

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

WILTON S. SOGG, EXECUTOR OF THE )  
ESTATE OF JULIA SOGG INDIVIDUALLY, AND )  
ON BEHALF OF A CLASS OF OTHERS )  
SIMILARLY SITUATED, )

*Plaintiff,*

v.

DAVID GOODMAN, DIRECTOR OF OHIO )  
DEPARTMENT OF COMMERCE, )

*Defendant.*

Case No. 04CVG-8028

Hon. Richard A. Frye

ORDER PRELIMINARILY APPROVING AGREEMENT  
OF SETTLEMENT  
AND AUTHORIZING NOTICE TO THE CLASS

WHEREAS, all capitalized terms contained herein and not otherwise defined herein shall have the same meaning as defined in the Agreement of Settlement (“Settlement Agreement”) attached hereto as Exhibit A;

WHEREAS, this Action is currently pending and unresolved before this Court;

WHEREAS, the Action was filed as a putative class action and the Court previously certified it as a class action; and

WHEREAS, the Parties to the Settlement Agreement have applied, pursuant to Rule 23(E) of the Ohio Rules of Civil Procedure, for an order preliminarily approving the Settlement Agreement, which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of the issues remaining in the Action against the Defendant, and dismissal of the Action on the terms and conditions set forth therein, and the Court has read and considered the Settlement Agreement and the exhibits annexed thereto and such additional submissions in connection therewith as the Parties have made;

**Preliminary Approval**

1. The Court hereby preliminarily approves the Settlement set forth in the Settlement Agreement as being fair, reasonable, and adequate and in the best interest of Plaintiff and the Class and preferable to the continued time commitments, delays, expenses, and risks of further litigation and further preliminarily approves the Plan of Allocation.

2. Hearing on attorney fees and Fairness Hearing.

a. At the hearing June 4, 2012, the Court inquired of representatives of Defendant as to whether they would take any position on the attorney fee and expenses claim by counsel for the Rule 23 class. The Court was advised, in substance, “that depends.” The Court allowed time for counsel to consult one another but has now been advised that the Defendant may wish to actively participate in the Court’s consideration of a fee and expense award. Apparently that is true even though the magnitude of fees and expenses will neither increase nor decrease the settlement fund.

b. The Court invites the parties or any others filing commentary on the fee application to consider the recent empirical study of published state and federal decisions from 1993 through 2008. Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, JI. Empirical Legal Stud. 248 (June 2010).

c. Plaintiff’s Counsel shall serve and file their motion for attorney fees and expenses no later than Tuesday, July 31, 2012. Responses by defense counsel *and* any class members or their counsel who care to comment must be filed with the Court no later than Tuesday, August 21, 2012. Evidence on this motion (or in opposition) shall be submitted by written affidavit. The fee application and any objections will be argued in open court on Wednesday, September 5, 2012, at 10:00 a.m. Absent exceptionally good cause no oral

testimony will be accepted.

d. Any written objections to the requested attorney fee and expenses must not only be filed with the Court by August 21, 2012, but must also be contemporaneously transmitted by first class mail or electronic means to counsel for both parties. Objectors who are class members must plainly state their individual concerns, and provide the background for them including their anticipated individual share of the settlement fund or facts from which their monetary interest in the matters can readily be determined (*i.e.*, Objectors *must specify* the name of the original property owner; the name(s) of the person(s) who claimed the funds (the claimant(s)); the claimant's address at the time of claim payment and the claimant's current address, if different; the dollar amount the claimant was paid; and the approximate date the claimant was paid.

e. Objections will *not* be considered, in writing or orally at the September 5 hearing, unless preceded by a written filing completed by August 21. Objectors meeting the deadline for written submission may attend and participate in the September 5 hearing in person or through counsel if they choose, subject to the court's responsibility to fairly allocate and manage the time available on September 5.

f. The attorney fees and expenses application by Plaintiff's Counsel is obviously premised upon confirmation of the proposed settlement on or after September 6, discussed below. If final settlement is not approved the fees and expenses application will be moot.

