Not For Publication

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JAMES HOWARD, LARRY E. WARE, TERRELL SWEEZY, and DON R. EARLEY on behalf of themselves and all others similarly situated,	Civil No. 01-929 (AET)
Plaintiffs,	
v.	OPINION
HOECHST CELANESE CORPORATION MEDICAL PLAN, et. al.,	
Defendants.	

This matter is before the Court on motion by the Plaintiffs for class certification under Fed.R.Civ.P. 23. The Court has decided this motion based on the submissions of both parties and without oral argument pursuant to Fed.R.Civ.P. 78. For the following reasons and for good cause shown, the Plaintiffs' motion will be granted.

BACKGROUND

Plaintiffs filed this complaint on February 21, 2002. Plaintiffs are retired persons who were employed with the Celanese Corporation during the time when a portion of the company was sold to KoSa Trevira in December, 1998. They allege that under the Employment Retirement Income Security Act (E.R.I.S.A.), 29 U.S.C. §1001, Defendants breached a fiduciary duty to Plaintiffs by misrepresenting to them the availability of Celanese medical retirement benefits. Defendants represented to Plaintiffs that they would be eligible to retire under the

Celanese plan during a transition period after the sale of the company. However, in reality, they were not eligible for the same terms during the transition period. They did not learn of their disenfranchisement from the Celanese medical retirement benefits plan until after it was too late and the transition period had already begun. They allege that KoSa has an inferior plan. Plaintiffs seek to require defendants to provide plaintiffs with retirement medical benefits at the level and under the terms of defendant's plan as it existed prior to the sale of a portion of the company to KoSa Corporation.

DISCUSSION

Fed.R.Civ.P. 23(a) requires four elements in order for plaintiffs to maintain a class action. The moving party must show that the number of potential class members is so numerous that it makes joinder impractical ("numerosity"), that there are questions of law or fact common to the class ("commonality"), that the claims or defenses of the representative parties are typical of the claims of the class ("typicality"), and that the representative parties will fairly and adequately protect the interests of the class ("adequacy"). Fed.R.Civ.P. 23(a). Once these four elements have been established, plaintiffs must also demonstrate compliance with one of the elements of Fed.R.Civ.P. 23(b). See Baby Neal v. Casey, 43 F.3d 48, 55 (3d Cir. 1994). The Court may certify the class initially and then, if appropriate, decertify the class after an adjudication of liability. Feret v. Corestates Financial Corp., 1998 WL 512933 (E.D.Pa. 1998). In a motion for class certification, the merits of the case are not at issue. Eisen v. Carlisle & Jacequelin, 417 U.S. 156, 177-78 (1974).

In this case, Plaintiffs seek to define the class as "Trevira retirees who were eligible to retire with Celanese retiree medical benefits at the time of the sale to KoSa, but who did not do

so because of promises and assurance made to them by defendants that their entitlement to Celanese retiree benefits would be unaffected during a transition period after the sale." Plaintiffs' Brief in Support of Motion for Class Certification ("Plaint. Br.") at 4.

1. Numerosity

Rule 23(a) requires that the class be "so numerous that joinder of all members is impracticable." Fed.R.Civ.P. 23(a)(1). The exact size of a class need not be known; Plaintiffs must only show that the proposed class is sufficiently large to meet the numerosity requirements. See Collier v. Montgomery County Housing Auth., 192 F.R.D. 176, 182 (E.D.Pa. 2000). Here, Plaintiffs state the potential number of class members ranges up to 400 Trevira retirees. See Plaint. Brief at p.10. At this time, the number of potential class members appears to satisfy the numerosity requirement of Rule 23(a)(1).

2. Commonality

Commonality requires that plaintiffs share a question of fact or law with the grievances of the prospective class. Baby Neal for and by Kanter v. Casey, 43 F.3d 48, 56 (3d Cir. 1994). Whether a sufficient common question exists depends on what plaintiffs need to establish in order to recover. Kane v. United Indep. Union Welfare, 1998 WL 78985 (E.D. Pa. 1998). In order to make a successful claim for a breach of a fiduciary duty under E.R.I.S.A., a litigant must prove that defendant is a fiduciary under E.R.I.S.A., that defendant made a material representation, and that the plaintiff relied to his detriment on the material representation made by defendant. Adams v. Freedom Forge Corp., 204 F.3d 475 (3d. Cir. 2000).

