

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN F. KNIGHT, JR., and
ALEASE S. SIMS, et al.,
individually and on behalf of
others similarly situated,
Plaintiffs and
Plaintiffs-Intervenors,

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**UNITED STATES OF
AMERICA,**
Plaintiff-Intervenor,

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Civil Action No.
2:83-cv-1676-HLM

v.

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THE STATE OF ALABAMA, et
al.,
Defendants.

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**SETTLEMENT AGREEMENT BETWEEN THE KNIGHT-SIMS
PLAINTIFFS AND THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ALABAMA AND ITS MEMBER
INSTITUTIONS: THE UNIVERSITY OF ALABAMA, THE
UNIVERSITY OF ALABAMA AT BIRMINGHAM, AND THE
UNIVERSITY OF ALABAMA IN HUNTSVILLE**

I. Purpose and Basis of the Agreement

This Settlement Agreement (hereinafter referred to as
"Agreement") is entered into by John F. Knight, Jr., and Alease

S. Sims et al., on behalf of themselves and the plaintiff class they have been certified to represent, and by defendant The Board of Trustees of The University of Alabama and its member institutions (The University of Alabama, The University of Alabama at Birmingham, and The University of Alabama in Huntsville) (hereinafter "defendant University" or "UAS"). The purpose of this Agreement is to specify the terms on which the Knight-Sims plaintiffs will join defendant University in requesting that the Court enter a judgment finally dismissing any and all claims against defendant University in this action.

A. Agreement That Defendant University Has Satisfied Legal Burden for Termination of Federal Supervision

1. Applicable desegregation law requires the Court to determine whether UAS has complied in good faith with the requirements of the 1991 and 1995 Remedial Decrees and whether through that compliance any remaining vestiges of segregation have been eliminated to the extent practicable and consistent with sound educational practices. The Court must also satisfy itself that the State's system of public higher

education will continue to operate in a constitutional and non-discriminatory fashion before it can declare the system to be unitary. To that end, this Agreement's primary focus is on continuing to improve meaningful African American participation in Alabama's system of public higher education.

2. By entering into this Agreement, the Plaintiffs acknowledge that the defendant University has satisfied this legal burden to warrant termination of this Decree with respect to defendant University. The parties agree that good faith efforts to enhance diversity should continue, and that continued progress does not depend on continued federal court supervision. The defendant University pledges to continue to make good faith efforts to further the progress that has been achieved over the course of this litigation in redressing historical discrimination in higher education against African-American citizens of this state, and reaffirms its good faith commitment to operate in a constitutional and non-discriminatory fashion.

B. Agreement To Create Strategic Diversity Plan

It is in this spirit that the Board of Trustees of The University of Alabama and its member institutions (The University of Alabama, The University of Alabama at Birmingham, and The University of Alabama in Huntsville) and the Knight Plaintiffs have reached this Agreement to acknowledge the effectiveness of many of the ongoing programs and initiatives at defendant University and for the member institutions to create and implement, with collegial dialogue with and input from representatives of its African-American faculty and staff, a Strategic Diversity Plan at their respective institutions, the content of which is entirely discretionary with the administration of each institution, but with the following components in each of their plans as noted in sections II – IV.

II. Board Commitment and Institutional Statements

1. Seeking to secure diversity within higher education institutions is an educational policy that the defendant University

freely and enthusiastically endorses as essential to the education of its students and as part of its broader educational mission. The defendant University recognizes that the educational benefits flowing from racial and ethnic diversity are considerable. Consistent with its September 2003 Board Resolution, the defendant University agrees that students who learn from each other in an environment with a variety of backgrounds are more apt to understand and appreciate the world they inhabit than students who are educated in more culturally and racially homogenous institutions. In this context, diversity is not the end in itself but is aligned with the defendant University's commitment to prepare all its students for productive lives in the twenty-first century. Consistent with applicable law, defendant University also recognizes that the educational interest in diversity is conceptually broader than racial and ethnic diversity alone.

