

## NOTICE OF CLASS SETTLEMENT

*Cokely, et al. v. New York Convention Center Operating Corporation, et al.*  
Civil Action No. 00 Civ. 4637 (DAB) (AJP)

### NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND CONSENT DECREE

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**TO: ALL AFRICAN-AMERICAN AND HISPANIC PERSONS WHO ARE OR HAVE BEEN EMPLOYED AS FREIGHT HANDLERS, SHOW CARPENTERS OR PART-TIME HOUSEKEEPERS AT THE NEW YORK CONVENTION CENTER OPERATING CORPORATION FROM JULY 1, 1995 THROUGH MAY 24, 2006.**

***PLEASE READ THIS NOTICE CAREFULLY.  
THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS.***

The New York Convention Center Operating Corporation (“NYCCOC” or “Javits Center”), Gerald T. McQueen, Richard Powers and Alexander Tomaczuk (collectively “Defendants”) have agreed to settle a race and national origin discrimination Class Action lawsuit (hereinafter “the Action”) now pending in the United States District Court for the Southern District of New York in New York, New York. The lawsuit was brought by Plaintiffs David Cokely, Natasha Perez, Sean Hannah, and Julio Teran (the “Class Representative Plaintiffs”), all of whom were or are employed by the Javits Center as Freight Handlers, Show Carpenters or part-time Housekeepers. The Class Representative Plaintiffs brought this suit on behalf of themselves and all similarly situated Javits Center employees. The Class Representative Plaintiffs claimed that Defendants discriminated against African-American and Hispanic Freight Handlers, Show Carpenters and part-time Housekeepers by denying them equal work opportunities through a discriminatory work assignment process, maintaining and condoning a racially hostile work environment, disciplining employees in a discriminatory manner because of race or ethnicity, and retaliating against those who complained to management about discrimination. The lawsuit also included claims by Individual Plaintiffs Dennis Crowley, Robert Iadarola and Daniel Perrella, who alleged that they were retaliated against for opposing Defendants’ purportedly discriminatory conduct. The Plaintiffs and Defendants have agreed to settle this lawsuit as provided in a Consent Decree (sometimes “the Decree”) and a Stipulation of Settlement (collectively, the “Settlement Agreement”).

THIS NOTICE IS PROVIDED PURSUANT TO RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND THE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK TO INFORM YOU OF:

- THE STATUS OF THE LAWSUIT, INCLUDING A STATEMENT OF YOUR RIGHTS WITH RESPECT TO A PROPOSED SETTLEMENT OF THE CASE;

- THE OPPORTUNITY TO FILE A CLAIM FOR A PAYMENT FROM THE COMPENSATORY DAMAGES FUND;
- THE OPPORTUNITY TO OPT OUT OF THE DAMAGES ASPECT OF THE CASE;
- THE OPPORTUNITY TO FILE WITH THE COURT ANY OBJECTIONS YOU MAY HAVE TO THE SETTLEMENT; AND
- THE HEARING TO APPROVE THE SETTLEMENT (“SETTLEMENT HEARING” OR “FAIRNESS HEARING”)

1. **The Affected Class**

The Settlement Class is defined as:

All African-American and Hispanic persons who are or have been employed as Freight Handlers, Show Carpenters or part-time Housekeepers at the Javits Center at any time between July 1, 1995 and May 24, 2006.

If you are included in the Settlement Class defined above, the proposed settlement may affect your rights. Additionally, you may be entitled to receive the benefits of the proposed settlement, including an individual monetary award.

2. **Reasons for Settlement**

After extensive discovery and negotiations, the Class Representative Plaintiffs, Individual Plaintiffs, and the attorneys for the Class (Milberg, Weiss, Bershad & Schulman LLP and Leeds, Morelli & Brown, P.C.) (“Class Counsel”) have concluded that the best interests of the Settlement Class will be served by a settlement of the Class Action (notwithstanding their belief that the claims asserted in the case have merit) because a trial of the claims asserted in the Action would involve sharply disputed issues of fact and credibility whose resolution by a jury would be uncertain, and any judgment obtained after trial would be subject to an appeal and to the risk of reversal. Moreover, the Class Representative Plaintiffs, Individual Plaintiffs, and their attorneys, Class Counsel, believe that the terms and conditions of the settlement are fair, reasonable, adequate, and in the best interests of the Settlement Class and the Individual Plaintiffs. In reaching this conclusion, Class Counsel has analyzed the benefits of the settlement, the risk of an unfavorable outcome in the litigation of this case, as well as the expense and length of continued proceedings necessary to prosecute this action through a trial and possible appeals.

Defendants do not admit any wrongdoing or liability by entering into this settlement, and have agreed to these settlement terms because they wish to avoid further costly, disruptive, and time-consuming litigation and wish to obtain complete and final settlement of the claims of the Class Representative Plaintiffs, Individual Plaintiffs, and Settlement Class Members.

Accordingly, the Class Representative Plaintiffs, Individual Plaintiffs, Class Counsel, and Defendants, after lengthy and vigorous negotiations, have agreed that the Class Action should be settled, conditioned upon the approval of the Court.

### **3. Terms of Proposed Settlement**

#### **(1) Equitable Relief**

Subject to final Court approval, and following the Effective Date of the Consent Decree, the Class Representative Plaintiffs, Individual Plaintiffs, and Defendants have agreed to the entry of an Order that requires the NYCCOC to do the following for a period of three years:

- (a) Together with Class Counsel, select an independent outside Monitor, to be paid for by Javits, to oversee NYCCOC's implementation of the relief set forth in the Decree. The Monitor will report to the NYCCOC's management and Class Counsel concerning the successful implementation of the Decree. Following the Effective Date of the Consent Decree, the Monitor will review annual and quarterly statistical reports measuring racial variances, if any, in work assignments, pay rates, and overtime for non-list freight handlers and carpenters, and submit an annual report to the Court detailing the NYCCOC's progress in implementing the Consent Decree. The Monitor will also investigate any statistical variances, and has the power to require the NYCCOC to pay appropriate back-pay to adversely affected employees, and to effectuate other remedies, including recommendations that management be sanctioned;
- (b) Create a new Committee of the Javits Center Board of Directors – the EEO Oversight Committee – to monitor the terms of the Decree and review quarterly and annual reports regarding the NYCCOC's implementation and compliance with the terms of the Consent Decree. This Committee is empowered to deny salary increases and bonuses, as appropriate, to senior management found to be in violation of the Decree;
- (c) Create the new position of EEO Compliance Manager within the Javits Center's Legal Department. The EEO Compliance Manager will develop procedures to ensure that work opportunities, work call procedures, shaping, and overtime procedures are free from bias and unlawful discrimination. As part of his or her job function, the Compliance Manager will oversee the collection and maintenance of comprehensive employment data related to work calls, call-backs, Hi-Lo assignments, overtime, hours, and earnings for the purpose of statistical monitoring. He or she will conduct investigations of allegations of harassment, discrimination, and/or retaliation. The EEO Compliance Manager will also update and continue anti-discrimination, anti-harassment, diversity, and sensitivity training for officers, managers and employees, and will develop and implement anti-discrimination, anti-harassment, diversity, and sensitivity training for show contractors at the NYCCOC;

- (d) Together with Class Counsel, select a qualified Statistician experienced in labor economics, to be paid for by Javits, to conduct a statistical analysis and monitoring program to ensure equal employment opportunities and a non-discriminatory work assignment process. As part of the program, the Statistician will produce reports measuring racial variances in work assignments, pay rates, and overtime for freight handlers and carpenters on a quarterly and annual basis, utilizing multivariate analysis techniques;
- (e) Reinforce and re-publicize the Center's anti-discrimination, anti-harassment, and anti-retaliation policies and develop procedures for effectively enforcing them against contractors' employees. The Javits Center and the unions will put in place a new expedited grievance arbitration procedure, which will be available for certain types of disciplinary matters;
- (f) Provide anti-discrimination, diversity and sensitivity training to all managers, foremen, supervisors, and non-supervisory employees. Such training will also be provided to all newly-hired managers, foremen, supervisors, and non-supervisory employees within one hundred twenty (120) days of their hire or appointment;
- (g) Clarify in writing that housekeepers may apply for employment in other crafts, but if the application for other employment at Javits is accepted, the successful applicant(s) must relinquish their housekeeping positions;
- (h) Promote ten qualified minority part-time housekeepers to full-time status within sixty (60) days of the Effective Date of the Decree. Thereafter, promote five additional part-time housekeepers to full-time status over the term of the Decree;
- (i) Commit \$300,000 annually for medical benefits for eligible part-time housekeepers, subject to negotiations with their union representative; and
- (j) Provide guarantees of a sufficient number of work calls that will result in the opportunity to earn no less than \$50,000 annually for the Term of the Decree, to a significant number of Black and Hispanic freight handlers who were hired by the NYCCOC in 1995.
- (k) Maintain records related to the implementation of the Decree.

(2) **Monetary Payments**

Defendants have agreed to establish a Settlement Fund of \$8,400,000.00 (Eight Million Four Hundred Thousand Dollars) to satisfy and in full settlement of all claims of the Individual Plaintiffs, Class Representative Plaintiffs, and eligible Settlement Class Members, and to satisfy and in full settlement of all claims for attorneys' fees, costs and expenses. From the Settlement Fund, \$975,000.00 (Nine Hundred Seventy-Five Thousand Dollars) will be allocated to pay the claims of Class Representative Plaintiffs David Cokely, Sean Hannah, Natasha Perez, and Julio Teran, and Individual Plaintiffs Dennis Crowley, Robert Iadarola, and Daniel

Perrella, in full settlement of their claims in this action. The Class Representative Plaintiffs and Individual Plaintiffs provided services and undertook risks-in prosecuting this Litigation, such as by assisting with discovery, providing affidavits, identifying witnesses, and giving deposition testimony, warranting an allocation from the Settlement Fund reflecting the value of their services, as well as the extent of harm, distress, and economic loss each suffered. Class Representative Plaintiffs and Individual Plaintiffs will not be eligible for any awards from the Back Pay/Front Pay Funds and/or the Compensatory Damages Fund (see below).

Black and Hispanic Plaintiffs (not including the Class Representative Plaintiffs) who were named as Plaintiffs in the original complaint filed June 22, 2000 will each receive an award of \$10,000 for services s/he has provided to the Class, the risks s/he has taken on behalf of the Class, and the work opportunities s/he has missed by virtue of the time spent providing such services to the Class. Black and Hispanic Plaintiffs (not including the Class Representative Plaintiffs or Plaintiffs who sued individually pursuant to the original complaint filed June 22, 2000) who were added as Plaintiffs in the first amended complaint filed in January 2002 will each receive an award of \$5,000 for services s/he has provided to the Class, the risks s/he has taken on behalf of the Class, and the work opportunities s/he has missed by virtue of the time spent providing such services to the Class. The receipt of these awards will not preclude the Settlement Class Member from receiving an award from the Back Pay/Front Pay Funds and/or the Compensatory Damages Fund.

The remainder of the Settlement Fund (less Opt-Out Credits and Attorneys' Fees, Costs and Expenses, see below) will be allocated to the Class Monetary Fund and will be used: (i) to pay Back Pay/Front Pay awards to eligible Settlement Class Members; and (ii) to pay Compensatory Damages claims to eligible Settlement Class Members who submit Claim Forms and Releases determined by the Claims Administrator to be timely, complete, and otherwise valid (hereinafter "Qualified Claimants").

