

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**LINDA SMITH, et al., and the
Class They Seek to Represent,**)

Plaintiffs,)

v.)

**UNITED STATES STEEL
CORPORATION,**)

Defendant.)

**CIVIL ACTION NO:
2:05-CV-1359-VEH**

PRELIMINARY APPROVAL ORDER

This cause is now before the Court on the Joint Motion for Preliminary Approval of a Class Action Settlement (Doc. 53) between plaintiffs, Linda Smith, Heather McGuffie, Arleen Thomas, Christy Warren, Angela Farmer, Jamie Allen, Teresa Davis, Lucie Johnson, Ginger Beasley, Annette Pack, Odora Beckwood, Phyllis Andrews and Ann Shaw as Class Representatives (“Plaintiffs”), and defendant, United States Steel Corporation (“USS”) filed on November 21, 2008. The Court has been advised that the parties have agreed, subject to Court approval following notice to the class members and a hearing, to settle this action upon the terms and conditions set forth in the Class Action Settlement Agreement

(“Agreement”), which has been submitted to the Court and is hereby adopted and made a part of this Order as if fully set forth herein.

The Court has now thoroughly reviewed the Agreement, in light of all of the filings, records, and proceedings in this case. Based upon this review and after careful consideration, the Joint Motion for Preliminary Approval of a Class Action Settlement is **GRANTED**. Relatedly, the Court further finds and orders as follows:

JURISDICTION

1. This Court has jurisdiction over the claims at issue in this action, as well as to the parties to this proceeding.

PREVIOUS PROCEEDINGS

2. Substantial discovery has been initiated and completed in this case. Plaintiff has filed a Motion to Amend the Complaint (Doc. 26) to allow additional named plaintiffs to join the case, and defendant opposed this Motion. Subsequent to discovery, the parties have engaged in extensive mediation and settlement discussions. The parties have kept the Court informed of the status of their settlement efforts.

AMENDMENT

3. The Court has granted (Doc. 47) Plaintiffs’ Amended Motion to Amend (Doc. 46) and Plaintiffs’ earlier Motion to Amend (Doc. 26) has been deemed moot.

(Doc. 47). In the event the Agreement is not finally approved or does not become effective, then, upon the request of either party, the Court will vacate its Order (Doc. 47) granting the Amended Motion to Amend and mooted Plaintiffs' earlier Motion to Amend (Doc. 26), and will set a new briefing schedule on such Motions. In such event, no party shall have waived any right to seek approval of or challenge/contest the Motions to Amend. (Docs. 26 and 46).

THE SETTLEMENT CLASS

4. For the purposes of settlement of this case only, Plaintiffs seek to have the following settlement class certified: all females (1) who applied via RTI's USS website for employment as a Utility Person or Utility Technician at USS's Fairfield Works from March 3, 2004 to February 29, 2008; (2) who did not voluntarily withdraw that application; (3) who subsequent to making that application were not hired or offered employment by USS at USS's Fairfield Works as a Utility Person or Utility Technician; (4) who have been legally authorized to work in the United States at all times since making that application; (5) who have been ready, willing and able to work at all times since making that application; (6) who at the time of making that application had one year of industrial experience as described in the Claim Form attached as Exhibit 1 to the Settlement Agreement; (7) who have not filed for bankruptcy since making that application; and (8) who have not been in prison and

unable to work since making that application. For the purposes of settlement, defendant USS agrees to the conditional certification of said class. Applying the factors set forth in Rule 23(a) and Rule 23(b)(3), the Court determines that it is appropriate to conditionally certify said class for settlement purposes.

a. Numerosity

The numerosity requirement of Rule 23(a) is satisfied because the proposed class involves in excess of 500 females who have accessed the internet intake screen (Doc. 54), the initial step in the hiring process at USS's Fairfield Works for entry level production positions during the relevant time period. The Court also finds that joinder would be impracticable.

b. Commonality

The commonality requirement of Rule 23(a)(2) is satisfied because there is at least one factual or legal issue which is common to all or substantially all of the class members. Plaintiffs allege that USS's requirement of two years heavy industrial experience has a disparate impact on females. This allegation involves interrelated factual and legal issues for each potential member of the class. Stated another way, Plaintiffs allege USS's conduct impacts all class members by a general policy.

c. Typicality

Rule 23(a)(3) typicality is generally satisfied when the named plaintiffs' claims arise from the same common nucleus of operative facts as the claims of absent class members. In this case, the typicality requirement is satisfied as the named plaintiffs and the potential class members all claim that USS's two years heavy industrial experience requirement had a disparate impact upon them in the same fashion.

d. Adequacy of Representation

Rule 23(a)(4) requires that the class representatives and their counsel fairly and adequately protect the interests of the class. Class counsel in this case are highly skilled, competent and experienced class action attorneys who have a long history of successfully litigating class action civil rights lawsuits, are knowledgeable of the applicable law, and have committed the necessary resources to the case. Further, the Court notes that class counsel have vigorously litigated this case for several years, have done extensive work in identifying and investigating potential claims in this action, and have successfully negotiated a settlement for the class. The Court is satisfied class counsel have and will continue to adequately represent the class. The Court also finds that the class representatives have adequately represented the class. The class representatives' interests are sufficiently

aligned with the interests of the unnamed class members and they have taken an active role in working with class counsel in the prosecution of this litigation.

e. Predominance

Rule 23(b)(3) requires that questions of law and fact common to the claims of Plaintiffs and each class member predominate over any questions of law or fact affecting any individual members of the class. All claims by named plaintiffs and the unnamed class members are based on an allegation that USS's two year heavy industrial experience requirement had a disparate impact on females in hiring for entry level production positions at USS's Fairfield Works. Thus, the liability issue is common to the class in this case. As all claims by Plaintiffs and the class members are based on the same alleged across the board experience requirement, the predominance requirement of Fed. Civ. P. 23(b)(3) is satisfied.

f. Superiority

Pursuant to Rule 23(b)(3), the court finds that a class action is superior to individuals' actions in this case because (1) joinder of all class members would create extreme hardship and inconvenience for the class members due to the geographic dispersion of the class members; (2) there are no known individual class members who are interested in individually controlling the prosecution of separate actions; (3) the interest of justice would be well served by resolving the common

disputes of the class members in one forum resulting in efficiencies to the Court system; (4) individual suits would not be cost effective and would have a potential detrimental impact on the Court's ability to manage and control its docket; and (5) this action is manageable as a class action and individual lawsuits would result in great inefficiencies and cost to the Court, Plaintiffs, class members, and USS.

In the event the Agreement is not finally approved by the Court, than this conditional class certification is null and void, shall no longer be in effect and shall not be used or referred to for any further purpose in this action or any other action or proceeding. In such event, no party shall have waived the right to seek approval of or challenge/contest class certification in this case.

NOTICE TO CLASS MEMBERS

5. The Court finds that the proposed notice to the class members attached to the Agreement as Exhibit 3 satisfies due process and is constitutionally adequate, both in terms of its substance and the manner in which it is to be disseminated. First, the methods employed by the parties to identify settlement class members are reasonable. Second, the notice contains all of the essential elements necessary to satisfy any due process concerns, including: (a) the nature of the action; (b) the definition of the class certified; (c) a description of the class claims, issues and defenses; (d) the identities of the parties; (e) a summary of the terms of the proposed

settlement and of class counsel's intent to apply for fees; (f) notice that the class member may appear through an attorney; and (g) information regarding the manner in which objections can be submitted, how a class member can seek exclusion from the class, what facts will result in denial of a class member's claim, and the binding effect of the class judgment. The notice properly informs the settlement class members of the basis for distribution of benefits under the settlement, as well as the date and location of the fairness hearing ("Fairness Hearing") on the settlement. The contents of the notice, accordingly, satisfy all of the requirements of Rule 23 and due process.