2. The parties acknowledge that in September of 2003, The Board of Trustees of The University of Alabama passed a resolution publicly reaffirming its staunch commitment to

promoting diversity in its educational mission, including increasing African-American representation within its campus communities. That resolution applauded individuals on each campus who had shown their dedication to increasing diversity; commended committed leadership at UA, UAB, and UAH for working to ensure that students, faculty and staff at all three institutions are fully able to participate in and learn from the robust exchange of ideas that occurs within a diverse and inclusive campus community; and noted the Board's embracing of the development of a diverse learning environment at each institution, which would enhance the quality of the educational product at each institution. By signing this Agreement, the defendant University once again reaffirms its commitment to diversity as an educational policy, and its good faith commitment to operate in a constitutional and non-discriminatory fashion.

3. To the extent they have not already done so, the member institutions of defendant University will document, using whatever language in whatever document the administration of each institution deems appropriate, that diversity is important to

their respective institutions and that their respective educational missions are enhanced and furthered by the existence of a diverse student body, faculty, and EEO-1 level administrative staff, which includes the highest leadership levels.

4. The President of each member institution of defendant University will produce a statement that affirms the institutions' good faith commitment to operate in a constitutional and non-discriminatory fashion, and a statement of support for diversity to reinforce the notion that diversity is an important institutional goal that contributes to the institution's educational mission.

5. Each member institution of defendant University shall identify an administrative position at the Vice President or other cabinet level to oversee implementation of its Strategic Diversity Plan.

III. Accountability for Effectuating Diversity Commitment and Annual Assessment of Progress

1. The member institutions of defendant University agree that the President, Vice Presidents, and Deans shall be

responsible for providing the leadership to create meaningful progress in diversity. The member institutions of defendant University agree that for at least the next five years, performance evaluations of the Vice Presidents and Deans will include an evaluation of that administrator's efforts in achieving diversity at their respective institutions.

2. For the next five years, the Chancellor of defendant University will continue to include, as a component of his/her job performance review of each President of its member institutions, consideration of whether the President has made progress in promoting diversity objectives.

3. For the next five years, the Chancellor of defendant University will continue to require its member institutions, in collegial dialogue with its African-American faculty and staff, to establish a five-year goal for African-American representation in the student body, faculty, and EEO-1 level staff, not as a legally or contractually enforceable quota, but as a standard management technique for assessing effectiveness of ongoing diversity initiatives. For the next five years, each member

institution of defendant University will continue to submit to the Chancellor on an annual basis data or performance indicators for each of those areas. Legal liability will not attach to any member institution of defendant University for failure to reach its stated goals.

4. Each member institution of defendant University agrees to prepare for the next five years, a Strategic Diversity Report, the contents of which shall be determined by each respective administration, but which shall, at a minimum, contain the following information:

- a) Racial composition data of student body (total, undergraduate, and graduate) from 1991 to the prior Fall semester;
- b) Racial composition data of students awarded bachelor, graduate and professional degrees the prior academic year for which data is available;
- c) Racial composition of full-time faculty from 1991 to the prior Fall semester;

- d) Racial composition of presidents, provosts, vice presidents, deans, and other EEO-1 level administrators for 1991 to the prior Fall semester;
- e) Racial analysis of faculty and EEO-1 level administrative searches filled during the past academic year, including the number of African Americans who self-identified as applicants for the position; and
- f) An assessment of progress by the institution in enhancing diversity and/or moving toward its diversity goals, with an emphasis on the representation of black faculty, EEO-1 administrators, and students.

IV. Continued Diversification of Faculty and EEO-1 Staff at Member Institutions of Defendant University

1. The member institutions of defendant University recognize that their need to employ African-American faculty and senior-level administrators is essential to their respective overall educational missions and is essential in securing the benefits

that diversity adds to these missions. They also recognize that diversity is, and must be, broader than simply the inclusion of African-Americans in the faculties and EEO-1 level administrative staffs of their institutions.

