IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CITY OF GREENVILLE, et al., individually, and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**Case No.: 3:10-cv-00188-JPG-PMF**
vs.	)	
SYNGENTA CROP PROTECTION, INC., and SYNGENTA AG,	)	
Defendants.	)	

JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

After years of litigation and months of negotiation, the parties have agreed to resolve Plaintiffs' claims concerning the presence of atrazine in their water. Under the terms of the settlement, any U.S. Community Water System that submits a valid claim form and has detected any measurable concentration of atrazine in its raw or finished water, or has such a detect within 90 days after entry of an order preliminarily approving the settlement, will receive a portion of the $105,000,000.00 settlement fund. This settlement will conclusively resolve the disputed claims of an estimated 2,000 U.S. Community Water Systems that may be within the proposed settlement class, and put an end to at least seven expensive and time-consuming lawsuits in which Defendants have expressly denied any liability. Pursuant to Fed. R. Civ. P. 23(e), the parties jointly move the Court to grant preliminary approval of the parties' proposed Settlement Agreement, attached as Exhibit A.

FACTUAL BACKGROUND

Atrazine is an herbicide used to control broadleaf and grassy weeds in a variety of crops, but is applied primarily to corn fields. A Syngenta legacy company discovered and synthesized atrazine in the early 1950s, and brought it to the U.S. market in 1959. Since then, atrazine has been one of the most widely used herbicides in the U.S. Syngenta is the largest manufacturer and distributor of atrazine and atrazine-containing products in the U.S.

Plaintiffs are Community Water Systems from six states that own property and facilities designed to acquire, treat, and dispense water for public use. Compl. at ¶¶ 4-27. Under the Safe Drinking Water Act ("SDWA"), Community Water Systems are required to test their finished drinking water for contaminants to ensure they do not exceed any Maximum Contaminant Level ("MCL"). 40 C.F.R. 141.24(h)(2).

Plaintiffs have alleged that atrazine has continuously entered their water supplies, thereby injuring their property rights. Compl. at ¶¶ 35, 51, 54-56, 59, 62-63, 74. Plaintiffs have alleged that they have had to test and monitor their water supplies for atrazine, as well as to install, operate, and maintain systems to filter atrazine from their water supplies. *Id*. at ¶¶ 4-27, 56(b), 56(d), 57, 65(b), 65(d), 75(b), 75(d). Plaintiffs also have alleged that, in addition to these past expenses, the continued presence of atrazine in their water supplies will cause them to incur future expenses. *Id*. at ¶¶ 4-27, 56(b), 56(d), 57, 65(b), 65(d), 75(b), 75(d). Plaintiffs have asked for all future damages likely to be incurred in removing atrazine from their water supplies, including costs associated with the purchase and operation of appropriate filtration systems. *Id*., Prayer for Relief (d).

Defendants have argued that Plaintiffs' only legally protected interest is the right to provide water that complies with the MCL for atrazine. Since 1991, the U.S. Environmental Protection

Agency ("EPA") has set an MCL of 3 parts per billion (ppb) for atrazine on an average annualized basis. 56 Fed. Reg. 3526-01 (Jan. 30, 1991); § 40 CFR 141.50(b). The EPA considers MCLs to be "safe levels that are protective of public health." 52 Fed. Reg. 25690, 25693-94 (July 8, 1987). Thus, Defendants have maintained that Plaintiffs who have not experienced a violation of the MCL have not suffered a legally cognizable injury. In addition, Defendants claim that the best available technology for removing atrazine from drinking water is commonly used to address drinking water issues other than herbicide removal. Thus, Defendants have challenged Plaintiffs' ability to demonstrate legal causation.

This litigation and other related litigation pending in Illinois state court on behalf of Illinois Community Water Systems entitled *Holiday Shores Sanitary District, et al. v. Sipcam Agro USA, Inc. and Growmark, Inc.*, 04-L-708 (Ill. Cir. Ct.); *Holiday Shores Sanitary District, et al. v. Drexel Chemical Co. and Growmark, Inc.*, 04-L-709 (Ill. Cir. Ct.); *Holiday Shores Sanitary District, et al. v. Syngenta Crop Protection Inc. and Growmark, Inc.*, 04-L-710 (Ill. Cir. Ct.); *Holiday Shores Sanitary District, et al. v. United Agri Products and Growmark, Inc.*, 04-L-711 (Ill. Cir. Ct.); *Holiday Shores Sanitary District, et al. v. Makhteshim-Agan of North America, Inc. and Growmark, Inc.*, 04-L-712 (Ill. Cir. Ct.); *Holiday Shores Sanitary District, et al. v. Dow Agrosciences LLC and Growmark, Inc.*, 04-L-713 (Ill. Cir. Ct.)) (collectively, the "Litigation") has been extremely hard-fought, burdensome and expensive. In the course of the Litigation, the parties collected, reviewed, and produced more than 10,000,000 pages of discovery. The parties also were subject to significant disruption of their business, including the depositions of dozens of employees. In addition, the parties incurred substantial costs through the retention of numerous expert consultants and the preparation of expert reports.

The proposed settlement would put an end to the expense, inconvenience and distraction of

further litigation while providing significant monetary relief to the proposed class in the form of $105,000,000.00, in exchange for a release resolving Plaintiffs' claims related to the presence of atrazine in their water. The settlement does not interfere with the jurisdiction of any regulatory agency, and it preserves any claims arising from future point-source contamination or off-label use and claims that otherwise could not have been brought in this litigation. Defendants expressly deny any liability, and Plaintiffs and their counsel have acknowledged that they are not aware of any new scientific studies relating to atrazine not already in the public domain. The proposed settlement also takes care to ensure effective notice to the proposed class and a claims process that should ensure full participation in the settlement. Accordingly, the proposed settlement is facially fair and within the range of possible approval. It should be preliminarily approved.

ARGUMENT

I. The Court Should Preliminarily Approve the Settlement.

"Federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1996 (7th Cir. 1996). *See also Armstrong v. Bd. of Sch. Dirs. of Milwaukee*, 616 F.2d 305, 313 (7th Cir. 1980), *overruled on other grounds sub nom. Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998) ("Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources."). However, the district court must give "careful scrutiny" to proposed class action settlements and must consider whether a given settlement is "fair, adequate, and reasonable, and not the product of collusion." *Mirfasihi v. Fleet Mortgage Corp.*, 450 F.3d 745, 748 (7th Cir. 2006) (quoting *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 279 (7th Cir. 2002)).

The review of a proposed class action settlement involves a well-established three-step process. First, the district court must issue a "preliminary approval" order following a pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." *In re Gen. Motors Corp. Engine Interchange Litig.*, 594 F.2d 1006, 1124 (7th Cir. 1979). Second, notice of the proposed settlement must be given to all class members. Third, the district court must issue a "final approval" order after notifying the class of the settlement and holding a hearing to consider the fairness of settlement. Manual for Complex Litigation (Fourth), § 21.632 (2004).

At this preliminary stage, the Court need only determine whether the settlement is "'within the range of possible approval.'" *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). Preliminary approval does not require the district court to answer the ultimate question of whether a proposed settlement is "fair, reasonable, and adequate." *Armstrong*, 616 F.2d at 314. Rather, that determination is made only at the final approval stage, after class members have been notified and given an opportunity to voice their views of the settlement or to exclude themselves from the settlement. *Id.*

Here, the Settlement Agreement is certainly "within the range of possible approval" and is a fair result for the parties following years of hard-fought litigation. The Settlement Agreement is the product of serious, arm's-length negotiations between experienced and informed counsel and reflects a compromise that provides a substantial monetary benefit to the class, while avoiding the risk that further protracted and contested litigation provides.

