NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. HONEYWELL INTERNATIONAL INC., f/k/a ALLIEDSIGNAL INC., AUTOMOTIVE AFTERMARKET, Defendant.	Civ. No. 02-2721 (WGB) **O P I N I O N**

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BASSLER, DISTRICT JUDGE:

The Equal Employment Opportunity Commission ("EEOC") brought this action on June 6, 2002, alleging that Honeywell International Inc. ("Honeywell") (formerly known as AlliedSignal Inc., Automotive Aftermarket) engaged in discriminatory employment practices in violation of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621, *et seq*. (the "ADEA").

On July 29, 2004, the EEOC and Honeywell filed a consent decree, which provides the terms on which the parties have agreed to settle this case. The settlement set forth in the consent decree resolves all issues raised in the Complaint filed by the EEOC. On September 14, 2004, the Court held a public hearing on the fairness of the consent decree. All eligible and potential claimants who filed timely objections were given notice and an opportunity to be heard.

The consent decree is now before the Court for final approval and entry.

This Court has jurisdiction over the matter pursuant to 28 U.S.C. § 1331. Venue is proper pursuant to § 1391.

For the reasons set forth below, the Court approves the consent decree and orders the Clerk of the Court to enter it as a final resolution of the claims asserted by the EEOC.

I. **PROCEDURAL BACKGROUND**

This action arises out of charges of age discrimination filed with the EEOC in 1997 and 1998 by six former Honeywell employees: Brian Hussey, David Hopkins, David McConnell, David Johns, Randal Anglin, and Terry Makinster (collectively, the "Charging Parties"). The EEOC conducted an investigation of the charges and interviewed and received questionnaire responses from many current and former Honeywell employees. Prior to filing this action, the EEOC attempted to resolve the charges by engaging in informal conciliation efforts with Honeywell, but was unsuccessful. (Supplemental Submission in Support of Consent Decree ("Supplemental Submission") at 4.)

On June 6, 2002, the EEOC filed this action against Honeywell alleging violations of the ADEA. In its Complaint, the EEOC alleged that in 1997, Honeywell laid off Charging Parties Hussey and Hopkins from their positions as Business Development Managers, and laid off a class of similarly situated managers, based on age. The Complaint also alleged that Honeywell terminated Charging Parties McConnell, Johns, and Anglin, and a class of similarly situated sales representatives, because of their age.[1] The EEOC further alleged that Honeywell failed to

[1] Prior to the mediation conference in August 2003, the EEOC advised Honeywell that it was not seeking monetary relief on behalf of several other similarly individuals, because these

select Charging Party Makinster, and a class of similarly situated employees, for the newly created position of Account Executive, and instead placed him and other qualified individuals into the newly created Sales Associate position, which offered less pay and benefits.[2] Honeywell denied that it discriminated against any of these individuals on the basis of age, or any other unlawful characteristic. (Consent Decree ("Decree") at § I.A.)

Prior to the initial scheduling conference with Magistrate Judge Madeline Cox Arleo, the parties agreed to engage in informal exchanges of information to facilitate mediation. The Court subsequently issued orders staying discovery pending mediation, except that the parties were permitted to exchange information or conduct other discovery as would facilitate the mediation. As part of these initial disclosures, Honeywell produced over 25,000 pages of documents and the EEOC produced nearly 7,000 pages of documents. The parties also took the deposition of Honeywell's former Vice President of Business

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individuals either signed waivers releasing all claims, or filed and settled private lawsuits against Honeywell.

[2] Twenty-five similarly situated individuals will receive monetary relief under the consent decree as Eligible Claimants. Earlier in the litigation, the EEOC also identified several other potential class members who had been placed in the Sales Associate position rather than the Account Executive position. The EEOC advised Honeywell that it was not seeking monetary relief on their behalf because these individuals later signed waivers releasing all claims against Honeywell.

Development, William Robinson, on May 6, 7, 20, and 21, 2003. (Supplemental Submission at 5.)

The parties agreed to use a mutually acceptable, neutral mediation firm in an attempt to resolve this matter and accordingly exchanged additional information prior to the mediation session. The mediator conducted all day mediation sessions on August 21 and 22, 2003, which were not successful. The mediator made several subsequent attempts with the parties to try to resolve the matter. (Id.)

