

In the United States Court of Federal Claims

Nos. 12-889L; 13-404L (Consolidated)

(Filed: September 26, 2018)

*****)
)
CLAUDE SEARS, et al.,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES,)
)
Defendant.)
)
*****)

ORDER FOR FINAL JUDGMENT

Pending before the court in this rails-to-trails case is a matter that potentially would conclude the case. The remaining matter consists of a proposed settlement of reasonable attorneys' fees and costs for the Trial Subclass.

On August 29, 2018, the parties filed a Joint Motion and Memorandum to Approve an Award of Reasonable Attorneys' Fees and Costs under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and to Approve Notice to the Trial Sub-Class Pursuant to Rule 23(h), ECF No. 179. The motion and notice adhered to the procedural discussion at a status conference held on August 27, 2018. The court notes that the joint compensation awarded by the court to the Trial Subclass for the taking has been affirmed by the court of appeals. *See Sears v. United States*, 132 Fed. Cl. 6 (2017), *aff'd*, 726 Fed. Appx. 823 (Fed. Cir. 2018). The mandate of the court of appeals was received on August 3, 2018, giving this court jurisdiction to address the proffered settlement of attorneys' fees and costs. Payment of just compensation has been made to the members of the Trial Subclass.¹

¹On September 4, counsel for the Trial Subclass filed Plaintiffs' Voluntary Partial Dismissal with Prejudice ("Dismissal"), respecting the members of the Trial Subclass, ECF No. 181. Procedurally, that dismissal became effective upon filing. The Dismissal, pursuant to Rule 41(a)(1)(A)(ii), was made in response to payment being made to class counsel on August 30, 2018. *Id.* Disbursement of that payment was made by class counsel to the members of the Trial Subclass on the next day, August 31, 2018. *Id.* In the Dismissal, counsel requested that "all [c]lass [m]embers' claims for land value and interest in the [t]rial [s]ubclass be dismissed with prejudice." *Id.*

On August 30, 2018, the court preliminarily approved the proposed settlement of attorneys' fees and costs relating to the claims of the Trial Subclass, and mandated notice of the proposed settlement be provided to the Trial Subclass. *See* Order of August 30, ECF No. 180. The court also approved the proposed plan for notice. *Id.* The Notice of Final Settlement of Class Counsel's Attorney's Fees and Costs was mailed to the subclass members under the plan. *See* Class Counsel's Notice of Compliance, ECF No. 182.

On September 21, 2018, the court received Class Counsel's [further] Notice of Compliance, ECF No. 183, relating to the court's August 30, 2018 order. Attached to the Notice of Compliance were the signed and dated consent forms of the five individual members of the subclass approving of the proposed settlement of attorneys' fees and costs. *Id.* Ex. A-B. The forms are signed and dated by John E. and June A. Bradley, Jane P. Richards, Norval K. Mosher, Charles S. Heene, and Denzil J. Gould.

Having reviewed the five returned forms, the court is satisfied that each of the members of the Trial Subclass has given consent to the settlement of attorneys' fees and costs. Each form is signed and dated by a member of the Trial Subclass and each of the members consents to the proposed settlement. Only one form, sent by Mr. Norval K. Mosher, included a comment. *See* Notice of Compliance, Ex. B. To his consent, Mr. Mosher added a brief note thanking the attorneys for the trial subclass for the "personal and professional way this [litigation] was handled." *Id.*

As each member of the Trial Subclass received notice and consented to the proposed settlement of attorneys' fees and costs, the court finds, pursuant to Rule 23(h)(3), that a hearing is not necessary.

Accordingly, the court accepts the proposed settlement of attorneys' fees and costs for the Trial Subclass and directs the clerk to issue final judgment in this action, awarding reasonable attorneys' fees and costs for the Trial Subclass in the amount of \$475,500.00.

It is so **ORDERED**.

s/ Charles F. Lettow

Charles F. Lettow

Senior Judge