

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Gary J. Milner, Toni Bjerke
Annette Barrett, individually
on behalf of themselves and all others
similarly situated,

Court File No.: EM 01-15004

Judge Gary Larson

Plaintiffs,

vs.

Farmers Insurance Exchange,

Defendant.

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION, MOTION FOR
ATTORNEYS' FEES, AND SETTLEMENT FAIRNESS HEARING**

TO: All persons who were employed by Farmers Insurance Exchange ("FIE") in Minnesota as personal lines Claims Representatives, Senior Claims Representatives and Special Claims Representatives from October 3, 1998, through October 6, 2004.

Please read this Notice carefully. You have received this Notice because records indicate that you worked in one or more of these positions for FIE in Minnesota within the class period. This Notice relates to a proposed settlement of class-action litigation. It is designed to advise you of the proposed settlement and how you may object to the settlement. It contains important information as to your rights, as further described below, whether you act or do not act.

The Court authorized this Notice. This is not a solicitation from a lawyer.

- The Settlement resolves a lawsuit about whether Defendant Farmers Insurance Exchange violated the Minnesota Fair Labor Standards Act and other laws by failing to pay its personal lines claims representatives in Minnesota for overtime hours worked and by failing to keep records of hours worked by these personal lines claims representatives.
- The Settlement will provide \$450,000 in direct compensation to Certified Class members, \$25,000 in additional compensation to the Class Representatives, \$25,000 payable to the State of Minnesota and \$1,000,000 to the Plaintiffs' attorneys for attorneys' fees, costs and expenses.

YOU HAVE THE RIGHT TO OBJECT TO THE SETTLEMENT

If you object to the terms of the Settlement, you have the right to write to the Court about why you object. You also have the right to appear at the hearing on the final approval of the Settlement in this matter on Monday, August 31, 2009, with or without an attorney, to object to the terms of the Settlement.

- Your rights and options and the deadlines to exercise them are explained in this Notice. The Court in charge of this case has preliminarily approved the proposed Settlement, but still has to decide whether to finally approve the Settlement. If the Court approves the Settlement, payments will be made after judgment is entered and any appeals are resolved. Please be patient.

SUMMARY OF NOTICE

A. Statement of Plaintiffs' Recovery

Under the proposed Settlement, FIE will distribute a \$1,500,000 Settlement Fund as follows:

FIE will disburse \$450,000 through checks in the gross amount of \$2,238.81, less withholdings required by law, to each member of the Certified Class.

FIE will also pay a total of \$25,000.00 to the Named Plaintiffs and Class Representatives in such proportion as the Court shall approve as compensation for their services and expenses in representing the Certified Class in this lawsuit.

FIE will also pay \$25,000.00 to the Commissioner of the Minnesota Department of Labor and Industry as a civil penalty.

FIE also will pay \$1,000,000 to Plaintiffs' Counsel for attorneys' fees, costs and expenses.

B. Statement of Potential Outcome of Case

The parties do not agree on the likely outcome should the remaining issues in this case be decided by the Court. The Court dismissed certain claims and ruled that all claims for compensation before October 3, 1999, are barred by the statute of limitations. The remaining claims were tried to a jury in October 2004. On October 22, 2004, the jury reached a verdict which established that the Class is not entitled to any damages for unpaid overtime compensation. The jury also found, however, that FIE had not established that the Certified Class members were properly classified as administrative employees who are exempt from overtime pay requirements under Minnesota law. The Court later ordered FIE to pay civil penalties totaling \$376,000.00 to 25 members of the Class and enjoined it from classifying its claims representatives as exempt. The Court also ordered FIE to pay Plaintiffs' Counsel the sum of \$1,992,607.60 in attorneys' fees and expenses incurred in bringing the case.

FIE appealed to the Minnesota Court of Appeals and the Minnesota Supreme Court. The Minnesota Supreme Court ruled that any civil penalties awarded must be paid to the State of Minnesota and not to individual Certified Class members, that the civil penalty award should be reconsidered in light of the factors identified by the Supreme Court and that while Plaintiffs were entitled to an award of attorneys' fees, the fee should reflect the "result obtained" at trial. The Supreme Court returned the case to the Court for a new decision on attorneys' fees and civil penalties. Plaintiffs believe that if this case were to be decided on the merits by the Court, the Court would again award a substantial civil penalty against FIE, payable to the State of Minnesota and its Commissioner of Labor and Industry, and would again award substantial attorneys' fees to Plaintiffs' Counsel. But FIE believes that any civil penalty award would be nominal. Both parties agree that regardless of the outcome, members of the Certified Class will not be eligible for any payment.

