

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

GLADYS YOLTON, WILBUR MONTGOMERY,
ELSIE TEAS, ROBERT BETKER, EDWARD
MAYNARD, and GARY HALSTED, on
behalf of themselves and a class of persons
similarly situated,

Hon. Patrick J. Duggan

Case No. 02-CV-75164

Plaintiffs,

CLASS ACTION

v.

EL PASO TENNESSEE PIPELINE CO., and
CNH AMERICA, LLC,
Defendants.

**ORDER OF PRELIMINARY APPROVAL
OF SETTLEMENT AGREEMENT**

The parties entered into a proposed Settlement Agreement on August 17, 2011 and requested the Court to give its preliminary approval to that Settlement Agreement and approve the form and method of providing notice of the proposed settlement to the Class described in the Settlement Agreement.

The Court has reviewed the Settlement Agreement and the referenced Exhibits, including the proposed forms of Class Notice, and finds and concludes as follows:

1. This Court certified the Litigation as a class action in an Order dated September 3, 2004. Based on the agreement of the parties, the Court now finds that the following described Class is appropriate for purposes of the Settlement Agreement:

All former bargaining unit employees who retired under the Case Corporation (formerly J.I. Case) Pension Plan for Hourly Paid Employees on or before July 1, 1994 (other than former employees eligible for or receiving retirement benefits under the deferred vested provisions of the Pension Plan) and all surviving spouses who are (1) spouses of former bargaining unit employees who retired or died on or before July 1, 1994; and (2) eligible for or receiving surviving spouse benefits under the Case Corporation

(formerly J.I. Case) Pension Plan for Hourly Paid Employees,
other than a deferred vested pension.

3. The Court is intimately familiar with the history of this protracted Litigation, having presided over it since it was filed in December 2002. The Court has now considered the pleadings filed in support of the Settlement Agreement and the statements of Counsel on the record. Based on this Court's extensive knowledge of this Litigation and a review of the proposed Settlement Agreement, the Court finds, on a preliminary basis, that the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Class. The Court will therefore direct that the notice of the Settlement Agreement be provided to the Class pursuant to Fed. R. Civ. Pro. 23(e)(B).

4. The Court has reviewed the attached forms of the Notice of Preliminary Approval of the Proposed Settlement and the cover letter from Class Counsel to be sent with the Notice, and finds that they comply with the requirements of Fed. R. Civ. Pro. 23(d) and (e) and fairly present the terms of the Settlement Agreement and the Class Members' rights and responsibilities in the settlement approval process.

5. The parties propose that Class Counsel send the Notice of Preliminary Approval to all identified Class Members by first class mail. The Court finds that such notice is the best notice practicable under the circumstances and is reasonably calculated to effectuate actual notice of the settlement to the Class.

6. The parties have compiled the names and addresses of all known Class Members.

The individual mailing of the Notice to those Class Members identified by the parties provides due and sufficient notice of the proceedings, of the proposed settlement, and of the settlement approval procedure, thus satisfying the requirements of Fed. R. Civ. Pro. 23 and the requirements of due process.

Based upon the foregoing findings of fact and conclusions of law:

IT IS HEREBY ORDERED THAT the Settlement Agreement is preliminarily approved.

IT IS FURTHER ORDERED THAT all proceedings not related to the approval and implementation of the Settlement Agreement are stayed until further Order of the Court.

IT IS FURTHER ORDERED THAT the Notice of Preliminary Approval of Settlement Agreement and the cover letter from Class Counsel to accompany the Notice are approved by this Court and that the Notice and letter, together with a copy of the Settlement Agreement and any appropriate Exhibits, be mailed to each identified Class Member at his or her current last known address by Class Counsel on or before September 26, 2011

IT IS FURTHER ORDERED THAT Class Counsel will file an Affidavit of Mailing of the Notice with this Court and serve copies of that Affidavit on all counsel prior to the date set for hearing on the Settlement Agreement.

IT IS FURTHER ORDERED THAT on November 17, 2011, at 2:00 P.M., in Courtroom 867, 231 W. Lafayette Blvd., Detroit, Michigan 48226, the Court will conduct a hearing to finally determine the fairness, reasonableness and adequacy of the terms and conditions of the settlement set forth in the Settlement Agreement and Exhibits thereto.

IT IS FURTHER ORDERED THAT any Class Member may appear personally or by

counsel at the hearing and may object or express his or her view regarding the Settlement Agreement and present evidence, briefs, or other papers in support thereof. However, a Class Member will not be heard, nor be entitled to contest the approval by this Court of the Settlement Agreement, unless on or before the date set forth in the Notice of Preliminary Approval, he or she files with the Clerk of this Court written objections, together with all papers to be submitted to this Court at the Settlement Hearing, and on or before that date serves all such objections and other papers on each of the following: (a) Class Counsel Roger J. McClow, Klimist, McKnight, Sale, McClow & Canzano, P.C., 400 Galleria Officentre, Suite 117, Southfield, MI 48034; (b) El Paso Tennessee Counsel William B. Forrest III, Kienbaum Opperwall Hardy & Pelton, 280 N. Old Woodward, Suite 400, Birmingham, MI 48009. Any Class Member who does not file and serve his or her objections in this manner will be deemed to have waived his or her objections and will be forever precluded from making any objections to the fairness or adequacy of the proposed Settlement Agreement. Objections should bear the following heading: *Yolton, et al. v. El Paso Tennessee*, Case No. 02-CV-75164, Objections to Proposed Settlement Agreement.

IT IS FURTHER ORDERED THAT the hearing may be continued or adjourned by order of this Court, from time to time, and without further notice to the Class, except to any Class Member who has timely filed an objection.

s/Patrick J. Duggan
Patrick J. Duggan
United States District Judge

Dated: August 19, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 19, 2011, by electronic and/or ordinary mail.

s/Marilyn Orem
Case Manager