

DEC 22 2004

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION** JAMES BONINI, Clerk
COLUMBUS, OHIO

LORILLARD TOBACCO COMPANY,)
PHILIP MORRIS USA INC., R.J.)
REYNOLDS TOBACCO COMPANY,)

Plaintiffs,)

v.) Case No. 2:04-CV-715

CHESTER, WILLCOX & SAXBE, L.L.P.)
(individually and as defendant class)
representative); PROVOST UMPHREY)
LAW FIRM, L.L.P. AND PROVOST)
UMPHREY TOBACCO (individually and)
as defendant class representative); SIMON,)
PERAGINE, SMITH & REDFEARN,)
L.L.P. (individually and as defendant class)
representative),)

Class Action)
Judge Edmund A. Sargus, Jr.)
Magistrate Judge Mark R. Abel)

Claimants/Defendants.)

**ORDER GRANTING PRELIMINARY CERTIFICATION OF
CLASSES AND PRELIMINARY APPROVAL OF SETTLEMENT**

Pursuant to Federal Rule of Civil Procedure 23, this Court has reviewed and considered the Motion for Preliminary Certification of Classes and Preliminary Approval of Settlement ("Motion") and the accompanying proposed Settlement Agreement ("Settlement Agreement") filed by Plaintiffs Lorillard Tobacco Company, Philip Morris USA Inc., and R.J. Reynolds Tobacco Company (collectively, "Plaintiffs"). This Court preliminarily finds that:

1. As to Count I and Count II of Plaintiffs' Amended Complaint, the amounts in controversy exceed \$500;
2. As to Count I and Count II of Plaintiffs' Amended Complaint, there are two or more adverse claimants of diverse citizenship;
3. Plaintiffs have deposited funds into the Registry of the Court in the amounts at issue in Count I and Count II;

4. This Court has jurisdiction over Count I and Count II and the parties hereto pursuant 28 U.S.C. §§ 1335 and 2361;

5. The amount in controversy under Count III exceeds \$75,000, exclusive of interests and costs;

6. There is complete diversity between Plaintiffs and Defendants, as well as between all Defendants;

7. This Court has jurisdiction over Count III and the parties hereto pursuant to 28 U.S.C. § 1332. Alternatively, this Court has jurisdiction over Count III pursuant to 28 U.S.C. § 1367; and

8. The Honorable David Folsom of the United States District Court for the Eastern District of Texas ("Texas Court") has entered an Order permitting Provost Umphrey Law Firm, L.L.P. and Provost Umphrey Tobacco to participate in this Settlement Agreement individually and as class representative.

Further, IT IS HEREBY ORDERED:

1. The Settlement Agreement between the Plaintiffs and Claimants appears to be within the range of reasonableness and is hereby granted preliminary approval subject to further consideration at the Fairness Hearing described below;

2. For purposes of settlement only, the Court provisionally certifies pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1), with no ability to opt out, the following class:

All MTF Counsel and all other persons or entities with any interests in any Fee Award to any MTF Counsel, directly or indirectly, made pursuant to any of the Mississippi, Texas, Florida or Mangini fee payment agreements. For purposes of this class definition, MTF Counsel includes all persons or entities that are a party to the Mississippi, Texas, Florida, and Mangini fee payment agreements and their successors, assignees or heirs (the "MTF Counsel Class");

3. For purposes of settlement only, the Court provisionally certifies pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1), with no ability to opt out, the following class:

All MSA Counsel and all other persons or entities with any interests in any Fee Award to any MSA Counsel, directly or indirectly, made pursuant to any of the Massachusetts, Hawaii, Illinois, Louisiana, Iowa, Kansas, Puerto Rico, Ohio, Oklahoma, New Mexico, South Carolina, Utah, Michigan, CCC ("California Cities & Counties"), New York, Washington, D.C., Missouri, Maryland fee payment agreements, and/or any other fee payment agreement in the form of Exhibit O to the November 23, 1998 Master Settlement Agreement other than the Ellis Fee Payment Agreement. For purposes of this class definition, MSA Counsel includes all persons or entities that are a party to any of the Massachusetts, Hawaii, Illinois, Louisiana, Iowa, Kansas, Puerto Rico, Ohio, Oklahoma, New Mexico, South Carolina, Utah, Michigan, CCC, New York, Washington, D.C., Missouri, Maryland fee payment agreements, and/or any other fee payment agreement in the form of Exhibit O to the November 23, 1998 Master Settlement Agreement other than the Ellis Fee Payment Agreement, and their successors, assignees or heirs ("the MSA Counsel Class");

4. For purposes of settlement only, the Court provisionally certifies pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1), with no ability to opt out, the following class:

All Ellis Counsel and all other persons or entities with any interests in the Fee Award to any Ellis Counsel, directly or indirectly, made pursuant to the Ellis Fee Payment Agreement. For purposes of this class definition, Ellis Counsel includes all persons or entities that are a party to the Ellis Fee Payment Agreement, all persons and entities who were named as parties in the matter styled as *Application of Brown & Williamson Tobacco Corp., et al. v. Chesley, et al.*, Index No. 117050/01 (S.Ct. N.Y. Cty.), and their successors, assignees or heirs (the "Ellis Counsel Class");

5. The MTF Counsel Class, the MSA Counsel Class, and the Ellis Counsel Class (collectively the "Counsel Classes") satisfy all of the criteria for class certification set forth in Federal Rules of Civil Procedure 23(a) and (b)(1). Specifically, the Court finds and concludes that (a) the persons or entities who are part of the Counsel Classes are so numerous that joinder of all such persons or entities is impracticable; (b) there are questions of law or fact common to

the Counsel Classes that predominate over any individual questions; (c) the claims of the Class representatives ("Class Representatives") are typical of those of their respective Counsel Classes; (d) in negotiating and entering into the Agreement, the Class Representatives and their counsel ("Class Counsel") fairly and adequately represented and protected the interests of members of their respective Counsel Classes; (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and (f) Plaintiffs face the risk of (1) adjudications with respect to the individual members of the Counsel Classes which would as a practical matter be dispositive of the interests of the other members of the Counsel Classes not parties to the adjudication or substantially impair or impede individual class members' ability to protect their interests or, in the alternative, (2) inconsistent or varying adjudications with respect to the Counsel Classes, which would establish incompatible standards of conduct for Plaintiffs and the Counsel Classes;

6. Claimant/Defendant Provost Umphrey Law Firm, L.L.P. and Provost Umphrey Tobacco is appointed as Class Representative for the MTF Counsel Class;

7. Claimant/Defendant Chester, Willcox & Saxbe, L.L.P. is appointed Class Representative for the MSA Counsel Class;

8. Claimant/Defendant Simon, Peragine, Smith & Redfearn, L.L.P. is appointed Class Representative for the Ellis Counsel Class;

9. Michael Tigar and Jane Tigar of the Tigar Law Firm are appointed Class Counsel for the MTF Counsel Class;

10. Steven G. Storch of Storch, Munves & Amini, P.C. is appointed Class Counsel for the MSA Counsel Class;

11. Stanley Chesley of Waite, Schneider, Bayless, and Chesley Co. LPA is appointed Class Counsel for the Ellis Counsel Class;

12. Through the use of reasonable efforts, Plaintiffs have identified the MSA Counsel Class members and their last known addresses listed in Exhibit 1; the MTF Counsel Class members and their last known addresses listed in Exhibit 2; and the Ellis Counsel Class members and their last known addresses listed in Exhibit 3 (collectively, the "Identifiable Counsel Class Members");

13. Within one business day of entry of this Order, Plaintiffs shall disseminate via Federal Express mail the Notice of Pendency of Class Action and Proposed Settlement Agreement and Settlement Hearing (the "Notice"), attached hereto as Exhibit 4, to all Identifiable Counsel Class Members at their last known addresses as listed in Exhibits 1, 2, and 3. The Court approves the form and content of the Notice and finds that transmission of the Notice as proposed by the Plaintiffs meets the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto;

14. A fairness hearing (the "Fairness Hearing") shall be held before this Court on January 10, 1005 at 10:00 a.m., to determine: (1) whether the Settlement Agreement is fair, reasonable, and adequate to the Class Members and should be finally approved by the Court; (2) whether the Counsel Classes should be finally certified; (3) whether the Class Representatives should be finally designated to represent their respective Classes; and (4) whether counsel of record should be finally designated Class Counsel;

15. Any member of the Counsel Classes who objects to the approval of the Settlement Agreement, to entry of final judgment, to class certification, to the designation of the Class

Representatives, or the appointment of Class Counsel and who properly files the appropriate documentation of such objection (see below), may appear at the Fairness Hearing and show cause why the Settlement Agreement should not be approved as fair, adequate, and reasonable. Objections to the Settlement Agreement shall be heard and considered by the Court only if such objectors file such objections with the Court by January 6, 2005. Any objections must also be sent to Plaintiffs and Class Counsel via overnight mail, for delivery on January 7, 2005 as set forth in the Notice. Included with such objection must be a statement that the objector is a member of one of the Counsel Classes. Any member of the Counsel Classes who does not make an objection in the manner provided shall be deemed to have waived such objection and shall be foreclosed from making any objection to the fairness or adequacy of the Settlement Agreement, to any final judgment that may be entered, to the class certification, to the designation of the Class Representatives, and to the appointment of Class Counsel;

16. Any member of one of the Counsel Classes may enter an appearance in the Class Action, at his or her own expense, individually or through counsel of their own choice. Class Members who do not enter an individual appearance will be represented by their respective Class Counsel;

17. Any and all MTF, MSA and Ellis Counsel Class members are preliminarily enjoined from instituting or further asserting any claim in any court or in arbitration against each other or Plaintiffs in any proceeding relating to any matter set forth in the Amended Complaint and/or the Settlement Agreement or seeking to reform, discharge or otherwise amend the terms of the Settlement Agreement, directly or indirectly;

18. Any decision reversing this Court's grant of preliminary class certification shall have no effect on the rights and obligations under the Settlement Agreement of any Claimant

who executes the Acknowledgment attached to the Settlement Agreement as Exhibit 1. Any such Claimant will continue to be treated as a member of the MTF, MSA and/or Ellis Counsel Class pursuant to the terms of the Settlement Agreement irrespective of whether Final Approval is achieved;

19. The bonds Plaintiffs deposited with the Ohio Court on August 5, 2004 shall remain under the control of the Ohio Court subject to the right of Plaintiffs to replace the bonds and deposit \$66,342,904 with the Ohio Court in an account subject to the exclusive control of the Ohio Court; and

20. The \$79,310,761 in "Missed Payments" which Plaintiffs deposited in an account subject to the exclusive control of this Court on or about December 21 and 22, 2004 shall remain under the control of this Court pursuant to the terms of the Settlement Agreement.

IT IS SO ORDERED.

Dated: Dec. 22, 2004

/s/ Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE