

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

Annie Owen, individually and on	)	
behalf of herself and all others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	Case No. 5:09-CV-00399-C
	)	Honorable Robin Cauthron
Continental Carbon Company,	)	
	)	
Defendant.	)	

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the "Settlement Agreement") is entered into this \_\_\_\_ day of June, 2009, by and among Annie Owen, individually and on behalf of herself and all others similarly situated ("the Class") and Continental Carbon Company ("CCC") (collectively, the "Parties").

**RECITALS**

**WHEREAS**, the class has filed the certain lawsuit captioned: *Annie Owen, individually and on behalf of herself and all others similarly located, Plaintiffs vs Continental Carbon Company, Defendant*, United States District Court for the Western District of Oklahoma, Case No. 5:09-CV-00399-C (the "Lawsuit");

**WHEREAS**, certain disputes have arisen between the Parties out of alleged emissions of black or dark appearing dust/particulate matter (including carbon black) gases, odors or other pollutants (collectively "Emissions") from CCC's Ponca City carbon black manufacturing facility;

**WHEREAS**, the Parties intend, through this Settlement Agreement, to resolve all claims, causes of action, demands, liabilities, or damages, of whatever nature, whether known or unknown, including, but not limited to, all disputed issues and allegations relating to or arising out of the Lawsuit (the “Settlement”); and

**NOW, THEREFORE**, in consideration of the recitals hereof which are incorporated herein by reference and are expressly made a part of this Settlement Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. For purposes of this Settlement, the parties agree to the certification of the following class pursuant to Fed. R. Civ. P. 23 of property owners in the Ponca City, Oklahoma area (the “Class”):

**All owners and occupants of homes and businesses within the property class boundary attached hereto as Exhibit 1 in the Ponca City area who claim to have suffered property or nuisance damages from Continental Carbon Company’s black or dark appearing particulate matter/dust emissions from January 1, 2003 to present who are/were not parties and/or class members to/of any other suit filed of record against Continental Carbon Company in state or federal court in Oklahoma asserting claims for such damages.**

2. By execution of this Settlement Agreement, Plaintiff shall, on her behalf and on behalf of all Class members she represents, and upon entry by the Court of the final order approving this Settlement each of the Class members who have not opted out of the Settlement, and each of their parents, affiliates, subsidiaries, shareholders, members, officers, directors, employees, agents, attorneys, administrators, executors, lessees, remaindermen, personal representatives, heirs, successors and assigns, agree to and shall release and forever discharge CCC, CCC USA Corp., China Synthetic

Rubber Corporation, and ConocoPhillips, and their parents, affiliates, subsidiaries, shareholders, members, officers, directors, employees, agents, attorneys, administrators, executors, personal representatives, heirs, successors and assigns, from any and all claims, obligations, rights, litigation, actions, suits, causes of action, debts, liabilities, sums of money, damages, attorneys' fees and court costs, demands and proceedings of any kind, in law or equity, whether known or unknown, including, but not limited to, the claims asserted in the Lawsuit and/or Emissions from CCC's Ponca City carbon black manufacturing facility or emissions of particulate matter from ConocoPhillips' Ponca City refinery. It is understood that the intent of the Settlement Agreement is to fully extinguish every claim asserted by the class in the Lawsuit or relating in any way to the emission of black particular matter (including carbon black), every claim not asserted by the class in the Lawsuit or relating in any way to the emission of black particular matter (including carbon black), and every claim that could have been asserted by the class in the Lawsuit or relating to the emission of black particular matter (including carbon black) which the Class has, or may have, against CCC, CCC USA Corp., China Synthetic Rubber Corporation and/or ConocoPhillips concerning the allegations made in the Lawsuit, or relating to the emission of black particular matter (including carbon black).

3. The terms of the Settlement are as follows:

CCC agrees to create a settlement fund not to exceed Eight Hundred Thousand Dollars (\$800,000.00) for the full and final settlement of the Class' claims (the "Settlement Fund") from which payments for claims, attorneys' fees and costs awarded

to class counsel by the Court, Class representative fees approved by the Court, and the fees and costs associated with any arbitrations to be conducted in the claims process as described herein below shall be deducted. In order for Plaintiffs to receive payment from the Settlement Fund, the following procedure will be used:

Claim Form:

- Plaintiffs wishing to make a claim for property and/or nuisance damages caused by CCC's Emissions must submit a claim form (attached as Exhibit 2) within 90 days of the fairness hearing. Plaintiffs submitting claims may do so with or without counsel, at their sole discretion.
- In completing the claim form, claimants must state with specificity the damages they seek. The claim form should include the basis for the claimant's belief that the damage was caused by CCC's Emissions, the damages sought, and the proof of those damages.
- Proof of property and nuisance damages may be provided by photographs, videotape, verified statements by witnesses, receipts, estimates, appraisals, verified narratives, and any other credible evidence of the type generally admissible and relied upon by courts. Claims for property damage are limited to \$2,000.00 for residential properties and \$4,000.00 for commercial properties. Claims for nuisance cannot exceed the amount of property damage.
- Claims for diminution in property value must be supported by an appraisal subject to the evidentiary standards generally applied by Courts to the

rendering and admissibility of expert opinions. Claims for diminution in property value are limited to \$1,000.00.

Review of Claim:

- Once the time period for submission of all claims has expired and all arbitrations are completed, CCC may, at its sole discretion, consent to payment of the claim as submitted on the claim form (subject to any proportionate reduction), make a counter-offer, or seek resolution of the claim through an arbitrator and shall advise the person making the claim, in writing, of its decision.

Counter-Offer:

- All counter-offers will be made in writing with a copy to any counsel for claimant(s). The person making the claim can accept the counter-offer by signing and returning the letter containing the counter-offer or can refuse the counter offer and request arbitration.
- If a claim is based on estimates of clean-up/repair costs, CCC has the right to have a licensed, bonded contractor of its choosing perform the clean-up/repair costs in lieu of payment of the claim in the amount of such estimate(s). If the claimant refuses the services of the contractor selected by CCC, he/she may pursue their claim through arbitration.

Arbitration:

- The parties agree that they will jointly select an attorney/mediator to serve as the arbitrator for any disputed claims. The arbitrator will make his rulings

- based on the presentation by the parties of credible evidence of the type generally relied upon by courts under relaxed rules of evidence. CCC will pay the fees for arbitration, which shall be deducted from the Settlement Fund.
- If a claim is arbitrated, the person making the claim may request to appear and make a presentation (no longer than thirty (30) minutes in length) or have the arbitrator decide the amount of the claim based on the written submissions.
  - If the person making the claim requests to make a presentation, CCC and/or the arbitrator will schedule the arbitration in Ponca City and provide the person making the claim written notice of the arbitration seven (7) business days prior to arbitration hearing. If the person making the claim wishes to be represented by counsel at the arbitration, he/she must advise CCC of the representation three (3) business days prior to the arbitration so CCC can also be represented by counsel, if it so desires. If the person making the claim attends the arbitration without counsel, CCC will also attend without counsel.
  - CCC has available as a defense any and all rights provided by previously executed releases, settlement agreements, or dispute resolution agreements between CCC and the person making the claim.
  - The arbitrator's decisions will be in the form of a summary order (i.e., not a reasoned award), are final, and are not subject to review or appeal, judicial or

otherwise. The parties will agree to a form for the arbitrator's use as the summary order.

Payment of Claims:

- If the aggregate of agreed and awarded (through arbitration) claims exceeds the amount available to satisfy claims from the Settlement Fund, the value of all claims will be proportionally reduced.
- Upon receipt of the arbitrator's award on all arbitrated claims, CCC shall pay all claims as consented, agreed through counter-claim, or awarded through arbitration (subject to any proportional reduction) within thirty (30) days.