2. The member institutions of defendant University commit to continuing to engage in strategic diversity initiatives that the administration of each institution deems appropriate to recruit, hire, and retain African-American faculty and EEO-1 level administrators. A description of some of the strategic diversity initiatives and practices employed at each member institution for the past fifteen years can be found in defendant University's Title VI annual reports.

3. A member institution's decision to continue or discontinue a particular strategic diversity program or initiative identified in its annual report or its decision to continue, implement or discontinue other current or new programs/initiatives will not constitute a breach of this Settlement Agreement. It is up to the administration of each institution to decide whether a particular strategic diversity initiative or

practice complies with the law regarding institutional diversity initiatives and/or is cost effective or otherwise an appropriate program/initiative to continue. Should a court or federal agency disagree with an institution's interpretation and conclude the law has not been complied with, the institution will not be deemed for that reason to have breached this Settlement Agreement.

4. The member institutions of defendant University agree to require that African American representation be on all search committees for presidents and all EEO-1 level administrative positions.

5. The member institutions of defendant University agree to require representation of African Americans, to the extent practicable and educationally sound, on all search committees for tenured or tenure track faculty. This agreement shall not require any modification of existing institutional policies, practices or procedures regarding academic or other qualifications for service on a faculty search committee.

6. The member institutions of defendant University agree to send announcements of faculty and EEO-1

administrator level position searches to the black faculty and/or staff association on their respective campuses (assuming such group exists) with an invitation for them to identify possible recruits. Member institutions also agree for the next five years to provide to the SREB a list of faculty vacancies in the event that the SREB, if it so chooses, will notify graduates of the SREB Doctoral Scholars Program of those vacancies.

7. The member institutions of defendant University agree for the next five years to distribute annually the SREB doctoral scholars list provided by ACHE (to the extent one exists and ACHE distributes it) to Vice Presidents and Deans at their respective institutions, with a request that these officials attempt to contact the SREB Doctoral Fellows within applicable fields of study and invite them to apply for positions at their respective institutions that may be applicable to the SREB scholars' fields of study.

8. The member institutions of defendant University agree for the next five years to identify black doctoral students in the pipeline at other institutions for consideration for faculty or

administrative positions at their respective institutions. This obligation does not require the member institutions to hire its own doctoral students for faculty or EEO-1 level administrative positions, although an institution may do so in order to meet its diversity objectives.

9. The member institutions of defendant University agree to implement new initiatives, activities, or programs or to utilize or modify existing initiatives that encourage black undergraduates to continue with graduate studies at their respective institutions.

10. The Chief Academic Officer of each member institution of defendant University, or his/her designee, agrees to meet at least twice annually for the next five years with either the elected leadership of its black faculty and staff association (if such group exists) or advisory diversity committees (if such committee exists) to receive recommendations on best practices and policies for increasing diversity on the faculty and at the senior administrative levels of the institution and on the retention of such faculty and administrators. The purpose of this meeting

is not to review employment and retention decisions for individual faculty or staff positions, but rather is to exchange ideas and information about best practices.

11. For the next five years, the defendant University agrees to continue to sponsor a statewide meeting for representatives of public bachelor degree granting institutions voluntarily to attend and discuss information about the recruitment and retention of African Americans and other under-represented groups and to continue to identify effective and constitutionally permissible recruitment and retention practices. Member institutions of defendant University agree to send representatives to this meeting who are involved in the recruitment and retention of black faculty and EEO-1 level staff. Representatives of the defendant University's black faculty and staff organizations and the Alabama Black Faculty Association shall be allowed to attend and to participate fully in these meetings. Any reports and/or recommendations emanating from this meeting will be considered by defendant University in its ongoing efforts to improve diversity recruitment and retention.

V. Dismissal of Action and Settlement Implementation

A. Preliminary Court Approval of Agreement

1. Promptly after execution of this Agreement, but in no event later than 10 days after the execution of this Agreement, the parties to this Agreement, 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 plaintiff 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.

