

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GEOFFREY OSBERG, :
 :
On behalf of himself and on :
behalf of all others similarly situated, :
 : Case No.: 07 CV 1358 (KBF)
Plaintiff, :
 :
v. :
 :
FOOT LOCKER, INC. and :
 :
FOOT LOCKER RETIREMENT PLAN, :
 :
Defendants. :
-----X

**Important Notice About Increased Retirement Benefits
from the Foot Locker Retirement Plan and Proposed Attorneys' Fee and Expense Award**

Your Increased Foot Locker Pension Benefits

You are receiving this Notice as part of the *Osberg v. Foot Locker* class action litigation in the United States District Court for the Southern District of New York. This litigation sought to remedy allegedly misleading disclosures by Foot Locker, Inc. about the 1996 amendment to the Foot Locker Retirement Plan—in particular, disclosures about the benefits employees would earn after the amendment. The remedy sought was increasing retirement benefits to current and former Foot Locker employees who participated in the Plan to match the benefits that Foot Locker allegedly told employees the amended Plan would provide (but which it did not provide). You have been identified as a current or former Foot Locker employee who may be entitled to an increased retirement benefit as a result of this class action lawsuit.

Before this litigation, when you ended your employment with Foot Locker (whether you already had, or would in the future), you were entitled to receive the greater of: (A) your benefit under the Plan under the Plan's prior traditional formula earned through December 31, 1995 (when that formula ceased to apply) or (B) your benefit under the Plan's new cash balance formula which went into effect on January 1, 1996. You could choose to receive this benefit as a lump sum or as an annuity. Your cash balance benefit was based on a cash balance account which included an opening account balance calculated based on the benefits you had earned under the prior formula as of December 31, 1995. It also included certain benefit credits that you earned for service after January 1, 1996 and interest earned at the rate of 6% per year, until you commenced benefits. If you met an age and service requirement on January 1, 1996 then you also received an enhancement to your new cash balance account.

As a result of this litigation, the Court has ordered that the Plan be reformed and that Foot Locker and the Foot Locker Plan pay all Class members increased benefits. Specifically, you will receive an ***additional pension benefit*** from the Foot Locker Retirement Plan calculated using the following formula set forth in the Court's ruling:

ADDITIONAL BENEFIT FORMULA

The benefit you earned under the Plan's prior formula earned through December 31, 1995, calculated in the manner directed by the Court

PLUS

An amount based upon the sum of the following credits to a cash balance account:

(1) If you met an age and service requirement, the enhancement percentage previously applied (in 1996) times the value of the prior-Plan benefit described above (valued as of 1/1/96);

(2) The cash balance credits promised under the Plan formula for service after January 1, 1996; and

(3) Interest credits on (1) and (2) at 6% per year from 1/1/96 until the date your benefit from the Plan was paid (or through today if you have not yet been paid a benefit)

MINUS

The value of benefits you were already paid, if any

INCREASED BY

Interest at 6% per year from the original payment date(s) (if you already received benefit payments) to the date of the additional payment that you will receive as a result of this lawsuit

MINUS

Your allocable share of court-approved attorneys' fees and expenses.

Details regarding the exact amount, manner, and timing of payment of your increased retirement benefits will be communicated to you separately by the Pension Plan administrator in a benefits election letter.

The Osberg Class Action Lawsuit

Geoffrey Osberg was a store manager who worked for Foot Locker for 20 years before leaving the Company and receiving a lump sum from the Plan in 2002. In February 2007, he filed a lawsuit against Foot Locker and the Foot Locker Plan on behalf of himself and over 16,000 similarly situated Plan participants and beneficiaries. The lawsuit alleged that, in connection with the conversion of the Plan from the prior traditional defined benefit pension plan formula to a "cash balance" plan formula effective January 1, 1996, Foot Locker made false and misleading statements to Plan participants as to the effect of the change and what Plan benefits earned after the change would be.

The lawsuit alleged that Foot Locker falsely told participants that the benefits they had earned as of December 31, 1995, prior to the change, were converted into initial account balances of equal value and that any subsequent additions to those account balances represented new additional benefits earned due to additional service. The lawsuit alleged that this was untrue because the benefits represented by the initial account balances in the cash balance plan were less than the benefits already earned prior to the change on January 1, 1996, and that Foot Locker failed to disclose this to employees.

In 2015, after a two-week trial, Judge Katherine B. Forrest of the United States District Court for the Southern District of New York ruled that Foot Locker had made false and misleading statements to participants that would lead them to incorrectly believe that the benefits represented by the initial account balances in the cash balance plan were equal to the benefits already earned as of December 31, 1995. The Court also found that Foot Locker made false and misleading statements that the additions to participants' cash balance accounts as a result of service after 1995 would result in participants earning increases in actual benefits payable from the Plan, when this was not always the case. The Court ruled that by making these statements to participants, Defendants violated their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") and ERISA's minimum requirements for summary plan descriptions ("SPDs"). The Court held that the appropriate remedy was that Foot Locker should pay participants what it promised in its participant communications, that is, that the post-1995 service that resulted in cash balance credits actually increased the participant's benefit. The Court held that that correction should be done by reforming the Plan to conform to the alleged promises made to participants. The Court thus ordered relief in the form of the "A+B" benefit formula described above. That ruling was affirmed on appeal in 2017 and in 2018, the United States Supreme Court denied Foot Locker's petition for review.

