

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

RENE E. PEINADO, etc.,

Plaintiffs,

v.

BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF SAN FRANCISCO, SAN PABLO AND SUISUN, et al.,

Defendants.

Case No.: 964 430

NOTICE TO CLASS OF PROPOSED SETTLEMENT

READ THIS NOTICE CAREFULLY BECAUSE IT MAY AFFECT YOUR RIGHTS TO ALL INDIVIDUALS WHO ARE ETHNIC OR RACIAL MINORITIES WHO EITHER:

- 1. In the years 1987, 1988, 1991, or 1993, applied for and were rejected for admission to the Bar Pilot Training Program through the Board Of Pilot Commissioners For The Bays Of San Francisco, San Pablo And Suisun ("The Board"); or
2. Were deterred in the years 1987, 1988, 1991 or 1993, from applying for admission to the Pilot Training Program through The Board; and
3. Who held a valid U.S. Coast Guard Master's license at the time of application or deterrence.
A hearing regarding a proposed settlement of this class action will be held on July 12, 1996 at 9:30 a.m. before the Hon. David A. Garcia in Department 10 of the above court located at 633 Folsom Street, San Francisco, CA 94107.
If you are a member of the plaintiff class, you should read this notice carefully because it will affect your rights.

I. BACKGROUND OF CLAIMS

The named plaintiff, Captain Rene E. Peinado, alleges that he is a member of a class of otherwise qualified minority applicants who, during the years 1987-1988, 1991 and/or 1993, sought admittance to The Board's Pilot Training Program, all of whom, despite otherwise being qualified for admission, were rejected on the basis of race or national origin. Captain Peinado alleges on behalf of himself and all others similarly situated, that since at least 1987, and continuing to the present, The Board has engaged in an ongoing practice of discrimination in selecting applicants for its Training Program. Captain Peinado alleges that The Board, to date, does not have any objective, defined written guidelines that are used in the selection process. It is alleged that the lack of established written guidelines allows nepotism, favoritism, bias and prejudice to dominate the selection process, and has perpetrated an easily manipulated process. Captain Peinado alleges that The Board's practices not only excluded qualified minorities such as petitioner, but also have cultivated within the maritime community a reputation for discrimination that has discouraged, and continues to discourage, qualified minorities from applying.

The Board has denied liability and has denied the allegations in the complaint.

II. NATURE OF CLAIMS

Plaintiff alleges on behalf of himself and all similarly situated individuals that The Board's practices violate the California Fair Employment and Housing Act, Section 12940, et seq., which prohibits discrimination on the basis of race or national origin. Plaintiff also alleges that The Board's conduct violates the equal protection clause of the California Constitution (Article 1, Section 7). Plaintiff also alleges that The Board's conduct against plaintiff and the class he represents constitutes unlawful discrimination in training and employment on account of race and national origin in violation of The California Constitution, Article I, Section 8.

III. SUMMARY OF LITIGATION

On October 14, 1994 plaintiff filed a complaint against the Board in the Superior Court of California In And For The County of San Francisco. On September 26, 1995 plaintiff filed a second amended complaint. Plaintiff engaged in extensive discovery, including depositions, propounding of interrogatories and document requests to the Board, and motion and appellate practice regarding such discovery.

On February 23, 1996, this action was certified as a class action. The case was to proceed to trial on April 29, 1996.

IV. SUMMARY OF PROPOSED SETTLEMENT

A. Class-wide Injunctive Relief

In general terms, the Board has agreed to take steps to make the application and selection process for its Training Program more objective and fair. The Board has agreed to utilize the assistance of an outside consultant, Dr. Norman Hertz, to assist in the process. The changes include: (1) published notice that the Board is accepting applications for its Training Program; (2) published prerequisites including specified amounts and types of maritime experience, federal license requirements and recency of sea experience; and (3) a review of the process of applicant selection to determine eligibility to sit for examinations. Additionally, a review will be undertaken to establish more objective criteria for progress in and completion of the Pilot Training Program. An independent consultant agreed upon between the parties will then review the proposed changes. The entire process will be subject to final approval by the Court. The parties have agreed that these new procedures will be submitted for Court approval by October 31, 1996, or upon agreement between the parties and approval by the Court, an alternative date certain shortly thereafter.

B. Monetary Relief for the Class.

The Board will establish a fund of a total of \$60,000 ("the Fund") which will be made available to all otherwise qualified minority applicants who actually applied and were rejected during the class period who complete and return the Proof of Claim which will be published with the Notice to Class of Proposed Settlement. Qualification will be determined by the new criteria referred to in paragraph A above. Claims for monetary recovery and distributed portions of the Fund will be subject to a process supervised by this Court. Unclaimed funds will be donated to the California Maritime Academy for use in improving pilot education.

C. Equitable Relief for the Class Representative.

In recognition of the class representative's qualifications and his well documented, extensive, and personally costly efforts in prosecuting this action, the Board has agreed as part of this settlement that upon completion of 300 additional days sailing as chief mate or master on deep draft vessels or as mate or master on tugs, 250 days of which must be as master, Capt. Peinado will be allowed to take the written and oral examinations given by the Board in 1993 and considered for the Training Program under the terms and conditions set forth in the Stipulation for Settlement and Mutual Release.

D. Attorneys Fees.

The Board has agreed to be solely responsible for and to pay class counsels' attorneys fees and reimburse them for out of pocket costs and expenses incurred in amounts agreed to as part of the settlement. Attorneys fees will not be deducted from the fund referred to in paragraph B above.

V. WHAT TO DO

A. IF YOU ARE NOT A MEMBER OF THE CLASS: DO NOTHING

B. IF YOU ARE A MEMBER OF THE CLASS:

1. To Object To The Settlement:

If you applied for admission to the Training Program during the class period and were rejected, and you are a member of a racial or ethnic minority group, and contend that you are otherwise qualified for admission to the Training Program and you object to the proposed settlement you may appear personally or through counsel at the hearing. In order to be heard or to have papers or briefs considered by the court, any objecting class member must file with this Court a notice of intention to appear along with any papers for the court to consider and must serve the counsel listed below **NO LATER THAN JUNE 11, 1996.**

IF YOU DO NOT OPPOSE THE PROPOSED SETTLEMENT YOU NEED NOT APPEAR AT THE HEARING OR FILE ANY PAPERS.

All objections should be sent to the Court clerk at:

San Francisco Superior Court
Office of the Clerk
633 Folsom Street, 2nd Floor
San Francisco, CA 94107

Copies of all documents filed with the clerk of the Court must be sent to the following counsel:

Raymond M. Paetzold, Esq.
Paetzold, White & Brodsky
101 California, #1875
San Francisco, CA 94111
(415) 249-0966
Attorneys for Defendants
Board of Pilot Commissioners

Daniel T. Berkley, Esq.
Lillian F. Wolf, Esq.
Berman, Berkley & Lasky
601 Montgomery Street, Third Floor
San Francisco, California 94111
(415) 989-7711

Allan Steyer, Esq.
Edward Egan Smith, Esq.
Steyer, Lowenthal & Walker
333 Bush Street, 26th Floor
San Francisco, CA 94104
(415) 421-3400
Attorneys for Plaintiffs

2. To Make A Claim for Monetary Relief:

If you applied for admission to the Training Program during the class period and were rejected, and you are a member of a racial or ethnic minority group, and contend that you were otherwise qualified for admission to the Training Program at the time you applied and you wish to make a claim for monetary relief, you must request a Claim Form from:

Daniel T. Berkley, Esq.
Lillian F. Wolf, Esq.
Berman, Berkley & Lasky
601 Montgomery Street, Third Floor
San Francisco, California 94111
(415) 989-7711

Allan Steyer, Esq.
Edward Egan Smith, Esq.
Steyer, Lowenthal & Walker
333 Bush Street, 26th Floor
San Francisco, CA 94104
(415) 421-3400
Attorneys for Plaintiffs

You must complete and return the Claim Form to the above persons no later than August 31, 1996.

VI.

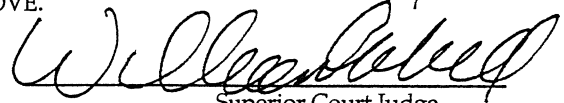
CHANGE OF ADDRESS

If you move after receiving this notice or it was mis-addressed, you should supply your name and your correct address to the above listed attorneys

The pleadings and all other records of this litigation including the Stipulation for Settlement and Mutual Release may be examined and copied any time during regular office hours in the Office of the Clerk at the above listed address.

YOU SHOULD RETAIN ALL RECORDS AND DOCUMENTS PERTAINING TO THE SUBJECT MATTER OF THIS CASE. DO NOT CALL OR WRITE TO THE COURT OR TO THE CLERK OF THE COURT. ADDRESS ALL INQUIRIES IN WRITING TO THE ATTORNEYS FOR THE CLASS SET FORTH ABOVE.

DATE: 8/2/96



Superior Court Judge

WILLIAM CAHILL

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ENDORSED
FILED
San Francisco County Superior Court

MAY 2 - 1996

ALAN CARLSON, Clerk
S. DOUGLAS
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR COUNTY OF SAN FRANCISCO

RENE E. PEINADO, individually)
and on behalf of all others similarly)
situated,)

Plaintiffs,)

v.)

BOARD OF PILOT)
COMMISSIONERS FOR THE BAYS)
OF SAN FRANCISCO, SAN)
PABLO AND SUISUN, agency of)
the State of California, and Does 1-)
50,)

Defendants.)

Case No. 964 430

WJG
~~PROPOSED~~ ORDER RE
PRELIMINARY APPROVAL OF
SETTLEMENT AND APPROVAL
OF NOTICE TO CLASS OF
PROPOSED SETTLEMENT

Date: April 23, 1996
Time: 2:00 p.m.
Place: Dept. 8

WHEREAS, plaintiffs and defendants all acting by and through their respective counsel, have agreed, subject to Court approval following notice to the class and a hearing, to settle this litigation upon the terms and conditions announced to this court on April 23, 1996;

NOW, THEREFORE, based upon the Notice as defined in paragraph 3 of this Order and submitted to this Court on April 23, 1996 and upon all of the files and records and proceedings herein, and it appearing to the Court that a hearing

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BERKLEY &
LASKY
601 MONTGOMERY
THIRD FLOOR
SAN FRANCISCO
CALIFORNIA 94111
(415) 989-7711

1 should be held on notice to the class of the proposed settlement to determine
2 finally whether the terms of the settlement are fair, reasonable and adequate;

3 IT IS HEREBY ORDERED:

4 1) In order to determine whether the terms of the settlement
5 should be finally approved as fair, reasonable and adequate, the parties shall send
6 as soon as practical, but to be completed no later than May 3, 1996 via first class
7 mail to all class members who can be identified through the exercise of reasonable
8 effort, the Notice to Class of Proposed Settlement attached as exhibit "A" hereto.
9 Moreover, the parties shall publish the Notice to Class of Proposed Settlement in
10 the manner approved by this Court on March 29, 1996. The parties are hereby
11 directed to file with the Court prior to the final settlement approval hearing, a
12 declaration confirming that dissemination of the notice has taken place in
13 accordance with the terms of this Order.

14 2) The Court preliminarily finds that the dissemination of the
15 notice under the terms and in the format provided for in this Order constitute the
16 best notice practicable under the circumstances and is due and sufficient notice for
17 all purposes to all persons entitled to such notice and fully satisfies the
18 requirements of due process, the California Civil Code, the California Code of
19 Civil Procedure and all other applicable laws.

20 3) A hearing (the "Settlement Hearing") shall be held on July 12,
21 1996 at 9:30 a.m., in department 10 of the San Francisco Superior Court, as set forth
22 in the Notice, to determine whether the Court should: (a) approve as fair and
23 reasonable, the proposed settlement of this action, including the payment of
24 attorneys' fees and expenses to plaintiffs' counsel; and (b) retain jurisdiction to
25 review the contemplated changes for the application to and successful completion
26 of the Pilot Training Program and, upon approval thereof, dismiss all claims
27 asserted in the litigation on the merits with prejudice and enter a final order
28 accordingly. The Settlement Hearing may be postponed, adjourned or

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1 rescheduled by order of the Court without further notice to the members of the
2 Settlement Class.

3 4) Any person legally entitled to object to the approval of the
4 proposed settlement or to the final order to be entered thereon and who wishes to
5 do so may personally appear at the Settlement Hearing and show cause why the
6 proposed settlement should not be approved as fair, reasonable and adequate or
7 why the final order should not be entered.

8 5) Objections to the settlement shall be heard, and any papers or
9 briefs submitted in support of said objections shall be considered by the Court,
10 unless the Court in its discretion shall otherwise direct only if, on or before June
11 11, 1996 said objectors have filed with the Court written notice of their intention to
12 appear and all papers and briefs they proposed to discuss at the Settlement Hearing
13 and have caused copies thereof to be actually received by each of the following on
14 or before said date:

15 Daniel T. Berkley, Esq.
16 Lillian F. Wolf, Esq.
17 Berman, Berkley & Lasky
18 601 Montgomery Street, Third Floor
19 San Francisco, California 94111
20 Telephone (415) 989-7711
21 Attorneys for Plaintiffs

