

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: FOUNDRY RESINS ANTITRUST
LITIGATION**

This Document Relates To:

**ALL CASES EXCEPT Caterpillar Inc. v. Ashland
Inc., et al., Court File No. 2:04-cv-01165-GLF-MRA**

Case No. 2:04-md-1638
Master Docket No. 2:04-cv-415

CLASS ACTION

Judge Gregory L. Frost
Magistrate Judge Mark R. Abel

**FINAL ORDER AND JUDGMENT REGARDING
SETTLEMENT WITH ASHLAND INC.**

This matter is before the Court for consideration of the March 13, 2008 Class Plaintiffs' Motion for Final Approval of Settlement Agreements with the HAI Defendants and Ashland Inc., and Plan of Distribution of the Settlement Funds. (Doc. # 243.) After a duly-noticed final approval hearing held on March 28, 2008, the Court **GRANTS** the motion in regard to the settlement with Ashland Inc. ("Ashland").

It is therefore hereby ORDERED, ADJUDGED, and DECREED as follows:

(1) The Court finds that due and adequate notice was provided to all members of the Class notifying the Class, *inter alia*, of the proposed settlement with Ashland Inc. ("Ashland"). The notice provided was the best notice practicable under the circumstances and included individual notice by first class mail to all members of the Class who could be identified through reasonable effort and a summary notice published in the national edition of *The Wall Street Journal*.

(2) In support of its conclusions of law that this settlement is fair, reasonable, and adequate, the Court makes the following findings:

Plaintiffs' likelihood of success on the merits is reasonably balanced against the total settlement amount, including the settlement amount available to class members after attorney fees and litigation expenses are deducted. As Plaintiffs concede, the complexity and inherent uncertainty of this litigation presented significant but not necessarily insurmountable challenges to proving liability and damages to a jury. Although Plaintiffs have presented a sound argument that they could address these challenges, the settlement avoids these issues and by Plaintiffs' own estimation affords them a high percentage of their estimated total possible damages (which Defendants understandably question).

The complexity, expense, and likely duration of this litigation favors the settlement. The inherent nature of this litigation has presented numerous obstacles to a prompt resolution and would no doubt continue to present fresh challenges to a fast resolution despite the best efforts and diligence of the Court and all counsel involved. During the course of what would necessarily continue to be protracted litigation, all parties would incur significant expenses. The settlement avoids these issues while affording the class members a fair resolution.

Settlement at this relatively early stage of the proceedings is a preferred resolution to an extended course of litigation that would likely ultimately result in settlement at a later date. Although the parties have completed necessary discovery to address threshold issues, they have only begun to address the more comprehensive, costly, and time-consuming discovery that would lead to the probable filing of dispositive motions and trial. The settlement avoids these expenditures of time and resources while, importantly, at the same time occurring at a stage in

this litigation that enables the parties to make informed decisions regarding their respective cases.

The Court has recognized previously the notable experience and qualifications of counsel on both sides of this litigation, all of whom have indicated that the settlement agreements with Ashland and the HAI Defendants presents a sound resolution to the issues before this Court. The Court agrees with counsels' evaluation of the settlements.

The Court recognizes that the parties have engaged in arms-length negotiations that properly safeguard the interests of the class members. There has been no evidence or suggestion of collusion.

There have also been no objections raised by any class members. Only two potential class members have opted out of the class. Considering that over 1,000 notices were mailed, as well as the proper notice by publication undertaken pursuant to this Court's approval and supervision, the absence of any objection supports the overall fairness and the inherent reasonableness of the settlement. The class has reacted favorably, and this Court agrees with that reaction.

Finally, the Court concludes that the proposed settlement favors the public interest. As Plaintiffs' briefing accurately describes, the settlement preserves the time and resources not only of the parties, but also of the Court. Most importantly, it affords the parties a mechanism through which they can resolve their dispute while continuing to provide services to both the class members and other members of the public.

(3) The Ashland Settlement Agreement is therefore approved as fair, reasonable and adequate and shall be consummated according to its terms.

(4) This action, as to Ashland, is dismissed with prejudice without costs, except as provided for in the Ashland Settlement Agreement. All Released Claims (as defined in the Ashland Settlement Agreement) are forever extinguished, barred, and foreclosed as against all Releasees (as defined in the Ashland Settlement Agreement).

(5) All members of the Class certified by the Court in an Order dated May 2, 2007, as amended by the Court's Order of October 9, 2007, are bound by this Final Order and Judgment, except any Class members that excluded themselves from the Class. Caterpillar Inc., which previously filed its own individual action, and Eagle Research & Development, Ltd., have excluded themselves from the Class.

(6) The Class is defined as follows:

All persons located in the United States (excluding Defendants, their parents, predecessors, subsidiaries, and affiliates, and co-conspirators, as well as government entities) who purchased Foundry Resins directly from Defendants or any of their predecessors, or controlled subsidiaries or affiliates, at any time during the period from January 1, 2001 through December 31, 2003 (the "Class Period").

The term "Foundry Resins" is defined as resin systems (often including a resin, co-reactant and catalyst) and refractory coatings used in foundries to produce casts and molds to cast metal. The term Foundry Resins excludes resin coated sand and liquid and flake shell resins. Additionally, the class claims do not include purchases under written contracts that were entered into before January 1, 2001, continued through December 31, 2003, and provided for changes in prices based solely on changes in cost of materials.

(7) The Class Representatives are as follows: State Line Foundries, Kore Mart, Lancaster Foundry Supply, Kulp Foundry, AmeriCast Technologies, and Tri-Cast Limited.

(8) The Court reserves exclusive jurisdiction over the Ashland Settlement Agreement, including administration and consummation of the Ashland settlement.

(9) Pursuant to Federal Rule of Civil Procedure 54(b), the Court expressly determines that there is no just reason for delay, and entry of judgment is directed.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE