

SUPERIOR COURT OF THE STATE OF GEORGIA
COUNTY OF COBB

COBB COUNTY, GA
FILED IN OFFICE

08 OCT 30 AM 10:20

J. C. [Signature]
COBB SUPERIOR COURT CLERK

EDGAR "BO" POUNDS, individually and)
on behalf of the estate of Mary Jean Pounds,)
JOSEPH THOMPSON, FRANKLIN)
SMITH, EAGLE EYE FORENSICS, LLC,)
DIANNE BRACKIN, and WILLIAM)
SHARP, Derivatively On Behalf of COBB)
ELECTRIC MEMBERSHIP)
CORPORATION.)

Plaintiffs,)

vs.)

Civil Action File No. 07-1-9408-48

DWIGHT BROWN, DON BARNETT,)
DAVID MCGINNIS, KAY ANDERSON,)
AL FORTNEY, JR., FRANK BOONE,)
SARAH BROWN, LARRY CHADWICK,)
HENRY BALKCOM III, COBB ENERGY)
MANAGEMENT CORPORATION and)
DOES 1-15, inclusive,)

Defendants,)

-and-)

COBB ELECTRIC MEMBERSHIP)
CORPORATION, a Georgia Corporation,)

Nominal Defendant.)

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**ORDER PRELIMINARILY APPROVING
JOINT PROPOSAL FOR RESOLUTION OF DERIVATIVE ACTION**

WHEREAS, the parties have made application, pursuant to O.C.G.A. § 46-3-272 for an order approving the settlement (the "Settlement") of the captioned matter (the "Derivative Action"), in accordance with a Joint Proposal for Resolution of Derivative Litigation dated as of October 30, 2008 (the "Joint Proposal"), which sets forth the terms and conditions for a proposed Settlement and dismissal of the Derivative Action, upon the terms and conditions set forth therein; and

[Handwritten mark]

WHEREAS, all capitalized terms contained herein shall have the same meanings as set forth in the Joint Proposal (in addition to those capitalized terms defined herein); and

WHEREAS, and the Court having read and considered the Joint Proposal and the Exhibits annexed thereto:

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve, subject to further consideration at the Fairness Hearing described below, the Joint Proposal and the Settlement.

2. A hearing (the "Fairness Hearing") shall be held before this Court on December 2, 2008, at 1:30 P.m., in courtroom N at 30 Waddell Street, Marietta, Georgia 30090-9642 to determine whether the Settlement of the Derivative Action on the terms and conditions provided for in the Joint Proposal is fair, reasonable and adequate to Cobb EMC and its members and should be approved by the Court; whether a Judgment as provided in section 8 of the Joint Proposal should be entered herein; and to determine whether the application by Derivative Counsel for an award of attorneys' fees and reimbursement of expenses should be granted. The Court may adjourn the Fairness Hearing or modify any of the dates set forth herein without further notice to Cobb EMC members.

3. The Court approves, as to form and content, the Notice of Joint Proposal for Resolution of Derivative Action ("Derivative Notice") and Summary Notice for Publication of Joint Proposal for Resolution of Derivative Action ("Summary Derivative Notice") annexed as Exhibits C-1 and C-2 hereto, and finds that the mailing and distribution of the Derivative Notice and publishing of the Summary Derivative Notice, substantially in the manner and form set forth in this Order, meets the requirements of O.C.G.A. § 46-3-272 (c) and due process, and is the best

notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

4. The Plaintiffs and Derivative Defendants shall administer the notice procedure as more fully set forth below:

(a) Not later than November 11, 2008, (the "Notice Date") a copy of the Derivative Notice substantially in the form annexed as Exhibit C-1 to the Joint Proposal shall be mailed by first class mail to all Cobb EMC members, except in the event Plaintiffs exercise their right to terminate the Settlement pursuant to paragraph (B) 1.1, in which case notice shall not be sent and the Joint Proposal will terminate;

(b) Not later than November 11, 2008, the Summary Derivative Notice shall be published once in the Marietta Daily Journal, substantially in the form attached as Exhibit C-2 to the Joint Proposal.

(c) At least ten (10) business days prior to the Fairness Hearing, Cobb EMC shall serve on Derivative Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing; and

(d) Prior to the Fairness Hearing, David Flint and W. Pitts Carr are designated by the parties as the sole spokespersons relating to the Joint Proposal. Any communications to and from the media regarding the Joint Proposal shall require the joint participation of Mr. Flint and Mr. Carr.

