

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CV 00-01213 #00000103

Honorable Robert S. Lasnik
FILED
LODGED
ENTERED
RECEIVED
MAR 03 2003 MR
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER ERICKSON, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

THE BARTELL DRUG COMPANY,

Defendant.

Civil No. C00-1213L

DECLARATION OF
JAMES R. DICKENS RE NOTICE OF
PROPOSED SETTLEMENT

Hearing date: Tues., March 4, 2003
9:00 a.m.

I, James R. Dickens, declare

1. I am counsel for defendant The Bartell Drug Company. I am making this declaration pursuant to Section II, paragraph D, of the Settlement Agreement and Release regarding certification of counsel as to the dissemination of the notice of proposed settlement to the class members. The information set forth herein was provided to me by Bartell Drug, as of February 17, 2003.

2. In accordance with the Settlement Agreement and Release, Bartell Drug determined that there were 826 present and former employees within the class as certified. Packets of information were prepared for each class member consisting of the Notice of Class-Wide Settlement, and a copy of the Court's Order Granting Preliminary Approval of the Settlement, with the date and time for the settlement hearing on March 4, 2003 at 9:00 a.m.

DECLARATION OF JAMES R. DICKENS RE NOTICE OF
PROPOSED SETTLEMENT - 1
(C00-1213L)
SEADOCS:148114. 1

103

ORIGINAL

MILLER NASH LLP
ATTORNEYS AND COUNSELORS AT LAW
TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

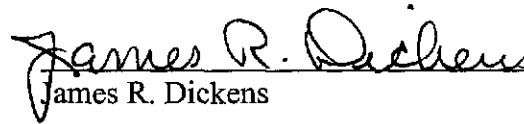
1 Attached hereto are copies of those documents mailed to the 826 class members on
2 December 13, 2002.

3 3. After the 826 packets were sent to the class members on December 13,
4 2002, 42 were returned as undeliverable because of incorrect addresses. Bartell Drug did a
5 further check and resent 19 of the 42 to a new address, but 6 of the 19 also were returned as
6 undeliverable. Therefore, of the packets sent to the 826 class members, 797 were presumed
7 delivered and only 29 were undeliverable.

8 4. As counsel for Bartell, we have received no objections from any of the
9 826 class members to the proposed settlement agreement or any other related aspects.

10 I declare under penalty of perjury and the laws of the United States that the above
11 is true and correct.

12 Signed at Seattle, Washington, this 3^d day of March, 2003.

13
14 
15 James R. Dickens
16
17
18
19
20
21
22
23
24
25
26

1 I hereby certify that I served the foregoing DECLARATION OF JAMES R.
2 DICKENS RE NOTICE OF PROPOSED SETTLEMENT on:

3 Roberta N. Riley
4 Planned Parenthood of Western Washington
5 2001 East Madison
6 Seattle, WA 98122-2959

Donna Lee
Planned Parenthood Federation of America
810 Seventh Avenue, 12th Floor
New York, NY 10019

FAX # (206) 328-7522

FAX # (212) 247-6811

7 by the following indicated method or methods:

8 by **faxing** full, true, and correct copies thereof to the attorneys at the fax numbers
9 shown above, which are the last-known fax numbers for the attorneys' offices, **and**
10 by **mailing** full, true, and correct copies thereof in a sealed, first-class postage-
11 prepaid envelope, addressed to the attorneys as shown above, the last-known office
12 addresses of the attorneys, and deposited with the United States Postal Service at
13 Seattle, Washington, on the date set forth below.

12 by **mailing** full, true, and correct copies thereof in sealed, first-class postage-
13 prepaid envelopes, addressed to the attorneys as shown above, the last-known
14 office addresses of the attorneys, and deposited with the United States Postal
15 Service at Seattle, Washington, on the date set forth below.

14 by sending full, true and correct copies thereof via **overnight courier** in sealed,
15 prepaid envelopes, addressed to the attorneys as shown above, the last-known
16 office addresses of the attorneys, on the date set forth below.

16 by causing full, true and correct copies thereof to be **hand-delivered** to the
17 attorneys at the attorneys' last-known office addresses listed above on the date set
18 forth below.

18 The undersigned hereby declares, under the penalty of perjury, that the foregoing
19 statements are true and correct to the best of my knowledge.

20 Executed at Seattle, Washington, this 3^d day of March, 2003.

21
22
23 James R. Dickens
James R. Dickens

24 Of Attorneys for Defendant

25
26 Certificate of Service - I

Hon. Robert S. Lasnik

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER ERICKSON, individually, and on behalf of all others similarly situated,)	No. C00-1213L
)	NOTICE OF CLASS-WIDE
Plaintiff,)	SETTLEMENT
)	
v.)	
)	
THE BARTELL DRUG COMPANY,)	
)	
Defendant.)	

