

Gaspar v. Linvatec Corp.

United States District Court for the Northern District of Illinois, Eastern Division
September 3, 1998, Decided ; September 8, 1998, Docketed
No. 95 C 3574

Reporter: 1998 U.S. Dist. LEXIS 14288

LARRY GASPAR, et al., Plaintiffs, vs. LINVATEC CORPORATION, et al., Defendants.

Disposition: [*1] Recommended that this plaintiffs' motion for Rule 60(b) relief be granted. Pursuant to Fed. R. Civ. P. 23(e), the court found that the proposed class settlement is fair, reasonable, and adequate, and as such approved its terms. Case remanded.

Counsel: For LARRY GASPAR, plaintiff: H. Candace Gorman, Law Office of H. Candace Gorman, Thomas R. Meites, Paul William Mollica, Meites, Frackman, Mulder & Burger, Chicago, IL.

For LINVATEC CORPORATION, BRISTOL-MYERS SQUIBB COMPANY, BRISTOL-MYERS SQUIB COMPANY PENSION COMMITTEE, BRISTOL-MYERS SQUIB COMPANY RETIREMENT INCOME PLAN, BRISTOL-MYERS SQUIB COMPANY SEVERANCE PLAN, defendants: Thomas G. Hancuch, Edward C. Jepson, Jr., Michael Warren Sculnick, Vedder, Price, Kaufman & Kammholz, Ann Margaret Schlaffman, IBM Corporation, Chicago, IL.

Judges: EDWARD A. BOBRICK, United States Magistrate Judge. HONORABLE JAMES H. ALESIA, JUDGE, UNITED STATES DISTRICT COURT.

Opinion by: EDWARD A. BOBRICK

Opinion

REPORT AND RECOMMENDATION Of Magistrate Judge Edward A. Bobrick

This matter was referred for a Report and Recommendation on plaintiffs' motion for rule 60(b) relief from judgment, for entry of an order preliminarily approving settlement agreement, if determined [*2] appropriate, for ordering notice of proposed class action settlement, and to conduct a fairness hearing.

I. BACKGROUND

On February 7, 1997, U.S. District Court Judge, James H. Alesia, granted summary judgment and entered judgment in favor of defendants and against plaintiffs on all counts. On

March 5, 1997, the plaintiffs filed their notice of appeal from the judgment entered on February 7, 1997. While the appeal was pending, the parties reached settlement of all claims and the appeal was stayed pending approval of the settlement by the court.

On April 15, 1998, the plaintiffs filed their MOTION FOR RULE 60(B) RELIEF FROM JUDGMENT AND FOR ENTRY OF AN ORDER PRELIMINARILY APPROVING SETTLEMENT AGREEMENT AND ORDERING NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND TO CONDUCT A FAIRNESS HEARING. This matter was referred to this court.

On June 6, 1998, this court entered and continued plaintiffs' Rule 60(b) motion, and granted plaintiffs' motion for entry of an order preliminarily approving the settlement agreement, and ordered notice of the proposed class action settlement. A fairness hearing was scheduled for August 10, 1998 and, upon notice, a hearing was held on that date.

[*3] One objection to the settlement agreement was received. The objection was from Mr. William B. Clatch, who objected to the settlement agreement on the basis that it was unfair to him in that under the terms of the settlement he was to receive only \$ 500 while the named class-plaintiff would receive \$ 23,000.

II. DISCUSSION

This court had earlier carefully reviewed the terms of the settlement agreement and on June 6, 1998, found it to be a fair, reasonable and adequate resolution of the issues in this case. The settlement agreement set forth, in detail, the reasons for the payment of \$ 23,500 to the named class-plaintiff Larry Gaspar. At the August 10, 1998, fairness hearing, the terms of the settlement agreement was again reviewed together with the objection made by Mr. Clatch. It was concluded that the settlement agreement remained a fair, reasonable, and adequate resolution of the issues in this case. It was further concluded that the subject objection was without merit and, in fact, imposed no bar to final approval of the settlement agreement. The record, made at the fairness hearing, revealed that Mr. Clatch had received significant voluntary retirement benefits from [*4] the defendant company, while the named class-plaintiff, Mr. Gaspar, had received no retirement or severance benefits to which he was entitled pursuant to his termination. Additionally, Mr. Gaspar, as plaintiff, had

claims against the defendants unique to himself. Accordingly, it was determined that it was fair, reasonable, and legally acceptable, as part of the settlement agreement, for Mr. Gaspar to receive a larger monetary settlement than Mr. Clatch and as such, the settlement agreement merited approval. It is noteworthy that no other class member has objected to the settlement.

II. CONCLUSION

For the foregoing reasons the following is hereby recommended:

1. That the plaintiffs' motion for *Rule 60(b)* relief be granted.
2. That pursuant to *Fed. R. Civ. P. 23(e)*, the court find that the proposed class settlement is fair, reasonable, and adequate, and as such approve its terms.
3. That pursuant to Circuit Rule 57, U.S. Court of Appeals, 7th Circuit, the district court

should indicate that it is inclined to grant the relief sought in plaintiffs' motion and remand the case for the purpose of modifying the judgment in accordance with the terms of the approved [*5] settlement agreement.

Respectfully submitted,

EDWARD A. BOBRICK

United States Magistrate Judge

DATE: September 3, 1998

Any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 88 L. Ed. 2d 435, 106 S. Ct. 466 (1985); *The Provident Bank v. Manor Steel Corp.*, 882 F.2d 258 (7th Cir. 1989).