IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: SCRAP METAL ANTITRUST LITIGATION	**CASE NO. 1:02 CV0844** **JUDGE BOYKO**

CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT WITH DEFENDANTS, COLUMBIA IRON AND METAL COMPANY AND COLUMBIA NATIONAL GROUP, INC., AND NON-PARTIES DAVID P. MILLER AND MERCER CO.

Class Plaintiffs respectfully move this Court for an order pursuant to Fed. R. Civ. P. 23(e) and 54 granting final approval of the proposed settlement between Class Plaintiffs and Defendants Columbia Iron and Metal Company (CIMCO) and Columbia National Group, Inc. (CNG) and non-parties David P. Miller ("Miller," CIMCO, CNG and Miller are hereinafter sometimes referred to as the "Miller Parties") and Mercer Co. (Mercer) (the "Settlement Agreement"). Class Plaintiffs moved for preliminary approval of the Settlement Agreement on April 22, 2016. A copy of the Settlement Agreement was attached to the motion for preliminary approval. On May 20, 2016, this Court issued an order preliminarily approving the Settlement Agreement, authorizing notice to the class, approving the requested attorney fees and costs, and setting a hearing for final approval (the "Fairness Hearing") on August 4, 2016 at 2:00 p.m. For the reasons set forth in the accompanying Memorandum of Law, Class Plaintiffs request that this Court Order:

1. that final approval of the Settlement Agreement;
2. that the Miller Parties and Mercer make the settlement payments commencing immediately in accordance with the Settlement Agreement;

3. that the claims administrator should pay Attorneys Fees and Costs upon the funds' availability; and

4. that the claims Class Counsel shall cause claim forms to be mailed by first-class mail to all potential class members whose names and addresses are known.

No objections to the Settlement Agreement have been received. An affidavit of the claims administrator detailing the notice procedures is filed with the Court today as Exhibit A to the Memorandum of Law in Support of this Motion.

Dated: August 3, 2016

Respectfully Submitted,

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MEMORANDUM OF LAW

Class Plaintiffs respectfully submit this Memorandum of Law in support of their Motion for Final Approval of the Settlement Agreement. For the reasons set forth below, Class Plaintiffs request that the Court grant final approval of the Settlement Agreement.

Subject to approval by this Court, Class Plaintiffs, the Miller Parties and Mercer have entered into a settlement. As set forth more fully in the Settlement Agreement attached to the Motion for Preliminary Approval, in exchange for a dismissal and release of the Miller Parties and Mercer, the Miller Parties and Mercer agree that (i) a payment of $1,500,000.00 will be paid collectively by David Miller, Columbia National Group, Inc. and Columbia Iron & Metal Co. d/b/a Columbia Trading, Inc., and (ii) a total payment of $300,000, to be made in four payments of $75,000, into an escrow account for the benefit of the class, will be made by Mercer.

BACKGROUND

A. Antitrust Litigation

On May 3, 2002, Profile Grinding, Inc. ("Profile") filed a putative class action in the United States District Court for the Northern District of Ohio, captioned *Profile Grinding, Inc., on behalf of itself and all others similarly situated, v. Harry Rock & Associates, Inc.; Bay Metals, Inc.; M. Weingold & Co., Inc.; and Ferrous Processing & Trading Co.*, Case No. 1:02-cv-00844, alleging claims for damages for violations of the Sherman Act, 15 U.S.C. § 1 (the "Antitrust Litigation"). On August 15, 2002, Profile and Lincoln Electric, which was added as a Third Party Plaintiff, amended their Complaint and added CNG and CIMCO as additional defendants. On September 16, 2002, the Defendants filed their Answer to the Amended Class Action Complaint.

On May 30, 2003, Plaintiffs filed a motion for class certification and memorandum in support. On March 31, 2004, the Court granted Plaintiffs' motion for class certification and

certified a class pursuant to Civil Rule 23(b)(3) as follows:

> all persons or entities with scrap generating facilities located in Northeast Ohio and the surrounding counties, which is comprised of Ashtabula, Cuyahoga, Lake, Lorain, Medina, Stark, and Summit counties, who sold ferrous or nonferrous industrial scrap metal to Defendants between December 1992 and March 2000. Excluded from the Class are Defendants, and their respective parents, subsidiaries and affiliates, as well as any governmental entities. Also excluded from the Class is any party, whether named or not, who is ultimately deemed to have participated in an illegal conspiracy.

