IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MARY PAT CAVANAUGH, CECIL WILSON, JASPER TYSON, AND RICHARD BROTHERS,	)	
Plaintiff,	)	
AND ALL THOSE SIMILARLY SITUATED,	)	
Putative opt in Plaintiffs,	)	Civil Action File No.
v.	)	1:04-CV-3418-BBM
SPRINT/UNITED MANAGEMENT COMPANY,	)	
Defendant.	)	

ORDER OF FINAL CONFIRMATION OF SETTLEMENT

This matter is before the Court in connection with the Stipulation of Proposed Settlement and Order of Preliminary Confirmation of Settlement (hereinafter the "Stipulation") filed by the parties. The proposed settlement provides $5.5 million dollars in monetary relief to the 462 member collective action previously certified under the Age Discrimination in Employment Act ("ADEA").

I. BACKGROUND

On May 15, 2006, this Court granted preliminarily confirmation of the proposed settlement and appointed a settlement administrator. See May 15, 2006 Order [Doc. No. 466]. Specifically, the Court found, based on its knowledge of the record and its conference with the parties on May 15, 2006, that the Settlement Agreement's terms appear to be "reasonable, adequate, fair and consistent with the relevant . . . law and warrants notice thereof being given to the individual plaintiffs." [Doc. No. 466 at 4-5]. As a result, the Court approved of the Settlement Agreement preliminarily and approved the form of Notice and Individual Release to be sent to all Named Plaintiffs and the Opt-Ins. It further stayed all further litigation in this matter as of May 1, 2006 pending confirmation of the settlement, approved of procedures regarding the sending of the Notice, and approved of the procedures for any Plaintiff to object and/or withdraw according to the terms of the Settlement Agreement. [See id. at 5-12].

The Settlement Administrator subsequently sent a Court-approved Notice of the proposed settlement to the ADEA Opt-In collective action members. Among other things, the Notice advised the Opt-Ins of the settlement terms and the monetary share for each particular Opt-In. It also instructed them of their right to withdraw and/or object to the settlement and provided the specific date for the final

hearing on this settlement.

There have been no timely notices of withdrawal. Approximately 421 of 458 opt-ins already have agreed to the settlement terms. Only one objection was filed. That objection was withdrawn unconditionally during the July 25, 2006 hearing regarding the final approval of this settlement. Moreover, there has been no additional evidence provided to the Court that in any respect indicates that the settlement is anything other than the result of arm's length negotiations between the parties after extensive litigation, including extensive discovery of Sprint's policies, practices and statistical data; and other exchange of information and discussions.

As noted, a hearing to consider final approval of the proposed class settlement was held on July 25, 2006. Based upon my observation of this litigation and the filings of the parties, including the Stipulation, the single since-withdrawn objection filed by opt-in Plaintiff Michael Roe, and the filings in support of the settlement by Sprint and Plaintiffs, the Court grants final confirmation to the settlement agreement. This Order, which incorporates the findings and conclusions made by the Court on July 25, 2006, explains the findings and reasoning that support the conclusion that the settlement is fair, adequate and reasonable and consistent with relevant law. The Court also finds and holds that

the releases signed by the Plaintiffs are in compliance with applicable law, including the Older Workers Benefits Protection Act, 29 U.S.C. § 626(f).

II. STANDARD OF REVIEW

In assessing the fairness of this settlement, this Court utilizes "the universal standard, that of fairness, adequacy, and reasonableness." See Binker v. Pennsylvania, 977 F.2d 738, 747 (3rd Cir. 1992) (ADEA); Bennett v. Behring Corp., 737 F.2d 982, 986 (11th Cir. 1984) ("A proposed class action settlement [under Rule 23] should be approved as long as it is 'fair, adequate and reasonable and is not the product of collusion between the parties.'); Ingram v. Coca-Cola Co., 200 F.R.D. 685, (N.D. Ga. 2001) (Title VII class settlement).

In addition to examining the collusion issue, the relevant factors the Court should consider in determining whether a settlement is fair, adequate, and reasonable have been enumerated as follows:

> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

Bennett, 737 F.2d at 986.

III. FINDINGS AND CONCLUSIONS

Applying the pertinent factors to this settlement and considering the sole objection filed, the Court finds that this settlement was fairly and honestly negotiated and is fair, adequate, and reasonable.