g. The parties shall publicize the deadline for objecting, and the date of the hearing on fees and expenses for the benefit of class members, as part of the overall notice being given.

h. Civ. R. 23(E) provides that a class action may not be compromised without the approval of the court, coupled with notice of the proposed compromise given to all class members in such manner as the court directs. The Court hereby approves the several forms of notice to class members submitted by the parties. The parties shall proceed with such notices in a timely manner pursuant to Section 4, below.

i. The Fairness Hearing on this proposed settlement is scheduled for Thursday, September 6, 2012, at 1:30 p.m. in Courtroom 5F at the Common Pleas Court of Franklin County, Ohio, 345 South High Street, Columbus, Ohio 43215, to determine: (a) whether the proposed Settlement Agreement is fair, reasonable, adequate, and in the best interest of the Class; (b) whether the Court should grant final approval of the Settlement; (c) whether a Final Judgment (as provided in the Settlement Agreement) should be entered; and (d) whether to approve the Plan of Allocation to distribute the Net Proceeds among the Class Members.

j. Any person, including class members or their attorneys, objecting to this proposed settlement, in whole or in part, must file a *written* objection no later than the close of business on Monday, August 27, 2012, failing which objections will not be considered, orally or in writing, at the September 6 hearing. Class members or their representatives timely meeting this August 27 deadline will be heard at the September 6 hearing if they choose to attend in person, subject to the Court's responsibility to fairly allocate and manage the time available for all parties and objectors, if any.

k. Any written objections to the proposed settlement must not only be filed with the Court by August 27, but must also be contemporaneously transmitted by first class mail or electronic means to counsel for both parties. Objectors must plainly state their individual concerns, and the background for them including their anticipated individual share of the

settlement fund or facts from which their monetary interest in the matters can readily be determined (*i.e.*, Objectors *must specify* the name of the original property owner; the name(s) of the person(s) who claimed the funds (the claimant(s)); the claimant's address at the time of claim payment and the claimant's current address, if different; the dollar amount the claimant was paid; and the exact date or the approximate date the claimant was paid. In addition, objectors also *should provide* the unclaimed funds claim number and any property identification numbers, if known).

1. Class members shall be advised in notices that they should *not* contact the Court relative to either the attorney fees and expenses application, or the final approval of settlement, except in conformity with this order. Counsel shall also make clear in such notices that, due to electronic filing rules of the Clerk of Franklin County Common Pleas Court, filings normally are required to be made electronically. Objectors should therefore not wait until the last minute, in order to assure they can comply with the Clerk's requirements for electronic filing. For further information on E-filing requirements class members or others should consult the Clerk of this Court.

3. The Court approves the Notice Program, as set forth below, and directs its implementation, as to form and content, and finds that its implementation substantially in the manner set forth below in this Order constitutes valid, due, and sufficient notice to the Class, complying fully with any and all applicable requirements of Rule 23 of the Ohio Rules of Civil Procedure, the Ohio Constitution, the Constitution of the United States, and any other applicable laws.

4. Notice Program:

a. **Press Releases.** Within 14 business days of the Court's entry of the

Preliminary Approval Order, Defendant shall issue the Defendant's Press Release, attached hereto as Exhibit G, and Plaintiff shall issue the Plaintiff's Press Release, attached hereto as Exhibit H, within 14 business days thereafter.

b. **Published Notice (Division Website).** Within 14business days of the Court's entry of the Preliminary Approval Order, Defendant shall cause to be prominently displayed on the website of the Ohio Department of Commerce Division of Unclaimed Funds at <http://www.com.ohio.gov/unfd/> ("Division Website"), in a manner and location reasonably satisfactory to Plaintiff's Counsel, content in the form of the Published Notice (Division Website), attached hereto as Exhibit B, which Published Notice (Division Website) shall contain a link to the Settlement Website and to the Court's website for access to Court filings in this Action, and which shall remain posted on the Division Website until the Fairness Hearing, after which the Parties shall confer regarding and attempt in good faith to agree upon such modifications to the Published Notice (Division Website) as are appropriate in light of the fact that while the Fairness Hearing has occurred, Class Members may still benefit from information regarding the Action and their rights in connection therewith and further shall attempt in good faith to agree on how long such modifications shall remain displayed. If the Parties cannot agree on modified wording and content within seven days after the Fairness Hearing, the Parties shall so advise the Court and the matter will be resolved by the Court.