The Settlement Agreement also fairly allocates the settlement proceeds without favoring any individual member over the class. A district court's "principal obligation" in approving a plan of allocation "is simply to ensure that the fund distribution is fair and reasonable as to all

participants in the fund." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 326 (3d Cir. 2011) (en banc) (quoting *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 964 (3d Cir. 1983)). *See also EEOC v. Hiram Walker & Sons*, 768 F.2d 884, 891 (7th Cir. 1985) (considering reasonableness of settlement disbursement). Courts "generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable." *Sullivan*, 667 F.3d at 328 (quoting *In re Corel Corp. Inc., Sec. Litig.*, 293 F. Supp. 2d 484, 493 (E.D. Pa. 2003)*; In re WorldCom, Inc. Sec. Litig.,* 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005) ("An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.").

The parties' proposed allocation plan provides that the Settlement Fund, minus any Court-approved attorneys' fees, expenses, and costs, will be paid to Class Members who submit a valid claim through a fixed payment and then allocates the remainder on a pro-rata basis based on evidence of the significance of the Class Member's history of atrazine detection, its size, and the age of its claim. This allocation plan is fair because it ensures that every Class Member who submits a valid claim will receive a portion of the settlement fund, while providing a proportionally larger share to those who are most affected by the presence of atrazine. "[W]hen real and cognizable differences exist between the likelihood of ultimate success for different plaintiffs, it is appropriate to weigh distribution of the settlement in favor of plaintiffs whose claims comprise the set that was more likely to succeed." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 589 (N.D. Ill. 2011).

Counsel for the Plaintiffs have carefully considered and evaluated the relevant legal authorities and evidence to support the claims and defenses, the likelihood of prevailing on the claims or defenses, the risk, expense and duration of continued litigation and the likely appeals,

and have concluded that the settlement is a favorable resolution of the Litigation for all parties. The Settlement Agreement removes the potential for continuing trial and appellate proceedings on the merits, which may take several years to complete and be extremely costly and the outcome of which is uncertain.

II. The Court Should Approve the Notice Plan.

The next step in the process requires the Court to "direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Constitutional due process and Federal Rule of Civil Procedure 23(c)(2)(B) require that absent class members receive "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Accordingly, "notice should be mailed to the last known addresses of those who can be identified and publication used to notify others." *Mangone v. First USA Bank*, 206 F.R.D. 222, 231 (S.D. Ill. 2001).

Here, the parties have agreed upon a comprehensive Notice Plan after consulting with a nationally-recognized class action administrator. See Declaration of Richard W. Simmons Regarding Dissemination of Class Notice, attached as Exhibit B. As set forth in more detail in the Simmons Declaration, the Notice Plan consists of three components: 1) direct mail notice; 2) publication notice; and 3) a case website and toll-free number. The direct mail notice is a summary notice that will be mailed to approximately 2,000 U.S. Community Water Systems that Class Counsel have identified as having experienced a measurable concentration of atrazine in their raw or finished water. Simmons Decl. at ¶ 17. A copy of the summary notice is attached as Exhibit C. To supplement the direct mail notice, Class Counsel will publish a summary notice in three leading publications whose readership includes potentially-affected Community Water Systems. Simmons Decl. at 18. A copy of the publication notice is attached as Exhibit D. Class

Counsel will also establish a website and a toll-free number to notify Class Members of the settlement, address common questions about the settlement, and provide updates on the settlement process. Simmons Decl. at ¶¶ 23-24. A more detailed Notice providing additional information about the settlement, attached as Exhibit E, will be available on the website. Under the circumstances, the Notice Plan is the best notice practicable.

Consistent with Rule 23, the Notices provide potential class members with the information reasonably necessary for them to decide whether to object to the settlement in easily understood terms. Fed. R. Civ. P. 23(c)(2)(B)(i), (ii) and (iii); *see also In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 351 (N.D. Ill. 2010) ("The contents of a Rule 23(e) notice are sufficient if they inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files, and that any class member may appear and be heard at the hearing."). The Notices inform class members of all of these facts.

