IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

ROBERT WEBB, et al.,

Plaintiffs,

v.

MISSOURI PACIFIC RAILROAD CO.,

Defendant.

C.A. No. LR-75-C-189

MEMORANDUM OPINION AND ORDER

Before the Court is the parties' Joint Motion for Preliminary Approval of Settlement Agreement, submitted on January 26, 1999. Based upon (a) the submissions of the parties at the Fairness Hearing held on April 12, 1999, in the parties' Joint Motion for Preliminary Approval of Settlement Agreement, with supporting Memorandum and exhibits (January 26, 1999), and in the Affidavit of Michael S. Moore and attached exhibits (March 10, 1999); (b) the complete absence of any written or oral objections to the settlement agreement proposed by the parties; and (c) the Court's detailed knowledge of the factual record and legal issues presented by this case, the Court hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. History of Litigation

1. This case was filed on June 25, 1975. On August 13, 1982, the Court certified four plaintiff subclasses, including the Maintenance of Way Subclass ("MOW Subclass"). The trial, which

lasted 95 days, began on November 19, 1985 and ended on December 11, 1989. At the end of the plaintiffs' case in chief, the Court dismissed the transfer claims of the MOW Subclass. After trial, in its July 16, 1993 opinion, this Court found in favor of the MOW Subclass with respect to their pattern and practice claims in the areas of promotions, discipline, and work environment. It also found in favor of named class representative Earnest Franklin with respect to certain of his individual claims.

2. Following the entry of an injunction on April 18, 1994, defendant Missouri Pacific filed an appeal from this Court's certification of the MOW Subclass and its rulings on the merits in favor of the MOW Subclass, as well as from this Court's entry of an injunction against the defendant. On October 22, 1996, the Court of Appeals vacated the injunction that had been entered, but declined to reach the class and merits issues for which Missouri Pacific had sought interlocutory review. Instead, the Eighth Circuit remanded the case with instructions to proceed to the remedy phase (Stage II).

3. After the remand, notice was transmitted by both U.S. mail and newspaper advertisements to all MOW Subclass members. These notices informed MOW Subclass members of their right to file claims of individual discrimination and set a deadline of April 16, 1997. Ultimately, 198 persons filed individual claims. After an opportunity for depositions and other discovery, Magistrate Judge H. David Young recommended dismissal with prejudice of the claims of 136 MOW claimants, a recommendation that was accepted by the

Court after none of these 136 claimants appealed from Judge Young's recommendation.

4. After these dismissals, there were 62 claimants who had claims remaining to be tried. The trial for these 62 claimants was scheduled to begin on September 28, 1998, but the Stage II trial was postponed as the parties resumed settlement discussions.

B. Voluntary Resolution by Settlement Agreement

5. The parties were able to reach an agreement in principle resolving the case on October 13, 1998.

6. The parties' Settlement Agreement under which all claims raised in this litigation by the Maintenance of Way Subclass and counsel for the Maintenance of Way Subclass or members thereof are finally and conclusively resolved is attached hereto as Appendix A. In this Settlement Agreement, the parties recognized that the Court's rulings in this case have not been reviewed on the merits by the United States Court of Appeals for the Eighth Circuit, and further recognized that the defendant continues to deny that it has discriminated against the Maintenance of Way Subclass and that it has violated Title VII of the Civil Rights Act of 1964 or 42 U.S.C. § 1981 with respect to that Subclass. As a result of the parties' voluntary settlement prior to appeal on the merits, there has been no final adjudication that the defendant has or has not engaged in the conduct alleged in the Complaint with respect to the Maintenance of Way Subclass.

C. Compliance with Previously Ordered Notice Requirements

7. The parties have fully complied with the procedures for providing notice to class members and counsel for class members as set forth in this Court's Order entered on February 1, 1999. Accordingly, the Court finds that all class members and counsel have been given notice of the proposed Settlement Agreement that was scrupulously neutral and that adequately and fully described the terms of the proposed Settlement Agreement.

D. Lack of Objections to Settlement Agreement

8. Even though MOW Subclass members and attorneys who have served as counsel to the MOW Subclass or members thereof have been given an ample and fair opportunity to object to object to the proposed Settlement Agreement, no written or oral objections to the proposed Settlement Agreement have been received by the Court. Moreover, prior to entering into this Settlement Agreement, plaintiffs' counsel consulted with each of the 62 MOW Subclass claimants who had filed claims that had not been dismissed and remained to be tried. Thus, the Court finds that there is no member of the Maintenance of Way Subclass nor any attorney who has represented the Maintenance of Way Subclass nor any member thereof who objects to the settlement proposed by the defendant and class counsel.

E. Adequate Factual Basis for Decision to Settle

9. Counsel for the parties, and particularly counsel for the Maintenance of Way Subclass, had a more than adequate factual and evidentiary basis upon which to reach a reasoned determination that

the Settlement Agreement is in the best interests of the Maintenance of Way Subclass. This Settlement Agreement was reached only after more than twenty-three years of litigation on this case. Prior to the Court's certification of this case as a class action, during the Stage I proceedings, and during the Stage II proceedings that followed the Eighth Circuit's remand (after the interlocutory appeal), counsel for the MOW Subclass engaged in discovery on a formal and informal basis. In the course of that discovery, the parties took more than 200 depositions at Stage I and more than 120 depositions at Stage II. In addition, Missouri Pacific has provided, among other documents, statistical data concerning its employment practices in the MOW Department from 1972 through 1984, data which was the subject of extensive expert witness testimony at the Stage I trial. In addition, the parties have exchanged other documents, interrogatory answers and responses to requests for admission at Stage I and Stage II of the litigation. Plaintiffs' counsel have also engaged in extensive interviews of members of the MOW Subclass. The foregoing discovery, taken in conjunction with the information disclosed during the 95 days of the Stage I trial, provides a solid basis for plaintiffs' counsel, as well as the defendant, to assess the merits and risks of the position of the MOW Subclass, and to bring this matter to a conclusion on an informed basis.

10. Counsel for the parties have represented to the Court that the parties engaged in substantive settlement discussions throughout the 1980s, but the assessments of the respective counsel

of the strengths and weaknesses of their clients' cases differed so much that settlement was never possible. Settlement discussions also continued in the 1990s, but agreement still eluded the parties. One of the largest stumbling blocks to settlement had been the uncertainties about how many persons would actually file individual claims of discrimination at Stage II, the nature of such claims, and the monetary value of these individual claims. Of course, once Stage II claims had been filed and discovery had been taken from Stage II claimants, both sides had concrete information from which they could much more accurately assess their cases. The possession of this information led both sides to move from their prior settlement positions and to reach a settlement agreement in principle on October 13, 1998. This chronology of events provides further support for this Court's finding that the parties had an ample factual basis to make an informed decision that settlement at this point is in the best interests of the MOW Subclass, as well as the defendant.

F. Arms-Length Negotiation & Absence of Collusion

11. The Court is confident, both as a result of the lengthy history of unsuccessful settlement negotiations in this case, and its observations of counsel for both sides throughout this hard-fought litigation, that this Settlement Agreement is not the product of collusion. Instead, the Court finds, on the basis of all of the evidence before it, that the Settlement Agreement is the product of good-faith, arms-length adversarial bargaining between two sets of lawyers who have vigorously and professionally

represented their respective clients' interests throughout this litigation.

G. Experience & Expertise of Plaintiffs' Counsel

12. The plaintiffs' counsel in this case are highly experienced in the litigation of discrimination suits, including large class actions. The two most senior members of plaintiffs' trial team (John Walker and Ralph Washington) have more than a half-century of experience in litigating discrimination cases. They certainly qualify as "experienced" counsel, whose expertise amply qualifies them to assess the strengths and weaknesses of a case and the value of a proposed settlement to their clients.

H. Benefits of Settlement & Risks of Continued Litigation

13. Counsel for the MOW Subclass have advised the Court of their belief that the Settlement Agreement is in the best interests of the class, when the risks and delays of continued litigation are weighed against the monetary benefits of settlement. Plaintiffs' counsel have advised the Court that they have taken into account the risks posed by the possibility of appeal from this Court's Stage I rulings on the merits and with respect to class certification, as well as the risks that individual claimants would not prevail on their claims in the Stage II "mini-trials." They have also taken into account the expenses and delays that would result from several months or years of further litigation. They have balanced these factors against the substantial amount being offered in settlement by defendant. The Court finds plaintiffs' explanation of their reasoning process to be persuasive and

reasonable. In particular, under the Court's Order of Reference and applicable caselaw, the defendant retains the right to prove, by a preponderance of the evidence, that the claimant was denied a promotion for lawful reasons or was disciplined for lawful reasons. See Order of Reference ¶¶ 10-11; International B'hood of Teamsters v. United States, 431 U.S. 324, 362 (1977); Craik v. Minnesota State Univ. Bd., 731 F.2d 465, 470 & n. 8, 484 (8th Cir. 1984). The parties indicate that the defendant has maintained extensive records of its reasons for its promotion decisions and, especially, for its discipline decisions, and at least some of the remaining 62 claimants would likely not prevail at Stage II. Moreover, the burden is on an individual claimant to show that he has suffered monetary loss from any discipline that occurred, and that he has exercised reasonable diligence in seeking alternative employment. See Order of Reference ¶¶ 14-15. According to the parties, in some cases, claimants were able relatively quickly to obtain employment paying as much as or more than their trackman jobs with the Railroad and a few claimants' employment history was such that they might have had difficulty in satisfying the reasonable diligence requirement. Thus, even some of those claimants who prevailed at Stage II might recover relatively limited back pay awards.

