

*KETCHMAN, et al., v. CITY OF MILWAUKEE, et al.*

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release is made and entered into for and in consideration of the commitments set forth herein on this 17<sup>th</sup> day of September, 2007, by and between Dick Boncel, Bill Joers, Art Ketchman, Ernie Meress, Ron Rebernick and Scott Schaefer (hereafter referred to collectively as "Plaintiffs"), and former Police Chief Arthur L. Jones, the City of Milwaukee, the Milwaukee Board of Fire and Police Commissioners, Robert (Woody) Welch, Carla Y. Cross, Eric M. Johnson, Leonard J. Sobczak and Ernesto A. Baca (in both their individual and official capacities), (hereinafter referred to as "Defendants").

WHEREAS, Plaintiffs Boncel, Joers, Ketchman, Meress, Rebernick and Schaefer filed a Complaint with the United States District Court for the Eastern District of Wisconsin, Case Number 05-C-0558, and this Complaint, filed under 42 U.S.C. §§1981 and 1983, having been consolidated with Case Number 05-C1133 alleging, among other things, discrimination on the basis of race and gender with respect to promotions to the rank of Captain of Police, in violation of the Civil Rights Act of 1964, *as amended*, the United States Constitution, as well as other state and federal laws; and

WHEREAS, the Defendants deny any wrongdoing and further deny that Plaintiffs sustained any injury or harm; and

WHEREAS, the parties wish to resolve the expense and disruption of any further litigation between them by amicably entering into this full and final settlement.

NOW, THEREFORE, in consideration of their mutual promises as set forth herein with their intention to be mutually and legally bound hereby, the parties covenant and agree as follows:

1. This Settlement Agreement is subject to approval by the Common Council of the City of Milwaukee and the expiration of the ten-day waiting period given for a mayoral veto. The Settlement Agreement shall be deemed null and void, and have no force or effect, nor shall it be admissible for any purpose, in the event it is not approved by the Common Council or in the event it is vetoed by the Mayor of the City of Milwaukee.

2. Each of the six named Plaintiffs, at times material to this litigation, were white male lieutenants employed by the Milwaukee Police Department, and each plaintiff resided in or near Milwaukee, Wisconsin.

3. Each Plaintiff, for himself, his heirs, personal representatives, executors, administrators, successors, agents and assigns, does hereby release and forever discharge the Defendants and their successors from any and all manner of action or actions, cause or causes of action, suits, debts, covenants, contracts, agreements, judgments, execution, claims, demands and expenses (including attorneys' fees and costs) whatsoever in law or equity, which he has had, now had or may have against the City for or by reason of any transaction, matter, cause or thing whatsoever up to the date of this Agreement, whether based on tort, express or implied contract, or any federal, state or local law, statute or regulations, specifically including, but not limited to, any and all claims under Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e, *et seq.*; the Fair Labor Standards Act of 1938, *as amended*, 29 U.S.C. § 201, *et seq.*; 29 U.S.C. § 621, *et seq.*; the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. § 1101, *et seq.*; the Federal Rehabilitation Act of 1973, *as amended*, the Civil Rights Act of 1991; the American Disabilities Act of 1990, *as amended*, 42 U.S.C. § 12101, *et seq.*; the federal and state Family and Medical Leave Act, the Municipal Employment Relations Act, the Federal Occupational Safety and health Act of 1970, *as amended*, 29 U.S.C. § 651, *et seq.*; 42

U.S.C. § 1981; 42 U.S.C. § 1983; the First or Fourteenth Amendments to the United States Constitution; the Wisconsin Fair Employment Act, and any other applicable statute or authority of law providing a cause of action as to their employment with the City that concern any claims which have arisen or could arise out of or be connected to the facts, issues or allegations made or referred to in U.S. District Court Eastern District of Wisconsin cases 05-C-0558 and 05-C-1133, as well as any EEOC or ERD complaint or charge concerning those facts, or related claims of retaliation.

4. Plaintiffs agree to execute a stipulation or joint motion to dismiss U.S. District Court Eastern District of Wisconsin case 05-C-0558, with prejudice and without further costs upon approval of this Settlement Agreement by the Common Council, upon the expiration of the ten day waiting period for the mayoral veto and upon payment of the sums set forth in Paragraph 7, below. Plaintiffs further agree to execute any other documents that may be required to fully discharge, dismiss or extinguish any claim that they have made in connection with these lawsuits.

5. Plaintiffs agree to each individually execute general releases of all claims in the form approved by the City Attorney, as described in the attached Exhibit A, upon approval of this settlement by the Common Council, and upon the expiration of the ten day waiting period for the mayoral veto as a condition precedent to their receipt of the settlement fund herein.

6. Jeffrey S. Hynes & Associates, S.C., and Jeffrey S. Hynes, Esq. and Patricia A. Lauten, Esq. covenant and agree they will not represent additional plaintiffs in the future concerning the same allegations, that is, claims involving the City's alleged discriminatory failure to promote police officers from the position of lieutenant to the position of captain during the period 1996 through 2003.

