

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Ann W. Humphrey, individually and  
on behalf of all others similarly situated,

Plaintiff

v.

Case No. H 05-758  
Hon. Melinda Harmon  
Mag. Frances H. Stacy

United Way of the Texas Gulf Coast,  
a Texas non-profit corporation, and  
United Way of the Texas Gulf Coast  
Cash Balance Plan,

Defendants.

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**NOTICE OF RIGHTS UNDER PROPOSED CLASS ACTION SETTLEMENT**

TO: PERSONS WHO (1) PARTICIPATED IN THE UNITED WAY OF THE TEXAS GULF COAST CASH BALANCE PLAN AS AMENDED EFFECTIVE 1/1/1996 ("96PLAN") AND THE IMMEDIATE PREDECESSOR PLAN TO THE 96PLAN (COLLECTIVELY, "THE PLANS"), AND (2) RECEIVED, OR MAY BE ELIGIBLE TO RECEIVE, A PENSION AT A TIME WHEN THEY WERE/ARE ELIGIBLE FOR AN EARLY RETIREMENT PENSION UNDER THE TERMS OF THE 96PLAN (THE "CLASS")

PLEASE READ THIS NOTICE CAREFULLY. IT RELATES TO A SETTLEMENT OF A CLASS ACTION LAWSUIT AND CONTAINS IMPORTANT INFORMATION AS TO THE RIGHTS OF MEMBERS OF THE CLASS TO OBTAIN A SHARE OF THE SETTLEMENT AMOUNT. THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT REGARDING THE ALLEGATIONS IN THIS ACTION OR THE MERITS OF THE CLAIMS OR DEFENSES ASSERTED.

ALL QUESTIONS CONCERNING THIS NOTICE MUST BE DIRECTED TO CLASS COUNSEL IDENTIFIED IN PART V BELOW.

DO NOT CONTACT THE COURT OR DEFENDANTS BECAUSE THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS

You are hereby notified pursuant to Rule 23 of the Federal Rules of Civil Procedure that the parties to this class action have reached, and the United States District Court for the Southern District of Texas (Houston Division) (the “Court”) has preliminarily approved, a settlement of this class action in the total amount of \$6,156,780 (the “Class Settlement Amount”), plus certain interest. The settlement will result in:

- (i) the payment of the Class Settlement Amount, after deductions for fees, costs, and expenses of Class Counsel and the escrow agent, to members of the Class; and
- (ii) the dismissal of this class action with prejudice against each and all of the named Defendants therein; and
- (iii) the release of the UNT Releasees (as defined in Part IV below and in the Settlement Agreement) from all Plaintiff’s Released Claims (as defined in Part IV below and in the Settlement Agreement).

**I. DEFINITION OF THE CLASS**

By Order entered June 27, 2012, the Court determined that this class action would be maintained as a class action for purposes of the Class Action Settlement Agreement entered into by the parties as of June 21, 2012 (the “Settlement Agreement”). The Class consists of the following individuals: all Participants or Former Participants (as those terms are defined in the 96Plan), and beneficiaries of such Participants or Former Participants, who (i) as of 12/31/1995, had accrued a pension under a prior plan sponsored by United Way of the Texas Gulf Coast Pension Plan, amended and restated effective January 1, 1989 (denoted the “Prior Plan” in the 96Plan), (ii) were or hereafter are eligible for an Early Retirement Pension under the 96Plan

(“ERP”), and (iii) received an ERP, or are eligible to receive an ERP, or hereafter become eligible to receive an ERP. Subject to the foregoing general requirements, the Class includes: (i) Participants who have received an ERP, (ii) Participants who have received a Deferred Vested Pension (“DVP”) after satisfying the age requirements for Early Retirement under Section 5.3 of the Plan, and (iii) Participants or Former Participants who are currently eligible or may become eligible to receive an ERP under Section 5.3 or 6.7 of the Plan. The Class does not include Participants or Former Participants who have received a Normal Retirement Pension or a Late Retirement Pension (as those terms are defined in the 96Plan), or who are no longer eligible to elect an ERP.

According to the records maintained by the 96Plan, you are a member of the Class.

