

TWENTY-SECOND JUDICIAL DISTRICT COURT
PARISH OF WASHINGTON
STATE OF LOUISIANA

NO. 73341
ALL CASES

IN RE CHEMICAL RELEASE
AT BOGALUSA

Division "C"

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED CLASS SETTLEMENT
BETWEEN PLAINTIFF CLASS AND RELIANCE INSURANCE COMPANY

MAY IT PLEASE THE COURT:

Reliance Ins. Co. (in Liquidation) ("Reliance") is one of the defendant insurers named in this class action arising out of the October 23, 1995 chemical explosion and release at the Gaylord Chemical plant in Bogalusa, Louisiana. At the time of the event, Reliance had issued excess umbrella policies to two of the named corporate defendants, specifically:

- (a) a policy with limits of \$10 million per occurrence and in the aggregate, in excess of \$42 million underlying limits, issued to Trans Resources, Inc., pursuant to which the defendant Vicksburg Chemical Company was an additional insurer; and
- (b) a policy with limits of \$15 million per occurrence and in the aggregate, as part of a \$35 million insurance layer in excess of \$16 million underlying limits, issued to Gaylord Chemical Corporation.

By the time of the class settlements with both Vicksburg Chemical and Gaylord Chemical, Reliance had been placed in liquidation by Order of the Pennsylvania Commonwealth Court. Any and all tort claims by plaintiff class members against Reliance, either as the insurer of Vicksburg Chemical or as the insurer of Gaylord Chemical, accordingly were stayed in this litigation, pending finalization of the liquidation process in Pennsylvania. But, at the same time, Proofs of Claim on behalf of the class members were filed as unsecured creditor claims in the Reliance liquidation proceedings.

During the pendency of the Reliance liquidation proceedings, members of the PLC began settlement discussions with representatives of the Reliance Liquidator. The objective was to arrive at a global resolution of these claims for purposes of both the liquidation case and this class action. Such a class settlement resolves all remaining claims in this matter, as all other

defendants have been dismissed with prejudice on the basis of previous, Court-approved class settlements.

The culmination of these negotiations is the attached Settlement Agreement and General Release, executed by the signatures of every PLC member and Mr. David Brietling, the Chief Liquidation Officer for Reliance Insurance Company in Liquidation. The PLC now wishes to pursue the required approval of this class settlement by the Court (as the necessary steps for approval by the Pennsylvania Commonwealth Court also are being taken).

The referenced Agreement (Exhibit I) provides that the Liquidator shall issue two “Notices of Determination” in the Liquidation proceedings, in the total amount of \$12,620,565. See Exhibit I at ¶ 2, p. 5.¹ This total consists of payments authorized under both the Gaylord and Vicksburg policies. However, the Notices are essentially the Liquidator’s agreed and negotiated maximum valuations of the claims for settlement purposes, and not the total of payments guaranteed under the Agreement. Rather, the Agreement specifies that the Liquidator anticipates an “initial distribution” to the plaintiff class in the amount of **\$4,870,113** upon approval of the Notices by this Court. *See id.* at ¶ 3, p. 5. As to the remaining balance of the settlement valuation of the claims (i.e., approximately \$12.6 million less the initial distribution of approximately \$4.9 million, or roughly \$7.7 million), further distributions are dependent upon a number of variables which are, by nature, uncertain. As stated in the “Notices of Determination,” the ultimate portion of the valuation total which actually can be funded and distributed “will not be known until all assets [of Reliance in liquidation] are recovered and all liabilities known.” Hence, the Agreement makes clear that any class settlement payments in excess of the initial distribution, remain uncertain both as to amounts and as to the timing of future distributions which in fact will be made. *See id.* at ¶ 4, p. 5.²

¹ Since execution of the Agreement, and specifically on October 10, 2014, both Notices of Determination in fact have been issued.

² As noted in *fn.* 1, at p. 5 of the Settlement Agreement, the Reliance settlement negotiations included the Mississippi plaintiffs as well. The total valuation amount negotiated was \$15.5 million for both the Louisiana class and the Mississippi plaintiffs, and, as has been done in all other settlements herein, the funds were divided according to the claim populations in each group, i.e., 18.577% to Mississippi and 81.423% to the Louisiana class. The same maximum valuation approach, percentage for initial distribution, and stipulated uncertainty as to further distributions, apply in the Mississippi settlement with Reliance as well.

The proposed Notice Plan for this settlement, as well as the proposed class notices, are attached as Exhibit II [Notice Plan]; Exhibit II(A) [Short-Form Notice] and Exhibit II(B) [Long-Form Notice]. The notices make it clear to class members that the only sum-certain payment to be made under this proposed class settlement at this time is in the amount of approximately \$4.9 million (the initial distribution), and that the amounts and timing of any future distributions to reach the maximum valuation of approximately \$12.6 million remain, of necessity, uncertain.

