IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

ZINA G. BIBB, et al.,

Plaintiffs,

v.

MONSANTO COMPANY, et al.,

Defendants.

CIVIL ACTION NO. 04-C-465
(Derek C. Swope, Circuit Judge
by temporary assignment)

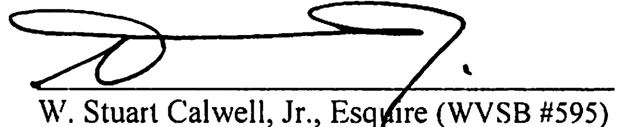
MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENTS

Plaintiff Class Representatives, Vicki Bailey; Zina G. Bibb; Herbert W. Dixon and Norma J. Dixon, husband and wife; Donald R. Rhodes and Wanda M. Rhodes, husband and wife; and Betty Tyson and Charles S. Tyson, husband and wife, and all others similarly situated ("Plaintiffs"), hereby move for preliminary approval of Class Settlements pursuant to West Virginia Rule of Civil Procedure 23(e). Plaintiffs rely on the reasons set forth in the accompanying Memorandum of Law.

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order granting preliminary approval of the proposed Class Settlements consistent with the relief requested herein and the proposed Preliminary Approval Order.

Respectfully submitted,

THE CALWELL PRACTICE PLLC

By: 

W. Stuart Calwell, Jr., Esquire (WVSB #595)
Law and Arts Center West
500 Randolph Street
Charleston, WV 25302

Attorneys for Plaintiffs

Dated: February 24, 2012

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IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

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CIVIL ACTION NO. 04-C-465
(Derek C Swope, Circuit Judge
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MONSANTO COMPANY, et al.,

Defendants.

[PROPOSED]
ORDER PRELIMINARILY APPROVING CLASS SETTLEMENTS

THIS MATTER having come before the Court on the Motion for Preliminary Approval of Class Action Settlements and Memorandum of Law in support thereof ("Motion for Preliminary Approval"); and the Parties having filed the Medical Monitoring Class Settlement Agreement dated February 16, 2012, as Exhibit A to the Motion for Preliminary Approval, along with the Property Class Settlement Agreement dated February 16, 2012 as Exhibit B to the Motion for Preliminary Approval (together, the "Settlement Agreements"), in satisfaction of Rule 23(e) of the West Virginia Rules of Civil Procedure; and the Court having reviewed and considered the terms and conditions of the proposed Class Settlements as set forth in the Settlement Agreements; and the Court finding it has subject matter jurisdiction over this matter; and for good cause appearing that the terms and conditions set forth in the Settlement Agreements were the result of good faith, arm's length settlement negotiations between competent and experienced counsel for both Plaintiffs and Defendants.

ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Preliminary Approval Order have the meanings assigned to them in the Settlement Agreements and this Order.

2. Preliminary Approval. The terms of the Parties' Settlement Agreements are hereby conditionally approved, subject to further consideration thereof at a final approval hearing ("Fairness Hearing") provided for below. The Court finds that said Class Settlements are sufficiently within the range of reasonableness.

3. Class Notice.

(a) The Court approves the forms of the Notice of Proposed Settlement of Medical Monitoring Class attached hereto as Exhibit A, and the Notice of Proposed Settlement of Property Class attached hereto as Exhibit B.

(b) By April 5, 2012, Class Counsel will commence publication of the Notice of Proposed Settlement of Property Class in a manner consistent with the notice procedures followed in providing notice of the Class Certification.

(c) Also by April 5, 2012, Class Counsel send by first-class mail the Notice of Proposed Settlement of Property Class to all members of the Property Class.

(d) These notices are hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Class Settlements and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the settlement, 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. The notices are accurate, objective, informative and provide members of the Medical Monitoring Class and Property Class with all

of the information necessary to make an informed decision regarding their participation in the Class Settlements and the fairness thereof.

(e) On or before June 11, 2012, Class Counsel shall provide to the Court and serve on Defense Counsel a report certifying completion of the notice requirements set forth in this Order.

4. Fairness Hearing.

(a) The Fairness Hearing is hereby scheduled to be held before this Court on June 18, 2012 in Courtroom #1, to consider the fairness, the reasonableness, and adequacy of the proposed Class Settlements, the dismissal with prejudice of this lawsuit, and the entry of final judgment in this class action.

(b) The date, time, and place of the Fairness Hearing shall be set forth in the Notice of Proposed Settlement of Medical Monitoring Class and Notice of Proposed Settlement of Property Class.

(c) Following the Fairness Hearing, on or before June 22, 2012, the Parties shall submit Proposed Findings of Fact and Conclusions of Law.

5. Objections.

(a) Any member of the Medical Monitoring Class or Property Class who submits written objections as to why the Settlement Agreements should not be approved as fair, reasonable, and adequate and why judgment should not be entered thereon ("Objector"), shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Fairness Hearing only if, within the time limit set forth in this Order, such Objector: (i) submits documentary proof that he or she is a member of the Medical Monitoring Class or Property Class; (ii) states in writing the specific basis for each objection, including any legal support the Objector wishes to bring to the Court's attention; (iii) submits any evidence the

Objector wishes to introduce in support of his or her objection; and (iv) any other information required by the Parties or the West Virginia Rules of Civil Procedure. Any Objector who fails to comply with these requirements shall be forever barred from objecting to the Class Settlements.

(b) To object, the Objector must send a letter stating that he or she objects to the proposed Settlement in the *Bibb v. Monsanto Co.*, NO. 04-C-465 litigation. He or she must include his or her name, address, telephone number, and his or her signature. He or she must also state the reasons for the objection.

(c) Any attorneys hired or retained by the Settlement Class members at Settlement Class members' expense for the purpose of objecting to the Class Settlements are required to serve a notice of appearance.

(d) Any Objector who serves and files a written objection and who intends to make an appearance at the Fairness Hearing, either in person or through personal counsel hired at the Objector's expense, in order to object to the fairness, reasonableness, or adequacy of the proposed Settlement Agreement, is required to serve a notice of intention to appear at the Fairness Hearing.

(e) All notices provided for in subsections (a)-(d) must be postmarked not later than June 7, 2012 and sent to the following:

Clerk of the Court
Circuit Court of Putnam
County, West Virginia
3389 Winfield Road
Winfield, WV 25213-9354

(f) Defendants' Counsel, Class Counsel, and any other counsel for Plaintiffs or the Settlement Class are directed to furnish promptly to each other and any other counsel who has

filed a notice of appearance with copies of any and all objections or written requests for exclusion that might come into their possession.

(g) No person shall be entitled in any way to contest the approval of the terms and conditions of the Settlement Agreements or the judgment to be entered thereon except by filing and serving written objections in accordance with the provisions of this Settlement Agreements. Any member of the Medical Monitoring Class or Property Class who does not submit a timely, written objection or who does not comply with the procedures set forth in the Settlement Agreements will be deemed to have waived all such objections and will, therefore, be bound by all proceedings, order and judgments in this action, which will be preclusive in all pending or future lawsuits or other proceedings.

The Clerk of the Court is directed to deliver true copies of this Order to counsel of record as set forth below.

Entered: February _______, 2012

____
Derek C. Swope, Circuit Judge

Prepared for entry by:

Charles M. Love, III (WVSB #2254)
Bowles Rice McDavid Graff & Love LLP
Post Office Box 1386
Charleston, West Virginia 25325-1386
Telephone: (304) 347-1100
Counsel for Defendants

W. Stuart Calwell, Jr. (WVSB #595)
David H. Carriger (WVSB #7140)
The Calwell Practice
Law and Arts Center West
500 Randolph Street
Charleston, West Virginia 25302
Telephone: (304) 343-4323
Class Counsel

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ZINA G. BIBB, et al.,

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v.

MONSANTO COMPANY, et al.,

Defendants.

CIVIL ACTION NO. 04-C-465
(Derek C. Swope, Circuit Judge
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MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENTS

Plaintiff Class Representatives, Vicki Bailey; Zina G. Bibb; Herbert W. Dixon and Norma J. Dixon, husband and wife; Donald R. Rhodes and Wanda M. Rhodes, husband and wife; and Betty Tyson and Charles S. Tyson, husband and wife, and all others similarly situated ("Plaintiffs"), respectfully submit this Memorandum of Law in support of their Motion for Preliminary Approval of Class Settlements.