A total of \$1,800,000.00 (One Million Eight Hundred Thousand Dollars) will be allocated to the Back Pay/Front Pay Funds, in order to compensate Settlement Class Members who are "Regular Employees" and who, Plaintiffs allege, were paid less than similarly situated Caucasians. The Back Pay/Front Pay Funds will be allocated as follows:

- \$900,000.00 (Nine Hundred Thousand Dollars) shall be allocated to the Freight Handler Fund A, to be distributed among eligible freight handlers hired in 1995;
- \$300,000.00 (Three Hundred Thousand Dollars) shall be allocated to the Freight Handler Fund B, to be distributed among eligible freight handlers hired after 1995; and
- \$600,000.00 (Six Hundred Thousand Dollars) shall be allocated to the Carpenters Fund, to be distributed among eligible journeymen carpenters.

Freight Handlers and Journeymen Carpenters are eligible to receive awards for Back Pay/Front Pay for each year in which they were “Regular Employees” (worked at least 1 show each quarter of the calendar year or at least 200 hours in the calendar year). If a Freight Handler was on the Preference List for any period during a calendar year, s/he shall not qualify for a Back Pay/Front Pay award for that year. Back Pay/Front Pay awards shall be calculated in accordance with the terms of the Consent Decree.

The remainder of the Class Monetary Fund, approximately \$2,000,000 (Two Million Dollars), shall be used to satisfy Settlement Class Members’ claims for compensatory damages for claims of race discrimination (but not including claims that work assignments were made on a racially disparate basis, which are compensated out of the Back Pay/Front Pay Funds), including retaliation, disparate discipline and hostile work environment. All Freight Handlers, Show Carpenters and part-time Housekeepers who have not timely opted-out of the Settlement Class for purposes of participation in the Compensatory Damages Fund and who submit a Claim Form and General Release determined by the Claims Administrator to be timely, complete and otherwise valid (hereinafter “Qualified Claimant”) are eligible to receive compensation from the Compensatory Damages Fund. On the basis of a review of the information supplied in each Claim Form and General Release, the Claims Administrator will allocate a certain number of Points to each Qualified Claimant, who will then be paid his or her proportionate share of the Compensatory Damages Fund. Points are determined based upon the number and severity of documented incidents of race discrimination and retaliation, including disciplinary terminations and suspensions that happened after a complaint of discrimination. The exact individual monetary award for each Qualified Claimant will be determined by the claims procedure, eligibility requirements, the nature and extent of an individual’s claims, the number of valid claims submitted, and other limitations set forth in the Consent Decree. For eligible Settlement Class Members, a Claim Form and General Release and Explanation of Claims Procedure are included with this Notice.

This relief will be in final settlement of all claims of the Class Representative Plaintiffs, the Individual Plaintiffs, and Settlement Class Members against the NYCCOC, Gerald McQueen, Richard Powers and Alexander Tomaczuk for alleged employment discrimination on the basis of race or national origin, harassment on the basis of race or national origin or retaliation that were raised or could have been raised in this case through the Final Approval Date or Effective Date as set forth in the Consent Decree.

#### **4. Filing a Claim for an Award from the Compensatory Damages Fund**

Eligible Class Members will automatically receive their share of the Back Pay/Front Pay Funds relating to their past work assignments that were alleged to have been made on a discriminatory basis. If you wish to be considered for an award from the Compensatory Damages Fund because you believe that you were retaliated against or subjected to discrimination at the workplace (other than with respect to work assignments), you must complete the enclosed Claim Form and General Release, sign and date it under penalty of perjury, and return it to *Cokely, et al. v. NYCCOC, et al. Claims Administrator*, P.O. Box 1638, Tallahassee, Florida 32302-1638, received no later than September 13, 2006. If your claim form is not received by September 13, 2006, you will not be eligible to receive any payment from the Compensatory Damages Fund.

## 5. Opt-Out Procedure

Settlement Class Members have a limited right to opt-out to preserve their ability to sue for damages (such as for compensation for pain and suffering) in other lawsuits. Once the Settlement Agreement is approved, even if a Class Member has exercised his right to opt-out, he or she cannot sue the defendants in other lawsuits for equitable relief, which includes for back pay and front pay. Settlement Class Members may exclude themselves, or opt-out, of the damages aspect of the case by mailing a written notice of intent to opt-out (“Opt-Out Statement”) to the Claims Administrator, *Cokely, et al. v. NYCCOC, et al. Claims Administrator*, P.O. Box 1638, Tallahassee, Florida 32302-1638. Opt-Out Statements must be POSTMARKED by **July 26, 2006**.

