

Roberts v. Texaco, Inc.

United States District Court for the Southern District of New York
March 21, 1997, Decided ; March 21, 1997, Filed
94 Civ. 2015 (CLB)

Reporter: 1997 U.S. Dist. LEXIS 23848

BARI-ELLEN ROBERTS, SIL CHAMBERS, JANET LEIGH WILLIAMS, MARSHA HARRIS, BEATRICE HESTER and VERONICA SHINAULT, Individually and as Class Representatives, Plaintiffs, -against- TEXACO, INC., Defendant,

Counsel: [*1] For BARI-ELLEN ROBERTS, SIL CHAMBERS, plaintiffs: Daniel L. Berger, Berstein Litowitz Berger & Grossmann LLP, New York, NY.

For BARI-ELLEN ROBERTS, SIL CHAMBERS, plaintiffs: Daniel L. Berger, Steven B. Singer, Bernstein, Litowitz, Berger & Grossmann LLP, New York, NY.

For BARI-ELLEN ROBERTS, SIL CHAMBERS, plaintiffs: Richard T. Sampson, Semmes, Bowen & Semmes, Baltimore, MD.

For BARI-ELLEN ROBERTS, SIL CHAMBERS, plaintiffs: David J. Shaffer, Semmes, Bowen & Semmes, Washington, DC.

For BARI-ELLEN ROBERTS, SIL CHAMBERS, plaintiffs: Cyrus Mehri, Esq., Mehri, Malkin & Ross, P.L.L.C., Washington, DC.

For VERONICA SHINAULT, plaintiff: Daniel L. Berger, Bernstein Litowitz Berger & Grossman LLP, New York, NY.

For TEXACO INCORPORATED, defendant: Andrea S. Christensen, Kaye, Scholer, Fierman, Hays & Handler, New York, NY USA.

Judges: Charles L. Brieant, U.S.D.J.

Opinion by: Charles L. Brieant

Opinion

MEMORANDUM DECISION

Brieant, J.

There is now before the Court a motion by plaintiffs after notice and hearing to approve the terms and conditions of a settlement negotiated in favor of a Settlement Class pursuant to a Stipulation and Settlement Agreement dated January 21, 1997 (the [*2] "Settlement Agreement") filed

in this Court on January 23, 1997. By Order to Show Cause filed January 23, 1997, this Court certified a Settlement Class consisting of all African-Americans employed in a salaried position in the United States by Texaco or its subsidiaries, and subject to the Texaco Merit Salary Program at any time from March 23, 1991 through and including November 15, 1996 ("the Class").

The familiarity of the reader is assumed with respect to all matters shown in the record of this case, including the detailed description and history of the litigation and the negotiation of the proposed settlement set forth in the affidavit of Daniel L. Berger and Michael D. Hausfeld verified March 12, 1997.

In compliance with the Order to Show Cause, a hearing was held by this Court on March 18, 1997.

Notice had been given to the Class members, consisting of approximately 1,348 persons by first class mail, and such notice was actually received by all the members of the Class, except for eight persons who could not be located. As to them, this Court has provided for notice by publication by order filed March 17, 1997, familiarity with which is assumed.

The United States Department [*3] of Labor has reviewed the proposed Settlement and finds no objection thereto. The United States Equal Opportunity Employment Commission has appeared in the action by its attorneys and has entered into an unopposed agreement with Texaco dated January 3, 1997. Familiarity of the reader with that document is also assumed. The Stipulation and Settlement Agreement between the EEOC and Texaco, Inc. grants to the Commission the right to enforce the Settlement Agreement. Also, it does not preclude the Commission from exercising any of its statutory powers.

The NAACP Legal Defense and Educational Fund, Inc. has appeared in this litigation as an amicus curiae and has informed the Court that "the proposed Settlement Agreement is innovative and will be highly effective as a model for ending systemic discrimination in employment"

No member of the Class has opted out of the litigation, and no objections have been received from any member of the Class, except with regard to legal fees.