4. Future Claims – Claims for damages incurred after July 28, 2009:

a. In addition to payment of the Settlement Fund, the Parties (on behalf of themselves and the Class) agree to the procedures set forth in this paragraph 4 as additional consideration for settlement and release of all past and present cleanup and repair costs and all past and present claims of discomfort, inconvenience and annoyance or any other nature. The procedures set forth in this paragraph 4 shall apply with respect to all future claims (i.e., those claims for damages caused by Emissions after July 28, 2009) of any kind, including diminution in property value, cleanup and repair, claims of discomfort, inconvenience and annoyance associated with the use and enjoyment of property.

b. The procedures described in this paragraph 4 shall be final and binding upon the Parties. The Parties agree that arbitration solely against CCC

shall be their exclusive means for resolving disputes relating to Emissions from the carbon black plant in the future and each hereby agrees they shall not bring any action in any state or federal court against the other with respect to or related to Emissions, including (i) loss or diminution of value of Plaintiffs' and/or Class members' properties; (ii) discomfort, inconvenience or annoyance of or to Plaintiffs and/or Class members associated with the use and enjoyment of property; and/or (iii) any cleanup or repair of Plaintiffs' and/or Class members' properties. Plaintiffs further agree that the procedures described in this paragraph 4 are only for the purpose of determining any amount necessary to compensate Plaintiffs and/or Class members for any future claims for which CCC is alleged to be liable, and for providing for the repair of any damage caused.

c. From and after the date hereof, if at any time a Plaintiff and/or Class member (hereinafter a "Future Claimant") believes that Emissions from CCC's carbon black plant have entered or come upon his property or person in such an amount or manner that requires cleanup or repair, or causes discomfort, inconvenience or annoyance, Future Claimant shall provide CCC with notice within seven (7) calendar days of discovering such claim. Such notice shall be made during regular business hours (Monday – Friday, 8 am to 4:30 pm) by telephone to the Plant Administrative Manager (who is currently Regina Bookout), at (580) 763-8102 (this line has voice mail which may be used to leave the claimant's name and phone number if there is no answer) and by regular mail to: Continental Carbon Company, Attn: Plant Manager, 1006 E. Oakland Ave.,

Ponca City, OK 74601. Future Claimant shall permit inspection of Future Claimant's property during reasonable hours (8:00 a.m. to 6:00 p.m.) by CCC's representative (the "Representative"). Before dispatching a Representative to Future Claimant's property, CCC shall notify Future Claimant and any counsel identified by Future Claimant as representing Future Claimant, and provide any such designated counsel with the opportunity to participate in any inspection of Future Claimant's property. Other than as necessary to protect Future Claimant's property or person, Future Claimant shall not initiate cleaning, repair or modification of the property prior to the inspection by CCC. If the Representative agrees that an Emission from the Plant requires cleaning and/or repair, CCC will cause necessary cleaning and/or repair to be performed. If the Future Claimant believes that the Emission also caused discomfort, inconvenience or annoyance Future Claimant shall identify with particularity (including any associated bills, invoices or other evidence) that discomfort, inconvenience or annoyance in a written statement which he shall provide to CCC or its Representative. Future Claimant and the Representative shall then attempt to agree upon an appropriate sum, if any, for discomfort, inconvenience or annoyance claimed by Future Claimant, directly occasioned by the Emission. If Representative and Future Claimant agree on a sum, CCC shall, within 10 business days, pay the agreed amount to Future Claimant, if any, and upon such cleanup, repair and payment, if any, Future Claimant shall be deemed to have released, and shall by reason of such cleanup or payment, release CCC, CCC

USA and CSRC from any and all claims, including claims for cleanup and repair and any discomfort, inconvenience or annoyance claims to the date of such payment. If Future Claimant and Representative are unable to agree as to the source or cause of Future Claimant's claims, or the amount or appropriateness of cleanup to be conducted by CCC or the amount to be paid to the Future Claimant, each shall have the right to refer the matter to arbitration to be resolved in accordance with subparagraph "e" below. If Representative and Future Claimant agree as to cleanup by CCC, but do not agree as to any additional amounts to be paid to Future Claimant, then CCC can proceed to complete cleanup as provided herein, and each shall have the right to refer any unagreed claims to arbitration in accordance with subparagraph "e" below.

