

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**NOTICE OF MONETARY DISTRIBUTION FORMULA
UNDER PROPOSED CONSENT DECREE**

Pursuant to a settlement reached between the Plaintiffs and the FDIC in this case (the “proposed settlement” or “proposed Consent Decree”), the FDIC has agreed to pay a total of \$14 million (fourteen million dollars) in satisfaction of all damages payable to members of the Plaintiff Class and the Class Representatives, from May 13, 1992 through March 31, 2001, and all attorneys’ fees generated and routine expenses incurred from the beginning of this litigation in 1992 to a date in the future when the United States District Court holds a hearing on the fairness of the consent decree (the “Fairness Hearing”).

The monetary relief will be distributed as follows. A total of \$11,500,000 (eleven million five hundred thousand dollars) will be payable directly to members of the Class. A portion of that \$11.5 million (\$7,187,500) will provide eligible Class Members with monetary relief for damages due to claims of discriminatory promotions and selections practices (the “Backpay Fund”). The balance of the

\$11.5 million (\$4,312,500) will provide each eligible Class Member with monetary relief for damages related to alleged emotional harm and distress (the “Damages Fund”).¹ A total of \$2 million, or approximately 14% of the total settlement recovery, is allocated for Class Counsel’s fees and costs. A total of \$500,000 is allocated for the services provided and contributions made by the six Class Representatives. This Notice describes how the monetary relief referenced in Section III.A of the Proposed Consent Decree will be distributed. Plaintiff’s expert statistician (the “Plaintiffs’ Expert”) will calculate for you the amount of money you are eligible to receive under the Consent Decree.

I. DISTRIBUTION OF BACK PAY AND FRONT PAY DAMAGES TO CLASS MEMBERS

The Backpay Fund is made up of \$6,562,500. This money is available to the Class to provide compensation for earnings lost as a result of the FDIC’s alleged racially discriminatory promotions practices. The Backpay Fund is divided into three pools, each of which correspond to the type of harm that a Class Member may have suffered, estimated on the basis of an analysis of workforce data conducted by the Plaintiffs’ Expert. Each pool is funded in relation to its proportion of the total lost earnings calculated by the Plaintiffs’ Expert, on which Plaintiffs based their settlement demand. The three categories of lost earnings that may be computed and paid under the Proposed Consent Decree from each pool are: 1) \$3,060,002 for lost earnings from delays in and denials of competitive promotions; 2) \$2,642,622 for lost earnings from delays in and denials of career ladder promotions;

¹ Before calculating each individual’s award, the Plaintiffs’ Expert will take out one million dollars (\$1,000,000) from the Backpay and Damages Funds (leaving \$6,562,500 for the Backpay Fund and \$3,937,500 for the Damages Fund) to create a Residual Fund. The Residual Fund will be used to adjust upward as appropriate any individual’s award in the event that an error was made in initially calculating that individual’s award.

and 3) \$859,876 for lost earnings from denials of accretion of duties promotions. The Plaintiffs' Expert will calculate how much money each Class Member is eligible to receive from each of these three pools. Each Class Member is entitled to receive money from the pool that gives him or her the largest amount of money.

The damages arising from delays and denials of selections include back pay and front pay. Back pay is a type of monetary relief designed to compensate an employee for what he or she would have earned had discrimination not taken place. It is considered a form of equitable relief, or relief meant to make an employee whole for injuries suffered on account of unlawful employment discrimination. The back pay award includes not only lost wages, but also fringe benefits and the interest on the amount of lost earnings. Front pay is a type of monetary relief designed to substitute for immediate promotion where a position is not available to make an employee whole because of unlawful employment discrimination. Front pay also includes fringe benefits and interest.

The following is the formula proposed for distribution of these damages. The Plaintiffs' Expert will calculate the amounts due to each Class Member using the distribution formula described below.

A. Damages for Delay and Denials in Competitive Promotions

As a Class Member, you may be eligible to receive money from this category on the basis of your tenure at the FDIC² from May 13, 1990 to March 31, 2001 (the "Liability Period") if you applied for a competitive promotion during the Liability Period. Class Members who applied for competitive

² A Class Member's tenure at the Resolution Trust Corporation ("RTC") during the Liability Period will not be counted under this formula.

promotions will be assigned initial allocations from this category based on their individual histories of promotions (or denials of promotion) as described below.

