

ORIGINAL

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Arie Zmora, Geoffrey Tabakin, Laurinda
Stryker, Robbi Hoy, and all others
similarly situated,

File No. 01-CV-1905 JEL/JGL

Plaintiffs,

vs.

State of Minnesota, the Minnesota State
College and University System, the
Board of Trustees of the Minnesota State
Colleges and Universities, St. Cloud
State University, James H. McCormick,
Roy H. Saigo, Richard D. Lewis, Don L.
Hofsommer, and Suzanne L. Williams

**ORDER PROVISIONALLY
CERTIFYING CLASS AND
SCHEDULING HEARING
ON PROPOSED CLASS
SETTLEMENT**

Defendants,

and

The Inter-Faculty Organization,

Defendant-Indispensable Party.

The court having made a preliminary review of the proposed settlement of this
action, IT IS ORDERED:

1. **Provisional Certification.** For purposes of the proposed settlement only,
a Settlement Class is certified as follows:

All individuals known to Class Counsel to be 1) employed as a
member of the faculty or professional staff at SCSU at any time
during the academic years 1999-2000, 2000-2001, or 2001-2002,
and 2) who during that time either held themselves out to be Jewish or
filed a charge of discrimination or retaliation related to anti-Semitism
with the SCSU Affirmative Action Office, the EEOC or the Minnesota
Department of Human Rights.

If the Court does not approve the Settlement, or if it does not become effective for

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U.S. DISTRICT COURT
DISTRICT OF MINNESOTA
ST. CLOUD, MINN.

any other reason, the settlement will be nullified, the Court's provisional certification of the Class will be vacated, the parties will retain the rights they had prior to signing the Settlement Agreement, and the pre-settlement status of the litigation will be restored.

2. **Certification of Class Representatives and Appointment of Class**

Counsel. For the purposes of the proposed settlement, named plaintiffs Arie Zmora and Laurinda Stryker are appointed Class Representatives and Judith K. Schermer, Daniel W. Schermer, Donald S. Arbour, and Beau D. McGraw are appointed class counsel. Judith K. Schermer is designated as lead counsel.

3. **Proposed Settlement.** The proposed settlement appears to be within the range of reasonableness and accordingly shall be submitted to the settlement class for their consideration and a hearing under Fed. R. Civ. P. 23(e).

4. **Hearing.** A hearing shall be held in Courtroom 3, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota on February 10, 2003 at 11:00 A.M., to consider whether the settlement should be given final approval by the court.

- a. Objections by settlement class members to the proposed settlement will be considered by the court if done in the manner prescribed in the notice to class members and filed in writing with the clerk and counsel for the parties on or before on or before January 21, 2003.
- b. At the hearing settlement class members may be heard orally in support of or in opposition to the settlement, provided such persons file with the clerk by February 5, 2003 a written notification of their intention to appear personally, indicating (if in opposition to the settlement) briefly the nature of the objection.

- c. Counsel for the class and for the defendants should be prepared at the hearing to respond to objections filed by settlement class members and to provide other information, as appropriate, bearing on whether or not the settlement should be approved.

Notice. Within seven days after the signing of this Order, Settlement Class Counsel shall mail the Notice substantially in the form attached hereto to the members of the Settlement Class identified pursuant to paragraphs 6 and 7 of the Class Settlement Agreement. The mailing shall be accomplished by first-class mail delivery to all Settlement Class members at their last known address as reflected in records of defendant St. Cloud State University, which shall be provided to class counsel. The costs of mailing the Notice shall be borne by defendant Minnesota State Colleges and Universities as provided in the Class Settlement Agreement.

Dated: December 5, 2002.



JOAN ERICKSON LANCASTER
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Arie Zmora, Geoffrey Tabakin, Laurinda
Stryker, Robbi Hoy, and all others
similarly situated,

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College and University System, the
Board of Trustees of the Minnesota State
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State University, James H. McCormick,
Roy H. Saigo, Richard D. Lewis, Don L.
Hofsommer, and Suzanne L. Williams

**NOTICE OF PROPOSED
CLASS SETTLEMENT**

Defendants,

and

The Inter-Faculty Organization,

Defendant-Indispensable Party.

TO: All past and present faculty and professional staff of St. Cloud State University during the academic years 1999-2000, 2000-2001, and 2001-2002 who during that period either held themselves out to be Jewish or filed a charge of discrimination or retaliation related to anti-Semitism.

**PLEASE READ THIS NOTICE CAREFULLY.
YOUR RIGHTS COULD BE AFFECTED BY THIS**

PURPOSE OF THIS NOTICE.

The purpose of this notice is to advise you of a proposed settlement of this lawsuit and your rights with respect to the proposed settlement.

DESCRIPTION OF THE LITIGATION.

The Plaintiffs claim that St. Cloud State University and the other Defendants violated Federal and state law by discriminating against Jewish faculty and staff and that the Defendants retaliated against faculty and staff who opposed the alleged discrimination. They have brought this lawsuit in the form of a class action on behalf of themselves and all others similarly situated. The Defendants have denied all of these claims.

