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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOLOMON WILLIAMS, et al.,

Plaintiffs,

v.

THE BOEING COMPANY, et al.,

Defendants.

CASE NO. C98-761C

ORDER

INTRODUCTION

This is an employment discrimination case brought by a group of African-Americans against the Boeing Company. The parties have agreed to enter into a consent decree which would settle the case. For the settlement to proceed, however, the Court must (i) certify that the case meets the requirements for a class action outlined in Fed. R. Civ. P. 23(a) and (b), and (ii) approve the terms of the settlement as fair and reasonable under Fed. R. Civ. P. 23(e). Having reviewed extensive briefing on these issues by the parties and by objecting members of the class, and having heard oral argument at two hearings, the Court now finds and rules as follows.

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1 The Court has heard a series of powerful arguments in opposition to the consent decree from
2 objectors in this case. Several consider the amount of damages awarded to be an insult. And even more
3 view Boeing's promises of future reforms with skepticism. The Court finds it difficult to reconcile these
4 compelling personal statements with the more positive view of the settlement expressed by the Reverend
5 Jesse Jackson and other experts. As with any settlement, it is likely that the parties will be dissatisfied
6 with at least some of the compromises made. In the class action context, however, there is an increased
7 risk that members of the class will feel cheated by the terms of a settlement which does not respond to
8 their individual assessment of the claim. Indeed, there is an argument to be made that cases involving
9 personal feelings as strong as those present here are always better resolved as individual cases than they
10 are as a class action.

11 The Court rejects this conclusion because there are important advantages to class-wide resolution
12 in this type of dispute. First, there is no guarantee that a plaintiff will fare better in an individual suit
13 than they will under the consent decree, as Boeing's recent series of victories in individual race
14 discrimination cases demonstrates. More significantly, the decree's broad injunctive provisions are the
15 product of class-wide treatment of the problem, and should be an effective means of addressing
16 company policies of the sort alleged here. Finally, this settlement has a greater chance of fostering a
17 cooperative relationship between Boeing and its African-American employees than would a series of
18 protracted individual disputes. This last point must be a crucial consideration for anyone who is
19 primarily interested in future race relations within the company, as both the plaintiffs and the objectors
20 maintain they are here.

21 For these reasons, and for the reasons described below, the Court concludes that the class should
22 be certified and that the proposed consent decree should be approved as a fair and reasonable settlement
23 of these claims.

ANALYSIS

1. Certification of the Class

For the Court to certify the class in this case, it must find that the four requirements of Fed. R. Civ. P. 23(a) are met, and that the case fits into at least one of the three categories of class action described in Rule 23(b). In a case like this one where the parties have presented the Court with a settlement agreement for approval prior to certification of the class, the Court must analyze relevant class certification questions with a heightened level of scrutiny. Amchem Products Inc. v. Windsor, 521 U.S. 591, 620 (1997).

The first requirement of Rule 23(a), that the number of class members be so great that joining them all would be impracticable, is easily met here. There is no dispute that the class includes thousands of Boeing employees and that it is not feasible to name them all as individual plaintiffs.

Next, the Rule requires that there be questions of law or fact common to the class. Not all legal and factual issues need be identical among the class members; a single common issue is sufficient to satisfy the requirement. In employment discrimination class actions, the commonality requirement is not met by a bare allegation that members of a particular race suffer discriminatory treatment. Rather, the plaintiffs must allege a specific discriminatory practice common to the class. General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 158 (1982).

The plaintiffs allege that the root of Boeing's race discrimination problems are company-wide policies which encourage favoritism among groups of white workers, and which tend to exclude African-Americans. The effects of these policies are alleged to be particularly manifest in the company's internal promotion and discharge decisions.¹ The plaintiffs have provided affidavits from

¹There is arguably some tension between class certification based on company-wide policies affecting promotions and lay offs, and the consent decree's effect of discharging all race discrimination claims against Boeing by African-American employees whether the claims are based on these policies or not. Evidence presented by the plaintiffs, and not contradicted by the objectors, indicates that these policies are, in fact, the primary source of the employees' discrimination claims. Also the opt-out

1 numerous Boeing employees describing the effects of these policies and internal memoranda from the
2 company explaining that the responsibility for race related employment policies rests with the Seattle
3 corporate office. And at the hearing, both the supporters of the consent decree and the objectors spoke
4 forcefully of institutional problems with race discrimination. These allegations clearly raise class-wide
5 legal and factual issues sufficient to satisfy the requirement of the Rule. See Falcon, 451 U.S. at 159
6 n.15.

