

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

<b>GLENN GATES, et al.,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>ROHM AND HAAS COMPANY, et al.,</b>	:	
<b>Defendants</b>	:	<b>NO. 06-1743</b>

**MEMORANDUM AND ORDER**

PRATTER, J.

FEBRUARY 20, 2008

In this putative class action, Glenn and Donna Gates, on behalf of themselves and all others similarly situated as residents and property owners in McCullom Lake Village in Illinois, sued Rohm and Haas Company, Rohm and Haas Chemicals, LLC (collectively, “Rohm and Haas”), Morton International, Inc. and Modine Manufacturing Company<sup>1</sup> pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9601, *et seq.*, and Illinois state law for damages allegedly resulting from contamination of their drinking water by pollutants allegedly generated and released by the Defendants.

After lengthy negotiations, the Plaintiff and Defendant Modine reached a proposed settlement, and now seek the Court’s preliminary approval of the proposed settlement agreement and the proposed form of notice to putative class members. The non-settling defendants, Rohm and Haas and Morton, object to certification of the proposed settlement classes, which are identical to the proposed litigation classes, prior to the Court’s decision regarding certification of

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<sup>1</sup> Defendants Huntsman and Huntsman Polyurethanes were dismissed without prejudice by stipulation on March 23, 2007 (Docket Nos. 91 and 93).

the litigation classes.

Following a hearing on February 11, 2008 and upon review of the parties' submissions and the governing law, the Court concludes preliminarily that the proposed settlement classes meet the requirements of Rule 23, and the proposed settlement is within the range of reasonableness. The Court also concludes that the notice provisions are consistent with the requirements of due process, Rule 23 and 28 U.S.C. § 1715. Accordingly, the Court will grant preliminary approval to the proposed class, class representatives, class settlement and notice provisions.<sup>2</sup>

#### **FACTUAL BACKGROUND**

The Gateses and the proposed class members are residents and property owners in McCullom Lake Village, Illinois, a town of approximately 1000 people and just over 400 homes. (See McCullom Lake Village, Illinois Fact Sheet, American Factfinder, United States Census Bureau, *available at* <http://factfinder.census.gov> (last visited 2/14/08)).

Rohm and Haas Company is an international specialty chemicals company; Morton International, Inc. is its wholly owned subsidiary. Until January 1, 2005, Morton operated a speciality chemicals manufacturing facility in Ringwood, Illinois (the "Rohm/Morton facility"),

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<sup>2</sup> The Court also concludes, and Rohm and Haas acknowledges, that it is proper for the Court to preliminarily certify the settlement classes at this juncture, provided that the grant of preliminary approval is without prejudice to the defenses and positions of the non-settling defendants as to any issue, including certification of the litigation classes. (Tr. 2/11/08 at 5-6.) See also Columbus Drywall & Insulation, Inc. v. Masco Corp., 2007 WL 2119022, at \*7 (N.D. Ga. Jul. 20, 2007) (granting preliminary approval of partial settlement prior to decision on certification of litigation class); In re Bulk (Extruded) Graphite Prods. Antitrust Litig., 2006 WL 891362, at \*1 (D.N.J. Apr. 4, 2006) (certifying litigation class and noting prior approval of partial settlements as to other defendants). The Court's Order is without prejudice to the non-settling defendants' right to challenge class certification.

located directly north and allegedly hydrologically<sup>3</sup> and hydrogeologically<sup>4</sup> “up gradient” from McCullom Lake Village. As of January 1, 2005, Rohm and Haas Chemicals, LLC, a wholly owned subsidiary of Rohm and Haas, has been operating the Rohm/Morton Facility. Modine Manufacturing Company is an international manufacturer of heating and cooling technology. Since 1961 Modine has operated a manufacturing facility in Ringwood, Illinois (the “Modine Facility”), located directly north and allegedly hydrologically and hydrogeologically “up gradient” from McCullom Lake Village.

