



West Virginia E-Filing Notice

CC-20-2017-C-765

Judge: Carrie Webster

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vbunch@bffb.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
RICHARD JEFFRIES, INDIVIDUALLY & OBO ALL v. WEST VIRGINIA AMERICAN WATER
COMPANY
CC-20-2017-C-765

The following order - case was FILED on 5/5/2025 3:34:23 PM

Notice Date: 5/5/2025 3:34:23 PM

Cathy S. Gatson
CLERK OF THE CIRCUIT COURT
Kanawha County
P.O. Box 2351
CHARLESTON, WV 25301

(304) 357-0440

In the Circuit Court of Kanawha County, West Virginia

**Colours Beauty Salon, LLC,
Richard Jeffries,**
Plaintiffs,

v.

Case No. CC-20-2017-C-765
Judge Carrie Webster

**West Virginia-American Water
Company,**
Defendant

**ORDER GRANTING PRELIMINARY APPROVAL OF THE CLASS SETTLEMENT,
CONDITIONAL CLASS CERTIFICATION, DIRECTING NOTICE TO THE CLASS, AND
SCHEDULING FAIRNESS HEARING**

This matter having come before the Court pursuant to a Joint Motion for Preliminary Approval of the Class Settlement, Conditional Class Certification, Directing Notice to the Class, and Scheduling the Fairness Hearing (the “Joint Motion”), the Court having heard the matters and being fully advised in the premises, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. Preliminary Approval of Settlement: Before this Court is the proposed Settlement Agreement, dated May 2, 2025, among Plaintiffs and Defendant West Virginia-American Water Company. The terms of the Settlement Agreement, including all Exhibits thereto attached to the Joint Motion, are hereby preliminarily approved, subject to further consideration thereof at the Fairness Hearing provided for below. This Order incorporates the Settlement Agreement herein and makes it a part hereof. Unless otherwise provided in this Order, the terms defined in the Settlement Agreement shall have the same meaning in this Order. The Settlement Agreement was entered into only after extensive arm’s length negotiation by experienced counsel under the supervision of an experienced mediator in court-ordered mediation. The Court finds that the Settlement embodied in the Settlement Agreement is sufficiently fair, reasonable and adequate such

that notice of the Class Settlement should be given as provided in Paragraph 7 of this Order. In making this determination, the Court has considered the current posture of this litigation and other pending actions and the risks and benefits to the parties involved in both settlement of these claims and continuation of the litigation.

2. Settlement Class Definition: The Settlement Class is defined as individuals and Businesses who, between June 23, 2015, and July 1, 2015:

- resided in a dwelling supplied tap water by WVAW and located within the area shown on the map attached as “Exhibit 1” to the Settlement Agreement, or
- owned a Business operating in real property supplied tap water by WVAW and located within that area.

Exclusions. The following groups are not included in the Settlement Class:

- Officers, directors, or employees of WVAW or of any of WVAW’s affiliates;
- Members of the immediate family of Judge Webster and any associated court staff assigned to this case;
- Class Counsel and attorneys who have made an appearance for the Plaintiffs or Defendant in this case;
- Persons or entities who exclude themselves from the Certified Class (Opt Outs).

3. Conditional Certification of Settlement Class: The Court preliminarily finds that the proposed Settlement Class meets all the applicable requirements of W. Va. R. Civ. P. 23(a) and (b)(3), and hereby certifies the Settlement Class for settlement purposes only. The Court hereby preliminarily finds, solely in the specific context of this Settlement Class, that the following requirements for certification are met:

a. Numerosity.

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Analysis of this requirement is unchanged since this Court decided the issue in its class certification order of July 5, 2022. See July 5, 2022, Order

Regarding Class Certification After Further Consideration in Light of *State ex rel. Surnaik Holdings of WV, LLC v. Bedell* (July 5, 2022, Class Certification Order) at 8. The proposed Settlement Class is estimated to contain more than 20,000 residential customers and around 2,000 business customers. Numerosity is satisfied.

b. Commonality.

Rule 23(a)(2) requires the existence of one or more “questions of law or fact common to the class.” The analysis of commonality is also unchanged since the July 5, 2022, Class Certification Order. Plaintiffs identified questions relating to whether Defendant breached its obligations under statutory and common law. These questions are sufficient to establish commonality under W. Va. R. Civ. P. 23(a)(2).

c. Typicality.

Rule 23(a)(3) requires that the claims and defenses of the representative parties be typical of the class as a whole. This issue is unchanged since the July 5, 2022, Class Certification Order and for purposes of analysis of the Settlement Class, Plaintiffs’ claims are typical of the claims of the proposed Settlement Class Members.

d. Adequate Representation.

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” As this Court found in its July 5, 2022, Class Certification Order, Plaintiffs are adequate class representatives, and Plaintiffs’ counsel has the necessary skills and experience to serve as adequate counsel for the Settlement Class Members.

e. Predominance of Common Issues.

Under *State of West Virginia ex rel. Surnaik Holdings of WV, Inc. v. Bedell*, 244 W. Va. 248, 852 S.E.2d 748, syl. pt. 7 (2020) (“*Bedell*”), in assessing Rule 23(b)(3) predominance, the Court must (1) identify the parties’ claims and defenses and their respective elements; (2) determine whether these issues are common questions or individual questions by analyzing how each party will prove them at trial; and (3) determine whether the common questions predominate. Furthermore, the Court should assess predominance “with its overarching purpose in mind—

namely, ensuring that a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.” *Id.* In the context of this Settlement Class, Plaintiffs’ allegations regarding liability issues predominate over individual questions and the predominance requirement of Rule 23(b)(3) is satisfied.

f. Superiority of the Class Action Mechanism.

Bedell also requires a thorough analysis of the superiority requirement of W. Va. R. Civ. P. 23(b)(3). Under the superiority test, the court must “compare the class action with other potential methods of litigation.” *Bedell*, 852 S.E.2d at 763. Factors that have “proven relevant in the superiority determination include the size of the class, anticipated recovery, fairness, efficiency, complexity of the issues and social concerns involved in the case.” *Id.*, citing *Cleckley, Davis & Palmer, Jr., Litigation Handbook on West Virginia Rules of Civil Procedure §23(b)(3)[2][b]* at 554. For this Settlement Class, the Court finds that the class action mechanism will promote efficiency and uniformity of judgment, because the many Settlement Class Members will not be forced to separately pursue individual claims.

4. If the Settlement Agreement is terminated or is not consummated for any reason whatsoever, the certification of the Settlement Class shall be void, and Plaintiffs and the Defendants shall be deemed to have reserved all of their rights as set forth in the Settlement Agreement, including but not limited to all claims, defenses, and issues under W. Va. R. Civ. P. 23, subject only to the fact that the Court previously certified an issues class under W. Va. R. Civ. P. 23(c)(4).

5. **Class Representatives:** Designated representatives for the Settlement Class are as follows: Richard Jeffries and Colours Hair Salon, LLC.

6. **Settlement Class Counsel:** The Court further preliminarily finds that the proposed Class Counsel fairly and adequately represent the interests of the Settlement Class pursuant to W. Va. R. Civ. P.23(g). The Court hereby appoints to serve as Class Counsel: Dante diTrapano and Alex McLaughlin of the law firm of Calwell Luce

diTrapano PLLC, Van Bunch of the law firm of Bonnett Fairbourn Friedman & Balint, P.C. and W. Jesse Forbes of Forbes Law Offices, PLLC.. The Court preliminarily finds that these attorneys meet the standards of W. Va. R. Civ. P.23(g) and that they will fairly and adequately represent the interests of the Settlement Class such that it is appropriate to appoint them as Class Counsel.

7. Approval of Agreed Notice Program: The Court has considered the Notice Program as described in the proposed Agreed Class Notice Program, attached as Exhibit 7 to the Settlement Agreement, and the proposed forms of notice and summary notice, attached as Exhibits 2-6 to the Settlement Agreement, and finds that the forms, content, and manner of notice proposed by the Parties and approved herein meet the requirements of W. Va. R. Civ. P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the constitutional due process requirements of notice. The Court approves the Agreed Notice Program in all respects (including the proposed forms of notice, summary notice, Simple Claim Forms, and With Evidence Claim Forms) and orders that notice be given in substantial conformity therewith. The Court also approves the appointment of SmithCochranHicks PLLC ("SCH"), to implement the Agreed Notice Program (as part of its role as Settlement Administrator further approved below). The Agreed Notice Program shall commence no later than 21 days after entry of this Order and shall be completed no later than 28 days after commencing. The costs of preparing, printing, publishing, mailing and otherwise disseminating the notice shall be paid as Administrative Expenses in accordance with the Agreement.

8. Customer Information for Notice Program: The Court further orders that West Virginia American Water provide to the Settlement Administrator such customer information as requested for use in implementing the Agreed Notice Program, including

physical addresses, and available phone numbers and email addresses, all of which are to be handled by the Settlement Administrator as confidential in accordance with the Court's prior protective orders, subject to the provisions of the Settlement Agreement.

