



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: UNIVERSITY COMMONS LITIGATION Civil Action No. 13-C-7000

THIS DOCUMENT APPLIES TO ALL CASES

ORDER RESCHEDULING SETTLEMENT HEARING

On December 5, 2013, the Court cancelled the December 13, 2013 Settlement Hearing because of apparent confusion regarding the information Counsel for Plaintiffs is required to provide to each individual Plaintiff affected by the proposed settlement. See Order Cancelling December 13, 2013 Settlement Hearing (TID 54659545). The December 13, 2013 hearing on Third Party Defendants, BUH Enterprises dba BUH Construction ("BUH") and Eagle Interiors, Inc.'s ("Eagle") Joint Motion for Approval of Settlement (TID 54601362) was also cancelled.

Please take notice there will be a Settlement Hearing and a hearing on BUH and Eagle's Joint Motion for Approval of Settlement at **10:00 a.m. on January 15, 2014, in the Courtroom of the Honorable Alan D. Moats, Barbour County Courthouse, 8 North Main Street, Philippi, West Virginia 26416.**

The purpose of the hearing will be to: (1) review the terms of the proposed settlements; (2) discuss the proposed method for allocation and distribution of settlement proceeds; (3) discuss notice to individual Plaintiffs regarding allocation and distribution of settlement proceeds; and (4) consider any application for an award of attorneys' fees and expenses.

As previously ordered by the Court, no distribution of settlement proceeds shall be made without prior Court approval. See July 14, 2013, Order Memorializing Rulings During July 9, 2013 Status Conference (TID 53257811).

In addition to the information the Court previously ordered Counsel for Plaintiffs to provide, Counsel for Plaintiffs is hereby **ORDERED** to provide the following information to each individual Plaintiff affected by the proposed settlement by no later than **December 20, 2013**:

1. A copy of the July 16, 2013 correspondence from Plaintiffs' Counsel Kerrie Boyle to Lead Presiding Judge Derek C. Swope with the attached accounting of all disbursements made from the two prior settlements reached and approved by the Circuit Court of Monongalia County, West Virginia.
2. The proposed method of allocation and distribution of gross settlement proceeds to each individual Plaintiff, which shall include:
 - a. The global settlement distribution and allocation formula;
 - b. The gross settlement amount;
 - c. The attorney fee percentage;
 - d. The gross amount of attorney fees;
 - e. The gross amount of costs and expenses;
 - f. The amount of the settlement to be paid to the Homeowner's Association for repair of systemic damages to the University Commons Riverside Condominium Complex;
 - g. The formula used to allocate the individual Plaintiff's share of settlement proceeds;
 - h. Every Plaintiff's allocated gross settlement amount, allocated attorney fees, costs, expenses and net settlement amount in spreadsheet format. The names and unit number(s) of the individual Plaintiffs shall be redacted so that each Plaintiff has a full and complete accounting of all settlement funds, disbursements, and distributions, with the exception of the individual Plaintiff names and unit number(s).

The proposed method of allocation and distribution to individual Plaintiffs should also address the impact of divorce, death, incompetence, claims by minors, and dissolution of business entities or other organizations on allocation and distribution of settlement proceeds; investment of settlement proceeds; and interim distributions and partial payments of fees and expenses.

3. A detailed accounting of costs, expenses and attorney's fees incurred by Counsel for the Plaintiffs.
4. A proposed procedure for handling lost or returned settlement checks, and a proposed method of accounting for and disposition of all undistributed or unclaimed settlement proceeds, including whether the unclaimed settlement proceeds will be returned to the settling Defendants, paid to other Plaintiffs,

distributed to a charitable or nonprofit institution, left to the discretion of the Panel for making *cy pres awards*, or any other reasonable distribution proposed by counsel.

5. A proposed order approving the settlement, the method of allocation and distribution, and dismissing the appropriate parties.

The information provided to the individual Plaintiffs pursuant to this Order is regarded as highly confidential and, therefore, the word “**CONFIDENTIAL**” is to be clearly and prominently marked or stamped across the top of each page of such information. Counsel for Plaintiffs shall file and serve on all counsel of record a certificate of compliance stating that the information has been provided to the individual Plaintiffs.

Counsel for Plaintiffs is **ORDERED** to submit a final accounting of any and all Notices of Hearing returned to Counsel for Plaintiffs to Lead Presiding Derek C. Swope, Presiding Judge Alan D. Moats, Presiding Judge David W. Hummel, Jr., and Mass Litigation Manager Kimberley R. Fields by no later than **December 20, 2013**.

Any individual Plaintiff who wishes to submit a written objection to the proposed settlement is **ORDERED** to fax such objection to the Court and to Plaintiffs’ Counsel **by no later than 12:00 noon on January 6, 2014**. Fax numbers for the Court are:

Lead Presiding Judge Derek C. Swope – 304-487-8062
Presiding Judge Alan D. Moats – 304-265-0459
Presiding Judge David W. Hummel, Jr. – 304-845-2522
Mass Litigation Manager Kimberley R. Fields – 304-558-0775

Counsel for Plaintiffs is **ORDERED** to fax their response to any written objection to the Court and to provide a copy of their response to the individual Plaintiffs **by no later than 12:00 noon on January 10, 2014**.

Any Plaintiff who objects to the proposed settlement of the University Commons Litigation, whether in writing or otherwise, is **ORDERED** to appear at **10:00 A.M. ON JANUARY 15, 2014, in the courtroom of the Honorable Alan D. Moats, Barbour County Courthouse, 8 North Main Street, Philippi, West Virginia 26416**, to state their objection on the record.

It is further **ORDERED** that counsel representing the settling Plaintiffs, counsel representing the settling Defendants and any self-represented parties affected by the proposed settlement are required to attend the January 15, 2014, hearing.

Counsel for Plaintiffs is **ORDERED** to provide a copy of this Order to each individual Plaintiff immediately.

It is so **ORDERED**.

ENTER: December 9, 2013

/s/ Derek C. Swope
Lead Presiding Judge,
University Commons Litigation