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59SCV-17-38
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**IN THE CIRCUIT COURT OF PRAIRIE COUNTY, ARKANSAS
CIVIL DIVISION**

PLAINTIFFS

**PAUL BETZNER AND RHONDA BETZNER,
HUSBAND AND WIFE; THE CALVIN FRED
BETZNER REVOCABLE TRUST; JAMES
ALBERSON AND TIFFANI ALBERSON, AS
PARENT AND NEXT FRIEND OF MJ, A
MINOR; KELLEY KELLY; TONY PATTERSON;
& CITY OF FREDONIA, A/K/A CITY OF
BISCOE, ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED**

No. 59SCV-17-38

v.

DEFENDANTS

**C.J. MAHAN CONSTRUCTION COMPANY,
LLC; API EQUIPMENT, LLC, PARSONS-
MAHAN JOINT VENTURE; PARSONS
CONSTRUCTION GROUP, INC.; JOHN DOES 1-
30; ANTHONY CRUZ; SCOTT RICHARDSON;
CHRIS GENTRY & BRYAN HOFEMAN**

**ORDER APPROVING SETTLEMENT FUND DISTRIBUTION
AND CLAIMS PROCESS AND INCREASING
THE SETTLEMENT ADMINISTRATOR'S FEE**

Before the Court is a motion to approve the distribution of the settlement funds to class claimants, to approve the claims process, and to increase the settlement Administrator's fee. The Court grants the motion as follows:

1. After years of litigation culminating in a trial on class issues that was hours from going to the jury, the Class Representatives (Plaintiffs) and Defendants reached settlement terms that secured a recovery for the Class Members. Under the terms of the

settlement, Defendants paid \$11,900,000 (the Settlement Fund), which is to be used to pay Class Members, fees and costs to Plaintiffs' counsel, incentive awards to Plaintiffs, and the cost of notifying the Settlement Class and administering the Settlement through a third-party administrator. The Court entered its order of final approval of the settlement on March 10, 2022, following a fairness hearing at which no one objected or opted out of the settlement.

2. The Settlement Administrator has processed the claims received and provided the Court with the names of each claimant being sent proceeds from the Settlement Fund, the amount being sent each claimant, and whether the funds are for an exposure claim, a property-damage claim, or both. The Settlement Administrator has also provided the Court with the names of each claimant whose claim was rejected and the reason for the rejection. The Court hereby approves those distributions and rejections.

3. The Settlement Administrator also informed the Court of the process by which the Settlement Fund was administered and sought Court approval for that process, particularly as to certain categories of claimants making property-damage claims. The Court hereby approves the following process undertaken by the Settlement Administrator:

- a) Numerous claims involve joint ownership interests in property including (i) joint ownership involving tenants in common, tenancy by the entireties (husband and wife), (ii) contracts for deed where a buyer is paying for property and residing at the residence but title is still held by the seller, and (iii) life estates where a life tenant currently resides in the property but at his or her death the property will

pass to the designated remaindermen. Often one or less than all of the joint owners made a claim for property damage. In this situation where one or more but not all of the joint owners filed a claim the Settlement Administrator treated it as a valid claim for that particular property. However, payments from the Settlement Fund for these joint claims will be made out jointly to all persons having an interest in the residence, even though the one receiving a portion of the funds may not have actually filed a claim (although another joint owner would have). In a joint ownership situation with tenants in common etc. where only one owner made a claim a check for the full amount will be delivered payable to all joint owners. The same procedure applies to contracts for deed and life estates. Where a buyer in a contract for deed filed a claim and the seller did not, the check for the damages will be made jointly to buyer and seller. Likewise with life estates where for example a claim was made by the life tenant, checks will be payable to both life tenant and remaindermen. Where more than one joint owner made a claim, the payment is to those claiming joint owners jointly in one payment. This process applies to joint property interests arising by marriage, by contract for deed, by intestacy, by life estate, or any other method.