9. Appointment of Settlement Administrator: The Court appoints SmithCochranHicks ("SCH") as Settlement Administrator. Responsibilities of the Settlement Administrator shall include the following: (a) establishing a post office box and toll-free phone number (to be included in the Long Form Notices and the Summary Notices (together, the "Notices" to the Class)) for purposes of communicating with Class Members; (b) establishing and maintaining a website for purposes of posting the Notices, the Agreement, the Claim Forms and related documents; (c) accepting and maintaining documents sent from Class Members, including Claim Forms and other documents relating to claims administration; and (d) evaluating and identifying Compensable Claims and administering payments of such Claims to Settlement Class Members. The costs of administering the settlement shall be paid from the overall amount available under the Settlement and in accordance with the Agreement.

10. Filing of Claims: Valid and completed Claim Forms must be sent by U.S. Mail such that they are received (not just postmarked) by August 22, 2025, the Claims Submission Deadline set forth in the Notice or submitted online by the same date.

11. Opt-Outs from Settlement Class. Settlement Class Members who wish to be excluded (Opt Out) from the Settlement Class shall mail a written request for exclusion to the Settlement Administrator, so that it is postmarked no later than July 23, 2025.

12. In order to constitute a valid Opt Out, a Class Member must affirmatively state that the Class Member intends to Opt Out and to be excluded from the Settlement Class, and then personally sign the form. Consistent with the Settlement Agreement, the written

request form also will contain the Settlement Class Member's printed name, address, telephone number, and email address (if any), and a statement regarding whether the Settlement Class Member intends to bring a separate claim against the Defendant.

13. Valid Opt-Outs will not be bound by the Settlement Agreement, or the Final Approval Order and Judgment. Any Settlement Class Member who does not properly and timely mail a notice of exclusion as set forth in Paragraphs 11-12 above shall be automatically included in the Settlement Class, and shall be bound by all the terms and provisions of the Settlement Agreement, the Settlement and the Final Approval Order and Judgment, whether or not such Settlement Class Member received actual notice or shall have objected to the Settlement and whether or not such Settlement Class Member makes a claim upon or participates in the Settlement. Any Settlement Class Member that previously opted out of the class certified under W. Va. R. Civ. P. 23(c)(4) in this litigation will be included in the Settlement Class unless the Settlement Class Member follows the steps in Paragraphs 11 and 12 to exclude the Settlement Class Member from this Settlement.

14. Objections. Any Settlement Class Member who has not filed a notice of exclusion in the manner set forth above may object to the Settlement. Consistent with the Settlement Agreement, any Settlement Class Member who wishes to object to any aspect of the Settlement, including without limitation any objection to Class Counsel's request for Attorneys' Fees and Litigation Expenses or Class Representative Incentive Awards, must file with the Court, or as the Court otherwise may direct, a written statement of the objection(s). The written statement of objection(s) must include a detailed statement of the Settlement Class Member's objection(s), as well as the specific reasons, if any, for each such objection, including any evidence and legal authority the Settlement Class Member wishes to bring to the Court's attention. That written statement also will contain

the Settlement Class Member's printed name, address, telephone number, a statement that the Settlement Class Member has reviewed the Settlement Class definition and has not Opted Out of the Settlement Class, and any other supporting papers, materials, or briefs the Settlement Class Member wishes the Court to consider when reviewing the objection, including information sufficient to demonstrate that the objector is otherwise a Settlement Class Member.

15. An objecting Settlement Class Member may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the Settlement, the dismissal with prejudice of the Defendant, the entry of final judgment as to the Defendant, and/or the Motion for Approval of Attorneys' Fees and Litigation Expenses and Class Representative Incentive Awards; provided, however, that no person shall be heard in opposition to the Settlement, dismissal and/or entry of final judgment or the Motion for Approval of Attorneys' Fees and Litigation Expenses and Class Representative Incentive Awards, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless filed with the Court and served upon counsel listed below in Paragraph 16 on or before July 23, 2025. Such person must (a) file with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition and any documentation in support of such opposition on or before July 23, 2025, and (b) serve copies of such notice, statement, and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon all counsel listed below in Paragraph 16 on or before July 23, 2025. Settlement Class Members who object in the manner and by the dates provided herein shall be subject to the jurisdiction of this Court. Settlement Class Members who fail to object in

the manner and by the dates provided herein shall be deemed to have waived and shall forever be foreclosed from raising any such objections.

