

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

LISA FEATHER, STANLEY BEIERMANN	)	
and HOLLY PYATT, on behalf of themselves	)	
and all others similarly situated, and on behalf	)	
of the SSM PENSION PLANS	)	No. 4:16CV1669 HEA
Plaintiffs,	)	
	)	
v.	)	
SSM HEALTH CARE CORPORATION, d/b/a	)	
SSM HEALTH, a Missouri Non-profit	)	
corporation, <i>et al</i> ,	)	
	)	
Defendants.	)	

**AMENDED ORDER PRELIMINARILY APPROVING SETTLEMENT, NOTICE  
PROCEDURES, AND SCHEDULING OF 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 certain pension plans (the “Plans”),<sup>1</sup> each of which Defendants claim is exempt from ERISA’s requirements pursuant to the exemption for “church plans,” 29 U.S.C. § 1002(33)(A).

Plaintiffs have presented a proposed settlement (the “Settlement”) to the Court for preliminary approval. The terms of the Settlement are set forth in the Settlement Agreement (Doc. No.118, Exh. No. 1), signed by counsel on January 14, 2019, on behalf of the Parties.

Plaintiffs

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<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Class Action Settlement Agreement (“Settlement Agreement”). As set forth in the Settlement Agreement, the Plans are: (a) The Retirement Plan for Employees of SSM Health Care; (b) The Retirement Plan for Employees of St. Mary’s Hospital, Centralia, Illinois; and (c) The Retirement Plan for Employees of Certain Illinois Entities Related to SSM Health Care.

have filed an Unopposed Motion for Preliminary Approval of Settlement Agreement. The Court has considered the Settlement to determine, among other things, whether to preliminarily approve the Settlement, preliminarily certify a Settlement Class, authorize the dissemination of Class Notice to members of the Settlement Class, and set a date and time for the Fairness Hearing. Upon reviewing the Motion, the accompanying papers, and the Settlement Agreement, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

2. Venue before the Court is proper pursuant to 29 U.S.C. § 1132(e)(2).

3. The Court makes the following preliminary findings with respect to the proposed Settlement Class:

a) The Court preliminarily finds that the Settlement Class is ascertainable from records kept with respect to the Plans and from other objective criteria, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable. Rule 23(a)(1) is satisfied.

b) The Court preliminarily finds that there are one or more questions of fact and/or law common to the Settlement Class including, but not limited to, whether the Plans are governed by ERISA or are exempt as “Church Plans,” and— if governed by ERISA—whether Defendants have failed to comply with ERISA requirements. Rule 23(a)(2) is satisfied.

c) The Court preliminarily finds that Named Plaintiffs, Lisa Feather, Stanley Beiermann and Holly Pyatt, are members of the Settlement Class and their claims are typical of the claims of the Settlement Class. Rule 23(a)(3) is satisfied.

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

e) The Court preliminarily finds that 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 Defendants; 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. Rule 23(b)(1) is satisfied.

f) Alternatively, the Court preliminarily finds that Defendants have acted or refused to act on grounds generally applicable to the Settlement Class, and such conduct may be subject to appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole. Rule 23(b)(2) is satisfied.

g) The Court appointed interim class counsel on August 31, 2017. ECF No. 75 (appointing Keller Rohrback L.L.P. ("Keller Rohrback") and Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz") as Interim Lead Class Counsel Committee Co-Chairs; Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") and Izard Kindall & Raabe, LLP ("Izard Kindall") as Interim Lead Class Counsel Committee Members, and Armstrong Law Firm LLC as

Interim Liaison Class Counsel). Since their appointment, Interim Class Counsel have committed significant resources to the litigation of the case, filed an Amended Complaint based on further investigation of potential claims, briefed the adequacy of the allegations of the Amended Complaint, participated in a successful mediation, and negotiated the terms of a proposed settlement for consideration by the Court and the Settlement Class. Accordingly, Rule 23(g) is satisfied.

4. Class Certification. Based on the findings set forth above, the Court preliminarily certifies the following class under Federal Rules of Civil Procedure 23(b)(1) and/or (2) and 23(e) in this litigation (the “Settlement Class”):

All vested or non-vested present or past participants of the Plans (and their beneficiaries) as of September 6, 2017. The Settlement Class shall be certified as a non-opt out class action for settlement purposes only, pursuant to Federal Rules of Civil Procedure 23 (b)(1) and/or (b)(2).

The Court preliminarily appoints Lisa Feather, Stanley Beiermann, and Holly Pyatt as representatives for the Settlement Class, and preliminarily appoints Keller Rohrback and Kessler Topaz as Settlement Class Counsel Committee Co-Chairs, Cohen Milstein and IZARD Kindall as Settlement Class Counsel Committee Members, and Armstrong Law Firm LLC as Liaison Counsel for the Settlement Class.

5. Preliminary Findings Regarding Proposed Settlement. The Court preliminarily finds that: (1) there is no evidence that the Settlement Agreement is the result of fraud or collusion; to the contrary, the Settlement was arrived at following significant litigation and arm’s-length negotiations conducted between experienced counsel with the assistance of a highly-regarded mediator; (2) the benefits of the proposed Settlement are real and substantial; (3) Plaintiffs’ case has already been dismissed by this Court and is presently on appeal, and thus Plaintiffs face substantial barriers to prevailing through further litigation; (4) the issues involved

in the case are both complex and novel, and (5) in the absence of Settlement, further litigation would be prolonged and costly. Accordingly, the Court preliminarily approves the proposed Settlement.

6. Fairness Hearing. A hearing is scheduled for June 6, 2019, at 11:00 a.m. in Courtroom 10 North (the “Fairness Hearing”) to determine, among other things:
  - a) Whether the Settlement should be approved as fair, reasonable, and adequate;
  - b) Whether the Complaint should be dismissed with prejudice pursuant to the terms of the Settlement Agreement;
  - c) Whether the Class Notice provided for by 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) was 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;
  - d) Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;
  - e) Whether the application for payment of attorneys’ fees and reimbursement of expenses to Class Counsel should be approved; and
  - f) Whether the application for incentive awards for the Settlement Class Representatives should be approved.

7. Class Notice. A proposed form of Class Notice is attached as Exhibit 3 to Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Preliminary Approval of Settlement Agreement. With respect to such form of Class Notice, the Court preliminarily finds that such form of Class Notice fairly and adequately: (a) describes the terms and effect of the Settlement Agreement; (b) notifies the Settlement Class that Class Counsel's attorneys' fees and expenses, and Class Representatives' incentive awards, will be determined in the sole discretion of the Court and paid according to sections 7.1.3 and 7.1.5 of the Settlement Agreement; (c) gives notice to the Settlement Class of the time and place of the Fairness Hearing; and (d) describes how the recipients of the Class Notice may object to any of the relief requested.

a) By no later than thirty (30) days after entry of this Preliminary Approval Order, Defendants shall cause the Class Notice, with such non-substantive, administrative changes/edits modifications thereto as may be agreed upon by the Parties, to be sent to the last known address of all members of the Settlement Class by first-class mail. Defendants will pay the cost for sending notice to the Settlement Class as part of the Settlement administration.

b) By no later than thirty (30) days after entry of this Preliminary Approval Order, Plaintiffs will cause the Settlement Agreement and the Class Notice to be published on a website to be listed on the Class Notice.

c) At least seven (7) days prior to the Fairness Hearing, Class Counsel shall file with the Court proof of timely compliance with the requirements of Paragraph 7(b) above, and Defendants' Counsel shall file with the Court proof of timely compliance with the requirements of Paragraph 7(a) above as well as proof of timely compliance with the notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1715(b).

d) By no later than May 6, 2019, (30 days before the Fairness Hearing), Class Counsel shall file motions for final approval of the Settlement, attorneys' fees and expenses, and incentive awards for the Class Representatives.

8. Objections to Settlement. 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 reimbursement of expenses, or to the application for incentive awards for the Class Representatives, may timely file an Objection in writing so that it is received no later than May 23, 2019, (fourteen (14) days prior to the Fairness Hearing). Any objection must be signed and must include (a) the case name and number (*Feather, et al. v. SSM Health Care Corp., et al.*, No. 4:16-cv-01669-HEA); (b) the full name, current address, and telephone number of the Class Member making the objection, and (c) a description of the objection, including whatever factual and legal support the objecting Class Member believes to be appropriate. Any objector must also provide the following additional information if the listed conditions apply:

- a) If the objecting Class Member intends to call any witnesses in support of his or her objection, he or she must provide the names and addresses of the witnesses, together with a brief summary of their testimony;
- b) If the objecting Class Member intends to submit documents in support of his or her objection, he or she must provide copies of each document;
- c) If the objecting Class Member is represented by an attorney or attorneys, the objecting Class Member must provide the name(s), address(es) and phone number(s) of each attorney; and

d) If the objecting Class Member previously appeared as an objector, or any attorney representing the objecting Class Member provided legal assistance in preparing an objection, with respect to another class action settlement, the objecting Class Member must provide the name of the case, the court in which the case was filed, and the docket number.

9. The address for filing objections with the Court is as follows:

Clerk of the Court  
United States District Court Eastern District of  
Missouri  
Thomas F. Eagleton U.S. Courthouse 111 South 10th  
Street  
Suite 3.300  
St. Louis, MO 63102

Re: *Feather, et al. v. SSM Health Care Corp., et al.*  
No. 4:16-cv-01669-HEA

10. If an objector hires an attorney to represent him or her for the purposes of making such objection pursuant to this paragraph, the attorney must file a notice of appearance with the Court by no later than May 23, 2019, (fourteen (14) days before the date of the Fairness Hearing). Any member of the Settlement Class or other Person who does not timely file 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. Any responses to objections shall be filed with the Court no later than May 30, 2019, (seven (7) days before the Fairness Hearing).

11. Appearance at Fairness Hearing. Any objector who files and serves a timely, written objection in accordance with paragraph 8 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 indicate that intention in his or her written objection. 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 appear at the Fairness Hearing, except for good cause shown.

12. Additional Briefs. Any additional briefs the Parties may wish to file in support of the Settlement shall be filed no later than May 30, 2019, (seven (7) days before the Fairness Hearing).

13. Notice Expenses. The expense of printing and mailing all notices required shall be paid by the Defendants as provided in section 7.2 of the Settlement Agreement.

14. Service of Papers. Defendants' Counsel and Class Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

15. 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 as of October 18, 2018 (the day before the mediation occurred), if the Settlement is terminated in accordance with the Settlement Agreement. In such event, section 9 of the Settlement Agreement shall govern the rights of the Parties.

16. Use of Order. If this Order becomes of no force or effect, it shall not be construed or used as an admission, concession, or declaration by or against the Defendants, the Class Representatives or the Settlement Class.

17. Continuance of Hearing. The Court may continue the Fairness Hearing without further written notice.

Dated this 18th day of January, 2019

  
HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE