

IN THE CIRCUIT COURT OF  
MARSHALL COUNTY, WEST VIRGINIA

ERNIE LEE ANDERSON, et al.,  
and DENNIS F. MOORE, et ux.,

Plaintiffs

vs.

COLUMBIAN CHEMICALS COMPANY,  
a foreign corporation; et al.,

Defendants and  
Cross-Plaintiff and  
Cross-Defendants.

and

RAIN CII CARBON LLC,

Third-Party Plaintiff

vs.

LIBERTY MUTUAL FIRE INSURANCE,  
et al.,

Third-Party Defendant Insurers

and

BAYER MATERIALSCIENCE, LLC., et  
al.,

Third Party Commercial Defendants.

CIVIL ACTION NO. 09-C-220

Judge Jeffrey D. Cramer

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**ORDER FINDING SETTLEMENTS WERE MADE IN GOOD FAITH AND  
DISMISSING PLAINTIFFS' REMAINING CLAIMS**

The court has considered the *"Plaintiffs' Motion For Finding Of Good Faith Settlement  
And Request To File Settlement Pleadings And Agreements Under Seal"* submitted by the

Plaintiffs (hereinafter Plaintiffs) with respect to Plaintiffs proposed settlements with Defendant Rain CII Carbon LLC, by and through its Third-Party Defendant Insurers, National Union Fire Insurance Company of Pittsburgh, Pa., Liberty Mutual Fire Insurance Company, James River Insurance Company, and Gulf Underwriters Insurance Company; Defendant ConocoPhillips Company; and Third-Party Defendants, Ormet Corporation and Ormet Primary Aluminum Corporation, PPG Industries, Inc. and Olin Corporation, (collectively the "Settling Defendants").

The court has considered the motion and as well the pleadings filed in these lawsuits together with the representations of counsel and further considered the independent investigation of two Guardians *ad litem*, who were previously appointed by this court to independently investigate the claims of twenty-eight minors/wards claimants, and accordingly makes the following **FINDINGS OF FACT**:

- 1) There is no evidence of corrupt behavior, collusion, fraud or dishonesty in obtaining these settlements;
- 2) Any non-settling defendant would not be substantially deprived of a fair trial as a result of these settlements;
- 3) The settlements were the result of arm's-length negotiations;
- 4) Plaintiffs' counsel and Settling Defendants' counsel are all experienced counsel who have handled similar cases of this magnitude;
- 5) Plaintiffs and Settling Defendants' counsel entered into the settlements to limit potentially substantial litigation costs, to avoid potential adverse verdicts and to extinguish all claims including non-contractual indemnity and contribution claims and thus eliminate further litigation;

- 6) Plaintiffs have entered into the settlement agreements because of the uncertainty of a verdict or if a verdict is obtained the uncertainty whether a lower award would be made and further to eliminate additional substantial expenses in the prosecution of these claims;
- 7) Any non-settling defendant may be entitled to set off these settlements from any verdict obtained against them;
- 8) The Settling Parties have disclosed to the court the amounts of settlements, all of which are confidential;
- 9) All of the settlements are supported by appropriate and adequate consideration;
- 10) There is no evidence that the Plaintiffs and Settling Defendants were motivated by an attempt to single out a non-settling party for wrongful tactical gain; and
- 11) There are no relationships between the Plaintiffs and Settling Defendants' such as family ties, employer-employee, or other relationship that might raise a question as to potential collusion among the Settling Parties.

Based upon the aforesaid **FINDINGS OF FACT** the court makes the following

**CONCLUSIONS OF LAW:**

- 1) No non-settling party has been substantially deprived of a fair trial because of corrupt behavior on the part of the Settling Parties;
- 2) The determination of whether a settlement is made in GOOD FAITH is a matter in the sound discretion of the court. See *Smith v. Monongahela Power Co.*, 189 W.Va. 237, 245-46, 429 S.E.2d 643, 651-52 (1993);
- 3) The settlement between Plaintiffs and Ormet Corporation and Ormet Primary Aluminum Corporation, PPG Industries, Inc. and Olin Corporation is subject to the

same treatment as a pre-suit settlement. *See Cline v. White* 183 W.Va. 43, 393 S.E.2d 923, 927 (1990); *Cook v. Stansell*, 186 W.Va. 189, 411 S.E.2d 844 (1991).

- 4) Each and every settlement of Plaintiffs with Settling Defendants' was made and entered in good faith;
- 5) All claims including all cross claims and third party claims that have been or could be filed for non-contractual indemnity and/or contribution against the Settling Defendants are extinguished and/or dismissed with prejudice.

