

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

James Peterson, et al.,  
for and on behalf of themselves  
and other persons similarly  
situated,

Plaintiffs,

v.

MEMORANDUM AND ORDER  
Civil No. 07-2502

Seagate US LLC, Seagate Technology,  
et al.,

Defendants.

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Beth E. Bertelson and Andrea R. Ostapowich, Bertelson Law Offices, P.A.,  
and Dorene R. Sarnoski, Dorene R. Sarnoski Law Office Law Office for and on  
behalf of Plaintiffs.

Marko J. Mrkonich, Kathryn Mrkonich Wilson and Susan K. Fitzke, Littler  
Mendelson for and on behalf of Defendants.

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This matter is before the Court upon Defendants' motion for an order to  
certify the November 20, 2007 and May 28, 2008 Orders for Interlocutory Appeal  
pursuant to 28 U.S.C. § 1292(b).

Background

This is a putative class action involving claims of age discrimination

pursuant to the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 et seq. The class also seeks declaratory relief relating to the enforceability of a purported release and waiver that was signed by many of the plaintiffs upon the termination of their employment with Seagate.

In the November 20, 2007 Order referenced above, this Court denied Defendants’ motion to dismiss the claims of those named plaintiffs that signed a release and waiver. This Court also denied Defendants’ request to file a motion for reconsideration, as Defendants had failed to identify any manifest error of law or fact in the November 20, 2007 Order. Thereafter, Defendants moved to certify the November 20, 2007 Order, which motion was denied by Order dated February 14, 2008.

In the May 28, 2008 Order, this Court granted in part Plaintiffs’ motion for partial summary judgment, finding that the releases signed by Plaintiffs terminated pursuant to the 2004 Reduction in Force are invalid as a matter of law.

Defendants now move for an order certifying the November 20, 2007 and May 28, 2008 Orders.

#### Standard

A district court judge may certify an action for interlocutory appeal under

the following circumstances:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

28 U.S.C. § 1292(b). Certification under § 1292(b) should only be used in exceptional cases “where a decision on appeal may avoid protracted and expensive litigation.” White v. Nix, 43 F.3d 374, 376 (8<sup>th</sup> Cir. 1994).

### Analysis

For the reasons stated in its previous Order dated February 14, 2008, the Court will not certify the November 20, 2007 Order.

With respect to the May 28, 2008 Order, Defendants argue that certification is appropriate because this Order forges new ground and is one of first impression. Because there is a lack of legal precedence and in consideration of existing legal authority, Defendants argue there are substantial grounds for a

difference of opinion. Defendants then repeat those same arguments made in opposition to Plaintiffs' motion for partial summary judgment. Clearly, the Court rejected those arguments in its May 28, Order. In addition, the Court finds that there are no substantial grounds for a difference of opinion. The law is clear that OWBPA requires strict compliance, and Defendants have failed to demonstrate that the releases at issue strictly comply with OWBPA.

The Court further finds that Defendants have failed to show that an interlocutory appeal will materially advance this litigation. According to Defendants, the Court must conduct an analysis of whether the mistakes made with respect to the releases were "material" before declaring the releases valid or invalid. Thus, the validity of the releases would remain at issue in this case if the Court's May 28, 2008 were reversed. Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion to Certify for Interlocutory Appeal the November 20, 2007 Order and the May 28, 2008 [Doc. No. 103] is DENIED.

Dated: August 24, 2008

s/Michael J. Davis  
Michael J. Davis, Chief Judge  
United States District Court