

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

MARTIN HOWARD, Individually and on)	Civ. Action No. 2:17-cv-01057-MRH
Behalf of All Others Similarly Situated,)	(Consolidated)
)	
Plaintiff,)	<u>CLASS ACTION</u>
)	
vs.)	
)	
ARCONIC INC., KLAUS KLEINFELD,)	
WILLIAM F. OPLINGER, ROBERT S.)	
COLLINS, ARTHUR D. COLLINS, JR.,)	
KATHRYN S. FULLER, JUDITH M.)	
GUERON, MICHAEL G. MORRIS, E.)	
STANLEY O’NEAL, JAMES W. OWENS,)	
PATRICIA F. RUSSO, SIR MARTIN)	
SORRELL, RATAN N. TATA, ERNESTO)	
ZEDILLO, MORGAN STANLEY & CO.)	
LLC, CREDIT SUISSE SECURITIES (USA))	
LLC, CITIGROUP GLOBAL MARKETS)	
INC., GOLDMAN SACHS & CO., J.P.)	
MORGAN SECURITIES LLC, BNP)	
PARIBAS SECURITIES CORP.,)	
MITSUBISHI UFJ SECURITIES (USA),)	
INC., RBC CAPITAL MARKETS, LLC, and)	
RBS SECURITIES INC.)	
)	
Defendants.)	
)	

**NOTICE OF NON-OPPOSITION AND REPLY IN FURTHER SUPPORT
OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT,
AWARD OF ATTORNEYS’ FEES AND EXPENSES, AND AWARD TO PLAINTIFFS**

Plaintiffs, individually and on behalf of the Settlement Class, respectfully submit this notice of non-opposition and reply in further support of their Motion.¹

On July 5, 2023, Plaintiffs filed their Motion for the entry of an order (i) approving the proposed \$74 million class-wide Settlement of this Litigation and the Plan of Allocation for distributing Settlement proceeds; (ii) awarding attorneys' fees totaling 33 ⅓% of the Settlement Amount and litigation expenses in the amount of \$822,910.28, together with interest thereon; and (iii) awarding \$65,000 to Plaintiffs for their service on behalf of the Settlement Class.

Under controlling Third Circuit law, one factor that courts must consider when evaluating such requests is the reaction of the class to the settlement and the fee request. *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) (factor 2); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975) (factor 2). This is, as many courts observe, “perhaps the most significant factor” in the overall assessment performed by the Court. *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *4 (D.N.J. July 29, 2013) (citation omitted).

As set forth in the Nordskog Declaration accompanying the Motion (Dkt. No. 236-1), notice of the proposed Settlement was sent to over 525,000 potential Settlement Class Members, published in *The Wall Street Journal*, transmitted over *PR Newswire*, and posted to the Legal Notice System maintained by the Depository Trust Company. Among other things, those notices summarized the material terms of the proposed Settlement, advised that Lead Counsel would apply for an award of attorneys' fees of up to 33 ⅓% of the Settlement Amount and expenses not to exceed \$975,000, plus interest thereon, and directed potential Settlement Class Members to a Settlement-specific website for more information regarding the Settlement, including the terms of the Plan of Allocation and how to submit a proof of claim, object to the Settlement, or request

¹ Unless otherwise defined herein, all capitalized terms have the meaning set forth in the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement, Award of Attorneys' Fees and Expenses, and Award to Plaintiffs, filed July 5, 2023 (Dkt. No. 235).

exclusion from the Settlement Class. The deadline for filing any objections or requesting exclusion from the Settlement Class was July 19, 2023. As provided in the Supplemental Declaration of Eric Nordskog, filed simultaneously herewith, there have been *no objections* to the proposed Settlement or the Plan of Allocation, *no objections* to Lead Counsel's request for attorneys' fees and expenses, and only *two requests for exclusion* from the Settlement Class by individual investors, the first of which included no transactional data and the second of which represents only 24 of the more than 338 million shares outstanding during the Class Period.