7 Rule 23(a)'s next requirement is that the named members of the proposed class have claims that
8 are typical of the class as a whole. This requirement is intended to guarantee that advocacy of the named
9 class members' interests will also advance the claims of absent class members. The Court, therefore,
10 considers any significant factual variations among class members under the typicality prong.

11 Insuring that the claims of the named plaintiffs are typical can be difficult in a case with a factual
12 context as complex as this one. Boeing is one of the world's largest corporations with several major
13 sub-divisions, two of which had been independent companies until their recent mergers with Boeing.
14 The class as defined by the parties includes all African-American employees in any type of position who
15 has worked for any of these entities during the claims period.²

16 The named plaintiffs in this case include a very broadly selected cross-section of the different
17 categories of Boeing employees. Salaried and hourly, management and line-worker, union and non-
18 union are all represented, as are each of the major geographic hubs of Boeing's operations and each of
19 the pre-merger companies. Particularly in a case in which the requested relief applies evenly to the
20 various sub-groups, this cross-section of Boeing employees suffices to insure that the interests of these
21 sub-groups have been adequately represented, and meets the typicality requirement of Rule 23(a).

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23 provision, which allows any class member to preserve a claim for individual resolution if he or she feels
24 that the damages provision of the decree would not provide adequate compensation, protects class
members who have exceptional or particularly egregious claims.

25 ² This period varies depending on the class member's state of residence.

1 Finally, Rule 23(a) requires that the named class members and their counsel are able to provide
2 adequate representation to protect the interests of the absent class members. This requirement overlaps
3 with the typicality and commonality issues, and also allows the Court to consider any other indication
4 that the named plaintiffs may not protect the interests of unnamed class members.

5 Several of the objectors have alleged that plaintiff's counsel are corrupt or are not competent to
6 represent the plaintiffs in such a complex suit. The Court rejects these allegations. The objectors have
7 failed to provide any proof to support charges of fraud and collusion by the plaintiffs' attorneys beyond
8 hearsay reports of the sort of negotiations that occur whenever a settlement agreement is reached in a
9 complex class action case. And the suggestion that plaintiffs' counsel is not competent to take on this
10 case is belied by the result they have achieved. Despite Boeing's recent success in defending race
11 discrimination suits, the plaintiffs here have gotten the company to agree to make damages payments in
12 an amount comparable to other large class action race discrimination cases, and have crafted an
13 innovative set of injunctive provisions intended to solve the traditionally intractable problem of
14 institutionalized favoritism leading to racism. The suggestion that this result displays anything less than
15 excellent legal ability or unwavering commitment to the plaintiffs' claims is insupportable.

16 Rule 23(a)(4) also requires the Court to consider any conflicts of interest among class members.
17 When class certification is presented in the context of a settlement agreement, the Court must be
18 particularly careful in scrutinizing any potential conflicts. Counsel for some of the objectors argues that
19 Boeing's size and the range of employee groups covered by the decree creates conflicts. They fail,
20 however, to identify a substantive issue for which there is a conflict of interest between two or more sets
21 of employees. Given that the named plaintiffs include representatives of each major employee sub-
22 group, and that the requested relief applies equally throughout the class, the Court finds that there are no
23 conflicts between class members sufficient to defeat certification.

24 The final requirement for class certification is that the case must fit into one of the three
25 categories described in Rule 23(b). The second category permits certification of a claim when the

1 plaintiffs are seeking injunctive relief in response to a course of action that the defendant has taken
2 toward the entire class. This provision was intended to cover class complaints of civil rights violations
3 such as this case. Even if a class action includes a claim for damages, it may be maintained under this
4 provision if a request for an injunction is a major part of the suit. Probe v. State Teachers' Retirement
5 System, 780 F.2d 776, 780 (9th Cir. 1986).

6 There can be no argument that it is appropriate to certify the class in this case under the
7 injunctive relief provision of Rule 23(b). The plaintiffs--and most of the objectors--maintain that the
8 primary focus of this suit has been the implementation of changes in Boeing's employment policies.
9 This is a traditional civil rights claim for injunctive relief and thus clearly meets the requirements of
10 Rule 23(b).

11 The objectors raise some additional arguments against certification which do not fit neatly under
12 any of the above provisions. First, they allege that defining the class by referring to the statute of
13 limitations from employees' current states of residence improperly eliminates many potential class
14 members who would bring suit in the state where they worked instead of the state where they live. The
15 parties explanation that the use of the state of residence simplifies the process for identifying class
16 members is sufficient to meet this objection. The Court also notes that any individual who is omitted
17 from the class as a result of this definition would not have their claim extinguished by the decree and
18 thus could bring an individual suit in any proper forum. The objectors' arguments that the class is not
19 proper because requirements for proceeding under Title VII were not met and because certain of the
20 class representatives have been recently promoted by Boeing are also without merit.

