

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT SESSIONS, <i>et al.</i>,	:	
	:	CIVIL ACTION
Plaintiffs,	:	NO. 1:07-cv-1669
	:	
vs.	:	
	:	(Judge Mariani)
OWENS-ILLINOIS, INC., <i>et al.</i>,	:	
	:	
Defendants.	:	

**PROPOSED FINAL ORDER AND JUDGMENT APPROVING
SETTLEMENT AND DISMISSING THIS ACTION WITH PREJUDICE**

Plaintiff Linda Sessions, individually, Plaintiffs Robert Sessions, John Roman, Pat Kovar, John Safian, and Joe Green (“Plaintiffs”), individually and on behalf of the Class, and Defendants Owens-Illinois, Inc. (“O-I” or the “Company”); The Owens-Illinois Salary Retirement Plan (“the Plan”); The Owens-Illinois Employee Benefits Committee for the Owens-Illinois Salary Retirement Plan (“the O-I EBC”); Roberta Bixhorn; Terri Fitzpatrick; David McCormick; Shaun McMackin; Mike Scheiding; Etta Strong; Al Baker; John Cantello; Renee Ellis; Terri Hicks; Rita Knost; Dan Pennywitt and Judy Warntz (collectively, “Defendants”) (with Plaintiffs and Defendants collectively referred to herein as “Parties”) have agreed to settle the above-captioned class action suit (the “Lawsuit”) on the terms and conditions set forth in the Class Settlement Agreement (the “Agreement”) (this settlement process hereinafter referred to as the

“Settlement”). All capitalized terms not otherwise defined in this order are defined in the Agreement.

On July 2, 2014, the Court entered an Order Preliminarily Approving Settlement And Approving Notice to the Class, provisionally certifying the proposed Class and appointing Plaintiff’s counsel as Class Counsel, and directing that Mailed Notice be given to the members of the Class of the proposed Settlement and of a Fairness Hearing. The Court approved the form and content of the Mailed Notice (“Mailed Notice”) directed to members of the Class. The Mailed Notice informed the Class of the Settlement terms and that the Court would consider the following issues at the Fairness Hearing: (i) whether the Court should grant final approval of the Settlement and finally certify the Class; (ii) whether the Court should enter final judgment dismissing the Lawsuit with prejudice; (iii) the amount of attorneys’ fees, costs, and expenses, if any, to be awarded to Class Counsel; (iv) whether to approve the payment of the Class Representatives’ Case Contribution Payments and the amount of the Case Contribution Payments; and (v) any objections by members of the Class to any of the above that are timely and properly served in accordance with the Order Preliminarily Approving Settlement and Proposed Mailed Notice to the Class.

Currently pending is an application for final approval of the Settlement pursuant to Fed. R. Civ. P. 23(e); final certification of the Class and this action as a

class action under Fed. R. Civ. P. 23(b)(1); and the final appointment of Plaintiffs' counsel as Class Counsel under Fed. R. Civ. P. 23(g).

In accordance with the Notice to Class Members, a Fairness Hearing was held on October 15, 2014. One objection to the Settlement was filed with the Court and/or made at the Fairness Hearing.

The Court, having heard argument in support of the Settlement, certification of the Class, and appointment of Class Counsel, and having reviewed all of the evidence, objections and other submissions presented with respect to the Settlement and the record of all proceedings in this case, enters the following findings:

1. The Court has jurisdiction over the subject matter and personal jurisdiction over the parties to this Lawsuit, including the members of the Class.

2. The Court confirms for settlement purposes the certification of this action as a class action and the Class under Fed. R. Civ. P. 23(b)(1). The Class is defined as the individuals identified on the Class Member List filed by the Defendants with the Court on July 10, 2014, Dkt. No. 268-1, or the Beneficiary of any such person. The Class Member List reflects the Parties' reasonable efforts to identify all individuals who meet the criteria below:

All persons who, as of October 6, 2004: (a) were Owens-Illinois Salary Retirement Plan participants; (b) were employees of Owens-

Illinois, Inc.'s blow-molded Plastic Container business (as referred to in the document attached as Exhibit 2 to the Amended Complaint, entitled "Plastic Container Sale Employee Frequently Asked Questions"); (c) had ten years of credited service; (d) had combined age and credited years of service of 65 or more; (e) were less than 55 years old; (f) worked in the United States and (g) were not subject to special or unique circumstances.

