

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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STEPHEN ADAMS, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 90-162-C
)	and Consolidated Cases
UNITED STATES OF AMERICA,)	(Judge Lynn J. Bush)
)	
Defendant.)	
)	

JOINT STATUS REPORT

Pursuant to the Court’s Order of July 9, 2008, the parties respectfully advise the Court as follows:

1. The parties have conferred and continue to confer with regard to various remaining matters in this litigation.
2. Concerning criminal investigators whose claims have not yet been litigated or settled, settlement has not been achieved with regard to GS-9 through GS-13 criminal investigators at the following agencies:

Department of the Treasury, Social Security Administration, Small Business Administration, Resolution Trust Corporation, Railroad Retirement Board, National Aeronautics and Space Administration, General Services Administration, Federal Deposit Insurance Corporation, Department of Transportation, Federal Aviation Administration, Department of the Navy, Department of Labor, Department of Justice, Department of Defense, General Accounting Office, Federal Emergency Management Agency, Equal Employment

Opportunity Commission, Department of Education, Naval Criminal Investigative Service, Defense Criminal Investigative Service, Federal Bureau of Investigation, Department of Health and Human Service, and others.

Settlements have been achieved at the GS-9-12 levels but not at the GS-13 level at the following agencies:

Department of Commerce (including National Oceanic Atmospheric Administration, the Bureau of Export Administration, and the Office of Export Enforcement), Department of the Interior (including the Fish and Wildlife Service), Department of Veterans Affairs, Environmental Protection Agency, Food and Drug Administration, Immigration and Naturalization Service, and others.

3. On December 21, 2007, plaintiffs submitted a settlement proposal to the Government that would resolve the majority of claims of the plaintiffs employed by the agencies above as well as plaintiffs employed by the Office of Inspector General ("OIG") of the Department of Health and Human Services ("HHS") and the OIG of the Department of Housing and Urban Development ("HUD"). The Government evaluated plaintiffs' proposal and provided plaintiffs' counsel with a response to the proposal on February 22, 2008. Plaintiffs' counsel responded to the Government's proposal on April 11, 2008. The parties met on July 10, 2008 to discuss their respective positions. As a result of these discussions, plaintiffs' counsel transmitted a revised

proposal to defendant on September 9, 2008. Defendant anticipates responding to plaintiffs' proposal by September 29, 2008.

4. On March 14, 2007, the United States Court of Appeals for the Federal Circuit denied plaintiffs' petition for panel rehearing and rehearing en banc with respect to the Federal Circuit's affirmance of this Court's April 27, 2005 disposition of the driving claims of plaintiffs in the grade GS-12 criminal investigator category. Plaintiffs filed a petition for writ of certiorari on July 27, 2007. Plaintiffs' petition was denied on January 7, 2008. Defendant filed a dispositive motion regarding the remaining driving claims on April 11, 2008. By Order dated May 19, 2008, the Court suspended proceedings on defendant's motion pending its decision on Plaintiffs' Motion Under RCFC 56(f), for a Continuance to Permit Them to Conduct Discovery for the Purpose of Opposing Defendant's Motion for Summary Judgment Regarding Remaining "Driving Time" Claims filed on May 12, 2008. On July 31, 2008 plaintiffs filed a Motion to Compel Production of Documents. On August 18, 2008, defendant responded and on September 2, 2008 plaintiffs filed their Reply to Defendant's Opposition to Plaintiffs' Motion to Compel Production of Documents.