The Gateses allege that both facilities discharged into a landfill waste water containing chemicals that degraded to form vinyl chloride, a carcinogen. Water containing the vinyl chloride allegedly flowed underground in two “plumes”: a shallow plume that emptied into a marshy area southeast of the Rohm/Morton facility and more than a mile north of McCullom Lake Village, and a deeper plume that flowed through an alleged underground channel into the eastern part of McCullom Lake Village, where it contaminated certain Village drinking wells.

Between 1968 and 2002, vinyl chloride allegedly evaporating from the shallow plume blew over the Village, causing some Village residents to breathe varying amounts of it. Between 1978 and 2002, vinyl chloride in Village wells above the deeper plume allegedly mixed with the air in some Village houses when the well water was used for household purposes, and residents of those houses breathed it. Breathing the vinyl chloride allegedly placed Village residents at

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<sup>3</sup> Hydrology is “a science dealing with the properties, distribution, and circulation of water on and below the earth’s surface and in the atmosphere.” Merriam-Webster Dictionary 609 (11th ed. 2003).

<sup>4</sup> Hydrogeology is “a branch of geology concerned with the occurrence, use, and functions of surface water and groundwater.” Merriam-Webster Dictionary 608 (11th ed. 2003).

risk of contracting brain cancer, and the contamination had an adverse impact on the value of all real estate in the Village as of April 2006 (when this suit was filed). Consequently, the Plaintiffs, on behalf of themselves and other Village residents, seek funding for medical monitoring to detect brain cancer, as well as damages for the diminution in value of their properties.

The Plaintiffs concede, however, that to date, the Plaintiffs “have not identified any link between Modine and the alleged contamination of ground water referenced in the Complaint.” (Joint Motion at ¶ 3.) They also concede that “Modine was, at most, only a relatively small contributor to the alleged contamination of air asserted in the Complaint.” (*Id.*)

### **THE PROPOSED PARTIAL SETTLEMENT**

Following two full days of mediation with a former federal magistrate judge and extensive negotiations, the Plaintiffs and Modine reached a settlement resolving this matter as between those parties only. The proposed Settlement Agreement provides for the payment of up to \$2,000,000, allocated between two different proposed settlement classes. The proposed settlement classes consist of a Medical Monitoring Settlement Class and a Property Damage Settlement Class.

The “Medical Monitoring Settlement Class” is defined to include all persons who lived for one year or more in total (whether consecutively or not) within McCullom Lake Village during the time period from January 1, 1968 to December 31, 2002. The “Property Damage Settlement Class” is defined to include all persons who have held an ownership interest in real property within McCullom Lake Village at any time between April 25, 2006 (the date of the filing of the Complaint) to January 18, 2008 (the date the Settlement Agreement was executed). Excluded from both classes are individuals for whom a brain tumor has been detected prior to

January 18, 2008 (the date of the Settlement Agreement) and individuals who as of January 18, 2008 have already filed personal injury claims arising out of exposure to chlorinated solvents.

Pursuant to the Settlement Agreement, the funds are to be allocated as follows:

- (i) A fund of \$1,400,000 for payments to Medical Monitoring Settlement Class claimants, allowing for reimbursement of up to \$1,400 for any Medical Monitoring Settlement Class member to obtain an MRI or other appropriate screening or test;
- (ii) A fund of \$100,000 for payments to Property Damage Settlement Class claimants, allowing for a maximum payment of \$1,000 per property (to be shared pro rata if there are multiple claimants to a single property);
- (iii) Up to \$500,000 for Court-approved attorneys' fees and all settlement administration costs, including the costs of a Claims Administrator and notice costs related to the Settlement.

The amounts awarded to claimants for medical monitoring and property damages are to be increased or decreased pro rata, depending upon the number of claimants. Thus, it will be impossible to discern the exact amount each class member will receive until the final approval hearing, at which time the deadline for the submission of claims will have passed. In any event, however, each claimant in each settlement class will receive the same amount as the other members of that class, regardless of any individual differences in exposure or property damage.

In the event there are funds remaining after the payment of all timely property damage claims, the remaining funds will be paid, subject to the Court's approval, to local I.R.C. § 501(c)(3) charities that benefit McCullom Lake Village. In the event there are funds remaining

