

POTTER V. WASHINGTON STATE PATROL
THURSTON COUNTY SUPERIOR COURT
CAUSE NO. 04-2-01086-9

SETTLEMENT AGREEMENT

This Agreement is entered between Mark Potter (hereafter "Class Representative") and the class he represents, collectively referred to in this Agreement as "Plaintiffs," and the defendant Washington State Patrol (hereafter "State Patrol") in the action currently pending in the Thurston County Superior Court (the "Court"), Cause No. 04-2-01086-9. The mutual consideration for this agreement evidences the parties' desire to resolve the claims of the class and the Class Representative fully with regard to the claims and causes of action that were actually or could have been raised in this action.

RECITALS

Plaintiff Mark Potter filed this lawsuit on June 1, 2004 on behalf of himself and a putative class comprising registered owners of motor vehicles that had been impounded by the State Patrol for Driving While License Suspended ("DWLS") violations pursuant to an allegedly unlawful mandatory impound policy. Potter sought reimbursement of impound fees, loss of use damages, and compensation for vehicles lost to auction following seizure under the mandatory impound policy

On February 28, 2005, the Thurston County Superior Court granted class certification on Potter's conversion claim and defined the Class as "[r]egistered owners of motor vehicles that were impounded by the Washington State Patrol solely for Driving While License Suspended violations during the period of June 1, 2001 through December 19, 2002 [the "Class Period"], who have not resorted to any other judicial or administrative method to challenge the legitimacy of the impound of their vehicle." The Court appointed Potter as Class Representative and Adam

J. Berger of Schroeter Goldmark & Bender as Class Counsel. Notice was sent to the Class of the pendency of the litigation and opportunity to opt-out of the Class.

On December 9, 2005, the Superior Court granted the State Patrol's motion for summary judgment on the merits. The Washington Supreme Court reversed the Superior Court's judgment on August 30, 2007 and affirmed the viability of Plaintiffs' claims after reconsideration on November 26, 2008.

Following remand to the Superior Court, the Parties engaged in direct negotiations regarding settlement of this case. Class Counsel and the Class Representative determined that a proposed settlement would be fair, reasonable, adequate, and in the best interests of the Class and that it is desirable that the litigation be settled in the manner and upon the terms and conditions set forth herein. The Settlement will permit Plaintiffs to receive compensation without the time, risk and expense of further litigation, and permits the State Patrol to avoid the expense, inconvenience, and distraction of further legal proceedings.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereto agree as follows, subject to Preliminary and Final Approval of the Court:

RELIEF TO QUALIFYING CLASS MEMBERS

1. Subject to the limitations set forth in Paragraph 2 below, Class Members shall be eligible for settlement compensation as follows. The term "Class Member" is limited to those individuals included in the Class as previously defined by the Court and who have not previously opted out of the Class:

a. Tier 1 Claims: Class members who were not driving their vehicles at the time the vehicle was impounded by the State Patrol and who redeemed their vehicles from impound shall

be eligible for payments in the following amounts, depending on whether the vehicle was impounded subject to a 0, 30, 60, or 90 day hold:

Impound – No Hold	\$ 297.80
Impound – 30 Day Hold	\$2,015.00
Impound – 60 Day Hold	\$3,923.00
Impound – 90 Day Hold	\$5,831.00

b. Tier 2 Claims: Class members who were driving their vehicles at the time the vehicle was impounded by the State Patrol and who redeemed their vehicles from impound shall be eligible for payments in the following amounts, depending on whether the vehicle was impounded subject to a 0, 30, 60, or 90 day hold

Impound – No Hold	\$ 237.80
Impound – 30 Day Hold	\$1,415.00
Impound – 60 Day Hold	\$2,273.00
Impound – 90 Day Hold	\$3,131.00

c. Tier 3 Claims: Class members whose vehicles were auctioned following impound shall be eligible for payments of \$2,500 for each auctioned vehicle regardless of whether they were driving the vehicle at the time of impound or not.

d. Class members may, but are not required to, submit documentation regarding the length of hold imposed on the impounds for which they are making claims. In the absence of such documentation, determination of the length of hold will be made from the State Patrol's impound database, which has previously been produced to Class Counsel during the course of discovery.

e. Payments for Tier 1 and 2 claims are subject to reduction in instances where early release from a multiple day hold was granted because of a hardship exemption or other reason. For Tier 1 claims, the reduction shall equal \$63.60 for each day of early release in advance of the hold date. For example, if the hold on a vehicle subject to a 30-day hold was released after only

10 days in impound, the eligible compensation would be reduced by \$1,272 (20 days x \$63.60/day). For Tier 2 claims, the reduction shall equal \$43.60 for each day of early release prior to 30 days in impound; no reduction shall apply to releases occurring after 30 days in impound.

f. Class members making claims for auctioned vehicles may be required to submit documentation or cooperate in obtaining documentation demonstrating auction of the vehicle following impound.

