

ENTRY REGARDING MOTION

State of Vermont vs. Parkway Cleaners et al

480-7-10 Wncv

Title:

Motion (Joint) for Approval of Settlement Agree,

No. 9

Filed on: March 17, 2014

Filed By: Persampieri, Nicholas F., Attorney for:
Plaintiff State of Vermont Agency of Natural Resources
and Fournier Defendants.

FILED
2014 APR - 9 P 12: 36
VT SUPERIOR COURT
WASHINGTON CIVIL DIVISION

Response: NONE

Granted Compliance by _____

Denied

Scheduled for hearing on: _____ at _____; Time Allotted _____

Other

As no other party has objected,
the motion is granted.

[Signature]
Judge

4/9/14
Date

=====
Date copies sent to: 4-9-14

Clerk's Initials [Signature]

Copies sent to:

- Attorney Nicholas F. Persampieri for Plaintiff State of Vermont Agency of Natural Resources
- Defendant Parkway Cleaners
- Defendant Paul D. Gendron
- Defendant Sandra L. Gendron
- Defendant Paul D. Gendron and Sandra L. Gendron d/b/a Parkway
- Attorney Mark G. Hall for Defendant Fournier Cleaners
- Attorney Mark G. Hall for Defendant Harold N. Fournier
- Attorney Mark G. Hall for Defendant Peggy J. Fournier
- Attorney Mark G. Hall for Defendant Harold N. Fournier and Peggy J. Fournier d/b/a F

Attorney James P.W. Goss for Defendant Richard S. Daniels
Attorney James P.W. Goss for Defendant Hazen Street Holdings, Inc.
Attorney Matthew G Hart for party 11 Co-counsel
Attorney Matthew G Hart for party 10 Co-counsel
Attorney William F. Ellis for Third-Party Defendant Town of Hartford

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON Unit

CIVIL DIVISION
Docket No. 480-7-10 Wncv

STATE OF VERMONT)
AGENCY OF NATURAL RESOURCES)
Plaintiff)
)
v.)
)
PARKWAY CLEANERS; PAUL D.)
GENDRON; SANDRA L. GENDRON;)
PAUL D. GENDRON and SANDRA L.)
GENDRON doing business as)
PARKWAY CLEANERS; FOURNIER)
CLEANERS; HAROLD N. FOURNIER;)
PEGGY J. FOURNIER; HAROLD N.)
FOURNIER and PEGGY J. FOURNIER)
doing business as FOURNIER)
CLEANERS; and RICHARD S.)
DANIELS; and HAZEN STREET)
HOLDINGS, INC.)
Defendants)

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND
DISMISSAL OF DEFENDANTS FOURNIER CLEANERS, HAROLD N.
FOURNIER, PEGGY J. FOURNIER, AND HAROLD N. FOURNIER AND PEGGY
J. FOURNIER DOING BUSINESS AS FOURNIER CLEANERS**

Plaintiff, the State of Vermont Agency of Natural Resources (“State”), by and through Vermont Attorney General William H. Sorrell, and Defendants Fournier Cleaners, Harold N. Fournier, Peggy J. Fournier, and Harold N. Fournier and Peggy J. Fournier doing business as Fournier Cleaners (collectively, “Fournier Defendants”), jointly move for approval of the attached Settlement Agreement and Release and for dismissal of the Fournier Defendants.

The State’s claims against the other Defendants will remain pending following the Court’s ruling on this joint motion. Granting the motion would, however, necessarily

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109 State Street
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eliminate the cross-claim for indemnification brought by Defendants Richard S. Daniels and Hazen Street Holdings, Inc. against the Fournier Defendants. *See* 10 V.S.A. § 6615(i) (“A responsible person who has resolved its liability to the State under this section through a judicially approved settlement . . . shall not be liable for claims for contribution or indemnification regarding matters addressed in the judicially approved settlement or in the agreement.”). Granting the motion would also moot the Fournier Defendants’ pending summary judgment motion.¹

1. The State alleges that the Fournier Defendants are among the parties liable under 10 V.S.A. § 6615(a) for the costs of investigation, removal, or remedial action in connection with the release of hazardous materials at 7 Union Street, Hartford, Vermont (“the facility”).

2. The Fournier Defendants dispute liability for the State’s claims.

3. The State and the Fournier Defendants attended a Court-ordered mediation in this matter on December 17 and have now reached and signed a proposed Settlement Agreement, which, if approved by the Court, will resolve the dispute between them.

