IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Derrick Reed, Willie Murray, Torrance Nealon, Monique Jackson, Sandra Solomon, and Wiley Mallette on their own behalf and on behalf of similarly situated persons, Christopher Boyd, Herman Davis and Gary Roundtree, individually, Plaintiffs, v. Dresser, Inc., Defendant.	Case No. 08-C-0818 Judge Lynn Adelman Magistrate Judge Patrice J. Gorence Jury Trial Demanded

PLAINTIFFS' MEMORANDUM IN SUPPORT
OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs, by their counsel, submit this memorandum in support of their request that the Court enter a final order approving this class action settlement. On July 14, 2010, the Court entered an order preliminarily approving the settlement as within the range of settlements that would be fair, reasonable and adequate, and directed that the claims process proceed. (Ex. 1, attached)

The settlement provides exceptional relief to the African-American class members who sought employment with Dresser Waukesha. The equitable relief obtained in the settlement will materially advance the goal of equal opportunity for African-American job applicants. (Section I.A, below) The monetary relief obtained ($650,000.00) provides a high level of monetary compensation to class members and is fairly allocated. (Section I.B, below). Taken together, the injunctive and monetary components of the settlement provide class members with prompt, certain and comprehensive relief – in contrast to the delay, expense and risks of continuing litigation.

As detailed in the declaration of Jennifer Soule, class members have responded very favorably to the settlement. No class members have objected to the settlement or opted out. (Ex. 2, Soule Declaration, Par. 13) Eighty-eight class members have submitted timely claims that satisfy the eligibility requirements. The class members who have contacted plaintiffs' counsel have reacted positively to the scope and terms of the settlement.

Accordingly, plaintiffs request that the Court enter final approval of the settlement, which will then allow for payment of the settlement funds to the class and payment of attorney's fees and costs to class counsel.

SUMMARY OF SETTLEMENT TERMS

The proposed settlement provides comprehensive injunctive relief and substantial monetary relief. (Ex. 3, Consent Decree)

I. EQUITABLE RELIEF

Dresser Waukesha has agreed to implement comprehensive relief to address the claims asserted by the class. In particular, the settlement agreement obligates defendant to take the following actions during the duration of the Consent Decree, which will be in effect for at least three years[1]:

A. Establishment of Hiring Benchmarks (Ex. 3, Section XVIII. B)

The Company has agreed to establish hiring benchmarks whereby the Company will endeavor to hire African-Americans to positions at rates that reflect the applicant pool and surrounding labor market.

[1]Obligations set out in the Consent Decree will operate for 42 months unless the Monitor determines after 36 months that defendant has complied with the Decree in all materials respects. (See Consent Decree, Section XV.)

B. Appointment of Monitor (Ex. 3, Section XVI)

The proposed settlement provides for the appointment of Nancy Kreiter as a monitor to perform advisory, review and reporting functions during the duration of the Decree. Ms. Kreiter is highly experienced in the role of monitoring and counseling companies with regard to equal employment opportunity issues. In addition to her other responsibilities, Ms. Kreiter will have authority to recommend additional policies and practices designed to meet the objectives of the Decree. Ms. Kreiter will be compensated by defendant from funds separate from the funds being distributed to the class.

C. Provision of Diversity/EEO Training (Ex. 3, Section XVIII. D)

The proposed settlement requires the Company to provide Diversity/EEO training to all employees at its Waukesha facility and to provide additional EEO training to supervisors and managers who have responsibilities for hiring and other employment decisions. One goal of such training is to curb individual biases and stereotypes, which plaintiffs contend have influenced hiring and other employment decisions.

D. EEO Complaint Procedure (Ex. 3, Section XVIII. A)

The proposed settlement provides for the adoption of an EEO complaint procedure and for the tracking and reporting of complaints of discrimination.

E. Review of Hiring Decisions (Ex. 3, Section XVIII. C)

The proposed settlement provides for the monitored review of hiring decisions to determine if minority applicants were fairly considered.

F. Review of Hiring and Employment Policies (Ex. 3, Section XVIII. C)

The proposed settlement calls for the review and revision, as necessary, of employment and hiring policies, procedures and standards, including instituting a process to establish the bona fide applicant pool for particular open jobs.

G. Effective Sources for Recruiting Minority Applicants (Ex. 3, Section XVIII. B)

The proposed settlement requires the Company to use recruiting sources designed to effectively reach potential African-American applicants.

H. Assurance of Open Hiring System (Ex. 3, Section XVIII. C)

The proposed settlement proscribes informal systems for recruiting and hiring family members and friends of defendant's work force, and provides for the operation of an open hiring system.

I. Monitoring and Tracking Measures (Ex. 3, Section XVIII. C)

The proposed settlement requires the Company to implement measures to ensure the accurate processing, review, consideration and tracking of applications for employment, and to monitor the number of African-American employees who are actually considered and interviewed for positions.

J. Accurate Placement and Fair Training of Employees (Ex. 3, Section XVIII. C)

The proposed settlement requires the Company to adopt monitored measures to ensure the accurate placement of employees in job classifications and the availability of training to employees on an equitable basis.

K. Manager Accountability (Ex. 3, Section XVIII. D)

The proposed settlement requires the Company to implement measures to assure manager accountability with regard to diversity and equal employment opportunity goals, including the evaluation of managers with respect to such activities.

II. MONETARY RELIEF

In addition to the comprehensive equitable relief described above, the proposed settlement requires defendant to pay $650,000.00 to members of the class (exclusive of fees and costs). This provides very substantial monetary compensation for the claims at issue considering

the number of positions available during the class period and the number of African-American applicants who applied for these positions.

In this case, the existence and extent of the "shortfall" in hiring African-Americans in this case depends greatly upon the (disputed) scope of the labor market considered and is complicated by the fact for several years during the class period, defendant had a "hiring freeze;" a rough middle range between the parties' estimates of the hiring shortfall would be approximately 10 positions for two years of damages. Ex. 2, Soule Declaration, ¶8. Valued for purposes of a settlement calculation at annual compensation of $32,500 a year, and with no deductions for mitigation of damages, fees or costs, the economic damages from such a shortfall would amount to $650,000.00. Ex. 2, Soule Declaration, ¶11.

Under the settlement, the $650,000.00 fund, (less $10,000.00 in proposed incentive awards to each of the class representatives) will be distributed in its entirety on a pro-rata basis to African-Americans who have submitted eligible claims. In order to submit an eligible claim, all that was required for a class member to do was submit a copy of photo identification and a claim form indicating that he/she is African-American, sought employment with the Company during the class period, and was not hired.

Prior to the deadline for submitting claims, 88 persons[2] submitted qualifying claims. Ex. 2, Soule Declaration, ¶13. This means that if the settlement is approved, each of these claimants will receive an award of approximately $6,704.00 in damages.

III. ATTORNEY'S FEES AND EXPENSES

Reasonable compensation for attorney's fees and expenses to plaintiff's counsel was determined during the mediation supervised by Hunter Hughes, at which time plaintiffs' counsel made available their time records. The proposed settlement provides for the payment of

[2] This number is subject to a small modification based on final verification of claims before September 23, 2010.

$300,000.00 in satisfaction of attorney's fees and expenses incurred in connection with prosecution of the hiring class claims to settlement,[3] and the amount of attorney's fees and expenses going forward is capped at $20,000.00.

As discussed below in Section IV.B.8, and in the declaration of Ms. Soule, Ex. 2, this amount is reasonable and conservative compensation in light of the amount of effort required, and the experience and background of plaintiffs' counsel. Moreover, the lodestar and expenses of plaintiffs' attorneys to date in the various proceedings against the Company exceeds $624,000.00; thus, the amount to be paid for attorney's fees represents a substantial reduction to the lodestar of plaintiffs' counsel.

LEGAL STANDARD

Rule 23(e) of the Federal Rules of Civil Procedure requires court approval for the settlement of class action claims. A court must consider whether the proposed settlement is fair, adequate and reasonable. *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *Armstrong v. Bd. of School Directors*, 616 F.2d 305, 314 (7th Cir. 1980); *Great Neck Capital Appreciation Investment Partnership v. PriceWaterhouseCoopers*, 212 F.R.D. 400, 409 (E.D. Wis. 2002). In this regard, federal courts recognize a strong policy of favoring voluntary settlement of class action litigation and also a policy favoring the voluntary resolution of employment discrimination claims. *Isby*, 75 F.3d at 1196; *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981)("[i]n enacting Title VII, Congress expressed a strong preference encouraging voluntary settlement of employment discrimination claims). A court will not substitute its judgment as to the optimal settlement terms for the judgment of the litigants and their counsel. *Armstrong*, 616 F.2d at 315.

[3] As part of the confidential settlement of six individual non-hiring/non-class claims, plaintiffs' counsel will receive an additional $165,000 in fees. This amount was also determined as part of the mediation with Mr. Hughes.

