

# Missouri Lawyers WEEKLY

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## Doe Run's owner to pay \$55M for property damage Class lawyers to get \$13.75 million in fees



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A judge has approved a \$55 million class action settlement over contaminated property with the owner of the Doe Run lead smelter in Herculaneum, overruling most of the last-minute objections that threatened to derail the agreement.

"We're pleased that the judge ruled and ruled so promptly," said class lawyer Maurice Graham, of Gray, Ritter & Graham in St. Louis. "We look forward to the members of the class in Herculaneum receiving payments that they've waited so long for."

Doe Run's Chief Operating Officer, Jerry Pyatt, said in a statement, "As we said when the settlement was first announced, Doe Run considers this resolution a step in the right direction for both our business and the people of Herculaneum."

The smelter owner agreed to settle the class action lead-contamination suit that has been pending for more than a decade.

St. Louis Circuit Judge Lisa VanAmburg approved the settlement April 4. Although The Doe Run Resources Corp. is responsible for the entire amount, the agreement also releases former owners of the smelter from liability.

"Our main purpose was to make sure that the property owners within the class area were adequately compensated for what they have had to endure as a result of the smelter and the smelter discharge, which has affected property values and their ability to enjoy the home in which they live," Graham said.

The settlement is described in court papers as the uncontaminated value of 453 currently owned class properties — roughly \$46.5 million — plus another \$8.5 million for former owners.

Lead emissions from the smelter permeated the lives of Herculaneum residents.

"It did affect the ability of children to play outside, and many of the families in Herculaneum underwent remediation of their properties by having their yards dug up and replaced, some more than once," Graham said.

Doe Run Resources will pay the settlement in four installments of \$13.75 million, the first due 30 days after final approval, unless an appeal is filed, followed by one payment in each of the next three years. The settlement was achieved after four days of negotiations in August and September.

At a contentious final approval hearing in March, lawyers Mark Bronson, Gerson Smoger and James R. Dowd, who are not involved in this case directly, objected to the allocation of settlement funds and challenged the notice provided to potential class members.

Bronson, Smoger and Dowd were among lawyers who won a \$358.5 million verdict

### Settlement allocation

- **Annoyance and discomfort:** \$26,356,175
- **Property damage:** \$13,176,110
- **Incentive payments to class representatives:** \$360,000
- **Contingency fund:** \$500,000
- **Litigation costs:** \$857,714
- **Attorneys' fees:** \$13,750,000
- **Total:** \$55,000,000

Source: *Doyle et al. v. The Fluor Corp. et al. Allocation Plan*

last summer in a personal injury suit over lead emissions at the Herculaneum smelter.

Those lawyers have their own property damage class action suit pending in St. Louis Circuit Court, *Johnson et al. v. Fluor Corp. et al.*

VanAmburg's approval of this settlement essentially eliminates the objecting lawyers' class action.

The objectors have until May 14 to appeal VanAmburg's judgment. Bronson could not be reached for comment by press time.

Although VanAmburg had OK'd at the hearing the plaintiffs' and defendants' joint request that current employees be considered part of the class, she backed off that decision in her final order. To allow the class to be expanded this way "goes beyond the allocation plan and changes class membership," she said in her April 4 judgment.

Meanwhile, Doe Run said it wanted to move forward.

"We continue to work toward the commercial development of a new, environmentally sound lead metal processing technology, which nearly eliminates all sulfur dioxide and air lead emissions, while allowing us to meet the growing global demand for lead," Pyatt, of Doe

Run, said in a statement after preliminary settlement approval in February.

The statement did not answer why the smelter's current owners would release the former owners from liability with this settlement. Litigation has been filed in Jefferson County Circuit Court and in U.S. District Court for the Eastern District of Missouri over the financial responsibility of current and former owners to pay, or contribute, to last summer's \$358.5 million verdict and to other settlement agreements.

Fluor attorney John H. "Jack" Quinn III, of Armstrong Teasdale, said his client's policy is not to comment on pending litigation.

The settlement agreement calls for the plaintiffs' lawyers to receive \$13.75 million in attorneys' fees, in four installments. It also provides for nearly \$858,000 in litigation costs. Graham and Kevin S. Hannon, of The Hannon Law Firm in Denver, are the lead plaintiffs' lawyers.

The agreement defines the class as all who own and occupy residential property in the Herculaneum area, except the area west of Commercial Boulevard, on or after July 9, 2001, when this lawsuit was filed. The class is further divided into groups of people whose property has undergone soil replacement by the defendants after 1990 and those whose property hasn't undergone such replacement.

Doe Run Resources entered into a consent agreement with the U.S. Environmental Protection Agency in September 2010 that requires the company to sample and remediate soil in Herculaneum. As part of this settlement, the company agreed not to seek a deadline extension with respect to any property within the class geographic area owned by any class representative or class member.

In the last decade, the defendants have appealed the lawsuit three times: on venue, on class certification and on class membership. The trial was scheduled to take place last October.

The settlement leaves in place a medical monitoring lawsuit Graham and his law firm have pending on behalf of young people in Herculaneum. **MO**

## \$55 million settlement

### PROPERTY DAMAGE

■ **Venue:** St. Louis Circuit Court

■ **Case Number/Date:** 22012-08641/April 4, 2012

■ **Judge:** Lisa VanAmburg

■ **Plaintiffs' Experts:** Randall Bell, Laguna Beach, Calif. (real estate appraisal); David Rowe, St. Louis (remediation); John Neff, St. Louis (real estate appraisal); David A. Sterling, Fort Worth, Texas (environmental/occupational health); Joel Hirschhorn, Chevy Chase, Md. (metallurgy); Jack Matson, State College, Pa. (industrial pollution); John McKenna, Roanoke, Va. (air pollution control); David Rosner, New York (sociomedical sciences and history); Ellen Silbergeld, Baltimore (environmental health and toxicology); David Sullivan, Alexandria, Va. (meteorology and air quality analysis)

■ **Defendants' Experts:** for Fluor: Thomas O. Jackson, College Station, Texas (appraisal and valuation); Peter W. Johnson, Lafayette, Calif. (environmental engineering, remediation); Stephen C. Davis, Lafayette, Calif. (lead exposure, regulations, environmental contamination); Benjamin Akande, St. Louis (corporate/partnership structure); for Doe Run: Barbara D. Beck, Cambridge, Mass. (toxicology); Theresa S. Bowers, Cambridge, Mass. (risk assessment, inorganic geochemistry); Peter D. Bowes, Denver (real estate appraisal); William H. Desvousges, Raleigh, N.C. (economics, environmental economics/conditions on property value); Edward A. Dinan, St. Louis (real estate appraisal); Dennis P. Gooch, DeSoto (real estate broker); David Hinrichs, Denver (hydrogeology, remediation); Gale F. Hoffnagle, Windsor, Conn. (meteorology, environmental, emissions); Gerhard W. Knutson, Edina, Minn. (industrial hygiene, smelter ventilation, emissions control); Christopher M. Long, St. Louis (environmental engineering, environmental health); William Nassetta, Baton Rouge, La. (occupational medicine, environmental medicine, public health)

■ **Caption:** James Doyle, Sheri Doyle, Lawrence Casey, Joseph McCoy, Christenna McCoy, Matt McKinstry, Ronald Naucke and Pat Naucke, individually and as class representatives v. Fluor Corp., Leslie McGraw, Bruce C. Clark, The Doe Run Resources Corp., Homestake Lead Company of Missouri, A.T. Massey Coal Co., Doe Run Investment Holding Co., DR Acquisition Corp., Marvin K. Kaiser, The Renco Group Inc. and Ira L. Rennert

■ **Plaintiffs' Attorneys:** Maurice B. Graham, Gray, Ritter & Graham, St. Louis; Kevin S. Hannon, The Hannon Law Firm, Denver

■ **Defendants' Attorneys:** Andrew Rothschild, Lewis, Rice & Fingersh, St. Louis, for The Doe Run Resources Corp.; Edward L. Dowd Jr., Dowd Bennett, Clayton, and Theodore J. Williams Jr., Williams, Venker & Sanders, St. Louis, for DR Acquisition Corp., The Renco Group Inc. and Ira L. Rennert; Ted L. Perryman, Roberts Perryman, St. Louis, for Homestake Lead Company of Missouri; Jeffrey Cramer and T. Michael Ward, Brown & James, St. Louis, for Marvin Kaiser; John H. "Jack" Quinn III and Scott K.G. Kozak, Armstrong Teasdale, St. Louis, for Fluor Corp., A.T. Massey Coal Company of Missouri, n/k/a Appalachia Holding Co., Doe Run Investment Holding Co. and Leslie McGraw