

**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,

Plaintiffs,

v.

FirstGroup America, Inc., Aon Hewitt Investment Consulting, Inc., and John Does 1-20,

Defendants.

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

Judge Matthew W. McFarland

**DECLARATION OF BROCK J. SPECHT IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Brock J. Specht, hereby declare and state as follows:

1. I am a partner at Nichols Kaster, PLLP (“Nichols Kaster”), and am one of the attorneys of record for Plaintiffs in the above captioned action. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

Settlement Terms

2. Attached hereto as **Exhibit A** is a true and correct copy of the proposed Class Action Settlement Agreement. The Settlement resolves Plaintiffs’ class action claims against Aon Hewitt Investment Consulting, Inc. (“Aon”) regarding Defendants’ administration and management of the FirstGroup America, Inc. Retirement Savings Plan (“Plan”).

3. The Settlement Agreement applies to the following 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, 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.

Settlement ¶ 1.52. Based on information provided by the Plan’s recordkeeper, there are approximately 26,000 Class Members.

4. Under the terms of the proposed Settlement, Aon will pay a Gross Settlement Amount¹ of \$4.5 million into a common fund for the benefit of the Settlement Class. *Settlement* ¶¶ 1.31, 4.1–4.2. During the expert discovery phase, Plaintiffs’ damages expert, Dr. Brian C. Becker, calculated damages to the Plan under two scenarios, which resulted in between \$25.2 million and \$42.4 million from October 1, 2013 to February 28, 2022. This partial settlement with Aon Hewitt represents approximately 10.6% to 17.8% of the Plan’s total damages.

5. After accounting for any Attorneys’ Fees and Costs, Administrative Expenses, and class representative service awards approved by the Court, the Net Settlement Amount will be distributed to eligible Class Members. *Settlement* ¶¶ 1.34, 5.2, 5.3, 5.4.

6. Under the Plan of Allocation, an Average Settlement Score will be assigned to each eligible Class Member for each quarter during the Class Period based on the Class Member’s aggregate quarter-ending account balance. *Settlement* ¶ 5.1. Each Class Member will then receive a pro rata share of the Net Settlement Amount based on their Average Settlement Score compared to the sum of all Participant Class Members’ and Former Participant Class Members’ Average Settlement Scores (“Entitlement Amount”). *Id.* 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 Class

¹ Unless otherwise specified herein, all capitalized terms have the meaning assigned to them in Article I of the Settlement Agreement.

Members. *Id.*

7. Current Participants will have their Plan accounts automatically credited with their Entitlement Amount. *Id.* ¶ 5.2. Former Participants will have the opportunity to submit a Rollover Form allowing them to have their distribution rolled over into an individual retirement account or other eligible employer plan. *Id.* ¶ 5.3(a). Former Participants who do not timely submit a Rollover Form will be sent a check. *Id.*; *see also id.* ¶ 5.3(a)(ii).

8. In the absence of a settlement, Plaintiffs would have faced uncertainty and risk in connection with their claims. Given these risks (which are outlined in the accompanying Memorandum of Law), and the costs and potential delays associated with further litigation, I believe that the Settlement is fair, reasonable, and adequate.

Case Proceedings

9. Prior to filing the Complaint in this action, my colleagues and I conducted a thorough investigation of the claims that were asserted and the factual basis for those claims. As a result of our investigatory efforts, we were able to file a detailed, 35-page Complaint and similarly detailed Amended and Second Amended Complaints.

10. Prior to reaching a settlement, the parties engaged in extensive written discovery.

11. The parties written discovery efforts created a substantial record. Aon produced more than 312,000 pages of documents and Plaintiffs produced over 7,000 pages of documents. In total, more than 320,000 pages of documents have been reviewed by the parties.

12. In addition, Plaintiffs sought discovery from several third parties including CapFinancial Partners, LLC, Curcio Webb, LLC, Wilshire Advisors, LLC, and Employee Benefits Solutions Consulting, LLC.

13. The parties also took seventeen depositions of fact witnesses.

14. The Class Representatives have fulfilled their duties to the class by, among other things, reviewing the complaints, producing documents, reviewing and signing written discovery responses, testifying at their depositions, and communicating regularly with Class Counsel.

15. In addition, the parties exchanged expert reports from eight different expert witnesses and took each of their depositions.

16. From approximately August 2022 to October 2022, Aon's Counsel and Class Counsel engaged in arm's-length settlement negotiations.

17. The parties reached a settlement-in-principle. The parties then negotiated the details of the comprehensive Settlement Agreement that is the subject of the present motion. For the reasons explained above, I believe the Settlement is fair, reasonable, and adequate.

