IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

This Document Relates to:
INDIRECT DIRECT PURCHASER CLASS

Case Nos. 1:10-pf-10007 (Vicky's Furniture); 1:11-pf-10002 (Gomez); 1:11-pf-10003 (Hudson); 1:11-pf-10010 (Beastrom)

MDL Docket No. 2196
Index No. 10-MD-2196 (JZ)

Indirect Purchaser Plaintiffs, Greg Beastrom, Seth Brown, Marjean Coddon, Susan Gomez, Joseph Jasinski, Henry Johs, Joseph Lord, Kirsten Luenz, Gerald & Kathleen Nolan, Kory Pentland, Jonathan Rizzo, Michael Schwartz, Larry Scott, Catherine Wilkinson, Jeffrey S. Williams, Driftwood Hospitality Management as authorized managing agent for the following entities that own/operate, or that formerly owned/operated, hotels in various states, including: (1) Genwood Memphis I, LLC, owner/operator of the Crowne Plaza Memphis, formerly the Wyndham Garden Hotel Memphis, in Memphis, Tennessee; (2) GFII DVI Cardel Doral, LLC, former owner/operator of the Hampton Inn & Suites Doral, in Miami, Florida; (3) Brad-Sum Colorado Springs, LLC, former owner/operator of the Summerfield Suites Colorado Springs, formerly the Bradford Homesuites Colorado Springs, in Colorado Springs, Colorado; (4) GFII DVI Cardel Sawgrass, LLC, owner/operator of the Crowne Plaza at Sawgrass, in Sunrise, Florida; (5) GFII DVI Cardel Colorado Springs, LLC, formerly Brad-Sum Centennial, LLC, owner/operator of the Staybridge Suites Denver Tech Center, formerly the Bradford Homesuites Centennial, in Centennial, Colorado; (6) DHM Chicago Hotel LP and DHM Chicago Hotel Lessee LP, owner and operator, respectively, of the Avenue Crowne Plaza Chicago Downtown, formerly The Avenue Chicago, formerly Radisson Chicago, in Chicago, Illinois; (7) DVI Kauai Hotel, LLC, owner and operator of the Radisson Kauai Beach Resort in Lihue, Hawaii; and (8) DHM Minneapolis Hotel, LLC, owner and operator of the Crowne Plaza North in Brooklyn Center, Minnesota and The Parker Company as authorized agent for the following: Met 2 Hotel LLC; Bachelor Gulch Properties, LLC; MPE Hotel I (Washington), LLC; and New York Hotel Tenant Co., LLC (—Indirect Purchaser Plaintiffs), individually and on behalf of a class of all those similarly situated, bring this action to recover damages and to obtain injunctive relief for violations of antitrust and consumer protection laws and for unjust enrichment against

Defendants,The Carpenter Company, Flexible Foam Products, Inc., FXI-Foamex Innovations, Inc., Future Foam, Inc., Hickory Springs Manufacturing Co., Mohawk Industries, Inc., Leggett & Platt, Inc., Otto Bock Polyurethane Technologies, Inc., Scottdel Inc., Vitafoam Products Canada Limited, Vitafoam, Inc., Woodbridge Foam Corporation, Woodbridge Sales & Engineering, Inc., Woodbridge Foam Fabricating, Inc., and Louis Carson and David Carson.

Tables of Authorities:

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Misc.

OPPOSITION TO CLASS COUNSEL'S MOTION TO REQUIRE POSTING OF APPEAL BOND BY THE OBJECTOR-APPELLANT

Andrews files this Opposition (the Opposition") to Class Counsel's Motion to Require Posting of Appeal Bond by the Objector Appellant Dkt. # 2042 filed on March 01, 2016.

Introduction

The objector objects to any bond being imposed under Rule 7 or 39(e). The legal issue presented is a fairly simple one: should an appellate bond be imposed on this objector based on the irrefutable evidence he has shown and described that the nine settlement agreements are legally defective, unlawful and unenforceable? The answer to this straightforward question is "no."

ARGUMENT

The objector would like to correct one error in his Appeal Notice. The Court did not award $800 an hour to the direct class for paralegal work but rather $600 an hour based on the 24% award. A mind-blogging, unjustifiable amount brought to the attention of the objector by class counsel.

The parties have ignored and cannot explain or respond to the five reversible errors in the Notice of Appeal in their motion for bond because they can't and it's all true. Regardless of this Court's views of the merits of the appeal and the objectors personally, an appeal is to be decided by the appellate courts, and not short-circuited by a district court that disproves of this appeal because it points out a multitude of reversible errors committed by it and all other parties in the nine rushed through error strewn, legally invalid settlement agreements. The objector will now deconstruct their flawed bond motion.

Class Counsel's False Bond Request

The purpose of the appeal bond in this case is not to secure costs but to force nine unlawful, legally invalid, third year, lunch hour, law school practice settlement agreements down the class's throat, stop the meritorious appeals in their tracks and slink away with an undeserved artificially inflated $36 million in fees and $5 million in artificially bloated expenses.

Class counsel seeks a laughable $305,000.00 appellate bond under Rules 7 and 39(e) of the Federal Rules of Appellate Procedure. Rule 7 permits a bond of taxable costs as those are defined under Rule 39(e). Class Counsel falsely states its taxable costs under Rule 39(e) (printing, copying briefs and other submissions) are estimated to be $10,000.00. That would equal $333.33 for a thirty page reply brief. That is an artificially gouging appeal bond request which is exactly like the egregious, calculated, and ongoing campaign of the theft from the class by class counsel's gouging $20 million in local hourly rate scheme and inflated expense scheme. Only $9 million has been subtracted out for the fraudulent attorney contractor scam they pulled on the class with another $20 million to go in the future.

The real cost to them is .10 per page for their brief and $4.00 for binding there is a total cost of $34.00. Any amount over $34.00 will be incorrect, excessive and result in the appellant appealing to protect his and the class's due process rights since there is no stated claims process of any type since class counsel forgot to include it in the settlement agreements.

Any sum above $34.00 is not a taxable cost but is instead ostensibly related to delay and attorney fees and administrative costs of continued settlement administration. Putting aside a lengthy *ad hominem* attack on this and all other objector's by class counsel, the Court along with the Court's veiled threat of

undeserved sanctions, the objector has still filed the appeal based on the beyond a reasonable facts that this approval is DOA at the appeals court steps.

Class counsel has unclean hands and based on the facts in this objector's Notice of Appeal and other issues raised in the filings that the Court intentionally did not give the objector credit for, legally, the agreements flunk basic contract law 101 and will be tossed out by three judges on the 6th Circuit Court of Appeals without oral argument even being needed. A small claims judge would even throw this out if the evidence in the objector's Appeal Notice and this document were presented to him/her. If Class Counsel cannot acknowledge that fact they are living in a "fairlyland", desperate and greedy for their fee now instead of fixing the material issues pointed out by the objector. The objector is requesting they all be sanctioned under Rule 11 for filing their frivolous request, removed and replaced. The $9 million contract lawyer scam reduction so far proves they are not trustworthy and are solely concerned with their gluttonous greed first, the class comes second. Since they have unclean hands there should be no bond approval, period.

Class Counsel states in their motion that 52,000 individual business and individuals have filed claims out "of tens of thousands of class members" which is itself is a crystal clear false statement. Mr. Miller is a serial fibber and class action filer and not a good one as evidenced by nine legally defective and invalid

settlement agreements that the class was usuriously billed 71,000 hours for at $513 an hour for $46 million. The settling documents don't state an approximate number of the class by design. The objector states there are 189 million potential claimants that encompass the population of all the included states over the past 15 years and most sleep on a mattress containing foam, have purchased at least one piece of furniture with foam in it and purchased carpet with foam underlay. According to Consumer Reports and the bedding industry an average bed is replaced every ten years. 189 million potential claimants divided by 54,000 claims filed (business and individual are still not broken down again for the second time) is just 0.00028571428 of one percent have filed a claim. This is proof of the notice failure. Mr. Miller commits a bad faith actionable, sanctionable falsehood by falsely claiming there are only "tens of thousands of claimants"! He does not want the true number in the class to be compared to the paltry claimed lowest $300 million estimate in the total class damages that were incurred over a 15 **year** period ($2.00 per mattress) compared to the much high number of $2 billion in damages before tripling under anti-trust statutes. That $151 million settlement would be too far away from $2 billion to gain approval. It's called intentionally "closing the gap" to cheat the class and gain unlawful approval

