

FILED

2019 JUL 10 AM 11:13

MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

DOREEN BARROW
FILED BUTLER CO.
COURT OF COMMON PLEAS

Case No. CV 2013 07 2047

Plaintiffs

JUL 10 2019

Judge Michael A. Oster, Jr.

v.

MARY L. SWAIN
CLERK OF COURTS

FINAL APPEALABLE ORDER
AND JUDGMENT ENTRY

VILLAGE OF NEW MIAMI, et al.,

Defendants

1. Incorporation of Prior Decisions and Definitions.

The Court, for purposes of this Order adopts the analysis set forth in its prior decisions granting Summary Judgment and Class Certification.

This Order and Judgment concerns Council Ordinance 1917 adopted by the Village of New Miami (the "Village") Council on July 5, 2012 (the "Ordinance"). The Ordinance created an Automated Speed Enforcement Program ("ASEP").

2. Judgment

The Court grants summary judgment in favor of the Defendants on Count I of the Complaint. The Court grants Summary Judgment in favor of the Plaintiff Class on Counts II, III, and IV.

On Count II, the Court issues a declaratory judgment that the Ordinance 1917 violates the "Due Course of Law" provision of the Ohio Constitution.

On Count III, the Court issues a permanent injunction prohibiting the Village from enforcement of the Ordinance. The Village is further permanently enjoined from adopting or modifying a new ASEP which violates the "Due Course of Law" guarantees of the Ohio Constitution. This Order is binding upon the parties to the action, their officers, agents, servants, employees,

Judge
Michael A. Oster, Jr.
Common Pleas Court
Butler County, Ohio



attorneys and those persons in active concert or participation with them who receive actual notice of this Order whether by personal service or otherwise.

On Count IV, the Court orders The Village to pay the amount of \$3,066,422.11. This amount is calculated as follows: payments by class members in the amount of \$3,066,422.11 plus interest in the amount of \$0.00. Interest to be calculated using simple interest at a 3% annual rate, accruing from the date of this Court's final judgment entry, filed as of this date, July 10, 2019. See generally, *Judy v. Ohio Bur. Of Motor Vehicles*, 6th Dist. Lucas Cty. App. No. L-01-1200, 2004-Ohio-5673, 2004 WL 2384371.

As set forth in the Court's October 17, 2018 Entry, the Court finds that, pursuant to R.C. 2744.06, restitution shall be paid in ten annual installments with a statutory interest rate of 3%. Restitution shall be paid in annual payments of \$349,007.98 according to the following schedule:

Date	Payment	Interest	Principal	Balance
7/10/19	\$349,007.98	\$0.00	\$349,007.98	\$2,717,414.13
7/10/20	\$349,007.98	\$81,522.42	\$267,485.55	\$2,449,928.58
7/10/21	\$349,007.98	\$73,497.86	\$275,510.12	\$2,174,418.46
7/10/22	\$349,007.98	\$65,232.55	\$283,775.42	\$1,890,643.03
7/10/23	\$349,007.98	\$56,719.29	\$292,288.69	\$1,598,354.35
7/10/24	\$349,007.98	\$47,950.63	\$301,057.35	\$1,297,297.00
7/10/25	\$349,007.98	\$38,918.91	\$310,089.07	\$987,207.93
7/10/26	\$349,007.98	\$29,616.24	\$319,391.74	\$667,816.19
7/10/27	\$349,007.98	\$20,034.49	\$328,973.49	\$338,842.70
7/10/28	\$349,007.98	\$10,165.28	\$338,842.70	\$0.00

2. Jurisdiction.

The Court has personal jurisdiction over the Parties and all Class Members and has subject-matter jurisdiction over this action, including, without limitation, jurisdiction to Order the relief in this Order.

Without in any way affecting the finality of this Final Order and Judgment, this Court expressly retains exclusive and continuing jurisdiction over the Parties, including the Class, and all matters relating to the administration, consummation, validity, enforcement and interpretation of this Final Order and Judgment, including, without limitation, for the purpose of entering such additional orders, if any, as may be necessary or appropriate to

protect or effectuate this Final Order and Judgment, and to ensure the fair and orderly administration of the equitable restitution.

3. Certification of the Class.

The Court previously granted certification of the Class in this Action. The certification has been affirmed by the Twelfth District Court of Appeals.

4. Adequacy of Representation.

The Court previously affirmed the appointment of Plaintiffs Barrow, McGuire, Muirheid, Woods, Johnson and Doepke as Class Representatives and Michael Allen, Joshua Engel, Paul DeMarco, and Charles Rittgers as Class Counsel. The appointment of Class Representatives and Class Counsel, respectively, is fully and finally confirmed. The Court finds that Class Representatives and Class Counsel and Plaintiff have fully and adequately represented the Class.

