IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CAROL BLACKMON and ANTHONY OLIVER, individually and on behalf of all others similarly situated PLAINTIFF, v. HONDA OF SOUTH CAROLINA MFG., INC., DEFENDANT.	CIVIL ACTION NO. 04-CV-1254 **Report by Class Counsel on Notice and Opt-ins and Supplemental Memorandum in Support of Final Approval of Settlement**

The preliminary fairness hearing in this matter occurred on February 2, 2005. Defendant Honda joined plaintiffs in their request for preliminary approval of the settlement. Numerous materials were submitted in support of plaintiff's motion for the Court's consideration. An order preliminarily approving settlement was signed by Judge Harwell on February 22, 2005. A summary of the preliminarily approved settlement is as follows:

1. Total Settlement Amount: $1,957,750.00.

2. Payments directly to class members: $1,443,750.00.

3. Attorneys' fees and expenses: $ .5 million (approximately 25% of total settlement)

4. Class representative compensation: $2,000.00 each.

5. Audit budget: $10,000.00.

6. Administrative expenses to be born by Honda.

Shortly after preliminary approval, notice to potential class members commenced. On March 8, 2005, approximately 2700 notices were mailed by Honda at Honda's expense to

potential class members. Notices were mailed to approximately 2200 Honda current and former employees ("associates") and 500 workers for temp agencies who had been assigned to Honda during the relevant period. Additionally, Honda made information available to current employees at its plant. Additional notice to class members was achieved through information disseminated through the Florence Morning News, which resulted in an article published on March 11, 2005 (copy attached). The core information in this article was picked up by other newspapers and published around the state during the successive days (sample copies attached). The settlement additionally received national publication by reports in various employment and class action publications. Follow up notices were mailed by Honda as additional class members were located or called in. According to Honda, it sent over three thousand notices. Plaintiffs counsel sent additional notices to class members who contacted them.

Class counsel began receiving opt-ins on March 9, 2005, the day after the notice campaign began, and have received significant numbers of opt-ins since then. Class counsel have received hundreds of calls relating to the settlement from class members, and have fielded a multitude of questions. Many callers simply wanted to confirm the opt-in procedure. Others wanted to record changes in their name or location. Some asked questions about the wage calculations.

In excess of 2,160 opt-ins have been received.[1] This equates to a return rate of eighty-one percent (81%). In excess of 1600 of these were from the Honda associates (employees), and in excess of 560 of these opt in were from persons employed by five temp agencies which supplied staff to Honda. As calculated by Honda, associates, by opting in, have made claim for

[1] Approximate numbers are being used as the class opt-in period mailing deadline just occurred several days ago and one or two opt ins were still being received as this document was being written.

$1.350m of the $1.447m available for associates, leaving a cy pres to Timmonsville School District of $83,685.21. Staff from temporary agencies have made claims for $93,421.29 (which is being paid out of funds over and above the associate settlement funds). This monetary volume of claims speaks volumes in favor of the class approval of the settlement and the direct monetary benefit to class members.

In stark contract to the overwhelming number of opt-ins, there have only been four objections by class members and one purported objection by a non-class member. These are described separately below.

Also since the fairness hearing, class counsel have confirmed the audit arrangement to be performed by Converse Chellis, CPA, of Gamble Givens and Moody in Charleston (copy attached). Mr. Chellis will perform the financial review included within the settlement to insure that the class compensation has occurred pursuant to the settlement agreement.

Discussion

This action is a wage class action under the Fair Labor Standards Act, Section 216 (b). It is brought by employees seeking overtime compensation for time spent changing in and out of protective gear and clothing before and after the shift at the Honda ATV plant located in Florence. The Plaintiff commenced this action in the Tenth Judicial Circuit in Florence County against the Defendant on March 11, 2004. A detailed background of this litigation and the underlying dispute is set forth in this Court's Order Preliminarily Approving Settlement (Feb. 22, 2005) and is incorporated by reference herein.

A District Court has discretion to approve a class settlement if it is "fair, reasonable, and adequate." Rule 23(e), F.R.C.P. Courts in the Fourth Circuit have applied the review

methodology enunciated by the Jiffy Lube case. See, e.g., Kidrick v. ABC Television & Appliance Rental, Inc., 1999 WL 1027050 (N.D.W.Va. 1999). In Re Jiffy Lube Securities Litigation , 927 F.2d 155 (4th Cir.,1991), adopted the analysis set forth in Montgomery County Real Estate Antitrust Lit. v. Jack Foley Realty Inc., 83 F.R.D. 305 (D. Md, 1979). The focus of the reviewing court is on a series of factors in the two major categories of fairness and adequacy. Montgomery, 83 F.R.D. at 315. The "fairness" factors are: 1) the posture of the case at the time settlement was proposed; 2) the extent that discovery has been conducted; 3) the circumstances surrounding the negotiations; 4) experience of counsel in securities (employment) class action litigation. In Re Jiffy Lube Securities Litigation , 927 F.2d at 155. The focus of the fairness inquiry is to establish the presence or absence of collusion between the parties, to make sure that the settlement was the result of good faith bargaining at arms length. Montgomery County Real Estate Antitrust Lit. v. Jack Foley Realty Inc., 83 F.R.D. at 316.

The "adequacy" of the settlement is evaluated under the five Montgomery factors: 1) the relative strength of the plaintiff's case on the merits; 2) the existence of any difficulties of proof or strong defenses that the plaintiffs are likely to encounter if the case goes to trial; 3) the anticipated duration and expense of additional litigation; 4) the solvency of the defendant; 5) the degree of opposition to the settlement. Montgomery, 83 F.R.D. at 316. These factors seek to weigh the likelihood of plaintiffs' recovery on the merits against the amount offered in settlement. Montgomery, 83 F.R.D. at 316. While it is necessary for the reviewing court to consider the facts and law of the case, it is not necessary or desirable for the court to "try" the case in determining the adequacy of the settlement. Id.

This Court has already applied the above analysis to this settlement, with the information presented to it at that time, and preliminarily approved this settlement, finding it fair and

adequate. Order, Feb. 22, 2003. At this time, the Court is revisiting the settlement to consider the class members' reactions to the settlement and to provide a forum for interested persons to provide the Court with any additional information relevant to its consideration of the settlement.

As indicated by the discussion of the notice campaign and responses (opt-ins and objections), the class response has been overwhelmingly favorable. Approximately 81% of the persons who were given the opportunity to join in the settlement have done so. This response bears out this Court's preliminary finding that, "Based upon the submissions of the parties ... the vast number of associates will likely elect to opt in to the settlement and that there will likely be little, if any, opposition to the settlement." Order, p. 9.

Only five possible objections have been received to the settlement.[2] This is less then one-fifth of one percent of the potential class. The small number of objections indicates the class members' approval of the fairness of the settlement. See, Montgomery County R.E. Antitrust Lit. v. Jack Foley Realty, Inc., 83 F.R.D. at 317-8 (Objectors totaling six percent (6%) of the class indicated that the vast majority of class members favor the proposed settlement). This is especially so when one considers that of the five objections, one objector is not a class member

---

[2] The objections and the grounds are summarized below:

Objection 1: Unclaimed funds should not go to Timmonsville School District; rather, they should be divided among the remaining class members. Objector: Ronald Posey

Objection 2: Claim period should commence before July 1, 2001.
Objectors: Allen Singletary, Victoria Kelley,

Objection 3: Honda should not have to pay any compensation. Objector: Laurie Fergusen

Objection with no standing: Honda should not have to pay any compensation
Objector: James Anderson

and does not have standing to object;[3] and two objections are not legally sufficient as they seek a recovery for the employment period outside of the three years which the Fair Labor Standards Act permits.[4]

Conclusion

Class notice has been proficiently performed; and the class response received. The class response has borne out this Court's preliminary finding that this settlement was "fair, reasonable, just and adequate;" and that "Class Counsel has obtained an excellent result for the class members and HSC has demonstrated good faith..." Order, p. 11. Plaintiffs respectfully suggest that final approval is appropriate.

Justin O'Toole Lucey, Esquire (Fed. I.D. No. 5613)
JUSTIN O'TOOLE LUCEY, P.A.
415 Mill Street
Mt. Pleasant, SC 29464
(843) 849-8400

and

M. Lee Robertson, Jr., Esquire (Fed. I.D. No. 3501)
Robertson Law Firm
1002 Anna Knapp Blvd.
P.O. Box 2110 (29465-2110)
Mount Pleasant, SC 29465
(843) 881-2244

Charleston, South Carolina
July 15, 2005

---

[3] Root v. Ames Dep. Stores, Inc., 989 F.Supp. 274, 275 (D. Mass, 1997) (potential class member who declined to opt-in lacked standing to object to settlement).

[4] The Fair Labor Standards Act essentially permits recovery for the two prior years; and one additional year if a willful violation is proven. McLaughlin v. Richland Shoe Co., 486 U.S. 128, 132-33 (1988) (confirming the two tier statute of limitations under the Fair Labor Standard Act and setting forth the distinction of a willful violation).

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Justin O'Toole Lucey, P.A., attorneys for the Plaintiffs, do hereby certify that I have served the below listed counsel and parties in this action with a copy of the foregoing pleading(s) by delivering a copy of same to the following addresses:

Counsel served:

Via E-Mail and Hand Deliveryl
Susan P. McWilliams, Esquire
Nexsen Pruet
1441 Main Street, Suite 1500
P.O. Drawer 2426
Columbia, SC 29202

Charleston, South Carolina
July 15, 2005