For each Caucasian FDIC employee, the Plaintiffs' Expert will determine the date of the employee's first competitive promotion after May 13, 1990³ and the date the employee entered the grade from which he or she was promoted. The difference between the two dates will be the length of that employee's first competitive promotion spell.

EXAMPLE:

If a Caucasian employee was hired into a grade 11 position on March 13, 1992 and received a competitive promotion to grade 12 on April 1, 1995, then the employee's first competitive promotion spell was 1114 days long.

Next the Plaintiffs' Expert will determine the date of the employee's second competitive promotion after May 13, 1990 and the date the employee entered the grade from which he or she received that promotion. The difference between the two dates will be the length of that employee's second competitive promotion spell. Spells will be measured for every competitive promotion received by a Caucasian employee between May 13, 1990 and March 31, 2001.

The data on competitive promotion spells of Caucasian employees will be sorted by the grade of the employees before the promotions. For each grade, the Plaintiffs' Expert will compute the average spell of Caucasians. (There may be grades for which there are no or a small number of

³ Under the applicable law, Class Members may recover back pay for up to two years before the date of the earliest discriminatory action within the Liability Period, *i.e.*, May 13, 1992.

Caucasian employees. In such cases the Plaintiffs' Expert will estimate the average spell on the basis of spells for other grades as appropriate.)

Next, the Plaintiffs' Expert will determine the first day that each eligible Class Member started in the first FDIC grade that was held on or after May 13, 1990. Note that a Class Member's starting date may be before May 13, 1990.

The Plaintiffs' Expert will identify the date on which each Class Member received a competitive promotion from a particular grade and compare it to the date that a Caucasian employee on average would have received that promotion. For example, suppose the average amount of time it took a Caucasian in grade 4 to be promoted to grade 5 was 475 days. If a Class Member in grade 4 was promoted to grade 5 in 600 days, the Class Member would be credited for a delay of 125 days for that promotion. But for the race discrimination, the Class Member would have received the promotion 125 days earlier than he actually did. This is called the "but for" promotion.

The Plaintiffs' Expert will estimate the "but-for" promotion dates on which each eligible Class Member would have received competitive promotions if he or she had experienced the average competitive spells of Caucasians in the relevant grades. However, but-for promotions will not include the following:

- An individual cannot have a but-for competitive promotion date to a particular grade after the date on which he or she actually received a promotion to that same grade.
- An individual cannot have a but-for promotion date after the date on which he or she left the FDIC.
- An individual cannot have a but-for promotion date after March 31, 2001.

EXAMPLES:

For purposes of these examples, it is assumed that the average competitive promotion spells of Caucasians in grades 4, 5, 6, 7, 8, and 9 are 475 days, 625 days, 775 days, 925 days, 1075 days and 1225 days, respectively.

Class Member A was hired into a grade 5 position on August 1, 1994. She received a promotion to grade 6 on October 1, 1996 and left the FDIC on November 11, 1997. If the Class Member had been promoted to grade 6 after 625 days (based on the average competitive promotion spells of Caucasians in grade 5), the promotion would have come on April 17, 1996, which is the first but-for promotion date. A subsequent promotion to grade 7 would have come on June 1, 1998, but this is not a second but-for promotion date because the Class Member left the FDIC on November 11, 1997.

Class Member B was in a grade 4 position on May 13, 1990. He was hired into the position on January 17, 1990. He received promotions to grade 5 on February 12, 1991, and to grade 6 on March 13, 1996. He has received no more promotions, and he was still employed by the FDIC on March 31, 2001. If the Class Member had been promoted to grade 5 after 475 days, the promotion would have come on May 7, 1991. Because the actual date of promotion to grade 5 was earlier than May 7, 1991, there is no but-for promotion date for the promotion to grade 5. If the promotion to grade 6 had occurred 625 days after February 12, 1991, it would have occurred on October 29, 1992, which is the first but-for promotion date. Based on the average competitive promotion spells of Caucasians, subsequent promotions to grades 7, 8, 9, and 10 would have come on December 13, 1994, June 25, 1997, June 4, 2000, and October 12, 2003. Because the last date is after March 31, 2001, it is irrelevant.

Class Member C was hired into a grade level 6 position on January 29, 1996, never received a promotion, and was still employed by the FDIC on March 31, 2001. If the promotion to grade 7 had occurred 775 days after January 29, 1996, it would have occurred on March 14, 1998, which is the first but-for promotion date. Based on the average competitive promotion spells of Caucasians, subsequent promotions to grades 8 and 9 would have come on September 24, 2000 and September 4, 2003. Because the last date is after March 31, 2001, it is irrelevant.

The Plaintiffs' Expert will use the but-for promotion dates, along with the FDIC salary rules to project the but-for earnings that the individual would have received each calendar year if promotions had been received on the estimated dates. The differences between the but-for earnings and actual earnings will provide estimates of the individual's earnings loss in each year from May 13, 1990 to the earlier of the individual's termination date and March 31, 2001. Interest on annual losses will be calculated through March 31, 2001 using historical interest rates for 30-year mortgages. The sum of the annual losses and the interest will be the Present Value of Earnings Losses.

The Plaintiffs' Expert will add up the Present Values of Earnings Losses for each eligible Class Member and determine each eligible Class Member's pro rata (proportionate) share. The Plaintiffs' Expert will then assign a portion of \$3,060,002 to each eligible Class Member as an initial allocation based on his or her pro rata (proportionate) share.

B. Damages for Delay and Denials in Career Ladder Promotions

As a Class Member, you may be eligible to receive money from this category on the basis of your tenure at the FDIC⁴ from May 13, 1990 to March 31, 2001 (the “Liability Period”) if you held a career ladder position at any time during that period. An eligible Class Member’s initial allocation from this category will be based on that individual’s history of career ladder positions and promotions as described below.

For each Caucasian FDIC employee, the Plaintiffs’ Expert will determine the date of the employee’s first career ladder promotion after May 13, 1990 and the date the employee entered the career ladder position from which he or she was promoted. The difference between the two dates will be the length of that employee’s first spell on a career ladder.

EXAMPLE:

If a Caucasian employee was hired into a grade 5 career ladder position on September 1, 1991 and received the first career ladder promotion to grade 6 on June 1, 1993, then the employee’s first spell on a career ladder was 639 days long.

Next, the Plaintiffs’ Expert will determine the date of the employee’s second career ladder promotion after May 13, 1990 and the date the employee entered the career ladder position from which he or she received that promotion. The difference between the two dates will be the length of that employee’s second spell on a career ladder. Spells will be measured for every career ladder promotion received by a Caucasian employee between May 13, 1990 and March 31, 2001.

⁴ A Class Member’s tenure at the RTC during the Liability Period will not be counted under this formula.

The data on career ladder spells of Caucasian employees will be sorted by the grade of the employees before the promotions. For each grade, the Plaintiffs' Expert will compute the average career ladder spell of Caucasians. (There may be grades for which there are no or a small number of Caucasian employees. In such cases the Plaintiffs' Expert will estimate the average spell on the basis of spells for other grades as appropriate.)

Next the Plaintiffs' Expert will determine the first day that each eligible Class Member started in a career ladder position that was held on or after May 13, 1990. (Career ladder positions will be defined by official FDIC career ladders and by the pattern of career ladder promotions.) Note that a Class Member's career ladder starting date may be before May 13, 1990. Some Class Members may not have held a career ladder position during the Liability Period in which case they will not be assigned an allocation from this category.

The Plaintiffs' Expert will estimate the "but-for" promotion dates on which each eligible Class Member would have received career ladder promotions if he or she had experienced the average career ladder spells of Caucasians in the relevant grades. However, but-for promotions will not include the following:

- An individual cannot have a but-for promotion date to a particular grade after the date on which he or she actually received a promotion to that same grade.
- An individual cannot have a career ladder promotion beyond the top grade of the ladder for his or her position unless he or she moves to another career ladder with a higher top grade.
- An individual cannot have a but-for promotion date after the date on which he or she left the FDIC.
- An individual cannot have a but-for promotion date after March 31, 2001.

EXAMPLES:

For purposes of these examples, it is assumed that the average career ladder spells of Caucasians in grades 4, 5, 6, 7, 8, and 9 are 400 days, 550 days, 700 days, 850 days, 1000 days and 1150 days, respectively.

Class Member D was hired into a grade 5 career ladder position on August 14, 1995. She received a career ladder promotion to grade 6 on September 3, 1997 and left the FDIC on December 21, 1998. If the Class Member had been promoted to grade 6 after 550 days (based on the average career ladder spells of Caucasians in grade 5), the promotion would have come on February 14, 1997, which is the first but-for promotion date. A subsequent promotion to grade 7 would have come on January 15, 1999, but this is not a second but-for promotion date because the Class Member left the FDIC on December 21, 1998.

Class Member E was in a grade 4 career ladder position on May 13, 1990. He was hired into the position on February 4, 1990. He received career ladder promotions to grade 5 on February 5, 1991, and to grade 6 on March 13, 1996. He has received no more promotions, and he was still employed by the FDIC on March 31, 2001. If the Class Member had been promoted to grade 5 after 400 days, the promotion would have come on March 11, 1991. Because the actual date of promotion to grade 5 was earlier than March 11, 1991, there is no but-for promotion date for the promotion to grade 5. If the promotion to grade 6 had occurred 550 days after February 5, 1991, it would have occurred on August 8, 1992, which is the first but-for promotion date. Based on the average career ladder spells of Caucasians, subsequent

promotions to grades 7, 8, 9, and 10 would have come on July 9, 1994, November 5, 1996, August 2, 1999, and September 25, 2002. Because the last date is after March 31, 2001, it is irrelevant.

The Plaintiffs' Expert will use the but-for promotion dates, along with the FDIC salary rules to project the but-for earnings that the individual would have received each calendar year if promotions had been received on the estimated dates. The differences between the but-for earnings and actual earnings will provide estimates of the individual's earnings loss in each year from May 13, 1990 to the earlier of the individual's termination date and March 31, 2001. Interest on annual losses will be calculated through March 31, 2001, using historical interest rates for 30-year mortgages. The sum of the annual losses and the interest will be the Present Value of Earnings Losses.

The Plaintiffs' Expert will add up the Present Values of Earnings Losses for each eligible Class Member and determine each Class Member's pro rata (proportionate) share. The Plaintiffs' Expert will then assign a portion of \$2,642,622 to each Class Member as an initial allocation based on his or her pro rata (proportionate) share.

C. Damages for Denials of Accretion of Duties Promotions

This category of relief is designed to compensate those who were denied promotions made through the reclassification of their jobs after an audit of their actual job duties ("accretion of duties" promotions).⁵ If you are a Class Member who was a Grade 5 as of December 31, 1996 in a position not on a career ladder and did not receive a promotion in 1997, you may be eligible to receive money

⁵ A Class Member's tenure at the RTC during the Liability Period will not be counted under this formula.

from this category on the basis of your earnings and tenure at the FDIC from January 1, 1997 to March 31, 2001. The Plaintiffs' Expert will calculate each eligible Class Member's total earnings from January 1, 1997 to March 31, 2001. The Plaintiffs' Expert will then add up all of the total earnings and determine each Class Member's pro rata (proportionate) share of the total. The Plaintiffs' Expert will then assign a portion of the \$859,876 to each eligible Class Member as an initial allocation based on his or her pro rata (proportionate) share.

The above formula can be illustrated by way of example.

EXAMPLE:

(DOLLAR FIGURES FOR INDIVIDUAL AWARDS ARE FOR ILLUSTRATION ONLY.)

Class Member F is an African-American FDIC employee. She started on January 1, 1996, earning \$28,000, as a grade 5. On December 31, 1996, Class Member F was a grade 5. She was not promoted in 1997. Her total earnings from January 1, 1997 to March 31, 2001 are \$150,000.

Class Member G is an African-American former FDIC employee. He started working for the Agency on January 1, 1996, as a grade 5, making \$25,000 and left on December 31, 1999, as a grade 7, making \$31,000. On December 31, 1996, Class Member G was a grade 5. He was not promoted in 1997. His total earnings from January 1, 1997 to December 31, 1999 are \$109,000.

