Vaszlavik v. Storage Tech. Corp.

United States District Court for the District of Colorado
March 9, 2000, Decided ; March 9, 2000, Filed; March 10, 2000, Entered
Civil Action No. 95-B-2525

Reporter: 2000 U.S. Dist. LEXIS 21129; 83 Fair Empl. Prac. Cas. (BNA) 1094

JOHN VASZLAVIK, et al., Plaintiffs, v. STORAGE TECHNOLOGY CORPORATION, a Delaware Corporation, doing business in Colorado, Defendant.

Disposition: [*1] ORDERED that the Proposed Settlement Agreement APPROVED. FURTHER ORDERED that the individual and class claims of the Plaintiffs in this case dismissed.

Counsel: For JOHN VASZLAVIK, WALTER PERDUE, CAROL HILL, BOB COTTON, DAVID WEE, MIKE MCCOY, HOWARD VALENTINE, PATRICK L. ELLIS, ARTHUR J. GERCKEN, LANETTE STEWART, BILL STEVENS, plaintiffs: Gilbert M. Roman, John A. Culver, Seth J. Benezra, Roman, Benezra & Culver, LLC, Lakewood, CO USA.

For JOHN VASZLAVIK, WALTER PERDUE, CAROL HILL, BOB COTTON, DAVID WEE, MIKE MCCOY, HOWARD VALENTINE, PATRICK L. ELLIS, ARTHUR J. GERCKEN, LANETTE STEWART, BILL STEVENS, plaintiffs: Todd J. McNamara, Todd J. McNamara, P.C., Denver, CO USA.

For STORAGE TECHNOLOGY CORPORATION, defendant: Nancy J. Gegenheimer, Katherine J. Peck, Holme Roberts & Owen LLP, United States District Court, Michael E. Lindsay, Ballard, Spahr, Andrews & Ingersoll, LLP, Kathryn S. Young, Cohen, Brame & Smith, P.C., Denver, CO U.S.A.

For STORAGE TECHNOLOGY CORPORATION, defendant: Dwight C. Seeley, Storage Technology Corporation, Office Of Corporate Counsel, Louisville, CO U.S.A.

For STORAGE TECHNOLOGY CORPORATION, defendant: Richard Len Bland, Richard Bland, Esq., Lafayette, CO USA.

Judges: Honorable Lewis T. Babcock, Judge.

Opinion by: Lewis T. Babcock

Opinion

ORDER APPROVING CLASS SETTLEMENT AND DISMISSING CLASS CLAIMS WITH PREJUDICE

BABCOCK, Judge

I. INTRODUCTION

THIS MATTER is before the Court in connection with the Stipulation for Approval of Class Settlement (hereinafter the "Stipulation") filed by the parties. The proposed settlement provides $ 5 million dollars in monetary relief to the 417 member collective action previously certified under the Age Discrimination in Employment Act ("ADEA"). It also provides significant affirmative relief to the approximately 1,226 member class action that was certified for injunctive and declaratory relief under the Employee Retirement Income Security Act ("ERISA").

On December 15, 1999, this Court granted preliminary approval to the proposed settlement. Plaintiffs' counsel subsequently sent a court-approved notice of the proposed settlement to the ADEA and ERISA class members. Among other things, the notice advised the classes of the settlement terms and the [*2] monetary share for each individual ADEA Plaintiff. It also instructed them of their right to object to the settlement.

A hearing to consider final approval of the proposed class settlement was held on March 8, 2000. Based upon my observation of this litigation and the filings of the parties, including the Stipulation, Plaintiffs' Position Statement in Support of Class Settlement and Response to Objections, and the three objections filed by opt-in Plaintiffs Bruce Barthen, Virginia Silcox, and Charles Priday, I granted final approval to the class settlements. This Order explains the findings and reasoning that support my conclusion that the class settlement is fair, adequate and reasonable.

II. STANDARD OF REVIEW

In assessing the fairness of a class settlement, whether under *29 U.S.C. § 626(c)(1)* of the ADEA or *Fed. R. Civ. P. Rule 23*, courts have utilized "the universal standard, that of fairness, adequacy, and reasonableness." [1] (*See*

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[1] While *Rule 23(e)* is not directly applicable to the settlement of an ADEA collective action, this Court has previously applied *Rule 23* principles in evaluating ADEA collective actions, including in the settlement context. (*See e.g. Vazslavik, et al. v. Storage Technology Corporation*, CA. No. 95-B-2525 (Order dated March 3, 1999) (applying *Rule 23* principles regarding notice of

Binker v. Pennsylvania, 977 F.2d 738, 747 (3rd Cir. 1992) (ADEA). *See also EEOC v. McDonnell Douglas Corp.*, 894 F. Supp. 1329 (E.D. Mo. 1995).) The pertinent inquiry in evaluating a class [*3] settlement is the "overall fairness" of the settlement. Thus, the Court must consider factors "beyond maximizing the potential benefit to an individual plaintiff." (*Binker*, 977 F.2d at 746.) As the *McDonnell Douglas* court held:

> Objections based purely on individual claims of loss do not warrant disapproval of the proposed settlement… In assessing the fairness of a settlement, the court's role is not to make a de novo determination of whether the measures applied to all claimants provide each individual with a satisfactory recovery. Rather, the criteria or methodology employed by the litigants is sufficient if its terms, when applied to the entire group of individuals represented, appear reasonable.(894 F. Supp. at 1335. *See also EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985), *cert. denied*, *478 U.S. 1004 (1986)* ("The parties to a settlement will not be heard to complain that the relief is substantially less than what they would have received from a successful resolution after trial").)

[*4] As such, this Court must consider the following four factors in assessing whether the settlement is fair, adequate, and reasonable: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact existed, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties and their counsel that the settlement is fair and reasonable. (*Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984); *Alvarado Partners, LP v. Mehta*, 723 F. Supp. 540, 546 (D. Colo. 1989), *app. dismissed*, *936 F.2d 582 (10th Cir. 1982)*.)

III. FINDINGS AND CONCLUSIONS

Applying the four pertinent factors to this settlement and considering the three objections, I find that this settlement 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, class counsel aggressively litigated [*5] this case for more than four years. One hundred and sixty-five depositions were taken, more than 150,000 pages of documents were exchanged, and dozens of motions, including three dispositive motions by Defendant, were filed and opposed. At the time a settlement was reached, discovery had been completed, the parties were fully cognizant of the strengths and weaknesses of their respective cases, and were ready for trial. The settlement was negotiated at arm's length with the assistance of a U.S. Magistrate Judge and through a private mediation process that lasted nearly ten months. I find that the settlement was fairly and honestly negotiated.

B. *Serious Questions Of Law And Fact Existed, Which Placed The Ultimate Outcome Of The Litigation In Doubt*

Prevailing on their pattern and practice discrimination claims was no sure thing for the Plaintiffs. I note that discrimination class actions have a well-deserved reputation for being complex and difficult to win. (*See e.g. Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977); *Officers for Justice v. Civil Service Commission*, 688 F.2d 615 (9th Cir. 1982), *cert. denied*, *459 U.S. 1217 (1983)*.) [*6] Moreover, as evidenced by the parties briefing of dispositive motions, the law regarding ADEA and ERISA pattern and practice cases is particularly unsettled.

Specifically, there were significant disputes regarding the strength and validity of Plaintiffs' statistical evidence, the weight and relevance of alleged discriminatory statements made by Defendant, and the propriety of allowing this action to proceed collectively, given the extremely broad scope of the class. As a result of these significant issues, I previously advised Plaintiffs that I would be closely considering Defendant's Motion for Decertification of ADEA Collective Action. I find that serious questions of law and fact existed, which placed the ultimate outcome of the litigation in doubt.

C. *The Value Of An Immediate Recovery Outweighs The Mere Possibility Of Future Relief After Protracted And Expensive Litigation*

Pursuant to the bifurcation of class liability and individual remedy, to successfully prosecute this case, the Plaintiffs would have been required to defeat Defendant's dispositive motions, prepare for and participate in an eight week class liability trial, prosecute potential appeals to the Tenth [*7] Circuit and even the United States Supreme Court, litigate more than 400 "remedial phase" trials to establish the liability and damages of each opt-in Plaintiff,

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settlement discussions): *Vaszlavik. et al. v. Storage Technology Corp.*, 175 F.R.D. 672 (D. Colo. 1997) (employing "ad hoc" application of *Rule 23* principles to ADEA collective actions).)

and then litigate another potential round of appeals. It is obvious that this lengthy procedure would be exceptionally expensive. Consequently, in light of the cost and risk of non-recovery, I conclude that the value of certain and immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation.

D. ***In The Judgment Of The Parties And Their Counsel, The Settlement Is Fair And Reasonable***

Both parties were represented by counsel with considerable experience in employment law and complex litigation, including class actions. The proposed settlement was specifically approved by Plaintiffs' counsel, a settlement committee made up of class representatives and opt-in Plaintiffs, and the Defendant and its counsel. Additionally, after extensive negotiations, Judges William Neighbors and Richard Dana of the Judicial Arbiter Group, recommended that the parties enter into the agreement that was ultimately reached. Magistrate Judge Schlatter also strongly recommended that Plaintiffs [*8] accept this settlement. Consequently, I find and conclude that the parties have submitted an honest judgment that the settlement is fair and reasonable.

E. ***The Objections***

Out of the approximately 1,226 ERISA class members, not one objected to the terms of the settlement. [2] Only three of the 417 ADEA class members, or less than 1%, objected to the ADEA settlement. In light of my findings that the overall settlement is fair, reasonable, and adequate in light of the four factors I am to consider, the three objections do not justify rejection of the proposed class settlement. In particular, the three objectors did not contest the overall fairness of the $ 5 million ADEA settlement, but instead contended that the settlement disbursement formula did not provide them with sufficient compensation. However, objections based on the adequacy of the benefit to a particular individual do not render a settlement unfair. (*See e.g.* *Binker*, 977 F.2d at 746; *McDonnell Douglas*, 894 F. Supp. at 1335; *Hiram Walker*, 768 F.2d at 889).)

[*9] **IV. CONCLUSION**

After a thorough review of the terms of the class settlement, the parties submissions in support of the settlement, the three objections lodged against the class settlement, 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 class Plaintiffs and Storage Tek is fair, reasonable, and adequate. Accordingly, it is

ORDERED that the Proposed Settlement Agreement is **APPROVED**. It is

FURTHER ORDERED that the individual and class claims of the Plaintiffs in this case are dismissed with prejudice as provided by Section III of the Proposed Settlement Agreement. The Court shall retain jurisdiction regarding the administration of the settlement.

DATED this 9th day of March, 2000.

BY THE COURT:

The Honorable Lewis T. Babcock

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[2] While Charles E. Priday's objection purports to object to the ERISA settlement, the content of his objection makes it clear that he is objecting to the ADEA settlement. Mr. Priday's objection is that he will not receive enough financial compensation under the settlement formula. The financial compensation that Mr. Priday will receive is only pursuant to the ADEA settlement.