IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT WHEELING

Patricia S. Hoskins and Mary Jako,
Clarence Rulong,
William R. Standiford and Linda Standiford, and
Lewis A. Aston and Cathy Aston,
individually and as the representatives
of The Class of All Similarly
Situated Individuals,

Plaintiffs,

FILED
APR 23 2014
U.S. DISTRICT COURT
ELKINS WV 26241

v.

CIVIL ACTION NO. 5:12-CV-78
Honorable John Preston Bailey

AB Resources, LLC, a Delaware
Limited Liability Company,

Defendant.

MEMORANDUM ORDER

Came the plaintiffs in this putative class action on January 6, 2014, jointly with the defendant AB Resources, LLC, and moved this Court to express its willingness to grant their joint motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b) for the limited purpose of considering the parties' joint motion for conditional certification of a settlement class and preliminary approval of a class action settlement [Doc. 37]. Thereafter, following a status conference in this Court to discuss the pending Rule 60(b) motion held on January 23, 2014, the plaintiffs conceded that taking into account the allegations of the complaint as a whole, their good faith settlement demands, and the ultimate total settlement value of the case including the release of claims, the amount in controversy exceeds $5,000,000.00, exclusive of interest and costs. The Court understands that the issue of subject matter jurisdiction rests in the Fourth Circuit and that this Court's acceptance of jurisdiction for the limited purpose of

granting relief from judgment to determine whether the parties' class action settlement should be approved would "preserve[] judicial resources and eliminate[] unnecessary expense and delay, and therefore is surely in 'aid of the appeal'" in accordance with *Fobian v. Storage Technology Corp.,* 164 F.3d 997, 890 (4th Cir. 1999). With these principles in mind, on February 26, 2014, this Court entered a Memorandum Order affirmatively stating that it is inclined to grant the joint motion for relief from judgment and further to consider the joint motion for conditional certification of a settlement class and preliminary approval of a class action settlement in the event that the Fourth Circuit determine that this Court may properly exercise jurisdiction over this matter and the Fourth Circuit remand the action for that purpose [Doc. 43].

The parties' filed a joint status report advising the Fourth Circuit of this Court's February 26th Memorandum Order on the same day it was entered [Doc. 74-1]. On April 4, 2014, the Plaintiffs further filed an unopposed motion for limited remand to this Court [Doc. 52-1]. By Order entered April 22, 2014, the Fourth Circuit granted the motion for limited remand for the express purpose of allowing this Court to grant the Rule 60(b) motion and consider the joint motion for conditional certification of a settlement class and preliminary approval of a class action settlement [Doc. 76].

Accordingly, upon consideration of the parties' Rule 60(b) motion, the memorandum in support thereof, and the exhibits thereto, this Court finds good cause and hereby GRANTS the motion and relief from judgment. The Court further VACATES its sealed memorandum opinion and order granting plaintiff's motion to remand entered on October 17, 2012 [Doc. 28].

The parties are DIRECTED to file a joint motion for approval of a settlement notice together with a settlement notice form within fourteen (14) days of entry of this Order.

The Clerk is DIRECTED to file the joint motion for conditional certification of settlement class and preliminary approval of settlement previously submitted by the parties [Doc. 37-1].

Dated 4-23-2014

JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE

Submitted this 22nd day of April, 2014.

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