

7-15-2009

Order Regarding Disbursement and Setting Post-Judgment Interest Rate (LARRIE GRANT PLYMEL)

Alice D. Bonner
Superior Court of Fulton County

Follow this and additional works at: <http://readingroom.law.gsu.edu/businesscourt>

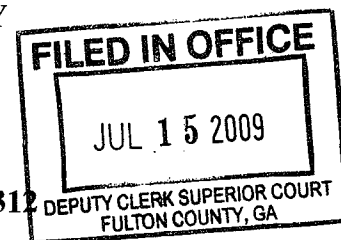
Recommended Citation

Bonner, Alice D., "Order Regarding Disbursement and Setting Post-Judgment Interest Rate (LARRIE GRANT PLYMEL)" (2009).
Georgia Business Court Opinions. Paper 9.
<http://readingroom.law.gsu.edu/businesscourt/9>

This Court Order is brought to you for free and open access by the College of Law at Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact dschander@gsu.edu.

COPY

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**



LARRIE GRANT PLYMEL,)
et al.,)
 Plaintiffs,)
))
v.))
))
TEACHERS RETIREMENT)
SYSTEM OF GEORGIA, et al.,)
))
 Defendants.)

**CIVIL ACTION
FILE NO. 2004-CV-84312**

CLASS ACTION

**ORDER REGARDING DISBURSEMENT AND SETTING
POST-JUDGMENT INTEREST RATE**

The Court having entered its Order of Final Approval of the resolution of this matter, the parties having mutually withdrawn their respective Petitions for Certiorari in the Supreme Court of Georgia pursuant thereto, and, pursuant to the Court’s retention of jurisdiction as provided in the Order of Final Approval,

IT IS THEREFORE ORDERED AS FOLLOWS:

1.

Post-judgment interest in this action and on all obligations hereunder is fixed at the rate of nine percent (9%) pursuant to O.C.G.A. § 7-4-12(a), the parties having so stipulated and the Court having determined such percentage to be factually and legally appropriate.

2.

The Court having previously approved the Garden City Group, Inc. (“GCG”), to act as Class Administrator for payment of claims as provided in the Court’s April 4, 2008 Consent Order Pursuant to Paragraph 9F of Final Order and Judgment and to Implement the Court’s Order Regarding Uncontested Claims, the Court further orders that GCG is authorized and

directed to make payment of all claims pursuant to the terms of the Court's Final Order and Judgment, as modified by the Order of Final Approval. GCG shall create invoices for and pay itself for reasonable expenses associated with GCG's disbursement of funds by issuing a check to GCG from Part 2 of the funds provided for in Paragraph 4 of this Order. GCG shall, at the time it pays such expenses, simultaneously provide a full accounting of all disbursements to Plaintiffs' counsel. If either GCG or Plaintiffs' counsel differ with the other as to the reasonableness of payment or allocation of any expense, such difference shall be submitted to the Court for decision.

3.

TRS shall provide GCG and Class Counsel with payment calculations on the following schedule: (1) not later than July 10, 2009, payment calculations regarding back benefits and interest concerning all yet to be compensated Class Members to whom payment is due under the terms of the Court's Final Order and Judgment, as modified by the Order of Final Approval, (2) not later than July 28, 2009, payment calculations regarding the present value of future upward adjustments of the benefits of all yet to be compensated Class Members to whom such adjustments are due under the terms of the Court's Final Order and Judgment, as modified by the Order of Final Approval, and (3) not later than September 1, 2009, payment calculations regarding additional interest to be paid to Class Members in accordance with the Court of Appeals' decision in this matter. Class Counsel shall have and retain the right to conduct audits of TRS' determinations of membership in the Class and of TRS' calculations of back benefits, interest, and future upward adjustments for any Class Member. Class Counsel shall conduct its audits expeditiously (and in any event shall conclude such audits within six (6) months from the date of entry of this Order unless Class Counsel and TRS agree to extend the time or the Court,

on a showing of good cause by Class Counsel, shall extend the time) and shall seek to avoid undue intrusion into the day-to-day operations of TRS, and TRS shall cooperate in all reasonable respects with the audits.

