

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE THE GOODYEAR TIRE & RUBBER
COMPANY ERISA LITIGATION**

**Case No. 5:03CV02182
JUDGE JOHN R. ADAMS**

**ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT,
CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS,
APPROVING FORM AND METHOD OF NOTICE
AND SETTING A DATE AND TIME FOR A FAIRNESS HEARING**

This litigation involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et seq.* (“ERISA”), with respect to the (a) The Goodyear Tire & Rubber Company Employee Savings Plan for Salaried Employees, and (b) The Goodyear Tire & Rubber Company Employee Savings Plan for Bargaining Unit Employees (collectively the “Plan” as defined in the Settlement Agreement) against The Goodyear Tire & Rubber Company and other Defendants.¹

Presented to the Court for preliminary approval is a settlement of the litigation as against all Defendants. The terms of the Settlement are set out in a Class Action Settlement Agreement

¹ Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

(the “Settlement Agreement”) dated September 20, 2007, and executed by counsel on behalf of the Lead Plaintiffs and the Defendants.

The Court has preliminarily considered the Settlement to determine, among other things, whether the Settlement is sufficient to warrant the issuance of notice to members of the Settlement Class and whether to preliminarily certify the Settlement Class. Upon reviewing the Settlement Agreement and Plaintiffs’ Motion for Preliminary Approval of Proposed Settlement, Conditional Certification of Settlement Class, Approval of Notice Plan and Time for Fairness Hearing, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Jurisdiction.** The Court has jurisdiction over the subject matter of this Action and over all parties to this Action, including all members of the Settlement Class.

2. **Class Findings.** The Court preliminarily finds, for purposes of the Settlement, that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met as to the Settlement Class, in that:

a. The Settlement Class is defined as:

All persons who were participants in or beneficiaries of The Goodyear Tire & Rubber Company Employee Savings Plan for Salaried Employees or The Goodyear Tire & Rubber Company Employee Savings Plan for Bargaining Unit Employees (collectively the “Plan”) at any time between January 1, 1998 and the date of the Preliminary Approval Order and whose accounts included investments in Goodyear stock, excluding any Defendants or their immediate family members.

b. The Court preliminarily finds that the Settlement Class is ascertainable from records kept with respect to the Plan and from other objective criteria and the Settlement Class, consisting of more than twelve thousand members, is so numerous that joining all of its members before the Court would be impracticable. Rule 23(a)(1) is satisfied.

c. Based on the allegations in Plaintiffs' Complaint, and the records and files herein, the Court preliminarily finds that there are one or more questions of fact and/or law common to the Settlement Class, including whether the Defendants breached their fiduciary duties with respect to investments in the Goodyear Stock Fund; whether Defendants breached their fiduciary duties by failing to provide complete and accurate information to participants; and whether the Plan suffered losses. Rule 23(a)(2) is satisfied.

d. Based on the allegations in Plaintiffs' Complaint, and the records and files herein, the Court preliminarily finds that the claims of George W. Loomis, Richard A. Lindstrom, Joseph Prather, Sharese Prather, and Johnny T. Dyer (the "Lead Plaintiffs") are typical of the claims of the Settlement Class. Rule 23(a)(3) is satisfied.

e. The Court preliminarily finds that the Lead Plaintiffs will fairly and adequately protect the interests of the Settlement Class in that (i) the interests of Named Plaintiffs and the nature of their alleged claims are consistent with those of the members of the Settlement Class; (ii) there appear to be no conflicts between or among the Named Plaintiffs and the Settlement Class; and (iii) the Named Plaintiffs have retained qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated ERISA class actions. Rule 23(a)(4) is satisfied.

f. The Court preliminarily finds that Rule 23(b)(1) is satisfied because the prosecution of separate actions by individual members of the Settlement Class would create a risk of (i) inconsistent or varying adjudications as to individual class members, that would establish incompatible standards of conduct for the parties opposing the claims asserted in the Action; or (ii) adjudications as to individual class members that would, as a practical matter, be

dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests.

g. The Court preliminarily finds that Class Counsel is suitable and appropriate for appointment to represent the Settlement Class, in that Class Counsel has done extensive work identifying and investigating potential claims in the action, and has vigorously and ably represented the interests of the Settlement Class throughout this litigation; Class Counsel is experienced in handling class actions, other complex litigation and claims of the type asserted in the Action; Class Counsel is knowledgeable of the applicable law; and Class Counsel has committed the necessary resources to represent the Settlement Class. Rule 23(g) is satisfied.

3. **Class Certification.** Based on the findings set forth above, the Court PRELIMINARILY CERTIFIES the Settlement Class for settlement purposes under Fed. R. Civ. P. 23(a), 23 (b)(1) and 23(e) in this Action. The Court finds that the Settlement Class is sufficiently well-defined and cohesive to warrant certification as a non-opt-out class under Fed. R. Civ. P. 23(a) and 23(b)(1). As required by Fed. R. Civ. P. 23(g), the court has considered: (i) the work Class Counsel has done in identifying or investigating potential claims in this action; (ii) Class Counsel's experience in handling class actions, other complex litigation and claims of the type asserted in this action; (iii) Class Counsel's knowledge of the applicable law and, in particular, its knowledge of ERISA as it applies to claims of the type asserted by the Plaintiffs in this action (i.e., breach of fiduciary duty claims that pertain to the Plan's investment in the Goodyear Stock Fund); and (iv) the resources Class Counsel has committed to representing the class. Based on these factors, the Court finds that Class Counsel has and will continue to represent, fairly and adequately, the interests of the Settlement Class. Accordingly, the Court

finds that Class Counsel shall serve as class lead counsel with respect to the Settlement Class in this Action.