5. Creation of a Common Fund

The Village shall pay the full amount of the equitable restitution into a fund to be established and administered by Class Counsel. Payments shall be made in accordance with the schedule set forth in Section 1 of this Entry. The fund shall be considered to be a "common fund" established for the benefit of the class. Expenses not otherwise specified in this Order related to the administration of the fund and/or for the benefit of the Class shall be paid from the fund.

In the event that this Judgment and Order is stayed, the Court orders that interest shall accrue at the annual rate of 3% on the amount of equitable restitution to be paid into the fund by the Village.

6. Court Approved Expenses and Findings

The Court approves the following expenses to be paid out of the common fund prior to the payment of equitable restitution:

a. Fund Administrator

Class Counsel shall, with the approval of the Court, retain a fund administrator. The fund administrator shall be responsible for the payment of restitution to class members and other ministerial and accounting duties. The fund administrator shall be responsible for the payment of all expenses related to the administration of the fund, including postage, banking and professional fees. The fund administrator shall receive compensation (including expenses) in an amount not to exceed \$360,000.00.

b. Class Representatives

Class Representatives shall each receive \$950 for the initiation of the action, work performed, and the risks undertaken. The Court finds that such a payment is reasonable and appropriate.

c. Class Counsel

The Court approves fees for Class Counsel in the amount of \$1,197,906.13, plus 33% of any interest accrued on that amount subsequent to this Order. The fees for Class Counsel are calculated under the percentage of funds method as 33% of the total amount recovered. The Court finds that Class Counsel undertook significant work and efforts to secure a benefit for the Class. This finding is supported by the observation that this matter has twice been to the Court of Appeals on interlocutory appeals and a further appeal is expected.

The Court finds Class Counsel's attorneys' fees request to be reasonable. The Court finds that 33% of the common fund is consistent with contingent fee arrangements in the State of Ohio and in the range of awards in other class action lawsuits. The Court further finds that the percentage is reasonable taking into account the novelty and difficulty of the issues presented, the quality of counsel's services, the time needed for this litigation to conclude, the amount at stake, and the result obtained. Class Counsel are experienced in this type of litigation, diligently managed the case, and also handled the matter over the past six years on a purely contingent basis. Most significantly, Class Counsel secured substantial results for Class Members, both in terms

of monetary compensation and also in obtaining preliminary and permanent injunctive relief which had a lasting, non-monetary public benefit.

The Court also approves Class Counsel's request for reimbursement of advanced litigation expenses in the amount of \$1237.10.

d. Public Records Litigation

The Court approves fees and expenses incurred by Class Counsel in the amount of \$5173.13 as additional expenses in *State of Ohio ex rel. Joshua Engel, et al v. Village of New Miami*, Twelfth District Court of Appeals No. CA 2017 03 0036. The Court finds that obtaining the public records sought in that litigation was for the benefit of the Class and that it is appropriate that these fees and expenses be paid out of the common fund.

7. Distribution of Funds to the Class

Prior to the distribution of funds, the fund administrator shall make all reasonable and diligent efforts to update the addresses of the class members.

a. Initial Distribution.

Following the payment of the Expenses approved in the previous section, the Fund Administrator shall distribute to each member of the class a share of the remaining funds. The amount to be distributed to each class member shall be proportionate to the payment made by the class member to the Village. Refunds shall be made annually on a "first-in-first-out" basis as funds are received from the Village and available for the payment of refunds.

b. Second Distribution

The claims administrator shall make reasonable efforts to locate any class members who did not actually receive the Initial Distribution, whether because of address changes, uncashed check, or otherwise. If found, such class members shall receive their initial distributions before the Second Distribution takes place.

No less than 270 days following the Initial Distribution, the fund administrator shall distribute to each member of the class who actually received a payment in the initial distribution a share of the remaining funds (whether due to undelivered, returned, or uncashed checks, or otherwise). The amount to be distributed to each class member shall be proportionate to the payment made by the class member to the Village.

c. Final Distribution

Any funds remaining after the Second Distribution shall be apportioned to all motorists who did not previously receive payments and shall be considered "Unclaimed funds." No less than 270 days following the Second Distribution, such funds shall be disposed of in accordance with the Ohio Unclaimed Funds statute, R.C. 169.01 *et seq.*

8. Costs

The Village shall pay all court costs, including reimbursement of the filing fee and any other costs incurred by Class Counsel. Such payment shall be made within ten days of demand by the Clerk or Class Counsel.

9. Certification

Upon completion of the administration of the fund, Class Counsel shall file an affidavit from the Fund Administrator concerning the amount of money distributed and certifying compliance with this Order.

This is a final appealable Order. There is no just reason for delay.

SO ORDERED.

Enter,



Judge Michael A. Oster, Jr.

Judge
Michael A. Oster, Jr.
Common Pleas Court
Butler County, Ohio