4. The proposed Settlement Agreement requires the Fournier Defendants to pay the State \$100,000 toward the investigation and cleanup of the facility, in exchange for a release of liability from the State and the resulting protection from third-party claims for contribution or indemnification pursuant to 10 V.S.A. § 6615(i).

6. The State and the Fournier Defendants request that the Court approve the proposed Settlement Agreement and accompanying Release, thereby providing the Fournier

¹ In the event that this joint motion is denied, the State respectfully requests, and the Fournier Defendants consent, that the Court should grant the State an extension of time (of at least 30 days from the Court’s decision) to respond to and cross-move on the Fournier Defendants’ summary judgment motion.

Defendants with protection from third-party claims for contribution or indemnification pursuant to 10 V.S.A. § 6615(i), as contemplated by the proposed Settlement Agreement.

7. The Attorney General, pursuant to 3 V.S.A. § 159, has general supervision of matters and actions in favor of the State and may settle such matters and actions as the interests of the State require.

8. The Attorney General has determined that the proposed Settlement Agreement and Release are in the State's interest and should be approved by the Court because:

- (i) The proposed settlement provides an immediate source of funding for ongoing expenses of facility investigation and clean-up, including the operation and maintenance of air ventilation systems that are necessary to protect the health of inhabitants of nearby homes.
- (ii) Although the State alleges that the Fournier Defendants are liable pursuant to 10 V.S.A. § 6615(a)(2) as persons who owned and operated the facility at the time of release of hazardous materials, the Fournier Defendants dispute this, and while a dispute remains as to whether there was a release during the time the Fournier Defendants owned and operated the facility, the State and the Fournier Defendants agree that the Fournier Defendants did not discharge pollution at the facility. Additionally, the Fournier Defendants are not the current owner or operator of the facility and thus are not liable under 10 V.S.A. § 6615(a)(1). *See, e.g., In re Cuyahoga Equipment Corp.*, 980 F.2d 110, 119 (2d Cir. 1992) (CERCLA "aimed to encourage settlements," particularly when liability is disputed).

- (iii) The Fournier Defendants provided the State with financial disclosures demonstrating an inability to pay additional sums to any regulatory agency.
- (iv) Pacific Employers Insurance Company, who issued a policy of liability insurance to the Fournier Defendants, has agreed to provide funding for the Settlement Agreement despite having asserted defenses to coverage, and the State agrees that considerable risk would be involved in attempting to demonstrate coverage should the matter proceed to further litigation.
- (v) The proposed Settlement Agreement and Release are the result of good-faith, arms-length negotiations by the State and the Fournier Defendants through their respective counsel, and, if approved by the Court, will settle complex litigation, conserve the time and resources of the Court and the parties, and further the public policy favoring settlement. *See, e.g., Kellner v. Kellner*, 2004 VT 1, ¶ 10, 176 Vt. 571, 844 A.2d 743; *Dutch Hill Inn, Inc., v. Patten*, 131 Vt. 187, 192, 303 A.2d 811, 814 (1973).

For these reasons, the State and the Fournier Defendants respectfully request the Court to enter an order approving the attached Settlement Agreement and Release as a “judicially approved settlement” under 10 V.S.A. § 6615(i) and dismissing with prejudice all claims and cross-claims against Defendants Fournier Cleaners, Harold N. Fournier, Peggy J. Fournier, and Harold N. Fournier and Peggy J. Fournier, individually and doing business as Fournier Cleaners.

DATED at Montpelier, Vermont this 17th day of March 2014.

STATE OF VERMONT

WILLIAM H. SORRELL

ATTORNEY GENERAL

by: *Nicholas F. Persampieri*
Nicholas F. Persampieri
Kyle H. Landis-Marinello
Assistant Attorneys General
109 State Street
Montpelier, Vermont 05602
(802) 828-3186

DATED at *Montpelier* Vermont this *17th* day of March 2014.

FOURNIER CLEANERS, HAROLD N.
FOURNIER, & PEGGY J. FOURNIER

By: PAUL FRANK + COLLINS P.C.

By: *Mark Hall by Nicholas F. Persampieri*
Mark Hall, Esq. *with permission*
David M. Poscius, Esq.
PO Box 1307, Burlington, VT 05402-1307
(802) 658-2311
mhall@pfclaw.com

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109 State Street
Montpelier, VT
05609

SETTLEMENT AGREEMENT

Following mediation with the assistance of Michael Marks, Esq., the Parties signing below have reached the following settlement agreement in reference to all of the issues among them arising out of or related to the following Lawsuit: *State v. Parkway Cleaners et al.* Docket No: 480-7-10 Wncv (“Lawsuit”). This Settlement Agreement shall not affect claims by the State against any of the litigants in the Lawsuit which are not Parties to this Agreement.

1. Payment. Harold N. Fournier and Peggy J. Fournier d/b/a Fournier Cleaners, (“Fourniers”) shall pay the State of Vermont the sum of One Hundred Thousand Dollars (\$100,000.00) within 30 days of the approval of the agreement as referenced below in Paragraph (3).

2. Dismissal. The Parties shall dismiss the Fourniers from the Lawsuit with prejudice. Each side shall bear its own costs and attorney’s fees.

3. Release. The State is providing a full Site Release related to the property that is the subject of the Lawsuit (“Site”) to the Fourniers and their alleged insurer, Pacific Employers Insurance Company (“PEIC”) including a release from third party claims pursuant to 10 V.S.A. § 6615(i) in a form reasonably acceptable to all counsel. The release and this Settlement Agreement shall be approved by the Court pursuant to 10 V.S.A. § 6615(i) or this Agreement is null and void. Without limiting the foregoing, the Site Release shall cover all claims that were or could have been raised by the State against the Fourniers and/or PEIC in the Lawsuit for any reason related to the Site, extending to any unknown, undiscovered, and undiscoverable claims related to the Site, and all persons who could in any way be subjected to these claims, including principals, members, employees, agents, officers, shareholders and insurers of the Fourniers. The Release shall not affect rights of the State against any person or entity who is not a Party to this Agreement. The Fourniers shall assign to the State any right they may have to make a claim against any insurance policy, other than and expressly excluding PEIC and its parent, subsidiaries and assigns, discovered by the State subsequent to the date of this Agreement; claims assigned by this sentence shall not be released.

4. Other Agreements. The State acknowledges that the payment made pursuant to paragraph 1 is reasonable and fair because the Fourniers did not discharge pollution at the Site and they lack assets and insurance to pay additional sums to any regulatory agency. In consideration of its acknowledgment and the payment made pursuant to this Agreement, the State shall use its best efforts to persuade the United States Environmental Protection Agency (EPA) not to make any claim against the Fourniers or PEIC related to the Site. Furthermore, the State shall cooperate with reasonable requests by the Fourniers and PEIC to implement this paragraph. Best efforts shall include, but not be limited to, in the event that EPA seeks enforcement or cost-recovery related to the Site, the submission of correspondence from the Secretary of the Agency of Natural Resources or his or his designee to the EPA, in a form agreed to by the Fourniers and PEIC, specifically requesting that no action be taken against the Fourniers or PEIC relative to the Site. Also, if necessary, best efforts shall include, but not be limited to, sharing documentation with the EPA as to the likely known source of the contamination (including but not limited to operations of prior owners of the Site, including but not limited to Paul and Sandra Gendron) and taking any and all actions to persuade the EPA of the limited resources available to Fourniers. The Parties acknowledge that EPA is not bound by this Agreement, but that strict adherence to this agreement of cooperation by the State is a material term of this Agreement.

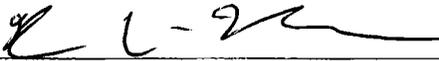
5. Miscellaneous. This Agreement represents a compromise to resolve pending litigation. By making this Agreement, no Party makes any admission, other than stated in paragraph 4, including, without limitation, claims for insurance coverage by the Fourniers against PEIC. This Agreement is a comprehensive agreement; all prior understandings and discussions are merged into this Agreement. This Agreement may only be amended by a written instrument signed by all Parties. The Parties shall execute such additional documents as are reasonably requested to implement this Agreement. This Agreement shall be interpreted under the laws of the State of Vermont. The presumption against the drafter shall not apply to the construction of this Agreement. Photocopies of this Agreement shall be as effective as the original. This Agreement shall be binding and enforceable against the successors, heirs and assigns of the Parties. All Parties were represented by counsel in the negotiation and drafting of this Agreement. The mediator does not provide legal advice to any

party. Any participation by the mediator in the drafting of this Agreement was in his capacity as mediator in recording mutually agreeable settlement terms, and does not constitute legal advice to any of the Parties.

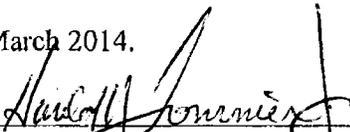
6. Nothing contained in this Agreement shall preclude the Fourniers or PEIC from taking any action to obtain the contribution of any Person not a Party to this Agreement for costs incurred in connection with the lawsuit or Site, including but not limited to the Settlement Payment.

7. This Agreement may be executed in counterpart originals, all of which, when so executed and taken together, shall be deemed an original and all of which shall constitute one and the same instrument. Each counterpart may be delivered by facsimile or electronic mail, and a faxed or electronically mailed copy of a signature shall have the same force and effect as an original signature.

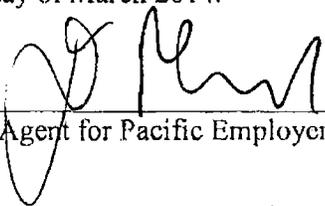
Dated at Montpelier, Vermont, this 10th day of March 2014.


Agent for State of Vermont

Dated at SPRING, ~~Vermont~~ ^{TEXAS}, this 7 day of March 2014.


Harold N. Fournier, Individually and as Agent
for Peggy J. Fournier and Fournier Cleaners

Dated at Philadelphia, Pennsylvania, this 5th day of March 2014.


Agent for Pacific Employers Insurance Co.

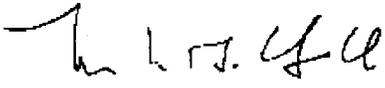
Approved as to form:

Dated at Montpelier, Vermont, this 10th day of March 2014.



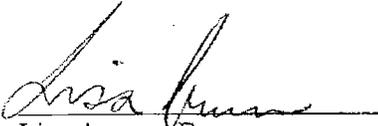
Kyle Landis-Marinello, Esq.
Counsel for State of Vermont

Dated at Burlington, Vermont, this 7th day of March 2014.



Mark Hall, Esq.
Counsel for Fourniers

Dated at Philadelphia, Pennsylvania, this 5th day of March 2014.



Lisa Armon, Esq.
Counsel for PEIC

RELEASE

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN:

GREETINGS: KNOW YE, that the State of Vermont, Agency of Natural Resources, and any and all successors thereof ("the State"), for itself and for its predecessors and successors, in consideration for the payment of \$100,000 by Pacific Employers Insurance Company ("PEIC"), and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby remise, release, and forever discharge Fournier Cleaners, Harold N. Fournier, Peggy J. Fournier, Harold N. Fournier and Peggy J. Fournier doing business as Fournier Cleaners, and PEIC, their respective predecessors, successors, assigns, parents, subsidiaries, directors, shareholders, officers, employees, agents, and representatives, from any and all manner of action and actions, administrative claims, grievances, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, costs, attorney's fees, penalties, and demands whatsoever, in law or in equity, which the State ever had, now has, or may have in the future, arising out of or on account of any hazardous waste or hazardous material that has been released on the premises of so-called Parkway Cleaners Site at 7 Union Street in Hartford, Vermont, as of the date of this Release ("the Parkway Cleaners Site Contamination"), including any and all migration of any portion of the Parkway Cleaners Site Contamination to any other property or to soil, groundwater, surface water, or any other receptor that has occurred or is occurring as of the date of this Release or that may occur subsequent to the date of this Release. Excepted from the foregoing and expressly not included in this Release is any claim the State may bring against an insurance company other than PEIC, its parents, subsidiaries, affiliates, and assigns, related to an insurance policy discovered by the State after the date of this Release. This Release includes, but is not limited to, the claims set forth by the State in an action filed in the Superior Court, Civil Division, Washington Unit entitled *State of Vermont, Agency of Natural Resources v. Parkway Cleaners, et al.*, Docket No. 489-7-10 Wncv.

The State acknowledges that the payment made by PEIC referenced herein is the compromise of claims that are disputed both as to liability and damages. It is not, and shall not, be deemed to be an admission of liability.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this 17th
Day of March 2014.

X C R
Witness

STATE OF VERMONT
AGENCY OF NATURAL RESOURCES

By: Nicholas F. Persampieri
Nicholas F. Persampieri
Assistant Attorney General

STATE OF VERMONT
COUNTY OF WASHINGTON, SS.

On this the 17th day of March, 2014, before me personally appeared Nicholas F. Persampieri, known (or satisfactorily proven) to me to be the person who subscribed his name to the foregoing instrument and acknowledged that he executed the same as his free act and deed and the free act and deed of the State of Vermont.

Wanda A. Clark
Notary Public
My commission expires 2-10-15