

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MELVIN BARNES, TRACY STEELE, and JEREMY
WILLIAMS, on behalf of themselves and all other
black persons similarly situated,

Plaintiffs,

vs.

CANADIAN NATIONAL RAILWAY COMPANY,
GRAND TRUNK CORPORATION, GRAND TRUNK
WESTERN RAILROAD, INC., ILLINOIS CENTRAL
CORPORATION, ILLINOIS CENTRAL RAILROAD
COMPANY, WISCONSIN CENTRAL
TRANSPORTATION CORPORATION, WISCONSIN
CENTRAL LIMITED,

Defendants.

Court No. 04 C 1249

Judge James B. Zagel

Magistrate Judge Michael T. Mason

CONSENT DECREE

I. Purposes of the Consent Decree

The Parties have entered into this Consent Decree for the following purposes:

- a. to assure equal employment opportunities for all Railroad employees;
- b. to promote and ensure continuing compliance with Railroad’s equal employment policies;

- c. to establish an efficient procedure for providing monetary relief to members of the Settlement Class;
- d. to avoid further expensive and time-consuming litigation; and
- e. to provide finality of claims and decisions.

Notwithstanding the foregoing, this Consent Decree is not intended to alter the terms and conditions established by any current or future collective bargaining agreement; if any such conflict exists, the terms of the collective bargaining agreement shall govern. Further, this Consent Decree is not intended to alter the right of any employee to file a grievance pursuant to any applicable collective bargaining agreement or any charge or complaint of discrimination or retaliation under any applicable local, state, or federal law, or with the EEOC or any state or local agency; and shall not be interpreted to: (i) alter any applicable time limitations for the filing of any such grievance, charge or complaint or (ii) add to, detract from, or otherwise modify any defenses thereto.

II. Definitions

The following terms when used in this Consent Decree, in addition to the terms defined elsewhere in the Decree, shall have the following meanings:

A. "African American"

"African American" for class membership purposes means all persons having origins in any of the Black racial groups of Africa, individuals who identify themselves as Black or African American, and individuals who identify themselves as more than one race so long as at least one of the races identified is Black or African American.

B. "Best Efforts"

"Best Efforts" means taking steps in good faith and reasonably designed to achieve compliance with specified objectives to which the best efforts are directed.

C. "Class" and "Class Counsel"

"Class" means all current, former and future African American employees of the Railroad who were employed any time from February 18, 2000 until the date of the Preliminary Approval of this Consent Decree. "Class Counsel" means counsel appointed by the Court to represent the Class, who are Robert F. Childs Jr. of Wiggins, Childs, Quinn & Pantazis, L.L.C., Robert M. Foote of Foote, Myers, Mielke & Flowers, LLC, William Ready Sr. of Ready and Associates, Kathleen Chavez of Law Office of Kathleen Chavez, and Peter Currie of Law Office of Peter Currie.

D. "Class Member"

"Class Member" means any individual member of the Class.

E. "Covered Complaint"

"Covered Complaint" means any complaint by an African American made pursuant to the Internal Complaint Procedure asserting that: (a) any provision of this Consent Decree has been violated with respect to his or her employment with the Railroad; (b) he or she has been the subject of race discrimination with respect to promotions to Covered Positions or training; or (c) he or she has been subject to racial harassment.

F. "Covered Position"

"Covered Position" means the following entry-level management positions: Trainmaster; Assistant Trainmaster; Chief Train Dispatcher; Supervisor, Locomotive Engineers; Production Supervisor; Supervisor, Work Equipment; Supervisor, Rail Grinding; Operator, Rail Flaw Detector; Assistant Operator, Rail Flaw Detector; Supervisor, Signals & Communications; Assistant Supervisor, Signals & Communication; Bridge Supervisor; Track Supervisor; Assistant Track Supervisor, Mechanical Supervisor; Manager, Transportation Services; Terminal Coordinator; Manager, Rules & Operating Practices; Supervisor Railroad Trainee ("RRTP"); Mechanical Services Representative; Coordinator ROC; Signal & Communications Operations Officer; Supervisor, Rail Maintenance; Bridge Inspector.

G. "Counsel of Record"

"Counsel of Record" means all counsel of record for the Parties and who are signatories to this Consent Decree.

H. "Court"

"Court" means the United States District Court for the Northern District of Illinois, and the Judge thereof having been assigned to preside over the Litigation or proceedings relevant to the Litigation.

I. "Day"

"Day" means a calendar day, unless otherwise noted to be a business day (i.e., Monday through Friday, exclusive of any Federal or State holiday).

J. "Defendants"

The "Defendants" are Grand Trunk Western Railroad Incorporated, Illinois Central Railroad Company, and Wisconsin Central Ltd. Canadian National Railway Company, Grand Trunk Corporation, Illinois Central Corporation and Wisconsin Central Transportation Corporation, being holding companies and not operating, policy-setting or employer companies, were not served with the Third Amended Complaint and were dismissed from this case, without prejudice, by stipulation of the Parties on May 21, 2008.

K. "Effective Date"

"Effective Date" means the latest of:

- (a) if an appeal is filed, (i) the date of final affirmance on an appeal of a judgment

approving this Consent Decree ("Judgment"), (ii) the expiration of the time to file a petition for, or a denial of, a writ of certiorari to review a Judgment, (iii) if certiorari is granted, the date of final affirmance of a Judgment following review pursuant to that grant, or (iv) the date of final dismissal of any appeal from a Judgment or the final dismissal of any proceeding on certiorari to review a Judgment; or

(b) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from a Judgment.

L. "Eligible Claimant" and/or "Eligible Class Member"

"Eligible Claimant" and "Eligible Class Member" means any Class Member who receives the benefit of any injunctive relief pursuant to this Consent Decree and/or a monetary award from the Settlement Fund under the terms of a Distribution Formula approved by the Court. "Eligible Claimant" and "Eligible Class Member" specifically exclude any Class Member who previously executed a valid and enforceable release of his/her Eligible Claims, unless such release specifically provides for recovery under this Consent Decree.

M. "Fairness Hearing"

Fairness Hearing means the date set by the Court to determine the fairness and reasonableness of the Settlement in this Litigation.

N. "Litigation"

"Litigation" means all proceedings relating to or arising from Civil No. 04 C 1249, currently pending before Judge James B. Zagel.

O. "Named Plaintiffs"

"Named Plaintiffs" means the three individual plaintiffs who brought this Litigation: Melvin Barnes, Tracy Steele, and Jeremy Williams.

P. "Notice"

"Notice" means the notice of the proposed class settlement that is sent to Class Members pursuant to order of the Court.

Q. "Parties"

"Parties" means the Named Plaintiffs and "Defendants" in this Litigation.

R. "Plaintiffs' Lead Counsel"

"Plaintiffs' Lead Counsel" means Robert F. Childs Jr. of Wiggins, Childs, Quinn & Pantazis, L.L.C.

S. "Preliminary Approval"

"Preliminary Approval" means the entry of the Court's Order granting preliminary

approval of this Consent Decree, which reflects that the Court concludes that the terms of this Consent Decree appear sufficiently fair, reasonable and adequate to the Class, as a whole, to warrant notice to the Class, an opportunity for Class Members to object or opt out, and a Fairness Hearing to consider final approval of the Consent Decree. (A Proposed Preliminary Approval Order is attached to this Consent Decree as Exhibit G.)

T. "Railroad"

"Railroad" as used herein collectively refers to all U.S. operating railroad subsidiaries of Canadian National Railway Company, including Bessemer and Lake Erie Railroad Company, Chicago, Central & Pacific Railroad Company, Cedar River Railroad Company, Duluth, Missabe and Iron Range Railway Company, Duluth, Winnipeg and Pacific Railway Company, Elgin, Joliet and Eastern Railway Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, The Pittsburgh and Conneaut Dock Company, Sault Ste. Marie Bridge Company, and Wisconsin Central Ltd.

U. "Settlement"

"Settlement" means the settlement terms embodied in this Consent Decree.

V. "Settlement Administrator"

"Settlement Administrator" means Administar Services Group, Inc., or any person subsequently appointed by the Court to implement the duties and responsibilities required to administer the Settlement in this Litigation, as set forth in this Consent Decree. The Settlement Administrator shall also serve as the Trustee of the Settlement Fund.

