

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

JAKE AYERS, JR., ET AL.

PLAINTIFFS

and

UNITED STATES OF AMERICA

PLAINTIFF/INTERVENOR

V.

CIVIL ACTION NO. 4:75CV9-B-D

**RONNIE MUSGROVE, GOVERNOR,
STATE OF MISSISSIPPI, ET AL.**

DEFENDANTS

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) among the parties to this action is intended to accomplish a full, complete, and final settlement of this controversy. The Agreement is made by Bennie G. Thompson, on behalf of himself and the class of persons identified below (collectively the “Class”), the United States of America, the Governor of the State of Mississippi in his official capacity, and the Board of Trustees of State Institutions of Higher Learning (“the Board”). The Board enters into this Agreement on behalf of itself and the following other defendants in this proceeding: Delta State University, Mississippi State University, Mississippi University for Women, the University of Mississippi, and the University of Southern Mississippi; and, in their official capacities, the institutional

executives of such universities, the Commissioner of Higher Education, and the individual members of the Board.

The Governor, in his capacity as chief executive officer, and the Attorney General, in his capacity as chief legal officer, execute this Agreement on behalf of the State, with the understanding that the Lieutenant Governor and the Speaker, following consultation, affirm their willingness to seek full implementation of the Agreement. As emphasized in section X below, the Agreement is subject to the approval of the District Court.

I. The Background for Settlement.

The private plaintiffs commenced this class action on January 28, 1975. Three months later the United States filed its complaint-in-intervention. On September 17, 1975, a plaintiff class (“the Class”) was certified and defined as follows:

All black citizens residing in Mississippi, whether students, former students, parents, employees or taxpayers, who have been, are, or will be discriminated against on account of race in receiving equal educational opportunity and/or equal employment opportunity in the universities operated by [the] Board of Trustees [of State Institutions of Higher Learning].

On March 8, 1996, the District Court designated Congressman Thompson as the lead plaintiff and representative for the Class.

The *Ayers* litigation now spans over 25 years. Substantial efforts to reach a comprehensive settlement in both the early and mid-1980’s were not successful. Consequently, a lengthy trial occurred in 1987 which resulted in the District Court dismissing the action in its entirety. The Court of Appeals affirmed the District Court but

was reversed by the United States Supreme Court in 1992. The Supreme Court delineated the legal standard to govern the State's duty to desegregate public universities but left implementation of the standard to the lower courts.

On remand from the Supreme Court the parties again unsuccessfully pursued settlement. A second lengthy trial occurred in 1994 which was followed by the District Court's 1995 decision, plaintiffs' appeal to the Fifth Circuit, and the Class's attempt to go to the Supreme Court. Settlement discussions in 1997 during these appeals were also unproductive. The case returned to the District Court in 1998 where the Board has continued its implementation of the District Court's remedial decree.

The Class and the United States continue to challenge the adequacy of the District Court's remedial decree and the Board's implementation of it. Presently on appeal to the United States Court of Appeals for the Fifth Circuit is a plaintiff challenge under *Ayers* of Board authorization of expanded course offerings for the University of Southern Mississippi – Gulf Coast. Multiple proceedings concerning admissions standards, scholarships, and academic programs await the parties in 2001 if this controversy is not settled. Perpetuating the litigation would further drain higher education resources, interfere with system administration, and strain relationships among university constituencies and public officials.

The compelling impetus for the Governor, the Board, and the Attorney General to execute this Agreement, and for the willingness of the Lieutenant Governor and the Speaker to seek implementation of this Agreement, is achievement of finality for the *Ayers* litigation. Judicial approval of this Agreement is to relieve the Board, and all other defendants, of any

further obligations under the remedial decree. On such approval there will no longer remain any arguable constitutional, statutory or regulatory violation. The only obligations of the Board, and other defendants, arising out of or related to the *Ayers* litigation will be those specified in this Agreement. When this Agreement becomes final, the Board will be free to fulfill its constitutional and statutory duties and responsibilities under Mississippi law wholly unfettered by the *Ayers* litigation except as specified in this Agreement.

II. Financial Assistance for Summer Developmental Education Program.

Student access to the summer developmental education program for certain individuals may be affected by financial considerations. The Board agrees to seek, and the State Legislature is expected to provide, special *Ayers* funding in the amount of \$500,000 annually for five years (FY2002 - FY 2006) and \$750,000 annually for five additional years (FY2007- FY2011) to supplement the financial aid presently available to summer program participants. A pool consisting of such funds will be established in which all IHL universities may participate. Award eligibility will be based on student financial need. The pool will be administered by the Commissioner. If the pool is not fully expended in a given fiscal year, the unexpended portion will be carried forward and applied toward the total for the succeeding fiscal year. Any unexpended funds at the end of fiscal year 2011 shall lapse and revert to the State treasury.

Opportunities for enrollment in the summer program, as well as the other admission opportunities for high school graduates and persons over age 21, are to be widely publicized, including but not limited to press releases and public service announcements. Admissions

and financial aid policies are to be included in materials disseminated to the high schools and in university catalogs. IHL and university websites are to relate the means by which admissions and financial aid policies may be readily obtained.

The commitments of the Board in this section to seek special funding for the summer program over a period of 10 years and to promote publication of its availability do not guarantee the continued existence of the summer program at all Mississippi universities for such a 10-year period. The Board specifically reserves the right to no longer provide the summer program at certain Mississippi universities should future circumstances so warrant.

III. Academic Programs.

ASU, JSU and MVSU are to develop, implement, strengthen, review, and modify the programs identified in paragraphs (a) and (b) below consistent with sound educational practices, the desegregation objectives of *Ayers*, and the resources available over time. The funding to be provided under this Agreement for such program implementation is identified in section VI. Such funding is not, and is not represented to be, adequate to immediately implement or strengthen all of the programs listed. Even if unlimited funding were available, immediate implementation of all the new academic programs would not be educationally practicable or achievable. Through prudent institutional management practices, however, substantial program implementation and enhancement should occur over the 17-year period of special appropriations and supplemental endowment income.

(a) Subject to the provisions of paragraph (c) below, the Board hereby authorizes, or affirms its previous authorization of, over time, the *Ayers* academic programs and related

endeavors below.

Alcorn State University:

- (i) Business administration, masters (Natchez);
- (ii) Accounting, masters (Natchez);
- (iii) Finance, bachelors (Lorman);
- (iv) Finance, masters (Natchez);
- (v) Physician assistants, masters (Natchez or Vicksburg);
- (vi) Biotechnology, masters (Lorman);
- (vii) Computer networking, bachelors (Vicksburg); and
- (viii) Environmental science, bachelors (Lorman).

Jackson State University:

- (i) Business, Ph.D.;
- (ii) Urban planning, masters;
- (iii) Urban planning, Ph.D.;
- (iv) Social work, Ph.D.;
- (v) Civil engineering, bachelors;
- (vi) Computer engineering, bachelors;
- (vii) Telecommunications engineering, bachelors;
- (viii) Public health, masters;
- (ix) Health care administration, bachelors;
- (x) Communicative disorders, masters;

- (xi) Higher education, Ph.D.;
- (xii) Public health, Ph.D.;
- (xiii) Mississippi Interinstitutional Pharmacy Initiative;
- (xiv) School of Allied Health;
- (xv) School of Public Health; and
- (xvi) School of Engineering.¹

Mississippi Valley State University:

- (i) History, bachelors;
- (ii) Special education, masters;
- (iii) Special education, bachelors;
- (iv) Computer science, masters;
- (v) Bioinformatics, masters;
- (vi) Leadership administration, masters; and
- (vii) Business administration, masters.

(b) Subject to the provisions of paragraph (c) below, the Board hereby authorizes, or affirms its previous authorization of, over time, enhancements of the academic program areas below.

Alcorn State University:

- (i) Nursing;

¹ Graduate programs in civil, computer and telecommunications engineering will be considered for implementation upon accreditation of the baccalaureate engineering programs.

- (ii) Teacher education;
- (iii) Mathematics and sciences (biology, chemistry, physics); and
- (iv) Computer science.

Jackson State University:

- (i) Business; and
- (ii) Education.

Mississippi Valley State University:

- (i) Biology;
- (ii) Chemistry;
- (iii) Computer science;
- (iv) Mathematics; and
- (v) Special education, masters.

(c) The universities are to submit annually to the Board the budgets for program implementation detailing anticipated expenditures for the subject fiscal year. Institutional access to *Ayers* program funding will be contingent on appropriate institutional identification and specification of contemplated program implementation through the budget process, including projected student enrollments by race. The universities will be required to account to the Board for all program expenditures. The Board will maintain the right to evaluate program implementation in light of program objectives including reservation of the right to direct reallocation of monies, in consultation with the presidents of the historically black universities, to other academic programs and other-race endeavors identified in this

Agreement. Given the considerable period of time covered by this Agreement, the Board further reserves the right to substitute academic programs, in consultation with the presidents of the historically black universities, for those presently identified should future circumstances so warrant.

(d) The president of JSU is authorized to submit for review by the Board an academic program request addressing a Ph.D. program in International Studies, which request will be evaluated by the Board in accordance with the Board's standard policies and practices regarding approval of new academic programs.

IV. Endowment.

Publicly-funded and privately-funded endowments are to be created for the benefit of ASU, JSU, and MVSU as set forth below.

(a) Public endowment. A publicly-funded endowment in the amount of \$70,000,000 is to be created over a 14-year period through transfer of the *Ayers* Endowment Trust, or an equivalent amount, to the Board and provision of an additional \$55,000,000 to the Board as set forth in section VI of this Agreement. This endowment will be managed by a seven-person management committee consisting of the presidents of ASU, JSU and MVSU, the Commissioner of Higher Education, two Board members (the president and the president's designee), and a member to be agreed upon by the other six members of the management committee. The income from investment of the endowment will be allocated 28.3% to ASU, 43.4% to JSU, and 28.3% to MVSU. ASU, JSU, and MVSU will be required to utilize such income for other-race marketing and recruitment, including employment of

other-race recruiting personnel and award of other-race student scholarships. The universities may also expend such income on the new academic programs and enhancements identified in section III above. Principal shall never be invaded.

This public endowment is to be managed by the committee and remain under the control of the Board until such time as the historically black university attains a total headcount other-race² enrollment of 10% and sustains such a 10% other-race enrollment for a period of three consecutive years. When the historically black university attains such a 10% other-race enrollment, the Board shall transfer to the university its pro rata share of the then existing principal of this endowment. The university's share of principal shall be the same percentage as utilized in the distribution of endowment income. The transfer shall be made as of June 30 of the fiscal year in which the university attained the requisite 10% other-race enrollment for the third consecutive year. If the transfer of endowment principal is made before the endowment is fully funded, subsequent funding of the endowment will be provided directly to the university rather than to the Board.

After transfer of endowment principal, the university shall have the discretion to direct investment of the principal and to expend the income for sound academic purposes such as faculty compensation, academic program enhancements and student scholarships. The university shall be required to submit annually to the Board the budgets for expenditure of such income.

² In this Agreement "other-race" refers to persons who are not African-American.

Should any historically black university not achieve the 10% headcount level set forth above by the fall semester of 2018, the income from the endowment shall continue to be allocated to the university upon a determination by the Board each year that said university is making a good faith effort to increase other-race enrollment until such enrollment reaches the 10% level. Showing of a good faith effort shall include, among other factors, the plans, expenditures, and activities addressing other-race recruitment and retention. Upon achievement of the 10% level, the endowment income shall be vested in the university.

(b) Private endowment. The Board will undertake to establish a privately-funded endowment over a seven-year period in the amount of \$35,000,000. This endowment will be managed by the same seven-person management committee managing the public endowment identified in paragraph (a) above. The income from investment of the endowment will be allocated 28.3% to ASU, 43.4% to JSU, and 28.3% to MVSU. ASU, JSU, and MVSU are to utilize such income for the same purposes as the above-described public endowment. Principal shall never be invaded. The Board covenants to use its best efforts to obtain the necessary pledges totaling \$35,000,000, but the inability to do so shall not be cause for setting aside this Agreement or for the imposition of any additional obligations on the Board.

The privately-funded endowment is to be managed by the committee and remain under the control of the Board until such time as the historically black university attains a total headcount other-race enrollment of 10% and sustains such a 10% other-race enrollment for a period of three years. When the historically black university attains such a 10% other-

race enrollment, the Board shall transfer to the university's private foundation the university's pro rata share of the then existing principal of this endowment. The university foundation's share of principal shall be the same percentage as utilized in the distribution of endowment income. The transfer shall be made as of June 30 of the fiscal year in which the university attained the requisite 10% other-race enrollment for the third consecutive year. If the transfer of endowment principal is made before the endowment is fully funded, subsequent donations will be made directly to the university's private foundation rather than to the Board. After transfer of endowment principal, the university foundation shall have the discretion to direct investment of the principal and to expend the income; provided, however, that the expenditures must be for sound academic purposes such as faculty compensation, academic program enhancements and student scholarships.

Should any historically black university not achieve the 10% headcount level set forth above by the fall semester of 2018, the income from the endowment shall continue to be allocated to the university upon a determination by the Board each year that said university is making a good faith effort to increase other-race enrollment until such enrollment reaches the 10% level. Showing of a good faith effort shall include, among other factors, the plans, expenditures, and activities addressing other-race recruitment and retention. Upon achievement of the 10% level, the endowment income shall be vested in the university.

V. Capital Improvements.

(a) The capital improvement projects identified below are hereby authorized for the respective universities in the estimated amounts indicated. Total funding for such

facilities and projects may not exceed \$75 million. Such funding is to be provided over time as set forth in section VI of this Agreement.

Alcorn State University:

- (i) Equipment for MBA program in Natchez (\$1.1 million);
- (ii) New fine arts center in Natchez (\$9.0 million);
- (iii) Repair and renovation of Dumas Hall to assist in pursuit of accreditation of business program (Lorman) (\$3.5 million);
- (iv) Purchase of property to improve security and access to Lorman campus (\$1.0 million); and
- (v) Biotechnology building (Lorman) (\$10.5 million).

Jackson State University:

- (i) Engineering building (\$20.0 million); and
- (ii) Allstate building (\$3.3 million).

Mississippi Valley State University:

- (i) Library enhancements (\$5.0 million);
- (ii) Science and technology building (\$16.7 million);
- (iii) Landscape and drainage (\$3.0 million); and
- (iv) Repairs and renovations (\$1.9 million).

(b) The cost estimates for the anticipated projects broadly described in paragraph (a) above are estimates only which have not been fully substantiated. Final project authorization will be dependent on university provision of complete details of project scope and the associated costs by category. If the final capital expenditure authorization for a

project is less than that presently estimated, the Board will dedicate that difference to other capital projects at that university. In no event, however, will the Board, or the State, be obligated under this Agreement to provide an amount of capital funds greater than that set forth in paragraph (a) above, or under circumstances different than set forth in section VI below. The order of project implementation is to be in the discretion of the Board. Further, because funding is to be provided through fiscal year 2006, the Board reserves the right to substitute capital projects, in consultation with the presidents of the historically black universities, for those presently identified should future circumstances so warrant.

VI. Funding.

The Board follows established procedures in making annual requests of the State Legislature for funding of the IHL system's operational and capital improvements needs. In addition to such regular funding, the State Legislature is expected to provide the special funding necessary to implement the commitments contained in this Agreement. Except for the private endowment referenced in section IV of this Agreement, all funds necessary to implement every commitment in this Agreement must come from, and only from, (i) State bond revenues earmarked as "*Ayers* bond revenues," and (ii) special legislative appropriations earmarked as "*Ayers* settlement funds" – and not from other State bond revenues or legislative appropriations for public higher education. It is specifically agreed and understood that the designated special *Ayers* funding arising out of this Agreement does not supplant regular funding for ASU, JSU, and MVSU.

The Board will seek, and the State Legislature is expected to provide, special *Ayers*

funding³ as follows:

(a) Summer Developmental Program. Commencing with fiscal year 2002 and ending no later than fiscal year 2011, annual *Ayers* appropriations are to be provided to the Board in the amounts of \$500,000 in fiscal years 2002 through 2006 and \$750,000 in fiscal years 2007 through 2011 for establishment of the student financial assistance pool identified in section II above.

(b) Academic Programs. Commencing with fiscal year 2002, annual *Ayers* appropriations are to be provided to ASU, JSU and MVSU for a period of 17 years in the total amount of \$245,880,000 for the purposes identified in section III above. For fiscal year 2002, the total annual appropriation will be \$16,946,000, which will be allocated \$3,112,000 to ASU, \$10,485,000 to JSU and \$3,349,000 to MVSU. Thereafter, total annual *Ayers* appropriations will be provided and allocated to each historically black university as follows:

| | <u>FY 2003 - FY 2008</u> | <u>FY 2009 - FY 2014</u> | <u>FY 2015 - FY 2018</u> |
|-------|--------------------------|--------------------------|--------------------------|
| ASU | \$ 4,350,000 | \$ 2,900,000 | \$ 1,450,000 |
| JSU | \$11,500,000 | \$ 7,667,000 | \$ 3,833,000 |
| MVSU | \$ <u>4,350,000</u> | \$ <u>2,900,000</u> | \$ <u>1,450,000</u> |
| Total | \$20,200,000 | \$13,467,000 | \$ 6,733,000 |

(c) Public Endowment. The public endowment specified in section IV(a) above in the total amount of \$70 million is to be created over 14 years as follows: Commencing with fiscal year 2002, the Legislature is to appropriate to the Board \$5,000,000 per year for

³ Attached hereto as exhibit A is a summary schedule of the special *Ayers* funding more fully described in the text.

11 years, for a total of \$55,000,000, from interest earned on the Working Cash-Stabilization Reserve Fund existing pursuant to *Miss. Code Ann.* § 27-103-203. After the eleventh year, the *Ayers* Endowment Trust of \$15,000,000 presently existing within the Working Cash-Stabilization Reserve Fund pursuant to *Miss. Code Ann.* § 37-101-27 will be terminated through special appropriations of \$5,000,000 annually for three years to the Board, or to ASU, JSU or MVSU directly if the other-race enrollment requirements specified in section IV(a) above have been met at that time.

From fiscal year 2002 through fiscal year 2012, ASU, JSU and MVSU will continue to receive the income attributable to the funds earmarked as the *Ayers* Endowment Trust. Such income will be allocated to each university for expenditure consistent with the provisions of section IV(a) above. Further, as the public endowment is established over time pursuant to section IV(a) above, ASU, JSU and MVSU will receive the income from investment of the endowment annually.

