

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

KERI EVANS, et al.,

Plaintiffs,

v.

JOHN F. AKERS, et al.,

Defendants.

MARK SIAMIS, et al.,

Plaintiffs,

v.

JOHN F. AKERS, et al.,

Defendants.

**Consolidated Under
Case No. 04-11380-WGY**

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, PRELIMINARILY CERTIFYING A CLASS FOR SETTLEMENT
PURPOSES, APPROVING FORM AND MANNER OF CLASS NOTICE, AND SETTING
DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT**

This *Action* involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et seq.* (“ERISA”), with respect to the W. R. Grace & Co. Savings and Investment Plan, and all predecessor and successor plans, individually and collectively, and any trust(s) created under such Plan (the “*Plan*”).

The terms of the *Settlement* are set out in the Settlement Agreement fully executed as of April __, 2009 (the “Agreement” or “Settlement Agreement”), executed by counsel on behalf of the *Named Plaintiffs*, the *Defendants*, and *W. R. Grace*.¹

Pursuant to *Named Plaintiffs*’ Motion for Preliminary Approval, on _____, the *District Court* (the “*Court*”) preliminarily considered the *Settlement* to determine, among other things, whether the *Settlement* is sufficient to warrant the issuance of notice to members of the proposed *Settlement Class*. Upon reviewing the Settlement Agreement and the matter having come before the *Court* at the _____ hearing, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Class Findings:** Solely for the purposes of the *Settlement*, the *Court* preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the *Court* and any other applicable law have been met as to the *Class* defined below, in that:

(a) The *Court* preliminarily finds for purposes of settlement only that, as required by FED. R. CIV. P. 23(a)(1), the *Settlement Class* is ascertainable from records kept with respect to the *Plan* and from other objective criteria, and the members of the *Settlement Class* are so numerous that their joinder before the *Court* would be impracticable.

¹ Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement fully executed as of April __, 2009.

(b) The *Court* preliminarily finds for purposes of settlement only that, as required by FED. R. CIV. P. 23(a)(2), there are one or more questions of fact and/or law common to the *Settlement Class*.

(c) The *Court* preliminarily finds for purposes of settlement only that, as required by FED. R. CIV. P. 23(a)(3), the claims of the *Named Plaintiffs* are typical of the claims of the *Settlement Class*.

(d) The *Court* preliminarily finds, for purposes of settlement only, as required by FED. R. CIV. P. 23(a)(4), that the *Named Plaintiffs* will fairly and adequately protect the interests of the *Settlement Class* in that: (i) the interests of the *Named Plaintiffs* and the nature of their alleged claims are consistent with those of the members of the *Settlement Class*, (ii) there appear to be no conflicts between or among the *Named Plaintiffs* and the *Settlement Class*, and (iii) the *Named Plaintiffs* and the members of the *Settlement Class* are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated ERISA class actions.

(e) The *Court* preliminarily finds for purposes of settlement only that, as required by FED. R. CIV. P. 23(b)(1), the prosecution of separate actions by individual members of the *Class* would create a risk of: (i) inconsistent or varying adjudications as to individual *Settlement Class* members that would establish incompatible standards of conduct for the parties opposing the claims asserted in this *Action* or (ii) adjudications as to individual *Settlement Class* members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede the ability of such persons to protect their interests.

(f) The *Court* preliminarily finds for purposes of settlement only that, as required by FED. R. CIV. P. 23(g), *Lead Counsel for Named Plaintiffs* ("*Class Counsel*") are capable of fairly and adequately representing the interests of the *Settlement Class*, in that *Class Counsel* (i) have done appropriate work identifying or investigating potential claims in the action; (ii) are experienced in handling class actions; and (iii) have committed the necessary resources to represent the *Class*.

2. **Class Certification** – The *Court*, in conducting the settlement approval process required by FED. R. CIV. P. 23, preliminarily certifies solely for purposes of settlement the following class under FED. R. CIV. P. 23(b)(1) (the "*Class*"):

All Persons who were participants in or beneficiaries of the Plan at any time between July 1, 1999 to April 19, 2004 and whose accounts included investment in the *Company Stock Fund* at any point during that time period, excluding the Defendants.