## **II. DESCRIPTION OF THE ACTION**

### **A. Humphrey’s Claims and the Findings of the Court.**

On March 9, 2005, the Plaintiff, Ann W. Humphrey (“Humphrey”), filed the above-captioned lawsuit against United Way of the Texas Gulf Coast (“UNT”) and the 96Plan. The 96Plan is a restatement and amendment of the Prior Plan. Humphrey is the plaintiff in the lawsuit (i.e., the party asserting claims against UNT and the 96Plan); and UNT and the Plan are the defendants in the lawsuit (i.e., the parties defending against Humphrey’s claims). Humphrey brought her Complaint as a Class Action, meaning that she brought it on behalf of all similarly situated persons. You are a member of the Class.

In her Complaint, Humphrey claimed that defendants were miscalculating the ERP under the 96Plan, causing it to be too small. More specifically, Humphrey alleged that, under Section 6.5 of the 96Plan, the ERP must be no less than (i) the pension earned under the Prior Plan **plus**

(ii) the pension earned under the 96Plan. Humphrey stated that defendants were paying only the “greater of” these two pensions, rather than the sum of both of these pensions; and that the sum of both pensions will always be larger than the greater of these two pensions. In other Court filings, Humphrey also stated that certain persons who received only a DVP were actually entitled to an ERP, and, therefore, they were also entitled to have their pension calculated under the foregoing “**plus**” methodology, rather than the “greater of” methodology employed by defendants.

On March 28, 2008, the Court issued an Opinion and Order, in which it agreed with Humphrey that the ERP must be calculated using the foregoing **plus** methodology (not the “greater of” methodology employed by the Defendants), and that this same **plus** methodology applies to DVP-eligible persons who wait until early retirement age to receive their pension. On December 9, 2010, the Court entered a Final Judgment following which the Defendants filed a motion seeking to alter or amend the judgment, or for a trial. After the Court denied the Defendants’ motion, the parties filed a joint motion requesting entry of an Amended Final Judgment, which the Court entered on October 14, 2011. The Defendants appealed the Amended Final Judgment on November 14, 2011 and filed their appeal brief on February 6, 2012. In their appeal brief, the Defendants requested, among other things, that the appellate court (i) reverse the Court’s finding that the Defendants must utilize the “plus,” rather than the “greater of,” methodology in calculating the ERP, (ii) alternatively, order the Court to conduct a trial to determine if the “plus” language in Section 6.5 of the 96Plan resulted from a drafting error, and (iii) significantly reduce the damages recoverable by Humphrey and the Class to an amount substantially lower than the Class Settlement Amount. In light of the settlement,

Humphrey has not yet filed her appellate brief responding to the arguments in Defendants' appeal brief.

To be eligible for an ERP under §5.3 of the 96Plan, a Participant must, at termination of service, (i) have attained age 55 (but not age 65) and have at least 5 years of service, **OR** (ii) have attained age 50 (but not age 55) and have combined age and service totaling at least 65. To be eligible for a DVP under §6.7 of the 96Plan, a Participant must terminate service for a reason *other than* Early Retirement (or Normal, Late or Disability Retirement, or death) and have completed 5 years of service. Pursuant to the last sentence of §6.7, a Participant who terminates service while DVP-eligible may age into eligibility for an ERP by electing to defer commencement of the pension until after satisfying the age requirements for Early Retirement under §5.3. Thus, in order to receive an ERP, Participants and Former Participants who have not yet elected to receive their pension must elect to commence their pension *after* they have attained age 55 and have at least 5 years of service, or after they have attained age 50 (but not age 55) and have age plus service totaling at least 65, but in all events *before* age 65.

A. **Proceedings Prior to Sending of this Notice.**

After over seven years of litigation and extensive investigation of the relevant facts and law by Class Counsel, including the review and consideration of documents, depositions and extensive legal arguments, including arguments advanced in Defendants' appeal brief, the lawyers for the parties engaged in extensive arms-length negotiations and formal mediation before a nationally recognized mediator in cases of this type, and ultimately negotiated the Settlement Agreement. While defense of the appeal might result in more than the Class Settlement Amount if Humphrey sustained her claims, Class Counsel recognize that Defendants

have asserted arguments which, if adopted by the appellate court, could reduce the recovery to an amount substantially less than the Class Settlement Amount or possibly exonerate Defendants from liability and result in no recovery at all for Humphrey and the Class. At the same time, without admitting or conceding any liability or damages whatsoever, the Defendants have agreed to settle this class action, on the terms and conditions set forth in the Settlement Agreement, including dismissal of the 96Plan and UNT with prejudice, to avoid the burden, expense, and uncertainty of continuing litigation and to conclude all claims that are, or could have been, asserted in the Action.