22 Allan Steyer, Esq.
23 Edward Egan Smith, Esq.
24 Steyer, Lowenthal & Walker
25 333 Bush Street, 26th Floor
26 San Francisco, CA 94104
27 Telephone: (415) 421-3400
28 Attorneys for Plaintiffs

Raymond M. Paetzold, Esq.
Paetzold, White & Brodsky
101 California, No. 1875
San Francisco, CA 94111
Telephone: (415) 249-0966
Attorneys for Defendant

BERMAN,
BERKLEY &
LASKY
601 MONTGOMERY
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SAN FRANCISCO
CALIFORNIA 94111
(415) 989-7711

1 6) This Stipulation for Settlement and Mutual Release, attached as
2 exhibit "B" hereto, is hereby preliminarily approved, but is not to be deemed an
3 admission of liability or fault by defendant or by any other person, or a finding of
4 the validity of any claims asserted in the litigation or of any alleged wrongdoing or
5 of any violation of law by defendant. This settlement is not a concession and shall
6 not be used as an admission of any fault or omission by defendant or any other
7 person. To the extent permitted by law, neither the terms of the settlement nor
8 any related document shall be offered or received in evidence in any civil,
9 criminal, or administrative action or proceeding, other than such proceedings
10 which may be necessary to consummate or enforce the terms of the settlement,
11 except that defendant may file this Order in any action that may be brought against
12 it in order to support a defense or counterclaim or cross complaint based on
13 principles of Res Judicata, collateral estoppel, release, good faith settlement,
14 judgment by or reduction, or any other theory of claim or issue preclusion or
15 similar defense or counterclaim or cross complaint.

16 IT IS SO ORDERED.

17 DATE: 5-2-96

By: WILLIAM CAHILL

JUDGE OF THE SUPERIOR COURT

21 648/lfw/Prop.Ord/4/17/96

26 BERMAN,
BERKLEY &
LASKY
27 601 MONTGOMERY
THIRD FLOOR
SAN FRANCISCO
CALIFORNIA 94111
28 (415) 989-7711

FILE

ENDORSED
FILED
San Francisco County Superior Court

MAR 29 1996

ALAN CARLSON, Clerk
BY: CYNTHIA S. HERBERT
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

RENE E. PEINADO, etc.,)	Case No.:	964 430
)		
Plaintiffs,)		
)	PROPOSED ORDER	
v.)	REGARDING CLASS	
)	<u>NOTICE</u>	
BOARD OF PILOT COMMIS-)		
SIONERS FOR THE BAYS OF SAN)	Date:	3/29/96
FRANCISCO, SAN PABLO AND)	Place:	Dept. 10, Rm. 414
SUISUN, et al.,)	Time:	11:30 a.m.
)		
Defendants.)		
)		

The Ex Parte motion of plaintiff Rene E. Peinado was heard by this Court on March 29, 1996. The matter having been duly considered and good cause having been found IT IS HEREBY ORDERED:

1. With regard to the approximately two hundred thirty-five unsuccessful applicants to the training program in the years 1987, 1988, 1991 or 1993, those class members shall be notified of the pendency of the class by first class mail sent to each applicant's last known address. The Board is in possession of the applications of these individuals. Addresses are contained on the applications. The Board shall either provide the names and addresses of the

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1 applicants or mail the Notice of Pendency of Class Action ("Notice") to them.

2 2. The deterred applicants and applicants for whom no address is
3 available, shall be notified of the pendency of the class action via publication of the
4 Notice by Publication of Pendency of Class Action ("Notice by Publication"). The
5 Notice by Publication may be published and/or posted for two weeks in the
6 following publications and/or locations:

- 7 • Pacific Shipper Magazine;
- 8 • Professional Mariner Magazine;
- 9 • Soundings;
- 10 • Marine Digest and Transportation News;
- 11 • Daily Shipping News;
- 12 • San Francisco Chronicle;
- 13 • Masters, Mates and Pilots and Inland Boatman's Union
- 14 publications and/or offices;
- 15 • Marisat Communications.

16 Additionally, plaintiff may publish and/or post the Notice by
17 Publication in other appropriate publications and/or locations either upon
18 agreement by the parties or upon approval by the Court.

19 3. There shall be no opt out provision as to liability and class-wide
20 injunctive relief. There shall be an opt out provision as provided in the Notice
21 and the Notice by Publication only with regard to monetary relief.

22 4. The parties shall equally divide the cost of notice.

23 SO ORDERED

24 Date:

3/28/96

25 By

Superior Court Judge

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27 648/lfw/ORD.ClassNtc. /3/28/96