Another certified class action lawsuit involving some of the members of the Certified Class in this lawsuit was pending in the United States District Court for the District of Oregon. The case entitled *In Re: Farmers Insurance Exchange Claims Representatives' Overtime Pay Litigation*, MDL Docket No. 1439A, included a subclass of Minnesota personal lines claims representatives asserting claims for unpaid overtime compensation under the Minnesota Fair Labor Standards Act ("MFLSA"). Following a remand from the Ninth Circuit Court of Appeals, the District of Oregon Court has dismissed that case for lack of jurisdiction. Although that dismissal is the subject of a pending appeal, FIE has taken the position that regardless of the outcome of that appeal, no member of the Certified Class in this lawsuit will be entitled to any payment.

C. Statement of Attorneys' Fees and Costs Sought

As compensation for their services and expenses in representing the Certified Class, Plaintiffs' Counsel are asking the Court to award them attorneys' fees, costs and expenses in the amount of \$1,000,000. This amount will include all claims for attorneys' fees and expenses, including the fees and expenses incurred in negotiating and carrying out the proposed Settlement. Application will also be made for payment to the Named Plaintiffs and Class Representatives of the total amount of \$25,000 (to be shared among the class representatives as ordered by the Court) as compensation for their services to the Certified Class.

D. Further Information

Further information regarding the Litigation and this Notice may be obtained by contacting Class Counsel:

Timothy J. Becker, Esq.
ZIMMERMAN REED, PLLP
651 Nicollet Mall, Suite 501
Minneapolis, MN 55402
Telephone: 612-341-0400
Facsimile: 612-341-0844
Email: Timothy.Becker@zimmreed.com

**DO NOT CALL THE COURT.
IF YOU HAVE QUESTIONS, CALL PLAINTIFFS' COUNSEL.
YOU MAY FILE AN OBJECTION TO THE SETTLEMENT WITH THE COURT.**

E. Reasons for the Settlement

For Plaintiffs, the principal reason for the Settlement is to provide a benefit to the Certified Class now. This benefit must be compared to the certainty that no member of the Certified Class will receive any payment as a result of the jury's verdict and the Supreme Court's decision and to the risk that the Court might award no or an insubstantial amount of civil penalties payable to the state. Although Plaintiffs contend that they have valid claims, the amount offered in settlement appears better than the likely alternatives. Moreover, there is a risk that any civil penalty or attorneys' fee award would be appealed, further delaying the final resolution of this case for many more months, perhaps a year or more.

For Defendant, the principal reason for the Settlement is to eliminate the continuing expense, risks, and uncertain outcome of the Litigation. FIE has expressly denied, and continues to deny, that it improperly failed to pay overtime to its employees or engaged in any other unlawful conduct whatsoever and disputes the amounts of civil penalties, attorneys' fees, and expenses claimed by the Certified Class.

BASIC INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I receive this Notice?

You are shown in the records of FIE as having been employed by FIE as a personal lines Claims Representative, Senior Claims Representative or Special Claims Representative in Minnesota during the time period from October 3, 1998, through October 6, 2004.

2. What is this lawsuit all about?

The Named Plaintiffs and Class Representatives brought a multi-count class action complaint against FIE. They alleged that FIE failed to pay them and a class of similarly-situated employees overtime compensation to which they were entitled. Specifically, they alleged that FIE violated Minn. Stat. § 177.25 by not paying overtime for hours worked in excess of 48 hours in a work week. They also claimed that FIE violated Minn. Stat. § 177.24 by failing to pay them for hours worked in excess of 38-3/4 hours, up to 48 hours, at their regular rate of pay. Finally, they alleged that FIE was unjustly enriched by requiring them to work in excess of 38-3/4 hours per week up to 48 hours per week without paying them compensation at their regular rate of pay. Based on FIE's alleged failure to pay for all hours worked, the complaint sought recovery of unpaid compensation, liquidated damages, an accounting, declaratory relief and "an injunction."

