

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

GREGORY L. WILSON, LARRY G.
CHASTAIN, GEORGE O. KENDALL,
CATHERINE POE, DAVID W. BLANK, and
CATHERINE SALE,

Plaintiffs,

v.

SMURFIT NEWSPRINT CORPORATION,

Defendant.

Case No. 9912-13689

FINAL GENERAL JUDGMENT

19 WHEREAS:

20 A. Gregory L. Wilson, Larry G. Chastain, George O. Kendall, Catherine Poe, and
21 David W. Blank (“Plaintiffs”) and Smurfit Newsprint Corporation (“Smurfit”), by and through
22 counsel, have entered into a settlement (the “Settlement”) of the claims asserted by Plaintiffs and
23 members of Subclass B and C against Smurfit in the above-captioned action (the “Action”), the
24 terms of which are set forth in a Stipulation of Settlement, dated June 13, 2005 (the
25 “Stipulation”).
26

1 B. The Court, in an Order dated August 6, 2001, certified Subclasses B and C. By
2 Order dated May 13, 2002, the Court narrowed Subclass C. Subclass B consists of former
3 Smurfit employees who were employed by Southeast Paper Manufacturing Company ("SP")
4 following SP's purchase of the Smurfit mill in Newberg, Oregon, and who seek to recover
5 penalties under ORS 652.150 for late payment of wages after termination. Subclass C is a subset
6 of Subclass B. Subclass C plaintiffs are former salaried exempt members of Subclass B who
7 seek penalties under ORS 652.615 for unauthorized deductions from their wages.

8 C. A Notice of Pendency of Class Action was mailed to the members of Subclass B
9 and C on or about October 12, 2001. No members chose to be excluded from the class.

10 D. The claims of Subclasses B and C were decided by this Court on multiple motions
11 for summary judgment. The Court awarded Subclass B a portion of the damages it sought. As
12 required under ORCP 32F(2), a second class notice was mailed to the members of Subclass B
13 and C along with proof of claim forms, which were requested to be returned to the neutral claims
14 administrator. Following the return of the claim forms, a judgment was entered. Both parties
15 appealed to the Oregon Court of Appeals, which issued its decision on February 23, 2005.
16 Smurfit filed a Petition for Review, which is pending.

17 E. Pursuant to an Order Preliminarily Approving Settlement and Directing Notice,
18 the Court scheduled a hearing for July 18, 2005, at 8:30 a.m. to (1) determine whether the
19 proposed Settlement is fair, reasonable, and adequate and should be approved; (2) determine
20 whether final judgment should be entered dismissing the Action with prejudice; (3) consider the
21 application of plaintiffs' counsel for an award of attorney fees and reimbursement of expenses;
22 and (4) consider whether to award Plaintiffs an incentive payment for their efforts in this case
23 resulting in substantial benefits for the Class. The Court ordered that the Notice of Proposed
24 Settlement of Class Action Against Smurfit Newsprint Corporation and Fairness Hearing ("the
25 Class Notice"), in the form attached as Exhibit 1 to the Order Preliminarily Approving
26 Settlement and Directing Notice ("Notice Order"), be mailed by first class mail, postage prepaid,

1 within two days of the entry of the order preliminarily approving the settlement, to all Subclass B
2 and C members who submitted claim forms at the last known address of each such person as set
3 forth in the records of Smurfit. The Court further ordered plaintiffs' counsel or their agent to
4 make reasonable efforts to locate and forward the Class Notice to any class member whose Class
5 Notice was returned as undeliverable.

6 F. As attested by the Declaration of Katharyn Thompson filed with this Court on
7 July 11, 2005, and the Defendant Smurfit Newsprint Corporation's Certification of Mailing Class
8 Notices, filed with this Court on July 11, 2005, the parties fully complied with the notice
9 provisions of the Notice Order.

10 G. On July 14, 2005, plaintiffs moved for final approval of the Settlement of class
11 action against Smurfit. A hearing on the proposed Settlement was duly held before this Court on
12 July 18, 2005, at which time all interested persons were afforded the opportunity to be heard
13 ("Fairness Hearing").

14 H. The Class Notice advised Subclass B and C members who submitted claim forms
15 of the date, time, place, and purpose of the Fairness Hearing. The Class Notice further advised
16 that any objections to the Settlement were required to be filed with the Court and served on
17 plaintiffs' counsel before July 11, 2005.

18 I. The Court received no objections, and no class member opted out of the class.

19 J. This Court has duly considered the Motion for Final Approval of Class Settlement
20 With Defendant Smurfit Newsprint Corporation, the points and authorities and affidavits
21 submitted in support, and all of the submissions and arguments presented with respect to the
22 proposed Settlement.

23 NOW THEREFORE, after due deliberation, this Court hereby ADJUDGES that:

24 1. The Court, for purposes of this Final General Judgment, adopts all defined terms
25 from the Stipulation.

1 2. This Final General Judgment is binding on all Subclass B and C Members as
2 defined in the Stipulation.

3 3. The proposed Settlement of the Action on the terms and conditions set forth in
4 the Stipulation is in all respects fair, reasonable, and adequate, is in the best interests of Subclass
5 B and C Members and should be approved, especially in light of the benefits to Subclass B and
6 C, the complexity, expense, and possible duration of further litigation and appeals, and the risk
7 of an outcome less favorable than the Settlement.

8 4. The notification given to Subclass B and C was in compliance with the Notice
9 Order, constitutes the best notice practicable under the circumstances, and is in full compliance
10 with the notice requirements of due process and ORCP 32.

11 5. The plan to distribute the net proceeds of the Settlement Fund (after payments of
12 attorney fees, reimbursement of expenses incurred by plaintiffs' counsel, and an incentive
13 payment to Plaintiffs) based on each Subclass B and C Member's individually-determined
14 statutory damages as set forth in the Stipulation and the Class Notice is, in all respects, fair,
15 reasonable, and adequate, and is approved.

16 6. Plaintiffs' motion for an incentive award of \$3750 to be paid to class
17 representatives Gregory L. Wilson, Larry G. Chastain, George O. Kendall, Catherine Poe, and
18 David W. Blank from the Settlement Fund is granted.

19 7. Class counsel's motion for an attorney fee award from the Settlement Fund in the
20 amount of \$617,899.57, plus reimbursement of expenses of \$7148, is granted.

21 8. Entry of this Final General Judgment and final approval of the Settlement
22 extinguishes all direct, derivative, and/or representative claims by Plaintiffs and Subclass B and
23 C Members against Smurfit, its officers, directors, agents, holding companies, subsidiaries,
24 affiliates, employees, partners and attorneys arising from the allegations asserted in this Action
25 or that could have been asserted in this Action based on any alleged violation of ORS Chapter
26 652 ("the Released Claims").

1 9. The Settlement is hereby approved and shall be consummated in accordance with
2 the terms and provisions of the Stipulation.

3 10. The Second Amended Complaint filed by plaintiffs in this Action is hereby
4 dismissed in its entirety, with prejudice, and without costs to any party. The Court finds that the
5 parties and their attorneys complied with ORCP 17 throughout the litigation.

6 11. Smurfit shall pay the Claims Administrator for all costs and expenses it incurs in
7 administering the Settlement, which shall not be deducted from the Settlement Fund.

8 12. All Subclass B and C Members, as defined in the Stipulation, are bound by this
9 Final General Judgment, including, without limitation, the release of claims set forth in the
10 Stipulation.

11 13. This Final General Judgment and the Stipulation, and all papers related thereto,
12 are not, and shall not be construed as, an admission by Smurfit of any liability or wrongdoing
13 whatsoever, and shall not be offered as evidence of any such liability or wrongdoing in this or
14 any other proceeding.

15 ////

16 ////

17 ////

18 ////

19 ////

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

1 14. The administration of the Settlement, and the decision of all disputed questions
2 of law and fact with respect to the validity of any claim or right of any person to participate in
3 the Settlement Fund shall be under the authority of the Court. The parties to this Settlement,
4 counsel herein in any capacity in which they may act hereunder, the Claims Administrator and
5 any employees or agents of such law firms or the Claims Administrator who may furnish
6 services in connection with the Settlement shall not be liable for anything done or omitted to be
7 done in connection with the Settlement and the administration thereof, unless they have acted in
8 a negligent manner.

9 15. Jurisdiction is hereby reserved over all matters relating to the consummation of
10 the Settlement in accordance with the Stipulation.

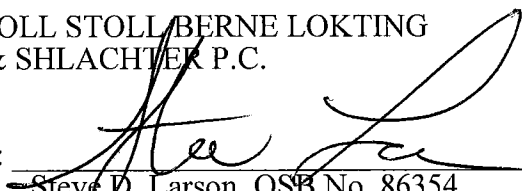
11 IT IS SO ORDERED AND ADJUDGED.

12 DATED: _____

13
14 
15 _____
16 JUDGE JEAN K. MAURER

17 SUBMITTED BY:

18 STOLL STOLL BERNE LOKTING
19 & SHLACHTER P.C.

20 By: 
21 Steve D. Larson, OSB No. 86354
22 Christina L. Beatty-Walters, OSB No. 98163

23 - AND -

24 BARTON C. BOBBITT, P.C.
25 Barton C. Bobbitt, OSB No. 71024
26 4380 SW Macadam Avenue, Suite 500
Portland, OR 97239
(503) 223-2321

Attorneys for Plaintiffs