

In the United States Court of Federal Claims

No. 97-294C

(Filed January 25, 1999)

CARMEN MOCHIZUKI, et al.,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

Civil Liberties Act of
1988; Internment of
Japanese Latin Americans
during World War II.

Robin Toma, Los Angeles, CA, with *Fred Okrand*, for plaintiffs.

Elizabeth Strange, Washington, D.C., with whom were *Tink Cooper*, Office of Redress Administration, *Vincent M. Garvey*, Deputy Director, Federal Programs Branch, Civil Division, U.S. Department of Justice, for defendant.

OPINION AND ORDER

SMITH, Chief Judge

The court approves the settlement of this case based upon the moving and eloquent testimony of several of the class members as well as plaintiffs' fine lawyers. The court believes those class members' statements provide valuable insight into the tragic experiences of Latin Americans of Japanese descent who were interned here during World War II. Accordingly the court has decided to append copies of their statements to this order so that their account of those trying times can be more widely known.

No settlement is ever perfect. No compensation is ever equivalent to a serious human loss. Who among us would ever trade our eyes or legs for \$5,000 or \$20,000 or a hundred times that much? Money damages can never undo the loss of life, false imprisonment or the passage of years. Money, however, is the medium which the law must use as it seeks to right wrongs. It must use this medium with the full recognition that it is never truly adequate.

The Twentieth Century has seen untold human suffering wrought by the hands of human beings. The World War out of which this case came was perhaps a pinnacle of mankind's ability to inflict evil upon

fellow human beings. I hope we never reach that level again. The statute enacted by the Congress to compensate Americans of Japanese descent was not perfect, however it was a highly moral action. It was an attempt to right a wrong. As such it marks an important milestone in the long road toward decent and civilized life. Few governments over the millennia have even acknowledged past evil, let alone made serious efforts to correct it. We can be very proud of this country for doing so.

Thus, while the wrong is far from perfectly assuaged, the court must acknowledge this as a fair settlement. The plaintiffs asked for the court's help in ensuring additional funding for the settlement. This is beyond the court's constitutional power. However, the court hopes that the Congress and the President will give due consideration to fully funding the settlement so that all identified class members may be paid the modest amount that will serve as a symbol of restitution rather than actual monetary damages. The court must also commend the attorneys and administrative officials of the United States Department of Justice who have worked hard and diligently to handle this settlement and other aspects of the whole claims process.

Upon consideration of the proceedings heretofore conducted in this case and a hearing having been held to determine the fairness, reasonableness and adequacy of the Settlement Agreement executed by the parties on June 10, 1998, it is by this court hereby ORDERED, ADJUDGED AND DECREED that:

1. Pursuant to RCFC 23, the court determines that it is in the interest of justice to certify a class consisting of:

Persons who have not previously received payments under the Civil Liberties Act of 1998 from the Office of Redress Administration, United States Department of Justice, and who are (a) persons of Japanese ancestry who were living in Latin America before World War II and who were interned in the United States at any time during the period from December 7, 1941, to June 30, 1946; or (b) persons who are the spouses, children or parents of persons who died after August 10, 1988, and who met the qualifications of (a) above.

Persons who have timely opted out of the class are not included as class members. The court further determines that, for the purposes of settlement, certification of this class is appropriate due to the number of potential class members, the predominance of common questions over questions affecting individual class members, the expiration of the statutory program at issue in this case, and the fact that the current plaintiffs and their attorneys are adequate representatives of the class.

2. The Settlement Agreement executed by the parties on June 10, 1998, is adjudged to be fair, reasonable, and adequate, and its terms are hereby approved.

3. The Second Amended Complaint is dismissed with prejudice.

4. The court shall retain jurisdiction of this action for a period of 180 days after entry of this order and judgment solely for the purpose of adjudicating any claim of a material breach of the Settlement Agreement.

5. In accordance with this order, judgment is hereby entered approving the settlement as proposed in all respects and dismissing the Second Amended Complaint with prejudice.

IT IS SO ORDERED

LOREN A. SMITH

CHIEF JUDGE

APPENDIX

consisting of the declarations of Carmen Mochizuki, Kazuo Matsubayashi, Rose A. Nishimura, Saduharu Sakamoto, and Grace Shimizu regarding the reaction of members of the class to the Settlement Agreement.