

NO. 15-CI-01623

JEFFERSON CIRCUIT COURT
DIVISION TWELVE (12)
JUDGE SUSAN SCHULTZ GIBSON

SHERHONDA STEWART

PLAINTIFFS

and

BEVERLY SHEPPARD, *et al.*

v.

**PROPOSED ORDER GRANTING AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF COSTS AND EXPENSES**

DERBY INDUSTRIES, LLC

DEFENDANTS

and

GENERAL ELECTRIC CO.

Plaintiffs Sherhonda Stewart, Beverly Sheppard, and Alex Ruiz, on behalf of themselves and class of similarly situated individuals, through Class Counsel, moved for an award for attorney's fees and reimbursement of costs and expenses.

Plaintiffs and Defendants in the captioned matter filed a Joint Motion for Preliminary Approval of a Class Action Settlement on April 2, 2014. Subsequent to the filing Plaintiffs filed the instant motion for an award of fees and reimbursement of costs and expenses.

Based on the arguments and evidence, the Court makes the following findings of fact:

- A. The Settlement Agreement provide for the payment of up to \$360,000.00 to Settlement Class Counsel for attorney's fees, plus costs incurred in prosecution of this action, and Plaintiffs' Counsel have applied for an award of fees for of \$360,000.00 and reasonably

incurred costs in the amount of \$14,312.54. Plaintiffs' Counsel's fees and expenses shall be paid exclusively from the Settlement Fund pursuant to the Settlement Agreement.

- B. The Court finds that this award is reasonable under the circumstances. *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974).
- C. In Kentucky, the proper method for evaluating the reasonableness of a fee request and determining the amount of the award in a common fund class action settlement is based upon "a percentage of the fund, plus reasonable expenses." *Coll. Ret. Equities Fund, Corp. v. Rink*, No. 2012-CA-002050-MR, 2015 Ky. App. Unpub. LEXIS 30, at *5 (Ct. App. Jan. 16, 2015).
- D. Instead of facing additional costly litigation and the time, expense, and delays involved in a trial and appeals, Class members who suffered losses will recover damages in the Settlement.
- E. Common fund fee awards serve the important purpose of encouraging individuals to seek legal assistance to recover for their injuries, which have also been similarly suffered by large groups of people. Protecting the rights of class members in the environs of hazardous industrial sites and the areas surrounding them is in the public interest and, thus, supports a fully compensatory award.
- F. Plaintiffs' Counsel's services were undertaken on a contingent fee basis.
- G. Plaintiffs' Counsel who principally worked on this case have expended approximately 1,000 hours in its prosecution. Based on their current rates, their combined lodestar is \$285,795.00. The multiplier is a de minimus 1.26.

- H. Industrial fire litigation and class action litigation is a highly-specialized and complex are of the law.
- I. Counsel on both sides demonstrated a high level of professional skill and experience.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- A. The payment to Plaintiffs' Counsel of \$360,000.00 for attorneys' fees and reasonably incurred costs of \$14,312.54 from the Settlement Fund pursuant to the terms of the Settlement Agreement is hereby approved. Such payments shall be made as specified in the Settlement Agreement. Should additional costs be incurred, Plaintiffs' Counsel shall submit documentation to the Claims Administrator for payment.
- B. Any dispute concerning the aggregate amount or allocation of Plaintiffs' Counsel's fee and expense award shall be subject to the exclusive jurisdiction of this Court and shall be a separate and severable matter from all other matters in this Final Judgement and the finality and fairness of the Settlement Agreement with the Settlement Class Members. Any appeal of the Plaintiffs' Counsel's fee and expense award shall be severed from a final judgement in the matter and shall not affect the finality of the judgement as to the settlement and release of the Settlement Class Members' claims against the Released Parties.
- C. The attorneys' fees, costs, and expense payment from the Settlement Fund described above is the total amount that will be paid by Defendants for any and all attorneys' fees, costs, and expenses in connection with the Action and settlement of the Released Claims regardless of whether any member of the Settlement Class retained separate or additional counsel, or incurred separate or additional attorneys' fees, costs, or expenses.

Susan Schultz Gibson
Susan Schultz Gibson, Judge
Jefferson Circuit Court, Division 12

Date: 3/28/18

ENTERED IN COURT
DAVID L. NICHOLSON, CLERK
MAR 28 2018
BY DEPUTY CLERK

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JEFFERSON CIRCUIT COURT
DIVISION TWELVE (12)
JUDGE SUSAN SCHULTZ GIBSON

SHERHONDA STEWART
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BEVERLY SHEPPARD, *et al.*

PLAINTIFFS

v.

DERBY INDUSTRIES, LLC
and
GENERAL ELECTRIC COMPANY

DEFENDANTS

**FINAL ORDER AND JUDGMENT GRANTING FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs Sherhonda Stewart, Beverly Shephard, and Alex Ruiz (collectively, the "Plaintiffs") and Defendants Derby Industries, LLC ("Derby") and General Electric Company ("GE") (collectively, the "Parties") have entered into a Class Action Settlement Agreement ("Settlement Agreement" or "Agreement"). The Parties previously submitted the Settlement Agreement to this Court for preliminary approval of the class action settlement provided for therein (the "Settlement"). On September 20, 2017, this Court entered an Order Granting Joint Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), which included provisional certification of a Kentucky settlement class ("Settlement Class"). Now, the matter having come before the Court for hearing on March 28, 2018, on the Parties' request for entry of an order granting final approval of the proposed Settlement and for entry of final judgment in this matter, the Court **ORDERS, FINDS, CONCLUDES, AND ADJUDGES** as follows:

I. JURISDICTION OF THE COURT

The Parties and the members of the Settlement Class ("Settlement Class Members") have submitted to the jurisdiction of this Court for purposes of the Settlement; the Court has personal jurisdiction over the Parties and the Settlement Class Members; the Court has subject matter jurisdiction to release all claims and causes of action released in the Settlement; and the Court has subject matter jurisdiction to approve the Settlement.

II. CERTIFICATION OF THE SETTLEMENT CLASS

In the Preliminary Approval Order, this Court granted conditional class certification to the Settlement Class, defined as follows:

All natural persons who, on April 3, 2015, resided in, or owned, residential property located (a) within a two-mile radius of the former AP-6 facility at 4000 Buechel Bank Road, Louisville, Kentucky, or (b) within a two- to three-mile radius of AP-6 and bounded by Fern Valley Road to the south and Route 150 to the northeast. Excluded from the Settlement Class are (a) officers, directors, and employees of the Defendants, (b) insurers of Class Members, and (c) subrogees or all entities claiming to be subrogated to the rights of a Class Member.

The Court found and concluded that the Settlement Class satisfied all the requirements of due process and other applicable Kentucky law and made several specific decisions relating to the Settlement Class. First, the Court appointed Jasper Ward and Alex Davis of the law firm Jones Ward, PLC, as Class Counsel for the Settlement Class. Second, the Court appointed Plaintiffs Sherhonda Stewart, Beverly Shephard, and Alex Ruiz as class representatives ("Class Representatives"). Third, the Court appointed Edgar C. Gentle, III, Esq. of Gentle, Turner, Sexton & Harbison, LLC, as Settlement Administrator.

Having considered all submissions timely filed with the Court pursuant to the Preliminary Approval Order, the Court now finds and concludes that those provisional findings and conclusions should be, and hereby are, confirmed in all respects as a final class certification

order under Kentucky Rule of Civil Procedure 23 for the purposes of implementing the class action settlement provided for in the Settlement Agreement and entering final judgment in this action.

III. NOTICE

The Preliminary Approval Order approved (1) the form and content of settlement notices to be mailed, emailed, and published to members of the Settlement Class (the "Settlement Notices"); (2) the form and content of the Claim Form; (3) the content of the Settlement Website, with the Notice and FAQ and other information and documents that the Parties jointly agreed to post concerning the nature of the case and status of the Settlement; and (4) the plan specified in the Settlement Agreement for distributing and publishing the Settlement Notices.