6. The manner in which the notice is to be disseminated also satisfies the requirements of Rule 23 and due process. Notice will be sent by first class mail at the Court's direction to all settlement class members whose names and last known addresses are reasonably available. The Court finds that reasonable efforts have been made to obtain the most current addresses for all settlement class members. The individual notices will be disseminated at least sixty (60) days prior to the Fairness Hearing, providing ample time for the settlement class members to decide whether to accept or reject the settlement. If class notice sent to any class member is returned, the claims administrator will make an attempt to determine the class member's current address via a social security number search and then, if a more current address is

located, re-mail the notice to that address. Accordingly, the Court finds that the method of identifying settlement class members, as well as the timing, form, content and method of disseminating the individual notice to those persons, comports with due process and the requirements of Rule 23.

PRELIMINARY APPROVAL OF SETTLEMENT TERMS

7. The Class Action Settlement Agreement and the terms contained therein are preliminary approved as fair, reasonable, just and adequate provided, however, that to the extent there is any conflict between the Agreement and this Order, this Order controls.

FAIRNESS HEARING

8. The Fairness Hearing shall be conducted on Friday, February 20, 2009, which is a date no earlier than seventy-five (75) days from the date of entry of this Order. The Fairness Hearing shall take place beginning at 1:00 p.m. in Courtroom 6A of the Hugo L. Black Federal Courthouse, 1729 5th Avenue North, Birmingham, Alabama 35203, for this Court to consider and determine: (a) whether the proposed settlement of this action is fair, reasonable, and adequate and should be approved; (b) the merit of the objections, if any, made to the Agreement or any of its terms; and (c) other matters related to the settlement.

9. The Fairness Hearing described herein may be postponed, adjourned or continued by order of the Court without further notice to the settlement class. If after the Fairness Hearing the Court finds the proposed settlement of this Action to be fair, reasonable, and adequate, it shall enter a Final Order and Judgment approving the Agreement between Plaintiffs, the settlement class members, and USS in accordance with the Agreement, which order and judgment will fully adjudicate the rights of all Non-Excluded Class Members.

10. Pursuant to the terms of paragraph V(A) of the Agreement, USS is hereby directed to prepare and provide to the Claims Administrator the class member list within fourteen (14) calendar days of the entry of this Order. Promptly thereafter, pursuant to the procedures detailed in the Agreement, the Claims Administrator must provide notice of the Fairness Hearing to all class members as follows:

- (a) by mailing a copy of the class notice substantially in the form attached to the Agreement as Exhibit 3; and
- (b) by undertaking such further efforts at notice as required by the Agreement.

11. The Claims Administrator shall print such individual notices with the address of the Claims Administrator as the return address. The Claims Administrator shall record all notices returned for any reason and shall comply with the terms of the Agreement in response to any such returned notice.

12. The reasonable cost and expense of printing and preparing to mail the notices and the reasonable costs and expenses of the Claims Administrator and other related administrative expenses shall be reimbursed from the payment obligations as set forth in paragraph VI of the Agreement.

13. Prior to the Fairness Hearing described in paragraph 8 above, class counsel shall serve and file a sworn statement of the Claims Administrator evidencing compliance with the provisions of this Order concerning the mailing of the class notices.

14. Any non-excluded class member who objects to the approval of the proposed Agreement may appear at the Fairness Hearing in person or through counsel to show cause why the proposed Agreement should not be approved as fair, reasonable, and adequate.

15. Any and all objections by a Non-Excluded Class Member must be set forth in writing, be mailed via First Class Mail, postage prepaid and postmarked at least thirty (30) days prior to the Fairness Hearing, be personally signed by the objecting class member and be delivered at least fourteen (14) days prior to the Fairness Hearing, to the Clerk of the Court and to the Claims Administrator. Any notice of intent to appear at the Fairness Hearing to present objections must also be in writing, personally signed by the objecting class member, postmarked at least thirty

(30) days prior to the Fairness Hearing and delivered so that it is received no later than fourteen (14) days prior to the Fairness Hearing, to the Clerk of the Court and to the Claims Administrator. No Non-Excluded Class Member will be allowed to appear and object at the Fairness Hearing unless she timely submits her Notice to Appear.