3. The Court finds that Plaintiffs' counsel satisfies the requirements of Rule 23(g). The Court further confirms for settlement purposes the appointment of Plaintiff's counsel as Class Counsel under Fed. R. Civ. P. 23(g).

4. The Agreement and all of its exhibits (as filed with the Court) are incorporated in this Final Order and Judgment, including the definitions and terms set forth in the Agreement.

5. On July 23, 2014, the Notice Administrator caused the Mailed Notice to be mailed to all members of the Class. On October 8, 2014, the Notice Administrator filed with the Court proof of mailing of such Mailed Notice to all members of the Class.

6. Notice to the Class has been given in an adequate and sufficient manner and the Mailed Notice given constitutes the best notice practicable under the circumstances, and was reasonably calculated to apprise interested parties of

the pendency of this Lawsuit, the nature of the claims, the definition of the Class, and their opportunity to present their objections to the Settlement. The Notice complied in all respects with the requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law.

7. The Total Settlement Amount is \$9,500,000.00, in accordance with the terms of the Agreement.

8. In response to the 100 individually mailed notices, one member of the Class filed an objection to the Settlement prior to the Fairness Hearing. No additional objections were presented at the Fairness Hearing.

9. After considering (i) the complexity, expense, and likely duration of the Lawsuit; (ii) the reaction of the Class to the proposed Settlement; (iii) the stage of the proceedings and amount of discovery completed; (iv) the risks of establishing liability; (v) the risks of establishing damages; (vi) the risks of maintaining the class action; (vii) Defendants' ability to withstand a greater judgment; (viii) the range of reasonableness of the proposed Settlement in light of the best possible recovery; and (ix) the range of reasonableness of the proposed Settlement in light of all the attendant risks of litigation, the Court finally approves the Settlement in all respects as fair, reasonable, adequate, and in the best interests of the members of the Class pursuant to Fed. R. Civ. P. 23(e). The terms of the

Agreement, including all Exhibits to the Agreement and to this Judgment, shall be forever binding on the parties.

10. a. The application by Class Counsel for reasonable attorneys' fees from the Total Settlement Amount is granted. The Court has considered the reasonableness of the attorney's fees sought in light of: (i) the size of the fund created by the Settlement and the number of persons benefitted; (ii) the presence or absence of substantial objections by members of the Class to the settlement terms and/or fees requested by counsel; (iii) the skill and efficiency of the attorneys involved; (iv) the complexity and duration of the litigation; (v) the risk of nonpayment; (vi) the amount of time devoted to the case by plaintiffs' counsel; (vii) the awards in similar cases; (viii) the value of the benefits attributable to the efforts of Class Counsel relative to other groups, such as government agencies; (ix) the percentage fee that was or would have been negotiated at the time counsel was retained; (x) any innovative terms of the Settlement; and (xi) a cross-check of the percentage fee award against the lodestar method. Plaintiffs' attorneys' fees in the amount of \$3,000,000 from the Total Settlement Amount is hereby found to be reasonable and is awarded to Class Counsel from the Total Settlement Amount.

b. The application by Class Counsel for reimbursement of \$391,079.25 in expenses, including those paid to experts, from the Total Settlement Amount is also granted. The Court finds that these expenses were adequately documented

and reasonably and appropriately incurred in the prosecution of the class action. Class Counsel shall recover such fees and expenses from the Total Settlement Amount as and in the manner described in the Agreement. Because the final calculation of expenses is \$38,920.75 less than as authorized by the Agreement, that difference shall be included in the Net Settlement Benefit and allocated among Class Members in accordance with the Plan of Allocation. No later than seven business days following entry of this Final Order, the Notice Administrator shall provide to Defendants an updated electronic spreadsheet showing, for each Class Member, the information required by the Plan to effectuate payment of the Individual Settlement Benefit to each Class Member.

