

IN THE CIRCUIT COURT OF  
THE FIRST JUDICIAL CIRCUIT  
IN AND FOR ESCAMBIA COUNTY  
STATE OF FLORIDA

ERNIE LEE MAGAHA  
CLERK OF CIRCUIT COURT  
ESCAMBIA COUNTY, FL

2004 OCT 20 A 10:32

CIRCUIT CIVIL DIVISION  
FILED & RECORDED

BERNICE SAMPLES, et al.,

Plaintiffs,

vs.

Case No.: 2001 CA 000631

CONOCO, INC.; AGRICO CHEMICAL  
COMPANY; and ESCAMBIA TREATING  
COMPANY, INC.,

Division: "J"

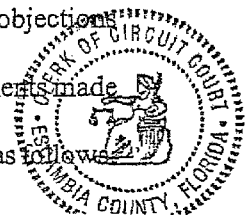
Defendants.

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**FINAL ORDER APPROVING SETTLEMENT AND FINAL JUDGEMENT**

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THIS COURT, having considered Plaintiffs' motion for final approval of the Settlement Agreement, entered into on April 2, 2004 between the Plaintiffs and Samples Class Members and Settling Defendants' Conoco, Inc. and Agrico Chemical Company, and the exhibits attached thereto; having considered all of the submissions and arguments with respect to Plaintiffs' motion; having entered an order certifying the class—that with certain additions agreed to by Plaintiffs and Settling Defendants (referred to as the "Extended Area")—constitute the Samples Settlement Class as described on Exhibit "A" attached hereto; having directed that notice be given to the Samples Settlement Class of the proposed settlement and of a hearing scheduled to determine whether the proposed settlement should be approved as fair, reasonable and adequate (the "Fairness Hearing"); having given all persons an opportunity to request exclusion from the Samples Settlement Class; having given all persons with objections to the settlement an opportunity to present such objections to the Court; having held the Fairness Hearing and considered the submissions and arguments made in connection therewith, and being well and sufficiently advised, the Court hereby FINDS as follows:



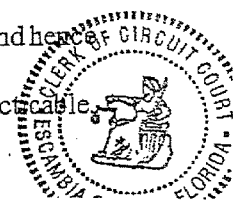
1. Terms used in this Order are as defined in Settlement Agreement.

2. Subject to paragraph 3 of this Order, the Settling Defendants and Samples Class Members have submitted to the jurisdiction of the Court for purposes of the Settlement Agreement. Accordingly, the Court has personal jurisdiction for purposes of this Settlement Agreement over the Settling Defendants and Samples Class Members, and subject matter jurisdiction to approve the Settlement Agreement.

3. Without affecting the finality of this Order and Judgment, the Court retains jurisdiction over the administration and consummation of the Settlement Agreement, the determination of issues relating to attorneys' fees and expenses and distribution of the Samples Funds, and Defendant Agrico's Motion to Compel Arbitration against The Williams Companies. Solely for purposes of proceedings relating to the Settlement Agreement that are subject to the jurisdiction of this Court, the Settling Defendants and Samples Class Members are deemed to have ~~irrevocably waived any claim that they are not subject to the jurisdiction of this Court or that this Court is in any way an improper venue or an inconvenient forum.~~

4. Fla. R. Civ. P. 1.220 provides for class certification when there is an ascertainable class and a well-defined community of interests among class members. On August 28, 2003, the Court issued its Class Certification Order allowing this case to proceed as a class action and allowing Plaintiffs to seek recovery of property damages for those persons who between 1957 and the present own or owned commercial or residential property within the geographic boundaries set by the Court. Notice of the class certification was provided to members of the certified class in the fall of 2004 and class members were given until January 20, 2004 to opt out of the class.

5. Notice of the proposed settlement was given to the Samples Settlement Class through extensive and overlapping direct mail, newspaper and other print publication of the notice, and hence notice was provided in an adequate and sufficient manner and constitutes the best notice practicable.



complying in all respects with this Court's Order of June 2, 2004 providing for notice to the Samples Settlement Class, Florida law, and the requirements of due process. The notice given to the members of the Samples Settlement Class, including publication notice and mail notice, was reasonably calculated under the circumstances to inform the members of the Samples Class of the pendency of the actions involved in this case, of all material elements of the proposed settlement, and the opportunity to exclude themselves from, object to, or comment on the settlement, and to appear at and participate in the Fairness Hearing. Given the high participation rates in the settlement, which is approximately eighty-nine (89) percent of all parcels included in the geographic boundaries of the Samples Settlement Class and approximately seventy-eight (78) percent of current property owners in the class, given the low number of valid opt-outs, which is sixty (60), and given the relatively few Samples Class Members that filed objections to the settlement (addressed in paragraph 6. of this order), the Court determines that the notice was adequate and accomplished its purpose. Accordingly, the Court determines that all Samples Class Members are bound by this Order Granting Final Approval of Settlement and Final Judgment.