To: All females currently or formerly employed by The Bartell Drug Company ("Bartell") who participated in Bartell's Prescription Benefit Plan for non-union employees between December 29, 1997 and June 12, 2001, while using prescription contraceptives.

This Notice is given pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and order of the U.S. District Court for the Western District of Washington. The purpose of this Notice is to inform you of the terms of a proposed settlement in this case.

This case alleged that Bartell discriminated against its non-union female employees on the basis of sex by excluding prescription contraception coverage from its non-union health benefits plans in violation of Title VII of the Civil Rights Act of 1964. On June 12, 2001, the U.S. District Court for the Western District of Washington held that Bartell must cover each of the available options of prescription contraception to the same extent, and on the same terms, that it covers other drugs, devices, and preventive care for non-union employees. Bartell appealed that ruling. Subsequently, the parties reached a proposed settlement of the case. The proposed settlement requires Bartell to provide prescription contraceptive coverage to its non-union employees and compensation to the plaintiff class.

1 The class of Bartell employees on behalf of which this lawsuit was brought, as certified by
2 the Court, is defined as:

3 All female employees of Bartell who at any time after December 29, 1997, were
4 enrolled in Bartell's Prescription Benefit Plan for non-union employees while using
prescription contraceptives.

5 For purposes of the settlement, a "class member" who may be eligible to receive compensation from
6 Bartell is any current or former female employee of Bartell who at any time between December 29,
7 1997 and June 12, 2001, was enrolled in Bartell's Prescription Benefit Plan for non-union employees
while using prescription contraceptives.

8 Under the proposed settlement, Bartell does not admit liability for the discrimination alleged
9 in this lawsuit. To settle this case, Bartell does, however, agree to the following:

- 10 1. Bartell will cover all FDA-approved methods of prescription contraception to the
11 same extent, and on the same terms, that it covers other drugs, devices, and
12 preventive care in its non-union health plan. FDA-approved methods of
13 prescription contraception include oral contraception; emergency contraception;
the intrauterine device ("IUD"); Norplant; injectables, such as Depo-Provera and
Lunelle; barrier methods, such as the diaphragm; the contraceptive skin patch;
and the contraceptive ring;
- 14 2. Bartell will cover contraception-related services, such as the initial visit to the
15 prescribing physician and any follow-up visits or outpatient services, to the same
16 extent, and on the same terms, as other outpatient services in its non-union health
plan;
- 17 3. For class members currently employed at Bartell, it will either: (a) provide
18 coverage for all FDA-approved methods of prescription contraception, and
19 contraception-related services, with no co-payments, until December 31, 2006,
20 or until the employee is no longer enrolled in Bartell's non-union health plans as
21 an employee, or through COBRA continuation of benefits, whichever occurs
22 first; or (b) pay the class member up to \$800 for out-of-pocket costs incurred at
any time between December 29, 1997 and June 12, 2001, for prescription
23 contraception that is typically purchased no more than once a year, such as an
24 IUD or Norplant, and/or for services related to such contraception, upon
25 submission of proof of expenditure;
- 26 4. For class members no longer employed at Bartell, it will pay either: (a) \$100 in
27 full compensation for out-of-pocket costs incurred between December 29, 1997
and June 12, 2001, for prescription contraception and contraception-related
services, without proof of expenditure from the class member; or (b) up to \$800
for out-of-pocket costs incurred at any time between December 29, 1997 and
June 12, 2001, for prescription contraception that is typically purchased no more

1 than once a year, such as an IUD or Norplant, and/or for services related to such
2 contraception, upon submission of proof of expenditure;

3 5. For any class member who was denied coverage or reimbursement under the non-
4 union health plans for prescription contraception or contraception related services
5 obtained between June 12, 2001 and November 1, 2001, Bartell will pay that
6 class member for the expenses incurred, upon submission of proof of
7 expenditure; and

8 6. Bartell will pay Jennifer Erickson, the Class Representative, \$7,246 for her
9 efforts to secure contraceptive coverage for the class.

10 7. Bartell will pay counsel for the class \$180,000 for attorney fees and costs
11 incurred in representing Ms. Erickson and the class.

12 If you elect to receive any of the benefits described above, you will release Bartell and its
13 officers, shareholders and directors from any other actual or potential claims or damages because
14 prescription contraceptives were not covered by Bartell's non-union health care plans prior to
15 June 12, 2001.

