

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANTHONY D. KOLTON, <i>et al.</i> ,)
)
Plaintiffs,)
v.) No. 16-cv-3792
) Hon. Charles P. Kocoras
MICHAEL W. FRERICHS,)
Treasurer of the State of Illinois,)
)
Defendant.)

**NOTICE OF CERTIFICATION OF CLASS ACTION,
PROPOSED SETTLEMENT OF CLASS ACTION AND
HEARING ON THE PROPOSED SETTLEMENT AND ATTORNEYS' FEE PETITION**

To: All persons and entities: (i) Who owned unclaimed property held in the form of money by the Illinois State Treasurer and whose claim for return of their property from the Illinois State Treasurer was paid or approved in the period from August 22, 2017 through July 20, 2021, or (ii) Who owned unclaimed property held in the form of money by the Illinois State Treasurer as of July 20, 2021 (collectively, the "Classes").

PLEASE READ THIS NOTICE CAREFULLY. YOU ARE RECEIVING THIS NOTICE BECAUSE YOU MAY BE A MEMBER OF ONE OF THE CLASSES AND YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS CLASS ACTION.

1. On July 20, 2021, the United States District Court for the Northern District of Illinois (the "Court") preliminarily approved a settlement between Plaintiffs and Defendant Michael Frerichs, Treasurer of the State of Illinois ("Defendant" or "Treasurer"). This Notice is to inform you of (i) the certification of the Classes; (ii) the Settlement of this Class Action (collectively the "Action"); (iii) the terms of the Settlement, which will affect the rights of all Class Members; and (iv) a hearing that will be held by the Court on October 21, 2021, to consider the fairness, reasonableness, and adequacy of the Settlement and the application of Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses and the request for Plaintiffs' compensation to the named Plaintiffs in this Action. The hearing will be held in Courtroom 2325 of the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, 60604. This Notice describes rights you may have under the Settlement and what steps you may now take in relation to the Action and the Settlement. This Notice is not an expression of an opinion by the Court as to the merits of any claim or defense asserted by any party to the Action, except to the extent that legal issues have been decided in the course of this litigation, or to the fairness, reasonableness, or adequacy of the Settlement.

If you wish to participate in the Settlement, you do not need to do anything. If you wish to object to the Settlement, the petition for attorneys' fees and reimbursement of expenses, or the

request for Plaintiffs' compensation, or, if your claim for return of your unclaimed property was paid or approved in the period from August 22, 2017 through July 20, 2021, and you wish to exclude yourself from the Class, you must follow the procedures described below in this notice.

BACKGROUND OF THE LITIGATION

2. On March 29, 2016, Plaintiffs Anthony Kolton and S. David Goldberg commenced the Action on behalf of themselves and other owners of unclaimed property held in the form of money by the Treasurer under the Illinois Uniform Disposition of Unclaimed Property Act (the "Act"). Under the Act, the Treasurer holds unclaimed property until it is claimed by the owner, at which time the property is returned. With certain exceptions, the Treasurer did not compensate the owner for the interest or other earnings on the property while in its custody. The Plaintiffs alleged that the Act violated the Takings Clause of the Fifth and Fourteenth Amendments to the United States Constitution because it denied just compensation for the taking of Plaintiffs' unclaimed property. Plaintiffs brought their action under 42 U.S.C. §1983 and sought prospective declaratory and injunctive relief on behalf of owners of property still in the Treasurer's custody and damages on behalf of those owners whose claims had been paid.

3. On June 20, 2016, Defendant moved for an order dismissing the Complaint, which the Court granted on September 16, 2016.

4. Plaintiffs appealed the dismissal to the United States Court of Appeals for the Seventh Circuit, which reversed the District Court's order in part, holding that Plaintiffs were entitled to seek prospective relief in federal court on their claim that the refusal to pay owners of unclaimed property the benefit of the property's earnings while in State custody was an unconstitutional taking. The Seventh Circuit remanded the Action for further proceedings on that claim and affirmed the dismissal of the claim for damages on behalf of those whose property had been returned on the ground that the claim was against the State and the State was not a person that could be sued under Section 1983. *See Kolton v. Frerichs*, 869 F.3d 532 (7th Cir. 2017). While Plaintiffs' appeal was pending, the Illinois legislature enacted legislation revising the Illinois Uniform Disposition of Unclaimed Property Act (the "Revised Act") to require the State to pay interest to owners of unclaimed property whose property had been earning interest before it was delivered to the Treasurer. The Revised Act applied only to certain money property delivered to or converted by the Treasurer after June 30, 2018 and did not apply to Plaintiffs or members of the Class they sought to represent.