I. INTRODUCTION

The Court has certified two classes: (1) a Medical Monitoring Class; and (2) a Property Class. The Parties have carefully negotiated two proposed class settlements for the Medical Monitoring Class and the Property Class. The Medical Monitoring Class Settlement Agreement dated February 16, 2012 ("MMCSA") is attached hereto as Exhibit A. The Property Class Settlement Agreement ("PCSA") dated February 16, 2012 is attached hereto as Exhibit B. Together, the MMCSA and PCSA are referred to herein as the "Settlement Agreements." The terms of the Settlements Agreements are referred to herein as the "Class Settlements."

The MMCSA creates a program through which members of the Medical Monitoring Class can register for and receive free medical examinations and testing performed by the physicians and professional staff with the Thomas Healthcare System, one of the leading medical

institutions in the region. The PCSA creates a program through which members of the Property Class can register for and have their residences cleaned free of charge. The Settlement Agreements provide for ample funding to accomplish its goals. The Funds created by the Settlement Agreements will pay for medical testing and residential clean-up for potentially thousands of West Virginians. Plaintiffs have sought two remedies in this litigation: medical monitoring and property clean-up. The Class Settlements provide both.

The Class Settlements represent an efficient and salutary solution for both classes on claims that have been vigorously contested in lengthy and complex litigation. Over the course of the last eight years, the Parties have engaged in extensive class and merits discovery such that the Parties' legal and factual positions are well known to each other and the Court.

Class Counsel has handled numerous cases of this type over many decades and fully appreciates the strengths and weaknesses of Plaintiffs' case, the challenges he faces in prevailing during a lengthy trial, and the very real risk that the class members he has aggressively represented and whose cause he has championed for many years may end up with nothing. Similarly, Defendants' counsel are seasoned toxic tort and class action trial lawyers who fully appreciate the strengths and weaknesses of Defendants' case, and the risks that attend to protracted jury trials.

In order to ensure that class members receive the relief for which they brought this lawsuit, Class Counsel has succeeded in fashioning settlements that allow eligible class members to participate in a sound, fully funded Medical Monitoring Program and have their homes cleaned. The Settlement Agreements represent a thoughtful compromise that take into consideration the Parties' respective concerns. In short, the Parties respectfully submit that the

Class Settlements are fair, adequate, and reasonable for both the Medical Monitoring Class and the Property Class.

The Parties request that, along with granting preliminarily approval of the Class Settlements, the Court adopt the schedule set forth below for the Parties to effectuate the various steps in the settlement approval process required under applicable law and the Settlement Agreements:

EVENT	TIMING
Preliminary Approval Order	February 23, 2012
Class Notice for Property Class (first class mail) and Medical Monitoring Class (advertising in national media)	April 5, 2012
Objections, Notices of Appearance	June 7, 2012
Fairness Hearing	June 18, 2012
Proposed Findings of Fact/Conclusions of Law	June 22, 2012
Final Approval Order	To Be Determined
Effective Date of Class Settlements	Expiration of appeal period or, if appeals are filed, final resolution of all appeals
Notice of Registration for Medical Monitoring Class	Within 30 days of Effective Date
Notice of Registration for Property Class	Within 30 days of Effective Date

Accordingly, at this preliminary stage of the settlement process, the Parties respectfully request that the Court enter an Order granting preliminary approval of the proposed Class Settlements consistent with the relief requested herein and the proposed Preliminary Approval Order.

II. PROCEDURAL BACKGROUND

On or about December 17, 2004, Plaintiffs filed a Complaint alleging that their property and persons were contaminated by dioxins released at Defendants' Plant located in Nitro, West Virginia, which is no longer operational (the "Plant"). Specifically, Plaintiffs allege that waste disposal practices at the Plant between 1948 and 1969 resulted in widespread dioxin contamination in the Class Area.

The case was certified by the Court as a class action pursuant to a Class Certification Order issued by the Court on January 8, 2008. The Court certified two classes: (1) a Property Class; and (2) a Medical Monitoring Class. Pursuant to the Class Certification Order, the Court defined the Medical Monitoring Class as "[t]hose persons who have resided, worked full time, or attended school full time in the Class Affected Area during the period 1948 to the present." This class definition was later amended but then returned to the original definition pursuant to the Order Amending the Definition of the Medical Monitoring Class dated March 26, 2010. The Court defined the Property Class as current owners of real property in whole or in part within the Class Area. Pursuant to the Order Granting in Part Defendant's Combined Motion and Memorandum of Law Seeking Dispositive Relief as to all Claims of the Property Class dated November 3, 2011, the Court decertified the Property Class. Notice of the Decertification was deferred until after the impending trial, and in fact no such Notice was ever accomplished. By Order dated January 25, 2012, the Court's November 3, 2012 Decertification Order was conditionally vacated.

