



West Virginia E-Filing Notice

CC-20-2017-C-765

Judge: Carrie Webster

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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 9/12/2025 6:55:55 AM

Notice Date: 9/12/2025 6:55:55 AM

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

**RICHARD JEFFRIES, and COLOURS
BEAUTY SALON, LLC, individually and
on behalf of all others similarly situated,**

Plaintiffs,

v.

**Civil Action No. 17-C-765
Judge Carrie L. Webster**

**WEST VIRGINIA-AMERICAN WATER
COMPANY,**

Defendant.

ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT

This matter comes before the Court pursuant to Plaintiffs' Motion for Final Approval of Proposed Class Settlement (the "Motion for Final Approval"), dated August 29, 2025, and Plaintiffs' and Class Counsel's Motion for Attorney Fees, Litigation Expenses, and Class Representative Incentive Awards (the "Fees Motion"), dated July 2, 2025, Defendant's Response in Opposition to the Fees Motion, dated July 30, 2025, and Plaintiffs' Reply, dated August 13, 2025. A Final Fairness Hearing regarding the Settlement was held on September 11, 2025. The Court having heard the matters and being fully advised in the premises, finds and ORDERS as follows:

1. Final 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, are adopted and fully incorporated by reference into this Order and Judgment.¹ Unless otherwise provided in

¹ The Settlement Agreement, with attachments, was attached as Exhibit A to the Joint Motion for Preliminary Approval of Class Settlement, Conditional Class Certification, Directing Notice to the Class, and Scheduling Final Fairness Hearing ("Joint Motion for Preliminary Approval").

this Order, the terms defined in the Settlement Agreement shall have the same meaning in this Order.

This Court previously signed an order granting preliminary approval to the proposed Settlement on May 5, 2025 (“Preliminary Approval Order”). In addition to approving the Settlement on a preliminary basis, the Preliminary Approval Order also certified the Settlement Class on a conditional basis, appointed Settlement Class Counsel and Class Representatives, approved an Agreed Notice Program, appointed a Settlement Administrator, and set deadlines for Class members to file claims and objections or to opt out of the Settlement.

The last step to approval of a class action settlement is final approval under W. Va. R. Civ. P. 23(e)(2). Final approval requires a final hearing (referred to as a “Final Fairness Hearing”) and a “finding that [the proposed settlement] is fair, reasonable, and adequate.” W. Va. R. Civ. P. 23(e)(2). Rule 23(e)(2) provides:

Approval of the proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3);and
- (D) the proposal treats class members equitably relative to each other.

The Court finds that the Settlement embodied in the Settlement Agreement is fair,

Unless specifically defined in this Order, all capitalized terms shall be defined as set forth in the Settlement Agreement.

reasonable and adequate within the meaning of W. Va. R. Civ. P. 23(e)(2). As this Court previously recognized in the Preliminary Approval 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. In making this determination, the Court considered the 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. Final Certification of Settlement Class: To certify a settlement class, the Court must find that the settlement class satisfies the requirements of Rule 23. *See Amchem v. Windsor*, 521 U.S. 591, 620 (1997). In *Amchem*, the Supreme Court approved the concept of certification of classes for settlement purposes, and held that courts must ensure that the class complies with the requirements of Rule 23(a) and at least one of the subsections of Rule 23(b).

The Court finds that the proposed Settlement Class meets all the applicable requirements

of W. Va. R. Civ. P. 23(a) and (b)(3), and hereby confirms and finally certifies the Settlement Class for settlement purposes only. The Court specifically finds, solely in the specific context of this Settlement Class, that the following requirements for certification are met:

(1) Numerosity.

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” The proposed Settlement Class is estimated to contain more than 20,000 residential customers and around 2,000 business customers. Numerosity is satisfied.

(2) Commonality.

Rule 23(a)(2) requires the existence of one or more “questions of law or fact common to the class.” 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).

(3) Typicality.

Rule 23(a)(3) requires that the claims and defenses of the representative parties be typical of the class as a whole. For purposes of analysis of the Settlement Class, Plaintiffs’ claims are typical of the claims of the proposed Settlement Class Members.

(4) Adequate Representation.

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” The Court finds Plaintiffs were adequate class representatives, and Plaintiffs’ counsel had the necessary skills and experience to serve as adequate counsel for the Settlement Class Members.

