

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES SINES and FELIX WILLIAMS,
Individually, and as Class Representatives, on Behalf
of All Others Similarly Situated,

Plaintiffs,

-against-

NOTICE TO CLASS MEMBERS

SERVICE CORPORATION INTERNATIONAL,
and its majority held, dominated, controlled and
consolidated subsidiary corporate and partnership
entities in the State of New York, including,
but not limited to, SCI MANAGEMENT L.P.,
SCI FUNERAL SERVICES INC., SCI
FUNERAL SERVICES OF NEW YORK, INC.,
and NEW YORK FUNERAL CHAPELS, INC.,

**CIVIL ACTION NO.
03 CV 5465 PKC**

Defendants.
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**TO ALL PERSONS WHO HAVE BEEN EMPLOYED, AT ANY TIME FROM
JULY 23, 1997, TO THE PRESENT, BY ANY FUNERAL HOME THEN OWNED
IN WHOLE OR PART BY ANY DEFENDANT**

**This Notice may affect your rights. You should read it carefully. The deadline for
filing a claim form, for filing an objection, or for opting out of the class and collective
action, is April 3, 2006.**

This case was filed as a class action under Federal court rules for claims under the New
York Labor Law ("NYLL"), and a "collective action" for claims under the Fair Labor Standards
Act ("FLSA"). The parties have reached a settlement of all claims of both kinds. The terms of
the settlement are set forth in the attached proposed Consent Decree.

In a class action or collective action, some persons sue the defendant about a practice that
is claimed to affect a larger number of persons, and seek relief for class members without class
members having to file their own lawsuits.

**You may or may not be included in the class. See the discussion below. If you are
on the list to receive money, you MUST file a claim form, provide and verify your complete
Social Security number, and either give it to Mr. Seymour at a meeting or get it to the
Claims Administrator as quickly as possible. The deadline is April 3, 2006.**

**Plaintiffs alleged the class claims described below. Defendants have either denied
engaging in them, or have asserted that the practices were lawful. To avoid the time,**

expense, and risk of further litigation, these claims have been settled in the proposed settlement:

1. Defendants paid flat or “menu” rates for particular services when they were performed outside of normal working hours, without basing the payment on the time spent on each particular occasion by the employee performing the task. Plaintiffs alleged that this violated the law on payment of overtime based on the time spent, for services performed in excess of forty hours per week. Defendants alleged that this was lawful.
2. When employees worked more than forty hours a week and earned bonuses, trip fees, pallbearer fees, and clergy services fees, defendants paid time and a half for the time spent but did not pay any additional amount for the fees earned after the employees had worked forty hours in the week. Plaintiffs alleged that this was a partial failure to pay overtime for work in excess of forty hours a week. Defendants alleged that their pay practices were lawful.
3. There were instances in which defendants paid for overtime worked in one week of a pay period as if some or all of it had been worked in the other week of the pay period, with the effect of reducing the overtime paid to employees. Plaintiffs and defendants disagree on how widespread this practice was, and whether it was due to innocent mistakes. Plaintiffs and defendants agree, however, that the cost of examining all pay records to pin down all such discrepancies would probably be greater than the amount of money involved.
4. There were instances in which defendants paid employees for less time than the approved payroll records showed the employees worked. Plaintiffs and defendants disagree on how widespread this practice was, and whether it was due to innocent mistakes. Plaintiffs and defendants agree, however, that the cost of examining all pay records to pin down all such discrepancies would probably be greater than the amount of money involved.
5. Plaintiffs alleged that defendants failed to keep adequate records of time worked by employees. Defendants have not admitted any such failures. Plaintiffs and defendants agree, however, that it is desirable to upgrade defendants’ timekeeping systems so as to avoid any future problems and such modifications have been made by defendants.

Defendants are free to change their system of paying employees for overtime work, are free to pay more for overtime work than the law requires, and where there is a labor union are free to bargain with the union over such changes, as long as all payments for time in excess of forty work hours per week are (a) based on the actual time spent, and (b) are paid in a manner consistent with the regulations of the U.S. Department of Labor at a rate at least 1.5 times the employee’s regular rate of pay.

Defendants are free to pay additional amounts for particular services such as bonuses, trip fees, pallbearer fees, and clergy services fees in addition to payments for time,

and where there is a labor union are free to bargain with the union over such payments, as long as the payments conform to the Consent Decree and Federal and State law.

The Court has not expressed any view about the merits of the case. The Court has provisionally certified the class and provisionally approved the collective action.

Defendants do not admit any violation of the law, have denied that the case has any merit, and have denied that this case should be treated as a class action or collective action. If the settlement is not finally approved, the parties will litigate these issues and a jury will determine the merits.

The settlement includes both injunctive relief and monetary relief. The monetary relief consists of \$3.75 million in back pay, liquidated damages, and interest, and \$ 700,000 to be paid by defendants towards plaintiffs' attorneys' fees and expenses, for a total of \$4.45 million.

The parties negotiated the amount of \$700,000 to be paid by defendants towards plaintiffs' attorneys' fees and expenses after plaintiffs and defendants had already reached agreement on the \$3.75 million in back pay, liquidated damages, and interest.

Counsel for plaintiffs will ask the Court to award their attorneys' fees and expenses as 30% of the total \$4.45 million recovery, which would amount to \$1,335,000. After subtracting the \$700,000 to be paid directly by the company, if the Court approves this request \$635,000 of the \$3.75 million fund would be used for the award of fees and expenses, and \$3,115,000 will be distributed to the named plaintiffs and the class.

Under the settlement, the named plaintiffs, James Sines and Felix Williams, are asking the Court for an award of an additional \$10,000 each for their burden in bringing the case, subjecting themselves to discovery, and working with counsel. If the Court approves this request, \$3,095,000 will be distributed to plaintiffs and the class on a formula basis, and \$20,000 would be distributed to the named plaintiffs. If the Court denies this request, the named plaintiffs will be paid on the identical basis as every other class member and \$3,115,000 will be distributed to the class.

Plaintiff Sines' retaliation claims have not been settled. The parties expect to take those claims to trial. Whether those claims are ultimately tried or settled, any payments to Mr. Sines on those claims will be made separately; not one cent will come from the settlement fund.

The settlement does not include any of the following claims of any class member: Any claim of any plaintiff or class member arising after October 1, 2004. None of the claims described in this paragraph may be resolved through any payment from the class fund.

If the Court grants final approval to the settlement, the Consent Decree will bind all class members who have not opted out regardless of whether they are entitled to a distribution from the settlement fund. This means that unless you opt out, you will be forever barred from bringing in the future any claims under the New York Labor Law or the Fair Labor Standards Act through and including October 1, 2004. The attached proposed Partial Final Judgment shows the matters as to which class members are bound.

This Notice is being provided to you so that you can decide whether to (1) opt out of the class—exclude yourself from the class—in which event you will remain free to pursue on your own whatever legal remedies, if any, may be available to you; or (2) not opt out of the class—and, therefore, remain in the class—and participate in any recovery in the event the class recovers any amount by way of settlement or judgment. If you elect not to opt out of the class, you retain the right to object to the settlement described in this notice. The deadline to opt out of the class is April 3, 2006. If you wish to remain in the class, the deadline to file a claim is also April 3, 2006. (See, “How to File a Claim.”) In addition, if you remain a member of the class the deadline for filing objections to the proposed settlement is April 3, 2006.

A class member may enter an appearance through counsel if the member so desires.

This is the definition of the settlement class under the NYLL:

All persons who have been employed in New York State, by defendants or any of their predecessors, in non-exempt positions within the meaning of the FLSA, at any time on or after July 23, 1997, or who shall be so employed within the term of this Consent Decree, for the periods of time in which they were or will be employed in such positions.