The Requests for Attorneys' Fees and Expenses

Prior to the 2015 trial and before any decision on the merits, the Court certified this case as a class action and ordered that you and the other members of the Class be given an opportunity to "opt-out" of the class action and either not pursue the certified claims or pursue them on your own, perhaps with your own attorney. You were informed that if you wished to remain part of the certified class the final outcome, whether favorable to Plaintiff or Defendants, would apply to you like all other Class members. You were also informed that if Plaintiff was successful and there were additional payments to be made by Foot Locker, you would receive notice and an opportunity to be heard as to the reasonableness of any fees and expenses Class Counsel would ask the Court to approve to be paid out of such award. This is that notice and your opportunity to object or comment.

The estimated value of the total recovery Class Counsel's efforts have won for the Class is \$290 million, as of June 1, 2018 ("judgment amount"). Class Counsel are seeking attorneys' fees of one-third of the net judgment amount, *i.e.*, after the expenses described in the next sentence have been deducted. Class Counsel are also seeking reimbursement of the \$1,520,057 in out-of-pocket expenses they incurred prosecuting this lawsuit, including the amount charged by the Class's enrolled pension actuary who has actively worked on the case for more than 11 years and testified at trial.

Included within this fee and expense request is a request for a \$50,000 incentive award for Mr. Osberg, who shouldered the burden of this litigation on behalf of other Class members and \$15,000 for the other eight Class member-witnesses who were deposed and testified at trial. Class Counsel is offering to pay these incentive awards out of Class Counsel's fee, rather than out of the Class's recovery.

You can obtain a copy of Class Counsel's motion for attorneys' fees, expenses, and incentive awards for Plaintiff Osberg and the eight testifying Class members free of charge, from the website that Class Counsel established for Class members (see address below). If the Court grants these requests, the approved amounts will be deducted from the total recovery and, pursuant to the court-approved formula described on page 2 of this Notice, will reduce the additional benefit payable to you as a result of this lawsuit. The deduction for lawsuit-related fees and expenses will only apply to any **benefit increase** to which you are entitled as a result of this lawsuit, not to any benefits you already had or would have received independent of this litigation.

Your Right to Object or Comment

If you wish to object or comment on the requests by Class Counsel for attorneys' fees and expenses from the judgment amount, please send your objections or comments to: Clerk of the Court, Office of the Clerk, United States District Court, Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, NY 10007. The letter must be

post-marked no later than May 25, 2018. The Court will consider any objections or comments before making its final decision.

Complete Address Verification Form to Ensure Receipt of Future Notices

Whether or not you object or comment, if you are eligible to receive a retirement benefit increase as a result of this litigation, you will receive a future notice about how to obtain your increased benefit. Enclosed with this Notice is an Address Verification Form to confirm or update your current address to ensure that you receive future notices about your increased retirement benefit. Please complete the Address Verification Form as soon as possible and return it in the enclosed prepaid envelope. If you are the surviving spouse or beneficiary of a deceased former Foot Locker employee, please fill in your name, address, and relationship to the deceased former Foot Locker employee.

Additional Information

If you have questions or concerns, please contact Class Counsel:

Gottesdiener Law Firm, PLLC
498 7th Street
Brooklyn, NY 11215
Tel: 718.788.1500
Fax: 718.788.1650
info@gottesdienerlaw.com

A website at www.footlockerpensionclassaction.com that Class Counsel has created dedicated to the lawsuit includes this Notice, Class Counsel's fee petition, and answers to frequently asked questions.

This Notice is authorized by the United States District Court for the Southern District of New York, Hon. Katherine B. Forrest, United States District Judge.

Osberg v. Foot Locker Pension Class Action
c/o Notice Administrator
P.O. Box 1367
Blue Bell, PA 19422

Address Verification Form

ID #: #####

«FirstName» «LastName»

«Address1»

«Address2»

«City», «StateCd» «Zip»

«CountryCd»



Instructions:

- **Please confirm your address if correct, or update your address to ensure you receive future notices about your increased retirement benefit.**
- Complete this form as soon as possible and return it in the enclosed prepaid envelope.
- Note: If you are the surviving spouse or beneficiary of a deceased former Foot Locker employee, please fill in your name, address and relationship to the deceased former Foot Locker employee.

1. The address listed above is correct (circle one) YES NO

2. If your name and/or address differs from the one listed above, please make changes below:

Name: _____

Relationship to deceased former employee (if needed): _____

Address: _____

Address: _____

City, State, Zip: _____

Telephone Number: _____

Signature: _____ Date: _____

If you have any questions, please contact lead counsel for the Plaintiff class:

Gottesdiener Law Firm, PLLC
498 7th Street
Brooklyn, NY 11215
Tel: 718.788.1500
Fax: 718.788.1650
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ID #: #####