(5) 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.

(6) 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 promoted efficiency and uniformity of judgment, because the many Settlement Class Members were not forced to separately pursue individual claims.

4. Class Representatives: Designated representatives for the Settlement Class remain as follows: Richard Jeffries and Colours Hair Salon, LLC.

5. Settlement Class Counsel: The Court finds that Class Counsel have fairly and

adequately represented the interests of the Settlement Class pursuant to W. VA. R. CIV. P.23(g). The Court reaffirms the appointment of the following 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.

6. Agreed Notice Program: The Agreed Notice Program was described in the proposed Agreed Class Notice Program and attached as Exhibit 7 to the Settlement Agreement, and the proposed forms of notice and summary notice were attached as Exhibits 2-6 to the Settlement Agreement. In its May 5, 2025, Preliminary Approval Order, the Court preliminarily approved the Agreed Notice Program in all respects (including the proposed forms of notice, summary notice, Simple Claim Forms, and With Evidence Claim Forms) and ordered that notice be given in substantial conformity therewith. The Court also approved the appointment of SmithCochranHicks PLLC (“SCH”), as Settlement Administrator and directed SCH to implement the Agreed Notice Program.

Responsibilities of the Settlement Administrator included 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 Declaration of John Jenkins (“Jenkins Decl.”), attached as Exhibit A to Plaintiffs’ Motion for Final Approval, shows that SCH complied with and executed every aspect of the court-approved Agreed Notice Program. The deadline for the filing of claims passed on August 22, 2025. As of August 24, 2025, there were 139,199 timely filed claims submissions. It is extremely likely that many of these claims are invalid, however, given the nature of the digital claims submissions and automated attacks on such systems. An audit of the claims filed is currently underway. Just over 1,500 of those claims have passed the initial testing as of the date of this Order.

The deadline for opting out of the Class was July 23, 2025. The Settlement Administrator received only one request to opt out. The deadline for objecting to the Settlement—and for providing notice of an intention to appear at the Final Fairness Hearing to be heard—was also July 23, 2025. The objection deadline passed with no objections to the proposed Settlement. *See* Jenkins Decl.

The Court finds that the form, content, and manner of notice met the requirements of W. VA. R. CIV. P. 23(c) and (e), were the best notice practicable under the circumstances, constituted sufficient notice to all persons entitled to notice, and satisfied the constitutional due process requirements of notice.

7. Guardian ad Litem. Pursuant to section 5.5 of the Settlement Agreement, a guardian ad litem will be designated “to represent the Settlement Class Members who are minors or who lack capacity.” On August 13, 2025, the parties jointly moved the Court to appoint R. Scott Long, Esq., as guardian ad litem. On August 14, 2025, the Court entered an Order appointing Mr. Long as Guardian ad Litem and, consistent with the terms of the Settlement Agreement, directing him to take the following actions:

- 1) Make an independent investigation on behalf of Settlement Class Members who are minors or who lack capacity into the terms and provisions of the Settlement Agreement,
- 2) Make a recommendation to the Court in advance of the Fairness Hearing as to the overall fairness of the Settlement Agreement and the Simple Claim Form Option payments with respect to the Settlement Class Members who are minors or who lack capacity, and
- 3) Following entry of a Final Approval Order, evaluate any determinations by the Settlement Administrator regarding any claims submitted under the With Evidence Option by Settlement Class Members who are minors or who lack capacity, and make a recommendation regarding the fairness of such determinations to Settlement Class Members who are minors or who lack capacity.

The appointment of Mr. Long as Guardian ad Litem is reaffirmed and the Court accepts and adopts his Report, dated September 5, 2025. *See* Report of the Guardian Ad Litem on the Fairness of the Proposed Settlement Agreement. Based on the Report of the Guardian ad Litem, the Court finds that the overall Settlement Agreement and the Simple Claim Form Option payments are fair, reasonable and adequate with respect to Settlement Class Members who are minors or who lack capacity.

8. Administrative Expenses.

Pursuant to Section 3.1 of the Settlement Agreement, Administrative Expenses include the costs, expenses, and fees reasonably incurred as part of the administration of the settlement of this matter, including the fees and expenses of the Settlement Administrator and the Guardian ad Litem. The Court authorizes payment of Administrative Expenses consistent with the terms of the Settlement Agreement.