This is the definition of the scope of the collective action under the FLSA:

All persons who have been employed in New York State, by defendants or any of their predecessors, in non-exempt positions within the meaning of the FLSA, at any time on or after July 1, 2001, or who shall be so employed within the term of this Consent Decree, for the periods of time in which they were or will be employed in such positions.

Notwithstanding the time limitation of this paragraph, the named plaintiffs filed their consents to participation in this litigation with the filing of the Complaint on July 23, 2003, and their individual rights under the FLSA extend back to July 23, 2000.

The parties have listed all known class members in Exhibits A and B to the proposed Consent Decree. You should check these lists right away.

The last column in Exhibits A and B shows for each class member whether plaintiffs found a problem with that person’s compensation under the FLSA or the NYLL. Only persons with a “YES” in this column will receive any money under the proposed settlement. If one or both of these lists show a “YES” for your name, you MUST file a claim form, provide and verify your complete Social Security number, and get it to the Mr. Seymour or the Claims Administrator by April 3, 2006. If you get it to Mr. Seymour or the Claims Administrator beyond the deadline, you will LOSE ANY RIGHT TO MONEY you would have had.

Exhibit C to the Consent Decree lists every employee that defendants regard as exempt from the overtime provisions of the FLSA and the periods of time for which they were exempt. The list of funeral homes where they worked is provided as a guide, but is not exhaustive. None of the persons listed on Exhibit C is a member of the class during the periods in which he or she is listed as exempt, but may be a member of the class at other times.

Any persons on Exhibit C who believe that they were not exempt during part or all of the period stated in Exhibit C may obtain a decision from the Court as to their exempt status by filing an objection by the deadline set forth below, and asserting their non-exempt status in their objection and stating with particularity in their objection the dates during which they claim to have been non-exempt. If they do so, their status shall be determined without any presumption from having been listed on Exhibit C. To the extent that they are determined to be non-exempt for any part of the periods stated, they shall recover back pay, liquidated damages, and interest on the same basis as other class members (funeral directors or otherwise), and the amounts of their recovery shall be added to the class fund and treated and subject to any fee award ordered by the Court. If plaintiffs and defendants agree that you should be added to the list, you will have an opportunity to withdraw your objection. If you do not agree with any proposed resolution, the Court will decide the question.

If you believe that you are a class member and want to share in the benefits of the settlement but are not on Exhibits A or B, you should file an objection by the deadline, stating that you want to share in the settlement but are not listed, and you should attach documentation showing that you worked in a covered position on or after July 23, 1997. Plaintiffs and defendants will then research the question and try to resolve it. If plaintiffs and defendants agree that you should be added to the list, you will have an opportunity to withdraw your objection. If you do not agree with any proposed resolution, the Court will decide the question.

You have the right to “opt out” of the class, disqualifying yourself from any of the monetary relief in the case. If you opt out but are still working for defendants, you WILL STILL be affected by the changes in defendants’ pay practices required by the settlement, WILL NOT share in any of the money in the settlement fund, and WILL be able to file your own lawsuit about any practices that affected you. If you opt out, your share of the settlement fund will be returned to defendants. If you then bring a separate proceeding, defendants intend to make an offer of judgment to you, in the amount of 75% of the amount you would have received if you had remained in the class. You will be free to accept or reject the offer, but should consult with your own counsel about the effect of rejecting the offer and then recovering a smaller amount.

Facts You Should Know

The calculations of relief for licensed funeral directors, embalmers, and morticians, are based on a formula by which the time spent is calculated from the flat-rate or “menu” payments in accordance with a formula plaintiffs derived from an inspection of some records in which employees recorded both the payments and time they spent. This formula was applied to all defendants’ funeral homes. Defendants have agreed to the use of this formula for purposes of this settlement only, and only if the Court grants final approval to this settlement. If any class member opts out and files a separate lawsuit, defendants are not required to agree to the use of this or any other formula.