Thereafter, on December 16, 2003, Magistrate Judge Arleo conducted a settlement conference, at which time the EEOC and Honeywell arrived at a settlement in principle. The EEOC and Honeywell then engaged in several months of negotiation concerning the specific terms of the proposed consent decree. On July 29, 2004, the EEOC and Honeywell filed the proposed consent decree to resolve the issues raised in this action without the time, expense, and uncertainty of further contested litigation. (Id.)

II. OVERVIEW OF THE CONSENT DECREE

A. General Injunctive Relief

Although Honeywell did not concede any wrongdoing, it agreed to comply with a series of obligations. Under the terms of the consent decree, Honeywell agrees not to engage in any employment practices that are unlawful under the ADEA, to provide training on the ADEA to all managers and supervisors in relevant divisions of Honeywell, to post notice of the entry of the consent decree, and to make periodic reports to the EEOC concerning its compliance with the decree. (Decree at ¶¶ 3, 20, 21, 22, 27.)

B. Relief for Individuals

The consent decree also provides for monetary relief to individuals who: (1) were age forty or over at the time of the adverse employment action; and (a) were laid off from AlliedSignal Automotive Aftermarket Division as part of the elimination of the Business Development Manager position effective in February and March 1997; or (b) were terminated or placed in a Sales Associate position in the AlliedSignal Automotive division, effective September 1, 1997, as a result of the restructuring of the Warehouse Distributor field sales force; and (2) have not filed a lawsuit alleging a violation of the ADEA, 29 U.S.C. § 621; and (3) have not, effective as of the date of the consent decree, settled and released their federal ADEA claims against Honeywell. (Id. at ¶ 6.)

The consent decree further categorizes these individuals into two groups: (1) the Charging Parties; and (2) Eligible Claimants: identified as those persons placed in a Sales Associate position in the AlliedSignal Automotive Aftermarket division, effective September 1, 1997, as a result of the restructuring of the Warehouse Distributor field sales force and who did not file a charge of discrimination with the EEOC or a state agency alleging age discrimination relating to such placement. (Id. at ¶ 7.)

Under the consent decree, $2,150,000.00 of aggregate monetary relief is to be paid out to the Charging Parties in cash payments, attorney's fees, and pension benefits as follows: (1) $475,000.00 to Brian Hussey; (2) $375,000.00 to David Hopkins; (3) $275,000.00 to Randal Anglin; (4) $275,000.00 to David Johns; (5) $275,000.00 to Terryl Makinster; and (6) $275,000.00 to David McConnell. In addition, the consent decree provides for a gross cash payment of $8,000.00 to each Eligible Claimant. (Id. at ¶ 8.)

C. Notification of Persons Eligible for Relief

On April 15, 2004, following the filing of the consent decree with the Court, counsel for the EEOC sent letters (in the form of Exhibit F to the consent decree) to the approximately sixty-seven Charging Parties, Eligible Claimants, and other potential claimants (listed in Exhibit E to the consent decree) informing them of the monetary terms of the consent decree and asking that any objections to the settlement be received by the EEOC no later than April 30, 2004. (Id. at ¶ 28.) The EEOC received two timely objections, as discussed more fully below.

On September 14, 2004, the Court held a fairness hearing and all Charging Parties, Eligible Claimants, and potential claimants who had filed timely objections were provided notice and an opportunity to be heard.

D. The Court's Jurisdiction and Role

Under the consent decree, the Court retains jurisdiction for the purpose of enforcing compliance with the terms of the decree. (Id. at ¶ 27.) The decree expires on June 1, 2006. (Id. at ¶ 33.)

E. Objections and Comments

The EEOC received two timely objections to the consent decree (attached as Exhibit 1 to the Supplemental Submission). First, Stanley Tanaka requests that the EEOC consider providing him with some monetary relief notwithstanding the fact that he had released his ADEA claim against Honeywell. (Supplemental Submission at 12.)

Second, John Cresmer objects to the consent decree as inadequate both generally and with respect to the amount he will receive as an Eligible Claimant. Mr. Cresmer was placed in the Sales Associate position when Honeywell went through its 1997 restructuring. Mr. Cresmer did not challenge Honeywell's action by filing a charge of discrimination with the EEOC or by any other means. Rather, Mr. Cresmer remained in the Sales Associate position until the position was eliminated in 2000. Mr. Cresmer was offered a standard separation package in connection with the termination of his employment, conditioned upon a general release of Honeywell from all claims Mr. Cresmer might have against it. Mr. Cresmer did not sign the release.

