

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

ISAAH EVANS, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.: 1:05-cv-01017-KOB
)	
UNITED STATES PIPE & FOUNDRY)	
COMPANY, INC., et al.,)	
)	
Defendants.)	

FINAL JUDGMENT AND ORDER

This matter comes before the court on the Parties’ “Joint Motion for Final Approval of Class Action Settlement and Incorporated Memorandum of Law in Support” (doc. 294) and “Joint Motion for Approval of Scholarship Fund Agreement” (doc. 295), and Plaintiffs’ “Motion to Certify Final Settlement Class and for Award of Fees, Expenses, and Class Representative Incentive Award” (doc. 293), all in accordance with the Parties’ Stipulation of Settlement and Compromise (“Stipulation”).¹

This court has jurisdiction over the subject matter of this litigation and all claims asserted in it and, for the purpose of this Final Judgment, over the parties to the Stipulation and all of the Class Members. This court is a proper and convenient venue for the adjudication of this action, and for consideration, approval and administration of this settlement. For the reasons stated in the accompanying Memorandum Opinion, the court hereby ORDERS as follows:

¹ The Stipulation is attached as Exhibit A to the Parties’ Joint Motion for Entry of Preliminary Approval Order (doc. 286). The terms used in this Final Judgment and Order shall have the same meanings as defined in the Stipulation except as otherwise specified herein.

1. The court's Preliminary Approval Order dated October 28, 2010 (doc. 287) is hereby **CONFIRMED**, and the findings of fact made in it regarding the analysis of the elements of Rule 23 of the Federal Rules of Civil Procedure, as supplied in the Memorandum Opinion, are adopted and restated as if set forth here.
2. For purposes of settlement only, the court finds that (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) common questions of law or fact to the members of the Settlement Class predominate over any questions affecting only individual members; (c) the claims or defenses of the representative parties are typical of the claims or defenses of the Settlement Class; (d) the representative parties have fairly and adequately protected the interest of the Settlement Class; and (e) the predominance and superiority requirements of Rule 23(b)(3) are satisfied. Therefore, this action is hereby **CERTIFIED** as a class action for the purposes of settlement only.
3. The named plaintiffs Isaiah Evans, Macy Carter, Brenda Gray, Lora Malone, Alberta McCrory, Roseada Bailey, Dorothy Elston, Carol Smith, Darrel Brunson, Flora Sanders, Kelvin Howard, Lorenzo Sistrunk, James Whatley, and Michael Washington are hereby designated as Class Representatives.
4. E. Clayton Lowe, Jr. of Lowe & Grammas, LLP and Dennis G. Pantazis of Wiggins Childs Quinn & Pantazis are hereby designated as Class Counsel, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, with respect to the Settlement Class.
5. The Settlement Class is composed of Class Members who are Current Owners and Former Owners of Eligible Properties as those terms are defined in the

Stipulation. Without substituting for these defined terms, generally the Settlement Class can be described as all current and former owners who are individuals and not a company, business or similar entity who, for any length of time from April 8, 1999² to the date of this Preliminary Approval Order, held or hold legal fee simple title to residential property located within any of the *Property Settlement Zones* identified in Exhibit G to the Stipulation.

6. Specifically excluded from the Settlement Class are: (a) those who have elected to exclude themselves from this settlement in the manner allowed by Preliminary Order; (b) persons presently in a bankruptcy proceeding; (c) persons who have pending against Settling Defendants on the date of this Order as defined in the Stipulation any individual action in which recovery sought is based in whole or in part on the same types of claims asserted in this action; (d) persons who, as to a particular defendant, have previously obtained a judgment or settled any claims against that same defendant involving the same types of claims asserted here or have previously executed releases, releasing any such claims against the same defendant; and (e) persons who currently own or formerly owned property that was the subject of previous legal proceedings involving the same subject matter at issue in this litigation in which a judgment or settlement was obtained by the then-owner of such property.
7. The court finds that the Stipulation of Settlement and Compromise is the product

² The Preliminary Approval Order carried forward a typographical error contained in the draft Preliminary Approval Order submitted by the Parties to the court. The error is in the recitation of the period of ownership for class membership, reflecting it as commencing on April 18, 1999 instead of April 8, 1999. All notices provided to Class Members reflected the correct date of April 8, 1999.

of substantial, good faith, arms-length negotiations of the parties, and is in all respects, fair, just, reasonable, and adequate to the Settlement Class and its members and should be and hereby is **APPROVED** pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8. Plaintiffs and all Settlement Class Members shall, as of the Effective Date defined in the Stipulation, conclusively be deemed to have released and forever discharged the Settling Defendants and Released Parties from all Released Claims as set forth in the Stipulation.
9. This court hereby **DISMISSES**, on the merits and **WITH PREJUDICE**, in favor of each and all of the Released Parties, each and every claim as defined or described in paragraph 13(b) of the Stipulation (the “Released Claims”), with each of the parties bearing only such attorney’s fees, costs and expenses as are set forth in the Stipulation and awarded by the court in this Order.
10. As of the Effective Date, Plaintiffs and all Settlement Class Members are fully and forever barred and permanently enjoined from asserting either individually, representatively, or on behalf of any class or person, or in any other capacity, any and all Released Claims against any and all of the Released Parties.
11. The Releases, as described and set forth in the Stipulation are, on the Effective Date, rendered and declared fully effective and enforceable. On the Effective Date, Plaintiffs and each of the members of the Settlement Class shall be deemed to have fully, finally and forever released and discharged the Defendants and the Released Parties with respect to any and all of the Released Claims, as defined in the Stipulation.

12. Neither the Stipulation, the settlement provided for in it, nor this Order shall be deemed a concession or admission of wrongdoing or liability by any party to it and shall not be used or construed as an admission of any fault, omission, liability, or wrongdoing on the part of any party in any statement, release, or written document or financial report issued, filed or made. The Stipulation, its exhibits, the fact of settlement, any settlement negotiations or discussions, and this Order shall not be offered or received in evidence as an admission, concession, presumption, or inference against any of the Released Parties, as that term is defined in the Stipulation, including Class Members, except that the Stipulation and settlement and this Order may be introduced by any party in any proceeding to enforce the terms of the Stipulation and this Order, including introduction to support the assertion of the bar of *collateral estoppel* or *res judicata* in any action now pending or hereafter commenced by, or on behalf of, any one or more Class Members.
13. The Stipulation is without prejudice to the rights of Settling Defendants to (a) oppose class certification in this action should the Stipulation not become “effective” or final as defined in the Stipulation; (b) oppose certification in any other proposed or certified class action; or (c) use certification of the Settlement Class to oppose certification of any other proposed class arising out of or related to the claims asserted in this action.
14. In the event that this Order does not become final or the settlement otherwise does not become “effective” in accordance with the terms of the Stipulation, this Order, except as to this paragraph, shall be rendered null and void and shall be

vacated *nunc pro tunc*, the Stipulation shall be terminated pursuant to its terms (except to those provisions that are expressly stated to survive in such event), and the parties to the Stipulation shall be deemed to have reverted to their respective status and position in this action as of the date immediately preceding the date of the Stipulation and as further provided in the Stipulation.

15. This court determines that the two individuals described in the Memorandum Opinion and in Paragraphs 1 and 2 of Doc. 292 filed under seal as having validly excluded themselves from the Settlement Class are not Settlement Class Members. Their claims, if any, are not determined or affected by this Order.
16. The court **APPROVES**, in form and content, the Final Publication Notice as attached as an exhibit to the Stipulation, and the publication of that notice in *The Anniston Star*, as described in the Stipulation, as the best practicable notice under the circumstances by which Class Members will be notified of this Order of Final Approval and Judgment by the court approving the settlement, their opportunity to obtain benefits from the Scholarship Fund, and the date by which their Scholarship Application Form and/or Cash Claim Form must be submitted. Within thirty days of the Effective Date (as defined in the Stipulation), Class Counsel shall publish the Final Publication Notice twice on successive weekends in *The Anniston Star*. When completed, the publication of the Final Publication Notice shall constitute fair, reasonable, and adequate notice of the settlement to all Class Members, in full compliance with the requirements of Fed. R. Civ. P. 23, the Alabama Constitution, and the United States Constitution. On or before **Thursday, April 14, 2011**, proof, by affidavit, of the publication of the Final

Publication Notice shall be filed by Class Counsel with the court. The filing date of proof of publication shall constitute the “Completion of Final Publication” as that term is used in the Stipulation.

17. Within thirty days of the Effective Date, Class Counsel shall make available on its website a copy of the Final Publication Notice, a copy of this Order and copies of all documents and forms containing information concerning the Cash Claim Process and the Scholarship Fund process.
18. Within thirty days of the Effective Date, information and forms shall also be available on the Scholarship Fund Settlement Administrator’s website, in the time and manner described in Paragraph 3.e. of the Stipulation.
19. The court hereby **APPROVES** the Scholarship Fund Agreement between Settling Defendants and the Community Foundation of Northeast Alabama and **CONFIRMS** the appointment of the Foundation as the Scholarship Fund Administrator.
20. Paragraph 2(a)(ii) of the Stipulation is hereby **AMENDED** to require that the Scholarship Fund Administrator advise the court of the sums remaining, if any, of the Scholarship Fund and identify the *cy pres* scholarship fund into which the Remaining Funds shall be poured, as specified in the Scholarship Fund Agreement, within six months following the Scholarship Application Form Deadline.³ The Foundation is so **DIRECTED**.
21. The due date reflected on the Scholarship Application Form shall be **AMENDED** to reflect the Scholarship Application Form Deadline, as defined in the

³ Barring any potential appeal, the court anticipates this date to fall sometime in 2016, based on the dates provided in the Stipulation.

Stipulation.

22. Based on the court's findings in the Memorandum Opinion regarding Class Counsels' motion for an award of attorneys' fees, expenses and incentive awards, the court grants the motion. Accordingly, the court hereby **AWARDS** Class Counsel, Lowe & Grammas, LLP and Wiggins Child Quinn & Pantazis, LLC, attorney's fees in the amount of Five Hundred Ten Thousand dollars (\$510,000.00), and expenses in the amount of One Hundred Eight Thousand dollars (\$108,000.00).
23. In addition, the court hereby **AWARDS** each of the class representatives previously identified in this Order the sum of Five Hundred dollars (\$500.00) as an Incentive Award. All sums so awarded are to be paid in accordance with the terms of the Stipulation.
24. With no just reason for delay, this Final Judgment and Order is **ENTERED** pursuant to Rule 54(b), Fed. R. Civ. P. as to all parties and members of the Settlement Class.
25. Without affecting the finality of this Final Judgment and Order in any way, the court **RETAINS** exclusive and continuing **JURISDICTION** over this action, the Class Representatives, Scholarship Fund Administrator, the Settlement Class Members, the Settling Defendants, and the Released Parties for the purposes of supervising the implementation, effectuation, administration, enforcement, construction, and interpretation of the Stipulation, and this Order of Final Approval and Judgment.

DONE and ORDERED this 28th day of February, 2011.


KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE