

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

JACK W. LEACH, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 E. I. DU PONT DE NEMOURS)
 AND COMPANY,)
)
 Defendant.)
)

Civil Action No. 01-C-608
(Judge George W. Hill)

ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT

On November 23, 2004, counsel for both parties (hereinafter the "Parties") appeared before this Court to seek approval of their Joint Motion for Preliminary Approval of Settlement and Related Matters. Attached as Exhibit 1 to the Motion, the Parties presented for this Court's consideration a complete copy of the settlement agreement between the Parties as of November 17, 2004 (hereinafter "Settlement"). After consideration of the Motion, the entire record herein, including the Settlement, and hearing counsel in open court, this Court hereby finds that preliminary approval of the Settlement is appropriate at this time under the West Virginia Rules of Civil Procedure.

It is, therefore, hereby accordingly **ORDERED AND ADJUDGED** that the Settlement, as set forth in Exhibit 1 to the Motion, including Plaintiffs' Health Project, is preliminarily approved pending a final fairness hearing on the Settlement, which is scheduled in this Court on February 28, 2005 at 9:30 a.m. The Garden City Group, Inc. is hereby appointed Administrator for the Settlement as set forth in Section 10.1 of the Settlement attached as Exhibit 1 to the Motion, James D. Lamp, who served as mediator for this matter, is hereby appointed Special

Master as set forth in Section 10.3 of the Settlement attached as Exhibit 1 to the Motion, and Robert G. Astorg, Managing Director, American Express Tax and Business Services, Inc., is preliminarily approved as Health Project Administrator.

This Court further orders that for any Class Member request to be excluded from the Class pursuant to Rule 23(c) of the West Virginia Rule of Civil Procedure to be valid, the Class Member shall send a written request to the Administrator, postmarked no later than February 1, 2005, and shall (a) state the name and address of the individual requesting exclusion; (b) state that such individual "requests exclusion from the Settlement Class in *Jack Leach, et al. v. E.I. du Pont de Nemours and Co., Civil Action No. 01-C-608*"; (c) state that the individual requesting exclusion has consumed water for at least one year before the date of notice from one of the drinking water sources identified in the notice that renders the individual a Class Member; (d) state the name of each water source and the period of consumption for each water source from which the individual requesting exclusion consumed water; and (e) state whether the individual requesting exclusion is or was an employee of DuPont.

This Court further orders that a Class Member may object to the fairness, reasonableness, and adequacy of the Settlement, the method of distribution, or the application for an award of attorneys' fees and reimbursement of expenses; provided, however, that any individual objecting to the Settlement, the method of distribution of the Settlement Fund, or Class Counsels' application for attorneys' fees and costs shall, on or before February 1, 2005, (a) file with the Clerk, at the address stated below, written notice of such individual's intention to appear, showing proof of such individual's membership in the Settlement Class, and providing a statement that indicates the basis for such opposition, along with any documentation in support of such objection, and (b) simultaneously serve copies of such notice, proof, statement and

documentation, together with copies of any other papers or briefs such individual files with this Court, in person or by mail upon the following:

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In addition to seeking preliminary approval of Settlement, the Parties, pursuant to West Virginia Rule of Civil Procedure 23, asked this Court to enter an order clarifying the definition of the class conditionally certified in this matter. Under West Virginia Rule of Civil Procedure 23, class certification is conditional; this Court may alter or amend the definition as the matter progresses toward resolution. *State ex rel. Metro. Life Ins. Co. v Starcher*, 196 W.Va. 519, 526, 474 S.E.2d 186, 193 (1996). The Class should be defined with sufficient specificity to make it administratively feasible for this Court to ascertain whether an individual is a Class Member. *See id.* In the process of negotiating the Settlement of this Lawsuit, the Parties jointly agreed that further clarification of the Class in this matter is appropriate at this time in order to enable the Parties to prepare to provide appropriate notice to individuals who fall within the definition of the Class that their rights may be affected by the Settlement, if it is approved by this Court. After consideration, this Court hereby finds that clarifying the definition of the Class is appropriate at this time under the West Virginia Rules of Civil Procedure 23(c) and (e).

It is, therefore, hereby accordingly **ORDERED AND ADJUDGED** that the Class definition shall be clarified as follows:

The class includes only those individuals who, (1) for the period of at least one year up to and including the date of the first notice issued in accordance with Section 2.1.3 of the Settlement (attached as Exhibit 1 to the Motion), have consumed drinking water containing 0.05 ppb or greater of C-8 attributable to releases from Washington Works from (a) any of six specified Public Water Districts (each as more particularly described in Schedule 2.1.1(A)

to the Settlement (attached to the Motion as Exhibit 1), (b) any private water source within the geographic boundaries of the Public Water Districts that is the individual's sole source of drinking water at that location or (c) any private water source more particularly described in Schedule 2.1.1(B) to the Settlement (attached to the Motion as Exhibit 1) that is the individual's sole source of drinking water at that location; and (2) who (a) do not exercise their right to Opt Out of the Certified Class or (b) have not elected to waive their rights as a Class Member through execution of a Notice of Clarification Regarding Class Member Status filed with this Court in the Lawsuit.

This Court further clarifies that the law firms of Taft Stettinius & Hollister LLP, Hill, Peterson, Carper, Bee & Deitzler, P.L.L.C., and Winter Johnson & Hill PLLC continue to be designated as Class Counsel to represent Class Members.

In addition, the Parties also presented for this Court's approval a plan to provide notice to the class of the pending settlement, including proposed content of a notice to be mailed ("Mailed Notice") (set forth in Exhibit 2 of the Motion) and a notice to be published ("Published Notice") (set forth in Exhibit 3 of the Motion). This Court finds that the Mailed and Published Notice provide appropriate information about the clarified definition of the Class, the basic terms of the Settlement and clearly and adequately explains rights of Class Members. Thus, the Court finds that the notice content and plan presented satisfies the requirements of due process and Rule 23 of the West Virginia Rules of Civil Procedure and constitutes the best notice practicable to the Certified Class, as clarified herein.

It is, therefore, hereby accordingly **ORDERED AND ADJUDGED:**

- A. The Administrator shall provide Mailed Notice to as many Class Members for whom the Administrator can reasonably obtain a current residential address.
- B. The Administrator shall cause publication to be made twice on non-consecutive week dates and once on a weekend date of the Published Notice in the following local and regional papers:
 - The Parkersburg News/The Parkersburg Sentinel/The Marietta Times

- Point Pleasant Register/Pomeroy Sentinel/Gallipolis Daily Tribune/Gallipolis Sunday Times-Sentinel
 - Athens Messenger
 - The Charleston Gazette/Charleston Daily Mail/Sunday Gazette Mail
 - The Columbus Dispatch
- C. The Administrator shall cause publication to be made once of the Published Notice in the following publications with national circulation: Parade Magazine and USA Weekend.
- D. The Administrator shall keep records of all contacts by potential Class Members and all Mailed Notice.
- E. The Administrator shall begin Mailed Notice, as set forth herein, as soon as practicable upon entry of this Court's Order approving the content of notices attached in Exhibits 2 and 3 to the Motion. The Administrator shall take reasonable steps to place the Published Notice, as set forth herein, as soon as space is available for publication.
- F. The Administrator shall keep records of any written request from any Class Member to be excluded and shall provide a report to the Parties and this Court prior to the final fairness hearing of all Class Members who request to be excluded in the manner set forth in this Order.

This Order is entered and the Joint Motion for Preliminary Approval of Settlement and Related Matters is granted without prejudice to the rights of the Parties in the event that the Settlement is not approved or is terminated under the terms of the Settlement to seek decertification or modification of the Class as certified or clarified, or to oppose certification in any other proposed or certified class action. Neither this Order nor the Joint Motion for Preliminary Approval of Settlement and Related Matters shall be construed as an admission on the part of either party that this action, or any other proposed or certified class action, is appropriate for class treatment pursuant to West Virginia Rule of Civil Procedure 23 or any other

class action statute or rule, and does not constitute a waiver of any substantive or procedural defenses.

The Clerk is directed to provide certified copies of this Order to all counsel of record.

IT IS SO ORDERED this ____ day of November, 2004.

Honorable George W. Hill
Circuit Court of Wood County, West Virginia

PRESENTED BY:

NAMED PLAINTIFFS

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