14. Plaintiffs' counsel also offered to meet privately with any Subclass member to explain in more detail (within the context of an attorney-client privilege) the basis for their conclusion that the settlement is in the best interests of the MOW Subclass.

15. Based on the representations to the Court by counsel for the MOW Subclass, counsel for the defendant, and the Court's own knowledge of the contested legal and factual issues presented by this case and the likely duration of the remainder of the case if it is not settled, the Court finds that the monetary payments provided pursuant to this Settlement Agreement are fair, adequate, and reasonable in light of the risks and delays of continued litigation.

I. Fairness & Reasonableness of Allocations of Monetary Payments

16. The Settlement Agreement provides for specific allocations of the overall payment of $880,000 among individual Maintenance of Way Subclass claimants and among class counsel, as set out in sections IV and V of the Settlement Agreement. In the aggregate, class counsel will receive $565,000 and Subclass claimants will receive $315,000 (less applicable withholding).

17. In assessing the fairness and reasonableness of the allocations as among the individual Stage II claimants and as between the Subclass and class counsel, the Court places substantial weight on the fact that each remaining Stage II claimant was specifically consulted about the precise allocations, yet not a single MOW Subclass member or attorney for the Subclass has objected to these allocations. The Court finds this complete lack of objections after a direct communications process to be highly persuasive evidence of the fairness and reasonableness of the allocations set out in Sections IV and V of the Settlement Agreement.

18. The Court finds the decision of plaintiffs' counsel that those MOW Subclass members who failed to file claims or whose claims were dismissed on summary judgment will not share in the monetary payments to be a reasonable and fair one, in light of the ample notice provided to the MOW Subclass, the clear and undisputed evidence that was presented with respect to the motions for summary judgment, and the failure of any of the claimants to appeal from the summary judgment entered against them by Magistrate Judge Young. The Court also finds the explanations provided for the failure of Alvin Gunn and Roger Williams to file claims to be credible and reasonable, and thus approves their inclusion in the monetary payments under the Settlement Agreement.

19. As explained in the motion for approval of the Settlement Agreement, plaintiffs' counsel has chosen to determine the specific amounts of monetary payments based primarily on the type of claims (e.g., promotion, dismissal) raised by each claimant, with a small additional amount being given to claimants who actively assisted plaintiffs' counsel at Stage I of this litigation (such assistance of course was to the benefit of the entire Subclass). The amount allocated for each type of claim depended upon plaintiff counsel's assessment of the relative strength of each type of claim and the relative monetary injury associated with the particular type of employment action (that is, those who were dismissed generally suffer greater economic loss than those whose promotions were delayed). In arriving at the allocation of the overall award to each remaining claimant in this case, plaintiffs' counsel have

engaged in extensive "Stage II" trial preparation, such as numerous strategy sessions with counsel and statistical expert; detailed reviews of the many volumes of documents delivered by counsel for the defendant pursuant to discovery requests regarding payroll records, bid sheets, and seniority rosters; detailed reviews of the deposition(s) and interrogatories responses of each claimant; and discussions and conferences with each claimant. Class counsel have reviewed each remaining claim, and feel that the total monetary settlement is fair and is in the best interest of the class and each individual claimant.

20. The Court does not believe that it would be feasible, in the context of a negotiated settlement occurring prior to litigation of individual claims in Stage II "mini-trials," to perform a highly individualized, case-by-case assessment of the relative "settlement values" of each individual claim. To the contrary, the Court finds that basing the amount of individual payments on the types of claims raised by the claimant (with small bonuses for those who actively participated in Stage I litigation) to be a fair and reasonable method of determining individual payment amounts, which does not result in any individual being unfairly favored or disfavored. The Court finds the amounts allocated for each type of claim to be fair and reasonable, for the reasons stated by class counsel.

21. Class counsel are seeking reimbursement of $565,000 for their time and expenses in this matter. Given the time period during which this case has been actively litigated by plaintiffs'

counsel and the number of lawyers involved,[1] it is apparent to the Court that this amount will fall far short of fully reimbursing class counsel for the amount of time that they have spent at their regular hourly rates, not to mention their out-of-pocket expenditures, and plaintiffs' counsel have represented to the Court that this is in fact the case. Based on this representation to the Court, the Court's general knowledge of the effort that has gone into this case, the Court's knowledge of plaintiff counsel's billing rates in other cases that have been reviewed by this Court, the years during which class counsel received no compensation, and the complete absence of any objection by any class member or attorney after they were provided full information about counsel's request for compensation, the Court finds that the amount requested by class counsel is reasonable and fair to the class.

J. Procedures for Payments Pursuant to Settlement Agreement

22. The monetary awards to individual MOW Subclass members represent payment in lieu of both back pay and interest. Because back pay and interest are treated differently for purposes of Railroad Retirement Board (RRB) and other types of employment taxes and withholding, it is necessary to develop a reasonable allocation of the monetary awards between back pay and interest. This requires some approximation, since it is not feasible to make such

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[1] Plaintiffs' counsel list the following as being among those who have provided legal services on behalf of the plaintiff class: John W. Walker, the Honorable Henry Jones, John Sizemore, Ralph Washington, John Mosby, David Parker, Lazar Palnick, Raymond Pierce, Martin Shapiro, David Schoen, Horace Walker, and the NAACP Legal Defense Fund, Inc.

determinations on an individual-by-individual basis where the individual awards have not been computed on an individual-by-individual basis. Instead, as set forth in sections II.M and II.N of the Settlement Agreement, the parties reviewed the claims remaining to be tried at the time of settlement and determined that a reasonable estimate of the average "starting" date of the remaining individual claims is January 1, 1982. They then applied the statutory rates for post-judgment interest under 28 U.S.C. § 1961[2] to determine what proportion of a monetary obligation accruing on January 1, 1982 but not actually paid until 1999 would represent interest. If $1000 had been invested on January 1, 1982 and interest accrued annually from that point forward at the applicable 52-week T-bill interest rates through the end of 1998, the total accrued amount would be $4,179.58.[3] Of this amount, the

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[2] These rates are set out in the Historical and Statutory Notes to 28 U.S.C.A. § 1961. For calculation purposes, the parties used the first interest rate reported for each calendar year, which the Court finds to be a reasonable method of approximation for this purpose.

[3] This calculation was as follows:

1982: $1000 x 14.92% = $1492.00
1983: $1492 x 8.65% = $1621.06
1984: $1621.06 x 9.87% = $1781.06
1985: $1781.06 x 9.09% = $1942.96
1986: $1942.96 x 7.85% = $2095.48
1987: $2095.48 x 5.75% = $2215.97
1988: $2215.97 x 7.14% = $2374.19
1989: $2374.19 x 9.16% = $2591.67
1990: $2591.67 x 7.74% = $2792.27
1991: $2792.27 x 6.62% = $2977.12
1992: $2977.12 x 4.02% = $3096.80
1993: $3096.80 x 3.67% = $3210.45
1994: $3210.45 x 3.67% = $3328.27
1995: $3328.27 x 7.34% = $3572.57

principal of $1000 would represent only 23.9%. The parties thus submit that the allocation of 25% to back pay is a reasonable one, based on the facts of this case and the issues being resolved by the Settlement Agreement. The Court agrees with this method of allocating between back pay and interest and finds that it is reasonable, fair, and as accurate a method of allocation as is feasible on the facts of this case. The Court further finds that 75% of each payment to a claimant represents interest and not "wages" or "compensation" and that 100% of the $565,000 payment made to class counsel does not represent "wages" or "compensation." The Court further finds that, given the non-individualized methods of determining individual payment amounts necessarily used in this settlement, it is not possible to determine that any such payment to a particular individual represents compensation for any identifiable period of non-promotion, underpayment, suspension, or termination.

23. The Court finds that section II.O of the Settlement Agreement, which provides that the defendant is not obligated to make payment to any individual claimant until he has executed the Release in the form set out in Attachment 1 to the Settlement Agreement is a reasonable means of protecting the defendant from duplicative claims while permitting claimants to receive their payments promptly upon the final resolution of any appeals periods.

1996: $3572.57 x 5.16% = $3756.91
1997: $3756.91 x 5.61% = $3967.67
1998: $3967.67 x 5.341% = $4179.58

Thus, the Court approves the procedure set out in section II.O of the Settlement Agreement.

24. The Court finds that section II.P of the Settlement Agreement, which provides that payments for attorneys fees and costs are to be made into the registry of the Court and shall not be paid out until an appropriate release has been received from the payee, represents a reasonable means of protecting the defendant from duplicative claims while permitting class counsel to receive payment promptly upon the final resolution of any appeals periods. Thus, the Court approves the procedure set out in section II.P of the Settlement Agreement.

25. Due to the lead counsel role assumed by John W. Walker and John W. Walker, P.A. throughout this litigation and due to the representation of John W. Walker, P.A. at page 22 of the Memorandum in Support of Joint Motion for Preliminary Approval of Settlement Agreement and for Approval of Notice to MOW Subclass that John W. Walker, P.A. has employed most (if not all) of the attorneys who have represented the plaintiff class, the Court finds that, upon execution of a Release in the form set out in Attachment 2 of the Settlement Agreement by John W. Walker and John W. Walker, P.A., the Clerk of Court may disburse the entire $565,000 in counsel fees to John W. Walker or John W. Walker, P.A. John W. Walker, P.A. will remain responsible for payments due, if any, to any other class counsel.

