

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

NOTICE OF A CLASS ACTION SETTLEMENT TO ALL PERSONS WHO HAVE AN INFLAMMATORY AIRWAYS DISEASE, ASTHMA, C.O.P.D., SINUSITIS, EMPHYSEMA, CHRONIC BRONCHITIS, CHRONIC HEART DISEASE, OR CYSTIC FIBROSIS, AND WHO RESIDE IN OR HAVE RESIDED IN KOOTENAI, BOUNDARY, BONNER, BENEWAH, OR SPOKANE COUNTY BETWEEN AUGUST 1999 AND OCTOBER 31, 2005

A court authorized this notice. This is not a solicitation from a lawyer. You are not being sued.

- The proposed Settlement provides up to \$891,450 (minus litigation and notice costs) for the benefit of those who suffer from cystic fibrosis, asthma, C.O.P.D. and other inflammatory or reactive airways diseases to settle claims of nuisance and trespass and other similar claims brought against the Kentucky bluegrass farmers who burn their fields.
- **YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE READ THIS NOTICE CAREFULLY.**

Your Legal Rights and Choices		
IF I WANT TO:	What that means:	Respond By:
DO NOTHING	Class Members will not receive anything and give up rights to ever be part of any other lawsuit about the legal claims in this case.	Not applicable
OBJECT TO THE SETTLEMENT	Write to Class Counsel about why you do not like the Settlement. You can still be part of the Settlement and make a claim for funds from the Settlement.	December 30, 2005
EXCLUDE MYSELF	Write to Class Counsel and exclude yourself from the case. If you do, you will have no right to any of the money under the Settlement.	December 30, 2005
FILE CLAIM	Write to Class Counsel and submit your claim form. This is the ONLY way for you to receive money from the Settlement	December 30, 2005

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this case has to decide whether to approve the Settlement. Funding of the Settlement will be made only if the Court approves the Settlement as final and after appeals, if any, are resolved. Please be patient.

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Basic Information

1. Why is this Notice available?

This Notice was made available by the Court and is posted because your legal rights may be affected by the proposed Settlement. People who suffer from inflammatory or reactive airways diseases may be entitled to receive a portion of Settlement, but only if it is approved as final by the Court.

The Court has ordered this Notice to be posted because you have a right to know about a proposed Settlement of a class action lawsuit that affects your rights.

This Notice explains:

- What the lawsuit is about.
- What your legal rights are.
- What the Settlement involves.
- What the benefits are and who is eligible to seek the benefits.

2. What is the lawsuit about?

This lawsuit is about grass field burning. Plaintiffs began this lawsuit in June 2002 with the filing of a class action complaint against various farmers who burn Kentucky bluegrass fields and the North Idaho Farmers Association ("NIFA").¹ The case is entitled *Moon, et al. v. NIFA*, Docket No. CV 02-3890. District Judge Woodland is presiding over this class action.

Plaintiffs initially sought injunctive relief to stop the burning and damages caused by the burning of bluegrass fields in north Idaho. Plaintiffs alleged that the smoke from the defendants' field burning invades the Class Members' homes, which aggravates their preexisting disease process, in turn, causes Class Members to either leave their homes and flee the smoke-impacted area or lock themselves inside their homes. Plaintiffs asserted claims under theories of (1) nuisance; (2) trespass; (3) strict liability for an abnormally dangerous activity; (4) civil conspiracy; and (5) medical monitoring, either as a remedy or an independent claim, against the defendants.

¹ The defendants are: North Idaho Farmers Association; Wayne Meyer, William Dole; Michael Dole; Warren Dole; Jacquot Farms Enterprises, Inc.; G. Wade McClean; Terry Nichols; Satchwell Farms, Inc.; Wallace Meyer; David Asher; Terrell K. Baune; Baune Farms, Inc.; Mike Schlepp; Schlepp Ranch; Paul Deshiell; Jeff Bloomsburg; Bergen Bothman; Arnold Brincken; Doug Bruce and Pigeon Hollow Farms; Earl M. Clausen; Clausen Farms, Inc.; Keith Daman; Paul Daman; Denny Bros., L.L.C.; Chad Denny; Matthew Drechsel; Drechsel Brothers, Inc.; Dennis Duncan; David Duncan; Chris Duncan; Joyce Duncan; Randy Duncan; David Fish; Thomas Freeburg; Michael Freeburg; Timothy Freeburg Gary French and Tyler Farms, Inc.; David Gumm; Charles A. Hahner, Hahner Farms, Inc.; Larry Hansen; Martin Hanson; Hatter Creek Farms, Inc.; Don Hay; Larry Heaton; Clarence Heeg; Randy Holt; Duane Jenneskens; Dale R. Johnson; Ted Lacy; Phillip Lampert; Lampert Farm and Ranch, Inc.; David Lampert; Eric Larson; Brian LaShaw; Mike LaShaw; Nick Lawson; Casey Lawson; Allen Lewis; Maple Leaf Farm, Inc.; Herbert W. Millhorn; Millhorn Farms, Inc.; Bruce Mills; Catherine Morris; Richard Morrison; Elmer Ness; Erling Place; Chris R. Ramsey; Michael Roecks; Rogada Farms, Inc.; John Schultz; Karl Schultz; Joe Sievers; Ron Tee; Donald Thies; Alan Thomas; Gene Towne; Windy Hill Farm, Inc.; Todd E. Wright; Gary Wright; and Wrights, Inc.

The farmers deny that their field burning causes any harm to anyone, and deny any and all liability or wrongdoing. Among other things, the farmers deny that their burning of Kentucky bluegrass fields causes smoke to trespass into anyone's home or causes anyone to lose the use or enjoyment of their property, and they argue that field burning is not an abnormally dangerous activity. Further, the farmers contend that they have a right to burn their grass fields under Idaho Code § 52-108 and the Idaho Right to Farm Act, Idaho Code §§ 22-4501 *et seq.* and the Idaho Smoke Management and Crop Residue Disposal Act, Idaho Code §§ 22-4801 *et seq.*

No defendant has asserted any legal claim against the plaintiffs or the Class. However, some of the defendants have filed lawsuits against other Kentucky bluegrass farmers who allegedly burn their fields, but whom the plaintiffs did not sue.

This notice is not to be construed in any way as an expression of opinion by the Court as to the merits of any of the claims or defenses raised by the parties to the action.

3. What has happened in this case?

In short, a lot has happened. After the lawsuit began in June 2002, the trial court denied the farmers' motions to dismiss the case and granted an injunction forbidding the farmers from burning grass in 2002. The Idaho Supreme Court, however, set aside that injunction (which allowed the farmers to burn their fields in 2002) and sent the case back to the trial court for further proceedings. In early 2003, the trial court certified the case as a class action and held that plaintiffs could proceed with punitive damages claims against the farmers.

In April 2003, the Idaho Legislature made changes in the Idaho Smoke Management and Crop Residue Disposal Act and expressly granted immunity to grass farmers who burn in compliance with the law. Immunity means that the farmers can't be sued for burning in compliance with the Act. Although the trial court initially ruled that the Legislature's act of immunizing the defendants from nuisance and trespass lawsuits for their field burning activities was unconstitutional and void, the Idaho Supreme Court reversed that ruling on August 2, 2004, and the United States Supreme Court refused to review the case on February 22, 2005. The parties have agreed that the changes in Idaho law make it impossible for the Class to stop the practice in an Idaho state court against the defendant farmers under the claims alleged. The parties likewise understand that the recent changes in the law did not immunize the defendants from the Class' damage claims for conduct that occurred before the effective date of new law, which was April 28, 2003.

More recently, the Court heard oral argument on NIFA's motion to decide the case without trial and dismiss all claims against NIFA for lack of evidence of its liability. Plaintiffs defended the claims against that motion, and the Court has yet to rule.

