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NEW PROPOSED SETTLEMENT IN ZEON CASE AFFECTS ALL RESIDENTS AND LANDOWNERS WITHIN 2 MILES OF ZEON PLANT

In the case of **Dickens et al v. Zeon GP, et al**, Judge Heyburn denied a proposed class settlement in August of 2009, after objection by Eboni and John Cochran and others that the settlement was unfair.

On May 2, 2011, a joint motion was filed by the Plaintiffs and by Zeon, seeking preliminary approval of a new class action settlement. **If approved**, the settlement will bind everyone who lives or lived, and owns or owned property within a 2-mile radius of the Zeon plant from July 28, 2001 to May 1, 2011, unless that person opts out. Persons within the class area have until August 15, 2011 to either file a proof of claim or to opt out. A "fairness hearing" will be held on August 31, 2011 at 1:00 p.m. at the Gene Snyder U.S. Courthouse, 601 West Broadway, Louisville, Kentucky 40202.

What happens if you do nothing.

If you do nothing, then you are bound by the agreement (if it is approved by the Court at the August 31, 2011 hearing), and you receive no money.

What happens if you file a claim?

Under the settlement Zeon would pay \$1.475 million dollars into four funds.

Within the 1-mile radius, a pool of \$600,000 is established for those who lived or owned property between 2001 and April 15, 2011 and submit a claim form. Money is divided equally among **each property** (which includes commercial, residential and all other properties) for which a claim form is submitted, with a **maximum payment to each land**

parcel of \$750. Whatever amount is paid per property would then be divided among all current and former residents and owners of that property since 2001.

For each parcel, if there is more than one claim, 20% of the total share for that parcel is divided among owners and 80% divided based on residency. For multiple ownership and residency claims for a parcel, divided based on term of residency or ownership with current owners and residents awarded more. Any funds left over go to Elementary School Fund.

It appears from the filed list of addresses that there are roughly 1,975 separate properties within the 1-mile radius. Assuming one owner and one resident only per home, if all landowners filed, the settlement would provide \$303.79 to each property. With each owner and resident at any time during the 10-year period of 2001-2011, the maximum of \$750 per parcel is divided. The **only** way in which a landowner will receive \$750.00 is if no more than 800 claims are filed out of the potential 1,975.

While the notice states that you will receive a minimum payment of **\$300**, that is not stated in the agreement. Among the issues that Ms. Cochran will raise at the fairness hearing is that the minimum **should** be paid because it was stated in the notice that it would.

For the 1-to-2 mile residents, a \$350,000 pool is created, to be divided along the same lines as for the 1-mile or less properties, and total for each parcel is **capped at \$100**. Any funds left over go to Elementary School Fund.

According to the list of addresses filed with the proposed settlement, there are 12, 239 properties in the zone of 1 to 2 miles from the plant. If a claim is filed for each parcel, each landowner would receive \$28.59. The **only** way that a landowner would receive the maximum amount of \$100 is if 3,500 or fewer claims are filed out of the potential 12,239. Again, the notice states that if you file a claim and live between 1 and 2 miles, you will get a minimum of \$30. We will request that this be paid if the settlement is approved.

\$250,000 goes to an “**Elementary School Fund**” paid to the Jefferson County Educational Foundation to support academic or extra-curricular programs, services, equipment, materials and supplies to be distributed in approximately equal amounts to nine elementary schools located within the Class Area, including Brandeis, Cane Run, Carter, Crums Lane, Foster Traditional, John F. Kennedy Montessori, Maupin, Mill Creek, and Schaffner Traditional. Unless excess funds are added from the balances remaining in the class payments, each of the schools would get \$27,777, less whatever overhead the Foundation charges.

\$300,000 would go to costs, expenses and attorney fees.

What you give up if you don't opt out:

The settlement would release Zeon from all claims that any class members “ever had, now has, **or hereafter can have**” relating to the matters alleged in the lawsuit, including all claims that could have been asserted, except for personal injury claims that could not have been asserted at the time of the settlement (meaning that the injury occurred before the settlement but didn't become apparent until after).

The class members agree that the settlement funds compensate them for past, present **and future** claims for nuisance or trespass, property damage, negligence, strict liability, health effects, personal injury or punitive damages relating to air emissions, releases and odors, provided that the air emissions and releases are not greater than they were at any time or for any year during the past five years.

The **only** future claims that could be made would be claims based on substantially different manufacturing processes and resulting in substantially different or greater air emissions, releases, or odors than current or historical operations and for claims based solely on a catastrophic release from the Facility (i.e., an unexpected, accidental incident resulting in releases atypical in nature and dramatically greater in amount than those historically associated with regular plant operations).

Class Members who don't opt out, also agree to issuance of an injunction barring them for five years from filing **any** lawsuit for damages or an injunction against Defendants arising from or relating to air emissions, releases, or odors from the Facility, except for claims for personal injury that could not have been asserted, in whole or in part, prior to the date of this Settlement Agreement or any claims for relief based solely on future operations of the Facility that involve both substantially different manufacturing processes and result in substantially different or greater air emissions, releases, or odors than current or historical operations, and claims for relief based solely on a catastrophic release from the Facility.

So while the “Release” portion of the agreement protects Zeon only if they don't emit more than the highest emissions over the last five years, for the first five years of the agreement, class members can't sue even if the emissions are substantially higher than the last five years.

What happens now?

Class Members have until August 15, 2011 to either file a “Proof of Claim” or to “Opt Out.” The address to send either form is in the notice, and if you have lost your copy you can call 1-800-536-0045 and request another.

If you choose either to opt out or to file a proof of claim, make a copy for your records, and send it certified mail, return receipt requested to that you have proof that it was mailed and received.