### **III. SUMMARY OF SETTLEMENT**

The proposed settlement reached in the Action is embodied in the Settlement Agreement on file with the Court. The following description of the settlement is only a summary. If you would like to read the entire text of the Settlement Agreement, please request a copy of same from Class Counsel, Eva Cantarella by calling (248) 335-5000 or e-mailing her at [ecantarella@hertzschram.com](mailto:ecantarella@hertzschram.com).

The proposed settlement, if approved by the Court, will result in the payment of a benefit to the Class in the amount of the Class Settlement Amount, reduced by the following fees, costs and expenses:

- (a) Attorneys' fees, costs and expenses incurred by Class Counsel. Class Counsel have filed a petition for attorneys' fees, costs and expenses earned and incurred by Class Counsel during the period beginning April 25, 2003 and ending July 3, 2013, requesting an award of \$1,666,212.25 in attorneys' fees and \$116,951.98 in costs and expenses.

- (b) Fees, costs and expenses incurred in connection with establishing and administering a Qualified Settlement Fund at a commercial bank selected by Class Counsel and approved by UNT/Plan Trial Counsel which will act as an escrow agent to hold the Class Settlement Amount until the Court enters an order approving the settlement and such order becomes final and non-appealable.

The remaining balance of the Class Settlement Amount (the “Net Class Settlement Amount”) will be distributed to members of the Class. The method for distributing the Net Class Settlement Amount is described in Part IV below.

#### IV. RIGHTS OF CLASS MEMBERS

Assuming that you fall within the definition of the Class described above, you are automatically a member of the Class and are entitled to receive your share of the Net Class Settlement Amount, calculated as described below. Because the Court has certified this case under Rule 23(b) of the Federal Rules of Civil Procedure, **you do not have the right to opt out of, or decline to participate in, the Class. You will be bound by any judgments or orders entered in the Action, and, if the Settlement Agreement is approved, you will be deemed to have released each and all of the Defendants and various related parties (collectively the “UNT Releasees”) of and from any and all claims arising under the 96Plan (the “Plaintiff’s Released Claims,” described with more particularity in the Settlement Agreement), subject only to your rights to participate in the distribution of the Net Class Settlement Amount. This means you will not be able to file your own lawsuit if you disagree with any aspect of your distribution, and you will be subject to the jurisdiction of the Court with respect to any disputes or litigation involving the proposed settlement.**

**V. CLASS COUNSEL**

Class Counsel are the following:

Bradley J. Schram  
Robert P. Geller  
Eva Cantarella  
Hertz Schram PC  
1760 S. Telegraph Rd., Ste. 300  
Bloomfield Hills, MI 48302

Please direct any questions you have to Eva Cantarella at Hertz Schram PC, at the above address, or by calling Ms. Cantarella at (248) 335-5000.

**VI. METHODOLOGY FOR DETERMINING PAYMENTS FROM THE NET CLASS SETTLEMENT AMOUNT TO THE CLASS**

In order to formulate a method for allocating the Net Class Settlement Amount, Defendants agreed to provide to Class Counsel and their actuary Excel spreadsheets containing data based on the following assumptions:

- (a) The date for valuing (i) the ERP “plus” payments to Class members who have already received their ERP or a DVP when they were ERP-eligible and for future ERP payees, and (ii) calculating the pre-judgment interest due Class members who have already received their ERP (or DVP where they were ERP eligible), would be April 1, 2012; and
- (b) All Class members who have not yet received an ERP, but are currently eligible for an ERP under either Sections 5.3 or 6.7 of the Plan, would elect to receive an ERP during the time they were eligible to do so;
- (c) All Class members who have not yet received an ERP, and are not yet eligible for an ERP under either Sections 5.3 or 6.7 of the Plan, would elect to do so once they became eligible to make that election;
- (d) The Amended Final Judgment would be affirmed on appeal.

