

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
JUL 29 2002

ZAIDA ESPANA, VITALIA MERO,)
VIRGINIA MUÑOZ, and ROSELIA)
CASILDO)
Plaintiffs,)
v.)
MID-WEST WIRE SPECIALTIES, INC.,)
Defendant.)
Case No. 01 C 0210
Judge Rebecca R. Pallmeyer
Magistrate Judge Sidney I. Schenckier

FILED
JUL 26 2002
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

CLASS ACTION SETTLEMENT AGREEMENT

Defendant Mid-West Wire Specialties, Inc. (“MWWS”), by its attorneys, and Plaintiffs and the Settlement Class Representatives, by Class Counsel, hereby enter into this Settlement Agreement with its Exhibits (“Settlement Agreement”) and agree to the following terms:

1. Description of Litigation

1.1 On January 11, 2002, Plaintiffs Zaida Espana and Vitalia Mero filed the lawsuit against MWWS. Espana claimed recovery for hostile environment and *quid pro quo* sexual harassment, as well as retaliation in violation of Title VII of the Civil Rights Act of 1964. Mero claimed recovery for hostile environment sexual harassment.

1.2 On August 30, 2001, Plaintiffs filed an Amended Complaint. The Amended Complaint added claims that Espana and Mero represented a class of employees affected by a pattern and practice of a hostile work environment, *quid pro quo* sexual harassment and retaliation. The Amended Complaint also added an individual retaliation claim by Mero.

1.3 Class Counsel has conducted substantial discovery in the Litigation. Class Counsel has deposed the alleged harassors, the owners of MWWS, the attorney who conducted the sexual harassment investigation, and purported witnesses to the harassment. Class Counsel also has served multiple sets of interrogatories and document requests upon MWWS, and has reviewed these responses and documents. MWWS similarly has conducted discovery, and deposed the Named Plaintiffs.

1.4 This Settlement Agreement was negotiated before Plaintiffs filed their motion for class certification. The parties here stipulate that this action may be contingently certified, solely for purposes of settlement, as a class action pursuant to Fed. R. Civ. P. 23(b)(3), on behalf of the two classes defined in Section 2.15.

2. *Definitions Applicable to the Settlement Agreement*

The parties agree that the following definitions here apply:

2.1 *Charging Parties* means Zaida Espana, Vitalia Mero, Virginia Munoz, and Roselia Casildo.

2.2 *Claim Amount*, for each Eligible Class Member, means the amount set forth in Section 10.

2.3 *Class Counsel* means Uche O. Asonye, Asonye & Associates, 11 South LaSalle Street, Suite 2140, Chicago, IL 60603.

2.4 *Class Representatives* means Zaida Espana, Vitalia Mero, Virginia Munoz, and Roselia Casildo.

2.5 *Court* means the United States District Court for the Northern District of Illinois.

2.6 *Effective Date* means the date that the Final Judgment is entered.

2.7 *Eligible Class Member* means a member of the Class who was living as of the Effective Date.

2.8 *Employee Settlement Class Members* means current and former full-time female employees of MWWS who worked at MWWS at any time between January 1, 1995 and December 31, 2001. A list of Employee Settlement Class Members is attached as Exhibit A.

2.9 *Final Judgment* means the final judgment of the Court approving this Settlement Agreement and dismissing the Espana action with prejudice, substantially in the form attached as Exhibit D.

2.10 *Litigation* means this lawsuit, entitled Espana, et al. v. Mid-West Wire Specialties, Inc., No. 01 C 0210 (N. D. Ill.).

2.11 *Magistrate* means a Magistrate Judge appointed by the Court to resolve disputes pursuant to Section 9, or consented to by the parties.

2.12 *MWWS Parties* means all and each of MWWS and its present and former divisions (including Accurate Winecraft Division) and direct and indirect affiliates (including Bolek Building Company), as well as each of their present and former shareholders, officers, directors, committees, employees, parents, subsidiaries, attorneys, benefit plans, insurers, partners, consultants, advisers, agents, and representatives, as well as MWWS' predecessors, successors, and assigns.

2.13 *Named Class Members* means Zaida Espana, Vitalia Mero and Virginia Munoz on behalf of the Employee Settlement Class Members, and Roselia Casildo on behalf of the Temporary Worker Settlement Class Members.

2.14 *Order of Preliminary Approval* has the meaning given in Section 5.1.