On January 24, 2006, a jury trial began with respect to Plaintiffs' claims against the Defendants and continued from day to day until February 9, 2006. On February 9, 2006, the jury returned a verdict in favor of Plaintiffs as to Defendant CIMCO, but against Plaintiffs as to CNG. On February 10, 2006, the Court entered judgment in favor of Plaintiffs and against CIMCO in the amount of $23,036,000 ($11,500,000 trebled, then offset against $11,464,000 in settlements received from other parties). On February 14, 2006, the Court entered judgment in favor of CNG against Plaintiffs on all of Plaintiffs' claims. On September 30, 2006, the Court entered an order awarding Plaintiffs a judgment against CIMCO in the amount of $2,529,820.85 for Plaintiffs' attorneys' fees and $130,575.34 for Plaintiffs' costs, for a total of $2,660,369.19 (the $23,036,000.00 judgment and the $2,529,820.85 are hereinafter referred to as the "Class Action Judgments").

B. Federal Court Collection Efforts

In May 2007, Plaintiffs garnished CIMCO's bank account, recovering approximately $350,000. Later in May, 2007, CIMCO determined that it could no longer operate as a going concern. It thereafter proceeded, to suspend the company's operations and terminate its remaining employees.

On January 26, 2010, Lincoln Electric filed a putative class action in the United States District Court for the Northern District of Ohio, captioned *The Lincoln Electric Company v.*

Mercer Company and David P. Miller, Case No. 1:10-cv-00184, alleging claims against Miller for violations of the Sherman Act, 15 U.S.C. § 1, piercing the corporate veil, and unjust enrichment (the "Federal Collection Action"). The claims alleged against Mercer were for fraudulent transfer and unjust enrichment. The Complaint sought to recover money from the unsatisfied judgment against CIMCO in this litigation. On March 5, 2010, Miller filed an answer to the complaint. On March 22, 2010, Mercer filed a motion to dismiss the counts against it, and an opposition brief was filed on May 10, 2010. On August 6, 2010, Miller filed a motion for judgment on the pleadings, or, in the alternative, summary judgment on the Sherman Act claim against him. An opposition brief was filed by Lincoln Electric on September 17, 2010.

On August 23, 2010, Plaintiffs filed an Amended Complaint against Miller and Mercer. The Amended Complaint added CIMCO as a defendant. The Amended Complaint alleged claims against Miller for violations of the Sherman Act, 15 U.S.C. § 1, fraudulent transfer, and piercing the corporate veil. The claim against Mercer and CIMCO was for fraudulent transfer. On February 10, 2011, Miller filed a renewed motion for judgment on the pleadings, or, in the alternative, for summary judgment on the Sherman Act claim against him. On September 26, 2011, the Court granted Miller's motion for judgment on the pleadings as to the Sherman Act claim against him and dismissed the antitrust claim against him.

On June 27, 2012, the Court ordered the parties to brief the issue as to whether the Court had subject matter jurisdiction over the case in light of the dismissal of the antitrust claims against Miller. On September 30, 2013, the Court dismissed the case for lack of subject matter jurisdiction.

On June 26, 2014, Niekamp Counsel (defined below) filed a Notice of Appearance and Request for Notice as Additional Counsel (Doc. 726), and on July 3, 2014, Niekamp Counsel (defined below) filed a Motion to Revive Judgment (Doc 729), which was later approved by this

Court and an Order reviving the judgment was entered on July 31, 2014 (Doc. 735).

C. State Court Action

In June 2014, Class Counsel retained Niekamp Counsel to pursue collection of the Judgments in State Court (See Section D below). On September 19, 2014, Lincoln Electric and Profile Grinding filed an action in the Court of Common Pleas, Summit County, Ohio, captioned *Profile Grinding, Inc. and The Lincoln Electric Company against Mercer Company and David P. Miller*, Case No. CV-2014-09-4330 (the "State Court Action," hereinafter the Antitrust Litigation, the Federal Collection Action and the State Court Action are sometimes collectively referred to as the "Actions"), alleging they were acting on behalf of the class in Case No. 1:02-cv-00844, stating claims against Miller for fraudulent transfer, piercing the corporate veil, aiding and abetting, and unjust enrichment. The Complaint alleged claims against Mercer for fraudulent transfer, successor liability, and unjust enrichment. The Complaint sought to recover money to satisfy the unsatisfied judgment against CIMCO in this litigation. On September 22, 2014, Lincoln Electric and Profile Grinding filed an Amended Complaint.

The theory upon which Plaintiffs pursued their fraudulent transfer and unjust enrichment claims in the State Court Action involves what Plaintiffs alleged were complex corporate debt avoidance maneuvers by the Defendants. As stated above, the Judgments were entered in favor of the Class and against CIMCO only. Plaintiffs alleged that CNG, and its sole shareholder Miller, facilitated the transfer of CIMCO's business operations to another CNG controlled entity, Mercer. Against Mercer, Plaintiffs contended that CNG (and ultimately Miller) were able to continue to realize CIMCO's profits while avoiding its obligations under the Judgments. Mercer and Miller both denied the allegations and vigorously defended the State Court Action.