9. Attorney's Fees, Litigation Costs, and Incentive Awards.

Plaintiffs and Class Counsel seek attorney fees in the amount of 40% of the \$18 million aggregate settlement cap, or \$7.2 million, along with \$486,777.38 in litigation expenses, and

\$35,000 incentive awards for each named plaintiff, and submit that those requests are fair and reasonable and supported by applicable case law. WV American objects to the requested 40% attorney fee and the requested incentive award amounts, and submits that those requests are excessive and not supported by applicable case law. The parties submitted the following filings detailing their respective positions and arguments in support of, or objections to, Plaintiffs and Class Counsel's requests: Plaintiffs' and Class Counsel's Motion for Attorney Fees, Litigation Expenses, and Class Representative Incentive Awards (the "Fees Motion"), dated July 2, 2025; Defendant's Response in Opposition to the Fees Motion, dated July 30, 2025; and Plaintiffs' Reply, dated August 13, 2025.

WV American also argued in its Response in Opposition to Plaintiffs and Class Counsel's Fees Motion that Class Counsel should be required to provide additional supporting documentation itemizing the requested litigation expenses prior to approval. Plaintiffs and Class Counsel subsequently provided declarations of Van Bunch, Date diTrapano, Jesse Forbes, Rod Jackson, and Kevin Thomspson, along with tables accompanying the declarations with a breakdown of expenses, as attachments to Plaintiffs' Reply.

After taking into account all of the factors relating to the award of attorney's fees, litigation costs, and incentive awards, the Court concludes that attorney's fees of 40% of the \$18 million total settlement, or \$7.2 million, recovery of reasonable litigation costs in the amount of \$486,777.38, and incentive awards of \$20,000 for each named plaintiff are fair and reasonable in this case and are hereby finally approved. Pursuant to Section 13.3 of the Settlement Agreement, within 30 days of the Effective Date, West Virginia American shall pay or cause to be paid these Court-approved amounts for Attorney's Fees and Litigation Expenses, and Class Representative Incentive Awards.

10. Establishment of Settlement Account. Pursuant to Section 5.9 of the Settlement Agreement, the Court orders the Settlement Administrator to establish a Settlement Account to be maintained as a Qualified Settlement Fund within the meaning of and as defined in Section 468B of the U.S. Internal Revenue Code and in the IRS regulations promulgated thereunder. The Settlement Administrator shall use, maintain, and administer the Settlement Fund in accordance with the terms of the Settlement Agreement.

11. Timing of Determinations and Payments to Claimants. Pursuant to Section 5.8 of the Settlement Agreement, the Settlement Administrator shall determine the eligibility and the amount of compensation for Compensable Claims as soon as reasonably practicable, and provide the aggregate payment amount of all Compensable Simple Claims and the aggregate payment amount of all Compensable With Evidence Claims to the Parties. West Virginia American shall deposit or cause to be deposited the amounts necessary to pay the identified Compensable Claims into the Settlement Account within 30 days after the later of (i) the date that the Settlement Administrator has provided a final pay deck with a list of Compensable Claims to West Virginia America; and (ii) the Effective Date.

The Court approves the process of distributing an aggregate payment for all members of a Household or all Owners of an Eligible Business Location to a single representative of a Household or a Business Location.

The Court determines under W. Va. Civ. P. 54(b) that there is no just reason for delay and directs that the judgment with respect to all claims by Settlement Class Members be certified as final judgments.

12. Continuing Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the interpretation, enforcement, and implementation of the Settlement

Agreement in accordance with its terms and this Order, including the continuing confidentiality orders entered in this case and the included protections for information submitted by Claimants. The parties shall complete all remaining obligations under the Settlement Agreement.

13. Dismissal with Prejudice and Release. The Court orders that dismissal with prejudice of all Released Claims by the Settlement Class and each of its Members against all Released Entities in the Litigation shall occur when the Final Order and Judgement is entered. Settlement Class Members are ordered to dismiss with prejudice any Released Claims pending in any other Court. The court permanently bars and enjoins each Settlement Class Member from filing, asserting, commencing, maintaining or consenting to any action against the Released Entities with respect to the Released Claims.

ENTERED: September 12, 2025



Honorable Carrie L. Webster
Circuit Court Judge
8th Judicial Circuit

Approved for Entry:

/s/ Thomas J. Hurney, Jr.

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