- b) In some instances, most particularly with mobile homes, ownership of the property could not be verified by records in the County Recorder's office. The Settlement Administrator appropriately verified ownership of the property by other reliable means, including County Assessor records, titles, and sworn affidavit from the claimant.

- c) In some limited instances, claimants made the Settlement Administrator aware that they were claiming damages for contaminated plumbing in shop buildings or utility buildings that received water during the relevant period of time, for which the damage model used to determine damage amounts did not account. The Settlement Administrator allowed these claims as follows: water service was confirmed by affidavit or other reliable source; the type of foundation was determined based on assessor records (if available) or affidavits from the claimant or other reliable information; number of bathrooms in the building was confirmed by affidavit from the claimant or other reliable information; and the damage amount was calculated by awarding the amount designated for that number and type of bathrooms (full and half) similar to the adjustments that were made to add and subtract full and half bathrooms in the damage model.
- d) In some limited instances, the record property owner is deceased and no prior estate administration was initiated. In some cases, affidavits of small estate were provided and distributions were made to those designated as heirs in those affidavits. In other cases, affidavits from family members or heirship affidavits/deeds were provided by individuals with personal knowledge of the facts.
- e) In some instances, the property was transferred after the event leading to this suit. Settlement Funds were made to the record owner as of the date of the event consistent with the class definition.

f) In some limited instances, particularly with churches due to their tax-exempt status, the data needed to make the damage calculations were not available in the Assessor's files. Thus, the Settlement Administrator obtained the data by sworn affidavit from one with personal knowledge.

4. This Court retained jurisdiction under the Settlement Agreement over "the distribution of settlement proceeds to the Settlement Class." Settlement Agreement ¶ 12.12. Pursuant to that continuing jurisdiction, the Court extends the time for distributing Settlement Proceeds to the Settlement Class to the 31st day following the entry of this Order.

5. The Settlement Administrator also seeks an increase in the fee to be paid for administering the Settlement Agreement. Pursuant to the Settlement Agreement, the Settlement Administrator was to be paid a fee of 1.5% of the Settlement Fund, or \$178,500, for administering the Settlement. In addition to Settlement Administrator's personal time, he utilized paralegals and employees of his law firm in the administration process. The total claim process has involved more than 250 claims. The Settlement Administrator kept records of all time spent in the administration process revealing he spent over 400 hours on this matter and his paralegals spent over 650 hours on this matter before final distribution. There will be additional time involved with finalizing the settlement. This expenditure of time far exceeds the time anticipated for the initial fee amount set forth in the Settlement Agreement.

6. The administration process was more time consuming than initially anticipated for the following reasons:

a). Verification of property ownership, correct water account information and related matters. In many cases claimants initially provided incomplete information and later provided lengthy documents and verification such as wills, trusts, probate estate proceedings, family agreements, deeds, divorce decrees, opinions from attorneys, etc. to establish property ownership;

b). At least 1/3 of the residences involved are mobile homes which could not be verified by records in the County Recorder's office. Additional methods of verification were utilized including titles if available, preparation of sworn affidavits from owners and assessor records;

c). Calls had to be placed to a significant number of claimants because of incomplete or conflicting information as to property ownership;

d). Many of the claims involved deceased property owners, divorces, etc. and property ownership and public records had not been updated, which further complicated the verification process;

e). In numerous claims the water company physical service addresses did not match to physical addresses shown on the County Recorder or Assessor records which again involved additional time in the verification process;

f). Numerous calls were taken from claimants to help them with the claim process in addition to a full day hosting a claim clinic in Biscoe to assist claimants; and

g). Extremely detailed records and background information was prepared in this process resulting in 8 three ring binders with all of the details on each claimant.

7. The above facts justify an increase in the Settlement Administrator's fee.

The total Settlement Administrator's Fee shall be \$243,000.00 with expenses in the

amount of \$4,194.47.

IT IS SO ORDERED this 18 day of April, 2022.


HONORABLE ROBERT BANUM GIBSON, JR.