

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: RAILWAY INDUSTRY)	Master Docket Misc. No. 18-798
EMPLOYEE NO-POACH ANTITRUST)	
LITIGATION)	MDL No. 2850
)	
This Document Relates to:)	
ALL ACTIONS)	

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION
SETTLEMENTS AND FINAL JUDGMENT AND ORDER OF DISMISSAL**

WHEREAS, Plaintiffs Stephen Baldassano, John Brand, David Escalera, Brian Lara, and Patricia Lonergan brought claims on behalf of themselves and all similarly situated persons and have entered into Settlement Agreements with the Defendants;

WHEREAS, the Knorr Defendants and Wabtec Defendants have entered into Settlement Agreements dated October 16, 2019 and February 24, 2020, respectively;

WHEREAS, after a hearing held on March 18, 2020, the Court issued an Order on March 19, 2020 granting preliminary approval of the Settlement Agreements. Dkt. 262.

In so doing, the Court, *inter alia*,

- i. Found that the Settlements were within the range of reasonableness meriting possible final approval;
- ii. Approved the retention of KCC LLC (“KCC”) as Notice Administrator to handle any and all aspects of Settlement Administration and Notice of the Settlements;
- iii. Approved the forms of Notice to Class Members and the Notice Plan for disseminating those Notices as reasonable, constituting the best notice

practicable under the circumstances, and consistent with the requirements of due process and Fed. R. Civ. P. 23(e);

- iv. Conditionally certified a Settlement Class and found that, for settlement purposes only, the Settlement Class meets all prerequisites for class certification under Rule 23(a) and (b) of the Federal Rules of Civil Procedure, including that: (a) the Settlement Class is ascertainable; (b) the Settlement Class is so numerous that joinder of all members is impracticable; (c) there are questions of law and fact common to the Settlement Class; (d) Plaintiffs and their counsel are capable of fairly and adequately protecting the interests of the Settlement Class; (e) common questions of law and fact predominate over questions affecting only individual Settlement Class Members; and (f) certification of the Settlement Class is superior to other available methods for the fair and efficient resolution of the claims of Settlement Class Members;
- v. Preliminarily approved the plan of allocation proposed by Plaintiffs; and,
- vi. Set procedures and schedules for Class Members to assert objections, request exclusion, or file claims.

WHEREAS, on July 17, 2020, Plaintiffs filed a Motion for Final Approval of Proposed Class Action Settlements and brief in support of same, seeking final approval of the Settlements pursuant to Rule 23(e) of the Federal Rules of Civil Procedure;

WHEREAS, on August 26, 2020, the Court held a final fairness hearing (the “Fairness Hearing” or “Final Approval Hearing”) to adjudicate the fairness, reasonableness and adequacy of the Settlements;

WHEREAS, unless otherwise defined herein, all capitalized terms have the same meanings as set forth in the Settlement Agreements.

NOW, THEREFORE, THIS ____ DAY OF _____, 2020, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Court has reviewed the terms and conditions set forth in the two Settlement Agreements, including all exhibits thereto, and finds that they are fair, reasonable, and adequate under Rule 23(e)(2) of the Federal Rules of Civil Procedure. The Court finds that the Settlements are in full compliance with all requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clause), and any other applicable law.

2. Pursuant to *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004), the Court finds that a presumption of fairness applies because the Settlements were negotiated at arm's length; the Parties were represented by reputable counsel with substantial class action, antitrust, and complex litigation experience; there was sufficient formal and informal discovery and the Parties and counsel were knowledgeable about the facts of the case and potential risks of continued litigation; and no Class Member objected and only four Class Members opted out.

3. The Court also specifically considered the *Girsh* factors, including the complexity, expense, and likely duration of litigation; the favorable reaction of the Settlement Class; the stage of proceedings; the risks of establishing liability, damages, and class status; and the range of reasonableness of the Settlements in light of the best possible recovery and attendant risks of litigation. *Girsh v. Jepson*, 521 F.2d 153, 157

(3d Cir. 1975). The Court finds that these factors weigh in favor of approving the Settlements.