c. **Frequently Asked Questions ("FAQ").** Within 14business days of entry of this Order, Defendant shall add to the "Frequently Asked Questions" ("FAQs") section of the Division's website, where it shall remain until the Fairness Hearing, question(s) and answer(s) in the form attached hereto as Exhibit C, which is agreeable to both Plaintiff's Counsel and Defendant's Counsel, regarding the Settlement, its implementation, Class Members' rights

thereto, and the date, time and location of the Fairness Hearing. After the Fairness Hearing, the Parties shall confer regarding and attempt in good faith to agree upon such modifications to the FAQs as are appropriate, and further shall attempt in good faith to agree on how long such modifications shall remain displayed. If the Parties cannot agree on modified wording and content within seven days after the Fairness Hearing, the Parties shall so advise the Court and the matter will be resolved by the Court.

d. **Settlement Website and toll free telephone number.** Within 10 business days of entry of this Order, Plaintiff's Counsel shall cause to be created a Settlement Website (which may be located within the Settlement Administrator's website, <http://www.strategicclaims.net>), and cause to be posted on same the following documents: the Amended Complaint in the Action; the Opinion of the Ohio Supreme Court, *Sogg v. Zurz*, 121 Ohio St. 3d 449, 2009-Ohio-1526; the Opinions of the Ohio Court of Appeals, Tenth District, *Sogg v. Ohio Dept. of Commerce*, No. 06AP-883, 2007-Ohio-3219, 2007 WL 1821306 (10th Dist.), and *Sogg v. Zurz*, 192 Ohio App. 3d 22, 2011-Ohio-81 (10th Dist.); this Court's order and judgment on unconstitutionality of the statute, *Sogg v. White*, 139 Ohio Misc.2d 58, 2006-Ohio-4223 (C.P.); the Settlement Agreement with Exhibits; an executed copy of the Preliminary Approval Order; and the text of the Published Notice (Division Website). The Settlement Website will also contain the Full Settlement Notice, attached hereto as Exhibit D, which will inform Class Members of their rights with respect to the Settlement; the means and time to object to or contest the Settlement, Plaintiff's Counsel's petition for attorneys' fees, the petition for Plaintiff Compensation, and the Plan of Allocation; the means for Class Members to access instructions for filing objections electronically; the date and time of the Fairness Hearing; the Division website, and the toll-free telephone number to call with questions. The Settlement

Administrator shall cause to be established a toll-free telephone number that Class Members may call to obtain information about the Settlement. Any questions received at such number that cannot be adequately responded to by the Settlement Administrator shall be referred to Plaintiff's Counsel for response.

e. Within fourteen (14) business days of the Court's entry of the Preliminary Approval Order, Defendant shall cause all employees or agents of the Ohio Department of Commerce Division of Unclaimed Funds who are expected to regularly come into contact with the public or Class Members to be fully advised in regard to the Settlement and to advise members of the Class or public who inquire regarding the Settlement that they may visit the Settlement Website described in paragraph 4.d., hereof;

f. Following entry hereof, and as part of its regular Ohio Revised Code Chapter 169 newspaper publication program regarding unclaimed funds, at Defendant's sole cost and expense, and in a size and manner reasonably acceptable to Plaintiff's Counsel, Defendant shall cause to be published notice in the form attached hereto as Exhibit E, in any newspapers that it publishes in before the date set for the Fairness Hearing.

g. As soon as reasonably practicable after the Court has entered this Order, the Settlement Administrator shall prepare the "Mailing List." To prepare the Mailing List, the Settlement Administrator shall first determine for each Class Member on the Class List this address as reported by Defendant on the Class List and his Gross Pro Rata Share of the Settlement Amount. The Settlement Administrator shall determine such Gross Pro Rata Share by:

i. Determining an Individual Gross Settlement Amount by multiplying the amount of the individual Class Member's Unclaimed Funds held by Defendant



(as reported by Defendant on the Class List) by the interest rate(s) applicable to the periods such Unclaimed Funds were held by Defendant, as shown in the chart of interest rates that follows labeled “Applicable Interest Rates.” For fiscal year 2012, the interest rate shall for these purposes be deemed 0.410, which is the same rate as fiscal year 2011;

*ii.* Totaling all Individual Gross Settlement Amounts to arrive at the Total Gross Settlement Amount;

*iii.* Dividing each Individual Gross Settlement Amount by the Total Gross Settlement Amount to arrive at the Individual Gross Percentage; and

*iv.* Multiplying the Individual Gross Percentage by the Total Gross Settlement Amount to arrive at the Gross Pro Rata Share for each Class Member.

*v.* In an effort to minimize the number of Post Card Notices and check mailings to any Class Member, to the extent reasonably practicable, multiple items of Unclaimed Funds for any Class Member shall be aggregated for purposes of the foregoing computations and in connection with the Plan of Allocation.

The Settlement Administrator shall then remove from the Class List all Class Members whose Gross Pro Rata Share is less than \$5 to create the Mailing List. The Settlement Administrator shall then establish the addresses to be used for the Initial Mailing defined below for all Class Members not so removed from the Class List as follows: (a) Defendant shall provide, in such form and manner as the Settlement Administrator may reasonably request, all updated or corrected addresses it has for Class Members; (b) the Settlement Administrator shall cause a commercially reasonable “skip trace” to be performed on the address of every Class Member not so removed from the Class List and take such other steps to verify such Class Members’ addresses as the Settlement Administrator deems reasonable and appropriate,

considering the costs and likely efficacy of such steps; and (c) the Settlement Administrator shall use the address information so obtained in (a) and (b) of this paragraph to update the addresses on the Class List.

The Settlement Administrator shall thereupon mail to each Class Member on the Mailing List a Post Card Notice in the form attached hereto as Exhibit F, first-class postage prepaid, at the most current address the Settlement Administrator has for such Class Member (“Initial Mailing”). The Settlement Administrator shall complete the Initial Mailing at least 45 days before the date for the Fairness Hearing set forth in this Order. The Settlement Administrator shall retain a record of each Post Card Notice mailed and returned as undeliverable, and of any forwarding addresses supplied for undeliverables as a result of the Initial Mailing. In addition, Defendant shall update the Settlement Administrator with respect to any new or updated addresses for Class Members that come into its possession after the entry hereof.

#### **Applicable Interest Rates**

Fiscal Year Ending June 30	Applicable Interest Rate
2001	2.617
2002	1.962
2003	1.154
2004	1.068
2005	1.131
2006	1.888
2007	2.435
2008	2.274
2009	1.347
2010	0.720
2011	0.410
2012	0.410

h. Not less than five (5) days before the Fairness Hearing, the Parties shall file with the Court a statement of compliance regarding implementation of the Notice Program.

5. Any payments and actions which, to effectuate the Settlement, must occur before entry of Final Judgment shall be carried out and paid as set forth in the Settlement Agreement.

Franklin County Court of Common Pleas

**Date:** 06-28-2012  
**Case Title:** WILTON S SOGG EXEC -VS- OHIO STATE DEPT COMMERCE  
DIRECTOR JEANNE  
**Case Number:** 04CV008028  
**Type:** ORDER

It Is So Ordered.

  
Handwritten signature of Richard A. Frye over a blue circular seal of the Franklin County Court of Common Pleas. The seal contains the text "FRANKLIN COUNTY OHIO COURT OF COMMON PLEAS" and "ALL THINGS ARE" at the bottom.

/s/ Judge Richard A. Frye