In this case, Plaintiffs assert that Defendants made oral and written representations that they would be able to receive Celanese retiree medical benefits as part of their retirement

package up until the sale of a portion of the company to KoSa Trevira and during a transition period following the sale. Plaintiffs assert that based upon those representations, they waited until after the sale of the company to retire. They state that they would have retired prior to the sale if they had known that they would only be eligible for the KoSa retirement benefits.

Plaintiffs and Defendants do not dispute that the potential class members received information about the impact of the sale on retirement benefits from various sources within the Celanese Company. The information was dispersed via individual employee conversations, an on-line weekly bulletin, email exchange, and company "town meetings." The question is whether the individual and group communications conveyed to potential class members was uniform and sufficiently without variation in order to satisfy the commonality requirement for class certification of the plaintiffs' claims. See In Re Life USA Holding, Inc., 242 F.3d 136, 146 (3d. Cir. 2001) (discussing the issue of uniformity in representations made by the defendants to the plaintiffs). In In Re Life USA Holding, the Circuit discussed the behavior of the defendant's independent agents who approached Plaintiffs with "non-standardized and individualized sales 'pitches'" when it determined that the District Court erred in certifying the class. Id. at 146.

In Bunnion v. Consolidated Rail Corp., et.al., 1998 WL 372644 (E.D.Pa. 1998), an issue in the commonality analysis was whether company-wide documents or e-mails sent out by defendants were misrepresentations that breached the fiduciary duties defendants owed plaintiffs. Id. at *7. The court held that because a uniform message was transmitted by Defendants, commonality was satisfied.

In the instant case, Plaintiffs' potential class members submitted thirty sworn statements to this court stating the sources of the retirement information. Affidavit of James Howard at

Exhib. B. Though it is true, as Defendants contend, that the sources vary, many allege the same person as the source of their information. Alice Ritchie, a benefits specialist employee of Celanese, provided the alleged representations about the Celanese/Hoechst benefits plan to several of the prospective class members according to the sworn statements. See Affidavit of James Howard at Exhib. B. In addition, the on-line weekly bulletin is emailed company-wide. See Aff. of Harvey S. Mars, Exh. G, pp. 31-32. On one occasion, the weekly bulletin quoted the Vice President of Human Resources, Philip Staggs, who stated that, in fact, benefits selected under the Hoescht plan would continue during a transition period after the sale was finalized. See Aff. of Mars, Exh. G, p. 35-36. An important fact in commonality analysis is that these on-line bulletins were Alice Ritchie's definitive source of information concerning the status of employee benefits during the transition period. See Aff. of Mars, Exh. G., pp. 31-32. In addition, plaintiffs assert that uniform information was provided to them – that during the transition period following the sale, their retirement benefits would not differ. This is different than varied sales pitches that the court dealt with in In re Life USA Holdings.

On the other hand, Plaintiffs cite E.R.I.S.A. cases similar to this case outside the Third Circuit where courts have denied class certification in cases involving misrepresentation and retirement benefits because commonality or typicality was lacking. See e.g., Sprague v. General Motors Corporation, 133 F.3d 388 (6th Cir. 1998); Hudson v. Delta Airlines, 90 F.3d 451 (11th Cir. 1996). In Sprague, the court found that there were too many individual issues of fact concerning representations made about early retirement to allow for class certification. The statements varied depending on who made them, when they were made, and to what extent they influenced each employee's understanding of the benefits at issue. Id. at 397-398. Similarly, in

Hudson v. Delta, 90 F.3d at 457, the court denied class certification because questions of fact were too varied as to the extent Delta employees heard alleged representations by Delta and to what extent they relied on them. Defendants argue that individual issues with regard to reliance on the information provided by Defendants should preclude class certification. In this Circuit, however, the issue of reliance by individual plaintiffs on the information about medical retiree benefits is not a bar to certifying a class. See In re Ikon Office Solutions, Inc. Sec. Litigation, 191 F.R.D. 457 (E.D. Pa. 2000). In In re Ikon, the court stated that the focus of the court's inquiry on commonality was "on the nature of the alleged misrepresentations, the materiality of those misrepresentations, and whether the [defendants] acted as fiduciaries." Id. at 464; See also, Bunnion v. Consolidated Rail Corp, et.al., 1998 WL 372644, *6 (granting class certification and reasoning that defendants' contentions that the information provided created individual issues of materiality and reliance [by employees] should preclude class certification were without merit.).

Therefore, this court finds that at this time, the commonality requirement is satisfied due to common questions of law and fact, and a common underlying legal theory. The Court agrees with Defendants' contention that Plaintiffs' question of reliance will ultimately be individualized. However, at this stage, the issue is not so predominant as to preclude class certification. See id. at 465; Feret, 1998 WL 512933 at *9-10.

3. Typicality

The typicality requirement is designed to assess whether the action can be efficiently pursued as a class and whether the named parties are adequately aligned with the interests of the class. See Baby Neal, 43 F.3d at 57. The typicality requirement is "intended to preclude certification of those cases where the legal theories of the named plaintiffs potentially conflict

with those of the absentees." Id. Typicality looks to whether the claim of the proposed class "arises from the same events or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same theory." See Liberty Lincoln Mercury Inc. v. Ford Marketing Corp., 149 F.R.D. at 77 (internal citation ommitted). Factual differences among the proposed class members will not defeat certification. See Baby Neal, 43 F.3d at 56. Commonality and typicality assessments tend to merge because they focus on similar aspects of an alleged claim. See General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 157 n. 13 (1982).

In this case, the claims by the named plaintiffs and the legal issues and facts are typical of the unnamed class members. The Plaintiffs assert that they have suffered the same harm as unnamed plaintiffs: they were precluded from obtaining the medical retirement benefits under the Celanese plan when they retired during the transition period after the sale to KoSa. Because the claims arise from the same events, practice, or course of conduct of the Defendants and are based on the same legal theory, typicality is satisfied in this case. Barnes v. Am. Tobacco Co., 161 F.3d 127, 141 (3d Cir. 1998).

4. Adequacy

The adequacy of representation requirement test the qualifications of counsel to represent the class and serves to uncover conflicts of interest between named parties and the class they seek to represent. See Barnes, 161 F.3d at 141; Hassine v. Jeffes, 846 F.2d 169, 179 (3d. Cir 1988) (citing General Telephone, 457 U.S. at 157 n.13). In the instant case, the named Plaintiffs' claims do not appear to be antagonistic to the unnamed class members and counsel appears competent to conduct this litigation on behalf of the proposed classes.

Because the Plaintiffs have satisfied the four elements under Rule 23(a), the Court now turns to the 23(b) analysis. Plaintiffs seek to class certification under Rule 23(b)(2) which provides for class certification when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed.R.Civ.P. 23(b)(2). The party seeking class certification must prove that the party opposing the class acted in a manner that is generally applicable to the class, which would make injunctive or declaratory relief appropriate to the entire class. See Hassine, 846 F.2d at 179 (internal citations omitted). Essentially, the question is whether the relief sought will benefit the entire class. See id. (citing Baby Neal, 43 F.3d at 59).

In the instant case, the claims and the desired relief sought by plaintiffs appear to be generally applicable to the potential class of plaintiffs. Class members seek to be reinstated under the retirement plan that would have been available to them based on the information they received from Celanese if they had retired as Hoescht employees.

Conclusion

For the reasons stated above, the Plaintiffs' motion for class certification will be granted. If, at any time, it appears that continuation of this lawsuit as a class action become unduly burdensome, or individual trials on the merits become necessary, the Court will exercise its discretion to decertify or modify the class certified herein. An appropriate Order accompanies this Opinion.

Dated: July 3, 2002.

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JAMES HOWARD, LARRY E. WARE, TERRELL SWEEZY, and DON R. EARLEY on behalf of themselves and all others similarly situated,	:	Civil No. 01-929 (AET)
Plaintiffs,	:	
v.	:	ORDER
HOECHST CELANESE CORPORATION MEDICAL PLAN, et. al.,	:	
Defendants.	:	

This matter having come before the Court on a motion by the Plaintiffs for class certification under Fed.R.Civ.P. 23, and the court, having considered the submissions by both parties, and for good cause shown,

It is on this 3rd day of July, 2002,

ORDERED that the Plaintiffs' motion for class certification is GRANTED.

ANNE E. THOMPSON, U.S.D.J.