

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

MARTIN HOWARD, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

ARCONIC INC., et al.,

Defendants.

) Civ. Action No. 2:17-cv-01057-MRH
) **(Consolidated)**

) CLASS ACTION

) **MEMORANDUM OF LAW IN SUPPORT**
) **OF PLAINTIFFS' MOTION FOR**
) **DISTRIBUTION OF THE NET**
) **SETTLEMENT FUND**

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I. INTRODUCTION

This action has been settled pursuant to the terms of the Stipulation of Settlement dated April 21, 2023 (the “Stipulation”) (Dkt. No. 220-1).¹ Lead Plaintiffs Iron Workers Local 580-Joint Funds and Ironworkers Locals 40, 361 & 417 – Union Security Funds and Janet L. Sullivan (“Plaintiffs”), and Defendants Arconic Inc. (“Arconic”), the Individual Defendants, and the Underwriter Defendants (“Defendants”) settled this Action for \$74,000,000.00 in cash by the terms stated in the Stipulation. On May 2, 2023, the Court entered an Order Granting Preliminary Approval Pursuant to Fed. R. Civ. P. 23(e)(1) And Permitting Notice To The Settlement Class (the “Preliminary Approval Order”) (Dkt. No 227). Following notice to the Settlement Class and a hearing, on August 9, 2023, the Court entered the Final Judgment Approving Class Action Settlement (Dkt. No. 252).

The Court-appointed Claims Administrator, A.B. Data, Ltd. (“A.B. Data”), has advised Lead Counsel that it has completed all analyses and accounting procedures and quality control procedures in connection with the submitted Claims and has finalized its determination of which Claims are authorized and which are ineligible. *See* Declaration of Eric A. Nordskog in Support of Plaintiffs’ Motion for Distribution of the Net Settlement Fund (the “Nordskog Declaration”) ¶ 3, submitted herewith. All that remains to complete the Settlement process is to distribute the Net Settlement Fund to the Authorized Claimants. Lead Counsel therefore respectfully requests that the Court authorize the distribution of the Net Settlement Fund to Authorized Claimants, as identified in Exhibits D and E to the Nordskog Declaration.

¹ Unless otherwise defined, capitalized terms herein have the same meanings attributed to them in the Stipulation.

II. DETERMINATION OF AUTHORIZED CLAIMS

Pursuant to the Preliminary Approval Order, Settlement Class Members wishing to participate in the Settlement were required to submit a Proof of Claim and Release form (“Claim Form”) online or by mail, postmarked or received, no later than August 21, 2023. Nordskog Declaration ¶ 7. The Claims Administrator received and reviewed all submitted Claims, and to the extent that a Claim was deficient in any regard, the Claims Administrator notified the Claimant of the deficiency and advised the Claimant as to possible ways to cure the deficiency. *Id.* ¶¶ 21-29. The Claims Administrator continued processing all Claims received up to September 20, 2024. *Id.* ¶ 10.

Of the 214,656 Claim Forms submitted to and fully processed by the Claims Administrator, 2,088 were paper submissions submitted by mail, and 3,461 were submissions through the online filing portal. *Id.* ¶¶ 10, 13. The remaining 209,107 Claim Forms were submitted electronically (“Electronic Claims”). *Id.* ¶ 14. Electronic Claims are typically submitted by institutional investors who may have hundreds or thousands of transactions during the relevant period. *Id.* Rather than provide reams of paper requiring data entry, the institutional investors filing Electronic Claims either mail a computer disc or email a file to A.B. Data, so that A.B. Data may electronically upload all transactions to the Settlement Database. *Id.* This process is designed to expedite the claims process.

A. Valid and Properly-Documented Claims

A.B. Data analyzed the 214,656 Claim Forms received through September 20, 2024, and determined that 31,813 were valid and properly-documented. Nordskog Declaration ¶ 39. Of these 31,813 valid Claims, 31,682 were timely (*i.e.*, postmarked or received no later than August 21, 2023) (“Timely Eligible Claims”) and 131 were postmarked or received after August 21, 2023, but received on or before September 20, 2024 (“Late but Otherwise Eligible Claims”). *Id.* ¶ 40-

41. These valid Claims represent Recognized Losses of \$383,493,435.08 for Arconic securities purchased during the Class Period. *Id.* ¶ 41. The total Recognized Losses include Recognized Losses for Timely Eligible Claims of \$373,699,025.76 and Recognized Losses for Late but Otherwise Eligible Claims of \$9,794,409.32. *Id.*