The Agreement further provides that amounts paid by the Court-Appointed Disbursing Agent (CADA) to class members but not actually received by identifiable claimants (given the passage of time and the prospect that claimants may have moved away, lost contact with counsel, etc.), will not revert or be returned to the Liquidator, but instead will either be reallocated to other claimants or made available for the benefit of the entire class pursuant to the *cy pres* doctrine. *See* Exhibit I at ¶ 5, p. 6. This will be a matter for the Court to decide, with appropriate input from the Special Master. As the Court knows, certain funds from an earlier settlement already have been deposited in the registry of the Court and earmarked for *cy pres* treatment in 2016. Obviously, whether settlement payments distributed to but not received by certain claimants are reallocated to other claimants or made the subject of a *cy pres* order, may depend on the amount of such undistributed funds.

Under the settlement, this total of distributed but not received claimant payments is important for another reason: On the one-year anniversary of the commencement of the distribution of funds, the Agreement provides that the CADA will give an accounting of the amount of such undistributed funds, and the Reliance Liquidator will receive a credit in this same amount with respect to the remaining balance of the valuation and any future distributions under the Agreement. *See id.* In effect, this total of allocated but not-received settlement payments to class members, as calculated on the one-year anniversary of the start of distribution, will operate to reduce by that amount what remains of the \$12.6 million maximum for future distributions.

One of the most significant difficulties in negotiating this proposed settlement was the issue of the Medicare lien on settlement recovery by certain class members. As the Court no doubt is aware, the laws over the course of this litigation have changed in ways which make this lien more difficult to extinguish by settlement, since these laws have increased the

responsibilities of settling defendants to notify Medicare of agreements and make provisions for lien reimbursements by Medicare-eligible claimants in the settlement. Ultimately, after much effort, the PLC was able to negotiate a lump-sum settlement agreement with the authorized agent of Medicare, the Center for Medicare and Medicaid Services (CMS), whereby, upon finalization and funding of the class settlement, the total amount of \$347,267.70 will be paid by the CADA to Medicare (*via* CMS). Only after Medicare/CMS receives this lump-sum payment will the CADA be authorized under the Agreement to make the further distribution of settlement funds to class members. *See* Exhibit I at ¶ 7, pp. 6-7. Importantly, for purposes of this Court's scheduling orders and the time frame for final approval of this settlement, the Agreement mandates that the Medicare/CMS lump sum settlement payment must be made "by the end of April 2015." *See id.* ¶ 7 at p. 7. The PLC therefore requests that the Fairness Hearing in this matter be set early enough to allow for the finality of approval in time for this Medicare payment deadline to be met.

It is respectfully submitted that this settlement is fair and reasonable, and that, more particularly for present purposes, there is a sufficient indication of its fairness and reasonableness to warrant preliminary approval by the Court. The uncertainties and risks for the unsecured creditor claims of class members in the Pennsylvania liquidation proceedings are formidable; and the continued duration of those proceedings (already over a decade long) is a strong incentive to achieve resolution for class members at this time. The PLC believes that class members will be well-served, therefore, by securing an initial distribution in a reasonable amount together with the prospect of later distributions up to a specified maximum evaluation of the claims which also is reasonable under the circumstances.

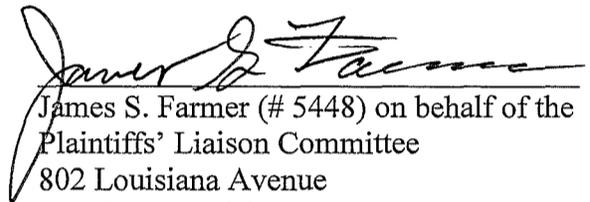
It should be emphasized that Your Honor will be asked at the Fairness Hearing to approve as fair and reasonable the entire settlement in the maximum valuation amount of \$12,620,565, as well as the initial distribution amount of \$4,870,113. This avoids the need to have further Fairness Hearings or further judicial involvement in regard to any later distributions. Court-approved deductions for fees and costs can be determined for both the initial and any later distributions. The attached notices thus inform class members that they should make any objection at this Fairness Hearing with respect to both the valuation amount of the settlement and

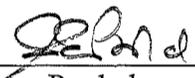
the amount of the initial distribution, since no further opportunities will be given to object to this settlement at such time any future installment payments or distributions occur.

An order reflecting the above request on behalf of the plaintiff class is attached for the Court's consideration and entry.

Dated: Nov. 13, 2014

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum in Support of Joint Motion for Preliminary Approval of Proposed Class Settlement Between Plaintiff Class and Reliance Insurance Company has been furnished to all liaison counsel of record by placing a copy of same in the U.S. mail, postage prepaid and properly addressed, this 14th day of November, 2014.


JAMES S. FARMER