

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Civil No. 20-cv-13293

vs.

Hon. David M. Lawson

**INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE, AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA,**

Defendant.

GOVERNMENT'S MOTION FOR APPOINTMENT OF MONITOR

Following the procedures set forth in the Consent Decree, the government has selected Neil M. Barofsky as the proposed Monitor. Pursuant to E.D. Mich. L.R. 7.1, UAW concurs in the government's requested relief.

Respectfully submitted,

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Acting United States Attorney

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Issue Presented

Should the Court appoint Neil M. Barofsky as the monitor pursuant to the Consent Decree?

Controlling Authority

Sault Ste. Marie Tribe of Chippewa Indians v. Engler, 146 F.3d 367 (6th Cir. 1998)

Consent Decree, ECF No. 10, PageID.117

Memornadum of Law

After this Court granted the parties' motion and entered the Consent Decree, the parties began the process to identify a proposed Monitor. After speaking to numerous qualified applicants and reviewing background materials and references, the government has identified and proposes Neil M. Barofsky to be appointed as Monitor pursuant to the terms of the Consent Decree.

BACKGROUND

After a years-long government investigation involving high-level officials at the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"), the government and the UAW reached an agreement to resolve civil and criminal liability of the UAW through a proposed Consent Decree. The parties jointly moved for the entry of that decree, which this Court granted and the Consent Decree was entered by the Court on January 29, 2021. (ECF No. 9, PageID.107).

As part of the parties' agreement, two court officers, including a Monitor, will help carry out the mandates and goals set forth in the Consent Decree. (ECF No. 10, PageID.117). The Decree itself sets out the process for the Monitor's selection: The UAW interviews applicants and then proposes three candidates. (*Id.*). The United States selects a proposed Monitor from this group, or asks for additional candidates. (*Id.*). And the government then requests the Court approve

its proposed Monitor. (*Id.*).

As required by the Consent Decree, the parties have actively engaged in this process since the Court entered the Consent Decree in late January. In other words, the UAW proposed multiple candidates to the United States. Representatives of the United States, including undersigned counsel, conducted interviews and checks on the candidates. And after due consideration, the government now proposes Neil M. Barofsky to act as the Monitor pursuant to the Consent Decree.

ANALYSIS

“Consent decrees and judgments are binding contracts.” *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 372 (6th Cir. 1998). As set forth above, the Consent Decree sets forth the procedure for selection of the Monitor. And the procedure is a familiar one—it follows the current guidelines set by the Department of Justice. *See* Dep’t of Justice Memorandum, Selection of Monitors in Criminal Division Matters, October 11, 2018, *available at* <https://www.justice.gov/opa/speech/file/1100531/download> (last visited April 7, 2021).

After a thorough review of his background and references, the United States has concluded that Neil M. Barofsky and his team, some of whom are described below, would dutifully fulfill the role as Monitor in this case, and seeks this Court’s approval for the same.



Mr. Barofsky is currently a partner at the law firm Jenner & Block. There, he leads the firm's monitorship practice, and has served as a monitor in other matters, including his appointment to monitor Credit Suisse Securities LLC and Credit Suisse AG following billion dollar settlements.

In these matters, Mr. Barofsky was separately appointed by the Department of Justice and the New York State Department of Financial Services. The government has spoken with representatives from all sides of these monitorships, all of whom endorsed Mr. Barofsky's tough but fair approach.

Prior to Mr. Barofsky's employment with Jenner & Block, he worked as an Assistant United States Attorney in the United States Attorney's Office in the Southern District of New York. He was also appointed to be the initial Special Inspector General for the Troubled Asset Relief Program (or TARP), an investigative agency that he built from scratch.

As both the parties and Mr. Barofsky recognize, the cost of the Monitor will be borne by the UAW. Accordingly, Mr. Barofsky has agreed to discount his and his team's normal rates for services related to the Monitorship.

The Consent Decree requires the Monitor to work in a number of different areas, including union election, compliance, and investigations. To this end, Mr.

Barofsky identified key personnel who would work as part of the team.



Kali Bracey is also a partner at the law firm Jenner & Block and would work with Glen McGorty on the oversight of the referendum vote and any other election issues. Ms. Bracey has participated in the monitorship of Citigroup and other election-related litigation. Prior to her

employment at Jenner & Block, Ms. Bracey served in the Department of Justice as a Deputy Assistant Attorney General for the Torts Branch.



Glen G. McGorty is a partner at the law firm Crowell & Moring. Since 2014, Mr. McGorty has served as the Independent Monitor of the New York City District Council of Carpenters, where he has been involved with oversight of the union, including over the union's elections. The

government has spoken with representatives from both sides of this monitorship, all of whom endorsed Mr. McGorty. Prior to his employment with Crowell & Moring, Mr. McGorty worked as an Assistant United States Attorney in the United States Attorney's Office in the Southern District of New York.



Reid J. Schar is a partner at the law firm Jenner & Block and would work on investigations of corruption. Mr. Schar has conducted numerous internal investigations, including in the automotive sector. Prior to Mr. Schar's employment with Jenner & Block, he worked as

an Assistant United States Attorney in the United States Attorney's Office in the Northern District of Illinois, where he investigated and prosecuted corruption cases, including against former Illinois Governor Rod Blagojevich.



Erin R. Schrantz is also a partner at the law firm Jenner & Block and would work on compliance. Ms. Schrantz has worked with Mr. Barofsky on the Credit Suisse monitorships and is an expert in corporate compliance matters.

CONCLUSION

For the foregoing reasons, the government requests that the Court appoint Neil M. Barofsky as the monitor pursuant to the Consent Decree.

Respectfully submitted,

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Dated: April 12, 2021

Certificate of Service

I hereby certify that on April 12, 2021, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record.

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