6. At the Fairness Hearing held on September 23, 2004, and at a subsequent hearing on October 12, 2004, the Court heard argument and comments on the fairness, reasonableness and adequacy of the proposed settlement, and was advised that only two objections to the settlement were filed by members of the Samples Settlement Class. The comments of these objectors and others who are not members of the Samples Settlement Class have been considered by the Court:

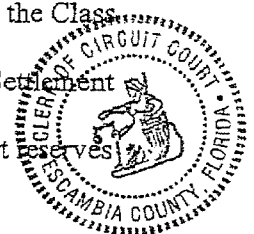
- (a) Cheryl Knowles, Debra Richardson, and Randall Lowens owned property that was just outside the class boundaries as defined in the Court's August 29, 2003, Class Certification Order (which was affirmed on appeal in Conoco v. Samples, 871 So.2d 206 (Table) (Fla. 1<sup>st</sup> DCA 2004)). Since these individuals did not own property within the defined settlement class, the Court finds that they did not have standing.



- to raise any objection to the fairness of the settlement.
- (b) Marci Langston objected to the fact cleanup was not included in the settlement agreement. However, this Court has ruled repeatedly that this case was not meant to act as a review of the EPA's remedy regarding the contaminant plumes. Therefore, the Court finds that it is without jurisdiction to entertain the objection.
  - (c) Don Williams objected to the methodology that allocated only 30% of the settlement to historical owners. His objection is overruled.
  - (d) Dr. Elmer Jenkins made an objection that was subsequently withdrawn.
  - (e) Clarence Tate, Jr., objected to the boundary between zone one and zone two. His objection is overruled.
  - (f) Leroy Boyd objected to the way the settlement was allocated. His objection is overruled.
  - (g) Margaret Reed, Peter Nowak, William Patton, Enoch Leatherwood, Kenneth Royster, Georgette Floyd-Neeley and Ellen Robinson all raised objections relating to their individual allocations of the settlement or the timeliness of their claim. The Court declined to rule on these objections until they were addressed by the Class Administrator/Special Master. The Court reserves jurisdiction to hear these claims, if necessary, through the procedure set up for appeals following the notice of award to all claimants.

7. The proposed settlement is the product of arms-length negotiations between Class Counsel and the Settling Defendants and is not the result of collusion or conflict of interest.

8. The distribution of the \$65 million Samples Funds Account pursuant to the Class Administrator/Special Master's Allocation Methodology (attached as Exhibit "B" to the Settlement Agreement) is fair, reasonable and proper, and meets the requirements of law. The Court



jurisdiction to interpret the allocation methodology and create exceptions to the application of that methodology for extraordinary claims as justice and fairness require. The Administrator will need to obtain and review a copy of the October 12, 2004, Fairness Hearing transcript which contains the Court's oral pronouncement regarding several of the issues concerning the fairness of certain individual disbursements.

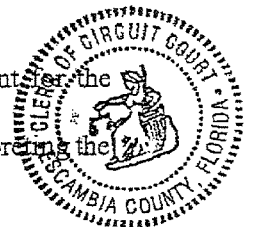
9. For their service as class representatives, an award of \$15,000.00 to each of the named Plaintiffs is fair and reasonable, and the Court hereby approves an award of \$15,000.00 to be paid out of the \$65 million Samples Funds Account, to each of the following class representatives: James T. Baer; Etta Mixon; Mark S. Bonifay; Charles Robinson; Thomas Staples; Rosa Lee; Ralph M. Boyd as trustee of the S.W. Boyd, Sr. Trust; Blair L. Stephenson; and Pensacola Village Apartments, L.P., a Florida limited liability corporation.

10. Plaintiffs and the Settling Defendants have complied with all material terms of the Court's June 2, 2004 Order Granting Preliminary Approval of Class Action Settlement.

11. The proposed settlement, including the Allocation Methodology and the class representative incentive awards, are in all respects fair, reasonable, adequate and proper and, given the benefits of settlement and the risks, complexity, expense and probable duration of further litigation, are in the best interests of the Samples Settlement Class.

12. Accordingly, it is hereby **ORDERED AND ADJUDGED**:

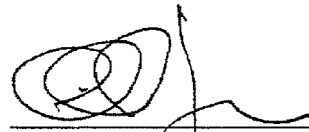
- (a) The Settlement Agreement and its terms, which are hereby incorporated by reference as though fully set forth herein, including the Allocation Methodology and class representative incentive awards, are finally **APPROVED** pursuant to Rule 1.220(e) of the Florida Rules of Civil Procedure.
- (b) The Court retains continuing jurisdiction over the Settlement Agreement for the purposes of enforcing, implementing, administering, construing and interpreting the



Settlement Agreement; the interpretation of the allocation methodology and the creation of exceptions to the application of that methodology for extraordinary claims as justice requires; the determination of issues relating to attorneys' fees and expenses and distribution of the Samples Funds; and Defendant Agrico's Motion to Compel Arbitration against The Williams Companies.