4. Why is this a class action?

In a class action, one or more people called class representatives sue on behalf of people who have similar claims. All those people are Class Members. One court

resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Court here has found that all of the requirements of class actions are satisfied and has designated plaintiffs Bud Moon, Bruce Rothermel, Jeanne Wolcott, and Jerry Vickers as the class representatives for the adult class, and, through their parents, Alex Hiesel and Kaley Fowler as the class representatives for the Class of children.

5. Why is there a Proposed Settlement?

The Court has not decided in favor of plaintiffs. Instead, both sides agreed to a Settlement. That way, they avoid the cost, risk, and delay of a trial and appeals, and ensure that the people affected will receive some benefit. The Class Representatives and attorneys for the Class concluded that the Settlement is best for all Class Members.

Who is in the Settlement?

6. How do I know if I am part of the Settlement?

To see if you are part of this Settlement, you first have to know if you are a Class Member.

You are a Class Member if:

Minor Field Burning Class:

All children with a medically diagnosed inflammatory air ways disease including, but not limited to, asthma, sinusitis, emphysema, chronic obstructive pulmonary disease, and chronic bronchitis; or, cystic fibrosis; or chronic heart disease, and who presently reside in or have resided in Kootenai, Boundary, Bonner, Benewah, and Spokane Counties sometime between August 1999 and October 31, 2005.

Adult Field Burning Class:

All non-minor individuals with a medically diagnosed inflammatory air ways disease including, but not limited to, asthma, sinusitis, emphysema, chronic obstructive pulmonary disease and chronic bronchitis; or, cystic fibrosis; or chronic heart disease, and who presently reside in or have resided in Kootenai, Boundary, Bonner, Benewah, and Spokane Counties sometime between August 1999 and October 31, 2005.

Specifically excluded from the above are (i) the officers, directors, agents, immediate family members, current attorneys and representatives of the defendants; and (ii) anyone who has filed an individual legal action against one or more of the defendants for damages allegedly caused by the burning of Kentucky bluegrass fields.

The Settlement Benefits – What You Get

7. What does the Settlement provide?

The Settling Farmers have agreed to pay \$891,450 into a Settlement Fund. Any Court-approved expenses and modest incentive awards to the named Plaintiffs will be deducted from the Settlement Fund. The balance of the Settlement Fund will be used to benefit Class Members in accordance with the proposed Plan of Allocation and as the Court may direct. The Plan of Allocation is attached as Exhibit 1 to this notice.

8. How much will I be paid?

To be eligible for any payment, you must be a Class Member and you must complete a Claim Form and return it to Class Counsel on or before December 30, 2005. The Claim Form is attached as Exhibit 2 to this notice. Your Claim Form must be **POSTMARKED** no later than December 30, 2005 and mailed to:

Idaho Grass Burning Litigation
c/o Hagens Berman Sobol Shapiro LLP
1301 Fifth Ave., Suite 2900
Seattle, WA 98101

Based on the answers you submit, and if you are eligible, you will be given a share from the Settlement. If you have cystic fibrosis the most that you might receive is \$50,000. If you have asthma or some other inflammatory airways disease, the most that you might receive is \$1,000. The difference reflects the permanent nature of any injury inflicted on cystic fibrosis Class Members.

Further, money will be allocated first to those who were exposed to smoke from field burning between 1999 and 2002 up to the individual claim cap. If there is money remaining after the funds are paid to those who were exposed to smoke from field burning between 1999 and 2002, that money will be distributed to those who were exposed to smoke from field burning during 2003 through 2005 according to the same formula, and subject to the same caps. The distinction between those exposed to smoke from field burning between 1999 through 2002 and those exposed to smoke from field burning from 2003 through 2005 is necessary because the State of Idaho enacted a law that immunized the defendants from liability for the claims alleged in the lawsuit, and the Idaho Supreme Court upheld the constitutionality of the Legislature's action. Accordingly, the claims of those exposed to smoke from field burning between 2003 and 2005 are significantly more tenuous than the claims of those exposed to smoke from field burning between 1999 and 2002.

For additional information, please review the Plan of Allocation.

The money available under the Settlement will only become available if the Court grants final approval of the Settlement.

9. Am I giving anything up?

If you are a Class Member, all decisions made by the Court in this lawsuit or about the Settlement Agreement will apply to you. If the Court approves the Settlement (and it is not overturned on appeal), you will have released the Settling Farmers from any further claims about the issues in this lawsuit unless you exclude yourself as explained below, and you will not be able to sue the farmers regarding these issues again. This is true even if you do not receive any money from the Settlement.

10. When will I know if the Settlement is final?

On January 31, 2006, at 10:00 a.m., the Court will hold a hearing to decide whether to give final approval to the Settlement. Please note that there is often a delay after a Settlement like this is approved. For example, there may be appeals, and payments can't be made until appeals are finished. Because of this, there could be a delay of several months or even longer before a final Plan of Distribution is approved and funded. All developments on the status of the Settlement will be posted on the website: www.hbsslaw.com

Your Rights – Excluding Yourself From the Settlement

11. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter or other written document, personally signed by you, saying that you want to be excluded from the Class. In addition to stating that you want to be excluded from the Class, be sure to include your name, address, telephone number and the following statement:

- "I request to be excluded from the settlement in *Moon, et al. v. NIFA*, Docket No. CV 02-3890 (Kootenai County District Court). I affirm that I lived in _____ County between 1999 and the present and that I have been medically diagnosed with [*identify qualifying medical condition*]."

You must mail your written request for exclusion **POSTMARKED** no later than December 30, 2005 to:

Idaho Grass Burning Litigation
c/o Hagens Berman Sobol Shapiro LLP
1301 Fifth Ave., Suite 2900
Seattle, WA 98101

You cannot exclude yourself by telephone or by e-mail.

If you ask to be excluded, you will not be eligible for any money from the Settlement, and you cannot object to the Settlement. You will not be bound by anything that happens in this lawsuit.

12. If exclude myself, does it have any effect on the Settlement?

Yes. If 5 or more Class Members with cystic fibrosis or 40 with asthma or some other qualifying disease opt out of and exclude themselves from the Agreement, the insurer for any group of Settling Farmers shall, at its option, have the ability to withdraw from this Agreement on behalf of its group of Settling Farmers. This right of withdrawal shall expire three days prior to the date of the final Settlement Hearing. To withdraw from the Agreement in its entirety, the insurer on behalf of its group of Settling Farmers must provide written notice to the Court and Plaintiffs' Counsel that the group is withdrawing.

13. If I do not exclude myself, can I sue later?

No. Unless you exclude yourself, you give up the right to sue the Settling Farmers for the claims that this Settlement resolves. You must exclude yourself from this Class to start or continue your own lawsuit. Remember, the deadline for exclusion is December 30, 2005.

14. If I exclude myself, can I receive any benefit from the Settlement?

No. You will not be eligible for any money from this Settlement.

Your Rights – Objecting to the Settlement

15. How do I tell the Court that I do not like the Settlement?

If you are a Class Member and do not exclude yourself, you can tell the Court you do not like the Settlement or some part of it. You may object to the Settlement by, for example, telling the Court that you do not think the Settlement is fair or adequate, or that you object to the amount of attorneys' fees or costs requested by Class Counsel, which are described below in paragraph 19. The Court will consider your views on any subject related to the Settlement.

To object, your objection must be in writing. It **must** include **all** of the following information although it does not have to be in any formal legal format:

- The name and title of the lawsuit, *Moon, et al. v. NIFA*, Docket No. CV 02-3890.
- Your name, address and telephone number.
- Your signature.
- A statement that you are a Class Member, identify the county in which you live, and the name of the disease from which you suffer and the doctor who diagnosed the condition.
- A statement of each objection and the facts that support each objection.

- A statement as to whether you or your lawyer will ask to appear at the Fairness Hearing to talk about your objections, and if so, how long you will need to present your objections.

You must mail your objection to the Notice Provider. **The objection must be postmarked no later than December 30, 2005.** You do not have to appear personally in court. **Do not send objections to the Court or the Clerk's Office.** Send your objections to:

Idaho Grass Burning Litigation
c/o Hagens Berman Sobol Shapiro LLP
1301 Fifth Ave., Suite 2900
Seattle, WA 98101

You cannot object by telephone or by e-mail.