2. Notwithstanding anything to the contrary herein, the State Patrol will under no circumstances be required to make aggregate cash payments, including any attorneys' fee award and Class Representative payment pursuant to Paragraphs 6 and 7 below, in excess of nine hundred thousand dollars (\$900,000). In the event that claims and awards made pursuant to Paragraphs 1, 6, and 7 would otherwise require the State Patrol to make aggregate cash payments in excess of \$900,000, payments to qualifying Tier 1, 2, and 3 claimants shall be reduced pro rata to reduce the aggregate obligation of the State Patrol for payments under Paragraphs 1, 6, and 7 to \$900,000.

3. The Parties reserve the right to independently verify any and all information that any Class Member provides on his or her claim form(s), including to ensure consistency with Washington State Patrol records. The Parties agree that the Court shall retain jurisdiction to resolve any disputes arising from this verification process.

4. To be eligible for any settlement compensation set forth in Paragraph 1 above, a Class Member must submit a completed Claim Form in substantially the form appended as Exhibit 1 hereto, postmarked on or before 120 days after the Preliminary Approval Order.

ATTORNEYS' FEES AND CLASS REPRESENTATIVE PAYMENTS

5. The Parties expressly agree that the terms of this Agreement are not conditioned upon any minimum or maximum attorneys' fees award or upon the payment of any incentive award to the Class Representative.

6. The Parties agree that Class Counsel may seek an award of fees and costs from the Court in an amount not to exceed \$200,000. Any award of costs and fees will be withdrawn from the agreed settlement amount of \$900,000. The Parties agree that any award of fees and costs shall be at the discretion of the Court.

7. Subject to Court approval, the Class Representative will be paid \$25,000 in recognition of his services to the class and in full satisfaction of all claims for damages of any kind for all events described in the complaint or otherwise arising out of the impoundment of his vehicles by the State Patrol during the Class Period. Any payment to the Class Representative will be withdrawn from the agreed settlement amount of \$900,000.

NOTICE AND CLAIMS PROCEDURE

8. Within 15 days of the date of Preliminary Approval of the Settlement by the Court, Class Counsel shall cause Notice in substantially the form appended as Exhibit 2 hereto to be sent by first-class mail to the last known valid addresses of all Class Members. Class Counsel or its designee shall promptly remail, once, any Notices returned by the Postal Service with forwarding addresses or where forwarding addresses can be obtained through TransUnion, the National Change of Address System, or similar database. Such Notice shall include a Claim Form in substantially the form appended as Exhibit 1 hereto.

9. Within 15 days of the date of Preliminary Approval, Class Counsel also shall post a copy of the Notice and Claim Form on the internet and maintain such posting for at least 30 days following the Effective Date of the Settlement, as defined in paragraph 17 below.

10. Class Members will have 120 days from the date of Preliminary Approval to postmark or otherwise submit Claim Forms. The claim of any Class Member not postmarked or otherwise submitted to Class Counsel within this time frame shall be barred from recovery.

11. Class Counsel will initially verify any claim presented by reference to the impound database previously produced by the State Patrol. Class Counsel and the State Patrol reserve the right to conduct further validation of any claim.

FINAL APPROVAL, DISMISSAL OF CLAIMS, AND RELEASES

12. The Parties shall request the Court to schedule a Final Approval Hearing no less than 127 days and no more than 150 days after the date of Preliminary Approval of the Settlement.

13. If this Settlement is approved by the Court following the Final Approval Hearing, the Parties shall request the Court to enter a Final Order and Judgment dismissing the claims in this case with prejudice and without fees or costs except as provided in this Agreement.

14. Notwithstanding Paragraph 13 above, and without affecting the finality of the Final Order and Judgment for purposes of appeal, the Parties shall ask the court to retain jurisdiction over the Parties as to all matters relating to the administration, consummation, enforcement and interpretation of the terms of the Settlement and the Final Order and Judgment and for any other necessary purposes.

15. As of the Effective Date of this Agreement (as defined in Paragraph 17), Plaintiffs expressly agree that they shall completely release and discharge the State of Washington,

including its officers, agents, employees, agencies and departments, and the Washington State Patrol from all civil claims, actions, causes of action, rights, demands, suits, debts, liens, losses, offsets, or liabilities, under federal, state, or local law, which Plaintiffs had, now have, or may in the future have involving, based on, relating to, arising out of, or in any way connected with the impoundment of motor vehicles by the Washington State Patrol solely for DWLS violations during the Class Period. Subject to Court approval, all Class Member shall be bound by this Agreement, and all of their claims shall be dismissed with prejudice and released.

16. Nothing in this Agreement shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed therein; provided, however, that no Class Member shall have any claim against Class Counsel, the State Patrol or the State Patrol's counsel based on the claim administration process conducted substantially in accordance with this Agreement.

EFFECTIVE DATE AND PAYMENT OF CLAIMS

17. This Agreement shall become effective when the Court has entered a Final Order and Judgment approving this Settlement and dismissing the released claims with prejudice, as provided above. For purposes of this Agreement, such Order and Judgment shall be deemed "Final," when: (a) it is a final, appealable judgment order; and (b) either (i) no appeal has been taken from the judgment as of the date on which all times to appeal therefrom have expired, or (ii) an appeal or other review proceeding of the judgment having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, and such appeal or other review has been finally resolved in such manner that affirms the Final Order and Judgment in all material respects.

18. Within 30 days of the Effective Date of this Agreement, the State Patrol shall convey to Class Counsel a settlement draft in an amount equal to the sum of all attorneys' fees and costs approved by the Court under Paragraph 6 above, all payments to the Class Representative approved by the Court under Paragraph 7 above, and all claims submitted by Class Members and verified under Paragraphs 1 through 4 above. The Parties may agree to extend this deadline only with respect to claims timely submitted by Class Members but requiring further verification under Paragraphs 3 and 11 above; provided that the Parties agree to act diligently to finally verify and resolve all such claims.

19. If, for any reason, this Agreement fails to become effective pursuant to Paragraph 17, the orders, judgment, and dismissal to be entered pursuant to this Agreement shall be vacated, and the Parties will be returned to the status quo ante with respect to the litigation as if this Agreement had never been entered into.

MISCELLANEOUS PROVISIONS

20. This Agreement is for settlement purposes only, and shall not be construed as any admission of the validity of any claim or any fact alleged by Plaintiffs in the litigation or of any wrongdoing on the part of the State Patrol.

21. The headings and captions contained in this Agreement are for reference purposes only and in no way define, extend, limit, describe, or affect the scope, intent, meaning, or interpretation of this Agreement.

22. This Agreement shall be construed, enforced and administered in accordance with the laws of the State of Washington.

23. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and the Parties hereto submit to the jurisdiction of

the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

24. In the event that there are any developments in the effectuation and administration of this Agreement that are not dealt with by the terms of this Agreement, then such matters shall be dealt with as agreed upon by the Parties. Failing agreement, the Parties agree that the Court may render decisions resolving such disputes.

25. Except as otherwise stated herein, this Agreement constitutes the entire agreement between the Plaintiffs and the State Patrol with respect to the settlement of this litigation. This Agreement supersedes all prior negotiations and agreements (except as otherwise stated herein) and may not be modified or amended except by a writing signed by the Parties and their respective counsel.

26. This Agreement shall not be construed more strictly against one Party than another merely because of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arms'-length negotiations resulting in the Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Agreement.


27. The Exhibits to this Agreement are an integral part of the settlement and are hereby incorporated and made part of this Agreement.

28. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective employees, agents, officers, directors, parents, subsidiaries, divisions, affiliates, attorneys, insurers, representatives, heirs, successors, and assigns. Subject to the foregoing, nothing in this Agreement is intended to or does create any rights in any third parties.

29. Each counsel or other person executing the Agreement or any of its Exhibits on behalf of any party hereto hereby warrants that such person has the full authority to do so.

30. This Agreement may be executed in one or more original, photocopied, or telecopied counterparts. Counsel for the Parties to this Agreement will exchange among themselves original signed counterparts, and a complete set of original executed counterparts will be filed with the Court.