- (c) The Class Administrator/Special Master is hereby **DIRECTED** to obtain and review a copy of the transcript of the October 12, 2004, Fairness Hearing.
- (d) In the notice of award to each claimant, the Class Administrator/Special Master is hereby **DIRECTED** to inform each of the claimants of their right to appeal their individual disbursement valuations *in extraordinary cases* by filing with this Court a written statement (to include the specific claims of the class member and all documentation relied upon) within 30 days following receipt of the notice.
- (c) All claims against Conoco, Inc., Agrico Chemical Company and Escambia Treating Company, Inc. are dismissed with prejudice.
- (d) There is no just reason for delay of entry of a final judgment of dismissal with prejudice as to the Plaintiffs and final judgment is hereby entered.

**DONE AND ORDERED** in Chambers at Pensacola, Escambia County, Florida, this 19<sup>th</sup>  
day of October, 2004.

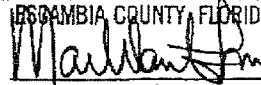


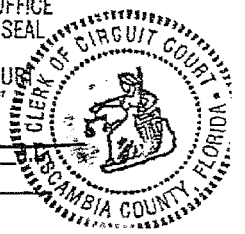
MICHAEL JONES  
CIRCUIT JUDGE

MJwhdii

cc: All counsel of record.

"CERTIFIED TO BE A TRUE COPY  
OF THE ORIGINAL ON FILE IN THIS OFFICE  
WITNESS MY HAND AND OFFICIAL SEAL  
ERNE LEE MAGAHA, CLERK  
CIRCUIT COURT AND COUNTY COURT  
ESCAMBIA COUNTY, FLORIDA"

BY:   
DATE: 10-20-04



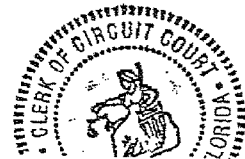
DEFINITION OF SAMPLES SETTLEMENT CLASS

ALL PERSONS WHO BETWEEN 1957 AND JUNE 15, 2004 OWN OR OWNED COMMERCIAL OR RESIDENTIAL PROPERTY WITHIN THE FOLLOWING DESCRIBED BOUNDARIES, AS DEPICTED IN THE ATTACHED MAP:

- a) The northern boundary begins at the intersection of North Palafox Street and Beggs Lane; continue east on Beggs Lane as if it continued through to Spruce Street; proceed south on Spruce Street to Hickory Street; continue east on Hickory Street to Hyatt Street, as if Hickory Street and Hyatt Street were connected, to I-110; south on I-110 until reaching Woodland Drive; proceed east on Woodland Drive until reaching Berkley Drive; proceed north and east on Berkley Drive until reaching North 9<sup>th</sup> Avenue; proceed east until reaching Ellison Drive and proceed south and east on Ellison Drive until reaching North 12<sup>th</sup> Avenue; proceed south on North 12<sup>th</sup> Avenue until reaching the eastern shoreline of Bayou Texar.
- b) The eastern boundary is the property fronting the eastern shoreline of Bayou Texar from 12<sup>th</sup> Avenue to Pensacola Bay.
- c) The western boundary begins at the intersection of North Palafox Street and Hickory Street and proceeds south on North Palafox Street to the point where East Cross Street would intersect.
- d) The southern boundary begins at the point where East Cross Street and North Palafox Street would intersect and continues east on East Cross Street until reaching I-110; proceed east as if East Cross Street continues through North Alcaniz Street and North Davis Street / North Davis Highway until once again reaching East Cross Street; proceed east on East Cross Street until it ends at Yates Avenue; proceed east as if East Cross Street intersects the western shoreline of Bayou Texar, and proceed southerly along the shoreline, including the property fronting the western shoreline of Bayou Texar, until reaching Pensacola Bay.
- e) Specifically included within the Samples Settlement Class is all real property fronting both the eastern and western shoreline of Bayou Texar.
  - For any designated street boundary, properties immediately bordering the street on either side shall be deemed to be within the Samples Settlement Class.
  - Excluded from the Samples Settlement Class are the defendants in this action, any entity in which any defendant has a controlling interest, any employees, officers, or directors of any defendant, and the legal representatives, heirs, successors, and assigns of any defendant.

THE SAMPLES SETTLEMENT CLASS DOES NOT INCLUDE:

- a) Leaseholders;
- b) Real property types other than commercial and residential; or
- c) Real property owners prior to 1957.



Settlement Class Boundaries

