

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Wendy Berry, Lorri Hulings, and Kathleen Sammons, individually and as representatives of a class of similarly situated persons, and on behalf of the FirstGroup America, Inc. Retirement Savings Plan,

Plaintiff,

v.

FirstGroup America, Inc., FirstGroup America, Inc. Employee Benefits Committee, and Aon Hewitt Investment Consulting, Inc.,

Defendant.

Case No. 1:18-cv-00326-KLL

Judge Karen L. Litkovitz

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

PLEASE READ THIS NOTICE CAREFULLY.

This is a notice of a proposed class action settlement in the above-referenced lawsuit.

Your legal rights may be affected if you are a member of the following Settlement Class:

All participants and beneficiaries of the FirstGroup America, Inc. Retirement Savings Plan at any time on or after October 1, 2013 through the date of preliminary approval August 1, 2024, who had any portion of their account invested in the Aon Hewitt Funds, excluding Defendants, any of their directors, and current or former members of the Employee Benefits Committee or Employee Retirement Benefits Committee who served on such committee since October 1, 2013.

- The Court has given its preliminary approval to a proposed class action settlement (“Settlement”), in a class action lawsuit against FirstGroup America, Inc., the FirstGroup America, Inc. Employee Benefits Committee (collectively, the “FGA Defendants”), and Aon Hewitt Investment Consulting, Inc. (“Aon Hewitt”) and collectively with the FGA Defendants “Defendants”). The class action lawsuit involves whether or not Defendants complied with their fiduciary duties under the Employee Retirement Income Security Act of 1974 (“ERISA”) with respect to the FirstGroup America, Inc. Retirement Savings Plan (the “Plan”). Defendants deny all claims, and nothing in the Settlement is an admission or concession on Defendants’ part of any fault or liability whatsoever.
- The Settlement will provide, among other things, for a \$9 million Settlement Fund that will be allocated to eligible Settlement Class Members after any Court-approved deductions for Attorneys’ Fees and Costs, Administrative Expenses, and Class Representative Service Awards. Settlement Class Members with a positive balance in their Plan account as of the date of Final Approval of the Settlement (referred to herein as “Participant Class Members”) will automatically receive allocations directly to their Plan accounts so long as they maintain a positive balance through the time Settlement monies are distributed. Settlement Class Members who had a positive balance in their Plan account during the Class Period but who no longer have a Plan account or do not have a positive balance in their account as of the date of Final Approval of the Settlement (referred to herein as “Former Participant Class Members”) will receive their settlement payment in the form of a check, or, in some instances, in the form of a tax-qualified rollover to an individual retirement account or other eligible employer plan if they elect a rollover. **A Former Participant Rollover form allowing you to elect to receive your distribution in the form of a rollover is attached to this Notice.**
- The terms and conditions of the Settlement are set forth in the Amended Settlement Agreement dated February 29, 2024. Capitalized terms used in this Notice but not defined in this Notice have the meanings

assigned to them in the Amended Settlement Agreement. The Amended Settlement Agreement is available at www.FirstGroupERISA.com. Certain other documents also will be posted on that website. You should visit that website if you would like more information about the Settlement or the lawsuit. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>.

- Your rights and the choices available to you—and the applicable deadlines to act—are explained in this Notice. Please note that neither Defendants nor any employees, attorneys, or representatives of Defendants may advise you as to what the best choice is for you or how you should proceed.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement, and that final approval is upheld in the event of any appeal.
- A Fairness Hearing will take place on December 12, 2024 at 10:00 am, before the Honorable Karen L. Litkovitz, United States District Court for the Southern District of Ohio, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio in Courtroom 708, to determine whether to grant final approval of the Settlement and approve the requested Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards. If the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at www.FirstGroupERISA.com.
- Any objections to the Settlement, or to the requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representative Service Awards, must be served in writing on Class Counsel and Defendants' counsel, as identified on page 7 of this Settlement Notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p>OUR RECORDS INDICATE YOU ARE A</p> <p>FORMER PARTICIPANT CLASS MEMBER</p> <p>IF SO, YOU WILL RECEIVE YOUR SHARE OF THE SETTLEMENT</p> <p>BY CHECK UNLESS YOU TIMELY SUBMIT A FORMER PARTICIPANT ROLLOVER FORM ON OR BEFORE NOVEMBER 21, 2024.</p>	<p>Our records indicate that you are a Former Participant Class Member. You do not need to do anything to receive your share of the Net Settlement Amount by check. However, if you wish to receive your share of the Net Settlement Amount via a rollover to an individual retirement account or other tax-qualified plan, then you must submit a Former Participant Rollover Form postmarked on or before November 21, 2024. A Former Participant Rollover Form is attached to this Notice, and also may be obtained by calling the Settlement Administrator at 877-336-8922 or by accessing www.FirstGroupERISA.com.</p>
<p>YOU CAN OBJECT</p> <p>(NO LATER THAN NOVEMBER 21, 2024)</p>	<p>If you wish to object to any part of the Settlement, or to the requested Attorneys’ Fees and Costs, Administrative Expenses, or Class Representative Service Awards, you must mail your objection and any supporting documents to Class Counsel, the FGA Defendants’ counsel, and Aon Hewitt’s counsel (as identified on page 7 below) at least 21 calendar days before the Fairness Hearing.</p>
<p>YOU CAN</p> <p>ATTEND A HEARING</p> <p>ON DECEMBER 12, 2024</p>	<p>You may also attend the Fairness Hearing and speak at the Fairness Hearing on December 12, 2024. If you wish to attend the hearing and speak at the hearing, you must serve Class Counsel, the FGA Defendants’ counsel, and Aon Hewitt’s counsel (as identified on page 7 below) with notice of your intent to appear at least 21 calendar days before the Fairness Hearing. Please note that you will not be permitted to make an objection to the Settlement if you do not comply with the requirements for making objections.</p>

The Class Action

The case is called *Berry v. FirstGroup America, Inc. et al.*, Case No. 1:18-cv-00326-KLL (S.D. Ohio) (the “Action” or “lawsuit”). It has been pending since May 11, 2018. The Court supervising the case is the United States District Court for the Southern District of Ohio. The individuals who brought this lawsuit are called the Class Representatives, and the persons that were sued are called the Defendants. The Class Representatives, Wendy Berry, Lorri Hulings, and Kathleen Sammons, are former or current participants in the Plan. The Settling Defendants are FirstGroup America, Inc., the FirstGroup America, Inc. Employee Benefits Committee, and Aon Hewitt Investment Consulting, Inc. The claims in the lawsuit are described below on page 4, and additional information about them, including a copy of the operative Second Amended Complaint, is available at www.FirstGroupERISA.com.

The Settlement

Following negotiations between Class Counsel and Defendants’ counsel, a Settlement has been reached. As part of the Settlement, a Qualified Settlement Fund of \$9,000,000 will be established to resolve the claims against Defendants in the Action. The “Net Settlement Amount” is \$9,000,000 minus any Administrative Expenses (including taxes, tax expenses and certain other expenses), Court-approved Attorneys’ Fees and Costs, and Class Representative Service Awards. The Net Settlement Amount will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court and further described below.

Statement of Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards Sought in the Class Action

Class Counsel has devoted many hours to investigating the facts, prosecuting the lawsuit, reviewing documents obtained from Defendants, and negotiating the Settlement. During that time, they also have advanced costs necessary to pursue the case. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending.

Class Counsel will apply to the Court for payment of Attorneys' Fees for their work in the case. The amount of fees that Class Counsel will request will not exceed one-third of the Qualified Settlement Fund (\$3,000,000). In addition, Class Counsel also will seek to recover their litigation costs and administrative expenses associated with the Settlement. Any Attorneys' Fees and Costs and Administrative Expenses awarded by the Court will be paid from the Qualified Settlement Fund. Class Counsel also will ask the Court to approve a payment, not to exceed \$10,000, for each Class Representative who took on the risk of litigation and committed to spend the time necessary to bring the case against Defendants to a conclusion. Any Class Representative Service Award approved by the Court will be paid from the Qualified Settlement Fund.

A full and formal application for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards will be filed with the Court on or before November 7, 2024. This application will be made available at www.FirstGroupERISA.com. You may also obtain a copy of this application through the Public Access to Court Electronic Records System (PACER) at <http://www.pacer.gov>, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the Southern District of Ohio, Potter Stewart U.S. Courthouse Room 103, 100 East Fifth Street, Cincinnati, Ohio 45202.

1. Why Did I Receive This Settlement Notice?

The Court caused this Notice to be sent to you because our records indicate that you may be a Former Participant Class Member. If you fall within the definition of the Settlement Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Settlement Class Members according to a Court-approved Plan of Allocation.

