

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Johnson, et al., vs. Couturier, et al.

No. 2:05-cv-02046 RRB GGH

Stanton vs. Couturier, et al.

No. 2:07-cv-01208 WBS-JFM

**NOTICE OF PROPOSED SETTLEMENT OF LITIGATION,
SETTLEMENT FAIRNESS HEARING, AND PROPOSED BAR ORDER**

Your legal rights might be affected if you are: a current or former participant in The Employee Ownership Holding Company Employee Stock Ownership Plan and Trust (the “*ESOP*”) or The Noll Manufacturing Company Employee Stock Ownership Plan and Trust (the “*Noll ESOP*”) (the *ESOP* and the *Noll ESOP* are referred to herein collectively as the “*Plans*”).

**PLEASE READ THIS NOTICE CAREFULLY. A FEDERAL COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION. YOU HAVE NOT BEEN SUED.**

This notice (“*Notice*”) advises you of a proposed settlement (the “*Settlement*”) of litigation (referred to herein as the “*Action*”) brought by Gregory Johnson, Darleen Stanton, Kelly Morrell, William Rodwell, and Edward Rangell (collectively, the “*Plaintiffs*”) against Clair R. Couturier, Jr. (“*CRC*”), David R. Johanson (“*DRJ*”), Robert E. Eddy (“*REE*”), Johanson Berenson LLP (“*JBLLP*”), and Pensco, Inc., a New Hampshire chartered trust company (“*Pensco*”) (collectively, “*Defendants*”). *Plaintiffs* and *Defendants* are referred to herein collectively as the “*Parties*.” In the *Action*, *Plaintiffs* seek to recover losses which they allege were suffered by the *Plans* as the result of breaches of fiduciary duty by *CRC*, *DRJ* and *REE*.

The United States District Court for the Eastern District of California (the “*Court*”) has preliminarily approved the *Settlement*, and has scheduled a hearing (the “*Fairness Hearing*”) to evaluate the fairness and adequacy of the *Settlement* at which the *Court* will consider (i) whether to approve the *Settlement* as fair and adequate; (ii) whether to enter the *Bar Order* (see Question 4 below); (iii) whether to approve the *Plan of Allocation* (see Question 5 below); and (iv) whether to award attorneys’ fees and expenses to *Plaintiffs’ Counsel* and incentive awards to *Plaintiffs* (see Question 8 below). The *Fairness Hearing*, before the Hon. Ralph R. Beistline, has been scheduled for March 5, 2010, at 2:00 p.m. at the United States District Court for the Eastern District of California, Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, California.

The terms of the *Settlement* are contained in a Settlement Agreement (the “*Settlement Agreement*”), a copy of which is available at www.Kellersettlements.com or by contacting *Plaintiffs’ Counsel* identified below. Capitalized and italicized terms used in this *Notice* and not defined herein have the meanings assigned to them in the *Settlement Agreement*.

Any questions regarding the Settlement should be directed to *Plaintiffs’ Counsel*: Gary Gotto or Gary Greenwald, Keller Rohrback P.L.C., 3101 N. Central Avenue, Suite 1400, Phoenix, Arizona 85012, tel: 602-248-0088 (counsel for *Plaintiffs* Johnson, Stanton, Morrell and Rangell), Terence Devine, Devine, Markovits & Snyder, LLP, 52 Corporate Circle, Albany, New York 12203, tel: 518-464-0640 or Stanley H. Shayne, Shayne Nichols LLC, Two Miranova Place, Suite 220, Columbus, Ohio 43215 tel: 614-221-2220 (counsel for *Plaintiff* Rodwell). *Plaintiffs’ Counsel* have established a toll-free phone number, (800) 236-8134, if you have questions or comments. *Plaintiffs’ Counsel* may also be contacted via email (info@Kellersettlements.com). Please do not contact the Court, as Court personnel will not be able to answer your questions.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A CURRENT OR FORMER PARTICIPANT IN THE PLANS, THE SETTLEMENT MAY AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.