For example, the Notices describe the nature of the action, the class definition and the common issues. Notice at §§ 1, 2, 6 and 7. As required by Rule 23(c)(2)(B)(iv), the Notice informs class members that they may appear through an attorney. Notice at § 18. The Notice satisfies Rule 23(c)(2)(B)(v) and (vi) by stating that Class Members may exclude themselves from the class and providing a description of the manner and deadline in which to do so. Notice § 20-22. As required by Rule 23(c)(2)(B)(vii), the Notice informs Class Members that any Class Member who fails to opt out will be prohibited from bringing a lawsuit against the released parties based on the released claims. Notice § 21. Aside from these requirements, a notice satisfies Fed. R. Civ. P. 23(c)(2)(B); 23(e), due process, and binds all members of the class if it:

1. Describes the essential terms of the settlement;

2. Discloses any special benefits or incentives to the class representatives;

3. Provides information regarding attorneys' fees;

4. Indicates the time and place of the hearing to consider approval of the settlement, and the method for objection to and/or opting out of the settlement;

5. Explains the procedures for allocating and distributing settlement funds; and

6. Prominently displays the address of class counsel and the procedure for making inquiries.

Federal Judicial Center, Manual For Complex Litigation § 21.312 (4th ed. 2005); *see, e.g.*, *Air Lines Stewards & Stewardesses Ass'n Local 550 v. Am. Airlines*, 455 F.2d 101, 108 (7th Cir. 1972) (notice that provided summary of proceedings to date, notified of significance of judicial approval of settlement and informed of opportunity to object at the hearing satisfied due process).

The proposed Notice meets all of these requirements. It identifies the lawsuit by docket number and case caption, describes the Litigation, and gives a summary of the terms of the settlement and the available benefits. Notice at § 1-5. It discloses the maximum amount of attorneys' fees that will be sought by Class Counsel. Notice at § 19. It describes the procedures for allocating and distributing the Settlement Fund, including a thorough description of how to obtain those benefits. Notice at §§ 10-11. Finally, it displays the name and address of Class Counsel and informs Class Members of the procedure for making inquiries of Class Counsel. Notice at §§ 17, 24, 30. Accordingly, the Notice goes beyond the requirements imposed by Fed. R. Civ. P. 23(c)(2) and 23(e), and constitutes the "best notice practicable under the circumstances" of this lawsuit.

Further, the parties' use of a settlement website and toll-free number in the claims process is designed to promote awareness of the settlement and encourage the filing of claims. *Schulte v.*

Fifth Third Bank, 805 F. Supp. 2d 560, 591 (N.D. Ill. 2011). Class Members can submit a claim online through the settlement website without the need to pay for a stamp. *Id.*

III. The Parties' Settlement Schedule Should be Approved.

In connection with the preliminary approval of the settlement, the Court must set dates for: 1) mailing the Notice; 2) the deadlines for objecting to or opting out of the settlement; 3) the filing of papers in support of the settlement; and 4) the final fairness hearing. The parties propose the following schedule:

Event	Date
Mailing of the Notice	Monday, June 11, 2012
Publication of the Notice	Monday, June 25, 2012
Deadline for objecting to or opting-out of the settlement	Monday, August 27, 2012
Deadline for filing papers in support of the settlement	Monday, October 8, 2012
Final Fairness Hearing	Monday, October 22, 2012

CONCLUSION

The parties respectfully request that the Court: (1) preliminarily approve the Settlement Agreement, attached as Exhibit A, as within the range of possible fairness, reasonableness and adequacy; (2) approve the Notice Plan, attached as Exhibit B, and the Notices, attached as Exhibits C, D and E; (3) set a deadline for objecting to or opting out of the settlement; (4) set a deadline for filing papers in support of the settlement; (5) set a date and time for the Final

Fairness Hearing; and (6) stay all proceedings in this action until the Court has ruled on a final approval of the Settlement Agreement and entered a final judgment.

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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2012, I electronically filed the above document with the Clerk of Court using the CM/ECF system, which will electronically deliver notice of the filing to all counsel of record.

By: s/ Christopher M. Murphy

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