

LEXSEE 2001 U.S. DIST. LEXIS 21481

ACCESS NOW, INC. and EDWARD RESNICK, Plaintiffs, vs. CUNARD LINE LIMITED, CO., and CARNIVAL CORPORATION, Defendants.

Case No. 00-7233-CIV-MORENO

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

2001 U.S. Dist. LEXIS 21481; 15 Fla. L. Weekly Fed. D 33

**October 31, 2001, Decided
October 31, 2001, Filed**

DISPOSITION: [*1] Parties' Joint Motion for Approval of Settlement Agreement GRANTED.

LexisNexis(R) Headnotes

Civil Procedure > Settlements > Settlement Agreements > General Overview
Contracts Law > Types of Contracts > Settlement Agreements

[HN1] A court must independently evaluate the fairness of a settlement agreement before entering final judgment.

Civil Procedure > Settlements > Settlement Agreements > General Overview

[HN2] The first factor a court must consider in determining a settlement agreement's fairness is a plaintiff's likelihood of success at trial.

Civil Rights Law > Protection of Disabled Persons > Americans With Disabilities Act > Accommodation
Civil Rights Law > Protection of Disabled Persons > Americans With Disabilities Act > Scope

[HN3] The United States Court of Appeals for the Eleventh Circuit holds Title III applicable to those portions of foreign flag cruise ships that come within the ambit of the American's with Disabilities Act's public accommodation provisions.

Civil Procedure > Settlements > Settlement Agreements > Modifications
Contracts Law > Types of Contracts > Settlement Agreements

[HN4] The second factor a court must consider in determining a settlement agreement's fairness is the range of relief a plaintiff may obtain at trial vis-a-vis that proposed in the settlement agreement.

Civil Procedure > Settlements > Settlement Agreements > General Overview

[HN5] The third factor a court must consider in determining a settlement agreement's fairness is the complexity and expense of litigating the matter.

Civil Procedure > Settlements > Settlement Agreements > General Overview

Contracts Law > Types of Contracts > Settlement Agreements

[HN6] The amount of opposition to a settlement is also a factor a court must consider in evaluating a settlement agreement's fairness.

Civil Procedure > Settlements > Settlement Agreements > General Overview

[HN7] The final factor a court must consider in evaluating a settlement's fairness is its timing, or the stage of the litigation in which the parties reached settlement.

COUNSEL: For ACCESS NOW, INC., EDWARD S. RESNICK, plaintiffs: Matthew Wilson Dietz.

For CARNIVAL CORPORATION, defendant: Thomas Richard Julin.

For CARNIVAL CORPORATION, defendant: Martin Leonard Steinberg, Thomas Richard Julin, Alan Richard Poppe, Hunton & Williams, Miami, FL.

For CARNIVAL CORPORATION, defendant: Carolyn Doppelt Gray, Epstein Becker & Green, Washington, DC.

For ATTORNEY GENERAL OF THE STATE OF FLORIDA, Amicus Curiae movant: Allison Kaye Bethel, Office of the Attorney General, Fort Lauderdale, FL.

JUDGES: FEDERICO A. MORENO, UNITED STATES DISTRICT JUDGE.

OPINION BY: FEDERICO A. MORENO

OPINION

ORDER APPROVING SETTLEMENT AGREEMENT

THIS CAUSE came before the Court upon the parties' Joint Motion for Approval of Settlement Agreement (**D.E. No. 41**), filed on **May 18, 2001**.

THE COURT has considered the motion, responses, argument and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ADJUDGED that the motion is GRANTED and all pending motions are DENIED as moot.

This Court approves the [*2] Modified Settlement Agreement filed on October 12, 2001. The Court notes that *amici curiae*, the Attorney General of the State of Florida and the United States Department of Justice, withdrew their objections upon notice of the modified settlement agreement.

Despite the objectors' withdrawals, [HN1] this Court must independently evaluate the fairness of a settlement agreement before entering final judgment. This Court reviewed the settlement agreement in light of the factors set forth by the Eleventh Circuit in *Bennett v. Behring*, 737 F.2d 982, 986 (11th Cir. 1984).

