

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

STEPHEN ADAMS, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 90-162C
	)	and Consolidated Cases
THE UNITED STATES,	)	(Judge Lynn J. Bush)
	)	
Defendant.	)	

**JOINT STATUS REPORT**

Pursuant to the Court’s Order of May 31, 2011, defendant respectfully submits the following joint status report on behalf of all parties. Counsel for the parties have conferred regarding the filing of this document, and counsel for plaintiffs have authorized counsel for defendant to state that plaintiffs concur in the contents of this status report.

1. The parties have conferred and continue to confer with regard to various remaining matters in this litigation.

2. On June 1, 2011, the parties signed a partial settlement agreement settling all outstanding claims of 1608 plaintiffs, inclusive of claims for attorney fees, costs, and expenses, and settling all claims of all other plaintiffs for attorney fees, costs, and expenses, except for fees and expenses incurred in connection with claims that have not yet been resolved. Stipulations of dismissal based upon this settlement were filed with the court on June 2 and June 22, 2011. This settlement resolves all outstanding Fair Labor Standards Act (“FLSA”) claims in these consolidated actions arising from plaintiffs’ employment as GS-9 through GS-13 criminal investigators, except for the claims of certain plaintiffs who also assert certain other claims that have not yet been resolved, and except for the claims of certain plaintiffs arising from employment at the Immigration and Naturalization Service and the Federal Law Enforcement Training Center. There remain 715 plaintiffs with claims that have not yet been resolved.

3. As stated in previous joint status reports, plaintiffs' counsel provided Government counsel a list of GM-13 plaintiffs who they believe should not have been classified as FLSA-exempt, and Government counsel forwarded the list to the agencies involved to ascertain whether, despite these plaintiffs' GM designation, they were non-managerial and did not perform exempt duties. The Government believes, based upon the information developed thus far, that most if not all of these plaintiffs were properly treated as exempt while in GM-13 positions, based upon the duties of these positions. The Government had provided plaintiffs' counsel with an explanation and certain documents underlying this conclusion, including plaintiff-specific information. The parties continue to discuss this issue.

4. As previously reported, by letter dated April 28, 2010, plaintiffs' counsel proposed terms for settling claims for alleged underpayment of Administratively Uncontrollable Overtime by the Defense Criminal Investigative Service, and the Government counsel responded to this proposal by letter dated June 3, 2010. With few exceptions, these claims have since been subsumed under the settlement described in paragraph 2, above. Since the filing of the parties' last joint status report, the parties have not further discussed the few exceptions.

5. By letter dated October 13, 2010, plaintiffs' counsel presented a settlement proposal with respect to the claims of approximately 50 plaintiffs who worked for the Office of Personnel Management ("OPM") as Series 1810 background investigators. Since the filing of the parties' last Joint status report, counsel for the parties have further discussed various particulars of this proposal, and intend to continue discussing this matter.

6. By letter dated June 6, 2011, defendant responded plaintiffs' April 28, 2011 letter, in which plaintiffs conveyed a settlement proposal concerning the claims asserted by approximately

60 plaintiffs arising from their transfer to Opa Locka Airport upon the closing of Homestead Air Force Base following Hurricane Andrew. Plaintiffs are reviewing this response.

7. Other claims and issues that are under discussion between the parties include the following:

- a. Technicians and other plaintiffs in non-1811 positions at the Department of Homeland Security and the Drug Enforcement Administration
- b. Sunday premium
- c. Michael Banas - Defense Security Service Background Investigator and Customs Import Specialist
- d. Erroneous withholdings from deceased plaintiffs
- e. USSS1802 (Randy Espinoza, Scott Curtis, and Tom Radtke).

Certain previous joint status reports indicated that the claims of another Series 1802 Secret Service plaintiff, John P. Connelly, were also under discussion. As stated in the parties' last Joint status report, however, defendant has concluded that all of the claims pleaded by plaintiff Connelly have been resolved. At all relevant times, plaintiff Connelly occupied position at grade GS-8, and, as such, was treated by the Government as covered by the FLSA. His complaint does not allege overtime claims for his time in this positions, except for a so-called *Lanehart* claims, which was settled in November 1994. Plaintiffs contend that plaintiff Connelly is owed overtime for the period when he was a GS-8. The parties have not discussed plaintiff Connelly's claim since the filing of the last joint status report.

8. The parties propose that they submit a joint status report on or before September 12, 2011, to apprise the Court of the status of the resolution of the above-discussed matters.

Respectfully submitted,

TONY WEST  
Assistant Attorney General

JEANNE E. DAVIDSON  
Director

**s/Todd M. Hughes**  
TODD M. HUGHES  
Deputy Director

**Filed electronically**

**s/Shalom Brilliant**  
SHALOM BRILLIANT  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
Department of Justice  
1100 L Street, N.W.  
Attn: Classification Unit  
8th Floor  
Washington, D.C. 20530  
Telephone: (202) 616-8275  
Facsimile: (202) 305-7643

Attorneys for Defendant

~~June~~ July  
27, 2011