The Plaintiffs' Expert assigns each eligible Class Member an initial allocation from this pool. The Plaintiffs' Expert does this by adding up \$150,000 for Class Member F, \$109,000 for

Class Member G, and so forth for each eligible Class Member. Suppose for the sake of this example that the Plaintiffs' Expert calculated a total of \$36,000,000. The Plaintiffs' Expert would assign the pro rata (proportionate) share to each eligible Class Member as an initial allocation from this pool. Here, Class Member F's pro rata share would be \$150,000/\$36 million or .0042. Class Member G's pro rata share would be \$109,000/\$36 million or .003.

The amount of settlement funds available from this pool is \$859,876. Each eligible Class Member who was a grade 5 as of December 31, 1996 would be assigned his or her pro rata share of this amount as an initial allocation. Here, Class Member F's initial allocation would be \$3,611 ($\$859,876 \times .0042$); Class Member G's would be \$2,580 ($\$859,876 \times .003$).

D. Calculation of Final Allocation of Back Pay and Front Pay Damages

The final allocation for each Class Member would be based on the initial allocations from each of the three categories of back pay and front pay damages discussed above. The first step in computing the final allocation would be for the Plaintiffs' Expert to select the largest initial allocation for each eligible Class Member who timely submits a Claim Form. The next step is for the Plaintiffs' Expert to total all of the largest initial allocations for each eligible Class Member. The Plaintiffs' Expert then assigns each eligible Class Member his or her pro rata (proportionate) share of that total.

The above formula can be illustrated by way of example.

EXAMPLE:

(DOLLAR FIGURES FOR INDIVIDUAL AWARDS ARE FOR ILLUSTRATION ONLY.)

Class Member H is an African-American employee, grade 12, earning \$76,000. On the basis of information about Class Member H's salary, positions, and tenure at the Agency, the Plaintiffs' Expert assigned the following initial allocations to Class Member H: \$11,903 from the pool for delays and denials in competitive promotions; \$7,169 from the pool for delays in career ladder promotions; and \$0 from the pool for denials of accretion of duties promotions. The largest initial allocation assigned to Class Member H is \$11,903, from the competitive promotions pool. Therefore, the Plaintiffs' Expert will use this amount to calculate Class Member H's final allocation.

The Plaintiffs' Expert totals all of the largest initial allocations for each eligible Class Member. Here, the Plaintiffs' Expert would add \$11,903 to all of the other eligible Class Members' largest initial allocations and come up with a total. Assume that the total of all the largest initial allocations is \$5,400,000. The Plaintiffs' Expert then assigns Class Member H his pro rata (proportionate) share of the \$5,400,000. Here, Class Member H's pro rata share would be $\$11,903/\$5,400,000$ or .0022.

The Plaintiffs' Expert would then calculate the final allocation for each eligible Class Member by calculating his or her pro rata (proportionate) share of \$6,562,500, the funds allocated for damages due to discriminatory promotions practices. Class Member H's final allocation would be \$14,438 ($\$6,562,500 \times .0022$).

II. DISTRIBUTION OF EMOTIONAL HARM AND DISTRESS DAMAGES TO CLASS MEMBERS

In addition to being eligible for monetary relief for lost earnings, as a Class Member, you may be eligible to receive money for emotional harm and distress due to the alleged discriminatory promotions practices. Plaintiffs have sought damages for emotional harm and distress experienced as a result of working in an environment in which there was alleged racial discrimination in promotions and selections for positions. Based on the rationale that every African-American employee has been harmed in some way from the alleged discrimination at the FDIC, this proposed settlement enables every Class Member an opportunity to recover compensatory damages for this emotional harm and distress.

The Plaintiffs' Expert will distribute damages to each eligible African-American according to the length of tenure that each employee has had at the FDIC.⁶ This means that those who have worked at the Agency for a longer period of time will be eligible for more money from this pool than those who have worked at the Agency for a shorter period of time.

The Plaintiffs' Expert will credit each African-American employee for each month of employment with the Agency within the Liability Period (May 13, 1990 to March 31, 2001). The Plaintiffs' Expert will then total the amount each person is eligible to receive from this category of damages. Each person is eligible to receive his or her pro rata (proportionate) share of the monies payable from this category of funds.