d. If the Representative does not agree with Future Claimant that Emissions from the Plant have then entered or come upon Future Claimant's property or person, or if CCC and the Future Claimant do not agree to resolve the matter as set out in paragraph 4 above, Future Claimant or CCC shall have the right to require Representative to cause samples to be taken pursuant to ASTM Standard D6602-03b (as amended) protocols using sample media allowing for the direct preparation method from Future Claimant's property of the material alleged to have entered or come upon Future Claimant's property or person as well as from other locations as necessary to obtain representative samples of Future Claimant's property. Such sampling shall include documenting such sample locations by photograph(s). CCC shall then promptly

cause such samples to be sent to the following laboratory: MVA Scientific Consultants, Inc., 3300 Breckenridge Boulevard, Suite 400, Duluth, Georgia 30096 or such person or entity as to which Future Claimant and CCC agree. The methods described in ASTM Standard D6602-03b (as amended) will be utilized to determine if carbon black is present and to estimate the percentage of all common particulates listed in Table 3 of the Standard, including carbon black. For any testing conducted, the testing company shall be instructed to provide the results of its testing simultaneously to Future Claimant and CCC. In the event requested by the Oklahoma Department of Environmental Quality (ODEQ) or Future Claimant, CCC shall provide a copy of all internal emission report(s) (or similar report) for the day prior to and the day of the claimed injury, together with a copy of any wind records CCC maintains.

e. In the event Future Claimant and CCC or its Representative are, after receiving the results of any testing, and under the circumstances described in subparagraphs "c" and "d" above, unable to agree upon the cause, source, the appropriateness of cleanup conducted by CCC, the nature and extent of any repairs, or the amount of compensation due Future Claimant for discomfort, inconvenience, annoyance, personal injury or wrongful death then either the Future Claimant or CCC may, cause the matter to be finally and completely resolved by binding arbitration in accordance with this subparagraph "e". It is the intent of Future Claimant and CCC to provide for a summary, abbreviated arbitration proceeding as described herein. Future Claimant and CCC shall agree upon a

qualified arbitrator within ten (10) calendar days of delivery of written notice from one to the other to elect arbitration. If Future Claimant and CCC are unable to agree upon an arbitrator, either Future Claimant or CCC may request arbitration against the other through the American Arbitration Association (“AAA”) office serving the State of Oklahoma. Any arbitration claim or response thereto shall set forth the date on which the claim was discovered, shall include a copy of any relevant internal or ODEQ emission reports, wind data [if in Future Claimant's possession], sampling photo documentation and testing results, as well as any cleanup or repair undertaken or to be undertaken by CCC and a statement of any discomfort, inconvenience or annoyance alleged by Future Claimant (the "Future Claimant's Notice"). Within ten (10) calendar days after receiving the Future Claimant's Notice, CCC shall in writing respond to any matter in Future Claimant's Notice to which it takes exception (“CCC Response”) and shall provide a copy of the CCC Response to Future Claimant, CCC shall attach to CCC's Response a copy of any relevant internal or ODEQ emission reports, wind data, sampling photo documentation and testing results to the extent not previously provided by Future Claimant. The Arbitrator shall hold a hearing under and in accordance with the Rules of the American Arbitration Association within ten (10) calendar days after receiving the CCC Response, or at a time mutually agreeable to CCC, the Claimant, and the Arbitrator. At such hearing, in addition to the ASTM testing results and photo documentation, and any relevant internal or ODEQ emission reports, wind records, and the Future Claimant's statements, the Arbitrator shall

receive from Future Claimant or CCC any and all evidence the Arbitrator in his/her sole discretion and judgment deems is reasonable or appropriate to reach a conclusion as to the amount of compensation or repair if any, due Future Claimant by reason of the complaint. At such hearing the Arbitrator shall render a decision, to be confirmed in writing to Future Claimant and CCC, and such decision shall be final and binding, and not subject to review or appeal, judicial or otherwise. The Parties shall bear their own attorney's fees and costs associated with the arbitration, regardless of the outcome. CCC will pay the fees and costs of the Arbitrator, but if CCC is the prevailing party in the Arbitrator's decision/award, CCC shall be entitled to recover such Arbitrator's fees and costs from Future Claimant. Under such circumstances, in the event Future Claimant does not pay to CCC the Arbitrator's fees and costs, such Future Claimant shall be precluded from initiating a subsequent arbitration claim as provided in Paragraph 4 of this Agreement until all such Arbitrator's fees and costs owed by Future Claimant to CCC have been paid. Future Claimant and CCC agree that in no event shall punitive or exemplary damages be awarded in the event of such arbitration.