W. "Settlement Fund"

"Settlement Fund" means the gross amount of 3.0 Million Dollars (\$3,000,000) to be paid by Railroad for the purpose of providing individual awards to the Named Plaintiffs, monetary awards to the Eligible Members, and the payment of attorneys' fees and costs to Class Counsel, to be distributed in accordance with the provisions of this Consent Decree.

X. "Settlement Trustee"

"Settlement Trustee" means Administar Services Group, Inc., or any person subsequently appointed by the Court to serve as the Trustee of the Settlement Fund. The Settlement Trustee shall also undertake the duties and responsibilities of the administration of the Settlement in this Litigation, as set forth in this Consent Decree.

III. Jurisdiction

A. The Court has jurisdiction over the Parties, the Railroad and the subject matter of the Litigation. The Litigation asserts claims under Title VII and 42 U.S.C. § 1981 that, if proven, would authorize the Court to grant the monetary and equitable relief set forth in this Consent Decree.

B. Venue is proper in this district. This Court shall retain jurisdiction of the Litigation during the term of this Consent Decree for the purpose of entering all orders, judgments and

decrees that may be necessary to implement the relief provided herein. The procedures described below are not intended to diminish this Court's inherent power to enforce any provision of this Consent Decree.

IV. Conditional Class Certification

The Court shall conditionally certify a class for settlement purposes consisting of all current, former, and future African American employees of Railroad who were employed at any time by the Railroad from February 18, 2000 until the Preliminary Approval of this Consent Decree.

In the event that the Consent Decree is not finally approved by the Court, the conditional certification shall be null and void and shall not be used or referred to for any further purpose in this Litigation or any other action or proceeding. In such event, no Party shall have waived the right to seek approval of, or challenge/contest, class certification.

V. Effective Date and Duration of Consent Decree

The provisions of this Consent Decree and the agreements contained herein shall become effective on the Effective Date and remain in effect for three (3) years from said date. During the first year of the Consent Decree, Railroad shall be permitted to correct any programmatic compliance violations without penalty. The Agreement shall expire without further action of the Parties on the third anniversary of the Effective Date.

Within twenty (20) days of the Effective Date, the Parties agree that they will collectively seek the dismissal of Plaintiffs' class action claims and any remaining individual claims in the Litigation against Defendants with prejudice, and without costs to any Party.

VI. No Admission of Liability

A. No Admission of Liability

This Consent Decree does not and is not intended to constitute and shall not be deemed to constitute an admission by Railroad as to the merits, validity, or accuracy of any of the allegations or claims in the Litigation, nor shall it be used as a means to require the continuation of any program or action beyond the term of this Consent Decree, except as may be necessary to enforce the terms of this Consent Decree. By entering into this Consent Decree, Railroad does not admit or concede, expressly or impliedly, but instead denies, that it has in any way violated Title VII or Section 1981, the common law of any jurisdiction, any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

B. No Court Findings As To Liability

In agreeing to the terms of this Consent Decree, the Parties acknowledge that neither this Court nor any other court has made any findings or expressed any opinion concerning the merits, validity, or accuracy of any of the allegations, claims, or defenses in the Litigation.

C. The Consent Decree Is Not Admissible In Any Other Proceeding

Nothing in this Consent Decree, nor any action taken in implementation thereof, nor any statements, discussions, or communications, nor any materials prepared, exchanged, issued, or used during the course of the Litigation or in negotiations leading to this Consent Decree, are intended by the Parties to, nor shall any of the foregoing constitute, be introduced, be used, or be admissible in any way in the Litigation or in any other judicial, arbitral, administrative, investigative, or other proceeding of whatsoever kind or nature as evidence of discrimination, harassment, or retaliation on the basis of race, or as evidence of any violation of: Title VII or 42 U.S.C. § 1981; the common law of any jurisdiction; any federal, state, or local law, statute, ordinance, regulation, rule, or executive order; or any obligation or duty at law or in equity. Notwithstanding the foregoing, the Consent Decree may be used by the Named Plaintiffs, or Railroad, to enforce or implement the terms of the Consent Decree or any orders or judgments of this Court entered in connection with the Consent Decree.

D. Termination of Consent Decree

If this Consent Decree does not become final or effective in its current form (for whatever reason), the entire Consent Decree shall be vacated, and all provisions contained within the Consent Decree shall become null and void. Further, the Parties agree that, in the event the Court does not grant Preliminary Approval or final approval of the Consent Decree, or Railroad lawfully exercises its option to void the Consent Decree, Railroad's agreement to this settlement in principle will not preclude it from contesting and opposing any future pleadings, including opposing any future motion for class certification under Rule 23 on any basis.

VII. Release of Claims

A. Class Release

Railroad, including its officers, directors, parents, subsidiaries, affiliates, predecessors, and successors, shall be, and shall be deemed to be, fully, finally, and irrevocably released and discharged by the Named Plaintiffs on behalf of all Class Members who do not opt out of the Litigation in the manner specified by the Court in the Order Granting Preliminary Approval from any and all allegations and causes of action of employment discrimination based on race that were made in the Third Amended Complaint. This release includes all claims of racial discrimination, retaliation, and hostile environment, including those alleged in the Third Amended Complaint, and including but not limited to discrimination and retaliation in appointments, selection decisions, job assignments, promotions, training, discipline, testing, compensation, benefits, evaluations, service ratings, other terms and conditions of employment, and termination, racial harassment, and intimidation. The Class Release shall release claims which accrued up to and including the date the class members submitted a claim form, or, if no claim form was submitted, up to and including December 15, 2009.

B. Named Plaintiffs' Release

On the Effective Date, or as soon as practicable thereafter, each of the Named Plaintiffs shall sign a General Release in the form attached as Exhibit A to this Consent Decree as a condition precedent to receipt of payment. Upon signing such Release, each such individual shall be deemed to have thereby waived, and released Railroad, including its officers, directors,

parents, subsidiaries, affiliates, predecessors, and successors, from, any and all claims related to their employment arising at any time up to and including the date such individual signs said Release, including but not limited to any claims for monetary and injunctive relief of any type and attorneys' fees and costs that he or she asserted in the Litigation, or that he or she might have asserted or could in the future assert against Railroad arising out of his or her employment or application for employment with Railroad, including, but not limited to, any claim under any federal, state, or local statute relating to his or her employment relationship with Railroad, including but not limited to Title VII, 42 U.S.C. § 1981, and analogous provisions of State laws. This Release shall survive the termination of this Decree. However, this Release shall not extend to claims based on incidents occurring after the date each Named Plaintiff signs such Release.

The Settlement Administrator shall provide to Railroad the original of each Named Plaintiff's Release within seven (7) days of receipt and will retain a copy for the Settlement Administrator's records.

VIII. Injunctive Relief

A. General Injunctive Provisions

1. Railroad reaffirms its commitment and acknowledges its legal obligation not to: (a) engage in any employment practice pertaining to the employees encompassed within the Class definition that has the purpose or the effect of violating the terms of this Consent Decree; and (b) retaliate against any employee, as prohibited by 42 U.S.C. Section 2000e-3(a), for his/her participation in this Litigation and Consent Decree.

2. Railroad reaffirms its commitment and acknowledges its legal obligation not to engage in: (a) any act, policy, or practice with the purpose of discriminating against any Named Plaintiff or Class Member on the basis of race; and (b) racial harassment against any Named Plaintiff or Class Member on the basis of their race.

3. Railroad will continue to maintain non-discrimination and non-retaliation policies and an Internal Complaint Procedure designed to assure equal employment opportunity. Railroad shall publish or post at the locations at which it customarily posts notices to employees, the EEOC notice of rights poster and notice of Railroad's policies against racial discrimination, harassment, and retaliation and Internal Complaint Procedure. These notices shall advise employees regarding the law prohibiting racial discrimination and harassment, as well as retaliation, and Railroad's policies against racial harassment, discrimination, and retaliation. The Railroad notice is attached hereto as Exhibit B in a form acceptable to Class Counsel and Railroad.

B. Specific Injunctive Provisions

Upon the Effective Date, Railroad shall implement the policies, practices, and procedures described in this Section in a non-discriminatory manner. These policies, practices, and procedures shall be implemented for the term of the Consent Decree unless a different time period is specified herein.

1. TRAINING AND EDUCATIONAL FINANCIAL ASSISTANCE.

(a). Railroad will ensure that access to any training that is or may be provided or sponsored by the Railroad to employees seeking Covered Positions is provided on a non-discriminatory basis. Railroad will continue to make available electronically a Training Catalog, together with instructions on how employees may obtain the training needed to enhance their abilities and qualifications for Covered Positions.

(b). Railroad shall make available, through Railroad's intranet, on-line courses in the subjects of basic computer software skills, supervisory skills, and railroad-related topics.

(c). Railroad shall make available to employees educational financial assistance, consistent with the terms of its current policy (attached hereto as Exhibit C). Educational financial assistance may include, but is not necessarily limited to, reimbursement for education relating to craft, technical, and vocational skills reasonably related to the railroad environment, and the duties and responsibilities of Covered Positions. Railroad may place a budgetary cap on its Educational Financial Assistance Policy. Railroad will notify Plaintiff's Lead Counsel prior to implementing its decision to place such a budgetary cap and provide Plaintiffs' Lead Counsel with its business reason for the budgetary cap. Plaintiff's Lead Counsel may challenge Railroad's implementation of a budgetary cap pursuant to the Dispute Resolution Procedures set forth in Section IX of this Consent Decree if Lead Counsel reasonably believes that the decision to implement a budgetary cap was made with discriminatory intent towards African Americans or that such action has an adverse impact on African Americans.

(d). Railroad shall document each employee who requests financial assistance, the decision made with respect to such request, the person making such decision, and the reason for the decision. Railroad shall make such information available to the Special Master upon his/her or Class Counsel's request.

(e). Railroad shall provide notice of the Educational Financial Assistance Policy through the People section of its intranet site.

2. EEO TRAINING.

(a). Training to Human Resources Personnel.

(i). Within six (6) months after the Effective Date, Railroad will develop and present training for members of its Human Resources staff who have substantive responsibilities related to compliance with the fair employment practice laws and/or the application of consistency and objectivity in the selection processes for Covered Positions and the selection procedures for training opportunities for Covered Positions at Railroad. Each training program will be re-administered yearly thereafter during the term of the Decree. Annual training may be in a more abbreviated format than the initial training. Railroad shall use its Best Efforts to provide new Human Resources staff members with such responsibilities with such training within ninety (90) days of their date of entry into such position.

(ii). Training for Human Resources staff shall include, but not be limited to: Federal and State equal employment opportunity laws; the application of equal employment opportunity laws to typical employment situations; compliance with the Consent Decree; the role and responsibility of the Human Resources staff; diversity; and the investigation of complaints of race discrimination or retaliation.

(b). Training to Supervisors and Managers.

(i). Beginning within thirty (30) days of the Effective Date, and to be completed within nine (9) months of the Effective Date, supervisors and managers shall receive training on equal employment opportunity, to include the following: compliance with the Decree; federal and state equal employment opportunity laws; Railroad prohibitions of workplace racial discrimination, including harassment and retaliation; and any other topics that may encourage diversity and equal employment in training, promoting, qualifying, and retaining African American employees. Such training may, but is not required to, be delivered in live "discussion" format. Railroad will use its Best Efforts to ensure that new supervisors or managers receive such training within nine (9) months of their entry into a supervisory or management position. Thereafter, during the term of the Decree, Railroad will provide equal employment opportunity training to supervisors and managers on an annual basis during each calendar year. Completion of such training shall be mandatory.

(ii). At Railroad's discretion, the training described above may be held in conjunction with other Railroad business and may be organized in such fashion as Railroad deems appropriate.

(c). Training to All Employees.

(i). Within nine (9) months of the Effective Date, Railroad shall provide to all employees not otherwise covered by Paragraphs B.2.(a) and B.2.(b) above a training/informational video or DVD that they may review and have available for reference. Such training shall include information covering the following subjects: (i) federal and state equal employment opportunity laws; (ii) Railroad prohibitions of workplace Racial Discrimination, including harassment and retaliation; and (iii) any other topics that may encourage diversity and equal employment in training, promoting, qualifying, and retaining African American employees. Railroad shall use its Best Efforts to ensure that new employees receive the training/informational video within three (3) months of their date of hire.

(ii). In addition, Railroad agrees to address with employees not otherwise covered by Paragraphs B.2.(a) and B.2.(b) at least once per year Railroad's Non Discrimination Policy, which will include an explanation of Railroad's prohibitions of workplace discrimination, harassment and retaliation, and Railroad's Internal Complaint Procedure. At Railroad's discretion, the information described herein may be provided in conjunction with other Railroad business and may be organized in such fashion as Railroad deems appropriate.

3. POSTING OF COVERED POSITIONS.

(a). Railroad shall ensure that employees have reasonable access to information regarding vacant Covered Positions that Railroad intends to fill, the intent being to maintain a

process that is reasonably transparent, generally accessible, and provides employees with the ability to express an interest in and timely apply for vacant Covered Positions Railroad intends to fill.

(b). Within twelve (12) months of the Effective Date, Railroad shall establish a procedure for posting vacant Covered Positions that Railroad intends to fill. This procedure will provide appropriate notice of the posted Covered Position by use of the Railroad intranet or internet sites, the current electronic posting system, or any new posting system. Employees will be responsible for using these resources to learn of posted vacancies. Railroad will ensure that employees have reasonable access to a computer, at its Transportation on-duty locations, on which employees can obtain information about, and express an interest in, vacant Covered Positions that Railroad intends to fill.

(c). Nothing in this Paragraph obligates Railroad to fill vacant Covered Positions or prohibits Railroad from abolishing Covered Positions for legitimate business reasons.

4. SELECTION PROCEDURE FOR COVERED POSITIONS.

(a). Railroad shall utilize the selection procedure specified herein to fill all vacant Covered Positions during the term of this Consent Decree.

(b). Employees may express their interest in any Covered Position via Railroad's currently existing on-line career management tool (currently referred to as Career Track) or such other tool Railroad develops for career management. Individuals who so indicate their interest will be invited to formally apply for the particular Covered Position and must do so to be considered as an applicant.

(c). Railroad shall ensure that there is a structured selection procedure so that the best qualified applicants are selected for the Covered Positions. As a part of these procedures, all qualified candidates will be interviewed and selected by a group of at least two (2) individuals, one of who shall be a member of Human Resources. Additionally, Railroad agrees to document the reasons for its selection or non-selection of each qualified applicant. Nothing herein is meant to suggest that Railroad is required to select an internal candidate for a Covered Position. In addition, nothing herein prohibits Railroad from effecting lateral movements of managers currently holding Covered Positions for legitimate business reasons.

5. ADVERSE IMPACT ANALYSES

(a) Railroad agrees to conduct adverse impact analyses every six (6) months throughout the duration of this Consent Decree. If, during any two consecutive reporting periods, a selection rate for African Americans hired (which includes promotions) into Covered Positions is less than eighty percent (80%) of the selection rate for the group with the highest selection rate into Covered Positions, or results in a statistically significant disparity, Railroad will investigate to determine the cause and take corrective action, if necessary, following the first year's analysis. In calculating the selection rate, and determining whether alternative measures should be considered, Railroad may consider neutral factors, including but not limited to, the number of selections during the reporting period, the precise Covered Positions for which selections were made, the statistical significance of any disparities in selection rates, and the

racial composition of employment in those positions from which the selections in question generally are made.

(b) Railroad shall report the results of the adverse impact analyses as part of its Compliance Report (as set forth in Section VIII. C. 3), and, where disparities, if any, cannot be explained by race-neutral factors or legitimate business reasons, Railroad shall at the same time present its proposal to use specific Best Efforts to eliminate the disparities or state the reasons why, consistent with the purposes of the Decree, no such corrective steps are appropriate or necessary. In the event that Plaintiff's Lead Counsel considers Railroad's response to be inadequate, Plaintiff's Lead Counsel may initiate the Dispute Resolution Procedures provided for in Section IX. If the Special Master concludes that Railroad should take certain action, the Special Master shall have the authority to recommend the action Railroad should take, which may include validation of its selection procedures. With respect to this issue, the parties shall comply with all requirements and processes of the Dispute Resolution Procedures. Nothing in this paragraph is intended to modify the terms, requirements, or process of the Dispute Resolution Procedures, including the time limitations in which to dispute an issue and the parties' appeal rights.

(c) The Parties understand that the analysis applied herein is intended as a practical means of keeping attention on hiring decisions related to Covered Positions. However, a selection rate of less than 80% for African Americans, or a statistically significant disparity, are not, standing alone, evidence of discrimination or a basis for further action under this Decree.

6. DIVERSITY COUNCIL.

Railroad agrees to maintain a Diversity Council, which shall include employees representing diverse backgrounds, including but not limited to diversity in race and levels of management. The Diversity Council will meet with the Railroad's CEO shortly after its creation to discuss its role and will thereafter report to the CEO quarterly during the first year of this Consent Decree and semi-annually thereafter concerning Railroad's efforts to achieve a diverse, non-discriminatory workforce. The Diversity Council's duties shall include:

(a). Developing criteria for interfacing with community groups and referral sources to spread the message that Railroad is committed to a diverse, non-discriminatory workforce;

(b). Making recommendations to Railroad management of ways in which the company can further diversity within the organization; and

(c). Reporting on its efforts and activities to all employees at least annually.

7. RULES, POLICIES, PRACTICES AND PROCEDURES.

Railroad will implement rules, policies, practices, or procedures that are reasonably necessary to comply with this Consent Decree. Railroad will notify its supervisory and managerial workforce about, and monitor the implementation, of these new rules, policies, practices, and procedures to assure compliance with them.

C. Implementation of Injunctive Relief

1. RAILROAD'S INTERNAL MONITORING AND COMPLIANCE PROCEDURES.

(a). Railroad's Internal Monitor.

(i). Selection of the Internal Monitor.

Railroad shall appoint an Internal Monitor who shall be charged with overall responsibility for monitoring Railroad's compliance with the terms of the Injunctive Relief and shall report directly to the Senior Vice President, Southern Region with respect to Railroad's compliance with the Injunctive Relief. The Internal Monitor may delegate such duties as he/she deems appropriate. Whenever the Internal Monitor is referred to in this Decree, such term shall mean the Internal Monitor or his/her designee; however, the Internal Monitor shall at all times maintain overall responsibility for monitoring Railroad's compliance with the terms of the Injunctive Relief. Railroad shall use its Best Efforts to designate a qualified individual to this position to carry out the duties and responsibilities set forth below. Before the Effective Date, Railroad shall provide Plaintiffs' Lead Counsel with the individual's resume that includes his/her identity, background, experience, and qualifications. The selection of the Internal Monitor shall be solely that of Railroad.

(ii). Procedure for Replacement of Internal Monitor

a. The Internal Monitor shall commence the duties and responsibilities of the Internal Monitor on the Effective Date. If the Internal Monitor ceases to function in that role for any reason, Railroad shall appoint a successor Internal Monitor as soon as practicable, but no later than thirty (30) days after the Internal Monitor provides notice of his/her intent to cease to function as the Internal Monitor, or where the circumstances do not permit such advance notice, no later than thirty (30) days after the Internal Monitor ceases to function in that role. The terms set forth in this paragraph shall apply to any successor Internal Monitor. Before appointing a successor Internal Monitor, Railroad shall provide Plaintiffs' Lead Counsel with the individual's resume that includes his/her identity, background, experience, and qualifications. The selection of the successor Internal Monitor shall be solely that of Railroad.

b. If the Railroad fails to appoint a successor Internal Monitor within sixty (60) days after the position becomes vacant, the Special Master shall nominate a successor Internal Monitor. The person so nominated will not be appointed to the position unless and until the parties obtain Court approval. Railroad and Class Counsel may suggest persons for the Special Master's consideration. Railroad and Plaintiffs' Lead Counsel shall have the right to interview any person that the Special Master nominates before the person's nomination is reviewed by the Court and to present evidence and argument to the Court regarding the successor nominee(s) for the Internal Monitor position.

c. In the event the Railroad replaces an Internal Monitor who was appointed pursuant to paragraph VIII.C.1.(a)(ii).b., the provisions set forth in paragraph VIII.C.1.(a)(ii).a. shall apply.

(iii). Request To Remove Internal Monitor.

a. If the Internal Monitor has failed to use his/her Best Efforts to implement and/or comply with one or more provisions of this Consent Decree, Class Counsel may request the removal of that Internal Monitor, pursuant to the Dispute Resolution Procedures set forth in Section IX.

b. Prior to seeking relief through the Dispute Resolution Procedure, if Class Counsel requests the removal of an individual as Internal Monitor, Class Counsel shall provide the grounds and factual support in writing to Railroad. Within fourteen (14) days of receiving Class Counsel's written statement, Railroad may dispute Class Counsel's position by setting forth in writing its reasons and any facts or circumstances it believes Class Counsel should consider. The Parties shall resolve any continuing dispute regarding the selection or retention of the Internal Monitor pursuant to the Dispute Resolution Procedures set forth in section IX. of this Consent Decree. If the parties are unable to reach an agreement through the Informal Dispute Resolution Process set forth in Section IX.B., and the dispute is referred to the Special Master, the Special Master shall resolve the dispute. If the Special Master determines that the Internal Monitor should be removed, then the Procedure for Replacement of Internal Monitor set forth in section (ii) above shall apply. The parties may appeal the Special Master's decision pursuant to the procedures set forth in Section IX.D.

(iv). Duties and Responsibilities of the Internal Monitor.

The Internal Monitor shall use his/her Best Efforts to fairly assure Railroad's implementation of, and compliance with, the provisions of the Injunctive Relief. Such Best Efforts shall include, but not be limited to:

a. Overseeing and monitoring the development, establishment, and/or implementation of the Injunctive Relief terms;

b. Reviewing all Covered Complaints and monitoring the procedure through completion;

c. Submitting the Compliance Reports and other documents and information to Plaintiffs' Lead Counsel and the Special Master.

d. Meeting with Class Members who file Covered Complaints to review said Complaints with them, as requested by such Class Member, pursuant to VIII.C.2.(c).

(v). Internal Monitor's Authority to Recommend Individual Relief

The Internal Monitor shall have the authority to recommend appropriate relief for any Class Member who he/she concludes has been subjected to: (a) a violation of the Consent Decree; (b) race discrimination with respect to his or her promotion into, or a training opportunity for, a Covered Position; (c) racial harassment; or (d) an improper decision by Railroad regarding a Covered Complaint filed pursuant to the Internal Complaint Procedure. The Internal Monitor's recommended relief may include promoting or reassigning the employee, or providing the employee with other appropriate relief, including monetary relief. Should

Railroad fail to adopt and carry out the Internal Monitor's recommendation, the Internal Monitor shall include in his/her Compliance Report a description of his/her recommendation and Railroad's explanation of the specific reasons for its decision not to follow that recommendation. The Parties shall resolve any continuing dispute regarding the Internal Monitor's remedial recommendation pursuant to the Dispute Resolution Procedures set forth in Section IX.

(b). Announcement of the Internal Monitor.

Within fourteen (14) days of Railroad's appointment of the Internal Monitor, or any successor Internal Monitor as provided for above, Railroad shall provide notice to all of its employees of the Internal Monitor's or successor Internal Monitor's appointment, including his/her name, title, and background, and a description of the Internal Monitor's job duties and responsibilities.

(c). Provision of Adequate Resources to the Internal Monitor.

Railroad shall provide the Internal Monitor with such support staff and funds as may be necessary to fully and effectively discharge Railroad's and the Internal Monitor's obligations under this Consent Decree.

2. INTERNAL COMPLAINT PROCEDURE.

(a). As described herein, Railroad shall continue to maintain an Internal Complaint Procedure for the purpose of resolving Covered Complaints. At its election, Railroad may extend the operation of the Internal Complaint Procedure to other types of complaints without broadening its obligations under this Consent Decree, which are strictly limited to Covered Complaints.