CONCLUSIONS OF LAW

This Court is responsible under Rule 23(e) of the Federal Rules of Civil Procedure for determining whether the proposed settlement of the claims of the MOW subclass is "fair, reasonable, and adequate." See Van Horn v. Trickey, 840 F.2d 604, 606 (8th Cir. 1988); Grunin v. International House of Pancakes, 513 F.2d 114, 123 (8th Cir. 1975). The procedure recommended by the Manual for Complex Litigation for reaching this determination, which has been adopted by many courts, consists of two steps. See Manual for Complex Litigation, Third § 30.41 (1995); see, e.g., Grunin v. International House of Pancakes, 513 F.2d 114, 120-22 (8th Cir. 1975); Officers for Justice v. Civil Services Comm'n, 688 F.2d 615, 622 (9th Cir. 1982); Armstrong v. Board of School Directors, 616 F.2d 305, 314 (7th Cir. 1980); In re General Motors Corp. Engine Interchange Litigation, 594 F. 2d 1006, 1124 & n. 22 (7th Cir. 1979).

The first step involves a preliminary determination by the court whether the proposed settlement is "within the range of possible approval"; Armstrong, supra, 616 F.2d at 314, or is "of sufficient substance to submit it to the class." Officers for Justice, supra, 688 F.2d at 622. The Court gave its preliminary approval to the parties' proposed settlement on January 28, 1999.

The second step, which follows preliminary approval, is notification to the class of the proposed settlement and, a final hearing on the fairness of the settlement, "at which arguments and evidence may be presented in support of and in opposition to the

settlement." Armstrong, supra, 616 F.2d at 314. The parties gave notice to the class, as directed by the Court and made a further evidentiary presentation to the Court at the Fairness Hearing on April 12, 1999.

A. Factors Relevant to Court's Review of a Proposed Settlement

The ultimate burden is on the proponents of the settlement to show that it is "fair, adequate, and reasonable." Once the fairness hearing has been held, "[e]ven if no objections have been filed and no adverse appearances made, the court should make a sufficient record and enter specific findings to satisfy a reviewing court that it has made the requisite inquiry and has considered the diverse interests and the factors implicated in the determination of fairness, adequacy, and reasonableness." Id.; see Van Horn v. Trickey, 840 F.2d 604, 607 (8th Cir. 1988)(finding must show that approval rests on "well-reasoned conclusions" and not "mere boilerplate"); Grunin, supra, 513 F.2d at 125 n. 9; In re Flight Transportation Corp. Securities Litigation, 730 F.2d 1128, 1136 (8th Cir. 1984).

While Rule 23(e) does not itself specify the standards by which a proposed class action settlement should be measured, the caselaw and the Manual for Complex Litigation provide extensive guidance in this area. The ultimate requirement is that the court must be satisfied that the proposed settlement is "fair, reasonable, and adequate." See DeBoer v. Mellon Mortgage Co., 64 F.3d 1171, 1176 (8th Cir. 1995); Van Horn v. Trickey, 840 F.2d 604, 606 (8th Cir. 1988); Grunin v. International House of Pancakes, 513

F.2d 114, 123 (8th Cir.1975); Armstrong v. Board of School Directors, 616 F.2d 305, 312 (7th Cir. 1980); Manual for Complex Litigation, Third § 30.42 (1995).

The court's review of a proposed settlement requires not only "an educated estimate of the complexity, expense, and likely duration" of the litigation, but also consideration of "all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise." Protective Committee for Independent Stockholders v. Anderson, 390 U.S. 414, 424-25 (1968). In short, the proposed settlement must be evaluated in light of any and all circumstances and factors that bear on fairness and adequacy. See Evans v. Jeff D., 475 U.S. 717, 742 n. 35 (1986); Officers for Justice, supra, 688 F.2d at 625.

In this case, the Court concludes that the legally relevant considerations for determining whether this particular agreement is fair, adequate, and reasonable include the following factors:

(1) The judicial presumption in favor of settlements.

(2) Whether the decision of counsel for the parties to settle was a well-informed, arms length decision, taking into account such factors as the experience of class counsel, the advanced stage of litigation, and the proof of adversarial bargaining and absence of collusion.

(3) The amount of opposition to the proposed Decree.

(4) The risk and expenses posed to the plaintiffs by continued litigation on the merits when compared to the substantiality of the monetary payment offered in settlement.

(5) The fairness and reasonableness of the allocations of monetary and injunctive relief among the subclass members.[4]

(6) The fairness and reasonableness of the attorneys' fees and costs provisions in the proposed Decree.[5]

Applying these legal criteria to the factual findings made by the Court, the Court concludes that the parties' proposed settlement is fair, adequate, and reasonable, and thus should be approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as set forth in more detail below.

1. Presumption in Favor of Settlements

A motion for approval of a settlement of an employment discrimination class action brings into play two basic policy considerations that must both be balanced by the Court. See generally Armstrong v. Board of Sch. Directors, 616 F.2d 305, 319 (7th Cir. 1990). The first policy consideration, embodied in Federal Rule of Civil Procedure 23(e), is the need to ensure that the interests of absent class members are not unfairly compromised. See, e.g., Grunin, supra, 513 F.2d at 1237; Officers for Justice, supra, 688 F.2d at 624. The second policy that the Supreme Court has indicated that the trial court should consider is the "strong preference" of Congress, as embodied in Title VII, "for encouraging

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[4] See generally Manual for Complex Litigation, Third § 30.42 (1995).

[5] See, e.g., Evans v. Jeff D., 475 U.S. 717, 735-36 n. 26 (1986); Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 921 F.2d 1371, 1391-92 (8th Cir. 1990); Grunin v. International House of Pancakes, 513 F.2d 114, 128 (8th Cir. 1975); Manual for Complex Litigation, Third § 30.42 (1995); see generally Farrar v. Hobby, 506 U.S. 103 (1992); Hewitt v. Helms, 482 U.S. 755 (1987).

voluntary settlement of employment discrimination claims." Carson v. American Brands, Inc., 450 U.S. 79, 88 n.14 (1981). As the Supreme Court indicated in Carson, a trial court's refusal to approve a settlement agreement approved by the parties therefore "would also undermine one of the policies underlying Title VII." Id.

The Eighth Circuit has similarly held that class action settlements should be favorably viewed: "The law strongly favors settlements. Courts should hospitably receive them...." Little Rock Sch. Dist. supra, 921 F.2d at 1383.

Thus, in reviewing a proposed class action settlement, the district court should be aware that settlement agreements are the product of compromise[6] -- that both sides have chosen to exchange the savings of costs and the elimination of risk in return for giving up something they might have won if they had proceeded with the litigation. See e.g., Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1977) (the essence of compromise is "a yielding of

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[6] The Supreme Court has explained the nature of consent decrees:

> Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms. The parties waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation. . . . [T]he parties have purposes, generally opposed to each other, and the resultant decree embodies as much of those opposing purposes as the respective parties have the bargaining power and skill to achieve.

United States v. Armour & Co., 402 U.S. 673, 681-82 (1971).

absolutes and an abandoning of highest hopes"). As the Ninth Circuit has noted, "Undoubtedly, the amount of the individual shares will be less than what some class members feel they deserve but, conversely, more than the defendants feel those individuals are entitled to. This is precisely the stuff from which negotiated settlements are made." Officers for Justice, supra, 688 F.2d at 628.

Where, as here, a detailed settlement agreement has been reached by experienced counsel as a product of adversarial negotiations, "[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."[7] Accordingly, the Court will not undertake to "decide the merits of the case or resolve undecided legal questions" in reviewing this proposed settlement agreement. Carson v. Brands, Inc., 450 U.S. 79, 88 n.14 (1981); see Grunin, supra, 513 F.2d at 123-24; Officers for Justice, supra, 688 F.2d at 625. Instead, it will apply the usual judicial presumption in favor of settlement.

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[7] Officers for Justice, supra, 688 F.2d at 625. See Armstrong, supra, 616 F.2d at 315 ("[T]he judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public. Judges should not substitute their own judgment as to optional settlement terms for the judgment of the litigants and their counsel.").

2. Whether the Parties Had an Adequate Basis for Making an Informed Decision About Settlement

A second legally relevant factor is "whether counsel had sufficient information to arrive at an informed evaluation." Manual for Complex Litigation, Third § 30.42 (1995); see Grunin, supra, 513 F.2d at 125; In re Chicken Antitrust Litig., 669 F.2d 228, 240-41 (5th Cir. 1982); Armstrong v. Board of Directors, 616 F.2d 305, 325 (7th Cir. 1980). Thus, the fact that a case has reached an advanced stage before settlement is proposed is a factor supporting the Court's approval of a settlement. See Grunin, supra, 513 F.2d at 125; City of Detroit v. Grinnell Corp., 495 F.2d 448, 453 (2d Cir. 1974); Plummer v. Chemical Bank, 668 F.2d 654, 658 (2d Cir. 1982).

This factor obviously weighs heavily in favor of settlement in the present case, since it occurs twenty-three years into the case, after ninety-five days of Stage I trial, more than 200 Stage I depositions and 120 Stage II depositions, and other extensive discovery, and ongoing substantive settlement discussions throughout the 1980s and 1990s.

In addition, where, as in this case, plaintiffs' counsel are highly experienced, their informed judgments are entitled to substantial weight in determining whether a settlement agreement should be approved. See, e.g., DeBoer v. Mellon Mortgage Co., 64 F.3d 1171, 1178 (8th Cir. 1995)(views of experienced class counsel "to be accorded deference"); Armstrong v. Board of Sch. Directors, 616 F.2d 305, 325 (7th Cir. 1980)(same); Pettway v. American Cast Iron Pipe Co., 576 F.2d 1157, 1215 (5th Cir. 1976)("court entitled

to take account of the judgment of experienced counsel"). Plaintiffs' counsel here are amply qualified to assess the strengths and weaknesses of a case and the value of a proposed settlement. Thus, the Court has given their views substantial weight in reviewing the proposed settlement.

3. The Amount of Opposition to the Proposed Decree

The number of class members who object to a proposed settlement is a relevant consideration in whether the agreement should be approved. See Manual for Complex Litigation, Third § 30.42 (1995); Grunin v. International House of Pancakes, 513 F. 2d 114, 124 (8th Cir. 1975); Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 622 (9th Cir. 1982). The fact that only a "handful" of class members objects weighs in favor of a settlement. See DeBoer v. Mellon Mortgage Co., 64 F.3d 1171, 1178 (8th Cir. 1995); 7B C. Wright, A. Miller & M. Kane, Federal Practice and Procedure §1797.1, at 409-11 (1986 & 1999 pocket part) ("The absence of any opposition may indicate that the class members agree with counsel that the offer being made is fair and adequate and this certainly would be important for the court to take into account."). The fact that in this case there were no objections whatsoever obviously weighs heavily in favor of approval of the settlement.

4. The Benefits of Settlement Weighed Against the Costs and Risks of Continued Litigation

"Courts judge the fairness of a proposed compromise by weighing the plaintiffs' likelihood of success on the merits against the amount and form of relief offered in the settlement."

Carson v. American Brands, Inc., 450 U.S. 78, 88 n. 14 (1981). As the Eighth Circuit has held, "The single most important factor in determining whether a settlement is fair, reasonable, and adequate is a balancing of the strength of the plaintiff's case against the terms of the settlement." Van Horn v. Trickey, 840 F.2d 604, 607 (8th Cir. 1988); see Grunin v. International House of Pancakes, 513 F.2d 114, 123 (8th Cir. 1975); Manual for Complex Litigation, Third § 30.42 (1995)("this analysis entails a comparison of the amount of the proposed settlement with the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing").

Of course, the Court cannot itself assume the role of counsel and undertake its own wholly independent judgment of the strengths, weaknesses, and risks presented by the plaintiffs' case. "[I]n approving a settlement the court need not undertake the type of detailed investigation that trying the case would involve." Van Horn v. Trickey, 840 F.2d 604, 606 (8th Cir. 1988). Instead, "[c]ounsel for the parties are the court's main source of information concerning the settlement." Manual for Complex Litigation, Third, § 30.04 (1995). Yet the Court does bring its own unique perceptions and information to bear on this evaluation, in that

> [the judge] is exposed to the litigants, and their strategies, positions and proofs. He is aware of the expense and possible legal bars to success. Simply stated, he is on the firing line and can evaluate the action accordingly.

Grunin v. International House of Pancakes, 513 F.2d 114, 123 (8th Cir. 1975).

In this case, class counsel provided a candid assessment of the strengths and shortcomings of their case on the merits, and defense counsel also provided their views as to the risks and costs of continued litigation. Based on its own perspective on the case, the Court concurs with the reasonableness of these assessments. The Court has found, based on these presentations and its own knowledge of the case, that when the factors of likelihood of appeal and risks on appeal,[8] risks of loss by individual claimants at Stage II, and the delay and expense of continued litigation[9] are taken into account, that the proposed settlement is on balance more favorable to the class than continued litigation. This factor weighs very heavily in favor of the Court's approval of the proposed settlement.

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[8] The fact that the case will be appealed is a factor that cuts in favor of settlement. See, e.g., City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974); Officers for Justice, supra, 688 F.2d at 625; Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975).

[9] See, e.g., DeBoer v. Mellon Mortgage Co., 64 F.3d 1171, 1178 (8th Cir. 1995)(very purpose of settlement is "to avoid the delay and expense" of trial); Van Horn v. Trickey, supra, 840 F.2d at 606 (district court should consider "the complexity and expense of further litigation"); Officers for Justice, supra, 688 F.2d at 629 (court should consider "expense, complexity, and duration of further litigation"); Cotton v. Hinton, 559 F.2d 1326, 1331 (5th Cir. 1977)(considering "length of time and expense" in discrimination class actions; "settlements contribute greatly to the efficient utilization of our scarce judicial resources").

5. Fairness of Intra-Class Allocations

Rule 23 (e) requires that the Court assess the fairness and adequacy of the allocation of monetary relief among class members, just as it must review the fairness of the overall settlement between plaintiffs and defendants. See Manual for Complex Litigation, Third, §30.42 (1995); In re Chicken Antitrust Litigation, 669 F. 2d 228, 238 (5th Cir. 1982); Pettway v. American Cast Iron Pipe Co., 576 F. 2d 1157, 1217 (5th Cir. 1978); 7B C. Wright, A. Miller & M. Kane, Federal Practice and Procedure §1797.1 at 401-04 & n.14 (1986 & 1999 pocket part). There is, of course, no requirement that all class members take equal shares, since not all class members are identical. Johnson v. Montgomery County Sheriff's Dept's., 604 F. Supp. 1346, 1348 (M.D. Ala. 1985). Moreover, the Court need not concern itself with minor monetary disparities among class members. Id. at 1349. Instead, the Court must assure itself that class counsel's allocations are "rationally based on legitimate considerations." Id . at 1349 (quoting Holmes v. Continental Can Co., 706 F.2d 1144, 1148 (11th Cir. 1993)); see Sweet v. General Tire & Rubber Co., 28 Empl. Prac. Cas. 804, 811 (N. D. Ohio 1982).

Counsel is not required to achieve perfection in allocations, but may rely upon categories and formulas that roughly correspond to the alleged injuries and strength of particular types of claims. See Chicken Antitrust, supra, 669 F. 2d at 240; Alpine Pharmacy, Inc. v. Chas. Pfizer & Co., 481 F. 2d 1045, 1049 (2d Cir. 1973).

This Court has reviewed the allocations proposed by plaintiffs' counsel and found them to be fair and reasonable -- a determination that is strongly reinforced by the fact that not one person objected to these allocations. In particular, a settlement that pays damages to individuals whose claims could not survive summary judgment would be unfair to other class members. This factor -- the fairness of allocations -- also weighs in favor of the proposed settlement.

6. Provision for Attorneys Fees and Costs

In reviewing the attorneys' fees provisions of a proposed settlement, the Court's "primary concern" is to "ensure that these awards reasonably compensate the attorneys for their services yet are not excessive, arbitrary, or detrimental with respect to the class." Grunin v. International House of Pancakes, 513 F.2d 114, 126-27 (8th Cir. 1975). The Court has found, as a matter of fact, that -- when the substantial discount taken by plaintiffs' counsel from the fee that they would receive if paid for all hours is balanced against the benefits to the class -- the amount awarded to class counsel is fair and reasonable, particularly when viewed in light of the fact that no class member or counsel objected. Plaintiffs' counsel are receiving far less than they might have expected to receive if this case had been litigated to a fully successful conclusion, and their fees are not excessive, arbitrary, or detrimental with respect to the class.

Taking all of the foregoing six factors into account, the Court concludes that the proposed settlement is fair, adequate, and

reasonable. The Court therefore approves the settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. Accordingly, as provided in section II.B of the Settlement Agreement, the Court will enter an order dismissing with prejudice the claims of the MOW Subclass and all intervenors therein (including class representative Earnest Franklin).

B. Characterization of Payments for Tax Purposes

An allocation as between back pay and interest thereon must be made in order to permit a proper disbursement and withholding of taxes pursuant to the Settlement Agreement.[10] The Court has made a factual finding that it is appropriate to characterize 25% of the payment to be made to each individual claimant as back pay and to characterize 75% of the payment to each individual claimant as pre-judgment interest on accrued back pay.

Under the employment tax provisions applicable to railroads,[11] the defendant is responsible for withholding employment taxes (and for making additional employer contributions) from any monetary payment that can be characterized as "compensation." See Railroad

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[10] All payments under the Settlement Agreement will represent taxable income. See Commissioner v. Schleier, 515 U.S. 323, 327 (1995); Newhouse v. McCormick & Co., 157 F.3d 582, 586 (8th Cir. 1998).

[11] Instead of participating in the Social Security and Medicare systems and FICA withholding, railroad industry employees participate in a separate retirement and sickness insurance system administered by the United States Railroad Retirement Board (RRB). See generally U.S. Railroad Retirement Board, Railroad Retirement Handbook (1997) (available at www.rrb.gov). As with the Social Security system, the RRB system is primarily financed by payroll taxes on the "compensation" or "wages" of employees.

Retirement Tax Act, 26 U.S.C. § 3202. "Compensation" is defined as "any form of money remuneration paid to an individual for services rendered as an employee." 26 U.S.C. § 3231(e)(1). This definition of "compensation" is essentially the same as the definition of "wages" under the Federal Insurance Contributions Act, 26 U.S.C. § 3121(a) & 3121(b).[12] Therefore, the cases that address what types of monetary payments constitute "wages" subject to FICA withholding and Social Security taxes are also applicable to Railroad Retirement withholding and taxes.

It is clear that the portion of each award that constitutes back pay constitutes "compensation" since such payments represent pay in lieu of promotions that were not received or pay in lieu of continued employment after a suspension or dismissal. The Internal Revenue Service has held that such payments to employees or former employees constitute "remuneration" for services and thus are subject to withholding and payroll taxes, see Revenue Ruling 80-364, 1980-2 C.B. 294, and the courts have consistently followed this ruling. See, e.g., Mayberry v. United States, 151 F.3d 855, 160 (8th Cir. 1998); Hemelt v. United States, 122 F.3d 204, 209 (4th Cir. 1997).[13]

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[12] FICA section 3121(a) defines "wages" to mean "all remuneration for employment." Section 3121(b) defines employment to mean "any service, of whatever nature, performed ... by an employee for the person employing him." See Mayberry v. United States, 151 F.3d 855, 860 (8th Cir. 1998).

