

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
Hon. Esther Salas

**OBJECTOR-APPELLANT'S RESPONSE
TO MOTION TO EXPEDITE THE PENDING APPEAL
(Corrected Version)**

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Counsel of Record for Objector-Appellant

July 1, 2016

INTRODUCTION

Counsel for Plaintiffs-Appellees are correct when they say this appeal is an unusual one. If there was ever a class action settlement that cried out for appellate review, it is this one.

Counsels' representation to this court in their introduction that "99.8% of the class members [] have indicated both their satisfaction with, and desire to participate in, the settlement" is bizarre, considering that over 40% of class members have not filed claims, and therefore, will receive nothing though still subject to the settlement release. The only reason so many class members did not file a claim for \$1800 after receiving direct notice, and attending multiple in-person, public meetings with Class Counsel, is that more than 40% of the class was not satisfied with the settlement or more than 40% of the class did not understand the proceedings.

Counsels' representation of a "99.8%" satisfaction rate is even more troubling when the court considers statements made by Class Counsel at a public meeting hosted by Class Counsel for class members on July 22, 2015, and attended by counsel for Objector-Appellant, Maureen Chandra. So many class members were upset at this meeting with the meager settlement, that Class Counsel announced his present sense impression to them via the public address system: "Based on the tenor of the crowd, it looks like a lot of people are unhappy with the

settlement.” When a class member asked Class Counsel what he thought of the settlement, Class Counsel refused to answer. Instead, Class Counsel announced to class members over the PA system, “The court found, based on the information that we provided to it, that this settlement is fair and reasonable under all the circumstances surrounding the lawsuit.” That statement to class members was not only untrue (because it predated the District Court’s April 26, 2016 Final Approval Opinion) but also had the effect of suppressing objections.

Class Counsel also told class members at the July 22, 2015 meeting, “The lawsuit that we are here about, is only about the loss of property values. However, the lawsuit is not about the cleanup. There is a completely separate lawsuit in federal court about the cleanup.” Class Counsel admitted that none of their experts did any physical testing of class property to determine the extent of contamination. Yet, the settlement release includes claims for contamination and remediation due to hexavalent chromium and other undisclosed “chemical contamination.”

Class Counsel also refused to provide the District Court with any estimate of damages, including lost property value or cost of remediation. Without an estimate of damages, the District Court did not have enough information to determine whether the settlement was fair, reasonable, and adequate. It also defies reason how Class Counsel could mediate and settle contamination claims without knowing the extent of contamination to class members’ properties.

Objections by Objector-Appellant, Maureen Chandra have already resulted in a \$151,000 benefit to class members. After Maureen Chandra objected to a \$100,000 *cy pres*, the parties agreed to forego a *cy pres* community project and distribute those funds directly to class members. In addition, after Maureen Chandra objected to Class Counsels' lack of disclosure concerning expenses, the District Court ordered Class Counsel to submit expense reports *in-camera*. Before submitting those expense reports for in-camera review, Class Counsel lowered its request for expenses by over \$51,000.

Since Plaintiffs-Appellees filed a motion to expedite the appeal pursuant to 3d Cir. L.A.R. 4.1, the only issue before the Court is whether or not Plaintiffs-Appellees have set forth an “exceptional reason that warrants expedition.”¹ They have not. The only reason cited by Plaintiffs-Appellees to expedite this appeal is that the appeal may cause a minor delay in distributing money to class members. That reason is not “exceptional” because it applies to any class action settlement or monetary judgment. Therefore, the Court should deny Plaintiffs-Appellees’ motion to expedite this appeal.

¹ Plaintiffs-Appellees argue the merits of the case in the majority of their brief instead of exceptional reasons that warrant expedition. Objector-Appellant is compelled to respond to Plaintiffs-Appellees’ merits arguments though not a factor that should be considered by the Court in a motion to expedite.

ARGUMENT

Plaintiffs-Appellees have not set forth an “exceptional reason that warrants expedition.” 3d Cir. L.A.R. 4.1. The only reason cited by Plaintiffs-Appellees to expedite this appeal is that the appeal may cause a minor delay in distributing money to class members. Plaintiffs-Appellees’ cited reason is not “exceptional” because it applies to any class action settlement or monetary judgment.

Furthermore, Plaintiffs-Appellees’ proposed briefing schedule is so unreasonable, it is doubtful anyone could comply with it. Plaintiffs-Appellees’ proposed briefing schedule would compel Objector-Appellant, Maureen Chandra to file her brief and appendix on Friday, July 8, 2016 – only one week from today. That briefing schedule is even more irrational considering that Monday, July 4 is a national holiday.

