrator Has My Correct Address?**

If you change your address or telephone number after you file a Claim Form in this case, you must notify the Claims Administrator of your new address or telephone number as soon as possible. Failure to keep the Claims Administrator informed of your address and telephone number may result in the loss of any monetary award you might be eligible to receive. Please send new contact information to the Claims Administrator at the address listed below and include your old address, new address, new telephone number, date of birth and Social Security number.

**SETTLEMENT SERVICES, INC.  
P.O. BOX 11190  
TALLAHASSEE, FL 32302-3190**

**PLEASE DO NOT CONTACT THE COURT,  
THE CLERK OF THE COURT OR THE JUDGE .**

Dated \_\_\_\_\_, 2001

BY ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

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United States District Judge  
Ellen Segal Huvelle

## Attachment A

### Example of Claims that will be Extinguished If I Don't Opt Out of Settlement

Attachment A provides examples of claims that are covered by the Consent Decree (claims that arose between May 13, 1992, and March 31, 2001) and that will be extinguished unless you opt out of the Class. If your situation is not covered by the examples, or if you do not understand them or have other questions, please immediately contact Class Counsel.

1. A grade 11 employee applies for a competitively posted grade 12 position, but is not selected, allegedly as a result of race discrimination or reprisal. That claim would be covered by the Consent Decree; the employee would be eligible to seek compensation from the settlement funds; and the claim would be extinguished (unless the employee opted out). That means that the employee could not file any race discrimination or reprisal action based on that nonselection, whether before the FDIC, the EEOC or in federal district court, regardless of the amount of compensation the employee ultimately receives (from the Backpay Fund, the Damages Fund, or both). If the employee had already filed a race discrimination or reprisal claim based on that nonselection that was still pending before the FDIC, the EEOC or a federal court at the time the Consent Decree became final, that claim would be dismissed, unless the employee opted out.
2. Same scenario as the first one above, except that in addition to alleging race discrimination or reprisal as a basis for nonselection, the employee also alleges sex and age discrimination. Same result as the one above with respect to the race discrimination or reprisal claim, but the claims based on sex and age discrimination are not covered by the Consent Decree and accordingly such claims are not extinguished, even though they are based on the same nonselection as the race discrimination claim. The employee would be free to file sex and age discrimination claims based on that nonselection, and would be allowed to pursue any sex and age discrimination claims already pending. If the employee ultimately obtained a monetary judgment on the sex and age discrimination claims, however, the amount of any award paid to the employee pursuant to the Consent Decree would be deducted from the judgment. The deduction would be based on the fact that the claims all arose out of denial of the same promotion, and the well-settled principle that a plaintiff may not recover twice for the same wrong.
3. A grade 11 employee applies for a competitively posted grade 11 position but is not selected, allegedly on the basis of race discrimination or reprisal. Same result as the first example above, even though the employee was seeking to be selected for a "lateral" (*i.e.*, same-grade) position,

rather than seeking a position that would result in an immediate increase in grade. The Consent Decree covers (and therefore extinguishes) all race discrimination or reprisal claims based on nonselection for any position.

4. A grade 11 temporary or term employee applies for a competitively posted grade 9 permanent position but is not selected, allegedly as a result of race discrimination or reprisal. Same result as the first example above, even though the employee was seeking to be selected for a lower-graded position, rather than seeking a position that would result in an immediate increase in grade. The Consent Decree covers (and therefore extinguishes) all race discrimination or reprisal claims based on nonselection for any position.
5. An employee alleges that he or she did not apply for a competitively posted position, or was prevented from applying for the position, and alleges that the failure to apply was the result of race discrimination or reprisal. Same result as in first example above, even though the employee did not actually apply for the position.
6. A grade 11 employee, instead of seeking a competitively posted grade 12 position, seeks a desk audit on the ground that he or she is performing grade 12 work. If the desk audit does not result in a promotion, or the employee is denied a desk audit, and the employee alleges that the denial of the promotion or the desk audit is the result of race discrimination or reprisal, same result as in first example above.
7. An employee does not receive a career ladder promotion, or alleges a delay in receiving a career ladder promotion, after meeting all the necessary requirements, allegedly as a result of race discrimination or reprisal. Same result as in the first example above.
8. An employee does not receive a detail, reassignment, expression of interest (EOI), or a solicitation of interest (SOI), or is denied the opportunity to be considered for any of these positions, allegedly as a result of race discrimination or reprisal. Same result as in the first example above.
9. Employee applies for an award or training, or is disciplined for misconduct, and alleges race discrimination or reprisal, unrelated to any issue involving selection for a promotion or other position. These claims are not covered by the Consent Decree and are not extinguished. The employee would be free to file race discrimination or reprisal claims based on these issues.

## **Attachment B**

### **Revised Schedule**

May 4, 2001	Submission of preliminary approval materials
May 16, 2001	Preliminary Approval Hearing
May 30, 2001	Mail Notice of Pendency of Class Action and Proposed Consent Decree, Claim Form and Notice of Monetary Distribution Formula Under Proposed Consent Decree to former FDIC employees who are Class Members
May 30, 2001	Email Notice of Pendency of Class Action and Proposed Consent Decree, Claim For, and Notice of Monetary Distribution Formula Under Proposed Consent Decree to current FDIC employees
July 16, 2001	Deadline for return of all Claim Forms and “opt out” statements
September 15, 2001	Disseminate Notice of Fairness Hearing
October 1, 2001	Disseminate Notice of Individual Monetary Award Under Proposed Consent Decree
October 31, 2001	Deadline for filing comments or objections, and appearances at Fairness Hearing; Deadline for submitting inquiries regarding individual initial monetary awards
November 14, 2001	Submission of materials in support of Consent Decree
November 26 & 27, 2001	Fairness Hearing