

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT SESSIONS, <i>et al.</i>,	:	
	:	CIVIL ACTION
	:	NO. 1:07-cv-1669
Plaintiffs,	:	
	:	
vs.	:	
	:	(Judge Mariani)
OWENS-ILLINOIS, INC., <i>et al.</i>,	:	
	:	
Defendants.	:	

**ORDER PRELIMINARILY APPROVING SETTLEMENT
AND APPROVING NOTICE TO THE CLASS**

WHEREAS, Plaintiff Linda Sessions, individually, Plaintiffs Robert Sessions, John Roman, Pat Kovar, John Safian, and Joe Green (“Plaintiffs”), individually and on behalf of the Class, and Defendants Owens-Illinois, Inc. (“O-I” or the “Company”); The Owens-Illinois Salary Retirement Plan (“the Plan”); The Owens-Illinois Employee Benefits Committee for the Owens-Illinois Salary Retirement Plan (“the O-I EBC”); Roberta Bixhorn; Terri Fitzpatrick; David McCormick; Shaun McMackin; Mike Scheiding; Etta Strong; Al Baker; John Cantello; Renee Ellis; Terri Hicks; Rita Knost; Dan Pennywitt and Judy Warntz (collectively, “Defendants”) (with Plaintiffs and Defendants collectively referred to herein as “Parties”) have determined to settle the above-captioned matter (the “Action”) on the terms and conditions set forth in the Class Settlement Agreement dated February 17, 2014 (the “Agreement”), the original of which is filed with the

Clerk of the Court (this settlement process hereafter referred to as the “Settlement”);

WHEREAS, the Court entered an order on April 16, 2010, granting Plaintiffs’ motion for class certification (“Class Certification Order”);

WHEREAS, Plaintiffs have filed an unopposed motion for an Order that, inter alia: (1) modifies the class definition and provisionally certifies a class for settlement purposes only pursuant to Fed. R. Civ. P. 23(b)(1); (2) preliminarily approves the settlement on the terms set forth in the Agreement; (3) appoints the Notice Administrator; (4) directs the Notice Administrator to notify the members of the class of the proposed settlement per the approved form of notice; (5) establishes a deadline for class members to object to the proposed settlement; and (6) schedules a hearing to determine whether the Agreement should be finally approved as fair, reasonable and adequate, and whether an Order finally approving the Settlement should be entered;

WHEREAS, the Court, having read and considered the motion, the memorandum submitted in support of the motion, the Agreement and the exhibits thereto, including the proposed (i) Mailed Notice to the Class; (ii) the Final Order and Judgment; and (iii) form notice of settlement pursuant to the Class Action Fairness Act of 2005 (“CAFA”) finds that substantial and sufficient grounds exist

for entering this Order Preliminarily Approving Settlement and Approving Notice to the Class (“this Order”); and

WHEREAS, upon review and consideration of the foregoing materials, the Court has found good cause for entering the following Order.

THEREFORE, IT IS ORDERED THAT:

1. The definitions and terms set forth in the Agreement are hereby adopted and incorporated into this Order.

2. The definition of the class that was previously certified by the Court is modified to consist of the Class. Such Class shall consist of all persons identified on the Class Member List to be filed by Defendants with the Court within five (5) business days after entry of this Order, or the Beneficiary of any such person. The Class Member List will reflect the Parties’ reasonable efforts to identify all individuals who meet the following criteria:

All persons who, as of October 6, 2004: (a) were Owens-Illinois Salary Retirement Plan participants; (b) were employees of Owens-Illinois, Inc.’s blow-molded Plastic Container business (as referred to in the document attached as Exhibit 2 to the Amended Complaint, entitled “Plastic Container Sale Employee Frequently Asked Questions”); (c) had ten years of credited service; (d) had combined age and credited years of service of 65 or more; (e) were less than 55

years old; (f) worked in the United States and (g) were not subject to special or unique circumstances.

The Court finds that the Class satisfies the requirements for certification under Fed. R. Civ. P. 23(a) and (b)(1). In so doing, the Court adopts and incorporates by reference its prior findings from the Class Certification Order that the action meets the requirements of Rule 23(a) and (b)(1). The Court finds that the modification of the class definition does not alter these findings, and further finds that the proposed settlement of this action eliminates concern, if any, that the trial of certain class members' claims might be unmanageable.

3. The Court finds that Plaintiffs' counsel satisfies the requirements of Rule 23(g) and appoints Plaintiffs' counsel to serve as Class Counsel.

4. The proposed Settlement, including, but not limited to, the proposed release and waiver of Released Claims, the Total Settlement Amount, the Class Representatives' Case Contribution Payments, and the method for allocating payments from the Net Settlement Benefit to each Plaintiff and Class Member, is hereby preliminarily approved. The Court finds that the proposed Settlement, including, but not limited to, the proposed release and waiver of Released Claims, the Total Settlement Amount, the Class Representatives' Case Contribution Payments, and the method for allocating payments from the Net Settlement Benefit to each Plaintiff and Class Member, is the product of informed arm's-length

negotiation by counsel; contains no obvious deficiencies that would prevent preliminary Court approval, does not improperly grant preferential treatment, and falls within the range of possible final approval as it appears to be fair, reasonable and adequate, subject to any objections that may be raised. Accordingly, notice thereof should be given to the Class.

5. The Court's preliminary approval of the Settlement shall be subject to further consideration at a hearing to be held before this Court on _____, 2014 (no sooner than ninety (90) days after service of the CAFA notice is required, i.e., on or after June 2, 2014) at the United States District Court for the Middle District of Pennsylvania, William J. Nealon Federal Building & United States Courthouse, 235 N. Washington Avenue, Scranton, PA 18501 (the "Fairness Hearing"). The Court will determine at or following the Fairness Hearing whether the proposed Settlement is fair, reasonable, and adequate and should be finally approved by the Court and the amount of attorneys' fees, costs, and expenses that should be awarded to Class Counsel pursuant to Rule 23(h) of the Federal Rules of Civil Procedure. The Court may adjourn and/or reschedule the Fairness Hearing without further notice to the Class other than by announcement at the Fairness Hearing.

6. The Court approves the form and substance of the notice to the Class ("Mailed Notice"), which is attached to the Agreement as Exhibit C. The Court

finds that the procedures established for notice by the Agreement are the best practicable and are reasonably calculated, under all the circumstances, to apprise the Class of the pendency of the Lawsuit and the proposed Settlement, afford any member of the Class an opportunity to present any objections to the Settlement, and comply in all respects with Rule 23 of the Federal Rules of Civil Procedure and all of the requirements of due process.

7. The Court approves the form and substance of the CAFA Notice, attached to the Agreement as Exhibit H. The Court further finds and orders that upon mailing of the CAFA Notice, Defendants will have complied with the notice requirements of CAFA.

8. RG/2 Claims Administration LLC is hereby appointed as Notice Administrator, and shall be responsible for providing the Mailed Notice to the Class in accordance with the provisions of the Agreement and this Order. The Mailed Notice shall be mailed by the Notice Administrator to all members of the Class in accordance with the Agreement. The Notice Administrator need only send one copy of the Mailed Notice to all members of the Class at the same address. Within five (5) business days of entry of this Order, Defendants shall provide the Notice Administrator with the Class Member List.

9. The Notice Administrator shall, at least seven (7) days prior to the Fairness Hearing, file with the Court proof of mailing of the Mailed Notice to the Class.

10. By no later than seven (7) days prior to the Fairness Hearing, Class Counsel and Defendants' Counsel shall file with the Court any papers in support of final approval of the Settlement. By no later than twenty-eight (28) days prior to the Fairness Hearing, Class Counsel shall file an application for attorneys' fees and reimbursement of costs and expenses. Copies of all papers shall be served upon all members of the Class who file a valid and timely objection to the Settlement or their counsel.

11. Any member of the Class may appear at the Fairness Hearing, in person or by counsel, and be heard to the extent allowed by the Court in opposition to the fairness, reasonableness, and adequacy of the Settlement as embodied by the Agreement, including Class Representatives' Case Contribution Payments, and the application for an award of attorneys' fees, costs, and expenses to Class Counsel. Unless such requirement is excused by the Court, no person shall be heard in opposition to the Settlement, the Agreement, or the application for an award of attorneys' fees, costs, and expenses to Class Counsel unless such person files with the Clerk of the Court a notice of an intention to appear and provides a written statement that indicates all bases for objection, all documentation in support of the

objection, and legal authority, if any, supporting the objection, and a list of witnesses the person may call by live testimony no later than _____ (i.e., 14 days before the Fairness Hearing). Copies of such notice, statement, and documentation, together with copies of any other papers or briefs filed with the Court, must be simultaneously delivered to Class Counsel and Defendants' Counsel. Any member of the Class who does not object in the foregoing manner shall be deemed to have waived all objections and shall be foreclosed from making any objections to the Settlement.

12. The Court reserves the right to adjourn and/or reschedule the Fairness Hearing without further notice of any kind to the Class; therefore, any member of the Class intending to attend the Fairness Hearing should (in addition to complying with all instructions and requirements above) confirm the date, time, and location of the Fairness Hearing with Class Counsel.

13. If the Court finally approves the Settlement, all members of the Class shall be bound by all the provisions of the Settlement as embodied by the Agreement, and all determinations and judgments in the Lawsuit, including the Final Order and Judgment dismissing the Lawsuit with prejudice.

14. Pending the final determination of whether the Settlement should be approved, all proceedings and discovery in the Lawsuit are to remain stayed, except as specifically provided for in this Order.

15. Pending the final determination of whether the Settlement should be approved, Plaintiffs and each member of the Class shall be enjoined from commencing or prosecuting, either directly or indirectly, any action in any other court concerning or relating to any of the Released Claims. Such injunction shall remain in force until such time as Plaintiffs and Defendants notify the Court that the Settlement has been terminated.

16. If the Settlement is finally approved by the Court, the Court shall retain exclusive jurisdiction over Plaintiffs, Defendants, the Class, and the Lawsuit, in each case only with respect to matters arising out of, or connected with, the Settlement, and may issue such orders as necessary to implement the terms of the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by Plaintiffs and Defendants, if appropriate, without further notice to the Class.

SO ORDERED.

Dated: _____, 2014.

Robert D. Mariani
United States District Judge