

No. 16-2712

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

MATTIE HALLEY, *et al.*,

Plaintiffs-Appellees,

v.

HONEYWELL INTERNATIONAL INC., *et al.*,

Defendant-Appellee,

MAUREEN CHANDRA,
Objector-Appellant.

On Appeal from the United States District Court
For the District of New Jersey
Case No. 10-cv-03345
The Hon. Esther Salas

**PLAINTIFFS-APPELLEES' MOTION TO
EXPEDITE THE PENDING APPEAL**

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June 24, 2016

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INTRODUCTION

This appeal is an unusual one. It has been brought by one objector, who — alone out of a class of 3,500 members — challenges the District Court’s final approval of both: (a) a class action settlement agreement of \$10,017,000 reached between Plaintiffs-Appellees and Honeywell; and (b) fees and costs. As such, the appeal will delay the distribution of thousands of dollars to each of 99.8% of the class members who have indicated both their satisfaction with, and desire to participate in, the settlement. The appeal also will impose additional and costly burdens on the claims administration process, burdens not previously contemplated and, therefore, costs for which funds were not previously set aside.

Accordingly, to prevent further delay of substantial settlement payments to thousands of eligible class members and to forestall the imposition of additional and costly administrative burdens in the claims administrative process, Plaintiffs-Appellees, pursuant to Fed. R. App. P. 27 and Local Appellate Rule (“L.A.R.”) 4.1— with the express written consent of Defendant-Appellee Honeywell International Inc. (“Honeywell”) — respectfully move to expedite this appeal.

Specifically, Plaintiffs-Appellees respectfully request that the Court enter an expedited briefing schedule, one which shortens the timeframe for the submission of both the Objector’s initial brief and the Plaintiffs-Appellees’ and Honeywell’s opposition briefs, but leaves intact the period allotted for the Objector’s reply brief.

The proposed expedited schedule: (a) trims the period allotted by Fed. R. App. P. 31(a)(1) for Objector-Appellant Maureen Chandra's opening brief from 40 to 21 days; and (b) cuts the period allotted by Fed. R. App. P. 31(a)(1) for Plaintiffs-Appellees' and Honeywell's opposition briefs from 30 to 14 days. Significantly, however, this proposed schedule does not call for shortening the period allotted by Fed. R. App. P. 31(a)(1) for Objector-Appellant's reply brief; *i.e.*, Ms. Chandra still will have 14 days in which to file a reply brief, if she so chooses, exactly as provided by Fed. R. App. P. 31(a)(1).

Concretely, if this Court grants this motion:

- Objector-Appellant Maureen Chandra's opening brief will be due on July 8, 2016;
- Plaintiffs-Appellees' and Honeywell's opposition briefs will be due on July 22, and
- Objector-Appellant's reply brief will be due on August 5, 2016.

Furthermore, should the Court wish to hear oral argument, Plaintiffs-Appellees and Honeywell respectfully request that such be scheduled at the Court's earliest convenience following the close of briefing on August 5, 2016.

Pursuant to L.A.R. 4.1, counsel for Plaintiffs-Appellees and Honeywell have separately contacted Ms. Chandra's counsel, seeking her consent to this motion, in

general, and to this proposed expedited brief schedule, in particular. Ms. Chandra refused consent and made a counter-offer. According to Ms. Chandra's counter-offer, the Court actually would *lengthen* — by 14 days — the time she would have to file her opening brief, while *shortening* — by 14 days — the time Plaintiffs-Appellees and Honeywell would have to file their separate opposition briefs. Plaintiffs-Appellees and Honeywell have rejected her counter-offer. Honeywell has stated that although it agrees with Plaintiffs-Appellees that expedition is warranted, it is amenable to whatever expedited briefing schedule the Court may order.

Finally, pursuant to the Third Circuit Practice Guide, by way of phone call on June 20, 2016, Plaintiffs-Appellees' counsel provided advance notice to the Clerk's Office of the pending submission of the instant motion.

FACTUAL BACKGROUND

In July 2014, after more than four years of very active and highly contentious class action litigation involving alleged environmental contamination of certain properties in Jersey City, New Jersey, Plaintiffs-Appellees and Honeywell reached a settlement in which Honeywell agreed to pay \$10,017,000 into a non-reversionary settlement fund for payments to be made to two classes of

residential property owners within certain areas of Jersey City.¹ That settlement was the result of months of arms-length negotiations between the parties and two rounds of multi-day negotiations before an experienced, skilled, and independent third-party mediator. The settlement was memorialized in an agreement executed in October 2014, which was submitted to the District Court for preliminary approval in November 2014. The District Court granted preliminary approval of the settlement on April 30, 2015.

Pursuant to the District Court's preliminary approval order, the court-approved claims administrator began mailing the court-approved notices and claim forms to eligible class members informing them of both the terms of the settlement and their ability to file claims to participate in the settlement, to opt out of the settlement, or to file an objection. The Court's preliminary approval order gave Class members three months from the date of notice in which to file claims, opt-outs, or objections.

Indicating their satisfaction with, and desire to participate in, the settlement, property owners submitted 2,217 valid claims for 2,085 of the 3,497 eligible class properties, representing a participation rate of nearly 60%. Only twenty-eight class members opted out. Moreover, although the class consists of 3,497 identified

¹ With limited exception, the settlement did not resolve claims against PPG Industries, Inc., the only other Defendant in this case.

properties, only three class members (representing less than 2/10th of 1% of all valid claims and barely 1/10th of 1% of all identified properties) objected to the settlement. Of these three objectors, only Ms. Chandra has appealed the final judgment approving the settlement and approving fees and costs.

