

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

ANTHONY D. KOLTON, S. DAVID)	
GOLDBERG, JEFFREY S. SCULLEY, and)	
HENRY C. KRASNOW, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiffs,)	
v.)	No. 16-cv-3792
)	Honorable Charles P. Kocoras
)	
MICHAEL W. FRERICHS,)	
Treasurer of the State of Illinois,)	
)	
Defendant.)	

**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I. Introduction

After more than five years of litigation, including two successful appeals to the Seventh Circuit Court of Appeals that resulted in landmark rulings, the parties entered into settlement negotiations and reached an agreement that benefits all owners of unclaimed money property in Illinois. Under the proposed settlement, the state will for the first time return the interest earned on unclaimed property while in state custody to the rightful owners. The amount class members will receive as a result of the settlement is conservatively estimated to be approximately \$47 million, and potentially as high as \$70 million, and millions of dollars more will be returned to those whose property is delivered to the state in the future.

The terms of the proposed settlement and the litigation that led to the settlement have been described in Plaintiffs’ Motion for Preliminary Approval, the Memorandum in Support of Plaintiffs’ Motion and the attached Exhibits. On July 20, 2021, after reviewing and considering

the written submissions and hearing from the Plaintiffs' and Defendant's Counsel, the Court, among other actions, (1) preliminarily approved the settlement; (2) preliminarily certified the Rule 23(b)(3) Settlement Class and Plaintiff Henry Krasnow as representative of that Class, and appointed Class Counsel for both the Rule 23(b)(2) Class and the Rule 23(b)(3) Settlement Class; (3) approved the form, substance and requirements of the Notices; and (4) set a fairness hearing for October 21, 2021 at 10:00 a.m.

At the July 20, 2021 hearing, the Court commented:

... [T]his clearly was an arms-length negotiation. In fact, even longer than arms-length since the Court of Appeals came into the picture at least twice, as I recall it.

It has been litigated vigorously on both sides. And I think fairly so. And, so, it is an objective resolution that I think is fair, adequate and complete for, certainly, the plaintiff and the putative plaintiff class.

And, so, I do not see any reason I should not preliminarily approve everything you have already done. (Transcript of Proceedings, at 10.)¹

Since the Court's order preliminarily approving the settlement, (1) hundreds of thousands of Notices were mailed or emailed to Rule 23(b)(3) Settlement Class Members and published in U.S.A. Today and on the Treasurer's website in accordance with this Court's July 20, 2021 order,² (2) the amount to be distributed to Rule 2(b)(3) Class members if the settlement is approved increased by approximately \$2.5 million, bringing the conservative estimate of the total value of the settlement as of July 20, 2021 to \$46.7 million, (3) Plaintiffs' Counsel filed their Motion and Supporting Memorandum for an Award of Attorneys' Fees and other Relief, and (4) as of October 12, 2021, no objections to the settlement and only a minimal number of requests

¹ A copy of the Transcript of the Telephonic Proceedings held on July 20, 2021 is attached as Exhibit A.

² Notice procedures were administered by the Treasurer. Defendant's Counsel is submitting a Declaration to demonstrate that the Notice procedures were in compliance with Rule 23 and satisfied due process.

for exclusion from the Rule 23(b)(3) Settlement Class have been received to date (the last date for delivering or mailing an objection to the settlement or a request for exclusion from the Rule 23(b)(3) Settlement Class was September 30, 2021).

Given the large size of the Class, the number of notices mailed, and the publication of the notice in *U.S.A. Today* and on the Treasurer's website, the absence of Class Members' objections provides further evidence that the Settlement is objectively fair, reasonable and adequate and should be approved.

II. The Proposed Settlement is Fair, Reasonable and Adequate

As discussed in detail in Plaintiffs' Memorandum in Support of Motion for Preliminary Approval, the proposed settlement satisfies the requirements enumerated in Rule 23(e) and by the Seventh Circuit that a court should consider in determining whether a proposed settlement is fair, reasonable and adequate.³ In granting preliminary approval, this Court concluded that it would "likely be able to approve" the proposed settlement as fair, reasonable and adequate and to certify the Settlement Class for purposes of judgment. Fed. R. Civ. P. 23(e)(2)(B).

The same considerations lead to the conclusion that the settlement is fair, reasonable and adequate and merits final approval. The settlement affords substantial and tangible benefits for the Classes – the payment of just compensation measured by the greater of what the Treasurer

³Fed. R.Civ. P. 23(e)(2) lists the following factors: the class representatives and class counsel have adequately represented the class; the proposal was negotiated at arm's length; the proposal treats class members equitably relative to each other; and the relief provided by the settlement is adequate, taking into consideration the costs, risks, and delay of trial and appeal; the effectiveness of the proposed method of distributing relief; the terms of any proposed award of attorneys' fees; any agreements made in connection with the proposed settlement. Courts in this Circuit consider the following factors: (1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer— the most important factor; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) the state of the proceedings and the amount of discovery completed. *Snyder v. Ocwen Loan Services, LLC*, 2019 U.S. Dist., LEXIS 80926 *13-*14, 2019 WL 2103379 (N.D. Ill. May 14, 2019) citing *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863-64 (7th Cir. 2014) (internal quotation marks and citations omitted).

earns on the class member's property while in state custody or the CPI – and future unclaimed property owners will equally be entitled to just compensation (and at the same measure unless and until the legislature changes the measure); it avoids the uncertainty, delay and expense of further litigation, including litigation on the measure of just compensation and the “net interest” owed to Class Members; it furthers judicial efficiency by bringing in those owners who are entitled to compensation but who would have had to pursue their claims in separate proceedings, very likely in state court; and it furthers the public interest by bringing state law into compliance with the U.S. Constitution. The absence of objections to the proposed settlement and the minimal number of requests for exclusion further support Class Counsel's opinion that the Settlement is fair, reasonable and adequate and should be approved.

III. Conclusion

For all of the reasons set forth above, Plaintiffs respectfully request that the Court grant final approval of the Settlement as fair, reasonable and adequate.

Respectfully submitted,

Dated: October 12, 2021

/s/ Terry Rose Saunders

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