5. On October 10, 2017, Plaintiffs Kolton and Goldberg and Plaintiff Jeffrey Sculley filed an Amended and Supplemental Complaint limited to claims for declaratory and injunctive relief entitling Plaintiffs to just compensation in the future. On February 1, 2018, Plaintiffs moved for certification under Federal Rule of Civil Procedure 23(b)(2) of a class of all persons who are owners of property in the Illinois unclaimed property program in the form of money. The District Court denied Plaintiffs' motion on the ground that the proposed class did not satisfy the commonality requirement and that Plaintiff Goldberg had no claim for just compensation because his property was not earning interest before delivery to the Treasurer.

6. Following this ruling, Plaintiff Goldberg filed a motion for entry of a final judgment on his claim, which the District Court granted on June 20, 2018. Plaintiff Goldberg appealed this judgment and the dismissal of his claim to the Seventh Circuit, and the Seventh Circuit reversed, holding that an owner of unclaimed property is entitled to income that the property earns while in State custody regardless of whether the property had been previously earning income in the owner's hands. *See Goldberg v. Frerichs*, 912 F.3d 1009 (7th Cir. 2019).

7. On April 22, 2019, Plaintiffs renewed their motion for class certification, and on June 20, 2019, the District Court granted this motion and certified a Rule 23(b)(2) Class of "all persons who are owners of property in the Illinois unclaimed property program that is in the form of money."

8. During June-August, 2019, the parties engaged in informal discovery, including conferences and the exchange of written questions and answers relating to the Treasurer's investment of unclaimed property held in State custody, including earnings on the property in the Unclaimed Property Trust Fund, use of unclaimed property while in State custody, the number and amount of claims made by owners of unclaimed property annually, and the length of time unclaimed property was held in the Unclaimed Property Trust Fund before being claimed. In addition, Plaintiffs' counsel consulted with an expert economist on what might be a reasonable return on unclaimed property in the form of money held by the Treasurer.

9. Plaintiffs presented a settlement demand to the Treasurer on August 19, 2019, and the Treasurer made a counter-proposal on October 10, 2019. Thereafter, counsel for the parties met and conferred on several occasions, and the Treasurer provided additional information in response to follow-up questions from Plaintiffs. After extensive arms-length negotiations and Plaintiffs' counsel's consultation with their expert economist, the Parties reached an agreement in principle to settle the Action on January 22, 2020, and after further arms-length negotiations over certain terms, memorialized their agreement in a Memorandum of Understanding dated March 11, 2020.

10. Pursuant to the terms in their agreement in principle to settle the Action, class member Henry Krasnow on July 20, 2021 filed a Second Amended and Supplemental Complaint which added claims on behalf of a Settlement Class consisting of owners of Unclaimed Property that was held in the form of money by the Treasurer and whose claim for return of their property was paid or approved in the period from August 22, 2017 (the date of the reversal of the dismissal of the Complaint by the Seventh Circuit) through and including July 20, 2021 (the date of preliminary approval of the Settlement by the District Court).

THE REASONS FOR THE SETTLEMENT

11. Plaintiffs have litigated this Action in the District Court and through two appeals in the Seventh Circuit for nearly five years. The claims presented complex issues and a novel theory which required extensive factual and legal research and investigation. Plaintiffs have reviewed documents obtained from the Treasurer and public records relating to the collection, investment, and disposition of unclaimed property and interviewed witnesses from the Treasurer's office.

12. The Settlement was entered into only after Plaintiffs succeeded on two separate appeals they took to the United States Court of Appeals for the Seventh Circuit. Although Plaintiffs prevailed in both appeals, the court of appeals limited the extent of Plaintiffs' potential recovery. First, the court held that Plaintiffs could not pursue, under 42 U.S.C. §1983, the federal civil rights statute, their claim on behalf of property owners whose unclaimed property had been returned to them by the State. Second, the court held that the State was entitled to deduct certain administrative expenses of the Unclaimed Property Trust Fund from interest owed ("net interest") to Plaintiffs and left it to the District Court to determine whether and how much net interest was due.