ACTIONS YOU MAY TAKE IN THE SETTLEMENT

<p>NO ACTION IS NECESSARY TO RECEIVE PAYMENT.</p>	<p>If the <i>Settlement</i> is approved by the Court and you are a current or former participant who qualifies for an allocation of a portion of the <i>Settlement Fund</i> (see “<i>The Plan of Allocation</i>” below), you do not need to do anything in order to receive an allocation. The portion, if any, of the <i>Settlement Fund</i> to be allocated to your <i>ESOP</i> account or otherwise for your benefit will be calculated as part of the implementation of the <i>Settlement</i>.</p> <p>If you are a current participant in the <i>ESOP</i>, any share of the <i>Settlement Fund</i> to which you are entitled will be credited to your <i>ESOP</i> account. If you are no longer a participant and are entitled to share in the <i>Settlement Fund</i>, you will be notified of the procedures for remitting your allocation to you or for your benefit.</p>
<p>YOU CAN OBJECT (NO LATER THAN February 26, 2010).</p>	<p>If you wish to object to any part of the <i>Settlement</i>, you can write to the <i>Court</i> and counsel and explain why you do not like the <i>Settlement</i>.</p>
<p>YOU CAN GO TO THE HEARING ON March 5, 2010</p>	<p>Whether you support or object to the <i>Settlement</i>, you may attend the fairness hearing. If you have submitted a written objection to the <i>Court</i> and counsel, as explained below, you can ask to speak in <i>Court</i> with respect to the aspect of the <i>Settlement</i> to which you object.</p>

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As described in more detail below, the *Action* concerns allegations that *Defendants CRC, DRJ and REE* breached fiduciary duties they owed to the *Plans* and to *TEOHC*. The allegations are set forth in the operative complaints and are described in certain rulings of the *Court* and of the Ninth Circuit Court of Appeals, which are available at www.Kellersettlements.com.

SUMMARY OF SETTLEMENT

Under the *Settlement*, the following deposits are to be made into a qualified settlement fund (the “*Settlement Fund*”):

(i) \$8.8 million in cash, of which \$7.6 million will be deposited by or on behalf of *Defendants CRC* and *REE*, and \$1.2 million will be deposited by or on behalf of *Defendants DRJ* and *JLLP* by their insurance carrier.

(ii) the net proceeds (after costs of sale) realized by *TEOHC* upon the sale of the *Palm Desert Property*. The *Palm Desert Property* is a home in the Big Horn golf community of Palm Desert, California, which was purchased by *TEOHC* and transferred to *CRC* in 2007. Under the *Settlement*, *CRC* will return the *Palm Desert Property* and the bulk of its contents to *TEOHC*. *TEOHC* will immediately begin to market the *Palm Desert Property*. Based on consultations with brokers active in the local market, it is anticipated that *TEOHC* will list the *Palm Desert Property* at a price in excess of \$5,000,000, and it is hoped that the full list pricing can be realized after a reasonable marketing period. However, due to current unfavorable conditions in the national economy and in the local real estate market, it is impossible to predict what price can actually be achieved or how long a marketing period will be necessary.

(iii) the dollar value of the federal income tax benefits that may be realized by *CRC* as the result of his return of the *Palm Desert Property* under the *Settlement*. This component of the *Settlement* is also highly uncertain as to amount and timing of receipt. While it is believed that *CRC's* return of the *Palm Desert Property* under the *Settlement* should give rise to material federal income tax benefits (which could approach or exceed \$2 million), numerous potential legal and factual issues exist that could reduce or even eliminate the amount of those federal income tax benefits. In addition, it is impossible predict the extent, if any, to which the Internal Revenue Service will challenge *CRC's* entitlement to any such benefits, how long it would take to resolve any such challenge, the expenses to be incurred in the resolution thereof (which will generally be borne by the *Settlement Fund*) or what the terms of any such resolution would be.

The amounts in the *Settlement Fund* shall be disbursed as follows:

(a) Pursuant to § 502(l) of *ERISA*, a penalty equal to one-eleventh of the amounts deposited in the *Settlement Fund* described in the immediately preceding paragraphs (i) and (ii) (*i.e.*, all deposits other than those arising from federal income tax benefits as described in paragraph (iii)) will be paid to the United States Treasury as the result of the concurrent settlement of an action brought by the Secretary of Labor against *CRC*, *DRJ*, *REE* and others (*Solis v. Couturier*, 2:08-cv-02732-RRB-GGH (E.D. Cal.) (the “*DOL Action*”)), alleging breaches of fiduciary duty by *CRC*, *DRJ* and *REE*. The *DOL Action* will be settled concurrently with the *Action* as part of a global resolution of *ERISA* and other claims related to *Defendants*, and the *Parties* will request that the *Court* formally consolidate the *Action* and the *DOL Action* for the purpose of reviewing and approving the global resolution reached in the *Action* and the *DOL Action* such that this global resolution comes within the provisions of the U.S. Department of Labor’s (“*DOL’s*”) Prohibited Transaction Exemption (“*PTE*”) 79-15, which provides, essentially, that the global resolution of the *Action* and the *DOL Action* is not prohibited under *ERISA*.