The total funds available from this category of damages is \$3,937,500 (three million, nine hundred thirty-seven thousand, five hundred dollars).

⁶ A Class Member's tenure at the RTC during the Liability Period will not be counted under this formula.

The above formula can be illustrated by way of example.

EXAMPLE:

(DOLLAR FIGURES FOR INDIVIDUAL AWARDS ARE FOR ILLUSTRATION ONLY.)

Class Member I is a current African-American employee at the FDIC. He has worked at the Agency for over 12 years. He started working at the FDIC on January 1, 1989. Class Member I is eligible for monetary relief for emotional harm and distress from May 13, 1990 (the first day within the Liability Period that Class Member I was employed with the FDIC) until March 31, 2001. Class Member I's tenure at the Agency during this time period is approximately 130.5 months.

Class Member J is a current African-American employee at the FDIC. She has worked at the Agency for thirty years. She started working at the FDIC on January 15, 1971. Class Member J is eligible for monetary relief for emotional harm and distress from May 13, 1990 (the first day within the Liability Period that Class Member J was employed with the FDIC) until March 31, 2001. Class Member J's tenure at the Agency during this time period is approximately 130.5 months.

Class Member K is an African-American former employee at the FDIC. He worked at the Agency for one year, from July 15, 1995 to July 15, 1996. Class Member K is eligible for monetary relief for emotional harm and distress from July 15, 1995 (the first day within the Liability Period that Class Member K was employed with the FDIC) until July 15, 1996. Class Member K's tenure at the Agency during this time period is 12 months.

The amount allocated to the Damages Fund is \$3,937,500. Each eligible Class Member is eligible to receive his or her pro rata (proportionate) share of this amount on the basis of how many months he or she has been employed by the Agency within the Liability Period. The Plaintiffs' Expert totals the amount of months for each Class Member and calculates each Class Member's pro rata share. Here, the Plaintiffs' Expert added up the number of months each Class Member was employed within the Liability Period and came up with a total of 150,000 months. Class Member I's pro rata share would equal .0009 (130.5/150,000); Class Member J's would equal .0009 (130.5/150,000); and Class Member K's would equal .00008 (12/150,000). Therefore, Class Member I would be eligible to receive \$3,543 (.0009 x \$3,937,500); Class Member J would be eligible to receive \$3,543 (.0009 x \$3,937,500) and Class Member K would be eligible to receive \$315 (.00008 x \$3,937,500).

III. ATTORNEYS' FEES AND COSTS

Plaintiffs' Counsel and Class Representatives Chris Conanan and Willitta Hawkins reached an agreement prior to the mediation that led to this Proposed Consent Decree, entitling Plaintiffs' Counsel to request fees in an amount up to a third, or 33%, of the total monetary recovery in this case. Under this arrangement, Plaintiffs' Counsel are entitled to seek an award of \$4,666,667 (four million six hundred sixty-six thousand six hundred sixty-seven dollars) in compensation for their work and expenses related to this litigation. However, Plaintiffs' Counsel has agreed to receive a total payment of fees for work performed, up to and including the Fairness Hearing, of \$2 million (two million dollars), which is approximately 14% of the total recovery.

IV. MONETARY AWARDS TO CLASS REPRESENTATIVES

The Proposed Consent Decree provides for individual awards to be made in recognition of the Class Representatives' efforts which have contributed to the successful resolution of this class action.⁷

The contributions of the Class Representatives are as follows:

Chris Conanan: Mr. Conanan is an attorney with the Legal Division in Washington, D.C. Mr. Conanan initiated this case in June, 1992 by seeking informal counseling regarding a class action EEO complaint. Soon thereafter, he retained the services of experienced class action counsel to pursue the class complaint. He persuaded upper level management at the FDIC to enter into mediation of the class complaint in 1992. Mr. Conanan served as the lead employee representative during the first mediation effort and recruited several other employees to work with him to try to reach an agreement. Mr. Conanan advocated for changes in personnel policies and procedures at the FDIC, several of which were subsequently adopted.

