IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

Sylvester McClain, et al.	§	Civil Action No. 9:97 CV 063 (COBB)
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
Lufkin Industries, Inc.	§	
	§	
Defendant.	§	

PLAINTIFFS' OPPOSITION TO DEFENDANT LUFKIN INDUSTRIES, INC.'S MOTION TO AMEND AND MAKE ADDITIONAL FINDINGS OF FACT

I. INTRODUCTION

Plaintiffs submit this response in opposition to Defendant Lufkin Industries, Inc.'s ("Lufkin") Motion to Amend and Make Additional Findings. Lufkin's motion is not designed to modify the findings or correct specific alleged errors. Instead, it is a wholesale assault on the Court's decision, consisting of both a request that the Court reverse itself and find in favor of Lufkin and against Plaintiffs and the class, and alternatively, a request that the Court enter 87 proposed amended or additional findings, which would assure a reversal of this Court's Judgment by the Court of Appeals. Lufkin's motion advances no argument nor presents any new evidence which would indicate that the Court's findings are erroneous in law or fact, or that the Court should reverse its liability findings and preliminary remedial order against Lufkin. Instead, Lufkin "reurges" its previously submitted Motion for Judgment on Partial Findings, its Amended Proposed Post-Trial Findings of Fact and Conclusions of Law, and its Motion for Summary Judgment, all of which were considered and expressly or implicitly rejected by the Court. This is an abuse of Federal Rules of Civil Procedure 52 and 59.

Additionally, Lufkin fails to offer any support that any of the 87 additional or amended findings it requests that the Court enter are necessary or appropriate at this stage of proceedings, after the Court has carefully reviewed the trial record and made its considered decision. In fact, as Plaintiffs demonstrate in this Opposition, Lufkin's proposed additional or amended findings are unnecessary and inappropriate in that they are not supported by the record, are recycled interpretations of the record Lufkin already has proposed and the Court has rejected, and/or reflect a mischaracterization of Plaintiffs' claims and the legal principles applicable to this disparate impact case. Plaintiffs oppose Lufkin's proposed additional or amended findings Nos. 1-86 in their entirety and No. 87, in part, as will be discussed below.

The Court, which has overseen this case for nearly eight years, was able to assess the evidence presented, including the reliability and credibility of witnesses called by the parties. The Court's carefully crafted liability findings are more than sufficiently detailed to allow a reviewing court to determine that the Court's ultimate findings and conclusions are solidly

supported by the evidence, are not clearly erroneous (as to the findings), and are based on a proper understanding of the applicable legal principles (as to the conclusions). The Court should therefore reject Lufkin's motion in its entirety (except as to No. 87, as noted below).

II. ARGUMENT

A. Requirements of Federal Rule of Civil Procedure 52(a).

Federal Rule of Civil Procedure 52(a) requires that

> (i)n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon. .... Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

A court's findings "must be sufficiently detailed to give (the reviewing court) a clear understanding of the analytical process by which ultimate findings were reached and to assure (the reviewing court) that the trial court took care in ascertaining the facts." Vicon, Inc. v. CMI Corp., 657 F.2d 768, 771 (5th Cir. 1981), quoting Golf City Inc. v. Wilson Sporting Goods Co., 555 F.2d 426, 433 (5th Cir. 1977). This requirement is not rigid. "Courts need not indulge in exegetics, or parse or declaim every fact and each nuance and hypothesis." Vicon, 657 F.2d at 771, quoting Gulf King Shrimp Co. v. Wirtz, 407 F.2d 508, 518 (5th Cir. 1969). The test is whether findings are sufficiently comprehensive and pertinent to the issues to provide a basis for decision. Id. at 515. In making this assessment, the district court's factual findings are examined for clear error pursuant to Fed. R. Civ. P. 52(a). Patterson v. P.H.P. Healthcare Corp., 90 F.3d 927, 933 (5th Cir. 1996), citing EEOC v. Clear Lake Dodge, 60 F.3d 1146, 1151 (5th Cir. 1995) ("Under this standard, we reverse a district court's judgment based on erroneous fact findings only when, after weighing the evidence, we are definitely and firmly convinced that a district court made a mistake."). "Where the court's finding is based on its decision to credit the testimony of one witness over that of another, 'that finding, if not internally inconsistent, can virtually never be clear error.'" Patterson, 90 F.3d at 933-34, quoting Anderson v. Bessemer City, 470 U.S. 564, 575 (1985) (internal citation omitted). If the district court's findings are

plausible in light of the evidence presented, a reviewing court may not reverse its decision even if it would have reached a different conclusion. Anderson, 470 U.S. at 573-74.