4. The Court finds that the distribution of Notice as set forth in the Declaration of Derek Smith of KCC was in compliance with the Court's March 19, 2020 Order approving proposed notices and the notice plan, and that notice has been given in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies Federal Rule of Civil Procedure 23(e) and due process.

5. Defendants properly and timely notified the appropriate government officials of the Settlements pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715. Further, more than ninety (90) days have elapsed since Defendants provided notice of the Settlements pursuant to CAFA. Dkt. 251.

6. The Court has jurisdiction over the subject matter of this Action and over all parties to the Settlements, including all absent members of the Settlement Class certified for purposes of the Settlements.

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court grants final class certification, for settlement purposes only, of the Settlement Class that it preliminarily certified in paragraph 12 of its March 19, 2020 Order.

8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, for settlement purposes only, the following Settlement Class: All natural persons who worked in job families in which railway industry experience or skills were valuable and were employed in the United States by one or more of the following: (a) from January 1, 2009 through April 3, 2018, Westinghouse Air Brake Technologies Corporation or its subsidiaries, including Wabtec Railway Electronics, Inc., Railroad

Controls, L.P., and Xorail Inc.; (b) from January 1, 2009 through April 3, 2018, Knorr Brake Company LLC or New York Air Brake LLC; or (c) from June 1, 2010 through April 3, 2018, Faiveley Transport, S.A. or Faiveley Transport North America Inc. Excluded from the Settlement Class are senior executives and personnel in the human resources, recruiting, and legal departments of the Defendants. Attached hereto as Appendix A is the list of job titles in the Settlement Class.

9. For avoidance of doubt, the Settlement Class does not include employees of entities that are not specifically named in paragraph 8, even if they held job titles listed in Appendix A.

10. The Court confirms the appointment of Stephen Baldassano, John Brand, David Escalera, Brian Lara, and Patricia Lonergan as Settlement Class representatives.

11. The Court confirms the appointment of Dean M. Harvey of Lief Cabraser Heimann & Bernstein, LLP and Roberta D. Liebenberg of Fine, Kaplan and Black, R.P.C. as Co-Lead Counsel for the Settlement Class.

12. The Court grants final approval of the plan of allocation as being fair, reasonable, adequate, and in the best interest of the Settlement Class. The Court further finds that the plan of allocation “treats class members equitably relative to each other” as required by Federal Rule of Civil Procedure 23(e)(2)(D).

13. Accordingly, the Court hereby grants Plaintiffs’ Motion for Final Approval of Proposed Class Action Settlements. The Settlements are hereby approved in all respects, and the Parties are hereby directed to implement the Settlements.

14. Plaintiffs have notified the Court that four Class Members timely opted out of the Settlement Class. As set forth in Exhibit D to the Declaration of Derek Smith,

they are David Corbin, Kyle S. Hagan, Richard Pecone, and Connie Cella. The releases and other provisions of the Settlement Agreements shall not apply to them. This listing satisfies the requirement for Class Counsel to set forth an opt-out list within seven (7) days of the Final Approval Hearing. Dkt. 262 at ¶ 22.

15. The Court hereby dismisses the Action as to all Defendants on the merits, with prejudice, and without taxation of fees or costs except as provided for in the Agreements.

16. This is the Final Judgment as defined in the Settlement Agreements. In the event that this Final Judgment is not otherwise final and appealable, pursuant to Federal Rule of Civil Procedure 54(b), the Court finds and directs that there is no just reason for delaying enforcement or appeal and judgment should be entered.

17. Without affecting the finality of this Order and Final Judgment in any way, this Court hereby retains exclusive and continuing jurisdiction as to all matters relating to administration, consummation, implementation, enforcement and interpretation of the Settlements and this Order and Final Judgment, and for all matters ancillary thereto.

IT IS SO ORDERED.

BY THE COURT:

The Honorable Joy Flowers Conti
Senior United States District Judge