



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

NOTICE OF SETTLEMENT HEARING AND ORDER

WHEREAS, on October 28-30, 2013, Lead Resolution Judge Booker T. Stephens and Resolution Judge John A. Hutchison conducted mediation of all underlying cases in *In re: University Commons Litigation*, Civil Action No. 13-C-7000.

WHEREAS, after engaging in extensive discussion regarding the issues presented in the University Commons Litigation and the possible terms of settlement, counsel for Plaintiffs and counsel for Defendants reached agreement to compromise and settle the University Commons Litigation as a result of the aforementioned mediation.

WHEREAS, information regarding the method of distribution and the method of allocation of settlement proceeds is required by the Mass Litigation Panel to ensure fair and equitable distribution of such proceeds to the individual Plaintiffs.

NOW THEREFORE, please take notice there will be a hearing regarding the proposed settlement of the University Commons Litigation at **9:30 a.m. on December 13, 2013, in the Courtroom of the Honorable Alan D. Moats, Taylor County Courthouse, 214 W. Main Street, Grafton, West Virginia.**

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.

No later than **November 13, 2013**, Counsel for Plaintiffs is **ORDERED** to provide the following to each individual Plaintiff affected by the proposed settlement:

1. A copy of the proposed settlement agreement affecting the individual Plaintiff;
2. A disclosure of the amount the individual Plaintiff will receive under the proposed settlement and distribution plans; and
3. A copy of this Notice of Hearing.

Counsel for Plaintiffs shall advise the Plaintiffs they have the option, but are not required to attend the hearing on **December 13, 2013**. Counsel for Plaintiffs is **ORDERED** to submit an 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 2, 2013**.

Counsel for Plaintiffs is further **ORDERED** to submit a copy of any settlement agreement that is the subject of these hearings directly to Judge Swope, Judge Moats, Judge Hummel, and the Mass Litigation Manager by no later than **December 2, 2013**. If such settlement agreement is subject to a confidentiality agreement, the word “**CONFIDENTIAL**” is to be clearly and prominently marked or stamped across the top of each page of the settlement agreement. **The settlement agreement will not be subject to distribution beyond the Presiding Judges and the Mass Litigation Manager, and all information regarding the terms of the settlement agreement will remain strictly confidential.**

In addition, Counsel for Plaintiffs is **ORDERED** to provide Judge Swope, Judge Moats, Judge Hummel, and the Mass Litigation Manager with the following information by no later than **December 2, 2013**:

1. A proposed method of allocating and distributing gross settlement proceeds to individual Plaintiffs. The proposed method of allocation and distribution should 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.
2. A 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 Defendant, 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.
3. A proposed report to the Court in spread sheet format regarding allocation and distribution of settlement proceeds to individual Plaintiffs. The proposed report should include the name of the settling Defendant or Defendants; gross fee percentage; any fee sharing information; allocated gross proceeds; allocated expenses; Plaintiff last name; Plaintiff first name; Plaintiff middle name; claimed damages used for allocation; allocated proceeds; gross fees; allocated expenses; total to the Plaintiff's law firm; and net to the Plaintiff.
4. A detailed accounting of costs, expenses and attorney's fees incurred by Counsel for the Plaintiffs.
5. The name and address of the financial institution where settlement proceeds will be deposited, including the name of the account, the account number and the name of any Trustee or Account manager.
6. Any document showing authorization by the Plaintiff to enter into the proposed settlement.
7. Any document showing the Plaintiff is informed of and agrees to the method of allocation and distribution of settlement proceeds.
8. Any document showing an accounting of the individual Plaintiff's settlement allocation and distribution.
9. A proposed order approving the settlement, the method of allocation and distribution, and dismissing the appropriate parties.

The responses and information provided to Judge Swope, Judge Moats, Judge Hummel and the Mass Litigation Manager pursuant to this Order are 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 responses and information. Counsel for Plaintiffs shall file and serve on all counsel of record a certificate of compliance stating that the responses and information have been provided to Judge Swope, Judge Moats, Judge Hummel and the Mass Litigation Manager as ordered herein.

Only 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 December 13, 2013, hearing.

It is so ORDERED.

ENTER: November 5, 2013

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