21 Having found that the requirements of Rule 23(a) and (b) have been met, the Court certifies the
22 class and proceeds to consider the fairness of the proposed consent decree.

23 2. Fairness of the Decree.

24 Fed. R. Civ. P. 23(e) provides that any agreement in settlement of a class action claim must be
25 approved by the Court. There is a strong judicial policy favoring settlement of class actions. Early

1 settlements not only conserve the resources of the Courts, but also those of the parties, leaving more to
2 devote to the problems raised by the claim. Also the parties know more about the claims than the Court
3 or a jury would be able to learn during litigation, and thus are in a better position to negotiate an
4 appropriate remedy.

5 As an initial matter, the Court must verify that the procedure for notifying class members of the
6 settlement was adequate. In this case, the parties used two forms of notice previously approved by the
7 Court, one mailed to each identifiable class member, and one published in major newspapers covering
8 the regions where class members were most likely to be found. The only significant challenge to the
9 adequacy of the notice in this case is a complaint that the paragraphs were confusingly misnumbered in
10 the original mailing. This defect was quickly cured, however, and a corrected notice was sent to each
11 individual who received the first mailing. The Court finds this notice procedure to be adequate and
12 proceeds to consider the terms of the consent decree.

13 Despite the preference for settlements, Courts must independently verify that a class action
14 consent decree is fair, adequate and reasonable. The Ninth Circuit has identified eight factors for district
15 courts to consider when approving a class action settlement: (1) the strength of the plaintiffs' case; (2)
16 the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class
17 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
18 completed and stage of proceedings; (6) the experience and views of counsel; (7) the presence of a
19 government participant; (8) the reaction of class members to the proposed settlement. Hanlon v.
20 Chrysler Corporation, 150 F.3d 1011, 1026 (9th Cir. 1998).

21 The Court reviews the first three factors together. The strengths of the plaintiffs' claims and the
22 risks of future litigation are clearly related questions. Boeing has faced a series of individual race
23 discrimination law suits in recent years and has won every one. Although the number of named
24 plaintiffs in this case and the descriptions of their experiences lend credence to their allegations,
25 discrimination cases are notoriously difficult to prove, particularly when they are based on failures to

1 promote or other discretionary decisions. There is also some risk that the class certified by the Court
2 would not survive a challenge by Boeing, which might, for example, be able to demonstrate after more
3 extensive discovery that the class claims are too individual to meet the commonality and typicality
4 requirements. Finally, there is no doubt that continued litigation would be enormously burdensome and
5 expensive for the plaintiffs as well as for Boeing. The price of discovery alone in a nationwide class
6 action such as this one is almost always measured in millions of dollars. The objectors raise no serious
7 challenges to these points, and the Court finds that these factors all strongly favor adopting the consent
8 decree.

9 The fourth factor is the heart of the matter—the amount of the settlement. This case involves
10 substantial injunctive provisions as well as a damages award and the Court must consider both sets of
11 remedies. The damages payments will total approximately \$6.6 million, consisting of two separate
12 funds: approximately \$3.25 million to be divided among the named plaintiffs and other individually
13 identified recipients who assisted in the litigation, and approximately \$3.4 million to be distributed
14 among other class members according to a claims processing procedure. The awards to the named
15 parties range between \$5,000 and \$50,000. The average award to this group will be approximately
16 \$16,500. The average award to members of the second group will be approximately \$1,000.³ Boeing
17 has presented evidence that dollars per class member and dollars per claim filed in this case are
18 comparable to settlement payments in other recent employment discrimination class actions. Although
19 the objectors quibble with Boeing's method of determining these figures, they have not presented any
20 evidence to suggest that the amount of payments appear inadequate or unfair when compared with the
21 other cases. The objectors also have not rebutted Boeing's contention that the vast majority of the
22 claims are for failure to promote or other actions rarely involving substantial damages.

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24 ³The awards to unnamed class members are difficult to predict because of uncertainty regarding
25 the nature of the claims. Also, all of the amounts in this paragraph will vary depending on the final
number of opt-outs and other factors.