2.15 *Settlement Classes* mean all of the individuals in the following groups:

- (1) All current and former full-time female employees of Mid-West Wire Specialties, Inc., 4545 West Cortland Avenue, Chicago, Illinois, who worked at Mid-West at any time between January 1, 1995 and December 31, 2001; and
- (2) All female workers who were sent by a temporary agency to perform services at Mid-West Wire Specialties, Inc., and performed services there for any 20 consecutive work-days between January 1, 1998 and December 31, 2001.

2.16 *Temporary Worker Settlement Class Members* means all female workers who were sent by a temporary agency to perform services at Mid-West Wire Specialties, Inc., and performed services there for any 20 consecutive work-days between January 1, 1998 and December 31, 2001.

A list of Temporary Worker Settlement Class Members is attached as Exhibit B.

3. *Benefits of Settlement.*

3.1 *To the Class.* In deciding to enter into this Settlement Agreement, the Class Representatives and Class Counsel recognized the length of further proceedings necessary to complete the Litigation against MWWS through a jury trial and subsequent appeals. The Class Representatives and Class Counsel considered the uncertainty and delays of litigation and the various possible outcomes of litigation. Given these considerations, risks and uncertainties, the Class Representatives and Class Counsel have determined that it is beneficial that the claims of all Class Members be settled on the terms set forth herein.

3.2 *To MWWS.* MWWS has concluded that the further conduct of the Litigation would be protracted, expensive and subject to variable outcomes. Absent settlement, substantial amounts of time and resources would continue to be spent in the defense of the claims asserted on behalf of Class Members. Without admitting liability, MWWS therefore has determined that it is beneficial

that all claims of the Classes be settled on the terms set forth herein.

4. *No Admissions.*

4.1 All of the MWWS Parties continue to deny any wrongdoing or legal liability arising out of any of the claims against MWWS in the Litigation. Neither this Settlement Agreement, any document referred to herein, nor any action effectuating this Settlement Agreement may be construed as an admission of wrongdoing or liability by any of the MWWS Parties.

4.2 The Class Representatives have contended and continue to contend that the claims made on behalf of the Classes in this Litigation are meritorious. This Settlement Agreement may not be construed as an admission by the Classes that their claims lack merit.

4.3 The negotiation and implementation of this Settlement Agreement may not be construed as an admission by any party. The Settlement Agreement shall not be introduced in evidence in any proceeding against any party hereto in any court or agency or other tribunal for any purpose, except to secure Court approval of this Settlement Agreement or to enforce its provisions.

5. *Class Action Notice Order.*

5.1 The parties shall submit this Settlement Agreement to the Court and shall seek from the Court an Order of Preliminary Approval, substantially in the form of Exhibit C hereto, providing that the Litigation will be stayed and providing for notice to the Class of the hearing on the proposed settlement.

5.2 Following entry of the Order of Preliminary Approval, Class Counsel shall (i) mail by first class mail a copy of the Notice contemplated by that order to each Class Member at her last known address; and (ii) submit a proof of such mailing to the Court. Defendant shall bear the full cost of distributing this notice.

5.3 The Notice sent to Class Members shall include instructions on how to be excluded from the class if a class member so desires ("opt-out"). The Notice also will include a claim form, which the putative class member must timely return in order to qualify to receive money under this Settlement Agreement. The Notice will be substantially in the form of Exhibit E.

5.4 Class counsel shall notify counsel for MWWS of any Notices returned for bad addresses.

5.5 In addition, on or about the date of mailing of the Notice, Defendant shall publish on a one-time only basis and at its expense the terms of the Notice in a Spanish language newspaper of general circulation in the neighborhood in which Defendant's facility is located.

6. *Final Judgment to be Entered Approving the Settlement.*

After notice to Class Members, and upon Court approval of this Settlement Agreement and the expiration of the opt-out period, the parties will request that a Final Judgment be entered substantially in the form of Exhibit D hereto, which will be enforceable against MWWS.

7. *Releases and Related Matters.*

7.1 Upon the Effective Date, each of the Class Representatives and anyone claiming on behalf of or through any Class Representative releases and discharges any and all rights, claims or causes of action, whether known or unknown, which any of the Class Representatives, or anyone claiming, on behalf of or through any class representative has or may have against any of the MWWS Parties.

7.2 Upon the Effective Date, the MWWS Parties will be released and discharged from any and all rights, claims or causes of action, whether known or unknown, which any Class Member or anyone claiming on behalf of or through a Class Member has or may have against any of the

MWWS Parties. The Judgment shall forever bar all Class Members and anyone claiming on behalf of or through a Class Member from instituting or prosecuting, either directly or indirectly, any such claims or causes of action against any of the MWWS Parties.

7.3 Neither this Settlement Agreement nor the Judgment may be construed as an admission by any of the MWWS Parties of any wrongdoing or liability. This Settlement Agreement, the Judgment and any related documents shall not be introduced in evidence in any proceeding against any MWWS Party in any Court or agency or other tribunal for any purpose, except to secure Court approval of the Settlement Agreement or to enforce the terms of the Settlement Agreement or Judgment.

7.4 This Settlement Agreement does not waive any claim which may arise regarding enforcement of this Settlement Agreement and the Judgment incorporating this Settlement Agreement.

7.5 This Settlement Agreement does not waive any claim arising under Illinois worker's compensation or unemployment compensation law.

8. *Modification of Class Member Lists.*

8.1 If, within 60 days following the Effective Date, MWWS or Class Counsel believes that an individual has been erroneously included or excluded from Exhibits A or B, the inclusion or exclusion will be brought to the attention of the other party. If the other party does not agree as to the inclusion or exclusion of an individual on Exhibit A or B, the disagreement shall be resolved by the Magistrate applying the appropriate definitions in Section 2.

8.2 If, within 60 days after the Effective Date, any individual claims that she has been erroneously excluded from Exhibit A or B, but MWWS and Class Counsel determine that she is

properly excluded, then the decision of MWWS and Class Counsel shall be final and binding.

8.3 No claim for inclusion in Exhibits A or B will be considered that has not been presented in writing to and received by Class Counsel and Counsel for MWWS within 60 days after the Effective Date.

9. *Dispute Resolution by The Magistrate.*

9.1 Any controversy or dispute arising out of or relating to the following matters shall be resolved by the Magistrate: individual questions arising under Section 8 related to inclusion or exclusion from Exhibit A or B.

9.2 Before submitting a dispute to the Magistrate, the aggrieved party shall give the other party written notice of such dispute. The party receiving such notice shall send the aggrieved party a written response within 21 days after receipt.

9.3 If, after receipt of a written response as described in Section 9.2, the parties are unable to resolve the dispute for a period of time not to exceed 30 days, the aggrieved party may, within 15 days after the 30 day period, send a written demand to the other party that the issue be resolved by the Magistrate pursuant to this Section. No demand will be allowed after these time limits.

9.4 In the event that the Class Counsel and MWWS are unable to resolve a dispute for which a right to submit the matter to the Magistrate has been provided in this Settlement Agreement, that dispute will be presented to the Magistrate. The Magistrate will not have the authority to modify or amend this Settlement Agreement, but rather solely to apply the Settlement Agreement, as written, to particular factual situations. The Magistrate will consult with the parties and will make a final and binding decision after such formal or informal hearing as the Magistrate deems appropriate.

10. *Claim Amounts and Procedures.*

10.1 Within 21 (twenty-one) days of the entry of the Final Judgment (Ex. D), MWWS will pay the following sums to those Eligible Class Members who did not exercise their right under Fed. R. Civ. P. 23(b)(3), (c)(2) to be excluded from the class and who returned completed Claim Forms. These amounts are gross amounts, and may be subject to state and federal taxes, and other required deductions and withholding.

- \$500 (five hundred dollars) in punitive damages to each Temporary Worker Settlement Class Member listed on Exhibit B;
- \$2,000 (two thousand dollars) in punitive damages to each Employee Settlement Class Member listed on Exhibit A;
- \$20,000 (twenty thousand dollars) to each of the Named Class Representatives Virginia Munoz and Roselia Casildo, of which \$5,000 is backpay and \$15,000 is punitive damages; and
- \$35,000 (thirty-five thousand dollars) to each of the Named Class Representatives Zaida Espana and Vitalia Mero, of which \$5,000 is backpay and \$30,000 is punitive damages.

The combined total sum to be paid by MWWS to members of the classes shall not exceed \$283,500 (two hundred and eighty-three thousand and five hundred dollars).

10.2 If any state or federal taxing authority seeks payments or penalties for tax withholding, social security, Medicare, or FUTA due to any MWWS payment to a class member under this Settlement Agreement, the class member at issue shall indemnify MWWS for the payments and penalties assessed.

10.3 Any Class Member who fails to timely submit a Claim Form has waived her right to receive any money under this Settlement Agreement, but nonetheless shall be bound by the Settlement Agreement and its terms, including the Release and Waiver contained in Section 7.

11. *Costs and Attorneys Fees.*

11.1 Plaintiffs and Class Counsel warrant and represent that Class Counsel is the only attorney who has represented the Plaintiff, and that no other attorney has a lien for attorney's fees or has any claim for fees and costs in regard to this lawsuit.

11.2 If at the end of the period for putative class members to opt-out those opt-outs have not exceeded the number specified in Section 13.1.2, MWWS shall within 14 (fourteen) days after the expiration of the opt-out period pay Class Counsel \$65,000 (sixty-five thousand dollars), representing one-half of the total fees and expenses due to Class Counsel under this Settlement Agreement. Within 14 (fourteen) days after the Effective Date, MWWS will pay Class Counsel the remaining amount of \$65,000 (sixty-five thousand dollars). Of that amount, \$110,000.00 is attributable to attorney fees and \$20,000.00 to costs.

11.3 All Costs and Attorney Fees awarded to Class Counsel are subject to the approval of the Court. Prior to the Effective Date, Class Counsel shall release any attorney's fees liens filed and present evidence of that release to MWWS Counsel. Class Counsel, as a condition of receiving fees under this Settlement Agreement, waives and releases any liens or rights to further fees or payment for services rendered to any Class Member.

12. *Non-Monetary Settlement Terms*

12.1 Within 30 days of the Effective Date, MWWS shall purge from the personnel file of any Class Member still employed at MWWS any disciplinary notice issued by Roberto Anzures.

12.2 MWWS shall not in the future rehire Roberto Anzures in any capacity.

12.3 Within 60 days of the Effective Date, MWWS shall have retained a Spanish-speaking administrator. That administrator shall report directly to the President, and shall have responsibilities

for enforcing the Company's harassment policy, including the investigation of complaints.

12.4 MWWS shall enforce the Harassment Policy promulgated February 15, 2002 in English, Spanish and Polish, attached as Exhibit F.

13. *Conditions of Settlement.*

13.1 This Settlement Agreement is subject to fulfillment of the following Conditions:

13.1.1 The Court enters the Notice Order without material modification.

13.1.2 Fewer than 6 (six) Temporary Worker Settlement Class Members, and fewer than 8 (eight) Employee Settlement Class Members, exercise their right to opt-out.

13.1.3 All Class Members, including the Named Class Members and any other Charging Parties, each obtain a written dismissal with prejudice as to each charge or complaint filed by them with the Equal Employment Opportunity Commission, Illinois Human Rights Department, City of Chicago Human Rights Commission, and any other agency or court. That written dismissal must expressly provide that the agency retains no right to prosecute or investigate MWWS under that charge or complaint.

13.1.4 The Court enters the Judgment and that Judgment becomes Final without material modification.

13.1.5 There is an Effective Date.

13.2 If any of the conditions specified in Section 13.1 above is not fulfilled, this Settlement Agreement shall be terminated unless MWWS, within 30 days from the date that the failure of a condition becomes known to MWWS, provides written notice to Class Counsel of its intent to proceed.

14. *Effect of Disapproval and Termination.*

14.1 If this Settlement Agreement is terminated or fails to become effective for any reason, the positions of the parties to this Settlement Agreement shall be deemed to have reverted to what they were as of the date and time immediately prior to the execution of this Settlement Agreement and they shall, except as otherwise expressly provided herein, proceed in all respects as if this Settlement Agreement and related orders had not been executed. Class Counsel shall be given a reasonable amount of time in which to file a motion for certification of a class for litigation purposes, and MWWS shall be given a reasonable amount of time in which to oppose class certification.

14.2 If this Settlement Agreement is terminated or fails to become effective for any reason, Class Counsel shall remit to MWWS Counsel any and all attorneys fees and expenses received by him from MWWS under this Agreement. Those sums must be returned within 7 (seven) days of a written notice from MWWS Counsel to Class Counsel of the termination of the Settlement Agreement. The Court will retain jurisdiction to enforce Class Counsel's return of these sums.

14.3 The parties specifically agree that in the event that any subsequent proceedings in the Espana case are necessary, each of the parties will bear its own costs and expenses (including attorneys and expert fees); provided, however, that this is in no way a waiver of any party's rights to receive such fees or costs as part of any ultimate judgment following trial on the merits, if any. Notwithstanding the foregoing, in the event that Plaintiffs are required to initiate further proceedings to enforce Defendant's obligation to pay sums due under this Settlement Agreement, Class Counsel shall be entitled to a reasonable attorney's fee in connection with such action. The Court will retain jurisdiction to enforce said obligation.

14.4 Each party agrees that, in the event that this Settlement Agreement is terminated or fails to become effective, it will not offer or attempt to place in evidence, or otherwise refer to, this Settlement Agreement, the negotiations which led to its signing, or its termination or failure to become effective, in any subsequent proceeding or otherwise.

15. *Miscellaneous Provisions.*

15.1 After the Court's preliminary approval of the Settlement Agreement and before Notices are received by Class Members, Class Counsel and his translator will be introduced by the MWWS President in a group meeting at the MWWS facility of Class Members still employed. The MWWS President will introduce Class Counsel, and advise the Employee Class Members that a settlement has been reached by all parties; that the Company supports the Settlement; that employees will soon receive information about the Settlement; and that they must direct any questions solely to Class Counsel. Class Counsel then shall be permitted to speak alone with the Employee Class Members.

15.2 The Exhibits hereto are incorporated in this Settlement Agreement as though fully set forth herein. If there is any conflict between this Settlement Agreement and any Exhibit, this Settlement Agreement controls. References in this Settlement Agreement to "Sections" and "Exhibits" refer to the Sections and Exhibits of this Settlement Agreement unless otherwise specified.

15.3 This Settlement Agreement may be amended or modified only by a written instrument signed by the Class Representatives who are then living and MWWS.

15.4 The waiver by one party of (a) any breach by the other party of, or (b) any other right to enforce, or claim, or benefit under, this Settlement Agreement shall not be deemed a waiver of

any other breach of, or right to enforce, or claim, or benefit under, this Settlement Agreement.

15.5 This Settlement Agreement constitutes the entire agreement between the parties, and no representations, warranties, or inducements have been made to either party concerning this Settlement Agreement, other than the representations, warranties and covenants contained in this Settlement Agreement.

15.6 The Class Representatives expressly authorize Class Counsel to take all appropriate action required or permitted to be taken by the Class Representatives pursuant to this Settlement Agreement to effectuate its terms. The Class Representatives also expressly authorize Class Counsel to enter into any modifications or amendments to this Settlement Agreement on behalf of them that Class Counsel deems appropriate from the date this Settlement Agreement is signed until the Judgment is entered.

15.7 This Settlement Agreement maybe executed in two or more counterparts. All executed counterparts and each of them shall be deemed to be one of the same instrument, provided that counsel for the parties to this Settlement Agreement shall exchange among themselves original signed counterparts.

15.8 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

15.9 MWWS represents and warrants that it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

15.10 All terms of this Settlement Agreement and the Exhibits hereto shall be governed and interpreted according to the substantive laws of the State of Illinois, except to the extent that federal law preempts application of Illinois law.

15.11 Any notice, request, information or other document to be given under this Agreement to any of the parties by any other party shall be in writing and delivered personally by UPS, Federal Express or other carrier, transmitted by facsimile, or sent by registered mail, postage prepaid, as follows:

If to the Settlement Class Representatives or Class Counsel, addressed to:

Uche O. Asonye
Asonye & Associates
11 South LaSalle Street, Suite 2140
Chicago, IL 60603

If to MWWS, addressed to:

Chris Sitkiewicz
President
Mid-West Wire Specialties, Inc.
4545 West Cortland Avenue
Chicago, IL 60639

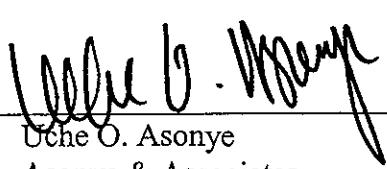
and

Michael W. Duffee
Matkov, Salzman, Madoff & Gunn
55 East Monroe Street, Suite 2900
Chicago, Illinois 60603-5709

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to be executed by themselves or their duly authorized attorneys.

FOR THE SETTLEMENT CLASSES:

By:


Uche O. Asonye
Asonye & Associates
11 South LaSalle Street, Suite 2140
Chicago, IL 60603

Dated:

7/17/02

FOR MID-WEST WIRE SPECIALTIES, INC.:

By:


Michael W. Duffee
Matkov, Salzman, Madoff & Gunn
55 East Monroe Street, Suite 2900
Chicago, IL 60603

Dated:

7/25/02

THE REPRESENTATIVES OF THE SETTLEMENT CLASSES:


Zaida Espana

Date: 7/15/02

X 
Vitalia Mero

Date: 7/17/02

X 
Virginia Munoz

Date: 7/17/02

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Roselia Casildo

Date: 7-12-02

See Case
File For
Exhibits