



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: WATER CONTAMINATION LITIGATION

CIVIL ACTION 16-C-6000

THIS DOCUMENT APPLIES TO ALL CASES

ORDER EXTENDING STAY

Pending is the parties' joint motion for an extension of the current stay of the proceedings due to the preliminary approval of a class action settlement in the case of *Crystal Good, et al. v. American Water Works Company, Inc. et al*, Civil Action No. 2:14-01374, now pending in the United States District Court for the Southern District of West Virginia. By order dated November 3, 2016, the court granted the parties' joint motion and stayed these proceedings for 90 days based upon the tentative class settlement. The proposed settlement includes all claims against both West Virginia-American Water Company (along with American Water Works Company, Inc., and American Water Works Service Company, Inc.) and Eastman Chemical Company. The proposed class settlement is intended to include all residents and businesses (and associated hourly wage earners) served by the Kanawha Valley Water Treatment Plant during the January 9, 2014 water contamination of the Elk River and the water system, including, but not limited to, the plaintiffs in all pending cases in both State and Federal Court and any persons or businesses which previously opted out of the *Crystal Good* action.

The stay was extended for 90 days by subsequent order entered January 31, 2017 and as the parties advised the court they continued to work on the settlement agreement and related documents. A Joint Motion for Preliminary Approval of Class Settlement, Conditional Class Certification, Directing Notice to the Class, and Entry of Scheduling Order, was filed April 27, 2017. By order dated July 6, 2017, the District Court found that certification of the proposed

settlement class was appropriate under Rule 23 of the Federal Rules of Civil Procedure and that the amount and structure of the settlement were generally acceptable. *Good v. W. Virginia-Am. Water Co.*, No. CV 14-1374, 2017 WL 2884535 (S.D.W. Va. July 6, 2017). After analyzing the requirements of Rule 23, the court concluded, “the requirements of both Rule 23(a) and Rule 23(b)(3) are met so that certification of a settlement class as proposed by the parties here is plainly warranted.” *Id.* *13. However, despite its approval of the overall settlement construct, the District Court declined to preliminarily approve the settlement and denied the motion without prejudice, stating four specific concerns: “The court remains particularly concerned by four aspects of the proposed settlement: (1) the tiered compensation structure for certain businesses, (2) the review and “appeals” process when disputes over claims arise, (3) the fixed base payments to certain medical claimants, and (4) the delay of payments pending appellate review.”

The parties filed a second joint motion seeking approval of the settlement. By Order dated September 21, 2017, Judge Copenhaver found “the amended settlement agreement is sufficiently fair, reasonable and adequate such that notice of the amended class settlement should be given as provided in Paragraph 9 of this Order. In making this determination, the Court has considered the current posture of this litigation and other pending actions and the risks and benefits to the parties involved in both settlement of these claims and continuation of the litigation.” The court set a series of deadlines for notice, opt out and objections, and the filing of claims and scheduled a hearing to consider final approval of the settlement on January 9, 2018.

On January 9, 2018, the District Court held the scheduled hearing to consider final approval of the class action settlement. The court took the matter under advisement and continued the hearing until February 1, 2018.

Given the status of the final approval by the District Court, and the ongoing process of notification regarding the settlement and its terms, and the filing of claims, the parties believe that an additional stay of ninety (90) days will permit the settlement to go forward and identify businesses or individuals, if any, who choose to opt out of the settlement.

The Court hereby FINDS that the motion is well-taken and hereby ORDERS that these proceedings be further STAYED for 90 days from the date of entry of this ORDER.

ENTER: January 22, 2018.

/s/ Alan D. Moats
Lead Presiding Judge
Water Contamination Litigation

AGREED to by:

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