Mr. Cresmer's primary objection to the settlement is that he will receive less money under the terms of the consent decree than he would have received had he accepted Honeywell's separation package. (Supplemental Submission at 12-13.) Mr. Cresmer had the opportunity to address the Court concerning his objections at the September 14, 2004 fairness hearing.

III. DISCUSSION

A. Standard

"Technically, ADEA enforcement actions initiated by the EEOC are not governed by Federal Rule of Civil Procedure 23, the provision requiring a district court to make a reasonableness determination in a class action proceeding." Binker v. Pennsylvania, 977 F.2d 738, 748 (3d Cir. 1992) (internal citations omitted). Some courts interpret this absence of a statutory requirement that settlements of ADEA claims be found "fair," as an order to district courts to abstain from oversight. Id.

The majority of courts, however, review settlement agreements, including those under the ADEA, for fairness, adequacy, and reasonableness. Id. at 748-49 (citing Stoetzner v. U.S. Steel Corp., 897 F.2d 115, 118 (3d Cir. 1990); Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 103 S.Ct. 1219 (1983); EEOC v. Pan Am, 622 F. Supp. 633, 639-40 (N.D.Cal. 1985)). A district court has considerable discretion in determining whether a settlement agreement is fair and reasonable, and its determination will only be reversed for abuse of discretion. Binker, 977 F.2d at 748; U.S. v. New Jersey, 1995 WL 1943013, at *10 (D.N.J. Mar. 14, 1995).

In making its determination, the district court should not seek to resolve underlying factual or legal disputes. EEOC v. Pan Am, 622 F. Supp. at 639. In addition, "[t]he proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." Id. (emphasis in the original).

In Girsh v. Jepson, the Third Circuit set forth some of the factors that a district court may consider in deciding whether a consent decree is fair and reasonable. These factors include: (1) the complexity, expense, and likely duration of the litigation; (2) the stage of the proceedings and the amount of discovery completed; (3) the risks of establishing liability and damages; (4) the ability of the defendants to withstand a greater judgment; (5) the range of reasonableness of the settlement fund in light of the best possible recovery; and (6) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. 521 F.2d 153, 156-57 (3d Cir. 1975). Other factors the Court should consider include: (1) any evidence of collusion between the parties in reaching a settlement; and (2) the presence of a government participant in the negotiations. Binker, 977 F.2d at 748; U.S. v. New Jersey, 1995 WL 1943013, at *11.

B. The Consent Decree is Fair, Adequate and Reasonable

A consideration of the record in light of the factors set forth above clearly shows that the settlement is fair, adequate, and reasonable and is not the product of fraud or collusion between the parties.

1. The consent decree was entered into only after substantial discovery and negotiation

The parties entered into the consent decree only after significant discovery had been completed, including the voluntary exchange of over 30,000 pages of documents and a four-day deposition of Honeywell's former Vice President of Business Development.

Moreover, the consent decree is the product of more than a year of vigorously defended arms-length negotiations. A mutually acceptable and neutral mediation firm conducted several lengthy mediation sessions, at which the parties were unable to come to an agreement. It was only after Magistrate Judge Arleo conducted a settlement conference that the EEOC and Honeywell reached a settlement in principle. Subsequently, the parties engaged in months of negotiation concerning the specific terms of the proposed consent decree.

Weight should also be given to the fact that a government agency negotiated and approved the proposed settlement. Officers for Justice, 688 F.2d at 625; U.S. v. State of New Jersey, 1995 WL 1943013, at *11. The fact that this settlement was negotiated by the EEOC lessens the concern usually present in private class actions that the proposed settlement might be the result of collusion between the parties.

The record shows that the consent decree was not hastily arrived at and there is no evidence of collusion between the parties. Rather, the consent decree is a result of careful negotiations in which the U.S. was a party.

2. The consent decree provides for significant monetary relief

Under the consent decree, Honeywell will pay $1,950,000.00 in back pay and attorneys’ fees to the six Charging Parties and $200,000.00 in monetary relief to the 25 Eligible Claimants. Except for the payment of attorneys’ fees to counsel for five of the Charging Parties, the EEOC and Honeywell agreed to bear their own attorneys’ fees and costs. In addition, the consent decree provides that Honeywell will pay $400.00 in attorneys’ fees to each Eligible Claimant who wishes to have an attorney of his or her choice review the terms of the proposed release.