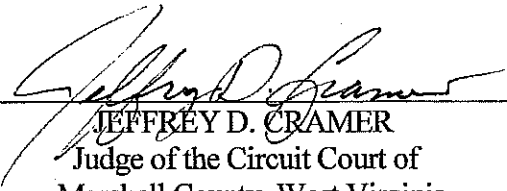
Accordingly, it is hereby **ORDERED** that (1) all claims that were or could have been asserted by Plaintiffs against the Settling Defendants, *i.e.*, Defendants, Rain CII Carbon LLC and ConocoPhillips Company, and Third-Party Defendants, Ormet Corporation and Ormet Primary Aluminum Corporation, PPG Industries, Inc. and Olin Corporation, are hereby dismissed with prejudice; (2) all cross-claims and third-party claims that have been asserted against the Defendants, Rain CII Carbon LLC and ConocoPhillips Company and Third-Party Defendants, Ormet Corporation and Ormet Primary Aluminum Corporation, PPG Industries, Inc. and Olin Corporation, are hereby dismissed with prejudice; and (3) all other claims for non-contractual contribution and indemnity that could have been asserted against the Defendants, Rain CII Carbon LLC and ConocoPhillips Company and Third-Party Defendants, Ormet Corporation and Ormet Primary Aluminum Corporation, PPG Industries, Inc. and Olin Corporation, are barred. *See Bd. of Educ. of McDowell County v. Zando, Martin & Milstead, Inc.*, 182 W.Va. 597, 606, 390 S.E.2d 796, 805 (1990); *Cook v. Stansell*, 186 W. Va. 189, 191-92, 411 S.E.2d 844, 846-47 (1991); *Hager v. Marshall*, 202 W.Va. 577, 584-85, 505 S.E.2d 640, 647-48 (1998). It is further **ORDERED** that all settlements identified herein were made in **GOOD FAITH**.

The court further finds pursuant to **TRIAL COURT RULE 10.03** that a request to limit access to all settlement amounts, settlement agreements and related pleadings has been made and that there is **GOOD CAUSE** to graht said motion including that these settlements are confidential and personal to the Plaintiffs and Settling Defendants.

It is therefore **ORDERED** that the Settlement Agreements, individual settlement amounts and all related pleadings filed by the Plaintiffs and/or Settling Defendants shall be filed under seal and shall not be disclosed or opened without an **ORDER** of the Court. It is further


**ORDERED** that an attested copy of this Order shall be sent to all counsel of record and the Guardians *ad Litem*.


**ENTERED** this 11<sup>th</sup> day of March, 2016.

  
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JEFFREY D. CRAMER  
Judge of the Circuit Court of  
Marshall County, West Virginia

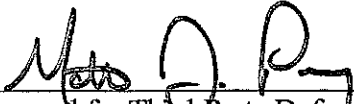
**APPROVED AND AGREED TO BY:**

  
\_\_\_\_\_  
Of Counsel for Plaintiffs

  
\_\_\_\_\_  
Of Counsel for Third-Party Defendant  
National Union Fire Insurance Company of Pittsburgh, Pa.,  
on behalf of Defendant Rain CII Carbon LLC

  
\_\_\_\_\_  
Of Counsel for Third-Party Defendant  
Liberty Mutual Fire Insurance Company,  
on behalf of Defendant Rain CII Carbon LLC

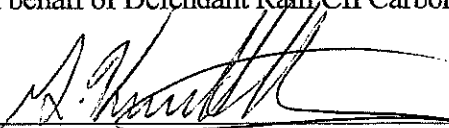
Certified by me this 11<sup>th</sup> day  
of March 2016.  
Doreen Crow Deputy



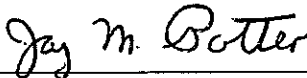
Of Counsel for Third Party Defendant  
James River Insurance Company,  
on behalf of Defendant Rain CII Carbon LLC



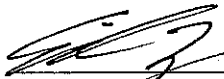
Of Counsel for Third-Party Defendant  
Gulf Underwriters Insurance Company,  
on behalf of Defendant Rain CII Carbon LLC



Of Counsel for Defendant, ConocoPhillips Company

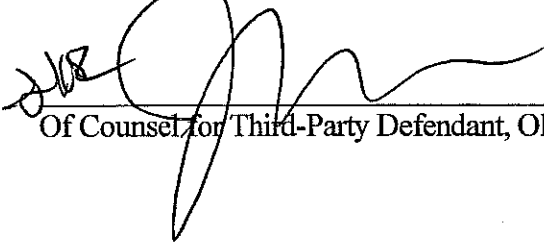


Of Counsel for Third-Party Defendant, Ormet Corporation  
and Ormet Primary Aluminum Corporation



Erik Legg 7738 for Michael J. Fortrell

Of Counsel for Third-Party Defendant, PPG Industries, Inc.



Of Counsel for Third-Party Defendant, Olin Corporation