5. All Cobb EMC members shall be bound by all orders, determinations and judgments in the Derivative Action concerning the Settlement, whether favorable or unfavorable to Cobb EMC members or any of them.

6. Any Cobb EMC member may enter an appearance in the Derivative Action, at his, her or its own expense, individually or through counsel of his, her or its own choice. If he, she or it does not enter an appearance, he, she or it will be represented by Derivative Counsel.

7. Pending final determination of whether the Settlement should be approved, no Cobb EMC member, either directly, representatively, or in any other capacity, shall commence or prosecute against any of the Released Derivative Parties, any action or proceeding in any court or tribunal asserting any of the Released Derivative Claims.

8. All papers in support of the Settlement and any application for attorneys' fees and expenses shall be filed with the Court and served by overnight mail or hand delivery on or before seven (7) days before the Fairness Hearing.

9. Any Cobb EMC member may appear and show cause, if he, she or it has any reason, why the Joint Proposal should not be approved as fair, reasonable and adequate, or why a Judgment should not be entered thereon, or why attorneys' fees and expenses should not be awarded to Derivative Counsel as requested; provided, however, that no Cobb EMC member shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the attorneys' fees and expenses to be awarded to Derivative Counsel, unless that Person, on or before ^{December} ~~November~~ 28, 2008, has filed with the Clerk of the Court and served on the following counsel (delivered by hand or sent by first class mail) written objections and copies of any papers and briefs in support thereof:

W. Pitts Carr
David M. Cohen
Carr & Palmer, LLP
10 North Parkway Square
4200 Northside Parkway, NW
Atlanta, Georgia 30327

Lead Counsel for Derivative Plaintiffs

David Flint
Schreeder, Wheeler & Flint, LLP
1100 Peachtree Street, Suite 800
Atlanta, Georgia 30309
Counsel for Cobb EMC

Barry McCabe
Southerland, Asbill & Brennan, LLP
999 Peachtree Street, NE
Atlanta, Georgia 30309-3996
Counsel for Dwight Brown

Leo E. Reichert
Parker, Hudson, Rainer & Dobbs LLP
1500 Marquis Two Tower
285 Peachtree Center Avenue, NE
Atlanta, Georgia 30303
Counsel for Directors Frank Boone and David McGinnis

S. Lester Tate, III
Akin & Tate, PC
11 Public Square
P.O. Box 878
Cartersville, Georgia 30120
*Counsel for Directors Anderson, Barnett
Balkcom, S. Brown, Chadwick and Fortney*

Michael Weinstock
Richard Merritt, Esq.
WEINSTOCK & SCAVO, PC
3405 Piedmont Rd., NE, Suite 300
Atlanta, Georgia 30305
Counsel for Cobb Energy

(a) The written objections and copies of any papers and briefs in support thereof

to be filed in Court shall be delivered by hand or sent by first class mail to:

Clerk of the Court
Clerk, Superior Court of Cobb County
Civil Filing Desk
32 Waddell Street

5/7

Marietta, Georgia 30090

(b) Any Cobb EMC member who does not make his, her or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness or adequacy of the Settlement as incorporated in the Joint Proposal, or to the award of attorneys' fees and expenses to Derivative Counsel, but shall otherwise be bound by the Judgment to be entered and the releases to be given;

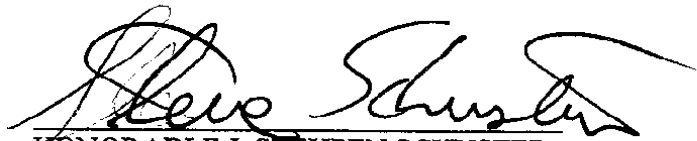
10. All reasonable expenses incurred in identifying and notifying Cobb EMC members, as well as in administering the Settlement, shall be paid by Defendants;

11. Neither the Joint Proposal, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Defendants or any of them of the truth of any of the allegations in the Derivative Action, or of any liability, fault, or wrongdoing of any kind;

12. The Court reserves the right to adjourn the date of the Fairness Hearing or modify any other dates set forth herein without further notice to Cobb EMC members, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the settling parties, if appropriate, without further notice to the Cobb EMC members.

IT IS SO ORDERED.

DATED: OCTOBER 30, 2008


HONORABLE J. STEPHEN SCHUSTER
JUDGE, SUPERIOR COURT OF COBB
COUNTY

*Signatures of attys on following
page
6/7*

[Handwritten signature]

David H. Fink

[Handwritten signature]
Weinstock

A. Knight

Leo E. Pachert

A. Peter Tate, III