Mr. Miller also falsely claimed in his settlement papers that this objector has been previously sanctioned which is another fib in a long line of them and the Court

says nothing. The Court should see a pattern here and because the Court did not put a stop to it earlier, it continues. Is this fibbing allowed by lawyers? Can they knowingly make false statements to and in a federal court all for the money and a judge allows it to happen with not even a hand slap? If not, objector again requests sanctions against class counsel based on their bad faith actions starting with no bond assessment.

The objector's Appeal Notice clearly shows five reversible errors made by the Court by it applying incorrect legal standards, erroneous findings of fact and legal mistakes made throughout the settlement agreements. The Court was made aware of various issues but chose to approval the deals regardless of the unlawful and material defects which amount to abuse of discretion. How class counsel chooses not to see and acknowledge that the nine settlement agreements are legally invalid can only be chalked up to blind greed that has clouded their vision and they are using the $305,000.00 appeal bond scare tactic to ward off meritorious appeals.

- The settlement agreements fail to state which individual lawsuits named plaintiffs filed, and applicable case numbers, apply to which deals, it's all missing. The deals and approval are legally invalid, constituting reversible error and abuse of discretion.

- District courts must evaluate proposed incentive awards individually, using relevant factors that include —the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . [and] the amount of time and effort the plaintiff expended in pursuing the litigation.‖ *Staton*, 327 F.3d at 977. No calculation of how the fees were arrived at was explained by the class counsel or the Court in this settlement and approval. The Ninth Circuit has instructed district courts to review class fee awards with special rigor: Because in common fund cases the relationship between plaintiffs and their attorneys turns adversarial at the fee-setting stage, courts have stressed that when awarding attorneys' fees from a common fund, the district court must assume the role of fiduciary for the class plaintiffs. Accordingly, fee applications must be closely scrutinized. Rubber-stamp approval, even in the absence of objections, is improper. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (quotation omitted). Rubber stamp on the incentive awards was done in this case. DryMax in this Circuit is another example why this will be reversed.

In Williams, the Sixth Circuit rejected a proposed settlement despite Class Counsel's support. Although a court may "defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs," "[t]he court should insure that the interests of counsel and the named plaintiffs are not

unjustifiably advanced at the expense of unnamed class members." Williams v Vukovich720 F.2d at 922-23.(6th Circuit 1983). "'An abuse of discretion exists when the district court applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact.'" Geier v. Sundquist, 372 F.3d 784, 789–90 (6th Cir. 2004) (quoting First Tech. Safety Sys., Inc. v. Depinet, 11 F.3d 641, 647 (6th Cir. 1993)). An abuse of discretion occurs when we are left with the 'definite and firm conviction that the [district] court committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors' or 'where it improperly applies the law or uses an erroneous legal standard.' "United States v. Haywood, 280 F.3d 715, 720 (6th Cir.2002) (alterations in original) (quoting Huey v. Stine, 230 F.3d 226, 228 (6th Cir.2000)) - We may also find an abuse of discretion when we are "'firmly convinced that a mistake has been made.'" Addock-Ladd v. Sec'y of Treasury, 227 F.3d 343, 349 (6th Cir.2000) (quoting Graham-Humphreys v. Memphis Brooks Museum of Art, Inc., 209 F.3d 552, 560 (6th Cir. 2000).

More examples out of the error bag are listed further below. Case closed, slam dunk reversal coming.

Bloated Attorney Fees in their Bloated Bond Motion

In document 2042 page 23 footnote 7 Mr. Miller's falsely claims that the Florida statute that includes a fee shifting provision applies to this case. It does not, so his bloated attorney fee claim cannot be assessed . The named plaintiffs' are "Missing In Action" in this settlement agreements because none of them have SIGNED off on these agreements stating that they agree with the deal, as individuals and as representatives of the class. The deals and approval are invalid. Are they all still class members, died, incapacitated, out of business, in bankruptcy, disagree with the deals etc? Why are some named plaintiffs not on the second amended complaint? Why is one defendant not included in the second amended complaint? A Third amended Complaint (TAC) should have been filed to legally correct this error. The state of Florida's statute does not apply and the nine settlement agreements are legally invalid contrary to Mr. Miller's false statement. There is reversible error number eight, nine and ten.

The objector has shown a $20 million overcharge in local hourly rates which no one has explained. Mr. Miiler again seems intent on cheating the class by billing out of state New York rates instead of local Toledo billing rates in a deceitful attempt to bloat this fee to the objector's as well. His attorney fee request should be rejected since he was personally caught billing out a large part of the $9 million attorney contract fees fraud scam to the class. No bond should be considered under

this section. Maybe the US attorney who was sitting in the audience at the fairness hearing is already looking into this along with the Shane case lawyers.

Administration Fees

The administrator stated at the fairness hearing that they be working on this settlement for an incredible one year before checks are issued which is ripping the class off. Sixty days is more real world. Since that is an ongoing usurious cost that is already being billed to the class there is absolutely no need for the objector(s) to pay that cost twice on a double dip move. Mr. Miller heard this information at the fairness hearing but chooses to engage in deception by omission and "forgetfulness".

Since class counsel got caught thieving millions from the class with another $20 million to be subtracted later they have no moral RIGHT asking for any bond. In fact the objector asks for class counsel to post a bond to reimburse him his costs for being forced to file this slam dunk appeal reversal because the nine agreements are the worst ever proposed, filed and approved in any federal court in US history. The Court can apply the $9 million fee fraud recovery pointed out by all the objectors against the assessment of any bond. The end result is a zero bond cost.

Lost Interest On The Funds Held By Carpenter.

All the defendants and especially Carpenter Co. played Mr. Miller in this settlement like Johnny played the fiddle in the hit song. He failed to get the money up front from Carpenter and now tries to cover up his failure by claiming the objectors should pay the lost interest starting now instead of him! Maybe he should pay the lost interest he failed to obtain in the past to date. Hint, it should have been stated in the agreements but the funds should have been invested in US backed securities but apparently were not. All the money may be in just one account insured to only $250,000.00 and it may not even be a highly capitalized ranked bank. If the bank fails what happens to those funds, counsel? The Court does not even have control of the funds under any agreement or understanding. This is a joke. It's all a secret like the sealed records in this case, especially the damage estimates, which this objector will get unsealed before the next fairness hearing. Damages appear to be closer to $2 billion not $300 million. The Court has not logically explained why the damages of $300 million are an acceptable damage amount for settlement purposes except that is what the defendants agreed to! Of course they would.

Inability To Post Bond

Next Mr. Miller misleads by omission by falsely claiming that no objector has shown an in ability to post a bond. That is because the issue has not been raised

yet, duh. The evidence of numerous reversible errors pointed out by this objector shows good faith and a future reversal on this error strewn approval is going to happen a year from today. That and the fact that assessing any bond amount would violate this objector's due process rights and would be appealed so an bond should not be assessed, the objector cannot afford any part of that $305,000.00 fee. Had class counsel and/or the Court listened to the objector and not attempted to rush a square settlement through a round approval hole this appeal would not have been necessary, so a bond would not be needed. The parties should have been slow and deliberate instead of fast and wrong. Why the Court and Mr. Miller seem intent on pushing this settlement and approval through with the Mt. Everest high evidence of material reversible errors contained in it is perplexing. For all the reasons stated above and incorporating the objector's Appeal Notice into this response no bond should be imposed on this objector. If it is imposed an appeal will follow and good luck defending the dozen material reversible mistakes made so far and unlawfully withholding this objector's due process rights in the 6th Circuit Court of Appeals. I swear under penalty of perjury that all the information is true and correct to the best of my knowledge.

March 03, 2016

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Proof of Service

I hereby certify that on March 03, 2016 I sent by USPS First Class Mail this document to the Clerk of The United States District Court, the US Appeals Court and I also sent a copy to Marvin Miller, Miller Law LLC 115 S. Lasalle Street, Suite 2910 Chicago IL.60603 via first class mail.

Executed on March 03, 2016

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