

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

JAMES DOYLE, et al.,	)	No. ED98462
	)	
Plaintiffs/Respondents,	)	
	)	
v.	)	
	)	Appeal from the Circuit Court
FLUOR CORPORATION, et al.,	)	of the City of St. Louis
	)	
Defendants/Respondents,	)	Honorable Lisa Van Amburg
	)	
JOSEPH MILLER, et al.	)	
	)	
Objectors/Appellants.	)	FILED: January 15, 2013

Appellants appeal the trial court's judgment approving a \$55 million class action settlement in favor of Herculaneum residents whose real property was affected by the Doe Run lead smelter. Appellants are 28 objectors in a class of over 700 plaintiffs who suffered nuisance and damage to their real property as a result of toxins emitted from Doe Run. They claim that they were denied adequate notice of the action, specific representation of their interests, and meaningful discovery related to the environmental justification for the monetary allocation plan.

AFFIRMED.

DIVISION ONE HOLDS:

(1) The named class representatives adequately represented the entire class, including Appellants. The sub-class distinctions between remediated and unremediated properties, defined in 2005, was moot by the time of settlement in 2012 in that virtually all properties in the area had been remediated by that time. No Appellant claimed to possess unremediated property. Additionally, the representatives comprised both past and present owners, thus representing all Appellants. The representatives certified by affidavit, and the record supports, that the settlement was fair and reasonable weighing all relevant factors, particularly the merits of Plaintiffs' case and the risks of trial versus the monetary allocation under the settlement, which provides nuisance compensation to all past and present owners and additional property damage compensation to current owners.

(2) The class was provided the best notice practicable under the circumstances in compliance with Rule 52.08. Published notice provided instructions for receiving direct mail notice, which specified the opt-out deadline, and both notices contained contact information for further inquiry. Failure to specify the terms of a future settlement did not render notice inadequate. The trial court did not abuse its discretion in refusing to order a second opt-out opportunity after the settlement was reached, as such a measure is not required by Rule 52.08 and would have unnecessarily prolonged the proceedings.

(3) The trial court did not abuse its discretion in denying Appellants' motion for continuance for additional discovery on the environmental rationale for the allocation plan. The Class would be severely prejudiced by any delay, as Defendants' financial obligation under the settlement was contingent upon final approval within 30 days. Appellants' counsel has conducted significant discovery in other suits against Doe Run, voluminous environmental information is publicly available, and Respondents provided additional discovery specifically relevant to Appellant's objection concerning allocation.

Opinion by: Clifford H. Ahrens, Presiding Judge Sherri B. Sullivan, J., and Glenn A. Norton, J., concur.

Attorneys for Appellant: Mark Bronson, Meghan McGlynn, Steven Bronson, James Dowd, Gerson Smoger

Attorney for Respondent: Maurice Graham, Kevin Scott Hannon, John Henry Quinn III, Andrew Rothschild, Ted Perryman, Theodore Williams, Edward L. Dowd, Thomas Ward

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