Profile Grinding and Lincoln Electric conducted discovery in the State Court Action,

including depositions of key actors (the sales people employed by CIMCO and Mercer, Mercer's Controller, CNG's CFO, Mercer's CEO, and David Miller who is the owner and President of CNG) an extensive review of documents, and a thorough factual and legal investigation and analysis into the claims and defenses asserted in the various actions. Following discovery, on November 17, 2015, Mediator John C. Fairweather conducted an all-day mediation with the goal of seeking resolution of the claims made by the class against Miller and Mercer. Subsequent to the mediation, and after further negotiation, Plaintiff Lincoln Electric Company, acting on behalf of the Settlement Class, and Miller reached a settlement as to all claims against the Miller Entities. Subsequent to reaching the settlement against Miller, *et al.*, Plaintiff Lincoln Electric Company, acting on behalf of the Settlement Class, reached a settlement as to all claims against Mercer.

At all times, Mercer, Miller, CIMCO, and CNG have denied and continue to deny any wrongdoing whatsoever and have denied and continue to deny that they committed, threatened, or attempted to commit any wrongful act or violation of law or duty alleged in the Actions. In addition, the Defendants maintain that they have meritorious defenses to the claims alleged in the Actions and are prepared to vigorously defend all aspects of the Actions.

Plaintiffs believe that the claims asserted in the Actions against the settling Defendants have merit; nevertheless, Plaintiffs and counsel recognize and acknowledge that the Defendants have raised factual and legal defenses in the Actions that present a risk that Plaintiffs may not prevail in the Actions. Plaintiffs and counsel also have taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulties and delays inherent in such litigation. Based on their evaluation, Plaintiffs and counsel have concluded that the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate to the Class, and that it is in the best interests of the Class to settle the claims raised in the Actions

pursuant to the terms and provisions of the Settlement Agreement. On May 20, 2016, the Court granted Plaintiffs' Motion for Preliminary Approval of the Settlement Agreement.

A. The Proposed Settlement Amount Provides a Substantial Benefit to the Class

The proposed $1,800,000 settlement ($1,500,000 collectively from David Miller, Columbia National Group, Inc. and Columbia Iron & Metal Co. d/b/a Columbia Trading, Inc. and $300,000 from Mercer) is substantial in both absolute terms and in light of the circumstances of this litigation. The two judgments entered against CIMCO, which are the subject of the state court collections case, are nearly a decade old. CIMCO itself is insolvent and not in operation. The settlement funds are coming from an individual and an entity that are not parties to this case. Therefore, in light of CIMCO's inability to pay the two judgments, the settlement amount is certainly substantial.

B. The Proposed Settlement Is the Product of Good Faith, Extensive Arm's-Length Negotiations

The proposed settlement resulted from extensive arm's-length negotiations undertaken in good faith between counsel for the Class Plaintiffs and counsel for the Miller parties and Mercer. The settlement negotiations spanned a number of months, and actively involved Class Counsel and Niekamp Counsel, counsel for the Miller parties and counsel for Mercer. The negotiations included a day-long mediation with a private, impartial mediator. *See Michel v. WM Healthcare Solns., Inc.*, 10-cv-638, 2014 U.S. Dist. LEXIS 15606, at * (S.D. Ohio Feb. 7, 2014) (finding that the involvement of two different plaintiffs' firms, two different defense firms, and an independent mediator "greatly decrease[d] the risk of fraud or collusion."). The parties also considered the delays and uncertainty that would arise from further litigation. The parties scrutinized the strengths and weaknesses of the pending claims, including liability, causation and damages, and the merits of the potential defenses. Because of the extensive, arms-length bargaining involved,

there can be no suggestion of any collusive aspects to the proposed settlement.

C. There Was More than Sufficient Discovery and Investigation for Counsel for the Class Plaintiffs to Make an Informed Decision

Counsel for the Class Plaintiffs have conducted substantial discovery in the state court case as well as the previous federal collection action. This discovery has included eight depositions of all of the key actors surrounding the circumstances in the collections action, numerous interrogatories and document requests. Class Plaintiffs also scoured thousands of pages of financial documents made available by the Defendants and third parties.

The facts concerning the Miller Parties' and Mercer's potential liability and damages have thus been sufficiently developed for counsel for the Class Plaintiffs to make an informed decision regarding the proposed settlement.

D. The Proponents of the Settlement Are Highly Experienced in Debt Collection, Antitrust and Class Action Matters.

While the underlying litigation in this case involved antitrust issues and class action certification, the current State Court Action is best described as a collections action, involving the prosecution of claims for the fraudulent transfer and successor liability. In the State Court Action, the class is represented by lawyers who have extensive experience in debt collection matters, including the post-judgment execution of substantial judgment awards similar to the two judgments in this case. Thus, counsel are well-versed in both the execution and settlement of large judgments.