The Settlement Notices, Claim Form, and Settlement Website fairly, accurately, and reasonably informed members of the Settlement Class of (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about, and means for obtaining, additional information regarding this litigation and the Settlement Agreement; (3) appropriate information about, and means for obtaining and submitting, a Claim Form; (4) appropriate information about the right of members of the Settlement Class to exclude themselves from the Settlement, object to the terms of the Settlement Agreement, or object to Class Counsel's request for an award of attorney fees and costs, and the procedures to do so; and (5) appropriate information about the consequences of failing to submit a Claim Form or failing to comply with the procedures and deadline for opting out of, or objecting to, the Settlement.

Based on the foregoing, the Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of Kentucky laws and due process.

IV. FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

In the Preliminary Approval Order, the Court found that the Settlement Agreement appeared to be fair, reasonable, and adequate and fell within the appropriate range of possible approval. In essence, the Settlement requires the creation of a Common Fund in the total amount of \$1,200,000 from which all payments to Settlement Class Members of Valid Claims, all Administration and Notice Expenses, all payments to Class Counsel for attorney fees and expenses, all payments of Service Awards, and all other costs and expenses associated with the Settlement will be paid out of the Common Fund.

All Settlement Class Members are eligible to make a claim from the Common Fund for a set amount of cash, ranging between approximately \$60 and \$90, based on the location of the property that the Settlement Class Member owned or resided in on April 3, 2015, and without the need to submit documentary proof other than a properly completed Claim Form. These cash payments may be proportionally adjusted upward or downward depending upon the rate of Valid Claims submitted by Settlement Class Members. Further, Settlement Class Members who have documentary proof of out-of-pocket costs or expenses for property damage caused by the AP6 Fire no later than August 7, 2015, are eligible to make a claim from the Common Fund for reimbursement of those costs or expenses subject to certain limitations and potential deductions. A maximum of \$150,000 of the Common Fund has been set aside for payment of reimbursement claims.

Any funds remaining in the Common Fund after the completion of the claims process, the payment of all Valid Claims, and the payment of all Settlement related costs and expenses shall not revert to the Defendants. Instead, the Settlement Administrator will make one or more *cy pres* distributions from the Common Fund for the benefit of the residents of one or more of the neighborhoods that border GE Appliance Park, totaling \$100,000 from any unclaimed settlement funds, in accordance with the terms of the Settlement Agreement. Any unclaimed funds remaining in the Common Fund after the *cy pres* distribution(s) shall be distributed pro rata to Settlement Class Members who made Valid Claims.

Having considered (1) the benefits offered to Settlement Class Members; (2) the risks to members of the Settlement Class that Defendants would continue to successfully defend some or all of the claims asserted by Plaintiffs, whether litigated on a classwide basis or by members of the Settlement Class themselves; (4) the expense and complexity of continued litigation; (5) the length of time that would be required for members of the Settlement Class, or any group thereof, to obtain a final judgment through one or more additional trials and appeals; (6) the experience and views of Class Counsel and Defendants' counsel; and (7) the low number of members of the Settlement Class who have elected to be excluded from the Settlement, the Court finds the Settlement to be fair, reasonable, and adequate. Moreover, the Court finds that the Settlement is the result of extended, arm's length negotiations among experienced counsel, including with the aid of an independent mediator, and is non-collusive.

In consideration of the foregoing, the Court grants final approval of the Settlement Agreement and enters this Final Order and Judgment implementing its terms, including but not limited to the releases in the Settlement Agreement. All timely objections filed by members of the Settlement Class have been considered by the Court and are hereby overruled. The Court

finds that the Settlement Agreement is in all respects fair, reasonable, adequate, and in the best interest of the Settlement Class and hereby adopts and incorporates the terms of the Settlement Agreement for purposes of this Final Order and Judgment, including the definitions set forth in the Agreement. The Parties are directed to consummate the Settlement Agreement in accordance with its terms.

V. EXCLUSIONS FROM THE SETTLEMENT CLASS

The Settlement Administrator has received, from certain members of the Settlement Class, requests for exclusion from the Settlement Class and has provided Class Counsel and Defendants' counsel copies of those requests. Class Counsel and Defendants' counsel have jointly filed with the Court a list of those persons who have timely elected to be excluded. All persons named in the list on file with the Court as having filed timely exclusions with the Settlement Administrator are hereby excluded from the Settlement Class and will not be bound by the terms of the Settlement. Each individual or entity that falls within the definition of the Settlement Class shall be bound by the terms of the Settlement.

VI. IMPLEMENTATION OF SETTLEMENT

Consistent with the Settlement Agreement, the Settlement Administrator shall make the payments from the Common Fund described in the Settlement Agreement, including, without limitation, payment to each Settlement Class Member who files a Valid Claim, for the cash payment or cash reimbursement, pursuant to applicable terms and documentation requirements set forth in the Settlement Agreement. The Parties shall carry out their respective obligations as stated in the Settlement Agreement.

VII. RELEASE, COVENANT NOT TO SUE, AND EFFECT OF SETTLEMENT

A. Release

In consideration of the terms of the Settlement Agreement, as to Plaintiffs and Class Members, they are hereby found, deemed, and adjudged to have fully, finally, and forever released and discharged Derby and GE, along with each of their successors, predecessors, assigns, affiliates, parent companies, subsidiaries, shareholders, officers, directors, agents, insurers, reinsurers, attorneys, and employees (“Releasees”) from all manner of claims, actions, causes of action, administrative claims, demands, debts, damages, costs, attorney fees, obligations, judgments, expenses, or liabilities for economic loss, in law or in equity, whether now known or unknown, contingent or absolute, including all claims that Plaintiffs now have or, absent this Agreement, may in the future have had, against Releasees, by reason of any act, omission, harm, matter, cause, or event whatsoever that has occurred from the beginning of time up to and including the Effective Date of this Agreement and that arise from or relate to the April 3, 2015, fire at AP6 or to any act, omission, damage, matter, cause, or event whatsoever arising out of the initiation, defense, or settlement of the Lawsuit or the claims or defenses asserted in the Lawsuit, including without limitation, all claims for real or personal property damage, shelter-in-place damages, economic loss, lost wages, business interruption, and environmental harm or damage (the “Released Claims”). Except as to Plaintiffs Sherhonda Stewart, Beverly, Shephard, and Alex Ruiz, this release, however, will not extinguish, and the Released Claims do not include, claims for personal injury. Further, the Released Claims cover and include a release by each Plaintiff and Settlement Class Member of all future injuries, damages, losses, or future consequences or results—excluding any future injury to person (other than Plaintiffs Sherhonda Stewart, Beverly Shephard, and Alex Ruiz)—of the April 3, 2015, fire at AP6 and include a release and waiver of all rights, causes of actions, claims, and lawsuits against the Releasees that may exist or arise in the future because of such future injuries, damages, losses, or future

consequences or results of known or unknown injuries that relate to or arise out of the subject matter of this litigation.

B. Covenant Not to Sue

In consideration of the terms of the Settlement Agreement, all Settlement Class Members, including Plaintiffs, are hereby found, deemed, and adjudged to have (a) covenanted and agreed that neither Plaintiffs nor anyone authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in the Settlement Agreement, against Derby, GE, or Releasees, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by Derby, GE, or Releasees, or any of them, in connection with the Released Claims; (b) waived and disclaimed any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of any of them; and (c) agreed that the Settlement Agreement shall be a complete bar to any such action.

C. Settlement Agreement as Exclusive Remedy for Released Claims

Upon entry of this Final Order and Judgment, enforcement of the Settlement Agreement shall be the exclusive remedy for all members of the Settlement Class, including Plaintiffs, all of whom are hereby permanently barred and enjoined from instituting, commencing, prosecuting or continuing to prosecute, either directly or indirectly, any claims released under the Settlement Agreement against Derby, GE, or Releasees, or any of them, as the release provisions of the Settlement Agreement define these terms. Settlement Class Members who are prosecuting or asserting any of the released claims are ordered to take whatever measures necessary to effectuate dismissal of their claims.

D. Effect of a Final Judicial Determination of Invalidity or Unenforceability

If, after entry of this Final Order and Judgment by the Court, a notice of appeal of this Final Order and Judgment is timely filed by any party, objector, claimant, or other person or entity, and if an appellate court makes a final determination that this Final Order and Judgment is in any respect invalid, contrary to law, or unenforceable (except for such determinations that are limited to the attorney fees or service awards), this Order shall be automatically vacated, the Settlement Agreement shall be null and void, and Defendants may fully contest certification of any class as if no Settlement Class had been certified. In addition, the Parties shall return to their respective positions in this lawsuit as they existed immediately before the Parties executed the Settlement Agreement, and nothing stated herein or in the Settlement Agreement shall be deemed an admission or waiver of any kind by any of the Parties or used as evidence against, or over the objection of, any of the Parties for any purpose in this action or in any other action.

VIII. NO ADMISSION OF LIABILITY

The Parties entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. Pursuant to Kentucky Rule of Evidence 408, nothing contained in the Settlement Agreement, any documents relating to the Settlement, the Preliminary Approval Order, or this Final Order and Judgment shall be construed, deemed, or offered as an admission by any of the Parties or any member of the Settlement Class for any purpose in any judicial or administrative action or proceeding of any kind, whether in law or equity. In entering this Order with this provision and other limiting provisions, this Court specifically refers to and invokes the Full Faith and Credit Clause of the United States Constitution and the doctrine of comity and requests that any court in any other jurisdiction reviewing, construing, or applying this Order implement and enforce such limiting provision.

IX. ESTABLISHMENT OF A QUALIFIED SETTLEMENT FUND

The Common Fund shall be a Qualified Settlement Fund as described in Internal Revenue Code §468B and Treasury Regulation §1.468B-1 established by order of the Court, and shall remain subject to the jurisdiction of this Court. Where applicable and in the best interests of the Settlement Class Member, the Settlement Fund is authorized to effect qualified assignments of any resulting structured settlement liability within the meaning of Section 130(c) of the Internal Revenue Code. At the Parties discretion, a separate Escrow Agreement will be executed if needed.

X. ENTRY OF FINAL JUDGMENT

The Court hereby dismisses with prejudice all claims alleged in this action. The Court further orders the entry of, and enters, this Final Order and Judgment on all claims, counts, and causes of action alleged in this action by Plaintiffs, on behalf of themselves, the Settlement Class, or both. In entering this Final Order and Judgment, this Court specifically refers to and invokes the Full Faith and Credit Clause of the United States Constitution and the doctrine of comity, and requests that any court in any other jurisdiction reviewing, construing, or applying this Judgment implement and enforce its terms in their entirety.

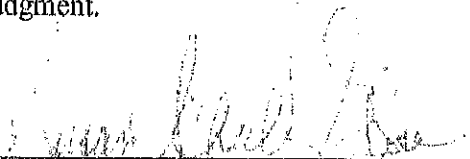
The Court has considered the due process rights of absent Settlement Class Members and finds that such rights have been and are adequately protected herein.

Pursuant to Kentucky Civil Procedure Rule 54.02, this Order is final and appealable, and there exists no just cause for delay in its entry. Without affecting the finality of this Final Order and Judgment in any way, this Court hereby reserves jurisdiction over (1) implementation of this Settlement and this action; (2) all matters related to the administration and consummation of the Settlement; and (3) all Parties to this action for the purpose of implementing, enforcing, and

monitoring compliance with, effectuating, administering, and interpreting the provisions of the Settlement Agreement and this Final Order and Judgment.

IT IS SO ORDERED AND ADJUDGED.

Dated: _____, 2018



Hon. Susan Schultz Gibson
Jefferson Circuit Court Judge