(b) *Court* awarded *Plaintiffs' Counsel* attorneys’ fees and expenses, *Plaintiff* incentive awards, and reasonable costs of the *Settlement* approved by the *Court*, shall be paid from the *Settlement Fund*.

(c) The balance in the *Settlement Fund* shall be disbursed to the *ESOP*, subject to the *Plan of Allocation*.

Disbursements will be made as promptly as practicable after the *Court's* approval of the *Settlement* has become *Final*. It is anticipated that an interim disbursement with respect to the \$8.8 million in cash to be deposited into the *Settlement Fund* will be made promptly upon the *Court's* approval of the *Settlement* becoming *Final*, and that the remaining amounts to be deposited into the *Settlement Fund* will be distributed as promptly thereafter as practicable after the deposits have been made in accordance with the terms of the *Settlement Agreement*.

BASIC INFORMATION

1. Why did I get this Notice package?

Either you or someone in your family may have been a participant in one of the *Plans* at some time on or after October 2, 1996 (all such participants are referred to herein as “*Affected Participants*”). The *Court* has directed that this *Notice* be sent to you because as such a participant, you may be entitled to share in the proceeds of the *Settlement* and you will be subject to the *Bar Order*, if the *Settlement* is finally approved by the *Court*.

This Notice explains the *Action*, the *Settlement*, your legal rights, what benefits are available, who is eligible for them, and how you will receive your portion of the benefits. This *Notice* also informs you with respect to the *Fairness Hearing* set by the *Court*.

The issuance of this *Notice* is not an expression of the *Court’s* opinion on the merits of any claim in the *Action*, and the *Court* still has to decide whether to approve the *Settlement*. If the *Court* approves the *Settlement*, payment to the *ESOP* will be made after all related appeals, if any, are favorably resolved, and after the *Palm Desert Property* is sold and the deposits to be made by *CRC* with respect to federal income tax benefits have been completed. It is uncertain when these various events will occur, and it is likely that they may take a year or more to be finally resolved. It is anticipated, however, that upon the *Court’s* approval of the *Settlement* becoming *Final*, the *ESOP* will make one or more interim distributions with respect to the cash proceeds of the *Settlement*.

2. What is the lawsuit about? What has happened so far?

In the *Action*, *Plaintiffs* allege, among other things, that the *Defendants CRC, DRJ and REE* were fiduciaries of the *Plans* and directors of *TEOHC* and violated fiduciary duties under the Employee Retirement Income Security Act of 1974 (“*ERISA*”) and under applicable state law by permitting certain payments to *CRC*. *Plaintiffs* sought to recover from the losses to the *Plans* allegedly caused by the fiduciary breaches.

Defendants deny that they have any liability whatsoever or that they breached any fiduciary duties. If the litigation were to continue, *Defendants* would raise numerous defenses to liability, including the following:

- They were not fiduciaries as alleged by *Plaintiffs*, or, if they were fiduciaries, their fiduciary duties did not extend to the matters at issue in the *Action*;
- To the extent they were fiduciaries as to the matters at issue in the *Action*, they fully discharged all fiduciary duties in a manner wholly consistent with applicable law;
- The relief sought by the *Plaintiffs* in the *Action* is not permitted under applicable law; and
- *Plaintiffs* were not damaged.

The *Parties* have engaged in extensive discovery and motion practice, including multiple motions by *Defendants* to dismiss the *Action*. *Plaintiffs* successfully sought and obtained injunctions with respect to the payment of substantial amounts sought by *Defendants* from *TEOHC* pursuant to alleged indemnity rights, and the expenditure or transfer by *CRC* of certain assets; the injunction was appealed to the Ninth Circuit Court of Appeals and was affirmed on appeal.

This *Settlement* is the product of intense, arm’s-length negotiations between *Plaintiffs’ Counsel*, the *DOL*, and *Defendants* and their counsel, including a two-day mediation facilitated by the Hon. Kimberly Mueller, United States Magistrate Judge, pursuant to which the terms of the *Settlement* were established.

3. Why is there a Settlement?

At the time of *Settlement* trial of the *Action* was approximately 90 days away. While *Plaintiffs’ Counsel* believed that at trial it was likely that they would be able to establish liability and obtain a substantial judgment, they concluded that it was unlikely that *Defendants* would have the financial resources to pay materially more than will be paid under the *Settlement*. Therefore, they concluded that the *Settlement* was the prudent and advisable course, because it avoided the risks inherent in any litigation, as well as the potential delays associated with trial and potential appeals.

