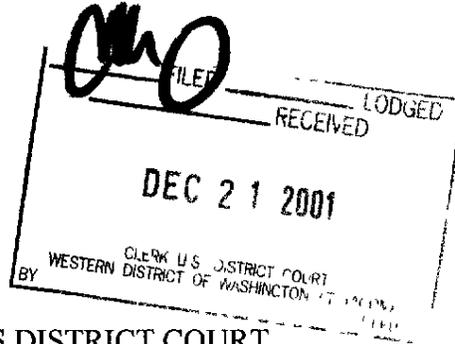




CV 00-5079 #61

THE HONORABLE ROBERT J BRYAN



UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v

ROBERT LARSON'S CHRYSLER PLYMOUTH OF TACOMA, INC , d/b/a ROBERT LARSON AUTOMOTIVE GROUP and LARSON MOTORS, INC ,

Defendant.

CIVIL NO C00-5079 RJB

JOINT MOTION RE: NOTICE

NOTE ON MOTION CALENDAR: January 11, 2002

I - RELIEF REQUESTED

COME NOW the parties and jointly move the court for an Order determining that the Settlement Fund Administrator provided adequate Notice of Settlement to potential claimants, and relieving the same of any further liability or responsibility for any further notification This Motion is made based upon the legal authorities cited herein, and the Declarations of The Honorable Judge Robert Peterson and Carol Giberson, and the records and files herein

II - SUMMARY OF THE FACTS

A Background

On January 24, 2001, the final Consent Decree and Order was entered in this case, resolving

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1 the action by the Equal Employment Opportunity Commission (EEOC) against the Robert Larson
2 Automotive Group ("Larson Group"). The Larson Group has agreed to pay all claims which shall
3 be determined by the Settlement Fund Administrator, pursuant to the claims resolution process, with
4 a limit of \$750,000.00 See Consent Decree, ¶ 20 The Consent Decree sets forth the procedure for
5 resolving claims presented by a certain class of individuals who claim to have been subjected to race-
6 based discrimination by the Larson Group.

7 With regard to the notice to be provided to potential claimants by the Settlement Fund
8 Administrator, the Consent Decree provided in pertinent part as follows

9 29 **Notification of Settlement/Claims Process** As soon as practicable
10 after receipt of the Potential Claimant list, the Settlement Fund Administrator shall
11 mail a Notice of Settlement (in the form of Exhibit A attached to this Decree) to all
12 Potential Claimants The Larson Group shall cooperate in the notification process,
including, among other things, providing to the Settlement Fund Administrator last
known addresses and telephone numbers of current and former African American
employees on the Potential Claimant list . .

13 If any Notice of Settlement mailed to a Potential Claimant is returned as
14 undeliverable, the Settlement Fund Administrator shall attempt to get updated
15 information in an effort to locate such Claimant, and a second mailing of the Notice
16 of Settlement will be made in such cases The second Notice of Settlement shall
follow the same procedure as outlined for the first mailing, and specifically state the
final postmarked date which will be accepted for completion and return of a Claim
Form

17 See Consent Decree and Order, ¶ 29 The Consent Decree also provides the following notification.

18 **ANY PERSON WHO HAS NOT COMPLETED AND MAILED A CLAIM**
19 **FORM BY THE 45 DAY POSTMARK DEADLINE SPECIFIED IN THE**
20 **NOTICES OF SETTLEMENT SHALL NOT BE ENTITLED TO RECEIVE**
21 **ANY MONETARY RELIEF UNDER THE CONSENT DECREE, AND**
22 **SHALL BE DEEMED, WITHOUT FURTHER ACT OR DEED BY ANY**
23 **PERSON OR THE COURT, TO BE INELIGIBLE FOR AND FOREVER**
24 **BARRED FROM RECEIVING ANY PAYMENT UNDER THIS CONSENT**
25 **DECREE.**

26 See Consent Decree and Order, ¶ 30 (emphasis in original)

III. EVIDENCE RELIED UPON

A Declaration of The Honorable Judge Robert Peterson

B Declaration of Carol Giberson

1 **IV. LEGAL AUTHORITY**

2 A **Due Process**

3 The Fourteenth Amendment requires that deprivation of life, liberty, or property by
4 adjudication must be preceded by notice and an opportunity to be heard. Due process requires
5 "notice reasonably calculated, under all the circumstances, to apprise interested parties of the
6 pendency of the action and afford them an opportunity to present their objections." *Mullane v*
7 *Central Hanover Bank & Trust Co*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950), *Duskin*
8 *v Carlson*, 136 Wash.2d 550, 557, 965 P.2d 611 (1998), U.S.C.A. Const. Amend. 14.