1 More problematic is the disparity between the awards to the named plaintiffs and individually
2 identified recipients and the awards to absent class members. The Court has considered this disparity
3 carefully because excessive payments to named class members can be an indication that the agreement
4 was reached through fraud or collusion. After reviewing the record, however, the Court concludes that
5 there is nothing improper about the damages awards under the decree in this case. There are 264 named
6 members of the class and individually identified recipients who will receive the larger awards.⁴ This is a
7 very large group to have been brought in-line behind an allegedly collusive agreement. More
8 importantly, this is the group of class members identified by plaintiffs' counsel as having the strongest
9 claims and thus as providing the strongest foundation for the lawsuit. Because they have the strongest
10 claims it is fair that they would receive the largest awards. Also awards to named class members and
11 others assisting in the prosecution of a class action are generally significantly larger than awards to
12 unnamed class members to compensate the first group for the time and risks taken by involving
13 themselves in the litigation. For these reasons, the Court concludes that the awards to the named parties
14 are not excessive.

15 One of the awards to an individually identified recipient draws substantial criticism from some of
16 the objectors. Mr. Cordell Bolder was awarded \$13,000 though the parties now admit he is not a
17 member of the class. Mr. Bolder was employed by Boeing for a period, but was laid off in 1992,
18 sufficiently long ago that he is not included in the class definition. Mr. Boulder did subsequently apply
19 for a position with Boeing and was rejected, but claims by non-employees for discrimination-in-hiring
20 are not encompassed within the decree. The objectors maintain that the plaintiffs' counsel arranged for
21 the award to Mr. Bolder in order to gain the support of his mother, Ms. Mary Dean, who is an influential
22 class representative. Class counsel maintains that Mr. Bolder provided them with substantial
23 information about his potential discrimination-in-hiring claim, and about his experiences with Boeing in

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25 ⁴Before adjusting for opt-outs.

1 general, and that the award reflects this contribution. Although the Court considers the award to Mr.
2 Bolder unfortunate, it is not persuaded by the objectors' claims of fraud, and declines to reject the entire
3 decree based on this single error.

4 As a final factor supporting the damages provision of the consent decree, the Court notes that the
5 opt-out provision allowed any member of the class to preserve an individual claim.⁵ Notice was
6 provided to all class members by mail and by publication of the effects of the suit, and information about
7 the claims process was readily available from the Clerk of the Court and from other sources. Any
8 individual who believed that the damages he or she is likely to receive under the decree are inadequate
9 could opt-out and file an individual suit. The decree provides that the statute of limitations period for
10 such claims would be tolled during the pendency of the class action suit. This protection, as well as the
11 other factors described above, leads the Court to conclude that the provisions for monetary relief in the
12 decree are adequate, fair, and reasonable.

13 The injunctive provisions of the decree focus on improving the chances for African-American
14 employees to succeed within the company. The distribution of information about promotion
15 opportunities will be improved, changes will be made in the procedure for resolving discrimination
16 related complaints, and free legal advice will be available to assist class members who feel that they
17 have been discriminated against by the company.

18 Several of the objectors have criticized these provisions as toothless and insist that they will have
19 no genuine impact. The Court is convinced otherwise. The injunctive provisions present a novel and
20 potentially effective response to the problem of race discrimination caused by insular social groups
21 within a company. Although it is possible that the injunction's effectiveness could be diminished if
22 Boeing fails to implement it aggressively, at least two factors indicate that this outcome is unlikely. The

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24 ⁵ The parties have asked the Court to determine which opt-outs were timely filed. In order to
25 avoid compromising the protection provided by the opt-out provision, the Court finds that all requests to
26 opt-out received by the Clerk of the Court on or before April 30, 1999 should be considered effective.

1 cooperative process which led to the agreement, and the provision for oversight of the decree by
2 independent observers and, if necessary, by the Court suggest that the decree will lead to genuine
3 improvements in Boeing's internal race relations.

4 Certainly among the most important evidence supporting the injunctive provisions in the decree
5 is the approval of several disinterested experts in race discrimination, the Reverend Jesse Jackson first
6 among them. Some of the objectors in this case have charged that the Reverend Jackson's endorsement
7 was purchased with a donation to one of his organizations. The discovery taken in this case apparently
8 failed to uncover any substantial evidence supporting the allegation, a result that should surprise no one
9 familiar with the Reverend Jackson's efforts to fight race discrimination. The Court considers his
10 meeting with Boeing officials and subsequent endorsement of the decree to be a very strong indication
11 that Boeing is sincere in its response to this suit, and that the decree provides a fair and reasonable
12 resolution of the claims.