4. What does the Settlement provide?

The material economic terms of the *Settlement* are set forth on Page 3 above. The *Settlement* also provides for general releases of *Defendants* by *Plaintiffs* and *TEOHC* and general releases of *CRC* and *DRJ* by the *ESOP*, and for general releases by *Defendants* of *Plaintiffs*, *TEOHC*, the *ESOP* and the current and former participants in the *Plans*. In addition, the *Settlement* provides for the entry by the *Court* of a *Bar Order* that will permanently enjoin the *Affected Participants* from bringing an action in the future against the *Defendants*, the *ESOP*, *TEOHC*, the *Insurers*, and certain other persons described in the *Settlement Agreement*. The *Bar Order* will also permanently enjoin *Plaintiffs*, *Affected Participants*, *TEOHC*, the *ESOP* and the *Noll ESOP* from asserting claims against *Defendants* that arise out of or are related to the facts on which any of the claims asserted in the *Action* or in the *DOL Action* (including in any pleading, motion or other paper filed in either action or on appeal) arise. This means that *Affected Participants* or the *ESOP* will not be able to sue *Defendants* in the future. The *Settlement* is conditioned upon the concurrent settlement of the *DOL Action*.

5. What will be my share of the Settlement Fund?

Plaintiffs' Counsel have submitted to the *Court* a detailed *Plan of Allocation* for approval at or after the *Fairness Hearing*. The *Plan of Allocation*, which may be obtained at www.Kellersettlements.com, or by contacting *Plaintiffs' Counsel*, will describe the manner by which the *Settlement* proceeds paid into the *ESOP* will be allocated. In general terms, the *Plan of Allocation* provides that persons other than *CRC* who were participants in the *Plans* on or after July 1, 2001, and who received full or partial distributions of their Capital Accumulations (as defined in the *Plans*) prior to June 30, 2004, will receive payment from the *Settlement Fund* for each share allocated to their Stock Account (as defined in the *Plans*) as follows: (a) promptly after the deposits into the *Settlement Fund* provided for in Paragraphs 3.1 – 3.3 of the *Settlement Agreement*, there shall be allocated to each such participant \$1.76 per share; (b) promptly after the deposit into the *Settlement Fund* by *TEOHC* of the proceeds of the sale of the *Palm Desert Property* as provided for in Paragraph 3.4 of the *Settlement Agreement*, there shall be allocated to each such participant an amount equal to \$0.80 per share multiplied by a fraction, the denominator of which is \$4,000,000, and the numerator of which is the amount so deposited by *TEOHC* into the *Settlement Fund*; and (c) at the time of distribution of the amount deposited into the *Settlement Fund* by *CRC* pursuant to Paragraph 3.5 of the *Settlement Agreement*, there shall be allocated to each such participant an amount equal to \$0.46 per share multiplied by a fraction, the denominator of which is \$2,100,000, and the numerator of which is the amount so deposited by *CRC* into the *Settlement Fund* pursuant to Paragraph 3.5 of the *Settlement Agreement* (net of any amount returned to *CRC* pursuant to Paragraph 3.6 of the *Settlement Agreement*). The *Plan of Allocation* further provides that the remainder of the net *Settlement* proceeds will be allocated among all other persons who for whom a Stock Account was maintained by the *ESOP* as of June 30, 2004 *pro rata* in accordance with their *ESOP* Capital Accumulation amounts as of June 30, 2004.

6. How can I get my portion of the recovery?

You do not need to file a claim for recovery. If you are entitled to share in the net *Settlement* proceeds, your share will be deposited in your *ESOP* account. If you are a former participant you will be notified with respect to the procedure for receiving your share, if any, of the net *Settlement* proceeds.

7. When would I receive my portion of the recovery?

As discussed above under Question 1, payment is conditioned on several matters, including the *Court's* approval of the *Settlement* and that approval becoming *Final* and no longer subject to any appeals, the sale of the *Palm Desert Property* and the deposits by *CRC* with respect to certain federal income tax benefits he may receive described above under "Summary of the Settlement." These matters may take one or more years to be finally resolved. As discussed in Questions 1 and 5 above, it is anticipated that certain interim distributions will be made by the *ESOP* after the *Court's* approval of the *Settlement* has become *Final*.

