

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

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
and)	Civil Action No. 1:06-cv-0747
)	
PAMELA J. MOHER, on behalf of herself)	
and others similarly situated,)	JUDGE LESLEY WELLS
)	
Plaintiff-Intervenor,)	MAG. JUDGE KENNETH S. McHARGH
)	
v.)	
)	
PITT OHIO EXPRESS, LLC,)	
)	
Defendant.)	
)	

**JOINT MOTION OF PAMELA MOHER AND PITT OHIO EXPRESS, LLC
FOR QSF DESIGNATION AS PART OF SETTLEMENT**

Following a lengthy and substantial investigation, discovery and extensive negotiations, plaintiff-intervenor Pamela J. Moher ("Moher") and defendant Pitt Ohio Express, LLC ("Pitt Ohio") have reached a settlement of all claims and issues in Moher's action against Pitt Ohio, reflected in a written Settlement Agreement, a copy of which is attached as Exhibit 1.

In order to implement and effect the terms of the Settlement Agreement, Moher and Pitt Ohio jointly move for an order establishing and designating the Elfvin & Besser Co. LPA IOLTA Account as a qualified settlement fund ("QSF") under Internal Revenue Code ("IRC") Section 468B (26 U.S.C. §468B) on the ground that such Account meets the requirements of IRC Section 468B. A draft order is included herein.

Neither the Settlement Agreement, this Motion nor the Order requested will displace or have any effect on the Consent Decree being finalized between the Equal Employment Opportunity Commission and Pitt Ohio in this case.

Respectfully Submitted,

For Plaintiff-Intervenor Pamela Moher:

For Defendant Pitt Ohio Express:

s/ Bruce B. Elfvin

s/ Terrence H. Murphy

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Dated: October 1, 2008

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	
)	
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Plaintiff,)	
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and)	Civil Action No. 1:06-cv-0747
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PAMELA J. MOHER, on behalf of herself and others similarly situated,)	JUDGE LESLEY WELLS
)	
Plaintiff-Intervenor,)	MAG. JUDGE KENNETH S. McHARGH
)	
v.)	
)	
PITT OHIO EXPRESS, LLC,)	
)	
Defendant.)	
)	

ORDER

Based upon the joint motion of Plaintiff-Intervenor Pamela Moher and Defendant Pitt Ohio Express, LLC, and the Settlement Agreement between Pamela Moher and Pitt Ohio Express, LLC, and in accordance with 26 C.F.R. §1.468B-1(c), this Court orders as follows:

This court approves and orders the designation of and establishment of the Elfvin & Besser Co. LPA IOLTA account as a qualified settlement fund (QSF) and the appointment of Mr. Bruce B. Elfvin, as administrator of that account as a QSF for the purposes of this case and the Settlement Agreement pursuant to §1.468B-1(c)(1). This QSF, in accordance with §1.468B-1(c)(2), is established to help resolve one or more contested claims that have resulted from an event that occurred and is alleged to have resulted in Pitt Ohio liability. Lastly, in accordance with §1.468B-

1(c)(3), it is ordered that the Elfvin & Besser Co. LPA IOLTA is and be deemed a trust under Ohio law and that its assets be segregated from the assets of the transferor, Pitt Ohio.

SO ORDERED, this _____ day of _____, 2008.

JUDGE LESLEY WELLS
UNITED STATES DISTRICT JUDGE

SETTLEMENT AGREEMENT

INTRODUCTION

Plaintiff-Intervenor Pamela J. Moher ("Moher") and defendant Pitt Ohio Express, LLC ("Pitt Ohio") have entered into a settlement resolving Moher's claims in Case No. 1:06-cv-0747, pending in the U.S. District Court for the Northern District of Ohio, Eastern Division ("Action").

Nature and Resolution of Case

After Moher filed a charge and amended charge with the EEOC, EEOC filed a Complaint with the Court on March 31, 2006, on behalf of Moher and women whom Pitt-Ohio allegedly failed to hire based on sex into driver and dockworker positions in its Ohio terminals on and after September 1, 1997, and also alleging recordkeeping violations pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII").

