

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

CASE TYPE: Civil Other/Miscellaneous

PASTOR DAVID BACON, PATRICIA  
HEPNER, RUTH DOLD, AND SHARON  
HVAM, individually and as representatives of a  
class of similarly situated persons on behalf of  
the Evangelical Lutheran Church in America  
Retirement Plan and the ELCA Retirement Plan  
for the Evangelical Lutheran Good Samaritan  
Society,

Plaintiffs,

v.

BOARD OF PENSIONS OF THE  
EVANGELICAL LUTHERAN CHURCH IN  
AMERICA (D/B/A PORTICO BENEFIT  
SERVICES), A MINNESOTA  
CORPORATION.

Defendant.

Court File No. 27-CV-15-3425  
Judge Ronald L. Abrams

**JOINT MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Under Minnesota Rule of Civil Procedure 23.05, the parties respectfully request preliminary approval of a Class Action Settlement.

1. Plaintiffs brought this action against Board of Pensions of the Evangelical Lutheran Church in America (d/b/a Portico Benefit Services), a Minnesota Corporation (“Defendant”) alleging that Defendant breached its duties with respect to the Evangelical Lutheran Church in America Retirement Plan and the ELCA Retirement Plan for the Evangelical Lutheran Good Samaritan Society (“the Plans”) by, among other things, causing the Plan to pay unreasonable investment management and administrative fees.

2. For over four years this case was extensively litigated with discovery and motion practice, including discovery motions, class certification and two trips to the Court of Appeals.

3. In July 2019, Plaintiffs and the Defendant began settlement discussions through private mediation with a nationally-recognized mediator. The Parties did not reach agreement during the mediation, but continued discussions thereafter. The Parties reached an agreement in principle on the monetary and non-monetary terms of a potential settlement on September 24, 2019, and thereafter continued negotiations regarding the terms of this Settlement Agreement. The terms of the Parties' settlement are memorialized in this Settlement Agreement that is attached hereto as Exhibit A.<sup>1</sup>

4. The Settlement Class is defined as:

All persons who participated in the Plans at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plans at any time during the Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are members of the Portico Executive Leadership Team.

5. The District Court may approve a class action settlement "if it is fair, adequate, reasonable, and not the product of collusion between the parties. *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 231 (Minn. 1979). After a preliminary review of the settlement, the Court may preliminarily conclude that it is fundamentally fair, adequate, and reasonable in light of the circumstances of this case and preliminary approval of the Settlement is in the best interests of the Class Members. In return for a release of the Class Representatives', Individual Plaintiffs', and Class Members' claims, Defendant has agreed to pay a sum of \$11,000,000 into a Gross Settlement Fund. The Parties have further agreed to certain non-monetary terms, as specified in Article 10 of the Settlement Agreement.

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<sup>1</sup> Capitalized terms herein are as defined in the Settlement Agreement.

6. The purpose of preliminary approval is merely to determine whether the proposed settlement is within the range of possible approval to warrant notice. Minn. R. Civ. P. 23.05

(a)(2).

7. The Settlement reached between the Parties here more than satisfies this standard and is clearly within the range of possible approval by the Court. Preliminary approval will not foreclose interested persons from objecting to the Settlement and thereby presenting dissenting viewpoints to the Court. Minn. R. Civ. P. 23.05; *see also* Declaration of Class Counsel.

WHEREFORE, the Plaintiffs request the following:

- That the Court enter an Order finding that the Settlement is sufficiently fair, reasonable, and adequate to warrant notice, and granting preliminary approval of the Settlement Agreement;

- That the Court schedule a Final Fairness Hearing no sooner than May 8, 2020, for the purpose of receiving evidence, argument, and any objections relating to the Parties' Settlement Agreement;