THE SETTLEMENT CLASS.

For purposes of the proposed Settlement only, the Court has certified the following class:

All individuals known to Class Counsel to be 1) employed as a member of the faculty or professional staff at SCSU at any time during the academic years 1999-2000, 2000-2001, or 2001-2002, and 2) who during that time either held themselves out to be Jewish or filed a charge of discrimination or retaliation related to anti-Semitism with the SCSU Affirmative Action Office, the EEOC or the Minnesota Department of Human Rights.

Class Counsel are Judith K. Schermer, Daniel W. Schermer, Donald S. Arbour, and Beau D. McGraw. Lead counsel is:

Judith K. Schermer, Esq.
JUDITH K. SCHERMER, PLLC
950 Lumber Exchange Building
10 South Fifth Street
Minneapolis, Minnesota 55402-1035

THE PROPOSED SETTLEMENT.

Class Counsel and representatives of the Defendants have engaged in intensive discussions and arm's-length negotiations with the assistance of United States Magistrate-Judge Jonathan G. Lebedoff. These efforts have resulted in the proposed Settlement described below. Class Counsel have concluded, after extensive investigation and discovery of the facts of the case, research and assessment of the legal issues, that the Settlement is in the best interests of the Plaintiffs and the members of the Class.

Settlement avoids the uncertainties and delay inherent in the continued prosecution of this complex while securing for the Class a substantial monetary recovery and non-monetary relief. Defendants have agreed to the proposed Settlement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation.

By entering into this settlement, St. Cloud State University and MnSCU do not admit any wrongdoing or liability. The proposed settlement is a compromise of disputed claims and does not mean that the claims made by Plaintiffs are true.

The Settlement will become effective only if the Court approves it. The terms and conditions of the Settlement are contained in a Settlement Agreement which is on file with the Court. The principal terms are as follows:

CLASSWIDE NON-MONETARY RELIEF (REMEDIAL MEASURES)

The parties have agreed upon a wide variety of remedial measure that the defendants have agreed to implement. These include:

- A. Diversity training for faculty and staff that must include a component on anti-Semitism.
- B. Revisions to faculty search procedures including mandatory prior notification to faculty of vacancies and permissions to conduct searches and requirement that all searches be conducted by search committees.
- C. Selection of an independent consultant to evaluate the operational structure and staffing of the Affirmative Action Office, with the further proviso that if the parties cannot agree upon a consultant, he/she will be selected by the Magistrate-Judge Lebedoff; and public disclosure by SCSU of any decision not to make changes recommended by the selected consultant.

- D. Changes to anti-discrimination policies and procedures and the handling of discrimination complaints, including
- (1) a requirement that the initial decision-maker issue a written decision providing sufficient factual and other information to ensure a meaningful opportunity for appeal:
 - (2) a requirement that if the President of SCSU delegates his decision making authority, it will be to someone above the level of Dean or to a MnSCU official outside of SCSU; and
 - (3) specific inclusion of anti-Semitism in affirmative action procedures.
- E. SCSU will establish a Jewish Studies and Resources Center and hire a coordinator/Professor of Jewish studies with .5 teaching responsibilities. It also agrees to fund the activities of the center and salary and benefits for the position for a minimum of five years at \$100,000 to \$125,000 per year, for a total funding commitment of at least \$500,000.
- F. Establishment of a peer review committee to independently review and issue a recommendation to the president of SCSU whenever there is a difference in the recommendation of the department and the dean with respect to retention, promotion, and tenure.

CLASS MONETARY PAYMENT AND PLAN OF DISTRIBUTION.

Within 30 days after the District Court's final approval of the Settlement Agreement, MnSCU/SCSU will pay a total of \$50,000 to those Settlement Class members who do not exclude themselves from the settlement as provided in this notice. Each non-excluded class member's portion of the class monetary payment shall be determined according to the

following formula:

Each member of the Settlement Class will receive one point for each year he or she was employed at SCSU during the past three academic years (1999-2000, 2000-2001, and 2001-2002). Thus a Settlement Class member who was employed at SCSU during any part of one academic year will receive one point; a Settlement Class member who was employed at SCSU during any part of two academic years will receive two Points; and a Settlement Class member who was employed at SCSU during any part of three academic years will receive three Points. **The named plaintiffs will not be considered Settlement Class members and will not receive Points.**

The Points received by the Settlement Class members would then be added together to determine the Total Number of Points.

The Point Value would then be determined by dividing \$50,000 by the Total Number of Points.

The payment to each Settlement Class member would then be calculated by multiplying the Point Value by the number of Points he or she had received.

The result would be rounded up or down by \$.01 if necessary in order to insure that exactly \$50,000 is distributed to the members of the class.

As an example, Sally Scholar was employed at SCSU during all of the academic year 1999-2000 and part of the academic year 2000-2001. She would receive two Points. The Total Number of Points received by the settlement class members was 53. Thus, \$50,000 would be divided by 53 to determine a Point Value of \$943.40. The Point Value (\$943.40) would be multiplied by the Points she received (2) to arrive at a payment to her of \$1,889.80.

AWARD OF DAMAGES TO NAMED PLAINTIFFS.

The named Plaintiffs will receive the following monetary settlements: Arie Zmora will receive \$165,000. Geoffrey Tabakin will receive \$20,000 and other non-monetary relief including a one-half time reassignment for two semesters. Laurinda Stryker will receive \$80,000 and other non-monetary relief including a paid leave for one year. These payments are separate from and will not reduce the award to class members.

ATTORNEYS' FEES AND COSTS.

The four Class Counsel will receive a total payment of \$265,000 for attorney's fees and for reimbursement of the costs of the litigation that they have advanced.

SETTLEMENT SUBJECT TO COURT APPROVAL.

The Settlement is subject to the approval of the Court. If the Court does not approve the Settlement, or if it does not become effective for any other reason, the settlement will be nullified, the Court's certification of the Class for settlement purposes will be vacated, the parties will retain the rights they had prior to signing the Settlement Agreement, and the pre-settlement status of the litigation will be restored.

REQUESTS FOR EXCLUSION (OPT-OUT).

If you are a member of the Class and do not wish to receive any of the described Settlement benefits or be bound by the release contained in the Settlement and covenant not to sue or the other provisions of the Settlement, you must submit a request for exclusion from the Class by sending letters addressed to Judith K. Schermer, Esq., JUDITH K. SCHERMER, PLLC, 950 Lumber Exchange Building, 10 South Fifth Street, Minneapolis, MN 55402-1035; and to Gary R. Cunningham, Esq., Assistant Attorney General, State of Minnesota, NCL Tower, Suite 1100, 445 Minnesota Street, St. Paul, Minnesota 55101. To be effective as an exclusion or "opt-out" request, the letter must be postmarked no later than January 21, 2003 and must contain (a) your name, address, and phone number, and (b) a statement that you wish to be excluded from the Class. **A Class member who submits a request for exclusion will not receive the monetary benefits of the Settlement. If you do not opt-out, you do not have to take any further steps to receive your share of the settlement fund if the Court approves this Settlement.**

SETTLEMENT HEARING.

The Court has directed that a hearing on the proposed Settlement be held on February 10, 2003, before the Honorable Joan Erickson Lancaster, United States District Court Judge, in Courtroom 3, Warren E. Burger Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101, commencing at 11:00 A.M. to consider whether the Settlement is fair, reasonable, and adequate and should be approved.

PROCEDURE FOR PRESENTING OBJECTIONS.

Objections to the proposed settlement or to any other matters by Settlement Class members (who have not previously elected to exclude themselves from the class) will be considered by the Court, but only if such objections (and supporting briefs, if any) are filed in writing by mail with the Clerk of Court, United States District Court, 700 Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101, postmarked no later than January 21, 2003. Copies of your statement must also be mailed with a postmark no later than January 21, 2003 to:

Judith K. Schermer, Esq.
JUDITH K. SCHERMER, PLLC
950 Lumber Exchange Building
10 South Fifth Street
Minneapolis, Minnesota 55402-1035

and to:

Gary R. Cunningham, Esq.
Assistant Attorney General
State of Minnesota
NCL Tower
Suite 1100
445 Minnesota Street
St. Paul, Minnesota 55101-2128

Any person who fails to submit an objection in the manner set forth above shall be regarded as having waived such objection and will be barred from subsequently raising it in any proceeding relating to the Settlement.

Attendance at the February 10, 2003 hearing is not necessary. However, Settlement Class members wishing to be heard orally in opposition to the proposed settlement should indicate in their written objections their intention to appear at the hearing.

**IF YOU ARE SATISFIED WITH THE MATTERS DESCRIBED IN
THIS NOTICE, YOU NEED NOT ATTEND THE HEARING OR
TAKE ANY STEPS WITH REGARD TO THE HEARING**

ADDITIONAL INFORMATION.

This Notice contains a summary of the litigation, the proposed Settlement, and related matters. For more detailed information, you or your attorney may review the pleadings and other documents filed in this litigation, including the Settlement Agreement, during regular business hours on any business day, at the Office of the Clerk, United States District Court, 700 Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101. Inquiries may also be directed in writing to lead counsel for Plaintiffs and the Class: Judith K. Schermer, Esq., JUDITH K. SCHERMER, PLLC, 950 Lumber Exchange Building, 10 South Fifth Street, Minneapolis, Minnesota 55402-1035.

**PLEASE DO NOT CONTACT THE UNDERSIGNED JUDGE OR THE CLERK
OF COURT WITH REQUESTS FOR ADDITIONAL INFORMATION ABOUT THE
DETAILS OF THE SETTLEMENT.**

Dated: Dec 5, 2002.



JOAN ERICKSON LANCASTER
United States District Judge