If you Opt-Out, you will lose your eligibility to receive payment from the Compensatory Damages Fund. In order to be valid, the Opt-Out Statement *must* include certain identifying information, as well as your affirmative provision of certain substantive information. First, the written Opt-Out Statement must indicate the Settlement Class Member’s full name, address, Social Security Number, and day and evening telephone numbers and the following language:

I understand that I am requesting to be excluded from the class monetary settlement for the purposes of receiving Compensatory Damages as part of any payment from the Settlement Fund contributed to by the NYCCOC pursuant to the Consent Decree and by the Individual Defendants pursuant to the Stipulation of Settlement. Therefore, I will receive no money from the Compensatory Damages Fund created under the Consent Decree. I understand that if I am excluded from the class monetary settlement for the purposes of receiving Compensatory Damages, I may bring a separate legal action seeking compensatory damages, but may receive nothing or less than what I would have received if I had filed a claim under the class monetary settlement procedure in this case. I also understand that I may not seek exclusion from the class with respect to my participation in the Back Pay/Front Pay Funds or for injunctive relief, and that I am bound by the injunctive and Back Pay/Front Pay provisions of the Consent Decree entered into by NYCCOC.

Second, to be valid, the Settlement Class Member must provide certain information in the Opt-Out Statement including information as to (1) whether you were ever suspended or terminated from employment at the Javits Center; (2) if "yes", whether you filed a written complaint with the Javits Center or any of its Directors or Managers *before* you were suspended or terminated; and (3) if the answer is "yes", you must indicate the approximate date that you filed the written complaint and indicate the name of the person to whom your written complaint was directed. The information you provide in your Opt-Out Statement assists the Claims Administrator in determining the appropriate amount of credit to be deducted from the Compensatory Damages Fund.

In addition, a Settlement Class Member submitting an Opt-Out Statement shall sign and date the Statement and mail it to the Claims Administrator so that he receives the Statement at least 13 days prior to the scheduled Fairness Hearing in order to be valid. Upon receipt of

an Opt-Out Statement, the Claims Administrator may request that a Settlement Class Member provide additional information in order to evaluate the Opt-Out Statement, and such Settlement Class Member shall timely respond to the request within 5 days. Failure to submit a valid Opt-Out Statement or to timely respond to a request for additional information shall result in the Class Member being included in the Settlement Class for all purposes.

**6. Objections to the Consent Decree and Stipulation of Settlement**

If you believe that the proposed Settlement Agreement should not be finally approved by the Court for any reason, you may object to it. If you want to object, you must file a written Objection stating the basis of your objection and the specific provision(s) of the Consent Decree and Stipulation of Settlement to which you object with the Claims Administrator on or before **July 26, 2006**. You may also appear at the Fairness Hearing to be held on **August 15, 2006 at 4:00 pm** at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007 to have your Objection heard by the Court, but Objections not previously filed in writing will not be considered. Any attorney who intends to represent an individual objecting to the Settlement Agreement must file a notice of appearance with the Court and serve counsel for all parties (see names and addresses in paragraph 12 below) on or before **July 26, 2006**. All Objections or other correspondence must state the name and number of the case, which is *Cokely, et al. v. NYCCOC, et al.*, 00 Civ. 4637 (DAB) (AJP).

**7. Attorneys' Fees and Litigation Costs and Expenses**

Class Counsel may apply to the Court for an award in an amount not to exceed Three Million Dollars (\$3,000,000.00) in full payment of attorneys' fees, costs, and litigation-related expenses incurred by Class Counsel in this Litigation inclusive of work performed and attorneys' fees and costs incurred in connection with this Decree and related work as may be necessary during the Term of this Decree. Defendants do not oppose Class Counsel's application. Class Counsel will be required to establish to the Court's satisfaction their right to this award.