4.

TRS shall wire to GCG all funds owed under the Order of Final Approval. The funds to be wired by TRS to GCG include:

Sum (1): all monthly underpayments of benefits for Class Members yet to be compensated and to whom payment is due under the terms of the Court's Final Order and Judgment, as modified by the Order of Final Approval, with pre-judgment interest commencing upon each monthly underpayment and continuing through February 29, 2008 at the rate of seven percent (7%) and post-judgment interest commencing March 1, 2008 and continuing through July 28, 2009 at the rate of nine percent (9%);

Sum (2): thirty percent (30%) of the present value of future upward adjustments of the benefits of Class Members yet to be compensated and to whom such adjustments are due under the terms of the Court's Final Order and Judgment, as modified by the Order of Final Approval; and

Sum (3): additional interest of two and one-half percent (2 ½ %) commencing upon each monthly underpayment for which compensation has been delivered by TRS to GCG pursuant to the terms of the Consent Order Pursuant to Paragraph 9F of Final Order and Judgment and to Implement the Court's Order Regarding Uncontested Claims and continuing through July 28, 2009.

TRS shall wire Sum (1) to GCG on or before July 13, 2009, Sum (2) to GCG on or before July 30, 2009, and Sum (3) to GCG on or before September 3, 2009. Upon receipt of such funds,

GCG shall wire to Class Counsel Sum (2) (comprising thirty percent (30%) of the present value of future upward adjustments of the benefits of Class Members yet to be compensated and to whom such adjustments are due under the terms of the Court's Final Order and Judgment, as modified by the Order of Final Approval). In addition, GCG shall divide the funds comprising Sum (1) and Sum (3) into two parts, denominated Part 1 and Part 2. Part 1 shall include seventy percent (70%) of the funds, and such part shall be held and distributed to members of the Plaintiff Class in accordance with the terms of the Court's Final Order and Judgment, as modified by the Order of Final Approval and this Order. Part 2 shall include thirty percent (30%) of the funds and shall represent the portion of the TRS distribution pursuant to this Order that is part of the Fees Fund under the Court's Final Order and Judgment and the Court's Order on Attorney's Fees of February 29, 2008. GCG shall disburse Part 1 and Part 2 of the funds pursuant to and subject to the Court's Final Order and Judgment, as modified by the Order of Final Approval and this Order, based upon information provided to GCG from TRS and approved by Plaintiffs' counsel, as follows:

a. With regard to "back benefit" claims of living Class Members who have not yet been compensated and to whom payment is due under the terms of the Court's Final Order and Judgment, as modified by the Order of Final Approval, and with regard to additional interest to be paid to living Class Members in accordance with the Court of Appeals' decision, GCG shall issue checks from Part 1 of the funds in the amounts of the Class Members' claims payable to these Class Members pursuant to the Court's Final Order and Judgment, as modified by the Order of Final Approval, and shall mail the checks by First Class United States Mail, together with the notice attached to the checks. The form of the checks and attached notice will be substantially the same as that attached hereto as Exhibit "A." GCG shall: (a) re-mail any such

checks that are returned by the United States Postal Service as undeliverable with a forwarding address; (b) research addresses for any such checks returned without a forwarding address or retain an address research firm to research such addresses; and (c) re-mail such checks to any Class Member for whom an updated address is discovered through such research within seven (7) business days of receiving the updated address. If, after reasonable efforts to locate a further address, a check returned by the United States Postal Service as undeliverable cannot be re-mailed, the funds represented by the check shall thereafter be administered in accordance with the provisions below with respect to payments for deceased Class Members.