A. The Proposed Settlement Was Fairly And Honestly Negotiated

No objector has complained that the proposed settlement was not fairly and honestly negotiated. Indeed, Plaintiffs' counsel aggressively litigated this case for more than 18 months. More than one hundred and twenty depositions were taken or defended, more than 100,000 pages of documents were exchanged, and a large database of employment-related information was produced. The Court appointed the Honorable Alan J. Baverman, United States Magistrate Judge, to decide numerous and contentious discovery disputes that arose during the case. At the time a settlement was reached, significant discovery had been had, the parties were cognizant of the strengths and weaknesses of their respective cases, and were preparing for briefing of significant motions relating to the pattern and practice and collective action claims. The settlement was negotiated at arm's length during a more than two week process. The settlement was fairly and honestly negotiated.

B. The Proposed Settlement Is Fair, Adequate, and Reasonable.

(1) Likelihood of Success at Trial and Range of Potential Recovery

The likelihood of success on the merits is weighed against the amount and

form of relief contained in the settlement. That is, the benefit this settlement provides to the opt-ins should be compared with the likely recovery for the collective action group at trial. This question concerns the first three of the Bennett factors, which are closely related: "(1) the likelihood of success at trial; (2) the range of possible recovery; and (3) the point on or below the range of possible recovery at which a settlement is fair, reasonable and adequate." Bennett, 737 F.2d at 986. "This standard often justifies approving settlements that are substantial compromises of the relief that could be obtained through litigation." Ingram, 200 F.R.D. at 689.

In its May 15, 2006 Order, this Court already examined the relative risks facing both Plaintiffs and Defendant which were taken into consideration by the parties in agreeing to the settlement:

> Plaintiffs recognize that their ability to recover all or part of the relief sought in this Action is subject to numerous risks, including but not limited to the following: (i) the Court may decertify the Collective Action; (ii) the Court may enter summary judgment in Defendant's favor on some or all of Plaintiffs claims; (iii) the Court or jury may determine Plaintiffs are not entitled to recover for their claims; (iv) the Court or jury may determine that some or all of the Plaintiffs are not entitled to damages or are entitled to an amount of damages less than the amount sought by Plaintiffs; (v) the Court may determine under 29 U.S.C. § 623(f) that the act or omission giving rise to the Action was lawful; (vi) the Court or jury may determine that any alleged

violation of the ADEA was not willful within the meaning of 29 U.S.C. § 626(b); and (vii) the Court of Appeals may determine that the Action could not properly be maintained as a collective action within the meaning of 29 U.S.C. § 626(b) for the claims.

Defendant recognizes that it is also subject to numerous risks in this case, including, but not limited to, the following: (i) a jury could determine that it violated the Plaintiffs' rights regarding their claims and award full relief including liquidated damages, for the lack of good faith and willfulness of its actions; and (ii) the Court and Court of Appeals could affirm this recovery.

Accordingly, in order to avoid the uncertainty, burdens, and expense of further discovery and litigation, and without any admission or finding of liability or wrongdoing on the part of Defendant, such being expressly and completely denied by Defendant, Plaintiffs and Defendant have determined that it is in the best interests of the parties to resolve FULLY ALL claims asserted in the Action and those included in the releases by the individual Plaintiffs as set forth in the Settlement Agreement and that such settlement shall constitute a final and complete resolution of the parties' rights, liabilities and obligations as set forth in the parties' Settlement Agreement.

[Id. at 2-4].

Both parties, thus, had risks to confront. The next step in the litigation would have involved significant disputes regarding the strength and validity of each side's statistical evidence and the propriety of allowing this action to continue to proceed collectively, given the scope of the collective action group and the

manner in which they were terminated. The battle of the experts was soon to be unleashed. Even if pattern and practice liability were established, there is a risk that some unknown number of opt-ins would lose their Stage II hearings and receive no compensation at all. See Teamsters, 431 U.S. at 344; 97 S. Ct. at 1859 (noting that employer may challenge any particular individual's entitlement to recovery in Stage II proceeding). The Court finds that serious questions remained to be resolved, which placed the ultimate outcome of the litigation in doubt.

(2) The Complexity, Expense and Duration of Further Litigation

The rapid litigation and settlement of this case was impressive and resulted in the collective action group obtaining a significant benefit. "[C]ases such as this typically take years, if not decades, to resolve to judgment." Ingram, 200 F.R.D. at 690-691 (citing cases and expert testimony on the subject from the fairness hearing and noting that "a credible projection for litigating this case through class certification and Stage I and Stage II trials, not to mention multiple opportunities for appeal, is ten years from the date of filing."). As in Ingram, "each phase of litigation would entail substantial expert costs, attorney time, travel and deposition costs, and other expenses. Trial on the merits would require consideration of complex dueling statistical models. In short, the likely alternative to settlement now is lengthy, burdensome, and expensive litigation." Id. at 691. The benefit of

obtaining relief now, rather than years from now, makes approval of this settlement in the best interests of the collective action group. See id.