On December 16, 2002, the Court certified this case as a class action, designated the Named Plaintiffs—Gary Milner, Toni Bjerke, and Annette Barrett and Jim Oliver¹—as Class Representatives, and designated the law firms of Zimmerman Reed, PLLP, the Branch Law Firm and Climaco, Lefkowitz, Peca, Wilcox & Garofoli, Co., LPA as Class Counsel. Notice of the pendency of the class action was mailed to the members of the Certified Class on March 15, 2003. The Notice advised members of the Certified Class of the pendency of the lawsuit and of their right to exclude themselves from the lawsuit. The Notice also advised members of the Certified Class that if they failed to request to be excluded from the Class, they would be bound by the judgment in the case, whether favorable or unfavorable. No member of the Certified Class requested exclusion from the lawsuit.

The claimed violation of Minn. Stat. § 177.24 was dismissed before trial on a motion for summary judgment. The claim for unpaid compensation for hours worked in excess of 48 in a week was tried to a jury from October 6 to 22, 2004. At the conclusion of evidence and before the case was submitted, Plaintiffs dismissed their unjust enrichment claim. The jury returned a special verdict finding that FIE misclassified the Certified Class members as administrative employees. But the verdict awarded no compensation for unpaid overtime hours worked during the class period, thus establishing that FIE did not violate Minn. Stat. § 177.25.

After trial, Plaintiffs asked the court for an injunction and civil penalties based, in part, on FIE's violation of Minn. Stat. § 177.30. The Court enjoined FIE from "misclassifying" the personal lines claim representatives at issue, and it imposed a civil penalty of \$376,000 to be paid to 25 members of the Certified Class. In addition, the Court awarded Class Counsel \$1,887,268.32 in attorneys' fees and \$105,399.72 in expenses for representing the Certified Class.

A final judgment was entered on December 29, 2005. FIE appealed from that judgment. The Named Plaintiffs and Class Representatives did not appeal.

On May 15, 2008, the Minnesota Supreme Court issued an opinion that decided the appeal. The Supreme Court held that FIE failed to keep records of the time worked by Certified Class members during the class period. The Supreme Court also ruled that the Court could not award civil penalties for misclassifying employees as exempt and that civil penalties cannot be awarded to Certified Class members, but must be paid to the State of Minnesota. The Supreme Court returned the case to the Court to re-determine the basis for and amount of any civil penalties to be paid to the State of Minnesota. Finally, the Supreme Court ruled that the award of attorneys' fees was improperly made and returned the case to the Court to re-determine the amount of attorneys' fees to be awarded.

After the Supreme Court decision, the Court ordered the parties to mediate the remaining issues in an attempt to reach a settlement. Using the services of retired Hennepin County District Judge Richard Solum, the parties finally reached agreement on the terms of the proposed Settlement for which Court approval is now being sought.

¹ Mr. Oliver passed away during the lawsuit and was removed as a Named Plaintiff and Class Representative.

3. Why is this Lawsuit a class action?

In a class action, one or more people called named plaintiffs or class representatives (in this case, Named Plaintiffs and Class Representatives Gary Milner, Toni Bjerke, and Annette Barrett), sue on behalf of people who have similar claims. All these people and/or entities are referred to collectively as a class, or individually as class members. One lawsuit resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a Settlement?

Because of the jury's verdict and the rulings of the Supreme Court, no Certified Class member will receive any payment from this Litigation should the remaining issues in this case be decided by the Court. Plaintiffs' Counsel will ask the Court to award civil penalties for FIE's failure to keep time records on Certified Class Members, but any civil penalties awarded will be paid to the State of Minnesota and not to the Certified Class Members. In reaching this Settlement, the parties negotiated the amount of the civil penalty to be paid to the state and the wage and liquidated damages payments to be paid to each Certified Class Member. The Named Plaintiffs and Class Representatives and Plaintiffs' Counsel think the Settlement is best for all Certified Class Members.

5. How do I know if I am part of the Settlement?

The Certified Class includes: all persons who were employed in Minnesota by FIE from October 3, 1998, through October 6, 2004, as personal lines Claims Representatives, Senior Claims Representatives or Special Claims Representatives, and who did not elect to participate in the federal multidistrict lawsuit pending in Oregon. FIE's records show that you are a member of the Certified Class.

6. Are there exceptions to being included in the class?

Excluded from the Certified Class were Minnesota personal lines claims representatives who had commenced a separate lawsuit to recover unpaid wages or consented in writing to join the federal multidistrict lawsuit in Oregon, unless the consent to join the federal action was formally withdrawn by May 1, 2003. Also excluded from the Class were any prospective Certified Class Members who filed a request for exclusion in accordance with the requirements set forth in the March 15, 2003, Notice. No Certified Class Member filed such a request for exclusion.