[13] The Eighth Circuit has recently held that payments of back pay to rejected applicants who were never employed by the defendant are not "wages" for purposes of FICA withholding. However, the Eighth Circuit affirmed that back pay payments to employees and ex-

It is also clear, however, that payments for interest and for attorneys' fees are not "wages" for purposes of FICA withholding, because such payments do not represent "remuneration" for employment services. See Revenue Ruling 80-364, 1980-2 C.B. 294; Blim v. Western Elec. Co., 731 F.2d 1473, 1480 n. 3 (10th Cir. 1984); Hemelt v. United States, 122 F.3d 204, 210 (4th Cir. 1997). This reasoning is fully applicable to the determination of whether such payments constitute "compensation" for purposes of the Railroad Retirement Tax Act. They do not represent "compensation" because interest and attorneys fees are not remuneration for employment services to the Railroad.

Accordingly, the Court concludes that 75% of the payments to be made by defendants to individual claimants (the portion attributable to interest) and 100% of the payment to be made by defendant in payment of attorneys fees and costs do not represent "wages" or "compensation" and are thus not subject to any withholding requirements or taxation under the Railroad Retirement Tax Act or FICA. Twenty-five percent (25%) of the payments to be made by defendant to individual claimants (the portion applicable to back pay) does constitute "compensation" and is therefore subject to all applicable RRB withholding and taxation requirements.

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employees continue to be characterized as "wages." See Newhouse v. McCormick and Co., 157 F.3d 582, 584-86 (8th Cir. 1998). None of the claimants here are rejected applicants who never were employed by the defendant, so Newhouse is not applicable.

CONCLUSION

The Court's approval of the party's proposed Settlement Agreement constitutes a final judgment under Rule 58, which will bring this litigation to an end, because all other claims in the case have previously been resolved by the Court. Thus, simultaneously with the filing of this Memorandum Opinion, the Court will enter a Judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

It is hereby ORDERED as follows:

(1) The Settlement Agreement entered into between the defendant and the Maintenance of Way Subclass is hereby APPROVED pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

(2) The claims of the Maintenance of Way Subclass and all intervenors therein (including class representative Earnest Franklin) are hereby DISMISSED WITH PREJUDICE.

(3) The Clerk of Court is directed to receive from defendant the sum of Five Hundred and Sixty-Five Thousand Dollars ($565,000) said amount to be paid by defendant into the Registry of the Court within thirty days of the latter of (a) the date when the time period for appeal from this Court's approval of this Settlement Agreement has lapsed or (b) any appeals from this Court's approval of the Settlement Agreement have been finally resolved in favor of the Settlement Agreement. As the parties agreed in section II.P of the Settlement Agreement, payment of this sum will represent defendant's sole, complete, and exclusive liability for payment of attorneys' fees and costs with respect to the MOW Subclass. Upon

notification by the defendant that it has received a release from John W. Walker and John W. Walker, P.A. in the form set out in Attachment 2 to the Settlement Agreement, the Clerk shall distribute the sum of $565,000 to John W. Walker, P.A. The firm of John W. Walker, P.A. will be responsible for making such further distributions (if any) to other class counsel as may be appropriate under the agreements among said counsel.

(4) With this Memorandum Opinion and Order, the Court has adjudicated and resolved all of the claims that have been raised in this case.

It is so ordered.

George Howard, Jr.
UNITED STATES DISTRICT JUDGE

5/14/99.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
Western Division

ROBERT WEBB, et al., Plaintiffs,	)	
v.	)	C.A. No. LR-75-C-189
MISSOURI PACIFIC RAILROAD CO., Defendant.	)	

SETTLEMENT AGREEMENT

I. SUMMARY OF PROCEEDINGS

This case was filed on June 25, 1975. On August 13, 1982, the Court certified four plaintiff subclasses, including the MOW Subclass. The trial, which lasted 95 days, began on November 19, 1985 and ended on December 11, 1989. At the end of the plaintiffs' case in chief, the Court dismissed the transfer claims of the MOW Subclass. After trial, in its July 16, 1993 opinion, this Court found in favor of the MOW Subclass with respect to their pattern and practice claims in the areas of promotions, discipline, and work environment. It also found in favor of named class representative Earnest Franklin with respect to certain of his individual claims.

Following the entry of an injunction on April 18, 1994, defendant Missouri Pacific filed an appeal from this Court's certification of the MOW Subclass and its rulings on the merits in favor of the MOW Subclass, as well as from this Court's entry of an injunction against the defendant. On October 22, 1996, the Court

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of Appeals vacated the injunction that had been entered, but declined to reach the class and merits issues for which Missouri Pacific had sought interlocutory review. Instead, the Eighth Circuit remanded the case with instructions to proceed to the remedy phase (Stage II).

After the remand, notice was sent by both U.S. mail and newspaper notices to all MOW Subclass members. These notices informed MOW Subclass members of their right to file claims of individual discrimination and set a deadline of April 16, 1997. Ultimately, 198 persons filed individual claims. After an opportunity for depositions and other discovery, Magistrate Judge H. David Young recommended dismissal with prejudice of the claims of 136 MOW claimants, a recommendation that was accepted by the Court.

After this dismissal, there were 62 claimants who had claims remaining to be tried. The trial for these 62 claimants was scheduled to begin on September 28, 1998. On October 13, 1998, the parties reached an agreement in principle that would resolve the claims of the MOW Subclass and of class counsel. The terms of that written agreement in principle are incorporated into this final Settlement Agreement, which is binding upon the MOW Subclass, MOW claimants, defendant Missouri Pacific, and class counsel.

Prior to the Court's certification of this case as a class action, during the Stage I proceedings, and during the Stage II proceedings that followed the Eighth Circuit's remand (after the interlocutory appeal), counsel for the MOW Subclass engaged in

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discovery on a formal and informal basis. In the course of that discovery, the parties took more than 200 depositions at Stage I and more than 120 depositions at Stage II. In addition, Missouri Pacific has provided, among other documents, statistical data concerning its employment practices in the MOW Department from 1972 through 1984, data which was the subject of extensive expert witness testimony at the Stage I trial. In addition, the parties have exchanged other documents, interrogatory answers and responses to requests for admission at Stage I and Stage II of the litigation. The foregoing discovery, taken in conjunction with the information disclosed during the 95 days of the Stage I trial, provides a solid basis for plaintiffs' counsel, as well as the defendant, to assess the merits and risks of the position of the MOW Subclass, and to bring this matter to a conclusion on an informed basis.

Based upon their investigation and discovery, the parties have concluded (taking into account the risks involved in continued litigation and the likelihood that litigation of the remaining portions of this case, if not settled at this point, will be protracted and expensive) that it would be desirable and in the best interests of all concerned (including MOW Subclass members and claimants) to settle the claims of the MOW Subclass upon the terms set forth hereinafter. The attorneys representing the MOW Subclass are satisfied that the terms and conditions of this Settlement Agreement are fair, adequate, and in the best interest of the MOW Subclass.

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II. GENERAL PROVISIONS

A. The parties to this Settlement Agreement are Union Pacific Railroad Company (as the successor to Missouri Pacific Railroad Company), on the one hand, and all members of the Maintenance of Way Subclass, including intervenors and the named class representative Earnest Franklin (hereinafter collectively referred to as the "MOW Subclass"), and all counsel representing the MOW Subclass on the other hand (hereinafter collectively referred to as "class counsel").

B. Except for the provisions contained in section III below (Interim Provisions), this Settlement Agreement will not become effective unless and until it has been finally approved by the United States District Court for the Eastern District of Arkansas and an order has been entered dismissing with prejudice the claims of the MOW Subclass and all intervenors therein (including class representative Earnest Franklin), and the time for appeal has lapsed without an appeal being filed or all appeals have been finally resolved in favor of the Settlement Agreement.

C. The parties have entered into this Settlement Agreement in order to avoid the substantial further burdens, expense, and uncertainties of continued litigation, and the avoidance of said continued litigation is one of the essential purposes of this Settlement Agreement.

D. The defendant denies any liability in this case and is settling solely to avoid the expense of litigation. The defendant expressly denies that it has discriminated against the MOW Subclass

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or any individual member of the MOW Subclass (including the named Subclass representative and other intervenors). The defendant further denies that any of its actions, omissions, policies, or practices have ever been in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., 42 U.S.C. § 1981, or any other equal employment law, regulation, or order. Further, defendant has throughout this litigation denied that any class or subclass in this case could properly be certified pursuant to Fed. R. Civ. P. 23.

E. The parties recognize that the United States Court of Appeals for the Eighth Circuit has held that there was no evidence introduced in this case of any racial discrimination by Union Pacific Railroad, as the successor to Missouri Pacific Railroad.

F. Union Pacific agrees to make lump sum payments totaling up to Eight Hundred and Eighty Thousand Dollars ($880,000.00), less withholding of any legally required amounts for employee payroll taxes or other legally required amounts, to the individual MOW claimants and counsel specified in sections IV and V below (or as directed by the District Court). In addition, Union Pacific agrees to pay any required employer payroll taxes on amounts deemed to be "back pay" by the District Court, as specified in paragraph II.N.

G. This Settlement Agreement fully discharges, releases and waives all discrimination claims (and all claims based on the same underlying facts as discrimination claims) of all Maintenance of Way Subclass members, including the claims of named Subclass representative Earnest Franklin and all intervenors within the MOW

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Subclass, that are based in whole or in part upon events occurring prior to December 31, 1985. This Settlement Agreement discharges all claims of MOW Subclass members for back pay, front pay, reinstatement or rehiring, damages, interest, fringe benefits, attorneys' fees, and costs (including attorneys' fees and costs attributable to defending the Settlement Agreement in any court and to computing individual awards under the Settlement Agreement).

