



AlaFile E-Notice

01-CV-2019-900914.00

Judge: JAVAN PATTON CRAYTON

To: RUTHERFORD ROBERT HOWARD
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NOTICE OF COURT ACTION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ANNA SPRUIELL ET AL V. THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM
01-CV-2019-900914.00

A court action was entered in the above case on 3/17/2025 10:08:04 AM

ORDER

[Filer:]

Disposition: GRANTED
Judge: JJP
Notice Date: 3/17/2025 10:08:04 AM

JACQUELINE ANDERSON SMITH
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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ANNA SPRUIELL, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 THE WATER WORKS BOARD OF)
 THE CITY OF BIRMINGHAM, et al.)
)
 Defendants.)

CIVIL ACTION NO.
CV-2019-900914.00

**FINAL ORDER AND JUDGMENT
APPROVING CLASS ACTION SETTLEMENT
AND DISMISSAL WITH PREJUDICE OF CLASS CLAIMS**

THIS CAUSE came before the Court on March 17, 2025, to determine the fairness of a proposed settlement after notice of the proposed settlement was given to all class members. The Court conducted a hearing on that date (a) to determine whether this action should remain certified as a class action pursuant to Alabama Rule of Civil Procedure Rule 23(b)(3); (b) to determine whether the Class Action Settlement Agreement between the Named Plaintiffs and Defendants (hereinafter referred to as the "Settlement" or "Settlement Agreement") is fair, reasonable, and adequate and should be finally approved; (c) to determine the amount of attorneys' fees and expenses that should be awarded; (d) to determine the amount of an incentive payment that should be awarded to the Class Representatives; (e) to entertain any objections of any affected persons as to approval of the Settlement Agreement, and all matters related thereto; (f) to determine whether final judgment should be entered thereon, pursuant to the terms of the Settlement Agreement;

and (g) to rule on all other matters related to or impacted by the Settlement Agreement.

The Court preliminarily approved the proposed Settlement Agreement between Plaintiffs, on the one hand, and Defendants BWWB and Transwood, on the other hand, by Order dated October 2, 2024, (Doc. 315), and directed Notice to the Settlement Class (“Notice”) of the status of the pendency of this class action and the terms of the proposed settlement, the manner of submitting objections, and the date of the fairness hearing. The terms and definitions used in the Settlement Agreement are incorporated herein by reference and are adopted for use herein.

The Court has considered the terms of the Settlement Agreement between Plaintiffs and Defendants BWWB and Transwood, reviewed all relevant pleadings, briefs, and other papers in this matter, considered any objections, heard arguments of counsel, and deliberated and considered the totality of the circumstances surrounding the Settlement Agreement. Based upon the foregoing, the Court hereby **ENTERS FINAL JUDGMENT** as follows:

I. FINDINGS

1. This Court has subject matter jurisdiction over the claims at issue in this Action.

2. The Court’s Order dated October 2, 2024, (Doc. 315), preliminarily approving the class action settlement, was appropriate and warranted under the circumstances.

3. The Court finds and determines that the Settlement Class, as defined by Paragraph 6 of the Settlement Agreement (referred to herein as the “Settlement

Class”), should be and hereby remains certified pursuant to Alabama Rule of Civil Procedure 23(b)(3).

4. The claims of the Named Plaintiffs are typical of the claims of the Settlement Class against Defendants, in that they arose out of the same pattern of alleged misconduct which is claimed to have injured the Class Members.

5. The Named Plaintiffs are adequate class representatives whose interests are consistent with the interests of the Settlement Class. Through counsel, and individually, they have vigorously represented the class without any conflicts of interests.

6. The lawyers of Heninger Garrison Davis, LLC, as Class Counsel, particularly Taylor Bartlett and Caroline Hollingsworth, are adequate, and they have vigorously pursued the interests of the Settlement Class since the inception of this case. They have extensively briefed numerous legal issues successfully. They have developed an adequate record. They have compiled the evidence in a professional and organized fashion.

7. Class Counsel have a wide range of experience with respect to complex and class action litigation. Class Counsel have demonstrated their familiarity with the claims and facts in this case, and have negotiated, at arm’s length, a fair, reasonable, and adequate settlement with the Defendants. The Court finds that the “adequacy of representation” requirements of Rule 23(a)(4) have been satisfied.