(b). At a minimum, Railroad's Internal Complaint Procedure shall contain the following components or provisions: (i) a toll-free number for employees to make verbal complaints that Railroad will document in written format; (ii) appropriate and effective investigation techniques and procedures; (iii) appropriate levels of trained staff to implement the Internal Complaint Procedure; (iv) prohibition against any individual who is the subject of a Covered Complaint playing a role in the decision-making process with respect to the resolution of such Covered Complaint; (v) notification to the complainant of the results of the investigation and any proposed remedial measures pertaining to the complainant; (vi) a system for providing appropriate corrective measures or remedial actions, including, but not limited to, awarding a promotion, eliminating discipline, and/or awarding lost back pay, as well as preventive measures for discriminatory conduct found to have occurred; and (vii) follow up measures to ensure that the corrective measures or remedial actions are implemented and to ensure that no retaliation against the complainant occurs.

(c). After Railroad concludes investigating a Covered Complaint made pursuant to the Internal Complaint Procedure, complainant shall have the right to review his or her complaint, and Railroad's response thereto, with the Internal Monitor, if complainant so requests. The Internal Monitor shall have the right to change or affirm the Railroad's decision regarding the Covered Complaint.

3. RECORDKEEPING AND REPORTING.

(a). Document Retention

Railroad shall retain the following employment-related records for the duration this Consent Decree or as required by state or federal law, whichever is longer:

(i). All Covered Complaints filed pursuant to the Internal Complaint Procedure, and the written findings of the investigations.

(ii). All notices required by this Decree, and a record of the date(s) on which Railroad distributed or posted such notice.

(iii). All policies, procedures, and programs related to, or designed to implement, the various provisions of this Decree.

(iv). Documentation regarding the reasons for Railroad's selection or non-selection of each employee interviewed for a Covered Position.

(b). Access to Retained Documents

(i). The records and information Railroad is required to retain under section 3.(a). above shall be made available to the Internal Monitor. The Internal Monitor will produce such records to the Special Master and Plaintiffs' Lead Counsel upon request and on reasonable notice and terms, but only if necessary and/or incidental to the performance of their obligations under this Consent Decree.

(ii). If Railroad objects to the production of a requested document or other information on the ground that it is protected by the attorney-client privilege or attorney work product doctrine ("privileged documents"), Railroad shall provide a privilege log describing the following:

- a. The date of the document;
- b. The type of document, e.g., letter, memorandum, report, or handwritten note;
- c. The author of the document;
- d. The recipient of the document;
- e. Individuals who received copies of the document; and
- f. The privilege that is being claimed.

(iii). The Parties agree that Railroad may claim as privileged and need not produce documents that are prepared by Railroad's attorneys or communications between Railroad's attorneys and Railroad for the purpose of seeking legal advice, providing legal advice, or otherwise monitoring Railroad's compliance with the terms of the Decree.

(iv). All documents Railroad is required to maintain by the express terms of the Consent Decree, and all documents that are provided to the Internal Monitor, the Special Master, and Plaintiffs' Lead Counsel under the terms of the Consent Decree, are, and shall be treated as, confidential business records. The Internal Monitor, Special Master, and Plaintiffs' Lead Counsel shall not divulge any such documents to any third party without Railroad's written consent to such disclosure, unless so ordered by the Court after notice to Railroad and an opportunity for Railroad to object to such disclosure and be heard.

(c). Compliance Reports

(i). Contents of Compliance Report

The Internal Monitor, through Railroad's counsel, shall produce to the Special Master and Plaintiffs' Lead Counsel the Compliance Report required by this Section on the one-year anniversary of the Effective Date and every six months thereafter during the term of this Consent Decree. Railroad's Compliance Reports shall provide information showing:

a. a summary of all EEO training activities, including the dates, subjects, and duration of each such training activity;

b. a summary of the information regarding Covered Complaints as referenced in Section VIII. C. 2. This shall include a description of all Covered Complaints filed pursuant to the Internal Complaint Procedure, including: the name, race, and job position of the complainant; a brief summary of the nature of the complaint; the name, race, job position, and locations of the subject(s) of the complaint; a brief summary of the status and nature of the investigation conducted; the final disposition of the investigation; and any corrective or remedial action taken. In addition, the annual reports of Covered Complaints should include review for any patterns, such as substantiated multiple complaints against a particular manager, or involving a particular employment practice or procedure. If such patterns are found, the Internal Monitor, shall, in consultation with the Human Resources Department or its designee, develop a plan to address and correct such patterns, and such plan will be included as part of the summary provided in the Compliance Report;

c. a summary of the number of internal African American applicants and the number of internal African American promotions into Covered Positions during the preceding twelve (12) month period.

d. a summary of any individual relief recommended by the Internal Monitor that Railroad declined to follow, along with Railroad's explanation of its reasons for the declination;

e. the results of Railroad's adverse impact analyses and other information required by Section VIII. B.5.b.; and

f. any additional information Railroad wishes to provide to demonstrate its overall compliance with the provisions of this Consent Decree.

(ii). Review of Compliance Reports

The Special Master and Plaintiffs' Lead Counsel shall review the Compliance Reports to ensure Railroad's compliance with the terms of the Decree.

4. It is understood and agreed that Railroad's operation undergoes constant change and requires flexibility to adapt to such change. It is further understood and agreed that in every instance where Railroad agrees to implement a specific system or process hereunder, Railroad shall be permitted to substitute an alternative system or process that provides equal or greater benefits to the Class, provided that if Railroad wishes to make any such substitution, it shall provide at least thirty (30) days advance notice to Plaintiffs' Lead Counsel. If there is any objection to the proposed substitution, Plaintiff's Lead Counsel must initiate the Dispute Resolution Procedures outlined in Section IX. within seven (7) days of notice. In the event that the Dispute Resolution Procedure is timely initiated, no substitution shall be implemented until such Procedure has concluded.

IX. Dispute Resolution Procedures: Informal Dispute Resolution Process and Enforcement of the Consent Decree Before the Special Master and the Court

A. Appointment of the Special Master

1. Railroad and Class Counsel agree to the appointment of Hunter Hughes as Special Master to serve as a mediator in connection with the Dispute Resolution Procedures contained in this Section IX. and to review Railroad's compliance with this Consent Decree as described in Section VII. The Special Master may be replaced or removed: (a) at the Special Master's written request; (b) at Class Counsel's and Railroad's joint written request; or (c) by order of the Court upon motion by either Railroad or Class Counsel demonstrating that good cause exists for removal of the Special Master.

2. In the event that the Special Master or his/her successor ceases to function as Special Master for any reason, including death, disability, voluntary resignation, the joint written request of Class Counsel and Railroad, or an order of the Court, Class Counsel and Railroad shall make a good faith effort to select a new Special Master by mutual agreement.

3. If Class Counsel and Railroad are unable to reach agreement as to a successor Special Master within forty-five (45) days following the date the designated Special Master ceases to function in that capacity, the Court, upon motion by either Class Counsel or Railroad, shall appoint a successor Special Master. Class Counsel or Railroad may nominate to the Court persons for consideration as the successor Special Master. Both Class Counsel and Railroad shall have the right to interview any nominated person and to present argument and evidence to the Court regarding the selection of a successor Special Master.

B. Informal Dispute Resolution Process

The Parties agree to the use of an informal resolution process for disputes involving the interpretation or implementation of this Consent Decree. Class Counsel and Counsel for Railroad shall confer as necessary and use their best efforts to attempt to resolve promptly any disputes regarding the interpretation or implementation of the Consent Decree,

including Railroad's compliance with any of its provisions, according to the procedures set forth below:

1. If Class Counsel or Counsel for Railroad has good reason to believe that a legitimate dispute exists as to the interpretation, application, or enforcement of any provision of this Consent Decree, said party shall promptly (i.e., within seven (7) days of the identification of the dispute) give written notice to the other party, including: (a) a reference to all specific provisions of the Consent Decree that are involved; (b) a statement of the issue(s); (c) a statement of the remedial action(s) sought; and (d) a brief statement of the specific facts, circumstances, and any other arguments supporting the initiating party's position.