In November 1993, Mr. Conanan filed a formal administrative class complaint, and he was approved by the Equal Employment Opportunity Commission to serve as a class agent. Mr. Conanan persuaded the FDIC to agree in 1998 to provide personnel data, essential to proceeding with the class complaint. Mr. Conanan participated as lead class agent in the second mediation effort, which resulted in a settlement. Throughout the pendency of the case, Mr. Conanan has communicated with numerous African-American employees, informing them of developments in the case, obtaining their comments, and answering their questions, and he has made decisions regarding the pursuit of the class action in

⁷ The Class Representatives are also eligible to receive monetary relief from the Backpay and Damages Funds.

consultation with attorneys for the class. Mr. Conanen has also assisted a number of FDIC employees with their individual EEO complaints. Mr. Conanen serves as a named class representative for the case in the United States District Court.

Willitta Gordon Hawkins: Ms. Hawkins is a computer specialist with the Division of Information and Resource Management at the Corporation's Virginia Square site. Ms. Hawkins participated with Mr. Conanen in his attempt in 1992 to resolve this class complaint in the first mediation. The FDIC adopted several changes in personnel policies and procedures in response to the concerns Ms. Hawkins and the other mediation participants raised.

Ms. Hawkins subsequently filed the formal administrative complaint with Mr. Conanen and the Equal Employment Opportunity Commission designated her as a class agent. She participated in the second mediation. Ms. Hawkins has communicated with numerous African-American employees, informing them of developments in the case, obtaining their comments and answering their questions. Ms. Hawkins serves as a named class representative for the case in the United States District Court.

Leonard Glenn: Mr. Leonard Glenn is a bank examiner with the Division of Supervision in the New York office. Mr. Glenn agreed to serve as a class agent for the second mediation. He has represented the interests of African-American employees by serving as a founding member, Chair, and Vice Chair for the Equal Employment Opportunity Advisory Committee; developing the Minority Recruiting Program in New York; serving as an Area Vice President of the National Treasury Employees Union; and working on the Recruitment and Selection Subgroup for the Diversity Plan. Mr. Glenn has communicated with numerous African-American employees, informing them of developments

in the case, obtaining their comments and answering their questions. Mr. Glenn serves as a named class representative for the case in the United States District Court.

Charles Thompson: Mr. Charles Thompson, a certified public accountant, is an Audit Specialist with the FDIC's Office of Inspector General in the Dallas Regional Office. Mr. Thompson participated with Mr. Conanan in his attempt in 1992 to resolve the class complaint through the first mediation, which resulted in the FDIC's adoption of several changes in personnel policies and procedures. Mr. Thompson assisted Mr. Conanan, Ms. Hawkins and Mr. Gordon during the pendency of the class action by informing employees in the Dallas Regional Office about developments in the case, and during the second mediation, by soliciting input from current employees regarding proposed settlement terms.

Marvin G. Gordon: Mr. Gordon, a former liquidation specialist with the Division of Liquidation (now the Division of Resolutions and Receiverships), South Brunswick Field Office, was a term appointment employee at the FDIC. Mr. Gordon participated with Mr. Conanan in his attempt in 1992 to resolve this class complaint through the first mediation during which he advocated for several changes in personnel policies and procedures later implemented by the FDIC. He filed the formal administrative complaint with Mr. Conanan and Ms. Hawkins and the Equal Employment Opportunity Commission designated him as a class agent.

Jacqueline K. Taylor: Ms. Taylor is a former Senior Attorney with the Legal Division, who served with the Chicago and Atlanta Regional Offices in the 1990s. Ms. Taylor participated with Mr. Conanan in his attempt in 1992 to resolve this class complaint through the first mediation in which she advocated for changes in personnel policies and procedures at the FDIC, several of which were

subsequently adopted. Ms. Taylor organized African-American employees in field and regional offices in petitioning for changes in employment practices at those field offices. Ms. Taylor served as an informal advisor to FDIC employees with respect to race discrimination complaints in regional and field offices of the FDIC.