On August 8, 2006, Moher's Motion to Intervene was granted and Moher filed a Plaintiff-Intervenor Complaint against Pitt Ohio, alleging that Pitt Ohio discriminated against Moher and a class of women, based on sex in violation of Title VII and the Ohio Civil Rights Act ("ORC Chapter 4112"), in failing to hire them into driver and dockworker positions at its Ohio Terminals.

Pitt Ohio denies the allegations in the Complaint, the Plaintiff-Intervenor Complaint and in connection therewith denies any liability under Title VII or ORC Chapter 4112. Without any admission or concession by Pitt Ohio of any liability or wrongdoing with respect to the allegations in the Complaint or the Plaintiff-Intervenor



Complaint, Moher releases all her claims against Pitt Ohio which shall be finally and fully compromised, settled and released, subject to the terms and conditions of this Settlement Agreement ("Agreement"), through the Pamela J. Moher General Release ("Moher Release"), a copy of which is attached as Exhibit 1. Both this Agreement and the Moher Release were the subject of negotiation and have been agreed upon by the parties.

In exchange for Pitt Ohio's promises herein, after Moher's execution of this Agreement and upon her execution of the Moher Release, all Moher's claims against Pitt Ohio for injunctive, equitable or legal relief, including claims for front pay, back pay, employment, compensatory and punitive damages, are released. This settlement applies to, resolves, and fully and finally settles all claims Moher raised or could have raised under common law, or under state or federal law, existing on the date she signs this Agreement, including all claims related to her allegations under federal or state law concerning Pitt Ohio's failure to hire her and an alleged class of women as drivers or dockworkers in Pitt Ohio's Ohio terminals, based on their sex, subject only to any conditions imposed by the Court.

Within three business days after counsel for Pitt Ohio receives (i) an original of this Agreement signed by Moher and Moher's counsel, (ii) the Moher Release signed by Moher, (iii) oral notice of the EEOC's approval of the Consent Decree in the Action, and (iv) an Order from the U.S. District Court for the Northern District of Ohio, designating the Elfvin & Besser Co. LPA IOLTA Account ("Account"), a qualified settlement fund (a 468b trust or "QSF") for the purposes of this Agreement, Pitt Ohio shall transfer \$570,000.00 to the Account. Moher and Moher's counsel agree that a stipulated

dismissal with prejudice of Moher's claims and causes of action against Pitt Ohio in the Action will be filed upon deposit of the funds in the Account. The dismissal shall reflect a full dismissal with prejudice of the Plaintiff-Intervenor Complaint, filed by Moher, including any allegations related to any class, and all claims of Moher against Pitt Ohio, including any rights to be hired by Pitt Ohio based upon any application filed up to the end of the term of the Consent Decree entered into by Pitt Ohio and EEOC.

Moher, who never had an employment relationship with Pitt Ohio and whose claim of unlawful failure to hire was never adjudicated and was denied by Pitt Ohio, will be paid from the Account, designated as a QSF for purposes of the settlement reflected in this Agreement, \$265,000.00 as compensatory damages for all losses claimed, her assistance with the prosecution of this action and her release of her individual and class claims under federal and state law from the QSF. Moher's attorneys also shall be paid their attorneys' fees and litigation expenses and costs from the QSF. The payment of fees shall be for the services of Dennis J. Niemann, David B. Malik and the firm of Elfvig & Besser, and be payable to Elfvig & Besser in the amount of \$300,000 and for costs and expenses in the amount of \$5,000.00. Moher agrees she is solely responsible for her tax obligations arising as a consequence of the payments described in this paragraph and that Pitt Ohio is not responsible for such obligations.

This Agreement does not, and is not intended to constitute, nor shall it be deemed to constitute, an admission by any party as to the merits, validity or accuracy of any of the allegations, claims or defenses of any party in the Action. By entering into this Agreement, Pitt Ohio does not admit or concede, expressly or impliedly, but denies that it has in any way violated Title VII or Ohio law prohibiting sex discrimination.

Neither the Court nor any other court has made any findings or expressed any opinion concerning the merits, validity or accuracy of any of the allegations, claims or defenses in this case.

The parties to this Agreement acknowledge that Moher was never an employee of Pitt Ohio and will not become an employee of Pitt Ohio under the terms of this Agreement. Moher promises not to apply for or accept employment with Pitt Ohio during the term of the Consent Decree. Moher and Pitt Ohio agree that this Agreement is the result of compromises and reflects the agreement of the parties to resolve this case.

Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the mediation or negotiations leading to this Agreement, is intended by the parties to, nor shall any of the foregoing constitute, be introduced, be used or be admissible in any way in this Action or any other judicial, arbitral, administrative, investigative or other proceeding of whatsoever kind or nature as evidence of sex discrimination, retaliation or evidence of any violation of Title VII or Ohio law prohibiting sex discrimination. Notwithstanding the foregoing, this Agreement may be used in any proceeding in the Court or in mediation or to enforce or implement any provision of this Agreement or implement any orders or judgments of the Court entered into in connection herewith. The parties agree that this Court shall have jurisdiction to enforce this Agreement consistent with *Kokkonen v. Guardian Life Insurance Company of America*, 114 S.Ct. 1673 (1994).

The Agreement constitutes the entire agreement between Moher and Pitt Ohio on its subject matter, which is resolution and settlement of Moher's claims and allegations in the Action, concerning failure to be hired by Pitt Ohio and concerning failure to hire other women who applied or might have applied for work at the Ohio terminals of Pitt Ohio. This Agreement does not impose any obligations on the parties beyond the terms and conditions stated herein.

The parties agree that Ohio law shall govern the validity, construction and enforcement of this Agreement. To the extent that it is determined that the validity, construction or enforcement of this Agreement and the Moher Release executed pursuant to its terms, is governed by state law, the law of the State of Ohio shall apply.

Moher and Pitt Ohio agree that neither Pitt Ohio's transfer of money nor payments to Moher and her attorneys pursuant to this Agreement shall obligate Pitt Ohio to pay any further amount to Moher, but Moher shall remain entitled to any amounts payable to her under the terms of the Consent Decree, entered into between EEOC and Pitt Ohio.

Neither Moher nor her attorneys shall seek or be entitled to any additional attorneys' fees, costs or other payments from Pitt Ohio or any other entity on the basis that Moher is a "prevailing party" in the Action under Section 706(k) of Title VII, any similar statute or Ohio law.

The failure of any party to insist in any one or more instances on strict compliance with the terms and conditions hereof shall not be construed to be a waiver of remedies available with respect to any prior or subsequent breach.

This Agreement shall inure to the benefit of, and be binding upon, the parties to this agreement and their respective heirs, dependents, executors, administrators, trustees, legal representatives, person representatives, agents, successors and assigns; provided, however, that this Agreement shall not inure to the benefit of any third party.

Both parties hereto have participated, through their respective counsel, in the drafting of this Agreement and, therefore, this Agreement shall not be construed more strictly against one party than another.

Moher agrees that the terms and conditions of this Agreement and the actions by the parties in accordance with it, are strictly confidential, and have not and shall not be disclosed to any person not a party to the Agreement or the Action, except her counsel, tax advisor, immediate family or as required by law.

Whenever possible, each provision and term of this Agreement shall be interpreted in such a manner as to be valid and enforceable.

Except as specifically provided for herein, this Agreement may not be amended or modified except with the express written consent of the parties. Each side shall be bound by a singular signature. Each signature warrants that the signer has authority to bind his party. This Agreement may be executed in counterparts. Each signed counterpart together with the others shall constitute the full Agreement.

As of the date on which counsel for the parties execute this Agreement, it will be binding in all respects.

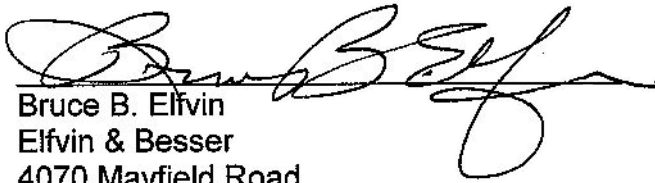
FOR PAMELA MOHER



Pamela Moher

10-1-2008
Date

COUNSEL FOR PAMELA MOHER:



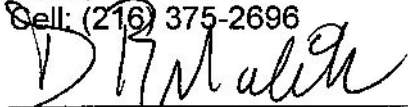
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10-1-08
Date



FOR PITT OHIO EXPRESS, LLC

By: _____

_____ Date

Its _____

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_____ Date