2. Within ten (10) days after receiving such notice, the non-initiating party shall provide its written position, including the facts and arguments upon which it relies in support of its position.

3. Within ten (10) days thereafter, Class Counsel and Counsel for Railroad shall undertake good-faith negotiations, which shall include a meeting or meetings by telephone or in person and the exchange of relevant documents and/or other information, to attempt to resolve the issue(s) in dispute or alleged non-compliance. The Parties shall use Best Efforts to resolve the disputed matter(s) within twenty (20) days after the initiating party's receipt of the non-initiating party's response required by subsection B.2. above.

C. Referral of Disputes to the Special Master

1. If Class Counsel and Railroad fail to resolve their differences or disputes regarding the interpretation or implementation of this Consent Decree pursuant to the Informal Dispute Resolution Process set forth in section IX.B. above, Class Counsel or Railroad may submit a motion to the Special Master, with a supporting brief, seeking resolution of the dispute or the issue of alleged non-compliance, provided, however, that: (a) the moving party has complied with and made a "good faith" effort to resolve the matter through the Informal Dispute Resolution Process; (b) the initiating party has served a written notice of "impasse" upon the other party within seven (7) days after being unable to resolve their differences; (c) the motion shall not be submitted until no less than seven (7) days has passed from the date the initiating party served the written notice of "impasse" upon the other party; (d) the motion is submitted within seven (7) days after service of the written notice of "impasse"; and (e) such motion shall be limited to the dispute(s) and/or issue(s) as to which the Informal Dispute Resolution Process was exhausted.

2. The non-moving party will have ten (10) days to respond to any such motion by submitting a brief to the Special Master and serving it on the moving party.

3. The Special Master shall attempt, within twenty (20) days after receiving the non-moving party's brief, to resolve the dispute. The Special Master may within that period schedule a telephonic or in-person hearing or other proceeding to resolve the matter by consent of the Parties or to provide them with an opportunity to present such evidence or argument as deemed appropriate by the Special Master in the absence of a consensual resolution. If the parties fail to resolve the matter within the twenty (20) day period, the Special Master shall, within thirty (30) additional days after such hearing, issue a written decision, which shall state:

(a) the issue(s) to be determined; (b) the decision of the Special Master; and (c) a summary of the facts and the Consent Decree provisions upon which the Special Master relied. The Special Master's jurisdiction and authority shall be limited to the enforcement of the terms of the Consent Decree. The Special Master shall not add to, detract from, or otherwise modify the terms of the Consent Decree. The Special Master shall not have the authority to issue penalties or sanctions against any party or their counsel.

D. Appeal from the Special Master's Decision

Either Class Counsel or Railroad may appeal the Special Master's written decision to the District Court, provided that such an appeal is filed within fourteen (14) days of the Special Master's written decision. Any such appeal shall be brought by motion pursuant to the Local Rules of the Court and Federal Rules of Civil Procedure. The decision rendered by the Special Master shall be affirmed unless the District Court finds that the Special Master abused his/her discretion or disregarded the law or the terms of the Consent Decree.

E. Payment of the Costs of the Special Master

Railroad shall pay for the fees and expenses of the Special Master.

F. Attorneys' Fees and Costs Incurred in Utilizing the Dispute Resolution Procedures

The Parties shall bear their own fees and costs (including attorneys' fees) incurred in using the Dispute Resolution Procedures, except that if an appeal is filed with the court on a particular issue, counsel for the "prevailing party" in the appeal shall be paid their reasonable fees and costs incurred pursuant to section IX.D (which may, at the court's discretion, include reasonable costs or fees incurred beginning with the initiation of the Dispute Resolution Process for that issue and ending with the resolution of the appeal on that issue).

X. Designation of Settlement Administrator

Subject to Court approval, the parties agree to retain Administar Services Group, Inc., as the Settlement Administrator. The Settlement Administrator's duties and responsibilities are set forth in this Consent Decree.

XI. Monetary Relief

A. Establishment of Settlement Fund

Railroad shall establish a settlement fund (the "Settlement Fund") in the gross amount of Three Million Dollars (\$3,000,000) for the purpose of providing individual awards to the Named Plaintiffs, monetary awards to the eligible members of the Settlement Class, and the payment of attorneys' fees and costs to Class Counsel, to be distributed in accordance with the provisions of this Consent Decree.

B. Administration of Settlement Fund

Within three (3) days of the Preliminary Approval of the Consent Decree, the Settlement Administrator will open an interest-bearing account ("Settlement Fund Account") with a unique Taxpayer Identification Number. Within 30 days of the Preliminary Approval of the Consent Decree, Railroad shall transfer Three Million Dollars (\$3,000,000) to the Settlement Fund Account established by the Settlement Administrator.

1. This account will accrue interest at the prevailing market rate for such an account at the banks in the town where the Settlement Administrator is located until all of the Settlement Funds have been paid out of the account, with interest to inure to the benefit of the Settlement Fund. At all times, however, Railroad shall be responsible for the payment of its portion of employer taxes and such payment shall not be made from the principal of the Settlement Fund. Only withdrawals authorized by this Consent Decree may be made from this account. Except as noted herein, each Class Member and Named Plaintiff shall take full and complete responsibility for all tax liability which might be incurred as a result of their receipt of any sum from the Settlement Fund. The payments to the Class Members and Named Plaintiffs will be allocated 80% to compensatory damages, interest, and fringe benefits and 20% to wages. The Settlement Fund shall be administered by the Settlement Administrator under the Court's supervision.

2. If there is no Final Approval of the Consent Decree, or if Railroad rescinds the Consent Decree pursuant to Section XII.F., the Settlement Administrator shall immediately return to Railroad all funds transferred by Railroad to the Settlement Account Fund, including any interest accrued thereon.

C. Payment to Settlement Class

1. The Settlement Administrator shall distribute \$1,500,000 of the Settlement Fund, plus interest (but less the amounts set forth in Section C.2. below) to eligible Class Members who file timely and valid claim forms, as set forth in Section D below. The distribution of the Settlement Fund according to the procedures set forth herein will be the Settlement Administrator's responsibility. The Settlement Administrator shall complete this distribution as soon as practicable, but in no event shall any distributions to the Class Members be made prior to thirty five (35) days after the Effective Date.

2. Prior to allocating any portion of the money from the Settlement Fund to Class Members, the Settlement Fund shall be reduced by the following amounts, which are to be paid to each Named Plaintiff as an Individual Award as described below:

Melvin Barnes: One hundred thousand dollars (\$100,000) for giving up the right to be employed by Railroad in the future and for his assistance throughout the preparation, filing, litigation, and settlement of this Litigation.

Tracy Steele and Jeremy Williams: Ninety thousand dollars (\$90,000) for their assistance throughout the preparation, filing, litigation, and settlement of this Litigation.

D. Procedure for Distribution of the Settlement Fund

The Parties agree that payments shall be made only to those Class Members who submit timely and valid claim forms. The determination of whether a claim form has been validly and timely submitted shall be made by the Settlement Administrator, in conjunction with Class Counsel and Railroad's Counsel. The Settlement Administrator will make the monetary calculation for each Class Member returning valid and timely claim forms. A sample claim form is attached to this Consent Decree as Exhibit D.

The amount from the Settlement Fund to be paid to each Class Member shall be calculated based on the total number of days each Class Member was employed by Railroad between February 18, 2000 and Preliminary Approval Date (or such other time period for which Railroad has employment tenure data to be agreed upon by the Parties). Payments will only be made to eligible Class Members or, in the event a Class Member is deceased, to his/her estate.

1. CALCULATIONS

Within 30 days after it is determined that the claim forms submitted by Class Members are timely and valid, the Settlement Administrator will determine the gross and net payments actually to be made to these Class Members.

2. NOTICE

Railroad shall provide to the Settlement Administrator the names, social security numbers, and last known addresses for all Class Members, within four (4) business days of the entry of the Preliminary Approval Order.

No more than seven (7) days after the entry of the Preliminary Approval Order, the Settlement Administrator will mail, via USPS first class mail, Notice to all Class Members in the form approved by the Court in the Preliminary Approval Order.