b. With regard to claims of deceased Class Members who have not yet been compensated and to whom payment is due under the terms of the Court's Final Order and Judgment, as modified by the Order of Final Approval, and with regard to additional interest to be paid to deceased Class Members in accordance with the Court of Appeals' decision, GCG shall within thirty (30) days of the date of this Order or provision by TRS of the funds and instructions regarding payment in an appropriate format, whichever is later:

i. Mail by First Class United States Mail notice in substantially the form attached hereto as Exhibit "B" (the "Entitlement Form"), to the last known address of all deceased retirees and deceased beneficiary class members; and

ii. Mail the Entitlement Form by First Class United States Mail to all forwarding addresses, representatives, or relatives identified pursuant to any notice plan previously conducted by GCG or otherwise ascertained;

c. As provided in the Entitlement Form, upon provision to GCG of Letters Testamentary or Letters of Administration (or such other documents as are authorized by a court or tribunal establishing the authority of a legal representative to receive funds held for the

accounts of deceased Class Members), GCG shall issue checks from Part 1 of the funds in the amounts payable to these legal representatives in such capacities pursuant to the Court's Final Order and Judgment, as modified by the Order of Final Approval and this Order and shall mail the checks by First Class United States Mail, together with the attached notice, in substantially the form attached hereto as Exhibit "A." Any unresolved issues related to claimants to funds held for the account of a deceased Class Member and to the legal sufficiency of documents as authorizing legal representatives shall be referred to this Court for resolution.

d. (1) GCG shall conduct an "Outreach Program" to attempt to locate and communicate with Class Members and representatives of deceased Class Members in order to encourage submission of Entitlement Forms and supporting documentation with regard to all unclaimed funds of deceased Class Members. Legal representatives may submit claims in the manner described in Exhibit B at any time through and including three years after the entry of the Court's Order of Final Approval (May 18, 2012).

(2) At the conclusion of the three year period, the accounts of deceased Class Members that are not the subject of an unresolved pending claim shall be closed. Within ten (10) days after closure of these accounts, GCG (1) shall remit to TRS all funds remaining in Part 1 (together with any accrued interest) to which such closed accounts relate, and TRS shall deposit such sums into the Pension Accumulation Fund of TRS as defined by O.C.G.A. § 47-3-43 or any successor statute. Within ten (10) days of resolution of all claims that were pending three (3) years after the entry of the Court's Order of Final Approval, any remaining accounts shall be closed, and within ten (10) days after such closure, GCG shall remit to TRS all funds remaining in such accounts for deposit as provided above upon closure of other accounts of deceased Class

Members; provided, however, that in GCG's discretion, it may remit funds to TRS as claims are resolved rather than holding funds until all claims have been resolved.

(3) Within ten (10) business days of remitting funds to TRS pursuant to the preceding subparagraph of this Order, GCG shall remit to Class Counsel, pursuant to the direction of Class Counsel, any funds remaining in Part 2 that exceed GCG's then-estimate of the remaining reasonable expenses that it expects will be incurred in administering the remaining funds that it holds on behalf of Class Members, multiplied by two. At such time as GCG no longer holds funds for the benefit of Class Members, it shall, after having first satisfied any outstanding invoice of GCG and simultaneously provided a full accounting of all disbursements to Class Counsel, remit to Class Counsel, pursuant to the direction of Class Counsel, any and all funds then remaining in Part 2, including any accrued interest; provided, however, that if either GCG or Class Counsel differ with the other as to the reasonableness of payment or allocation of any fee or expense on the invoice, such difference shall be submitted to the Court for decision.

e. GCG shall, pending disbursement, hold Part 1 and Part 2 in escrow in FDIC insured funds, Treasury bills, other federal funds or Money Market accounts whose investments are solely in US government securities which provide comparable security and sufficient liquidity to permit the orderly implementation of the provisions of the Court's Orders. Security measures employed by GCG in connection with this Order are further described in Exhibit C hereto.

f. Within thirty (30) days of entry of this Order, GCG shall, with respect to Part 2 of the funds, estimate the reasonable expenses that it expects will be incurred over the period of administering Part 1 and Part 2 of the funds. GCG shall provide its estimate to Plaintiffs' counsel, and, within thirty (30) days of providing such estimate, GCG shall (1) set aside a

portion of Part 2 equal to twice the amount of its estimate and hold that sum from which to make payment of expenses, if any, and (2) disburse to Plaintiffs' counsel, pursuant to the directions of Plaintiffs' counsel, that portion of Part 2 of the funds that remains after deduction of the holdback.

g. GCG shall account to the Court on a not less than quarterly basis for all sums it has held or disbursed pursuant to the terms of this paragraph 4 and the following paragraph 5.