H. This Settlement Agreement finally resolves all claims for monetary relief, interest, fringe benefits, and injunctive relief against the defendant by the MOW Subclass (and their successors in interest) that have been, are being, or could have been raised in this litigation. Without limitation of the foregoing sentence, in consideration of the defendant's agreement to pay the amounts specified in paragraph II.F the MOW Subclass and individual members thereof (and their successors in interest) agree that they release, acquit, and forever discharge defendant and all its agents, servants and employees, officers, directors, stockholders, and successors in interest from all claims, demands, and causes of action for monetary relief, injunctive relief, back pay, damages, interest, fringe benefits, attorneys' fees, or costs whether past or present and whether or not now claimed or known, accruing to the MOW Subclass and individual members thereof, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., 42 U.S.C. § 1981, and the Civil Rights Attorneys' Fees Award Act, 42 U.S.C. § 1988, based on any action, omission, event, or practice occurring in whole or in part prior to December 31, 1985.

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I. The defendant's agreement to pay the amount specified in paragraph II.F will fully discharge all claims of the MOW Subclass and of all class counsel, including but not limited to John W. Walker, P.A., Ralph Washington, Horace Walker, Martin Shapiro, the NAACP Legal Defense and Educational Fund, Inc., and any other attorney who has entered an appearance in this action (including any appearance in court, at any deposition, or on any brief or discovery document) to any recovery, direct or indirect, of attorneys fees, expert fees, or any other costs in this suit (Civ. Action No. 75-189 in the Eastern District of Arkansas and C.A. 94-2305 in the United States Court of Appeals for the Eighth Circuit), including any claims for work in defending the Settlement Agreement.

J. As a condition of receiving any monetary payment pursuant to this Settlement Agreement, each individual claimant (including intervenors and subclass representative Earnest Franklin), or his successor in interest, must sign a full waiver and release of all discrimination claims against Union Pacific Railroad and Missouri Pacific Railroad, and of all claims based upon the same facts as discrimination claims, and waiving any right to be reinstated or rehired by Union Pacific (or any successor or affiliate thereof). The waiver of any right to reinstatement or rehire shall be required only of (1) employees who were dismissed prior to December 31, 1985 and have not been reinstated and (2) employees who have signed personal injury releases claiming total disability for the job in which they were employed by Missouri Pacific or Union

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Pacific.[1] The form of release that must be signed prior to payment to any individual claimant is attached hereto as Attachment 1. If any individual MOW claimant (or his successor in interest) entitled to payment under section IV below (or as ordered by the Court) fails to sign the release in the form set out in Attachment 1, defendant's non-payment of the amount specified for the claimant in section IV below (or ordered by the Court) shall not affect in any way the releases, claims, and discharges of defendant set forth in this section II. Persons who decline to execute the release in the form set out in Attachment 1, will not receive a monetary award pursuant to this Settlement Agreement.

K. By their signature on this Settlement Agreement, John W. Walker, Ralph Washington, Horace Walker, and the NAACP Legal Defense and Education Fund, Inc., hereby waive any and all claims to attorneys' fees or costs for past, present, or future work and/or expenditures on the case of Webb, et al. v. Missouri Pacific R.R., Civ. Action No. 75-189 (E.D. Ark.), and any appeals therefrom, and further hereby agree not to request or accept any additional payments for such work or expenditures.

L. Counsel for the MOW Subclass and all members of the MOW Subclass bound by this Settlement Agreement agree never to commence, aid, or in any way prosecute or cause to be prosecuted against the defendant any action based upon, involving, or related

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[1] The parties agree that Earnest Franklin fits within the category of employees for whom waiver of reinstatement and rehire is required.

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to the claims resolved by this Settlement Agreement. This does not apply to compulsory process.

M. Based upon their analysis of the specific claims presented at Stage II, twenty-five percent (25%) of each payment to an individual MOW claimant, as set forth in section IV below (or as directed by the court), will represent back pay and seventy-five percent (75%) will represent payment for accrued interest. There will be no withholding for RRB taxes or income taxes from the interest portions of payments to individual MOW claimants, or from the payments made to class counsel. Individual MOW claimants will be responsible for payment of any income taxes due on payments to them and the employee share of payroll taxes. Class counsel will be responsible for the payment of any income taxes due on payments to them personally.

N. The allocation of 75% of each individual payment to accrued interest and 25% to back pay is based on the parties' judgment that a reasonable estimate of the "average" starting date of individual claims in this case is January 1, 1982 (based on a review of those claims remaining after summary judgment) and application of the statutory rates for post-judgment interest under 28 U.S.C. § 1961.[2] If $1000 had been invested on January 1, 1982 and interest accrued annually from that point forward at the applicable 52-week T-bill interest rates through the end of 1998,

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[2] These rates are set out in the Historical and Statutory Notes to 28 U.S.C.A. § 1961. For calculation purposes, the first interest rate reported for each calendar year was used for this calculation.

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the total accrued amount would be $4,179.58.[3] Of this amount, the principal of $1000 would represent only 23.9%. The parties thus believe that the allocation of 25% to back pay is a reasonable one, based on the facts of this case and the issues being resolved by this Settlement Agreement. The parties' agreement herein is contingent upon the Court's review and approval of the parties' determination that 75% of each payment to individual MOW Subclass claimants and 100% of each payment to class counsel will not represent "wages" or a payment made in lieu of "wages" and thus is not subject to payroll taxes (such as FICA, RRB taxes, or Medicare taxes) or withholding requirements.

O. Within thirty (30) days after the latter of (a) the date when the time period for appeal from the District Court's approval of this Settlement Agreement has lapsed, (b) any appeals from the

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[3] This calculation was as follows:

1982: $1000 x 14.92% = $1492.00
1983: $1492 x 8.65% = $1621.06
1984: $1621.06 x 9.87% = $1781.06
1985: $1781.06 x 9.09% = $1942.96
1986: $1942.96 x 7.85% = $2095.48
1987: $2095.48 x 5.75% = $2215.97
1988: $2215.97 x 7.14% = $2374.19
1989: $2374.19 x 9.16% = $2591.67
1990: $2591.67 x 7.74% = $2792.27
1991: $2792.27 x 6.62% = $2977.12
1992: $2977.12 x 4.02% = $3096.80
1993: $3096.80 x 3.67% = $3210.45
1994: $3210.45 x 3.67% = $3328.27
1995: $3328.27 x 7.34% = $3572.57
1996: $3572.57 x 5.16% = $3756.91
1997: $3756.91 x 5.61% = $3967.67
1998: $3967.67 x 5.341% = $4179.58

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District Court's approval of this Settlement Agreement have been finally resolved in favor of the Settlement Agreement, and (c) the individual MOW claimant has executed a release in the form set out in Attachment 1 and delivered it to Michael S. Moore, Friday, Eldredge & Clark, 2000 First Commercial Building, Little Rock, Arkanas 72201 (or such other address as defendant may subsequently designate by written notice to John W. Walker or successor lead class counsel), defendant will mail a check to the individual executing the release in the amount specified in section IV below (or such other amount as ordered by the Court pursuant to paragraph III.C below). These checks will be mailed to the addresses specified in section IV below, unless another address is provided to Michael Moore in writing at least 21 days before the due date for mailing.

P. Within thirty (30) days after the latter of (a) the date when the time period for appeal from the District Court's approval of this Settlement Agreement has lapsed and (b) any appeals from the District Court's approval of this Settlement Agreement have been finally resolved in favor of the Settlement Agreement, defendant will deposit Five Hundred and Sixty-Five Thousand Dollars ($565,000.00), or such other sum as the Court may direct pursuant to paragraph III.C below, directly with the Clerk of the United States District Court of the Eastern District of Arkansas. Payment of this sum represents defendant's sole, complete, and exclusive liability for payment of attorneys' fees and costs with respect to the MOW Subclass. The Clerk shall pay such sums from the $565,000

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fund (or such other amount as ordered by the Court) to individual attorneys as directed by the Court, but no such payment shall be made unless and until the Clerk has been notified that the individual attorney (or his or her successor in interest) has executed a release in the form set out in Attachment 2 and delivered same to Michael S. Moore, Friday, Eldredge & Clark, 2000 First Commercial Building, Little Rock, Arkanas 72201 (or such other address as specified by the defendant). In the event that any attorney who is held by the District Court to be entitled to a payment from the registry of the Court fails to execute a release in the form set out in Attachment 2 within one year after the latter of (a) the date when the time period for appeal from the District Court's approval of this Settlement Agreement has lapsed or (b) any appeals from the District Court's approval of this Settlement Agreement have been finally resolved in favor of the Settlement Agreement, then the sums that were to have been paid to that attorney shall be paid to a 501(c)(3)-qualified charity to be agreed upon by the defendant and John W. Walker, P.A. If any attorney entitled to payment as ordered by the Court fails to sign the release in the form set out in Attachment 2, defendant's non-payment of the amount specified by the Court shall not affect in any way the releases, claims, and discharges of defendant set forth in this section II.

Q. Except as specified in paragraph III.C below, no modifications to this Settlement Agreement can be made without the written approval of both parties and the approval of the Court. If

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the Court fails to approve this Settlement Agreement as written (except as specified in paragraph III.C), then it shall be deemed automatically void and of no force and effect, except as to the "Interim Provisions" set forth in Section III below.

R. This Settlement Agreement shall not be considered as evidence in any judicial or administrative proceeding that defendant has violated any law, regulation, or order.

S. This Settlement Agreement does not confer any rights upon any person, firm, corporation, union, or government agency other than the parties to this Settlement Agreement.

