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Workers Slam Fiat Chrysler Bid To Duck Evaluation Bias Suit

By **Linda Chiem**

Law360 (March 26, 2019, 9:13 PM EDT) -- A proposed class of current and former Fiat Chrysler employees told a Michigan federal judge Monday that they've alleged enough facts claiming the automaker's employee evaluation process discriminated against African-Americans and that their amended suit should move forward.

Named plaintiffs Pamela Williams Carthens, Leven Weiss, Clarence Presley II, Ellis Jefferson, Darlene Collins, Tracy Fitzpatrick and Robert Johnson defended their third amended suit alleging FCA US LLC's performance and leadership management evaluation for salaried, nonunion employees disparately impacted African-Americans.

The plaintiffs' job titles at FCA ranged from senior manager to senior and midlevel professionals. They allegedly routinely received low scores as a result of a "forced ranking" or "calibration process" in the PLM evaluation — during which evaluating managers can access an employee's photo, age and ID number — that resulted in them earning lower bonuses and compensation or being shut out of promotions when compared to their white colleagues, according to the amended complaint.

The plaintiffs argued that U.S. District Judge Laurie J. Michaelson last year rejected much of the same arguments that FCA presents here when it tried to beat a separate proposed class action alleging its employee evaluation policy disparately affected workers aged 55 and older. In that case, *Cerjanec v. FCA US LLC*, Judge Michaelson held last August that most of the allegations **sufficiently linked** the company's policy to older workers being denied promotions and bonuses, put on probation or fired.

"Similar to this court's findings in the *Cerjanec* matter, these factual allegations must be accepted as true. In doing so, this court should find that plaintiffs have pled a plausible causal connection between the challenged policy and the identified disparity," they said in their brief opposing FCA's **motion to dismiss**.

FCA had sought to block the employees from pursuing their disparate-impact claim as a collective action under the Age Discrimination in Employment Act and as a class action under Michigan's Elliot-Larsen Civil Rights Act, according to court documents. The judge kept all those claims intact but agreed to dismiss a constructive discharge claim from a former employee who alleged he was compelled to resign after complaining about the unfair policy.

An attorney for the plaintiffs, Beth Rivers of Pitt McGehee Palmer & Rivers, said in a statement to Law360 on Tuesday that in continuing to bring these same preliminary motions repeatedly, "FCA's intent seems to be to delay discovery regarding the claims and delay justice for FCA employees."

"The current seven class representatives alleged that they each received lower PLM scores due to their race and further that African-Americans received those lower scores, which denied them bonuses, incentive payments and salary increases, and [threatened] possible termination, at a statistically disproportionate rate to their white counterparts," Rivers said. "What FCA continues to ignore is that the statistical disparity is proof of intentional discrimination."

She added that once the plaintiffs are given an opportunity to conduct discovery, it will reveal

evidence that the process is racially biased.

The instant suit was **first filed** in January 2017 by a former diversity manager for FCA alleging the company's two-step evaluation process rated African-American employees at a disproportionately "alarming rate" than non-African-American employees.

It was then amended twice before Judge Michelson **ruled last May** that six of the eight named plaintiffs had agreed, when they were hired, to arbitrate employment matters with the company. That left only Leven Weiss and Pamela Williams Carthens as plaintiffs in the still-surviving suit. Weiss and Carthens circled back in December with a third amended complaint that added the other five new employee plaintiffs.

Shereef Akeel of Akeel & Valentine PLC, who is also representing the plaintiffs, said in a statement to Law360 that they hope to achieve the same result as in the Cerjanec case "by obtaining a ruling that we have sufficiently identified the company policy that has caused discrimination towards African-Americans."

An FCA spokesperson declined to comment Tuesday.

The plaintiffs are represented by Shereef H. Akeel, Hasan Kaakarli and Adam Akeel of Akeel & Valentine PLC, and Michael L. Pitt, Cary S. McGehee, Robert W. Palmer, Beth M. Rivers and Megan A. Bonanni of Pitt McGehee Palmer & Rivers.

FCA is represented by Jerome R. Watson and M. Misbah Shahid of Miller Canfield PLC, and Daniel E. Turner, Tasha K. Inegbenebor and Jacqueline Phipps Polito of Littler Mendelson PC.

The case is Williams et al. v. FCA US LLC, case number 2:17-cv-10097, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Dean Seal, Kat Greene and Adam Lidgett. Editing by Jay Jackson Jr.

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