

Wheaton Franciscan Settlement

Welcome to the Wheaton Franciscan ERISA Litigation Settlement website. This website is intended to keep class members informed regarding the Class Action Settlement of the case *In Re Wheaton Franciscan ERISA Litigation*, No. 16-cv-04232 (N.D. Ill.).

Background

In Re Wheaton Franciscan ERISA Litigation is a case brought in the Northern District of Illinois under the Employee Retirement Income Security Act (“ERISA”). On April 11, 2016, Plaintiff Diann M. Curtis filed a putative class action complaint against Wheaton Franciscan (“Wheaton”) and various individual defendants, alleging violations of ERISA. On June 28, 2016, Plaintiffs Bruce Bowen and Cheryl Mueller filed a separate putative class action complaint against Wheaton, Ascension Health, and various other defendants (collectively, the “Defendants”) also alleging violations of ERISA. The two complaints were consolidated into a single case on January 4, 2017.

Both complaints allege that Defendants denied ERISA protections to participants and beneficiaries of the Wheaton Franciscan System Retirement Plan (“Plan”), a defined benefit pension plan, by incorrectly claiming that the Plan qualifies as an ERISA-exempt “church plan.” The complaints allege that because the Plan is not a “church plan,” Defendants violated ERISA in a number of ways, including, among others:

- Underfunding the Plan by over \$134.5 million;
- Requiring participants to complete five years of service before participants became fully vested in their accrued benefits;
- Decreasing accrued benefits by several amendments to the Plan in violation of ERISA’s anti-cutback provisions; and
- Failing to furnish Plaintiffs or any member of the class with required statements and reports.

Plaintiffs also allege that application of the “church plan” exemption to the Plan would violate the Establishment Clause of the Constitution.

The case was stayed on January 4, 2017 pending the Supreme Court’s resolution of an appeal in another church plan case, *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017) (“Advocate”). During the stay, the parties began settlement negotiations. Following the Supreme Court’s June 5, 2017 ruling that held that pension plans need not be established by churches in order to qualify as ERISA-exempt church plans, the parties agreed to settle this case.

For more information about the history of this case, please visit the [Wheaton Franciscan Church Plan Litigation](#) webpage.

The Settlement Class

On September 13, 2017, the Honorable Gary Feinerman issued an Order Preliminarily Approving Settlement on behalf of the following class (the “Settlement Class”): “All persons who, as of July 31, 2017, are former and/or current Plan participants, whether vested or non-vested, and their beneficiaries.”

The Settlement

The Settlement provides that, in exchange for a release of all claims, Ascension Health will guarantee the payment of the first \$29,500,000 of benefits that are distributable from the Plan to Settlement Class members in the event trust assets attributable to the Plan become insufficient to pay such benefits. **The Settlement also provides that Ascension Health may buy out this guarantee obligation by making an aggregate total of \$25,000,000 (twenty-five million dollars) in contributions to the Plan's trust. *The cash amount, if any, will be contributed to the Plan as a whole, rather than to individual Plan participants and beneficiaries.*** The amount of individual Settlement Class members' pension benefits will not increase as a result of the Settlement.

Additionally, the Settlement provides that current participants in the Plan will receive certain ERISA-like reporting, disclosure, and administrative protections. Notably, Plan participants will receive notice on an annual basis about the funding status of the Plan and the retirement benefits that they **have accrued. This annual notice will include, among other information, a summary of the Plan's funding arrangements, a summary of the Plan's expenses, a statement of the Plan's liabilities and assets, information about the increase or decrease in net plan assets for the year, and summary information about the Plan's total income.**

Released Claims and Fairness Hearing

The Court did not decide who was right: instead, both parties have agreed to the Settlement. The Settlement will avoid the costs and risks of a trial while ensuring that all Settlement Class members are treated fairly. The Named Plaintiffs and Class Counsel believe that this Settlement is in the best interest of the Settlement Class members. As a result of the Settlement, the Settlement Class releases the claims against Defendants pertaining to the church plan exemption (these claims are defined in the Settlement Agreement).

The Court will hold a Fairness Hearing at the U.S. District Court for the Northern District of Illinois on January 16, 2018 at 9:15 am CST to consider the fairness of the proposed Settlement. At the hearing, the Court will also hear any objections and arguments concerning the proposed **Settlement's fairness. The Settlement will not be effective until after the Court grants final settlement approval and the Settlement becomes Final.**

Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the application for payment **of attorneys' fees and expenses, or to the application for Incentive Payment Awards for the Named Plaintiffs**, may timely file an Objection in writing **no later than December 19, 2017 (twenty-eight (28) days prior to the Fairness Hearing)**. All written objections and supporting papers must: (1) clearly identify the case name and number "*In Re Wheaton Franciscan ERISA Litigation, Case No. 16-cv-04232*;" (2) **be filed with the Court and postmarked and mailed or faxed to Class Counsel and Defendants' Counsel at the addresses below on or before December 19, 2017 (twenty-eight (28) days prior to the Proposed Fairness Hearing)**; (3) **set forth the objector's full name, current address, and telephone number**; (4) set forth a statement of the position the objector wishes to assert, including the factual and legal grounds for the position; (5) set forth the names and a summary of testimony of any witnesses that the objector might want to call in connection with the Objection; (6) provide copies of all documents that the objector wishes to submit in support of his/her position; (7) provide the name(s), address(es) and phone number(s) of any attorney(s) representing the objector; and (8) **include the objector's signature.**

The addresses for filing objections with the Court and service on counsel are as follows:

To the Court:

Clerk of the Court
United States District Court Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604

To Class Counsel:

Karen L. Handorf
Michelle Yau
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To Defendants' Counsel:

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Edward C. Young
PROSKAUER ROSE, LLP
Three First National Plaza Howard Shapiro
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Chicago, IL 60602
Fax: (302) 962-3551 Settlement FAQs

Q: How do I know whether I am part of the Settlement?

The Court has certified the Action as a class action. You are a member of the Settlement Class if, as of July 31, 2017, you were a former and/or current Plan participant, whether vested or non-vested, or the beneficiary of such a participant.

Q: What does the Settlement provide?

Defendants guarantee that, for as long as the Plan is sponsored by any of the Released Parties, Ascension Health will guarantee the payment of the first \$29,500,000 of benefits that are distributable from the Plan to Settlement Class members in the event trust assets attributable to the Plan become insufficient to pay such benefits. The Settlement also provides that Ascension Health may buy out this guarantee obligation by making an aggregate total of \$25,000,000 in contributions **to the Plan's trust. Because the Plan is a defined benefit pension plan and not a defined contribution plan with individual accounts, like a 403(b) plan or 401(k) plan, the cash amount, if any, will be contributed to the Plan as a whole, rather than to individual Plan participants and beneficiaries.** Your pension benefit will not increase as a result of the Settlement. Additionally, the Settlement provides significant non-monetary equitable consideration, in that current participants in the Plan will receive certain ERISA-like financial and administrative protections, some of which continue for the next seven and one half years, and others continue indefinitely.

Q: What do I need to do to be included in the Settlement?

Members of the Settlement Class do not need to do anything with respect to the Settlement in this Action.

Q: How will the lawyers be paid?

Court-appointed Class Counsel will file a motion for an award of attorneys' fees, expenses, and incentive awards for Named Plaintiffs that will be considered by the Court at the Final Approval Hearing. Class Counsel will apply for a total award not to exceed \$2.25 million. Any such award will be at the sole discretion of the Court. Any Court-awarded attorneys' fees, expenses, and incentive awards will be paid by Ascension Health, and will be paid in addition to the guarantee and other provisions of the Settlement.

To date, Class Counsel has not received any payment for their services in prosecuting this Action on behalf of the Settlement Class, nor have Class Counsel been reimbursed for their out-of-pocket expenses. The fee requested by Class Counsel would **compensate all of Plaintiffs' counsel for their efforts in achieving the Settlement for the benefit of the Settlement Class and for their risk in undertaking this representation on a contingency basis.** The Court will determine the actual amount of the award.

Q: Can I exclude myself from the Settlement?

You do not have the right to exclude yourself from this Settlement. The Settlement contemplates that the Court will certify a non-opt out class under Federal Rule of Civil Procedure 23(b)(1) or (b)(2) once the Court determines the requirements of that Rule are satisfied. This means it is not possible for any members of the Settlement Class to be excluded from this Settlement. As a member of the Settlement Class, you will be bound by any judgments or orders that are entered in the Action for all

claims that were or could have been asserted in the Action against the Defendants or are otherwise included in the release under the Settlement.

Although members of the Settlement Class cannot opt out of the Settlement, they can object to the Settlement and ask the Court not to approve it.

Contact Us

For inquiries about this Settlement, please [email](#) or call Class Counsel at (888) 238-2105 if you have questions or comments.

Please do not contact the Court. Its personnel will not be able to answer your questions.

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