

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

Defendants.

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

Judge Jeffery P. Hopkins

**SUPPLEMENTAL DECLARATION OF BROCK J. SPECHT IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL
OF AMENDED 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 supplemental declaration in support of Plaintiffs’ Motion for Preliminary Approval of Amended Class Action Settlement.

Supplemental Procedural History

2. Plaintiffs filed their motion for preliminary approval of the Partial Class Action Settlement Agreement between Plaintiffs and Aon Hewitt¹ on December 12, 2022. ECF No. 144.²

¹ “Aon Hewitt” means Aon Hewitt Investment Consulting, Inc.

² A copy of the Partial Class Action Settlement Agreement (“Partial Settlement Agreement”) is filed at ECF No. 144-3.

The FGA Defendants³ filed a response in opposition to preliminary approval on December 27, 2022, arguing that they were unfairly prejudiced by the terms of the Partial Settlement Agreement's proposed Bar Order provision and requesting a fairness hearing on this issue. *See* FGA Defendants' Opposition to Plaintiffs' Motion for Preliminary Approval of Partial Class Action Settlement with Defendant Aon Hewitt Investment Consulting, Inc., ECF No. 150.

3. In response to the FGA Defendants' objections to the Partial Settlement Agreement, the parties met and conferred in an effort to address the FGA Defendants' concerns. Plaintiffs and Aon Hewitt agreed in principle to clarify the definition of "Barred Claims," but the parties reached an impasse in their efforts to draft language that would resolve the FGA Defendants' objections.

4. Plaintiffs and the FGA Defendants attended a full-day in-person mediation on April 13, 2023, in Connecticut before Mr. David Geronemus of JAMS. Despite the good faith efforts of the involved parties, the mediation was unsuccessful.

5. During a telephone status conference with the parties on April 19, 2023, the Court postponed the final pretrial conference and trial dates and scheduled a hearing to address the fairness of the bar order provision for June 13, 2023. The June 13 hearing was subsequently postponed by the Court. No further proceedings have been scheduled in this matter.

6. Following the denial of a request for the preliminary approval of a partial settlement with similar a bar order provision that was reached between Aon Hewitt and a third party in an unrelated matter, arm's-length settlement negotiations between the parties resumed. The parties notified the Court that they reached a global settlement-in-principle on February 8, 2024. Notice of Global Settlement, ECF No. 173.

³ "FGA Defendants" means FirstGroup America, Inc., FirstGroup America, Inc. Employee Benefits Committee.

Amended Settlement Agreement Terms

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

8. Under the terms of the proposed Amended Settlement Agreement, the definition of the Settlement Class remains unchanged:

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.

Amended Settlement Agreement ¶ 1.56; *see* Partial Settlement Agreement ¶ 1.52, ECF No. 144-3, at PAGEID 12401. Based on information provided by the Plan’s recordkeeper, there are approximately 26,000 Settlement Class Members.⁴ The proposed process for providing direct notice of the Amended Settlement Agreement to the Settlement Class via first class mail remains unchanged. *See* Amended Settlement Agreement, art. V; Partial Settlement Agreement, art. V, Doc. No. 144-3 at PAGEID 12409–13.

9. Under the terms of the proposed Amended Settlement Agreement, Defendants will pay a combined Gross Settlement Amount of \$9 million into a common fund for the benefit of the Settlement Class, with payments equally divided between the FGA Defendants and Aon Hewitt. Amended Settlement Agreement ¶¶ 1.35, 4.2. During the expert discovery phase, Plaintiffs’

⁴ Unless otherwise specified herein, all capitalized terms have the meaning assigned to them in Article I of the Amended Settlement Agreement.

damages expert, Dr. Brian C. Becker, calculated nominal 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. *See* Expert Report of Brian C. Becker, Ph.D., ECF No. 157-1, at PAGEID 12657. The monetary relief secured under the Amended Settlement Agreement represents approximately 21.2% to 35.7% of the Plan's nominal damages during that time period. The Plan of Allocation of the Net Settlement Amount in the Amended Settlement Agreement is unchanged.

10. In the absence of a global settlement, Plaintiffs would have faced uncertainty and risk in connection with their claims. Given these risks (which are outlined in the accompanying Supplemental Memorandum of Law and Plaintiffs' Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Partial Class Action Settlement with Defendant Aon Hewitt Investment Consulting, Inc., ECF No. 144-1), and the costs and potential delays associated with further litigation, I believe that the Amended Settlement Agreement is fair, reasonable, and adequate.

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: February 29, 2024

/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 February 29, 2024.

/s/ Brock J. Specht
Brock J. Specht