Plaintiffs respectfully request that the Court accept all 31,813 valid Claims, consisting of the 31,682 Timely Eligible Claims and the 131 Late but Otherwise Eligible Claims. The Late but Otherwise Eligible Claims have not caused delay in the distribution of the Net Settlement Fund or otherwise prejudiced any Authorized Claimant. Accordingly, Plaintiffs believe that it would be unfair to prevent otherwise valid Claimants from participating in the Net Settlement Fund solely because their Claims were submitted after the August 21, 2023 submission deadline, but while other Claims were still being processed. The Court maintains an inherent equitable power to “allow late-filed proofs of claim and late-cured proofs of claim.” *In re Cendant Corp. Prides Litig.*, 233 F.3d 188, 195 (3d Cir. 2000). *See also In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246 F.3d 315, 321 (3d Cir. 2001) (courts may allow late claims on a “finite pool of assets.”); *Mulroy v. Nat’l Water Main Cleaning Co. of New Jersey*, No. 12-cv-3669-WJM-MF, 2014 WL 7051778, at *6 (D.N.J. Dec. 12, 2014) (including late-filed claims as part of a settlement).

Accordingly, Plaintiffs respectfully request that the Court approve the 31,813 valid Claims listed in Exhibits D and E to the Nordskog Declaration.

The Court should also enter an Order directing that no Claims received after September 20, 2024 or any responses to Deficiency Notices received after September 20, 2024, be included in the distribution. To facilitate the efficient and proportional distribution of the Net Settlement Fund, there must be a final cut-off after which no other Claims may be accepted. *Jaroslawicz v. Engelhard Corp.*, No. 84-cv-3641-CSF, 1991 WL 117416, at *2 (D.N.J. June 21, 1991) (“[I]n the

distribution of a large class action settlement fund, ‘a cutoff date is essential and at some point the matter must be terminated.’” (quoting *Reports of the Conference for District Court Judges*, 63 F.R.D. 231, 262 (1973)); *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 177 F.R.D. 216, 235 (D.N.J. 1997) (“the impetus for defendants to settle class action suits is finality of the litigation.”).

B. Deficient and Ineligible Claims

To be eligible for a payment from the proceeds of the Settlement, Settlement Class Members were required to submit a Claim Form with adequate supporting documentation. *See* Dkt. No. 220-3, Stipulation, Ex. A-1 at 7-8. Likewise, Settlement Class Members must evidence transactions that result in a Recognized Loss under the Court-approved Plan of Allocation. *Id.* at 16-27. If a Claim was determined to be defective or ineligible, a *Notice of Rejection of Claim* or a *Notice of Partial Rejection of Claim* (“Deficiency Notice”) was sent to the Claimant describing the defect(s) or condition(s) of ineligibility in their Claim and what was necessary to cure any “curable” defect(s) in the Claim, and the deadline for doing so. Nordskog Declaration ¶ 23. A sample Deficiency Notice is attached as Exhibit A to the Nordskog Declaration. To date, A.B. Data has mailed Deficiency Notices to Claimants in connection with 4,865 Claims. *Id.* In addition, for Electronic Claim filers, A.B. Data sent an email to the email address included with their Claim Form (“Status Email”) with an attached Excel spreadsheet containing detailed information associated with the accounts and indicating which of those accounts within the filing were deficient and/or rejected (“Status Spreadsheet”). *Id.* ¶ 25. For Electronic Claims, A.B. Data sent Status Emails and Status Spreadsheets to 372 Electronic Claim filers, notifying them of any deficiencies or Claims that were ineligible, samples of which are attached as Exhibits B and C to the Nordskog Declaration. *Id.* ¶ 28.

1. Rejected Claims

A.B. Data has identified 182,843 Claim Forms that it recommends for partial or complete

rejection. Nordskog Declaration ¶ 39; *see also id.*, Exhibit F. The reasons for rejection are the following: (i) Claims with no purchase(s)/acquisition(s) of Arconic securities during the Settlement Class Period; (ii) Claims with no Recognized Losses; (iii) duplicate or replaced Claims; (iv) Claims which were withdrawn; (v) Claims filed by an excluded party; and (vi) Claims that did not comply with documentation audit. *Id.* A.B. Data informed each of the rejected Claimants of the status of their claims, and the deadline for challenging such rejections.

2. Disputed Claims

Following the curing procedures identified above, A.B. Data received 16 requests seeking Court review. Nordskog Declaration ¶ 30. A.B. Data contacted these 16 Claimants to answer all questions, fully explain the determination of their Claim's status and, where applicable, facilitate the submission of missing information or documentation. *Id.* As a result, all 16 requests for Court review were withdrawn by the Claimant, or the deficiency associated with the Claim was resolved. *Id.*

III. PLANNED DISTRIBUTION OF THE NET SETTLEMENT FUND

Pursuant to the Preliminary Approval Order, “[a]ll funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis*, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.” Dkt. No. 227 ¶ 25. The Court's Order Approving Plan of Allocation of Settlement Proceeds states that “the formula for the calculation of the claims of Authorized Claimants that is set forth in the Notice of Pendency and Proposed Settlement of Class Action (the ‘Notice’) sent to Settlement Class Members provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established by the Stipulation among the Settlement Class Members, with due consideration having been given to administrative convenience and necessity.” Dkt. No. 251 ¶ 3. Further, pursuant to the Stipulation, “[t]he Claims

Administrator shall allocate to each Authorized Claimant a *pro rata* share of the Net Settlement Fund based on his, her, or its Recognized Loss as compared to the total Recognized Losses of all Authorized Claimants.” Dkt. No. 220-3, Stipulation, Ex. A-1 at 26. The Plan of Allocation sets forth the formula for calculating each Claimant’s Recognized Loss. *See* Declaration of Eric A. Nordskog Regarding: (A) Mailing Of The Postcard Notice; (B) Publication Of The Summary Notice; And (C) Report On Requests For Exclusion And Objections, Ex. B (Dkt. No. 236-1). The Plan of Allocation was approved by the Court in the Order Approving Plan of Allocation of Settlement Proceeds *See* Dkt. No. 251 ¶ 4.

Lead Counsel now seeks to distribute the Net Settlement Fund to the Settlement Class Members whose 31,813 Claims have been accepted as set forth in Exhibits D and E of the accompanying Nordskog Declaration, in proportion to their Recognized Losses as shown therein.

Consistent with the Plan of Allocation and with the Court’s approval, the Claims Administrator will conduct an initial distribution of the Net Settlement Fund to all Authorized Claimants on a *pro rata* basis, where distribution payments calculate to \$10.00 or more. Nordskog Declaration ¶ 43(a); Dkt. No. 220-3, Stipulation, Ex. A-1 at 26. Based on the substantial experience of Lead Counsel in similar distributions, it can be expected that a certain number of the payments to be distributed to Settlement Class Members who filed valid Claims will not be timely cashed. To encourage Authorized Claimants to promptly cash their distribution checks and to avoid or reduce future expenses relating to unpaid distributions, Lead Counsel proposes that all the distribution checks bear a notation “DEPOSIT PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT NEGOTIATED WITHIN 120 DAYS OF DISTRIBUTION.” Nordskog Declaration ¶ 43(a).

The Claims Administrator will make reasonable and diligent efforts to encourage Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund to cash their distribution. However, if any funds remain in the Net Settlement Fund within a reasonable amount of time after the initial distribution, by reason of uncashed checks or otherwise, and if Lead Counsel, in consultation with the Claims Administrator, determines it is cost-effective to do so, the Claims Administrator will conduct a second distribution (the “Second Distribution”). Nordskog Declaration ¶ 43(b). During the Second Distribution, any amounts remaining in the Net Settlement Fund after the initial distribution, after payment of Notice and Administration Expenses (including the estimated costs of such Second Distribution), Taxes, and any escrow fees, will be redistributed to all Authorized Claimants in the initial distribution who cashed their distribution checks and would receive at least \$10.00 from the Second Distribution. *Id.* Following the Second Distribution, additional redistributions will occur following the same process of the Second Distribution until no funds remain in the Net Settlement Fund or until Lead Counsel, in consultation with the Claims Administrator, determines additional distributions are no longer economically feasible. *Id.*

Finally, if any funds remain in the Net Settlement Fund after payment of any further Notice and Administration Expenses and Taxes and any remaining fees and expenses, the remaining balance shall be contributed to Howard University’s Investor Justice and Education Clinic, a not-for-profit organization unaffiliated with any party or their counsel and serving the public interest. *Id.* ¶ 43(c).

