



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

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IN RE : FLOAT-SINK LITIGATION

Hon. John A. Hutchison

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Civil Action No. 11-C-5000000

THIS DOCUMENT APPLIES TO ALL CASES

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ORDER ESTABLISHING QUALIFIED SETTLEMENT FUND AND ESCROW AGENT

On May 3, 2013, came Plaintiffs and Defendants (collectively “the Parties”), by counsel, presenting this agreed upon order to the Court establishing a Qualified Settlement Fund. After reviewing the pleadings in this matter, the Court makes the following findings of fact and conclusions of law:

1. Plaintiffs and Defendant Preiser Scientific, Inc. (“Preiser”), during the February 22, 2013 mediation of this matter, reached a settlement, although the exact allocation to individual Plaintiffs has not yet been finalized. As will be more fully set forth in the Order Setting Forth Settlement Terms, Confirming Release by all Plaintiffs of all Claims Against Defendants and Dismissing the Cases as to Defendants With Prejudice (“Final Order”) and the Confidential Settlement Agreement and Full Release of all Claims, the settlement encompassed all of the claims made or that could have been made by Plaintiffs against the Defendant Preiser before February 22, 2013, including physical bodily injury.

2. Plaintiffs and the remaining Employer Defendants, prior to and during the mediation of this matter on December 12, 2012, reached a series of settlements between individual Plaintiffs and their respective Employer Defendants. The exact settlement amount is

known for each of those claims. As will be more fully set forth in the Order Setting Forth Settlement Terms, Confirming Release by all Plaintiffs of all Claims Against Defendants and Dismissing the Cases as to Defendants With Prejudice (“Final Order”) and the Confidential Settlement Agreement and Full Release of all Claims, those settlements were for the claims made or that could have been made by Plaintiffs against their respective Defendant employers before December 12, 2012, including physical bodily injury.

3. In the best interest of the Parties, a Fund, which shall be identified as “The Float Sink Litigation Settlement Fund” (the “Fund”), shall be established to resolve or satisfy these claims while allowing for the allocation and final disbursement of monies to be finalized.

4. The Fund shall be established as a Qualified Settlement Fund (“QSF”) within the meaning of Treasury Regulation Section 1.468B-1 and pursuant to this Court’s subject matter jurisdiction under Treasury Regulation Section 1.468B-1(c)(1). The entirety of the settlement amounts reached by and between Plaintiffs and Defendants shall be paid into the Fund no later 30 days of the entry of an Order finally approving the settlement between Plaintiffs and Defendant Preiser.

5. Given valid concerns about adding unreasonable delay or expense to the transfer of settlement monies to Plaintiffs, a QSF in this matter will: (1) facilitate placement of settlement proceeds without requiring further participation by the Defendants; (2) permit resolution of claims by government agencies that may have a reimbursement right or lien against a Plaintiffs settlement proceeds; (3) “fast track” the payment of settlement proceeds to those Plaintiffs who do not have reimbursement right or lien issues and (4) minimize expenses.

6. A. Andrew MacQueen III, Esquire, by separate Order of this Court, has been appointed as Fund Administrator and Trustee (the “Fund Administrator”). Pursuant to the terms,

conditions, indemnification and restrictions of this Order, the Fund Administrator is hereby given the authority to conduct any and all activities necessary to administer the Fund. Mr. MacQueen submits personally to the jurisdiction of this Court. Upon the inability or unwillingness to act, this appointment shall terminate and Plaintiffs' counsel shall seek Court approval of their nominated successor Fund Administrator.

7. The Fund shall be held at City Holding Company, a financial institution doing business in Charleston, West Virginia (the "Escrow Agent"). The parties have entered into a separate Escrow Agreement that has been filed with and approved by the Court. Said financial institution shall be responsible for any and all investment-related decisions, following the Fund Administrator's investment policy for fiduciaries, which is based on safety of principal, no bank balance sheet exposure and zero sweep accounts for distributions to Plaintiffs once authorized. Said financial institution shall be responsible for the issuance of any checks and/or wire transfers from the Fund once authorized. Fees and costs for all service related to the Fund shall not exceed (\$10,000) except by Order of this Court. The Fund Administrator shall not authorize any distributions of income or principal from the Fund except pursuant to the terms of the individual claimants' Settlement Release, as applicable, and by further Order of this Court. No other person or entity is permitted to authorize or make any withdrawals from the Fund except by Order of this Court.

8. The settlement proceeds are the sole property of the Fund. No portion of such monies shall be made available to Plaintiffs except as specifically set forth in the Final Order. Until such time as monies are distributed, Claimants shall not possess any rights to demand or receive any portion of the monies or the escrowed monies or to mortgage, pledge or encumber the same in any manner. To the extent possible, the terms of this Order shall be construed so as

to prevent Plaintiffs from being in constructive receipt, as determined under federal income tax principles, of any amounts held by the Fund.

9. The Fund Administrator shall be indemnified and held harmless by Plaintiffs from any claims made by any alleged lien holder or other person or entity that attempts to assert a right of payment, reimbursement or garnishment against the Fund. No bond shall be required for the Fund Administrator or the Fund.

10. The Fund, by and through the Fund Administrator, is authorized to enter into Fund Agreements with Plaintiffs, including any entity asserting a claim of subrogation, rights to settlement proceeds or liens, which may permit payments in a manner prescribed and approved by this Court. In addition, the Fund Administrator, with the consent of the Plaintiffs, is authorized to create special needs trusts, in a manner prescribed and approved by this Court, with the Escrow Agent. Moreover, Plaintiffs shall agree in writing to a discharge of the Fund and the Fund Administrator's liabilities in the making of any settlement payments, by executing, along with the Fund, any necessary documents required or related to the discharge of those liabilities.

11. The Fund Administrator is authorized to distribute attorneys' fees and litigation expenses to Plaintiffs' counsel, consistent with existing contingency fee contracts and, to the extent required by law, upon Court approval.

12. Any taxes on the income of the Fund and expenses and costs incurred in connection with the taxation of the Fund (including, without limitation, the expenses of tax attorney and accountants) shall be paid out of the Fund, shall be considered to be a cost of administration of the settlement and shall be paid by the Fund Administrator pursuant to instruction by Plaintiffs' counsel.

13 All Expenses incurred in administering the Fund, including without limitation, the fees and expenses of the Escrow Agent and Fund Administrator shall be paid from the Funds as provided by this Order and the Escrow Agreement.

14. Upon request, the Fund Administrator will prepare and deliver Fund Statements (“Statements”) to Plaintiffs’ counsel or the Court. The Statements shall include, without limitation, a statement of receipts, investment earnings and disbursements. The Fund Administrator shall provide the Statement no later than ten (10) business days following the request.

15. The Fund Administrator shall have the right to rely upon any affidavit, certificate, letter, notice, electronic mail or other document believed by the Fund Administrator to be genuine and sufficient and upon any other evidence believed by the Fund Administrator, in his reasonable judgment, to be genuine and sufficient, which may be provided to the Fund Administrator by Plaintiffs’ counsel.

16. The Fund Administrator is authorized, upon final distribution of all monies paid into the Fund, to take appropriate steps to wind down the Fund and thereafter the Fund Administrator is discharged from any further responsibility with respect to the Fund.

17. The Fund Administrator will obtain a Federal Taxpayer Identification Number for the Fund upon the execution of the Order by the Court establishing the Fund.

It is so **ORDERED**.

All exceptions and objections are noted and preserved for the record.

ENTERED this 3rd day of May, 2013.

/s/ John A. Hutchison
Lead Presiding Judge
Float-Sink Litigation

AGREED TO BY:

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