8. The Settlement Classes are numerous, consisting of hundreds of potential members, which means that the “numerosity” requirements of Rule 23(a)(1) are easily satisfied.

9. Common issues have been alleged by the Plaintiffs, both as to the common core facts relating to the release of chlorine gas at BWWB's Shades Mountain Filter Plant, the Defendants' actions, the shutdown of U.S. Highway 280 as a result of the chlorine gas release, and the legal claims which have been asserted by the Named Plaintiffs. The remaining issues to be determined by the Court presented issues of law and fact that were typical and common to the class. The Court makes this determination that the requirements of Rule 23(a)(2) and Rule 23(a)(3) are satisfied based upon its analysis of the legal and factual issues which would be considered at trial.

10. The Court also determines that the requirements of Rule 23(b)(3) are satisfied because the common issues relating to the class claims predominate over any individual issues that would affect only certain individual class members, and because resolution of this case as a class action is the most efficient and cost-effective means of resolution, making a class action the superior method of proceeding with this case.

11. To comply with due process, the Notice must provide class members with the information reasonably necessary to make an informed decision whether to remain a class member, object to the settlement, or opt-out. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812-13 (1985); Ala. R. Civ. P. 23(c)(2). The Settlement Administrator appointed by this Court has submitted a declaration establishing the Notice that was disseminated to the Settlement Class. (Doc. 329.) The Notice was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice was in plain language and contained all of the essential elements necessary to satisfy any due process

concerns, including the class definitions, the identities of the Parties, a summary of the terms of the proposed Settlement and of Class Counsel's intent to apply for fees, and information regarding the manner in which objections or requests for exclusion from the settlement could be submitted. The Notice properly informed Settlement Class Members of the relief obtained through the Settlement and the scope of the Releases. The court-approved Notice also informed Settlement Class Members of the date and location of the Fairness hearing on the Settlement. The content of the Notice, therefore, satisfied all requirements of Alabama Rule of Civil Procedure 23 and due process.

12. The manner in which the Notice was disseminated satisfied the requirements of due process and Alabama Rule of Civil Procedure 23. In order to ensure wide dissemination of this Settlement, a Summary Form of Notice was twice published in a newspaper having a circulation in Jefferson County. A Summary Notice was also published on BWWB's website. A Long-Form of the Notice more fully explaining the Class Members' rights and obligations, was attached to the Settlement Administrator's website. The Court finds that the timing of the dissemination of the Notice, the Publication Notice, and website posting notices prior to the Fairness Hearing comport with due process and the requirements of Alabama Rule of Civil Procedure 23.

13. The discovery in this case (and several similar cases) has been substantial. The Court has had the benefit of the evidence and arguments presented at several hearings in this and other related cases, including hearings on potentially dispositive motions. These hearings, as well as a review of all the pleadings, relevant motions and briefs, have enabled the Court to evaluate the

strength of the Plaintiffs' claims, the propriety of class certification, and the value of the Settlement.

14. The Settlement proposed by the Parties is fair, adequate and reasonable, and it deserves final approval. It provides immediate benefits to all Class members.

15. The terms of the Settlement Agreement are favorable to the Settlement Class. The Parties have presented evidence to the Court which demonstrates that Settlement Class Members have obtained fair, adequate, and reasonable relief under this Settlement. No Settlement Class Members opted out of or objected to the settlement. This weighs heavily in support of approval. See *Ass'n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 467 (S.D. Fla. 2002) ("a small number of objections ... is strong evidence of a settlement's fairness and reasonableness"); accord, *Wyatt ex rel. Rawlins v. Horsley*, 793 F. Supp. 1053, 1056 (M.D. Ala. 1991).

16. The Court is satisfied that the Settlement was the product of arms-length negotiation subsequent to Court-ordered mediation. The Court is informed that the settlement discussions were adversarial in nature and hard-fought on both sides.

