

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

In re: BISPHENOL-A (BPA) ) MDL No. 1967  
POLYCARBONATE PLASTIC ) Master Case No. 08-1967-MD-W-ODS  
PRODUCTS LIABILITY LITIGATION )

ORDER SETTING HEARING ON PARTIES' MOTION FOR PRELIMINARY APPROVAL  
OF SETTLEMENT OF CLAIMS AGAINST DEFENDANT PHILIPS ELECTRONICS  
NORTH AMERICA CORPORATION

A hearing will be held at 9:00 a.m. on January 6, 2011, to consider Plaintiffs' Motion for Preliminary Approval of Class Action Settlement against Defendant Philips Electronics North America Corporation (for itself and as successor to Avent America, Inc.). The following matters are of particular concern to the Court.

1. It appears the settlement provides for payments in the form of "coupons" as described in 28 U.S.C. § 1712. This creates implications for attorney fee awards as specified in subsections (a) through (d), particularly if it becomes necessary to calculate the value of the redeemed coupons. As a preliminary matter, the anticipated request of \$2.5 million for attorney fees and costs does not appear disproportionate or inappropriate. It may also be that the redeemed value is of lesser importance because counsel is seeking reimbursement for the amount of time reasonably spent on the action in accordance with subsection (b)(1) – which carries certain implications in terms of any settlements that occur in the future. In any event, the Court believes it prudent to address the matter before the settlement is preliminarily approved.
2. Regardless of whether subsections (a) through (d) are implicated, the parties also must address subsection (e) because it applies to all settlements involving "coupons" regardless of the fee arrangements. Section 1712(e) directs that "the court may approve the proposed settlement only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members." Congress' command that special scrutiny be

applied to coupon settlements requires the parties provide additional information so the Court can make the necessary findings.

3. The “Most Favored Nation” provision causes some concern. While the Court understands the purpose and motivation for the provision, it represents a rather large variable that deprives the Court of certainty as to what is being approved. While its existence is also disclosed to prospective class members, this variable also seems to deprive class members of sufficient information to know whether they should remain in the class or opt-out.
4. The Claim Forms proposed by the parties require information that has no apparent direct relationship to the settlement (notably, a listing of the claimant’s children and birthdates). If such information is to be required, the Court will desire some protection to insure that the information is not used for purposes unrelated to the determination of a claim’s validity.
5. The proposed Notice of Class Action and Proposed Settlement (as well as other documents submitted to the Court) describes the Settlement Class as consisting of “[a]ll persons who from January 1, 2001 to the present, purchased or acquired (including by gift) a new BPA Product in the United States.” The categories of class members (A through C) are similarly described by reference to those who “purchased or acquired BPA products.” Other documents (such as suggest the Settlement Class does not consist of consumers who bought or acquired BPA products, but rather consumers who bought or acquired BPA products *manufactured by Philips*. The Court suspects the latter understanding is more accurate, but is concerned that the point is not made clear to potential class members. If the Court is incorrect and the former meaning is intended, the Court notes the settlement fails to provide for compensation for class members who did not buy or acquire products from Philips.

IT IS SO ORDERED.

DATE: January 5, 2011

/s/ Ortrie D. Smith  
ORTRIE D. SMITH, JUDGE  
UNITED STATES DISTRICT COURT