The Medical Monitoring Class asserts that members have sustained significant exposure, relative to the general population, to a proven hazardous substance (dioxin), through the conduct of the Defendants. The Medical Monitoring Class further claims that as a proximate result of that significant exposure, they have suffered a significantly increased risk of contracting serious

latent (asymptomatic) illnesses. The Medical Monitoring Class further claims that the increased risk of disease makes it reasonably necessary for Medical Monitoring Class members to undergo periodic diagnostic testing different than what would be prescribed in the absence of the exposure, and that monitoring procedures exist that make early detection of the disease possible.

The Property Class asserts that Defendants are liable under theories of negligence, nuisance, trespass, and strict liability for property damage caused by dioxin contamination allegedly resulting from the operation of the Plant. The Property Class further claims that as a result of that contamination, the living spaces in their residences require clean-up. It is now agreed that, based on the evidence, dioxin levels in the soil of residential properties in the class area do not pose a risk to human health or otherwise impair property.

For their part, Defendants assert that there exists substantial evidence rebutting those claims, including the following: serum dioxin testing of class members showing normal dioxin levels; testing of soil in the class area showing dioxin levels are "inconsequential"; testing of dust in residences of class members showing average levels substantially below the United States Environmental Protection Agency ("USEPA") Soil Guideline of 1000 ppt; the presence of numerous other potential sources of dioxin in the Class Area; testing showing that virtually all of the dioxin found in the Class Area is not the type associated with Defendants' Plant; modeling by Plaintiffs' own experts that demonstrated that the Plant operations could have contributed not more than .03 ppt in dioxin concentrations to the surrounding area, thousands of times lower than the USEPA Soil Guideline of 1000 ppt; scientific literature that demonstrates that virtually all dioxin found in humans comes from food and not from environmental sources such as air, soil, and dust; investigations performed by the United States Department of Health and Human Services, the USEPA, and the West Virginia Department of Health and Human Resources that

found that dioxin levels found in Nitro schools and public buildings were safe and did not pose any health hazard; official statistics compiled by the Centers for Disease Control and the West Virginia Department of Health and Human Resources that demonstrate that the rates of diseases Plaintiffs claim to be associated with dioxin exposure (including various forms of cancer) are the same as or lower in Putnam and Kanawha Counties (where the Class Area is located) than other West Virginia counties; health studies of workers at the Defendants' Nitro Plant, including a study sponsored by the union, which showed no unusual health problems except for a skin condition called chloracne; and evidence that Defendants' operation of the Plant and their waste disposal practices were safe and consistent with the standards and practices of the time (1948-69).

In short, after eight years of hard-fought litigation, both sides are poised and ready to present their evidence to the jury. That evidence includes thousands of pages of documents, hundreds of environmental and biological test results, sophisticated computer modeling, complex statistical analyses, thousands of scientific studies, and the testimony of dozens of lay and expert witnesses. Faced with the prospect of a lengthy trial of uncertain outcome, and aided by the patient guidance of this Court, the Parties have succeeded in bridging their considerable differences and fashioning the Class Settlements now under review.

III. <u>THE PROPOSED CLASS SETTLEMENTS</u>

A. PROGRAM DETAILS AND FUNDING

1. MMCSA

Under the MMCSA, a Medical Monitoring Fund will be created to pay for medical examinations and testing of eligible class members over the course of the next 30 years. Defendants will contribute a minimum of $3 million for each of the seven screening periods. On top of that $21 million contribution, Defendants may be responsible for additional contributions

in the amount of $63 million, and screening intervals may be increased from five years to two, should certain benchmarks regarding participants' serum dioxin levels be exceeded.

