

# **PLAINTIFFS' ANSWERS TO FREQUENTLY ASKED QUESTIONS**

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## **SETTLEMENT**

1. **What are the claims and relief sought in this lawsuit?**

The lawsuit generally involves claims by the Plaintiffs against Defendants for breach of their fiduciary duties, abuse of control, gross mismanagement, gross negligence, waste of corporate assets and unjust enrichment. More specifically, Plaintiffs' First Amended Verified Derivative Complaint asserts claims that:

- (a) The creation and continuation of Cobb Energy was in violation of Georgia law, constituted a conflict of interest transaction in breach of the fiduciary duties of the individual Defendants, violated Cobb EMC's bylaws and resulted in tens of millions of dollars in damages;
- (b) Defendants transferred valuable assets of Cobb EMC to Cobb Energy, including all meters and the entire workforce, for less than fair market value or no value;

- (c) Defendants failed to account for approximately \$5,000,000 or 200,000 shares of Cobb Energy stock owned by Cobb EMC;
- (d) The individual Defendants permitted Cobb Energy to inappropriately charge Cobb EMC, including charges for certain meter reading services and approximately \$3,350,060 for retirement liability;
- (e) Cobb Energy and its subsidiaries failed to pay rent to Cobb EMC for use of its buildings and facilities;
- (f) The individual Defendants violated their fiduciary duties by concealing material information from Cobb EMC members, including, among other things, information about Cobb Energy, the significant losses it was incurring, related party transactions that were required to be disclosed pursuant to accounting rules, and salaries and other compensation provided to certain of the Defendants through Cobb Energy;
- (g) The Cobb EMC board members breached generally recognized principles of corporate governance;
- (h) Cobb EMC directors provided themselves excessive retirement and insurance benefits not authorized by Cobb EMC's bylaws; and
- (i) The individual Defendants improperly controlled and implemented the election process to perpetuate themselves in office.

The relief sought by the Plaintiffs included an injunction to prohibit the continued operation of Cobb Energy, the termination of the remaining portion of the 40-year Operating Agreement between Cobb EMC and Cobb Energy, a full accounting of the transfer of funds and assets to Cobb Energy, the return of those assets and damages against certain Cobb EMC, Cobb Energy and certain of their directors and officers for their alleged violations of law as summarized above.

**2. What are the defenses asserted in this lawsuit and did the Court rule against the Defendants on any of the Plaintiffs' allegations?**

Defendants denied Plaintiffs' claims, have asserted that certain of the claims are barred by applicable statutes of limitations and a legal theory called the business judgment rule, have asserted that all transactions between Cobb EMC and Cobb Energy were properly disclosed and denied all liability. There has been no trial of any of the claims in the lawsuit and the Court has not determined whether any of Plaintiffs' allegations or Defendants' defenses are valid. Rather than continuing to involve themselves in extended and costly litigation, and wishing to act in the best interest of all parties involved, the Plaintiffs and Defendants agreed to enter into a settlement. After nearly one and a half years of litigation and significant negotiations, the Plaintiffs and the Defendants have agreed to the *Joint Proposal for Resolution of Derivative Litigation* which contains the terms of a settlement (the "Settlement"). The proposed settlement has been preliminarily approved by the Court for purposes of sending notice to Cobb EMC members.

**3. Who is included in the Settlement/How do I know if I am affected?**

This case is called a "derivative lawsuit" in which six named Cobb EMC members have advanced claims on behalf of Cobb EMC against certain individuals and entities that are alleged to have damaged Cobb EMC. If the Settlement is approved and a Final Order

and Judgment entered thereon, all derivative claims of Cobb EMC members through December 2, 2008 will be deemed released.

**4. Where can I view a copy of the complete Settlement agreement?**

The Settlement agreement formally consists of the *Joint Proposal for Resolution of Derivative Litigation* ("Joint Proposal") and the exhibits thereto which were filed with the Court on October 30, 2008 and can be viewed during normal hours of operation at:

Clerk, Superior Court of Cobb County  
32 Waddell Street  
Marietta, Georgia 30090

You may also download and print a copy of the Joint Proposal, Preliminary Approval Order, the Notice documents and other court documents and information at [www.carrpalmer.com](http://www.carrpalmer.com), at [www.cobbemc.com](http://www.cobbemc.com).

**5. Who are the lawyers that represent the Plaintiffs?**

Plaintiffs in the case are represented by the law firms of Carr & Palmer, LLP; Dupree & Kimbrough, LLP and Webb, Klase & Lemond, L.L.C. Should you have further questions in this regard, you should contact Plaintiffs' Counsel, W. Pitts Carr or David M. Cohen at (404) 442-9000 x 116.

**6. Was the Settlement approved?**

It has been granted preliminary approval status, subject to the result of a Final Approval Hearing or "Fairness Hearing" to be held before the Honorable J. Stephen Schuster on December 2, 2008 at 1:30 pm in Courtroom N of the Cobb County Superior Court, 30 Waddell Street, Marietta, Georgia 30090.

**7. What if the Settlement is not approved?**

If for any reason the Settlement does not become final, or is terminated, the Plaintiffs and Defendants shall revert to their respective positions in the lawsuit as they existed immediately before the entry of the Preliminary Approval Order on October 30, 2008.

**8. Is there a website for this Settlement?**

Yes: you may obtain the Settlement documents and additional information at [www.carrpalmer.com](http://www.carrpalmer.com) and at [www.cobbemc.com](http://www.cobbemc.com).

**9. How can I object to the terms of the Settlement?**

Any Cobb EMC member may appear at the Fairness Hearing to show cause why the Settlement should not be approved, why a Judgment should not be entered thereon or why Derivative Counsel's application for attorneys' fees and expenses should not be approved. Any current Cobb EMC member who wishes to present objections to any aspect of the Settlement can do so by stating their objections in writing. The objection, along with any supporting documentation or additional information (see the next question below), must be filed with the Clerk of Court, and be filed on **or before December 1, 2008** at:

Clerk, Superior Court of Cobb County  
Civil Filing Desk  
32 Waddell Street  
Marietta, Georgia 30090

A copy of your objection must also be received by Plaintiffs' Counsel and Defendants'

Counsel set forth below on or before December 1, 2008:

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David M. Cohen  
Carr & Palmer, LLP  
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Atlanta, Georgia 30305  
*Counsel for Cobb Energy*

#### **10. What information must my written objection include?**

(1) a statement of each objection asserted; (2) a description of the facts and arguments supporting each objection; (3) a statement of whether the objector intends to appear and argue at the Fairness Hearing, and if so, how long the objector anticipates needing to present the objection; and (4) proof of being a current Cobb EMC member.

### **BENEFITS**

#### **11. What are the Settlement benefits?**

1. The sale and/or liquidation of all Cobb Energy subsidiaries except ProCore Solutions LLC, Cobb Energy Right of Way, LLC and the joint venture between Cobb Electric and Cobb Energy relating to the design, licensing, development and operation of certain software and related computer equipment. All proceeds from the above sale and/or liquidation of Cobb Energy subsidiaries will be paid to Cobb EMC;

2. Cobb Energy will become a wholly-owned subsidiary of Cobb EMC, which will result in the return of all meters to Cobb EMC (having a fair market value of approximately \$18,900,000) and the return of all employees under the corporate umbrella of Cobb EMC. In addition, Cobb EMC will receive the remaining term of the naming rights agreement with the Cobb-Marietta Coliseum and Exhibit Hall Authority valued at approximately \$11,766,000 and the remaining 70% it does not own of software and computer equipment, which 70% has a depreciated book value of approximately \$20,041,000. Furthermore, Cobb EMC will receive ProCore Solutions LLC and Cobb Energy Right of Way, LLC, both of which companies have no outstanding debt;

3. Termination of the remaining approximately thirty year term of the Operating Agreement between Cobb Energy and Cobb EMC, which will eliminate all management fees paid by Cobb EMC to Cobb Energy resulting in a savings of approximately \$5 million per year over the next 30 years or a net present value savings of approximately \$46,500,000;

Summary of Assets Going to Cobb EMC	Approximate Value
Termination of Remaining approx. 30 years of Operating Agreement between Cobb EMC and Cobb Energy [approx. gross = \$156,000,000 (\$5,200,000 x 30 yrs.)]	\$46,500,000 (Net Present Value)
All Meters	\$18,900,000
70% of computer software, hardware and billing system (Cobb EMC already owns 30%)	\$20,041,000
Remaining term of naming rights agreement between Cobb Energy and Cobb Marietta Coliseum and Exhibit Hall Authority	\$11,766,000
ProCore Solutions, LLC	\$15,000,000
Funds from the sale of the remaining assets of Cobb Energy subsidiaries less debt of subsidiaries	Uncertain at this time
<b>Totals</b>	<b>\$112,207,000</b>

Summary of Liabilities Assumed by Cobb EMC	Approximate Value
Purchase of Cobb Energy Preferred Shares and Remaining Common Shares	\$12,100,000
Cobb Energy Outstanding Balance on Line of Credit with National Cooperative Services Corporation	\$18,800,000
Cobb Energy Outstanding Balance on Line of Credit with Cobb EMC	\$12,900,000
Pension Liability and Long-Term Benefits for Employees	\$ 3,300,000
<b>Totals</b>	<b>\$47,100,000</b>

4. By June 1, 2009, Cobb EMC's Board of Directors will adopt a succession plan for Cobb EMC's CEO and President Dwight T. Brown to assure the orderly transition to a replacement CEO and President. Mr. Brown will announce his retirement from Cobb EMC on or before February, 2011.