The calculations of relief for drivers, for pay periods in which amounts of pay but no time are recorded, are based on a formula by which the time spent is calculated from the amounts of “nonreimbursable funeral expenses” paid to them. Plaintiffs derived the formula from some

records in which there were records of both the amounts of “nonreimbursable funeral expenses” and the hours needed to earn them. This formula was applied to all defendants’ funeral homes where this situation arose. Defendants have agreed to the use of this formula for purposes of this settlement only, and only if the Court grants final approval to this settlement. If any class member opts out and files a separate lawsuit, defendants are not required to agree to the use of this or any other formula.

The calculations of relief for all other employees in the class are based on their time records and otherwise treat “chits” for bonuses, trip fees, pallbearer fees, and clergy services fees in the same manner as “menu” or flat-rate payments. Defendants have agreed to the use of this formula for purposes of this settlement only, and only if the Court grants final approval to this settlement. If any class member opts out and files a separate lawsuit, defendants are not required to agree to the use of this or any other formula.

Under the FLSA, the only persons who can be included within the collective action are those who file “consent forms” to have their rights included within the lawsuit. For purposes of this settlement only, and only if the Court grants final approval to this settlement, all class members who do not “opt out” are automatically included as of July 1, 2004, if they are listed in Attachments A and B to the Consent Decree.

The FLSA period of limitations is two years in ordinary cases, but is extended to three years if plaintiffs can show that the violation is willful. Defendants contend that any violation was not willful. For purposes of this settlement only, and only if the Court grants final approval to this settlement, the calculations of back pay and liquidated damages use a three-year period of limitations tolled on July 1, 2004, and thus go back to July 1, 2001.

The FLSA provides for a doubling of back pay as liquidated damages, but allows a “good faith” defense to liquidated damages. Defendants have asserted the “good faith” defense. For purposes of this settlement only, and only if the Court grants final approval to this settlement, FLSA liquidated damages are included in the calculations.

The NYLL period of limitations is six years, tolled by the filing of suit on July 23, 2003. The NYLL claims therefore go back to July 23, 1997.

The law does not allow a double recovery, one under the FLSA and one under the NYLL, for the same violation. Therefore, the settlement is based on FLSA remedies for pay periods ending within the FLSA period of limitations (on or after July 1, 2001), and NYLL remedies for pay periods ending from July 23, 1997, through June 30, 2001. This maximizes the recovery for class members.

The NYLL provides for liquidated damages of 25% of back pay, as an additional remedy in individual cases. New York State court procedures do not allow class treatment for claims seeking penalties. Federal district courts in New York State have generally enforced this rule even when NYLL claims have been brought in Federal court. For purposes of this settlement only, and only if the Court grants final approval to this settlement, the settlement calculations include NYLL liquidated damages for pay periods ending from July 23, 1997, through June 30, 2001, and all class members will automatically share in these NYLL liquidated damages.

The decisions of the U.S. Supreme Court and of the U.S. Court of Appeals for the Second Circuit bind the Federal courts in New York. These courts have held that the FLSA does not allow awards of both liquidated damages and prejudgment interest for the same violations. Plaintiffs attempted to negotiate for both liquidated damages under the FLSA and prejudgment interest under the NYLL. Defendants refused to concede this issue, and the settlement is based on the use of FLSA remedies for the FLSA period and NYLL remedies for the part of the NYLL period not covered by FLSA remedies.

The plaintiffs and defendants exchanged calculations on back pay, liquidated damages, and prejudgment interest. The lump sum includes compromises taking into account the risks of litigation, the uncertainties of proof, and the desirability of class members receiving a definite amount quickly.

The parties agreed that the calculations of relief will be done again according to plaintiffs' calculations, using the same formulas used for the settlement calculations, but done after the Court has ruled on any objections and after going through the procedures necessary to include within the class any individuals who are not now listed as part of the class.