7. In consideration for the general releases and the motion to dismiss the actions, and the other terms and conditions of this Settlement Agreement, the City of Milwaukee will pay the total sum of Three Hundred Thousand Dollars (\$300,000.00) to the Plaintiffs as follows:

- a. A check made payable to Dick Boncel in the amount of \$50,000.00.
- b. A check made payable to Bill Joers in the amount of \$50,000.00.
- c. A check made payable to Art Ketchman in the amount of \$50,000.00.
- d. A check made payable to Ernie Meress in the amount of \$50,000.00.
- e. A check made payable to Ron Rebernack in the amount of \$50,000.00.
- f. A check made payable to Scott Schaefer in the amount of \$50,000.00.

Payments shall be made no later than five (5) business days following the expiration of the ten-day period for mayoral veto via delivery of the checks to Jeffrey S. Hynes & Associates, S.C.

8. With respect to the payments referred to in paragraph 7, the parties acknowledge and agree that said payments are in full and final settlement of all damages which they have, or could have claimed in this matter, including without limitation, compensatory damages, punitive damages, attorney fees, costs, wage loss, back pay, front pay, pension loss or other economic damages. The parties aver that based upon the evidence, Plaintiffs did not sustain wage loss, and the settlement payment does not represent back pay, front pay or other economic losses in this matter, and therefore, the City is not withholding state or federal income taxes or employment taxes that might be due or that may be determined to be due and owing from the aforementioned payment. Each Plaintiff acknowledges and agrees they will be solely responsible for the payment of any state or federal taxes that may be due as a result of the payments each individual Plaintiff receives herein, and each Plaintiff agrees to indemnify, defend and hold the Defendants harmless

from and against any and all loss, liability, damage, deficiency or claim arising out of the City not making withholdings from this amount for state and federal income and employment taxes. Each Plaintiff further acknowledges and agrees that the sum of Three Hundred Thousand Dollars is the maximum amount the Defendants will pay in this matter, irrespective of any tax consequence to Plaintiffs individually and collectively.

9. It is expressly understood and agreed between the parties that by entering into this Settlement Agreement, the Defendants in no way admits that it has violated any federal, state, local statute or ordinance, or contractual provision, or was otherwise liable. It is further understood and agreed that this is a compromise settlement of disputed claims and that neither this Settlement Agreement nor the furnishing of the consideration provided for in this Settlement Agreement shall be deemed or construed at any time or for any purpose as an admission of liability by the Defendants. Liability for any and all claims for relief is expressly denied by the Defendants.

10. Plaintiffs represent and certify they have carefully read and fully understand all of the provision and effects of this Settlement Agreement and General Release, and that their attorneys have thoroughly discussed all aspects of this Settlement Agreement and General Release with them, that they are voluntarily entering into this Settlement Agreement, and that neither the Defendants nor the Defendants' attorney(s) made any representation concerning the terms or effects of this Settlement Agreement other than those contained herein.

11. Plaintiffs expressly acknowledge that the Settlement Agreement and General Release is intended to include in its effect, without limitation, all claims which have arisen and of which they know or should have known, had reason to know or suspects to exist in their favor at the time of the execution hereof concerning their employment with the City, including any

claims for retaliation, in connection with the litigation referenced herein, and that this Settlement Agreement and General Release contemplates the extinguishment of any such claim or claims, consistent with the terms of this Settlement Agreement.

12. Each party to this Settlement Agreement and General Release agrees that in the event that any party breaches the Settlement Agreement the breaching party will indemnify and hold the non-breaching party harmless for any costs, damages or expenses, including reasonable attorneys' fees arising out of the breach of the Settlement Agreement by that party, or arising out of any suit or claim to enforce the Settlement Agreement.

13. This Settlement Agreement and General Release shall in all respects be interpreted, enforced and governed under the laws of the State of Wisconsin.

14. Should any provision of this Settlement Agreement and General Release be declared or be determined by any court to be illegal, invalid, an/or against public policy, the validity of the remaining parts, terms or provisions shall not be affected there by, and said illegal and invalid provision or term shall be deemed not to be part of the Settlement Agreement.

15. This Settlement Agreement and General Release sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof.

16. Plaintiffs warrant that, other than their attorneys, Jeffrey S. Hynes & Associates, S.C., no other person or legal entity has any interest in any claims, demands, causes of action, obligations, damages or liabilities covered by this Settlement Agreement; that they have the sole right and exclusive authority to execute this Settlement Agreement and to receive the consideration hereunder, and that, other than any agreement they may have with their attorneys,

they have not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, cause of action, obligation, damage or liability covered by this Settlement Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Plaintiffs and the Defendants (individually or through their attorneys) have executed the foregoing Settlement Agreement and General Release.

Dated: 9-17-07

Richard V Boncel  
Dick Boncel

Dated: 9/17/07

Bill Joers  
Bill Joers

Dated: 9-17-07

Art Ketchman  
Art Ketchman

Dated: 9-17-07

Ernie Meress  
Ernie Meress

Dated: 9/17/07

Ronald J. Rebernick  
Ron Rebernick

Dated: 9/17/07

Scott A. Schaefer  
Scott Schaefer

Dated: 9/17/07

Jeffrey S. Hynes, Esq.  
Patricia A. Lauten, Esq.  
Jeffrey S. Hynes & Associates, S.C.  
Attorneys for the Plaintiffs  
Approved As To Form Only

Dated: \_\_\_\_\_

\_\_\_\_\_  
Grant F. Langley, City Attorney  
Miriam R. Horwitz, Assistant City Attorney  
Attorneys for the Defendants