The *Court* appoints the *Named Plaintiffs* as representatives for the *Class* and *Class Counsel* as counsel for the *Class*. Any certification of a preliminary *Class* pursuant to the terms of the *Settlement Agreement* shall not constitute and does not constitute, and shall not be construed or used as an admission, concession, or declaration by or against *Defendants* that (except for the purposes of the *Settlement*) this *Action* or any other action is appropriate for litigation class treatment under FED. R. CIV. P. 23, or any similar federal or state class action statute or rule.

3. **Preliminary Findings Regarding Proposed Settlement** – The *Court* preliminarily finds that (i) the proposed *Settlement* resulted from extensive arm's-length negotiations, (ii) the *Settlement Agreement* was executed only after *Class Counsel* had conducted appropriate investigation and discovery regarding the strengths and weaknesses of *Named Plaintiffs'* claims, (iii) *Class Counsel* have concluded that the proposed *Settlement* is fair,

reasonable and adequate, and (iv) the proposed *Settlement* is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed *Settlement* to the *Class*. Having considered the essential terms of the *Settlement Agreement* under the recommended standards for preliminary approval of settlements as set forth in relevant jurisprudence, the *Court* finds that those whose claims would be settled, compromised, dismissed, and/or released pursuant to the *Settlement* should be given notice and an opportunity to be heard regarding final approval of the *Settlement* and other matters.

4. ***Fairness Hearing*** – A hearing is scheduled for Oct. 7 at 2:30 p.m. (the “*Fairness Hearing*”) to determine, among other things:

- Whether the *Settlement* merits final approval as fair, reasonable and adequate;
- Whether the *Action* should be dismissed with prejudice pursuant to the terms of the *Settlement*;
- Whether the notice method proposed by the *Litigants*: (i) constitutes the best practicable notice, (ii) constitutes notice reasonably calculated, under the circumstances, to apprise members of the *Class* of the pendency of the litigation, their right to object to the *Settlement*, and their right to appear at the *Fairness Hearing*, (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to notice and (iv) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;
- Whether *Class Counsel* adequately represented the *Class* for purposes of entering into and implementing the *Settlement*;
- Whether the proposed *Plan of Allocation* should be approved; and

- Whether any application(s) for attorneys' fees and expenses and compensation to *Named Plaintiffs* is fair and reasonable and should be approved.

5. *Class Notice* – The *Litigants* have presented to the *Court* a proposed form of *Class Notice*, appended hereto as Exhibit A. The *Court* finds that such form fairly and adequately: (a) describes the terms and effect of the *Settlement Agreement*, the *Settlement* and the *Plan of Allocation*, (b) notifies the *Class* that *Class Counsel* will seek attorneys' fees and reimbursement of expenses from the *Settlement Fund*, and for compensation up to \$5,000 for each of the two *Named Plaintiffs* for their service in such capacity, (c) gives notice to the *Class* of the time and place of the *Fairness Hearing*, and (d) describes how the recipients of the *Class Notice* may object to any of the relief requested. The *Litigants* have proposed the following manner of communicating the notice to members of the *Settlement Class*, and the *Court* finds that such proposed manner is the best notice practicable under the circumstances. Accordingly, the *Court* directs that *Class Counsel* shall:

- By no later than Aug. 7, 2009, cause the *Class Notice*, with such non-substantive modifications thereto as may be agreed upon by the *Parties*, to be provided by first-class mail, postage prepaid, to the last known address of each member of the *Class* who can be identified by reasonable effort. *W. R. Grace* shall endeavor in good faith to, within thirty (30) days of the signing of this Order, use its reasonable best efforts to provide *Class Counsel*, in electronic format, the names and last known addresses of the *Class* and timely respond to any reasonable written requests for accessible data in *W. R. Grace's* or the *Plan* trustee's/record keeper's (past or present) custody or control necessary to effectuate notice and implement, enforce or determine the administrability of a

Plan of Allocation (as described and/or provided for herein). The names and addresses *Class Counsel* obtains pursuant to this Order shall be used solely for the purpose of providing notice of this *Settlement* and for no other purpose.

- By no later than Aug 1, 2009 cause the *Class Notice* to be published on each website identified in the *Class Notice*, including a website dedicated to the *Settlement*, www.WRGraceERISAsettlement.com, which will also host and make available copies of all *Settlement*-related documents, including the Settlement Agreement.

