

STATE OF MISSOURI  
CIRCUIT COURT, TWENTY-SECOND JUDICIAL CIRCUIT  
*City of Saint Louis*

State *ex rel.* CITY COLLECTORS OF WELLSTON, *et al.*,  
Plaintiffs,

v.

AT&T INC., *et al.*,  
Defendants.

**FILED**  
NOV 09 2009

MARIANO V. FAVAZZA  
CLERK, CIRCUIT COURT

Cause No. 22044-02645

Division 31

November 9, 2009

DEPUTY

**JUDGMENT AND ORDER APPROVING SETTLEMENT,  
AND ATTORNEYS' FEES FOR CLASS COUNSEL,  
AND DISMISSING CASE IN ACCORDANCE WITH TERMS OF SETTLEMENT**

**Summary**

This Court approves the Settlement Agreement submitted to the Court, which includes Defendants' agreement to establish a \$65 million fund for payment to two-hundred-seventy Missouri municipalities of back taxes related to telephone landline services provided by Defendants, and attorneys' fees and expenses, with further provisions in the Agreement governing payment of additional future taxes and other conditions.

The Settlement Agreement was entered into between Defendant AT&T Inc. and related companies, and Plaintiff municipalities as representatives of a proposed "Settlement Class" consisting of over two hundred seventy Missouri municipalities. The Agreement provides for Defendants to pay \$48.75 million to the municipalities for back taxes claimed by the municipalities under ordinances taxing various services provided by Defendants in conjunction with Defendants' landline telephone services. The Agreement also provides for Defendants to adjust their accounting practices, so as to pay in the future taxes to the municipalities on those various services. The Agreement has other conditions, including a prohibition against Defendants lobbying the General Assembly for any legislation which would undercut the payments called for in the Agreement for a period of five years.

The Settlement is approved because 1) the terms of the settlement are fair, reasonable and adequate to protect the interests of all members of the settlement class; 2) the provisions for notice of the terms of the settlement to be disseminated to members of the settlement class, with the opportunity for members to either opt out of the settlement or to raise objections to any of the terms of the settlement of the Court's order of June 26, 2009, have been complied with; and 3) only three members of the settlement class have opted out; and none of the remaining two hundred seventy Missouri municipalities which are members of the settlement class have objected to the terms of the settlement.

In accordance with the terms of the Settlement, this case is dismissed.

The Settlement also provides that after subtracting the \$48.75 million for payment to the municipalities of back taxes claimed from the \$65 million fund, the remainder of \$16.25 million is to be set aside for payment of the attorneys' fees and expenses of Plaintiffs' attorneys, in their capacity as counsel appointed to represent the class of municipalities. Plaintiffs' attorneys have filed their motion requesting payment of that amount for their fees and expenses incurred in pursuing this litigation on behalf of Plaintiffs and all the municipalities that are members of the settlement class.

The Court approves the application of Plaintiffs' counsel and co-counsel for payment of attorneys' fees and expenses from the total amount of the settlement of \$65 million, in the amount of \$16.25 million, as fair and reasonable in the light of 1) the time and labor involved in the attorneys' work; 2) the novelty and difficulty of the questions of law presented in the case; 3) the skill required to perform the work properly; 4) the nature and length of the representation; 5) the risk involved in a case where the law in Missouri governing this matter was unsettled; 6) the opportunity cost associated with performing work on this case to the preclusion of work on another case; 7) the limitations and parameters within which counsel had to work given the special circumstances of this case; 8) the experience, reputation and ability of Plaintiffs' counsel; 9) the customary fees charged by attorneys in this region in comparable cases; 10) the fact that Plaintiffs' counsel had contingency fee arrangements with a substantial proportion of the members of the settlement class, and the resultant risk involved in working on the case where it was possible Plaintiffs may have lost and Plaintiffs' counsel would have received nothing for their work; 11) attorneys' fee awards in comparable cases; and 12) the amounts of money involved in the case and the results obtained in favor of the municipalities that are members of the Settlement Class.

**Nature of the Dispute: WHAT THIS CASE IS ABOUT  
(AND WHAT IT IS NOT ABOUT)**

This case is about claims made by the municipalities for taxes which the municipalities claim are owed to them by Defendants for telephone landline and related services provided by Defendants in each municipality. The municipalities' right to collect taxes on these services is authorized by Missouri statutes, and by ordinances adopted in each of the separate municipalities. Defendants dispute that certain services are taxable under those laws and ordinances.

This case is not about the charges paid by consumers who receive telephone service from Defendants. The rates consumers pay for such services, including charges for applicable taxes, is determined by the Missouri Public Service Commission, which regulates public utilities in Missouri.

Whether or not any tax paid by Defendants to the municipalities can be included in the Defendants' billing to consumers who are their customers is determined by the Public Service Commission. It is this Court's understanding, based on the presentations of counsel at the November 2, 2009, hearing, and the supporting documents, including the affidavit of Steven

Shashack, Executive Director-Tax for AT&T Services, Inc. which was submitted as Exhibit A in support of the motion for approval of the Settlement Agreement, that: 1.) "The governing tariff [of the PSC] authorizes AT&T Missouri to pass through to its customers the amounts it pays in the form of taxes, fees, or charges imposed by any taxing body, including municipal business license taxes imposed by municipalities. Under the Settlement Agreement, Class Members agreed not to challenge the right of Defendants to pass through to their retail customers all or any part of the sums to be paid to putative class members under their respective ordinances and the Settlement Agreement." 2.) "AT&T's payment of attorneys' fees under the Settlement Agreement will not be paid to Class Members, but rather directly to Class Counsel. 3.) "AT&T is not surcharging its retail customers any amounts paid as attorneys' fees in connection with the settlement." (Exhibit A, paragraphs 6, 7 and 8.)

The question of how much Defendants' retail customers pay, or whether or not Defendants have the right to pass on any portion of any taxes or payments to their customers, was not an issue in this case, and was not a matter over which this Court had jurisdiction; except insofar as the municipalities' agreement that in return for Defendants' agreement to the settlement, the municipalities would not challenge Defendants' "passing through" any taxes paid to their customers; and also insofar as AT&T represented through the affidavit of Mr. Shashack and in related portions of the Settlement Agreement that AT&T would pay Class Counsel's attorneys' fees directly to counsel, and that AT&T is not surcharging its customers for any amounts related to the payments of attorneys' fees paid to Class Counsel.

### Procedural Background

On December 30, 2004, the original Plaintiffs filed this action against Defendant SBC Communications, Inc., now doing business as AT&T Inc., and two other entities, Southwestern Bell Communications Services, Inc., and Southwestern Bell Telephone LP, formerly known as Southwestern Bell Telephone Company.

The original Plaintiffs were two Missouri municipalities, the City of Wellston and the City of Winchester. The pleading was signed by Stephen M. Tillery, Steven A. Katz, Douglas R. Sprong, and John W. Hoffman of the law firm of Korein Tillery LLC; by John F. Mulligan, Jr., and by Howard Paperner of Howard Paperner PC.

The petition sought relief on behalf of the two municipalities, and "on behalf of all others similarly situated," and included claims asserted as a putative class action on behalf of "all other Missouri municipal corporations and political subdivisions similarly situated." The pleading further defined those Missouri municipalities similarly situated as "all cities or other political subdivisions that have adopted an ordinance in effect that imposes a business or occupational license tax on any person engaged in the business of supplying or furnishing telephone service (including exchange telephone service) in the city or political subdivision, or who is otherwise engaged in a telephone business (including a telephone utility business) therein." (Original petition, para. 7.)