Accordingly, counsel's recommendations are entitled to great weight. Indeed, courts have repeatedly and explicitly deferred to the judgment of experienced counsel who have conducted arms-length negotiations in approving proposed class settlements. *See, e.g., Blank v. Talley Industries, Inc.*, 64 F.R.D. 125, 132 (S.D.N.Y. 1974) (a factor "entitled to substantial weight is that

the settlement bears the imprimatur of seasoned and experienced counsel"); *Fisher Brothers v. Phelps Dodge Industries Inc.*, 604 F. Supp. 446, 452 (E.D. Pa. 1985) ("the professional judgment of counsel involved in the litigation is entitled to great weight").[1] The presumption in favor of such settlements reflects the courts' understanding that vigorous expert negotiation protects against collusion and advances the fairness interests of Rule 23(e).

D. Notice of the Settlement Has Been Provided.

Pursuant to the Court's May 20, 2016, Order, notice of the Settlement Agreement was mailed, by first class mail, postage prepaid, to over eight hundred potential class members on June 7, 2016. The mailing list was compiled for previous settlement notices in this same case that were sent to this same Plaintiff Class. *See* Affidavit of Markham Sherwood, attached hereto as Exhibit A. Copies of the Settlement Agreement and the Mailed Notice were posted on Class Counsel's website at www.bsfllp.com.

E. There Have Been No Objections From Class Members.

The Court's May 20, 2016, Order specified that class members who wish to object or otherwise be heard with respect to the Settlement Agreement must file written notice with the Court no later than seven (7) days before the Fairness Hearing. To date, no such notice has been received. *See* Exhibit A.

ARGUMENT

Federal Rule of Civil Procedure 23(e) provides that:

> A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such

[1] *See also Stewart v. Rubin*, 948 F. Supp. 1077, 1099 (D.D.C. 1996), *aff'd*, 124 F.3d 1309 (D.C. Cir 1997); *In re Lease Oil Antitrust Litig. (No. II)*, 186 F.R.D. 403, 424-425 (S.D. Tex. 1999); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 312-13 (N.D. Ga. 1993); Manual § 30.42, at 240.

manner as the court directs.

Approval of a proposed class action settlement is within the discretion of the court. *Baily v. Greatlakes Canning, Inc.*, 908 F2d 38, 42 (6th Cir. 1990). "To determine whether a proposed settlement is fair, reasonable, and adequate, the court must determine whether the interests of the class are better served by the settlement than by further litigation." *Manual For Complex Litigation (Fourth)*, § 21.61 (2004); *see also* Charles A. Wright, Arthur R. Miller & Mary K. Kane, *Federal Practice And Procedure: Civil 2d*, § 1797.1 (2d ed. 1986). The Rule 23 requirements are fully consistent with the long-standing judicial attitude favoring settlement. *See, e.g., Hennessy v. Bacon*, 137 U.S. 78, 85 (1890). This policy of encouraging settlements is particularly appropriate in class actions, which are often complex, protracted, and demanding of limited judicial resources. *Mayfield v. Barr*, 985 F.2d 1090, 1092 (D.C. Cir. 1993).

The discretion accorded to courts in approving settlements recognizes that "evaluation of [a] proposed settlement in this type of litigation . . . requires an amalgam of delicate balancing, gross approximations and rough justice," and the trial court's ruling on the adequacy of a proposed compromise is given great deference. *City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1385 (S.D.N.Y. 1972), *aff'd in part and rev'd in part on other grounds*, 495 F.2d 448 (2d Cir. 1974); *Thomas v. Albright*, 139 F.3d 227, 231 (D.C. Cir.), *cert. denied*, 525 U.S. 1033 (1998). "The court must eschew any rubber stamp approval . . . yet, at the same time, it must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *United States v. District of Columbia*, 933 F. Supp 42, 47 (D.C. 1996) (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974)). The exercise of that discretion, however, is constrained by the "principle of preference" favoring and encouraging settlements. *Pigford v. Glickman*, 185 F.R.D. 82, 103 (D.D.C. 1999). The courts particularly encourage settlements in complex litigation because

litigants should be encouraged to determine their respective rights among themselves. *Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977) (citing *United States v. Allegheny-Ludlum Indus., Inc.*, 517 F.2d 826 (5th Cir. 1975), cert denied sub nom, National Organization for Women, Inc. v. United States, 425 U.S. 944 (1976)). "Absent evidence of fraud or collusion, such settlements are not to be trifled with." *Granada Investments, Inc. v. DWG Corp.*, 962 F.2d 1203, 205 (6th Cir. 1992).

There is no single, obligatory test in this Circuit that courts must use to determine whether the proposed settlement of a class action should be approved under Rule 23(e). However, a district court should review a consent decree to assure that it is "fair, adequate, and reasonable, as well as consistent with the public interest." *United States v. Jones & Laughlin Steel Corp.*, 804 F.2d 348, 251 (6th Cir. 1986); *see also Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983). For the following reasons, Plaintiffs request that the Court find that the Settlement Agreement is fair, reasonable, and adequate, and therefore merits final approval.

A. The Settlement Agreement is Fair, Reasonable, And Should Be Approved.

1. The Settlement Agreement Resulted From Arm's-Length Negotiations By Informed, Experienced Counsel After Months of Instigation and Discovery.

This Court and other courts have deferred to the judgment of experienced counsel who have conducted arm's-length negotiations in approving proposed class settlements. *In re Materials Antitrust Litigation*, 100 F.R.D. 367, 371 (D.Ohio 1983) (*citing Cotton v. Hinton*, 559 F.2d 1326, 1330 (Ala. Civ. App. 1977)); *see also In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403, 424-25 (S.D. Tex. 1999); *In re Domestic Air Transp. Litig.*, 148 F.R.D. 297, 312-13 (N.D. Ga. 1993); H. Newberg & A. Conte, *Newberg On Class Actions* § 11.41 (4th ed. 2002).

While the underlying litigation in this case involved antitrust issues and class action certification, the current State Court Action is best described as a collections action, involving the prosecution of claims for the fraudulent transfer and successor liability. In the State Court Action,

the class is represented by lawyers who have extensive experience in debt collection matters, including the post-judgment execution of substantial judgment awards similar to the two judgments in this case. Thus, counsel are well-versed in both the execution and settlement of large judgments.

The proposed settlement resulted from extensive arm's-length negotiations undertaken in good faith between counsel for the Class Plaintiffs and counsel for the Miller parties and Mercer. The settlement negotiations spanned a number of months, and actively involved counsel for all parties. The negotiations included a day-long mediation with a private, impartial mediator. Nothing in the course of the negotiations or the substance of the Settlement Agreement discloses grounds to doubt its fairness. To the contrary, the extensive negotiations between experienced advocates strongly supports the conclusion that the Settlement Agreement is fair, reasonable, adequate, and should be approved.

2. The Proposed Settlement Agreement Is Fair, Reasonable, and Adequate.

Under the terms of the Settlement Agreement the class will receive $1,800,000 settlement ($1,500,000 collectively from David Miller, Columbia National Group, Inc. and Columbia Iron & Metal Co. d/b/a Columbia Trading, Inc. and $300,000 from Mercer). The proposed settlement is substantial in both absolute terms and in light of the circumstances of the litigation. The two judgments entered against CIMCO, which are the subject of the state court collections case, are nearly a decade old. CIMCO itself is insolvent and not in operation. The settlement funds are coming from an individual and an entity that are not parties to this case. Therefore, in light of CIMCO's inability to pay the two judgments, the settlement amount is certainly substantial.

The State Court Claims, pursuant to which the Settlement Agreement has been reached, pose complex legal questions. Plaintiffs have alleged that some of the assets of CIMCO were

transferred to Mercer in order to continue CIMCO's business free of the two Judgments. In particular, Plaintiffs alleged that CIMCO transferred intangible assets, such as business relationships with customers and suppliers, and pricing structures both of scrap metal sold and purchased by CIMCO and Mercer. Mercer denied this allegation, and argued that its business relationships with customers and suppliers existed before the Judgments were rendered against CIMCO. Indeed, tracking the movement of intangible assets, such business relationships and pricing structures, can be difficult. Many of the customer and supplier relationships that Plaintiffs allege to have been transferred had relationships with both entities prior to the two Judgments, therefore, Plaintiffs had to analyze whether the business done by Mercer with these entities increased as a result moving CIMCO's business to Mercer. That analysis was complicated further due to the significant fluctuations in the economy during the time period. Not only have Plaintiffs faced significant challenges in showing that intangible assets were transferred from CIMCO to Mercer, but valuing those assets proved to be difficult, again due to the volatility in the steel industry at the time of the alleged transfers.

Further, Plaintiffs faced significant legal battles beginning with whether class recertification was necessary in the State Court Action. Plaintiffs also had statutes of limitations hurdles to overcome on nearly every claim brought in the State Court Action. The events that led to the claims happened nearly a decade prior to the filing of the State Court Action. Counsel in the State Court Action were also limited by Ohio's Savings Statute in bringing only the claims previously dismissed for reasons other than the merits in the Federal Collections Action. These limitations also included limiting the parties against whom claims could be pursued. Plaintiffs were not able to bring claims against CNG, which poses a potential issue in obtaining a judgment against

Miller through piercing the corporate veil, because such piercing would have to go through CNG, which was not available as a party to the State Court Action.

All of these complexities have proven challenging for Plaintiffs' and their counsel in obtaining the $1.8 million settlement. Defendants have presented merits and compelling challenges to the State Court Action. Further, the complexity of the facts in the case have required diligent and creative review of financial statements that were often incomplete due to their age, and due also to the change in ownership of Mercer.

This Settlement Agreement was reached after years of litigation and extensive discovery in three separate jurisdictions. If approved, the Settlement Agreement guarantees the class a substantial recovery of their antirust injury, for which they have previously been compensated through settlements with other defendants. Viewed against any probable recovery, and considering the risks inherent in litigation, the Settlement Agreement falls well within the range of fair, reasonable, and adequate, and therefore merits final approval.