B. Final Judgment

At the final hearing on fairness, adequacy, and reasonableness of the settlement as set forth in this Agreement,

the defendant University and Knight-Sims Plaintiffs 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 plaintiff 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 representatives, and all class members, have released all claims against defendant University and its member institutions, all as set forth in the Agreement;

5. Order that the defendant University shall implement the Settlement Agreement;

6. Find that on judicial approval of this Agreement, including the commitments contained herein, the defendant University and its member institutions shall be in full compliance with the law, and that, therefore, there are no continuing policies or practices of defendant University, 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;

7. Dismiss on the merits and with prejudice (i) all claims against defendant University and its member institutions set forth in the complaint, as amended; (ii) all claims against defendant University and its member institutions set forth in the complaint-in-intervention; and (iii) all claims against defendant University and its member institutions of racial discrimination asserted before the Court throughout the pendency of this action, the trials and appeals, and the entire remedial phase 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.

C. Finality and Term of Agreement

1. This Agreement shall become final upon the occurrence of all of the following events: (a) approval of the Agreement in all respects by the District Court as required by Rule 23(e) of the Fed. R. Civ. P.; and (b) entry of the Judgment as provided for above.

2. The term of the provisions of this Agreement shall be for five (5) years from the date it is finally approved by the Court. The Agreement shall be binding upon the successors and assigns of the parties and shall inure to their benefit.

D. Enforcement

1. The parties to this Agreement, including all class members, agree that litigation regarding enforcement of this Agreement is counterproductive. If there is a claim that any member institution or defendant University has not complied with the terms of this Agreement, then the parties agree that resolution of any such allegation should first and foremost be

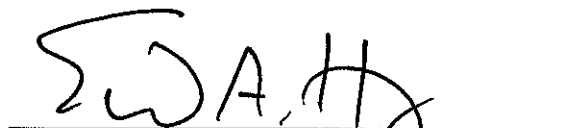
achieved by informal discussions and negotiations between counsel for the Knight Plaintiffs and counsel for the member institutions and/or defendant University. Counsel for Knight Plaintiffs, acting on behalf of the class members, shall notify counsel for defendant University of the specific provision(s) of this Agreement that any member institution has allegedly not complied with. Upon receipt of that notice, counsel for defendant University agrees to work with its member institution client within a reasonable time period to respond to that allegation, and if it concedes non-compliance, to make reasonable efforts to cure any alleged breach. Counsel for both parties agree to use good faith efforts to resolve legitimate disputes regarding differences of interpretation of the settlement agreement. If the parties are unable to resolve the matter, they agree to select a mediator acceptable to all the parties to reach a resolution to the issue. Each party will pay for their own fees and expenses associated with any dispute regarding compliance with the terms of this agreement.

For the Knight-Sims Plaintiffs
and plaintiff class,

For The Board of Trustees of The
University of Alabama and each of
its Member Institutions,



JAMES U. BLACKSHER

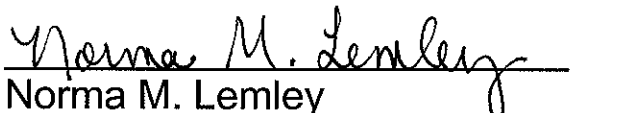


Fournier J. Gale, III
Edward A. Hosp

Ala. Bar Code: ASB-2381-S82J
P.O. Box 636
Birmingham, AL 35201
Telephone: 205-591-7238
Fax: 866-845-4395

OF COUNSEL:
MAYNARD, COOPER & GALE, P.C.
2400 AmSouth/Harbert Plaza
1901 Sixth Avenue North
Birmingham, Alabama 35203-2618
Telephone: 205-254-1000
Fax: 205-254-1999

Date: 10 / 5 / 2006



Norma M. Lemley
Robert W. Rieder, Jr.
Gary C. Smith
The Office of Counsel
The University of Alabama System
222 Rose Administration
Tuscaloosa, AL 35487
Telephone: (205) 348-5490
Fax: (205) 348-8681

Date: 10 / 5 / 2006