

Board of Trustees of the City of Lake Worth Employees' Retirement System, et al., v. Merrill Lynch, Pierce, Fenner & Smith Inc.

COURT: United States District Court for the Middle District of Florida
CASE NUMBER: 3:10-cv-845-TJC-MCR
CASE TEAM: John J. Mills

Class action brought by Plaintiffs, the respective Boards of Trustees of the City of Lake Worth Employees' Retirement System, the City of Lake Worth Police Officers' Retirement System and the City of Lake Worth Firefighters' Pension Trust Fund (collectively, the "Plaintiff Plans") against defendant Merrill Lynch Pierce Fenner & Smith Inc. ("Merrill Lynch" or "Defendant").

Plaintiffs alleged that Merrill Lynch breached its fiduciary duties to the Plaintiff Plans and to all other Florida public employee retirement benefit plans for which Merrill Lynch and Merrill Lynch Financial Advisor Michael Callaway or any other member of the Callaway Team provided Consulting Services during the Class Period (collectively, with the Plaintiff Plans, the "Plans") by, among other things, (a) entering into fee arrangements with the Plans – and with certain third parties (such as mutual fund companies) who provided services to the Plans – that placed Merrill Lynch's financial interests ahead of the Plans' interests and compromised Merrill Lynch's role as an "independent" advisor to the Plans, and (b) failing to utilize the full panoply of Merrill Lynch's manager selection and retention resources (including the full panoply of manager research and analysis services available through Merrill Lynch's offices in New Jersey) for the benefit of the Plans.

Plaintiffs alleged that the Plans suffered losses as a result of Merrill Lynch's breaches of its fiduciary duties, and demanded that Merrill Lynch disgorge all benefits, compensation, or other value it received in connection with the provision of Consulting Services to the Plans or the investment of the Plans' assets during the Class Period.

The Class consists of all Plans for which Merrill Lynch and Merrill Lynch Financial Advisor Michael Callaway or any other member of the Callaway Team provided Consulting Services during the period from July 1, 2000, through and including June 30, 2008 (the "Class Period"), or any portion thereof, but excluding all such Plans that had brought separate arbitration or litigation proceedings against Merrill Lynch or any member of the Callaway Team on or before December 14, 2011.

On May 31, 2011, the Court entered its Order and Opinion denying Defendant's Motion to Dismiss. Thereafter, the parties commenced discovery, which has included (*inter alia*) Plaintiffs' review of over two million pages of documents and the taking or defending of a half-dozen depositions.

On December 8, 2011, the parties participated in a mediation conference under the auspices of Judge Herbert Stettin (ret.). After a full day of negotiations, the parties reached an agreement in principle to settle the case for a payment of \$8.5 million (plus an additional \$1,000 contribution by Defendant to cover the costs of notice of the proposed settlement) in exchange for a release of all claims.

On March 23, 2012, the parties executed the Stipulation and Agreement of Settlement setting forth the terms of the proposed settlement. On April 24, 2012, the Court entered the Order Preliminarily Approving Settlement and

Providing for Notice, which preliminarily approved the proposed settlement and directed that the Notice of the settlement be provided to the Class Member Plans. On July 30, 2012, the Court entered the Judgment granting final approval of the settlement.

Case Documents

- July 30, 2012 - Judgment Approving Class Action Settlement
- June 22, 2012 - Joint Declaration in Support of Motion for Final Approval of Settlement and Approval of Plan of Allocation and Motion for Attorneys' Fees and Reimbursement of Expenses
- June 22, 2012 - Plaintiffs' Counsel's Motion for an Award of Attorney's Fees and Reimbursement of Litigation Expenses and Incorporated Memorandum of Law
- June 22, 2012 - Plaintiffs' Motion for Final Approval of Settlement and Approval of Plan of Allocation and Incorporated Memorandum of Law
- May 15, 2012 - List of Class Member Plans
- May 15, 2012 - Notice of (I) Pendency and Proposed Settlement of Class Action, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Expenses
- March 23, 2012 - Stipulation and Agreement of Settlement
- May 31, 2011 - Order and Opinion Denying Defendant's Motion to Dismiss
- July 16, 2010 - Class Action Complaint