

# SETTLEMENT AGREEMENT

## SETTLEMENT AGREEMENT

PCS Phosphate Company, Inc. ("PCS"), Essie Moore Long, Marcellus Blount, and Bernard Moore, on behalf of themselves and the Defendant Class certified by the Court ("Class"), agree to a full and final settlement of all claims in this action on the following terms:

1. PCS shall pay to Class Counsel for the benefit of the Class the total sum of \$160,000 (the "Gross Settlement Amount") to be held in Class Counsel's trust account subject to the terms of this Settlement Agreement.

2. Upon receipt of the Gross Settlement Amount specified in ¶ 1 above, Class Counsel shall notify the Court of said payment and the Court shall then enter a declaratory judgment by consent confirming that, as between PCS and the heirs or other transferees of the heirs of Eliza Diamond, PCS is sole owner of the Diamond Property, more particularly described in the Complaint filed in this action.

3. The Gross Settlement Proceeds shall be allocated by Class Counsel as follows:

- a. \$25,000 to the North Carolina Community Foundation Fund, payable on the Distribution Date (defined below). Descendants of Eliza Diamond Moore will be encouraged to apply for these scholarships. Descendants are not guaranteed to receive the scholarships, but familial relationship may be a factor, among many factors, that are considered in the grant of these scholarships. By law, however, the fund cannot be limited to one family.
- b. \$2,500 to Essie Moore Long, payable \$1,250 upon receipt of the Gross Settlement Proceeds by Class Counsel, and the Balance payable on the Distribution Date.
- c. \$2,500 to Marcellus Blount, payable \$1,250 upon receipt of the Gross Settlement Proceeds by Class Counsel, and the Balance payable on the Distribution Date.
- d. \$2,500 to Bernard Moore, payable \$1,250 upon receipt of the Gross Settlement Proceeds by Class Counsel, and the Balance payable on the Distribution Date.

- e. \$100,000 for use to satisfy Court approved Class Notification Costs, the balance allocated among Confirmed Claimants as specified below. Class Notification Costs are: the expenses of notifications described below in ¶¶ 4, 5, 6, 8, 9, and 11.
- f. \$27,500 payable to the firm of White & Allen for payment of all fees and expenses (except those expenses that are to be paid by the Class, after approval by the Court) as Class Counsel in this action, payable as follows: \$5,000 upon receipt of the Gross Settlement Amount by Class Counsel; \$10,000 upon filing by Class counsel of the Preliminary Claimant List as specified in ¶ 6; \$5,000 upon filing by Class Counsel of the Recommended Distributions as specified in ¶ 9; the balance of \$7,500 upon receipt of the Court's filed order pursuant to ¶ 13.

4. Upon receipt of the payment specified in ¶ 1, Class Counsel shall cause to be published in publications specified by the Court, and shall serve by regular mail on any individual known by Class Counsel to be asserting a claim as an heir of Eliza Diamond, Notice of the Eliza Diamond Class Action Claims Procedure. The Claims Procedure is set forth in Exhibit A, attached hereto. The Notice shall be in a form approved by the Court and will establish: the Deadline for Filing a Notice of Claim, the Deadline for Filing Proof of Claim, and the documentation necessary to support a claim. Any person or entity who fails to comply with either Deadline shall be barred from participating in the distribution of the Net Settlement Proceeds (as defined below). Class Counsel shall post on its website a copy of the Referee's Report [being the November 18, 1968 Report filed by Referee Clarence Griffin in 68 CvS 1157], a list of the "Owners" [being an heir of Eliza Diamond identified solely in the Referee's Report as owning an interest in either or both Tracts, as modified by the deeds to Texas Gulf Sulphur Company referenced in the Report], and the Claims Procedures.

5. Upon receipt of each timely Notice of Claim, Class Counsel shall forward to said filer (“Claimant”) instructions for completion of the Proof of Claim. Each Claimant shall have until the Deadline for Filing Proof of Claim to file the documents required for Proof of Claim in accordance with Exhibit A.

6. Within thirty (30) days after the Deadline for Filing Proof of Claim, Class Counsel shall file with the Court the “Preliminary Claimant List,” consisting of the following, separately for each Tract: (a) a list of Claimants who have satisfied the filing requirements for a Claim under ¶¶ A, B, C, D, E, or F of Exhibit A; (b) a list of Claimants who have proffered Proofs of Claim relying on ¶ G of Exhibit A, the documents filed in support of each such claim, and such other information or documents as Class Counsel determines may assist the Court; and (c) a list of conflicting claims, the documents filed by each such conflicting Claimant, and such other information or documents as Class Counsel determines may assist the Court. Class Counsel shall also post the Preliminary Claimant List on the Class Counsel’s website and notify each person included on the Preliminary Claimant List of such posting either by mail or email.

7. Within thirty (30) days of the filing of the Preliminary Claimant List, any person may file with the Court an objection to the inclusion or exclusion of any person on or from the Preliminary Claimant List, together with such documents as the objector deems appropriate.

8. Based solely on the writings submitted pursuant to ¶¶ 6 and 7, the Court shall make a final ruling on each Claim described in the Preliminary Claimant List within ninety (90) days of the filing of the Preliminary Claimant List and enter an appropriate Order determining each Claimant’s eligibility to participate in the distribution of the Net Settlement Proceeds (as defined below) for each Tract. The Court may but need not include findings of fact in said Order. Claimants identified by the Court in this Order as eligible to participate in the distribution of the

Net Settlement Proceeds are referred to hereafter as Confirmed Claimants. Class Counsel shall post the Order and list of the Confirmed Claimants on the Class Counsel's website and notify each person included on the Preliminary Claimant List of such posting either by mail or email.

9. Within thirty (30) days after entry of the Court's Order pursuant to ¶ 8, Class Counsel shall file with the Court two Recommended Distributions, one for each Tract, showing the percentage of Net Settlement Proceeds (defined below) each Confirmed Claimant would receive. The recommended percentages shall be determined by allocating shares among only the Confirmed Claimants for each Tract, calculated *per stirpes* as if such Confirmed Claimants are the only intestate heirs, devisees, or transferees (as the case may be) of Eliza Diamond and her descendants. The Recommended Distributions will also include an estimated distribution dollar amount to each Confirmed Claimant, based on Class Counsel's best estimate of the amount of the Net Settlement Proceeds and a report of the Class Notification Costs incurred to date and estimated for remaining notifications. Class Counsel shall post the Order and list of the Recommended Distributions on the Class Counsel's website and notify each Confirmed Claimant of such posting either by mail or email.

10. Within thirty (30) days of the filing of the Recommended Distributions, any Confirmed Claimant may file with the Court an objection to the Recommended Distributions, specifying in writing the basis for objecting to the Recommended Distribution percentage and the proposed adjustment to all percentages. No objection will be accepted with respect to Class Counsel's estimated distribution dollar amount or the previous determination of Confirmed Claimants.

11. Within sixty (60) days of the filing of the Recommended Distributions, the Court shall: rule on any objections thereto and Order, if necessary, adjustments to said Recommended Distribution percentages; approve reimbursement to Class Counsel from the Gross Settlement Amount of such Class Notification Costs expended or to be expended as the Court deems appropriate; and order the Final Distribution of the Net Settlement Proceeds. Class Counsel shall post the foregoing on the Class Counsel's website and notify each Confirmed Claimant of such posting either by mail or email.

12. Within ten (10) business days of receipt of the Court's Order pursuant to ¶ 11 above, Class Counsel shall distribute the funds from his trust account (the "Distribution Date"). The Net Settlement Amount shall be calculated and apportioned as follows:

- a. The Net Settlement Proceeds shall be the Gross Settlement Amount, less:
  - i. The amounts paid or to be paid pursuant to ¶ 3(a),(b), (c) (d), and (f); and
  - ii. Class Notification Costs as approved by the Court.
- b. The Final Distribution Percentages shall be based on the Class Counsel's Recommended Distributions (¶ 9), as modified (if applicable) by the Court's determinations made pursuant to ¶ 11.
- c. Sixty-four percent (64%) of the Net Settlement Proceeds shall be distributed to the Tract 1 Confirmed Claimants in the percentages set pursuant to ¶ 12.b. The remaining thirty-six percent (36%) of the Net Settlement Proceeds shall be distributed to the Tract 2 Confirmed Claimants in the percentages set pursuant to ¶ 12.b.

