

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

| | | |
|-----------------------------------|---|----------------------------|
| NORMA FIORENTINO, <i>et al.</i> , |) | |
| |) | CASE NO. 3:09-cv-02284-JEJ |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| CABOT OIL & GAS |) | |
| CORPORATION, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

**PLAINTIFFS' AMENDED UNCONTESTED MOTION TO ADMINISTER
SETTLEMENTS RESOLVING CASES AND CLAIMS OF PLAINTIFFS
AND ESTABLISH QUALIFIED SETTLEMENT FUND**

Plaintiffs Norma Fiorentino, *et al.* (collectively, "Plaintiffs"), by and through their respective undersigned counsel and pursuant to the Court's Order dated August 2, 2012 (Doc. 313), respectfully submit this Amended Uncontested Motion for an Order to: (1) establish a fund, which shall be called the Napoli Bern Ripka Shkolnik & Associates, LLP Dimock Client Settlement Fund (the "Fund"); and (2) to appoint an administrator for the Fund. In support of this amended motion, Plaintiffs respectfully state as follows:

1. The purpose of this Motion is to allow for the establishment of a Fund to facilitate the collection of as well as the ultimate distribution of settlement funds to certain Plaintiffs (hereinafter, identified as “Settling Plaintiffs”).

2. As of the date hereof, the Settling Plaintiffs are: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

4. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

5. Settling Plaintiffs are individuals who allege they were personally exposed to various forms of environmental contamination and/or whose property was exposed to environmental contamination (hereinafter called "The Incident"). Settling Plaintiffs allege the Incident caused them to suffer ongoing injury and/or damages to their persons and/or properties and further allege that Defendants are liable to Plaintiffs for such damages.

6. In May and June 2012, Defendants sent Settling Plaintiffs' counsel offers of settlement. In order to accept the settlement, Settling Plaintiffs are required to sign a broad release ("Confidential Release") outlining the terms of the

settlement and requiring complete confidentiality with regard to same.¹ The Confidential Release can be made available to this Court, in camera, at the Court's request.

7. The Confidential Release provides the complete terms that govern the settlement in all respects, including Defendants' payment obligations and the Settling Plaintiffs' obligations. Nothing herein, or in the Order, shall in any way modify or supplement those terms.

8. As Confidential Releases are executed and exchanged for each individual Settling Plaintiff, Defendants will transfer total settlement moneys for each Settling Plaintiff into the Fund. Given that these settlements will be executed on a per-plaintiff basis, the settlement will be effectuated on a rolling basis.

9. Under the terms of the Confidential Release, [REDACTED]
[REDACTED]
[REDACTED]. After Defendants transfer said moneys, the Fund Administrator, *infra*, will administer funds to the Settling Plaintiffs. The Court will not be involved with these transactions. The Fund Administrator will keep the amounts of the settlement accounts confidential.

¹ Settlement agreements and releases for minor Settling Plaintiffs are not subject to confidentiality clauses, as the parties assumed the terms of those settlements would have to be disclosed to the Court in for approval.

10. After Defendants transfer settlement moneys for a Settling Plaintiff, dismissal papers will be filed by that Settling Plaintiff within seven (7) days, completely absolving Defendants and the Court of any further responsibility regarding that Settling Plaintiff or the Fund.²

11. The parties hope to complete the settlement process for all Settling Plaintiffs within sixty (60) days. While the settlement process may involve the Court, for infant compromise hearings for example, the existence of the Fund will have no bearing on the Court.

12. This Motion and the Order will have no impact on Defendants or the Confidential Release, and instead, will define terms that solely relate to the Settling Plaintiffs, their counsel, and the Fund. Neither the Court nor the Defendants shall have any liability or responsibility relating to the actual creation or performance of any fund created by this Motion or the Order.

13. It is anticipated that some Settling Plaintiffs will want to structure their settled claims. The Court is hereby requested to establish the Fund to facilitate the collection from Defendants as well as the ultimate disbursement of

² Plaintiffs anticipate that the Court's involvement will be limited to the approval of any minor's settlement amounts. Once those settlements are approved, those moneys would be transferred into the Fund, completely absolving the Court of any further responsibilities.

settlement funds to Settling Plaintiffs, and where Settling Plaintiffs or their lawyers so choose to “structure” those Settlement Amounts.

14. The Fund shall qualify as a §468B Qualified Settlement Fund as it meets the three requirements to qualify as such and as set forth in Treas. Reg. 1.468B-1(c):³

- It is established by Court Order satisfying Treas. Reg. 1.468B-1(c)(1);

³ The Federal tax rules concerning Qualified Settlement Funds are found in Internal Revenue Code § 468B and Treas. Reg. 1.468B-1, which became effective on January 1, 1993. Under these regulations, there are three requirements for a Settlement Fund, account or trust to be created as a QSF:

- (a) In general. A qualified settlement fund is a fund, account, or trust that satisfies the requirements of paragraph (c) of this section.
- (c) Requirements. A fund, account, or trust satisfies the requirements of this paragraph (c) if
 - (1) It is established pursuant to an order of, or is approved by the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority;
 - (2) It is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability ... [a]rising out of a tort, breach of contract, or violation of law; ... and
 - (3) The fund, account, or trust is a trust under applicable state law, or its assets are otherwise segregated from other assets of the transferor (and related persons).

- It is established to resolve the tort claims of one or more Settling Plaintiffs and the Fund shall remain subject to the continuing jurisdiction of this Court satisfying Treas. Reg. 1.468B-1(c)(2);
- The Fund assets shall be physically segregated from the assets of Defendants satisfying Treas. Reg. 1.468B-1(c)(3).