This Settlement was a product of arms length bargaining between knowledgeable plaintiffs acting through their attorneys, and also at times dealing directly with Texaco. The Settlement terms provide for a [*4] cash settlement fund of \$ 115,000,000.00, which has already been deposited in escrow with a bank and has been earning interest since November 22, 1996. Plaintiffs' counsel estimate that the average award to class members will exceed \$ 63,000.00. Furthermore, each Class member presently employed at Texaco as of January 1, 1997 will receive a salary increase of 11.34%. This is said to aggregate \$ 4,000,000.00 in the first year and is in addition to any other pay increase any Class member would routinely receive in 1997 in the ordinary course of business. The settlement also provides for an innovative monitoring task force funded by Texaco, which will act under the jurisdiction of this Court over a five year period in connection with the implementation of the Human Resources Program changes agreed to or resulting from the Settlement. This Task Force, which will remain in effect for a five year period carries an estimated cost to Texaco of \$ 35,000,000.00, and its responsibility extends beyond the salaried employees included within the defined Class as set forth in the Settlement Agreement.

This Court resists the temptation to summarize the specific agreements for the future contained [*5] in the Settlement Agreement, beyond noting that they are highly favorable to the accomplishment of the goals and hopes for improved equality in employment and legal opportunity for advancement shared by the Class Action plaintiffs and the highest ranking officers of Texaco.

We Note that the agreement reflects a denial on the part of Texaco of any intention to discriminate in the past, and that with respect to such discrimination as may have been present the Chief Executive Officer and the Board of Directors had no actual or direct knowledge, nor did they directly cause the existence of whatever problems may have been present.

The controlling case law on the subject of class action settlements is well known. See City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974), and Kirkland v. New York State Department of Correctional Services, 711 F.2d 1117 (2d Cir. 1983) cert. denied sub nom. Althiser v. New York State Department of Correctional Services, 465 U.S. 1005, 79 L. Ed. 2d 230, 104 S. Ct. 997 (1984).

As is clear from the submissions received on this application, all of the nine factors set forth in *Grinnell* which a Court should consider in determining [*6] whether to approve settlement of a Class Action have been satisfied. By formula, the allocation of damages among the Class members has been resolved in order that the cost and

uncertainty of separate hearings or trials to prove the damages of each Class member is obviated. This Court agrees with the contention of plaintiffs' counsel that if the case were to go to trial and plaintiffs prevailed on *all* of their claims it is highly unlikely that plaintiffs would be able to recover any greater financial benefits than are set forth in the Settlement Agreement; many years might go by before they recovered anything, and as far as the consensual monitoring Task Force is concerned it is highly unlikely that the Court would impose such a post-trial supervisory scheme upon the defendant, even if it lost the case totally.

Over an extensive period of time, the attorneys for the plaintiffs have investigated the merits of the claims and have taken pretrial discovery. The EEOC has investigated the plaintiffs' claims and at the direction of the Court this litigation was mediated for a period of approximately four months, involving twenty-five separate mediation sessions under the auspices of the [*7] Community Relations Service of the United States Department of Justice. Accordingly, all parties have become fully familiar with the issues relating to the plaintiffs' class wide claims of discrimination and by the time the settlement was reached were fully prepared and informed so as to be able to assess the strengths and weaknesses of their claims. The entire record before this Court demonstrates that counsel for plaintiffs have weighed their litigation position based upon a full consideration of all the possibilities facing them and the risks of trial. The Settlement Class, as defined, includes more persons subject to the Texaco Merit Salary Program than the Class comprised within the EEOC Determination affecting African-American employees at pay grades 7 through 14 only.

A difficulty of proof exists in the case because many members of the Class are employed in different and varied positions in facilities throughout the Nation, so that it would be difficult for a trial jury to extrapolate evidence of apparent discrimination against one employee in one location and in one job title to apply to a national workforce. That Texaco is sufficiently solvent to withstand a judgment beyond [*8] the dreams of avarice does not diminish in any way the extraordinary result for the class achieved by the settlement process.

Based upon the entire presentation to this Court, including factors concerning which the Court does not perceive it necessary to comment in its decision, this Court finds and concludes that the settlements arrived at by arms length negotiation between equally informed parties is fair and reasonable, and highly beneficial to the Class. It should be and hereby is approved.