13. Within thirty (30) days of the filing of the Order in ¶ 11, Class Counsel shall file with the Court a report of Class Counsel's services to date, detailing the hours worked, a list of expenses reasonably incurred by Class Counsel, and any supporting materials Class Counsel deems appropriate. Within thirty (30) days after filing such report, the Court will approve release

from Class Counsel's trust account of all or such part of the final payment specified in ¶ 3(f) as the Court deems appropriate.

14. All parties waive the right to appeal the Orders entered by the Court pursuant to this Agreement.

15. This Settlement shall not be effective unless and until the Court has entered an Order approving this Settlement.

[Remainder of page intentionally left blank]

SETTLEMENT AGREEMENT

PCS PHOSPHATE COMPANY, INC. v. ESSIE MOORE LONG,  
MARCELLUS BLOUNT, AND BERNARD MOORE, each individually and as a  
Representative of the Class of All Heirs of ELIZA ANN MOORE DIAMOND

14 CvS 327

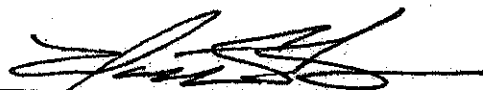
Approval and Execution by Counsel for Named Defendants and Class

WHITE & ALLEN, P.A.

Date:

8/26/14

By:



Matthew S. Sullivan  
Counsel for Defendants and the Class



SETTLEMENT AGREEMENT

PCS PHOSPHATE COMPANY, INC. v. ESSIE MOORE LONG,  
MARCELLUS BLOUNT, AND BERNARD MOORE, each individually and as a  
Representative of the Class of All Heirs of ELIZA ANN MOORE DIAMOND

14 CvS 327

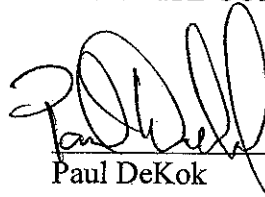
Approval and Execution by Plaintiff and Its Counsel

PCS PHOSPHATE COMPANY, INC.

Date:

4/21/2014

By:



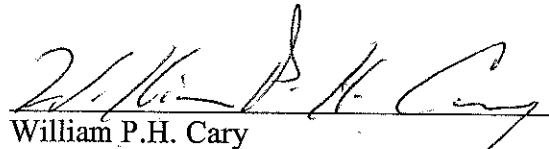
Paul DeKok  
President, PCS Phosphate Company, Inc.

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.

Date:

4/22/2014

By:



William P.H. Cary  
Counsel for PCS Phosphate Company, Inc.

SETTLEMENT AGREEMENT

PCS PHOSPHATE COMPANY, INC. v. ESSIE MOORE LONG,  
MARCELLUS BLOUNT, AND BERNARD MOORE, each individually and as a  
Representative of the Class of All Heirs of ELIZA ANN MOORE DIAMOND

14 CvS 327

Approval and Execution by Named Defendant and Class Representative Marcellus Blount

Date: 8-26-14

  
Marcellus Blount

SETTLEMENT AGREEMENT

PCS PHOSPHATE COMPANY, INC. v. ESSIE MOORE LONG,  
MARCELLUS BLOUNT, AND BERNARD MOORE, each individually and as a  
Representative of the Class of All Heirs of ELIZA ANN MOORE DIAMOND

14 CvS 327

Approval and Execution by Named Defendant and Class Representative Bernard Moore

Date: 8-26-14

Bernard Moore  
Bernard Moore

SETTLEMENT AGREEMENT

PCS PHOSPHATE COMPANY, INC. v. ESSIE MOORE LONG,  
MARCELLUS BLOUNT, AND BERNARD MOORE, each individually and as a  
Representative of the Class of All Heirs of ELIZA ANN MOORE DIAMOND