On February 4, 2005, Defendants filed a notice of removal of this action to Federal Court, in which Court the case was given Case number 4:05-CV-234-FRB. Defendants promptly filed a motion to dismiss the case in Federal Court.

On May 23, 2005, as amended by the order of May 25, 2005, United States District Judge Catherine Perry granted Plaintiffs' motion to remand the case back to the Circuit Court of the City of Saint Louis, and also denied the motion to dismiss without prejudice, since that issue was moot in the Federal Court upon the case having been remanded back to State court.

On June 3, 2005, after the remand, Defendants promptly filed a "Designation of Documents" in which they renewed their motion to dismiss that had been filed before the Federal Court as motions in this action in State court. On June 7, 2005, Defendants filed their joint motion to dismiss this case, alleging the same grounds on which they filed their motion to dismiss in Federal Court.

On August 9, 2005, Defendants' motion to dismiss was granted by Division 5, the Hon. David L. Dowd presiding.

On September 8, 2005, Plaintiffs filed notice of appeal of the judgment of dismissal.

On August 8, 2006, the Missouri Supreme Court reversed the judgment of dismissal, and remanded this case to this Circuit. The case was one of four cases that were all decided by the Supreme Court on that date which involved lawsuits by various cities in Missouri against telephone service providers, in which the cities sought to recover payments from the companies providing various kinds of telephone services, which the cities contended were due under the authority of state laws and local ordinances assessing taxes or charges on companies providing telephone services. Those other cases were *City of University City, Missouri, et al. v. AT&T Wireless Servs. Inc., et al.*, 203 S.W.3d 197, (Mo. 2006); *City of St. Louis v. Sprint Spectrum, L.P.*, 203 S.W.3d 199, (Mo. 2006); and *City of Springfield v. Sprint Spectrum, L.P.*, 203 S.W.3d 177 (Mo. 2006).

Following the Supreme Court's remand of this case to this Circuit, on February 20, 2007, Plaintiffs filed what was in effect an Amended Petition in this action, headed "Consolidated Master Petition for Declaratory Judgment and Other Relief." In that Petition, Plaintiffs were the City Collectors and the Cities of Wellston and Winchester, Missouri, and the City of University City, Missouri. The petition reiterated claims as had the initial petition that the Plaintiffs were filing the action as a putative class action "on behalf of all other Missouri municipal corporations and political subdivisions similarly situated."

The parties proceeded with discovery, and a hearing was set on Plaintiffs' motion for class certification. On June 17, 2008, the parties appeared by counsel and this Court heard the motion. Subsequently, with that motion under submission, the parties advised this Court that they were engaged in settlement negotiations, and that it was the joint request of all parties that this Court refrain from ruling on the motion for class certification until the parties could determine whether settlement negotiations could be successfully concluded. The parties

subsequently notified this Court that a tentative settlement had been reached, and requested the Court set the matter for a status conference on June 26, 2009, in order to determine if a settlement had been reached, for such further proceedings as might be necessary.

### ***The Proposed Settlement Executed June 26, 2009***

On June 26, 2009, the parties filed their Settlement Agreement which they had executed that day, along with their "Joint Motion for Class Certification for Purposes of Settlement and for Preliminary Approval of Proposed Class Action."

### **Additional Parties to Settlement**

The Settlement Agreement included as parties to the agreement a host of entities that were not parties to this action, but whose business apparently involved the providing of telephone services such that such services were connected to the Defendants in this action. The Agreement indicates that it is entered into between the Plaintiff municipalities as representatives of the Settlement Class, and then sets forth a list of entities including the Defendants named in the lawsuit: AT&T Inc. (which according to the caption of the case was formerly known as SBC Communications Inc.); Southwestern Bell Telephone Company, doing business as AT&T Missouri (which according to the caption was formerly known as Southwestern Bell Telephone LP); and SBC Long Distance LLC doing business as AT&T Long Distance, (which in the caption apparently was referred to as SBC Long Distance Inc., and was formerly known as SBC Communications Services Inc.). In addition, the Settlement Agreement lists the following other entities as having entered into the Agreement: American Telephone and Telegraph Company, AT&T Corp., AT&T Advanced Solutions Inc. (now merged into AT&T Corp.), AT&T Messaging Inc., AT&T Advertising LP, AT&T Broadband Services Purchasing and Leasing LLC, AT&T Capital Holdings International Inc., AT&T Capital Holdings Inc., AT&T Capital Services Inc., AT&T Communications - East Inc., AT&T Communications of the Southwest Inc., AT&T Consulting Solutions Inc., AT&T Credit Holdings Inc., AT&T DataComm Inc., AT&T Foundation, AT&T Global Network Services LLC, AT&T Government Solutions Inc., AT&T Information Systems Inc., AT&T Labs Inc., AT&T Management Services LP, AT&T Messaging LLC, AT&T Network Procurement LP, AT&T Operations Inc., AT&T Services Inc., AT&T Solutions Inc., AT&T Technical Services Company Inc., AT&T Technologies Inc., AT&T Video Services Inc., SBC Asset Management Inc., SBC Global Services Inc., SBC Internet Services Inc., SBC Telecom Inc., SBC Tower Holdings LLC, SBCSI Purchasing & Leasing Limited Partnership, SNET of America Inc., d/b/a AT&T Long Distance East, Southwestern Bell Yellow Pages Inc., Southwestern Bell Yellow Pages Resources Inc., YellowPages.com LLC, Bell South Long Distance Inc. d/b/a AT&T Long Distance Service, Pacific Bell Telephone Company, Missouri Bell Telephone Company, Ameritech Information Industry Services, Inc., Ameritech Publishing Inc., Ameritech Services Inc., American Information Technologies Corporation (Nevada), L.M. Berry & Company, Resort WiFi Operating Corp., Sterling Commerce (America), Sterling Commerce Inc., SWBT Purchasing & Leasing Limited Partnership, TCG America Inc., TCG Kansas City Inc., TCG St. Louis Inc., Teleport Communications Group Inc., and Wayport Inc.

**Defendants made no admission of liability for additional taxes owed**

By the terms of the settlement, Defendants did not admit liability for any back taxes or charges owed to any of the Plaintiffs, or to any of the other municipalities in the proposed settlement class. However, by the terms of the settlement, in return for Plaintiffs dismissal of this action, Defendants agreed to make certain payments to the municipalities in the settlement class, and to pay to the municipalities, in accordance with the terms of the settlement, "future tax benefits" in excess of what Defendants contended they would owe.

**Payments of back taxes**

The proposed settlement provided that AT&T Missouri and SBC Long Distance LLC "shall collectively make a Back Tax payment to each Class Member" (except for the City of Saint Louis, which was excepted due to a previous settlement entered into between the City of Saint Louis and Defendants) within ten days of the effective date of the settlement agreement. (Settlement, Section II.A.1, p. 14)

The effective date of the settlement is the date the Order and Judgment of Dismissal has become final; this is further defined as the date on which time to appeal this Court's Order and Judgment of Dismissal has expired and no appeal has been filed; or in the event of an appeal, the date the Order and Judgment of Dismissal of this Court has been affirmed by the appellate court. (Settlement, Section I.N and I.P)<sup>1</sup>

**Future tax calculations**

Defendants AT&T Missouri and SBC Long Distance LLC also agreed that they would make future tax payments to the municipalities in accordance with the provisions in the settlement for the interpretation and application of the various taxing ordinances and state laws.