The consent does not provide full back pay to each of the twenty-five Eligible Claimants. During negotiations, Honeywell vigorously argued various defenses to reduce both liability and damages for the Eligible Claimants. While the EEOC did not agree with these theories, it was not unreasonable for the EEOC to consider the risks of litigation in negotiating particular provisions of the settlement. See Bryan v. Pittsburgh Plate Glass Co., 494 F.2d 799, 802 (3rd Cir. 1974)(finding that the district court did not abuse its discretion in approving a settlement awarding a low percentage of the claimants' alleged losses, because the claimants would have faced substantial legal obstacles in establishing their right to any relief), cert. denied, 419 U.S. 900 (1974); see also Agent Orange Prod. Liab. Litig., 818 F.2d 145, 171-74 (2d Cir. 1987) (finding that the settlement amount was adequate in light of the substantial factual and legal hurdles that the plaintiff class would have faced in establishing liability), cert denied sub nom., 484 U.S. 1004 (1988); Officers for Justice, 688 F.2d at 628 ("It is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness.").

Moreover, by the time the EEOC filed suit in June 2002, only two of the Eligible Claimants and potential claimants had filed a charge of discrimination, both of which were settled prior to this action. Thus, none of the Eligible claimants would be able to recover any amounts in the absence of the proposed consent decree.

3. The consent decree provides for significant equitable relief

The consent decree also contains substantial equitable relief designed to further the purposes of the ADEA. Under the terms of the consent decree, Honeywell agrees to not engage in any employment practices that are unlawful under the ADEA, to provide training on the ADEA to all managers and supervisors in relevant divisions of Honeywell, to post notice of entry of the consent decree, and to make periodic reports to the EEOC concerning its compliance with the decree.

C. The Objections Do Not Prevent the Court from Finding that the Consent Decree is Fair, Adequate and Reasonable

Out of approximately sixty-four Eligible and potential claimants, only two filed timely objections. Neither of the two objections received by the EEOC presents any basis for not approving the consent decree. Stanley Tanaka requests that the EEOC consider providing him with some monetary relief notwithstanding the fact that he had released his ADEA claim against Honeywell. Mr. Tanaka, however, articulates no basis for invalidating his release, nor is there any. None of the potential claimants who released their ADEA claims will recover any monetary relief as an Eligible Claimant. (Supplemental Submission at 12.)

John Cresmer objects to the consent decree as inadequate both generally and with respect to the amounts he will receive as an Eligible Claimant. Mr. Cresmer was provided the Sales Associate position in the challenged 1997 restructuring. Mr. Cresmer did not challenge this action by filing a charge of discrimination with the EEOC or by any other means. Mr. Cresmer remained in that position until his position was eliminated in a reduction in force in 2000. Mr. Cresmer was offered a standard separation package in connection with the termination of his employment, conditioned upon a general release. However, he chose not to sign the release and to preserve his claims. Mr. Cresmer’s primary objection is that he will receive less money under the terms of the consent decree than he would have received from Honeywell’s separation package.

Of course, in refusing to accept the separation package and retain his ADEA claim stemming from his placement in the position of Sales Associate in 1997, Mr. Cresmer assumed the risk that he would not recover as much as was offered in the separation package, or that he would not recover anything at all. Mr. Cresmer’s contention that, after his termination in 2000, he was advised by the EEOC that “it was not necessary to be interviewed to be included in the lawsuit,” is irrelevant. (Supplemental Submission at Exhibit 1). He <u>was</u> included as an Eligible Claimant in the consent decree, and he will receive monetary relief.

To the extent he is alleging that he would have become a

Charging Party but was told by the EEOC in 2000 that he did not need to file a charge to participate in the lawsuit, such allegation also is without merit. By the time of the alleged conversation, in or after 2000, Mr. Cresmer had long since foregone any opportunity to file a timely EEOC charge stemming from the 1997 actions. 29 U.S.C. § 626(d). Moreover, Mr. Cresmer’s loss of employment in 2000 was not challenged in this action, nor was it challenged by Mr. Cresmer individually by filing a timely charge of discrimination.

IV. CONCLUSION

Having reviewed the record and the objections submitted, the Court finds that the consent decree is a fair, adequate and reasonable compromise of disputed claims and is not a product of collusion between, or fraud or overreaching by, the negotiating parties. Therefore, the Court approves the consent decree and orders the Clerk of the Court to enter it as a final resolution of the claims asserted by the EEOC.

/s/ WILLIAM G. BASSLER
U.S.D.J.

DATED: September 28, 2004