As recommended by the Medical Monitoring Class's medical monitoring expert, Charles L. Werntz, III, D.O., the participating class members will be given an initial evaluation, including a history and physical examination, and a battery of blood tests (including serum dioxin tests). This process will be repeated every five years (and more frequently if exposure benchmarks are exceeded) for a period of 30 years. The testing is designed to detect certain serious latent (i.e., asymptomatic) illnesses as required under the Bower decision and consistent with recognized principles of medical screening.

Initial registration will be handled by Jay Goldman, the former mayor of Charleston, who will also oversee registration of the property class members. This will allow members of both classes to sign up for both property remediation and medical monitoring at the same time and at the same location. The medical monitoring will be performed by the physicians and professional staff of the Thomas Healthcare System. Ample time is provided for both registration and the performance of the testing. Class members and/or their personal physicians will receive medical reports summarizing the results of the examinations and testing.

Criteria for entry into the program are those recommended by class experts, Dr. Werntz and William R. Sawyer, Ph.D.: class members must fit into one or more of Dr. Sawyer's "dose groups." Also, the class member may not have worked at Monsanto's Nitro Plant previously. In addition, the parties selected a geographical area encompassed by an isopleth calculated by plaintiffs' expert William M. Auberle, and then added 10% to that area as a "safety buffer." (A map showing both Auberle's isopleth and 110% of that isopleth is attached as Exhibit D.)

As is common in medical monitoring class settlements, the Medical Monitoring Fund will operate on a "pay-as-you-go" basis, and all funds not expended will revert to Defendants.

2. PCSA

The PCSA creates a Program that is designed to clean the interior surfaces of potentially thousands of residences in the community. It creates a Property Fund that will be used to clean eligible class members' residences over the course of three years. Defendants will contribute $3 million per year to the Property Fund.

The Property Fund will be administered by Jay Goldman, who is both an attorney and a respected professional in the real estate field. The cleanup will be performed by Foth Infrastructure & Environment, L.L.C., an international engineering and environmental remediation corporation whose personnel have handled thousands of dioxin remediations. The cleanup will encompass defined living spaces where there is a potential for exposure. Exterior surfaces such as soils are not included as the parties and their experts agree that these do not constitute an environmental or health hazard.

As logic would dictate, the geographic area encompassed in the clean-up coincides with that incorporated into the medical monitoring program. Again, it is based on an isopleth calculated by Plaintiffs' expert Auberle, plus an additional 10% added as a "safety buffer." (See, Exhibit D) Up to 4,500 residences will be eligible for cleaning. As is common in property class settlements, any parts of the Property Fund not spent on remediation will revert to Defendants..

B. ATTORNEYS' FEES AND COSTS

Class Counsel hereby petitions the Court for reasonable attorneys' fees and costs payable by Defendants. Class Counsel has attached hereto as Exhibit C his Affidavit setting out the hours expended in the prosecution of the litigation since its inception and a description of the documentation of the hours worked, documents collected, files generated, and evidence

accumulated in both documentary and expert opinion form. As disclosed in Exhibit A Class Counsel is seeking fees up to 22,500,000 approximating 18% of the value of the settlement as apportioned between the two Classes and in addition up to a total of $7,000,000 in reimbursable direct case costs as apportioned between the two Classes. Defendants have agreed to pay up to a total of $29,500,000 as reasonable fees and costs in connection with the proposed settlement.[

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE CLASS SETTLEMENTS

The Parties seek preliminary approval of the Settlement Agreements. It is long established that West Virginia Law favors the resolution of controversies through compromise and settlement instead of through litigation. See, e.g., Sanders v. Roselawn Memorial Gardens, Inc., 159 S.E.2d 784, 792 (W.Va. 1968). Settlement spares the litigants the uncertainty, delay, and expense of a trial, while simultaneously reducing the burden on judicial resources. Rule 23(e) of the West Virginia Rules of Civil Procedure provides that a class action "shall not be dismissed or compromised without the approval of the court." Recently, the Circuit Court of Harrison County noted that Rule 23 "does not provide any more direction for the Court, nor does the common law of West Virginia." Perrine v E.I. Du Pont De Nemours and Company, Circuit Court of Harrison County, West Virginia, case no. 04-C-296-2 (See Final Order Approving Settlement dated 01/04/2011) (unpublished but attached hereto as Exhibit E). In its Final Order Approving Settlement, the Perrine court concluded that "it is clear that the primary inquiry of the [c]ourt must focus on the fairness and adequacy of the proposed settlement." Id. As discussed more fully below, at this preliminary approval stage, the Class Settlements are fair and reasonable and should be preliminarily approved.

