



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: FLOOD LITIGATION

MC FLOOD 7/8/2001

THIS DOCUMENT APPLIES TO ALL CASES

ORDER REGARDING UNPAID SETTLEMENT PROCEEDS

Attorneys John Skaggs and Ben Adams on behalf of the Calwell Practice PLLC, attorney James F. Humphreys on behalf of Humphreys & Associates, L.C., and attorneys Randolph McGraw and Jim McKowen on behalf of the McGraw Law Offices (“Plaintiffs’ Counsel Calwell, Humphreys and McGraw”) appeared before Lead Presiding Judge John A. Hutchison and Lead Resolution Judge Booker T. Stephens to show cause why they did not timely provide the Court with a final accounting of unclaimed settlement checks, or a certificate of compliance with the Court’s direction to submit a Notice of Newspaper Publication in newspapers of general circulation regarding unclaimed settlement checks.¹ Also present were Defense Counsel Amber Hoback and John Fowler.

Having considered the representations of counsel, and having conferred with the members of the Mass Litigation Panel to insure uniformity their decision, the Court **FINDS** Plaintiffs’ Counsel Calwell, Humphreys and McGraw substantially delayed in complying with the Court’s prior orders requiring a final accounting of unclaimed settlement checks and a certificate of compliance with the Court’s direction to submit a Notice of Newspaper Publication regarding unclaimed settlement checks. The Court further **FINDS** the delay was due, in part, to excusable neglect caused by health issues experienced by certain of Plaintiffs’ Counsel during the relevant time period, and no irreparable harm was caused to Plaintiffs. Accordingly, no sanction is warranted under the circumstances.

¹ The Segal Law Firm previously submitted a final accounting of their Plaintiffs’ settlement proceeds, including documentation that settlement proceeds were distributed.

The Court further **FINDS** the final accounting of unclaimed settlement checks and the Notice of Newspaper Publication regarding the unclaimed settlement checks by Plaintiffs' Counsel Calwell, Humphreys and McGraw to be adequate under all of the circumstances. The Court notes Defendants did not object to the final accounting of unclaimed settlement checks, and all parties agreed the Notice of Newspaper Publication was sufficient.

The Court further **FINDS** that the remaining alleged plaintiffs cannot be specifically identified and/or located and, therefore, the Court recommends, approves and **ORDERS** the aforementioned unclaimed settlement funds held in the IOLTA accounts of Plaintiffs' Counsel Calwell, Humphreys and McGraw to be subject to a *cy pres* award. The Court **ORDERS** the following percentages of such *cy pres* award to be given to each county affected by the July 8, 2001, flood event: Wyoming County – 25%; McDowell County – 25%; Fayette County – 15%; Raleigh County – 15%; Mercer County – 10%; Nicholas County – 5%; and Kanawha County – 5%. Lead Presiding Judge John A. Hutchison will confer with the Chief Judge of each of the aforementioned counties to obtain their input regarding appropriate recipients of the *cy pres* award for each county, and will issue the *cy pres* award for each aforementioned county by subsequent order.

Plaintiffs' Counsel Calwell, Humphreys and McGraw are **ORDERED** to deposit the aforementioned unclaimed settlement funds held in their IOLTA accounts into the trust account of the Circuit Court of Raleigh County within ten (10) days from the date of entry of this Order.

ENTER: December 18, 2012

/s/ John A. Hutchison
Lead Presiding Judge, Flood Litigation