Humphrey and Class Counsel therefore propose the following plan of allocation for the distribution of the Class Settlement Amount of \$6,156,780.00:



(a) Step 1 – Determine the Net Class Settlement Amount

(1) Step 1 requires the attorneys’ fees, costs and expenses awarded by the Court to Class Counsel, and the fees, costs and expenses of the Escrow Agent, to be deducted from the Class Settlement Amount;

(2) Example:

Assume an award by the Court of \$1,783,164.23 in fees, costs and expenses awarded to Class Counsel and the Escrow Agent;

- Subtract from the Class Settlement Amount (\$6,156,780) the amount of fees, costs and expenses awarded to Class Counsel and the Escrow Agent by the Court (\$1,783,164.23);
- This results in a Net Class Settlement Amount of \$4,373,615.77

(b) Step 2 – Determine the Allocation Percentage of the Potential Class Action Recovery

Step 2 involves a calculation of the percentage of the “Potential Class Action Recovery” attributable to the Net Class Settlement Amount;

(1) The “Potential Class Action Recovery” is the sum of all damages potentially recoverable by the Class based on the spreadsheet data provided by the Defendants, calculated in accordance with the assumptions as set forth above, which amount equals \$8,235,242.87;

(2) The Allocation Percentage is determined by dividing the Net Class Settlement Amount by the Potential Class Action Recovery;

(3) Example:

(i) Assume the Net Class Settlement Amount equals \$4,373,615.77;

(ii) Divide the Net Class Settlement Amount (\$4,373,615.77) by the Potential Class Action Recovery (\$8,235,242.87);

(iii) The result is .5311 (53.11%), which is the “Allocation Percentage;”

(c) Step 3 – Distribution of each Class member’s pro-rata share of the Net Class Settlement Amount.

- (1) Step 3 sets forth the formula for calculating the amount of the Net Class Settlement Amount to be paid to an individual Class member;
- (2) Example:
  - (i) Assume a Class member is shown on the spreadsheet to have a potential damages recovery of \$10,000;
  - (ii) Multiply the Allocation Percentage (53.11%) by the individual class member's potential damages recovery (\$10,000);
  - (iii) The result of \$5,311 is this particular Class member's pro-rata share of the Net Class Settlement Amount.

The actual pro-rata share of the Net Class Settlement Amount that any individual Class member will receive will depend on (i) the Court's award of fees, costs and expenses to Class Counsel, including those incurred in connection with the escrow agent, and (ii) the actual Allocation Percentage derived as a result. As soon as reasonably possible following the issuance of such award, Class Counsel will file with the Court a plan of allocation that will set forth the actual Allocation Percentage that will apply to each Class member's individual potential damages recovery for purposes of determining the Class member's individual distribution amount.

## **VII. TERMINATION OF THE 96PLAN**

Because the 96Plan is in the process of terminating, Class members who have not yet elected or received a distribution of their ERP may receive a distribution from the 96Plan of their ERP (as calculated by the 96Plan under the pre-settlement "greater of" methodology) prior to approval of the proposed settlement and the Settlement Agreement. In that event, if the Court subsequently approves the proposed settlement and Settlement Agreement and the resultant Judgment becomes final and non-appealable, such Class members will receive a second

distribution that will represent their pro-rata share of the Net Class Settlement Amount.

### **VIII. FAIRNESS HEARING**

A. **Fairness Hearing Scheduled.** A Fairness Hearing has been scheduled by the Court to occur on August 23, 2012, Court Room 9C, commencing at 3:00 p.m., at the United States District Court for the Southern District of Texas, Houston Division, Bob Casey, United States Courthouse, 515 Rusk Avenue, Houston, Texas 77002. At the Fairness Hearing, counsel for the parties will request that the Court, among other things, (i) approve the proposed settlement and Settlement Agreement as fair, reasonable, adequate and binding on all members of the Class, (ii) enter a Judgment in accordance with the Settlement Agreement, (iii) approve an award of attorneys' fees, costs and expenses for Class Counsel including fees, costs and expenses incurred by the escrow agent, and (iv) approve distributions to Class members. The Court may change the date and time of the Fairness Hearing without any further notice to the Class.

B. **Objections to Settlement.** Any Class member who wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement must file written objections with the Clerk of the Court and serve them on Class Counsel, Eva Cantarella, Hertz Schram PC, 1760 S. Telegraph Road., Suite 300, Bloomfield Hills, Michigan 48302, and Defendants' Counsel, Reagan Brown, Fulbright & Jaworski, L.L.P., 1301 McKinney, Suite 5100, Houston, Texas 77002-3095, no later than 14 days before the Fairness Hearing. Written objections must contain the Class member's full name, date of birth, address, and telephone number; the case name and number (Humphrey v United Way of the Texas Gulf Coast No. H-05-00758); a statement of each objection; and the specific reason for each objection, including any legal support and evidence that the Class member filing the objection wishes to bring to the Court's

attention. Class members may file and serve written objections on their own or through an attorney hired at their own expense.