16. Counsel for the Parties who must be served with all documentation described above in Paragraph 15 are as follows:

Dante diTrapano
Calwell Luce diTrapano PLLC
500 Randolph Street
Charleston, WV 25302

Thomas J. Hurney, Jr.
Jackson Kelly PLLC
500 Lee Street East, Suite 1600
Charleston, WV 25301

17. Final Fairness Hearing: A hearing on final settlement approval (the “Final Fairness Hearing”) will be held on September 11, 2025, at 9 a.m. before this Court, at the Circuit Court of Kanawha County, West Virginia.

18. Final Approval Motion: Plaintiffs shall file their motion for final approval of the Settlement no later than August 7, 2025, and file the reply in support of that motion and in response to any objection and request to intervene no later than September 4, 2025.

19. Stay of Proceedings: All proceedings in this action or in any other action before this Court with respect to the case of *Jeffries v. West Virginia American Water Company*, are stayed pending the Final Approval of the Class Settlement (“Final Approval”), except such proceedings as may be necessary to implement the terms of the Settlement Agreement, the Settlement, or this Order.

20. Enjoining Actions for Released Claims: Pending Final Approval, no Settlement Class Member, either directly, as a representative, or in any other capacity (other than a Settlement Class Member who validly and timely elects to be excluded from the Settlement Class), shall commence, continue or prosecute against any Released Entity

any action or proceeding in any court or tribunal asserting any of the matters, claims, or causes of action that are to be released (Released Claims) upon Final Approval pursuant to the Agreement, and are hereby enjoined from so proceeding. Upon Final Approval, all Settlement Class Members who do not file a timely notice of exclusion – without regard to whether they were members of the “fault” class previously certified under W. Va. R. Civ. P. 23(c)(4) by this Court on July 5, 2022, or opted out of that class, or were putative members of another proposed class – shall be forever enjoined and barred from asserting any of the matters, claims, or causes of action released pursuant to the Settlement Agreement, and any such Settlement Class Member shall be deemed to have forever released any and all such matters, claims, and causes of action as provided for in the Settlement Agreement.

21. Table of Dates and Deadlines. The following table shows the important deadlines and schedule for the implementation of the Class Settlement Notice Plan and the filing of claims, opt-outs, objections, motions, and for the Final Fairness Hearing:

Event	Date/Deadline
Preliminary Approval Order entered	May 5, 2025
Claims Administrator to start mailing and publishing notices	May 26, 2025
Claims Administrator to finish mailing and publishing notices	June 23, 2025
Deadline for filing Motion for Attorney Fees and Costs	July 2, 2025
Deadline for filing Response to Motion for Attorney Fees and Costs	July 23, 2025
Deadline for Class Members to opt-out or object to settlement	July 23, 2025
Deadline for Claims Administrator to report number of opt-outs	August 4, 2025
Deadline for filing Motion for Final Approval Order	August 7, 2025
Deadline for Class Members to file claims	August 22, 2025
Deadline to file Reply in Support of Motion for Final Approval Order	September 4, 2025
Final Fairness Hearing	September 11, 2025

/s/ Carrie Webster
Circuit Court Judge
8th Judicial Circuit

Approved for Entry:

/s/ Thomas J. Hurney, Jr.

Thomas J. Hurney, Jr, Esquire (WVSB 1833)
Alexandra Kitts, Esquire (WVSB 12549)
Albert Sebok, Esquire (WVSB 4722)
Blair Wessels, Esquire (WVSB 13707)
JACKSON KELLY PLLC
P.O. Box 553
Charleston, WV 25332

Kent Mayo, Esquire (admitted *Pro Hac Vice*)
BAKER BOTTS LLP
700 K Street NW
Washington, DC 20001

Counsel for West Virginia-American Water Company

/s/ L. Dante diTrapano

L. Dante diTrapano, Esquire (WVSB 6778)
David H. Carriger, Esquire (WVSB 7140)
Alex McLaughlin, Esquire (WVSB 9696)
CALWELL LUCE DITRAPANO, PLLC
Law and Arts Center West
500 Randolph Street
Charleston, West Virginia 25302
Telephone: (304) 343-4323
Facsimile: (304) 344-3684

Van Bunch, Esquire (WVSB 10608)
BONNETT FAIRBOURN FRIEDMAN & BALINT PC
7301 North 16th Street, Suite 102
Phoenix, AZ 85020
Telephone: 602-274-1100

W. Jesse Forbes, Esquire (WVSB 9965)
FORBES LAW OFFICES, PLLC
1118 Kanawha Boulevard, East
Charleston, WV 25301
Telephone: 304-343-4050

Kevin W. Thompson, Esquire
David R. Barney, Jr., Esquire
THOMPSON BARNEY
2030 Kanawha Boulevard, East
Charleston, WV 25311
Telephone: 304-343-4401

Counsel for Plaintiffs

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