16 *The Court* has given preliminary approval of the settlement, and it *will determine whether*
17 *to finally approve the proposed settlement as fair, reasonable and adequate at a HEARING TO BE*
18 *HELD on MARCH 4, 2003, at 9 a.m., in Courtroom 911, U.S. District Court for the Western District*
19 *of Washington, 215 U.S. Courthouse, 1010 Fifth Ave., Seattle, WA 98104.*

20 You need not appear at this hearing. However, any member of the class who objects to the
21 proposed settlement may appear at the hearing and show cause why the proposed settlement should
22 not be approved as fair, reasonable and adequate pursuant to Rule 23(e) of the Federal Rules of Civil
23 Procedure, provided that, unless otherwise permitted by the Court at the hearing, *no person shall be*
24 *heard in opposition to the settlement* and no paper or brief submitted by any such person shall be
25 received or considered by the Court *unless* on or before FEBRUARY 11, 2003, you file a notice of
26 intention to appear and a statement of the position to be asserted and the grounds therefor, together
27 with copies of any supporting papers or briefs, with the Clerk, U.S. District Court for the Western
District of Washington, 215 U.S. Courthouse, 1010 Fifth Ave., Seattle, WA 98104.

Copies of all documents filed with the Clerk must be sent by first class mail, postage prepaid,
to the attorney for class members, Roberta Riley of Planned Parenthood of Western Washington,
2001 E. Madison, Seattle, WA 98122, and to the attorney for Bartell, James R. Dickens, Miller
Nash LLP, 4400 Two Union Square, Seattle, Washington 98101.

1 Any questions you have concerning the matters contained in this Notice may be directed to
2 the attorney for class members, Roberta Riley of Planned Parenthood of Western Washington at
(800) 727-2996. DO NOT TELEPHONE THE CLERK OF COURT REGARDING THIS NOTICE.

3 Dated: _____

4 BY ORDER OF THE
5 U.S. DISTRICT COURT FOR THE
6 WESTERN DISTRICT OF
7 WASHINGTON

8 *See attached copy of Court's ORDER Granting Preliminary Approval of*
9 *Class Action Settlement, Approval of Notice to Class Members and Setting*
10 *Fairness Hearing.*

[Handwritten signature]
FILED
DEC 3 2002

The Honorable Robert S. Lasnik

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY *[Handwritten signature]* RECEIVED

DEC - 3 2002



CV 00 01213 00000102

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER ERICKSON, individually, and on)
behalf of all others similarly situated,)
)
) Plaintiff,)
)
) v.)
)
) THE BARTELL DRUG COMPANY,)
)
) Defendant.)

No. C00-1213L

~~(PROPOSED)~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, APPROVAL OF
NOTICE TO CLASS MEMBERS AND
SETTING FAIRNESS HEARING

This Court considered the joint motion for preliminary approval of the class action settlement, approval of notice to class members and setting of fairness hearing, and the memorandum and declaration of Roberta N. Riley in support thereof.

NOW THEREFORE, the Court hereby GRANTS the joint motion for preliminary approval of class action settlement. The proposed notice to class members is also approved. Defendant Bartell is ORDERED to notify class members of the settlement pursuant to the terms of the settlement on or before December 31, 2002. Any class member objecting to the proposed settlement shall file her objection in writing on or before February 11, 2003. A fairness hearing regarding final approval of the settlement is hereby set for March 4, 2003.

ORIGINAL

~~(PROPOSED)~~ ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, APPROVAL OF NOTICE TO CLASS MEMBERS AND SETTING FAIRNESS HEARING; Case No. C00-1213L; Page - 1

N:\CLIENTS\24763\1\PLEADINGS\ORDER\MOTION\ORDER SETTLEMENT APPROVAL.DOC

ROBERTA RILEY, WSBA #16841
PLANNED PARENTHOOD
OF WESTERN WASHINGTON
2001 EAST MADISON
SEATTLE, WASHINGTON 98122-2959
TELEPHONE: (206) 328-6805
FACSIMILE: (206) 328-1522

ITC PSL KC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Dated this 3rd day of December, 2002.

MS Lasnik

Robert S. Lasnik
United States District Judge

Presented by:
PLANNED PARENTHOOD OF
WESTERN WASHINGTON

By *Roberta Riley*
Roberta Riley, WSBA #16841
2001 East Madison
Seattle, Washington 98122-2959
Telephone: (206) 328-6805

Lead Counsel for Plaintiffs

MILLER NASH LLP

By *JAMES DICKENS, JTC*
James Dickens
4400 Two Union Square *tel. authority*
601 Union Street
Seattle, WA 98101-2352
Telephone: (206) 622-8484

Counsel for Defendant

(PROPOSED) ORDER GRANTING PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, APPROVAL OF NOTICE TO CLASS MEMBERS
AND SETTING FAIRNESS HEARING: Case No. C00-1213L; Page - 2

N:\CLIENTS\24763\1\PLAIDINGS\ORDER\MOTION\ORDER\SETTLEMENT\APPROVAL.DOC

ROBERTA RILEY, WSBA #16841
PLANNED PARENTHOOD
OF WESTERN WASHINGTON
2001 EAST MADISON
SEATTLE, WASHINGTON 98122-2959
TELEPHONE: (206) 328-6805
FACSIMILE: (206) 328-7522