7. The Fund shall, with the consent of the Settling Plaintiffs with whom it enters into Fund Agreements, be liable to make payments to those Settling Plaintiffs as the Fund Agreements specify, including payment to the Trustee of any Trust created for the benefit of a Settling Plaintiff as described in the settlement or structure agreements.

8. The Fund may, with the consent of the Settling Plaintiffs with whom it enters into Fund Agreements, purchase and assign any structured settlements created under any Fund Agreements. Any structured settlement shall be issued by a life insurance company that is rated A+ or better by A.M. Best.⁴ The Fund may, with the consent of the Settling Plaintiffs with whom it enters into Fund

⁴ Structured Settlement Payments qualify under Section 104(a)(2) of the Internal Revenue Code and are assigned to a qualified assignee by entering into qualified assignments of such structured settlement payments within the meaning of Section 130(c) of the Internal Revenue Code. The qualified assignee shall, respecting each person who is to receive periodic payments under a settlement agreement, purchase one or more qualified funding assets within the meaning of Section 130(c) of the Internal Revenue Code to fund any structured settlement payments assigned to the qualified assignee.

Agreements, purchase and assign any “non-qualified” structured settlements created under any Fund Agreements.⁵ Any “non-qualified” structured settlement shall be issued by a life insurance company that is rated A or better by A.M. Best or funded through the use of non-annuity assets.

9. The claims made against Defendants as a result of the Incidents are made on account of some alleged personal physical injury and/or property damage, and arise out of alleged liability in tort or violation of law. Settling Plaintiffs entering into Fund Agreements with the Fund shall agree in writing to a discharge of the Fund’s liability to make any structured settlement and/or attorney fee payments, also known as periodic payments, under the Fund Agreements by executing, along with the Fund any necessary documents required or related to the discharge of said liabilities once the monies have been extinguished.

10. Movants request that the Court approve the engagement of ATG Trust Company as the Fund Administrator. ATG Trust Company is an Illinois state chartered trust company and possesses extensive experience administering Qualified Settlement Funds. ATG Trust Company’s address is as follows: One South Wacker Drive, 24th Floor, Chicago, Illinois 60606-4654.

⁵ A non-qualified assignment does not rely upon nor must it comply with Internal Revenue Code Section 104 and/or 130 to effect such assignment.

11. Settling Plaintiffs request that no bond shall be required, provided that all monies received by the Fund shall be deposited in an account comprised of United States government obligations, a money market mutual fund or funds investing in instruments backed by the full faith and credit of the United States government, FDIC-insured account(s), any type of funds or investments deemed prudent by a trust company or any combination thereof.

12. The Fund Administrator is authorized to incur costs necessary to administer the Fund and to hire professionals as is necessary to administer the Fund, including but not limited to accountants or counsel, for example.

13. It is anticipated that some Settling Plaintiffs settling claims will determine more quickly than others whether they are interested in any form-of-settlement options (i.e. structured settlement and/or trusts to preserve government benefits) rather than a lump sum. The Fund Administrator shall be empowered to distribute lump sum proceeds upon execution of the appropriate Fund Agreement. The Fund Administrator also shall be authorized to distribute all attorney's fees to the Settling Plaintiffs' counsel consistent with existing fee agreements, whether in the form of cash, periodic payments and the assignment of such payments, and whether such assignment is a qualified assignment under Internal Revenue Code § 130 or a "non-qualified" assignment , or any combination thereof.

14. All expenses incurred in the settlement of claims shall be allocated among the Settling Plaintiffs on a pro rata basis including any fees of the Fund Administrator and/or accounting fees and shall not be the responsibility of Defendants. The fee of the Fund Administrator shall be according to the Fund Administrator's published fee schedule.

15. Upon completion of all Fund Agreements and final distribution of all monies deposited into the Fund, the Fund Administrator shall take appropriate steps to wind-down the Fund and thereafter be discharged from any further responsibility with respect to the Fund.

16. The Administrator shall obtain a Federal Taxpayer Identification Number for Napoli Bern Ripka Shkolnik & Associates, LLP Dimock Client Settlement Fund.

17. A form Order granting the requested relief is attached

Date: August 13, 2012
New York, New York

Respectfully submitted:

/s/ Tate J. Kunkle

Tate J. Kunkle, Esq. (NY 4468542)

TKunkle@NapoliBern.com

Admitted Pro Hac Vice

NAPOLI BERN RIPKA SHKOLNIK &
ASSOCIATES, LLP

Empire State Building

350 Fifth Avenue, Suite 7413

New York, New York 10118

Tel: 212-267-3700

Fax: 212-587-0031

Counsel for *All Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that, on August 13, 2012, I electronically filed the foregoing PLAINTIFFS' AMENDED UNCONTESTED MOTION TO ADMINISTER SETTLEMENTS RESOLVING CASES AND CLAIMS OF PLAINTIFFS AND ESTABLISH QUALIFIED SETTLEMENT FUND with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users and sent a copy of same to the following via electronic mail:

Amy L. Barrette, Esq.
FULBRIGHT & JAWORSKI LLP
Southpointe Energy Complex
370 Southpointe Boulevard, Suite 300
Canonsburg, Pennsylvania 15317
Tel: 724-416-0400
Fax: 724-416-0404
abarrette@fulbright.com

/s/ Tate J. Kunkle

NAPOLI BERN RIPKA SHKOLNIK &
ASSOCIATES, LLP
Empire State Building
350 Fifth Avenue, Suite 7413
New York, New York 10118
Tel: 212-267-3700
Fax: 212-587-0031
TKunkle@NapoliBern.com