

IN THE UNITED STATES COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED

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U.S. DISTRICT COURT
N.D. OF ALABAMA

ANTONIO TOLBERT, et al.,

PLAINTIFFS,

MONSANTO COMPANY; and PHARMACIA
CORPORATION;

DEFENDANTS.

ENTERED *Carly*

) APR 20 2004

) CASE NO. CV-01-C-1407-S

GERALDINE OLIVER,

PLAINTIFF,

V.

MONSANTO COMPANY; and PHARMACIA
CORPORATION;

DEFENDANTS.

) CASE NO. CV-02-C-0836-S

**SUPPLEMENTAL ORDER RESOLVING ABERNATHY CASE AND TOLBERT
QUALIFIED SETTLEMENT FUND CLAIMANT BANKRUPTCY ISSUES
AND REFERRING SUCH CASES TO BANKRUPTCY COURT**

The Court has before it certain bankruptcy cases numbering approximately 1,000 which were withdrawn from the bankruptcy court to this Court by Order entered on December 29, 2003. These cases were withdrawn pursuant to 28 U.S.C. §157(d) for "cause shown" to this Court because the pendency of those bankruptcy cases impeded the ability of this Court to effectively monitor and effectuate the terms of the Global Settlement reached herein such that the

Plaintiffs in the Abernathy case and the claimants to the Tolbert Qualified Settlement Fund (“TQS Fund”) could promptly receive those funds and other settlement benefits to which they may be entitled. The Court has encouraged the parties herein and the bankruptcy trustees, who were impacted by the withdrawal of the reference, to confer and determine whether a basis exists for the resolution of the bankruptcy questions.

The Court is advised that counsel for the Plaintiffs in the Abernathy case, the Claims Administrator for the TQS Fund and the bankruptcy trustees, James G. Henderson, Rocco J. Leo, Linda B. Gore, and Mavis Willingham (the “Trustees”) have conferred, and the Court is advised that the Claims Administrator for the TQS Fund, and counsel for the Plaintiffs in the Abernathy case, have proposed a resolution of the bankruptcy questions before this Court related to the bankruptcy cases of the Abernathy Plaintiffs and the TQS Fund claimants (collectively, the “Withdrawn Cases”), as set forth in this Order, and that this Order may be entered without opposition by the Trustees, and it appearing to the Court that this Supplemental Order should be entered to modify and clarify its previous Order of December 29, 2003,

It is **HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. Counsel for the Plaintiffs in the Abernathy case, and the Claims Administrator for the TQS Fund have proposed a resolution of the bankruptcy questions before this Court related to the Withdrawn Cases, and the Trustees have no objection to said proposed resolution. The Court having been advised of the terms of the proposed resolution, and it appearing that an Order thereon should be entered, the Court hereby orders that,

- A. All Withdrawn Cases are hereby referred back to the appropriate Bankruptcy Court, provided however, that each case shall be administered consistent with this Order.
- B. The \$500.00 TQS Fund Advance Payment shall be conclusively deemed to either be exempt or inconsequential or a burden to the Estate.
- C. The Trustee in each bankruptcy case is directed to make an initial offer to each Debtor/Claimant in a Withdrawn Case to settle the dispute as to the ownership of (1) the funds due a Plaintiff in the Abernathy case, or (2) the additional funds above the \$500.00 TQS Fund Advance Payment due a TQS Fund claimant, as applicable, as follows:
- (i) The Debtor/Claimant may elect to receive a payment of: (i) up to \$3,000.00 from the Abernathy case for Abernathy Plaintiffs or (ii) up to \$2,500.00 in addition to the \$500.00 Advance Payment from the Claims Administrator for TQS Fund claimants, as applicable, with the balance of the funds due from the Abernathy case or the Claims Administrator for the TQS Fund, as applicable, being property of the Bankruptcy Estate; or,
 - (ii) The Debtor/Claimant may elect to accept a pro-rata share of any payment due from the Abernathy case for Abernathy Plaintiffs (with the first \$500.00 being exempt), or of the additional payment above the \$500.00 Advance Payment from the Claims Administrator for the TQS Fund, as applicable, based upon the following schedule:

<u>Bankruptcy Case</u> <u>Petition Filing Year</u>	<u>Trustee</u>	<u>Debtor/Claimant</u>
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2000 to 2001	50%	50%
2002 - forward	75%	25%

