

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

AIKEN DIVISION

Brenda Burns, Individually and as the)	C/A No. 1:15-cv-05060-TLW-PJG
Parent and Natural Guardian for B.B., a)	
Minor,)	
)	
Plaintiff,)	
)	VERIFIED PETITION FOR
vs.)	APPROVAL OF MINOR
)	SETTLEMENT
Coty, Inc. and Coty US, LLC,)	
)	
Defendants.)	
)	

The Petitioner, Brenda Burns, Individually and as the Parent and Guardian *ad litem* for B.B., a minor, through her undersigned attorney, hereby petitions this Court pursuant to Local Rule 17.02, DSC, for an order approving the minor’s settlement reached in connection with this matter. Pursuant to District Judge Currie’s Standing Order Regarding Approval of Settlements, the Petitioner would respectfully show as follows:

(1) Provide the legal and actual basis of the movant's authority to seek settlement approval (attach documentation establishing the Representative Plaintiff’s authority).

The Petitioner has been appointed as B.B.’s Guardian *ad litem*. As a result, all parties are properly represented and are properly before the Court.

(2) Summarize:

- *the nature of the action*

Plaintiff Brenda Burns, proceeding individually and as the parent and Guardian *ad litem* for her minor daughter B.B., (hereinafter “Plaintiff”) initiated this products liability action with the filing of her Summons and Complaint in the Aiken Division on March 9, 2016. (ECF 1)

Thereafter, Plaintiff filed her Amended Complaint, in which she alleges the minor, B.B., sustained personal injury on or after September 28, 2014, from exposure to Sally Hansen Simply Smooth Hair Remover, a cream-based depilatory manufactured by Coty. (ECF 11) Plaintiff asserted causes of action for negligence, strict liability, failure to warn, violation(s) of the South Carolina Adulterated or Misbranded Food and Cosmetics Act, S.C. Code Ann. §§ 39-25-10, *et seq.*, and breach of implied and express warranties. Her Amended Complaint includes a prayer for actual and punitive damages, pre- and post-judgment interest, costs and expenses, and attorney's fees. The gravamen of Plaintiff's allegations is that Coty failed to properly label and warn users of the potentially dangerous chemical properties of the Sally Hansen Simply Smooth Hair Remover product. Plaintiff's Amended Complaint invoked this Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332. (Amd. Compl., ECF 11, at ¶ 3) Defendants' Answer to Amended Complaint (ECF 16) denied the allegations of the Amended Complaint and asserted numerous substantive defenses.

- ***the state of the proceedings at the time of settlement (including a summary of completed discovery***

The parties engaged in extensive discovery, including written discovery, fact and expert witness depositions, and the issuance of numerous document subpoenas directed to the minor's treating physicians and school. Discovery ended November 20, 2017, and Defendants moved for summary judgment (ECF 38, 38-1) Defendants' Motion was denied via Order entered May 16, 2018 (ECF 56) The parties mediated the case July 18, 2018, but did not resolve the matter. A jury was selected August 6, 2018, and the parties were able to reach a settlement agreement shortly thereafter.

- ***the nature and extent of injuries (including a summary of medical expenses)***

The minor, B.B., sustained an alkaline burn to the left eye, which resulted in a complete loss of vision. B.B.'s treating corneal specialist, Dr. Amy Estes, confirmed B.B.'s vision loss and that B.B. is not presently a candidate for any medical treatment that might restore vision in her left eye. Medical expenses related to the left-eye injury were approximately \$13,500.00. (Exhibit A – Affidavit of Amy Estes, M.D. and medical report of Amy Estes, M.D.)

- ***factors influencing the decision to settle the claim***

There remains a significant factual dispute between the parties regarding how B.B. came into contact with the subject product and whether a jury could find Plaintiff responsible, in whole or in part, for B.B.'s injuries, and whether Defendants properly and sufficient informed Plaintiff and other consumers regarding the potentially dangerous chemical properties of the product at issue.

- ***the amounts and nature of any insurance coverage relevant to the action***

At all times relevant to these proceedings, Coty, Inc. and Coty US, LLC were insured subject to a commercial general liability policy issued by Sentry Insurance a Mutual Company, policy number 90-16534-03, with a general aggregate limit of \$2,000,000.00.

- ***the names of any creditors and amounts of their claims***

None as to Defendants. B.B is a Medicaid recipient. Pursuant to a letter from Equian dated February 8, 2018, Molina Healthcare of SC, a Medicaid plan, has asserted a lien in the amount of \$1,168.84.

- ***the amount and terms of the settlement and detailed explanation of how proceeds will be distributed***

In consideration of the full and final release of any and all claims asserted or that could have been asserted against Defendants in this matter, Sentry Insurance a Mutual Company, on

behalf of Defendants, has agreed to pay the sums outlined below, inclusive of cash and periodic payments. Plaintiff acknowledges the current value or cost to Sentry Insurance a Mutual Company of this entire settlement, inclusive of cash and periodic payments, is \$470,000.00, inclusive of cash and future periodic payments as described in Exhibit A. (Exhibit B – QAR of Brenda Burns on behalf of B.B., a minor child)

1. Cash: \$240,549.45 is the cash portion due at the time of settlement to Plaintiff and her attorneys. *See* Item (4), below.

2. Periodic Payments: \$228,281.71 is the cost to Sentry Insurance a Mutual Company to provide for the schedule of periodic payments outlined below. Disclosure of this cost has been required as a condition of settlement. No part of the cost being paid by Sentry Insurance a Mutual Company to provide funding for the schedule of future periodic payments may be paid directly to Plaintiff or her attorneys since the parties negotiated for a structured settlement as being in the best interest of B.B. Sentry Insurance a Mutual Company agrees to pay, or cause to be paid, future periodic payments per the schedule as follows (“Periodic Payments”):

To B.B. (“Payee”):

1. \$75,000.00 guaranteed lump sum payable on February 23, 2029.
2. \$120,000.00 guaranteed lump sum payable on February 23, 2034.
3. \$217,525.00 guaranteed lump sum payable on February 23, 2039.

- ***the nature of the release to be given***

Plaintiff will sign a full mutual release of all claims of whatsoever nature against Defendants and their past, present, and future officers, directors, shareholders, attorneys, insurers, indemnitors, agents, and servants.

- *the status of any other actions arising out of the same incident which have been or may be filed (and the impact on the fairness of any settlement in this action)*

There are no other actions arising out of the same incident which have been or may be filed.

- (3) **State whether there are any known, anticipated, or potential disputes as to distribution of proceeds, or approval of the settlement and, if so, provide a full explanation.**

The parties are unaware of any such potential disputes.

- (4) **Set forth the amount of attorneys' fees and costs (supporting documentation including any fee or fee splitting agreements shall be attached).**

This includes: (a) One Hundred Eighty-Eight Thousand and No/100 (\$188,000.00) Dollars in attorneys' fees or 40% of the total recovery in this action with \$62,666.04 to McWhirter, Bellinger & Associates, P.A. and \$125,333.96 to Bell Legal Group (Exhibit C Joint Fee Contract); (b) Forty-Three Thousand Forty-Nine and No/100 (\$43,049.45) in costs allocable to this claim.

- (5) **Include petitioner's statements that the amounts and terms of the settlement as well as costs and fees are fair and reasonable.**

Petitioner believes the terms and conditions of the settlement and the attorneys' fees and costs are fair and reasonable. Petitioner agrees with the distribution of settlement proceeds as set forth above.

- (6) **In addition:**

- **in wrongful death actions, the Plaintiff Representative should list all persons known to have a right to proceeds under the wrongful death statute and indicate whether they have been informed of the action and the planned settlement;**

Not applicable.

- **in settlements for minors and incapacitated persons, address the payment requirements found in S.C. Code Ann. § 62-5-433 (requiring payment to a**

conservator under certain circumstances) and provide information regarding the care plan and how proceeds will be managed.

According to Amy Estes, M.D., there are no current medical therapies available that will ameliorate B.B.'s vision loss. (*Supra*, Exhibit A). Therefore a life care plan is not needed at this time.

The Plaintiff, who has been appointed by this Court to serve as Guardian *ad litem*, is only seeking Court approval of \$9,500 for the minor's sole benefit. In accordance with then Chief Justice Toal's Order dated July 26, 2011: "The court should not routinely require the appointment of a Conservator for amounts under \$10,000. Additionally, when a structured settlement is over \$10,000, but the minor will not receive more than \$10,000 per year during his or her minority, it is generally not appropriate to appoint a conservator."

VERIFICATION

Petitioner verifies that the allegations contained in the foregoing Petition are true of her own knowledge, except those allegations stated upon information and belief, and as to those, Petitioner believes them to be true. (Attached hereto as Exhibit D)

DECLARATION OF COUNSEL

Counsel for the Petitioner and minor affirm that they are in agreement with the content of the Verified Petition and join in the request for settlement approval. Counsel is unaware of any known disputes as to settlement approval, distribution of proceeds, or competing claims. However, reference is made to the proposed distributions as set forth above.

WHEREFORE, the undersigned prays that this Court approve, in accordance with Local Rule 17.02, DSC, the aforesaid proposed settlement and authorize the Petitioner to consummate this settlement and execute the appropriate releases and dismissals.

November 13, 2018

s/J. Edward Bell, III

J. Edward Bell, III (Fed. I.D. #1280)
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