



GENERAL COUNSEL CORNER

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Light at the End of the Tunnel - the Allapattah Litigation

For years, Exxon dealers across the nation have been awaiting the end of the marathon litigation that is the *Allapattah* discount-for-cash class action litigation.

Throughout the course of the fifteen-year litigation, a class of current and former Exxon direct serve dealers located throughout thirty-five states doggedly pursued a claim that then Exxon, now ExxonMobil, intentionally overcharged them for motor fuel between March 1, 1983 and August 31, 1994 by failing to provide them with a promised discount-for-cash pricing incentive.

Following seemingly endless pretrial motions, two trials (the first ending in a mistrial) and appeals to the federal court of appeals and the United States Supreme Court, it appeared that the dealer class - although obtaining a jury verdict valued at over a billion dollars - still faced years of wrangling with Exxon about the administration of class claims before class members would receive cash payouts.

That outlook changed dramatically with Judge Gold's release on April 7, 2006 of a forty-three page opinion giving final approval to a class settlement with Exxon that should finally resolve the litigation.

Judge Gold's opinion sets forth in detail how the litigation will be wound down, and disposes of the objections of

the sole class member who challenged the fairness of the settlement.

First and foremost, Exxon will pay \$1,075,000,000 into a settlement fund in exchange for being released immediately from all class member claims. Because Exxon has agreed to release all of the set-off claims that it might have asserted against class members and to remove itself entirely from the claim adjudication process, the procedure of converting class claims into cash payments should be much easier and quicker.

The payments distributed to class members will be substantial. The class recovery consists roughly of fifty percent in damages and fifty percent in pretrial interest, representing the value of the loss to class members of the use of the money wrongfully taken by Exxon over the many years that have passed since the discount for cash program was in effect. The Special Master appointed by Judge Gold to oversee the administration of the class settlement has projected that claimants will recover one hundred percent of their claims for damages and nearly one hundred percent of their claims for prejudgment interest.

Obtaining such a complete recovery is almost unheard of in class action litigation, where typically class members recover only pennies on the dollar if that, and sometimes are left only with coupons good against future

purchases, while the lawyers who represent the class receive millions in cash. The difference here, of course, is that the underlying case was tried to judgment, leaving Exxon with little room for maneuver or negotiation.

Also unique to the *Allapattah* litigation is the high degree of former and present dealer participation in the claims process, and the almost total lack of any indication of class-member discontent. Of the approximately eleven thousand class claimants, only one filed an objection to the class settlement agreement. According to the chart filed with Judge Gold's opinion, only thirty-eight present and former dealers opted out of the class and failed to submit claims for class recovery. Ninety-two percent of class members - an extraordinarily high percentage - submitted claims for compensation.

Even class members who failed to submit a timely claim by the December 19, 1995 deadline may yet receive some recovery. Counsel representing state governments of the thirty-five states affected by the settlement will be responsible for challenging any wrongfully asserted claim, and the funds that counsel recovers will be held by the states for the benefit of the true owner of the claim. Thus, a dealer who failed to submit a timely claim can claim may still recover something under state abandoned property law.

Some reductions to class member recovery have been imposed. Each claim will be reduced by a two percent reserve for contingent circumstances, and an additional five percent will be retained to ensure that sufficient funds will remain to pay all valid claims that were filed in a

timely manner. In addition, the recovery to class members will be reduced by the court's award of attorneys' fees to class counsel, a determination which has not yet been made.

Judge Gold dismissed all arguments made by the sole class member who objected to the settlement as being "patently frivolous." To discourage the rejected objector - whose claim apparently amounted only to approximately \$17,000 - from appealing and tying up the resolution of the class distribution for many more months, the court required it to post a bond of \$13,500,000 if it attempted to appeal anything other than its own miniscule claim.

In sum, the end is in sight. And what an end it is!

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