Professional Overview

18. I am licensed to practice law in the State of Minnesota, and also have been admitted to practice in several federal district courts and appellate courts across the country. A list of jurisdictions in which I have been admitted is set forth below:

United States Court of Appeals for the Second Circuit
United States Court of Appeals for the Third Circuit
United States Court of Appeals for the Fourth Circuit
United States Court of Appeals for the Eighth Circuit
United States Court of Appeals for the Ninth Circuit
United States District Court for the District of Colorado
United States District Court for the District of Minnesota
United States District Court for the Western District of New York
United States District Court for the District of North Dakota
United States District Court for the Eastern District of Wisconsin
Minnesota Supreme Court

19. I have been actively engaged in the practice of law since 2007 and have been counsel of record for both plaintiffs and defendants in numerous large, complex cases that have resolved through the payments of hundreds of millions of dollars in settlements or awards,

including counsel for the plaintiff in *TiVo Inc. v. Verizon Communications, Inc.*, No. 2:09-cv-257 (E.D. Tex.), which settled for more than \$250 million, and counsel for defendant Medtronic in a series of disputes that settled globally for over \$1 billion. *See Medtronic, Inc. v. Edwards Lifesciences Corp.*, No. 11-cv-1650 (D. Minn.). I have substantial experience litigating ERISA class actions in numerous federal courts around the country and, in connection with those cases, I have been involved in negotiating class action settlements providing for more than \$100 million in available relief to ERISA plan participants. I have been admitted *pro hac vice* in numerous federal courts across the country and have argued before the United States Courts of Appeal for the Second, Eighth, and Ninth Circuits.

20. The principal types of cases that I have handled at Nichols Kaster are consumer class actions and ERISA class actions.

21. Along with my partner Paul Lukas, who is also counsel of record in this matter, I am one of the leaders of the ERISA practice group at Nichols Kaster. We have one of the most active and successful plaintiff-side ERISA litigation groups in the country. In addition to the present case, the firm's lawyers (including myself) have been appointed class counsel for litigation and/or settlement purposes in over twenty-five other class action cases involving retirement plans as set forth below:

- *Andrus v. NY Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y.);
- *Baker v. John Hancock Life Ins. Co. (U.S.A.)*, No. 1:20-cv-10397 (D. Mass.);
- *Beach v. JPMorgan Chase Bank, N.A.*, No. 1:17-cv-00563 (S.D.N.Y.);
- *Berry v. FirstGroup America, Inc.*, No. 1:18-cv-00326 (S.D. Ohio);
- *Bhatia v. McKinsey & Co., Inc.*, No. 1:19-cv-01466 (S.D.N.Y.);
- *Brotherston v. Putnam Investments, LLC*, No. 1:15-cv-13825 (D. Mass.);

- *Clark v. Oasis Outsourcing Holdings Inc.*, No. 9:18-cv-81101 (S.D. Fla.);
- *Falberg v. The Goldman Sachs Group, Inc.*, No. 19-cv-9910 (S.D.N.Y.);
- *Hill v. Mercy Health Corp.*, No. 3:20-cv-50286 (N.D. Ill.);
- *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375 (W.D.N.Y.);
- *Intravaia v. Nat'l Rural Elec. Coop. Assoc.*, No. 1:19-cv-00973 (E.D. Va.);
- *Johnson v. Fujitsu Tech. & Bus. of America, Inc.*, No. 5:15-cv-03698 (N.D. Cal.);
- *Karpik v. Huntington Bancshares Inc.*, No. 2:17-cv-1153 (S.D. Ohio);
- *Kinder v. Koch Indus., Inc.*, No. 1:20-cv-02973 (N.D. Ga.);
- *Kirk v. Ret. Comm. of CHS/Community Health Sys., Inc.*, No. 3:19-cv-00689 (M.D. Tenn.);
- *Larson v. Allina Heath Sys.*, No. 0:17-cv-03835 (D. Minn.);
- *Main v. American Airlines, Inc.*, No. 3:16-cv-01033 (N.D. Tex.);
- *Mass v. Regents of the Univ. of California*, No. RG17-879223 (Alameda County Super. Ct.);
- *Moitoso v. FMR LLC*, No. 1:18-cv-12122 (D. Mass.);
- *Moreno v. Deutsche Bank Americas Holding Corp.*, No. 1:15-cv-09936 (S.D.N.Y.);
- *Reetz v. Lowe's Co.*, No. 5:18-CV-00075 (W.D.N.C.);
- *Sims v. BB&T Corp.*, No. 1:15-cv-00732 (M.D.N.C.);
- *Stevens v. SEI Invs. Co.*, No. 2:18-cv-04205 (E.D. Pa.);
- *Toomey v. Demoulas Super Markets, Inc.*, No. 1:19-cv-11633 (D. Mass);
- *Urakhchin v. Allianz Asset Mgmt. of America, L.P.*, No. 8:15-cv-01614 (C.D. Cal.);
- *Velazquez v. Massachusetts Fin. Servs. Co.*, No. 1:17-cv-11249 (D. Mass.); and

- *Wildman v. American Century Servs., LLC*, No. 4:16-cv-00737 (W.D. Mo.).