T. In the event that any dispute arises between defendant and any member of the MOW Subclass concerning the interpretation of this Settlement Agreement, the party claiming a dispute shall notify counsel for the other party in writing and specify the basis of such dispute. Before submission of such dispute to any judicial body for resolution, counsel for the parties must meet in person to attempt in good faith to resolve the dispute concerning the interpretation of the Settlement Agreement.

III. INTERIM PROVISIONS

A. All parties are jointly responsible for defending this Settlement Agreement before the United States District Court for the Eastern District of Arkansas and in any appeals.

B. Defendant will have no responsibility for determining or supporting the allocation of the amounts paid as between the MOW Subclass as a whole and class counsel, or as among individual claimants in the MOW Subclass. Defense of such allocations before

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the Court is solely the responsibility of the MOW Subclass and class counsel.

C. The allocations of the aggregate payment specified in paragraph II.F above among individual members of the MOW Subclass (as set out in section IV) and between the MOW Subclass and class counsel (as set out in section V) may be adjusted by the District Court to the extent necessary to ensure fairness and adequacy. Any such adjustments shall not impose upon defendant any responsibility to make an aggregate payment of greater than $880,000 under this Settlement Agreement (except to the extent, if any, that defendant's responsibility for payroll taxes may be increased if additional sums are allocated to class members). All class counsel expressly agree that any reallocation of the aggregate payment amount ordered by the District Court or Court of Appeals will be accepted by the MOW Subclass and class counsel, and will not be grounds for withdrawal of class counsel's agreement to the Settlement Agreement.

D. Unless and until this action has been dismissed with prejudice and the time for appeal has lapsed or any appeals have been finally resolved, the parties, including class counsel, agree not to make any written or oral statements concerning the proposed Settlement Agreement for dissemination to the general public or the media without the prior written consent of the other party.

E. The parties agree to seek approval of the District Court to send notice of the proposed Settlement Agreement to all members of the MOW Subclass, at their last known addresses, and all

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attorneys who have appeared on behalf of the plaintiffs, at their last known addresses, at least 45 days in advance of the hearing date established by the Court. Defendant agrees to pay the cost of this mail notice.

IV. PAYMENTS TO INDIVIDUAL MOW CLAIMANTS

Unless modified by the Court pursuant to paragraph III.C above, the following individuals shall receive payments in the following amounts, less withholding of any legally required amounts for employee payroll taxes or other legally required amounts. Of the following amounts 25% of each payment is deemed by the parties to represent reimbursement for back pay and 75% to represent accrued interest on back pay. Sixty-two of the following individuals filed a claim at Stage II of this case and their claims were not dismissed on summary judgment. Two other MOW Subclass members, Alvin Gunn and Roger Allen Williams, are included on the list of persons scheduled to receive monetary payments.

CLASS MEMBERS

CLASS MEMBER IDENTIFICATION	AMOUNT
Acklin, Troy Box 210-01 - Hwy. 365, Conway, AR 72032 501-329-9161	$4,000
Anderson, Edward 4105 W. 14, Little Rock, AR 72204 501-661-0605	$4,000
Barber, Jr., Fred 2520 Lincoln, North Little Rock, AR 72211 501-945-6026	$4,000
Blackmon, Roy 1400 Old Forge, Apt. 1805, Little Rock, AR 72227 501-227-4303	$4,500

DCH

Bradley, Elreece Box 211, Beebe, AR 72022 501-882-3133	$4,000
Brewer, Milo Box 64, Judsonia, AR 72081 501-729-5071 or 5911	$4,000
Bridges, Garfield 1518 Twin Lakes Dr., Little Rock, AR 72201 501-228-7330	$7,500
Brown, Jermiah Box 13, Gurdon, AR 71743 870-353-4517	$4,000
Brown, Jr., Howard 1509 Smithton Rd., Gurdon, AR 71743 870-353-6527	$4,000
Brown, Earnest 5031 Hwy. 67, Fulton, AR 71833 870-896-2327	$5,000
Bryant, Keith 1201 Jr. Deputy Rd., Little Rock, AR 72205 501-223-2939	$4,000
Campbell, Billy #1 State Police Plaza Dr., Little Rock, AR 72209 501-296-1847 or 376-6516	$4,000
Chatman, Clarence 706 Morris Ave., Kensett, AR 72802 501-742-3541	$7,000
Conley, Eugene #10 Standwood Loop, North Little Rock, AR 72118	$5,500
Cowan, Robert 1501 West Park, Searcy, AR 72143	$4,000
Conway, Sr., Richard 421 Sample Dr., North Little Rock, AR 72117 501-835-5694	$4,500
Dawson, Nathaniel 815 N. Cedar, North Little Rock, AR 72114 501-376-3044	$4,000
Dickerson, James 1606 Crawford St., Arkadelphia, AR 71923 870-246-3893 or 870-230-1076	$4,000

DCK

Dishmon, Columbus 4710 Timberland Dr., Little Rock, AR 72204 501-455-2796	$6,500
Dixon, Rommie P.O. Box 926, Wynne, AR 72396 1-800-877-1010	$4,000
Dorn, Joseph 2405 Amberly Dr., North Little Rock, AR 72117 501-945-8025	$4,000
Edwards, Paul P.O. Box 293, Beebe, AR 72012 501-882-2021	$4,000
Forte, Donald 3724 W. 14th, Little Rock, AR 72204 501-897-4994	$4,000
Franklin, Earnest 308 Shady Land, Little Rock, AR 72004 501-565-0050	$18,000
Gilbert, Carl 5607 Forrestview, Little Rock, AR 72204 501-565-4827	$6,500
Graham, David 315 W. Hickory Ave., Wynne, AR 72396 501-238-9126	$4,500
Green, Luther 1509 Ben, North Little Rock, AR 72117 501-945-0402	$4,000
Gulley, Willie 308 S. Denison, Little Rock, AR 72205 501-376-6886	$6,500
***Gunn**, Alvin 2211 South Oak Little Rock, AR 72204	$4,000
Harris, Roy P.O. Box 832, Bald Knob, AR 72010 501-724-5802	$4,000
Hendrix, Lee (Gus) 210 Huntington Place, Gurdon, AR 71743 870-353-6304	$5,000

Hildreth, Horace 1245 Ouachita 51, LouAnn, AR 71751 870-689-3474	$4,000
Holden, Johnnie 9 Prospect Cove, North Little Rock, AR 72118 501-758-2505	$6,500
Hooks, Moses 3 War Eagle Court, North Little Rock, AR 72116 501-834-6423	$4,000
Hunter, David L. 705 S. First St., Gurdon, AR 71743 870-353-6754	$4,000
Hunter, Robert 4304 W. 22, Little Rock, AR 72204 501-820-0211	$5,500
Jackson, Otis Curtis Box 59, Beebe, AR 72012 501-882-5175	$4,500
Johnson, Berice 2924 Maryland, Apt. A, Little Rock, AR 72204 501-614-9382	$4,000
Johnson, James E. P.O. Box 1414, Hope, AR 71802 870-777-1977	$4,500
McCarroll, Ervin 629 "C" St., Wynne, AR 72396 501-238-6519	$6,500
McDaniel, Ivory P.O. Box 15162, Jonesboro, AR 72403 870-972-6878	$4,000
Mitchell, Donald 2614 Allis, Little Rock, AR 72204 501-666-0874	$4,500
Mitchell, Randall 1714 Fair Park, Little Rock, AR 72204 501-666-7143	$7,000
Moore, James 2409 E. 24th, Apt. 47, Texarkana, AR 71854 870-774-3101	$4,000

Moultrie, Levia 2520 S. Park Lane, Carbondale, IL 62901 618-351-0003	$4,000
Norful, Vernard 926 Ouachita 51, LouAnn, AR 71751 870-689-3538	$4,000
Norment, Ray 1 Jamestown Court, Little Rock, AR 72211 501-227-6193	$5,000
Norris, Samuel 910 South 11th St., Poplar Bluff, MO 63901 573-785-6323	$4,000
Palmer, Theodis P.O. Box 14, Hope, AR 71802 870-777-8858	$4,000
Scott, John P.O. Box 245, Arkadelphia, AR 71923 870-245-3815	$4,500
Shaw, Helmer C. 10721 Lionel Dr., Little Rock, AR 72209 501-562-0577	$4,500
Smith, Billy 11439 W. Jolly Rd., Lansing, MI 48911 517-393-9158	$7,000
Smith, Freddie 508 Norman St., Lansing, MI 48910 517-393-9158	$4,000
Smith, Harold 1002 West Park, Searcy, AR 72143 501-279-2025	$6,500
Smith, James P.O. Box 17444, North Little Rock, AR 72117 501-791-0934	$4,000
Smith, Renwick 5156 Wood Thrush Cove, Memphis, TN 38134 901-266-861	$4,000
Tate, Carel 2628 Fizer Rd., Memhis,TN 28114 901-744-1778	$4,000

Dck

Thomas, Robert P.O. Box 59, Lewisville, AR 71845 870-921-5413	$4,000
Thompson, Michael 7907 Eagle Dr., Little Rock, AR 72209 501-565-2860	$4,000
Toliver, Jr., H.L. 309 N. St. Johns Dr., Richardson, TX 75081 972-783-2734	$10,000
Toombs, Phillip 1906 Ringo, Little Rock, AR 72205 501-376-1220	$4,000
Washington, Walter 3208 W. 11th St., Little Rock, AR 72204 501-280-0989	$5,000
Williams, James 92 Bledsoe R., Lonoke, AR 72086 501-676-5391	$4,500
***Williams**, Roger 1800 Broadway, Little Rock, AR 72206 501-376-0875	$4,000
GRAND TOTAL	**$315,000**

*Two claimants, Alvin Gunn and Roger Williams filed claims out of time. They contend that they never received notice; that letters were either sent to the wrong addresses or that they were not received. Both claimants had been very cooperative in Phase I of this case. Claimant Roger Williams is disabled. Class counsel have recommended $4,000 to each claimant. If the Court rejects such distribution, it is recommended that the $8,000 be equally divided among the 62 remaining claimants.