11. The Court finds that \$20,000 each should be paid to Robert Sessions and John Roman, and \$10,000 each should be paid to Joe Green, John Safian, and Pat Kovar as Case Contribution Payments for their efforts in prosecuting this case, helping Class Counsel litigate this matter, and helping the other members of the Class realize a significant monetary benefit. These Case Contribution Payments shall be paid from the Net Settlement Benefit in the manner described in the Agreement.

12. The Court recognizes that Defendants have denied and continue to deny any liability on Plaintiffs' and the Class' claims. Neither the Settlement, this Judgment, any papers related to the Settlement, nor the fact of Settlement shall be

used as a finding or conclusion of the Court or an admission by Defendants of any fault, wrongdoing, or liability whatsoever.

It is, therefore, ORDERED, ADJUDGED, AND DECREED that:

1. The parties shall carry out all the terms of the Settlement, including the payment of the Total Settlement Amount, the Individual Settlement Benefit to each Plaintiff and Class Member, and the release provisions in the Agreement in accordance with the terms of the Agreement.

2. Defendants shall have no liability or responsibility for any payments, fees, or costs under this Final Order and Judgment or the Settlement aside from the Total Settlement Amount. Under no circumstances shall Defendants be required to pay any amounts in furtherance of this Settlement, this Final Order and Judgment, and the administration of the Settlement other than the payment of the Total Settlement Amount.

3. Apart from Class Counsel's privileged communications with Plaintiffs and Class Members, the Parties' oral or written communications with anyone else (*e.g.*, the press or members of the public not seeking legal advice with respect to the Lawsuit or this Agreement) inquiring about the Lawsuit or this Agreement shall be limited to providing factual information about the Lawsuit or this Agreement that do not disclose information protected by the attorney-client privilege or work product exception and that do not disclose any information

concerning the discussions, communications, and negotiations concerning this Agreement. Nothing herein prohibits Class Counsel from describing the allegations made on behalf of the Class or Defendants from describing their defenses; however, in no event, whether to clients, prospective clients, or anyone else, shall any communication concerning the Lawsuit, the conduct of the Lawsuit, or this Agreement disparage, demean, or criticize the Settlement, the Agreement, any of the Parties, or any representative, attorney, or agent of the Parties.

4. Releases. As of the Effective Date:

A. Plaintiffs and each Class Member, together with each of their successors, assigns, beneficiaries, estates, dependents, heirs, administrators, and executors (“Releasers”) fully, finally, and forever release, acquit and forever discharge each of the Defendants and Released Parties from the Released Claims.

B. Releasers, without limitation, are precluded, enjoined and estopped from bringing in the future any claim or cause of action released in the preceding paragraph and are permanently enjoined from bringing any such claim or cause of action.

C. Nothing in this Final Order and Judgment or the Agreement shall preclude any action to enforce the terms of the Settlement.

5. The Court finds that Defendants have mailed the Class Action Fairness Act Notice ("CAFA Notice") previously approved by the Court to the appropriate persons or entities and that Defendants have therefore satisfied the requirements under CAFA.

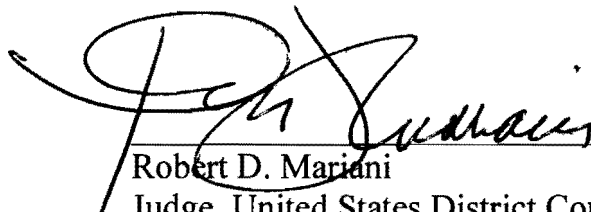
6. Without affecting the finality of this Judgment in any way, this Court will retain exclusive continuing jurisdiction over all parties and the Class for purposes of enforcing this Judgment and implementing and enforcing the Agreement, including the release provisions thereof. The Court may order any appropriate legal or equitable remedy necessary to enforce the terms of this Judgment and/or the Settlement.

7. The Court hereby dismisses this Action with prejudice and without costs (except as otherwise provided herein).

8. This is a final and appealable judgment.

SO ORDERED.

Dated: October 23, 2014.



Robert D. Mariani
Judge, United States District Court
Middle District of Pennsylvania