If a Class member hires an attorney to represent him/her at the Fairness Hearing, the attorney must:

File a notice of appearance with the Clerk of Court no later than 14 days prior to the Fairness Hearing or as the Court may otherwise direct, and

Serve a copy of such notice of appearance on Class Counsel, Eva Cantarella, and Defendants' Counsel, Reagan Brown, at the above-noted addresses.

Any Class member who files and serves a written objection, as described herein, may appear at the Fairness Hearing to object to the fairness, reasonableness or adequacy of the Settlement Agreement or the terms of the settlement. Subject to the Court's discretion, any Class member or attorney failing to comply with the provisions of this paragraph shall *forfeit* any and all right the Class member may have to appear separately and/or to object.

C. **Effect of Failure to Obtain Final Approval**. In the event that the Court fails to enter Judgment in accordance with the Settlement Agreement, or in the event that the Judgment is reversed on appeal, the parties shall revert to their status as of March 22, 2012 and none of the parties shall have any other further rights or obligations under the Settlement Agreement.

**IX. FAILURE TO CLAIM BENEFIT OR FAILURE TO NEGOTIATE BENEFIT PAYMENT INSTRUMENTS**

Any Class member or other person to whom a Class member's distribution is derivatively owed who fails to claim his/her benefit or negotiate a check or payment instrument from the 96Plan within one (1) year after the judgment is final and non-appealable (i.e., Final, as defined in the Settlement Agreement) will, by that failure, be deemed to have acquiesced in a distribution

being made in accordance with the rules and regulations of the Pension Benefit Guaranty Corporation, which rules and regulations entitle the 96Plan to cancel the check or payment instrument and purchase an annuity representing the amount of the distribution in the name or and on behalf of such Class member, or to transfer the amount of such distribution to the Pension Benefit Guaranty Corporation in the name of such Class member. Any such Class member who fails to claim his/her benefit or negotiate a check or payment instrument shall nevertheless remain bound by all of the terms and conditions of the Settlement Agreement, including, but not limited to, all aspects of the release specified in the Settlement Agreement.

**X. UPDATED ADDRESSES AND PERSONAL INFORMATION**

In order to expedite the distribution of benefits under the terms of this proposed Settlement, it is important that the 96Plan have accurate and current information about Class members' names, addresses, and other identifying information. IF THERE ARE ANY ERRORS OR MISTAKES IN YOUR NAME, CURRENT ADDRESS, SOCIAL SECURITY NUMBER OR OTHER INFORMATION REFLECTED IN EITHER THIS NOTICE OR OTHER DOCUMENTS THAT ARE TRANSMITTED BY CLASS COUNSEL, THE DEFENDANTS' COUNSEL, OR THE DEFENDANTS, IT IS IMPORTANT FOR YOU TO CORRECT THAT INFORMATION EITHER BY CALLING CLASS COUNSEL, EVA CANTARELLA AT (248) 335-5000; OR BY SENDING WRITTEN NOTIFICATION TO MS. CANTARELLA ADDRESSED TO HERTZ SCHRAM PC, ATTN: EVA CANTARELLA, ESQ., 1760 S. TELEGRAPH ROAD, SUITE 300, BLOOMFIELD HILLS, MI 48302.

**XI. EXAMINATION OF PAPERS AND INQUIRIES**

DO NOT CONTACT THE COURT OR DEFENDANTS BECAUSE THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS

Any questions you have concerning the matters contained in this Notice should **NOT** be submitted to the Court, but may be directed to Class Counsel, Eva Cantarella, Esq., Hertz Schram PC, at the address set forth above.

You may, of course, seek the advice and guidance of your own attorney if you desire. Certain pleadings and other records of this litigation may be examined and copied at any time during regular office hours at the Office of the Clerk, Civil Division, United States District Court for the Southern District of Texas, Houston Division, Bob Casey, United States Courthouse, 515 Rusk Avenue, Houston, Texas 77002.