



1           2.       In October 2004, Dr. Storti filed an amended complaint that alleged the UW  
2 breached its contract with its faculty by failing to provide a minimum 2% merit salary increase  
3 in the 2002-03 academic year. In December 2004, Dr. Storti moved for class certification,  
4 which the UW opposed.

5           3.       In April 2005, the Court certified the class. The UW sought discretionary re-  
6 view of the class certification in the Court of Appeals. In September 2005, the Court of Ap-  
7 peals denied discretionary review.

8           4.       The parties then submitted cross-motions for summary judgment on the claim  
9 that the UW was contractually obligated to provide class members a 2% minimum salary in-  
10 crease each year. In October 2005, the Court granted summary judgment in favor of the class  
11 on liability.

12           5.       Jury trial was set to begin in June 2006 with respect to the compensation due to  
13 the class. A number of significant issues remained to be resolved at or before trial including,  
14 but not limited to, whether persons holding certain faculty titles were entitled to receive mini-  
15 mum merit increases under the faculty salary policy; whether persons who received two percent  
16 or greater non-promotional increases for 2002-03 were entitled to relief; and the measure of  
17 additional compensation owed. The UW could also, of course, appeal the earlier rulings.

18           6.       Due to the risks and delays of further litigation, the parties engaged in extensive  
19 settlement discussions with the assistance of a mediator. Prior to these discussions, class coun-  
20 sel extensively and comprehensively investigated the claim under the Public Disclosure Act  
21 and through discovery under the Civil Rules. The parties also exchanged information. Class  
22 counsel's investigation and discovery resulted in the production of numerous documents and  
23 electronic records relating to the eligibility of faculty members for merit increases under the  
24 faculty salary policy, the various alleged exclusions from eligibility, as well as the amount of  
25 compensation allegedly due to the class. The parties' discussions resulted in the Settlement  
Agreement. The UW Regents approved the Settlement Agreement on March 16, 2006.

1 ***The Terms of the Settlement Agreement***

2 7. The Settlement Agreement provides relief for both the past and the future. The  
3 future relief is a 2% salary increase for all class members who are still employed by the Uni-  
4 versity in one of the covered faculty titles. Agreement, ¶58. The 2% salary adjustment will  
5 result in annual additional payments to class members of approximately \$6.2 million including  
6 benefits and costs to the University. *Id.*, ¶63. The 2% increase in class members' base salaries  
7 will therefore affect salaries in the upcoming academic year and future years.

8 8. Under the Settlement Agreement the University will also pay the plaintiff class  
9 \$17.45 million for omitting the 2% salary increase in the 2002-03 academic year. Agreement,  
10 ¶59. From this amount attorney fees and a \$15,000 class representative award to plaintiff  
11 Duane Storti are deducted, and the University will allocate the remaining funds to "Qualified  
12 Class Members" on a *pro rata* basis. *Id.*, ¶59.

13 9. "Qualified Class Members" for the purpose of receiving a *pro rata* share of the  
14 cash settlement fund (back pay and interest) are class members employed by the University on  
15 the date the Settlement Agreement is approved and class members formerly employed by the  
16 University who submit a timely claim form. *Id.*, ¶36. The purpose of the claim form is to ver-  
17 ify each formerly employed class member's identity and address for the purpose of sending the  
18 formerly employed class member a check for his or her share.

19 10. The University will allocate the funds to Qualified Class Members *pro rata*  
20 based on their total earned University-Paid Salary during the period from and after July 1, 2002  
21 to the date the shares are computed, compared to the aggregate total earned University-Paid  
22 Salary to all Qualified Class Members during the same period. *Id.*, ¶59. University-Paid Sal-  
23 ary means the gross amount of monetary compensation paid to a class member by the Univer-  
24 sity as regular salary for faculty duties. It does not include administrative supplements, tempo-  
25 rary salary supplements, endowment supplements, additional salary to nine month faculty for  
four quarter duties, or compensation paid directly to faculty members by entities other than the

1 University. *Id.*, ¶38.

2 11. After calculating each Qualified Class Member's *pro rata share*, the University  
3 will issue a check to each Qualified Class Member that represents each Qualified Class Mem-  
4 ber's share, less applicable tax and retirement deductions. *Id.*, ¶¶59-60, 82-87. The University  
5 will also make appropriate employer contributions to the applicable retirement plans based on  
6 the amount of back pay paid to the class member (not including the interest component of the  
7 check). *Id.*, ¶60.

8 12. The Settlement Agreement here also provides a \$15,000 class representative  
9 award to Duane Storti. This amount is consistent with and within the range in similar class ac-  
10 tion cases. Dr. Storti's participation here has included, but was not limited to, investigating the  
11 claim, filing an administrative claim, commencing both the PDA lawsuit and the class action,  
12 discovery matters (including producing personal papers, testifying at a deposition, and review-  
13 ing the UW's documents and discovery responses), attending meetings and hearings, and assist-  
14 ing class counsel. The class representative award is fair and reasonable.

15 13. The Settlement Agreement provides a common fund fee for class counsel based  
16 on the common fund percentage fee method in *Bowles v. Dep't of Retirement Systems*, 121  
17 Wn.2d 52, 72 (1993). A fee of 20% to 30% of the common fund, including the value of future  
18 relief, is the percentage range for common fund fees set by the Washington Supreme Court.

19 14. The Settlement Agreement, ¶64, provides for a \$5.235 million attorney fee  
20 award, which equals 30% of the \$17.45 million cash fund and is less than 10% of the total  
21 value of relief considering the value of the adjustment to current salary (estimated to be an  
22 annual \$6.2 million benefit). The attorney fees are well within the range of reasonableness as set  
23 forth in *Bowles*. The attorney fees are also consistent with other class action fee awards. The  
24 fees are therefore reasonable as a percentage of the recovery and in light of the risks, complex-  
25 ity and relief in this litigation.

1 ***Preliminarily Approval, Notice to the Class, and Class Member Comments***

2 15. An order preliminarily approving the settlement was entered by the Court on  
3 March 17, 2006. The Court directed that notice of the proposed settlement and the settlement  
4 hearing be given to the class as provided in that order. The declaration submitted by UW Act-  
5 ing Vice Provost Cheryl Cameron on March 31, 2006, shows that, as required by the Court or-  
6 der, notices were e-mailed to 2,847 class members currently employed by the UW and notices  
7 were air-mailed to 476 class members who are no longer employed by the UW. The notice and  
8 settlement agreement were also posted on the UW's website and class counsel's website.

9 16. No class member objected to the settlement or any provision in the agreement.  
10 Instead, class members have voiced their support for the settlement, including inquiries con-  
11 cerning whether they are able to participate in the relief and what steps they possibly need to  
12 participate in the relief.

13 17. The UW chapter of the American Association of University Professors, which  
14 "was founded in 1918 and helped create the faculty senate and the system of tenure at UW,"  
15 describes the lawsuit and settlement as a "historic victory that will shape governance at the  
16 University of Washington and potentially other schools for decades to come":

17 In 2003, Associate Professor Duane Storti (Mechanical Engineering) sued the  
18 University charging that President McCormick had violated the Faculty Code  
19 when he refused to allocate funds for the 2% annual merit salary increase that is  
20 guaranteed as part of University salary policy. On March 17, 2006 the Univer-  
21 sity of Washington Regents agreed to settle the case. The settlement restores the  
22 lost 2% raise and awards \$17.45 million in back pay to more than 3,000 faculty  
23 members. *Most importantly, the settlement and the Oct 25, 2005 summary  
24 judgment by Superior Court Judge Mary Yu establish that the Faculty Code  
25 (University Handbook) is an enforceable contract and cannot be ignored just  
because the administration finds it to be inconvenient. This is an historic victory  
that will shape governance at the University of Washington and potentially  
other schools for decades to come. (Emphasis added.)*

24 The results obtained for the class here are thus considered a "historic victory" by faculty mem-  
25 bers affected by the action.

18. On April 26, 2006, the UW Faculty Senate also passed a "Resolution Regarding

1 Duane Storti Lawsuit Settlement. The Resolution states “*the class-action lawsuit initiated by*  
2 *Professor Duane Storti has been settled in a manner that restores the lost 2% increase and*  
3 *validates the Faculty Code;*” and “*the Faculty Senate commends Duane Storti, Associate Pro-*  
4 *fessor of Mechanical Engineering, for having the courage and commitment to defend the Fac-*  
5 *ulty Code and the 2% salary policy[.]*”

### 6 CONCLUSIONS OF LAW

7 1. The notice to the class of the settlement hearing satisfied due process and the  
8 requirements of CR 23(e).

9 2. The Settlement Agreement is fair and reasonable.

10 3. The Settlement Agreement should be approved and each term therein should be  
11 a binding order of the Court.

12 4. An individual who is not a class member, Susan Helf, filed a motion to intervene  
13 so that she could make an objection to the Settlement Agreement. She is concerned that the  
14 release and dismissal of claims in the Settlement Agreement (¶¶41-42) could apply to persons  
15 such as her who are not class members. Helf has no standing to object to the settlement be-  
16 cause she is not a class member. Helf’s motion to intervene and proposed objection are also  
17 mistaken because only parties and class members represented in this action are bound by the  
18 settlement. Mary McGough appeared, but she is not a class member and her comment was not  
19 considered.

### 20 ORDER

21 Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered:

22 1. The Settlement Agreement is approved.

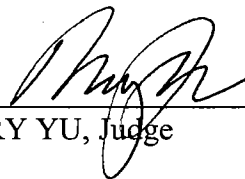
23 2. Each term in the Settlement Agreement is and shall be a binding order of the  
24 Court.

25 3. This Court retains jurisdiction for further proceedings in this matter, as provided  
in the Settlement Agreement.

4. Susan Helf’s motion to intervene is denied.

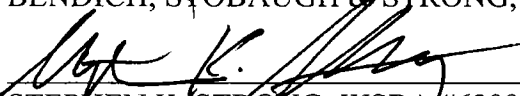
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DATED: May 12, 2006.

  
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MARY YU, Judge

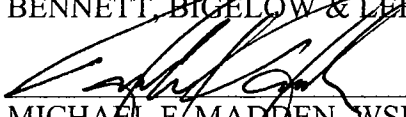
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