Federal, State, and local income taxes will be withheld from all payments except payments for prejudgment interest. Prejudgment interest is subject to these income taxes, but there is no withholding for the interest, just as there is no such withholding when a bank pays interest on an account.

How to Find Out More Information

This Notice contains the information the Court has directed to be made available to you. If you have questions or want further information, you should contact counsel for plaintiffs, or attend one of the meetings that has been scheduled. **Do not contact the Clerk of Court, the judge, or the defendants for further information.**

Counsel for plaintiffs are:

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(212) 398-1532 – Telecopier

Meetings with counsel for plaintiffs have been scheduled for the following places, dates, and times:

A. Albany: Wednesday, March 8, at 7:00 P.M. and Thursday, March 9, at 9:00 A.M.

Hampton Inn 1-518-432-7000
25 Chapel Street
Albany, New York, United States, 12210

B. Buffalo: Monday, March 6, at 7:00 P.M. and Tuesday, March 7, at 9:00 A.M.

Buffalo Marriott Salon B 1-716-689-6900
1340 Millersport Hwy.
Amherst, NY 14226

C. Long Island: Friday, March 10, at 7:00 P.M. and Saturday, March 11, at 9:00 A.M.

Hilton Long Island/Huntington 1-631-845-1000
598 Broad Hollow Road
Melville, New York, United States 11747-5002

D. Manhattan: Sunday, March 12, at 7:00 P.M. and Monday, March 13, at 9:00 A.M.

The Martinique on Broadway (Holiday Inn) 1-212-736-3800
49 West 32nd Street
New York, NY 10001

E. Queens: Saturday, March 11, at 7:00 P.M. and Sunday, March 12, at 9:00 A.M.

Hilton Garden Inn Queens/JFK Airport 1-718-322-4448
148-18 134th Street
Jamaica, New York, United States 11430

F. Rochester: Tuesday, March 7, at 7:00 P.M. and Wednesday, March 8, at 9:00 A.M.

Radisson Hotel Rochester Airport 1-585-475-1910
175 Jefferson Road
Rochester, NY 14623

G. Syracuse: Thursday, March 9, at 7:00 P.M. and Friday, March 10, at 9:00 A.M.

Wyndham Hotel 1-315-432-0200

6301 Route 298
East Syracuse, NY 13057

How to File an Objection

Objections must contain the name of this case: Sines v. SCI. They must be received by the Claims Administrator on or before April 3, 2006, with original signatures. Faxed signatures will not be effective. The address is as follows:

Settlement Services, Inc.
Post Office Box 10564
Tallahassee, FL 32302-2564

How to Opt Out

Persons may opt out of the class and the collective action by sending a letter to the Claims Administrator with the case name, and clearly stating the following in the letter: "I am opting out of this case. I understand that my decision means that I will not share in any of the money in the class fund." They must be received by the Claims Administrator on or before April 3, 2006, with original signatures. Faxed signatures will not be effective. The address is as follows:

Settlement Services, Inc.
Post Office Box 10564
Tallahassee, FL 32302-2564

How to File a Claim Form

Class members who are listed on Exhibits A or B as persons for whom plaintiffs found problems are the ones to receive money in this case. To receive the money, they **MUST** file the enclosed claim form by either giving it to Mr. Seymour at the class meetings or sending it to the Claims Administrator. The forms must be received by Mr. Seymour or the Claims Administrator on or before April 3, 2006, with original signatures. Faxed signatures will not be effective. The address is as follows:

Settlement Services, Inc.
Post Office Box 10564
Tallahassee, FL 32302-2564

The Hearing

The Court will hold a hearing on whether to grant final approval to the settlement, the proposed Consent Decree, and Partial Final Judgment. The hearing will be in Courtroom 12-C, 500 Pearl Street, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY, at 10:00 A.M. on April 19, 2006.

Dated February 15, 2006.

