

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

Sylvester McClain, et al.

Plaintiffs,

v.

Lufkin Industries, Inc.

Defendant.

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Civil Action No. 9:97 CV 063 (CLARK)

**PLAINTIFFS' REPORT ON PLAINTIFFS' PROPOSED OMBUDSPERSON  
CANDIDATES**

**A. INTRODUCTION**

Pursuant to the Parties' Joint Report on Proposal for Injunctive Relief (Dkt. 606), the Parties were to "attempt to reach an agreement who would serve in [the] role [of ombudsperson], no later than February 27, 2009." *Id.* at 2. Should the Parties not reach agreement by that date, the Parties each "will propose [no later than March 6, 2009] three candidates for the Court to consider." *Id.*

Plaintiffs proposed the three candidates discussed herein to Lufkin on February 12, 2009. *See* Declaration of Teresa Demchak ("Demchak Decl."), filed herewith, at ¶ 3. On February 26, 2009, at Lufkin's request, Plaintiffs provided the hourly rate each of Plaintiffs' proposed candidates would bill should he be selected as the ombudsperson in this matter. *Id.* at ¶ 5. Lufkin did not provide its proposed ombudsperson candidates to Plaintiffs on or before February 27, 2009, nor on March 2, 2009, as it subsequently advised Plaintiffs it would do. *Id.* at ¶¶ 5-7. Instead, Lufkin advised Plaintiffs of two of its proposed three candidates on March 6, 2009, *id.* at ¶ 9, which did not allow time for Plaintiffs to conduct a meaningful review of the candidates' backgrounds and qualifications to serve as the ombudsperson, nor for the Parties to meet and

confer regarding the candidates prior to the March 6, 2009 deadline by which the Parties jointly agreed to submit the names of proposed candidates. Because Plaintiffs want to give the Court adequate time to review, and should the Court desire, interview candidates for the ombudsperson position, Plaintiffs are submitting the names and proposed candidates to the Court and will continue to research Lufkin's candidates in order to comment on them as the Parties' Joint Report on Proposal for Injunctive Relief provides.<sup>1</sup> *See id.* at 2-3. Once Plaintiffs receive complete information on all of Lufkin's candidates, they also will confer with Lufkin to determine if the Parties can agree on a single candidate.

**B. PLAINTIFFS' PROPOSED OMBUDSPERSON CANDIDATES**

Plaintiffs propose the following three candidates to serve as ombudsperson. For the Court's convenience, Plaintiffs attach the biographical statements of each of the candidates as exhibits to this submission. Plaintiffs' counsel have provided each of the proposed candidates copies of the Fifth Circuit Court of Appeals' February 29, 2008 order and the transcript of the December 5, 2008 status conference at which the Court discussed its views regarding the possible role of an ombudsperson in monitoring the Court's injunctive relief orders in this case. Demchak Decl. at ¶ 10. Each of the candidates has expressed his interest and availability to serve as the ombudsperson. *Id.* at ¶ 11.

**1. R. Lawrence Ashe**

Mr. Ashe is a partner in Ashe, Rafuse & Hill, LLP located in Atlanta, Georgia. A copy of his biographical statement is attached as Exhibit 1. His hourly billing rate for this assignment – not his normal billing rate – would be \$575.

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<sup>1</sup> Although Plaintiffs have not had time to thoroughly research Lufkin's candidates and do not know who the third candidate is, the first two do not appear to have any experience overseeing the implementation of equitable relief in a complex class action as Plaintiffs' proposed candidates do. Plaintiffs will provide additional comments on Lufkin's proposed candidates in a subsequent submission.

**2. Hunter R. Hughes, III**

Mr. Hughes is a partner in Rogers & Hardin, located in Atlanta, Georgia. A copy of his biographical statement is attached as Exhibit 2. His hourly billing rate for this assignment – not his normal billing rate – would be \$495.

**3. John Wymer, III**

Mr. Wymer is a partner in the Atlanta office of Paul Hastings. A copy of his biographical statement is attached as Exhibit 3. His hourly billing rate for this assignment – not his normal billing rate – would be \$590.

All of Plaintiffs' proposed candidates are management-side attorneys who have substantial experience in representing employers and have defended employment discrimination class action cases. Two of the candidates (Hughes and Ashe) have served as mediators in employment discrimination class action cases. All of the candidates also have substantial experience in advising employers on the implementation of employment practices that comply in both the letter and spirit of the fair employment laws. One of the candidates (Hughes) also has served as a court-appointed Special Master in overseeing and resolving disputes in a number of employment discrimination class action cases that were resolved through settlement and the entry of consent decrees. In Plaintiffs' view, this is the kind of experience necessary for the person who will serve as ombudsperson in this case. That person not only must understand good and sound human resources practices, but he also must know and understand: (1) an employer's legal requirements under the fair employment laws, (2) how to effectively investigate and resolve complaints of racial discrimination, and (3) how to interpret, and how to monitor implementation of, and compliance with, the Court's orders.<sup>2</sup>

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<sup>2</sup> Plaintiffs are aware of a number of cases in which individuals with the type of background and experience proposed here by Plaintiffs were appointed to serve as external monitors. *See e.g., Gonzalez v. Abercrombie & Fitch Stores, Inc.*, Case Nos. 03-2817 SI, 04-4730 and 04-4731 (N.D. Cal.) (Fred Alvarez, labor and employment litigation partner at Wilson Sonsini selected as court-appointed monitor to oversee implementation and compliance of consent decree settling race and national origin class discrimination claims); *Ridgeway, v. Denny's, Inc.*, Case No., C-93-20202 (N.D. Cal.), *United States v. TW Services, Inc. and Denny's Inc.*, C-93-20208 (N.D. Cal.), and *Dyson v. Denny's, Inc.*, C.A. No. DKC 93-1503 (D. Md.) (Sharon Lybeck Hartmann,

Plaintiffs endorse each of these candidates for the ombudsperson position and respectively request the Court's consideration of them.

Dated: March 6, 2009

Respectfully submitted,

By:       /S/      

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former litigation partner selected as court-appointed monitor to oversee implementation of settlement in race discrimination class action brought on behalf of African American customers of Denny's restaurants); *see also*, *Wynne v. McCormick & Schmick's Seafood Restaurants, Inc.*, Case No. 06-3153CW (N.D. Cal.) (plaintiffs' employment discrimination class action litigation attorney Barry Goldstein, selected as court-appointed monitor to oversee implementation and compliance with settlement of race discrimination in employment class action lawsuit); *EEOC v. The Dial Corporation*, Case No. 99 C 3356 (N.D. Ill.) (George F. Galland, Jr., partner in Miner Barnhill & Galland, Nancy B. Kreiter, of counsel to Women Employed, a Chicago-based women's rights organization and Reginald E. Jones, counsel in Coudert Brothers, LLP, selected as court appointed monitors in settlement of sexual harassment case).

**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:

Douglas Hamel  
Christopher V. Bacon  
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on this 6th day of March, 2009.

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/s/  
Teresa Demchak