B. Requirements of Federal Rules of Civil Procedure 52(b) and 59(e).

Rule 52(b) provides, in pertinent part, that "[u]pon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly." Rule 52(b) is not intended to allow parties to rehash old arguments already considered and rejected by the trial court, see Am. Train Dispatchers Ass'n v. Norfolk & W. Ry. Co., 627 F. Supp. 941, 947 (N.D. Ind. 1985); its purpose is to permit the correction of any manifest errors of law or fact that are discovered, upon reconsideration, by the trial court, in order to enable the appellate court to obtain the correct understanding of factual issues determined by the trial court as a basis for the conclusions of law and judgment entered thereon. United States v. Carolina E. Chem. Co., Inc., 639 F. Supp. 1420, 1423 (D. S.C. 1986); see 9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure§2582 (2d ed. 1995) (the primary purpose of Rule 52(b) is to allow the district court to correct manifest errors of fact or law or to consider newly discovered evidence. The rule, however, is not intended as a vehicle for obtaining rehearing of a party's case).

Similarly, "[a] court possesses 'considerable discretion in deciding whether to reopen a case in response to a motion for reconsideration arising under' Rule 59(e)." Lupo v. Wyeth-Ayerst Labs., 4 F. Supp. 2d 642, 645 (E.D. Tex. 1997); quoting Lavespere v. Niagara Mach. & Tool Works, Inc., 910 F.2d 167, 174 (5th Cir.1990), cert. denied, 510 U.S. 859 (1993). "Motions for reconsideration serve the narrow purpose of allowing a party 'to correct manifest errors of law or fact or to present newly discovered evidence.'" Id. at 645, quoting Waltman v. Int'l Paper Co., 875 F.2d 468, 473 (5th Cir.1989); and citing Williams v. Miss. Action for Progress, Inc., 824 F. Supp. 621, 623-24 (S.D. Miss. 1993). Rule 59(e) motions, therefore, "should not be used to raise arguments that could, and should, have been made before the entry of judgment ... [or] to re-urge matters that have already been advanced by a party." Lupo, 4 F. Supp. 2d at 645,

quoting In re Liljenerg Enter., Civ. A. No. 97-0456, 1997 WL 222497, at * 2, *3 (E.D. La. May 1, 1997); and citing State v. Sprint Communications Co., 899 F. Supp. 282, 284 (M.D. La.1995) ("[L]itigants are expected to present their strongest case when the matter is first considered. A motion to reconsider based on recycled arguments only serves to waste the resources of the court."); Resolution Trust Corp. v. Holmes, 846 F. Supp. 1310, 1316 (S.D. Tex.1994) (motion to reconsider is not "the proper vehicle for rehashing old arguments or advancing legal theories that could have been presented earlier").

C. In "Reurging" Motions and Pleadings Already Considered and Rejected by the Court, Lufkin Fails to Meet its Burden of Demonstrating Why the Court's Liability Findings are Clearly Erroneous and Why They Should be Altered or Amended.

Lufkin "reurges" its previously submitted Motion for Judgment on Partial Findings, its Amended Proposed Findings of Fact and Conclusions of Law ("Amended Proposed Findings"), and its Motion for Summary Judgment. Lufkin contends that "[t]hese previous filings explain why the *only* proper judgment is a judgment against Plaintiffs on all claims." Lufkin's Motion to Amend at 1-2 (emphasis added).[1] In advancing arguments that Lufkin admits it has already made, all of which were considered by the Court and expressly or implicitly rejected in its Memorandum and Order entered January 13, 2005, Lufkin's motion, on its face, fails to meet its burden under Rules 52(b) and 59(e) of demonstrating why the Court's findings and judgment in favor of Plaintiffs are clearly erroneous.[2] The Court should, therefore, reject Lufkin's motion to reverse and amend the judgment in favor of Lufkin.

[1] This peculiar word choice suggests that, in Lufkin's view, the Court lacked the power, in exercising its adjudicatory duty, to rule for Plaintiffs.

[2] Indeed, by not even attempting to meet its burden under Rules 52(b) or 59(e), Lufkin's motion to reverse the judgment fails to comply with Federal Rule of Civil Procedure 11(b).

D. Lufkin Fails to Provide Any Argument or Refer to Any Evidence Supporting Why the Court Should Adopt Lufkin's Proposed Amended or Additional Findings Nos. 1-86.