17. The Settlement avoids complex, expensive, and prolonged litigation which could have inured to the disadvantage of all parties and the Court. Defendant BWWB has submitted a memorandum explaining the hurdles and difficulties the Class Members faced if they had to prove their claims at trial. It is possible that absent a settlement, individual class members would have received no benefits whatsoever as a result of Defendants prevailing on their many defenses

at trial. And even if the Settlement Class succeeded at trial, they faced the expense of and uncertainties of an appeal.

18. The Settlement is supported by adequate discovery. Over the course of several years, Class Counsel have undertaken substantial discovery in this and related cases. They are unquestionably aware of the strengths and weaknesses of the claims of the Settlement Class. The Settlement reflects the strengths and weaknesses of Plaintiffs' claims, and it is supported by Class Counsel. The Court specifically finds the Settlement to be fair, reasonable and adequate.

II. THEREFORE, IT IS HEREBY ORDERED:

1. Plaintiffs' Motion for Final Approval of the Settlement is GRANTED.
2. The Court confirms certification of the Settlement Class as defined in paragraph 6 of the Settlement Agreement.
3. The certification of this proceeding as a class action pursuant to Alabama Rule of Civil Procedure 23(b)(3) is finally approved.
4. The Named Plaintiffs, as well as Class Counsel, have fairly and adequately represented and protected the interest of the Settlement Class.
5. Because the method of identifying Settlement Class members, as well as the timing, method, content, and form of the Publication Notice given to the Settlement Class Members, and the dissemination thereof, satisfied the requirements of both Alabama Rule of Civil Procedure 23 and due process, and because all potential Settlement Class Members were given the opportunity to exclude themselves from or object to the settlement, the Court has personal jurisdiction over all Settlement Class Members.

6. The Settlement set forth in the Settlement Agreement is, in all respects, fair, reasonable, adequate, and just to the Settlement Class Members, and is FINALLY APPROVED. Judgment as set forth herein is entered thereon, and the Parties are directed to perform and carry out their respective obligations under the Settlement Agreement as approved by this Final Judgment and otherwise consistent therewith.

7. The Court approves, incorporates, and adopts the Release set forth in Section 13 of the Class Action Settlement Agreement (13.01-13.03). The Release is made effective as of this Final Settlement Date, and will forever discharge BWWB, Transwood, and the other Released Parties of and from any liability to the Settlement Class Members who did not timely and effectively opt-out of the Class, regardless of whether a Settlement Form is submitted, or a payment check is cashed. The Named Plaintiffs and all Settlement Class Members release the Defendants BWWB and Transwood, together with their past and present members, divisions, subsidiaries, parent corporations, sister companies or corporations, affiliated corporations or companies, stockholders, partners, directors, officers, agents, employees, attorneys, representatives, trustees, insurers, instrumentalities, assignors, assignees, transferors, transferees, and affiliates (the "BWWB/Transwood Released Parties") from any and all Class Claims as defined in Paragraph 12 of the Settlement Agreement.

8. All Class Claims asserted in this Action against the Defendants are dismissed on the merits and with prejudice. The Named Plaintiffs, and all Settlement Class Members, are permanently enjoined from bringing or prosecuting any claim or action which is released under paragraph II.7 above.

9. In return for the release and dismissal of the Class Claims, the Named Plaintiffs and the Settlement Class shall obtain the relief described in the Settlement Agreement upon submission of a proper proof of claim.

10. Approval of Fee Request and Reimbursement of Class Counsel Expenses. Also before the Court is Class Counsel's Motion seeking an award of fees and expenses in the amount of \$75,000.00, plus an incentive award of \$750.00 each for the Named Plaintiffs. Accordingly, the Court makes the following findings and conclusions regarding the requested attorneys' fees, litigation expenses, and incentive awards.

11. It was not until after the Parties had negotiated the substance of the Settlement, the relief distributable for the Class, and that Defendants would pay the administrative expenses of the Settlement, that they began negotiations on the issue of attorneys' fees and expenses. The parties then negotiated fees and expenses at arms-length, resulting in the \$75,000.00 figure requested by Plaintiffs' counsel. The Settlement Agreement, moreover, is not conditioned on the Court deciding to award Class Counsel the amount they requested. (Doc. 306 at p. 25, ¶ 24.02.) All of this indicates there was no collusion or self-dealing that would call into question the petition for an award of fees and expenses. *See Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) (approving fee award "that was negotiated separately from the rest of the settlement, and only after substantial components of the class settlement had been resolved").

