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FILE
PUTNAM CO. CIRCUIT COURT

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

ZINA G. BIBB, et al.,

Plaintiffs,

v.

Civil Action No. 04-C-465
(Derek Swope, Circuit Judge)

MONSANTO COMPANY, et al.

Defendants.

**ORDER FINDING THAT THE NOTICE REQUIREMENTS SET FORTH
IN THE COURT'S ORDER PRELIMINARILY APPROVING CLASS
SETTLEMENTS HAVE BEEN SATISFIED**

1. The Court previously certified two classes pursuant to the requirements of Rule 23 of the West Virginia Rules of Civil Procedure.
2. The first class, known as the "Medical Monitoring Class," has been defined as "Those persons who have resided, worked full time, or attended school full time in the Class Affected Area during the period 1948 to the present." See *Order Amending the Definition of the Medical Monitoring Class* (03/26/2010). (dkt. no. 1235).
3. The second class, known as the "Property Class," has been defined as "Current owners of real property in whole or in part within the Class Affected Area shown in Exhibit 1." See *Class Certification Order* (01/07/2008). (dkt. no. 695). In order to fix the membership of the Property Class, the Court subsequently determined that "current" ownership would mean ownership on September 30, 2010, the date coinciding with the date on which publication of class notice by United States Mail commenced. See, e.g., *Order Adopting Form of Class Notices and Plan for Class Notification, with Directions* (08/06/2010), and Exhibit A thereto. (dkt. no. 1368).
4. The Court previously certified both classes pursuant to Rule 23(b)(1),

23(b)(2), and 23(b)(3).

5. Subsequent to the Court's certification of the Medical Monitoring Class and Property Class, the Court considered the question of class notice. Following the parties' written submissions in favor of, or against, *Plaintiffs' Revised Proposal for Class Notification* (05/18/2010), (dkt.no. 1282), on June 24, 2010, the Court conducted a hearing on the issue of class notice. The Court thereafter issued its *Order Adopting Form of Class Notices and Plan for Class Notification, with Directions* (08/06/2010). (dkt. no. 1368).

6. The Court's *Order Adopting Form of Class Notices and Plan for Class Notification, with Directions* found that "Class Counsel's proposed class notification plan, as modified herein, will provide the best notice practicable to class members under the circumstances and further satisfies the requirements of Rule 23 of the West Virginia Rules of Civil Procedure." *Id.* at p. 2, ¶ 1.

7. On March 24, 2011, the Court entered an *Order Finding that the Requirements Set Forth in the Court's Class Notification Order Have Been Satisfied*. (dkt. no. 1711).

8. More recently, with respect to the Parties' proposed settlement of this matter, the Court instructed Class Counsel to provide notice of the settlement to *Bibb* class members by means similar to that provided to class members for Class Certification, to wit:

... Class Counsel will commence publication of the Notice of Proposed Settlement of Medical Monitoring Class in a manner consistent with the notice procedures followed in providing notice of the Class Certification.

... Class Counsel [will] send by first-class mail the Notice of Proposed Settlement of Property Class to all members of the Property Class.

See Court's *Order Preliminarily Approving Class Settlements*, Feb. 24, 2012, at p. 2 (dkt. no. 3028) and *Order Correcting the Court's 'Order Preliminarily Approving Class Settlement*, ' March 2, 2012. (dkt. no. 3032).

9. The Court has already determined and ruled that the aforementioned publication and mailing of the relevant notices to members of the Medical Monitoring and Property Classes will provide sufficient notice to class members, "in full compliance with the notice requirements of W.Va. R. Civ. P. 23, due process, the Constitution of the United States, the laws of West Virginia, and all other applicable laws." See Court's *Order Preliminarily Approving Class Settlements*, Feb. 24, 2012, at p. 2; see also Paragraph 8 *supra*.

10. Class Counsel has fully complied with the Court's aforementioned instructions and, on June 11, 2012, filed *Class Counsel's Report Certifying Completion of the Notice Requirements Set Forth in the Court's Order Preliminarily Approving Class Settlements*. (dkt. no. 3146). This filing attached the affidavit of Alicia Gehring, Media Director for Kinsella Media, wherein she testifies that the Court's Publication Notice has appeared in the national and local publications required by the Court (see generally, *Declaration of Alicia Gehring With Respect to Publication*, attached as Exhibit A to Report), and the affidavit of Kahalla Thompson, Project Manager for Rust Consulting, wherein she testifies that the Court's long-form Settlement Notices have been sent via first-class U.S. Mail to the Property and Medical Monitoring Classes, in manner consistent with the Clerk's previous Class Certification Notice Plan (see, generally, *Declaration of Kahalla C. Thompson*, attached as Exhibit B to Report). Ms. Thompson further testifies that Rust Consulting has maintained and administered the

relevant toll-free telephone number and settlement website, and also received and maintained the names and addresses of those persons who have expressed an interest in receiving Eligibility Questionnaires from the Plan Administrator in the future. (*Id.*) Rust Consulting will produce these names and addresses to the Plan Administrator following the final approval of the class settlements.

11. The Court makes the following **FINDINGS and CONCLUSIONS**:

12. The Court notes that Rule 23(c)(2) provides that:

In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each members that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and ((2) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

13. The Court also notes that its power to exercise personal jurisdiction over the claims of absent class members residing outside of West Virginia depends upon whether those absent class members have received "minimal procedural due process protection[s]" under the Fourteenth Amendment to the United States Constitution. In this regard, the United States Supreme Court has held that:

a forum State may exercise jurisdiction over the claim of an absent class-action plaintiff, even though that plaintiff may not possess the minimum contacts with the forum which would support personal jurisdiction over a defendant. If the forum State wishes to bind an absent plaintiff concerning a claim for money damages or similar relief at law, it must provide minimal procedural due process protection. The plaintiff must receive notice plus an opportunity to be heard and participate in the litigation, whether in person or through counsel. The notice must be the best practicable, "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford

them an opportunity to present their objections." *Mullane*, 330 U.S., at 314-315, 70 S. Ct., at 657; cf. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-175, 94 S. Ct. 2140, 2151, 40 L.Ed.2d 732 (1974). The notice should describe the action and the plaintiffs' rights in it. Additionally, we hold that due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an "opt-out" or "request for exclusion" form to the court. Finally, the Due Process Clause of course requires that the named plaintiff at all times adequately represent the interests of the absent class members. *Hansberry*, 311 U.S., at 42-43, 45, 61 S. Ct., at 118-119, 120.

Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811-12 (1985) (footnote omitted).

14. Based upon the Court's prior findings and conclusions made in its *Order Adopting Form of Class Notices and Plan for Class Notification, with Directions*, its *Order Finding the Requirements Set Forth in the Court's Class Notification Order Have been Satisfied*, and evidence submitted by Class Counsel, including the Affidavits of Alicia Gehring and Kahalla Thompson, the Court FINDS that the class notice requirements of Rule 23(c)(2) of the West Virginia Rules of Civil Procedure have been satisfied.

15. Based upon the Court's prior findings and conclusions made in its *Order Adopting Form of Class Notices and Plan for Class Notification, with Directions*, its *Order Finding the Requirements Set Forth in the Court's Class Notification Order Have Been Satisfied*, and evidence submitted by Class Counsel, including the Affidavits of Alicia Gehring and Kahalla Thompson, the Court further FINDS that it may exercise personal jurisdiction over all of the claims held by absent members, because the absent class members have been afforded the "minimal procedural due process protection[s]" mandated by the U.S. Supreme Court in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

Conclusion

Based on the foregoing, the Court HOLDS that:

1) the class notification program it prescribed in its *Order Adopting Form of Class Notices and Plan for Class Notification, with Directions* has been effectuated in accordance with the order's requirements,

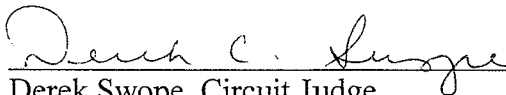
2) Class Counsel has adequately satisfied the Notice Requirements Set Forth in the Court's Order Preliminarily Approving Class Settlement, and

3) the class notification requirements of Rule 23(c)(2) have been satisfied and that the Court may constitutionally assert personal jurisdiction over all of the claims of absent class members, with the exception of those class members who completed timely requests for exclusion.

It is so ORDERED.

The Clerk is requested to circulate copies of this Order to counsel of record as set

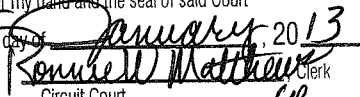
Entered this the 23rd day of January, 2013.



Derek Swope, Circuit Judge

STATE OF WEST VIRGINIA
COUNTY OF PUTNAM, SS:

I, Ronnie W. Matthews, Clerk of the Circuit Court of said County and in said State, do hereby certify that the foregoing is a true copy from the records of said Court. Given under my hand and the seal of said Court

this 25th day of January, 2013


Ronnie W. Matthews, Clerk
Circuit Court
Putnam County, W.Va. *CR*