(3) The Stage of Litigation at Which the Settlement Was Reached

As noted above, this case did not settle until both sides had engaged in significant discovery over an 14-month period and had developed important issues The parties actively pursued numerous discovery-related motions and issues. At the time a settlement was reached, the parties were cognizant of the strengths and weaknesses of their respective cases and had the ability to make a reasoned judgment about the merits of the case during settlement negotiations.

(4) The Substance and Amount of Opposition to the Settlement

Both the substance and amount of opposition to this settlement are small. While the number of objectors is "not controlling," Cotton v. Hinton, 559 F.2d 1326, 1331 (5th Cir. 1977),[1] a relatively small number of objectors can be taken as "some indication that the class members as a group did not think the settlement was unfair." Kincade v. General Tire & Rubber Co., 635 F.2d 501, 506 n.4 (5th Cir. 1981). This concept applies with particular force where, as here, a significant

[1] The United States Court of Appeals for the Eleventh Circuit adopted as binding precedent the decisions of the United States Court of Appeals for the Fifth Circuit handed down prior to September 30, 1981. Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1207 (1981).

majority (approximately 90%) of opt-ins received notice of the settlement and have affirmatively agreed to it.

(5) The Judgment of Experienced Counsel

In a case where experienced counsel represent the class, the Court "absent fraud, collusion, or the like, should hesitate to substitute its own judgment for that of counsel," and the "trial court is entitled to rely upon the judgment of experienced counsel for the parties." Cotton, 559 F.2d at 1330. Indeed, "[t]he endorsement of the parties' counsel is entitled to significant weight." UAW v. GM, Case No. 05-CV-73991-DT, 2006 U.S. Dist. LEXIS 14890, at *57 (E.D. Mich. March 31, 2006).

Both parties were represented by counsel with considerable experience in employment law and complex litigation, including class actions. Given the qualifications of Plaintiffs' and Sprint's counsel, which include substantial experience in class action and other complex litigation and employment discrimination cases, the Court has confidence in their collective judgment that the benefits of this settlement outweigh the delay and risk of proceeding to trial.

C. Approval of Qualified Settlement Fund

The Settlement Agreement does not identify how the Plaintiffs are to be paid. The Court has been advised that Plaintiffs and Defendants have agreed that

Sprint directly or through the Settlement Administrator, will establish an escrow fund for the purpose of satisfying the portion of its obligations to Plaintiffs under the Settlement Agreement. The Court approves this escrow fund as a "qualified settlement fund" under I.R.C. Reg. § 1.468B-1. Nothing in the escrow agreement shall alter any of Sprint's obligations under the Settlement Agreement, including its obligations to (i) the named Plaintiffs and the opt-ins or (ii) Plaintiffs' counsel. See Garst v. Franklin Life Ins. Co., 1999 U.S. Dist. LEXIS 2266636 (N.D. Ala.) (similarly approving of qualified settlement fund for purposes of facilitating payment under a settlement agreement).

IV. CONCLUSION

After a thorough review of the terms of the settlement, the parties' submissions in support of the settlement, the sole objection lodged against the settlement (which objection has been withdrawn unconditionally), and the factors to be considered by the Court in evaluating the fairness of such a settlement, I conclude that the proposed class settlement entered into between the Plaintiffs and Sprint is fair, reasonable, and adequate. Accordingly, it is

ORDERED that the Proposed Settlement Agreement is CONFIRMED. It is FURTHER ORDERED that the Court hereby enters judgment dismissing with prejudice the pattern or practice and disparate impact claims of all Named

Plaintiffs and anyone who opted-in to this action, as well as any individual disparate treatment claims, all as asserted in this case. Finally, it is FURTHER ORDERED that pursuant to the terms of the Settlement Agreement and this Court's May 15, 2006 Order, should any reviewing Court on direct appeal and/or on writ of certiorari to the Supreme Court of the United States invalidate the Settlement Agreement or require its modification, the Settlement Agreement and any documents associated with it shall be null and void, inadmissible and unusable in any Court proceeding regarding any issue whatsoever, and shall not be considered a binding Settlement Agreement, unless Plaintiffs and Defendant each expressly and voluntarily approve in writing any such required modification by any reviewing Court. The Court shall retain jurisdiction regarding the administration of the settlement.

SO ORDERED this 27th day of July, 2006.

Beverly B. Martin

BEVERLY B. MARTIN
UNITED STATES DISTRICT JUDGE