For purposes of this schedule, "Bankruptcy Case Petition Filing Year" shall mean the calendar year in which any Debtor/Claimant filed his/her bankruptcy petition under Title 11. Where multiple bankruptcy cases have been filed, it shall mean the date of the first case filed in 2000, or after, in which the Debtor/Claimant received a discharge; or

- (iii) The Debtor/Claimant may "opt-out" and elect to accept neither of the options set forth above in paragraphs 1(C)(i) and (ii) immediately above, and litigate the issue of his or her ownership of any funds to be paid from the Abernathy case or the TQS Fund, as applicable. In such event, upon receiving notice of the Debtor/Claimant's election to "opt-out," the Claims Administrator of the Tolbert Qualified Settlement Fund or the Plaintiffs' attorneys in the Abernathy case shall pay the funds to which the Debtor/Claimant may be entitled to the Trustee. Any such funds shall be held in trust pending further order from the Bankruptcy Court adjudicating or otherwise determining the relative rights of the Debtor/Claimant and the Trustee; and

- D. All settlements entered into by the Trustee in the bankruptcy cases are subject to appropriate review and approval by the Bankruptcy Court after notice and a hearing.

2. At any time that Plaintiffs' counsel in the Abernathy case or the Claims Administrator to the TQS Fund, as applicable, pays funds under this Order under paragraph 1(C)(iii), or such additional Bankruptcy Court Order as may be appropriately entered under paragraph 1(C)(i) or (ii), then, upon payment of such funds from the Abernathy case or the TQS Fund, as applicable, to the Trustee or to the Debtor/Claimant or to both of them under the terms of this Order, Plaintiffs' counsel in the Abernathy case, the TQS Fund and the Claims Administrator, including their employees, agents and any successors, and the Released Parties (as that term is defined in Exhibit B to the Global Settlement Agreement, entered on or about September 9, 2003), together with Plaintiffs' counsel for TQS Fund claimants, shall be discharged from further liability and performance whatsoever from any Trustee, Debtor/Claimant or creditor of any such Debtor/Claimant.
3. The Court further finds that the Trustees can have no greater rights than the Debtor/Claimants to the Abernathy case or the TQS Fund. Consequently, all releases of liability granted under the Global Settlement and previously approved by this Court, including those in favor of the Released Parties, remain in full force and effect, and the Trustees are bound by said Releases to the full extent permitted by law.
4. The Trustee's counsel may file appropriate applications for employment and for compensation in the Withdrawn Cases affected by this Order, in the respective bankruptcy cases; provided, however, that in those bankruptcy cases where Plaintiffs' counsel in the Abernathy cases or the Claims Administrator in the TQS Fund, as applicable, proposes to disburse funds to a Trustee that would exceed all allowed administrative expenses and allowed claims of creditors in said bankruptcy case, thereby

creating the potential for a refund of the excess to the Debtor/Claimant, the total distribution to the Trustee shall not exceed 117.5% of the allowed claims in the bankruptcy estate from which all allowed claims, administrative claims and attorney's fees shall be paid upon proper application. Any excess funds remaining after the payment of said amount shall be remitted to the Debtor/Claimant in the normal course of the Trustee's Final Distribution.

5. A. The Court further Orders that in certain Withdrawn Cases the Court finds that the causes of action in the Abernathy cases or the claims to the TQS Fund, as applicable, are not property of the estate and the Trustees have no claim to said causes of action or TQS Fund claims. Those cases include:
 - (i) Bankruptcy cases bearing a petition date preceding January 1, 2000; and
 - (ii) Bankruptcy cases where the existence of a tort claim relating to this litigation was disclosed in the Debtor/Claimant's bankruptcy Schedules or Statement of Financial Affairs, and where the case was subsequently closed and the asset deemed abandoned by operation of law; or
- B. Bankruptcy cases where the Debtor/Claimant disclosed a tort claim related to this litigation, scheduled the asset as exempt property and the Trustee failed to object to said claim of exemption within 30 days of the conclusion of the Meeting of Creditors required by 11 U.S.C. §341;
- C. The Trustee or any creditor of a Debtor/Claimant or other party in interest may make application to this Court to review the issues in paragraph five in the future if appropriate;