7. What does the Settlement provide?

In exchange for the Settlement, release of claims, and dismissal of the lawsuit, FIE has agreed to create a Settlement Fund consisting of \$1,500,000.00. If the Settlement is approved by the Court, FIE will distribute this Settlement Fund as follows:

FIE will disburse \$450,000 through checks in the gross amount of \$2,238.81, less withholdings required by law, to each member of the Certified Class.

In addition, FIE will pay \$25,000.00 to the Named Plaintiffs and Class Representatives in such proportion as the Court shall approve, as compensation for their services and expenses in representing the Certified Class in this Litigation.

FIE also will pay \$25,000.00 to the Commissioner of the Minnesota Department of Labor and Industry as a civil penalty.

Finally, FIE will pay \$1,000,000 to Plaintiffs' Counsel in full settlement and compromise of their claims for attorneys' fees, costs, and expenses in representing the Certified Class.

8. What do I have to do to receive a payment?

If the Settlement is approved, all Certified Class members will receive a payment, to be mailed to their last known addresses as shown in the records of FIE. Plaintiffs' Counsel is responsible for mailing the payment checks and following up on any mailings that are returned by the post office because of an incorrect or expired address. No action on your part is required.

9. When will receive my payment?

The Court will hold a hearing on **August 31, 2009**, to decide whether to approve the Settlement. If the Court approves the Settlement, it will enter a Final Judgment resolving all the issues in the case. If no one appeals from the Final Judgment, the payments will be made between sixty-one and one hundred and six days after the entry of judgment. If an appeal is taken, no payment will be made until after the appeal is decided. Please be patient.

10. Can I exclude myself from the Settlement?

No. Your only right is to object to the terms of the Settlement by following the procedures in this Notice. You were given a right to exclude yourself from the Certified Class by following the procedures set forth in the Notice the Court sent you on March 15, 2003, and you chose not to do so. That Notice advised you that you would be bound by a judgment in the case, favorable or unfavorable. Because of the jury's verdict and the subsequent rulings of the Court and the Minnesota Supreme Court, you no longer have the right to exclude yourself from the Certified Class and commence a separate lawsuit.

11. What am I giving up if the Settlement is approved by the Court?

The Settlement provides that Certified Class members are releasing any claims they may have related to the facts and claims at issue in the Litigation, including any claims for failure to pay wages for overtime hours, failure to pay the minimum wage, and unjust enrichment by failing to pay for overtime worked. This means you cannot bring a lawsuit to pursue those claims in any court or before any agency. Many of these claims have already been extinguished

by the passage of time, the jury's verdict, or prior rulings of the Court and the Minnesota Supreme Court.

The Released Claims include any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, equitable or injunctive relief and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and unknown claims that have been asserted in this Litigation by the Certified Class members or any of them against any of the released parties, that could have been asserted in this Litigation by the Certified Class members or any of them against any of the released parties, or that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Amended Complaint, or that relate in any way to payment by FIE for hours worked. The Released Claims also include all claims relating to the defense or settlement of the Litigation (except for claims to enforce the Settlement).

With respect to any and all Released Claims, the parties stipulate and agree that upon the Settlement Effective Date, the Named Plaintiffs and Class Representatives shall expressly, and each Certified Class member shall be deemed to have, and by operation of the Final Judgment will release and extinguish all such claims against FIE, including unknown claims. The release also releases FIE's officers, employees, agents, and related entities, successors and assigns.

If the Settlement is approved, all of the Court's orders will apply to you and legally bind you.

12. Do I have a lawyer in this case?

The Court ordered that the law firms of Zimmerman Reed, PLLP of Minneapolis, Minnesota, The Branch Law Firm of Albuquerque, NM, and Climaco, Lefkowitz, Peca, Wilcox & Garofoli, Co., LPA, of Cleveland, OH, represent all Certified Class members. These lawyers are called Plaintiffs' Counsel. You may contact Plaintiffs' Counsel at the toll-free telephone numbers, business addresses and/or email addresses listed in Question 14 below. You will not be separately charged for these lawyers. The payment of attorneys' fees included in the Settlement will compensate Plaintiffs' Counsel for all attorneys' fees, costs and expenses, including any fees, costs and expenses to complete the Settlement. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

As part of the Settlement, Plaintiffs' Counsel are asking the Court to award a payment of \$1,000,000 as compensation for all of their attorneys' fees, costs, and expenses in representing Plaintiffs, including the Certified Class members, including any and all fees and expenses in negotiating, securing the approval of and carrying out the Settlement.

Plaintiffs' Counsel are also asking the Court to award a payment of \$25,000.00 to the Named Plaintiffs and Class Representatives Gary Milner, Toni Bjerke, and Annette Barrett to compensate them for their efforts in representing the Certified Class.

14. How do I object to the Settlement?

If you are a Certified Class member, you can object to the Settlement if you do not like any part of it, including the amounts allocated to payments to Certified Class members, the payment of civil penalties to the State of Minnesota, the application for attorneys' fees and reimbursement of expenses or the request for a payment to the Named Plaintiffs and Class Representatives.

To object, you must send a letter via U.S. mail to each of the persons listed below saying that you are a Certified Class member in *Milner et al. vs. Farmers Insurance Exchange, Court File EM-01-15004*, that you object to the Settlement, and the reasons why you object. In your objection, you must include your name, address, and telephone number. The objection must be postmarked no later than **August 6, 2009**, and addressed to each of the following:

COURT	CLASS COUNSEL	DEFENDANT'S COUNSEL
The Honorable Gary Larson Hennepin County District Court Room C1621 300 South Sixth Street Minneapolis, MN 55402	Timothy Becker, Esq. Zimmerman Reed, PLLP 651 Nicollet Mall, Suite 501 Minneapolis, MN 55402	George Preonas, Esq. Seyfarth Shaw LLP Suite 3300 2029 Century Park East Los Angeles, CA 90067 and Frederick E. Finch, Esq. Bassford Remele, P.A. 33 So. Sixth St. #3800 Minneapolis, MN 55402

You will not be able to make an objection for the first time at the hearing. The Court will not consider objections that have not been filed in writing by the deadline stated above. Any Certified Class member who does not make and serve his or her written objections in the manner provided above shall be deemed to have waived such objections and shall be foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement. If you object to the Settlement, you will still remain a member of the Certified Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way and to the same extent as a Certified Class member who does not object.

15. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Settlement Fairness Hearing at 9:00 a.m. on Monday, August 31, 2009, at the Hennepin County Government Center, 300 South Sixth Street, Minneapolis, Minnesota 55487, in the courtroom of The Honorable Gary Larson, Room C1655. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are written objections, the Court will consider them. The Court will also listen to people who have asked in writing by **August 6, 2009**, to speak at the hearing. The Court may also decide whether and how much to award Plaintiffs' Counsel for attorneys' fees and expenses and whether to make an award to the Named Plaintiffs and Class Representatives.

16. Do I have to come to the hearing?

No. Plaintiffs' Counsel will answer any questions the Court may have.

17. May I speak at the hearing?

You may ask the Court for permission to speak at the Settlement Fairness Hearing. To do so, you must include with your objection, described in Question 14 above, the statement, "I hereby give notice that I intend to appear at the Settlement Fairness Hearing in *Milner et al. v. Farmers Insurance Exchange*." Be sure to include your name, address and telephone number, and sign the letter. If you intend to have any witnesses testify or to introduce any evidence at the Settlement Fairness Hearing, you must list the witnesses and evidence in your objection. Your Notice of Intention to Appear must be sent to the Court, Plaintiffs' Counsel and Defendant's Counsel, no later than **August 6, 2009**, at the addresses shown in the answer to Question 14.

18. What happens if I do nothing at all?

If you do nothing, and if the Court approves the Settlement, a payroll check will be sent to you in the amount of \$2,238.81, less withholdings required by law, to your last known address as shown in the records of FIE. If your address has changed, please mail notice of your new address to the addresses shown above in the response to question number 14. If the Settlement is not approved, you will receive more information about the Litigation in the future.

19. How can I get more information?

This Notice summarizes the proposed Settlement. More details are contained in the Settlement Agreement. You can obtain a copy of the Settlement Agreement by visiting www.zimmermanreed.com. If you have questions regarding how to obtain copies of documents related to this Settlement or object to the Settlement, you may contact Plaintiffs' Counsel:

Timothy J. Becker, Esq.
ZIMMERMAN REED
651 Nicollet Mall, Suite 501
Minneapolis, MN 55402
Telephone: 612-341-0400
Facsimile: 612-341-0844,
Email: Timothy.Becker@zimmermanreed.com.

**DO NOT CALL THE COURT.
IF YOU HAVE QUESTIONS, CALL PLAINTIFFS' COUNSEL.**

This Notice is given by Order of the Court.

Timothy J. Becker
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612-341-0400

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