2. What Is the Class Action About?

In the Class Action, the Class Representatives claim that the Defendants improperly selected and retained the Aon Hewitt Funds for the Plan, and that it was not prudent or in the best interest of participants for them to do so. The Class Representatives also claim that Aon Hewitt had a conflict of interest in selecting and retaining these funds. The Defendants deny all claims and assert that they have always acted prudently and in the best interests of participants and beneficiaries.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Amended Settlement. The Amended Settlement is the product of extensive negotiations between the Class Representatives, Defendants, and their counsel. The parties to the Amended Settlement have taken into account the uncertainty, risks, and costs of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Amended Settlement Agreement. The Class Representatives and Class Counsel believe that the Settlement is best for the Settlement Class. Nothing in the Amended Settlement Agreement is an admission or concession on the Defendants' part of any fault or liability whatsoever. They have entered into the Settlement Agreement to avoid the uncertainty, expense, and burden of additional litigation.

4. What Does the Settlement Provide?

Under the Amended Settlement Agreement, Defendants or their insurers will pay \$9,000,000 into a Qualified Settlement Fund to resolve the claims of the Settlement Class against Defendants. The Net Settlement Amount (after deduction of any Court-approved Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards) will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court (as explained further below). Allocations to Participant Class Members who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan. Former Participant Settlement Class Members who are entitled to a distribution may receive their distribution as a check or, if they choose, as a rollover to a qualified retirement account.

All Settlement Class Members and anyone claiming through them will fully release the Plan as well as Defendants and the Released Parties from certain Plaintiffs' Released Claims, as defined in the Amended Settlement Agreement. The Released Parties include, but are not limited to, the Plan, each of the Defendants, each member of the Committee during the Class Period, and certain related parties as outlined in the Settlement Agreement. The Plaintiffs' Released Claims include any claims against any of the Released Parties with respect to the Plan that were asserted in the Action against Defendants or could have been asserted against Defendants.

This is *only* a summary of the Released Parties and Plaintiffs' Released Claims, and is not a binding description of either. The governing releases are found within the Amended Settlement Agreement, which is available at www.FirstGroupERISA.com.

5. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper. Calculations regarding individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To receive a distribution from the Net Settlement Amount, you must either be a (1) "Participant Class Member" as described on page 1; or (2) a "Former Participant Class Member" as described on page 1; or (3) a Beneficiary or Alternate Payee of a person identified in (1) or (2).

There are approximately 29,290 Settlement Class Members. The Net Settlement Amount will be divided *pro rata* among Settlement Class Members (and their Beneficiaries and Alternate Payees) based on Settlement Class Members' average quarterly balances in the Aon Hewitt Funds during the Class Period. If the dollar amount of the settlement payment to a Former Participant Class Member is calculated by the Settlement Administrator to be less than \$5.00, then that Former Participant Class Member's *pro rata* share shall be zero for all purposes, and his or her share shall be reallocated amongst the other Settlement Class Members. Settlement Class Members whose *pro rata* shares are zero will still be bound by their release of claims. A more complete description regarding the details of the Plan of Allocation can be found in Article V of the Amended Settlement Agreement, which is available at www.FirstGroupERISA.com.

6. How Can I Receive My Distribution?

According to our records, you are a Former Participant Class Member. If you wish to receive your share of the Net Settlement Amount via a rollover to an individual retirement account or other tax-qualified retirement account, then you must submit a Former Participant Rollover Form by November 21, 2024. A Former Participant Rollover Form is attached to this Notice and explains the steps necessary to receive your distribution via rollover. You may also obtain the Former Participant Rollover Form on the Settlement Website at www.FirstGroupERISA.com or by calling the Settlement Administrator at 877-336-8922. If you are a Former Participant Class Member but do not submit a timely, valid Former Participant Rollover Form, you will receive your distribution via check. You may contact the Settlement Administrator to confirm or update your mailing address. The Settlement Administrator may be contacted by phone at 877-336-8922 or by mail at FirstGroup America ERISA Settlement, PO Box 2009, Chanhassen, MN 55317-2009.

7. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and any approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval order may take several years. If the Amended Settlement is approved by the Court and there are no appeals, the Settlement distribution likely will occur within approximately four months of the Court's Final Approval Order, unless there are unforeseen circumstances. There will be no payments under the Settlement if the Amended Settlement Agreement is terminated.

8. Can I Get Out of The Settlement?

No. The Settlement Class has been certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Settlement Class Member, you are bound by the Amended Settlement (if it receives final Court approval) and any judgments or orders that are entered in the Action. If you wish to object to any part of the Amended Settlement, you may write to Class Counsel and Defendants' counsel about why you object to the Amended Settlement, as discussed below.