A. FAIRNESS OF PROPOSED CLASS SETTLEMENTS

In Perrine, the court considered the following four factors "as provided by pervasive common law from the Federal District Court of the Eastern District of Virginia: 1) the posture of the case at the time settlement was proposed; 2) the extent of discovery that had been conducted; 3) the circumstances surrounding the negotiations; and 4) the experience of counsel in the area of class action litigation." Id.; In re MicroStrategy, Inc. Securities Litigation, 148 F. Supp. 2d 654, 663-665 (E.D. Va. 2001); Strang v. JHM Mortgage Sec. Ltd. P'ship, 890 F. Supp. 499, 501 (E.D. Va. 1995).

Here, the Class Settlements meet all four of these requirements. First, the Parties' legal and factual positions are well known to each other and to the Court. Second, the Parties have engaged in exhaustive discovery over the last eight years. Third, the Parties have carefully memorialized their agreements in the Settlement Agreements in an effort to reach a fair resolution. All negotiations between the Parties were conducted at arm's length and in good faith. Fourth, both Class Counsel and Counsel for Defendants are seasoned litigators who have decades of experience in these matters. Accordingly, it follows that all four tests are satisfied and that the proposed Settlement Agreements are fair.

B. ADEQUACY OF PROPOSED CLASS SETTLEMENTS

In Perrine, the court considered the following five factors in determining the adequacy of settlement "1) the relative strength of the Plaintiffs case on the merits; 2) the existence of any difficulties of proof or strong defenses of the Plaintiffs are likely to encounter if the case goes to trial; 3) the anticipated duration and expense of additional litigation; 4) the solvency of the Defendants and the likelihood of recovery on a litigated judgment; and 5) the degree of opposition to the settlement." Perrine, et al. v E.I. Du Pont De Nemours and Company, Circuit Court of Harrison County, West Virginia, case no. 04-C-296-2 (See Final Order Approving

Settlement dated 01/04/2011) (unpublished); MicroStrategy, 148 F. Supp. 2d 665; see also Strang, 890 F. Supp. at 501.

The Class Settlements again meet all these requirements. As described above, it is clear that the Parties understand through extensive discovery and scientific evidence that there exists a very real possibility that Plaintiffs may not prevail in this case. The evidence rebutting Plaintiffs' claims, which Defendants believe is compelling, is briefly summarized in Section II, above. Even if the Plaintiffs were to prevail, they would likely be faced with years of appellate review, given not only the numerous legal and evidentiary issued that have been raised and preserved, but also the constitutional dimensions of many of those issues. Faced with the possibility of the two classes getting nothing, or getting something many years down the road, Class Counsel succeeded in fashioning a settlement that guarantees the remedies he has long sought: free medical testing and property clean-up.

Accordingly, the proposed Class Settlements are both fair and adequate and should be preliminarily approved.

V. PROPOSED PROCEDURE FOR COURT APPROVAL AND IMPLEMENTATION OF CLASS SETTLEMENTS

A. NOTICE TO THE CLASS

Under W.Va. R. Civ. P. 23(e), "notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." Under the analogous Federal Rule of Civil Procedure 23(e) and the relevant due process considerations, adequate notice must be given to all class and potential class members. In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions, 148 F.3d 283, 326-27 (3d Cir. 1998); Valentino v. Carter-Wallace, Inc., 97 F.3d 1227 (9th Cir. 1996). However, neither Rule 23 or due process considerations requires actual notice to every class member in every case, Phillips Petroleum Co.

v. Shutts, 472 U.S. 797, 812 (1985), but simply calls for "notice reasonably certain to reach most of those interested in objecting is likely to safeguard the interests of all." Id.

In order to provide notice of the Class Settlements to each class member in the best form practicable and to maximize participation in the Class Settlements, the Parties have designed a notice plan to be implemented upon issuance of the Preliminary Approval Order by the Court (the "Notice Plan"). Specifically, by April 5, 2012, Class Counsel will cause notice to the Medical Monitoring Class by publication as outlined in the Notice Program Schedule of Kinsella Media (Exhibit F).The identity of members of the Medical Monitoring Class are currently unknown to the Parties. As a result, notice by national publication is the best practicable notice under the circumstances. The identity of members of the Property Class are known, in that they encompass occupied residences within the Property Class Cleanup Area (Exhibit C to the PCSA). By reaching Property Class members by first class mail, such notice is, again, the best practicable notice under the circumstances.

Class Counsel will also establish a website, www.BibbClass.com, which will contain the Class Notices and Registration Forms for both classes. The website will also contain sufficient information to allow individuals to determine whether they may be eligible to participate in the Medical Monitoring and Property Clean-up Programs.

The Notice Plan is the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement Agreements and of the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requires of W.Va. R. Civ. P. 23, due process, the Constitution of the United States, the laws of the State of West Virginia, and all other applicable laws. The notices are accurate, objective, informative, and provide members of

the Medical Monitoring Class and Property Class with all the information necessary to make an informed decision regarding their participation in the Class Settlements and the fairness thereof. All the costs of Class Notice, including the newspaper advertisements and internet website, will be borne by Class Counsel.

B. OBJECTIONS AND NOTICES OF APPEARANCE

The Parties propose that objections by class members ("Objectors") be handled as follows. Any objection should explain why the Settlement Agreements should not be approved as fair, reasonable, and adequate and why final judgment should not be entered thereon. Moreover, the Parties propose that any papers submitted in support of an objection shall be considered by the Court at the Fairness Hearing only if the Objector: (1) submits documentary proof that he or she is a member of at least one of the Settlement Classes; (2) states in writing the specific basis for each objection, including any legal support he or she wishes to bring to the Court's attention; (4) submits any evidence he or she wishes to introduce in support of his or her objection; and (5) provides any other information required by the West Virginia Rules of Civil Procedure. The Parties propose that any Objector who fails to comply with these requirements be forever barred from objecting to the Class Settlements.

The Parties also propose that any attorneys hired or retained by the Objectors or other members of the Settlement Class at Settlement Class members' expense for the purpose of objecting to the Class Settlements be required to serve a notice of appearance. Further, the Parties request that any Objector who serves and files a written objection and who intends to make an appearance at the Fairness Hearing, either in person or through personal counsel hired at Objector's expense, serve a notice of intention to appear at the Fairness Hearing.

The Parties request that all objections and notices described above be postmarked no later than June 7, 2012 (*i.e.*, 10 days before the Fairness Hearing) and sent to:

Clerk of the Court
Circuit Court of Putnam
County,
West Virginia
3389 Winfield Road
Winfield, WV 25213-9354

C. FAIRNESS HEARING

The Court has already tentatively (pending its ruling on this Motion) scheduled a Fairness Hearing for June 7, 2012, to consider the fairness, adequacy, and reasonableness of the Class Settlements. The Fairness Hearing will provide a forum to explain, describe, or challenge the terms and conditions of the Class Settlements.

D. PROPOSED FINDINGS OF FACT/CONCLUSIONS OF LAW

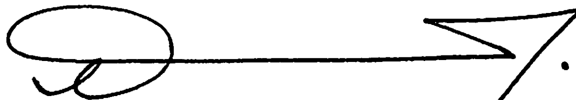
Finally, the Parties propose that, on June 22, 2012, they submit proposed Findings of Fact/Conclusions of Law which shall include, without limitation: (1) a sworn statement attesting to the publication of the Notice of Proposed Settlement of Medical Monitoring Class and Notice of Proposed Settlement of Property Class; (2) a complete explanation of the reasons why the Class Settlements should be approved and a final judgment entered; (3) a proposed disposition of objections; (4) grounds supporting Class Counsel's application for award of attorney's fees; and (5) a proposed Final Approval Order.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order granting preliminary approval of the proposed Class Settlements consistent with the relief requested herein and the proposed Preliminary Approval Order. Defendants respectfully, and fully, join in this request.

Respectfully submitted,

THE CALWELL PRACTICE PLLC

By: 

W. Stuart Calwell, Jr., Esquire (WVSB #595)
Law and Arts Center West
500 Randolph Street
Charleston, WV 25302

Attorneys for Plaintiffs

Dated: February 24, 2012