**Defendants promise not to lobby the Missouri Legislature to undercut the Settlement**

The Defendants also promised, for a period of five years from the date of the execution of the settlement agreement, that they would not lobby the Missouri General Assembly for legislation to alter certain provisions of the settlement, including any legislation that would cap or reduce the business license taxes, nor exclude any part of the business license tax base of the class members, nor interfere with any class member's rights.

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<sup>1</sup> There is an exception for an appeal which relates solely to the application for or the award of attorneys' fees, costs, and expenses. That exception is discussed in a later section of this Judgment.

### ***The Court's Preliminary Order regarding the Proposed Settlement***

On June 26, 2009, the parties appeared before this Court and presented the proposed Settlement Agreement. This Court heard and approved the motion for preliminary approval of the settlement class, and entered its "Preliminary Approval Order."

#### **Appointment of representatives of the Settlement Class**

That Order included preliminary approval of the proposed settlement class. The Court also appointed three municipalities as representatives of the settlement class: the cities of University City, Wellston, and Winchester. The Court also appointed Plaintiffs' attorneys to serve as counsel for the settlement class.

#### **Notice to the municipalities in the Settlement Class**

This Court approved proposed forms for notice of the terms of the settlement and to make claims under the terms of the settlement, and directed counsel for Defendants to send the notice and the claim form to all Missouri municipalities, and to file a declaration of compliance with this Court by July 21, 2009.

#### **Provision allowing any municipality to "opt out" of the settlement**

This Court provided for any municipality that wished to be excluded from the terms of the settlement to do so by sending a request for exclusion in accordance with the notice; and the Court ordered Defendants' counsel to file with the Court by September 21, 2009, a report on any such requests for exclusion, along with any determination of municipalities ineligible to receive settlement class relief.

#### **Provision allowing any municipality to file an objection to the Settlement Agreement**

This Court further provided that any municipality could file an objection to the Settlement Agreement, to Class Counsel's application for attorneys' fees and expenses, or to the proposed Order and judgment of dismissal; and further that any such municipality had the right to appear and be heard at the final hearing on approval of the proposed settlement, provided that the municipality file with this Court its written notice of intention to appear and statement of the objections made.

This Court further set the final hearing for determination whether the proposed settlement should be approved for November 2, 2009.

On September 30, 2009, two individuals jointly filed a motion seeking leave to intervene in this case. Subsequently, three other individuals were granted leave to also join in that motion; and a sixth individual filed her own separate motion also seeking leave to intervene on the same grounds as the others.

On October 23, 2009, this Court heard the motions seeking leave to intervene. On November 2, 2009, this Court denied the motions.

**Final hearing on proposed settlement held November 2, 2009**

After entering its Order and Judgment denying the motions to intervene, this Court proceeded with the hearing that had previously been set, for determination whether the proposed settlement should be approved. Plaintiffs appeared by counsel and co-counsel that had been appointed by the Court to represent the settlement class; in addition, counsel for twenty-five members of the settlement class also appeared, representing those members; and counsel for Defendants appeared.

All parties, including counsel for the twenty-five members of the settlement class, joined in urging the Court to approve the settlement as to the \$48.75 million fund for payment of back taxes claimed to the two-hundred-seventy municipalities, and the provisions of the settlement for adjustments to pay future taxes to the municipalities and for the other conditions of the settlement agreement such as the restrictions on Defendants' lobbying of the Missouri General Assembly.

Plaintiffs' class counsel and co-counsel also presented their motion for approval of attorneys' fees and expenses in accordance with the amount set aside for such payments in the settlement agreement. Counsel for twenty-five members of the settlement class stated on behalf of those members that they had no position on the motion. Counsel for Defendants stated they had no opposition to the motion. The Court then took both the motion to approve the Settlement Agreement and the motion for attorneys' fees and expenses under submission.

**Issues**

There are three issues presented by the motions for approval of the Settlement Agreement and for payment of attorneys' fees and expenses for Class Counsel: first, whether the action should be certified as a class action for purposes of effectuating the Settlement Agreement; second, whether the Settlement Agreement is fair, reasonable, and adequate, and therefore should be approved; and third, whether the attorneys' fees and expenses should be approved under the standards for approval of attorneys' fees for Class Counsel in similar cases.

**Discussion**

The Court now has considered the pleadings, the record, the arguments of the parties and the applicable law. This Court has determined, and no party had contested, that this Court has jurisdiction over the subject matter of this case and over all claims raised herein and all parties hereto, including the Settlement Class.



**I. DETERMINATION WHETHER THE ACTION SHOULD BE CERTIFIED AS A CLASS ACTION FOR PURPOSES OF EFFECTUATING THE SETTLEMENT AGREEMENT**

The first issue presented, whether the action should be certified as a class action for purposes of effectuating the Settlement Agreement, is governed by Missouri Supreme Court Rule 52.08, and cases establishing precedents following that rule. Rule 52.08 sets forth prerequisites that must be satisfied in order for an action to be certified as a class action: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. *Green v. Fred Weber, Inc.*, 254 S.W.3d 874, 877 (Mo. 2008); *State ex rel. American Family Mutual Ins. Co. v. Clark*, 106 S.W.3d 483, 486 (Mo. banc 2003) (citing Rule 52.08(a)).

If these four prerequisites are met, the court will certify a class if the plaintiff also shows that the class falls within one of the categories set out in Rule 52.08(b).

**Rule 52.08(b) states:**

“Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole;

or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

- (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- (D) the difficulties likely to be encountered in the management of a class action."

Rule 52.08 is identical to Federal Rule 23, and interpretations of the latter are considered in interpreting the Missouri rule. *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 377 (Mo.App. W.D. 1997).

"The burden to establish that the action complies with the requirements of Rule 52.08(b) rests entirely with the plaintiff." *Green, supra* at 878.

Here, in order to effectuate a settlement between Defendants and Plaintiffs and all of the municipalities in the proposed class, Defendants agreed to withdraw their objections to certification of this case as a class action, and in the Settlement Agreement agreed that the Settlement Class, as defined in the Agreement, would be the class certified for purposes of the settlement only.

This Court previously heard Plaintiffs' motion to certify the proposed settlement class. In Plaintiffs' argument in support of that motion, Plaintiffs cited *City of University City, Missouri, et al. v. AT&T Wireless Services, Inc., et al.*, Cause number 01-CC-004454 (Cir.Ct. St. Louis County). In that case, the Court certified a class of Missouri municipalities in accordance with the terms of settlement agreements entered into with AT&T Mobility and other wireless carriers in a municipal tax enforcement case.

Here, where the Defendants do not contest certification of the proposed settlement class for purposes of this Court's approval of the Settlement Agreement, and where Plaintiffs have cited precedent for the approval of certification of a class of municipalities for purposes of effectuating a settlement in a similar case, and where Plaintiffs presented considerable evidence and legal argument in support of certification of the class at the hearing on the motion for class certification, this Court finds that the proposed settlement class meets the requirements for certification.

This Court finds, for purposes of effectuating the Settlement Agreement only, that each element for certification of the Settlement Class has been met: (a) the members of the Class are so numerous that joinder of all Class members in this litigation is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual questions; (c) the claims of the Plaintiff municipalities are typical of the claims of the Class; (d) Plaintiffs and their counsel have fairly and adequately represented and protected the interests of all Class members; (e) prosecution of separate actions by or against individual members of the Class would create a risk of inconsistent or varying adjudications with respect

to individual members of the Class; (f) the parties opposing the Class (i.e., Defendants) have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole; (g) questions of law or fact common to members of the Class predominate over any questions affecting individual members of the Class; and (h) a class action is superior to other available methods of fair and efficient adjudication of this controversy.

Therefore, for purposes of settlement and this Order and Judgment of Dismissal only, pursuant to Mo.S.Ct. Rule 52.08, this Court hereby certifies this action as a class action on behalf of all municipalities in the State of Missouri (except Springfield, Missouri<sup>2</sup>) that, on or before June 26, 2009, had imposed a Business License Tax and in which AT&T Missouri or SBC Long Distance LLC derived gross receipts from the provision of telephone, exchange telephone, public utility, or telecommunications services, or related services, and that did not submit a timely and valid Request for Exclusion. A list of municipalities that submitted a timely and valid Request for Exclusion has been filed by Defendants.

Further, this Court certifies Plaintiffs City of University City, City of Wellston, and City of Winchester as representative Plaintiffs for the members of the Settlement Class; and approves Plaintiffs' counsel and co-counsel as counsel for the Class.

## ***2. DETERMINATION WHETHER THE SETTLEMENT AGREEMENT SHOULD BE APPROVED***

The second issue presented is whether the Settlement Agreement is fair, reasonable, and adequate, and therefore should be approved. The standard by which this Court reviews the proposed settlement was set forth by the Missouri Court of Appeals, Eastern District, in *Ring et al. v. The Metropolitan St. Louis Sewer District*, 41 S.W.3d 487 (Mo.App., E.D. 2000).

### The factors to consider in determining whether a Settlement should be approved

When determining if a settlement is fair, reasonable, and adequate, the court must consider: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members. *Ring*, citing *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 378 n.6 (Mo. App. 1997); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1150, 1152 (8th Cir. 1999).

<sup>2</sup> Springfield, Missouri has claims that are the subject matter of a separate lawsuit.

This case has reached this stage almost five years after Plaintiffs filed their original claims. Defendants have contested the matter at every stage – removing the case to Federal Court; upon remand winning a motion to dismiss, that would have defeated Plaintiffs' claims entirely had not the Missouri Supreme Court reversed the dismissal; then engaging in an arduous discovery process and contesting Plaintiffs' motion for class certification.

The Settlement now proposed was reached only after the parties engaged the services of a professional mediator and conducted two days of mediation followed by weeks of further negotiation.

*Ring* notes that a court must ascertain that there is no suggestion of fraud or collusion underlying the Settlement. Here, there is absolutely nothing to suggest anything of the kind; rather, there is every indication that this has been a long-fought battle between the parties, with both Plaintiff municipalities and Defendants represented by highly competent and experienced counsel, all of whom either notified this Court in writing or appeared at the November 2, 2009 hearing and expressed their opinions that the Settlement should be approved. In addition, counsel for twenty-five municipalities that are included in the members of the Settlement Class appeared, in addition to Class Counsel, and announced the support of those twenty-five municipalities for the approval of the Settlement. No municipality raised any objection to the Settlement.

The nature of the claims and issues are complex; and not only has this litigation lasted for almost five years, but if this Court were not to approve of this Settlement, it is likely the litigation would last considerably longer and the associated expenses would also grow.

The probability of Plaintiffs' success on the merits and the range of possible recovery, other factors cited in *Ring*, also weigh in favor of approval of the Settlement. This is not because it can be said that Plaintiffs would probably succeed on the merits – indeed, Defendants even in the Settlement contend that Defendants could prevail. Rather, because the issues presented by this case are in some parts matters in which Missouri law is unsettled, neither Plaintiffs nor Defendants can be confident that a trial would result in judgment in their favor. Therefore, the recitation in the Preamble to the Settlement Agreement that both Plaintiffs as representatives of the Settlement Class and Defendants have joined in, that both sides “wish to avoid the expense and uncertainty of continued litigation” is certainly a good reason for each party, including all of the members of the Settlement Class, to have approved of the Settlement.

This Court finds that under the factors set forth in *Ring, supra*, the Settlement should be approved.

**The Parties have complied with this Court's order relating to notice to members of the Class, satisfying Due Process requirements and Court Rules**

As noted above in the procedural background of this case, on June 26, 2009, this Court ordered that notice be sent to all Missouri municipalities that might fall into the proposed

settlement class, and set out other procedures for the parties to follow to establish whether any members of the Class desired to opt out of the Settlement, or to object to any of its terms. The parties have filed with the Court indication that all aspects of this Court's order regarding notice and other procedures connected with making a claim for back taxes in this action have been complied with.

This Court finds that Defendants sent the Notice and Claim form packets to every Missouri municipality which could be identified with reasonable effort; and that all Class members which sent notice or submitted claims on or before the deadline of September 15, 2009 set by this Court were notified of their right to appear at the November 2, 2009 hearing in support of or in opposition to the proposed Settlement and the award of attorneys' fees and expenses to Class counsel; and that no member of the Class appeared and objected at the November 2, 2009, hearing.

This Court further finds that the Notice Plan set forth in Section III of the Settlement Agreement and effectuated pursuant to this Court's Preliminary Approval Order constituted the best notice practicable under the circumstances to the Settlement Class members of (i) the pendency of the Action, (ii) certification of the Settlement Class for settlement purposes only, (iii) the terms of the Settlement Agreement, and (iv) the "Final Fairness Hearing," i.e., the November 2, 2009 hearing; and that the form and method of notifying the Missouri municipalities of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Mo.S.Ct. Rule 52.08, the Due Process clauses of the Constitution of the United States and the Constitution of the State of Missouri, and all other applicable laws, and further that said Notice constitutes due and sufficient notice to all Missouri municipalities which were entitled to receive notice.

**The municipalities that are members of the Settlement Class have overwhelmingly approved the Settlement**

The parties have submitted to this Court ordinances approving the Settlement after the municipalities received the notice of the terms of the Settlement and the procedures to voice approval or disapproval. Ordinances were passed by almost all of the two-hundred-seventy members of the Settlement Class. In some cases, the vote by which each municipality's City Council or other legislative body approved the ordinance was also indicated. In a few cases, the actual ordinance was not submitted, but in each of those instances there was submitted some indication that the municipality had approved the Settlement. A list of the approval ordinances and related materials is attached to this Judgment as Exhibit 1.

The two-hundred-seventy municipalities have filed claims, in accordance with the procedures set forth in this Court's order of June 26, 2009, to 99.8 percent of the \$48.75 million set aside in the Settlement for payment of claims to the municipalities.

**The Settlement provides substantial benefits to the municipalities that are members of the Settlement Class**

The Settlement will result in the immediate payment, upon this Order and Judgment becoming final, of \$48.75 Million to be distributed to the two-hundred-seventy municipalities that are members of the Settlement Class. In addition, the Settlement includes an agreement by Defendants to increase the services on which Defendants will pay taxes to the municipalities in the Settlement Class, which will result in a substantial increase of tax revenues received from Defendants from those municipalities under current economic conditions. The Settlement also provides other significant benefits to the municipalities, including a prohibition against Defendants lobbying the General Assembly for legislation that would undercut the payment of sums due the municipalities under the provisions of the Settlement. That prohibition is particularly significant here, where Defendants were successful, during the pendency of this dispute, in lobbying the General Assembly to pass legislation that prohibited municipalities from participating in an action of this type. Only a decision of the Missouri Supreme Court prevented such lobbying from serving as an effective roadblock to Plaintiffs' recovery of any amount in this case.

Therefore, for all of the above reasons, this Court approves the Settlement as set forth in the Settlement Agreement.

This Court further finds that the Settlement Agreement provides that the rulings of the Court regarding the amount of attorneys' fees and expenses payable to Class Counsel shall be considered separately by the Court from all other matters, and that any order relating to such fees and expenses, and any appeal related thereto, shall not operate to terminate or cancel the Settlement Agreement, affect the Releases provided for in the Agreement, or affect whether the Order and Judgment of Dismissal is final.

In accordance with this provision, and Missouri Supreme Court Rule 74.01(b) and cases applying that rule, this Court severs consideration of all other matters contained in the Settlement Agreement and in this Court's Order and Judgment of Dismissal from the determination of the amount of attorneys' fees and expenses to be paid to Class Counsel. This Court enters its Final Order and Judgment of Dismissal as to all other matters, and finds that pursuant to Mo.S.Ct. Rule 74.01(b) there is no just reason for delay in the enforcement or appeal of this Final Order and Judgment of Dismissal as to all other matters except for this Court's determination of the amount of attorneys' fees and expenses payable to Class Counsel.

***3. DETERMINATION WHETHER THE APPLICATION FOR PAYMENT OF THE ATTORNEYS' FEES AND EXPENSES TO CLASS COUNSEL SHOULD BE APPROVED***

The third and final issue presented is whether the attorneys' fees and expenses payable to Class Counsel, as provided for in the terms of the Settlement Agreement relating to payment of such fees and expenses, and as requested in Class Counsel's application for

approval of attorneys' fees and expenses, should be approved under the standards for approval of attorneys' fees for Class Counsel in similar cases.

Class Counsel and co-counsel have filed an application for an award of attorneys' fees and expenses to them of twenty-five percent of the amount of \$65 million, as set forth in the Settlement Agreement which provides that Defendants shall establish a fund in that amount, with \$48.75 Million of that fund to be used to pay the municipalities that are Class members the amount each municipality is due under the calculations provided for in the Agreement for payment of back taxes. The remainder of the fund is set aside for payment of attorneys' fees and expenses by Defendants directly to Class Counsel upon order of the Court awarding an amount for attorneys' fees and expenses.

The factors which the Court considers in determining whether to approve attorneys' fees and expenses of class counsel in a class action settlement were set forth by the United States Supreme Court in *Blanchard v. Bergeron*, 489 U.S. 87 (1989). The factors include: 1) the time and labor involved in the attorneys' work; 2) the novelty and difficulty of the questions of law presented in the case; 3) the skill required to perform the work properly; 4) the preclusion of other employment by the attorneys due to acceptance of the case; 5) the customary fees charged by attorneys in comparable cases; 6) whether the fee is fixed or contingent; 7) time limitations imposed by the client or clients or by the circumstances of the case; 8) the amounts of money involved in the case and the results obtained; 9) the experience, reputation and ability of counsel; 10) the "desirability" or "undesirability" of the case; 11) the nature and length of the representation of the client or clients;; and 12) attorneys' fee awards in comparable cases.

Here, this Court has considered these factors in the light of the facts and circumstances involved in this case. This Court finds that the amount which has been applied for an award of attorneys' fees and expenses by Class Counsel and co-counsel is fair and reasonable in the light of 1) the time and labor involved in the attorneys' work; 2) the novelty and difficulty of the questions of law presented in the case; 3) the skill required to perform the work properly; 4) the nature and length of the representation; 5) the risk involved in a case where the law in Missouri governing this matter was unsettled; 6) the opportunity cost associated with performing work on this case to the preclusion of work on another case; 7) the limitations and parameters within which counsel had to work given the special circumstances of this case; 8) the experience, reputation and ability of Plaintiffs' counsel; 9) the customary fees charged by attorneys in this region in comparable cases; 10) the fact that Plaintiffs' counsel had contingency fee arrangements with a substantial proportion of the members of the settlement class, and the resultant risk involved in working on the case where it was possible Plaintiffs may have lost and Plaintiffs' counsel would have received nothing for their work; 11) attorneys' fee awards in comparable cases; and 12) the amounts of money involved in the case and the results obtained in favor of the municipalities that are members of the Settlement Class.

In presenting their application for an award of attorneys' fees and expenses to this Court at the November 2, 2009 hearing, Class Counsel filed an Exhibit, labeled "Group

Exhibit 1 of 11/2/09, which contained declarations filed by sixty-three municipalities which are members of the settlement class in which officials of the various municipalities declared that they fully understood the terms of and supported the proposed award of attorneys' fees to Class Counsel. In addition, counsel for twenty-five other municipalities included in the Class appeared at the hearing, and stated that those twenty-five municipalities fully understood the terms of the Settlement Agreement with regard to an award of attorneys' fees; further, that those twenty-five municipalities took no position on the issue of approval of the amount applied for by Class Counsel, but left it to this Court to determine.

At the November 2, 2009 hearing, Class Counsel cited seven factors weighing in favor of approval of the application: 1) there are no Class Member objections to the proposed award; 2) two-hundred-seventy municipalities have passed ordinances approving the Settlement including its provisions regarding attorneys' fees and expenses; 3) seventy-five municipalities have executed retainer agreements consistent with the fee request; 4) Missouri courts have approved a twenty-five percent proportion of an award of attorneys' fees to the overall settlement fund as the "benchmark" for the amount of an award in similar cases; 5) the amount applied for is consistent with the observations of a law professor who specializes in the area of attorney fee requests and fee awards; 6) the largest settlement class member, the City of Kansas City, Missouri, has approved the payment of the amount requested; and 7) the percentage proportion is calculated only with regard to the settlement fund established for payment of back taxes, and does not include any calculation of payment of future tax benefits to the municipalities that are members of the settlement class, even though those benefits are substantial.

With regard to the argument regarding a "benchmark" of twenty-five percent of the total settlement fund as an appropriate amount to award in attorneys' fees and expenses, Class Counsel cited *State ex rel. Byrd v. Chadwick*, 965 S.W.2d. 369 (Mo.App., W.D. 1997); *In re Charter Communications, Inc. Securities Litig.* 2005 WL 4045741; *Hale v. Wal-Mart Stores, Inc.*, 2009 WL 2206963 (Cir.Ct., Jackson Co., Mo., May 15, 2009); *Karen S. Little, LLC v. Brinker Missouri, Inc.*, 2008 WL 5581405 (Cir.Ct., Saint Louis Co., Mo., May 22, 2008); *In re U.S.Bancorp Litig.*, 276 F.3d 1008 (8<sup>th</sup> Cir., 2002); and *In re Marion Merrell Dow Inc. Sec. Litig.*, 965 F.Supp. 25 (W.D. Mo., 1997). This Court finds that these authorities are persuasive that an award of twenty-five percent of the total settlement fund is an appropriate amount to award in attorneys' fees and expenses to Class Counsel.

In particular, with regard to the facts and circumstances of this case, this Court notes that Plaintiffs' Class Counsel and co-counsel took the considerable risk involved in a case where the law in Missouri governing this matter was unsettled, that they could expend thousands of hours litigating this case and get nothing. That Class Counsel might get paid little or nothing for their work on this case was a substantial possibility is supported by the fact that Defendants argued throughout this case that Defendants were not liable for any back taxes due to any of the municipalities, until the Defendants decided to enter into the Settlement Agreement, and then only after engaging in a lengthy and voluminous process of discovery, litigation in both the federal courts and an appeal in this case to the Missouri Supreme Court, and the mediation and subsequent negotiations referred to above.



After consideration of all of the matters discussed above, this Court approves the application of Plaintiffs' counsel and co-counsel for payment of attorneys' fees and expenses from the total amount of the settlement of \$65 million, in the amount of \$16.25 million, in accordance with the terms of the Settlement Agreement.

## **ORDER AND JUDGMENT**

WHEREFORE, this Court certifies Plaintiffs City of University City, City of Wellston, and City of Winchester as representative Plaintiffs for the members of the Settlement Class; and approves Plaintiffs' counsel and co-counsel as counsel for the Class.

FURTHER, this Court approves the Settlement as set forth in the Settlement Agreement. The parties are directed to consummate the Settlement Agreement according to its terms and provisions, except with respect to the payment of attorneys' fees and expenses to Class Counsel, the terms of which are governed by this Court's further Order and Judgment as to those attorneys' fees and expenses.

FURTHER, in accordance with the terms and provisions of the Settlement Agreement, this Court orders that any Class Member who would otherwise have been eligible to receive payments as described in the Settlement Agreement, but which did not timely return a valid Claim Form to Defendants in accordance with the instructions contained therein, shall not be entitled to any Back Tax Payment under the Settlement Agreement.

FURTHER, in accordance with the terms and provisions of the Settlement Agreement, this Court orders that upon the Effective Date of the Settlement, the Class Representatives and all Class Members shall have, by operation of this Order and Judgment of Dismissal, fully, finally and forever released, relinquished and discharged all Defendants from all Released Claims, whether or not such Class Members executed and delivered a Claim Form.

FURTHER, in accordance with the terms and provisions of the Settlement Agreement, this Court orders that Class Members, including the Class Representatives, and the successors, assigns, parents, subsidiaries, affiliates or agents of any of them, are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any Released Claim against any of Defendants.

FURTHER, in accordance with the terms and provisions of the Settlement Agreement, this Court orders that upon the Effective Date of the Settlement, Defendants shall have, by operation of this Order and Judgment of Dismissal, fully, finally, and forever relinquished and discharged Plaintiffs, the Class Members and Class Counsel, from all claims arising out of, in any way relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the litigation or the Released Claims. In any future dispute relating to Defendants' payment of any Business License Tax, Defendants shall not raise any claims or defenses relating to the enactment or validity of the Class Members' Business License Tax

ordinances in the form existing as of the Effective Date of the Settlement or the applicability of those ordinances to Future Tax Benefits, subject to the terms of the Settlement Agreement.

FURTHER, in accordance with the terms and provisions of the Settlement Agreement, this Court orders that neither this Order and Judgment of Dismissal, the Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein, shall be:

- (a) offered or received against Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of Defendants with respect to the truth of any fact alleged by any of the Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of Defendants;
- (b) offered or received against Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant;
- (c) offered or received against Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement; provided, however, that Defendants may refer to it to effectuate the liability protection granted them hereunder;
- (d) construed against Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been received after trial; or
- (e) construed as or received in evidence as an admission, concession or presumption against the Class Representatives or any of the Class Members that any of their claims are without merit, or that any defenses asserted by Defendants have any merit, or that damages recoverable under the Consolidated Master Petition would not have exceeded those agreed to in the Settlement Agreement.

FURTHER, in accordance with the terms and provisions of the Settlement Agreement, this Court orders that Defendants shall make Back Tax Payments to Class Members which have submitted approved claims as provided in the Settlement Agreement, calculated based upon the assumption that Class Counsel will be awarded attorneys' fees and expenses in the amount of \$16.25 Million. If the order awarding attorneys' fees and expenses is reduced in the future to an amount less than \$16.25 Million, then Class Members Back Tax Payments shall be increased proportionately in accordance with the Settlement. Any increased Back Tax Payments to the Class Members shall be consistent with the order awarding attorneys' fees.

FURTHER, in accordance with the terms and provisions of the Settlement Agreement, this Court orders that if the amount of attorneys' fees and expenses payable to Class Counsel under the order awarding attorneys' fees is modified or reduced for any reason, Defendants' rights and obligations under this Final Order and Judgment of Dismissal shall not change. Defendants shall remain released and dismissed as provided in this Final Order and Judgment of Dismissal. Defendants shall have no obligation to pay any additional amounts as and for attorneys' fees or to Class Members for Back Tax Payments. Defendants shall have no obligation to reapportion any payments previously made as and for attorneys' fees or to Class Members for Back Tax Payments. It shall be the sole responsibility of Class Counsel to directly pay as the Court may direct, Class Members' proportionate share of any funds due and owing as a result of any modification or reduction in the amount of attorneys' fees awarded in the order awarding attorneys' fees. Any funds due and owing to Class Members that did not effectively claim their original Back Tax Payments shall be paid by Class Counsel directly to Defendants. Class Counsel shall determine any reapportionment in accordance with the formula set forth in the Settlement, and in consultation with Defendants.

FURTHER, in accordance with the terms and provisions of the Settlement Agreement, this Court orders that the Consolidated Master Petition, which this Court finds was filed on a good-faith basis in accordance with Mo.S.Ct. Rule 55.03 based upon all publicly available information, is hereby dismissed with prejudice and without costs, except as provided in the Settlement Agreement, as against Defendants. Except as otherwise provided in this Order and Judgment, the parties shall bear their own costs and attorneys' fees.

FURTHER, in accordance with the terms and provisions of the Settlement Agreement, this Court finds that all parties and their counsel have complied with each requirement of Mo.S.Ct. Rule 55.03 as to all proceedings herein.

FURTHER, in accordance with the terms and provisions of the Settlement Agreement, this Court orders that the parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement, without further order of this Court.

FURTHER, without affecting the finality of the Order and Judgment heretofore entered, this Court retains exclusive jurisdiction over the administration, interpretation, effectuation or enforcement of the Settlement, the Settlement Agreement, and this Order and Judgment of Dismissal, including any releases in connection therewith, and any other matters related or ancillary to the foregoing.

FURTHER, this Court finds that the issues contained in the Settlement dealing with Back Tax Payments, Future Tax Benefits, and all other provisions of the Settlement with the exceptions of the provisions relating to the payment of attorneys' fees and expenses to Class Counsel, are separate from the issues relating to the payment of attorneys' fees and expenses to Class Counsel and co-counsel. This Court finds that there is no just reason to delay an appeal of this Court's Order and Judgment of Dismissal regarding all of the matters contained in this and previous Orders of this Court except for this Court's separate determination of the

amount of attorneys' fees and expenses to be paid to Class Counsel and co-counsel. Therefore, in accordance with the provisions of Missouri Supreme Court Rule 74.01(b) and cases applying that rule, this Court severs consideration of all other matters contained in the Settlement Agreement and in this Court's Order and Judgment of Dismissal from the determination of the amount of attorneys' fees and expenses to be paid to Class Counsel and co-counsel. This Court enters its Final Order and Judgment of Dismissal as to all other matters, and finds that pursuant to Mo.S.Ct. Rule 74.01(b) there is no just reason for delay in the enforcement or appeal of this Final Order and Judgment of Dismissal as to all other matters except for this Court's determination of the amount of attorneys' fees and expenses payable to Class Counsel and co-counsel. This Court retains jurisdiction to determine the amount of attorneys' fees and expenses payable to Class Counsel and co-counsel, and to enter separately this Court's order and judgment relating to the payment of such attorneys' fees and expenses payable to Class Counsel and co-counsel.


FURTHER, with regard to the application of Class Counsel and co-counsel for approval of the payment by Defendants of attorneys's fees and expenses to Class Counsel and co-counsel, this Court enters its separate Order and Judgment approving the application of Class Counsel and co-counsel in the amount of \$16.25 Million, in accordance with the terms of the Settlement Agreement.

This case is dismissed. Each party shall bear its own Costs.

The Clerk shall mail a copy of this Order to:

1. John W. Hoffman,  
Korein Tillery LLC  
505 North 7<sup>th</sup> Street, Suite 3600  
Saint Louis, MO 63101,  
Attorney for Plaintiffs.
2. John F. Mulligan, Jr.,  
1600 South Hanley, Suite 101,  
Richmond Heights, MO 63144,  
Co-counsel for Plaintiffs.
3. Howard Paperner,  
9322 Manchester Road  
Saint Louis, MO 63119.  
Co-counsel for Plaintiffs.
4. Stephen Higgins,  
Thompson Coburn LLP  
One US Bank Plaza  
Saint Louis, MO 63101,  
Attorney for Defendants.
5. Timothy Leahy,  
AT&T Legal Department  
One AT&T Center, Room 3558  
Saint Louis, MO 63101  
Co-counsel for Defendants.
6. Daniel G. Vogel,  
Cunningham, Vogel & Rost PC  
75 West Lockwood, Suite One  
Saint Louis, MO 63119

**SO ORDERED:**

  
EDWARD SWEENEY, MBE #24064  
Circuit Judge

## Exhibit 1

## Adopting ordinance votes (for/against):

[Note that in all cases where no vote count is listed, the document does indicate that the adopting ordinance has been passed and approved]

City of Advance 4 to 0  
City of Anniston 3 to 0 (1 alderman absent)  
City of Appleton City (no vote count listed)<sup>3</sup>  
City of Arnold (no vote count listed)  
City of Ashland (no vote count listed)  
City of Ash Grove 4 to 0  
City of Ballwin (no vote count listed)  
City of Bates City (no vote count listed)  
City of Bell City 3 to 0  
City of Bella Villa (no vote count listed)  
City of Bellefontaine Neighbors (no vote count listed)  
City of Belton (no vote count listed)  
City of Berkeley (no vote count listed)  
City of Bertrand (no vote count listed)  
City of Beverly Hills (no vote count listed)  
City of Bloomfield 3 to 0  
City of Bloomsdale (no vote count listed)  
City of Blue Springs (no vote count listed)  
City of Bonne Terre (no vote count listed)  
City of Boonville (no vote count listed)  
City of Bowling Green (no vote count listed)  
City of Breckenridge Hills (no vote count listed)  
City of Brentwood (no vote count listed)  
City of Bridgeton (no vote count listed)  
City of Brookfield (no vote count listed)  
City of Byrnes Mill (no vote count listed)  
City of Campbell (no vote count listed)  
City of Canalou (no vote count listed)  
City of Canton (no vote count listed)  
City of Cardwell (no vote count listed)  
City of Carl Junction (no vote count listed)  
Town of Carrollton (no vote count listed)  
City of Carthage (no vote count listed)  
City of Caruthersville (no vote count listed)  
City of Centralia (no vote count listed)  
City of Chaffee (no vote count listed)

<sup>3</sup> Document unsigned by president, board of alderman but signed by mayor.

City of Charlack (no vote count listed)  
City of Charleston (no vote count listed)  
City of Chesterfield (no vote count listed)  
City of Chillicothe (no vote count listed)  
City of Clarksville (no vote count listed)  
City of Clayton (no vote count listed)  
City of Clinton 7 to 0 (1 absent)  
City of Cole Camp (no vote count listed)  
City of Concordia (no vote count listed)  
City of Cool Valley 4 to 0  
City of Corder (no vote count listed)  
City of Country Club Hills (no vote count listed)  
City of Crestwood (no vote count listed)  
City of Creve Coeur (no vote count listed)  
City of Crystal City 8 to 0  
City of Crystal Lakes (no vote count listed)  
City of Crystal Lake Park (no vote count listed)  
City of Curryville (no vote count listed)  
City of Dearborn (no vote count listed)  
City of Dellwood (no vote count listed)  
City of Des Peres 6 to 0  
City of Desloge 6 to 0  
\* City of De Soto (no vote count listed)<sup>4</sup>  
City of Dexter (no vote count listed)  
City of Duenweg (no vote count listed)  
City of East Prairie 5 to 0 (1 absent)  
City of Edina (no vote count listed)  
City of Edmundson (no vote count listed)  
City of El Dorado Springs (no vote count listed)  
City of Eldon (no vote count listed)  
City of Ellington 4 to 0  
City of Ellisville 7 to 0  
City of Elsberry (no vote count listed)  
City of Essex (no vote count listed)  
City of Eureka (no vote count listed)  
City of Excelsior Estates (no vote count listed)  
City of Excelsior Springs (no vote count listed)  
City of Farmington (no vote count listed)  
City of Fayette (no vote count listed)  
City of Fenton 7 to 0, 1 absent  
City of Ferguson (no vote count listed)  
City of Festus (no vote count listed)  
City of Flordell Hills (no vote count listed)  
City of Florissant (no vote count listed)

<sup>4</sup> Authenticated but appears to be missing at least the signature page. Document marked with a post-it note

City of Foristell (no vote count listed)  
City of Frankford (no vote count listed)  
City of Franklin (no vote count listed)  
City of Frontenac (no vote count listed)  
City of Fulton (no vote count listed)  
City of Gerald 4 to 0  
City of Gideon (no vote count listed)  
City of Gladstone (no vote count listed)  
City of Glasgow 6 to 0  
City of Glenaire (no vote count listed)  
City of Glendale (no vote count listed)  
City of Goodman 7 to 0, 1 absent  
City of Grain Valley 6 to 0  
City of Grandview (no vote count listed)  
City of Green Ridge 4 to 0  
City of Greendale (no vote count listed)  
City of Greenfield (no vote count listed)  
City of Hannibal (no vote count listed)  
City of Hayti (no vote count listed)  
City of Hazelwood (no vote count listed)  
City of Herculaneum (no vote count listed)  
City of Higbee 3 to 0  
City of Higgensville 6 to 0  
City of Hillsboro (no vote count listed)  
City of Holcomb (no vote count listed)  
City of Holden (no vote count listed)  
City of Holts Summit (no vote count listed)  
City of Houston Lake (no vote count listed)  
City of Howardsville (no vote count listed)  
City of Huntsville 8 to 0  
City of Independence (no vote count listed)  
City of Jackson 8 to 0  
City of Jennings (no vote count listed)  
City of Kansas City (no vote count listed)  
City of Kearney (no vote count listed)  
City of Kennett (no vote count listed)  
City of Kinloch (no vote count listed)  
City of Kirksville (no vote count listed)  
City of Kirkwood (no vote count listed)  
City of Knob Noster (no vote count listed)  
City of La Monte (no vote count listed)  
City of Ladue (no vote count listed)  
City of Lake Ozark 6 to 0  
City of Lake Saint Louis (no vote count listed)  
City of Lake Tapawingo 6 to 0  
City of Lake Waukomis (no vote count listed)



City of Lake Winnebago 4 to 0  
City of Lakeshire (no vote count listed)  
City of Lamar (no vote count listed)  
City of Lathrop (no vote count listed)  
City of Lawson (no vote count listed)  
City of Leadington 4 to 0  
City of Leadwood (no vote count listed)  
City of Lebanon (no vote count listed)  
City of Lexington (no vote count listed)  
City of Lilbourn (no vote count listed)  
City of Linn (no vote count listed)  
City of Louisiana (no vote count listed)  
City of Macon (no vote count listed)  
City of Manchester (no vote count listed)  
City of Maplewood (no vote count listed)  
City of Marble Hill 4 to 0  
City of Marceline (no vote count listed)  
City of Marquand 3 to 0, 1 absent  
City of Marshall (no vote count listed)  
City of Marshfield (no vote count listed)  
City of Marston (no vote count listed)  
City of Martinsburg (no vote count listed)  
City of Maryland Heights (no vote count listed)  
City of Maryville (no vote count listed)  
City of Matthews 4 to 0  
City of Mexico (no vote count listed)  
City of Miner (no vote count listed)  
City of Moberly (no vote count listed)  
City of Moline Acres (no vote count listed)  
City of Monroe City (no vote count listed)  
City of Montgomery (no vote count listed)  
City of Montrose (no vote count listed)  
City of Morehouse (no vote count listed)  
City of Mound City (no vote count listed)  
City of Nevada (no vote count listed)  
City of New Haven (no vote count listed)  
City of New Madrid (no vote count listed)  
City of Norborne (no specific vote count listed, certificate  
states 3 of 4 aldermen present and voting)  
\* City of Normandy (document lists ordinances that appear  
relevant but does not attach text of said ordinances, marked  
with post-it note)  
City of North Kansas City (no vote count listed)  
City of Northwoods (no vote count listed)  
City of O'Fallon (no vote count listed)  
City of Olivette (no vote count listed)

City of Oran 6 to 0, 1 abstain and 1 absent  
City of Oranogo (no vote count listed)  
City of Osage Beach 6 to 0  
City of Pagedale (no vote count listed)  
City of Palmyra (no vote count listed)  
City of Paris 3 to 0, 1 absent  
City of Park Hills (no vote count listed)  
City of Parkville (no vote count listed)  
\* City of Parma (attached ordinance appears relevant, but it is not an ordinance in support of the motion for final approval of the settlement, document marked)  
City of Pasadena Hills (no vote count listed)  
City of Perryville (no vote count listed)  
City of Pevely 4 to 0, 2 absent  
City of Piedmont (no vote count listed)  
City of Pierce City 6 to 0  
City of Pine Lawn (no vote count listed)  
City of Platte Woods (no vote count listed)  
\* City of Plattsburg (attached document is not an ordinance but the opinion of the City Attorney that the settlement agreement is binding on the municipality. Document marked.)  
City of Pleasant Hill (no vote count listed)  
City of Pleasant Valley (no vote count listed)  
City of Poplar Bluff (no vote count listed)  
City of Portageville (no vote count listed)  
City of Potosi (no vote count listed)  
City of Puxico 3 to 0  
City of Qulin (no vote count listed)  
City of Raymore 8 to 0  
City of Republic 8 to 0  
City of Richmond (no vote count listed)  
City of Richmond Heights (no vote count listed)  
City of Risco (no vote count listed)  
City of Riverside (no vote count listed)  
City of Rock Hill (no vote count listed)  
City of Rolla (no vote count listed)  
City of St. Ann (no vote count listed)  
City of Saint Charles (no vote count listed)  
City of St. Clair 3 to 0 (1 absent)  
City of St. John (no vote count listed)  
City of St. Mary 4 to 0  
City of Saint Robert (no vote count listed)  
City of Salem (no vote count listed)  
City of Salisbury (no vote count listed)  
City of Savannah (no vote count listed)  
City of Scott City 7 to 0 (1 absent)

City of Sedalia (no vote count listed)  
City of Senath (no vote count listed)  
City of Shelbina (no vote count listed)  
City of Shrewsbury (no vote count listed)  
City of Sikeston 7 to 0  
City of Slater (no vote count listed)  
City of Smithville (no vote count listed)  
City of Sugar Creek (no vote count listed)  
City of Sunset Hills (no vote count listed)  
City of Sweet Springs (no vote count listed)  
City of Tipton 4 to 0  
City of Town and Country (no vote count listed)  
City of Trenton (no vote count listed)  
City of Troy (no vote count listed)  
City of Union 7 to 0 (1 absent)  
City of University City (no vote count listed)  
City of Valley Park (no vote count listed)  
City of Vandalia (no vote count listed)  
City of Velda City 3 to 0 (1 absent)  
City of Velda Village Hills 5 to 0  
City of Vienna (no vote count listed)  
City of Vinita Park (no vote count listed)  
City of Vinita Terrace (no vote count listed)  
City of Wardell (no vote count listed)  
City of Warrensburg (no vote count listed)  
City of Washington (no vote count listed)  
City of Waynesville no vote count listed)  
City of Weatherby Lake (no vote count listed)  
City of Wellston (no vote count listed)  
City of Wellsville (no vote count listed)  
City of West Plains (no vote count listed)  
City of Weston 4 to 0  
City of Wildwood (no vote count listed)  
City of Winchester (no vote count listed)  
City of Wyatt 4 to 0

City of Adrian (no vote count listed)  
City of Aurora (no vote count listed)  
City of Butler (no vote count listed)  
City of Cameron (no vote count listed)  
City of Cape Girardeau (no vote count listed)  
City of Green Park (no vote count listed)  
City of Harrisonville 6 to 0 (1 absent)  
City of Joplin (no vote count listed)  
City of Lee's Summit (no vote count listed)  
City of Liberty (no vote count listed)

City of Malden (no vote count listed)  
City of Monett (no vote count listed)  
City of Neosho (no vote count listed)  
City of Oak Grove (no vote count listed)  
City of Oakland (no vote count listed)  
City of Overland (no vote count listed)  
City of Pacific (no vote count listed)  
City of Platte City (no vote count listed)  
City of Raytown (no vote count listed)  
City of St. Joseph (no vote count listed)  
City of Warson Woods (no vote count listed)  
City of Webb City (no vote count listed)  
City of Webster Groves (no vote count listed)  
City of Wentzville (no vote count listed)  
City of Woodson Terrace (no vote count listed)