

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 90-cv-00181-JLK

MERILYN COOK, *et al.*,

Plaintiffs,

v.

ROCKWELL INTERNATIONAL CORPORATION
and THE DOW CHEMICAL COMPANY,

Defendants.

**[PROPOSED] ORDER GRANTING PLAINTIFFS' AND CLASS COUNSEL'S
MOTION FOR A SECOND DISTRIBUTION OF THE NET SETTLEMENT FUNDS;
FOR INITIAL DISTRIBUTION AWARDS TO CLAIMANTS WHO
SUBMITTED VALID, TIMELY CLAIMS; AND FOR ADJUSTMENTS
TO INITIAL DISTRIBUTION AWARD AMOUNTS**

This matter comes before the Court on Plaintiffs' and Class Counsel's Motion for a Second Distribution of the Net Settlement Funds; for Initial Distribution Awards to Claimants Who Submitted Valid, Timely Claims; and for Adjustments to Initial Distribution Award Amounts, made pursuant to Paragraph 5 of the Order Granting Plaintiffs' and Class Counsel's Unopposed Motion for Initial Distribution, ECF No. 2501, which provides that the Court retains jurisdiction over any further application or matter that may arise in connection with this Action.

NOW, THEREFORE, upon review of Plaintiffs' and Class Counsel's Motion for a Second Distribution of the Net Settlement Funds; for Initial Distribution Awards to Claimants Who Submitted Valid, Timely Claims; and for Adjustments to Initial Distribution Award Amounts, the accompanying Memorandum in Support of Plaintiffs' and Class Counsel's Motion

for a Second Distribution of the Net Settlement Funds; for Initial Distribution Awards to Claimants Who Submitted Valid, Timely Claims; and for Adjustments to Initial Distribution Award Amounts (“Memorandum in Support”), and all other materials attached thereto, it is ORDERED, ADJUDGED AND DECREED as follows:

1. The Court approves the initial distribution awards from the Net Settlement Fund for claims which were timely submitted on or before December 31, 2017, and which are accepted by the Settlement and Claims Administrator, but which have not yet been received any payment. The Court directs the Heffler Claims Group, the Settlement and Claims Administrator, to distribute such initial distribution awards in accordance with the Plan of Allocation and the Memorandum in Support. The Settlement and Claims Administrator is authorized to make an initial distribution award to claimants who submitted claims that have been accepted. All of the claimants that submitted claims on or before December 31, 2017 that are accepted by the Settlement and Claims Administrator shall thus be paid initial distribution awards, as well as Second Distribution awards as set forth below.

2. The Court approves the adjustments to the initial distribution award amounts approved by the Settlement and Claims Administrator. The Court directs the Settlement and Claims Administrator to make these adjustments to the initial distribution awards in accordance with the Plan of Allocation and the Memorandum in Support.

3. The Court approves the Second Distribution from the Net Settlement Fund as proposed by Plaintiffs and Class Counsel, and directs the Settlement and Claims Administrator to distribute the *pro rata* Second Distribution awards in accordance with the Plan of Allocation and as set forth in the Memorandum in Support. Claimants who submitted claims regarding properties located within two miles of the southeast corner of the Rocky Flats plant (“the Plant”)

will receive an extra weighting of 50% for purposes of calculating their Second Distribution awards so that they will receive relatively more than properties that are farther from the Plant; and this same adjustment will apply regardless of whether they are submitting a claim in connection with a residential, vacant, or commercial property. Specifically, the Court orders that Claimants who owned properties within 2 miles of the southeast corner of the Plant shall receive a second payment equal to approximately 1.301547 times the size of their first payment, and owners of properties further than two miles from the southeast corner of the Plant receive a second payment equal to approximately 0.867698 times the size of their first payment, where 1.301547 is equal to 1.5 times 0.867698.¹

4. The Court orders that the Settlement and Claims Administrator will hold in escrow and not distribute approximately \$9,354,662.96 to ensure that sufficient funds are reserved to make both a first and second distribution to the claimant and Class member Farmer's Reservoir and Irrigation Company ("FRICO").²

5. The Court further orders that the Settlement and Claims Administrator will hold in escrow and not distribute \$2,000,000 to cover future claims administration expenses.

¹ For the claims whose initial payment amounts are adjusted in accordance with paragraph 2 above, the corrected initial distribution amount shall be used as the basis for the calculation of the second distribution amount. In addition, the 0.867698 and 1.301547 multipliers have been rounded to six decimal places.

² The amount due to FRICO has not yet been determined. *See* ECF No. 2528 (Order Granting in Part and Denying in Part the Remainder of FRICO's Motion for Review of the Claims Administrator's Denial of its Claims). According to the Settlement and Claims Administrator, holding back \$9,354,662.96 for a possible FRICO claim will be sufficient to make the maximum possible initial distribution award to FRICO, which is based on the 1989 assessed values of the FRICO properties and treatment of the FRICO properties as vacant, and a Second Distribution award based on that initial distribution amount (with separate multipliers used to calculate the Second Distribution amounts for FRICO's properties located within two miles of the Plant versus more than two miles from the Plant).

6. Class Counsel shall submit a separate application requesting Court approval for any additional or subsequent disbursements of Net Settlement Funds.

7. This Court retains jurisdiction over any further application or matter that may arise in connection with this Action.

IT IS SO ORDERED.

BY THE COURT:

John L. Kane, Senior District Judge
United States District Court