16. Any class member whose objection is not post-marked at least thirty (30) days prior to the Fairness Hearing and whose objection is not received at least fourteen (14) days prior to the Fairness Hearing in the manner provided for in the Agreement and class notice shall be deemed to have waived any such objections to the settlement for all purposes. This waiver shall preclude any assertion of any grounds for objection in an appeal filed in these actions, through collateral attack and other proceedings, or otherwise. Said Non-Excluded Class Member shall be bound by all terms of the Agreement and by all proceedings, orders and judgments in this action.

17. If a Non-Excluded Class Member hires an attorney to represent her, she must do so at her own expense. Any such attorney must file a notice of appearance with the Clerk of the Court and deliver it to Class Counsel and Counsel for USS so that it is received at least fourteen (14) days prior to the Fairness Hearing. If such attorney is not admitted to practice before this Court, the attorney must file a pro hac

vice motion and pay the appropriate fee no later than three (3) business days prior to the Fairness Hearing.

18. Any class member who desires to submit a proof of claim form must submit a complete, verified and signed claim form by First Class Mail, postage prepaid and postmarked at least thirty (30) days prior to the Fairness Hearing, to the Claims Administrator and in time to be received by the Claims Administrator at least fourteen (14) days prior to the Fairness Hearing. The proof of claim shall be in the form as attached to the Agreement as Exhibit 1. By submitting a proof of claim, the class member thereby submits to the jurisdiction of the Court for purposes of this action and agrees that her proof of claim is subject to investigation and discovery. Approval and payment of a claim shall be in accordance with the procedures set forth in the Agreement.

19. Any request for exclusion from the settlement must be set forth in writing, mailed via First Class Mail, postage prepaid and postmarked at least thirty (30) days prior to the Fairness Hearing, be personally signed by the class member and be received by the Clerk of the Court and to the Claims Administrator no later than fourteen (14) days prior to the Fairness Hearing.

20. Within ten (10) days before the Fairness Hearing, the Claims Administrator shall:

- (a) notify in writing USS counsel and class counsel and provide the names of class members, if any, who request exclusion;
- (b) file with the Court a sworn statement listing all persons who have submitted timely requests for exclusion;
- (c) provide copies of all requests for exclusion received to USS's counsel and class counsel. The originals of all requests for exclusion shall be retained by the Settlement Administrator unless and until such originals are delivered to the Court or to class counsel at the conclusion of these proceedings; and
- (d) conventionally file (not e-file) with the Court and provide copies to USS's counsel and class counsel of all objections and notices of intent to appear (with the envelope in which such objections and notices were delivered) received by the Settlement Administrator. The original of all objections and notices of intent to appear and envelopes shall be retained by the Settlement Administrator unless and until such originals are delivered to the Court or to class counsel at the conclusion of these proceedings.

21. Any submissions in support of the proposed settlement shall be filed with the Court not less than seven (7) days prior to the Fairness Hearing. Plaintiffs and/or USS shall submit their replies, if any, to any written objections to the Agreement not less than three (3) days prior to the Fairness Hearing.

22. All Pretrial proceedings in this action are stayed and suspended, except such actions as may be necessary to implement the Agreement and this Order or as hereafter may be ordered.

23. Plaintiffs, Linda Smith, Heather McGuffie, Arleen Thomas, Christy Warren, Angela Farmer, Jamie Allen, Teresa Davis, Lucie Johnson, Ginger Beasley, Annette Pack, Odora Beckwood, Phyllis Andrews and Ann Shaw, and the firm of Wiggins, Childs, Quinn & Pantazis have thus far fairly and adequately protected and represented the interests of the settlement class.

24. In the event that the proposed settlement embodied in the Agreement is not finally approved by the Court, or for any reason does not become final, or in the event that the Agreement becomes null and void, pursuant to its terms, then the Agreement and all orders entered in connection therewith shall become null, void and of no further force and effect and shall not be used or referred to for any purpose whatsoever in this action or in any other case or controversy. In such event, the Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice as to the rights of any and all parties thereto, and the parties shall be restored to their respective litigation positions as of the date immediately preceding the execution of the Agreement.

DONE and **ORDERED** this 3rd day of December, 2008.



VIRGINIA EMERSON HOPKINS
United States District Judge