

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

IN RE:

WIRSBO NON-F1807 YBFs

Case No: 08-CV-1223-F

ORDER CLARIFYING ENTRY OF FINAL ORDER AND JUDGMENT

This matter is before the Court after a status conference on November 16, 2015, with the parties regarding the finality of the Court's October 26, 2015 Order Granting Joint Motion for Final Approval of Class Action Settlement and Payment of Service Awards (Doc. 1373) and corresponding Judgment (Doc. 1374)(hereinafter collectively "Court's October 26, 2015 Order and Judgment). At that time the Court reserved a ruling on payment of costs and attorneys' fees and announced that it would grant attorney's fees and costs under a separate order and judgment.

There is a dispute among the parties as to whether the Court's October 26, 2015 Order and Judgment triggered the Effective Date in the Settlement Agreement. The Effective Date is found at ¶135 and states in relevant part that the Effective Date shall occur when: "a. The Court has entered a Final Order and Judgment that conforms to the terms and conditions required by this Agreement;" The Final Order and Judgment is defined as "the Final Order and Judgment of the Court approving the settlement provided

for in this Agreement, i.e. the United States District Court for the District of Nevada.” Settlement Agreement at ¶16. The Settlement Agreement discusses what should be included in the Final Order at ¶131. There is a dispute between the parties of whether the Final Order and Judgment must include the Court’s determination on the issue of payment of cost and attorneys’ fees.

Uponor argues that it intended all aspects of the Settlement Agreement, including costs and attorneys’ fees, would be finalized before the Court’s order could be considered the Final Order and Judgment. Plaintiffs strongly disagree and assert the issue of costs and attorneys’ fees should not delay Defendants’ obligations under the settlement. The Court finds that, with minor supplementation, all terms and conditions of the Final Order and Judgment have been met by the Court’s October 26, 2015 Order and Judgment to be the Final Order and Judgment referenced in Paragraph ¶135(a).

All the conditions required by ¶131 have been met, and any “terms” which might be missing from the Court’s Order and Judgment will be addressed herein so that Defendants receive the benefit of their bargain as to all terms and conditions. As to ¶131, there is nothing in that paragraph which requires the determination of costs and attorneys’ fees, only the Court’s retention of exclusive jurisdiction over any applications for attorneys’ fees, expenses and costs related to the Agreement. The Court has found this is a fair, reasonable and adequate settlement, has approved the Settlement Notice, the Court has found there was no just reason for delay and entered Judgment on the settlement of the class action claims, dismissed the Class Action, and all related claims with prejudice. With minor supplementation, all other provisions of ¶131 have also been met.

The Court notes that pursuant to ¶95 of the Settlement Agreement, Uponsor is required to pay attorneys' fees and costs awarded to Class Counsel by the Court within 10 days after the Effective Date as defined in ¶135 of the Settlement Agreement. However, at this time there are no attorneys' fees and costs awarded. Therefore, the Court will set a deadline in its Order Awarding Attorneys' Fees and Costs for the payment of that award. The Court has ordered payments to Class Representatives and those payments should be made in accordance with the Effective Date. Plaintiffs' request for payment of costs and attorneys' fees complies with the ¶94, and the Settling Defendants and other Released Parties have not objected to or commented on the request.

As to the other terms and conditions associated with the provisions dealing with payment of costs and attorneys' fees, the following shall supplement the Order Granting Joint Motion for Final Approval of Class Action Settlement and Payment of Service Awards:

1. Once the Court enters an award of attorneys' fees and costs, payment of the award shall constitute full satisfaction of any claim for fees and/or costs between Class Counsel, the Class Representatives, and the Settlement Class Members, on the one hand, and the Settling Defendants and the Released Parties, on the other hand.
2. Once the Court enters an award of attorneys' fees and costs, Class Representatives and Class Counsel, on behalf of themselves and all Settlement Class Members, may not seek any additional attorneys' fees or costs under any theory as against the Settling Defendants and the Released Parties.

3. In the event that an award of attorneys' fees and costs in an amount less than \$22,000,000 occurs, the difference between the amount of the sum awarded and the \$22,000,000 aggregate amount referenced in ¶ 94 shall be deposited into the "In re Wirsbo Settlement Claim Fund" as defined in ¶ 167 and in Exhibit "B" to the Settlement Agreement.
4. Once the Court enters an award of attorneys' fees and costs, the Settlement Class Members and the Settling Defendants shall bear all their own attorneys' fees and costs related to the Las Vegas Class Action and all claims, suits and actions encompassed within the scope of the Las Vegas Class Action Settlement.

Uponor asks the Court to set the date of the Final Order and Judgment for today, rather than October 26, 2015. Given that only 20 days have elapsed since the Court entered its Order and Judgment, and that there appears to be sincere confusion over the definition of the Final Order and Judgment in the Settlement Agreement, the Court will consider this Clarifying and Supplementing Order to be the date of the Final Order and Judgment for purposes of determining the Effective Date under the Settlement Agreement.

IT IS ORDERED that the Court's October 26, 2015 Order and corresponding Judgment is and shall be considered the Final Order and Judgment pursuant to ¶ 131 of the Settlement Agreement and supplemented herein.

IT IS FURTHER ORDERED that given the confusion regarding the Effective Date of the Settlement Agreement pursuant to ¶135, the Court considers the date of this

Order to be the date the Court entered the Final Order and Judgment pursuant to ¶ 135(a) of the Settlement Agreement.

Dated this 16 day of November, 2015.



NANCY D. FREUDENTHAL
CHIEF UNITED STATES DISTRICT JUDGE