Alternatively, Lufkin proposes that the Court adopt 87 amended or additional findings. See Lufkin Motion to Amend at 2-14. Lufkin provides absolutely no argument or explanation why any of the proposed amended or additional findings are necessary, appropriate or supported by the record, applicable law or new evidence. Notwithstanding Lufkin's access to the entire record since the trial, Lufkin's Motion fails to refer to any evidence of record supporting its proposed amendments or contradicting the Court's findings. Moreover, Lufkin fails to address the credibility determinations the Court made and on which the Court's factual findings are based (see e.g. Mem. and Order at 19, 20, 21, 22-23, 25-27), nor does it argue why the Court's decisions to credit Plaintiffs' witnesses over Lufkin's witnesses were clear errors. Accordingly, Lufkin has failed to demonstrate that it is entitled to the relief it seeks under Rules 52(b) and 59(e).[3] Attached to this Opposition is a chart in which Plaintiffs list Lufkin's proposed amended or additional findings Nos. 1-86, and Plaintiffs' response to each demonstrating why the proposed findings are (1) not supported by the record; (2) not supported by applicable legal principles; (3) have already been proposed by Lufkin and implicitly, if not expressly, rejected by the Court; (4) irrelevant; and/or (5) merely argumentative and devoid of substance. See Exhibit 1, which includes detailed summaries of the record, with citations to specific evidence in the record that support the Court's findings. See also Plaintiffs' Proposed Post-Trial Findings of Fact and Conclusions of Law.

[3] In the absence of even a facial showing to support its request that the additional or amended findings it proposes are necessary or appropriate, Lufkin's Motion, likewise fails to comply with Federal Rule of Civil Procedure 11(b).

E. Plaintiffs Do Not Oppose Lufkin's Proposed Amended or Additional Finding No 87 in its Entirety.

The one exception – as to which Plaintiffs do not completely oppose Lufkin's proposed amendment – is the Court's finding to apply a 10% pre-judgment interest rate. See Mem. and Order at 34. The Court has the discretion to award prejudgment interest and to set an appropriate rate to make a Title VII plaintiff whole. Williams v. Trader Publ'g Co., 218 F.3d 481, 488 (5th Cir. 2000). Furthermore, the Court may vary the rate of post-judgment interest set by 28 U.S.C. §1961 depending on the circumstances of the case. Id. However, since the Court noted that it chose a 10% rate of interest "to reflect Texas law," Mem. and Order at 34, Plaintiffs do not oppose Lufkin's request that the Court "delete the award of pre-judgment interest at the rate of 10%" and set a lower rate, consistent with current Texas law, which changed during the course of these proceedings.

Lufkin, however, misstates the current law. Texas Finance Code§304.003, which Lufkin cites, provides that, effective June 20, 2003:

> The postjudgment interest rate is:
>
> (1) the prime rate as published by the Federal Reserve Bank of New York on the date of computation;
>
> (2) five percent a year if the prime rate as published by the Federal Reserve Bank of New York described by Subdivision (1) is less than five percent;
>
> (3) 15 percent a year if the prime rate as published by the Federal Reserve Bank of New York described by Subdivision (1) is more than 15 percent.

Tex. Fin. Code§304.003(c) (emphasis added).

During the class period, the annual prime rate has fluctuated between a high of 9.23% (2000) and a low of 4.12% (2003). See www.federalreserve.gov/releases/h15/data.htm. Accordingly, Plaintiffs oppose Lufkin's proposal that the Court find that "Texas law … establishes a lower rate of 5%," Lufkin's Motion to Amend at 14,¶87, or that the Court find that the applicable pre-judgment interest rate for each year of the class period is 5%. If the Court

decides to amend this finding, Plaintiffs will submit evidence based on which the Court may then properly exercise its rate-setting discretion.[4]

III. CONCLUSION

For all of the reasons discussed above and in the attached Exhibit, which is incorporated in this Opposition by reference, Plaintiffs respectfully submit that the Court deny Lufkin's motion to alter or amend its Memorandum and Order and Judgment to find in favor of Lufkin, and that the Court deny Lufkin's proposed altered or amended findings Nos. 1-86. Plaintiffs have no objection to Lufkin's proposal that the Court alter or amend its finding on post-judgment interest to less than 10% to reflect the change in Texas law, but oppose and request that the Court reject Lufkin's request that the Court find that the interest rate applicable for all years during the liability period is 5%.

Dated: February 11, 2005

Respectfully submitted,

By: /S/

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[4] In the event that the Court determines to alter or amend its finding on the pre-judgment interest rate, the Court should do so upon further proceedings to determine the applicable rate and the manner and method of calculation and distribution of the monetary award to the class. On this point, Plaintiffs have requested that Lufkin produce to Plaintiffs up-to-date computerized data on the class members' earnings through January 14, 2005. Lufkin did not respond to this request. Therefore, Plaintiffs have served written discovery requesting the production of the data on Lufkin. Upon receipt of this data, Plaintiffs will present to the Court a further declaration of Dr. Drogin, which will calculate the value of the Court's monetary award to the class, together with a request that the Court enter a supplemental Order and Judgment which includes the overall amount of the award and the direction that it be distributed to class members as specified in the Court's opinion.

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CERTIFICATE OF SERVICE

I hereby certify that I have served all counsel of record in this case, including the following, with a true and correct copy of the foregoing by sending same via electronic filing to:

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on this 11th day of February, 2005.

/S/
Teresa Demchak