3. The Settlement is In the Public Interest.

"A trial court may review a [settlement] to assure that it is fair, adequate, and reasonable, as well as consistent with the public interest." *United States v. Jones & Laughlin Steel Corp.*, 804 F.2d at 351. Here the public interest is served because counsel has been able to obtain a Settlement Agreement where the individual and entities paying the settlement amount are parties that were not subject to the underlying judgments, which are now over a decade old.

Here, there have been no objections to the settlements. The lack of objections is particularly meaningful here, because the class consists of many large, sophisticated businesses who may have substantial claims. These entities could be expected to object if they had perceived any unfairness in the settlements. The fact that these class members chose not to object weighs heavily in favor

of approval of the settlements. *See In re Cardizem CD Antitrust Litigation*, Master File No. 99-MD-1278, MDL No. 1278 (E.D.Mich. Nov. 26, 2002) (Edmonds, D.J.); *Whitford v. First National Bank*, 147 F.R.D. 135, 141 (W.D.Ky. 1992) (*citing Lasky v. International Union*, 638 F.2d 954 (6th Cir. 1981)).

Given the public's interest in enforcement of the antitrust laws, as well as the fact that there have been no exclusions, the public interest would undoubtedly be served by ensuring a recovery on the two judgments when the judgment debtor is insolvent and no longer in operation.

B. Counsel's Approved Attorney Fees Should Be Paid Upon the Funds' Availability.

In its May 20, 2016, Order, the Court approved Class Counsel and Niekamp Counsel's request for attorneys' fees in the amount of 33 and 1/3% of the settlement amount, to be payable upon the final approval of the proposed settlement. (Doc. 747) Therefore, Plaintiffs move that the Court Order that the claims administrator shall pay to Niekamp Counsel $600,000.00, which is 33 and 1/3% of the settlement amount upon the funds availability. Further, the Court Ordered in its May 20, 2016, Order that costs in the amount of $8,143.30, should be reimbursed to Niekamp Counsel. Therefore, Plaintiffs move that the claims administrator should pay to Niekmap Counsel $8,143.30 for costs reimbursement upon the funds' availability.

CONCLUSION

For the foregoing reasons, Class Plaintiffs respectfully request that the court grant their motion for final approval of the Settlement Agreement.

Respectfully Submitted,

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Special State Court Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Northern District of Ohio by using the CM/ECF system on August 3, 2016. All participants will be served through the Court's CM/ECF system.

/s/ Christopher J. Niekamp
Christopher J. Niekamp (0051221)

EXHIBIT A

TO

CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT WITH DEFENDANTS, COLUMBIA IRON AND METAL COMPANY AND COLUMBIA NATIONAL GROUP, INC., AND NON-PARTIES DAVID P. MILLER AND MERCER CO.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

IN RE: SCRAP METAL ANTITRUST LITIGATION	**CASE NO. 1:02 CV0844** **JUDGE BOYKO**

AFFIDAVIT OF MARKHAM SHERWOOD REGARDING NOTICE PROCEDURES

STATE OF CALIFORNIA)
) SS.
COUNTY OF MARIN)

I, Markham Sherwood, being duly sworn, depose and say:

1. I am a Director of Class Actions at Kurtzman Carson Consultants LLC ("KCC"). My business address is 3301 Kerner Boulevard, San Rafael, CA 94901. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts stated herein.

2. Pursuant to the Order Preliminarily Approving Proposed Settlement with Defendants, Columbia Iron and Metal Company and Columbia National Group, Inc., and Non-Parties David P. Miller and Mercer Co., dated May 20, 2016 (the "Preliminary Approval Order"), KCC was authorized to act as the settlement administrator for the purpose of issuing notice to the Settlement Class.[1]

MAILING OF NOTICE

3. Pursuant to the Preliminary Approval Order, KCC disseminated the Notice of Proposed Settlement with Columbia Iron and Metal Company, Columbia National Group, Inc., David Miller and Mercer Co. (the "Notice") to members of the Settlement Class, defined as all

[1] All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Preliminary Approval Order, dated May 20, 2016.

persons or entities who sold ferrous or nonferrous industrial scrap metal in Northeast Ohio and the surrounding counties, which is comprised of Ashtabula, Cuyahoga, Lake, Lorain, Medina, Stark and Summit Counties. A copy of the Notice is attached hereto as Exhibit A.

4. Prior to mailing, KCC caused the addresses in the Class Member List to be updated using the National Change of Address Database ("NCOA") maintained by the United States Postal Service ("USPS").

5. On June 7, 2016, KCC disseminated the Notice by first-class mail to those 875 members on the Class Member List.

OBJECTIONS

6. The Notice informs Class Members who wish to object must send their objection(s) in writing to the Office of the Clerk of the Court, with a copy to be sent to lead counsel for Class Plaintiffs, by July 28, 2016. As of August 2, 2016, KCC has not received any objection from Class Members forwarded by Settlement Class Counsel.