5. On September 13, 2007, plaintiffs covered under the Partial Settlement Agreement covering the claims of Marine Enforcement Officers at the United States Customs and Border Protection within the Department of Homeland Security and/or its predecessor, the United States Customs Service, received payment. However, between September 4, 2007 and October 9, 2007, plaintiffs' counsel notified defendant that eleven plaintiffs believed to be entitled to back pay under such settlement agreement were not paid. Counsel for the parties have recently determined that two of these plaintiffs - Russell G. Perras and Steven D. Harper- are not eligible for back pay

under this settlement. The remainder of these plaintiffs were not paid based upon a determination by the defendant that they were not eligible. Defendant, however, is presently in the process of verifying the accuracy of this determination but has not provided plaintiffs any further information since the filing of the last status report on June 30, 2008. On September 9, 2008, plaintiffs submitted information to defendant contesting the fact that plaintiffs Andrew J. Brunner, Noe Irizarry and Ramon Salgado are not entitled to payment under the settlement agreement. The Government is reviewing such information. As to the additional plaintiffs whose claims the Government has not yet addressed under the settlement agreement, on this date defendant advised plaintiffs that it is having difficulty obtaining the employment history of those plaintiffs and requested that plaintiffs provide such information.

6. On June 1, 2007, a proposed settlement agreement covering the claims of the diversion investigators at the DEA was approved by the authorized representative of the Attorney General. Pursuant to the settlement agreement, on September 26, 2007, plaintiffs provided defendant with their overtime hours worked during the relevant time period. On June 24, 2008, defendant made payment under the settlement agreement. On July 2, 2008, plaintiffs filed appeals on behalf of four plaintiffs on the basis that defendant made improper deductions from their back pay. The government response to plaintiffs' appeal is due September 30, 2008.

7. Other claims and issues that are under discussion between the parties include the following:

- a. United States Marshals
- b. Non-supervisory investigators for U.S. Attorneys (GS-13s and 14s)

- c. Technicians and other plaintiffs in non- 1811 positions at various agencies, including the Department of Homeland Security
- d. USCS Operational Enforcement Officers
- e. GM 12s & 13s
- f. Sunday premium
- g. Opa Locka claim which was added by way of an amendment as a result of Hurricane Andrew
- h. Underpayment of AUO at certain agencies (principally DCIS)
- I. Interest due on OASDI refunds paid to BATF plaintiffs
- j. USSS1802 (Randy Espinoza and John P. Connelly)
- k. Michael Banas - Defense Security Service Background Investigator and Customs Import Specialist
- l. Scott Curtis and Tom Radtke (USSS1802)
- m. Attorneys' fees and expenses.
- 8. Insofar as the dismissal of any claims are concerned, because of continued


litigation of the driving claims, as well as the fact that there may be plaintiffs whose employment by defendant was with more than one agency, one of which has not yet been settled, and because plaintiffs' claims for attorneys' fees and expenses have not been resolved, plaintiffs believe it not to be practical or appropriate to dismiss any of the pending claims. Defendant believes that it is appropriate to dismiss all plaintiffs who do not possess any identifiable unadjudicated claims pending in this case.


9. The parties propose that they submit a joint status report on or before December 11, 2008 to apprise the Court of the status of the resolution of the above-discussed matters.

Respectfully submitted,

GREGORY G. KATSAS
Assistant Attorney General

JEANNE E. DAVIDSON
Director


TODD M. HUGHES
Deputy Director


SHALOM BRILLIANT
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
Department of Justice
Attn: Classification Unit
1100 L Street, N.W.
Washington, D.C. 20530

Tel: (202) 616-8275
Fax: (202) 305-7643

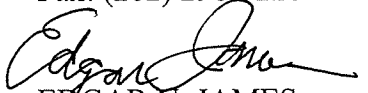
Attorneys for Defendant

Dated: September 15, 2008



JULES BERNSTEIN
Bernstein & Lipsett, P.C.
1920 L Street, N.W.
Suite 303
Washington, D.C. 20036

OF COUNSEL:
LINDA LIPSETT
Tel: (202) 296-1798
Fax: (202) 296-7220



EDGAR N. JAMES
James & Hoffman, P.C.
1101 17th Street, N.W.
Suite 510
Washington, D.C. 20036
Tel: (202) 496-0500
Fax: (202) 496-0555

Attorneys for Plaintiffs

Dated: September 15, 2008

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September 2008, a copy of the foregoing “JOINT STATUS REPORT” was filed electronically. I understand that notice of this filing will be sent to all parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

s/Shalom Brilliant