- D. All other issues concerning the respective rights of the Debtor/Claimant and the Trustee shall be determined by the Bankruptcy Court.
6. Nothing in this Order shall be construed as a bar of any Debtor/Claimant's right to dismiss a Chapter 13 case pursuant to 11 U.S.C. §1307(b).
 7. Plaintiffs' counsel in the Abernathy case and the TQS Fund Claims Administrator shall provide a copy of this Order to every Plaintiff in the Abernathy case and to every TQS Fund claimant who has disclosed to Plaintiffs' counsel in the Abernathy case or to the TQS Claims Fund Administrator, as applicable, that such Debtor/Claimant has filed any type of bankruptcy since January 1, 2000, and the TQS Funds Claims Administrator is directed to consider whether any additional reasonable notice procedures may be practical and prudent to effectuate this Order with respect to TQS claimants and may apply to this Court for such additional procedure orders as may be required.
 8. To assist in the orderly, timely and efficient distribution of the funds held by the TQS Fund Claims Administrator or paid in settlement of the Abernathy case, as applicable, said TQS Funds Claims Administrator and Plaintiffs' counsel in the Abernathy case are authorized to confer with, and assist, the Trustees in determining the status of the bankruptcy cases in which such Debtor/Claimants are involved, and further, to contact the Debtor/Claimants to request that they provide the information to the TQS Funds Claims Administrator and Plaintiffs' counsel in the Abernathy case as to whether the Debtor/Claimant disclosed a tort claim related to this litigation in the Debtor/Claimant's

bankruptcy schedules or Statement of Affairs and whether the Debtor/Claimant claimed said tort claim as exempt.

DONE and **ORDERED** this the 20th day of April, 2004.



U. W. Clemon
Chief United States District Judge

**CLAIMS ADMINISTRATOR PAYMENT OFFICE
TOLBERT QUALIFIED SETTLEMENT FUND
(MONSANTO/SOLUTIA SETTLEMENT)**

**Suite 1200
2 North 20th Street
Birmingham, Alabama 35203**

**(800) 345-0837
www.TOLBERTQSF.com**

May 14, 2004

[Claimant Name and Address]

**RE: The Tolbert Qualified Settlement Fund - Supplemental Order Resolving
Claimant Bankruptcy Issues; Our File No. 3388-3 {RR}**

Dear Claimant:

As you may know, I am the Claims Administrator for the Tolbert Qualified Settlement Fund.

Please find enclosed an Order which Judge Clemon entered on April 20, 2004 concerning claimants in the Tolbert Qualified Settlement Fund who have a bankruptcy history.

Our records indicate that you may have such a bankruptcy history. If you do not, please let me know.

As the Order indicates on pages 3 and 4, the bankruptcy trustees have agreed that the \$500 advance payment is not subject to any bankruptcy estate claim, and they therefore do not challenge your right to receive that full \$500 payment approved on by the Court in December 2003. Also, the Order indicates that if your last bankruptcy petition was filed before 2000, your settlement payments will not be impacted by your bankruptcy history in any way.

If you filed a bankruptcy petition during or after 2000, you have the following three alternatives:

(i) You can receive an additional \$2,500 (in addition to your \$500 advance payment) free of any bankruptcy estate claims; or (ii) you can elect to split your payments with the bankruptcy estate based upon the percentages given on pages 3 and 4 of the Order; or (iii) you can opt-out and litigate this issue with the bankruptcy estate.

We will not require you to choose among these options until you know how much you will be paid from the Tolbert Qualified Settlement Fund.

May 14, 2004

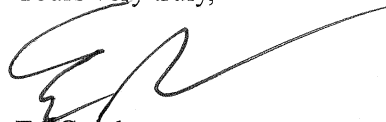
Page 2

As you can see, the Order provides you with some options that allow you to keep some of your settlement no matter what your bankruptcy history. However, it does not take away any of your rights, because you are allowed to opt-out of all of these options and to litigate with the bankruptcy estate yourself.

Please note, however, that we do not represent you in any bankruptcy proceeding. Likewise, counsel for the *Tolbert* plaintiffs do not represent you in any bankruptcy proceeding unless you have a specific agreement with them to do so. Accordingly, you may wish to hire a lawyer with bankruptcy expertise to advise you with respect to these matters. If a lawyer represented you in filing your bankruptcy case, you may want to contact that lawyer to advise you regarding these matters. Otherwise, the Alabama State Bar Lawyer Referral Service, telephone number 1 (334) 269-1515, may be able to help you find a bankruptcy lawyer.

Please let me know if you have any questions concerning the enclosed or the foregoing.

Yours very truly,



Ed Gentle
Claims Administrator

ECG/kjm
Enclosure