6. **Objections to Settlement** – Any member of the *Class* who wishes to object to the fairness, reasonableness or adequacy of the *Settlement*, to any term of the Settlement Agreement, to the *Plan of Allocation*, to the proposed award of attorneys' fees and expenses, or to the request for compensation for the *Named Plaintiffs* may file an objection. An objector must file with the *Court* Clerk a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that such objector wishes to bring to the *Court's* attention or introduce in support of such objection. The objector must also mail copies of the objection and all supporting law and/or evidence to *Class Counsel* and to counsel for the *Defendants*. The addresses for filing objections with the *Court* and service on counsel are as follows:

For Filing:

Clerk of the Court
United States District Court
for the District of Massachusetts
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2300
Boston, Massachusetts 02210
Re: Case No. 04-11380-WGY

To Class Counsel:

Joseph H. Meltzer
Edward W. Ciolko
Katherine B. Bornstein
BARROWAY TOPAZ KESSLER
MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, Pennsylvania 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

To Defendants' Counsel:

Carol Connor Cohen
Nancy S. Heermans
Caroline Turner English
ARENT FOX LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone: (202) 857-6000
Facsimile: (202) 857-6395

The objector or his, her, or its counsel (if any) must effect service of copies of the objection on counsel listed above and file it with the *Court* by no later than Sept. 23, 2009. If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must both effect service of a notice of appearance on counsel listed above and file it with the *Court* by no later than Sept. 23, 2009. Any member of the *Class* or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising any objection to the *Settlement*, and any untimely objection shall be barred absent an Order from the Court.

7. **Appearance at *Fairness Hearing*** – Any objector who files and serves a timely, written objection in accordance with paragraph 6 above may also appear at the *Fairness Hearing*

either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the *Fairness Hearing* must effect service of a notice of intention to appear setting forth, among other things, the name, address, and telephone number of the objector (and, if applicable, the name, address, and telephone number of the objector's attorney) on *Class Counsel* and *Defendants'* counsel (at the addresses set out above) and file it with the *Court Clerk* by no later than Sept. 22, 2009. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the *Fairness Hearing*, except by Order of the Court for good cause shown.

8. **Notice Expenses** – The expenses of printing and mailing and publishing all notices required hereby shall be paid from the *Settlement Fund*.

9. **Service of Papers** – *Defendants'* counsel and *Class Counsel* shall promptly furnish each other with copies of any and all objections that come into their possession.

10. **Termination of Settlement** – This Order shall become null and void, *ab initio*, and shall be without prejudice to the rights of the *Parties*, all of whom shall be restored to their respective positions as of the day immediately before the *Litigants* engaged in the mediation before the Mediator that resulted in the *Settlement*, if the *Settlement* is terminated in accordance with the terms of the *Settlement Agreement*.

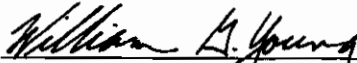
11. **Use of Order** – This Order is not admissible as evidence for any purpose against *Defendants* in any pending or future litigation involving any of the *Parties*. This Order shall not be construed or used as an admission, concession, or declaration by or against *Defendants* of any fault, wrongdoing, breach, or liability and *Defendants* specifically deny any such fault, breach, liability or wrongdoing. This Order shall not be construed or used as an admission, concession, or declaration by or against *Named Plaintiffs* or the *Class* that their claims lack merit or that the

relief requested in the *Action* is inappropriate, improper or unavailable. This Order shall not be construed or used as an admission, concession, declaration or waiver by any *Party* of any arguments, defenses, or claims he, she, or it may have, including, but not limited to, any objections by *Defendants* to class certification, in the event that the *Settlement Agreement* is terminated. Moreover, the *Agreement* and any proceedings taken pursuant to the *Agreement* are for settlement purposes only. Neither the fact of, nor any provision contained in the *Agreement* or its exhibits, nor any actions taken thereunder shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any defense that has been, could have been, or in the future might be asserted.

12. **Jurisdiction** – The *Court* hereby retains jurisdiction for purposes of implementing the *Settlement*, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the *Settlement* as may from time to time be appropriate, and to resolve any and all disputes arising thereunder.

13. **Continuance of Hearing** – The *Court* reserves the right to continue the *Fairness Hearing* without further written notice.

SO ORDERED this 8TH day of June, 2009.


HON. WILLIAM G. YOUNG
UNITED STATES DISTRICT JUDGE