12. The parties, through a series of phone conversations and written proposals, were able to come to an agreement to the reimbursement of expenses and a reasonable attorneys' fee. The agreement reached was that Defendants

would pay Plaintiffs' counsel a total of \$75,000.00 for expense reimbursement and attorneys' fees, as well as for any class representative fee allowed by the Court. This amount covered all those items.

13. The Fee is Reasonable Under the Circumstances. There is no question that an award of \$75,000.00, covering attorneys' fees, litigation expenses, and incentive payments is reasonable in light of the results obtained and the difficulties facing the Class. The requested attorneys' fees reflect the significant work performed by Class Counsel in reaching a resolution that provides meaningful relief to the affected class members while avoiding the risks and costs of continued litigation. An award of \$75,000.00 is even more reasonable considering that it is being paid completely by Defendants and no portion of any recovery by the Settlement Class Members will be reduced or diluted by payment of the fees, expenses and incentive payments. Thus, this arrangement is highly advantageous to the Settlement Class Members. Ordinarily, in most class actions, the Class Members recovery is reduced by the payment of fees and expenses.

14. The Incentive Awards are Reasonable Under the Circumstances. Class Counsel has requested incentive payments of \$750.00 for each Class Representative. These incentive payments will be paid exclusively from the \$75,000 allocation for attorneys' fees and expenses, ensuring that class members' recovery remains unaffected. The Court finds that the incentive payments requested by Class Counsel are **reasonable** and **appropriate** under the circumstances. The Settlement Agreement was the result of arm's length negotiations, and the incentive awards are consistent with the terms of the agreement and applicable legal standards. The incentive payments reflect the

significant work performed by Class Representatives towards reaching a resolution that provides meaningful relief to the affected class members while avoiding the risks and costs of continued litigation.

15. The Court expressly finds that there is no just reason for delay and the Clerk of the Court is directed to enter this Final Order and Judgment as a final judgment. Without in any way affecting the finality of this Final Order and Judgment, the Court expressly retains exclusive and continuing jurisdiction over: (a) all matters and issues relating to the interpretation, administration, implementation, consummation, effectuation, and enforcement of the Settlement Agreement and this Final Order and Judgment, specifically including, but not limited to, the allocation, payment, and distribution of Class Counsels' attorneys' fees and expenses, fees to referring attorneys, and Plaintiff Class Representatives' incentive awards; and (b) all parties to this action, including all Settlement Class members, for the purposes of enforcing and administering the Settlement Agreement and this Final Order and Judgment.

16. No Admissions. Neither this Final Order and Judgment, nor any other document referred to herein, nor any action taken to carry out this Final Order and Judgment, is, may be construed as, or may be used as an admission or concession by or against either Defendant or the Released Parties of the validity of any claim or defense or any actual or potential fault, wrongdoing, or liability. Defendants continue to deny that the action meets the requisites for class certification under Rule 23 for any purpose other than settlement. Entering into or carrying out the settlement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or

concession as to Defendants' denials or defenses. This Final Order and Judgment shall not be offered or received in evidence in any action or other tribunal for any purpose whatsoever, except as (1) evidence to enforce the provisions of the settlement and this Final Order and Judgment; or (2) evidence to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim by Defendants or the Released Parties in any action brought against them by a Class Member.

17. Dismissal of Action. Subject to the provisions of this Final Order and Judgment, including the Court's retention of jurisdiction as set forth herein, this action (including all individual and class claims presented herein) is dismissed on the merits and with prejudice, and without any other past or future fees, expenses, or costs to any party or Settlement Class Member. This dismissal is without prejudice to the rights of the Parties to enforce the terms of the Settlement Agreement. The Clerk of the Court is DIRECTED to terminate any pending motion as moot and to place this case on the Court's administrative docket for a period of six (6) months.

DONE and ORDERED this 17th day of March, 2025.


JAVAN P. CRAYTON
CIRCUIT COURT JUDGE