In assessing whether a settlement is fair, adequate and reasonable, courts have considered such factors as: a comparison of the proposed settlement with the potential result of the litigation; the complexity, expense, risks and likely duration of the litigation; the presence or absence of collusion; the reaction of the class to the settlement; the stage of proceedings and the amount of discovery that has been completed; and the opinion of counsel. *See e.g.*, *Isby*, 75 F.3d at 1199; *Great Neck Capital Appreciation Investment Partnership*, 212 F.R.D. at 409-410; *Scholes v. Stone, McGuire & Benjamin*, 839 F. Supp. 1314,1315 (N.D. Ill. 1993)

ARGUMENT

The Court should grant final approval to the settlement because it is fair, adequate and reasonable, and the settlement is in the best interests of the class.

I. THE SETTLEMENT AGREEMENT PROVIDES EXCEPTIONAL INJUNCTIVE AND MONETARY RELIEF TO THE CLASS

As described above, the settlement provides exceptional injunctive relief that will materially advance the goal of equal employment opportunity for African-Americans seeking employment at Dresser Waukesha. The equitable relief obtained under the settlement includes all of the following: establishment of hiring benchmarks; appointment of a prominent and highly qualified independent monitor; provision of equal employment opportunity and diversity training to the work force; provision of additional EEO training to supervisors with responsibility for employment decisions; establishment of EEO complaint procedure; review and revision of employment policies and procedures; implementation of monitored review of hiring decisions to ensure fairness to minority applicants; use of effective recruiting sources for minority applicants; elimination of informal recruiting and hiring systems; use of effective monitoring and tracking mechanisms with regard to hiring; institution of measures to ensure appropriate placement of employees in positions and fair access to training; and adoption of measures to assure manager

accountability with regard to equal employment opportunity and diversity. These equitable measures might well exceed the scope of relief that plaintiffs would obtain if they prevailed on the merits. By any measure, this is very meaningful relief.

The settlement also provides substantial monetary compensation to the class by requiring defendant to pay $650,000.00 to members of the class. Based on a pro-rata method distribution, (and after deductions for incentive awards to the class representatives), this will provide for payments of approximately $6,704.00 to each eligible class member who has submitted a claim. Had defendant hired African-Americans in proportions comparable to white employees, some additional African-Americans would have been hired, but it is impossible at this point to determine which particular African-American applicants would have been hired. As such, the fairest way to divide the settlement fund is to divide it equally among the eligible applicants who were not hired.

II. CONTINUED LITIGATION WOULD INVOLVE SIGNIFICANT RISKS, COSTS AND DELAY

Plaintiffs' counsel believes strongly in the merits of this case, but recognizes the very substantial risks associated with litigating the case to trial. The fundamental issue in the case – whether defendant unlawfully discriminated against black applicants – was vigorously contested by defendant. The ultimate outcome of the issue would have depended largely on labor market assumptions and methodological issues that could be reasonably disputed by the parties. The task of proving liability would be complicated by the lack of detailed applicant flow data for several years during the class period, and contested issues regarding the appropriate labor market and the impact of "hiring freezes" during several lengthy portions of the class period. As such, there was a risk that the shortfall of African-American hires could be found to be limited and/or

that statistical significance might not be sustained. Ex. 2, Soule Declaration, ¶8. In fact, this defense was presented by defendant to plaintiffs at the mediation.

Balanced against these risks, the equitable relief and monetary relief obtained under the settlement is compelling. Based on favorable assumptions to the class, a rough middle range between the parties' estimates of the shortfall in African-American hires would be approximately ten positions for two years. Ex. 2, Soule Declaration, ¶¶8, 11. Under the settlement, the class is receiving close to full economic compensation for a shortfall of this magnitude, as well as the equitable relief described above.

Moreover, in contrast to the prompt relief that comes with settlement, continued litigation would inevitably entail substantial expense and delay. Many depositions (fact and expert) would need to be taken, and lengthy proceedings related to class certification and summary judgment were likely. Experts would be needed by both sides, and expert analyses would be costly. If the case continued, a trial would be expensive and complex, involving dozens of witnesses. If plaintiffs ultimately prevailed on the merits, they would still face substantial additional delay from a potential appeal and a complex remedial phase prior to receiving any measure of relief.

In short, faced with a non-trivial risk of losing on the merits, a significant risk of a limited monetary recovery, and the certainty of years of litigation against a determined and capable adversary, the relief obtained under the settlement is clearly in the best interests of the class.

III. THE REACTION OF THE CLASS SUPPORTS APPROVAL OF THE SETTLEMENT

After preliminary approval, class notice and claims forms were sent to 1,624 potential class members[4]. Ex. 2, Soule Declaration, ¶13. Notice was also provided by publication in the

[4] This figure includes many persons whose race could not be determined from written records. Of course, non-African-American persons receiving the notice are not class members and were not eligible to submit claims.

Milwaukee Journal Sentinel. In response, 88 persons submitted eligible claims. Ex. 2, Soule Declaration, ¶13. No objections were made to the settlement and no class members opted out. These facts strongly weigh in favor of approving the settlement.

IV. THE PARTIES CONDUCTED EXTENSIVE INVESTIGATION AND ANALYSIS AND THE SETTLEMENT WAS REACHED THROUGH ARMS LENGTH NEGOTIATIONS

The parties engaged in discovery, fact-gathering and intensive analysis before agreeing to the terms of the proposed settlement. Prior to settlement negotiations, the parties exchanged Rule 26 disclosures and answered written discovery. In response to plaintiffs' initial discovery requests, defendant produced a substantial amount of documents and personnel data (including applicant logs, affirmative action plans and an employee data base). Plaintiffs' counsel also gathered pertinent information from other sources with regard to the labor market in this area and the practices of similarly situated employers.

The written discovery received and other facts obtained by plaintiffs' counsel enabled class counsel – who are experienced employment discrimination attorneys – to assess the strengths and weaknesses of the claims against Dresser Waukesha. In particular, counsel conducted statistical analyses related to liability and damages based on the applicant flow data provided by defendant. Ex. 2, Soule Declaration, ¶¶8-9. Dresser Waukesha did the same. These analyses formed the basis for negotiations regarding the monetary terms of the settlement.

Moreover, as a result of discovery exchanges and communications with class members, class counsel were well informed regarding Dresser Waukesha's employment policies and practices. Ex. 2, Soule Declaration, ¶¶7-9. This information was relied upon in negotiating the injunctive relief terms of the settlement.

The actual negotiations process was non-collusive and closely supervised. The parties participated in negotiations conducted by an experienced, nationally-recognized mediator

specializing in complex employment discrimination cases, Hunter Hughes. There were two full days of in-person negotiations and numerous follow-up conversations before an agreement was reached. Under the supervision of Mr. Hughes, all negotiations were conducted at arms length and in good faith, and were informed by the extensive data and information analyzed by the parties. Ex. 2, Soule Declaration, ¶10.

V. THE RECOMMENDATIONS OF EXPERIENCED COUNSEL FAVOR APPROVAL OF THE SETTLEMENT

The judgment of experienced counsel regarding a settlement is entitled to significant weight. *See Armstrong*, 616 F.2d at 325. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, class counsel have extensive experience prosecuting and litigating employment discrimination cases and complex class actions, and have thoroughly investigated and analyzed the claims in this case. Ex. 2, Soule Declaration, ¶2. Based on this analysis, and taking into account the risks, expense and delay of further litigation, class counsel firmly believe that the proposed settlement satisfies Rule 23(e)'s requirements and is in the best interests of the class members. Ex. 2, Soule Declaration, ¶12.

VI. THE REQUESTED INCENTIVE AWARDS ARE REASONABLE

As indicated in plaintiffs' motion for preliminary approval and supporting memorandum, the settlement provides for incentive awards in the amount of $10,000.00 to each of the class representatives. These awards are appropriate and reasonable.

A trial court has discretion to approve incentive awards to class representatives. *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); *Mego Financial Corp. Sec. Litig. v. Nadler*, 213 F.23d 454, 463 (9th Cir. 2000). The criteria related to determining whether to approve an incentive award and the amount of the award include: (1) the risk to the class representative in commencing the case, both financial and otherwise; (2) the notoriety and personal difficulty

encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit, or lack thereof, enjoyed by the class representative as a result of the litigation. *Id. See also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 299 (N.D. Cal. 1995); *Razilov v. Nationwide Mut. Ins. Co.*, 2006 WL 3312024 at *1 (D. Or. November 13, 2006).

These facts support the incentive awards provided for in the settlement. The case involved substantial notoriety in the sense of local media coverage and in terms of alerting the current employers of the class representatives to their involvement in a controversial proceeding. In addition, each of the class representatives spent significant time and effort in connection with the litigation. The class representatives worked closely with counsel in the development of the case, including identifying witnesses, preparing disclosures and participating in discussions of case strategy and settlement. Ex. 2, Soule Declaration, ¶28.

Moreover, absent an incentive award, the only personal benefit to the class representatives from their efforts in the litigation would be their pro-rata share of the settlement fund. The class representatives, who have each asserted claims in the case regarding specific positions they were denied, are not being hired by defendant, and this ultimate measure of relief will redound to the benefit of future black applicants.

