

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: AUTOMOTIVE REFINISHING
PAINT ANTITRUST LITIGATION

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MDL DOCKET NO. 1426

SURRICK, J.

DECEMBER 28, 2006

MEMORANDUM & ORDER

Plaintiffs filed a Consolidated and Amended Class Action Complaint (the “Amended Complaint”) on behalf of all individuals and entities who purchased automotive refinishing paint in the United States directly from Defendants, their predecessors or their controlled subsidiaries from at least as early as January 1, 1993, to at least December 31, 2000 (the “Class Period”). The Amended Complaint alleges that during that period, Defendants conspired to fix, raise, maintain or stabilize prices for automotive refinishing paint sold in the United States, thereby artificially inflating prices for automotive refinishing paint in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Plaintiffs seek damages and injunctive relief pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26. The Court certified a Class by stipulation of the parties on October 9, 2002.

Presently before the Court is Plaintiffs’ Motion For Preliminary Approval Of Proposed Settlements With Defendants PPG Industries, Inc. (“PPG”), The Sherwin-Williams Company, And Sherwin-Williams Automotive Refinishes Corporation (collectively “Sherwin-Williams”). (Doc. No. 213).¹

¹ If the Court approves these settlements, Plaintiff Class will have received a total of \$105.75 million from all of the Defendants in this antitrust class action litigation.

I. TERMS OF THE SETTLEMENT

The Settlement Agreement (Doc. No. 213 at Exs. A, B) provides that in exchange for settlement of the Class's claims, PPG and Sherwin-Williams will pay the class a total of \$39,000,000 ("Settlement Payments"). Specifically, PPG will pay \$23,000,000 and Sherwin-Williams will pay \$16,000,000. PPG and Sherwin-Williams are required to make their Settlement Payments within ten and twenty business days, respectively, of execution of their Agreements of Settlement. The funds are to be deposited in an escrow account maintained at PNC Bank. The Settlement Payments are to be invested in U.S. Treasury bills or notes or U.S. Treasury money market funds. Interest on the Settlement Payments shall accrue to the benefit of the Class.

Plaintiffs, PPG, and Sherwin-Williams have agreed that on or before January 15, 2007, the settling parties shall jointly submit to the Court proposed forms of notice and a proposed schedule for dissemination of notice to the Class, submission of papers supporting or objecting to the proposed settlements and related matters, and a hearing on final approval of the proposed settlements.

II. STANDARD FOR PARTIAL APPROVAL

Pursuant to Federal Rule of Civil Procedure 23, "the court must approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class." Fed. R. Civ. P. 23(e)(1)(A). Final approval of a class action settlement requires the district court to determine whether "the settlement is fair, adequate, and reasonable." *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118 (3d Cir. 1990) (quoting *Walsh v. Great Atl. and Pac. Tea Co., Inc.*, 726 F.2d 956, 965 (3d Cir. 1983); see also *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir.

2001). Prior to granting final approval, however, we must first decide whether preliminary approval should be granted. The process proceeds as follows:

Review of a proposed class action settlement generally involves two hearings. First, counsel submit the proposed terms of settlement and the judge makes a preliminary fairness evaluation. In some cases, this initial evaluation can be made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by parties. . . . The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the . . . proposed settlement, and date of the final fairness hearing.

Manual For Complex Litigation (Fourth) § 21.632 (2004). “In evaluating a settlement for preliminary approval, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.” *Thomas v. NCO Fin. Sys.*, No. Civ. A. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002). Instead, the court must determine whether “the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.” *Id.* (citing *In re Prudential Sec. Inc. Ltd. P’ship Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995); Manual for Complex Litigation (Third) § 30.41 (1995)). This analysis often focuses on whether the settlement is the product of “arms-length negotiations.” *See, e.g., Thomas*, 2002 WL 1773035, at *5; *Tenuto v. Transworld Sys., Inc.*, No. Civ. A. 99-4228, 2001 WL 1347235, at *1 (E.D. Pa. Oct. 31, 2001).

III. DISCUSSION

The proposed partial settlement presently before us provides for the payment of \$23,000,000 by PPG and \$16,000,000 by Sherwin-Williams. These settlements represent

approximately 1.5 % of PPG's and Sherwin-Williams's combined sales of automotive refinishing paint in the United States for the four years during the Class Period in which they registered their highest sales totals. (Doc. No. 213 at 8.) The partial settlement that we approved in the Memorandum and Order dated September 27, 2004, between Plaintiff Class and BASF and DuPont in the total amount of \$48,000,000 (\$12 million from BASF and \$36 million from DuPont) represented 2 % of BASF's and DuPont's sales of automotive refinishing paint in the United States for the four years during the Class Period in which they registered their highest sales totals. (Doc. No. 135 at 13.) Similarly, the partial settlement that we approved in the Memorandum and Order dated September 5, 2003, between Plaintiff Class and Akzo in the amount of \$18,750,000 represented 4.2 % of Akzo's sales of automotive refinishing paint in the United States for the four years during the Class Period in which Akzo had its highest sales.² (Doc. No. 108 at 10.) Moreover, the instant settlement amount is within a range of settlements approved in other antitrust class actions in this district. *See In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 627 (E.D. Pa. 2004) (settlements represent 1.62 % and 2.0 % respectively of sales from class period); *See In re Plastic Tableware Antitrust Litig.*, No. 94-CV-3564, 1995 WL 723175, at *1 (E.D. Pa. Dec. 4, 1995) (3.5 % of sales); *Fischer Bros., Inc. v. Mueller Brass Co.*, 630 F. Supp. 493, 499 (E.D. Pa. 1985) (0.2 % of sales); *Axelrod v. Saks & Co.*, Civ. A. Nos. 76-3805, 76-4011, 77-172, 1981 WL 2031, at *1 (E.D. Pa. Feb. 23, 1981) (3.7 % of sales).

At this juncture, we see no reason to doubt the fairness of this settlement. The settlement was reached after extensive arms-length negotiation between very experienced and competent

²The Akzo settlement was reached before termination without indictment of the grand jury investigation by the Department of Justice.

counsel for Plaintiff Class, PPG and Sherwin-Williams. Under all the circumstances, we will grant preliminary approval of this settlement.

An appropriate Order follows.

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ORDER

AND NOW, this 28th day of December, 2006, upon consideration of Plaintiffs' Motion For Preliminary Approval Of Agreement Of A Proposed Settlement With Defendants PPG Industries, Inc. ("PPG"), The Sherwin-Williams Company, and Sherwin-Williams Automotive Refinishes Corporation (collectively "Sherwin-Williams") (Doc. No. 213), and it appearing that PPG and Sherwin-Williams consent to the filing of this Motion and to the entry of an order preliminarily approving the proposed settlement, it is ORDERED that the Motion is GRANTED. It is further ORDERED as follows:

- 1) The Agreements of Settlement between the Plaintiff Class and Defendants PPG and Sherwin-Williams are preliminarily approved.
- 2) The litigation against PPG and Sherwin-Williams is stayed except as required by the Agreements of Settlement.
- 3) On or before January 15, 2007, the settling parties shall jointly submit to the Court proposed forms of notice, a proposed schedule for dissemination of notice to the Class, a proposed schedule for submission of papers supporting or objecting to the proposed settlements and related matters, and a proposed date for a hearing on final approval of the proposed settlements.

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick
U.S. District Court Judge