**8. Binding Effect**

The proposed Consent Decree, if finally approved by the Court, will be binding for all purposes on all Members of the Settlement Class who have not opted out pursuant to the procedures specified in Paragraph 5 above, and will bar any such person who is a Member of the Settlement Class from seeking relief in any lawsuit from the NYCCOC, Gerald McQueen, Richard Powers or Alexander Tomaczuk, other than the relief provided for in the Consent Decree, for all claims that were or could have been asserted in the Initial Complaint or any of the Amended Complaints, including the Second Amended Class Action Complaint, against Gerald McQueen, Richard Powers, Alexander Tomaczuk, their heirs, administrators, executors, estates or assigns, and/or the NYCCOC and any of its past, present or future parent entities, partners, subsidiaries, affiliates, divisions, employee benefit and/or pension plans or funds, successors and assigns and any of its or their past, present or future directors, officers, attorneys, agents, trustees, administrators, employees, or assigns (whether acting as agents for the NYCCOC or in their individual capacities). For any Class Member who has opted out and thereby excluded himself or herself from the damages

portion of the case pursuant to the procedures specified in Paragraph 5 above, s/he will be permitted to seek damages relief in other lawsuits, but will be bound by all other provisions of the Decree. Once the Settlement Agreement is approved, no Class Member can sue the Defendants for back pay or front pay, which is a form of equitable relief, even if s/he has opted out of the damages portion of the case.

**9. Additional Considerations**

Completion of the Settlement is subject to a number of terms and conditions, which includes, among other things, acceptance and approval by the Court of a provision certifying the Settlement Class under Rule 23(b)(2) of the Federal Rules of Civil Procedure. On May 18, 2006 in the United States District Court for the Central District of California (Los Angeles), Milberg Weiss Bershad & Schulman was named as a defendant in an indictment based on allegations that are unrelated to the present case. The firm has publicly stated that it is innocent and intends to fight the charges.

**10. If the Consent Decree Is Not Approved**

If the Consent Decree and Stipulation of Settlement are not finally approved by the Court, the conditional settlement will be voided, no money will be paid, and litigation of the case will continue. However, if that happens there is no assurance: (a) that the litigation will result in a judgment favorable to the Class; (b) that a favorable judgment, if any, will be as favorable to the Class as this settlement; or (c) that any such favorable judgment will be upheld on appeal.

**11. Address Changes**

It is your responsibility to keep the Claims Administrator updated with your address. If you do not inform the Claims Administrator of any address corrections or changes, any potential entitlement you may have to receive a monetary award may be forfeited. Please sign and mail or e-mail any change of address along with your Social Security number, date of birth, former address and new address to: *Cokely, et al. v. NYCCOC, et al. Claims Administrator*, P.O. Box 1638, Tallahassee, Florida 32302-1638 or [info@jjccsettlement.com](mailto:info@jjccsettlement.com).

**12. Class Counsel, Counsel for the Individual Plaintiffs, and Counsel for Defendant**

Counsel for Parties are:

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**13. Further Information**

The very brief and general summary of the proposed Consent Decree and Stipulation of Settlement in this Notice does not include all of the terms and conditions of the proposed settlement. The only complete statement of the terms and conditions of the proposed settlement is found in the actual Consent Decree and Stipulation of Settlement that the Court has provisionally approved. Copies of the proposed Consent Decree and Stipulation of Settlement are available for inspection or copying at your expense at the Office of the Clerk of the United States District Court for the Southern District of New York at the address shown in paragraph 6, or at [www.jjccsettlement.com](http://www.jjccsettlement.com)

If you have any questions about the settlement, including the process for filing a claim for a monetary award, you may call or write *Cokely, et al. v. NYCCOC, et al. Claims Administrator*, P.O. Box 1638, Tallahassee, Florida 32302-1638, (866) -854-8531.

Dated: May 25, 2006

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK