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Cobb EMC Will Pay \$98 Million to Settle Claims

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Six years of bitter legal battles concluded Thursday in a courtroom full of lawyers who gathered before Cobb County Superior Court Judge J. Stephen Schuster to announce a preliminary \$98 million settlement of a class action lawsuit against the Cobb Electric Membership Corp. over sharing profits with customers.

In a deal described as the largest known settlement in the county's history, the money will go to two classes of EMC members—current and former—to be paid by a claims administrator. A website and call center are being developed. The amount that will go to lawyers, which will come from the \$98 million, is yet to be determined. For legal fees and expenses, the attorneys will have to seek approval from the mediator who brought the parties together, Michael Bowers, a partner with Balch & Bingham and former Georgia attorney general.

"Every nickel was fought through," Bowers told the court, adding that out of 400 cases he has mediated in his career, he has not seen one more contentious.

In thanking Bowers for his help, the judge referred to the partial government shutdown. "General Bowers, if I could send you up to Washington to work that out, I would."

In reply, Bowers referred to his last political campaign, a failed bid for governor in 1998: "Your honor, I don't do politics anymore."

Bowers began working with the EMC and the two plaintiffs groups a year ago. "There were many moments when I thought, this is not going to work," Bowers told the court. "It was highly adversarial. There were so many things they fought about." The claims arose over the lack of payments of profits back to customers, or members, of the cooperative dating back to the formation of the company in 1938.

The parties did their battling in a conference room at the law firm of Cobb EMC general counsel, J. Kevin Moore of Moore Ingram Johnson & Steele. The room overlooks a cemetery, which Bowers confessed he was beginning to view as a metaphor. "This deal was dead from the beginning," he said.

"I'm not sure what changed, but something changed toward the holiday season," Bowers said. In January of 2012, the parties agreed to a framework. Working out the details of the settlement took another nine months. The lawyers signed the deal Wednesday. The judge signed it in the courtroom at 10:36 a.m. Thursday. They set a date for final approval in February 2014.

Three teams of lawyers thanked each other and the judge. They used the word "happy" frequently. They praised each other. They agreed that Cobb EMC will, within 60 days, set aside an estimated \$34 million to be paid to individuals and businesses that were co-op members up through the first half of 1988. The remaining amount, estimated at \$64 million, will go to reimburse individuals and businesses that were co-op members between the second half of 1988 through Dec. 31, 2012.

The EMC has turned over 5.5 million addresses and "data points" to facilitate the payments. The size of the class is estimated to be 900,000 former and current members, which would mean the average payment—excluding any legal fees—is about \$109 per member. But the lawyers cautioned against stating any average payment because the amount of electricity used varies widely between members, which ranged from individuals in small homes to large businesses.

In testament to the delicate nature of the negotiations, the lawyers retreated behind closed doors after Schuster signed the settlement order. Their mission was to fine tune a statement already prepared by the EMC public relations firm. That effort took longer than the one-hour hearing. Still, the atmosphere was congenial, almost friendly.

Schuster took note of the change in tone since he first began presiding over the dispute with an earlier lawsuit in 2007, then another filed in 2010. "We've come a long way," he said. He compared the Cobb EMC directors—sitting tightly together in the first two rows behind their lawyers and their executives sitting behind them on the third row—with their predecessors. Most of the directors and the executives have changed since the litigation began. Schuster said the first time they came together, he had to bring them in under subpoena and they scattered out around the courtroom refusing to sit together.

"You have truly saved the company and turned the company around," Schuster told the new directors and executives. "It's a new board, a new CEO and a whole new outlook. The EMC is now focused on member rights."

The plaintiffs' lawyers agreed the settlement reflects the judge's direction to reach an agreement that would mean "real money" to the members, said Paul Lawrence II of Waters & Kraus in Washington, lead counsel for the class of former Cobb EMC members. The first named plaintiff was estate of Joseph Seay, who was the inspiration for the detective character played by Tom Hanks in the movie "Catch Me if You Can."

Charles Gabriel of the Roswell law firm Pierce-Gabriel Partners also represents the former members.

Speaking for the class of current EMC members, David Cohen of Complex Law Group said the settlement will mean "real cash value" to the plaintiffs. "This is not a case where the plaintiffs are just getting coupons." Also representing current members is Hylton Dupree Jr. of Dupree & Kimbrough.

Speaking for the EMC, Moore said the settlement controls the risk, cuts the cost of protracted litigation and offers a fresh start. "This is a new day," Moore said. "This was a crisis that was not of this board's making."

The reference to the EMC's past management was hardly veiled. Not mentioned and not present was former EMC CEO Dwight Brown, who still faces felony racketeering and theft of assets charges for his role in management decisions before he retired. The lead prosecutor on the Brown case, Cobb County Assistant District Attorney John Melvin, sat on the back row of the courtroom and watched the settlement proceedings, which lasted nearly an hour. He said he was interested to see if the civil resolution would affect the criminal case, particularly in the area of restitution. "It doesn't have to affect it, but it could," Melvin said.

As he left the courtroom, Melvin said to a reporter, "I'll see you at State v. Brown."

The civil case is *Shea v. Cobb EMC*, in re: Cobb EMC class action, No. 10-100353-48.



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