13 Next, the Court considers the extent of discovery and the stage of proceedings. Settlement
14 agreements that are presented prior to class certification are to be considered with particular care because
15 they are more likely to be a product of collusion and because they have not been negotiated by court-
16 approved representatives. The Court has exercised this scrutiny and finds no evidence of collusion. In
17 addition, the Court notes that unlike many other class actions, the plaintiffs here did not file a complaint
18 having already agreed to a settlement. On the contrary, this case was contentiously litigated for a
19 substantial period prior to the settlement negotiations. And the plaintiffs' counsel spent a great amount
20 of time preparing the case before it was filed. The nature and quality of this work gives every indication
21 that plaintiffs' counsel intended to pursue these claims vigorously until they reached a satisfactory result;
22 and is wholly inconsistent with the suggestion that the attorneys planned to sacrifice the plaintiffs'
23 claims in exchange for a large fee award. It also indicates that the plaintiffs' counsel had obtained
24 sufficient evidence to understand the strength of the claims despite the lack of formal discovery. The
25 Court concludes that although settlements at this stage must be scrutinized carefully, there are also

1 factors present here that mitigate some of the most troublesome aspects of such agreements.

2 The experience and views of counsel are additional factors supporting the decree. Both Boeing's
3 attorneys and the plaintiffs' attorneys have substantial experience litigating employment discrimination
4 claims. Their analysis of the strengths and weaknesses of the plaintiffs' case are likely to be accurate.
5 Each side has presented forceful arguments in favor of the decree. The Court finds no reason to doubt
6 the sincerity of these arguments and concludes that this factor also supports adopting the decree.

7 There has been no involvement of a government agency in the prosecution of this suit or the
8 negotiation of the decree. The Equal Employment Opportunity Commission has issued right to sue
9 letters to several of the named plaintiffs. Although this suggests that there may be merit to these claims,
10 it does not alter the Court's view of the decree.

11 The final factor is the content of the objections brought by class members. The most common of
12 these objections are that the injunctive provisions will produce no genuine change, and that the damages
13 provisions are inadequate. The Court has addressed these contentions above, and will only add that the
14 mere possibility of a better settlement is not sufficient grounds for finding the agreement unfair.

15 "Settlement is the offspring of compromise; the question we address is not whether the final product
16 could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." Hanlon v.
17 Chrysler Corporation, 150 F.3d 1011, 1027 (9th Cir. 1998).

18 Objectors also complain that Boeing fails to admit that it discriminated and does not apologize.
19 Their concern may be understandable, but a refusal to admit discrimination is an almost universal
20 element of this type of settlement. Particularly when the defendant faces the threat of additional suits on
21 similar claims, as Boeing does, for example, from members of other races, it is simply unrealistic to
22 expect the company to compromise itself by admitting liability here. The lack of an apology is not,
23 therefore, a sufficient reason to ignore the concessions Boeing has made and declare the agreement
24 unreasonable.

25 Although the sheer number of objections filed was significant, between six and eleven percent of

1 the class according to calculations by Boeing, this alone is no reason to reject the decree. Any
2 settlement agreement of for this type of claim will generate a large number of objections, particularly
3 when the objectors are organized by a competing law firm.⁶ In the final analysis, it is the content of the
4 objections and not their number which determine whether or not the decree should be adopted. Because
5 these objections have failed to overcome the parties' evidence in support of the decree, the Court finds
6 that its terms are fair, adequate, and reasonable.

7 Finally, the Court must approve the award of attorneys' fees. Under the decree, Boeing will pay
8 class counsel \$3.1 million for its work through the approval of the decree. Class counsel will receive an
9 additional \$750,000 for supervising the implementation of the decree and other post-approval work. A
10 second plaintiffs firm which had filed a similar class action suit against Boeing in Philadelphia is to
11 receive \$200,000. The Ninth Circuit has approved the use of either a percentage of the recovery or the
12 loadstar, or hourly billing, method of determining the reasonableness of a fee award. Here, the parties
13 defend the proposed award under the percentage method. The total damages awarded by the decree are
14 approximately \$6.5 million. The parties have put a value on the injunctive provisions by estimating
15 their cost to Boeing at \$3.65 million. Adding in the attorneys' fees of \$4.05 million establishes a total
16 fund of \$14.2 million. The attorneys' fees amount to approximately 28% of this fund. This is close to
17 the benchmark amount of 25% and the Court finds the award to be reasonable given the nature of the
18 case, the risks to the plaintiffs' counsel's firm, and the amount of pre-filing and post-settlement work
19 performed.

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25 ⁶The Court notes that the number of objectors who chose to opt-out is substantially lower than
the figure which would permit Boeing to reject the decree.

CONCLUSION

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2 It is clear that the factors outlined above support Court approval of the consent decree. The
3 agreement as a whole provides a fair, adequate, and reasonable resolution of the plaintiffs' claims in this
4 case, and there is no credible evidence of fraud or collusion. The Court, having already determined that
5 the class should be certified, now approves the decree.

6 SO ORDERED this 30th day of September, 1999.

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CHIEF UNITED STATES DISTRICT JUDGE