MARINA MC KENNA
Commission # 2021192
Notary Public - California
Marin County
My Comm. Expires Apr 21, 2017

Markham Sherwood

State of California
County of Marin

Subscribed and sworn to (or affirmed) before me
on this 2nd day of August, 2016
by Markham Sherwood
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Marina Mc Kenna
Notary Public

EXHIBIT A

TO

AFFIDAVIT OF MARKHAM SHERWOOD REGARDING NOTICE PROCEDURES

Scrap Metal Antitrust Litigation Notice Administrator
c/o KCC Class Action Services
P.O. Box 40008
College Station, TX 77842-4008

SDX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: SCRAP METAL ANTITRUST LITIGATION	**)**	**CASE NO. 1:02 CV0844**
	)	
	)	**JUDGE BOYKO**

NOTICE OF PROPOSED SETTLEMENT WITH COLUMBIA IRON AND METAL COMPANY, COLUMBIA NATIONAL GROUP, INC., DAVID MILLER AND MERCER CO.

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS.

PLEASE READ CAREFULLY.

TO: ALL PERSONS OR ENTITIES WITH SCRAP GENERATING FACILITIES LOCATED IN NORTHEAST OHIO AND THE SURROUNDING COUNTIES, WHICH IS COMPRISED OF ASHTABULA, CUYAHOGA, LAKE, LORAIN, MEDINA, STARK AND SUMMIT COUNTIES, WHO SOLD FERROUS OR NONFERROUS INDUSTRIAL SCRAP METAL TO DEFENDANTS BETWEEN DECEMBER 1992 AND MARCH 2000

Excluded from the Class are Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, as well as any governmental entities.

Named plaintiffs Lincoln Electric Company ("Lincoln Electric") and Profile Grinding, Inc. ("Profile") (collectively "Class Plaintiffs"), on behalf of themselves and a class of similarly situated entities defined more fully above (the "Class" or "Settlement Class"), originally brought a federal court action in 2002, against Defendants Bluestar Metal Recycling Co., Columbia National Group, Inc., Columbia Iron & Metal Co. d/b/a Columbia Trading, Inc., Atlas-Lederer Company, Inc., Luntz Corporation, Philip Metals Inc., Parkwood Iron & Metal, Inc., DeMilta Iron and Metal, Bay Metal, Inc., and M. Weingold & Co. Inc., Harry Rock & Associates, Inc., and Jack Weingold for violations of the federal antitrust laws (the "Antitrust Action"). Class Plaintiffs alleged that the Defendants engaged in a conspiracy to fix prices, allocate customers, rig bids and commit other unlawful acts designed to artificially reduce the prices of ferrous and nonferrous industrial scrap metal sold to Defendants by Class Plaintiffs and members of the proposed Class.

Previously the claims against M. Weingold & Co. Inc., Harry Rock & Associates, Inc., Jack Weingold, Bay Metal, Inc. and Bluestar Metal Recycling, Co. have been settled. Defendants Luntz Corporation, Philip Metals, and Parkwood Iron and Metal Inc. are no longer in business.

After a jury trial in February 2005, Defendants DeMilta Iron and Metal and Columbia National Group were found not liable, and a judgment was awarded against Columbia Iron & Metal Co.

Thereafter on January 26, 2010, another action was filed in this federal Court to facilitate the collection of the judgment against Columbia Iron and Metal Co. which named David Miller and Mercer Co. as defendants (the "Federal Collection Action"). The state law claims in the Federal Collection Action were dismissed for reasons other than on the merits, and on September 19, 2014, were refiled in the Court of Common Pleas for Summit County, Ohio (the "State Court Action").

Now Class Plaintiff, Lincoln Electric has reached a settlement with Columbia National Group, Inc., Columbia Iron & Metal Co. d/b/a Columbia Trading, Inc., David Miller and Mercer Co. (collectively the "Settling Parties"). The settlement agreement may be viewed in its entirety on Class Plaintiff's lead counsel's website, at www.bsfllp.com.

PROPOSED SETTLEMENT

A settlement of the judgment against Columbia Iron and Metal Co. and the State Court Action has been reached with the Settling Parties. The terms of the settlement provide that in exchange for (i) a payment of $1,500,000.00 to be paid collectively by David Miller, Columbia National Group, Inc. and Columbia Iron & Metal Co. d/b/a Columbia Trading, Inc. and (ii) a payment of $300,000 to be paid by Mercer Co. to be made in four payments of $75,000 each, into an escrow account for the benefit of the class, the Class Plaintiffs and the Settlement Class will dismiss with prejudice their claims against the Settling Parties as set forth below.

