

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MATTIE HALLEY, ET AL.

On Behalf of Themselves
and All Others Similarly Situated,

Plaintiffs,

v.

HONEYWELL INTERNATIONAL,
INC., ET AL.

Defendants.

Civil Action No. 2:10-cv-3345 (ES) (JAD)

~~[PROPOSED]~~ ORDER APPOINTING
SPECIAL MASTER

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Salas, District Judge.

This matter comes before the Court *sua sponte* regarding the appointment of a Special Master. Pursuant to Federal Rule of Civil Procedure 78, no oral argument was heard.

The United States Court of Appeals for the Third Circuit having issued a mandate in this matter on July 21, 2017 (*see* D.E. No. 451);

and the Third Circuit, in relevant part, having “remand[ed] so the District Court may articulate why the costs were reasonably incurred in the prosecution of the case against Honeywell and to address the issue of commingled expenses, including, if appropriate, by requiring additional information from counsel or the parties,” *Halley v. Honeywell Int’l, Inc.*, 861 F.3d 481, 501 (3d Cir. 2017);

and the Third Circuit “express[ed] no opinion as to whether the costs should ultimately be approved and in what amount.” *id.*;

and “Federal Rule of Civil Procedure 53 empowers the Court to appoint a master, provide for the master’s compensation, and specify the master’s powers,” *Agostino v. Quest Diagnostics, Inc.*, No. 04-4362, 2012 WL 2344865, at *1 (D.N.J. June 20, 2012);

and Rule 53(a)(1) providing, in relevant part, that “[u]nless a statute provides otherwise, a court may appoint a master only to . . . (B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by (i) some

exceptional condition; or (ii) the need to perform an accounting or resolve a difficult computation of damages; or (C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district”;

and the Third Circuit having indicated that a district court may use a master “to perform some specialized matters of account or difficult computation of damages . . . or some other time consuming or detailed tasks that the district court judge or a magistrate judge would be less efficient in accomplishing.” *see Prudential Ins. Co. of Am. v U.S. Gypsum Co.*, 991 F.2d 1080, 1085 (3d Cir. 1993); *see also Beazer East, Inc. v. Mead Corp.*, 412 F.3d 429, 441 (3d Cir. 2005) (“Accountings and other damages computations may be referred without the parties’ consent because they generally do not call for any peculiar judicial talent or insight.”) (citation omitted):

and the Court having elected to appoint Professor Eric D. Green, Resolutions LLC, 125 High Street, Suite 2205, Boston, MA 02110 as a master for the aforementioned tasks (*see* D.E. 470);

and the Court having issued an Order on July 31, 2017 constituting the required notice under Rule 53(b)(1) and providing ample opportunity for the parties to express any objections in writing to the Court;

and the Court having received numerous submissions thereafter (as summarized in the Court’s letter order of October 17, 2017 (D.E. No. 466)), including Class Counsel’s motion seeking an award of costs (D.E. 455, 460), an amended proposed order in connection with that motion (D.E. No. 464), and a letter objection (*see* D.E. No. 467);

and the Court finding the circumstances in this matter and the resources required to address the aforementioned issues constitute exceptional circumstances and/or a specialized matter of accounting that is time consuming and detailed to an extent that the Undersigned and the Magistrate Judge would be less efficient in accomplishing than a master;

and the Court accordingly finding that the Settlement Classes—who have yet to be provided their *pro rata* share of the Net Settlement Fund (*see, e.g.*, D.E. No. 459)—would benefit from the efficiency associated with the appointment of a Special Master;

IN LIGHT OF THE FOREGOING, IT IS on this 5th day of December 2017,

ORDERED, that Professor Eric D. Green is hereby appointed as a Special Master pursuant to Federal Rule of Civil Procedure 53(a);

I. SCOPE OF THE SPECIAL MASTER’S AUTHORITY

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 53(b)(2)(A), that the scope of the Special Master’s authority is to assist the Court in “articulat[ing] why the costs were reasonably incurred in the prosecution of the case against Honeywell and to address the issue of

commingled expenses, including, if appropriate, by requiring additional information from counsel or the parties,” *Halley v. Honeywell Int’l, Inc.*, 861 F.3d 481, 501 (3d Cir. 2017);

II. PROCEDURES

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 53(b)(2), that the master shall proceed with all reasonable diligence and, pursuant to Fed. R. Civ. P. 53(b)(2)(D), shall submit his report and recommendations to the Court as to the costs to be awarded to Class Counsel from the Settlement Fund within 90 days of the date this order is issued;

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 53(b)(2)(B), that the Special Master may communicate *ex parte* with Class Counsel as needed to fulfill the Special Master’s duties; may communicate *ex parte* with the Court regarding logistics, the nature of his activities, management of the litigation, and other appropriate procedural matters; but may not communicate *ex parte* with any other party in this action;

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 53(b)(2)(C), that all materials Class Counsel submit to the Special Master that document the costs Class Counsel has advanced in this action will at all times be treated as confidential, *in camera* submissions;

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 53(b)(2)(C), that the report or recommendation of the Special Master, and the record of the evidence considered in making or recommending findings of fact, shall be filed with the Court *in camera* and made available to Class Counsel, but otherwise maintained in confidence and under seal;

IT IS FURTHER ORDERED, consistent with the notes of the Advisory Committee on Civil Rules to Fed. R. Civ. P. 53, that the Special Master circulate a draft order, report, or recommendation to Class Counsel for review and comment before filing it with the Court;

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 53(b)(2)(D) and 53(f)(2), that Class Counsel may file objections to, or a motion to adopt or modify, any order, report, or recommendations of the Special Master that are filed with the Court no later than 45 days after a copy is served on Class Counsel;

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 53(b)(2)(D), that the Court will decide all objections to—or a motion to adopt or modify any order, report, or recommendation of the Special Master—under the standards of review set forth in Fed. R. Civ. P. 53(f), and that the Court will decide all objections to procedural matters under an abuse of discretion standard of review;

IT IS FURTHER ORDERED that any motion authorized by the Special Master, including opposition and reply papers, shall be filed with the Special Master, including one courtesy copy. All motion papers shall comply with applicable Federal or Local Rules of Civil Procedure, unless otherwise ordered by the Special Master, provided, however, that nothing

herein shall preclude the Special Master from adopting or utilizing informal procedures, with the consent of Class Counsel, to resolve issues within the scope of the Special Master's authority;

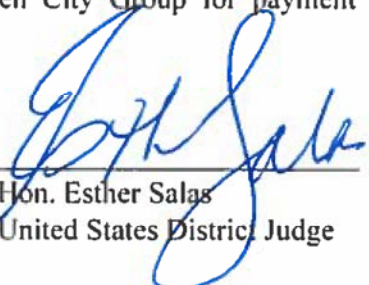
IT IS FURTHER ORDERED that the Special Master shall not be subject to subpoena;

IT IS FURTHER ORDERED that the Special Master may employ other persons to provide assistance; and such persons shall be under the supervision and control of the Special Master; and

III. COST OF SPECIAL MASTER

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 53(b)(2)(E), that the Special Master shall receive an hourly rate of \$1,000. Reasonable costs and fees of the master will be deducted from the Net Settlement Fund approved by the Court (D.E. 439), at that hourly rate. Monthly invoices shall be submitted to the Garden City Group for payment from the Net Settlement Fund.

SO ORDERED.



Hon. Esther Salas
United States District Judge