IV. RELEASE OF CLAIMS

To allow the full and final distribution of the Net Settlement Fund, the Court must bar any further claims against the Net Settlement Fund beyond the amounts allocated to Authorized Claimants, and provide that all persons involved in the review, verification, calculation, tabulation,

or any other aspect of the processing of the Claims submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, be released and discharged from any and all claims arising out of such involvement. Accordingly, the Court should release and discharge all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, from any and all claims arising out of such involvement and bar all Settlement Class Members, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Plaintiffs, the Settlement Class, Plaintiffs' Counsel, the Claims Administrator, the Escrow Agent, or any other agent retained by Plaintiffs or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund beyond the amounts allocated to them under the terms of the distribution order. *See In re Toronto-Dominion Bank Sec. Litig.*, Order of Final Distribution of Net Settlement Fund at p.6, ECF No. 135, Case No. 1:17-cv-01665-NLH-JS (D.N.J. Apr. 27, 2020); *Carmack v. Amaya Inc. et al.*, Order of Distribution of the Additional Settlement Funds at ¶1, ECF No. 157, Case No. 1:16-cv-01884-JHR-JS (D.N.J. Sept. 22, 2021).

V. RECORDS RETENTION AND DESTRUCTION

The Court should order that: (i) in no less than one year after the distribution of the Net Settlement Fund is complete, the Claims Administrator may destroy the paper copies of the Claims and all supporting documentation; and (ii) in no less than one year after the distribution of the Net Settlement fund is complete, the Claims Administrator may destroy the electronic copies of the Claims and all supporting documentation.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve and enter the [Proposed] Order Granting Plaintiffs' Motion for Distribution of the Net Settlement Fund submitted herewith.

Dated: November 20, 2024

Respectfully submitted,

**LAW OFFICE OF ALFRED G. YATES,
JR., P.C.**

/s/ Alfred G. Yates Jr.

Alfred G. Yates, Jr. (PA17419)
Gerald L. Rutledge (PA62027)
1575 McFarland Road, Suite 305
Pittsburgh, PA 15216
Telephone: (412) 391-5164
Facsimile: (412) 471-1033
yateslaw@aol.com

Local Counsel

POMERANTZ LLP

Jeremy A. Lieberman (*pro hac vice*)
Emma Gilmore (*pro hac vice*)
Cheryl D. Hamer
Villi Shteyn (*pro hac vice*)
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (212) 661-8665
jalieberman@pomlaw.com
egilmore@pomlaw.com
chamer@pomlaw.com
vshteyn@pomlaw.com

*Lead Counsel for Lead Plaintiff Ironworkers
for All Shares Other Than the Defined
Preferred Shares*

**ROBBINS GELLER RUDMAN & DOWD
LLP**

Samuel H. Rudman

David A. Rosenfeld (*pro hac vice*)
Magdalene Economou (*pro hac vice*)
Natalie Bono (*pro hac vice*)
58 South Service Road, Suite 200
Melville, New York 11747
Telephone: (631) 367-7100
Facsimile: (631) 367-1173
srudman@rgrdlaw.com
drosenfeld@rgrdlaw.com
meconomou@rgrdlaw.com
nbono@rgrdlaw.com

Ellen Gusikoff Stewart (*pro hac vice*)
655 West Broadway, Suite 1900
San Diego, California 92101
Telephone: (619) 231-1058
Facsimile: (619) 231-7423
elleng@rgrdlaw.com

Lead Counsel for Lead Plaintiff of the Defined Preferred Shares

**LAW OFFICE OF ALFRED G. YATES,
JR., P.C.**

Alfred G. Yates, Jr. (PA17419)
Gerald L. Rutledge (PA62027)
1575 McFarland Road, Suite 305
Pittsburgh, PA 15216
Telephone: (412) 391-5164
Facsimile: (412) 471-1033
yateslaw@aol.com

Local Counsel

LAW OFFICES OF CURTIS V. TRINKO

Curtis V. Trinko (*pro hac vice*)
39 Sintsink Drive West - 1st Floor
Port Washington, NY 11050
Telephone: (212) 490-9550
Facsimile: (212) 986-0158
ctrinko@trinko.com

Additional Plaintiffs' Counsel