The [HN2] first factor this Court must consider is Plaintiffs' likelihood of success at trial. See *Bennett*, 737 F.2d at 986. [HN3] The Eleventh Circuit has held Title III applicable to those portions of foreign flag cruise ships that come within the ambit of the ADA's public accommodation provisions. See *Stevens v. Premier Cruises Lines*, 215 F.3d 1237, 1241, n.5 (11th Cir. 2000). Despite Title III's applicability to public accommodations within cruise ships, courts have varied in the amount of relief afforded plaintiffs when cruise ships are involved. See *Resnick v. Magical Cruise Co. Ltd.*, 148 F. Supp. 2d 1298, 1304 (M.D. Fla. 2001) [*3] (holding no relief available under land-based guidelines because

the regulations are inapplicable to cruise ships); *Assoc. for Disabled Americans, Inc. v. Concorde Gaming Corp.*, 158 F. Supp. 2d 1353, 1369 (S.D. Fla. 2001) (applying Title III's barrier removal provisions to casino cruise ship). Though Title III is applicable to those portions of Defendants' cruise ships that fall under the rubric of the ADA's public accommodation provisions, the relief Plaintiffs may obtain at trial remains uncertain.

[HN4] The second factor this Court must consider is the range of relief Plaintiffs may obtain at trial vis-a-vis that proposed in the settlement agreement. See *Bennett*, 737 F.2d at 986. The relief delineated in this settlement agreement exceeds that obtained by the Concorde Gaming plaintiffs at trial. See *Concorde Gaming Corp.*, 158 F. Supp. 2d at 1369 (requiring minimal modifications of the cruise ship's restrooms). This settlement requires Defendants to spend \$ 7 million on installing fully and partially accessible cabins, accessible public restrooms, new signage, coamings, thresholds, stairs, corridors, doorways, restaurant facilities, [*4] lounges, spas and other shipboard facilities. To enforce the settlement agreement, Defendants agreed to create a fund to pay experts who will inspect the modified cruise ships. Additionally, Defendants agreed to allow Plaintiffs an opportunity to inspect the cruise ships within sixty days of the time of completion. As such, Plaintiffs have obtained much of the relief they sought in their complaint, weighing heavily in favor of the settlement's approval.

[HN5] The third factor this Court must consider is the complexity and expense of litigating this matter. See *Bennett*, 737 F.2d at 986. This matter has already required the parties to retain experts in a variety of fields. The parties have spent a considerable amount of time and money in analyzing the factual and legal issues the case presents. This matter will clearly lead to a protracted and expensive trial as well as a possible appeal. The parties, therefore, have a strong impetus to settle this matter, favoring this Court's approval of the settlement agreement.

[HN6] The amount of opposition to this settlement is also a factor this Court must consider in evaluating its fairness. See *id.* As already noted, both the Attorney [*5] General of Florida and the United States Department of Justice withdrew their objections to this settlement upon notice of its modifications. Therefore, this factor also militates in favor of approval as there are no objections on record to the modified settlement agreement.

[HN7] The final factor the Court must consider in evaluating the settlement's fairness is its timing, or the stage of the litigation in which the parties reached settlement. See *id.* The parties in this matter reached a settlement after spending a considerable amount of time participating in supervised mediation exploring the legal

and factual issues involved in this case. Because the parties expended much effort in analyzing the issues, this Court finds the parties were at a proper juncture with sufficient information to settle this dispute. Therefore, this factor also weighs in favor of approval.

Having examined all the factors, this Court finds that the balance weigh in favor of approving the settlement agreement. The Court notes that this final approval of the class settlement was preceded by dissemination of a detailed notice and mailing of the complete settlement agreement to each member of Plaintiff Access [*6] Now's class as well as published notice in three national magazines and a website targeted at the disability community.¹ The Court also conducted a hearing to consider argument on the merits of the settlement agreement. After considering the arguments, the objector's withdrawals, and the Bennett factors, this Court properly approves the parties' settlement agreement.

1 The Court finds the settlement notice sufficiently met the requirements of *Federal Rule of Civil Procedure 23(e)* for notice in a *Rule 23(b)(1)* or *(2)* class action. Though the Department of Justice initially objected to the notice provided, it now concedes and this Court agrees that the notice's form and content was reasonably calculated to apprise interested parties of the pendency of the action and to afford them an opportunity to present objections.

DONE AND ORDERED in Chambers at Miami, Florida, this 31ST day of October, 2001.

FEDERICO A. MORENO

UNITED STATES DISTRICT JUDGE