FOR MARK POTTER AND THE PLAINTIFF CLASS:



ADAM J. BERGER
Schroeter Goldmark & Bender
810 Third Avenue, Suite 500
Seattle, WA 98115
Counsel for Plaintiffs

DATE: 4/27/09

FOR WASHINGTON STATE PATROL AND THE STATE OF WASHINGTON



JENNIFER SMITH MEYER
Assistant Attorney General
Attorney General of Washington
7141 Cleanwater Drive SW
Olympia, WA 98504-0126
Counsel for Defendant

DATE: 5.1.09

CLAIM FORM

**FOR VEHICLES IMPOUNDED BY THE WASHINGTON STATE PATROL
FOR DRIVING WHILE LICENSE SUSPENDED VIOLATIONS**

YOU MUST SUBMIT THIS FORM IN ORDER TO OBTAIN REIMBURSEMENT.

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COMPLETE THE FOLLOWING FORM AS FULLY AS POSSIBLE.

SUBMIT A SEPARATE FORM FOR EACH IMPOUND

[Forms with incomplete information will be processed, but more complete information will help in verifying and processing claims.]

Name of Claimant/Registered Owner: _____

Current Address: _____

Current Phone Number(s): _____

Name of Driver at Time of Impound (if different from owner): _____

Date of Impound: _____

Impound City Or Tow Company: _____

Make, Model, and Year of Vehicle: _____

Vehicle Identification Number: _____ Lic. Plate No.: _____

Was a hold placed on the impounded vehicle? ____ For how long (30/60/90 days)? ____

If a hold was placed, did you obtain early release of the hold? _____

Did you redeem the vehicle from impound? _____

Was the vehicle auctioned as a result of the impound? _____

Please attach any documentation you have regarding the impound, payment of impound fees, or auction of the vehicle following impound.

RETURN THIS FORM BY | _____ | TO:

WSP Impound Class Action Claims
c/o Schroeter Goldmark & Bender
810 Third Avenue, Suite 500
Seattle, WA 98104

EXHIBIT 1

IN THE THURSTON COUNTY SUPERIOR COURT

Potter v. Washington State Patrol

) No. 04-2-01086-9

**TO: REGISTERED OWNERS OF MOTOR VEHICLES THAT WERE IMPOUNDED
BY THE WASHINGTON STATE PATROL SOLELY FOR DWLS VIOLATIONS
BETWEEN JUNE 1, 2001 AND DECEMBER 19, 2002**

**YOU MAY BE ENTITLED TO A RECOVERY
UNDER THE TERMS OF THIS SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY**

1. WHY SHOULD I READ THIS NOTICE?

Your rights may be affected by a proposed settlement in this lawsuit, *Potter v. Washington State Patrol*, No. 04-2-01086-9 (the "Action"), which is now pending before the Honorable Richard D. Hicks in the Thurston County Superior Court (the "Court"). This Notice is given pursuant to CR 23 and by order of the Court.

The purpose of this Notice is to inform you that there has been a proposed settlement of this Action ("Settlement") pursuant to a written agreement between the parties (the "Settlement Agreement"), which has been preliminarily approved by the Court. This Notice summarizes the essential information concerning the Settlement and your potential rights under the Settlement.

2. WHAT IS THIS LAWSUIT ABOUT?

This case involves impoundment of vehicles by the Washington State Patrol for driving while license suspended ("DWLS") violations between June 1, 2001 and December 19, 2002 (the "Class Period"). Plaintiff alleges that these impounds were conducted under an unlawful mandatory impound policy.

The Action seeks reimbursement for registered owners of fees paid to redeem impounded vehicles, damages for loss of use of the vehicles during the period of impound, and damages for loss of vehicles sold at auction following impound.

On February 28, 2005, the Court ruled that the lawsuit could proceed as a class action. The Court named Adam J. Berger of Schroeter, Goldmark & Bender, 810 Third Avenue, Suite 500, Seattle, Washington 98104, as Class Counsel, and Mark Potter as Class Representative.

The Court defined the class to include all "[r]egistered owners of motor vehicles that were impounded by the Washington State Patrol solely for Driving While License Suspended violations during the period of June 1, 2001 through December 19, 2002, who have not resorted to any other judicial or administrative method to challenge the legitimacy of the impound of their vehicle."

3. WHAT ARE THE ESSENTIAL TERMS OF THE SETTLEMENT?

The Settlement Amount. The State Patrol will pay up to \$900,000 to resolve all claims in this case, including class member claims, any Court-approved Attorneys' Fee Amount, and any Court-approved Class Representative Payment as described below. Class counsel anticipates that this sum may well be sufficient to fully reimburse all class member claims as described below. However, if the total of the class member claims, Fee Amount, and Class Representative Payment exceeds this sum, reimbursement of class member claims will be reduced on a *pro rata* basis so that the total payments will not exceed \$900,000.

(over)

EXHIBIT 2