In addition to filing an initial objection to the settlement, Ms. Chandra also filed a brief objecting to Plaintiffs-Appellees' and Honeywell's joint motion for final approval of the settlement on three grounds and Settlement Class Counsel's application for fees and expenses on six additional grounds. Plaintiffs-Appellees and Honeywell filed separate briefs responding to each objection. The District Court held a Fairness Hearing on September 30, 2015, which lasted over three hours. Ms. Chandra, who was the only objector to appear at the hearing (through her counsel), was given ample opportunity to present her objections to the settlement agreement. Following that hearing and pursuant to the Court's request, Plaintiffs-Appellees and Honeywell submitted additional supplemental briefing in support of final approval, in part to address additional arguments raised by Ms. Chandra for the first time at the Fairness Hearing.

In a 56-page opinion, the District Court granted final approval of the settlement on April 26, 2016, entered a final order approving the settlement and the fees and costs the same day, and entered final judgment on May 10, 2016. Ms. Chandra's appeal followed.

ARGUMENT

Through the settlement reached between the parties, Honeywell has paid \$10,017,000 into a non-reversionary settlement fund, the majority of which will be used for payments to the 2,085 owners of residential property within Jersey City, New Jersey who timely filed claims to participate in the settlement. Pursuant to the settlement agreement, class members were due to start receiving their settlement checks — with payments of up to \$3,080.42 each — beginning in mid-June 2016.

Significantly, however, under the terms of the settlement, these settlement funds cannot be paid to any of the eligible class members until all appeals in this action are exhausted, including appeals by any objectors, of whom there is only one in this case, Ms. Chandra. (Settlement Agreement, ECF No. 367-2, at IV.5.)

As a result, Ms. Chandra's singular appeal now risks further delaying the distribution to thousands of class members and imposes additional administrative burdens not previously contemplated. Realistically, the more time that passes between a final resolution of the case and the distribution of settlement funds makes it more likely that class members will change addresses and/or move outside of the class area, thereby potentially jeopardizing the ability of those class members to recover if the claims administrator is not able to locate them. At the very least, the task of attempting to locate class members (some of whom may have changed addresses) for purposes of mailing class members their settlement

checks would impose additional administrative burdens on the claims administration process.

Moreover, this settlement provides substantial sums of real money, with payments of up to \$3,080.42 per class member, to people who have already waited a significant amount of time to receive their payments. This case thus stands in sharp contrast to many large class actions, where individual class members' compensation is minimal and thus the delay from an appeal would not cause class members significant harm. Finally, this settlement was expressly found to be fair and adequate by the District Court after substantial and multiple rounds of briefing and after a full hearing at which Ms. Chandra appeared through counsel and was given ample opportunity to present her arguments supporting her nine objections to the Settlement Agreement and the Settlement Class Counsel's application for fees and expenses — objections which no other class member joined and which the District Court thoroughly considered and completely overruled.

In short, in view of the facts that: Ms. Chandra's appeal is a singular one; the nine objections Ms. Chandra raised below were fully explored by the District Court; Ms. Chandra is barred from raising new objections or arguments on appeal; and Ms. Chandra can succeed only if she shows the District Court abused its discretion in rejecting her arguments and overruling her objections, *In re Insurance*

Brokerage Antitrust Litig., 579 F.3d 241, 272 (3d Cir. 2009), Ms. Chandra's appeal can and should be briefed expeditiously.

In sum, the unique circumstances of this case provide the "exceptional reason[s]" specified by L.A.R. 4.1 for the Court to grant this motion. Expediting this appeal will both minimize the imposition of additional burdens on the settlement claims administration process and reduce the likelihood of further protracted delay in providing a significant monetary award to over 2,000 individual homeowners.

CONCLUSION

For the reasons discussed above, Plaintiffs-Appellees respectfully request, with Honeywell's consent, that the Court grant this motion to expedite the appeal. Specifically, Plaintiffs-Appellees respectfully request that the Court enter an order setting the following expedited schedule:

1. Objector-Appellant's opening brief shall be due July 8, 2016
2. Plaintiffs-Appellees' and Honeywell's opposition briefs shall be due July 22, 2016;
3. Objector-Appellant's reply brief shall be due August 5, 2016;

4. Should the Court request oral argument, it shall be scheduled at the Court's earliest convenience following the close of briefing on August 5, 2016.

Respectfully submitted,

/s/ Allan Kanner
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DATED: June 24, 2016

CERTIFICATE OF BAR MEMBERSHIP

I, ALLAN KANNER, counsel for Plaintiffs-Appellants, hereby certify that I am a member of the bar of the United States Court of Appeals for the Third Circuit.

/s/Allan Kanner

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June 24, 2016

**CERTIFICATE OF COMPLIANCE
PURSUANT TO THIRD CIRCUIT RULE 31.1(c)**

Pursuant to Third Circuit Rule 31.1(c), I, ALLAN KANNER, counsel for Plaintiffs-Appellants, hereby certify that the electronic copy of the Plaintiffs-Appellees' Motion to Expedite the Pending Appeal was scanned for viruses by BitDefender and no viruses were detected.

/s/ Allan Kanner
ALLAN KANNER

June 24, 2016

CERTIFICATE OF SERVICE

I, ALLAN KANNER, hereby certify that on this 24th day of June, 2016, I electronically filed the foregoing Plaintiffs-Appellees' Motion to Expedite the Pending Appeal with the Clerk of the Court for the U.S. Court of Appeals for the Third Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Allan Kanner
ALLAN KANNER

June 24, 2016