(d) *Capital Improvements*. Commencing with fiscal year 2002 and continuing through fiscal year 2006, the State is to provide \$15,000,000 per year, for a total of \$75,000,000, to the Board for implementation of capital improvement projects identified in section V of this Agreement. Priorities for the allocations of such funds among ASU, JSU and MVSU will be determined by the Board in consultation with the presidents of these universities. The parties recognize that the total funding for capital improvements of \$75,000,000 may be allocated by the Board on some basis other than \$15,000,000 annually to assure educationally sound expenditure of the funds.

(e) July 6, 2000 Order. The \$3.6 million frozen by the District Court's July 6, 2000 order is to be released. Such funds are to be divided equally between ASU and MVSU. These funds are to be used for the purposes identified in section III of this Agreement.

(f) Attorneys' fees. The Board deposited \$250,000 in the registry of the United States District Court for the Northern District of Mississippi pursuant to the District Court's December 19, 2000 order addressing interim attorneys' fees. The Clerk has disbursed this sum to the private plaintiffs pursuant to the December 19, 2000 order. Such \$250,000 sum is to be applied to the Board's obligation to pay attorneys' fees addressed in section IX below.

Additionally, pursuant to section IX below and within 60 days of this Agreement having become final as provided in section X below, the State Legislature is to provide \$1,000,000 to the Board for payment of attorneys' fees. Thereafter, in fiscal year 2004, the State Legislature is to provide an additional \$1,250,000 to the Board for complete satisfaction of the total attorneys' fees maximum obligation of \$2,500,000. Payments by the Board of such attorneys' fees will be made as set forth in section IX below.

VII. JSU as a Comprehensive University.

JSU presently offers a broad array of academic programs which include professional programs and graduate programs through the doctoral level. JSU is assuming a leadership role within Mississippi higher education in the field of public health, JSU's service area is greater than the Jackson metropolitan area, and JSU is significantly involved in organized research activities. Accordingly, the Board agrees that JSU should be recognized as a

comprehensive university.

It is agreed by the parties that JSU's use of the comprehensive description does not imply any change in JSU's institutional mission classification. Institutional mission designations are not being addressed by this Agreement. The Board reserves the right in its sole discretion to hereafter change the mission classifications of any or all universities.

Such additional programs, facilities and other resources to which JSU is entitled because of and arising out of this comprehensive recognition are set forth in this Agreement. Nothing herein shall prevent JSU from hereafter submitting for consideration by the Board academic programs consistent with this comprehensive recognition. The Board reserves the right to allocate programs, facilities and resources to the institutions of higher learning on the basis of the availability of resources and in conformity with the Board's overall responsibility to supervise and control the institutions of higher learning.

VIII. Mississippi Veterans Memorial Stadium and the Universities Center.

Mississippi Veterans Memorial Stadium is to be designated as the home of the JSU Tigers. Membership on the Mississippi Veterans Memorial Stadium Commission will be afforded to the president of JSU or his designee. The State Legislature is expected to enact the legislation necessary to effect these changes. The Stadium Commission should provide appropriate signage.

Subject only to the Board, JSU is to have control over the facility often referred to as the Universities Center.

IX. Attorneys' Fees.

On securement of the requisite funding from the State Legislature, the Board agrees to pay to private plaintiffs attorneys' fees, costs and expenses of \$2,500,000. This total of \$2,500,000 includes the interim attorneys' fee of \$250,000 previously deposited in the registry of the United States District Court for the Northern District of Mississippi pursuant to the District Court's December 19, 2000 order addressing interim attorneys' fees. The class representative (Congressman Thompson) and Class counsel Byrd, Derfner and Pressman specifically represent that North Mississippi Rural Legal Services, The Center for Law and Education, and Alvin O. Chambliss, Jr. have knowledge of these provisions (i) that the *Ayers* defendants' obligations for attorneys' fees, costs and expenses will be fully satisfied on payment of \$2,500,000 as provided in this section IX and section VI above, and (ii) that no present or former counsel for the Class, or member of the Class, may seek attorneys' fees, costs and expenses other than as set forth in this Agreement.

Payments by the Board of such attorneys' fees will be in accordance with the schedule stipulated in section VI above. The Board will make such payments into the registry of the United States District Court for the Northern District of Mississippi. The Clerk will in turn disburse such funds as directed by the District Court.

X. Dismissal of Action and Settlement Implementation.

A. Parties' Approval of Agreement.

The actions promised in this Agreement are solely to achieve a compromise settlement of claims asserted by the Class and the United States and disputed by the Board and other

defendants. The Agreement constitutes the entire agreement among the parties. No representations, warranties or inducements have been made to any party concerning the Agreement other than those memorialized herein. The Class Representative, Class Counsel, and the defendants, and each of them, shall represent that the Agreement is fair and reasonable and is the result of arms-length negotiations.

All parties and counsel shall use their best efforts to cause the District Court to give preliminary approval to the Agreement as promptly as possible, to take all steps contemplated by the Agreement to effectuate the Agreement on the stated terms and conditions and, further, to obtain final approval of the Agreement. Specifically, the Class Representative and Class Counsel agree to recommend the settlement contained in the Agreement as being in the best interests of the Class Members under the circumstances. No Class Member, however, other than the Class Representative, shall be precluded from questioning or objecting to the Agreement at the hearing for final approval thereof by the Court, notwithstanding Class Counsel's recommendation. The parties and their counsel agree not to solicit, request, or advise Class Members to object to the Agreement or to arrange representation for Class Members objecting to the Agreement.

B. Preliminary Court Approval of Agreement.

Promptly after execution of this Agreement, but in no event later than 10 days after the execution of this Agreement, the parties by joint motion shall submit the Agreement to the District Court requesting that the Court enter an order granting preliminary approval of the Agreement. The District Court shall be requested to direct the giving of notice to the

Class and to schedule a fairness hearing. In the event the Court declines to preliminarily approve the Agreement, or to find the Agreement provides an adequate basis for issuing notice and scheduling a fairness hearing, then the entire Agreement shall become null and void unless the parties promptly agree in writing to other mutually satisfactory settlement provisions and agree to proceed with the Agreement, subject to approval by the Court.

C. Final Judgment.

At the final hearing on fairness, adequacy, and reasonableness of the settlement as set forth in this Agreement, the parties, and each of them, agree to cooperate in good faith to achieve the expeditious approval of the settlement, and shall request the Court to grant final approval of the Agreement and to enter judgment thereon (“Judgment”). In order to satisfy the requirements of the Agreement, the Judgment must include, by specific statement or by reference to the Agreement to the extent permitted by law and the rules of court, provisions which:

1. Affirm certification of the proceeding as a class action pursuant to Rule 23 of the Fed. R. Civ. P. with the Class as previously defined by the Court;
2. Find that the notice given to Class Members satisfied the requirements of both Rule 23, Fed. R. Civ. P., and due process, and that the Court has jurisdiction over the Class;
3. Find that the Agreement is fair, adequate, and reasonable in all respects;
4. Find that the Class Representative, and all Class Members, have released all claims, all as set forth in the Agreement;

5. Order that the State shall implement the Settlement Agreement, including providing the funding designated in section VI and exhibit A to this Agreement;
6. Incorporate the Agreement within the Judgment to enable the District Court to exercise jurisdiction over any subsequent dispute involving the Agreement;
7. Find that on judicial approval of the Agreement, including the commitments contained therein, the defendants, and the State of Mississippi, shall be in full compliance with the law, and that, therefore, there are no continuing State policies or practices, or remnants, traceable to *de jure* segregation, with present discriminatory effects which can be eliminated, altered or replaced with educationally sound, feasible and practical alternatives or remedial measures; and, further, that this finding shall extend to all facets of the case and to all facets of public higher education under the direction, supervision or control of the Board;
8. Dismiss on the merits and with prejudice (i) all claims set forth in the complaint, as amended, (ii) all claims set forth in the complaint-in-intervention, and (iii) all claims of racial discrimination asserted before the Court throughout the pendency and trials of the action including, without limitation, claims of system or institutional aspects, features, policies and practices alleged to be remnants of the *de jure* system. (*See* 879 F. Supp. at 1496, et seq.).

D. Finality of Agreement.

This Agreement shall become final upon the occurrence of all of the following three events: (i) approval of the Agreement in all respects by the District Court as required by Rule 23(e) of the Fed. R. Civ. P.; (ii) entry of the Judgment as provided for above; and (iii) expiration of the time for appeal or to seek permission to appeal from the District Court's

approval of the Agreement and entry of Judgment or, if the Judgment is appealed, affirmance of the approval of the Agreement and the Judgment in their entirety by the court of last resort to which such appeal has been taken with such affirmance no longer being subject to further appeal or review.

The Agreement shall be binding upon the successors and assigns of the parties and shall inure to their benefit.

E. Dismissal of Appeal.

On this Agreement becoming final as set forth in subsection D above, the appeal pending before the United States Court of Appeals for the Fifth Circuit from the District Court's order of November 29, 1999, addressing the University of Southern Mississippi – Gulf Coast shall be dismissed with prejudice.

F. Enforcement.

The parties, including each Class Member, irrevocably submit to the exclusive jurisdiction of the United States District Court for the Northern District of Mississippi, any suit, action, proceeding or dispute arising out of or relating to the Agreement (including any alleged nonperformance of the Agreement or the Judgment) or to the applicability of the Agreement. All parties agree that the District Court has complete jurisdiction and power to enforce this Agreement. The parties intend by this paragraph to vest the District Court with full jurisdiction for enforcement as contemplated by the case of *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994).

G. Disclosure of Agreement Implementation.

No later than October 1 of each year, the Board, through counsel, shall provide to lead counsel for the private plaintiffs and counsel for the United States line item reports reflecting the following: (i) *Ayers* bond revenues and settlement funds requested; (ii) *Ayers* bond revenues and settlement funds obtained; (iii) *Ayers* bond revenues and settlement funds expended; (iv) institutional enrollments by race at each public university; (v) by race and university, the number of participants in the summer program, the number of participants satisfactorily completing the program, and the number of successful participants enrolling in the following fall term; (vi) by race and university, the number of persons receiving funding pursuant to section II of this Agreement, the total amount of funding received by each university and the standards used in distributing the funds; (vii) by university, the facilities projects receiving funding under section V of this Agreement, together with identification of those projects completed; (viii) by university, the academic programs receiving funding under section VI(b) of this Agreement; and (ix) the amount of private endowment raised and the amounts of public and private endowment income distributed to each university pursuant to section IV of this Agreement. Such annual disclosures will address the specified items regarding the immediately preceding fiscal year and will also include a cumulative summary of such items to date.

H. Effect of Non-Approval, Cancellation and Termination of Agreement.

If the District Court does not enter an order preliminarily approving settlement, or does not enter the final Judgment contemplated by this Agreement, or if the Court enters the

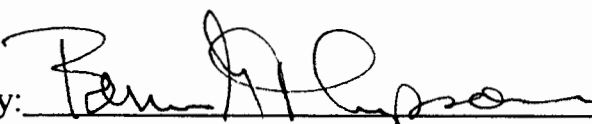
Judgment and appellate review is sought, and upon appellate review such Judgment is reversed, or is modified so as to change any of the material terms of the Agreement, then the Agreement shall be automatically canceled and terminated unless the parties hereto otherwise agree at such time.

If the Agreement is not approved or is canceled or terminated, or fails to become effective for any reason, then the parties to the Agreement shall each be deemed to have its or their respective status as of the date and time immediately prior to the Agreement, and the parties shall proceed in all respects as if the Agreement and any related orders had never been executed or entered.

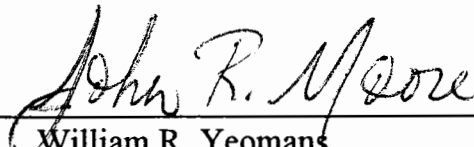
In the event the Agreement is not approved, or is canceled or terminated, or fails to become effective for any reason, then the Agreement shall be void and have no continuing effect, and no reference to the fact of an Agreement or the terms thereof shall be made in the District Court, or in any other court, nor sought to be used by any person in any proceeding against any of the defendants as an admission or indication or evidence of any constitutional or statutory or regulatory violation.

Executed this 29th day of March, 2001, by the persons and entities set forth below.

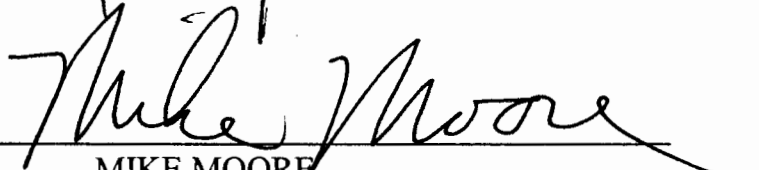
THE PRIVATE PLAINTIFFS

By: 
Bennie G. Thompson, Individually
and as Class Representative on Behalf
of the Class

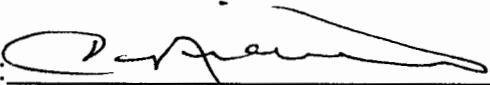
THE UNITED STATES OF AMERICA

By: 
William R. Yeomans
Acting Assistant Attorney General
John R. Moore
Special Litigation Counsel
LeVern M. Younger
K. Heshima White
Attorneys
U. S. Department of Justice
Civil Rights Division

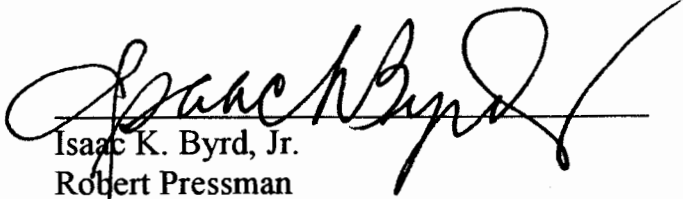

RONNIE MUSGROVE
Governor, State of Mississippi


MIKE MOORE
Attorney General, State of Mississippi

THE BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING

By: 
Carl Nicholson, Jr., President

APPROVED:

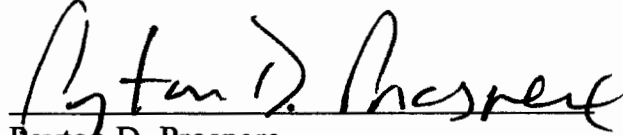


Isaac K. Byrd, Jr.

Robert Pressman

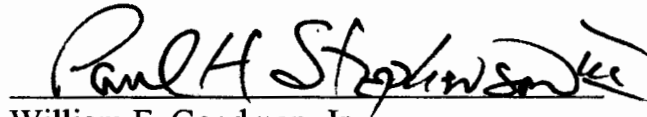
Armand Derfner

COUNSEL FOR THE CLASS



Peyton D. Prospere

COUNSEL FOR THE GOVERNOR



William F. Goodman, Jr.

Paul H. Stephenson, III

Watkins & Eager PLLC

Jackson, Mississippi

COUNSEL FOR THE BOARD OF
TRUSTEES OF STATE INSTITUTIONS
OF HIGHER LEARNING

**Summary Schedule of *Ayers* Funding¹
Fiscal Years 2002 - 2018**

| | <u>FY 2002</u> | <u>FY 2003</u> | <u>FY 2004</u> | <u>FY 2005</u> | <u>FY 2006</u> | <u>FY 2007</u> |
|--------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Student Fin'l Assistance | \$ 500 | \$ 500 | \$ 500 | \$ 500 | \$ 500 | \$ 750 |
| Academic Programs | 16,946 | 20,200 | 20,200 | 20,200 | 20,200 | 20,200 |
| Public Endowment | 5,000 | 5,000 | 5,000 | 5,000 | 5,000 | 5,000 |
| Capital Improvements | 15,000 | 15,000 | 15,000 | 15,000 | 15,000 | - |
| Attorneys' Fees | <u>1,000</u> | <u>-</u> | <u>1,250</u> | <u>-</u> | <u>-</u> | <u>-</u> |
| Total | \$ 38,446 | \$ 40,700 | \$ 41,950 | \$ 40,700 | \$ 40,700 | \$ 25,950 |

| | <u>FY 2008</u> | <u>FY 2009</u> | <u>FY 2010</u> | <u>FY 2011</u> | <u>FY 2012</u> | <u>FY 2013</u> |
|--------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Student Fin'l Assistance | \$ 750 | \$ 750 | \$ 750 | \$ 750 | - | - |
| Academic Programs | 20,200 | 13,467 | 13,467 | 13,467 | 13,467 | 13,467 |
| Public Endowment | 5,000 | 5,000 | 5,000 | 5,000 | 5,000 | - |
| Capital Improvements | - | - | - | - | - | - |
| Attorneys' Fees | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> |
| Total | \$ 25,950 | \$ 19,217 | \$ 19,217 | \$ 19,217 | \$ 18,467 | \$ 13,467 |

¹ Dollars stated in thousands.

**Summary Schedule of Ayers Funding
Fiscal Years 2002 - 2018 (Cont'd)**

| | <u>FY 2014</u> | <u>FY 2015</u> | <u>FY 2016</u> | <u>FY 2017</u> | <u>FY 2018</u> | <u>17-Year Total</u> |
|----------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|-------------------------------|
| Student Fin'l Assistance | - | - | - | - | - | \$ 6,250 |
| Academic Programs | 13,467 | 6,733 | 6,733 | 6,733 | 6,733 | 245,880 |
| Public Endowment | - | - | - | - | - | 55,000 ² |
| Capital Improvements | - | - | - | - | - | 75,000 |
| Attorneys' Fees | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> | <u>2,250</u> |
| Total | \$ 13,467 | \$ 6,733 | \$ 6,733 | \$ 6,733 | \$ 6,733 | \$ 384,380 |
| Funding thru FY 2001 | | | | | | <u>83,856³</u> |
| Total Public Funding | | | | | | \$ 468,236 |
| Privately Funded Endowment | | | | | | <u>35,000</u> |
| Total Settlement Funding | | | | | | <u>\$ 503,236⁴</u> |

² The total public endowment being created under the settlement is \$70,000,000. See footnote 3 addressing transfer of funds presently constituting the *Ayers* Endowment Trust.

³ This total includes \$15,000,000 presently earmarked in the Working Cash-Stabilization Reserve Fund as the *Ayers* Endowment Trust. The designation as trust funds is to be removed in FY 2013 and \$5,000,000 is to be appropriated annually in fiscal years 2013, 2014 and 2015 to complete creation of the \$70,000,000 public endowment. The \$83,856,000 total also includes \$15,000,000 appropriated for property acquisition by JSU pursuant to paragraph 6 of the District Court's remedial decree and \$9,600,000 appropriated for construction of a facility in Natchez to house ASU's MBA program pursuant to paragraph 10 of the remedial decree. In addition to other funding under the remedial decree, the \$83,856,000 total further includes \$250,000 paid as interim attorneys' fees.

⁴ This total does not include the income from the *Ayers* Endowment Trust or the income from the investment of the public and private endowments which ASU, JSU, and MVSU will be receiving over the 17-year period covered by the Settlement Agreement.