The absence of any objections and the limited requests for exclusion after such an extensive notice program provide strong evidence that the Settlement is fair, reasonable, and adequate within the meaning of Rule 23(e)(2). *See In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001) (“The vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement.”); *see also McDermid v. Inovio Pharms., Inc.*, 2023 WL 227355, at *7 (E.D. Pa. Jan. 18, 2023) (that “[n]o one objects to the settlement” is “indicative of its fairness” and supports final approval); *Kanefsky v. Honeywell Int’l Inc.*, 2022 WL 1320827, at *5 (D.N.J. May 3, 2022) (the “absence of any objections . . . and the small number of opt-outs relative to the apparent size of the Class strongly weigh in favor of approval of the Settlement”).

In addition, the fact that there were no objections to the proposed Plan of Allocation which, as noted in Plaintiffs' opening brief, uses industry-standard methods to calculate each Authorized Claimant's share of the Settlement proceeds, shows that the Settlement Class endorses the plan and further supports its approval. *See Utah Ret. Sys. v. Healthcare Servs. Grp., Inc.*, 2022 WL 118104, at *11 (E.D. Pa. Jan. 12, 2022) (plan of allocation was “fair and reasonable” where it used criteria commonly used in securities cases and “there were no objections to the plan”); *see also In*

re Rent-Way Sec. Litig., 305 F. Supp. 2d 491, 512 (W.D. Pa. 2003) (observing that “no class member has objected to the Allocation Plan” in approving the plan).

Similarly, the lack of any objections also lends further weight to the attorneys’ fees and expenses requested by Lead Counsel and the awards to Plaintiffs for their service on behalf of the Settlement Class. *See In re Innocoll Holdings Public Ltd. Co. Sec. Litig.*, 2022 WL 16533571, at *10 (E.D. Pa. Oct. 28, 2022) (fee and expense application supported by the fact that “[n]o Settlement class member objected to the attorneys’ fees or any out-of-pocket reimbursements sought”); *see also Tumpa v. IOC-PA, LLC*, 2021 WL 62144, at *11 (W.D. Pa. Jan. 7, 2021) (“The absence of any objections favors the approval of [attorneys’] fees without reduction.”); *Lan v. Ludrof*, 2008 WL 763763, at *18 (W.D. Pa. Mar. 21, 2008) (lack of any objections to expenses claimed or requested lead plaintiff awards supported finding that each was “reasonable[]”).

The lack of any objections here is especially noteworthy given that the Settlement Class includes a significant number of institutional investors with sufficient incentive and resources to evaluate the terms of the Settlement and object if appropriate. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (approval of settlement that yielded two objections was proper given that the class included “a significant number of . . . ‘sophisticated’ institutional investors that had considerable financial incentive to object had they believed the requested fees were excessive”); *see also Rent-Way*, 305 F. Supp. 2d at 515 (finding it significant that “no institutional investors have objected either to the Settlement or to Lead Counsel’s fee request”).

Based on the foregoing, and the entire record herein, Plaintiffs respectfully request that the Court: (i) grant final approval of the Settlement and Plan of Allocation; (ii) award attorneys’ fees totaling 33 ⅓% of the Settlement Amount and payment of litigation expenses in the amount of \$822,910.28, plus interest on both amounts at the same rate and for the same period as earned by the Settlement Fund; and (iii) award Lead Plaintiff Iron Workers Local 580 – Joint Funds \$25,000,

award Lead Plaintiff Ironworkers Locals 40, 361 & 417 – Union Security Funds \$25,000, and award Lead Plaintiff Sullivan \$15,000 for their work and service on behalf of the Settlement Class.

Dated: August 2, 2023

Respectfully submitted,

POMERANTZ LLP

/s/ Emma Gilmore

Jeremy A. Lieberman (*pro hac vice*)

Emma Gilmore (*pro hac vice*)

Justin D. D'Aloia (*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

jdaloia@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

drosefeld@rgrdlaw.com

meconomou@rgrdlaw.com

nbono@rgrdlaw.com

Ellen Gusikoff (*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

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August, 2023, I served the attached document, Notice of Non-Opposition and Reply In Further Support of Motion for Final Approval of Class Action Settlement, Award of Attorneys' Fees and Expenses, and Award to Plaintiffs, via the CM/ECF system to all counsel of record.

/s/ Emma Gilmore
Emma Gilmore