A total of \$500,000 (five hundred thousand dollars) will be distributed on the basis of each individual's leadership and role in representing the Class from the inception of this action to the present. Awards will be made to each Class Representative in the following amounts: Chris J. Conanan, \$185,000; Willitta Gordon Hawkins, \$125,000; Leonard Glenn, \$115,000; Charles Thompson, \$35,000; Marvin Gordon, \$25,000; and Jacqueline Taylor, \$15,000.

V. EXCLUSIONS FROM MONETARY RELIEF AND ADJUSTMENTS TO AWARDS

1. Only those Class Members who timely submit a Claim Form, a copy of which is attached as Exhibit 3 to the Consent Decree, in conformance with the procedures set forth in the Notice of Pendency of Class Action and Proposed Consent Decree, attached as Exhibit 2 to the Consent Decree, are eligible to receive any monetary relief under the proposed settlement. Class Members who do not follow these procedures will not be eligible for any monetary relief under the settlement.

2. A Class Member may have brought an individual claim against the FDIC alleging a denial or delay in promotions or selections for positions due to race or color discrimination or reprisal during the Liability Period (May 13, 1990 to March 31, 2001). If such a claim was settled or decided on the merits, the Class Member's award from the Backpay Fund may be reduced or eliminated

altogether. Class Members will be required to provide on their Claim Forms information regarding such claims.

Those eligible Class Members whose claims were settled will be awarded money from the Backpay Fund in accordance with the formula, but only from the date of settlement to March 31, 2001 (the end of the Liability Period).

Those eligible Class Members whose claims were decided on the merits will be awarded money from the Backpay Fund in accordance with the formula. However, the Plaintiffs' Expert will not include any monetary award from the Backpay Fund for the claim for which there was already a decision made on the merits.

Those eligible Class Members whose claims have not been settled or decided on the merits will not have any adjustments made to their monetary awards under this Consent Decree.

EXAMPLE:

Class Member L is an African-American employee, grade 11. Class Member L has been employed at the FDIC since January 1, 1990. On June 14, 1995, Class Member L settled a claim against the FDIC in which she alleged that she was denied a competitive promotion from grade 7 to grade 9 in January, 1993, because of race. Class Member L is eligible to receive a monetary award from June 14, 1995 to March 31, 2001 from the Backpay Fund and from January 1, 1990 to March 31, 2001 from the Damages Fund.

Class Member M is an African-American employee, grade 9. Class Member M has been employed at the FDIC since January 1, 1990. Class Member M filed a complaint against the FDIC in federal court, alleging that he was denied a career ladder promotion from grade 6 to

grade 7 in January, 1994, because of race. A jury determined that he was denied this promotion due to race discrimination. Class Member M is eligible to receive a monetary award from January 1, 1990 to March 31, 2001 (the Liability Period), from both the Backpay and Damages Funds. However, his monetary award from the Backpay Fund, if any, will not include relief for the denial of the promotion from grade 6 to grade 7.

3. The Residual Fund: The Residual Fund is a fund comprised of One Million Dollars (\$1,000,000) which the Plaintiffs' Expert will set aside from the \$11.5 million available for distribution to the Class, when determining each Class Member's initial allocation. The purpose of the Residual Fund is to have money available in the event that the Plaintiffs' Expert needs to adjust upward any individual's award due to an error in the initial calculation of that individual's award.

Each Class Member is afforded the opportunity to inform the Plaintiffs' Expert if he or she believes that there has been an error in calculating his or her monetary award under this formula, (*i.e.*, an "appeal"), in accordance with the procedure set out forth in the Notice of Individual Monetary Award Under Proposed Consent Decree, attached to the Consent Decree as Exhibit 4. Once the deadline for submitting appeals has expired, the Plaintiffs' Expert will determine for each Class Member who timely submits an appeal whether it is appropriate to adjust his or her initial allocation. Once the Plaintiffs' Expert considers all new information brought forth in the appeals process, he will recalculate each eligible Class Member's pro rata share of the \$11.5 million sum. All of the monies from the \$11.5 million sum will be distributed to the Class and there will be no money left over in the Residual Fund.

The Claims Administrator will then distribute the \$11.5 million sum by mailing to each Class Member who is eligible to receive money pursuant to this settlement, his or her check in the amount

determined by the Plaintiffs' Expert, subject to the tax deductions described in Section III.A.4 of the Consent Decree.

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