As indicated above, the Court finds that Lead Plaintiffs, George W. Loomis, Richard A. Lindstrom, Joseph Prather, Sharese Prather, and Johnny T. Dyer, are adequate class representatives for the Settlement Class and, therefore, hereby appoints Lead Plaintiffs as the representatives of the Settlement Class.

The Court having determined preliminarily that this Action may proceed as a non-opt-out class action under Fed. R. Civ. P. 23(a) and 23(b)(1), all members of the Settlement Class shall be bound by any judgment concerning the Settlement in this Action, subject to the Court's final determination as to whether this Action may so proceed.

4. **Preliminary Findings Regarding Proposed Settlement.** The Court preliminarily finds that the proposed Settlement: (i) appears to be the product of serious, informed, non-collusive negotiations; (ii) has no obvious deficiencies; (iii) does not improperly grant preferential treatment to class representatives or segments of the class; (iv) falls within the range of possible approval; and (v) warrants notice to Class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the proposed Settlement.

5. **Fairness Hearing.** A fairness hearing is hereby scheduled for May 21, 2008 at 10:00 a.m. (the "Fairness Hearing") to determine, among other things:

- Whether the Settlement should be approved as fair, adequate, and reasonable to those it affects and whether it is in the public interest;

- Whether the Settlement Class should be finally certified pursuant to Fed. R. Civ. P. 23 as preliminarily found by the Court;
- Whether the Action should be dismissed with prejudice as to the Defendants pursuant to the terms of the Settlement;
- Whether the notice, summary notice and notice methodology implemented pursuant to the Settlement Agreement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (iii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law;
- Whether, as preliminarily found by the Court, Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement as required by Fed. R. Civ. P. 23(g);
- Whether the proposed Plan of Allocation of the Settlement Fund is fair, reasonable and adequate and should be approved by the Court;
- Whether the Settlement has been negotiated at arm's length by Class Counsel on behalf of the Plan and the Settlement Class, whether the Lead Plaintiffs have acted independently, whether Lead Plaintiffs' interests are identical to the interests of the Plan and the Settlement Class, whether an Independent Settlement Fiduciary has been engaged to evaluate the Settlement for and on behalf of the Plan, and whether the negotiations and consummation of the Settlement by Plaintiffs on behalf of the Plan and the Settlement Class do not constitute prohibited transactions as defined by ERISA §§ 406(a) or (b), or qualify for a class exemption from the prohibited transaction rules, including Prohibited Transaction Exemption 2003-39;
- Whether the motion for attorneys' fees and expenses filed by Class Counsel should be approved;
- Whether the application for compensation for Lead Plaintiffs should be approved;
- Whether the payment of fees and expenses arising from the administration and implementation of the Settlement shall be approved as payable from the Settlement Fund; and

- Any other issues necessary for approval of the Settlement.

6. **Class Notice.** The Parties have presented to the Court a proposed form of Class Notice, which is appended hereto as Exhibit A. With respect to such form of Class Notice, the Court finds that such form fairly and adequately:

- describes the terms and effect of the Settlement Agreement and of the Settlement;
- notifies the Settlement Class concerning the proposed Plan of Allocation;
- notifies the Settlement Class that Class Counsel will seek compensation from the Settlement Fund (1) for the Lead Plaintiffs, in an amount not to exceed \$5,000 each for George W. Loomis, Richard A. Lindstrom, Joseph Prather, Sharese Prather, and Johnny T. Dyer, relating to their representation of the Settlement Class, (2) for reimbursement of non-taxable costs of litigation, and (3) for attorneys' fees of Class Counsel that do not exceed 30% of the Settlement Fund, plus reimbursement of expenses incurred in connection with the prosecution of the Action;
- gives notice to the Settlement Class of the time and place of the Fairness Hearing; and
- describes how the recipients of the Class Notice may object to any of the relief requested.

The Parties have proposed the following manner of communicating the notice to members of the Settlement Class, and the Court finds that such proposed manner is the best notice practicable under the circumstances, and directs that Class Counsel shall:

- By no later than 45 days before the Fairness Hearing, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties and presented to the Court, to be mailed, by first-class mail, postage prepaid, to the last known address of each Person within the Settlement Class who can be identified by reasonable effort. Defendants shall provide Class Counsel with the names and last known addresses of the members of the Settlement Class to the extent such information is within Defendants' custody or control.
- By no later than 45 days before the Fairness Hearing, cause the Class Notice to be published on the website identified in the Class Notice.

