

COUNTY OF ORANGEBURG)
STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

MARY LOUISE FAIREY, ET AL.,)
PLAINTIFFS)

Case No. 94-CP-38-118

v.)

Order

THE EXXON CORPORATION,)
DEFENDANTS.)
_____)

FILED FOR RECORD
LISA W. MIZELL
CLERK OF COURT
ORANGEBURG, S.C.
03 AUG 18 AM 9:40

This matter is before the Court on Plaintiffs' Motion for Notice to Class of Proposed Settlement and Fairness Hearing.

Rule 23(d), S.C.R.C.P. provides this Court with the authority to issue an Order providing notice to absent class members of a proposed settlement and fairness hearing. Rule 23(d)2, S.C.R.C.P. The purpose of the notice is to insure absent class members are provided an opportunity to participate in or object to the proposed settlement. Furthermore, because the proposed settlement will potentially affect the legal rights of absent class members, it must comport with due process. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed.2d 865, 873 (1950).

The primary requirement of due process in any proceeding that is to be concluded is 'notice, reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' Id. The "best notice practicable" under the circumstances includes "individual notice to all members who can be identified through reasonable effort." In re: Nissan Motor Corp., 552 F.2d 1088, 1103 (5th Cir.1977). However, where individual notice to all class members is not practicable or possible, notice by publication has been held to satisfy due process. Phillips Petroleum v. Shutts, 472 U.S. 797, 811, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985); Mullane, 339 U.S. at 314 - 315. Even when the sufficiency of class notice is challenged, the appropriate inquiry is not whether the

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ORANGEBURG COUNTY, SOUTH CAROLINA

absent class member actually received the notice, but rather, whether the notice was reasonably calculated to provide notice. Mullane, 339 U.S. at 314-15; Peters v. National R.R. Passenger Corp., 966 F.2d 1483, 1486 (D.C.Cir.1992) (due process does not guarantee notice to class members).

Under the circumstances of this case, I find that the combination notice proposed by Plaintiffs, which includes individual notice¹ and notice by publication in nine South Carolina newspapers, satisfies the due process requirements and Rule 23. See, Phillips Petroleum v. Shutts, 472 U.S. 797, 811, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985); Mullane, 339 U.S. at 314 - 315; In re Ikon Office Solutions, Inc. Securities Litigation, 209 F.R.D. 94 (E.D.Pa.2002) (nationwide class utilizing combination notice including by first class mail of class members who could be identified with reasonable effort, electronic publication on an internet website maintained by Plaintiffs' counsel, and publication in one edition of the *Wall Street Journal*); Logan v. King County, 2002 WL 418040 (Wash.App.Div. 1, 2002) (combination notice of direct mail to class members who could reasonably be identified and publication in four area-wide newspapers and on the County's Intranet website held to satisfy due process); Dornberger v. Metropolitan Life Insurance Co., 203 F.R.D. 118 (S.D.N.Y.2001) (publication only notice held to satisfy due process for sub-class consisting of 93,000 former holders of insurance policies because ascertaining addresses of these policy holders was not reasonable).

The notice must also be reasonably calculated to convey the necessary information about the proposed class settlement so that absent class members have an opportunity to make their appearance and voice any objections. Mullane, 339 U.S. at 314. I find that the notice proposed by the Plaintiffs provides an adequate description of the action, an adequate description of the

¹Individual notice that is sent by first class mail is sufficient to meet due process. Saxton v. Davis, 2003 WL 21499359 (Ga.App.2003).

class definition, and provides clear and specific instructions to absent class members about what how to obtain more information and make objections if they so desire. Accordingly, I find that the content of the proposed notice satisfies Rule 23, SCRCP and due process requirements.

Finally, the notice must also provide the absent class members with sufficient time to receive the notice and take action. In this case, the Plaintiffs' proposed notice is to commence by August 20, 2003, and the proposed deadline for filing objections for the October 7, 2003 fairness hearing is September 24, 2003. This is more than sufficient time to afford absent class members a meaningful opportunity to appear and make any objections that may be appropriate. Ballard v. Martin, 79 S.W.3d 838, 852 (Ark.2002) (holding notice sent out two weeks before the proposed fairness hearing sufficient to satisfy due process); citing, Grunin v. Int'l House of Pancakes, 513 F.2d 114, 121 (8th Cir.1975) (holding notice sent nineteen days before fairness hearing sufficient to satisfy due process); Armstrong v. Board of School Directors, 616 F.2d 305 (7th Cir.1980) (holding notice sent out twelve days before fairness hearing was not a due process violation). I find that the proposed notice provides class members with sufficient time to act prior to the October 7, 2003 fairness hearing.

IT IS THEREFORE ORDERED that the Plaintiffs' proposed notice which is attached to this Order is approved.

IT IS FURTHER ORDERED that this notice shall be published as a quarter-page advertisement once a week for six weeks in the leading daily newspapers in the following cities: Greenville, Columbia, Charleston, Rock Hill, Orangeburg, Myrtle Beach, Aiken, Spartanburg and Beaufort.

IT IS FURTHER ORDERED this notice shall also be mailed, via First Class Mail, to absent class-members or class member properties already known to the Plaintiffs and/or Exxon. Exxon shall provide Plaintiffs with all addresses of potential absent class members it believes

should receive notice no later than August 29th, 2003.

IT IS SO ORDERED.



The Honorable Diane S. Goodstein,
Circuit Court Judge for the First Judicial Circuit

Entered this 18 day of August, 2003
St. George, South Carolina