Class Plaintiffs' Counsel has concluded, after extensive discovery and investigation of the facts, after pursuing judgment collection actions in the federal and state courts, and after considering the circumstances of the class action and the applicable law that it is in the best interests of the class to enter into a settlement agreement with the Settling Parties. Such a settlement will avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure that the benefits described herein are obtained for the class. Class Plaintiffs' Counsel also concluded that this settlement is fair, reasonable and adequate, and in the best interests of Class Plaintiffs and the class. The Settling Parties have concluded that the settlement is appropriate to avoid the costs, expenses and uncertainties of litigation, particularly complex litigation such as the class action and the related state court action.

The proposed settlement with the Settling Parties is a compromise of disputed claims and does not mean that they have been found liable for the claims made by the Class Plaintiffs in the state court action. The Parties expressly agree that the settlement and its contents, and any and all statements, negotiations, documents and discussions associated with it, are not and shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing in the state court action.

If the settlement is approved by the Court, the Settling Parties shall be released and forever discharged from any and all causes of action, equitable or legal claims, damages, losses, penalties and liabilities of any kind whatsoever, including costs and attorneys' fees, in law or equity, known or unknown, asserted or unasserted, arising out of or related to the class action, including, without limitation, the allegations in the Complaint in this case and in the state court action, from the beginning of time to final approval, which were or could have been asserted on behalf of the class in this action. Each member of the class covenants and agrees that it shall not seek to establish liability against the Settling Parties based, in whole or in part, upon any of the released claims.

Any disputes arising under or relating to the Settlement Agreement, including, but not limited to, the releases in the Settlement Agreement, will be resolved in the United States District Court for the Northern District of Ohio.

REQUESTED ATTORNEY FEES

Class Counsel and other specialized counsel have not to date received any payment for their services in conducting the Federal Collection Action and the State Court Action, nor have they been paid for any litigation expenses. Class Counsel has requested that, upon the final approval of the Settlement Agreement by the Court, Class Counsel should receive attorneys' fees in the amount of 33 and 1/3 % of the settlement amount described above ($600,000.00). In addition, Class Counsel has requested that they be reimbursed for expenses of litigation in the State Court Action in the amount of $8,143.30.

OBJECTIONS TO SETTLEMENT

As a class member:

1. You will be entitled to share in any proceeds from the settlement as described above and according to the terms of the Settlement Agreement if it is finally approved by the Court.

2. Class Counsel will continue to represent the class on your behalf. All fees, costs, and expenses of counsel for the class will be paid only out of recovery by the class as determined by the Court. You will not have to pay Class Counsel any additional amounts, and in no event will you have to pay any court costs or attorneys' fees for participating as a class member. You may advise the Court if at any time you are not being fairly and adequately represented by the Class Plaintiffs and counsel for the class.

3. If the settlement is finally approved, you will be bound by the final judgment and release against the Settling Parties as entered by the Court.

4. You may be required as a condition to participating in any recovery through the proposed settlement to present evidence respecting your sales of industrial ferrous or nonferrous scrap metal to defendants during the relevant time period. (You should therefore preserve invoices or other records reflecting this information.)

5. Class members who do not object to the settlement need not take any action to indicate their approval; at some later date a claim form will be sent to class members.

6. The Court will hold a hearing on **August 4, 2016 at 2:00 p.m.** ("Hearing") to consider any timely objection to the Motion filed by any party and to consider final approval of the Motion.

7. Class members who wish to object or otherwise be heard with respect to the Motion including the proposed settlement or to appear in person at the Hearing must first send a *Notice of Intention to Appear* and a *Summary Statement* outlining the position(s) to be asserted and the grounds therefor, together with copies of any supporting papers or briefs, via first-class mail, postage prepaid, to the Office of the Clerk of this Court no later than seven (7) days prior to the Hearing (**July 28, 2016)**. Except as herein provided, any persons who fail to file a *Notice of Intent to Appear* as well as a *Summary Statement* shall be deemed to have waived such objections and will not be heard in person at the Hearing. The *Notice of Intention to Appear* and the *Summary Statement* should be sent to:

Office of the Clerk
United States District Court for the Northern District of Ohio
Carl B. Stokes United States Courthouse
801 West Superior Avenue
Cleveland, Ohio 44113

A copy of any objection should be sent to lead counsel for Class Plaintiffs:

William Isaacson
Boies, Schiller & Flexner, LLP
5301 Wisconsin Avenue, NW Suite 800
Washington, DC 20015

PLEASE DO NOT CONTACT THE COURT OR THE CLERK OF THIS COURT FOR INFORMATION.

Date: June 7, 2016, Cleveland, Ohio

BY THE ORDER OF THE COURT
Honorable Judge Boyko
United States District Court Northern District of Ohio

Prepared and submitted by

/s/ Christopher J. Niekamp
Christopher J. Niekamp (0051221)

Attorney for Class Plaintiffs Lincoln Electric Company and Profile Grinding, Inc.