22. Our firm took the *Putnam*, *American Century*, and *Lowe's* cases to trial. We received final court approval of settlements in *New York Life*, *John Hancock*, *JPMorgan Chase*, *McKinsey & Co.*, *Putnam*, *Oasis Outsourcing*, *Koch*, *M&T*, *Mercy Health*, *National Rural Electric Cooperative Association* (“NRECA”), *Fujitsu*, *Huntington Bank*, *CHS/Community Health Systems*, *Allina*, *American Airlines*, *FMR LLC* (also known as Fidelity), *Deutsche Bank*, *Lowe's* (partial settlement), *BB&T*, *SEI*, *Demoulas Super Markets*, *Allianz*, and *Massachusetts Financial Services*. We won contested class certification motions in *Goldman Sachs*, *JPMorgan Chase*, *Putnam*, *University of California*, *Deutsche Bank*, *BB&T*, *Allianz*, and *American Century*, and reached stipulations concerning class certification in our cases with *John Hancock*, *FirstGroup*, *Fidelity*, *Lowe's*, and *Massachusetts Financial Services*. We also defeated motions to dismiss in many of these cases in whole or in part, including *John Hancock*, *JPMorgan Chase*, *Putnam*, *M&T*, *NRECA*, *Fujitsu*, *Goldman Sachs*, *FirstGroup*, *Huntington Bank*, *American Airlines*, *University of California*, *Deutsche Bank*, *Lowe's*, *BB&T*, *Demoulas Super Markets*, *Allianz*, *Massachusetts Financial Services*, and *American Century*, as well as in *Morin v. Essentia Health*, 2017 WL 4083133 (D. Minn. Sept. 14, 2017), *report and recommendation affirmed*, 2017 WL 4876281 (D. Minn. Oct. 27, 2017), *Nelsen v. Principal Global Investors Trust Company*, 362 F. Supp. 3d 627 (S.D. Iowa 2019), *Davis v. Stadion Money Management*, 2020 WL 1248580 (D. Neb. March 16, 2020), *Falberg v. The Goldman Sachs Group*, 2020 WL 3893285 (S.D.N.Y. July 9, 2020), *McGinnes v. FirstGroup America, Inc.*, No. 1:18-cv-00326, Dkt. 59 (S.D. Ohio March 18, 2021), and *Stark v. Keycorp*, No. 1:20-cv-01254, Dkt. 24 (N.D. Ohio May 4, 2021).

23. The firm is viewed as a leader in ERISA 401(k) cases. According to a Bloomberg BNA article, “Nichols Kaster has been the driving force” behind recent 401(k) self-dealing litigation. See Jacklyn Wille, *Deutsche Bank Can’t Shake 401(k) Fee Lawsuit*, Bloomberg BNA (Oct. 17, 2016). Attorneys from Nichols Kaster have been interviewed by National Public Radio’s “All Things Considered”, the Wall Street Journal, Bloomberg, Financial Times, Investment News, Bankrate.com, and several trade publications in connection with their ERISA work.

Law Firm Overview

24. Nichols Kaster has been engaged in the practice of law for over 30 years, and is devoted to representing the interests of both consumers and employees. The firm has offices in Minneapolis and San Francisco, and currently employs 32 attorneys and a sizeable staff of paralegals, legal assistants, class action clerks, and information technology professionals.

25. Nichols Kaster has extensive class action and collective action experience. The firm has been appointed lead counsel or co-counsel on hundreds of class and collective actions, and has recovered over \$750 million for its clients.

26. Nichols Kaster was named one of the top 50 elite trial firms by National Law Journal in September 2014, and also has been ranked as a Best Law Firm by U.S. News and World Report. In addition, Nichols Kaster has received praise from numerous courts for its work. The firm’s lawyers have litigated dozens of cases through trial, and have managed discovery in cases involving millions of pages of documents. The firm is also well regarded for its appellate work, and has been involved in two successful appeals before the United States Supreme Court, *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92 (2015) and *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1 (2011).

27. Based on my personal experience and Nichols Kaster’s firm-wide experience litigating ERISA cases, I believe that we were well-equipped to negotiate the Settlement that was reached in this case. For further background, a copy of our firm resume is attached as **Exhibit B**.

Settlement Administrator

28. Analytics Consulting, LLC (“Analytics”) has been selected to serve as the settlement administrator in this matter. Analytics has extensive experience administering class action settlements, including several ERISA settlements, and has previously served as the settlement administrator in connection with settlements in this District and other settlements within this Circuit. A copy of Analytics’ company profile is attached as **Exhibit C**.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: December 12, 2022

/s/ Brock J. Specht
Brock J. Specht

CERTIFICATE OF SERVICE

I, Brock J. Specht, hereby certify that I served this document on counsel of record via ECF on December 12, 2022.

/s/ Brock J. Specht
Brock J. Specht