- That the Court approve the text of the Settlement Notices and Former Participant Claim Form for mailing to Class Members and Former Participants identified by the Settlement Administrator to notify them (1) of the Fairness Hearing and (2) that notice of changes to the Settlement Agreement, future orders regarding the Settlement, modifications to the Settlement Notices, changes in the date or timing of the Fairness Hearing, or other modifications to the Settlement, including the Plan of Allocation, may be provided to the Class through the Settlement Website without requiring additional mailed notice;

- That the Court determine that, the Settlement Notices constitute the best notice practicable under the circumstances, provide due and sufficient notice of the Fairness Hearing

and of the rights of all Class Members, and comply fully with the requirements of Minn. R. Civ. P. 23.05 and any other applicable law;

- That the Court establish a deadline no later than thirty (30) calendar days prior to the Fairness Hearing by which any interested party must file any objections to the Settlement and any papers submitted in support thereof;

- That the Court order that any such objections and supporting papers be served on counsel as set forth in the proposed Preliminary Approval Order and Settlement Notices, that any Settling Party may file a response to an objection, and that the Parties have the right to limited discovery from any objector as provided for in the proposed Preliminary Approval Order;

- That the Court set a deadline of no later than ten (10) calendar days prior to the Fairness Hearing by which each Former Participant must file a Former Participant Claim Form with the Settlement Administrator in order to be considered for a distribution in accordance with the Plan of Allocation;

- That the Court order that the Fairness Hearing may, without further direct notice to the Class Members, other than by notice to Class Counsel, be adjourned or continued by order of the Court;

- That the Court order that, pending final determination of whether the Settlement Agreement should be approved, every Class Member is prohibited and enjoined from directly, through representatives, or in any other capacity, commencing any action or proceeding in any court or tribunal asserting any of the Released Claims against any Released Party or the Plan;

- That the Court determine that the information to be provided to the Settlement Administrator in connection with the administration of the Settlement constitutes Confidential Information protected from public disclosure by the Confidentiality Order; and

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**DECLARATION OF JEROME J.  
SCHLICHTER**

1. I am the founding partner of the law firm Schlichter, Bogard & Denton LLP, counsel for the Plaintiffs in the above-referenced matter. This declaration is submitted in support of the Joint Request for Preliminary Approval of Class Action Settlement. I am familiar with the facts set forth below and able to testify to them.

2. There has been no collusion or complicity of any kind in connection with the negotiations for, or the agreement to, settle this class action. As illustrated in the parties' Joint Request, all settlement negotiations in this case were conducted at arm's length by adverse, represented parties. The negotiations were extensive and adversarial. The parties were assisted by a highly experienced national mediator with whom the parties met for an in-person all-day mediation session, as well as conducting calls between the parties to negotiate a settlement. The

parties at agreed to the monetary amount on September 24, 2019, there were extensive negotiations thereafter in drafting and finalizing the full settlement agreement.

3. Schlichter Bogard & Denton has extensive experience in prosecuting fiduciary breach class actions. The firm has expended significant resources representing the class and prosecuting Plaintiffs' claims, as it has done in all of its prior fiduciary breach actions. The firm's experience is evidenced by its appointment as class counsel in over 20 large fiduciary breach class actions.

4. It is my opinion that the proposed settlement is not only within the range of reasonableness, but also is fair, reasonable, adequate, and in the best interests of the Plan and its participants in light of the procedural and substantive risks Plaintiffs would face if litigation were to continue.

5. Attached to the Joint Request for Preliminary Approval of Class Action Settlement is a true and accurate copy of the Settlement Agreement between Plaintiffs and Defendant, the Board of Pensions of the Evangelical Lutheran Church in America (D/B/A Portico Benefit Services).

6. Each of the named plaintiffs in this litigation have a contract with this firm agreeing to a one-third fee to Schlichter Bogard & Denton LLP in the event of any recovery.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on December 23, 2019, in St. Louis, Missouri.

/s/ Jerome J. Schlichter  
Jerome J. Schlichter

• That following the Fairness Hearing, the Court enter an Order granting final approval of the Parties' Settlement and dismissing the present live Complaint in this Action with prejudice.

Dated: December 26, 2019

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