Lastly, the $10,000 incentive awards sought here are modest in comparison to other class cases. *See e.g.*, *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)(affirming $25,000.00 award to named plaintiff); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890 at *6 (E.D. Pa. Dec. 1, 2004)(award of $20,000.00 to each named plaintiff); *In re Linerboard Antitrust Litigation*, 2004 WL 1221350 (awarding $25,000.00 to each of five class representatives); *Van*

Vraken v. Atl. Richfield Co., 901 Supp.2d 294, 299 (N.D. Cal. 1995)(approving incentive award of $50,000.00 to class representative who personally benefitted little from the litigation).

VII. THE AMOUNT ALLOCATED FOR ATTORNEY'S FEES AND EXPENSES IS REASONABLE

Under Title VII and the Civil Rights Attorney's Fees Act, 42 U.S.C. Sect. 1988, a prevailing plaintiff is entitled to an award of attorney's fees and costs. The court's task in awarding fees in civil rights cases, such as this one, "is as much a matter of assuring an adequate fee as it is of eschewing an excessive one." *Bennett v. Central Telephone Co. Of Illinois*, 619 F. Supp. 640, 650 (N.D. Ill. 1985).

The proposed settlement provides that, separate from the $650,000.00 in funds to be distributed to the class and class representatives, plaintiffs' counsel will receive $300,000.00 in payment of fees and expenses incurred in connection with prosecuting the class claims, and an additional $20,000.00 for work to be performed in the course of implementing and monitoring the settlement. These amounts were negotiated during the mediation supervised by Mr. Hughes. Also at the mediation, the claims of the six individual employees with claims against the company (three of whom are plaintiffs in this case and three of whom are arbitration plaintiffs) were also settled, and plaintiffs' counsel agreed to accept $165,000.00 in attorney's fees and expenses for work on those cases. As such, the total amount of fees and expenses to be received by plaintiffs for work in the overall litigation, including both class and 6 individual non-class claims, (and including the arbitration proceeding) is $485,000.00.

This amount is very conservative as measured by the applicable legal principles and the amount of effort expended by plaintiffs' counsel in the case. In general, the amount of a reasonable attorney's fee is calculated by multiplying the number of hours reasonably expended by the attorney's hourly rate (the "lodestar" method). *Hensley v. Eckerhart*, 461 U.S. 424, 433

(1983). Here, as summarized in the Soule declaration, Ex. 2, and supported by the time records appended to that declaration as Attachment A, the actual lodestar plus expenses[5] in the overall litigation to date is $624,634.25:

	Hours	Rate	Total
Soule, Bradtke & Lambert			
Jennifer K. Soule	355.40	$ 415	147,491.00
James G. Bradtke	528.10	$ 450	237,645.00
Kelly K. Lambert	8.60	$ 415	3,569.00
Daniel McNeely	451.20	$ 300	135,360.00
Law Clerk	122.90	$ 115	14,133.50
Paralegal	10.40	$ 135	1,404.00
SBL TOTAL LODESTAR:			$ 539,602.50
SBL Expenses:			6,161.57
Law Offices of Peter Earle, LLC, Fees and Expenses:			78,870.18
Total Fees and Expenses:			624,634.25

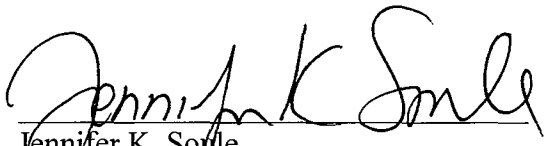
Thus, the amount of attorney's fees and expenses to be paid under the global settlement agreements ($485,000.00) constitutes a substantial discount to the actual fees and expenses incurred in the overall litigation. In further support of the agreed fee request, plaintiffs submit the declarations of Ms. Soule, Ex. 2, Mr. Earle, Ex. 4, and Mr. Allison, Ex. 5. The declarations of Ms. Soule and Mr. Earle provide detailed information regarding the hourly rates charged by counsel, the work performed on the case, and the background of plaintiffs' attorneys. The declaration of Mr. Allison further attests that the rates charged are reasonable hourly rates.

CONCLUSION

For all the foregoing reasons, the Court should approve the proposed settlement as fair, reasonable and adequate.

[5] The case expenses are authenticated in the Soule Declaration, Ex. 2 and Earle Declaration, Ex. 4, and are identified with specificity in the appended billing records.

Respectfully submitted,



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Dated: September 16, 2010

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