16. What's the difference between Objecting and Excluding Myself?

Objecting is telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you cannot object to the Settlement, because the case no longer affects you, and you will not receive any benefits from the Settlement or be legally bound by it.

If You Do Nothing

17. What happens if I do nothing at all?

If you do nothing, you are permitting the Settlement to go forward. You will not be eligible to receive any money from the Settlement. Remember to receive money from the Settlement you must complete and return a claim form. If you are a Class Member and you do nothing, all of the Court's orders will apply to you. You will not be able to start a lawsuit, be part of any other lawsuit or continue with a lawsuit against the Settling Farmers about the legal issues in this case.

The Lawyers Representing You

18. Do I have a lawyer in this lawsuit?

The Court has appointed Class Counsel to represent you and all Class Members. *You will not be charged for these lawyers*, except that the Court may award Class Counsel fees out of the Settlement as explained below. Class Counsel may not obtain fees from you directly. If you want to be represented by your own lawyer, you may hire one at your own expense.

The names and address of Class Counsel are:

Steve W. Berman
R. Brent Walton
Hagens Berman Sobol Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Tel. (206) 623-7292
Fax. (206) 623-0594
www.hbsslaw.com

Philip H. Gordon, ISB #1996
GORDON LAW OFFICES, CHTD.
623 West Hays St.
Boise, ID 83702
Telephone: (208) 345-7100
Facsimile: (208) 345-0050

19. How will the lawyers be paid?

Class Counsel has agreed to waive any right it has to attorney fees. Class Counsel will only seek to recover the expenses and out-of-pocket costs they have incurred on the Class' behalf in prosecuting this case since 2002. The amount of such costs is approximately \$275,000. Class Counsel will file a petition with the Court for such costs which will provide information on the work that Class Counsel has performed to investigate, prosecute and settle this case over a four year period, including reviewing the evidence and claims of Class Members, conducting a preliminary injunction hearing and marshalling evidence for the hearings, defending the complaint against the defendants' efforts to have it dismissed, retaining and consulting with numerous experts, moving to certify the case as a class action, and attempting to have the State's enactment of HB 391 declared unconstitutional. Class Counsel will also ask the Court for an incentive award to some of the Plaintiffs who participated in the lawsuit as well as all costs of notice.

If you choose to hire your own lawyer, you will be responsible for that lawyer's fees and expenses.

The Court's Fairness Hearing

20. When and where will the Court decide whether to approve the Settlement as final?

The Court will hold a Fairness Hearing on January 31, 2006, at 10:00 a.m., at the District Court of the First Judicial District of the State of Idaho, 324 W. Garden Ave., Coeur d'Alene, Idaho. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will decide whether to approve the Settlement and the motion for attorneys' fees, expenses, and incentive awards to Plaintiffs. The hearing

may be continued to a different date without additional notice, so it's a good idea to check our firm's website, www.hbsslaw.com, for updated information.

21. Do I have to come to the hearing?

No, Class Counsel will answer questions the Court may have. Nonetheless, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary that you hire a lawyer to attend.

22. May I speak at the hearing?

If you wish to speak at the Fairness Hearing, you must submit a written request to speak for the Judge's consideration. Be sure to include your name, address, telephone number, and your signature. You must send your Notice of Appearance to Class Counsel at:

Idaho Grass Burning Litigation
c/o Hagens Berman Sobol Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

It must be postmarked no later than December 30, 2005. You cannot speak at the hearing if you excluded yourself from the Settlement. The Judge will decide whether to approve your request to speak.

DO NOT SEND YOUR REQUEST TO THE CLERK'S OFFICE OR THE COURT.

Getting More Information

23. How do I get more information?

This notice summarizes the Settlement. You can get a copy of the complete Settlement Agreement from the website www.hbsslaw.com or by contacting Class Counsel at (206) 268-9363.

PLEASE DO NOT WRITE OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.