9 Due process does not require actual notice in all circumstances. *Martin v Meier*, 111
10 Wash.2d 471, 477, 760 P.2d 925 (1988) (citing *Wuchter v Pizzutti*, 276 U.S. 13, 19, 48 S.Ct. 259,
11 260-61, 72 L.Ed. 446, 57 A.L.R. 1230 (1928)).

12 In general, mail service is "an inexpensive and efficient mechanism" for providing notice,
13 involving a "relatively modest administrative burden[.]" *Mennonite Bd. of Missions v Adams*, 462
14 U.S. 791, 799, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983) (quoting *Greene v Lindsey*, 456 U.S. 444,
15 455, 102 S.Ct. 1874, 1881 (1982)). Washington courts have found mailed notice sufficient for due
16 process purposes even where it is not actually received. *Baker v Altmayer*, 70 Wash.App. 188, 851
17 P.2d 1257 (1993).

18 Court rules authorize service of pleadings and other documents by mail. Fed. R. Civ. Pro.
19 5(b) authorizes service upon a party by mailing to the party's last known address, service by mail
20 is complete upon mailing. Superior Court Civil Rule 5(b)(2)(A) provides "If service is made by
21 mail, the papers shall be deposited in the post office addressed to the person on whom they are being
22 served, with the postage prepaid."

23 For instance, a statute requiring that the administrator or executor of an estate mail notice of
24 their appointment, pendency of probate proceedings and the final report and petition for distribution
25 to each heir and distributee whose name and address is known to administrator or executor,
26 contemplates that heirs and distributees entitled to notice and includes those whose names and

1 addresses are ascertainable by the exercise of due diligence on part of administrator or executor, and
2 presupposes that a personal representative will make an earnest effort to determine who is lawfully
3 entitled to the estate *Hesthagen v Harby*, 78 Wn 2d 934, 481 P 2d 438 (1971)

4 B. Analysis.

5 In the present case, the Consent Decree provides that the Settlement Fund Administrator shall
6 mail a Notice of Settlement, in a specific form, to all Potential Claimants With regard to any
7 Notices returned as undeliverable, the Settlement Fund Administrator "shall attempt to get updated
8 information in an effort to locate such Claimant," and a second mailing will occur

9 The Settlement Fund Administrator, the Honorable Robert H Peterson, and his assistant,
10 Carol Giberson, have submitted declarations setting forth the notice that they provided to potential
11 claimants Potential claimants were identified by counsel for defendant Larson and the EEOC On
12 February 28, 2001, eighty-nine notices were sent out, with claim forms enclosed. Of those, twenty-
13 three were returned to Judge Peterson as undeliverable, either because the person had moved with
14 no forwarding address, or the forwarding order had expired. The Larson Group provided addresses
15 for 2 potential claimants, but those 2 notices were returned as undeliverable, for a total of 25
16 undeliverable notices. Of all the potential claimants who received notices, twenty have filed claims
17 and twenty separate hearing dates have been scheduled

18 Ms Giberson personally went to the post office to obtain more information about the 25
19 people who did not receive notices, however, the post office had no additional information Ms
20 Giberson also checked the telephone directory for names and addresses, with no success

21 Ms Giberson also performed a search on the Internet at the National Address Database She
22 also requested a "people search" on the Internet As a result of these searches, notices were able to
23 be mailed to ten of the 25 people whose prior notices had been undeliverable. Five of those ten
24 additional notices were not returned by the post office, and five notices were returned as
25 undeliverable.

26 Twenty people have therefore not received the claim forms that were mailed to them The

1 envelopes proving that the notices were undeliverable are in Judge Peterson's possession.

2 However, potential claimants may have received notice by other means. For instance, as
3 Judge Peterson points out in his declaration, there was a front-page article in the Tacoma News
4 Tribune about the settlement Order. The EEOC case was also well publicized at all of the Larson
5 dealerships in Pierce County. People who contacted the EEOC were given notices and claim forms.
6 Neither Judge Peterson, nor any staff at Judicial Arbitration and Mediation Services ("JAMS") has
7 been contacted by any of the twenty people who did not receive the mailed notices.

8 Counsel for the parties have agreed that the Settlement Fund Administrator has completed
9 the notice required by law and the Consent Decree. Because the total amount which may be awarded
10 is limited, individual awards cannot be determined until all claims have been submitted and resolved
11 pursuant to the hearing process outlined in the Consent Decree. *See* Consent Decree, ¶¶ 20, 31. The
12 parties therefore request that the Court approve of the notice provided and relieve the Settlement
13 Fund Administrator of further responsibility for notifying the twenty known people who did not get
14 the notice that was mailed to them, and any other individuals who claim not to have received notice,
15 so that the final claimants can be determined and their claims can be resolved.

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V. PROPOSED ORDER

A proposed Order accompanies this Motion

RESPECTFULLY SUBMITTED this 14th day of December, 2001.

Attorneys for Plaintiff

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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