- By no later than 45 days before the Fairness Hearing, cause a Summary Notice in the form attached hereto as Exhibit B, with such non-substantive modifications thereto as may be agreed upon by the Parties and presented to the Court, to be published on at least one occasion in *USA Today* and the *Akron Beacon Journal*.
- By no later than 21 days before the Fairness Hearing, file with the Court and post on www.goodyearERISAsettlement.com Class Counsel's motion for award of attorneys' fees and expenses and Lead Plaintiff compensation.
- By no later than 7 days before the Fairness Hearing, file their motion for final approval of the proposed Settlement, and motion for approval of Plan of Allocation.
- At or before the Fairness Hearing, Class Counsel shall file with the Court a proof of timely compliance with the foregoing mailing and publication requirements.

7. **Objections to Settlement.** "Objector" shall mean any member of the Settlement Class who wishes to object to the fairness, reasonableness or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of attorneys' fees and expenses, or to any request for compensation for the Lead Plaintiffs. An Objector must file with the Court a statement of his, her or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that such objector wishes to bring to the Court's attention or introduce in support of such objection (the "Objection"). The Objector must also mail the Objection and all supporting law and/or evidence to Class Counsel and Defendants' Counsel, who shall be responsible for promptly serving all papers received from objectors upon all counsel who are entitled to receive notice pursuant to the Settlement Agreement. The addresses for filing objections with the Court and service on counsel are as follows:

Court	Class Counsel	Defense Counsel
Clerk of the Court Northern District of Ohio 568 United States Courthouse Federal Building Two South Main Street Akron, Ohio 44308-1813	Lynn Lincoln Sarko Derek W. Loeser Keller Rohrback L.L.P. 1201 Third Avenue, Ste 3200 Seattle, WA 98101-3052 Facsimile: (206) 623-3384	Gregory C. Braden Christopher A. Weals Morgan Lewis & Bockius LLP 1111 Pennsylvania Ave., N.W. Washington, DC 20004 Facsimile: (202) 739-3001

The Objector or his, her or its counsel (if any) must effect service of the Objection on counsel listed above and file it with the Court by no later than fourteen (14) days before the date of the Fairness Hearing. If an Objector hires an attorney to represent him, her or it for the purposes of making such Objection pursuant to this paragraph, the attorney must both effect service of a notice of appearance on counsel listed above and file it with the Court by no later than fourteen (14) days before the date of the Fairness Hearing. Filing and service may be effected on the Court and counsel by use of the U.S. District Court of the Northern District of Ohio's Case Management/Electronic Case Files (CM/ECF) docketing system or by mail, provided facsimile service is made on counsel listed above by no later than fourteen (14) days before the date of the Fairness Hearing. Any member of the Settlement Class or other Person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

8. **Appearance at Fairness Hearing.** Any Objector who files and serves a timely, written Objection in accordance with paragraph 7 above, may also appear at the Fairness Hearing either in person or through counsel retained at the Objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must effect service of a "Notice of Intention to Appear" setting forth, among other things, the name, address and telephone number

of the Objector (and, if applicable, the name, address and telephone number of the Objector's attorney) on counsel listed above (at the addresses set out above) and file it with the Court by no later than seven (7) days before the date of the Fairness Hearing. Filing and service may be effected on the Court and counsel by mail, provided facsimile service is made on counsel listed above by no later than seven (7) days before the date of the Fairness Hearing. Any Objector who does not timely file and serve a "Notice of Intention to Appear" in accordance with this paragraph shall not be permitted to be heard at the Fairness Hearing, except for good cause shown.

9. **Response to Objectors.** Class Counsel shall respond to any timely-filed and served Objection by seven (7) days before the Fairness Hearing.

10. **Notice Expenses.** The reasonable expenses of all notices required hereby shall be paid from the Settlement Fund as provided in Section 8.1 of the Settlement Agreement.

11. **Service of Papers.** Defendants' counsel and Class Counsel shall promptly furnish each other with copies of any and all objections and Notices of Intention to Appear at Fairness Hearing that come into their possession.

12. **Financial Institution.** The Financial Institution under the Settlement Agreement shall be Wells Fargo Bank, NA, and Wells Fargo Brokerage Services, LLC, which shall hold the Settlement Fund pursuant to the Settlement Agreement. All payments and disbursement from the Settlement Fund shall be directed in writing by Keller Rohrback L.L.P.

13. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is

terminated in accordance with the Settlement Agreement. In such event, Section 10 of the Settlement Agreement shall govern the rights of the Parties.

14. **Use of Order.** In the event this Order becomes of no force or effect, it shall not be offered, construed or used as an admission, concession or declaration by or against Defendants of any fault, wrongdoing, breach or liability. Nor shall the Order be offered, construed or used as an admission, concession or declaration by or against Lead Plaintiffs or the Settlement Class that their claims lack merit or that the relief requested in the Action is inappropriate, improper or unavailable, or as a waiver by any party of any defenses or claims he, she or it may have.

15. **Continuance of Hearing.** The Court reserves the right to continue the Fairness Hearing without further written notice.

SO ORDERED this 12th day of December, 2007

s/ John R. Adams

John R. Adams
United States District Judge