

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CITY OF WESTLAND POLICE AND FIRE	:	Civil Action No. 1:12-cv-00256-LAK
RETIREMENT SYSTEM, Individually and on	:	
Behalf of All Others Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	DECLARATION OF LAYN R. PHILLIPS IN
	:	SUPPORT OF FINAL APPROVAL OF
vs.	:	CLASS ACTION SETTLEMENT
	:	
METLIFE INC., et al.,	:	
	:	
Defendants.	:	

I, Layn R. Phillips, declare as follows under 28 U.S.C. §1746:

I am filing this Declaration in my capacity as the mediator in the above-captioned action (the “Litigation”). As set forth herein, I submit this Declaration in support of Plaintiff’s Motion for Final Approval of the Settlement.

I. Relevant Professional Background and Experience

1. I currently serve as a mediator and arbitrator with my own alternative dispute resolution company, Phillips ADR Enterprises (“PADRE”), based in Corona Del Mar, California. I am a member of the bars of Oklahoma, Texas, California and the District of Columbia, as well as the United States Courts of Appeals for the Ninth, Tenth and Federal Circuits.

2. I served as the United States Attorney for the Northern District of Oklahoma from 1984 to 1987. I personally tried many cases and oversaw the trials of numerous other cases as a United States Attorney and, prior to my time as a United States Attorney, as an Assistant United States Attorney in California and Florida.

3. While serving as the United States Attorney for the Northern District of Oklahoma, I was nominated by President Reagan to serve as a District Judge for the Western District of Oklahoma, where I served from 1987 to 1991. While on the bench, I presided over more than 140 federal trials and sat by designation on the United States Court of Appeals for the Tenth Circuit. I also presided over cases in Texas, New Mexico and Colorado.

4. I left the federal bench in 1991 and joined Irell & Manella, where for 23 years I specialized in alternative dispute resolution, complex civil litigation and internal investigations. In 2014, I left Irell & Manella to found PADRE. For more than 25 years, I have devoted the majority of my professional life to serving as a mediator and arbitrator in connection with large, complex cases such as this one.

5. I have successfully mediated numerous complex commercial cases involving Fortune 500 and other publicly traded companies, including more than one hundred securities class action cases. I have mediated hundreds of disputes referred by private parties and courts and have been appointed as Special Master by various federal courts in complex civil proceedings. I serve as a Fellow in the American College of Trial Lawyers, and I have been nationally recognized as a mediator by the Center for Public Resources Institute for Dispute Resolution (“CPR”), serving on CPR’s National Panel of Distinguished Neutrals.

II. Negotiations Resulting in the Instant Settlement

6. The mediation process in this case, like the Litigation itself, was hard fought on all sides. The Settlement is the product of protracted arm’s-length negotiations among the parties in the Litigation (the “Parties”).

7. As described below, in addition to three in-person mediation sessions which took place over a period of several years, the mediation of this matter involved numerous teleconferences, emails and written submissions by the Parties.

8. In March 2017, the Parties participated in a full-day mediation session before me in New York. Prior to that mediation session, Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) for Lead Plaintiff, Debevoise & Plimpton LLP (“Debevoise”) for the MetLife Defendants and DLA Piper (“DLA”) for the Underwriter Defendants all provided me with extensive briefing on the then-current procedural history and factual status of the Litigation, as well as addressing liability, damages and risk exposures supported by legal and factual analysis. Among other things, I reviewed the Parties’ mediation statements and exhibits, including the Third Amended Complaint and the Court’s multiple orders granting in part and denying in part various motions to dismiss.

Members of my mediation support team attended the mediation session and assisted me in facilitating the Parties' negotiations and analyzing the legal and factual issues in this Litigation.

9. The initial mediation session was not successful as the Parties were far apart financially and maintained highly divergent views on the settlement value of the Litigation. However, I found the discussions engaged in by the Parties during the first mediation session to be extremely valuable in helping to understand the relative merits of each party's position and to identify the issues that were likely to serve as the primary drivers and obstacles to achieving a settlement.

10. While I am bound by confidentiality with regard to the content of the Parties' discussions and negotiations,¹ I can say that the arguments and positions asserted by all involved during this first mediation session were the product of detailed analysis and hard work, that they were complex, and that, while professional, they were highly adversarial.

11. Following the first mediation, I believed that efforts to settle this case would continue to be challenging as those involved continued to hold strong and vastly divergent views as to the relevant legal and substantive arguments, and that a resolution without further litigation seemed unlikely.

¹ All participants agreed that the entire mediation process was to be regarded as settlement negotiations under Rule 408 of the Federal Rules of Evidence, protecting disclosure made during such process from later discovery, dissemination, publication and/or use in evidence. By making this declaration, neither the Parties nor I waive in any way the provisions of this confidentiality agreement or the protections of Rule 408. While I cannot disclose the contents of the mediation negotiations, the Parties have authorized me to inform the Court of the procedural and substantive matters set forth herein to be used in support of Plaintiff's Motion for Final Approval of the Settlement. Thus, without in any way waiving the mediation privilege, I make this declaration based on personal knowledge.

12. On February 2, 2018, I convened a second in-person mediation session in New York with Robbins Geller, Debevoise and DLA in another attempt to negotiate a settlement. Little progress was made at the February 2, 2018 mediation as the Parties remained far apart.

13. On September 9, 2019, Robbins Geller, Debevoise and DLA met in in person for a third full-day mediation session before me, this time in California. While no settlement was reached, I continued to have regular dialogue with the Parties about their respective settlement positions.

14. On March 7, 2020, I made a “double-blind” Mediator’s Recommendation to certain of the parties to settle the Litigation, whereby each party’s response would remain confidential unless both sides accepted the Mediator’s Recommendation. The Mediator’s Recommendation required those parties to respond on or before March 12, 2020. I also continued to discuss the benefits of the Mediator’s Recommendation with those parties over the telephone while it was pending to assist each side in evaluating the merits of the proposed settlement.

15. On March 12, 2020, I informed the Parties that both sides had accepted the Mediator’s Recommendation, such that there was an agreement to settle the action for an \$84,000,000 cash payment for the benefit of the Classes.

16. As stated above, the mediation process is confidential. Without discussing specifics of the negotiations, the Mediator’s Recommendation reflected my assessment that \$84,000,000 was the most that Defendants collectively would pay and the least that Lead Plaintiff would accept to settle the Litigation at that time.

17. I was aware that between the initial mediation session in March 2017 and the Mediator’s Recommendation, the Parties had significantly developed the record and the Parties were waiting on rulings on motions for summary judgment and preparing for trial. It is my opinion

that at the time the Settlement was reached, the Parties had thoroughly developed the record and were keenly aware of their respective strengths, weaknesses and risks presented by continued litigation.

18. After presiding over the mediation process in this case, it is my professional opinion that the Settlement is the product of vigorous and independent advocacy and of arm's-length negotiations conducted in good faith by the Parties. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 28, 2021, at Carmel, California.



LAYN R. PHILLIPS
Former U.S. District Judge

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on February 1, 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Shawn A. Williams

SHAWN A. WILLIAMS

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Mailing Information for a Case 1:12-cv-00256-LAK City of Westland Police and Fire Retirement System v. Metlife, Inc. et al

Electronic Mail Notice List

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Thomas C. Michaud

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