8. How will Plaintiffs' Counsel be paid?

Plaintiffs' Counsel will apply for an award of attorneys' fees and expenses on behalf of all *Plaintiffs' counsel*. The application for attorneys' fees will not exceed 33.33% of the cash deposited in the *Settlement Fund* from time to time (net of amounts payable to the United States Treasury as an ERISA § 502(l) penalty as described above under "Summary of the Settlement,"

and excluding expenses approved by the *Court* to be reimbursed to *Plaintiffs' Counsel*), plus \$450,000 payable with respect to *Plaintiffs' Counsel's* successful efforts to secure and uphold on appeal an injunction with respect to indemnification sought by the *Defendants* from TEOHC. The application for expense reimbursement will not exceed \$440,000. Any award of fees and additional expenses will be paid from the *Settlement Fund* as and when cash is deposited therein in accordance with the terms of the *Settlement Agreement*, concurrent with disbursements to the *ESOP*. The written application for fees and expenses, together with the application for incentive awards to the *Plaintiffs* (which shall not exceed \$40,000 in the aggregate), was filed on January 19, 2010, and the *Court* will consider this application at the *Fairness Hearing*. A copy of the application is available at www.Kellersettlements.com or by a requesting a copy from *Plaintiffs' Counsel*. To date, *Plaintiffs' Counsel* have received no payment for their services in prosecuting the *Action*, nor have counsel been reimbursed for their out-of-pocket expenses.

OBJECTIONS

9. How do I tell the *Court* if I don't like the *Settlement*?

Any *Affected Participant* may object to any aspect of the *Settlement* by filing a written objection with the *Court*. To object, you must send a letter or other written statement saying that you object to the *Settlement*, *Bar Order*, the attorneys' fee award, and/or the *Plaintiff* incentive awards in *Johnson et al. v. Couturier et al.*, No. 2:05-cv-02046 RRB GGH. Be sure to include your name, address, telephone number, signature, and a full explanation of all reasons you object to the *Settlement*. **Your written objection must be filed with the *Court*, and served upon the counsel listed below by no later than February 26, 2010:**

File with the Clerk of the Court:

Clerk of the Court
United States District Court for the Eastern District of California
Robert T. Matsui United States Courthouse
501 I Street, Sacramento, California 95814 - 7300
Re: Case No. No. 2:05-cv-02046 RRB GGH

And, by the same date, serve copies of all such papers by mail and fax to each of the following:

PLAINTIFFS' COUNSEL:

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Gary D. Greenwald
KELLER ROHRBACK P.L.C.
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Fax: (602) 248-2822

COUNSEL FOR TEOHC AND THE ESOP:

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Fax: (415) 901-8701

The objection must state all supporting bases and reasons for the objection, set forth proof of your participation in the *Plans*, clearly identify any and all witnesses, documents and other evidence of any kind that are to be presented at the *Fairness Hearing* in connection with such objections, and further describe the substance of any testimony to be given by you as well as by any supporting witnesses.

UNLESS OTHERWISE ORDERED BY THE COURT, ANYONE WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION, WILL NOT BE PERMITTED TO SPEAK AT THE FAIRNESS HEARING AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT, THE BAR ORDER AND THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF INCENTIVE AWARDS.

THE COURT'S FAIRNESS HEARING

10. Do I have to come to the hearing?

Plaintiffs' Counsel will answer questions Judge Beistline may have at the *Fairness Hearing*. You are welcome to come at your own expense. If you send an objection, you do not have to come to *Court* to talk about it. As long as you mailed your written objection on time, it will be before the *Court* when the *Court* considers whether to approve the *Settlement* as fair, reasonable and adequate. You may also have your own lawyer attend the *Fairness Hearing* at your expense, but such attendance is not mandatory.

11. May I speak at the hearing?

If you have filed a timely objection and are a current *ESOP* participant or a former participant in the *Plans* who would be subject to the *Bar Order*, if you wish to speak, present evidence or present testimony at the *Fairness Hearing*, you must state in your objection your intention to do so, and must identify any witnesses you intend to call or evidence you intend to present.

The *Fairness Hearing* may be rescheduled by the *Court* without further notice to *Affected Participants*. If you wish to attend the *Fairness Hearing*, you should confirm the date and time with *Plaintiffs' Counsel*.

IF YOU DO NOTHING

12. What happens if I do nothing at all?

If you do nothing and you are entitled to participate in the *Settlement* proceeds, you will participate in those proceeds as described above in this Notice if the *Settlement* is approved, and you will be subject to the *Bar Order*.

GETTING MORE INFORMATION

13. How do I get more information?

This Notice summarizes the proposed *Settlement*. Full details of the *Settlement* are set forth in the *Settlement Agreement*. You may obtain a copy of the *Settlement Agreement* by making a written request to a member of *Plaintiffs' Counsel* listed on Page 6. Copies of the *Settlement Agreement* may also be viewed at www.Kellersettlements.com. *Plaintiffs' Counsel* have established a toll-free phone number to receive your comments and questions, (800) 236-8134, and may also be contacted via email at info@Kellersettlements.com.

DATED: MARCH 4, 2010.

BY ORDER OF THE COURT