

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

D.D. and all other similarly situated, et al.,	:	Case No. 2:10-cv-1097
	:	
Plaintiffs,	:	Judge Edmund A. Sargus, Jr.
	:	
v.	:	Magistrate Judge Kemp
	:	
WASHINGTON COUNTY, OHIO, et al.,	:	<u>ORDER APPROVING CLASS</u>
	:	<u>ACTION SETTLEMENT AND</u>
	:	<u>CLAIMS PROCESS</u>
Defendants.	:	

This matter is before the Court on the joint motion of the parties (#28), pursuant to Fed. R. Civ. Proc. 23(e), to approve the proposed consent decree between Plaintiffs and Defendants in this case. Having reviewed this matter, reviewed the material on the sealed DVD submitted by Plaintiffs, and conducted a fairness hearing on November 21, 2011, the Court considered the following factors which all weigh in favor of approving the settlement:

(1) the plaintiffs' likelihood of ultimate success on the merits balanced against the amount and form of relief offered in the settlement; (2) the complexity, expense and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the judgment of experienced trial counsel; (5) the nature of the negotiations; (6) the fact that no objections were raised by class members; and (7) the public interest.

Enterprise Energy Corp., 137 F.R.D. at 245, citing *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983); *Thompson*, 124 F.R.D. at 157. As stated in open court on the record, upon consideration of these factors in this case, this Court concludes that this settlement is fair, reasonable, and adequate. In addition, the Court finds there has been no fraud or collusion in arriving at the proposed settlement. Accordingly, the consent decree, signed and attached hereto as Exhibit A, is approved.

Mr. Steve Martin is hereby appointed Monitor by agreement of the parties.

The parties have also submitted a claims process and claim form to be used in implementing the settlement. The Court has reviewed the proposed process and heard counsel's presentation at the Fairness Hearing. The proposed plan and claim form are approved.

A. Claims Process Responsibilities

Defendants will:

1. Pay \$650,170 to the Qualified Settlement Fund ("QSF") within 30 days of the Court approving the consent decree.
2. Pay \$7,500 to the QSF within 14 days of the Court approval of the QSF as an initial deposit for QSF administration fees and expenses.
3. Pay additional funds into the QSF within 14 days of the Administrator's request for funds to pay the Monitor fees and expenses, the Administrator fees and expenses, Class Counsel's monitoring fees and expenses (an amount not to exceed \$20,000) and any additional settlement funds for Schedules A-1, A-2, A-3, or A-4 as a result of a final decision on appeal.
4. Cooperate with the QSF Administrator to facilitate Probate Court Approval in the most efficient and cost effective way for claimants.

Class counsel will:

1. Mail claim forms to all class members for whom Class Counsel have a current addresses before December 31, 2011. If Plaintiff learns of an additional class member's name or address after December 31, 2011, Class Counsel may send

claim forms to class members up until February 22, 2012. The Claim Form attached filed as Doc. 36-1 shall be used by Class Counsel.

2. The claim form must include the following information:
 - a. The amount of money the class member is entitled to receive according to Schedules A-1 through A-4. If the class member is entitled to no recovery according to the schedules the claim form will explain why (over age, no record in detention, no record in shackles, etc.).
 - b. The class member may make only one of three elections:
 - i. elect to receive the scheduled settlement amount
 - ii. elect to appeal the scheduled settlement amount (for example, disputes the numbers of days held in detention or in shackles, submits proof that tolling applies, etc.)
 - iii. elect to reject the scheduled settlement amount and instead make a claim to the common fund
 - c. A notice to all Ohio minor class members of the need to have an Ohio Probate Court approve of any settlement amount over \$1,000.00 before any money is sent to the class member. Claims under \$1,000.00 will be paid as indicated in Section C. Probate Court Approval below.
 - d. A notice to all class members that those claimants who receive public benefits and receive settlement money may see an impact in their public benefits.

- e. All claim forms must be signed, notarized, and postmarked to Class Counsel on or before February 29, 2012. All minor class members must sign the claim form as well as one parent or custodian. Class members who do not postmark a claim form on or before February 29, 2012 will receive no settlement award.
 - f. Class Counsel will enclose a self-addressed stamped envelope.
3. Class Counsel will process claim forms and send the claim forms and any supporting documents:
- a. to the QSF Administrator all claim forms that elect to receive the scheduled settlement amount
 - b. to the QSF Administrator all claim forms that elect to appeal the scheduled amount
 - c. to Magistrate Judge Kemp all claim forms that elect to make a claim to the common fund

The Qualified Settlement Fund Administrator (“Administrator”) will:

1. Process the claim forms that elect to receive the scheduled settlement amount.

The Administrator will pay all adults their settlement within 60 days of the Administrator’s receipt of the claim form. The Administrator will apply to the appropriate Ohio Probate Court for approval of the minor’s settlement.

Within 60 days of receiving the final Probate Court approval, the Administrator will pay the minor’s settlement, as directed by the Probate Court.

2. Process all appeals of the scheduled amount. The Administrator will review all documents the class member submits, including his sworn statement, and all documents submitted by class counsel before making a decision on the appeal. If the appeal is denied, Administrator will notify class member of the right to make a final appeal to the Magistrate Judge. If the appeal is granted and no appeal to the Magistrate Judge is made, the Administrator will request any additional money from the Defendants and, within 60 days of the receipt of the additional money, either pay the claim to the adult class member or seek Probate Court approval (as outlined above) for minor class members. If the Administrator's decision is appealed to the Magistrate Judge, the Administrator will request any additional money from the Defendants and pay the settlement amount in the Magistrate Judge's decision within 60 days of the receipt of the additional money or, if the class member is a minor at that time, apply to the Probate Court for approval as outlined above.
3. Pay common fund applicants within 60 days of receiving this Court's decision on the last common fund applicant appeal, unless Probate Court approval is required. Within 60 days of being notified by this Court of its decision on the last appeal to the common fund, the Administrator shall pay all common fund claims (those decided by the Magistrate Judge that were not appealed and those decided on appeal) to the adult class member or if the class member is a minor at the time, seek Probate Court approval (as outlined above).
4. The common fund is limited to \$100,000. If all proposed awards from the Magistrate Judge and this Court total more than \$100,000 the Administrator

shall notify this Court before paying any common fund award. Principal is defined as money deposited by the Defendant. Unclaimed funds on which checks are issued but not cashed will be reissued once if a known address exists. If the second check is not cashed or there is no current address readily available, the Administrator shall escheat the funds to the State of Ohio. Any interest earned on the Fund shall be used to pay Qualified Settlement Fund expenses and fees.

5. Return to Defendants any principal deposits made by Defendants to the QSF that were not spent.
6. File a report of activities, including an accounting of the QSF fund, with the District Court, with a copy to defense counsel, on July 31 and January 31 every year until the QSF fund is closed.

Magistrate Judge Kemp will:

1. Decide all appeals of the QSF Administrator's decision to deny an appeal of the schedule settlement amount. The Magistrate Judge shall notify the class member and the Administrator of his decision. The Magistrate Judge's decision is final and not appealable further.
2. Decide all claims made to the \$100,000 common fund. The Magistrate Judge shall notify each class member, class counsel, and the Administrator of his decision and provide appeal rights. Class members may appeal the Magistrate Judge's decision to this Court within 30 days of the date of the Magistrate Judge's decision.

The District Court will:

1. Decide all appeals of the Magistrate Judge's common fund decisions. The Court will notify each class member, class counsel, and the Administrator of his decision. The Court's decision is final and not appealable further.
2. Hold a status conference with the parties and Administrator one year after the fund is established and thereafter, as appropriate.

B. Probate Court Approval

The QSF Administrator will apply for Probate Court approval for all Ohio minors whose claims exceed \$1,000 and pay the settlement amount as ordered by the Probate Court. For any award for a minor receiving \$1,000.00 or less, the Administrator will distribute the award to the parent, or if no parent exists, the guardian of the child, and if no guardians exists, the custodian of the child solely for the benefit of the child, without the need to seek Probate Court approval. The parties are directed to submit a Probate Form to be included with the Claim Form for Court approval prior to the mailing of any Claim Forms.

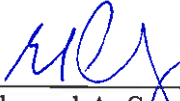
C. Miscellaneous Orders

All records related to this claim process that identify an individual class member are ordered to be filed under seal.

Class Counsel and the Monitor may apply to the QSF Administrator for fees and expenses when they choose. Attorney and monitor fees and expenses are not taxable to any plaintiff class member.

IT IS SO ORDERED.

Date: 11-22-2011



Edmund A. Sargus, Jr.
United States District Judge