5. A proposed amendment to the by-laws will be presented for Cobb EMC member consideration and vote at the next meeting of Cobb EMC members, which will be held within sixty days from the date of the final approval of the Settlement by the Court, to allow members the right to vote for directors by mail-in ballots. Whether or not this by-law amendment is approved by Cobb EMC members, a meeting to elect Cobb EMC directors for 2008 will take place within sixty days after the meeting of the members at which the proposed by-law amendment is considered. An amendment to the by-laws may also be presented at the next meeting of the Cobb EMC members seeking to address the payment of retirement benefits to Cobb EMC directors in the future.

6. The motions made by members at the September 4, 2008 Cobb EMC Annual

Meeting have been addressed by the Cobb EMC Board of Directors or are addressed by the Settlement. More particularly:

- (i) The motion to rescind the resolution adopted by the Cobb EMC board on August 26, 2008 increasing the fee charged by Cobb Energy to Cobb EMC from 6% to 11% is addressed by Cobb Energy's restructuring in which it becomes a wholly-owned subsidiary of Cobb EMC as such fees will not be charged in the future;
  - (ii) The motion to prohibit Cobb EMC officers, directors and others from having ownership interest in, or being employed with, Cobb Energy has been addressed by Cobb Energy's restructuring in which it becomes a wholly-owned subsidiary of Cobb EMC;
  - (iii) The motion made to request the EMC board of directors to reassess the relationship of Cobb Energy so to eliminate any appearance of conflicts of interest has been addressed by Cobb Energy's restructuring in which it becomes a wholly owned subsidiary of Cobb EMC;
  - (iv) The motion to hold future meetings of the Cobb EMC members on Saturdays has been addressed as Cobb EMC's Board of Directors adopted a resolution to hold future meetings of members on Saturdays;
  - (v) The motion to have the cost benefit analysis relating to the proposed Washington County, Georgia coal-fired power generation plant made accessible to the public and the Cobb EMC membership has been addressed as Cobb EMC's Board of Directors adopted a resolution requiring this information to be placed on Cobb EMC's website;
  - (vi) The motion to have Cobb EMC distribute and separate the financials of Cobb EMC and Gas South LLC in future annual reports has been addressed as Cobb EMC's Board of Directors adopted a resolution requiring this information to be placed on the EMC website; and
  - (vii) The motion that Cobb EMC director insurance, fringe benefits and compensation be listed in future annual reports has been addressed as Cobb EMC's Board of Directors adopted a resolution requiring such information to be posted on Cobb EMC's website with a reference in future annual reports that such information can be obtained by accessing Cobb EMC's website.
7. Corporate Governance Changes - The corporate governance policies and provisions adopted by Cobb EMC's Board of Directors on September 4, 2008 will be fully implemented as soon as practicable. Cobb EMC shall maintain these corporate governance policies and provisions in effect for a period of no less than five years. A copy of the full text of these polices and provisions can be viewed at [www.carrpalmer.com](http://www.carrpalmer.com).

**12. Is there anything else the Settlement will require the Defendants to do?**

Yes. - Defendants have agreed to pay all costs of notice and administration of the Settlement. Furthermore, Defendants, and their insurance companies, as applicable, will pay the attorneys fees awarded by the Court to Plaintiffs' Counsel.

## OTHER

### 13. Will I be responsible for attorney fees or other expenses?

No. You will not be responsible for any fees, or expenses. Under the terms of the Settlement, attorney fees and expenses will be paid by the Defendants. Establishment of Plaintiffs' Counsel's legal fees and other Settlement-related expenses will be one of the issues decided upon by the Court at the Final Approval Hearing scheduled for December 2, 2008. In determining the amount or percentage of the settlement benefits to award in legal fees, the Court will value the Settlement recovery to the EMC and then make a determination as to a reasonable fee to counsel taking into account a number of factors including (i) the amount involved and results obtained; (ii) the time and labor involved; (iii) novelty and difficulty of the questions; (iv) the undesirability of the case; (v) preclusion of other employment; and (vi) awards in similar cases. The award of fees and reimbursement of expenses should be paid by Defendants' insurance carriers.