Also before this Court for consideration is the separate issue of approval of the proposed application for an award

of attorneys' fees, reimbursement of litigation expenses, and an application by the individual class representative plaintiffs for incentive awards. Several individual members of the Settlement Class have written to the Court objecting to the "amount and manner of disbursement of fees" These objections, essentially "form letters" incorporate by reference an article in the *Wall Street Journal* on March 27, 1997 which appears to be rife with irony but of little help to any court in fixing a fair fee. Nevertheless, the court recognizes its obligation to compensate the lawyers [*9] who produced the result fairly, and at the same time to protect the interests of the absent class members from any excess charges. Accordingly, this matter requires further study and will be resolved by the Court by separate Findings and Conclusions to be developed. Defendant Texaco has no interest in the matter of the legal fees or incentive awards, since under the settlement agreement, they will be paid out of the principal of the fund created by the settlement. These issues are severed from the application for approval and ratification of the Settlement itself.

There is no just cause for delay. See *Rule 54(b) F.R.Civ.P.* The Court will file a judgment at this time approving the Settlement and authorizing and directing its performance by the parties, and reserving jurisdiction over the parties and the subject matter with respect to such performance. The Court also retains jurisdiction on the matter of the fees and disbursements, and incentive awards.

A Judgment has been signed.

Dated: White Plains, New York

March 21, 1997

Charles L. Brieant, U.S.D.J.

JUDGMENT

WHEREAS:

A. On January 23, 1997, this Court entered an Order to Show Cause regarding certification of [*10] plaintiffs Chambers, Williams, Harris, Hester and Shinault as representatives of a Settlement Class consisting of all African-Americans employed in a salaried position subject to the Texaco Merit Salary Program in the United States by Texaco Inc. ("Texaco") or its subsidiaries at any time from March 23, 1991 through and including November 15, 1996 (the "Class" or "Settlement Class").

B. On January 21, 1997, plaintiffs entered into a Stipulation and Settlement Agreement (the "Settlement Agreement") in settlement of all claims in the above-captioned litigation (the "Action") with Texaco (the "Settlement").

C. Pursuant to the January 23, 1997 Order, this Court directed that a hearing be held on March 18, 1997 at 9:00 a.m. to determine, among other things, whether the proposed Settlement should be approved by the Court as being fair, reasonable and adequate and whether final judgment should be entered thereon, and to consider whether to approve the application of Class Counsel for an award of attorneys' fees and reimbursement of expenses.

D. Pursuant to that Order, this Court ordered that the Notice of Pendency of Class Action, Proposed Settlement and Fairness Hearing (the "Notice"), [*11] substantially in the form attached to the Settlement Agreement as Exhibit B, be mailed by first-class mail, postage prepaid, by January 24, 1997, to each member of the Class.

E. As attested by the affidavits of Michael Rosenbaum and Judith R. Goldfien, filed with this Court on March 12, 1997, the provisions of said Order as to notice were complied with.

F. The Notice stated that, pursuant to the Court's January 23, 1997 Order, the time for Class members to opt-out of the Settlement or to file objections expired on March 4, 1997. No Class members have opted-out of the Settlement, and no Class members have objected to the Settlement or the Plan of Allocation.

G. The hearing on the proposed Settlement was duly held before this Court on March 18, 1997, at which time all interested persons were afforded the opportunity to be heard. This Court has duly considered all of the submissions and arguments presented with respect to the proposed Settlement, Plan of Allocation, request for attorneys' fees and reimbursement of expenses by Class Counsel and request for Incentive Awards to the named plaintiffs.

NOW THEREFORE, after due deliberation, and the Court having filed its Memorandum and [*12] Order dated March 21, 1997, this Court hereby FINDS, CONCLUDES, ADJUDGES AND DECREES that:

1. For purposes of this Judgment, the following terms have the following meanings:

a. *Subsidiaries*: For purposes of this Judgment, "subsidiaries" shall mean entities in which Texaco has, directly or indirectly, more than a 50% ownership interest.

b. *Settlement Class*: For purposes of this Judgment, "Settlement Class" shall mean all African-American employees who were employed in a salaried position subject to the Texaco Merit Salary Program in the United States by Texaco or its subsidiaries at any time from March 23, 1991 through and including November 15,

1996. Employees whose salaried position was not subject to the Texaco Merit Salary Program are not within the Settlement Class. For purposes of this Judgment, African-Americans shall mean persons who, pursuant to the EEOC's Race/Ethnic Identification form, designated themselves to Texaco as "Black", including those who signed a release of claims in exchange for an enhanced severance package.

2. The notification provided for and given to the Class constitutes the best notice practicable under the circumstances and is in full compliance [*13] with the notice requirements of due process and *Rule 23 of the Federal Rules of Civil Procedure*.

3. This Order is binding on all members of the Class as described in the Court's Order of January 23, 1997.

4. The proposed Settlement of the Action on the terms and conditions set forth in the Settlement Agreement is fair, reasonable and adequate, is in the best interests of the Class and should be approved, especially in light of the benefits to the Settlement Class and the complexity, expense and probable duration of further litigation, the substantial discovery and investigation conducted and the risks of establishing liability.

It is further ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement and the proposed Settlement are hereby approved and shall be consummated in accordance with the terms and provisions thereof.

2. The Plan of Allocation set forth in the Settlement Agreement and Notice is hereby approved and shall be implemented in accordance with the terms and provisions thereof.

3. David Berdon & Co., L.L.P. is appointed settlement administrator to distribute the Settlement Fund as set forth in the Plan of Allocation.

4. All claims alleged in this Action [*14] are hereby dismissed in their entirety on the merits, with prejudice, and without costs to any party.

5. The First Amended Complaint is hereby dismissed in its entirety on the merits, with prejudice, and without costs to any party.

6. Upon the entry of this Judgment, the plaintiffs and each member of the Class will have released Texaco from, and have covenanted not to sue it on, any and all claims under federal or state law that have been, or could have been, asserted against Texaco arising out of or relating to claims

of employment discrimination (including retaliation) or disparate treatment or impact in his or her employment by Texaco prior to November 16, 1996, including any for discrimination on the basis of age, disability, gender, national origin, race, religion or any other factor or protected classification (the "Settled Claims"). Upon the entry of this Judgment, any and all Settled Claims will be dismissed with prejudice.

7. Plaintiffs, each member of the Settlement Class, their successors, heirs and assigns, and anyone acting on their behalf, including in a representative or derivative capacity, are hereby permanently enjoined and restrained from asserting, instituting [*15] or prosecuting, either directly or indirectly, in any suit, action, proceeding or dispute, any Settled Claim, in whole or in part, against Texaco in any state or federal court or other forum.

8. This Judgment, the Settlement Agreement, and all papers related to it are not, and shall not be construed to be, an admission by Texaco of any liability or wrongdoing whatsoever, and shall not be offered as evidence of any such liability or wrongdoing in this or any future proceeding, and shall not be deemed as a concession or an admission by plaintiffs or the Class of any lack of merit of their claims.

9. All other issues not specifically resolved herein, including but not by way of limitation, applications for legal fees, reimbursement of litigation expenses and incentive awards for individual class representative plaintiffs are hereby severed and reserved for future decision by this Court. Jurisdiction is also hereby reserved over all matters relating to the Settlement in accordance with the Settlement Agreement.

10. Without affecting the finality of this Judgment, the Court also retains exclusive jurisdiction over the Settlement Agreement, including its administration, consummation, [*16] and performance in order to determine issues relating to any distribution to members of the Settlement Class. In addition, without affecting the finality of this Judgment, the Court retains exclusive jurisdiction over Texaco, plaintiffs and each member of the Settlement Class for the purpose of enabling any of them to apply to the Court at anytime for further orders and directions as may be necessary or appropriate for the construction and implementation of the terms of the Settlement Agreement and Judgment. Texaco, plaintiffs and each member of the Settlement Class are hereby deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of or relating to this Judgment, the Settlement Agreement or the applicability of the Settlement Agreement and exhibits thereto.

11. The Court finds, pursuant to *Fed.R.Civ.P. 54(b)*, that there is no just reason for delay, and directs the Clerk to enter this Judgment.

SO ORDERED.

Dated: White Plains, New York

March 21, 1997

Charles L. Bricant, U.S.D.J.