



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

**IN RE: MINGO COUNTY
COAL SLURRY LITIGATION**

CIVIL ACTION NO. 10-C-5000

THIS DOCUMENT APPLIES TO ALL CASES

**ORDER REQUIRING AMENDMENT OF
PROPOSED ORDER APPROVING SETTLEMENT**

On September 29, 2011, the Court held a hearing regarding the proposed settlement agreement during which Plaintiffs' counsel described and placed the proposed settlement on the record; Defendants' counsel confirmed the description of the proposed settlement on the record; the Court heard any objections to the proposed settlement; the Court received the reports/answers of guardians *ad litem* appointed to represent the interests of minor plaintiffs, incarcerated plaintiffs, missing plaintiffs, and incompetent plaintiffs; and the Court heard the proffer/testimony of the guardians *ad litem*.

The Court scheduled another hearing on December 16, 2011, to hear from any guardian *ad litem* who did not submit a report or answer for their respective minor plaintiff(s) at the September 29, 2011, hearing; to hear from any guardian *ad litem* who submitted a supplemental report or answer for their respective minor plaintiff(s) after the September 29, 2011 hearing; to hear from guardians *ad litem* for certain minor plaintiffs whose cases were tentatively settled in 2009, but whose settlements were not approved; and to hear Plaintiffs' omnibus petition for Court approval of wrongful death settlements pursuant to West Virginia Code § 55-7-7.

During the December 16, 2011, hearing, Plaintiffs' Counsel and Defendants' Counsel submitted their respective versions of the proposed "Order Setting Forth Settlement Terms, Confirming Release By All Plaintiffs Of All Mingo County Coal

Slurry Litigation Claims Against All Defendants, And Dismissing The Mingo County Coal Slurry Litigation As To All Defendants With Prejudice” (“Proposed Settlement Order”) for review by the Court.

Having considered the representations of the parties on September 29, 2011 and December 16, 2011, including any objections to the proposed settlement, any reports/answers and the proffer/testimony of guardians *ad litem* appointed to represent the interests of minor plaintiffs, incarcerated plaintiffs, missing plaintiffs, and incompetent plaintiffs; and having reviewed the parties’ versions of the Proposed Settlement Order; and having conferred with one another to ensure uniformity of their decisions, as contemplated by West Virginia Trial Court Rule 26.07(a), the Court **FINDS** and **ORDERS** that:

1. Plaintiffs’ have stated numerous objections to the purchase of a critical illness insurance policy for their benefit. Because a significant number of plaintiffs and guardians *ad litem* object to the proposal to purchase a group critical illness insurance policy for all plaintiffs, the proposed critical illness insurance policy is not a required term of the parties’ settlement agreement, and counsel for plaintiffs has not determined whether the proposed critical illness insurance policy will suffice in lieu of a Medicare set-aside with respect to those Medicare beneficiaries for whom further medical expenses are reasonably anticipated, the Court **FINDS** plaintiffs’ objections are well-founded. The Court **ORDERS** the parties to amend their Proposed Settlement Order to remove any reference to purchase of a critical illness insurance policy for the plaintiffs. The Court further **ORDERS** plaintiffs’ counsel to re-distribute the settlement proceeds designated to fund the critical

illness insurance policy and add those proceeds to the plaintiffs' individual settlement amounts.

2. The Proposed Settlement Order shall be further amended to require that the Fund Administrator may not distribute any Settlement money to any individual plaintiff or his/her counsel until counsel for the parties meet and confer as to the amount of settlement proceeds that are to be designated to cover future medical expenses.
3. The Court has considered plaintiffs' objections to counsel receiving an attorney fee for the Medical Monitoring Settlement. The objections are overruled. The decision of Plaintiffs' Counsel to not reduce the medical monitoring fund by the amount of the contracted attorney fee works to the benefit of the plaintiffs and further does not constitute a waiver by counsel to collect their fee. The fee may be collected from the global settlement fund subsequently paid as a result of the final mediation and ultimate settlement of the entire case.
4. The Court has reviewed and considered all other objections of the plaintiffs, and the guardians *ad litem* to the proposed settlement, including the allocation and distribution of the settlement proceeds. The Court **FINDS** that the allocation and distribution of the settlement proceeds is fair and reasonable, considering all of the circumstances, and overrules plaintiffs' objections and the objections of the guardians *ad litem*.
5. The Court is advised that, pursuant to this Court's December 7, 2011, Order approving the amount of the Settlement, defendants wired the total Settlement Amount, not including the Medical Monitoring Settlement, into plaintiffs' Qualified Settlement Trust Fund, at City National Bank. Accordingly, the Court

- ORDERS** the parties to amend the Proposed Settlement Order to reflect defendants' timely payment of the total Settlement Amount, not including the Medical Monitoring Settlement.
6. The Court further **ORDERS** the parties to work together to submit an amended joint proposed "Order Setting Forth Settlement Terms, Confirming Release By All Plaintiffs Of All Mingo County Coal Slurry Litigation Claims Against All Defendants, And Dismissing The Mingo County Coal Slurry Litigation As To All Defendants With Prejudice" with all appropriate exhibits attached, for review by the Court by **February 6, 2012**.
7. Because the amended Proposed Settlement Order and attached exhibits contain confidential settlement information, the parties shall follow the procedures for electronic filing and service of confidential documents.

It is so **ORDERED**.

ENTER: January 23, 2012

/s/ James P. Mazzone
Lead Presiding Judge,
Mingo County Coal Slurry Litigation