13. In deciding to settle the Action, Plaintiffs and Plaintiffs' Counsel weighed the potential benefits of continuing with the litigation against the certain benefits provided by the Settlement, as well as the potential risks and costs of continuing the litigation. The principal reasons for agreeing to the Settlement are: (a) the potential recovery in light of the Seventh Circuit's opinions, which left contested issues relating to the appropriate measure of just compensation and the calculation of net interest subject to further litigation; (b) the benefits of obtaining immediate relief for the Classes and the risk of losing these benefits for large numbers of Class Members through protracted legal proceedings; (c) the advantages of obtaining benefits for the Rule 23(b)(3) Class Members whose property has been returned without interest but whose claim had been dismissed from the federal court proceeding; and (d) the risks and uncertainties of continued class action litigation of this nature.

14. Plaintiffs and Plaintiffs' Counsel believe that the proposed Settlement confers substantial benefits upon the Classes and that it is fair, reasonable, and adequate and in the best interest of the Classes. They recommend it to the Classes and to the Court for its approval. Defendant and Defendant's Counsel also recommend the Settlement to the Court for its approval.

TERMS OF THE PROPOSED SETTLEMENT

15. On July 20, 2021, the Court conditionally certified a class of owners of unclaimed property whose claim for return of their property from the Treasurer was paid or approved during the period August 22, 2017 to July 20, 2021 (the "Rule 23(b)(3) Settlement Class"). The Court had previously certified a Class of owners of unclaimed property whose property was being held in the form of money by the Treasurer (the "Rule 23(b)(2) Class"). Under the Settlement Agreement, the Rule 23(b)(2) Class will include all persons who are owners of unclaimed property held in the form of money by the Treasurer as of July 20, 2021.

16. If the Court approves the Settlement, the Defendant has agreed to pay interest as just compensation to members of both the Rule 23(b)(3) Settlement Class and the Rule 23(b)(2) Class. Interest will be paid from the latest of August 22, 2017, the date the unclaimed property is delivered to the Treasurer, or the date the Treasurer converts unclaimed property that is not in the form of money to money. Just compensation shall be payable for a period not to exceed ten years or until the property is returned, whichever is earlier. The Treasurer will also pay the just compensation measure agreed to in the Settlement to owners of unclaimed property in the form of money that is delivered to the Treasurer after July 20, 2021 ("Future Claimants"), subject to the

General Assembly's enacting legislation that changes the just compensation owed to Future Claimants.

17. The Settlement measure of just compensation is an interest rate calculated monthly and compounded monthly that is the greater of: (1) the actual return the Defendant earns on the Unclaimed Property Trust Fund maintained by the Defendant, or (2) the percentage increase, if any, in the Consumer Price Index for all Urban Consumers (CPI-U), for all items published by the U.S. Department of Labor. This measure will be applied to the gross amount of the Class Member's claim for each month that the Defendant has held the class member's property in the form of money. The Treasurer may assess an administrative fee of no more than \$5.00 for each claimed property, deductible only from interest due on each claimed property. Members of either Class entitled to interest under the Revised Act shall be entitled to receive any greater amount due under this Settlement.

18. Rule 23(b)(3) Settlement Class Members whose mailing addresses can be verified by the Treasurer will receive their interest payments without further action from the Class Member. If no current mailing address can be verified, the Class Member will be required to confirm the mailing address within 120 days of the date confirmation is requested or to file a separate request with verification of the mailing address within two years of the confirmation request.

19. The Settlement will become effective (the "Effective Date") only after the judgment approving the Settlement entered by the Court becomes final and is not subject to appeal. Upon the Effective Date, the Treasurer will begin making interest payments to Class Members whose property has been returned or is returned in the future. The Treasurer has calculated that, as of March 31, 2021, the net interest payable to Rule 23(b)(3) Settlement Class Members is \$13,563,730.89. Net interest payable to Rule 23(b)(2) Class Members can only be estimated because those claims have not yet been made. However, based on historical averages relating to holding periods and return rates of the Unclaimed Property Trust Fund, recent interest rates, and calculations of interest payable to the Rule 23(b)(3) Class, the Treasurer has estimated that the present value of interest payable to the Rule 23(b)(2) Class will be approximately \$30,851,391. Plaintiffs and Plaintiffs' Counsel have been advised by an expert economist whom they have consulted that, based on historical trends of unclaimed property claims paid by the Treasurer, the interest payable to the Rule 23(b)(2) Class will likely be well above that estimate.

20. Upon the Effective Date, Plaintiffs and the Classes shall release and discharge Defendant, his representatives, and the State of Illinois, and Defendant shall release Plaintiffs, the Classes, and Plaintiffs' Counsel, from claims related to this Action, other than their respective obligations contained in the Settlement Agreement.

21. Upon the Effective Date, Class Members will be bound by all proceedings, orders, and the final judgment in this Action, whether favorable or unfavorable to them. You are not required to take any action to remain a Class Member.

22. This Notice is not intended to be a complete description of the Settlement Agreement. That document, which contains the full and complete terms of the Settlement, is on

file with the Court and is available on the Treasurer's website, <http://icashillinoistreasurer.gov> and <http://illinoistreasurer.gov>.

RIGHTS OF RULE 23(b)(3) CLASS MEMBERS

23. Members of the Rule 23(b)(3) Settlement Class who do not wish to be bound by the Settlement and the Order and Final Judgment must exclude themselves from the Class by submitting a request for exclusion in writing to (i) Counsel for Plaintiffs and the Classes and (ii) Counsel for the Defendant at the addresses listed below that is post-marked or otherwise delivered no later than September 30, 2021.

24. A request for exclusion must clearly state the name, mailing address and email address, if there is one, of the person seeking exclusion, the name of the original property owner, the name of the person who claimed the property from the Treasurer, the dollar amount the claimant was paid, and the date the claim was paid. The request for exclusion should provide the claim number and property identification numbers, if known. Class Members who request exclusion from the Class will not be entitled to receive any interest payment from the Settlement.

SETTLEMENT FAIRNESS HEARING

25. On October 21, 2021, a hearing will be held before the Honorable Charles P. Kocoras in Courtroom 2325 at 219 South Dearborn Street, Chicago, Illinois at 10:00 a.m. (the "Settlement Fairness Hearing") to determine (a) whether the proposed Settlement of the Action as set forth in the Settlement is fair, reasonable, adequate, and in the best interest of the Classes; (b) whether the Court should grant final approval of the Settlement; and (c) whether a Final Judgment (as provided in the Settlement Agreement) should be entered.

ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND PLAINTIFFS' COMPENSATION

26. At the Settlement Fairness Hearing, or at such other time as the Court may direct, Plaintiffs' Counsel intends to apply to the Court for an award of attorneys' fees and reimbursement of expenses in accordance with F. R. Civ. P. 23(h), 42 U.S.C. §1988 (as applicable), and common law in an amount not to exceed \$9.5 million or 25% of the benefit to the Classes. Plaintiffs' Counsel have expended considerable time and effort in the prosecution of this litigation on a contingent fee basis and have advanced the expenses of the litigation in the expectation that if they were successful, they would be compensated. Plaintiffs' Counsel will also request that the Court award the four individual Plaintiffs \$2,500 each to compensate them for their efforts in assisting Plaintiffs' Counsel in the Action.

OBJECTIONS TO THE SETTLEMENT

27. A Member of the Rule 23(b)(2) Class or the Rule 23(b)(3) Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement, to the request for an award of attorneys' fees and expenses, or to the request for Plaintiffs' compensation must file a written objection with the Court and serve the objection on Counsel for Plaintiffs and the Classes and Defendant's Counsel at the addresses listed below by first class mail and electronic mail by no later than September 30, 2021. A member of the Rule

23(b)(3) Settlement Class who requests to be excluded from the Class may not submit an objection.

Counsel for Plaintiffs and the Classes:

Terry Rose Saunders	Arthur Susman
The Saunders Law Firm	Law Offices of Arthur Susman
120 North LaSalle Street, Ste.2000	55 West Wacker Drive, Suite 1400
Chicago, IL 60602	Chicago, IL 60601
Tel: (312) 444-9656	Tel: (847) 800-2351
tsaunders@saunders-lawfirm.com	arthur@susman-law.com

Counsel for Defendant:

Sarah Newman
Office of the Illinois Attorney General
100 West Randolph Street, 13th Floor
Chicago, IL 60601
Tel: (312) 814-6131
sarah.newman@illinois.gov

28. An objection of a Class Member must demonstrate that the objector is a Class Member, and must include the name and mailing address of the original property owner; the name, mailing address and email address, if there is one, of the person who claims or, if the property has been returned, claimed ownership of the property; the dollar amount of the claim; and, if paid, the date or approximate date the claim was paid. An objector should provide the unclaimed funds claim number and any property identification numbers, if known. Objectors must also plainly state their individual concerns, including which part of the Settlement the Class Member objects to and the specific reasons for any objection.

29. A Class Member may file an objection on his, her, or its own, or through any attorney hired at the objector's own expense. If a Class Member hires an attorney in connection with filing an objection, the attorney must file a notice of appearance with the Court and effect service on Plaintiffs' Counsel and Defendant's Counsel no later than September 30, 2021.

30. A Class Member who files and serves a written objection pursuant to this Section – and only such Class Members¹ – may appear at the Settlement Fairness Hearing, either in person or through an attorney retained at the Class Member's expense, to object to the fairness, reasonableness or adequacy of the Settlement Agreement, to any terms of the Settlement Agreement, to the request of Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses, or the request for Plaintiffs' compensation. Class Members or their attorneys who intend to make an appearance at the Settlement Fairness Hearing must both file

¹ The Settlement Fairness Hearing is open to the public, and therefore any member of the public may attend and listen to the hearing. However, only Class Members who file objections may appear and speak at the hearing to set forth their objections.

with the Court and serve Plaintiffs' Counsel and Defendant's Counsel with a notice of intention to appear by no later than October 7, 2021.

31. Any Class Member who does not comply with any of these requirements may waive and forfeit any right to object to the Settlement, Plaintiffs' Counsel's petition for attorney's fees and reimbursement of expenses, and Plaintiffs' request for Plaintiffs' Compensation.

32. Class members should not contact the Court relative to either the attorneys' fees and expenses application or the final approval of the Settlement. Due to electronic filing rules of the Court, filings normally are required to be made electronically. Objectors should therefore not wait until the last minute, to assure they can comply with the Clerk's requirements for electronic filing. For further information on E-filing requirements, class members should consult the website of the Clerk of the District Court, <https://www.ilnd.uscourts.gov>.

TERMINATION OF THE AGREEMENT OF SETTLEMENT

33. The Settlement Agreement will terminate if the Court does not approve the Settlement or declines to enter the final judgment or if the final judgment entered by the Court is reversed or modified on appeal. If the Settlement is terminated, the Settlement will become null and void, and the Action will revert to its status as of March 10, 2020.

FURTHER INFORMATION

34. This Notice is only a summary and does not fully describe all aspects of the Action or the Settlement. It is subject to and controlled by the more detailed provisions of the Settlement Agreement and related orders, exhibits, and other papers filed in the Action. For examination of the Settlement Agreement and related exhibits, orders and other papers, Class Members should visit the homepage of the Treasurer's website, <http://icash.illinoistreasurer.gov> and <https://illinoistreasurer.gov> or obtain access to the U.S. District Court for the Northern District of Illinois through Public Access to Court Electronic Records ("PACER") at <https://pacer.uscourts.gov>. Because of orders entered by the District Court relating to COVID-19, which restrict access to the Office of the Clerk and the U.S. Courthouse, it is not currently possible to inspect files in person at the Office of the Clerk. If you are unable to access information on the Treasurer's website or PACER, you may contact the Treasurer's Office by calling 833-623-0612 or, outside of office hours, send an email to unclaimedproperty@illinoistreasurer.gov.

PLEASE DO NOT CONTACT THE COURT OR THE OFFICE OF THE CLERK OF THE COURT CONCERNING THE SETTLEMENT OR THIS NOTICE.

BY ORDER OF THE COURT

Dated: July 20, 2021

Chicago, Illinois