For those Class Members whose notices are returned by the USPS as undeliverable within thirty (30) days of the initial mailing of the notices, the Settlement Administrator will perform an address search and re-mail the notice to those for whom a potential new address can be found. The postmark filing deadline for claim forms is December 9, 2009.

The Notice, as approved by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, will set forth the total amount of the Settlement Fund, the date for the Fairness Hearing, the Individual Award to be paid to the Named Plaintiffs, a description of the method by which the payment to Class Members from the Settlement Fund will be computed, the amounts of attorneys' fees and costs payable to Class Counsel, the process for opting out of the Settlement, the process for objecting to the settlement, , and a description of the procedure and timetable for completing computation of the amounts to be distributed to each Class Member and for the issuance of payment. A copy of the Consent Decree shall be included in the Notice. The Notice is attached hereto as Exhibit E.

E. Fairness Hearing

The Court will hold a Fairness Hearing to consider whether, after hearing any objections, the Settlement terms are fair and reasonable to the Class Members as a whole. In the event the Court approves the Settlement as fair and reasonable, upon the Effective Date, the Settlement Administrator will complete computation of the amounts to be distributed as described below and thereafter will issue and mail checks to Eligible Class Members through the process described herein.

1. All Class Members who wish to receive a distribution from the Settlement Fund must complete, return, and postmark their claim forms to the Settlement Administrator on or before December 9, 2009. Only if the Notice and Claim Form is completed, returned, and postmarked on or before that date will the Class Member be considered eligible for a distribution from the Settlement Fund.

2. Within ten (10) days after the Effective Date, the Settlement Administrator, in conjunction with Class Counsel and Railroad's Counsel, will determine the Class Members who submitted timely and valid claim forms from the Settlement Fund and are therefore eligible to receive payments from the Settlement Fund.

F. Payment to Eligible Class Members

Within thirty (30) days after the Effective Date, the Settlement Administrator will mail each eligible Class Member a check representing their respective share of the Settlement Fund. Each check will state that the check will be void on a date one hundred eighty (180) days from the date of issuance. Each payment shall be allocated 80% to compensatory damages, interest, and fringe benefits and 20% to wages.

Any Class Member endorsing a settlement check will be deemed to have released their claims, as set forth in Section VII.A.

G. Tax Withholdings and Reporting

The Settlement Administrator will inform Railroad of the amount of the employer's share of all taxes or contributions (e.g., matching social security, RRB, Medicare or other required withholding or payroll taxes) required to be paid. Any employer's share of taxes or contributions (e.g., matching social security, RRB, Medicare or other required withholding or payroll taxes) shall be paid by Railroad. The Settlement Administrator will be responsible for preparing, reporting and remitting all appropriate tax filings and reports for all Class Members and Named Plaintiffs in a timely fashion after receipt of the Settlement Funds, including, but not limited to, W-2 and 1099 forms for all Named Plaintiffs and Class Members for their payments from the Settlement Fund, as well as any filings and/or reports required for the Settlement Fund itself. The Settlement Administrator will also be responsible for reporting and remitting to the appropriate taxing authorities the employer's share of taxes or contributions required to be paid by Railroad in a timely manner after receipt of the amount due for those payments from Railroad. In determining the amount of each payment, the Settlement Administrator will calculate the gross amount of distribution and then deduct all applicable withholding for federal, state, local, Social Security, RRB, or other applicable deductions. Each Class Member shall take full and complete responsibility for any and all personal tax liability which s/he may incur as a

result of their receipt of any sum from the Settlement Fund.

H. Remaining Monies In Settlement Fund

Any monies remaining in the Settlement Fund for three hundred (300) days after the Effective Date shall, at Class Counsel's sole discretion, be used to make additional payments to Class Members, or be paid to any nonprofit 501(c) organizations eligible to receive cy pres distributions. Class Counsel represent that they shall derive no financial or other benefit from any transfer of funds to any such organization.

I. Undeliverable Checks

Any checks returned as undeliverable shall be voided and the amount of the check shall be returned to the Settlement Fund, to be distributed as per Section H above.

J. Deceased Settlement Class Members

Any allocation paid to a deceased Class Member shall be made payable to the estate of the deceased Class Member upon timely receipt by the Settlement Administrator of proper written proof of the estate's entitlement to receive the deceased Class Member's assets.

K. Periodic Statements from Settlement Administrator

Within thirty (30) days of the final distribution of the monies from the Settlement Fund, the Settlement Administrator shall furnish an accounting of all distributions from the Settlement Fund to the Court, with copies to counsel for Railroad and Class Counsel.

XII. Notice of Objections and Limited Right To Opt-Out

Class Members may object to, or opt out of, the Settlement.

A. Objections

Class Members objecting to the terms of the Settlement must do so in writing by sending a written objection to the Settlement Administrator, which must be postmarked on or before December 9, 2009. The Settlement Administrator shall date stamp the original of the objection and forward a copy of the objection to both counsel for Railroad and Class Counsel within two (2) business days following receipt. The Settlement Administrator will file the original objections with the Clerk of the Court no later than five (5) business days prior to the scheduled Fairness Hearing. The Settlement Administrator shall retain copies of all written objections until such time as it has completed its duties and responsibilities under this Decree.

B. Right to Opt-Out

Class Members have a right to exclude themselves (or opt-out) from this Consent Decree. If the request for exclusion is exercised, the right to share in the monetary benefits of this Consent Decree will be forever lost. All Class Members who are presently employed by Railroad shall, however, be beneficiaries of any injunctive relief agreed to in the Consent Decree, and may not opt-out of those provisions of the Settlement.

Any request for exclusion must be in the form of a written Opt-out statement sent to the Settlement Administrator. Information on how to opt-out of the settlement shall be made available to Class Members in the Notice and by the Settlement Administrator upon request. A person wishing to opt-out must sign a statement that includes the following language:

"I understand that I am requesting to be excluded from the class monetary settlement and that I will receive no money from the settlement fund created under the Consent Decree entered into by Railroad. I understand that if I am excluded from the class monetary settlement, I may bring a separate legal action seeking damages, but may receive nothing or less than what I would have received under the class monetary settlement in this case. I also understand that I may not seek exclusion from the class for injunctive (non-monetary) relief and that I am bound by the injunctive provisions of the Consent Decree entered into by Railroad."

Class Members who do not properly or timely request exclusion (as to the monetary aspects of the Consent Decree only) will be barred and precluded from filing, commencing, prosecuting, maintaining, intervening in, participating in (as a Class Member or otherwise) any other lawsuit or settlement based on or relating to the claims, causes of actions, or the facts and circumstances of this lawsuit and the claims released in Section VII above. Class Members who do not properly or timely request exclusion (as to the monetary relief aspects of the Consent Decree only) also will be barred and precluded from receiving any benefits from any other lawsuit, administrative, or regulatory proceeding or court order in any jurisdiction based on or relating to the claims, causes of actions, or the facts and circumstances of this lawsuit and the claims released in Section VII above.

Class Members who timely request exclusion (as to the monetary relief aspects of the Consent Decree only) will not be permitted to object to this Consent Decree or otherwise participate in any further proceedings in this case.

C. Submission of Opt-Out Statements

A Class Member submitting an Opt-out statement shall sign and date the statement and send it to the Settlement Administrator postmarked no later than December 9, 2009. The Settlement Administrator shall date stamp the original of any Opt-out statement and serve copies on both counsel for Railroad and Class Counsel within two (2) business days of receipt of such statement. The Settlement Administrator will file the original Opt-out statements with the Clerk of the Court no later than five (5) business days prior to the scheduled Fairness Hearing. The Settlement Administrator shall retain copies of all Opt-out statements until such time as it has completed its duties and responsibilities under this Decree.

D. Rescission of Class Member Opt-Outs

The Parties recognize that some Class Members who initially submit Opt-out forms seeking exclusion may, upon further reflection, wish to withdraw or rescind such Opt-out statements. The Parties agree that Class Members shall be permitted to withdraw or rescind their Opt-out statements by submitting a "Rescission of Opt-out" statement to the Settlement Administrator. The Rescission of Opt-out statement shall include the following language:

"I previously submitted an Opt-out statement seeking exclusion from the class monetary settlement. I have reconsidered and wish to withdraw my Opt-out statement. I understand that by rescinding my Opt-out statement I may be eligible to receive an award from the claims settlement fund and may not bring a separate legal action against Railroad seeking damages."

E. Submission of Rescission Statements.

A Class Member submitting such a rescission statement shall sign and date the statement and cause it to be delivered to the Settlement Administrator no later than three (3) calendar days prior to the date of the Fairness Hearing. The Settlement Administrator shall date stamp the original of any Rescission of Opt-out statement and immediately scan and send by e-mail or fax copies to counsel for Railroad and Class Counsel no later than the next business day after receipt thereof and shall file the date-stamped originals with the Clerk of the Court no later than one (1) business day prior to the date of the Fairness Hearing. The Settlement Administrator shall retain copies of all Rescissions of Opt-Out statements until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Decree.

F. Defendant's Rescission of Agreement

If any of the Named Plaintiffs opt out, or if the number of Class Members who opt-out of the Settlement in the manner provided for in this Decree exceeds twenty-two (22), then Railroad, at its sole option, shall have the right to void this Settlement within seven (7) days after the date the Court allows the submission of rescissions of opt-outs. If Railroad exercises this option, all of Railroad's obligations under this Consent Decree shall cease to have any force or effect and any orders entered in connection therewith shall be vacated, rescinded, cancelled, and annulled, and the Parties shall return to the status quo in this Litigation as if the Parties had not entered into this Consent Decree. In addition, in such event, the Consent Decree and all negotiations, court orders and proceedings related thereto shall be without prejudice to the rights of any and all Parties hereto, and evidence relating to the Consent Decree and all negotiations shall not be admissible or discoverable in this Litigation or otherwise.

XIII. Settlement Administrator's Duties and Responsibilities.

The Settlement Administrator shall: (1) receive from Railroad the names, social security numbers, last known addresses, and length of employment of all Class members by no later than four (4) business days after the Preliminary Approval Order; (2) prepare and mail the Notice to Class Members and the claim form to those Class Members who may be eligible to receive a monetary distribution no later than seven (7) days after the Preliminary Approval Order; (3) trace twice, if necessary, all Class Member addresses for undeliverable Notice and claim forms; (4) seek additional information from Railroad, when appropriate or necessary; (5) calculate the amounts due to each Class Member; (6) calculate, report and remit in a timely fashion to the appropriate state and federal taxing authorities the taxes due to be paid by each Class Member and Named Plaintiff based on the money they receive from the Settlement Fund; (7) report and remit in a timely fashion to the appropriate state and federal taxing authorities the employer's share of taxes or contributions required to be paid by Railroad as a result of the payment of monetary sums to the Class Members and Named Plaintiffs; (8) receive and file opt-out statements, objections and rescissions of opt-out statements; (9) implement the

Distribution Procedures required by the Consent Decree; (10) respond to questions from Class Members and Named Plaintiffs; and (11) perform any other duties necessary to carry out its responsibilities as set forth in this Decree.

XIV. Payment of the Settlement Administrator's Fees and Costs

The Settlement Administrator's fees and costs will be paid by Railroad.

XV. Payment For Attorneys' Fees, Costs and Expenses

Within seven (7) days of the Effective Date, Class Counsel shall be paid from the Settlement Fund One Million Five Hundred Thousand Dollars (\$1,500,000) for work performed up to the Effective Date. If required by the Court, Class Counsel will provide support for its fees and expenses.

Railroad shall have no obligation under this Consent Decree to pay any money for attorneys' fees and costs to Class Counsel, except as expressly set forth in this Consent Decree. Except as otherwise provided herein, Railroad shall not be liable for any of Named Plaintiffs' costs or attorneys' fees, statutory or otherwise, incurred in this Litigation or during the term of this Consent Decree.

XVI. Attorney's Fees, Expenses and Costs During Term of Consent Decree

Within seven (7) days of the Effective Date, Railroad also agrees to pay to Class Counsel Five Hundred Thousand Dollars (\$500,000) for attorneys' fees, expenses, and costs to be expended during the Term of the Consent Decree. This payment shall not be paid from the Settlement Fund.

XVII. Media and Confidentiality Obligations

The Parties have agreed to issue a joint media statement (attached as Exhibit F) after the filing of the Joint Motion to Approve the Settlement, and on the day of the Court's Final Approval of the Settlement. Prior to that time, the Parties agree to keep the terms of this Settlement confidential.

Any further statements to the media by either Party, the Named Plaintiffs, or any Class Counsel must be provided to, and approved by, the opposing party in advance of the issuance to the media. Therefore, the Parties agree that neither they, the Named Plaintiffs, nor any Class Counsel may issue or release statements to the media about the Decree without securing prior advance approval from the opposing Party.

Moreover, the Named Plaintiffs, Class Counsel, Railroad, and Railroad's counsel agree not to discuss with any other person or entity other than their immediate family and tax or financial advisors, except as may be directed by the Court, any terms of the Settlement other than information as set forth in the agreed upon joint media statement. If a party makes a statement to the media or third parties in violation of its confidentiality obligations, the other party shall not be deemed to have violated its confidentiality obligations, or otherwise waived privilege or protection (including without limitation the reporter shield protection), by taking appropriate action in response to the statements made by the violating party, including

responding to the media or third parties. If one Party alleges that another Party violated this provision, the Parties shall be subject to full discovery as to the alleged violation.

XVIII. Other Provisions

A. Where notice is required to be provided to Counsel or to the Settlement Administrator, or where materials are required to be sent to Counsel or to the Settlement Administrator, then such requirements shall be satisfied by providing such notice as follows:

Plaintiffs' Lead Counsel: Robert F Childs, Jr., Wiggins, Childs, Quinn & Pantazis, LLC, The Kress Building, 301 19th Street North, Birmingham, Alabama 35203, (205) 314-0591.

Defendants' counsel: Keith C. Hult, Littler Mendelson, P.C., 200 North LaSalle Street, Suite 2900, Chicago, IL 60601, (312) 372-5520.

Settlement Administrator: Administar Services Group, Inc., P.O. Box 36380, Jacksonville, Florida 32241-6380.

B. If any individual or entity objects to or appeals the approval of this Consent Decree, all Parties to this Decree shall support and defend the propriety of and approval of this Decree.

C. If the Consent Decree is not finally approved, whether by reason of an order of the Court or of any appellate court or for any other reason, then the Releases contained herein shall be null and void; any and all further undertakings of the Parties under this Decree shall be excused.

D. The Parties acknowledge that they are entering into this Consent Decree voluntarily and that it is his, her, its or their intent to consummate this Decree and agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of this Consent Decree and exercise Best Efforts to establish the foregoing terms and conditions of the Consent Decree.

E. Upon execution of this Consent Decree, all proceedings in this action shall be stayed until further order of the Court, except such proceedings as may be necessary to implement the settlement or comply with or effectuate the terms of this Consent Decree.

F. This Consent Decree (along with the Exhibits thereto) constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous agreements or understandings between the Parties with respect to the subject matter hereof, and any and all prior correspondence, conversations or memoranda between the Parties are merged herein and are replaced hereby. This Consent Decree may not be altered or amended except by a written instrument that has been approved by an order of the United States District Court for the Northern District of Illinois.

G. If any part, subpart, section, paragraph, subparagraph, sentence or clause of this Consent Decree or the application of same to any person or circumstance is, for any

reason, judged by any court to be unenforceable or contrary to law, or if the enactment or amendment of any federal or state statute, order, ordinance, or regulation renders any provision of this Consent Decree unenforceable or contrary to law, such judgment, enactment, or amendment shall not affect, impair, or invalidate the remainder of this Consent Decree, provided that such portion of this Consent Decree that has or may become unenforceable is not a material part or the essence of any Party's bargain hereunder.

H. This Consent Decree and the Exhibits hereto, and the rights and obligations of the Parties thereunder, shall be construed and enforced in accordance with the laws of the State of Illinois as to substance and procedure, including all questions of conflicts of laws.

I. The undersigned counsel and persons are fully authorized to execute and enter into the terms and conditions of this Consent Decree on behalf of their respective clients.

/s/ Robert F. Childs, Jr.
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