14 CvS 327

Approval and Execution by Named Defendant and Class Representative Essie Moore Long

Date: Aug 26, 2014

Essie Moore Long  
Essie Moore Long

**SETTLEMENT AGREEMENT**

**EXHIBIT A  
(CLAIMS PROCEDURE)**

## CLAIMS PROCEDURES

### I. Notice of Claim

To qualify as a Claimant, an individual must file the following, in writing, with Class Counsel:

- full name;
- mailing address;
- telephone number;
- name of person identified in the Referee's Report<sup>1</sup> as an "Owner"<sup>2</sup> through whom the Claimant is claiming;
- brief explanation of Claimant's basis for claim (*e.g.*, child of Owner named in Referee's Report); and
- proof of identity (*e.g.*, government issued photo identity).

In addition, each Claimant is encouraged to provide Class Counsel with an email address for ease in communication and to reduce the cost of communicating with Class Counsel.

**Each Claimant is responsible for promptly notifying Class Counsel in writing of any change to the first three items of information required by this Notice of Claim section as well as the Claimant's email address, if provided. All Court-ordered notifications sent to either the last email or mailing address provided by the Claimant shall be deemed sufficient and Class Counsel shall be under no obligation to attempt any other notification to such Claimant.**

**Failure to provide the above information by March 6, 2015, the Deadline for Filing Notice of Claim established by the Court, will bar the individual from participating as a Claimant.**

### II. Proof of Claim

On or before May 6, 2015, the Deadline for Filing Proof of Claim established by the Court, each Claimant who has timely filed a Notice of Claim must provide the following written documentation to Class Counsel. **Failure to provide the following information by May 6, 2015, the Deadline for Filing Proof of Claim established by the Court, will bar the individual from participating as a Claimant.**

---

<sup>1</sup> "Referee's Report" means the November 18, 1968 Report filed by Referee Clarence Griffin in 68 CvS 1157. The Report is available at the Class Counsel's website: [www.whiteandallen.com](http://www.whiteandallen.com).

<sup>2</sup> "Owner" means an heir of Eliza Diamond identified in the Referee's Report as owning an interest in either or both Tracts. A list of the Owners is available at the Class Counsel's website and is attached to the Notice as Attachment B.

- A. If Claimant is an Owner identified on the Referee's Report. No further documentation is required.
- B. If Claimant is a child of an Owner named in the Referee's Report. Claimant must provide Claimant's birth certificate showing as a parent an Owner named in the Referee's Report.
- C. If Claimant is a grandchild, great-grandchild, or later direct descendant of an Owner named in the Referee's Report. Claimant must provide Claimant's birth certificate, the birth certificate of a parent identified on Claimant's birth certificate, and birth certificates of each previous generation until a birth certificate identifies as a parent an Owner named in the Referee's Report.
- D. If Claimant's interest passed to Claimant or his/her ancestor by Will. Claimant must provide a copy of the will or wills and birth certificates sufficient to show both a link from an Owner identified in the Referee's Report to the testator and from the will beneficiary to the Claimant.
- E. If Claimant's interest passed to Claimant or his/her ancestor by Deed. Claimant must provide the deed or deeds through which Claimant claims, and birth certificates sufficient to show both a link from an Owner identified in the Referee's Report to the grantor in said deed and from the grantee in said deed to the Claimant.
- F. If Claimant is former spouse of a deceased person who, if alive, could have claimed under ¶ A, B, C, D, or E. Claimant must provide an affidavit detailing the full name of the deceased spouse, a copy of the marriage license, the deceased spouse's death certificate, the proof requirement for the deceased spouse specified under ¶¶ A-E, and the names of all children (if any) of the marriage who survived the deceased spouse.
- G. All other Claimants. Claimant must provide an affidavit detailing the basis for Claimant's claim and an explanation for why the documentation required by ¶¶ A-F is not available.