

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ARTHUR C. RUPERT, LINDA K.	)	
AUSTIN, LARRY L. CAMPBELL,	)	Civil Action No.
KENNETH J. HUNT and WADE C.	)	
BITTNER, on behalf of themselves and	)	
all others similarly situated,	)	
	)	
Plaintiffs,	)	ELECTRONICALLY FILED
	)	
vs.	)	
	)	
PPG INDUSTRIES, INC.,	)	
	)	JURY TRIAL DEMANDED
Defendant.	)	

COLLECTIVE ACTION COMPLAINT

Representative Plaintiffs, Arthur C. Rupert, Linda K. Austin, Larry L. Campbell, Kenneth J. Hunt and Wade C. Bittner, on behalf of themselves and all others similarly situated, file this Collective Action Complaint against Defendant PPG Industries, Inc., under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621, *et seq.*, including the Older Workers Benefit Protection Act (“OWBPA”), 29 U.S.C. § 626(f), and assert as follows:

THE PARTIES

1. Plaintiff Arthur C. Rupert is an individual who is currently 59 years old and resides at 40 Trump Road, Cheswick, PA 15024.
2. Plaintiff Linda K. Austin is an individual who is currently 57 years old and resides at 4092 Valleyvue Drive, Gibsonia, PA 15044.
3. Plaintiff Larry L. Campbell is an individual who is currently 63 years old and resides at 1402 Basinger Court, Raleigh, NC 27612.

4. Plaintiff Kenneth J. Hunt is an individual who is currently 59 years old and resides at 2817 Kennerly Road, Irmo, SC 29063.

5. Plaintiff Wade C. Bittner is an individual who is currently 53 years old and resides at 842 Linneys Mill Road, Union Grove, NC 28689.

6. Defendant PPG is a Pennsylvania corporation with its principal place of business located in Pittsburgh, Pennsylvania. Defendant maintains its Corporate Headquarters at One PPG Place, Pittsburgh, Pennsylvania 15272. At all relevant times, PPG has continuously been an “employer” within the meaning of 29 U.S.C. § 623 of the ADEA.

7. Mr. Rupert, Ms. Austin, Mr. Campbell, Mr. Hunt and Mr. Bittner are all former employees of PPG.

8. Once the discovery process in this matter is underway, the roles of other unknown conspirators and participants in the wrongdoing identified herein may be revealed, and Representative Plaintiffs reserve their right to then seek leave of court to amend this Complaint to add new parties or claims.

NATURE OF THIS ACTION AND CORE ALLEGATIONS

9. Representative Plaintiffs bring this collective action on behalf of themselves and former similarly situated salaried employees of PPG (the “ADEA Class Members”) for unlawful retaliation against Representative Plaintiffs, and putative ADEA Class Members, for having initiated, or contemplated joinder in, an ADEA lawsuit against PPG, by filing a Counterclaim prohibited by law. In the Counterclaim PPG improperly seeks to recover, not only Representative Plaintiffs’ severance benefits, but also PPG’s attorneys’ fees and litigation costs,

in violation of the OWBPA, and explicitly threatens similar adverse action against any future opt-in plaintiffs.

10. The above-described conduct constitutes a willful violation of the ADEA.

JURISDICTION

11. This Court has jurisdiction over the federal question subject matter of this civil rights action under 28 U.S.C. § 1331 and 29 U.S.C. § 216(b), as made applicable by 29 U.S.C. § 626(b).

12. This Court has personal jurisdiction over PPG because PPG systematically and continuously engages in substantial interstate commercial conduct and business activity within Pennsylvania and maintains its World Headquarters in Pennsylvania, and because the case arises out of PPG's unlawful conduct within this District.

13. Plaintiffs have complied with all conditions precedent to filing a suit under ADEA.

14. The Representative Plaintiffs each filed charges of retaliation in violation of the ADEA against PPG with the Equal Opportunity Employment Commission ("EEOC"): Mr. Rupert filed on December 7, 2007; Ms. Austin filed on December 13, 2007; Mr. Campbell filed on December 7, 2007; Mr. Hunt filed on December 7, 2007; and Mr. Bittner filed on December 13, 2007.

15. More than 60 days have elapsed since the Representative Plaintiffs filed charges with the EEOC.

VENUE

16. Venue is proper in the Western District of Pennsylvania under 28 U.S.C. § 1391(b) and 29 U.S.C. § 1132(e)(2), as the unlawful retaliatory acts complained of by the Representative Plaintiffs were committed within this District. Moreover, PPG maintains its World Headquarters in this District, and Representative Plaintiffs Rupert and Austin, as well as a large concentration of the Class Members, reside and/or worked for PPG in this District.

17. Because the retaliatory conduct that is the subject of this action took place in Pittsburgh, because PPG is headquartered in Pittsburgh, and because of the federal claims asserted herein, this District is an appropriate forum for this collective action.

FACTUAL BACKGROUND

18. On May 24, 2007, Representative Plaintiffs filed a two-count Class Action Complaint, initiating an action at Civil Action No. 07-705 against PPG, alleging, *inter alia*, violations of the ADEA. More specifically, Plaintiffs alleged that they had been unlawfully terminated by PPG on the basis of age.

19. On August 7, 2007, Representative Plaintiffs filed, as of right, their First Amended Collective Action Complaint. In the First Amended Complaint, Representative Plaintiffs amplified the factual and legal bases for their claims.

20. The First Amended Complaint included more specific allegations related to, *inter alia*, PPG's use of a suspect, standard-less evaluation process that targeted older workers for termination in Reductions in Force ("RIFs").

21. The Amended Complaint also described PPG's practice of extracting Separation Agreements and Releases ("Release Agreements") from terminated older workers, which

purported to waive the employees' claims under the ADEA, but which were, in fact, not compliant with the OWBPA and, therefore, unenforceable.

22. On September 10, 2007, PPG filed its Answer and Counterclaim in the action, to which it attached as Exhibits, *inter alia*, the Release Agreements executed by each of the five Representative Plaintiffs.

23. PPG's Counterclaim asserted a claim for Breach of Contract against each of the Representative Plaintiffs. Relying on the releases, covenants-not-to-sue, and attorneys' fees provisions contained in the Release Agreements, PPG claimed that "[b]y filing their amended complaint and pursuing this civil action, Representative Plaintiffs have breached contractual obligations owed to PPG ... [and] are liable to PPG for compensatory damages equal to the consideration PPG paid them in exchange for the enforceable promises, releases and representations ... [and further] are liable to PPG for recovery of PPG's litigation costs, including attorneys' fees, incurred in connection with this action for breach of the Release Agreements, as expressly authorized by the Release Agreements." PPG Counterclaim, ¶¶ 15-17.

24. At the time that PPG asserted its Counterclaim, it knew or should have known that its cause of action is not recognized as a viable claim under the ADEA and OWBPA, as interpreted by the controlling regulations promulgated by the EEOC. 29 U.S.C. § 626(f)(1)(A); 29 C.F.R. § 1625.22(b)(4); 29 C.F.R. § 1625.23(b), (c). PPG's intent in filing its Counterclaim was to retaliate against the Representative Plaintiffs because they have opposed practices unlawful under the ADEA and have challenged those practices in asserting their claims against PPG. PPG's conduct is in direct violation of 29 U.S.C. § 623(d).

25. PPG has also threatened putative ADEA Class Members with equally invalid *future* breach of contract claims. In the Counterclaim PPG menaces the prospective ADEA

Class Members by stating that “[t]o the extent that other plaintiffs join this action after signing (and not revoking) release agreements substantially the same as those signed (and not revoked) by plaintiffs Rupert, Austin, Campbell, Hunt and Bittner, and after receiving severance payments and other benefits from PPG, such future plaintiffs will also have liability to PPG for recovery of PPG’s litigation costs, including attorneys’ fees, and for compensatory damages equal to the consideration PPG paid them in exchange for enforceable promises and releases.”

26. PPG’s retaliation against the Representative Plaintiffs for the exercise of their protected right to file the Action seeking redress for PPG’s ADEA violations and its concomitant effort to chill the future exercise of that right by potential ADEA Class Members, is indefensible in light of the unenforceability of the waiver provisions, overly broad and misleading covenants-not-to-sue, unlawful attorneys’ fee provisions contained in each Release Agreement, and defective decisional unit disclosures, as outlined in both Plaintiff’s Amended Complaint and pending summary judgment motion.

COUNT I

Retaliation under the Age Discrimination in Employment Act, 29 U.S.C. § 623(d)

27. Representative Plaintiffs hereby repeat and incorporate by reference the allegations of Paragraphs 1 through 26, above as if fully set forth herein.

28. By terminating the employment of the Representative Plaintiffs, and by doing so with virtually no notice, PPG put each of them in a financial predicament in which they had no choice but to sign the Release Agreement presented to each of them by PPG, so as to receive necessary full severance benefits.

29. Under such financial compulsion, each of the Representative Plaintiffs executed a Release Agreement that contained a release of claims against PPG, a covenant-not-to-sue, and a provision purporting to make each liable for the attorney fees and litigation costs incurred by PPG in defending any action instituted against it. These provisions were unlawful under the OWBPA. PPG also supplied each of the Representative Plaintiffs with decisional unit disclosures that were also deficient under the OWBPA.

30. When the Representative Plaintiffs initiated the Action, and then filed the First Amended Complaint, they were clearly opposing employment practices of PPG that were and are unlawful under the ADEA. As such, they were engaging in activity that is protected under the ADEA.

31. When PPG filed its Counterclaim against the Representative Plaintiffs in the Action, seeking to recover not only the Representative Plaintiffs' severance benefits, but also PPG's attorneys' fees and litigation costs, in violation of the OWBPA, and therein threatened any future opt-in plaintiffs that it would assert a similar counterclaim against them, as well, PPG took adverse employment action against not only the Representative Plaintiffs, but against all potential members of a class of former PPG salaried employees, as well.

32. PPG's assertion of its Counterclaim is materially adverse, not only to Representative Plaintiffs and future members of the class, but would also be materially adverse to any salaried employee of PPG.

33. The harm to the Representative Plaintiffs and to future members of the class that is threatened by the assertion of PPG's Counterclaim is so great that the assertion of such Counterclaim could easily dissuade a former salaried employee from asserting and pursuing an age-discrimination claim against PPG, there is a direct causal connection between the protected

conduct of the Representative Plaintiffs in initiating the Action, and the materially adverse conduct of PPG against each of them arising from the assertion of PPG's Counterclaim in the Action. In fact, PPG alleges as much in its Counterclaim.

34. There exists the same direct causal connection between the protected conduct of the future class members in opting in to the class and PPG's threat to assert the Counterclaim against them if they do.

PRAYER FOR RELIEF

WHEREFORE, the Representative Plaintiffs, on behalf of them selves and prospective members of this collective action, request that this Court:

- a. Enter a judgment declaring this action to be a collective action properly maintained under 29 U.S.C. §216(b), that the Representative Plaintiffs be designated as representatives of the ADEA Class, and that their counsel of record be designated as ADEA Class Counsel;
- b. Enter a judgment declaring that PPG's assertion of a Counterclaim against Representative Plaintiffs is retaliation, which violates 29 U.S.C. § 623 (d);
- c. Enter a judgment declaring that PPG's threat to assert the Counterclaim against future, opt-in class members is also a violation of 29 U.S.C. § 623(d);
- d. Enter a judgment and award in favor of the Representative Plaintiffs and the ADEA Class for costs, including, but not limited to, reasonable attorney's fees, experts' fees, and other costs and expenses of this litigation associated with opposing PPG's retaliatory conduct; and,
- e. Award such other and further legal and equitable relief as may be found appropriate and as this Court may deem just and proper.

JURY TRIAL DEMANDED

Respectfully submitted,

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

Date: May 6, 2008

s/Bruce C. Fox

Bruce C. Fox, Esquire

Pa. I.D. No. 42576

Rudy A. Fabian, Esquire

Pa. I.D. No. 56703

Melissa L. Evans, Esquire

Pa. I.D. No. 85978

One Mellon Center, Suite 5240

500 Grant Street

Pittsburgh, PA 15219

(412) 566-1500

Fax: (412) 566-1508

Charles A. Lamberton, Esquire

Pa I.D. No. 78043

Lamberton Law Firm, LLC

1705 Gulf Tower

Pittsburgh, PA 15219

(412) 258-2250

Fax: (412) 258-2249

Counsel for Plaintiffs, Arthur C. Rupert, Linda K. Austin, Larry L. Campbell, Kenneth J. Hunt, and Wade Bittner, individually and on behalf of all others similarly situated