

Deal proposed in FMC leak Payment would average \$1,327

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larrym@wvgazette.com FMC Corp. will pay \$1.35 million to settle the lawsuit filed after a December 1995 leak at its Nitro plant, according to U.S. District Court papers filed Monday.

The proposed settlement includes an average payment of \$1,327 to the 406 people represented in the class-action case, the filing said.

The lawyers for those plaintiffs - retired Supreme Court Justice **Richard Neely** and a New Orleans legal team - have also requested \$499,423 for expenses in the case. But the filings include no fee request or list of hours worked from the lawyers, who note that under agreements with their clients, they would have been entitled to about \$450,000.

The settlement would cover a variety of minor injuries, lost wages and other damages alleged after more than 6,000 pounds of a toxic chemical escaped from an FMC holding tank.

The leaking gas combined with rain to form a cloud of hydrochloric acid that forced thousands of area residents to shelter indoors and halted all nearby traffic.

The case first went to trial in October 1998. That jury awarded \$38.8 million in punitive damages along with \$83,000 for injuries. Judge Charles H. Haden II threw out that verdict after concluding that a witness had improperly swayed the jury with incorrect information.

FMC admitted liability during the 1999 retrial, but argued the chemical cloud injured no one. That jury agreed, but a federal appeals court ruled the jury failed to weigh all the injuries alleged by all 406 plaintiffs.

The settlement averts what would have been a third trial in the case.

"Not surprisingly, plaintiffs' class has incurred enormous costs in addition to the expense of this settlement process," the settlement proposal papers said.

The expenses include \$212,991 for expert witnesses in both trials, \$35,100 in travel costs for the New Orleans lawyers and \$27,882 in trial costs. Of the \$499,423 in listed expenses, Neely's firm reported \$4,568.

Monday's filing proposes a point system to calculate the money owed each plaintiff. The point system would award as much as \$4,025 and as little as \$1,000 to each plaintiff.

Lawyers for FMC will be allowed to weigh in on the proposed fees and distribution before Haden rules.

FMC earlier settled a companion chemical-leak case filed by Neely and the New Orleans lawyers for \$1,000 each for four plaintiffs. The Chicago-based company has since sold the Nitro plant to Great Lakes Chemical Co. of West Lafayette, Ind.

Before the sale, FMC agreed to pay the U.S. Occupational Safety and Health Administration \$500,000 to settle workplace safety violations stemming from the leak.

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