US EPA ARCHIVE DOCUMENT

Denham Springs News 11/20/97

Combustion plaintiffs complain over lack of access to settlement papers

Alice Dowty

WALKER — Two Combustion class action plaintiffs say they were not allowed to view the evidence relating to a proposed $3.5 million settlement with Chevron and Cooper Gilder Chemical, Inc.

A notice sent out to all 10,000 class members by the court states that "the full details of the proposed settlement" are available at the Plaintiffs Steering Committee office in Baton Rouge, but plaintiffs Joel Talley and Karen Holmes said employ-

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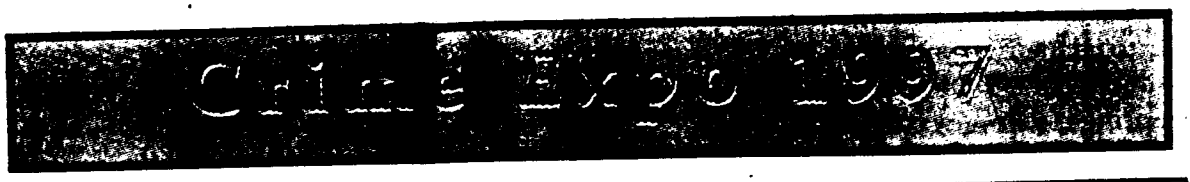

Priscilla Williams (above), a nurse at the Denham Springs Health Unit, gives Ruby Walock a flu shot at the Crime Expo at North Park Friday. In addition to free flu shots, the expo featured a free lunch, free seminars and over 20 vendors offering free publications. Senior citizens listen to Sheriff Willie Graves (right) as he discusses security issues.

News photos by David Normand

the whole story behind
call."

Kinchen said she was m
able beyond words when
realized that the money
not in her purse, "but it's
return of the money that
always remember," she s
"This will always be
Thanksgiving that reinfo
our faith in the goodnes
people."

Out of the $8,000
which was lost, $7,400
returned.

"We don't know whe
our caller kept $600
whether there is more to
story than that," Kinchen
"We would like him to k
how grateful we are. He
read this newspaper, so
hope he reads this. Thank
thank you very much."

Kinchen spent a mise
five days between the tim
discovered the loss of
money and the time it
returned.

"There was this initial
belief," Kinchen said, "
any minute I'd remem
where the money wa
looked and looked; I
over in my mind every
I'd taken. Then I had to
my husband the money
gone and that made it rea
husband never lost his te
never lectured me. I sup
he saw how up miserabl
upset I was.

Searching for the m
became an automatic, o
sive part of her life for
days.

"I cried for three da
couldn't eat. I kept remi
myself that money is
money. And I thought
people who lose the r
important things in
Kinchen said. "I th
about parents who lose a
and how unbearable the
must be. I couldn't
myself from searchin
hoping that I'd find w
was looking for. Pa
would never stop lookin
a child. It must become

$8
Continued on Pag

Combustion

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ees at that office said they could not hand over the documents.

A hearing is scheduled in federal court Dec. 9 to decide whether to accept the proposed $3.5 million settlement. Plaintiffs who wish to object must mail written comments in advance and must appear in court Dec. 9, according to the court notice. Objections and the reasons for those objections must be mailed no later than Dec. 1 to Clerk of Federal Court, 106 J.D. Waggonner Jr. Federal Building, 500 Fannin Street, Shreveport, Louisiana, 71101.

"We cannot evaluate this final settlement if we are not allowed to view the documents," Talley said. "This is the end of an 11-year-old case and the end of our hopes for a jury trial," Talley said.

Talley and Holmes say they were interested in reviewing the documents because they had heard that Chevron was probably the single largest contributor of waste oil to the Combustion site.

"I have been told that 45 percent of the Combustion oil might have come from Chevron," Talley said.

"I don't believe we have anything to lose by objecting," Holmes said, "because I do not believe we will ever see a penny of this final settlement. The judge is already getting suggestions from the lawyers about other ways to spend it, along with the money left over from the reserve funds."

Sludges from the unlined pits at Combustion "contained extremely high levels of volatile organic solvents, both of the aromatic type such as benzene and toluene, and of the halogenated type such as tetrachloroethylene and chlorobenzene," according to a written report by plaintiffs' expert witness Dr. Donald Rosebrook.

The high zinc content "would indicate that some client of the operation has one or more zinc compounds in the waste. Such a client could be Chevron's Belle Chase Additives Plant," Rosebrook wrote.

Samples of leached sludge showed minimal zinc, suggesting that it was "tied up in organic compounds such as the zinc diorganodithiophosphates produced by Chevron," Rosebrook wrote.

"We found technical documents like this at the Department of Environmental Quality, but we still have no way of getting the complete array of evidence concerning Chevron without the cooperation from officers of the court," Holmes said. "Without those documents, I don't see how we can make an informed decision about the fairness of a $3.5 million settlement."

Previous settlements with other defendants resulted in a total of over $127 million, according to court records.

About $58 million out of $127 million is now being disbursed to about 10,000 plaintiffs, most of whom never lived or worked near the site, but were eligible to enroll because they were parish residents.

"That does not seem fair to those of us who did live near the site while it was active," Talley said. "The hearing Dec. 9 is our last opportunity to address fairness issues before this court."

U.S. District Judge Richard Haik has written about standards for class settlements.

"The cardinal rule that a court must follow when considering final approval of a proposed class settlement," Haik wrote, "is to ensure that the proposed settlement is 'fair, reasonable, and adequate.' More particularly, the Fifth Circuit has described the court's duty as ensuring that the settlement is in the interest of the class, does not unfairly impinge on the rights and interests of dissenters, and does not merely mantle oppression."

Concerning the complexity of the case, Haik wrote that he had been told that if all the files from the Plaintiffs Steering Committee and from the defendants' offices were combined in the courtroom, the entire room would be filled.

"It is the estimate of this Court that paper would flow into the Courthouse corridors as well," Haik wrote.

More than 2,300 party-defendants have been involved in the case and about 530 attorneys filed and argued motions, according to court records.

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

JAN - 9 1998

ROBERT H. SHEMWELL, CLERK
BY _____ DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

IN RE: COMBUSTION, INC.	*	ACTION NO: 94MDL4000
	*	ALL CASES
	*	JUDGE HAIK
	*	MAGISTRATE JUDGE TYNES

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REPORTER'S OFFICIAL TRANSCRIPT OF THE FAIRNESS HEARING PERTAINING TO THE SIX SUPPLEMENTAL SETTLEMENT AGREEMENT BEFORE THE HONORABLE RICHARD T. HAIK UNITED STATES DISTRICT JUDGE

December 9, 1997

ORIGINAL

MARY V. THOMPSON
OFFICIAL COURT REPORTER
161 FEDERAL BUILDING
705 JEFFERSON STREET
LAFAYETTE, LOUISIANA 70501

Proceedings Recorded By Mechanical Stenography; Transcript Produced By Computer

1 correct?

2 MS. HOLMES: Yes, sir, you are. I was here for

3 the April 18th hearing, but at that time I did not really

4 know enough -- I didn't have the forthwith (sic) and I was

5 not informed by any of my PSC attorneys as to what was

6 actually going on.

7 THE COURT: Nor did you make yourself available to

8 those things prior to that date; am I correct?

9 MS. HOLMES: I was always available.

10 THE COURT: No, no. By that I mean, you didn't go

11 and do the research that you've done at this point?

12 MS. HOLMES: I had no idea it existed and the

13 depository wasn't open to us at this time. QLS was not

14 available to us then.

15 THE COURT: So the answer to my question is you

16 did not file any type of objection to the first five?

17 MS. HOLMES: No, sir, I did not.

18 THE COURT: Thank you very much.

19 **MS. HOLMES: (CONTINUING)**

20 Q. And if I may proceed, we have a thing that is

21 called Exhibit K, and it comes out of Exhibit A in the

22 preliminary settlement agreement. And one of our major

23 beefs was because everything was sealed in envelopes for

24 in camera review before the Court, we didn't really know

25 enough on just the merits of Chevron really to be standing

1 THE COURT: Well, 12,300 and something claimants.
2 MR. TALLEY: Exactly. And it said you can review
3 that by coming to the office on Third Street and you'll be
4 able to see it in its entirety.
5 THE COURT: See what?
6 MR. TALLEY: The Sixth SPSA. So we got there and
7 it was not there. It was not available. So then we had to
8 go to the claims office. You know, where they were issuing
9 the checks. Now, if there was 12,300 and whatever you
10 quoted people that went there, they would have left there
11 empty handed. They would not have been able to see them.
12 THE COURT: Well, the number of people who went
13 there to file -- to pick up their checks, is that what you
14 are talking about?
15 MR. TALLEY: No, sir. I was talking about to see
16 the -- it says you can see the complete -- for a complete
17 copy of the sixth SPSA come to the office at Third Street,
18 downtown Baton Rouge.
19 THE COURT: Okay. Are you telling me it was not
20 there?
21 MR. TALLEY: Yes, sir, exactly. And I have a
22 letter here we signed. Ms. Holmes and I went there to
23 review it.
24 THE COURT: Well, I think it was there. But
25 anyway from there they sent you somewhere else, you said?

1 MS. SMITH: Rebecca Smith.
2 THE COURT: All right.
3 MS. SMITH: Okay. And I just want to know how
4 this can be a fairness hearing when I have proof right
5 here -- and I have a copy of Mr. Talley's letter that came
6 back with the stamp on it. He didn't lose the stamp. And I
7 have --
8 MR. UNGLESBY: I'll get it from you, ma'am.
9 MS. SMITH: Over 12,000 people were sent the wrong
10 address.
11 MR. UNGLESBY: What part do you want me to see?
12 MS. SMITH: This is the address for the Federal
13 Clerk of Court. This is the one Mr. Talley sent it to.
14 This is the correct address for the federal court.
15 MR. UNGLESBY: Okay.
16 MS. SMITH: So 12,000 people were sent the wrong
17 information.
18 THE COURT: All right.
19 MR. UNGLESBY: Help me, here.
20 THE COURT: This is off the record.
21 (Off-the-record discussion.)
22 THE COURT: Let's go back on the record. The
23 question is?
24 MR. UNGLESBY: Let me show you this stuff. She is
25 right -- or something is wrong.