When contacted on June 20, 2016 by counsel for Plaintiffs-Appellees concerning their motion to expedite the appeal, counsel for Objector-Appellant responded the same day and explained that he was leaving for vacation on June 22. That vacation was reserved and paid for on February 2, 2016 – long before the District Court entered its Order on May 10, 2016, which is the subject of this appeal.

Without conceding that expedition is necessary, counsel for Objector-Appellant was willing to work with counsel for Plaintiffs-Appellees on a joint

briefing schedule. Counsel for Objector-Appellant proposed adding 30 days to each deadline proposed by counsel for Plaintiffs-Appellees. (See Attached Ex. A, e-mail from Thomas Paciorkowski to Ned Miltenberg dated June 20, 2016). Counsel for Plaintiffs-Appellees never responded; and instead, filed this motion on June 24, 2016 while counsel for Objector-Appellant was on vacation.

Plaintiffs-Appellees' argument that somehow a briefing schedule which adds 30 days to their proposed schedule will cause class members harm also lacks reason when considering the expanse of time between the execution of the settlement agreement (November 7, 2014), the notice to class members of the settlement (June 1, 2015), and the District Court's Final Approval Order (May 10, 2016).

Finally, Plaintiffs-Appellees' argument that the claims administrator will "potentially" be unable to locate class members who move outside the class area in the next 30 days is wild speculation that is easily dismissed. Regardless of where a class member "may" move, a letter will be forwarded to a subsequent address by the post office simply by filling out a free, forwarding address card. Noticeably absent from Plaintiffs-Appellees' motion is any certification from the claims administrator supporting Plaintiffs-Appellees' argument.

CONCLUSION

For the foregoing reasons, Plaintiffs-Appellees motion for expedition should be denied because an exceptional reason does not exist to warrant expedition. Nevertheless, and without conceding that expedition is necessary pursuant to 3d Cir. L.A.R. 4.1, Objector-Appellant would agree to a briefing schedule which adds 30 days to the deadlines proposed by Plaintiffs-Appellees.

Respectfully submitted,

July 1, 2016

s/ Thomas Paciorkowski
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Attorneys for Objector-Appellant, Maureen Chandra

CERTIFICATE OF BAR MEMBERSHIP

I, Thomas Paciorkowski, counsel for Objector-Appellant, certify that I am a member of the bar of the United States Court of Appeals for the Third Circuit.

July 1, 2016

s/ Thomas Paciorkowski
Thomas Paciorkowski, Esq.

CERTIFICATE OF COMPLIANCE WITH 3d Cir. L.A.R. 31.1(c)

I, Thomas Paciorkowski, certify that Windows Defender has been run on this file and no viruses were detected.

July 4, 2016

s/ Thomas Paciorkowski
Thomas Paciorkowski, Esq.

CERTIFICATE OF SERVICE

I, Thomas Paciorkowski, certify that on July 4, 2016, I electronically filed the (Corrected Version) of Objector-Appellant's Response to 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.

July 4, 2016

s/ Thomas Paciorkowski
Thomas Paciorkowski, Esq.

EXHIBIT

A

Tom Paciorkowski

To: Tom Paciorkowski
Subject: RE: Halley et al. v. Honeywell International Inc., et al. No. 16-2712

From: Tom Paciorkowski
Sent: Monday, June 20, 2016 5:38 PM
To: 'Ned Miltenberg'; tshebell@shebell.com; jsanders@shebell.com
Cc: Himelfarb, Allyson; Anthony Z. Roisman
Subject: RE: Halley et al. v. Honeywell International Inc., et al. No. 16-2712

Dear Ned,

Your cited reason is not "exceptional" because it applies to any class action settlement or monetary judgment. Thus, we do not agree that expedition is necessary.

In addition, we have scheduling conflicts with your proposed briefing schedule. For example, I leave for vacation on June 22nd.

Nevertheless, we would agree to the following briefing schedule without conceding that expedition is necessary. Our proposed briefing schedule simply adds 30 days to each deadline you proposed, to avoid scheduling conflicts.

Appellant's brief -- Aug. 8
Appellees' response -- Aug. 22
Appellant's reply -- Sept. 1

Sincerely,

Tom Paciorkowski

From: Ned Miltenberg [<mailto:nedmiltenberg@gmail.com>]
Sent: Monday, June 20, 2016 8:35 AM
To: tshebell@shebell.com; Tom Paciorkowski; jsanders@shebell.com
Cc: Himelfarb, Allyson; Anthony Z. Roisman
Subject: Re: Halley et al. v. Honeywell International Inc., et al. No. 16-2712

Dear Counsel:

I understand that the e-mailed version of the letter I sent you yesterday was poorly formatted and thus difficult to read. I apologize for the inconvenience. Attached please find a PDF version of that letter, which I trust will be easier to read.

I still hope you will respond, one way or the other, by COB on Wednesday, 6/22.
Sincerely, Ned

NED MILTENBERG
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