V. PAYMENTS TO CLASS COUNSEL

The following payment is to be made to class counsel, unless otherwise directed by the Court (pursuant to paragraph III.C): Five Hundred and Sixty-Five Thousand Dollars ($565,000.00), to be paid into the registry of the Court, as set forth in paragraph II.P, above.

DCH

This Agreement is entered into as of this 26th day of January, 1999.

AGREED AND CONSENTED TO BY:

Respectfully submitted,

John W. Walker #64046
JOHN W. WALKER, P.A.
1723 Broadway
Little Rock, Arkansas 72206
(501) 374-3758

Ralph N. Washington # 76138
1723 Broadway
Little Rock, Arkansas 72206
(501) 374-3758

Horace Walker
JONES, TILLER & WALKER
Suite 601, Pyramid Place
Little Rock, Arkansas 72201

Norman Chachkin
NAACP Legal Defense and Educational Fund, Inc.
99 Hudson Street
New York, New York 10013
(212) 219-1900

Counsel for Plaintiffs

Michael S. Moore #82112
FRIDAY, ELDREDGE & CLARK
2000 First Commercial Building
400 W. Capitol
Little Rock, Arkansas 72201
(501) 376-2011

Douglas C. Herbert
1835 K Street, N.W.
Suite 810
Washington, D.C. 20006
(202) 659-1400

Counsel for Defendant

FULL AND FINAL
R E L E A S E

In consideration of the payment to me of _____, less any applicable withholdings and deductions, by and from Union Pacific Railroad Company ("Union Pacific") I hereby waive, release, and discharge any discrimination claims I may have against Missouri Pacific Railroad Company ("Missouri Pacific"), Union Pacific, or their agents, successors, and assigns, for alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended, 42 U.S.C. §1981 or 1988, or any other State or Federal anti-discrimination law or regulation, for events occurring in whole or in part prior to the date on which I execute this Release. I understand and agree that this Release applies to all claims of any kind based upon the same underlying facts as my discrimination claims.

This Release includes and waives all claims for relief of any type in the case of Webb, et al. v. Missouri Pacific Railroad Co.,U.S.D.C., E.D. Ark., No. LR-C-75-189, including but not limited to damages of any kind, for back-pay, front-pay, fringe benefits, costs, interest, expenses and/or attorneys' fees.

As further consideration for the payment made to me referenced above, I understand and agree that if I (a) was dismissed prior to December 31, 1985 and have not been reinstated or (2) I have signed a personal injury release in connection with which I claimed to be totally disabled for the job in which I was employed by Missouri Pacific and/or Union Pacific, then by signing this Release I hereby waive any right to reinstatement or rehiring in any capacity by Union Pacific, its agents, servants and employees, officers, directors, stockholders, and successors in interest.

I understand that I am waiving all individual or class-based claims, including pattern-and-practice claims, by accepting this payment. I understand and represent that I am a member of the MOW Subclass in Webb, et al. V. Missouri Pacific Railroad Co., U.S.D.C., E.D. Ark., No. LR-C-75-189, and that this Release settles all claims which were or could have been raised by me against Missouri Pacific or Union Pacific in that case.

I understand that, as part of this settlement, the MOW Subclass, including me, and Union Pacific have entered into a Settlement Agreement which has been approved by the Court, and I understand that the terms of that Settlement Agreement are part of the consideration or payment for my agreement to sign and agree to this Release.

I understand that this Release and the Settlement Agreement represent the entire agreement between the parties; that this is a full and complete settlement of my claims against Missouri Pacific and Union Pacific; that Missouri Pacific and Union Pacific have not admitted liability by the payment to me or any other Subclass member; and that the terms of this Release are contractual and legally binding, and not a mere recital.

I declare, under penalty of perjury, that the following statements are true and correct:

(a) I am represented by an attorney in connection with this Release. If there were any parts of this Release that I did not understand, I have talked with my lawyer and had him or explain the Release to me.

(b) This Release is written so that I can and do understand (with the help of my lawyer, where needed). I have read this Release carefully and understand it.

(c) I understand that this Release specifically waives all of my discrimination claims against Union Pacific and Missouri Pacific, which are based on events occurring at any time before the signing of this Release.

(d) I understand that this Release does not waive claims based on events occurring after my signing of this Release, but that it does include the future consequences of events before my signing of this Release.

(e) I understand that my release of claims includes all possible discrimination claims, including those of which I am not currently aware or that I do not now suspect to exist.

(f) I understand that my release and waiver of rights and claims in this Release is made in exchange for monetary payments that are in addition to what I would otherwise be entitled to.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this ____ day of _____, 199_.

_____

[Name]

SS # _____

Witness:

_____

RELEASE

This Release is entered into by _____ ("Attorney"), and discharges Attorney's claims for attorneys' fees and costs against Union Pacific Railroad Company("Union Pacific") and its predecessor Missouri Pacific Railroad Company ("Missouri Pacific").

WHEREAS, on behalf of certain clients Attorney has asserted certain claims with respect to Union Pacific and its predecessor Missouri Pacific in an action filed in the United States District Court for the Eastern District of Arkansas, Western Division, captioned as Webb, et al. v. Missouri Pacific Railroad Company, Case No. LR-C-75-189;

WHEREAS, Union Pacific and Attorney have entered into a Settlement Agreement which has been approved by the Court and Union Pacific has deposited funds with the Clerk for the United States District Court for the Eastern District of Arkansas pursuant to that Settlement Agreement for the satisfaction of attorneys' fees claims.

NOW THEREFORE, in consideration of the mutual agreements, representations, covenants, and warranties recited hereinbelow, Attorney does hereby agree as follows:

1. In consideration of the payment being made from the deposit mentioned above in the amount of _____ dollars ($_____), Attorney does hereby fully, finally, and forever release and discharge Union Pacific and Missouri Pacific and their predecessor, successor, parent, affiliated, direct and indirect subsidiary corporations and each of such corporation's agents, employees, officers, directors, insurers and attorneys (individually and collectively, the "Releasees"), from any and all claims, obligations and liabilities, whether known or unknown, including without limitation those for court costs, attorneys' fees, expert witness fees, or any other causes, claims, or demands, known or unknown, which Attorney has or may have had with respect to the Releasees, either directly or as an assignee or third party beneficiary of the subclasses certified in Webb v. Missouri Pacific, as of the date Attorney signs this Release. Without limitation of the foregoing, Attorney specifically releases and discharges Releasees from any claims, obligations and liabilities which relate to or in any way arise out of their representation in the lawsuit filed in the United States District Court, Eastern District of Arkansas, Western Division, captioned as Webb v. Missouri Pacific Railroad Company, Case No. LR-C-75-189.

2. Attorney hereby agrees to indemnify and hold Union Pacific and Missouri Pacific, their successors, purchasers,

subsidiaries, assigns, affiliates, and parents harmless from and against any and all loss, costs, damage, and expense, including without limitation, attorneys' fees incurred by Union Pacific, its successors, purchasers, subsidiaries, assigns, affiliates, and parents arising out of any claim by any current or former employee of Attorney for attorneys' fees or costs arising out of that employee's performance of services in connection with Webb v. Missouri Pacific Railroad Company,No. LR-C-75-189.

3. Attorney further agrees that to the extent that any federal or state taxes of any kind may be due or payable as a result of the payment to Attorney referred to above, Attorney will be responsible for the payment of such taxes and will hold Union Pacific harmless in the event of any claim against it for payment of such taxes. Said agreement to hold Union Pacific harmless shall include Plaintiff's agreement to indemnify Union Pacific for any and all loss, cost, damage, or expense, including, but without limitation, attorneys' fees associated with defending against any claim for taxes.

4. This Release and the Settlement Agreement in Webb v. Missouri Pacific represent the entire agreement between the parties.

WHEREFORE, Attorney voluntarily enters into this Release by affixing his signature hereunto on the date set forth below.

_____
[Name of Attorney]
SS # _____

Witness:

_____

F I L E C O P Y

jad

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Post Office & Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

May 14, 1999

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:75-cv-00189.

True and correct copies of the attached were mailed by the clerk to the following:

John W. Walker, Esq.
John W. Walker, P.A.
1723 Broadway
Little Rock, AR 72206-1220

Horace A. Walker, Esq.
Attorney at Law
518 Pyramid Place
Second & Center Streets
Little Rock, AR 72201

Lazar M. Palnick, Esq.
UPMC Health System
200 Lothrop Street
Pittsburgh, PA 15213-2582

Michael Wolly, Esq.
Zwerdling, Paul, Leibig, Kahn, Thompson & Wolly, P.C.
1025 Connecticut Avenue N.W.
Suite 712
Washington, DC 20036-5405

Darrell F. Brown, Esq.
Attorney at Law
300 Spring Street
Suite 515
Little Rock, AR 72201

Michael S. Moore, Esq.
Friday, Eldredge & Clark
Regions Center
400 West Capitol Avenue
Suite 2000
Little Rock, AR 72201-3493

Walter A. Paulson II, Esq.
Friday, Eldredge & Clark
Regions Center
400 West Capitol Avenue
Suite 2000
Little Rock, AR 72201-3493

Douglas C. Herbert, Esq.
Attorney at Law
1835 "K" Street, N.W.
Suite 810
Washington, DC 20006

cc: Press, Post, Financial

James W. McCormack, Clerk

Date: 5-14-99

BY: _____