5.

Any undisbursed funds held by GCG under the terms of previous Orders of this Court to be disbursed to any Class Members, deceased Class Members, Estates of deceased Class Members, or for expenses or to Class Counsel shall also be subject to the foregoing provisions of this Order.¹ GCG is authorized to combine with Part 1 of the funds received by it under this Order any remaining funds previously set aside as Part 1 of the funds received by GCG under the Court's April 4, 2008 Consent Order Pursuant to Paragraph 9F of Final Order and Judgment and to Implement the Court's Order Regarding Uncontested Claims. GCG is also authorized to combine with Part 2 of the funds received by it under this Order any remaining funds previously set aside as Part 2 of the funds received by GCG under the Court's April 4, 2008 Consent Order Pursuant to Paragraph 9F of Final Order and Judgment and to Implement the Court's Order Regarding Uncontested Claims. Thereafter, the combined funds shall be administered as a single Part 1 and Part 2.


¹ The Consent Order Pursuant to Paragraph 9F of the Final Order And Judgment and to Implement the Court's Order Regarding Uncontested Claims, entered February 29, 2008, provided a disposition date of "three years after the entry of the remitter on appeal resulting from any appeals taken from any order of the Court entered February 29, 2008." That Order is hereby amended so that funds subject to disposition thereunder shall be subject instead to the date and procedure specified in Paragraph 4 of this Order.

Accordingly, it is hereby **ORDERED, ADJUDGED** and **DECREED** that the Court's Final Order and Judgment of February 29, 2008 and the Court's Order of Final Approval are hereby modified as provided in this Order this 15 day of July 2009. Except as so modified, the Court's Final Order and Judgment and Order of Final Approval shall remain in full force and effect.



ALICE D. BONNER
Senior Judge, Superior Court of Fulton County,
Business Case Division

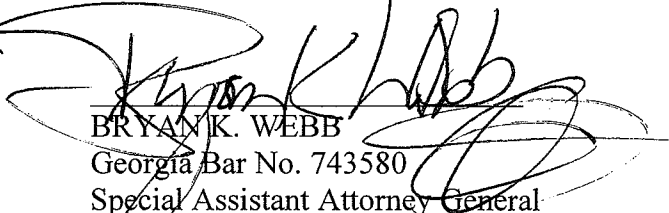
Counsel for Plaintiffs Consent:


~~RICHARD H. SINKFIELD~~
Georgia Bar No. 649100
Rogers & Hardin LLP
2700 International Tower, Peachtree Ctr.
229 Peachtree Street, N.E.
Atlanta, GA 30303-1601
(404) 420-4605

DAVID A. FOREHAND, JR.
Georgia Bar No. 006860
HARDY GREGORY, JR.
Georgia Bar No. 310100
Gregory & Forehand
602 East 16th Avenue
Cordele, GA 31015
(229) 276-1670

BOBBY LEE COOK
Georgia Bar No. 183100
Cook & Connelly
9899 South Commerce Street
P. O. Box 370
Summerville, Georgia 30747
(706) 857-3421

Counsel for Defendants Consent:


BRYAN K. WEBB
Georgia Bar No. 743580
Special Assistant Attorney General
(Signed by Richard H. Sinkfield
with express permission)
233 E. Broad Street
P.O. Box 1884
Athens, GA 30603
(706) 546-1395

ANNETTE M. COWART
Georgia Bar No. 191199
Sr. Assistant Attorney General
CHRISTOPHER A. MCGRAW
Georgia Bar No. 493177
Assistant Attorney General
Georgia Department of Law
40 Capitol Square, SW
Atlanta, GA 30334
(404) 656-3380