9. Do I Have A Lawyer in The Case?

The Court has appointed the law firms of Nichols Kaster, PLLP in Minneapolis, Minnesota and Freking Myers & Reul LLC in Cincinnati, Ohio as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How Will the Lawyers Be Paid?

Class Counsel will file a motion for an award of Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Services Award at least 14 days prior to the objection deadline. This motion will be considered at the Fairness Hearing. Class Counsel will limit their application for Attorneys' Fees to not more than one-third of the Qualified Settlement Fund. Class Counsel also will seek to recover all actual and anticipated litigation costs and administrative expenses associated with the Settlement. In addition, Class Counsel will seek compensation for each Class Representative of no more than \$10,000. The Court will determine the amount of fees, costs, administrative expenses, and Class Representative compensation that will be awarded, if any. All papers filed in this Action, including Class Counsel's motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards, will be available for review via the Public Access to Court Electronic Records System (PACER), available online at <http://www.pacer.gov>.

11. How Do I Tell the Court If I Don't Like the Settlement?

If you are a Settlement Class Member, you can object to the Amended Settlement by mailing to Class Counsel, the FGA Defendants' counsel, and to Aon Hewitt's counsel at the addresses below a written objection explaining why you object and any supporting documents, and your objection will, in turn, be provided to the Court. Your written objection must: (1) clearly identify the case name and number: *Berry, et al. v. FirstGroup America, Inc., et al.*, Case No. 1:18-cv-00326-KLL; (2) include your full name, current address, and telephone number; (3) describe the position you wish to assert, including the factual and legal grounds for the position; (4) provide copies of all documents that you wish to submit in support of your position; (5) provide the name(s), address(es) and phone number(s) of any attorney(s) representing you; and (6) include your signature. Your written objection and supporting documents must be mailed to Class Counsel, the FGA Defendants' counsel, and Aon Hewitt's counsel no later than November 21, 2024 to be considered. Class Counsel and Defendants' counsel will have an opportunity to respond to your objection.

CLASS COUNSEL	FGA DEFENDANTS' COUNSEL	AON HEWITT'S COUNSEL
Paul Lukas NICHOLS KASTER, PLLP 4700 IDS Center 80 South 8th Street Minneapolis, MN 55402	Dave Rosenberg James O. Fleckner GOODWIN PROCTER LLP 100 Northern Avenue Boston, MA 02210	Shannon M. Barrett Brian D. Boyle O'MELVENY & MYERS LLP 1625 Eye Street, NW Washington, DC 20006

12. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing at **10:00 am on December 12, 2024**, at United States District Court for the Southern District of Ohio, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio, in Courtroom 708. At the Fairness Hearing, the Court will consider whether the Amended Settlement is fair, reasonable, and adequate. The Court also will consider the motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards. If there are objections, the Court will consider them then. Please note that if the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at www.FirstGroupERISA.com.

13. Do I Have to Attend the Fairness Hearing?

No, but you are welcome to come at your own expense. You may also make an appearance through an attorney. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it.

14. May I Speak at The Fairness Hearing?

Yes. If you wish to attend the hearing and speak at the hearing, you must serve Class Counsel, the FGA Defendants' counsel, and Aon Hewitt's counsel (as identified above) with a notice of intent to appear at least 21 calendar days before the Fairness Hearing. You must also comply with the requirements for making an objection (described above) if you wish to object to the Settlement.

15. What Happens If I Do Nothing at All?

If you are a "Former Participant Class Member" as described on page 1, and you do nothing, you will receive your *pro rata* share of the Net Settlement Amount via check if you do not submit a rollover form and the Amended Settlement is finally approved. If you are a "Participant Class Member" as described on page 1, and you do nothing, you will receive your *pro rata* share of the Net Settlement Amount as a deposit to your Plan account if the Amended Settlement is finally approved.

16. How Do I Get More Information?

If you have questions regarding the Amended Settlement, you can visit www.FirstGroupERISA.com, call 877-336-8922, or write to the Settlement Administrator at FirstGroup America ERISA Settlement, PO Box 2009, Chanhassen, MN 55317-2009. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>, and can be reviewed in person during regular business hours at the Office of the Clerk of the United States District Court for the Southern District of Ohio, Potter Stewart U.S. Courthouse Room 103, 100 East Fifth Street, Cincinnati, Ohio 45202. Please note that neither Defendants nor any employees, attorneys, or representatives of Defendants may advise you regarding the Settlement or how you should proceed.