

**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,)
)
CONTINENTAL CARBON)
COMPANY,)
)
Defendant.)

**Case No. CIV-09-399-C
[Docket No. 16]**

**ORDER GRANTING PLAINTIFFS’ MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT, CERTIFICATION OF A CLASS, AND
AUTHORIZATION
OF DISSEMINATION OF NOTICE AND BRIEF IN SUPPORT**

Before the Court is Plaintiffs’ Motion for Preliminary Approval of the Settlement, Certification of a Class, and authorization of Dissemination of Notice (Dkt. No. 14) and Plaintiffs’ Amended Motion for Preliminary Approval of the Settlement, Certification of a Class, and authorization of Dissemination of Notice (Dkt. No. 16). The Court, having reviewed the Motions, finds there is no objection that for good cause shown the Motion should be and is hereby GRANTED.

Proposed Settlement:

The Court finds that the proposed Settlement Agreement is “within the range of possible approval” or, in other words, that there is “probable

cause” to notify the class of the proposed Settlement Agreement. *Horton v. Merrill Lynch*, 855 F.Supp. 825, 827 (E.D.N.C 1994) (citing *Armstrong v. Board of School Directors*, 616 F.2d 305, 312 (7th Cir. 1980); *In re Diet Drugs Prods. Liability Litig.*, 1999 WL 33644489, at *2 (E.D. Pa. Dec. 3, 1999) (quoting *Armstrong v. Bd. Of School Dir. Of City of Milwaukee*, 616 F.2d. 305, 314 (7th Cir. 1980)).

Class Certification:

The Court finds that the proposed class meets all requirements of Federal Rules of Civil Procedure, Rule 23(a) including numerosity, commonality, typicality, and adequacy of representation. The Court further finds that the proposed class meets the requirements of Federal Rules of Civil Procedure, Rule 23(b)(3) in that common questions predominate over individual questions such that a class action is the superior method for adjudication. For class certification purposes, courts accept the complaint’s allegations as true and may not look into the merits of the case. *Universal Serv. Fund Tel. Billing Litig.*, 219 F.R.D. 661, 665 (D. Kan. 2004); *Anderson v. City of Albuquerque*, 690 F.2d 796 (10th Cir. 1982). Based on the allegations in the Plaintiff’s Complaint and evidence outlined in Plaintiff’s Motion, the proposed class of all owners and occupants of homes and businesses within the property class boundary noted in Exhibit 1 of Plaintiffs’ Motion 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, gases, odors, or other pollutant 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 meets all requirements for class certification.

Notice:

The Court further finds that the proposed notices of the Class Action and Preliminary Settlement are adequate and may be understood by the average class member. See, e.g., 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 11:53, at 167 (4th ed. 2002). The proposed notices and the plan to provide notice are reasonable and will “fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.” *Wal-Mart Stores v. Visa USA, Inc.*, 396 F.3d 96, 113 (2nd Cir. 2005) (quoting, *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2nd Cir. 1982).

The Court therefore ORDERS, ADJUDGES, AND DECREES as follows:

The Court has jurisdiction over the subject matter of this litigation;

Based on the class certification briefing and evidence, and as requested in the Plaintiffs’ Motion, all elements of Rule 23(a) and 23(b)(3) are satisfied, and that this matter is certified as a class action as to the individuals comprising the Class (i.e., all owners and occupants of homes

and businesses within the property class boundary noted in Exhibit 2 of Plaintiffs' Motion 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, gases, odors, or other pollutant 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).

Based on the class certification briefing and evidence, that Ms. Annie Owen can properly represent the interests of the class, is appointed Settlement Class representative, and must perform all duties and obligations such an appointment entails;

Based on the class certification briefing and evidence, that the proposed settlement is fair, reasonable, and adequate to the Class and is preliminarily approved in all respects;

Based on the class certification briefing and evidence, that the proposed notice to be sent to the Class and published comport fully with both Rule 23 and due process, is the best notice that is practicable, and is approved. Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), the Court Orders Class Counsel to mail and publish the proposed notices as outlined in Plaintiffs' Motion and Amended Motion for Preliminary Approval of the Settlement, Certification of a Class, and authorization of

Dissemination of Notice. Further, that Class Counsel is required to file with the Court proof of the due mailing of notice and proof of publication of notice no later than three (3) days before the scheduled fairness hearing;

That Gerald P. Green and Amy R. Steele of Pierce Couch Hendrickson Baysinger and Green, LLP are appointed Class Counsel, and shall fulfill all duties and obligations such an appointment entails;

That Continental Carbon Company shall make any and all payments required by the Settlement Agreement, and that, in general, all parties and their counsel are to abide by and perform as per the terms and obligations of the Settlement Agreement;

Class counsel shall file their Application for Attorneys' Fees and Costs no later than Monday, July 13, 2009.

That a Settlement Fairness Hearing shall be conducted before this Court on the 28th day of July, 2009 at 1:00 a.m. at the United States District Courthouse in Oklahoma City, Fifth Floor, Courtroom 501. Fair and adequate notice of this hearing shall be included in the notice materials mailed and published to the Class, as described herein. At this hearing, the Court shall consider the following topics:

- a. Whether to finally approve the class settlement, whether to finally approve class counsel's request for fees and expense reimbursement, and whether to finally approve of Ms. Owen's class representative fee;

- b. Any proper and timely objections to the class settlement, the attorneys' fee application, the expense reimbursement, and Ms. Owen's class representative fee application; and
- c. Any other matters properly brought before the Court concerning this action and the proposed settlement.

That any person who wishes to appear at the Settlement Fairness Hearing through separate counsel and/or to challenge the fairness, reasonableness, and adequacy of the class settlement, or any aspect thereof, shall fully and timely comply with any and all pre-hearing filing, form, procedure and deadline requirements set forth in the notice the Court has ordered to be mailed and published. Any objector who fails to strictly adhere to these shall not be permitted to raise or pursue an objection at the Settlement Fairness Hearing, and such failure shall constitute a waiver of any objection to the class settlement, the attorneys' fee application, the expense reimbursement, and Ms. Owen's class representative fee application, and related matters;

That Class Counsel shall provide counsel for Continental Carbon Company copies of any requests for exclusion received by Class Counsel within five (5) business days of Class Counsel's receipt of any such requests, assuming the requests for exclusion are timely received and accurately completed. To the extent late requests for exclusion are received, Class Counsel shall supplement such information to counsel for

Continental Carbon Company as soon as reasonably practicable, and prior to the Settlement Fairness Hearing, if possible; and

12. That this Order is a non-final, non-appealable preliminary order. After the Settlement Fairness Hearing is conducted, and objections, if any, to the proposed settlement and related matters are evaluated and analyzed, the Court may alter, modify, amend, supplement, or vacate the contents of this order as it deems necessary or appropriate. Or, the Court may adopt the contents of this Order, with modest or material changes, in issuing a final order approving this settlement.

Dated this 15th day of June, 2009.



ROBIN J. CAUTHRON
United States District Judge