5. For their fee in representing plaintiffs, counsel will seek Court approval of attorneys' fees in the amount of 30% of the Settlement Fund. Additionally, counsel will provide the Court with an itemized statement of expenses incurred (estimated to be approximately \$19,000) and seek reimbursement of those expenses from the Settlement Fund. CCC agrees not to object to this fee request.

6. For her fee is serving as the class representative, counsel will seek Court approval of a class representative fee for Annie Owen in the amount of \$20,000.00. This fee will be paid directly to the class representative. CCC agrees not to object to this fee request.

7. CCC shall bear its own costs and expenses, including attorneys' fees, relating directly or indirectly to the Lawsuit, the settlement, the review of settlement Claim Forms, and attending arbitration.

8. This Settlement Agreement is contingent on the Court's approval of the this Settlement at the fairness hearing. Should the Court not approve the Settlement, this Settlement Agreement shall be null and void.

9. The Parties hereby warrant and represent that they have each had the opportunity to consult with attorneys of its or their own choosing, if the party so desired, with regard to the obligations imposed by this Settlement Agreement and all rights released or compromised herein, and with regard to the facts and controversies relating to such disputes and with respect to the rights asserted and the rights arising out of such facts.

10. This Settlement Agreement constitutes the sole and complete understanding and agreement of the Parties and supersedes all prior and contemporaneous negotiations, representations, agreements, and understandings. No change, modification, or termination of any of the provisions of this Settlement Agreement shall be effective unless set forth in a written instrument that is signed by the Parties. This Settlement Agreement shall be binding upon and inure to the benefit of

the Parties, their administrators, executors, personal representatives, heirs, successors and assigns. The Parties acknowledge that neither they nor their agents or their attorneys have made any promises, representations or warranties whatsoever, express or implied, not contained herein, and they acknowledge that they have not executed this instrument in reliance on any such promise, representation, or warranty.

11. The Parties warrant and guarantee that they have not made, and will not make, any assignment of any claim, cause or right of action, or any right of any kind whatsoever, embodied in, or arising out of, the Lawsuit and obligations that are released herein.

12. The Parties warrant that each of the respective signatories to this Settlement Agreement has the respective authority to execute this Settlement Agreement, to release and compromise any litigation released and/or compromised by this Settlement Agreement, to make all warranties and representations contained herein on behalf of each of the parties hereto, and to bind each of the parties hereto to all obligations contained herein.

13. The laws of the State of Oklahoma shall govern the validity, construction, interpretation, and effect of this Settlement Agreement.

14. Any action brought by any of the parties to this Settlement Agreement which relates to or arises out of the enforcement or breach of any provision of this Settlement Agreement shall be brought in the United States District Court for the Western District of Oklahoma or the District Court of Oklahoma County, Oklahoma, whichever Court is most appropriate given the amount in controversy. The prevailing

party shall be entitled to recover from the non-prevailing party all costs and attorneys' fees incurred as a result of such action brought related to or arising out of the enforcement or breach of the Settlement Agreement.

15. This Settlement Agreement may be executed in counterparts and each such counterpart shall be fully enforceable. A facsimile copy or xerox copy of an original signature shall, likewise, be fully enforceable.

16. This Settlement Agreement shall be deemed effective on the date first set forth above, regardless of the date on which each party hereto actually executes it.

**THIS IS A RELEASE. READ BEFORE SIGNING.**

**ANNIE OWEN, INDIVIDUALLY AND ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED**

**CONTINENTAL CARBON COMPANY**

\_\_\_\_\_  
**Annie Owen**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**Witnessed by:**

**Witnessed by:**

\_\_\_\_\_  
PIERCE COUCH HENDRICKSON  
BAYSINGER & GREEN, L.L.P.  
Gerald P. Green  
Amy R. Steele  
1109 N. Francis  
Oklahoma City, OK 73106  
Phone: (405) 235-1611  
Fax: (405) 235-2904

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RYAN WHALEY COLDIRON  
SHANDY, P.C.  
Patrick M. Ryan  
Phillip G. Whaley  
119 N. Robinson Avenue, Suite 900  
Oklahoma City, OK 73102-4617  
Phone: (405) 239-6040  
Fax: (405) 239-6766